**EXPLANATORY MEMORANDUM TO**

**THE TOWN AND COUNTRY PLANNING (ELECTRONIC COMMUNICATIONS) (WALES) (No. 3) ORDER**

**2004 No.3172**

**1.** This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty.

**2. Description**

**2.1** An Order to introduce the option of electronic working in the field of town and country planning; the Order being the third of three Orders required in Wales – the other two Orders are currently in the process of being made by the National Assembly for Wales (NAW) with the consent of the Secretary of State for Wales. Together, the Orders will enable applications for, or appeals in relation to, planning permission etc. to be made electronically and will bring Wales into line with England (which made the equivalent provision last year in S.I. 2003/956).

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

**3.1** None.

**4. Legislative Background**

**4.1** The NAW requires 3 Orders to be made to introduce in Wales the option of electronic working in the field of town and country planning to bring the approach in Wales into line with that in England, which made the equivalent provision last year in SI 2003/956.

**4.2** The first 2 Orders were made by the NAW, with the consent of the Secretary of State for Wales, on 30 November 2004 and are timetabled to come into force on 1 January 2005. The third Order, which is the subject of this Memorandum, needs to be made, under Section 8 of the Electronic Communications Act 2000 (the 2000 Act), by the Lord Chancellor, or one of his Ministers on his behalf, because the Rules it is amending were made by the Lord Chancellor under provisions of the Tribunals and Inquiries Act 1992 and the functions of the Lord Chancellor have not been transferred to the NAW.

**4.3** The proposed Orders are to facilitate electronic handling of parts of the town and country planning service by applicants, agents, local and central government. The

2000 Act permits provision to be made to authorise or facilitate the use of electronic communications and electronic data storage. Sections 8 and 10 of the 2000 Act enable the NAW, with the consent of the Secretary of State for Wales, to make orders amending existing legislation for the purpose of removing obstacles to the use of electronic communication and storage in place of paper. Section 9 indicates who in England and Scotland may make these Orders under section 8, while section 10 covers the position in relation to Wales.

**4.4** The Orders amend parts of the Town and Country Planning Act 1990, which is the principal Act governing the planning system, together with parts of the Planning (Listed Buildings and Conservation Areas) Act 1990, the Environment Act 1995, various secondary legislation made under those Acts and regulations and rules making provision for the way in which planning applications and appeals are determined.

**4.5** The modifications made by the Orders confer new meanings on expressions used in the primary and secondary legislation – which was drafted for a paper-based system – so that it can be explicitly construed as applying to electronic communication. The Orders also change some relevant mandatory administrative actions, with no loss of equity for parties using or not using the electronic process, to make them operate more effectively by electronic means. The Orders do not replace the existing paper-based system, which will continue to operate for as long as those engaging in the planning system wish to use it. Neither do they prescribe the means by which electronic services might occur. They merely allow those who wish to make use of such services to do so.

**4.6** The Orders facilitate the handling of the most common types of appeals - planning appeals and enforcement notice appeals. The intention is to enable further types of appeal, for example, lawful development certificate appeals and advertisement appeals, to be handled electronically in due course.

## 5. Extent and Application

**5.1** This instrument has effect in England and Wales, but applies to land in Wales only.

## 6. European Convention on Human Rights

**6.1** Baroness Ashton of Upholland, Parliamentary Secretary at the Department for Constitutional Affairs, has made the following statement regarding Human Rights:

In my view, the provisions of the Town and Country Planning (Electronic Communications) (Wales) (No. 3) Order 2004 are compatible with the Convention rights.

## 7. Policy background

**7.1** The 2000 Act permits provision to be made to authorise or facilitate the use of electronic communications and electronic data storage. Sections 8 and 10 of the Act enable the NAW, with the consent of the Secretary of State for Wales, to make orders amending existing legislation for the purpose of removing obstacles to the use of electronic communication and storage in place of paper.

**7.2** The attached Town And Country Planning (Electronic Communications) (Wales) (No. 3) Order and the 2 connected Orders being made by the NAW are bulky and technical pieces of legislation that create an opportunity for those that wish to use an electronic, rather than paper-based, planning system. They are intended to facilitate electronic handling of parts of the town and country planning service by applicants, agents and local and central government.

**7.3** This will meet key NAW commitments including commitments to make significant improvements in the quality of the planning service and in the involvement of communities, including business, in plan-making and decision-making.

**7.4** The Town And Country Planning (Electronic Communications) (Wales) (No. 3) Order will also enable hearings and inquiries relating to appeals in the field of planning law to be made electronically.

