

**EXPLANATORY MEMORANDUM TO
THE PLANNING (GENERAL DEVELOPMENT) (AMENDMENT) ORDER (NORTHERN
IRELAND) 2012**

2012 No. 329

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of the Environment to accompany the above Statutory Rule which is laid before the Northern Ireland Assembly.
- 1.2 This Statutory Rule is made under Articles 13, 20(1) and 20(3) of the Planning (Northern Ireland) Order 1991 and is subject to the negative resolution procedure.
- 1.3 The Rule is due to come into operation on 19th September 2012.

2. Purpose

- 2.1 This Order amends the Planning (General Development) Order (NI) 1993 (S.R. 1993 No. 278 as amended) (the “GDO”) by –
 - amending Article 7 “Applications for planning permission” and Article 9 “Application for approval of reserved matters” of the GDO, so as to reduce the maximum number of copies of forms, plans and drawings that need to accompany such applications from 6 to 3 (see Article 2(2) of this Statutory Rule).
 - revising existing permitted development rights for industrial buildings and warehouses to expand the scope of those rights (see Article 2(3)(a) and Schedule 1 to this Statutory Rule which amends Part 8 of Schedule 1 of the GDO (industrial and warehouse development));
 - adding a new Part 33 to permit the demolition of buildings, subject to certain exceptions in respect of buildings in Areas of Townscape and Village Character (see Article 2(3)(b) and Schedule 2 of this Statutory Rule).
 - adding a new Part 34 to provide permitted development rights for shops, financial and professional services. (see Article 2(3)(b) and Schedule 2 of this Statutory Rule).
 - adding a new Part 35 to provide permitted development rights for office premises (see Article 2(3)(b) and Schedule 2 of this Statutory Rule).
 - adding a new Part 36 to provide permitted development rights for schools, colleges, universities and hospitals (see Article 2(3)(b) and Schedule 2 of this Statutory Rule).

3. Background

- 3.1 In Northern Ireland permitted development (PD) rights are provided by the GDO to allow certain, often minor, non-contentious types of development to proceed without the need for a planning application as planning permission is granted by the GDO instead.. Such rights help to reduce the number of planning applications and the regulatory burden on the planning system.

4. Consultation

- 4.1 In 2008 the Department of the Environment Planning Service commissioned Entec UK Ltd Consultants to review, research and to produce a report on Non-Householder Permitted Development Rights. On 22 October 2009 the Department issued a consultation paper setting out the consultants' recommendations and asking for the comments and views of the public and interested parties on proposals for PD rights for non-householder land uses. The consultation exercise ended on 22 January 2010. There were some 52 responses from a mix of local councils, professional associations, heritage societies, and the general public. The majority of those who responded to particular questions were generally supportive of the proposals and having considered the responses the Department is introducing a number of new non-householder PD rights based on original proposals.
- 4.2 The Department carried out a public consultation exercise from 13 February to 6 April 2012 setting out its proposals for amending the Departmental Direction on Demolition and Development and introducing permitted development rights for the Demolition of Buildings. The need for amendment arose following the decision of the Court of Appeal in *the Queen (on the application of Save Britain's Heritage) –v- Secretary of State for Communities and Local Government and Lancaster City Council and Mitchells of Lancaster*. In that case the Court of Appeal, in line with the decision of the Court of Justice of the European Union in *Commission –v- Ireland (C-50/09)*, concluded that the demolition of buildings is capable of constituting a development project for the purposes of the Environmental Impact Assessment (EIA) Directive. There were 26 responses received to this consultation paper from a wide range of stakeholders who were generally supportive of the proposals. Having considered the responses the Department is revising the Departmental Direction on Demolition and introducing PD rights for the demolition of buildings based on the original proposals.

5. Equality Impact

- 5.1 Equality Impact Screenings carried out in respect of these proposals found no evidence of any differential impact on any of the section 75 categories.

6. Regulatory Impact

- 6.1 A Regulatory Impact Assessment carried out in respect of the changes to non-householder land uses and the demolition of buildings is attached to this memorandum at Annex A.

