FINAL BUSINESS AND REGULATORY IMPACT ASSESSMENT

Title of Proposal:

Final and Implementation Stage Business and Regulatory Impact Assessment for Permitted Development Rights for Microgeneration Equipment on Non-Domestic Properties

1. Purpose and intended effect of amendments to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992

Objectives

- To regularise and clarify the extent of permitted development rights for microgeneration equipment on non-domestic properties.
- To meet legislative requirements set out in Section 71 of the Climate Change (Scotland) Act 2009.

Background

1.1 The existing Town and Country Planning (General Permitted Development) (Scotland) Order 1992 does not specifically establish permitted development rights for microgeneration equipment on non-domestic buildings. The proposed legislation clarifies the range of microgeneration equipment that benefits from permitted development rights. It sets out the thresholds and limitations which apply to those rights.

1.2 Microgeneration is defined in the Energy Act 2004 as equipment which is capable of generating up to 50 kilowatts of electricity or 45 kilowatts of heat.

1.3 The Business and Regulatory Impact Assessment accompanying the consultation document indicated that anemometers may be included in a revised permitted development rights regime but due to the likely temporary nature of that equipment it was not considered further for the purposes of Business and Regulatory Impact Assessment (BRIA). Question 1 of the Partial BRIA asked whether it was right that anemometers should be excluded from further consideration in that way. None of the responses objected to that course of action.

Rationale for Government intervention

1.4 Apart from the legislative requirement for changes to be made, it is considered that the existing permitted development rights are applied unevenly to microgeneration equipment in non-domestic settings across Scotland. Bringing forward a clarification on the type and scale of equipment will create a consistent approach which will provide efficiency savings as well as cost savings for the applicant, which include the cost of the planning application itself as well as necessary drawings, assessments and negotiations which are required to secure consent (such services are often provided by professionals rather than being undertaken by the property owner).

1.5 The permitted development rights will assist the achievement of the National Performance Framework outcomes on:

- Sustainable Places: by helping to reduce the green house gas emissions of Scotland's existing non-domestic building stock whilst maintaining high quality places;
- Environment: by not allowing microgeneration equipment to be inappropriately sited within built or natural sites designated for protection;
- Environmental Impact: by helping to reduce emissions from buildings in use, supporting the microgeneration industry and implementing the Climate Change (Scotland) Act 2009.

1.6 Providing permitted development rights will identify the Scottish Government's support for the technology, when reasonably sited, and as such will help to stimulate the market if the permitted development rights are set at a level which provides sufficient energy returns for the properties involved. A number of responses to the consultation paper remarked that either dimensions or output limitations would reduce the attractiveness of uptake of the permitted development rights. This, combined with a more limited range of technologies to be classified as permitted development (paragraph 1.7) will mean that the financial savings to be made are likely to be more muted than previously predicted, erring towards the lower end of predictions made in this assessment.

1.7 As a result of the consultation it is not proposed to increase thresholds, furthermore a more limited range of technologies (solar panels, ground and water source heat pumps, energy from biomass equipment and anaerobic digestion plant) will be included in the Amendment Order to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992. The fundamental principle of permitted development rights is that the development deemed to be permitted has no or minimal impacts to ensure that the quality of the built environment and level of amenity are at least maintained.

1.8 The Scottish Government is committed to providing an effective, proportionate and fit for purpose planning system. Providing permitted development rights removes an unnecessary regulatory process for low impact developments. However, planning is only one regulatory process in installing microgeneration technology.

1.9 Section 72 of the Climate Change (Scotland) Act 2009 requires Local Development Plans to contain policies ensuring that all new buildings have low and zero carbon generating technologies installed. This change to existing regulations encourages the use of such equipment in existing properties, providing an evenly weighted approach to microgeneration technologies.

2. Consultation

All-Energy

2.1 A leaflet which summarised the initial proposals was handed out at the 'All-Energy' event in Aberdeen on 19 and 20 May and subsequently was made available electronically on the Scottish Government's website (http://www.scotland.gov.uk/Publications/2010/06/01094402/0).

2.2 A formal public consultation was open from 15 July 2010 to 8 October 2010. Respondents were invited to comment on a paper that set out proposals for permitted development rights (which included a Partial Equalities Impact Assessment), the Partial Business and Regulatory Impact Assessment, and the Environmental Report. 74 consultation responses were received on time and two additional responses were late. The consultation papers were made available on the Scottish Government's website: http://www.scotland.gov.uk/Publications/2010/07/15092031/0.

Within Government

2.3 The leaflet and consultation were made available to: Scottish Building Standards; the Renewable & Onshore Renewables Strategy Division; Greener Scotland; Solicitors; Office of the Chief Economic Advisor; Marine Scotland; Historic Scotland; and the Climate Change Division; Planning and Environmental Appeals Division; Energy Efficiency Unit, Protecting Land Water and Air Quality and Managing Flood Risk, and the Aviation, Maritime, Freight and Canals Division.