**7.5** The Lord Chancellor has no policy responsibility for this subject area and is merely involved in the process of making the Town And Country Planning (Electronic Communications) (Wales) (No. 3) Order as a consequence of the devolution settlement in Wales.

## 8. Impact

**8.1** A Regulatory Impact Assessment prepared by the NAW in relation to the proposals, which encompasses the content of all three connected Orders as referred to above, is attached to this Memorandum.

## 9. Contact

Duncan Rutty at the Department for Constitutional Affairs, telephone 020 7210 0674, email duncan.rutty@dca.gsi.gov.uk, can answer any queries regarding the instrument.

***REGULATORY APPRAISAL***

THE TOWN AND COUNTRY PLANNING (ELECTRONIC COMMUNICATIONS) (WALES) (No. 1), (No. 2) and (No. 3) ORDERS 2004

***Purpose and intended effect***

1. The proposed Orders made under sections 8 to 10 of the Electronic Communications Act 2000 ("the 2000 Act") are to facilitate electronic handling of parts of the town and country planning service by applicants, agents, local and central government. This would meet 4 of the 5 key commitments in "Cymru Ar-lein" (it does not meet the commitment to ensure everyone in Wales can acquire the skills and understanding to participate in and benefit from the Information Age) and cover the commitment in 'Planning: Delivering for Wales' to make significant improvements in the quality of the planning service and the involvement of communities, including business, in plan-making and decision-making.

2. The 2000 Act permits provision to be made to authorise or facilitate the use of electronic communications and electronic data storage. Sections 8 and 10 of the 2000 Act enable the National Assembly for Wales ("the Assembly"), with the consent of the Secretary of State for Wales, to make orders amending existing legislation for the purpose of removing obstacles to the use of electronic communication and storage in place of paper. Section 9 indicates who in England and Scotland may make these Orders under section 8, while section 10 covers the position in relation to Wales.

3. The Orders amend parts of the Town and Country Planning Act 1990, which is the principal Act governing the planning system, together with parts of the Planning (Listed Buildings and Conservation Areas) Act 1990, the Environment Act 1995, various secondary legislation made under those Acts and regulations and rules making provision for the way in which planning applications and appeals are determined.

4. The Orders facilitate the handling of the most common types of appeals - planning appeals and enforcement notice appeals. The intention is to enable further types of appeal, for example, lawful development certificate appeals and advertisement appeals, to be handled electronically in due course. There is no timetable for the next stage as the expansion of the process will depend very much on the availability of time resources to provide additional back up (technological and equipment) to support the expansion. Further "electronic orders" under the 2000 Act will be required as and when further types of appeals and applications are to be added to the process and will amend the legislation appropriate to those appeals and applications. Future primary and secondary legislation will be prepared in a way which makes it compatible with electronic working.

5. The modifications made by the Orders confer new meanings on expressions used in the primary and secondary legislation – which was drafted for a paper-based system – so that it can be explicitly construed as applying to electronic communication. The Orders also change some relevant mandatory administrative actions, with no loss of equity for parties using or not using the electronic process, to make them operate more effectively by electronic means. The Orders <u>do not</u> replace the existing paper-based system, which will continue to operate for as long as those engaging in the planning system wish to use it.

6. The Orders do not prescribe the means by which electronic services might occur. They merely allow those who wish to make use of such services. Generally accepted standards of electronic service provision will apply and such questions as compatibility of software and the security of systems are matters that will need to be addressed by those making use of electronic services.

**Risk Assessment**

7. There are no risks of substance. The Orders do no more than create an opportunity for those that wish to use an electronic, rather than paper-based, planning system. There is therefore no threat to the existing regime and no identifiable risk associated with creating the new parallel electronic one.

***Options***

8. In making these Orders, the selection of optional means of delivery has not arisen. The "do nothing" option of has been dismissed as this would not meet the commitments in "Cymru Ar-lein" and "Planning: Delivering for Wales". Given that the constraints on electronic planning services are in primary and secondary legislation, the only suitable delivery mechanism is to remove those constraints by a further Order under section 8 of the 2000 Act.

***Benefits***

9. The benefits afforded by the Orders will be conferred where parties to the planning process take-up the opportunity to engage in the process electronically. The benefits when planning services are undertaken electronically include:

    - faster (almost instantaneous) and uncorrupted transmission between parties (enabling decision making times to be reduced and quality to be enhanced);
    - reducing postage, packing, photocopying and printing costs;
    - reduced storage space for papers and files;
    - closer linkages between participants in the planning system; and
    - more open access to the planning system for all parties.

