

## **EXPLANATORY MEMORANDUM TO**

### **THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (AMENDMENT) (No. 2) (ENGLAND) ORDER 2010**

**2010 No. 2134**

### **THE TOWN AND COUNTRY PLANNING (COMPENSATION) (No. 3) (ENGLAND) REGULATIONS 2010**

**2010 No. 2135**

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. **Purpose of the instrument**
  - 2.1 The Town and Country Planning (General Permitted Development) (Amendment) (England) (No. 2) Order 2010 amends the Town and Country Planning (General Permitted Development) Order 1995 to:
    - give permitted development rights for buildings used as dwellinghouses, to use as small scale houses in multiple occupation shared by three to six people without the need for a specific planning application;
    - make a minor amendment to correct a reference in the procedure for making a direction to remove permitted development rights.
  - 2.2 The Town and Country Planning (Compensation) (No. 3) (England) Regulations 2010 prescribe certain matters for the purposes of section 108 of the Town and Country Planning Act 1990.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None
4. **Legislative Context**
  - 4.1 Section 59 of the Town and Country Planning Act 1990 requires the Secretary of State, by order, to provide for the granting of planning permission for development – either by granting planning permission for development specified in the order (“a development order”) or to provide for permission to be granted by a local planning authority on an application made to it.
  - 4.2 The Town and Country Planning (General Permitted Development) Order 1995 (S.I. 1995/418) (“the GPDO”) is made under section 59 and grants automatic planning permission for various types of development – subject to the limitations and conditions set out in the respective Parts of Schedule 2.

These are known, informally, as “permitted development rights”. The effect is that no application is needed for planning permission.

- 4.3 Sections 61A to 61D of the Town and Country Planning Act 1990 provide for the making of local development orders by local planning authorities. A local development order has the same effect as a development order made under section 59, but only applies in relation to the area or part of the area of the authority that makes it.
- 4.4 The GPDO also makes provision (in articles 4 to 6) for a local planning authority to withdraw certain permitted development rights in its area or part of its area, or in respect of a particular development.
- 4.5 Section 108 of the Town and Country Planning Act 1990 provides for compensation to be payable by local authorities in certain cases where planning permission for development granted by a development order or a local development order is withdrawn and where, on a subsequent application for planning permission for that development, the application is refused.
- 4.6 Section 108 was amended by section 189 of the Planning Act 2008. New subsection (2A) provides that where planning permission of a prescribed description granted by a development order or local development order is withdrawn by the issue of directions under powers conferred by that order, compensation is payable only if an application for planning permission for development formerly permitted by that order is made within 12 months of the directions taking effect. The effect of new subsections (3B) and (3C) is that, where planning permission granted by a development order is withdrawn, there will be no entitlement to compensation where the permission was granted for development of a prescribed description and is withdrawn in the prescribed manner, and notice of the withdrawal is published not less than 12 months or more than 24 months (“the prescribed period”) before the withdrawal takes effect. Where planning permission granted by local development order is withdrawn, subsections (3B) and (3D) provide that there will be no entitlement to compensation where notice of the withdrawal is published not less than 12 months or more than 24 months before the withdrawal takes effect.
- 4.7 Section 55 of the Town and Country Planning Act 1990 defines “development” for the purposes of the Act. Section 55(2)(f) provides that the use of a building or land for any purpose specified in an order made by the Secretary of State does not constitute development. The Town and Country Planning (Use Classes) Order 1987 (S.I. 1987/764) (“the Use Classes Order”) sets out various classes of use – change of use within a class itself does not constitute development. In addition, Part 3 of Schedule 2 to the GPDO grants planning permission for development consisting of certain changes of use between classes in the Use Classes Order.
- 4.8 Part 3 of Schedule 2 to the GPDO is amended by the Town and Country Planning (General Permitted Development) (Amendment) (England) (No. 2) Order 2010 to grant planning permission for development consisting of a

change of use from Class C3 (dwellinghouses) to Class C4 (small scale houses in multiple occupation).

## **5. Territorial Extent and Application**

5.1 This instrument applies to England only.

## **6. European Convention on Human Rights**

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

## **7. Policy background**

- *What is being done and why*

7.1 Current planning legislation for small houses in multiple occupation (HMOs) which came into force on 6 April 2010 requires planning permission for material changes of use from dwelling houses which fall within the C3 use class to small scale HMOs which fall within the C4 use class. Changes in the opposite direction from C4 to C3 are permitted development i.e. no application for planning permission is required.

7.2 The new use class was introduced to allow local authorities to deal with the problems, such as increased noise and loss of community balance, which can arise from high concentrations of HMOs. However, as was acknowledged at the time, the problems associated with uncontrolled HMO development are not widespread and are not experienced in all local authority areas. In many areas HMOs are either not of concern or are considered to be a valuable source of low cost housing.

7.3 The current legislation applies nationally regardless of whether there is a local need to control HMO development or not. The Government considers that this is imposing an unnecessary regulatory burden on landlords and local authorities in the areas where HMO development is not causing problems.