2.4 The Air Noise and Nuisance Team is content that the mitigation measures around biomass installations are sufficient.

Councils

2.5 15 responses to the main consultation paper were received from Councils in Scotland

Public Consultation

2.6 The leaflet and full consultation were made available on the Government's website. No comments from members of the public were received about the leaflet. 74 responses were received on the formal consultation from a range of sectors on the broad spectrum of issues raised. There were 2 late responses. For the consultation paper, 3 responses came from the general business sector, 20 from the renewable energy industry, 9 from community councils and housing associations, and 8 were from individuals. 5 respondents replied to formal questions set out in the Partial Business and Regulatory Impact Assessment, but many other comments pertinent to that assessment were made by respondents to the main consultation paper.

Business

2.7 9 responses to the leaflet were received at the 'All-Energy' event and 3 following the event. A summary of those responses is contained in a digest of responses that is available on the Scottish Government's website.

2.8 The proposals in the leaflet were discussed directly with 6 businesses within the microgeneration sector. The minutes of those meetings have been made available on the Scottish Government's website. Those meetings focused on drawing out the business impacts of the proposals.

2.9 Business responded to the formal consultation on proposals, 3 from general businesses and 20 from the renewable industry and relevant representative groups.

2.10 Responses to the leaflet were considered in the preparation of the proposals contained in the formal consultation paper. Responses to those proposals have been considered in preparing the Order amending the Town and Country Planning (General Permitted Development) (Scotland) Order 1992.

Next Steps

2.11 The responses from the consultation exercise have fed into a final set of proposals prepared as an Amendment Order to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992.

2.12 The Amendment Order plus the Business and Regulatory Impact Assessment is being notified to the European Commission under the Technical Standards Directive (98/34/EC) prior to being laid in the Scottish Parliament.

3. Options

3.1 Given the legislative requirement for intervention, taking no action is not an option. The main consultation paper considers 3 options for change:

1 – **Make Minimum Changes** – This approach would introduce constrained permitted development rights for a small number of microgeneration technologies and those which are the least controversial (the passive technologies such as solar, ground and water source heat pumps for example). This approach misses the opportunity to make a more significant contribution to the reduction of demands on energy from centralised sources.

2 – **Remove all Restrictions** – This approach would limit the installation of microgeneration equipment only by its power output as per the Energy Act (2004). In this scenario there is significant potential for adverse impacts on neighbouring properties (particularly where those properties are residential in use).

3 – **Provide a Threshold Based Approach** – This approach provides for a range of permitted development rights within defined thresholds which are intended to allow the greatest number of microgeneration units to be installed whilst providing safeguards for occupiers of neighbouring properties and for the protection of the quality of places, habitats and species more generally.

Sectors and Groups Affected

3.2 All of the options have impacts for the following sectors and groups:

- Owners of non-domestic properties;
- Owners and occupiers of domestic and non-domestic property which neighbour sites where microgeneration equipment could be installed;
- The public at large;
- Firms manufacturing and/or installing microgeneration equipment included within the amendment Order (and those forms manufacturing components for those products);
- The Government in making progress towards its emissions reductions targets and sustainability national Performance Indicators;
- Planning authorities;
- Umbrella organisations for the microgeneration industry and public sectors;
- Planning Aid for Scotland, which provides free impartial advice and training on planning issues;
- The aviation sector;
- The Ministry of Defence;
- Environmental Health Authorities.

Benefits and Costs of the Options

3.3 Option 1 – Benefits:

- Meets the letter of the Climate Change (Scotland) Act 2009;
- Provides permitted development rights which are unlikely to have any adverse impacts on the natural or built environment or the people within it;
- As the installations will be almost certainly be uncontroversial the industry around the microgeneration sector gains a more positive image;
- Some microgeneration technology no longer has the time or cost burden of requiring to be subject to the planning application process;
- Helps boost the industry by removing some associated costs of installing microgeneration equipment.

3.4 Option 1 – Costs:

- The opportunity to provide permitted development rights for a broad range of microgeneration equipment at one time is lost;
- Pressure will remain from the microgeneration industry to provide permitted development rights across other microgeneration equipment;
- A range of more 'active' microgeneration equipment likely to include wind turbines would still be subject to the financial and time burden of being subject to the planning application process.
- There would be less confidence within the microgeneration sector about

the level of support for the technology;
- The opportunity to have a public debate on the range of technologies and extent to which they should be considered to be permitted development would be lost;
- The potential long term demand reduction on energy from traditional centralised sources may be reduced.

