EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (AMENDMENT) (ENGLAND) ORDER 2007

2007 No. 406

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. Description

2.1 This Order adds a new Part 39 to Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 ("GPDO"). It grants planning permission for certain development which is necessary for housing poultry and other captive birds to protect them from avian influenza.

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

3.1 This Order will come in to force the day after it is laid before Parliament in breach of the 21 day rule. As part of the Department for Environment, Food and Rural Affairs (Defra)'s contingency planning for an avian influenza outbreak, in April 2006, it was agreed that that, in the event of a requirement to house birds due to avian influenza, the GPDO would be amended to allow the erection of temporary shelters housing birds or to modify existing buildings without the need for an individual application for planning permission.

3.2 Following the outbreak of avian influenza in Suffolk on 3rd February 2007, Defra introduced various restrictions including on the movement of poultry and other captive birds. Defra also introduced a compulsory requirement to house or otherwise isolate domestic birds from wild birds in the Protection and Surveillance Zones, 3km and 10km around the infected premises respectively, but also in the Restriction Zone which covers large parts of Suffolk and Norfolk. Defra has also issued detailed guidance advising all bird keepers on how they can prepare for any extension of the housing or separation requirements to any other part of the country if there were to be any further spread of the disease.

3.3 This Order is laid in response to the outbreak of avian influenza in Suffolk. Unless this exemption from normal planning rules is brought into force quickly, there is a risk that bird keepers in those areas will be unable to comply with their legal obligations under the Avian Influenza and Influenza of Avian Origin in Mammals (England) (No.2) Order 2006 and Avian Influenza (H5N1 in Poultry) (England) (Order) 2006 with consequent potential increased risk of disease spread from wild birds. The Order will apply throughout England because of the increased nationwide risk of avian influenza and the fact that the Government is encouraging all bird keepers to make preparations to house their birds if necessary.

3.4 Defra have taken measures to prevent the spread of the avian influenza virus, including the requirement for birds to be brought indoors. There is an existing provision

in the GPDO (Part 6 of Schedule 2) which grants various general permissions for farmers and householders to carry out certain development but provides insufficient help in the present circumstances. The need to comply with the prior approval procedure, the fact that they grant permission for structures intended to be permanent, and the fact that Part 6 does not cover provision for zoo, game and other birds, make the existing rights inflexible in situations where there is an immediate need to build temporary structures that will house birds.

3.5 Any delay in implementing this measure may hinder the actions taken by Defra so far to prevent the spread of the virus.

4. Legislative Background

4.1 This Order 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 planning permission for a range of, predominantly, minor development. This Order amends the current GPDO by adding a new Part 39; permitting the erection of temporary shelters housing birds or the modification of existing buildings housing birds in order to protect them from avian influenza.

5. Territorial Extent and Application

5.1 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

7.1 The policy background is mainly set out above in section 3. Any development permitted by the Order is temporary - and must be removed before 19th February 2008 or the date when the buildings cease to be needed to protect birds from avian influenza, whichever is sooner.

7.2 No formal consultation was carried out on the proposals because of the need to act urgently. Defra and the Department of Health were consulted and are in full agreement with the proposal. Informal soundings were also take from a couple of local planning authorities who agreed that the approach was sensible.

7.3 The proposed amendment covers Conservation Areas, Areas of Outstanding Natural Beauty and National Parks. Other legislation will continue to protect Listed Buildings and Sites of Special Scientific Interest (SSSIs).

7.4 There will be a duty on the developer to notify the local planning authority of the building no later than 14 days after commencing development. This measure is intended to ensure that any future disputes about what was or was not erected under these temporary powers can be avoided.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

9. Contact

Asma Mouden at the Department for Communities and Local Government Tel: 020-7944-3934 or e-mail: asma.mouden@communities.gsi.gov.uk can answer any queries regarding the instrument.

Annex B

FINAL REGULATORY IMPACT ASSESSMENT

Title of Proposal

Amendment to the Town and Country Planning (General Permitted Development) Order 1995 – Temporary protection of poultry and other captive birds.

Purpose and Intended Effect of Measure

Objective

To grant temporary permitted development right for the erection of temporary buildings, or the extension of existing buildings, for housing of poultry and other captive birds to protect them from Avian Influenza.

Background

Following the recent outbreak of Avian Flu ('bird flu') in Suffolk, Defra have taken precautionary measures to contain the virus that includes the culling of birds and putting in place a 3km protection zone and a 10km surveillance zone around the infected area and a restriction zone covering large parts of Suffolk and Norfolk In addition, bird owners have been advised to bring birds indoors.

Certain types of development are already permitted without the need for planning permission. These permitted development rights are set out in the Town and Country Planning (General Permitted Development) Order 1995 (the GPDO). Part 6 grants various general permissions for farmers and householders to carry out certain development. However, the limitation of those rights, especially the need to comply with prior approval procedures, the fact that they grant permission for structures intended to be permanent, and the fact that they do not cover provision for zoo, game and other birds, make the existing rights inflexible in the current situation where there may be an immediate need to build temporary buildings to house birds.

