Explanatory Memorandum to the Town and Country Planning (General Permitted Development) (Amendment) (Wales) (No. 2) Order 2012

This Explanatory Memorandum has been prepared by the Department for Environment and Sustainable Development and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister’s Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Town and Country Planning (General Permitted Development) (Amendment) (Wales) (No. 2) Order 2012.

I am satisfied that the benefits outweigh any costs.

John Griffiths
Minister for Environment and Sustainable Development
6 September 2012
**(a) Description**

1. This Order introduces a new Part 43 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (the GPDO). The new Part 43 confers permitted development rights for the installation of specified microgeneration equipment on or within the curtilage of buildings other than dwellinghouses or blocks of flats subject to certain criteria. It adds six new classes of permitted development rights to install certain types of microgeneration equipment, specifically solar panels (Class A), stand alone solars (Class B), ground source heat pumps (Class C), water source heat pumps (Class D), flues forming part of biomass heating systems (Class E) and flues forming part of combined heat and power systems (Class F).

The Order also amend Parts 6 (agricultural buildings and operations) and 7 (forestry buildings and operations) of Schedule 2 to the GPDO to clarify that permitted development rights apply to buildings on agricultural or forestry land to house microgeneration equipment, and in particular to house hydro-turbines, to house biomass boilers and anaerobic digestion systems, and to store associated fuel and waste as long as the fuel or waste is produced on the agricultural or forestry land or by the boiler or system.

**(b) Matters of special interest to the Constitutional and Legislative Affairs Committee**

2. None

**(c) Legislative Background**

3. The power to make this instrument is provided by sections 59, 60, 61 and 333(7) of the Town and Country Planning Act 1990 (the Act).

4. These sections give the Secretary of State power to grant planning permission for categories of development specified in a development order. The GPDO is made under these powers and grants automatic planning permission for a range of predominantly minor development, subject to certain criteria. Development granted automatic planning permission is known as permitted development.

5. The functions of the Secretary of State under sections 59, 60, 61 and 333(7) were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672): see the entry in Schedule 1 for the Town and Country Planning Act 1990 (c.8) as substituted by article 4 of, and Schedule 3 to, the National Assembly for Wales (Transfer of Functions) Order 2000 (S.I. 2000/253). The functions were transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c.32), the functions being relevant Assembly functions as defined in paragraph 30(2).

6. **Negative Resolution:** Section 333 of the Act provides that the procedure for a statutory instrument which contains a development order is a negative resolution procedure. There are some exceptions to this provision but they do not apply in this instance.
(d) **Purpose and intended effect of the legislation**

7. Microgeneration is the small-scale production of heat and/or electricity from low carbon sources. Some microgeneration technologies produce energy using renewable resources such as solar, wind or biomass (e.g. wood) and some, like combined heat and power, may use fossil fuels but are much more efficient than conventional systems. Microgeneration offers a practical response to climate change, national energy security and energy poverty. The Welsh Government's policies support the encouragement of microgeneration as a realistic alternative or supplementary energy generation source for the householder, the community and for small businesses.

8. The regime governing the need for planning permission for renewable energy micro-generation technology on non-domestic buildings can act as a barrier to wider uptake. The process of seeking planning permission can be complex, costly, time consuming and uncertain.

9. The Welsh Government’s objective is to promote the uptake of microgeneration by classifying appropriate development as permitted development under the GPDO. However whilst the Welsh Government wants to encourage the widest possible uptake of microgeneration, it is also concerned to ensure that the right levels of control are retained to protect the reasonable interests of neighbours, the environment and the wider community.

10. The intended effects of the proposals include:
    - the reduction in the cost of obtaining planning permission (the perceived barrier to uptake);
    - potential energy savings to businesses and communities (and commensurate reduction in demand for traditional non-renewable sources);
    - wider direct and indirect effects including a reduction on the burden on Local Planning Authorities (LPAs);
    - stimulation of the market demand for renewable technologies, increased investment within the industry and efficiency improvements in microgeneration equipment;
    - increased uptake of renewable sources of power relative to non-renewable sources leading to knock-on effects on carbon savings;
    - contributions towards national (and local) targets for renewable energy and increased energy security.