3.5 Option 2 – Benefits:
- Meets the letter of the Climate Change (Scotland) Act 2009;
- Provides permitted development rights for all microgeneration equipment;
- Enables a significant boost to the industry in removing all costs associated with the planning process;
- Signals further the Scottish Government's support for microgeneration equipment.

3.6 Option 2 – Costs:
- Creates legislative tensions, for example the Environmental Impact Assessment regulations sets out guidelines and thresholds for when screening for the need to undertake environmental impact assessment is required. If the assessment is required, a planning application is also required.
- Could cause a backlash against the installed equipment through adverse impacts arising from noise and visual intrusion, for example;
- Real potential for harm to townscapes, landscapes, species, habitats and the historic environment.
- Potential to cause loss of amenity to those in society least able to fund legal challenges to the installation of equipment.

3.7 Option 3 – Benefits
- Provide permitted development rights for a wider range of microgeneration equipment than Option 1;
- Provide safeguards against the potentially harmful impacts of some equipment;
- Provide a clear and robust framework for identifying what is permitted development;
- Remove uncertainty around what equipment might or might not be covered in the existing regulations (reducing planning authority work load);
- Demonstrates support for the industry from the Scottish Government;
- Provides the opportunity for a public debate around the issues involved and the extent to which permitted development rights should apply.

3.8 Option 3 – Costs
- Some equipment which is desirable by consumers may fall outwith the thresholds set and thus require planning permission.
- Potential to cause loss of amenity to those in society least able to fund legal challenges to the installation of poorly sited equipment.
- Some potential for harm to townscapes, landscapes, species, habitats and the historic environment.

3.9 The Partial BRIA asked respondents whether they agreed with the range of costs and benefits identified. Of those respondents specifically responding to the BRIA there was no suggestion that the range of costs and benefits was deficient. However one respondent to the Equalities Impact Assessment considered that the proposals had the potential to adversely affect those less well off as they would not necessarily have access to the funds necessary to mount legal action against poorly sited equipment which was adversely affecting their amenity. This has been reflected in the list of potential costs.

3.10 Another respondent considered that microgeneration technologies would generally only be installed by the more affluent, however as the Amendment Order relates to non-domestic properties it is assumed that the installation costs would be a business rather than personal cost. A further respondent considered that the benefits of reduced energy bills had not been noted. As it is not possible to provide an estimate of what the savings might be, that issue is not being progressed in this assessment.

3.11 As a result of some responses to the main consultation document it was decided to also note the potential for costs to the built and natural environment as a result of Option 3.

3.12 On the question of whether more than minimum action should be pursued one respondent to the main consultation document considered that minimum action should be pursued until greater knowledge of the potential impacts is available, others considered that more than minimum action was needed, with one respondent pointing out that more than minimum action was needed in order to reduce the current burden on planning authorities.

Cost of the Planning Application Process

3.13 A minor planning application has been estimated to cost on average £1,450 (http://www.scotland.gov.uk/Publications/2010/02/05083644/90). The planning application fee for planning permission for the erection, alteration or replacement of plant or machinery is in reality set on a sliding scale determined by the size of the site, beginning at £319 rising to a limit of £15,950. The 6 organisations interviewed directly presented a range of costs incurred, currently not all of which were charged, ranging from £30 to £4,000. 2 organisations interviewed considered the £1,450 to be a reasonable figure (although one of those added that did not include completed but uncharged work) 1 organisation considered the average sum to be inflated and a further organisation provided average costs below the £1,450 figure.

3.14 It is likely that the reasons it is difficult to have a reasonable degree of precision on the average cost of the planning application are:

- The site size will change with each individual application;
- The planning fee does not include the cost of drawings, assessments and negotiations. There is no real consistency between firms as to how much of the work outside what is needed to create a valid planning application and secure consent incurs a charge to clients.

3.15 The Partial BRIA asked respondents whether they agreed with the range suggested for the cost of a planning application for microgeneration equipment (£319 - £4,000). Respondents provided a range of comments, including one who agreed to one who felt the range was a significant underestimate and called for additional research. However, no alternative figures were presented as an option. The lower figure clearly cannot be in doubt. An upper area of works threshold of 0.5 hectare has been indicated for ground and water source heat pumps, this is five times the smallest site area for planning fee purposes (0.1 hectare). Therefore an upper cost for planning application fees alone (excluding drawings and negotiations for example) required to validate such a planning application would be £1,595. This is significantly less than the maximum planning application fee (£15,950) and also less than the previously used £4000 figure. Furthermore, a planning application could be made for more than one technology but still attract the lowest fee.

3.16 Given the unlikelihood of any of the technologies being granted permitted development rights ever reaching the maximum planning application fee, it would not be appropriate to use that as a proxy maximum cost. As no other figures have been suggested through the consultation for an upper cost threshold (although it is noted that there will be some who disagree) the £4000 figure will be maintained. These high and low figures will be utilised to estimate low and high potential savings from the introduction of permitted development rights.

