

**EXPLANATORY MEMORANDUM TO  
THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT  
PROCEDURE) (ENGLAND) ORDER 2010**

**2010 No. 2184**

**THE PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS)  
(AMENDMENT NO. 2) (ENGLAND) REGULATIONS**

**2010 No. 2185**

- 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 This Order consolidates the Town and Country Planning (General Development Procedure) Order 1995 (S.I.1995/419) ("the GDPO") and instruments which have amended that Order, in relation to England.
  - 2.2 This Order also makes amendments to the provisions as to applications to replace an extant planning permission. The Regulations make corresponding amendments to the Planning (Listed Buildings and Conservations Areas) Regulations 1990 (S.I. 1990/1519) ("the Listed Buildings Regulations").
- 3. Matters of special interest to the Joint Committee on Statutory Instruments**

None.
- 4. Legislative Context**
  - 4.1 Section 59 of the Town and Country Planning Act 1990 (c. 8) ("the 1990 Act") provides that the Secretary of State must by order provide for the granting of planning permission. Such an order is referred to as a "development order". A development order may either grant planning permission for development or, in respect of development for which planning permission is not granted by the order itself, provide for the granting of planning permission by the local planning authority or by the Secretary of State. A development order may be either a general order applicable to all land or a special order applicable to specified land.
  - 4.2 The Town and Country Planning (Development Management Procedure) (England) Order 2010 ("the DMPO") is a general development order which consolidates the GDPO and subsequent amending instruments in relation to England. The GDPO was itself a consolidation of the procedural provisions of the Town and Country Planning General Development Order 1988 (S.I.1988/1813) ("the GDO") and subsequent amending instruments. A separate Order, the Town and Country Planning (General Permitted Development) Order 1995 (S.I.1995/418), which

remains in force, consolidated with amendments the remaining provisions of the GDO dealing with permitted development.

4.3 Section 4A of the 1990 Act (inserted by section 67 of the Environment Act 1995 (c. 25)) provides that the National Park authority for a National Park is the sole local planning authority for the area of the Park (with some exceptions regarding functions relating to trees). Accordingly, functions conferred under the 1990 Act on a planning authority of any description, in relation to that Park, are functions of the National Park authority and not of any other authority. So much of the area of any other authority as is included in the Park is treated as excluded from any area for which that other authority is a planning authority. The DMPO (made under the 1990 Act) amends provisions which were in the GDPO, relating to various functions of local planning authorities, in order to clarify where National Park authorities are responsible for those functions in accordance with section 4A of the 1990 Act.

4.4 A table of destinations setting out the differences in the numbering of the articles and Schedules of the GDPO and the DMPO is attached as an Annex to this Explanatory Memorandum.

#### ***Legislative background to flexibility for planning permissions***

4.5 Sections 91 and 92 of the 1990 Act impose default time limits on the implementation of planning permissions: three years on a full permission and, on an outline permission, three years to apply for reserved matters and two years to implement the permission from the final approval of reserved matters. Section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9) imposes an equivalent time limit of three years on listed building and conservation area consents.

4.6 An amendment to the GDPO made by the Town and Country Planning (General Development Procedure) (Amendment No.3) (England) Order 2009 (S.I. 2009/2261) introduced a procedure for applying to replace a planning permission with a new permission subject to a new time limit. An amendment made by the Planning (Listed Buildings and Conservation Areas) (Amendment) (England) Regulations 2009 (S.I. 2009/2262) made equivalent provision for other associated consents. This procedure applied only in relation to permissions granted on or before 1st October 2009 where the time limit had not expired, and where development had not yet begun.

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

This instrument applies to England.

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

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

## **7. Policy background**

- *What is being done and why*

## ***Consolidation***

7.1 The GDPO, amongst other things, sets out the steps local authorities must take with regard to the processing and administration of planning applications, from the point where an application is made through to the way in which decisions are recorded.

7.2 In the 15 years since the Order was last consolidated, it has been amended 16 times. As a result of this, the Department for Communities and Local Government has decided to consolidate the GDPO in relation to England.

7.3 The draft consolidated Order includes the original GDPO and all amendments made to it up until 6 April 2010. It has been reorganised to introduce a new structure, which is considered to reflect better the actual stages applicants go through whilst submitting a planning application.