11. More generally, these proposals represent a deregulatory initiative and are in line with the Welsh Government's objectives of improving both the uptake of renewable energy, and improving the efficiency of the planning system, which are set out in the Programme for Government.
Implementation

12. It is intended that the Order will come into force on 5 October 2012.

13. There are no legal or other implications for the Welsh Government should the date not be met.

Consultation

14. Consultation was undertaken on the proposed revisions to the GPDO in April 2010 for 14 weeks. Details can be found in the following Regulatory Impact Assessment.

Regulatory Impact Assessment

15. This is a Regulatory Impact Assessment of the likely impacts of proposals to amend the GPDO to extend permitted development rights to the above mentioned classes.

- Options

16. Two options were considered:
   (1) Do nothing and maintain the current permitted development rights for non-domestic buildings.
   (2) Introduce the new Part 43 provisions and make amendments to Part 6 and 7.

17. The option testing process does not take into account external events that might affect the uptake of microgeneration equipment (such as an increase in the relative price of non-renewable fuels) or different methods of intervention to address the overall objectives set out in UK Government policy; such as any changes to the financial incentives delivered through the Feed in Tariff.

18. (1) Do nothing
   The ‘do nothing’ option assumes that planning authorities insist upon planning applications for all categories of equipment covered by these proposals.

19. (2) Introduce the new Part 43 provisions and make amendments to Part 6 and 7.

20. Option 2 would provide for the specified microgeneration equipment defined as ‘microgeneration’ in section 82 of the Energy Act 2004 – that is electricity generating equipment with a capacity of less than 50 kilowatts and heat production equipment with a capacity of less than 45 kilowatts thermal. The Order generally permits the installation of specified microgeneration equipment on non-domestic buildings without applying for planning permission subject to limits in respect of size and positioning to control impacts on neighbours and the wider community.

21. It is not proposed to exclude permitted development rights under Part 43 in National Parks as they contain built settlements (e.g. market towns with industrial areas) where such development could be appropriate providing it meets the other conditional criteria. It should therefore remain the responsibility of the LPA to use
Article 4 GPDO Directions to remove permitted development rights if they consider that the local importance of specific areas within their boundaries warrant more restrictive control.

**Benefits**

22. There are four main categories of quantified benefit, which will be examined in turn:
   (i) Savings from the reduced cost of planning applications
   (ii) Fuel cost savings
   (iii) Reduced carbon emissions
   (iv) Energy security

23. (i) **Savings from the reduced cost of planning applications**
   Making a planning application incurs the following costs:
   - Direct cost: the planning fee
   - Indirect costs: transaction costs such as professional fees, production of scaled drawings etc.

24. If the requirement to seek planning permission were removed these costs would no longer be incurred. The typical savings per application would be as follows:
   - Planning fee is £1675\(^1\)
   - Transaction cost is £1450\(^2\)
   This produces a saving of approximately £3125 per installation, which factored up for the average number of annual installations (91 solar PV and 7 biomass\(^3\)) in Wales would produce a saving of approximately £306,250 per annum.

25. By applying the saving per installation of £3125 to the number of installations that would otherwise have required planning permission cumulative savings for option 2 can be calculated as approximately £2.6m up to 2020 based on existing uptake. However if we predict that the introduction of this Order will result in greater certainty that developments can proceed, and thus increase the level of uptake by 10% per year; then savings by 2020 could actually increase to approximately £3.9m.

26. (ii) **Fuel cost savings**
   If non-domestic buildings get some or all of their energy requirements from microgeneration equipment then their related fuel bills would be reduced. However these savings are only relevant to microgeneration equipment installed as a consequence of removing the requirement to obtain planning permission. Fuel savings will depend on the future price of energy and have to be considered in relation to the cost of installing the relevant equipment. The greatest uptake is likely to be in respect of large buildings (factories, warehouses, schools and offices) which have relatively high demand for electricity and heating.

