EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (AMENDMENT) (ENGLAND) ORDER 2012

2012 No. 748

THE TOWN AND COUNTRY PLANNING (COMPENSATION) (ENGLAND) REGULATIONS 2012

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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 2012 amends the Town and Country Planning (General Permitted Development) Order 1995 ("GPDO") by:

- adding a new Part 43 to Schedule 2 to introduce permitted development rights for solar panels, ground and water source heat pumps, and flues forming part of biomass and combined heat and power systems installed on non-domestic premises.
- inserting new paragraphs into Parts 6 and 7 of Schedule 2 to clarify that permitted development rights can apply under those Parts to structures to house biomass boilers, anaerobic digestion systems and associated waste and fuel stores, and hydro turbines installed on agricultural and forestry units, and
- amending paragraph J of Part 40 of Schedule 2 (interpretation of Part 40) to delete the words "product and installation" from the definition of "MCS Planning Standards".

Compensation

2.2 The Town and Country Planning (Compensation) (England) Regulations 2012 replace the Town and Country Planning (Compensation) (England) Regulations 2011 (the "2011 Regulations"), and in doing so insert one additional description of prescribed development under paragraphs (2A)(a) and (3C)(a) of section 108 of the Town and Country Planning Act 1990. The additional description of prescribed development is:

- development permitted by Part 43 of Schedule 2 (installation of non-domestic microgeneration equipment).

The transitional provision relates to Part 40 which was amended in December.

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

None

4. Legislative Context

Permitted development

4.1 The first instrument is made under sections 59, 60, 61 and 333(7) 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 the GPDO by adding a new Part 43 to Schedule 2 to introduce permitted development rights for solar panels, ground and water source heat pumps, and flues forming part of biomass and combined heat and power systems installed on non-domestic premises. Limitations and conditions are set out which must be met in order for a development to be permitted development

4.3 The instrument also inserts new paragraphs into Parts 6 and 7 of Schedule 2 to confirm that permitted development rights are available for structures to house biomass boilers, anaerobic digestion systems and associated waste and fuel stores, and hydro turbines installed on agricultural and forestry units. Additional conditions are inserted relating to these developments.

4.4 The instrument amends paragraph J of Part 40 of Schedule 2 (interpretation of Part 40) to delete the words "product and installation" from the definition of "MCS Planning Standards". This amendment relates to the standards which must be met in order for a wind turbine or air source heat pump installation on domestic premises to benefit from permitted development rights.

4.5 The Green Energy (Definition and Promotion) Act 2009 requires the Secretary of State to consider amending the GPDO for the purpose of facilitating the installation of equipment for microgeneration on non-domestic land in England. This instrument brings into legislative force the outcome of this consideration.

Compensation

4.6 The replacement compensation regulations are made under section 108 of the Town and Country Planning Act 1990, specifically inserting an additional description 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

This instrument applies to England.

6. European Convention on Human Rights

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 Part 43 of Schedule 2 to the GPDO allow for solar panels, ground and water source heat pumps, and flues forming part of biomass and combined heat and power systems to be installed on non-domestic premises. These rights will bring into line freedoms for non domestic premises that are already in place for domestic properties. These rights will be subject to certain limitations and conditions, such as maximum size and siting, designed to minimise impacts on neighbours and the wider environment. The conditions and limitations seek to create a similar legislative position for installations on non-domestic premises to that which already exists for domestic properties. The amendments to Parts 6 and 7 clarify that biomass boilers, anaerobic digestion systems and associated waste and fuel stores may be installed on agricultural and forestry units as permitted development.

7.2 The purposes of these measures are threefold:

- They encourage the uptake of microgeneration on non domestic premises by removing the requirement to submit a planning application to the local planning authority.
- They contribute to the Government's commitments on renewable energy and carbon reduction.
- They represent a deregulatory initiative that will reduce bureaucracy in the planning system and ease the administrative burden on business.

7.3 Encouraging the take up of small scale renewable energy technologies has an important part to play in meeting the goal of delivering 15% of energy from renewable sources by 2020 as set out in the UK Renewable Energy Strategy.

7.4 The Government introduced permitted development rights for installations of wind turbines and air source heat pumps on domestic premises in December 2011.

7.5 In accordance with the requirements of the Green Energy (Definition and Promotion) Act 2009, the Secretary of State has given consideration to amending the GPDO for the purpose of facilitating the installation of equipment for microgeneration on non-domestic land in England. This

7.6 The permitted development rights will be subject to limitations and conditions that have been informed by research reports, extensive discussion across government departments, local authorities, the microgeneration industry and the responses to the consultation exercise detailed in section 8.

7.7 An amendment is also made to the definition of "MCS Planning Standards" in paragraph J to Part 40 of the GPDO (interpretation of Part 40) to remove the words "product and installation" from the definition that read *"MCS Planning Standards means the product and installation standards for air source heat pumps and wind turbines specified in Microgeneration Certification Scheme MCS 020"*. The MCS Planning Standards contain the product, installation, and noise standards which must be met in order for domestic installations of wind turbines and air source heat pumps to benefit from permitted development rights. The amendment clarifies the standards which must be met in order for a development to be permitted development.

Compensation

7.8 The exercise of permitted development rights may 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.

7.9 Section 108 of the Town and Country Planning Act 1990 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.

7.10 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.

7.11 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

7.12 There are no current plans to consolidate the GPDO. The Town and Country Planning (Compensation) (England) Regulations 2011 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 An analysis of the consultation responses indicates that a large majority of respondents agreed with the proposals for non-domestic premises. Where amendments to the proposals were suggested these tended to focus on the detailed limitations and conditions of the permitted development rights. The measures have been adjusted to take account of responses and the outcome of engagement with other interested parties.

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

9. Guidance

It is not proposed to publish guidance on the changes to the GPDO.

10. Impact

10.1 The impact on business resulting from these measures is positive. The likely increase in demand for renewables products as a result of these measures should impact positively on retailers, manufacturers, and installers of these technologies. Non-domestic consumers will also benefit from reduced energy costs, this includes businesses, and charitable and voluntary bodies who install renewable technologies on non-domestic premises.

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

10.3 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. The conditions and limitations of the permitted development rights are designed to ensure that the impact of development will be acceptable, reducing the risk of adverse impact on local authority enforcement teams.

10.4 An Impact Assessment is attached to this memorandum.

11. Regulating small business

These measures are deregulatory in effect. They 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 measures 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.

12. Monitoring & review

12.1 The Green Energy (Definition and Promotion) Act 2009 requires the Secretary of State to review the effect of introducing permitted development rights for wind turbines and air source heat pumps installed on domestic properties as soon as reasonably practicable after December 2013. It is proposed to also consider the effect of the changes in these statutory instruments at this time.

12.2 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.

13. Contact

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.