7.4 The purpose of consolidating the GDPO is to simplify the way in which the procedural requirements for most planning applications are set out in legislation by putting them all in one order, so that people need no longer look up the original instrument and the various amendments separately. This should be of benefit to local authorities, applicants and third parties.

7.5 There are a number of minor and drafting amendments, in particular references to responsible regional authorities have been removed in light of recent changes to the structure of regional governance, as announced by the Secretary of State for Communities and Local Government on 6 July 2010. For legal accuracy, references to non-material changes to permissions under section 96A of the 1990 Act have been removed, in provisions relating to appeals and registers of applications.

## ***Flexibility for Planning Permissions***

7.6 In 2009, the Department became aware of a reduction in the implementation rate of major schemes that already have planning permission. If large numbers of permissions are not implemented and subsequently lapse, this could delay economic recovery. Developers would have to make new planning applications for those schemes, which could lead to delay and additional costs. Furthermore, local planning authorities could find themselves dealing with a sudden upsurge in applications as the economy moves out of recession.

7.7 Following calls from the Local Government Association, the Confederation of British Industry and the British Property Federation, SI 2009/2261 amended the GDPO to introduce a new power to allow the time limits for implementation of existing planning permissions to be extended. The amendment enabled existing planning permissions to be replaced before expiring, in order to allow a longer period for implementation (although the previous planning permission is not revoked, rather a new permission granted subject to a new time limit). For this new kind of application, the requirement for design and access statements was removed, and the requirements for consultation were modified. SI 2009/2262 made associated amendments to the Listed Buildings Regulations to allow the provisions to apply to linked applications for listed building and conservation area consents.

7.8 The amended procedure did not apply to developments that have already commenced. As a result of this, a small but significant number of outline planning applications which are to be implemented in phases have been excluded from the provisions, where implementation of one or more phases of the development has commenced. In such a scenario, a replacement planning permission to have the effect of extending the time limits for implementing the remaining phases of such development could not be taken forward under the provisions of SI 2009/2261.

7.9 The Department is, therefore, introducing a new category of replacement planning permission which will apply to any development which was expressly intended (at the outline permission stage) to be implemented in phases, including where different timescales were given for submitting the reserved matters for each phase, and consequentially for commencing each stage, and on which some development *has* already begun. Again, no design and access statement will be required and there will be modified consultation requirements. Listed building and conservation area consents that are linked to such permissions can also be replaced.

## **8. Consultation outcome**

8.1 The draft consolidated Development Management Procedure Order was shared with a limited number of representatives from the sector.

8.2 The Department consulted on giving greater flexibility for planning permissions in summer 2009. A large majority of respondents were in favour of introducing the power to extend the time limits for implementing planning permissions, as well as listed building and conservation area consents. A small minority expressed outright opposition to the measure on grounds that it is unnecessary, is not the best way to encourage economic recovery, would be counterproductive or would deprive local residents and community groups of an opportunity to express their views. Many respondents expressed the view that the ability to extend the time for implementation, which existed before the amendment to section 73 made by the Planning and Compulsory Purchase Act 2004, should be reintroduced permanently.

8.3 A full summary of responses was published on 22 January 2010 and is available on the Department's website.

8.4 In July 2010 CLG undertook a further informal consultation exercise, engaging earlier consultation respondents and other interested parties regarding the flexibility for planning permissions policy. This proposed a minor amendment to the greater flexibility for planning permission powers to include unimplemented phases of any development which was clearly intended (at the outline permission stage) to be implemented in phases, including where different timescales were given for submitting the reserved matters for each phase, and consequentially for commencing each stage. Currently the measure only applies to developments which have not commenced at all.

8.5 Of the 131 previous respondents, 20 replied. The breakdown by respondent type is as follows:

Respondent type	total	Y	Y,but	No	No comment
Local Planning Authorities	3		1		2
Public	1			1	
Environment and community groups	2			1	1
Business	9	3	6		
Professionals and academics	5	1	4		
Other	20	4	11	2	3

8.6 Of the 20 respondents, 15 expressed either unqualified or qualified support for the amendment.

8.7 Some respondents used the consultation exercise to take the opportunity to comment further on the policy, including the following remarks:

- Would like a permanent reinstatement of pre 2004 section 73 process to allow variation of time limit conditions (3)
- Concern about the fee level (too high) (2)
- Concern about the fee level (too low and insufficient to cover costs) (2)
- General concern about new applications procedure (1)
- More community engagement needed (1)
- Concern that the measure will contribute to derelict sites (1)

8.8 The Government has noted the views expressed regarding the flexibility for planning permissions policy as part of this consultation exercise and will take these into account when the policy is next reviewed.