7. Financial Implications

- 7.1 The changes to the GDO will give potential savings to applicants if their development is considered to be PD and will avoid EU-based legal challenges in relation to demolition. Applicants will still have to make sure their development meets building regulations, but they will not incur the application fees for planning consent and the administrative costs incurred to submit an application. It is uncertain whether extended PD rights will lead to an increase in applications for Certificates of Lawful Use and Development should developers wish to have written confirmation that their development is permitted. In relation to demolition there may be a small increase in the number of screening determinations issued by the Department however a significant rise in the number of Environmental Statements produced by developers is not expected. Any resulting costs to business should therefore be minimal.

8. Section 24 of the Northern Ireland Act 1998

- 8.1 The Department considers that the legislation complies with the requirements of section 24 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1 There are no EU transpositional implications.

10. Parity or Replicatory Measure

- 10.1 This is not a parity or replicatory measure.

11. Additional Information

- 11.1 None.

12. Contact

- 12.1 Please direct any queries to Joe Torney at the Department of the Environment

Tel: 028 90256505 or email joe.torney@doeni.gov.uk

REGULATORY IMPACT ASSESSMENT (FINAL)
Demolition and non-householder permitted development

1. Title of Proposal

- (a) The Planning (Demolition – Description of Buildings) Direction 2012.
- (b) The Planning (General Development) (Amendment) Order (Northern Ireland) 2012

2. Purpose and intended effect of measure

i) The objective:

Demolition

The objective is to update the arrangements for planning permission for the demolition of buildings to ensure that they comply with the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2012 (“the EIA Regulations”) to reflect recent EIA case-law.

Other non –householder permitted development rights

The main objective of the Statutory Rule is to deliver proposals that improve the ability of the Planning (General Development) Order (Northern Ireland) 1993 (“GDO”) to grant planning permission and thereby enable the planning system to regulate non-householder developments in a more productive and beneficial manner. The revisions to permitted development rights in the GDO therefore aim to:

- be easy to understand;
- be proportionate to the anticipated impacts of such development;
- be simple and economic to operate for both developers and planning administration; and
- manage impacts upon local amenity and environmental interests, including the built heritage.

This Order also amends Article 7 “Applications for planning permission” and Article 9 “Application for approval of reserved matters” of the 1993 Order, so as to reduce the maximum number of copies of forms, plans and drawings that need to accompany such applications from 6 to 3. Due to the minor technical nature of this particular procedural amendment the Department does not envisage that it will incur any compliance costs.

The proposed changes to the GDO will only affect Northern Ireland.

ii) The background:

Key changes are:

Demolition

The changes follow the ruling from the Court of Justice of the European Union in the case of the Commission v Ireland (C-50/09), that concluded that demolition of certain buildings is capable of constituting EIA development.

- **Revision of the Department’s Direction on Demolition of Buildings and Development:** To significantly increase the categories of demolition to be regarded as constituting development.
- **Introduction of new permitted development rights for demolition of buildings:** To ensure that non-EIA demolition development which occurs outside areas of townscape or village character does not generally require permission on foot of a planning application.

Other non –householder permitted development rights

- **To introduce new and revised permitted development** rights for Industrial and warehouse development, Shops, financial and professional services establishments, Office premises and Schools, colleges and universities.

iii) Risk Assessment and Rationale for Government Intervention:

Demolition

If the UK did not legislate to take account of the court ruling it may be subject to infraction proceedings by the European Union (EU) with the possibility of subsequent heavy fines for non-compliance.

Other non –householder permitted development rights

In the “Reform of the Planning System” the then Minister for the Environment set out the aims and objectives of reform as improving the Northern Ireland economy, while promoting social inclusion, sustainable communities and personal health and well being as well as promoting viable and vital towns and cities and helping to create shared spaces accessible to all and where people can live, work and socialise. We must also balance this with protecting the environment and heritage and contributing to sustainable development.

The reform paper set out the measures intended to improve all aspects of the planning system including development control, enforcement and regulation of householder development. It recognises that the key focus for development control is proportionality and developing ways to deal with different types of development in different ways. This includes reducing bureaucracy for local and minor developments.