7.4 These legislative changes will remove the current national requirement for planning permission granted on an application to change use from a C3 dwelling house to a C4 HMO. Instead, all changes of use between C3 and C4 will become permitted development i.e. they will be able to take place freely without the need for planning applications.

7.5 The Government recognises that in those areas where there are problems with concentrations of HMOs it can have a significant impact on the quality of life of those who live there. It is important that these areas are able to put in place local solutions to deal with these problems. For example, local authorities might decide to use existing planning powers (article 4 directions) to require planning applications for such changes of use in specific areas or they may decide to adopt a non-legislative approach, such as working with higher

education institutions to develop housing and community strategies or introducing local landlord accreditation schemes.

- 7.6 Where article 4 directions are used there are costs for local authorities including the liability to pay compensation where a planning application is refused or granted subject to conditions for development which would previously have been allowed. As part of these changes we are reducing local authorities' liability in this respect. This will mean that:
- where local authorities give at least 12 months' notice of directions coming into effect they will not be liable to pay compensation at all; and
  - where they issue directions with less than 12 months' notice they will only be liable to pay compensation in relation to applications which are submitted within 12 months of the effective date of the direction.

- ***Consolidation***

- 7.7 There are no plans to consolidate the GPDO in the immediate future. Rather than amend the original regulations, the Town and Country Planning (Compensation) (England) (No. 3) Regulations 2010 revoke the Town and Country Planning (Compensation) (England) (No. 2) Regulations 2010 (S.I. 2010/1220) and the relevant provisions are re-made.

## **8. Consultation outcome**

- 8.1 No formal consultation has taken place in respect of these proposals. The views of key partners representing the different broad interests on this issue – local government, residents, landlords, students, universities, planning professionals – were however sought through meetings and written responses to a questionnaire on the proposals. A number of other organisations, mainly individual local authorities, also took the opportunity to comment directly on the proposals.
- 8.2 Landlords, students and university representatives broadly viewed the proposals as an improvement but on the whole considered that the current rules should be revoked completely. Residents' representatives were strongly opposed to the proposed changes. Local government opinion was divided.

## **9. Guidance**

- 9.1 Communities and Local Government Circular 05/2010, Changes to planning regulations for dwellings and houses in multiple occupation, will be updated to reflect the changes.

## **10. Impact**

- 10.1 The impact of this proposal is to remove the burden, with the associated costs and uncertainty, on landlords of having to submit planning applications to change the use of a property from a family dwelling house to a small scale HMO. Local authorities will also be freed of the need to determine such applications and will be able to redirect resources elsewhere.

10.2 An impact assessment is attached to this memorandum.

## **11. Regulating small business**

11.1 The legislation applies to small business.

11.2 Many landlords are small businesses and the removal of the requirement to submit planning applications where the use of a property changes from a family dwelling to a small HMO. This will save costs and remove the uncertainty as to whether planning permission will be granted and as such will benefit small businesses.

11.3 The final decision on what action to take to assist small business has been determined on the basis that the impact of legislation would be positive.

## **12. Monitoring & review**

12.1 CLG receives regular feedback from local planning authorities, practitioners, professional bodies and local communities on all areas of planning. We will monitor progress and evaluate the success of this policy on an ongoing basis through this feedback.

12.2 More specifically we will review the overall policy change three years after implementation.

## **13. Contact**

13.1 Theresa Donohue at the Department for Communities and Local Government (Tel: 0303 444 1719 or email: [theresa.donohue@communities.gsi.gov.uk](mailto:theresa.donohue@communities.gsi.gov.uk) can answer queries regarding this instrument.

<b>Title:</b> <b>Houses in multiple occupation - changes to planning legislation</b> <b>Lead department or agency:</b> Communities and Local Government <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>
	<b>IA No:</b> CLG0014
	<b>Date:</b> September 2010
	<b>Stage:</b> Final
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Secondary legislation
<b>Contact for enquiries:</b> Theresa Donohue - 0303 4441719; theresa.donohue@communities.gsi.gov.uk	

## Summary: Intervention and Options

**What is the problem under consideration? Why is government intervention necessary?**

The current planning rules for houses in multiple occupation (HMOs) impose a national 'blanket requirement' for planning applications for material changes of use from dwelling houses to small HMOs regardless of whether there is a local need to control such development. The Government believes this is imposing an unnecessary regulatory burden on landlords and local authorities in those areas where HMOs are not a problem. Government intervention is required to replace this "one size fits all" approach with a system which can be tailored to meet local circumstances.

**What are the policy objectives and the intended effects?**

To replace the current national rules with a system which allows areas that are experiencing problems to put in place local solutions without imposing unnecessary burdens on unaffected areas. This proposal will allow changes of use between family dwelling houses and small HMOs to take place freely. It will reduce the number of unnecessary planning applications. It has been argued that the current requirement to obtain planning permission may deter some landlords from entering the HMO sector. It is possible therefore that these changes may help to maintain the supply of this type of housing. Where there are local concerns about HMO development, local authorities can use existing powers, including making article 4 directions, to control such development in their areas.