Cost of Permitted Development Rights

3.17 Consultation proposals identified a need for installers and equipment to be compliant with the Microgeneration Certification Scheme. The Partial BRIA noted this would incur costs, referring to the comments made by one interviewee that the third party testing element of the Microgeneration Certification Scheme had cost in the region of £26,000. The Partial BRIA did not consider the costs incurred as a result of the Microgeneration Certification Scheme as it noted that some manufacturers and installers were already committing themselves to the scheme. Question 4 of the Partial BRIA invited respondents to comment on the approach taken to the costs incurred as a result of the application of the Microgeneration Certification Scheme.

3.18 A respondent to the Partial BRIA thought that product certification for wind turbines would cost in the region of £80,000 and considered that such costs would be a barrier to small companies being able to take advantage of the proposed permitted development rights. Another respondent considered that the Partial BRIA was distorted by ignoring the costs incurred through the use of the Microgeneration Certification Scheme. A respondent to the main proposals document considered that equivalent certification schemes should also be eligible to avoid duplication of costs. The Partial BRIA also asked respondents (Question 5) whether the predicted level of uptake and costs was appropriate. The responses differed but as no alternative figures were

suggested, no revision to the approach to costs and uptake levels (which were based on a range) has been made.

3.19 It is no longer proposed to tie permitted development rights to compliance with the Microgeneration Certification Scheme. Although that means loosing the safeguarding on quality which is inferred by the scheme it also means that installers and products will not be forced to incur the costs of the scheme to enable permitted development rights to apply. This also reduces costs associated with the duplication of accreditation schemes for products which may have been accredited outside of the United Kingdom. It should be noted that the planning system has not traditionally been a means by which the quality of manufactured products can be assured. Removing the formal link to the Microgeneration Certification Scheme does not therefore reduce the functionality of the planning system or imply that inferior or low quality products will be installed.

3.20 The main consultation on proposals posed questions around the potential application on non-reflective materials for solar panels. There was some feeling amongst respondents that a requirement for non-reflective materials would add to the cost of installations and thus reduce their attractiveness. The non-reflective surfaces option has not been pursued.

3.21 Following comments made by respondents to the main proposals consultation paper about the potential for ambiguity around permitted development rights thresholds based on somewhat subjective criteria of where a development was or was not visible from, more exacting thresholds have been defined. This clarity should assist in identifying what developments are and are not permitted development, reducing the burden on planning authorities and developers in making accurate assessments of compliance. Unfortunately it is not possible to monetise this impact at this time.

Estimating Microgeneration Uptake

3.22 The 2008 report 'The Growth Potential for Microgeneration in England, Wales and Scotland' (http://www.berr.gov.uk/files/file46003.pdf) set out some forecast figures for what the growth of the non-domestic microgeneration equipment installations might be in the non-domestic sector and these are reflected in Figure 1.

Figure 1: Estimated uptake of microgeneration technologies	
Year	Installed Units
2015	2,500
2020	5,000
2030	12,000
2050	39,000

3.23 These figures do not show the entire picture as they include equipment capable of generating up to 100 kilowatts of heat, do not include anaerobic digestion units and do not include farm or forestry land holdings. The study

assumed that there were 1.5 million non-domestic premises in the UK at the time of writing. In Scotland there were 51,993 agricultural land holdings in 2009 (Agricultural Facts and Figures 2010; http://www.scotland.gov.uk/Publications/2010/06/09152711/2). A figure for the number of forestry land holdings (as opposed to total area of forest area) was not available at the time of writing this assessment. The Scottish Assessors Association indicates that in July 2010 there were 134,712 Office, Shop and Industrial (including warehouse, factories and stores) premises (for valuation purposes) in Scotland (http://www.saa.gov.uk/general_statistics.php#report_list). This represents just fewer than 9% of the total UK non-domestic land holdings (excluding forestry and agriculture). Whilst this reflects a low total number of non-domestic properties in Scotland (as there are other property classifications which are non-domestic) it helps to begin to quantify the impacts of the permitted development rights in monetary terms. So for the uptake prediction set out in Figure 1 has been adjusted in Figure 2 to better reflect the Scottish situation.

Figure 2: Estimated uptake of microgeneration technologies in Scotland	
Year	Installed Units
2015	225
2020	450
2030	1,080
2050	3,510

3.24 Some respondents to the main consultation paper on non-domestic permitted development rights noted that the restricted output of equipment benefiting from proposed permitted development rights would reduce uptake of the technology. Another respondent noted that the lack of available finance would currently limit uptake. However, as this is not quantifiable at this time no adjustment to Figure 2 has been made.