8.9 A total of six comments were received on the drafting of the proposed clause itself. These all questioned the use of 'intended' in the draft policy. The two grounds cited are:

- It is likely to result in unintended ambiguity and difficulty in interpretation;
- The measure as currently drafted would exclude developments that were not intended to be phased at the application, but have become so as the result of decisions by the applicant about how they wish to submit reserved matters.

8.10 Having reviewed the responses to consultation, the Government decided to change 'intended' to 'required or expressly permitted', taking account of views expressed in the consultation.

8.11 The Government acknowledges that the phasing of much major development is unintended, and a consequence of the way in which developers have chosen to submit reserved matters. However, it is considered desirable for such phasing to be agreed with the local planning authority, at the decision making stage. It is not desirable to encourage phasing retrospectively, after decisions have been taken and

after local planning authority control has ceased. In consequence the Government has decided to maintain the position set out in the draft: that the extensions procedure only applies where a development is permitted at the time of the original decision to be implemented in phases.

8.12 No comments were received from respondents on the previous Impact Assessment of the proposal.

## **9. Guidance**

9.1 No new guidance has been produced in respect of the consolidation of the GDPO.

9.2 The Department is to amend the October 2009 guidance on flexibility for planning permissions to take account of the amendments explained above.

## **10. Impact**

10.1 The consolidation is considered to have a minor, positive impact on business, charities or voluntary bodies by making planning legislation easier to understand.

10.2 The consolidation is also considered to have a minor, positive impact on local authorities, by making planning provisions easier to refer to and reducing the scope for misinterpretation of the law. A Summary Impact Assessment for the DMPO is attached to this memorandum and will be published alongside the Explanatory Memorandum on the [legislation.gov.uk](http://legislation.gov.uk) website.

10.3 The amendments relating to flexibility for planning permissions are considered to have a positive impact on business, charities or voluntary bodies applying for planning permission. A revised Impact Assessment of the flexibility for planning permissions policy is attached to this memorandum and will be published alongside the Explanatory Memorandum on the [legislation.gov.uk](http://legislation.gov.uk) website.

## **11. Regulating small business**

The legislation does not directly regulate small business. It is hoped that the changes will have a minor, positive benefit on small business when they submit planning applications.

## **12. Monitoring & review**

The Government will monitor and review the implementation of the new consolidated Order through correspondence with the sector and beyond.

## **13. Contact**

Neil Holdsworth at the Department for Communities and Local Government, Tel: 030344 41716 or email: [neil.holdsworth@communities.gsi.gov.uk](mailto:neil.holdsworth@communities.gsi.gov.uk) can answer any queries regarding the instruments.

## Annex

## TABLE OF DESTINATIONS

<b>GDPO - Previous provision number</b>	<b>DMPO - New provision number</b>	<b>Heading in DMPO</b>
Articles 1 and 2	Article 1	Citation, commencement and application
Article 1	Article 2	Interpretation
Article 2A	Article 3	Development to include certain internal operations
Article 2B	Article 34	Local development orders
Article 3	Article 4	Applications for outline planning permission
Article 4	Article 5	Applications for approval of reserved matters
Article 4A	Article 7	Applications in respect of Crown land
Article 4B	Article 15	Major infrastructure projects: economic impact report
Article 4C	Article 8	Design and access statements
[Article 4D]	[omitted]	[Access statements: Wales]
Article 4E	Article 6	Applications for planning permission
Article 4F	Article 9	Applications for non-material changes to planning permission
Article 5	Article 10	General provisions relating to applications
[Article 5A]	[omitted]	[Declaration to accompany application to a local planning authority in Wales for planning permission for certain telecommunications developments]
Article 6	Article 11	Notice of applications for planning permission
Article 7	Article 12	Certificates in relation to notice of applications for planning permission
Articles 8 and 9 (part)	Article 13	Publicity for applications for planning permission
Article 9 (part)	Article 32	Notice of appeal
Article 10 (part)	Article 16	Consultations before the grant of permission
Article 10 (part)	Schedule 5	Consultations before the grant of permission
Article 10A	Article 17	Consultations before the grant of planning permission: urgent Crown development
Article 10B	Article 18	Consultations before the grant of planning permission pursuant to section 73 or the grant of a replacement planning permission subject to a new time limit
Article 11	Article 19	Consultation with county planning authority
Article 11A	Article 20	Duty to respond to consultation