**What policy options have been considered? Please justify preferred option (further details in Evidence Base)**

(1) do nothing.  
 (2) revoke the current legislation (introduced on 6 April 2010).  
 (3) amend the legislation to remove the blanket requirement for planning permission but allow local authorities to exert control, using existing powers, in areas where there are problems.

The preferred option is to amend the legislation to allow for local solutions in problem areas while not imposing unnecessary burdens elsewhere. In areas where HMO development is not of concern changes of use between dwelling houses and small HMOs will be able to take place freely as permitted development without the burden of submitting planning applications. In problem areas local authorities will be able to take local action using existing powers, including making article 4 directions, to control such development.

<b>When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?</b>	It will be reviewed 10/2013
<b>Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?</b>	Yes

**SELECT SIGNATORY Sign-off** For final proposal stage Impact Assessments:

***I have read the 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) the benefits justify the costs.***

Signed by the responsible Minister: Grant Shapps..... Date: 1<sup>st</sup> September 2010 .....

# Summary: Analysis and Evidence

# Policy Option 3

**Description:** Amend the legislation – make changes of use from dwelling houses to small HMOs permitted development.

Price Base Year 2010	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: £24m	High: £184m	Best Estimate: £104m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low		£0.08m	£0.7m
High		£0.6m	£5m
Best Estimate		£0.3m	£2.8m

**Description and scale of key monetised costs by ‘main affected groups’**

Local planning authorities will bear the administrative cost of processing planning applications where they choose to use article 4 directions as the fee is waived where directions have been made (estimated at £335 per planning application). Other monetised costs arising from the use article 4 directions to local authorities and the Planning Inspectorate (from associated appeals) and landlords (admin costs of applications and associated appeals) have been taken account of in the benefit assessment below by assuming a 12% reduction in the cost savings from fewer planning applications.

**Other key non-monetised costs by ‘main affected groups’**

The local community would have no opportunity to comment on development of new HMOs through the planning system, unless local authorities issue article 4 directions.  
 Local planning authorities would have no opportunity to consider the impacts of new HMO development through the planning system unless they issue article 4 directions.  
 Where local authorities choose to use article 4 directions there will be associated costs such as publicising the intention to make article 4 directions and where directions have been made with less than 12 months notice local authorities may be liable to pay compensation

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low		£3m	£25m
High		£23m	£189m
Best Estimate		£13m	£107m

**Description and scale of key monetised benefits by ‘main affected groups’**

Landlords - administrative cost savings and application fee savings for removal of requirement for planning applications; administrative cost savings from reduced number of appeals arising from refused/not determined applications. Total benefits (PV): £24m - £182m.  
 Cost savings to local planning authorities from reduced number of appeals. Total benefits (PV): £124,000 - £929,000. Cost savings to the Planning Inspectorate from reduced number of appeals. Total benefits (PV): £806,000 - £6m.

**Other key non-monetised benefits by ‘main affected groups’**

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
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There is a great deal of uncertainty regarding the extent of the problem of HMOs and the extent to which local authorities will decide to use their article 4 powers. Costs and benefits will vary by local authority, depending on level of HMO development.

It is assumed that there are no additional benefits to local planning authorities arising from a reduced number of planning applications, as application fees cover their administrative costs.

Annual growth of HMOs ranges from 1-5%. 50-75% of new HMOs considered material changes of use. If local authorities make article 4 directions, financial costs will be incurred. Yet, these are outweighed by the benefits of intervening and exerting control; furthermore, other measures could be used.

It is assumed that 12% of local authorities could make article 4 directions; applying a blanket requirement for planning permission in their areas. There is a risk that there may be an increase in concentration of HMOs and associated problems, such as noise, litter, "ghost towns", in some areas if local authorities do not take other action to prevent this where it is required.

<b>Impact on admin burden (AB) (£m):</b>			<b>Impact on policy cost savings (£m):</b>		<b>In scope</b>
<b>New AB:</b> £0m	<b>AB savings:</b> £9.5m	<b>Net:</b> -£9.5m	<b>Policy cost savings:</b>	£2.5m	Yes/No

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	England				
From what date will the policy be implemented?	01/10/2010				
Which organisation(s) will enforce the policy?	Local planning authorities, Secretary of State				
What is the annual change in enforcement cost (£m)?					
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	N/A				
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b>		<b>Non-traded:</b>		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	<b>Costs:</b>		<b>Benefits:</b>		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	<b>Micro</b>	<b>&lt; 20</b>	<b>Small</b>	<b>Medium</b>	<b>Large</b>
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	<b>Impact</b>	<b>Page ref within IA</b>
<b>Statutory equality duties</b> <sup>1</sup> <a href="#">Statutory Equality Duties Impact Test guidance</a>	No	12
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	No	12
Small firms <a href="#">Small Firms Impact Test guidance</a>	No	12

<sup>1</sup> Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.



