

Final Regulatory Impact Assessment

1. Title of Proposal

The Planning (Avian Influenza) (Special Development) Order (Northern Ireland) 2008

2. Purpose and Intended Effect of the Regulations

(i) The Objective

The purpose of this Order is to provide limited permitted development rights to enable poultry and other captive birds to be housed or kept separate from wild birds; or from other poultry and other captive birds as part of avian influenza prevention measures in Northern Ireland.

(ii) The Background

Following an outbreak of Avian Influenza in Suffolk in February 2007 the Department considered the need to provide limited permitted development rights to enable poultry and other captive birds to be housed or kept separate as part of avian influenza prevention measures in Northern Ireland. The Department liaised with the Department of Regional Development, (DARD), which is responsible for animal health and welfare and which has the power to require poultry and other captive birds to be housed or otherwise kept separate from wild birds; or from other poultry and other captive birds, in order to prevent avian influenza.

Further outbreaks of avian influenza have since occurred in Norfolk in November 2007 and Dorset in January 2008.

Although there have been no recorded incidents of avian influenza in Northern Ireland, it is only prudent to consider how an outbreak or the likelihood of an outbreak might impact on the planning regime.

Certain types of development are already permitted without the need to apply for planning permission. These rights are set out in the Planning (General Development) Order (Northern Ireland) 1993 (the GDO). Part 6 of Schedule 1 to the GDO provides permission for development relating to agricultural buildings and operations. However the limitations of those rights, particularly 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 unsuitable where there may be an immediate need to build temporary buildings to house birds.

The proposed Special Development Order (SDO) will allow owners of poultry and other captive birds to erect buildings to temporarily house their birds, should this be required to prevent avian influenza, without the need to apply

for planning permission.

(iii) Risk Assessment

Failure to provide permitted development rights will lead to delay in the erection or extension of buildings where an application for planning permission is required. Such a delay, where urgent action is required to minimise the threat of disease spread, could have a detrimental effect on farmers and poultry owners who would have their birds destroyed if they were found to be infected by avian influenza. Adverse impact on the welfare of birds is also likely since, for example, the normal accommodation for free range birds is not usually designed for 24 hour living.

3. Options

Option 1: Do Nothing

This is not a realistic option as the introduction of avian influenza prevention measures by DARD, which may include a requirement to house or otherwise keep poultry and other captive birds separate from wild birds; or from other poultry and other captive birds, is likely to lead to an urgent need for the erection or extension of buildings. The Department has a duty to consider how such development should be regulated and make appropriate provision for this. The effect of doing nothing would mean applications for planning permission would be required for such development.

Option 2: Amend legislation

The second option that the Department considered was to amend the Planning (General Development) Order (Northern Ireland) 1993 by adding a new Part to Schedule 1 to that Order conferring permitted development rights, for the development necessary to house birds, for a fixed period to protect them from avian influenza. This would have been similar to the provisions made in the rest of the UK in 2007 where permitted development rights were provided in the respective General Permitted Development Orders for a maximum period of one year. The Department of Communities and Local Government (DCLG), which has responsibility for planning in England, took the lead in this issue and we were in contact with them as their legislation was developed. However we considered that this was not best option – further legislation would be required from time to time to either extend or provide further periods. Also, there could be a delay between the need for the Order and the Order being operative – it would only be put in place when required.

Option 3 – Introduce legislation

The third and preferred option is to make a Special Development Order as proposed. This will provide limited permitted development rights to enable

poultry and other captive birds to be housed or kept separate as part of avian influenza measures required by DARD in Northern Ireland. The advantages of this approach are that the SDO can be made and become operative now as the rights only and automatically become exercisable once DARD require birds to be housed. There will be no delay between the DARD requirement and the permitted development rights being available. Similarly, the permitted development rights cease to be available once the DARD requirement is lifted. DCLG in England also considered a similar option but their Special Development Order would only have been made if an avian influenza prevention zone was declared in England by the Department for Agriculture and Rural Affairs (Defra) and it would have applied only within that zone. DCLG then reconsidered the issue and concluded that rather than make a series of such Orders, if required, it would be more beneficial to amend their General Permitted Development Order on a temporary basis. Scotland and Wales followed suit.

Alternative Options Considered

No further options were identified.

4. Benefits

Option 1: Do Nothing

There are no benefits associated with this option.