Article 11B	Article 21	Duty to respond to consultation: annual reports
Article 12	Article 22	Applications relating to county matters
Article 13	Article 23	Representations by parish council before determination of application
Article 14	Article 25	Directions by the Secretary of State
Article 15	Article 26	Development affecting certain existing and proposed highways
Article 16	Article 24	Notification of mineral applications
Article 17	Article 27	Development not in accordance with the development plan
Article 18	Article 14	Notice of reference of applications to the Secretary of State
Article 19	Article 28	Representations to be taken into account
Article 20	Article 29	Time periods for decision
Article 21	Article 30	Applications made under planning condition
Article 22	Article 31	Written notice of decision or determination relating to a planning application
Article 23	Article 33	Appeals
Article 24	Article 35	Certificate of lawful use or development
Article 25	Article 36	Register of applications
Article 25A	Article 37	Register of local development orders
Article 26	Article 38	Register of enforcement and stop notices
Article 27	Article 39	Directions
Article 27A	Article 40	Withdrawal of consent to use of electronic communications
Article 28	Article 41	Revocations, transitional provisions and savings
Schedule 1	-	
Part 1	Schedule 1	Letter to be sent to applicant on receipt of application
Part 2	Schedule 6	Notification where planning permission refused or granted subject to conditions
Schedule 2	Schedule 2	Notices under articles 11 and 32
Schedule 3	Schedule 3	Publicity for applications for planning permission
Schedule 4	Schedule 8	Certificate of lawful use or development
Schedule 4A	Schedule 4	Major infrastructure projects: economic impact report
Schedule 5	Schedule 9	Statutory instruments revoked in so far as they apply to England
-	Schedule 7 [new]	Notices under article 34



<b>Title:</b> <b>Development Management Procedure Order Consolidation</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>
	<b>Date:</b> 01/01/2010
	<b>Stage:</b> Final
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Secondary legislation
	<b>Contact for enquiries:</b> Neil Holdsworth 0303 444 1716 Neil.holdsworth@communities.gsi.gov.uk

## Summary: Intervention and Options

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

The General Development Procedure Order is a piece of secondary legislation, made under the provisions of the Town and Country Planning Act 1990. It is a key piece of legislation which, amongst other things, sets out the steps local authorities must take with regard to the processing and administration of planning applications, from the point where an application is made through to the way in which decisions are recorded. In the 15 years since the Order was introduced, it has been amended 16 times. As a result of this, if a user of the planning system wishes to consult planning procedural law, there are 17 interrelated pieces of legislation that should be referred to.

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

The Consolidation does not contain any new policy. The objective of this exercise is to put all the laws together in one place, integrating the original statutory instrument and sixteen amendment orders in to a new consolidated Order, introducing a better structure to the Order, making it a more faithful reflection of the actual steps applicants go through when submitting planning applications. The intended effect is to introduce a greater degree of clarity and simplification in to the planning system for applicants and local authorities alike.

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

The option was either to consolidate or not to consolidate:

(1) Do nothing: not consolidating the order would maintain the existing position where there is a lack of clarity in planning procedural law as the result of the 16 amending orders to the original GDPO.

(2) Consolidation: consolidation would introduce the positive effects as outlined above, for this reason it is the preferred option.

<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 01/2011
<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 consultation stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister: Greg Clark..... Date: 8<sup>th</sup> September 2010 .....

# Summary: Analysis and Evidence

# Policy Option 2

Description: Consolidation

Price Base Year 2010	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: £7.6m	High: £14.0m	Best Estimate: £10.8m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	n/a	£0.25m	£2.2m
High	n/a	£3.0m	£25.8m
Best Estimate	n/a	£1.6m	£14.0m

### Description and scale of key monetised costs by 'main affected groups'

Consultants and lawyers: as a result of consolidation there will be a reduced need for applicants and third parties to seek professional advice [this costs nets out with the reciprocal benefit to the applicant, as set out below]. (£0.25m to 3m).