<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	12
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	12
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	12
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	12
Justice system <a href="#">Justice Impact Test guidance</a>	No	12
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	12
<b>Sustainable development</b>	No	12
<a href="#">Sustainable Development Impact Test guidance</a>		

## Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

### References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	The Town and Country Planning (General Permitted Development) (Amendment) (No 2)(England) Order 2010
2	The Town and Country Planning (Compensation)(No 3)(England) Regulations 2010
3	The Town and Country Planning (Use Classes)(Amendment)(England) Order 2010 ( <a href="http://www.opsi.gov.uk/si/si2010/uksi_20100653_en_1">http://www.opsi.gov.uk/si/si2010/uksi_20100653_en_1</a> )
4	The Town and Country Planning (General Permitted Development)(Amendment)(England) Order 2010 ( <a href="http://www.opsi.gov.uk/si/si2010/uksi_20100654_en_1">http://www.opsi.gov.uk/si/si2010/uksi_20100654_en_1</a> )
5	Impact Assessment: Introducing a definition of houses in multiple occupation into the Use Classes Order ( <a href="http://www.communities.gov.uk/publications/planningandbuilding/hmoimpactassessment">http://www.communities.gov.uk/publications/planningandbuilding/hmoimpactassessment</a> )
6	Houses in multiple occupation and possible planning responses: consultation - Summary of Responses ( <a href="http://www.communities.gov.uk/publications/planningandbuilding/housesmultipleresponses">http://www.communities.gov.uk/publications/planningandbuilding/housesmultipleresponses</a> )
7	Houses in multiple occupation and possible planning responses: Consultation ( <a href="http://www.communities.gov.uk/archived/publications/planningandbuilding/housesmultipleconsultation">http://www.communities.gov.uk/archived/publications/planningandbuilding/housesmultipleconsultation</a> )
8	Arup (2009) "Benchmarking the costs to applicants of submitting a planning application".

+ Add another row

### Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

### Annual profile of monetised costs and benefits\* - (£m) constant prices

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
<b>Transition costs</b>										
<b>Annual recurring cost</b>	0.34	0.34	0.34	0.34	0.34	0.34	0.34	0.34	0.34	0.34
<b>Total annual costs</b>	0.34	0.34	0.34	0.34	0.34	0.34	0.34	0.34	0.34	0.34

<b>Transition benefits</b>										
<b>Annual recurring benefits</b>	12.5	12.5	12.5	12.5	12.5	12.5	12.5	12.5	12.5	12.5
<b>Total annual benefits</b>	12.5	12.5	12.5	12.5	12.5	12.5	12.5	12.5	12.5	12.5

\* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office  
Excel Worksheet

# Evidence Base (for summary sheets)

## Background

Houses in multiple occupation (HMOs) make an important contribution to the private rented sector by catering for the housing needs of specific groups/households in the majority of areas. However in some towns and cities, residents are concerned about the serious impact high concentrations of HMOs are having on their neighbourhoods.

Research (Evidence Gathering: Housing in Multiple Occupation and possible planning responses – Final Report)<sup>2</sup> commissioned by the Department found that the majority of HMOs are occupied by young and single people who tend to be on low incomes e.g. unemployed, homeless, full time students, in low paid jobs. However in London, because of high property prices and rents, HMOs are also an important source of accommodation for young professionals. A minority of people also choose HMOs for a variety of personal or lifestyle reasons, such as weekday accommodation but return to another home at weekends.

Public concern in relation to houses in multiple occupation (HMOs) has tended to focus on those properties occupied by students. However the research identified that the problems are not restricted to areas with high student concentrations and not all university towns are affected. It also identified high concentrations of HMOs with other types of residents, such as migrant workers in market towns and seasonal workers in some coastal towns.

The types of problems encountered in these areas include:

- Anti-social behaviour, for example noise nuisance
- Increased litter
- parking issues arising from numbers of occupants in HMOs
- Reduced opportunities for low cost home ownership e.g. because landlords are willing to pay higher property prices than families
- Closure of under-used community facilities e.g. schools becoming unviable because of reduction in number of children in area or pressure on over-used community facilities e.g. doctors
- Loss of community balance e.g. established communities are replaced by a younger, transient population

In response to the concerns about the problems which can be associated with concentrations of HMOs in some areas planning legislation in England was amended on 6 April 2010 to introduce a specific definition of a small HMO into the Town and Country Planning (Use Classes) Order 1987 and require planning permission for any material change of use from a dwelling house to a small HMO.

## Problem under consideration

The changes to the planning rules for HMOs in England which came into effect on 6 April 2010 introduced a definition of small HMO into the planning system and mean that currently planning permission is required for material changes of use from family houses to small HMOs. While it is acknowledged that there is a great deal of uncertainty about the numbers and spread of HMO development, the available evidence (from research, responses to consultation and general feedback/correspondence) indicates that the problems which can be associated with high concentrations of HMOs are not widespread and are experienced only in a minority of areas. The Government believes therefore that this 'blanket requirement' for planning permission is imposing an unnecessary and unfair burden on landlords and local authorities in the majority of areas where HMOs are not causing problems and where there is no need to control such development. It has also been argued by some that it could result in a reduction in supply of this type of low cost housing in areas where it is needed because prospective landlords could potentially be deterred from entering the HMO market by the time, cost and uncertainty arising from the requirement to submit planning applications. However, there is no reliable evidence supporting this.