This Order grants the right to carry out temporary and reversible works to shelter poultry and other captive birds from contact from wild birds. These provisions are designed to ensure that farmers and poultry owners have the ability to provide adequate shelter to house birds unaffected by avian flu without needing to seek planning permission from the local planning authority.

Rationale for Government Intervention

This measure is being introduced to deal with the urgent requirement to restrict the movement of birds by allowing urgent additional provision for birds in affected areas to be housed. Failure to introduce the Order could have a detrimental impact on farmers and poultry owners, who would have their birds destroyed if they were found to be infected by avian flu.

Consultation

We have not undertaken any formal consultation on our proposals because of the need to act urgently and the temporary nature of the measure.

We have consulted with Defra and DoH on our proposals and they are in full agreement with the measure. In addition, we have also taken informal soundings from one or two local planning authorities who also agree that this is a sensible approach.

Options

We considered two options:

Option 1 - **Do nothing** – Require planning permission to erect buildings to shelter birds from avian flu.

Option 2 - **Allow temporary permitted development rights to erect/extend buildings without the need for planning permission** – This would grant farmers and poultry owners' temporary additional permitted development right for the erection of temporary buildings, or the extension of existing buildings, for housing of poultry and other captive birds to protect them from Avian Influenza.

Option 2 is the Government's preferred option

Costs and Benefits

Sectors and groups affected

The groups that will be most affected are primarily farmers and local planning authorities who might need to take enforcement action if temporary buildings are not removed within 12 months.

Race equality assessment

None of the options has a race impact.

Health impact assessment

Avian flu is primarily a disease of birds and the public health implications are currently negligible except for those who work very closely with infected birds. However, option 2 would allow bird keepers in certain areas near to the infected premises to comply with their legal obligations to house their birds to prevent contact with wild birds. This would limit the risk of further infection should the virus be circulating in the wild bird population.

Rural considerations

Option 2 would allow the most flexibility to farmers to ensure that they deal with any requirement to bring birds in doors by erecting or extending buildings to help protect birds from avian flu.

Breakdown of costs and benefits

As this is a temporary right for farmers, it is impossible to estimate the exact or approximate costs or benefits at this stage as we do not know to what extent, this exceptional right will be used. In general, granting this right will create more benefits than costs for both farmers and poultry owners and to local planning authorities who might otherwise have to deal with an influx of planning applications.

Economic Benefit

Option 1 – there would be no benefit from this option which would require farmers to submit planning applications which would need to be consulted upon before determination by local planning authorities. The whole process would take weeks.

Option 2 – Farmers and the poultry industry will benefit from the scope to put up buildings quickly. Without such buildings if there are any further outbreaks of avian flu, it is possible that hundreds of thousands or even millions of birds would have to be slaughtered. The potential financial losses involved if this were necessary have not been calculated.

Environmental Benefit

Option 1 – there would be no environmental benefits from this option

Option 2 – there would be benefits if birds were protected from the risk of avian flu.

Social Benefits

Option 1 – there would be no social benefits from this option.

Option 2 – there would be no social benefits from this option.

Economic Costs

Option 1 – maintaining the current arrangements of requiring planning permission for buildings would potentially have a considerable cost for farmers and poultry owners who did not have the flexibility to put up buildings quickly. If as a result birds were slaughtered the impact to the economy particularly the farming industry would potentially be considerable.

Option 2 – the buildings will be permitted for up to 12 months. The expectation is that they would be removed within this period. Should this not happen, local planning authorities would need to take enforcement action. Such action should not impose significant additional costs on local planning authorities.

Environmental Costs

Option 1 – there would be a loss of captive birds including ornamental birds.

Option 2 – Potentially there might be some visual impact from temporary buildings.

Social Costs

Option 1 – there are no social costs under this option.

Option 2 – there are no social costs under this option.

Small Firms' Impact Assessment

Creating additional permitted development rights should benefit small firms by allowing them to act quickly to put up temporary buildings to protect birds.

Competition Assessment

A competition filter has been carried out and no effects on competition have been identified. The measure should benefit firms, who will be able to exercise this exceptional right to erect buildings to protect birds from the spread of avian flu.

Enforcement and Sanctions

This measure will not create any new burdens on local planning authorities. Where a developer carries out development not permitted by the GDPO local planning authorities will have the same enforcement powers as they have to deal with development in breach of planning controls. Developers who do not comply with the condition to remove temporary buildings within 12 months could face possible enforcement action from the local planning authority.

Implementation and Delivery Plan

Ministers have informed Parliament of the measure which will be implemented immediately to deal with the risk of possible further outbreaks of bird flu.

Post-Implementation Review

The temporary buildings will only be granted planning permission for 12 months. Farmers who have not removed their buildings after 12 months will be in breach of planning permission. We will rely on advice from Defra about how long the measure should last.

Summary and Recommendation

The introduction of a temporary additional permitted development right to allow farmers and poultry owners to erect temporary buildings to house birds is a precautionary measure to deal with the risk of a further spread of avian flu.

Option 2 is therefore the preferred option.

Declaration and Publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed ***Kay Andrews***

Date ***15th February 2007***

Baroness Andrews, Parliamentary Under Secretary of State, Communities and Local Government