### Other key non-monetised costs by 'main affected groups'

There will be a transitional period which could lead to misunderstandings amongst practitioners for a limited period, but the long term benefit of the policy are judged to outweigh this. It is not considered necessary to attribute costs to this process as it has to be considered against the existing position, which is often misunderstood in any case, particularly by non-experts.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	n/a	£1.1m	£9.7m
High	n/a	£4.6m	£39.8m
Best Estimate	n/a	£2.9m	£24.8m

### Description and scale of key monetised benefits by 'main affected groups'

Applicants and third parties: (as above) reduced need to seek legal advice represents cost savings for applicants (£0.25m to £3m).

Local authorities: the consolidated Order will reduce the time taken by planning officers and administrative staff in referring to the Order both in the case of dealing with applications and public queries. (£0.9m to £1.6m)

### Other key non-monetised benefits by 'main affected groups'

Applicants: reduced need to consult legal advice should speed up the process of preparing a planning application.

### Key assumptions/sensitivities/risks

Discount rate (%)

3.5%

There are minimal risks to this policy option. The Order has been tested with a limited number of practitioners and we expect it to be welcomed amongst practitioners.

Impact on admin burden (AB) (£m): -£1.6m			Impact on policy cost savings (£m):	In scope
New AB: £0m	AB savings: £1.6m	Net:£1.6m	Policy cost savings: £0	Yes/No

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			Options		
From what date will the policy be implemented?			01/10/2010		
Which organisation(s) will enforce the policy?			Ultimately the legislation will be enforced by the courts. As present, Local Planning Authorities will be responsible for compliance with the legislation. The Local Government Ombudsman deal with complaints of maladministration in local government.		
What is the annual change in enforcement cost (£m)?			0m		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			Traded:		Non-traded:
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs:		Benefits:
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	Yes/No	Yes/No	Yes/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...?	Impact	Page ref within IA
<b>Statutory equality duties</b> <sup>1</sup> <a href="#">Statutory Equality Duties Impact Test guidance</a>	No	-
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	No	-
Small firms <a href="#">Small Firms Impact Test guidance</a>	Yes	6
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	-
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	-
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	-
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	-

<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.

Justice system <a href="#">Justice Impact Test guidance</a>	No	-
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	-
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	-

## 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	<u>The General, Development Procedure Order was originally laid before Parliament in 1995: Statutory Instrument 1995/419: <a href="http://www.opsi.gov.uk/si/si1995/uksi_19950419_en_1.htm">http://www.opsi.gov.uk/si/si1995/uksi_19950419_en_1.htm</a></u>
2	
3	
4	

+ 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>										
<b>Total annual costs</b>	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6
<b>Transition benefits</b>										
<b>Annual recurring benefits</b>										
<b>Total annual benefits</b>	2.9	2.9	2.9	2.9	2.9	2.9	2.9	2.9	2.9	2.9

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



Microsoft Office  
Excel Worksheet

## Evidence Base (for summary sheets)

- Problem under consideration;

The problem under consideration is that a key piece of planning legislation, the General Development Procedure Order, has been amended 16 times since its introduction in 1995. As a result, there is a clear need to combine the original Order with the sixteen amending Orders into a new consolidated Order. The existing position can create a significant amount of confusion amongst practitioners, as not everyone is aware of the amending orders; also, the existence of amending orders themselves makes it more time consuming to identify what the law precisely is, and the greater the amount of amending orders, the greater the risk of an incorrect interpretation on the part of applicants, local authorities and third parties. A further problem is that the Order itself does not currently have a structure, therefore it is difficult to read the Order in a 'start to finish' way, and as a result it is difficult for the reader to relate processes and procedures in relation to a chronological understanding of the planning application process.

- Rationale for intervention;

The rationale for intervention is that consolidation is desirable, and can help make the planning system simpler and more effective for all involved. In addition, consolidation can be achieved without having a detrimental impact on any party. Whilst there will be a minimal cost in terms of a loss of business to consultants and lawyers, this is considered to be outweighed by the increase in transparency for the wider public in being able to understand planning legislation without needing to obtain professional advice.

- Policy objective;

The consolidation does not reflect any change in policy in itself, however, it does take forward a commitment on the part of government to streamline and simplify secondary legislation, making the planning system more accessible and effective for all users. This policy is considered to be achieved with the consolidated order.