These benefits can arise for any of the parties to the process. The extent of the benefit will vary according to the circumstances of those involved.

10. In drafting the Orders, we have sought, where possible, but without compromising the equity to users of either system, to streamline the planning system for electronic users where the paper system does not suit electronic working. For instance, in certain cases a number of paper copies of documents are currently needed, where one electronic copy will suffice, and so in the electronic regime we have required only one copy.

***Costs***

11. There will be costs to those involved in using the planning system in electronic format, because of the need to acquire and maintain electronic equipment. The costs will vary according to the circumstances of those involved and therefore cannot be quantified. However, the costs will include the need to meet accepted standards of electronic service provision, including the compatibility of software and the security of systems. Work on the Planning Portal has included a drive to ensure that a single data standard is agreed for all planning related electronic service delivery to ensure the highest level of interoperability.

12. Given that there is a presumption that in the long term all services should be undertaken electronically, any costs arising from initiating electronic planning services are ones that would arise generally in due course. In the shorter and medium terms, there will be offsetting savings for those engaging in the planning system on account of the specific benefits to the planning system identified above.

13. The costs could only be mitigated by not complying with the commitments in "Cymru Ar-lein" and "Planning: Delivering for Wales". As already explained, that option has been dismissed.

***Securing compliance***

14. These are facilitating Orders and no compliance with the Orders needs to be secured. Nonetheless, those parties using the electronic system will continue to be subject to checks that exist in the planning system. For instance, applicants and agents will have electronic applications scrutinised by local planning authorities to ensure that they have been completed correctly and are associated with the correct fee, authorities will be subject to audit and court scrutiny, as will be the National Assembly and its agency the Planning Inspectorate (PINS).

***Impact on small businesses***

15. Their need to acquire and/or maintain electronic equipment will be an impact on any small business that engages in the planning system electronically. The costs involved in this are considered to be outweighed by the positive benefits that flow from electronic working. There will be no dis-benefits for small businesses should they continue to the use paper based system.

***Competition assessment***

16. The markets that the Orders will affect are those of the supply of hard and software and maintenance of services in information communications technology. Research for the former Department of Transport, Local Government and the Regions found that it is a well-developed market. The Orders are considered to have beneficial effects on competition. It broadens the scope for ICT in planning and thus open new opportunities for existing suppliers and may stimulate the involvement of new players. Certain suppliers enjoy significant shares of the market but there would be no differential impacts on existing players or new entrants, so no detailed assessment has been undertaken following the application of the competition filter.

***Consultation***

With Stakeholders

17. The Orders are highly complicated pieces of technical legislation which make a large number of minor modifications to the wording of various planning-related Acts and statutory instruments. As they do no more than create an opportunity for those that wish to use an electronic, rather than paper-based, planning system, it was considered there would be little, if any, benefit in circulating them for comment. However, by letter dated 10 August 2004, all 25 local planning authorities in Wales, the Planning Officers' Society for Wales, Royal Town Planning Institute (Wales), Royal Institute of Chartered Surveyors (Wales) and the Welsh Local Government Association were informed of the preparation of the Orders and invited to comment on the draft Regulatory Appraisal. No responses were received.

***With Subject Committee***

18. The proposals were notified to the Environmental, Planning and Countryside Committee of the Assembly through inclusion in the rolling programme of forthcoming legislation put to the Committee on 6 October 2004 (item No.18) but was not identified for detailed scrutiny.

***Review***

19. As the Orders are facilitating, rather than requiring, the use of electronic communications in the planning system, there is no formal need for monitoring and evaluation. A number of tools will be at the disposal of the Assembly, however, to measure any impacts of the Orders. These include the Planning Portal which has been developed to facilitate an electronic planning system and the connection to it of the PINS appeals service, where the number of planning appeals submitted electronically can be monitored. Wider monitoring of the use of electronic planning will be unrealistic given that the planning service involves all local planning authorities and those who make and comment on 500,000 planning applications each year. In terms of efficiency and effectiveness, any impact could be measured through statistics on local authority performance and PINS' performance in handling appeals.

**Summary**

20. These Orders open-up a large part of the planning system to electronic communication and, while those who choose to participate – and this would include individuals, business and local and central government – will bear their own costs of their participation, it is considered the benefits they will enjoy through electronic working outweigh the costs incurred.