EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (AMENDMENT) (ENGLAND) ORDER 2011

2011 No. 2056

AND

THE TOWN AND COUNTRY PLANNING (CONTROL OF ADVERTISEMENTS) (ENGLAND) (AMENDMENT) REGULATIONS 2011

2011 No. 2057

AND

THE TOWN AND COUNTRY PLANNING (COMPENSATION) (ENGLAND) REGULATIONS 2011

2011 No. 2058

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instruments

Permitted development

2.1 The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2011 amends the Town and Country Planning (General Permitted Development) Order 1995 ("GPDO") by:

- inserting new Classes D and E into Part 2 of Schedule 2 to introduce permitted development rights for electric vehicle charging points in off-street public and private car parking areas;
- substituting a new Class A into Part 12 of Schedule 2 to clarify that local authorities can install on-street electric vehicle charging points as permitted development; and
- substituting a new Part 40 to Schedule 2. Making minor amendments to the existing permitted development rights for the installation of specified microgeneration equipment on or within the curtilage of dwellinghouses and blocks of flats and granting planning permission for the installation of additional types of microgeneration equipment on or within the curtilage of dwellinghouses and blocks of flats subject to certain criteria.

Advertisements

2.2 The Town and Country Planning (Control of Advertisements) (England) (Amendment) Regulations 2011 amend the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 ("the 2007 Regulations") to introduce a new deemed consent class 17 into Schedule 3 to

the 2007 Regulations which allows small advertisements. In addition the Regulations amend class 12 of Part 1 to Schedule 3 of the 2007 Regulations to prevent advertisements of the type set out in Class 12 from being permitted in telephone kiosks.

Compensation

The Town and Country Planning (Compensation) (England) Regulations 2011 replace the Town and Country Planning (Compensation) (England) (No.3) Regulations 2010 (the "2010 Regulations"), and in doing so insert two additional descriptions of prescribed development under paragraphs (2A)(a) and (3C)(a) of section 108 of the Town and Country Planning Act 1990. These additional descriptions of prescribed development are:

- development permitted by Class D and Class E of Part 2 of Schedule 2 to the GPDO (minor operations relating to electric vehicle charging points);
- development permitted by Part 40 of Schedule 2 to the GPDO (installation of domestic microgeneration equipment).

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

Permitted development

4.1 The first instrument is made under sections 59 and 60 of the Town and Country Planning Act 1990. 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 this power and grants automatic planning permission for a range of predominantly minor development, subject to certain limitations and conditions. Development granted automatic planning permission is known as "permitted development", and the effect is that no application needs to be made to the local planning authority to obtain planning permission.

4.2 This instrument amends Part 2 and Part 12 of Schedule 2 to the GPDO. It introduces new permitted development rights to allow the installation of electrical outlets for recharging electric vehicles in off-street public and private car parking areas, and clarifies that local authorities can install on-street electric vehicle charging points as permitted development.

4.3 This instrument also amends the GPDO by substituting a new Part 40 to Schedule 2 of the Order. Part 40 now includes an amended Class G, to allow domestic installations of air source heat pumps and two new Classes to allow domestic installations of small wind turbines on buildings and stand alone wind turbines. The instrument also makes minor changes to Classes A to F.

4.4 The Green Energy (Definition and Promotion) Act 2009 requires the Secretary of State to amend the GPDO to grant permitted development rights for domestic installations of wind turbines and air source heat pumps. This instrument fulfils this commitment.

4.5 This instrument has to be referred to the European Commission under the provisions of Directive 98/34/EC as amended by Directive 98/48/EC because it contains references to technical requirements.

Advertisements

4.6 Under the 2007 Regulations an outdoor advertisement is permitted for display without the local planning authority's specific consent if it falls within Classes A to I of Schedule 1 and complies with the conditions and limitations applicable to those classes, or it has deemed consent, as specified in Classes 1 to 16 of Schedule 3 to the 2007 Regulations, and again complies with the conditions and limitations applicable to those classes.