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<sup>2</sup> <http://www.communities.gov.uk/publications/planningandbuilding/evidencegatheringresearch>

## **Rationale for intervention**

There is a need to intervene to remove this unnecessary regulatory burden on landlords and local authorities and ensure that supply is unaffected in the many areas where HMOs are not a concern. At the same time, the changes will still allow areas where HMO concentration creates problems to take local action.

## **Policy objective**

To replace the current national rules with a system which allows areas that are experiencing problems to put in place local solutions without imposing an unnecessary burden on unaffected areas. This proposal will allow changes of use between dwelling houses and small HMOs to take place freely unless the local authority considers such development would pose a real or specific threat to a particular area. Where there are problems with new HMO development in particular areas, local authorities will be able to use other existing powers, including article 4 directions, to control such development.

Although it is recognised that there is a great deal of uncertainty around the numbers and spread of HMO development it is generally accepted that the problems associated with concentrations of HMOs are not widespread. It could be argued therefore that a more targeted, localist approach to addressing the problems where they arise is more favourable than a national blanket requirement for planning permission.

## **Consultation**

The problems associated with concentrations of HMOs and how such development should be controlled was the subject of a full public consultation (summer 2009) prior to the introduction of 6 April 2010 rules. The changes being introduced now are based on one of the options put forward in that consultation. This option was preferred by only 1% of respondents with the main objections being that it was overly bureaucratic and ran the risk of local planning authorities being subject to compensation payments to developers.

Since that consultation, the procedures for article 4 directions have been simplified in that the requirement to obtain the Secretary of State's approval for directions has been removed. It is now for local authorities to decide whether to use these powers or not. In addition, the consultation option covered all HMOs not just small ones, and respondents may also have been concerned that the proposal would result in a loss of existing control of larger (i.e. more than 6 people) HMOs unless article 4 directions were issued.

As part of these changes we will reduce local authority's liability to pay compensation to developers in relation to article 4 directions.

No formal consultation has taken place in respect of these amendments. However we have sought the views of key partners representing the different interests on this issue – local government, residents, landlords, students, universities, planning professionals. A number of other organisations, mainly individual local authorities, also took the opportunity to comment on the proposals.

In broad terms, landlords, students and university representatives viewed the proposals as an improvement but on the whole considered that the current rules should be revoked completely. Residents' representatives were strongly opposed to the proposed changes and local government opinion was divided.

It was suggested by some of those opposed to these changes, that the current rules should be retained and local authorities without HMO problems should use existing powers (Local Development Orders) to allow changes of use between family houses and small HMOs to happen without the need for planning applications in their areas. This would require the majority of local authorities to take action to 'opt out' of the regulatory system and as such would not achieve the objective of removing an unnecessary regulatory burden.

## Description of options considered

**Option 1: Do nothing** – the rules remain as they are and the unnecessary regulatory burden will continue to fall on landlords and local authorities in areas where HMOs are not causing problems with the potential for affecting supply of this type of housing.

**Option 2: Revoke the current legislation (introduced on 6 April 2010).** This option would have the benefit of removing the regulatory burden on the majority of local authorities which are not experiencing problems with HMO development. However, it would not allow those authorities who consider there is a local need to control such development the option to do so through the planning system should they consider this appropriate. It would therefore run the risk that in those areas, the problems arising from HMO development could increase, if non-legislative approaches were insufficient. For this reason this option was rejected and is not included in the cost benefit section below.

**Option 3: Amend the legislation** – retain the current provisions (i.e. the definition of a small HMO and the permitted development rights to change use from a small HMO to a dwelling house without the need for a planning application) and in addition make changes of use from dwelling houses to small HMOs permitted development. This will mean that any changes of use between dwelling houses and small HMOs can take place freely without the need to submit planning applications. Where there are problems with new HMO development in particular areas local authorities will be able to use existing powers, including article 4 directions, to control such development.

Article 4 directions can be used to withdraw permitted development rights and require planning applications for such changes of use in defined areas. Where a planning application is refused or granted subject to conditions for development which would previously have been allowed, local authorities are liable to pay compensation. As part of these changes we are reducing local authorities' liability in this respect. This will mean that instead of being liable to pay compensation for an indefinite period:

- where local authorities give at least 12 months notice of article 4 directions coming into effect they will not be liable to pay compensation; and
- where they make such directions with less than 12 months notice they will only be liable to pay compensation in relation to applications which are submitted within 12 months of the effective date of the direction and which are subsequently refused or granted subject to conditions.

## Costs and benefits

### *Option 1: Do nothing*

There are no additional costs or benefits from this option.