There are several key inefficiencies with the current system, which could be improved to the benefit of both the planning authority and those currently having to submit applications for planning consent. Around 92% of planning applications are currently granted approval. In some instances some of the development that requires planning permission may have no significant impacts and therefore resource costs for to both the planning authority and the applicant could have been avoided. This further adds to the number of applications that the planning authority has to deal with, which increases pressure on the authority and potentially diverts resources away from dealing with developments that have more significant impacts and greater benefit to the economy. This could have an effect on the time taken to determine applications.

3. Options Appraisal

Demolition

Option 1 – Do Nothing

This is not a realistic option. Failure to take account of recent case law could result in infraction proceedings by the EU and ultimately by the European Court of Justice which could result in financial penalties on the UK

Option 2 – Amend the Direction without the introduction of permitted development rights for the demolition of buildings.

This is not a feasible option given that it would have the effect of increasing the regulatory burden on the planning system by requiring planning applications for proposals for the demolition of relatively insignificant buildings.

Option 3 – Amend Direction and introduce Permitted development rights for the demolition of buildings.

This is the preferred option because it will make the necessary changes to take into account recent court judgments to ensure the EIA Directive is properly transposed with the lightest possible regulatory touch.

Other non –householder permitted development rights

Option 1 – Do Nothing

The current provisions set out in the GDO would continue to apply. This is not considered to be an appropriate option as it fails to achieve the Department's objectives of further reform of the permitted development regime.

Option 2 – Changes to the GDO

The GDO would be changed in line with areas for change identified by the review. A range of options for change were tested against planning applications for proposed non-householder developments, some of which had been refused permission. Having reviewed the current GDO and tested the options this provided a basis for proposing the following changes to the GDO:

- amend Part 8 of Schedule 1 to expand the scope of permitted development within the curtilage of **industrial buildings and warehouses**.
- insert a new Part 33 into Schedule 1 to permit the **demolition of buildings**, subject to certain limitations for buildings in Areas of Townscape and Village Character.
- insert a new Part 34 into Schedule 1 to provide permitted development rights for **shops, financial and professional services**.
- insert a new Part 35 into Schedule 1 to provide permitted development rights for **office premises**.
- insert a new Part 36 into Schedule 1 to provide permitted development rights for **schools, colleges, universities and hospitals**.

4. Costs and Benefits

Demolition

Option 1: Do Nothing

There are no benefits to this option. Costs would be substantial as failure to amend planning legislation may result in infraction proceedings and subsequent heavy fines by the EU for non-compliance.

Option 2: Amend Direction without permitted development rights

This would add to the regulatory burden on developers and the planning authority by requiring the submission and processing of planning applications for demolition works to buildings of relatively minor significance.

Option 3: Amend Direction and introduce permitted development rights for the demolition of buildings.

The preferred option. Making the necessary amendments will avoid EU-based legal challenges. Permitted development rights will enable time savings for applicants and the Department as there would be fewer planning applications than otherwise to complete and process. Although the proposed amendment could result in a small increase in the number of screening determinations issued by the Department, it is not expected that there would be a significant rise in the number of Environmental Statements produced by developers. Any resulting costs to business should therefore be minimal.

Other non –householder permitted development

Option 1: Do Nothing

There are no additional economic benefits or costs. Planning administration would continue to allocate resources to processing applications that have low impacts. If such applications were to increase, this could impact upon the planning administration's ability to process efficiently applications for developments which are of greater strategic or economic importance.

Option 2: Changes to the GDO

Greater clarification and increased scope of the GDO will give potential savings to applicants if their development is considered to be PD. These applicants will still have to make sure their development meets building regulations, but they will not incur the application fees for planning consent and the administrative costs incurred to submit an application. It is uncertain whether extended permitted development rights will lead to an increase in applications for CLUDs should developers wish to have written confirmation that their development is permitted.

5. Sectors and Groups Affected

Demolition

The requirements of the EIA Directive are mainly limited to projects which are likely to have significant effects on the environment. Business sectors currently involved in such EIA projects are likely to be large scale developers. While these amendments may place some additional procedural and financial requirements on such developers, the Department does not consider there will be any significant costs over and above those of compliance with existing statutory provisions on EIA.

The Department and the Planning Appeals Commission may also face some additional procedural requirements, but the impact is likely to be minimal.

Other non –householder permitted development

The main sectors and groups affected are the planning authority, planning application specialists (includes architects, technicians, town planning consultants, and developers), Industry, Commercial/Retail and Institutions).