Compensation

4.7 The replacement compensation regulations are made under section 108 of the Town and Country Planning Act 1990, specifically inserting two additional descriptions of prescribed development under paragraphs (2A)(a) and (3C)(a). Section 108 makes provision for the duration of compensation liability to be limited where planning permission for development of a prescribed description formerly granted by a development order or local development order is refused or granted subject to conditions.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

Permitted development

7.1 The new permitted development rights under Classes D and E of Part 2 of Schedule 2 to the GPDO allow for off-street public and private installations of electric vehicle charging points. These rights will be subject to certain constraints, such as maximum size and siting, designed to minimise impacts on neighbours and the wider environment. The amendment to Part 12 clarifies that on-street electric vehicle charging points and associated infrastructure can be installed by local authorities under their permitted development rights to provide facilities required in connection with the operation of any public service administered by them.

7.2 With carbon emissions from transport accounting for 21% of total UK emissions, a reduction in emissions from transport is crucial to achieving the Government's climate change mitigation goals. De-carbonising transport is important in achieving carbon reduction targets set out in the Climate Change Act 2008. Electric and plug-in hybrid vehicles potentially offer significant environmental benefits compared with existing internal combustion engine vehicles, and greatly improved fuel efficiency. Accordingly, the Government

is promoting a switch towards electric vehicles. A strong network of charging points is crucial to supporting the anticipated increase in electric vehicle use.

7.3 This statutory instrument also amends the GPDO to expand the scope of permitted development rights for domestic installations of microgeneration equipment to include wind turbines and air source heat pumps, provided these meet certain criteria. It also makes some minor amendments to the existing domestic microgeneration permitted development rights.

7.4 The purpose of granting permitted development rights for these particular technologies is twofold:

- To encourage the take up of small scale microgeneration by removing the requirement, in cases which meet certain criteria, to submit a planning application for these technologies. The planning application process can be a disincentive because this imposes both time and financial costs on the applicant.
- To make the planning system more proportionate by granting automatic planning permission for small scale developments which would have little impact beyond the host property.

7.5 Addressing the urgent challenges of climate change and secure energy supplies through greater use of renewable energy and low carbon technologies are urgent priorities. The May 2007 white paper, entitled *"Planning for a sustainable future"* set out proposals for changes to the planning system to meet the challenges of globalisation and climate change. The white paper proposed the expansion of permitted development rights to domestic and non-domestic microgeneration equipment as a way of significantly contributing to meeting our future energy needs in a sustainable way.

7.6 The 2007 white paper's proposals for permitted development were informed in part by the 2006 Microgeneration Strategy which set out the benefits of eliminating unnecessary red-tape as a means of promoting the uptake of the new microgeneration technologies. Lack of clarity as to whether a planning application for new technologies is required, different interpretations of existing rules by local authorities and the costs of making a planning application were discouraging those wishing to install new technologies. This was in turn holding back the growth of the microgeneration industry. The microgeneration strategy called for clear national guidelines to provide the industry with the clarity it needed to develop new products.

7.7 The July 2009 Renewable Energy Strategy (RES) sets out how the United Kingdom will increase the use of renewable electricity, heat and transport to meet this target. The RES envisages that microgeneration and other small scale technologies can play a significant role in meeting the commitment to the EU target of generating 15 per cent of our energy from renewable sources by 2020, and highlights the considerable contribution that the planning system can make in achieving these targets. The RES recommended that small scale wind, air source heat pumps and other renewable technologies should be assessed to see whether they should be 'permitted development' in the planning system.

7.8 The 2008 Killian Pretty Review of the Planning System endorsed the 2007 white paper's proposals. Killian Pretty recommended that the system should be made more proportionate by reducing the need for planning applications for small scale developments that have little impact beyond the host property. The Department for Communities and Local Government (DCLG) accordingly undertook a series of studies into the potential of extending permitted development rights to developments that have minimal impact. One such study was undertaken by ENTEC on behalf of DCLG, titled *"Domestic Installation of Microgeneration Equipment"*. The final report and consultation on proposals was published in April 2007.

