EXPLANATORY MEMORANDUM TO

THE PLANNING (GENERAL DEVELOPMENT) (AMENDMENT) ORDER (NORTHERN IRELAND) 2013

2013 No. 96

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 Article 13 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 30 April 2013.

2. Purpose

2.1 This Order expands the scope of permitted development by amending the Planning (General Development) Order (NI) 1993 (S.R. 1993 No. 278 as amended) (the "GDO") by –

- amending Part 4 of Schedule 1 to the GDO (Temporary Buildings and Uses) to provide permitted development for the temporary use of land to operate licensed street markets and trading for the number of days specified in the street trading licence (see Article 2(3)(a) of this Statutory Rule);
- amending classes A(Railway undertakings), B(Dock, pier, harbour or water transport undertakings), C(Electricity Undertakings), G(Universal Service Providers) and H(Water and Sewerage undertakings) permitted development set out in Part 13 of Schedule 1 to the GDO (Development by Statutory and Other Undertakers) (see Article 2(3)(b and Schedule 1 of this Statutory Rule). These classes of permitted development allow the statutory undertakers to carry out necessary development commensurate with their operational obligations;
- amending, by substitution, Part 17 of Schedule 1 to the GDO (development by electronic communications code operators) which deals with the installation, alteration or replacement of electronic communications apparatus by code operators (see Article 2(3)(c) and Schedule 2 of this Statutory Rule); and
- adding a new Part 37(Installation of non domestic microgeneration equipment) to introduce permitted development rights for the installation, alteration or replacement of non domestic microgeneration equipment including solar panels, biomass boiler housing and fuel stores, and ground and water source heat pumps (see Article 2(3)(d) and Schedule 3 of this Statutory Rule).

2.2 In addition a minor technical amendment has been made to remove reference to Part 23 of Schedule 1 from the definition of operational land in Article 2(1) of the GDO (see Article 2(2) of this Statutory Rule). Part 23 of Schedule 1 to the GDO was omitted by S.R. 2007 No.106.

3. Background

3.1 In Northern Ireland permitted development 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 virtue of Article 3. 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 commissioned Entec (Planning) Consultants to review, research and 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 revised non-householder permitted development including statutory and other undertakers, street markets and telecommunications. The consultation exercise ended on 22 January 2010. Overall the respondents were generally supportive of the recommendations set out in the consultation and having considered the consultation responses, both for and against, the Department has decided to introduce new permitted development rights for street markets, statutory and other undertakers and telecommunications derived from those proposals.

4.2 A public consultation, dealing principally with non-domestic microgeneration, also took place between 22 October 2009 and 22 January 2010. The technologies considered as part of this work included solar panels, biomass boiler housing and fuel stores, wind turbines, and heat pumps. The proposals sought to address the impacts on amenity of non domestic microgeneration technologies, including visual appearance, and the implications of potential nuisance. In terms of visual impact, this is mainly minimised by restrictions on the size and siting of development. The Department also recognised the need to protect amenity impact on certain sensitive areas, including conservation areas, World Heritage Sites, areas of special scientific interest, sites of archaeological interest and listed buildings, depending on the nature of the development permitted. Additional restrictions have therefore been introduced in specified designated areas where appropriate. Following consideration of the consultation responses the Department has decided to introduce new permitted development rights for solar panels, biomass boiler housing and fuel stores, and ground and water source heat pumps derived from the consultation 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 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 fall within the classes described as permitted development in Schedule 1 to the GDO. Applicants will still have to make sure their development meets building regulations etc, but they will not incur the application fees for planning consent and the administrative costs incurred to submit an application. It is uncertain whether the 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. However, any resulting costs to business should 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)
Non-householder permitted development

1. Title of Proposal

The Planning (General Development) (Amendment) Order (Northern Ireland) 2013

2. Purpose and intended effect of measure

i) The objective:

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.

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

ii) The background:

Key changes are:

- **To introduce new and revised permitted development** rights for Public Utilities, telecommunications, non-domestic microgeneration equipment and the use of land for street trading.

iii) Risk Assessment and Rationale for Government Intervention:

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 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

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 4 of Schedule 1 to provide permitted development rights for the **use of land for street trading.**
- amend Part 13 of Schedule 1 to expand the scope of permitted development for certain **statutory and other undertakers including railway undertakers, water and sewerage undertakers, electricity undertakers, pier, dock and harbour undertakers and universal postal services providers.**
- amend Part 17 of Schedule 1 to expand the scope of permitted development for **electronic communication code system operators**.
- insert a new Part 37 into Schedule 1 to provide permitted development rights for **the installation, alteration or replacement of non-householder microgeneration equipment**.

4. Costs and Benefits

Unlikely to be any compliance costs. Permitted development is seen to be a deregulatory mechanism removing the need to complete and submit a planning application along with any associated fee. Thus it will be of direct benefit to the person intending to undertake the 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 etc, 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

The main sectors and groups affected are the planning authority, planning application specialists (includes architects, technicians, town planning consultants, district councils, developers, statutory and other undertakers).

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

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

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
The proposed changes to the GDO would remove some of the regulatory burden from the many small businesses. The simplification of the regulations may result in an increase in

developers carrying out development with the removal of the bureaucracy involved, and greater speed from inception of the project to completion. There may be indirect benefits to small businesses that manufacture and/or install microgeneration equipment including solar panels and biomass boilers.

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

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

In October 2009 the Department issued consultation papers 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. A range of responses were received to the non-householder consultation papers 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

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.



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Date: 8th April 2013

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