- Description of options considered (including do nothing);

In taking its decision to consolidate the GDPO, the government considered carefully the way in which planning processes are currently set out in secondary legislation. It was decided at an early stage that the parameters of the decision regarding what to do to the GDPO would be restricted to a consideration of the law as it currently stands, without introducing any new or amended policy at this stage.

As a result there are essentially two options. One is to consolidate the GDPO, the other is to do nothing. It is considered that consolidation would achieve a number of benefits relating to simplification of the system for all users: from local authority planners and administrators, through to business and the private sector, to members of the public when they are attempting to understand a planning issue and wish to avoid the prospect of having to pay for professional advice. The reason for this is that consolidation would make planning procedural law easier to understand, and reduce the scope for misinterpretation and conflicting interpretations of the law.

The other option is to do nothing - this would maintain the existing position with the GDPO and sixteen amendment orders. It would also maintain the current position whereby the Order does not have a structure that accurately reflects the procedures that planning applications go through when considered by local authorities.

- Costs and benefits of each option;

The costs of taking forward the consolidation are marginal and will affect planning consultants and lawyers who previously developed a detailed understanding of the 1995 Order and its 16 amending Orders and sold advice on this basis to non-specialists. However, as set out above, the benefits of consolidation in terms of making the planning application process more transparent and making planning procedural policy accessible to all are considered to outweigh this cost. In summary the benefits to consolidation are considered to be a simplification for all users of the planning system, where a need is established to clarify correct planning procedures, which in turn involves consultation of planning procedural law.

There are not considered to be any benefits in doing nothing, failure to consolidate would result in further amending orders being laid to the GDPO in the future, and the legislative picture would get more complicated as a result.

This benefit could be monetised in the following ways:

- reduced need for applicants and third parties to seek professional advice, where a query is identified on planning procedural law, perhaps in consideration of whether there is a potential case for legal challenge of a planning decision.
- Saving time for consultants and lawyers who advise clients on the planning process, and in particular in relation to specific planning issues where clarification on the law is sought;
- Saving significant amounts of time for local authority staff, including planning officers and administrators, where they refer to planning procedural law in the course of business, both in respect of the processing of planning applications themselves, and in responding to questions from members of the public.
- Risks and assumptions;

Consolidation is considered to be a low risk process.

The Order has been tested with a limited number of practitioners and we expect it to be welcomed amongst practitioners. There will be a transitional period which could lead to misunderstandings amongst practitioners for a limited period, but the long term benefit of the policy is considered to outweigh this.

## Analysis

### Headline assumptions

- The total annual number of planning permissions, received by Local Planning Authorities across England, is c. 500,000
- Local Authorities must follow the procedural rules set out in the General Development Procedure Order (GDPO) every time a planning application is considered. It is estimated that the GDPO is consulted by the public in the case of between 0.5% and 2% of applications, which represent c. 2,500- 10,000 applications per annum, to establish whether local authorities are complying with the law in processing applications and to establish whether there is a prospect of legal challenge.
- It is estimated that the new consolidated Order will save time for planning consultants and lawyers, where they seek to establish whether procedures set out in the GDPO are being followed correctly by Local Authorities. Consultants and lawyer fees range between £100 and £300 per hour, and it is estimated that individuals will save 1hr (of time spent paying for professional advice) per application a result of the change.
- In consequence, applicants, developers and third parties will save 1hr worth of expenses to the consultant/ lawyer (equal to above). where there is a prospect of a claim of maladministration or legal challenge.
- The measure is estimated to have a potential impact on a total of 9000 local authority planners (approximately 27 per local authority – based on an estimated total of 27,000 planners, one third [9000]of which are assumed to work in local authorities) , who deal with the planning process generally. It is estimated that, of the circa 27 people involved with planning in each LPA, 25- 50% of these planners will be directly involved in development management and planning applications, and each of these will save 1 hr per month as the result of only needing to refer to one legal document when it comes to establishing correct planning procedures, instead of 17 as previously. This saving might be observed in the course of considering planning applications, but could also result in a reduction in the numbers of queries from the general public related to planning guidance, and it could also become easier for planning officers to refer correspondents to the consolidated Order.
- The average hourly wage for a planner is assumed to be £22 (based on national HEO annual wage for 2009).
- Planning Admin staff are assumed to save 2 hours a month per planning authority (total of 328) at a wage of £14 per hour (up rated to £17.50 per hour), as the result of fewer enquiries and follow up queries relating to planning procedures. The activities through which planning admin staff would save time on include answering telephone calls and email correspondence on issues relating to planning procedures and whether they are being followed correctly: With a new consolidated Order, there will be fewer enquiries and it will also be possible for admin staff to refer correspondents to the Order rather than trying to clarify the existing legal position, set out in the GDPO and 16 amending orders.
- Town planner and admin staff wages are up rated by 125% to account for additional costs of employment such as pensions, also overheads such as building and equipment costs, rent and other expenses incurred in the course of business.