Savings for Applicants

3.25 In order to understand what the potential savings of the regulations might be (in terms of costs to secure planning permission which would no longer apply), low and high scenarios have been considered. Given all of the complications around the desirability of the thresholds imposed and the availability of technology to conform to the thresholds, the lowest level of uptake of the technology is being set at 25% and the highest rate of uptake set at 75% (Option 2 would result in 100% uptake as there would be almost no thresholds to meet to ensure compliance). This approach also assumes that one applicant would apply for one piece of equipment at a time (which will result in an overestimate of the savings as one planning application can be made for more than one piece of equipment).

3.26 Following consultation on proposals, the range of technologies to be granted permitted development rights has been reduced. This creates additional uncertainty about the level of installed units, however this is

countered in part by the issues set out in paragraph 3.23 which indicated a potential under estimate of installed units. Therefore the estimate of installed units set out in Figure 2 remains in place, as does the 75% high uptake scenario which allows for uncertainty in the level of predicted uptake set out in Figure 2.

3.27 Additionally the prior notification procedure will remain applicable to some installations for biomass and anaerobic digestion equipment which exceed existing building alteration or extension size on agricultural or forestry buildings. The prior notification procedure attracts a fee of £61. However, it is not possible to tell at this stage how many installations of a scale significant enough to warrant notification will be on farm or forestry land. Therefore this issue is not considered further in this assessment, although the fee for prior notification is considerably less than that for full planning permission.

Figure 3: Savings for Applicants, Low Uptake Scenario, Low cost (£319) Scenario.

Year	Installed Units (nearest whole number)	Saving (£)
2015	56	17,864
2020	113	36,047
2030	270	86,130
2050	878	280,082

Figure 4: Savings for Applicants, Low Uptake Scenario, High Cost (£4000) Scenario

Year	Installed Units (nearest whole number)	Saving (£)
2015	56	224,000
2020	113	452,000
2030	270	1,080,000
2050	878	3,512,000

Figure 5: Savings for Applicants, High Uptake Scenario, Low Cost (£319) Scenario

Year	Installed Units (nearest whole number)	Saving (£)
2015	169	53,911
2020	338	107,822
2030	810	258,390
2050	2,633	839,927

Figure 6: Savings for Applicants, High Uptake Scenario, High Cost (£4,000) Scenario		
Year	Installed Units (nearest whole number)	Saving (£)
2015	169	676,000
2020	338	1,352,000
2030	810	3,240,000
2050	2,633	10,532,000

Council Costs and Benefits

3.28 Planning authorities in Scotland will experience a loss of fee income proportionate to the level of uptake of the permitted development rights, but will continue to receive application fees for equipment which is considered to be outside the thresholds identified for permitted development rights to apply. Some Councils responding to the main consultation paper did not anticipate a significant loss in fee income. The Low Cost scenario set out above reflects the price of the minimum planning application fee alone. Clearly not all planning applications for microgeneration equipment would have attracted that fee. The maximum price for the planning application alone is currently £15,950 (assuming the planning authority processes the application as the erection, alteration or replacement of plant or machinery). As there is a sliding scale of application fee between those two points, depending on the size of the site for which the application is made, as stated in paragraph 3.15, a more likely upper figure for the scale of development proposed in the Amendment Order would have been £1,595. The loss of fee income, therefore, cannot be reliably estimated here, although as an indication of minimum fee income loss the applicant savings identified in Figure 3 can be converted into minimum fee income lost to the Planning Authority. However, it is important to note that the planning authority would have a reduced number of planning applications to process, freeing up resources to concentrate on the really significant applications.

3.29 The Partial BRIA indicated that Environmental Health authorities may receive increased levels of complaints regarding noise, however the presence of clear noise thresholds will make such cases more straightforward to deal with. Unfortunately it has not been possible to identify at this stage a noise threshold which would be applicable across the whole of Scotland as well as an agreed measuring methodology to assess achievement of the noise threshold. Therefore planning applications will remain a requirement for air source heat pumps and micro-wind turbines, which are the technologies that have ongoing noise emissions related to their operation. Some costs may be attributable to Environmental Health services if complaints around emissions from biomass plant or odour from anaerobic digestion plant arise, it is not possible to quantify or monetise the scale of such complaints at this time.

Costs Relating to Visual Impact / Appearance

3.30 These costs have not been monetised. The provisions under Options 1 and 3 seek to establish thresholds which are acceptable in terms of visual impact and appearance.

Costs to Neighbours

3.31 Neighbouring land owners will have no route for objection to the installation of microgeneration equipment which falls within the thresholds for permitted development rights in advance of that technology being installed. Permitted development rights also mean that no formal notification that the development is to proceed will be issued. Safeguards and enforcement issues are discussed later in this assessment. Paragraph 3.9 noted potential legal costs of neighbours challenging poorly sited equipment. It is not possible to monetise these costs at this time but the risk has been noted in the costs and benefits section of this Assessment.