### *Option 3: Amend the legislation*

While we have sought to identify the potential impacts of this policy change in this assessment, it has not always been possible to quantify them. Furthermore, they will vary by location depending on the level of HMO development.

## Assumptions

The Impact Assessment which was produced when the existing legislation was introduced in April 2010 identified a lack of definitive data on the existing number and future growth rate of HMOs or the percentage of additional applications which would arise from those changes. The previous assessment was therefore based on of the following assumptions:

- an indicative stock of 400,000 HMOs. A 2006 review concluded that “currently no single data source or survey captures sufficient detail to provide a reliable picture of the current stock of HMO dwellings in England” (Evaluating the impact of HMO and Selective Licensing: the baseline before licensing in April 2006, CLG 2007). This figure therefore is our best estimate based on a variety of data sources.
- a future growth rate of HMOs of between 1 and 5% per year. There is a range of evidence to suggest that this represents a reasonable range of possibilities, though actual growth may vary significantly year on year and in some years be negative.

- an illustrative range of between 50% and 75% of change of use to HMOs would no longer require planning permission. On this basis it is estimated that there could be an average of 8,500 planning applications removed from the planning system per year (with a range of between 2,000 and 15,000 per annum). The remaining 25-50% would not have required planning permission under the current rules anyway because they were not considered to be material changes of use.

No new data has come to light since April and therefore we have based the assessment of benefits arising from these proposals on these same assumptions.

In addition, we have also made the following assumptions here:

- 6% of applications give rise to appeals. This is based on the number of change of use appeals received in 2009/10 as a proportion of the number of change of use planning decisions in England, year ending March 2010.<sup>3</sup> On this basis it is estimated that there could be an average of 510 planning appeals removed from the planning system per year (with a range of between 120 and 900 per annum).
- around 40 local authorities which responded to the summer 2009 HMO consultation answered positively to the question about whether they experience problems/effects which they attribute to high concentrations of HMOs. This represents approximately 12% of all local authorities in England. We have used this to assume that 12% of local authorities could issue article 4 directions; applying a blanket requirement for planning permission. This assumes a uniform distribution of article 4 directions issued across these 40 authorities.

The table below summarises the possible impacts identified.

<b>Group</b>	<b>Benefits</b>	<b>Costs</b>
<b>Landlords</b>	<p>Removal of the costs of planning applications and appeals.</p> <p>Where article 4 directions are issued, applicants may claim compensation in certain circumstances.</p>	<p>If article 4 directions are issued, there may be administrative costs associated with submitting applications. If this application is refused, there may be administrative costs associated with lodging an appeal.</p>
<b>Local authorities</b>	<p>Cost savings relating to a reduced number of appeals.</p> <p>Cost savings arising from removal of need to investigate/enforce against unauthorised HMOs.</p> <p>Local authorities have the opportunity to address new HMO development via measures that are relevant and appropriate to their area.</p>	<p>Loss of opportunity to consider the impacts of new HMO development through the planning system unless they issue article 4 directions.</p> <p>Indirect costs associated with needing to intervene and exert control in areas where new HMO development is a concern, such as by issuing article 4 directions or other measures.</p> <p>Local authorities would need to investigate where intervention may be necessary, such as by investigating complaints.</p> <p>If article 4 directions are issued, local authorities will incur costs including the administrative cost of determining planning applications, administrative costs in relation to potential appeals, publicising directions and possible compensation claims.</p>
<b>The Planning</b>	Cost savings relating to a reduced	If article 4 directions are issued,

<sup>3</sup> [http://www.planning-inspectorate.gov.uk/pins/reports/stats\\_09\\_10/section\\_1.xls](http://www.planning-inspectorate.gov.uk/pins/reports/stats_09_10/section_1.xls)

<b>Inspectorate</b>	number of appeals	some applications may give rise to appeals. The costs of determining these would be borne by the Planning Inspectorate.
<b>Tenants of HMOs</b>	If the current requirement for planning permission is acting as a disincentive for landlords to provide HMOs, these changes could help to maintain the supply of HMOs.	
<b>Local community</b>		Loss of opportunity to comment on HMO development through the planning system unless local authorities issue article 4 directions.  There is a risk that there may be an increase in concentration of HMOs and associated problems, such as noise, litter, “ghost towns”, in some areas if local authorities do not take other action to prevent this where it is required.