## Costs

- Consultant/ lawyer

As a result of reduced business there is a cost of £250k to £3m.

Hours taken		1
Fees per hour	low	£100
	high	£300
Total	low	£250,000
	high	£3,000,000

## Benefits

- Applicants

The above costs are essentially net out by savings made by the applicant.

- Local authorities

With 25- 50% of planners working on development management saving 1hr a month the annual savings are estimated at between £743k and £1.5m.

Planners		9,000
	25% low	2,250
	50% high	4,500
Hours		12
Fees		£22
Up rated		£27.5
Total		£742,500
		£1,485,000

In addition, savings from admin staff are estimated to total £137k.

<i>Admin staff</i>	
<i>Number of admin staff</i>	326
<i>hours per year</i>	24
<i>Wage</i>	14
<i>Uprated</i>	17.5
Total	136,920

## Impact tests

### Statutory equality

We have screened and believe there to be no impact on statutory equality.

### Economic impacts

- Impact on small businesses

For lawyers and consultants the changes will result in a reduction in business given the reduced need to applicants and third parties to seek legal advice. Although this may have a greater impact on smaller firms it is still likely to be minimal overall (see analysis above).



For applicants and third parties there is a subsequent reduction in cost (that offsets the above). This may be in favour of smaller firms who previously were constrained by the prospect of having to pay for legal advice on planning issues, of which the need for will be much reduced.

#### Environmental impacts

We have screened and believe there to be no adverse environmental impacts.

#### Social impacts

We have screened and believe there to be no social impacts.

#### Sustainable development

We have screened and believe there to be no impact on sustainable development.

## 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.

**Basis of the review:** [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];

The department are proposing to undertake a light touch review of the consolidation as part of a 'lessons learned' exercise to inform future consolidation exercises. This review will take place in January 2011. The reason for undertaking at this stage is that it gives four months for the consolidation to 'bed down' in to planning practice, and will be undertaken prior to the next common commencement exercise (March 2011, so any lessons learnt can be built in to future consolidation exercises.

**Review objective:** [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?]

The review will have two objectives:

1) to ensure that the consolidation has delivered its objective and that the legislation has been well received amongst practitioners. 2) to identify what lessons can be learned for future consolidation exercises (as this is basically a routine legal procedure, and will be repeated frequently in the future).

**Review approach and rationale:** [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]

1) The review will measure the feedback received from practitioners to determine how well the consolidation has been received.  
2) The review will engage the planning inspectorate, who are involved in determining applications against the DMPO, to establish whether they have had difficulties using the legislation.

**Baseline:** [The current (baseline) position against which the change introduced by the legislation can be measured]

The baseline is the pre October 2010 position, whereby planning procedural law is set out in the GDPO and subsequent amending orders.

**Success criteria:** [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]

Success would ultimately be observed in the extent of queries and disputes arising from the consolidation. The fewer, the better. In addition, the department will engage with community organisations such as planning aid to see if the measure has genuinely helped people establish the correct planning procedures to avoid having the need to seek professional advice over whether to proceed with a legal review. As part of this process we will look at our initial calculations on cost savings and identify whether there is a need to review these. This will be of particular relevance to gauging the impact of future consolidations of other relevant legislation.

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

Ultimately, most queries relating to planning procedural issues are referred to our department here at CLG and a log is maintained of such issues and how the department responds. This process will continue through the roll out of the DMPO. In addition, the department will engage with PINS regarding this matter and look at the extent to which the consolidation has been helpful in determining planning appeals. This element of the review will take place in January 2011.

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

Add annexes here.