Emissions Savings

3.32 It is not anticipated that microgeneration technologies, which benefit from permitted development rights, alone will be sufficient to meet the energy needs of non-domestic properties and no figures are available to estimate the emissions savings to be made. Emissions savings will depend on the existing energy source and the extent to which that is transferred to renewable energy technologies. Moving away from solid fuel energy sources will be likely to reveal the greatest emissions savings.

3.33 The Partial BRIA noted that technically air source heat pumps can be run in reverse as air conditioning units. This would result in more significant energy use and therefore emissions. However, the use of the equipment for air cooling rather than warming is not likely to be significant in Scotland at this time. It is no longer proposed to grant permitted development rights to air source heat pumps and so the Amendment Order will have no additional risk to emissions in this regard.

Savings due to Improved Air Quality

3.34 Although not monetised or quantified here, the shift towards renewable sources of energy will lead to less reliance on fossil fuel sources of energy. The impact on air quality of the greater use of microgeneration equipment will probably have a marginal positive impact on air quality.

Environment and Biodiversity

3.35 Options 1 and 3 enable the retention of controls regarding the protection of the natural environment which would be lost under Option 2. The thresholds could be used to protect internationally designated sites and species, designated buildings and landscapes from inappropriate development. This does not prevent applications for microgeneration equipment on a larger scale being submitted and being demonstrated to be acceptable.

3.36 The Partial BRIA asked respondents (Question 6) whether the range of qualitative costs and savings was adequate. Those who responded directly to the Partial BRIA found the description acceptable. 1 respondent wanted further support to be shown for the technologies. Unfortunately it has not been possible to go further with permitted development rights at this time. Support for renewable energy in general continues to be shown through a

variety of financial incentives and policy support at Government level.

4. Scottish Firms Impact Test

4.1 In setting out to understand the impact that the proposed regulations might have on Scottish businesses a questionnaire was devised and issued to 27 companies of varying scales which operate within the microgeneration sector. The size of the organisation was verified with Scottish Renewables, the body which represents companies within the microgeneration sector within Scotland. As a result, six interviews were secured in June 2010 with the following companies:

- Ampair
- babyHydro
- Caber Energy Limited
- Highland Alternative Energy Limited
- Proven Energy Limited
- Mitsubishi Electric

4.2 The interview with Ampair was conducted by telephone, the remainder were face to face interviews. Minutes from all of these interviews are available in the 'Overview of Responses to Initial Proposals and Minutes of Meetings with Industry Regarding the Business and Regulatory Impact Assessment' which is available on the Scottish Government's website: http://www.scotland.gov.uk/Resource/Doc/212607/0103262.pdf.

4.3 The regulations as initially proposed would have had an impact on six broad groups of technology (which have sub groups): solar, wind turbines, heat pumps, biomass, anaerobic digestion and hydro turbines. However, that range is reduced in line with the more restricted range of technologies to be granted permitted development rights, as discussed in paragraph 1.7.

4.4 The companies listed above collectively have some experience in all of the technologies affected by the proposed regulations.

Competition Assessment

4.5 What was clear from the interviews was that there is only a small number of products which would currently comply with the thresholds defined (not withstanding that compliance for issues such as noise would require predictive testing). However, there is potential for research and development to deliver additional products to the market place which could comply with the thresholds.

4.6 Whilst there was general support for the generous stance taken to the proposed thresholds (Option 3) there are difficulties with certain technologies being able to uniformly conform to a set of fixed criteria. The design process to determine the energy need of the building and the scale of microgeneration equipment required to serve that need is not going to result in standard sizes or scales of equipment being installed.

4.7 With particular regard to wind turbines (but applicable to most of the technologies) is the issue of Government 'tariffs' for payment for electricity generated (such as Feed In Tariffs). Tariffs encourage property owners to seek equipment with the greatest output in order to generate the most income from the tariffs and were also considered by some of those organisations interviewed to be a means of enabling the installation of the microgeneration equipment to be economically viable. This is particularly the case with wind turbines. If the permitted development rights thresholds are set too low they will simply be ignored. This is particularly difficult for wind turbines where an increase in height can result in significant increases in the power generated, but would be likely to get caught by the Environmental Impact Assessment regulations, which could require the development to have a planning application. This was explored in more detail in the main consultation document.

4.8 Unfortunately it has not been possible to progress proposals for permitted development rights for micro-wind turbines to clauses within an Amendment Order. The range of issues presented by micro-wind turbines are of a scale that are appropriately addressed through the planning application process. Micro-wind turbines will therefore continue to require planning permission at this time.

