

Explanatory Memorandum to the Town and Country Planning (General Permitted Development) (Amendment) (Wales) (No.2) Order 2020

This Explanatory Memorandum has been prepared by the Planning Directorate 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 2020.

Julie James AM
Minister for Housing and Local Government

14 April 2020

PART 1

1. Description

- 1.1 The Town and Country Planning (General Permitted Development) Order 1995 (the “GPDO”), as amended, allows development to be undertaken, within certain parameters, without the need to submit a planning application. This is known as “permitted development”.
- 1.2 The Town and Country Planning (General Permitted Development) (Amendment) (Wales) (No.2) Order 2020 (“the Amendment Order”) amends Schedule 2 to the GPDO by:
 - Inserting a new Part 3A (Temporary Buildings and Changes of Use for Public Health Emergency Purposes) to permit certain development for the purposes of preventing, protecting against, controlling or providing a response to a public health emergency in the United Kingdom.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

- 2.1 In accordance with section 11A(4) of the Statutory Instruments Act 1946, as inserted by Sch.10 para 3 of the Government of Wales Act 2006, the Llywydd has been informed that the Order will come into force less than 21 days from the date of laying.
- 2.2 The Order seeks to avoid the delay that the making and processing of planning applications would inevitably involve. In view of the circumstances surrounding COVID-19, which falls in the category of an “public health emergency” for the purposes of the Order, and in particular its fast-moving nature, not adhering to the 21-day convention is thought necessary and justifiable in this case.

3. Legislative background

- 3.1 The powers to make the Amendment Order are in sections 59, 60(1), 61(1) and 333(7) of the Town and Country Planning Act 1990. These sections give the Secretary of State power to grant (or to enable local planning authorities to grant) planning permission for categories of development specified in a development order. The functions of the Secretary of State were transferred to the National Assembly for Wales by article 2 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) so far as exercisable in relation to Wales. Those functions were transferred to the Welsh Ministers by virtue of section 162 of, and paragraphs 30 and 32 of Schedule 11 to, the Government of Wales Act 2006 (c. 32), the functions being relevant Assembly functions as defined in paragraph 30(2).

- 3.2 Section 333(5B) of the Town and Country Planning Act 1990 provides that the procedure for a statutory instrument which contains a development order made by the Welsh Ministers is a negative resolution procedure.

4. Purpose and intended effect of the legislation

Emergency Development by a NHS body

- 4.1 During a public health emergency, there is often a need for the NHS to respond rapidly to changing situations in the interests of preventing, mediating or easing a human health crisis. It is accepted that during such time the usual regulatory requirements may need to be relaxed to ease pressure on the NHS and enable health service bodies to respond and provide facilities to limit its spread, treat, test, care for and manage the recovery of an extremely high number of patients.
- 4.2 It is the responsibility of those who undertake development to ensure their actions are lawful. With this in mind, the purpose of the provisions in the Amendment Order, introducing a new Part 3A (Temporary Buildings and Changes of Use for Public Health Purpose) to permit certain development for the purposes of preventing, protecting against, controlling or providing a response to a public health emergency in the United Kingdom.
- 4.3 The development permitted is the change of use of a building or land from any class in the Schedule to the Use Classes Order or any other use to Class C2 (Residential institutions) or Class D1 (Non-residential institutions), and the provision of buildings or other structures.
- 4.4 For the purpose of Part 3A, a public health emergency is an event or situation which causes or may loss of human life, serious human illness or injury; or serious disruption of services relating to health.
- 4.5 Development is not permitted under Part 3A if any part of the development is on land which is, or forms part of a military explosive storage area, a safety hazard area or a site of special scientific interest. Development is also not permitted if the land or building is, or contains, a scheduled monument.
- 4.6 The permitted development is subject to conditions which are also set out in the new Part 3A at paragraph A.2. Those conditions are:
- The development must be undertaken by or on behalf of an NHS body;
 - That if the developer is not also the Local Planning Authority (LPA) that the developer notify the LPA of the development;
 - That the developer must stop using the land for the emergency purpose on or before the expiry of a period of 12 months from when it started.

- Any structures and plant etc. must be removed and the building and/or land must be restored to its previous condition (or to an agreed condition) on or before the expiry of a period of 12 months from when the development started. Alternatively, planning permission would have to be sought for any continuing use.

4.7 For the purposes of the legislation, an “NHS body” is defined in paragraph A.3.

4.8 The Order seeks to avoid the delay that the making and processing of planning applications would inevitably involve, thereby enabling a quicker response to the emergency.

5. Consultation

5.1 Due to the emergency nature of this Order the Welsh Government did not undertake a consultation before the Order came into force. The permitted development rights granted by this Order are urgently required by the NHS to respond to the current Coronavirus (COVID-19) epidemic.

5.2 The views of stakeholders will be sought retrospectively as part of a future consultation on wider changes to the GPDO. Any feedback will be used to inform any future changes to the Order.

6. Regulatory Impact Assessment (RIA)

6.1 These Regulations need to be put in place quickly to deal with an emergency situation. As such, no RIA has been completed. This is in line with the Welsh Ministers’ regulatory impact assessment code for subordinate legislation.