7.9 The Government introduced permitted development rights for most types of domestic microgeneration in April 2008, including solar panels. Unresolved complex technical issues meant that it was not possible to introduce permitted development rights for domestic installations of wind turbines and air source heat pumps at that time.

7.10 In order to fulfil the requirement imposed in the Green Energy (Definition and Promotion) Act 2009, further work has been undertaken in relation to these technologies, including a public consultation (details in Section 8). The Government is now in a position to amend the GPDO and to submit the instrument to the European Commission as required by Directive 98/34/EC as amended by Directive 98/48/EC.

7.11 The permitted development rights being introduced for domestic wind turbines and air source heat pumps will be subject to limitations and conditions. These constraints are designed to minimise impacts upon neighbouring properties and the wider environment. The constraints have been informed by DCLG commissioned research reports, extensive discussion across government departments, local authorities, the microgeneration industry and the responses to the 2009/10 consultation exercise. They include:

- a requirement to comply with Microgeneration Certification Scheme (MCS) planning standards (a Government-endorsed scheme which is designed to ensure that installations meet certain standards) and a noise prediction contained within the standard;
- restrictions on the number of installations per property;
- restrictions on the size of each installation (eg. height, volume etc);
- restrictions on where these technologies can be sited (eg. not in safeguarded areas, not within certain land designations etc).

Advertisements

7.12 It is proposed to amend the 2007 Regulations so as to allow both the electricity supplier to the electric vehicle charging point and the person who has paid for the installation of the electric vehicle charging points to attach a small advertisement to each charging point. These advertisements are to be given deemed consent, subject to certain conditions, under Schedule 3 to the 2007 Regulations, by providing a new Class 17. The advertisements permitted by Class 17 are subject to certain conditions and limitations including that there should be no more than two advertisements and that no advertisement should

exceed 70 square centimetres in size. Illumination is not allowed and if there are two advertisements they should face in opposite directions (as far as practicable).

7.13 Allowing the display of such name plates will help defray the costs on installation of the charging points and provide an incentive to provide charging points.

7.14 In addition, the instrument amends Class 12 in Part 1 of Schedule 3 to the 2007 Regulations so as to exclude from the deemed consent granted by Class 12 advertisements displayed on the glazed surface of a telephone kiosk.

7.15 Class 12 of the 2007 regulations provides deemed consent for an advertisement displayed inside a building. A telephone kiosk constitutes a building within the definition provided by section 336 of the Town and Country Planning Act 1990. Consequently it can be argued that an advertisement stuck to the inner face of the glazed surface of a kiosk also benefits from deemed consent under Class 12 and would not be affected by the conditions and limitations of Class 16, which grants deemed consent for certain advertisements to be displayed on the (outer) glazed surface of a telephone kiosk. The amendment will close a loophole in the regulations and prevent the proliferation of advertisements displayed from the inside of kiosks.

Compensation

7.16 The exercise of permitted development rights may, however, result in a local problem in exceptional circumstances. This may particularly be the case in sensitive areas or where there is a cumulative or concentrated exercise of such rights. Local planning authorities are therefore able to give directions under article 4 of the GPDO withdrawing permitted development rights locally where they consider it expedient to do so. The effect of an article 4 direction is not to prevent development, but to require that specific planning permission be obtained.

7.17 Section 108 of the Town and Country Planning Act 1990, however, provides for compensation to be paid where local planning authorities withdraw planning permission. Where a local planning authority withdraws permitted development rights by giving an article 4 direction (and subsequently refuses an application required as a result of that direction or approves the application subject to conditions) they may be liable to pay compensation for abortive work or other loss or damage directly attributable to the withdrawal.

7.18 In order to be eligible to claim compensation, the application necessary as a result of an article 4 direction has to be submitted within 12 months of the effective date of that direction. If 12 months or more advance notice of a direction is given, there would be no liability for compensation after the direction came into force.