27. (iii) **Carbon savings**

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1 Based on a 0.5 hectare site area (e.g. £335 per 0.1 hectare)
2 Based on the PwC Administrative Burdens Measurement Project. The transaction cost of a minor application was calculated as £1450.
Microgeneration provides a more environmentally sustainable form of energy production than non-renewable sources. A greater use of microgeneration equipment would lead to lower emissions of carbon dioxide. However it is necessary to account for the embodied energy and carbon costs arising from the manufacture and installation of the equipment. Although it is not possible to provide quantifiable figures in relation to this at this time for Wales.

28. Since option 2 produces significant savings both in the short term (e.g. the cost of planning consent) and the longer term (e.g. reduced fuel and electricity bills) it is likely to encourage growth in the microgeneration renewable energy market, and so microgeneration equipment will provide a larger contribution towards meeting carbon reduction targets than is currently the case. However if greater uptake results in UK suppliers being unable to fulfil market demand and consequently there is an increase of foreign imports then the embodied energy costs associated with transport will be higher. However it is not possible to provide quantifiable figures in relation to this at this time for Wales.

29. (iv) Energy security
Microgeneration can contribute positively towards renewable energy targets, increasing the overall stock of UK energy supply and adding to long term energy security for business and industry. Option 2 presents the lesser constraint to microgeneration renewable energy development, which should result in higher uptake and therefore the greatest effect.

30. Benefits to the Microgeneration Industry and Secondary Benefits
The increase in demand for microgeneration equipment will benefit firms that produce and install microgeneration equipment. This has the potential to boost investment in microgeneration leading to efficiency improvements and further job creation. This could further benefit consumers and the environment as prices fall, output increases and embodied energy costs decrease. Any price falls will depend on the capacity of the industry and the structure of the market.

- Costs

31. It is difficult to place a monetary value on the costs of removing the requirement to seek planning permission for the installation of microgeneration equipment. This is because many of the costs concern non-marketed goods such as landscape and the environment. Because these goods are not bought and sold in conventional markets it is very difficult to put a monetary value on them. There would be a reduction in planning fee income for LPAs, however the fee often does not cover the costs of handling the application and so in real terms there would be a net benefit for LPAs.

32. In some circumstances there may be resource implications on LPA Environmental Health Departments in investigating noise complaints if equipment has not been installed or maintained properly, or is close to a sensitive receptor. However it is unlikely due to the passive nature (e.g. limited moving parts) of the microgeneration equipment, the location of non-domestic buildings, agricultural buildings and forestry operations (e.g. industrial estates, city centres, agricultural barns, remote rural

locations) that many complaints of nuisance will be made to local authorities. However if complaints are received then Local Authorities will continue to have powers to take action under the Environmental Protection Act 1990.

33. **Costs to conventional energy providers**
   If more non-domestic buildings get some or all of their energy requirements from microgeneration equipment there will be a reduced demand for energy from other sources. This imposes costs on more conventional energy providers in terms of lost business. However as a proportion of the total conventional energy market these reductions in demand are likely to be relatively small because the Order includes a definition of microgeneration which restricts the amount of electricity or heat that can be produced in order to be able to benefit from permitted development rights. Therefore if a developer wishes to generate more than the permitted limits of energy from microgeneration equipment then a formal planning application will be required.

34. **Landscape and amenity**
   The planning regime provides an effective control of the location and by implication visual impact and amenity of the development of non-domestic microgeneration. Granting permitted development rights may result in cases of microgeneration equipment being installed in inappropriate locations; however the conditional criteria contained in the Order (for example restricting the location of stand alone solars on Article 1(5) land) should help to ensure that this does not occur. LPAs would still be able to use Article 4 GPDO Directions to remove permitted development rights to ensure that visual impact and amenity are protected in locally sensitive areas.