## Benefits

Amending the legislation to make changes of use from dwelling houses to small HMOs permitted development will remove planning applications from the system will therefore result in the following estimated savings:

- For landlords – annual average saving of £12m (range £3m-21m pa). This is based on the fee and administrative cost savings of submitting planning applications and the administrative cost savings of subsequent appeals where applications are refused/not determined. The following additional assumptions are employed:
  - a change of use planning application fee of £335
  - the Arup report finds that the administrative cost of a change of use planning application is £1,245
  - an administrative cost of £500 for submitting an appeal although, in many cases, the cost may be lower as the information needed would be provided at application stage and there would be no additional consultancy costs. There is no appeal fee. We have assumed that 6% of applications would give rise to appeals.
- For local planning authorities – annual average saving of £63,000 (range £15,000-112,000). Application fees cover local authorities’ costs. These savings therefore arise from the removal of associated planning appeals and are based on the assumption that these cases would have been dealt with by written representations with an average cost to local planning authorities of £141 per appeal (planning officer salary + 20% + accommodation for 1 day). There may also be savings arising from the removal of the need to investigate or take enforcement action against unauthorised changes of use however it is not possible to monetise such a potential impact.
- For the Planning Inspectorate – annual average saving of £412,000 (range £97,000-727,000) for determining associated appeals. This is based on the full corporate cost of a planning inspector’s time to determine the appeal (including direct costs of the Inspector, chargeable overheads and administrative support) of an average £918 per day. Minor written representations cases take an Inspector on average 1 day to deal with.

It has been argued by some that removing the need to apply for permission could remove a disincentive to prospective landlords entering the HMO market. However there is no evidence available to support this suggestion.

In areas where there is a need to control new HMO development to prevent the problems which can arise from concentrations of HMOs, it will be for local authorities to make a judgement on whether the costs of taking action to address these local problems outweigh the benefits. This will vary depending on

the particular circumstances and it will be for local areas to decide what action is appropriate in their areas.

Where local authorities choose to use existing regulatory powers, in the form of article 4 directions, to control new HMO development in their areas, a proportion of HMOs would still require planning permission. The analysis takes account of this and the total cost savings to landlords, local planning authorities and the Planning Inspectorate have been reduced accordingly. We have assumed that 12% of local authorities may issue article 4 directions, thus reducing the total cost savings to landlords, local planning authorities and the Planning Inspectorate by 12% (presented in the estimates above). It must be noted that this assumption is based on local planning authorities making article 4 directions which cover the whole local authority area. It is, however, our expectation that local planning authorities would apply article 4 directions to a range of geographical areas, from individual roads to much wider areas.

Note that the analysis takes account of the fact that landlords will not need to pay a planning application fee at all as this is waived when article 4 directions are used. So the total application fee costs to landlords is reduced by 100% as opposed to 88%.

Where article 4 directions have been issued with immediate effect or less than 12 months notice and where applications which were submitted within 12 months of the effective date are subsequently refused or granted subject to conditions, applicants (i.e. landlords) may claim compensation. In such cases applicants may be able to claim compensation for such things as abortive expenditure (e.g. the preparation of plans for the purposes of any work) or for any loss or damage directly attributable to the withdrawal of the permitted development right. It could also be claimed for any resulting depreciation of the value of the claimant's interest in the land but cannot be based on speculation about future loss of profit or income but could cover any loss of anticipated future business profits under a specific contract.

## **Costs**

There will be no significant direct costs arising from these proposals in those areas where there is no need to control new HMO development to prevent the problems which can arise from concentrations of HMOs. However, there may be some costs such as:

- local communities would have no opportunity to comment on new individual HMOs
- local authorities would lose the ability to consider the impacts of new individual HMOs
- there may be a slight increase in complaints from neighbours in relation to particular HMOs.

These costs have not been monetised.

In areas where there is a need to control new HMO development and local authorities decide to use article 4 directions there will be associated costs to local planning authorities including:

- they will bear the administrative cost of processing planning applications as the fee is waived where article 4 directions have been made (estimated at £335, equal to the planning application fee as it is assumed that there is generally cost recovery for a local planning authority).
- there will be costs associated with publicising the intention to make article 4 directions.
- where article 4 directions have been made with immediate effect or less than 12 months notice and where applications which were submitted within 12 months of the effective date are refused or granted subject to conditions, local authorities may be liable to pay compensation to applicants as set out in the Benefits section above.
- there may also be costs associated with the need to investigate where intervention is necessary (investigating e.g. complaints by local residents) and enforce against unauthorised HMOs.

It is difficult to determine the extent to which local authorities will use article 4 directions to deal with new HMO development and the coverage to which the directions would apply i.e. the exact number of houses, wards, etc. is uncertain.

## **Risks**

It is difficult to determine the impact of this policy in terms of controlling the problems with HMOs, since the circumstances are localised and vary significantly by area.



It has been argued by some that local authorities will be deterred, because of the risk of compensation claims, from making article 4 directions with less than 12 month's notice, where there is a local need to do so. Instead they suggest that local authorities will give 12 months notice of a direction coming into effect (thus avoiding compensation liability), in which time there could be a surge in new HMO development which could give rise to new problems or increase existing problems.

However, the Department considers that it is right that local areas decide what action is appropriate for them and if local authorities consider the benefits of intervening outweigh the costs incurred, they will make article 4 directions with immediate effect. A surge in HMO development would only arise if there is local demand for such accommodation. Local authorities could use other means to control such development and address any associated problems. This could include non legislative approaches such as working with higher education institutions to develop housing and community strategies or local landlord accreditation schemes.