7.19 These compensation time limits apply to permitted development of a prescribed description. The November 2009 consultation on permitted development rights for microrenewables and electric vehicle charging points proposed applying the time limits to the proposals for additional permitted development rights in the consultation document. No comments were received

on this issue in public consultation, although respondents did comment on article 4 directions more generally.

Consolidation

7.20 There are no current plans to consolidate the GPDO or the 2007 Regulations. The first instrument contains a full substitution for Part 40 of Schedule 2 to the GPDO. The 2010 Regulations are revoked and replaced, rather than amended.

8. Consultation outcome

8.1 A consultation entitled *"Permitted Development Rights for Small Scale Renewable and Low Carbon Energy Technologies and Electric Vehicle Charging Infrastructure"* was published in November 2009, and responses invited until February 2010. Almost 200 responses were received – 24% from local authorities; 17% from the microgeneration industry; 12% from individuals; 12% from environmental and community groups; 11% from academe and professionals; 11% from owners/managers of private sector business; 5% from government bodies and the remaining 7% from a mix of others including parish and town councils, MPs, resident associations etc.

8.2 Analysis of the responses to the consultation indicated strong overall support for the Government's proposals on electric vehicles, with 90% of respondents agreeing that they would be instrumental in helping kick start the electric vehicle industry. The analysis revealed a mix of views on how the proposals should be taken forward. Some respondents felt that the roll out of the charging infrastructure should carried out in accordance with existing local authority and infrastructure planning processes or be integrated with transport and housing developments. Others were concerned about the effects on the environment, especially in protected areas, as the result of increased street clutter. Some thought there may be health and safety risks associated with the preponderance of trailing electrical wiring. There was also a difference of opinion in regard to the proposed dimensions, both of the charging points and the space allocated for installers of charging points and energy suppliers to display their nameplates. Some, mainly, potential providers, thought the limits too restrictive, with others, largely, local authorities, considered the size limits overly generous.

8.3 The responses to the domestic wind turbine and air source heat pump proposals in this consultation were positive overall, with the majority of respondents agreeing with the proposals (62% on the proposals for wind turbines and 72% for air source heat pumps). Of those that responded positively, the majority suggested amendments to the detailed limitations and constraints.

8.4 The aspect of the proposals which drew the most response from the consultation was the maximum noise limit to be applied for permitted development rights for wind turbines and air source heat pumps. The consultation proposed a noise limit of 45dB $L_{AEQ, 5min}$ for these technologies, to be assessed at 1 metre from the window of a habitable room in the façade of any neighbouring residential property (but ignoring the effect of that façade).

8.5 Objections to the 45dB $L_{AEQ, 5min}$ noise limit proposed in the consultation centred around concerns that it would create disturbance and annoyance, particularly in rural and tranquil environments, and during the night when background noise levels are lower. Many respondents (particularly local authorities, government bodies, professionals and environment/community groups) considered that it would be more appropriate to apply a 37dB $L_{AEQ, 5min}$ noise limit. To strike a balance between encouraging take up of renewable technologies and protecting amenities Ministers have decided to apply a 42dB $L_{AEQ, 5min}$ noise limit, which will be reviewed one year after the new rights come into force, and to consider whether or not the initial experience justifies a change to the noise limit.

8.6 Another area which drew significant interest in the consultation was the visual impact of the proposals (particularly wind turbines), with many respondents arguing for more protection to be afforded to Article 1(5) land. Respondents argued that allowing wind turbines as permitted development in these areas would be harmful to the special qualities of these landscapes. Further consideration has been given to these representations, and accordingly permitted development rights for wind turbines will be restricted in conservation areas where they would front a highway, and not apply at all on other Article 1(5) land.

8.7 While there were some comments about the monopolising effect of linking the permitted development rights to the Microgeneration Certification Scheme, it is felt that overall linking the rights to the MCS will ensure a high quality of installations so as to develop public trust and confidence in these new technologies. This aspect of the instrument will be scrutinised by the European Commission.