35. **Biodiversity**

   The Welsh Government must have regard to duties under section 11A of the National Park and Access to the Countryside Act 1949, section 85 of the Countryside and Rights of Way Act 2000 and the Conservation of Habitats and Species Regulations 2010. The installation of the specified microgeneration equipment is subject to certain criteria and LPAs will be able to use Article 4 GPDO Directions to remove permitted development rights if they consider that areas within their boundaries warrant more restrictive control.

36. **Equality**

   As required by the Equality Act 2010 we have also examined whether any of the options would have an unfavourable impact on persons who share a relevant protected characteristic. We have concluded that they would not.
Small firms impact test

37. There are clearly a number of different types of small firms that may be affected (in terms of demand for goods and services) as a result of an increase in uptake of non-domestic microgeneration equipment. In Option 1, the do nothing approach, there are a number of small firms that may be involved such as surveyors/consultants or architects/drafting firms who may provide advice about or drawings for planning applications. In Option 2 there may be a reduction in demand for these services however applications for non-domestic microgeneration installation currently make up less than 1% of all non-domestic applications and the overall impact on these firms should therefore be small.

38. Equally with increased permitted development rights there will be a potential increase in demand for microgeneration equipment – having a knock-on effect on the supply chain, such as manufacturers, suppliers and installers.

39. The sectors most likely to be affected by the proposals are:
- Businesses and community groups wishing to purchase microgeneration equipment due to reduced planning costs.
- Microgeneration equipment manufacturers, installers and retailers as a result of greater demand as barriers to uptake are removed.

40. There may also be secondary effects to:
- Planning services/staff at LPAs (e.g. need to obtain training to better understand implications of proposals);
- LPA Departments that deal with enforcement relating to nuisance (e.g. if a greater number of complaints are received from neighbouring households);
- Non-renewable energy suppliers – power generation, oil/gas companies as well as other indirect supply chain effects (e.g. experience reduced demand as barriers to uptake are removed); and
- Neighbours and surrounding occupiers (e.g. potential impact on visual amenity).

- Competition assessment

41. The possible competition impacts of the options within this review have been assessed. The approach adopted is as set out by the UK Government's Cabinet Office, referring in turn to more detailed Guidelines for competition assessment set out by the Office of Fair Trading.

42. It has not been practicable to undertake a full, detailed competition assessment across all affected markets. Therefore, the likely competition impacts have been assessed in mainly qualitative terms based on an understanding of the affected markets, the current market structure, the nature of competition and the likely positive and negative impacts of the possible policy measures. The level of analysis within this Impact Assessment has been determined by the availability and detail of the data and information.

43. Consideration has been given both to effects upon competition in the UK (relating to potential reductions in market distortions) and to effects upon UK competitiveness. For the latter, the analysis relates to the potential for economies of scale in production for UK firms as compared to those in EU firms and also in non-EU firms. In both cases, the results of improvements in the economies of scale in production may result in more activity (and knock-on job creation) in the UK and abroad. In the subsequent sections, consideration is given in turn to competition issues and the question of potential impacts on competitiveness.

44. **Competition effects**

An assessment of the potential competition effects of the options has been undertaken. However it has not been possible to provide a monetary value for these effects. The main conclusions that can be drawn at this stage are:

- Electricity and gas are supplied mainly by large energy supply companies. The options discussed within this assessment are likely to have relatively negligible affects on their operations. If uptake of microgeneration were to rapidly increase, however, this may potentially result in increasing activity in this sector from such companies (indeed, a number of major energy supply companies are already active in the microgeneration industry). Furthermore, increased uptake of microgeneration may provide price competition with the more conventional fossil fuels.

- Fewer planning restrictions are likely to stimulate demand for microgeneration equipment. This in turn may allow microgeneration companies to benefit from economies of scale in their production techniques with greater mechanisation and worker productivity. The result may be a reduction in the price of microgeneration equipment which in turn may stimulate further demand.