4.9 In terms of impacts on the market place, there was not a consistent opinion as to whether a new market would be created or an existing one altered. Additionally it was not generally considered that barriers to entry were being created as the regulations were about reducing burdens. Interestingly it was considered that micro-companies (less than 10 employees) whose business is the installation of microgeneration equipment will gain significant benefits from the proposals as it is likely that there will be more business within the market and less paperwork and bureaucracy to deal with. Conversely, micro-businesses which manufacture products could be adversely affected as it was proposed to establish a link to the Microgeneration Certification Scheme, which has associated product testing fees which micro-businesses may be less able to support. Collusion within the market place between companies was not thought to be a significant issue as a result of the permitted development rights.

4.10 Although the range of technologies to be granted permitted development rights has been reduced from that proposed in the consultation paper, the mandatory link to the Microgeneration Certification Scheme has also been removed. Therefore, installers and manufacturers will not be subject to the costs associated with the Microgeneration Certification Scheme for the technologies which are deemed to be permitted development.

4.11 It was generally felt that larger firms would not be adversely affected in terms of market distortion or barriers to entry. In general it was not considered that the proposals created barriers to exit from the market place.

4.12 Component suppliers were considered to benefit only from the general uplift in the volume of products sold and therefore components required.

4.13 There is potential for distortion of the market towards the smaller scale of equipment if planning authorities adopt the permitted development rights thresholds as a proxy for 'acceptable' development in the consideration of planning applications for microgeneration equipment falling outside the permitted development rights thresholds. However, this is not good practice and it is likely that even if this did begin to emerge, appeals against decisions refusing planning consent based on permitted development rights thresholds would be likely to succeed. This issue was also raised in a response to the main consultation paper.

4.14 Ultimately, however the interviews concluded that if the permitted development rights were framed in the right way, with a view to the needs of the technology being installed; then the permitted development rights were most likely to act as a boost to the microgeneration market rather than a drag on it.

4.15 Interestingly, however, there was a view emerging that rather than being the direct cost of the planning application which was a barrier to uptake of the technology, it was the uncertainty that the planning process creates (perceived and actual). If potential clients for microgeneration technology consider that planning might cause a problem in time or expense in order to achieve a consent, then some are put off the technology straightaway and revert to traditional systems. It was also reported that once in the planning process, if a project begins to get difficult or delayed some clients either revert to traditional technology or opt for technology which is less suitable to their requirements.

4.16 The main concern emerging from the industry was that the existing uncertainty within the planning process for microgeneration technology is one of the, if not the biggest disincentive to the uptake of the technology. Although not going as far as some would like, the identification of even a limited range of microgeneration technologies within the General Permitted Development Rights Order identifies which technologies or which scale of technology is not within the order and clearly indicates a planning application is required, removing uncertainty around what is and is not permitted development.

4.17 A number of respondents provided comments around Question 7 of the Partial BRIA on the topic of the impacts on Scottish firms and competition as a result of the proposed regulations. One respondent noted advantages in reduced energy bills from uptake of the equipment, which is right but would be equally applicable if the equipment was installed following the grant of planning permission. Another felt that the high heating costs in Scotland put Scottish firms at a disadvantage but similarly that adverse weather could actually be beneficial in terms of producing high levels of energy. Current grid connection charges were considered to be disadvantageous to business. Those charges are not regulated by the planning system.

4.18 A further respondent felt that permitted development rights could boost employment in Scotland though the installer network, manufacturing and supply chain. This is accurate, although it is difficult to suggest what the employment and value created would be. The reduced set of technologies to be granted permitted development rights may mute that employment growth but potentially not significantly as the planning application route remains open for technologies at a scale that does not benefit from permitted development rights.

4.19 Bringing forward amendments to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 which are straightforward and allows for desirable technology to be installed, will be of significant benefit to the microgeneration industry not so much in terms of financial savings but more in the freeing up of the market from bureaucracy which currently acts as a disincentive to the uptake of the technology. This benefit will be more muted as a result of the smaller range of technologies which will be classed as permitted development rights following consultation (although some additional clarity will result, as discussed in paragraph 4.16).

Test run of business forms

4.20 There are no new business forms proposed.

5. **Legal Aid Impact Test**

5.1 One respondent to the Equalities Impact Assessment felt that households on lower incomes may be adversely affected through the inability to raise the funds for legal action against poorly sited microgeneration equipment. That could cause fresh demands on the Legal Aid Fund.

5.2 The range of microgeneration technologies which will benefit from permitted development rights has been scaled back. Those technologies which generate ongoing noise emissions are not being granted permitted development rights (in the case of micro-wind turbines and air source heat pumps). Also the provision of permitted development rights provides clarity and reduce regulatory burden. This suggests that no or minimal demands will be placed on the Legal Aid Fund.