Society is also affected by the impacts that changes to the GDO might have on those living and working in close proximity to the development as well as wider environmental and social issues.

6. Enforcement and Sanctions

Demolition

The Department and the PAC will enforce the new arrangements by applying the statutory requirements to planning applications for demolition projects with significant environmental effects.

Other non –householder permitted development

The Department's enforcement regime will continue to operate in the same way as it does with existing permitted development rights. Available sanctions include powers to compel developers to submit a planning application for works which require planning permission and powers to stop construction work and require the demolition or rebuilding of works which are unacceptable. All such sanctions are subject to the right of appeal by the affected developer.

7. Consideration of Impacts

Demolition

Equality Impact Assessment

An Equality Impact Assessment screening carried out in respect of this proposal found no evidence of any additional impact on any of the Section 75 categories.

Health Impact

No impact on health has been identified.

Small Firms Impact Test

Impact on small businesses is expected to be minimal as any additional costs will be small and should only occur in a small number of cases. The Department has sought views from any small businesses, or their representatives, who felt that they may be affected by these proposals. No representations indicating any particular impact on small businesses were made.

Human Rights Assessment

The Department considers that the proposed amendments are fully compliant with the Human Rights Act 1998.

Rural Impact Assessment

The proposals apply equally with no distinction having been made between urban or rural thereby the impact on rural areas will be no different.

Other non –householder permitted development rightsEquality Impact Assessment

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Health Impact

No impact on health has been identified.

Small Firms Impact Test

The proposed changes to the GDO would remove some of the regulatory burden from the many small businesses. The simplification of the regulations and provision of associated guidance may lead to a reduction in those seeking specialist help to interpret the regulations correctly however this might be offset by an increase in developers carrying out development with the removal of the bureaucracy involved, and greater speed from inception of the project to completion.

Human Rights Assessment

The Department considers that the proposed amendments are fully compliant with the Human Rights Act 1998.

Rural Impact Assessment

The proposals apply equally to all non-householder development with no distinction having been made between urban or rural thereby the impact on rural areas will be no different.

8. Monitoring and Review

Demolition

It should be possible to monitor applications for determinations as to whether projects for the demolition of buildings are considered to be EIA development.

Other non –householder permitted development rights

The introduction of a new planning regime for non-householder development will require to be monitored to determine whether the aims of undertaking the review and subsequent

amendments are met. The overarching aim has been to expand the scope of non-householder development.

9. Consultation

Demolition

(i) Within Government

These proposals have been drawn up in discussion with internal Departmental stakeholders, the Department's legal advisors and with the Department for Social Development.

(ii) Public Consultation

A full public consultation on the policy to deliver option 3 was carried out. A draft Regulatory Impact Assessment formed part of it.

Non –householder

In October 2009 the Department issued a consultation paper setting out recommendations for change and asking for the comments and views of the public and interested parties on proposals for non-householder permitted development.

The consultation paper set out in detail the rationale for the proposed changes under each type of non-householder permitted development. There were 52 responses received to the non-householder consultation paper from a wide range of stakeholders including elected representatives, public bodies and government departments, residential and community groups, individual members of the public, environment and heritage groups, business and development interests and architects and professional bodies.

Overall there was majority support for the proposals put forward in the non-householder consultation paper.

10. Summary and Recommendations

Demolition

Option 3 is the recommended option as it is the only option which ensures full compliance with the EIA Directive and the court rulings and at the same time minimises the regulatory burden on the planning system.

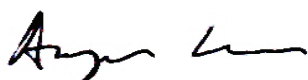
Other non-householder permitted development

Option 2 is the recommended option as it will improve the ability of the GDO to grant planning permission and so enable the planning system to regulate non-householder developments in a more proportionate and effective manner. The proposed changes to the GDO will only affect Northern Ireland and have emerged from NI specific research into issues relating to the current regime.

Declaration:

I have read the Regulatory Impact Assessment and I am satisfied that the balance between cost and benefit is the right one in the circumstances.

Signed by a senior officer of the Department of the Environment.

A handwritten signature in black ink, appearing to read 'Angus Kerr', with a stylized flourish at the end.

Date: 28 August 2012

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