- Fewer planning restrictions may reduce barriers to market entry for new businesses. Smaller microgeneration manufacturers may face a more favourable commercial market compared to the current situation. However existing firms who are already more efficient in their production methods may be able to create barriers to entry through competitive pricing (thereby reducing the profitability of entry).

**Consultation**

45. **Within Government**

In preparing the proposals for consultation we consulted widely with colleagues in England, Scotland and Northern Ireland.

46. **Public consultation**

A full consultation exercise took place between the 14th April and 10th July 2010. A wide range of stakeholders (approx 300) including LPAs, microgeneration trade associations, national bodies and environmental groups were sent a consultation package explaining the proposals and seeking responses to a questionnaire. The consultation was reported in the technical press and the material was available online.
47. A total of 53 responses to the consultation proposals were received from the following groups:
   - LPAs (including 2 National Park Authorities)
   - Members of the public
   - National/Regional Organisations
   - Energy Businesses
   The 'key issues' summary below indicates the balance of opinion held by the 53 respondents who replied to some, or all, of the questions included with the consultation document.

48. The response was generally positive, with unanimous support for the principle of increasing permitted development rights for microgeneration because of the perceived importance of climate change. Much of the comment related to points of detail as to how the measures proposed would be implemented.

49. Amendments made as a result of the consultation.
   In the light of responses we have acknowledged that a number of changes should be made including:
   - Introducing location and visibility criteria in respect of proposals for stand alone solar PV on Article 1(5) land (e.g. National Parks and AONBs) and World Heritage Sites.
   - Not taking forward restrictions in town centres due to potential difficulty in being able to clearly and consistently identify the geographical extent of such areas.
   - Reducing the distance within which stand alone solar PV can be installed from the boundary of the curtilage from 10 metres to 5 metres.

50. Main issues arising where no change has been made
   All issues raised by the consultation have been carefully considered but not all proposals for change have been accepted, not least because there were often opposing views. The key issues raised by a significant number of responses where we have not made changes are:
   - Adopting a 'prior approval' regime. These systems are not well understood by the public, would create difficulties for all involved and would not provide the certainty required to encourage the uptake of microgeneration equipment.
   - No restriction on solar panels around airfields.

51. Post Implementation Review
   It is anticipated that the Welsh Government will collaborate with the Department for Communities and Local Government to assess the effects of the introduction of Part 43 together with the changes to Parts 6 and 7 of Schedule 2 to the GPDO after the first anniversary of this Order coming into force.

52. Summary
   Microgeneration is the small-scale production of heat and/or electricity from low carbon sources. Some microgeneration technologies produce energy using renewable resources such as solar, wind or biomass (e.g. wood) and some, like combined heat and power, may use fossil fuels but are much more efficient than conventional systems. The current uptake of domestic microgeneration is estimated to be low.
53. Microgeneration offers a practical response to climate change, national energy security and energy poverty. The Welsh Government's policies support the encouragement of microgeneration as a realistic alternative or supplementary energy generation source for the householder, the community and for small businesses.

54. The need for planning permission for the installation of microgeneration equipment can act as a barrier to its wider uptake. The GPDO grants rights (known as permitted development rights) to carry out specified forms of development without the need to make an application for planning permission. Inclusion of specified microgeneration equipment within the GPDO can directly eliminate the cost of applying for planning permission, which is estimated to be £890 per installation (taking into account both the planning fee and transaction cost).

55. The proposal is to amend the GPDO to confer permitted development rights for the installation of specified microgeneration equipment subject to certain criteria. This proposal could have significant benefits if the demand and uptake for microgeneration equipment leads to reductions in price through economies of scale and in improvements to the effectiveness of the equipment. It will encourage companies to research and develop more energy effective equipment and mass production will drive prices to levels that are more affordable for more householders which will in turn stimulate further demand.

56. More generally, the proposal is a deregulatory initiative which is in line with the objective of reducing the regulatory burden on households and to improve the overall efficiency of the planning system.