Option 2: Amend Regulations

This option would have provided permitted development rights but further amendment would then have been required once the time period ended or to provide permitted development rights for further discrete periods. It would not have been the most streamlined option.

Option 3 Introduce legislation

This option is the most beneficial as it provides permitted development rights that are immediately available or withdrawn in concert with DARD requirements.

5. Costs

Option 1: Do Nothing

The Department would incur costs associated with determining applications for planning permission for development necessitated by avian influenza prevention measures in Northern Ireland. It would be very likely that consideration would need to be given to fast tracking, adding an additional burden upon resources and disadvantaging other users of the planning

system. Bird and poultry keepers would incur fees and other costs in making applications.

Option 2: Amend Regulations

The Department would have incurred normal administrative costs associated with making and printing a Statutory Rule. Further costs would be incurred each time the fixed period required to be extended or reintroduced. There would be a potential delay between the requirement to house birds and the permitted development rights becoming available.

Option 3: Introduce legislation

The Department will incur the normal administrative costs with making and printing a Statutory Rule. This rule can remain in place indefinitely as it automatically benefits bird and poultry owners when DARD requires birds to be housed.

6. Business Sectors Affected

The permitted development rights provided by the SDO will impact mainly on large scale poultry or bird keepers. The Regulatory Impact Assessment (RIA) that accompanied the DARD consultation (on the transposition of Council Directive 2005/94/EC on measures for the control of avian influenza) indicated that the Northern Ireland poultry industry consists of a relatively small number of large-scale producers with around two-thirds of poultry production carried out on small scale units of less than 1,000 birds each.

7. Small Firms Impact Test

The business sectors affected will be mainly large scale poultry or bird keepers. A Small Firms Impact Test has not been carried out. The SDO removes costs that would otherwise fall upon the industry – it does not add costs or adversely impact upon small firms.

8. Enforcement and Sanctions

The Department will enforce the Order as it considers appropriate.

9. 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.

10. Health Impact Assessment

Avian influenza is primarily a disease of birds and the Department

understands that the public health implications are negligible except for those who work very closely with infected birds. However, Option 3 will allow bird keepers in certain premises 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.

11. Rural Impact Assessment

The SDO will better enable farmers to comply with any DARD requirement to house or separate birds or poultry to prevent avian influenza. It will be beneficial and does not have an adverse impact.

12. Environmental Assessment

Benefits would arise from the ability to quickly comply with DARD disease prevention and control measures and the segregation of captive birds from the wild bird population.

13. Human Rights Assessment

The Department considers that the proposed amendments are fully compliant with the Human Rights Act 1998.

14. Monitoring and Review

The Department will monitor and review the Order in the same way that it does other legislation for which it is responsible.

15. Consultation

(i) Within Government

Representatives of the other UK planning administrations in England, Scotland and Wales have been consulted during the preparation of this SDO. Within government Planning Service has consulted closely with the Department of Agriculture and Rural Development (DARD) in preparing the draft Order.

(ii) Public Consultation

We have not undertaken any formal consultation on our proposals because:

- a. the permitted development rights become exercisable only within the narrow circumstances of a DARD requirement that poultry and other captive birds be housed or otherwise kept


- separate from wild birds; or from other poultry and other captive birds to reduce the risk of infection;
- b. when the DARD requirement to house birds ceases the development is required to be removed within a specified period or within a period agreed with the Department (if an owner wishes to make the development permanent he can apply for planning permission);
 - c. there is a requirement when the permitted development rights are exercised to notify the Department which enables us to monitor the extent of this development;
 - d. the permitted development rights are similar to those available elsewhere in the UK being linked to existing Northern Ireland agricultural permitted development rights; and,
 - e. DARD has already consulted extensively on its powers in relation to avian flu prevention measures, including the power to require housing or other means to separate poultry or other captive birds from wild birds.

Interested parties will likely be poultry and other bird keepers who will be made aware of the Special Development Order as part of the normal publicity arrangements when it is made.

16. Summary and Recommendation

Option 3 is the recommended option as it is considered to be the best means of providing planning permission for development required to be undertaken by avian influenza prevention measures in Northern Ireland.

Signed by a Senior Officer of the Department of the Environment



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Marianne Fleming.....

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Contact point:
Wilfrid Reavie
Department of the Environment
Planning Service
Millennium House
17-25 Great Victoria Street
Belfast BT2 7BN

Tel: 028 9025 6505

E-mail: Wilfrid.Reavie@doeni.gov.uk