

**EXPLANATORY MEMORANDUM TO
THE TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT
PROCEDURE) (AMENDMENT) (NO. 2) (ENGLAND) ORDER 2009**

2009 No. 1304

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.

2. Description

This Order amends the Town and Country Planning (General Development Procedure) Order 1995 (“GDPO”). The amendments are consequential on section 188 of the Planning Act 2008, which removes the stipulation that local development orders (“LDO”s) must be based on local development plan policies.

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

None.

4. Legislative Background

- 4.1. An LDO is an order which can grant development rights without the need for a planning application in areas defined by the relevant local planning authority (“LPA”). The provisions allowing an LPA to create an LDO are sections 61A to 61C of, and Schedule 4A to, the Town and Country Planning Act 1990 (“TCPA”) and were inserted by section 40 of the Planning and Compulsory Purchase Act 2004.
- 4.2. Section 188 of the Planning Act 2008 removes section 61A(1) and paragraphs 4 and 5 of Schedule 4A from the TCPA, so that LDOs need no longer be based on policies in the local development plan or in development plan documents.
- 4.3. Article 2B of the GDPO sets out the process for establishing an LDO. This Order removes the elements which relate to LDOs being based on local development plan policies.
- 4.4. This Order is to come into force at the same time as section 188 of the Planning Act 2008.

5. Territorial Extent and Application

This instrument applies only in relation to England.

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

- *What is being done and why*

7.1. Section 188 of the Planning Act 2008 is to be commenced by the Planning Act 2008 (Commencement No.2) Order 2009. The Order that is the subject of this memorandum makes consequential amendments to the GDPO to reflect the commencement of section 188 of the Planning Act 2008.

7.2. The Planning Advisory Service, which was set up by the Government in 2004 to give advice to LPAs, commissioned research into LDOs in January 2009 on behalf of the Department for Communities and Local Government. In April 2009, it published a report (available at <http://www.pas.gov.uk/pas/aio/106047>) which found that one of the reasons LPAs have so far not made LDOs was the requirement that LDOs must be based on local development plan policies.

7.3. LDOs offer potential as a tool to contribute towards improving economic activity by allowing flexibility in development that can take place without the need for a planning application.

- *Consolidation*

7.4. There are currently no plans to consolidate the GDPO.

8. Consultation outcome

The changes made by this Order are consequential on changes that were debated in Parliament in the course of the passage of the Planning Bill – now the Planning Act 2008 – and have therefore not been the subject of separate consultation. No significant concerns over the issue of removing the requirement that LDOs must be based on local development plan policies were raised during Parliamentary debate.

9. Guidance

Circular 1/06 *Guidance on Changes to the Development Control System* will be reissued to reflect the changes made by section 188 of the Planning Act 2008 and this Order on the same date as this Order comes into force.

10. Impact

10.1 This Order aims to facilitate the process of making LDOs. The anticipated impact of this change on the public sector is minimal. Simplifying the process of establishing an LDO should encourage LPAs to make use of them. This may bring savings for businesses, which may enjoy additional permitted development rights sooner than they would have done if the requirement that LDOs be based on local development plan policies remained. Businesses could make savings as they would not need to apply for planning permission permitted by the LDO and pay the associated fee for the development.

10.2 The potential impact of removing the requirement that LDOs must be based on policies in local development plans was considered as part of the impact assessment undertaken for the Planning Act 2008. That assessment work concluded that the impact of this measure could not be quantified. As no LDO has yet been made, it is impossible to determine how this measure will affect how many LDOs are made in future.

11. Regulating small business

11.1 The legislation does not apply directly to small business.

12. Monitoring & review

12.1 The effect of this Order will be reviewed after three years.

13. Contact

Thomas Bristow, Communities and Local Government (tel: 020 7944 3727, email: tom.bristow@communities.gsi.gov.uk).