6. **Enforcement, Sanctions and Monitoring**

Planning Authorities

6.1 Planning authorities will continue to provide the authoritative interpretation of any amendments made to the General permitted Development (Scotland) Order. Where development subject to regulation through the planning system has not been implemented correctly, planning authorities remain responsible for taking enforcement action.

Sanctions

6.2 Where development requires planning permission and does not have it, the ultimate sanction (following enforcement action) would be the removal of the unauthorised equipment. Councils can take action against the operation

of non exempt biomass boilers in designated smoke control areas. Permitted development rights will not apply to biomass boilers in Air Quality Management Areas.

6.3 There are costs associated with enforcement, although it has not been possible to monetise these at this time. However, enforcement is already a function of the various regulatory regimes and the limited range of technologies being taken forward in the Amendment Order assists in limiting the additional costs of enforcement.

The Courts

6.4 Precedents set by the courts will assist with interpretation over time as challenges are settled.

Monitoring

6.5 The permitted development rights will be reviewed should there be agreement between the administrations of the UK that further action is required.

7. Implementation and Delivery Plan

7.1 Implementation will be undertaken by planning authorities, installers, consultants, manufacturers and non-domestic property owners. Implementation will occur over a long time period. The consultation exercise leading to the Amendment Order has been informed by some of these groups and all of these groups have had the opportunity to respond to the consultation documents.

7.2 As indicated in paragraphs 2.11 and 2.12 the permitted development rights will be prepared as an Amendment Order to the existing regulations, thus meeting the first objective of regularising and clarifying the extent of permitted development rights for microgeneration equipment on non-domestic buildings. The second objective is met by laying the Amendment Order before the Scottish Parliament.

8. Summary and Recommendation

8.1 As a result of the assessment it is clear that the existing extent to which permitted development rights for microgeneration equipment on non-domestic property can be applied is unclear.

8.2 It is also clear that the cost of a planning application is highly variable. However, the fee itself is not the major barrier to the uptake of microgeneration technology, it is more about the time taken to reach a decision by the planning authority and the uncertainty as to what that decision will be. Nevertheless there is the potential for applicants to save between £280,082 and £3,512,000, based on a low uptake scenario.

8.3 Permitted development rights would provide automatic planning permission for the equipment, removing the financial and time costs associated with planning applications as well as providing certainty for the equipment that does and does not require planning permission.

8.4 However, there are potentially significant negative costs associated with un-restrained installation of microgeneration equipment, both for the industry as a competitive market and directly for the owners of neighbouring sites, biodiversity, habitats, townscapes and landscapes.

8.5 Therefore, it is recommended that Option 3 provides the best scope to address a range of microgeneration technologies and avoid the impacts of unconstrained development. Although the range of technologies to be granted permitted development is more restrained than indicated in the consultation document, this reflects more than the absolute minimum action that could have been taken. Option 3 remains applicable to this approach.

9. Summary Costs and Benefits Table

Option	Benefits	Costs
	Economic, Social & Environmental	
1	• Time and financial savings for applicants from not requiring a planning application. • Certainty for installers, consultants, applicants, manufacturers and in the extent of permitted development. • Some reduction in workload for planning authorities.	• Savings fairly low given the narrow range of technologies and limited thresholds applied. • Costs passed to environmental health authorities. • Some revenue lost to planning authorities. • Less contribution to green house gas emissions reduction. • Not all desired equipment will fall within the permitted development rights thresholds.
2	• Greatest time and financial savings for applicants from not requiring a planning application. • All equipment would receive permitted development rights up to Energy Act 2004 output thresholds. • Greatest reduction in workload for planning authorities in not processing applications. • Greatest support for the industry in completely removing a barrier to uptake.	• Greatest costs passed to planning authorities and environmental health authorities in terms of enforcement action. • Greatest revenue losses to planning authorities. • Greatest contribution to green house gas emissions reduction. • Greatest chance of backlash against the industry from inappropriately sited equipment. • Tensions between permitted development rights and legislation designed to protect the environment. • Greatest potential for adverse

		impacts on designated habitat areas and species.
3	• Time and financial savings for applicants from not requiring a planning application. • Certainty for installers, consultants, applicants, manufacturers and neighbours in the extent of permitted development. • Permitted development rights most likely to be taken up. • Some reduction in workload for planning authorities.	• Some savings from a range of equipment and thresholds applied. • Few costs passed to environmental health authorities. • Some revenue lost to planning authorities. • Likely low - medium contribution to green house gas emissions reductions (compared to option 2). • Not all desired equipment will fall within the permitted development rights thresholds.

10. Declaration and Publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Minister for Transport and Infrastructure

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Date: 21 February 2013