8.8 For wind turbines, there was general acceptance that permitted development rights would not exist on land where there is a risk to the operation of radar/air traffic control and aircraft movement, and that such land should be "safeguarded". For the permitted development rights for wind turbines, a limitation will restrict their installation on "safeguarded land" as defined in the instrument.

8.9 A summary of the consultation responses and a formal Government response to the consultation will be published shortly.

9. Guidance

9.1 Guidance on the new permitted development rights for domestic wind turbines and air source heat pumps will be published. It will be available on the Planning Portal, the Government's online planning service.

10. Impact

10.1 With regard to electric vehicle charging points, the impact on local authorities, business, charities or voluntary bodies, and the general public will be positive for those wishing to make provision for electric vehicle charging points on their premises. While there will be some minimal initial costs associated with familiarisation with new legislation, the new measures will benefit local

10.2 Wider environmental benefits will result from the reduction in carbon emissions, because of the increase in electric vehicle usage. There will also be economic benefits for industries connected with electric vehicle production or vending or the supply of the charging infrastructure.

10.3 With regard to domestic microgeneration, the impact on business is positive. The likely increase in demand for air source heat pumps and wind turbines as a result of these measures should impact positively on retailers and manufacturers of these technologies.

10.4 Apart from the overall environmental benefits of reducing carbon emissions, there will be no particular benefits resulting for charities or voluntary bodies.

10.5 The impact on the public sector is considered likely to be neutral. The elimination of costs to local authorities associated with processing planning applications will be largely offset by a loss of income from planning application fees.

10.6 There could potentially be costs to local authorities if as a result of the measures more noise complaints were required to be investigated under Statutory Nuisance legislation. This has been considered from the point of view of the 'New Burdens principle' which states that local authorities should be compensated financially by the Government department responsible for introducing new local government spending commitments.

10.7 Having assessed the proposed measures and the available evidence, the view of DCLG's Head of Expenditure Control is that, in the light of the 42dB noise limit and the relatively low expected levels of take up, there is a reasonable likelihood that costs and savings to local authorities arising from the proposals will broadly balance out. The Government's commitment to undertake a review after a year will enable the situation to be monitored in implementation.

10.8 Two Impact Assessments are attached to this memorandum.

11. Regulating small business

11.1 The legislation relating to electric vehicles is deregulatory in effect. It will help reduce bureaucracy in the planning system and remove the cost and time burden to businesses of having to submit a planning application. The measure will have a positive effect both on large and small businesses. Small businesses are not likely to face any negative impacts because of their size.

11.2 With regard to domestic microgeneration, the main beneficiaries of these rights will be householders. The legislation's deregulatory effect will also result in benefits to small business. Many small businesses are involved in the installation of these technologies and now they will be able to proceed with such without the householder having to obtain specific planning permission for the installation first. This will save them time, as the installer will no longer have to wait for a planning application to be processed before proceeding with an installation. It will also provide them with a greater degree of certainty as to what can be done without the need to apply for planning permission from the local planning authority.

12. Monitoring & review

12.1 The Government will review the 42dB $L_{AEQ, 5min}$ noise limit adopted for permitted development rights for domestic wind turbines and air source heat pumps one year after the new rights come into force. This review will allow for consideration as to whether or not initial experience justifies a change to the noise limit.

12.2 The Green Energy (Definition and Promotion) Act 2009 also requires the Secretary of State to review the effect of the instrument's amendment to the GPDO as soon as reasonably practicable after the end of 2 years beginning with the date the amendment comes into force.

12.3 The Department for Communities and Local Government receives regular feedback from local planning authorities, practitioners, professional bodies and the general public on all aspects of planning. We will monitor progress and evaluate the success of these permitted development rights, culminating in the reviews detailed above.

13. Contact

13.1 Mr Darren McCreery at the Department for Communities and Local Government (Tel: 0303 444 4352 or email: darren.mccreery@communities.gsi.gov.uk) can answer queries regarding this instrument.