**Admin Burdens Assessment:** The admin burden savings represent the administrative savings for developers from not having to complete planning applications. This is the mid point of the average annual administrative cost savings (constant prices) of planning applications and the administrative cost of submitting an appeal, equal to £9.5m. The policy cost savings represent the planning application fee savings, estimated at £2.5m.

**New Burdens Assessment:** It is entirely at the discretion of local authorities to issue article 4 directions or to take other action to control new HMO development, therefore, there are no new burdens.

**One In One Out:** This policy lowers the regulatory burden on business i.e. landlords. The net cost savings to business are estimated at £12m (ranging from £2.8m to £21.3m); the sum of the administrative cost savings of not completing planning applications, paying a planning application fee, nor submitting an appeal (see page 9 referring to landlords).

## **Wider impacts**

### **Specific Impact Tests**

We have not identified any specific impacts arising from these changes. They simply remove the unnecessary burden of planning applications for changes of use from family dwelling houses to small HMOs in those areas where there is no need to control such development. As such, they benefit small businesses (landlords). In areas where there are problems arising from such development local authorities will still have be able to control such development using other existing powers so there are no new impacts in those areas.

### **Statutory equalities duties:**

We have undertaken an Equalities Impact Screening and have not identified any impacts on equalities and therefore do not consider that a full Equalities Impact Assessment is required.

### **Economic impacts:**

We have not identified any adverse economic impacts arising from these changes.

### **Environmental impacts:**

We have not identified any adverse environmental impacts arising from these changes.

### **Social impacts:**

We have not identified any adverse social impacts arising from these changes.

### **Sustainable development:**

We have not identified any adverse sustainable development impacts arising from these changes.

## Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

### Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p><b>Basis of the review:</b> [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];</p> <p>The review will consider the impact of the policy on the control of new HMO development.</p>
<p><b>Review objective:</b> [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p> <p>The review will assess whether, following these changes, local areas have been able to control new HMO development to prevent increased or new concentrations of HMOs where they feel there is a local need to do so, without unintended consequences, such as relatively high bureaucracy and costs to local authorities.</p>
<p><b>Review approach and rationale:</b> [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p> <p>There is currently a large amount of uncertainty regarding the extent of the problems associated with high concentrations of HMOs. The review approach therefore will be to survey a representative sample of local authorities and other interested partners, such as residents' groups and landlords, in 3 years time to evaluate whether:</p> <ul style="list-style-type: none"><li>• permitted development rights for HMOs is positive and appropriate in most areas; and</li><li>• in those areas where there is a local need to control such development, local authorities have intervened and how and what costs have been incurred in taking action.</li></ul> <p>Local authorities are currently required to notify the Secretary of State when they issue article 4 directions so we will also monitor the number and scope of article 4 directions that are issued.</p> <p>The review would aim to determine whether the risks we have highlighted actually occurred and whether it is necessary for government intervention again (on a national level).</p>
<p><b>Baseline:</b> [The current (baseline) position against which the change introduced by the legislation can be measured]</p> <p>In response to the formal, public consultation about the problems associated with HMOs and possible solutions, (in summer 2009), 94% of those who responded to this question indicated that they experienced problems which they attributed to high concentrations of HMOs in their areas. This number included around 40 local authorities. The responses to this consultation can be used as a baseline against which to assess the impact of the policy on the control of new HMO development.</p>
<p><b>Success criteria:</b> [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p> <p>Positive feedback from the survey; including wider partners' belief that new HMO development is being effectively dealt with. If there are concerns regarding problems with new HMO development not being addressed, partners' views would be sought.</p> <p>Assessment of the numbers of article 4 directions made. A low number would suggest local authorities have not needed to exert control over new HMO development through the planning system, thus permitted development has not worsened problems associated with HMOs in certain areas; or local authorities have used other measures appropriate for their area to address issues. It must be determined whether a low use of article 4 directions is because local authorities are deterred by the costs and/or bureaucracy involved. Whether a 12 month notice period of an article 4 direction being made is given could determine whether local authorities are content to incur the possible compensation costs or whether they avoid being liable for</p>

compensation.

If the use of article 4 directions is high, this would imply that the problem could be more significant than previously thought and that local authorities could be dealing effectively with the growth of new HMO development.

**Monitoring information arrangements:** [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]

The survey referred to above would assess:

- what is the extent of problems with HMOs in your area? What has been the extent of problems with new development since 2010?
- what has been the impact of this policy i.e. the extent of permitted development and ability for local authorities to intervene?
- are local authorities deterred from issuing article 4 directions given the costs incurred and the liability for compensation? What costs have been experienced in terms of bureaucracy and compensation?
- monitor the timing/ circumstances of article 4 directions?
- other methods used to control new HMO development and problems with new development. What type of methods are used and why?
- more detailed questions regarding the costs incurred with dealing with litter, noise complaints and anti-social behaviour, among others, due to new HMO development, such as the costs of deploying environmental health officers to address issues created by new HMO development?

We will also monitor the number and scope of article 4 directions.

**Reasons for not planning a PIR:** [If there is no plan to do a PIR please provide reasons here]

N/A

Add annexes here.