<b>Title: Greater Flexibility for Planning Permissions</b>  <b>Lead department or agency: Communities and Local Government.</b>  <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>
	<b>IA No:</b>
	<b>Date: 24/08/2009 (Reviewed and updated 16/08/2010)</b>
	<b>Stage: Enactment</b>
	<b>Source of intervention: Domestic</b>
	<b>Type of measure: Secondary Legislation</b>
	<b>Contact for enquiries:</b> Neil Holdsworth 0303 444 1716

## Summary: Intervention and Options

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

In 2009 the government introduced a policy to give greater flexibility to planning permissions in light of current economic circumstances, which had resulted in a reduced take-up of existing permissions. Where permissions lapse, there are costs and delays associated with providing and processing a fresh planning application to allow development to commence. The policy allowed developers, for a limited period, to effectively extend planning permissions for a further period, usually three years, where the local authority is in agreement to do so, and was introduced alongside a streamlined procedure for making minor and non material amendments to existing planning permissions. The flexible planning permissions policy was reviewed in summer 2010, and as a result of this review the government have decided to make a minor amendment to the legislation to ensure the provisions for extensions apply to outline planning permissions where they have been partially implemented, and there is an intention expressed at application stage to develop the site in phases. The change will come in to effect in October 2010.

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

When the policy was introduced in 2009, its objective was to provide a package of measures which together allow:

- greater flexibility for the planning system to maintain the flow of development given current economic circumstances;
- a proportionate and graded approach to making minor material and non-material changes to existing planning permissions in cases where an entirely new application is not justified;
- greater certainty about the process by which minor material and non-material amendments can be made to permissions, thus reducing the risk of challenges to the approach taken by the local planning authority, or to their eventual decision.

The changes under consideration following the 2010 review are considered to be in accordance with the original objectives of the policy, but extend its scope to cover certain circumstances which were inadvertently excluded when the policy was originally introduced.

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

In the original IA:

Option 1 (preferred option): i) Allow extensions of lifetime of existing permissions for development schemes  
ii) Streamline the process for making minor material amendments to planning permissions through applications under s.73. III) Implement powers to make non-material amendments to planning permissions

Option 2: Do nothing (status quo)

This IA revisits the arguments and conclusions of the initial IA, prepared in Summer 2009, to account for the proposed changes to expand flexibility measures to outline planning permissions.

**When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?**

It will be reviewed in January 2012.

Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	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 : Greg Clark..... Date: 8<sup>th</sup> September 2010 .....

# Summary: Analysis and Evidence

# Policy Option 1

**Description:** Provide a clearer and more proportionate approach to minor amendments to planning permissions, as well as greater flexibility to maintain the flow of development in current economic circumstances

Price Base Year 2008	PV Base Year 2008	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: £120m	High: £450m	Best Estimate: £285m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate			

### Description and scale of key monetised costs by 'main affected groups'

### Other key non-monetised costs by 'main affected groups'

Costs of new streamlined procedures for minor material, and non-material, amendments are incorporated in the estimates of overall cost savings under monetised benefits reported below.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low		£18m	£120m
High		£69m	£450m
Best Estimate		£43m	£285m

### Description and scale of key monetised benefits by 'main affected groups'

Benefits to business and householders (PVs over 10 years)  
 Extending lifetime: £4m to 16m (admin savings) plus £6m to £22m (fee savings); Minor material amendments: £23m to 89m (admin) plus to £32m to £118m (fees); Non-material amendments: £23m to £89m (admin) plus £32m to £118m (fees)

### Other key non-monetised benefits by 'main affected groups'

### Key assumptions/sensitivities/risks

Discount rate (%) 3.5

A key potential impact of extending lifetime of extant permissions is bringing forward new development, and the benefits that would flow from this. But, given uncertainty as to the effects we assume the net effect on timing of development is neutral. Estimates of admin savings are sensitive to assumptions on the proportion of schemes taking up lifetime extension.

The minor technical amendment we are now introducing does not affect these numbers which were estimated when the policy first came into force. However, it could help achieve the higher range of savings as predicted in the original impact assessment, without having a material impact on the overall conclusion of the 2009 IA.

<b>Impact on admin burden (AB) (£m):</b>			<b>Impact on policy cost savings (£m):</b>	<b>In scope</b>
<b>New AB:</b>	<b>AB savings: £18.6m</b>	<b>Net: £-18.6m</b>	<b>Policy cost savings:</b>	<b>Yes/No</b>

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			England		
From what date will the policy be implemented?			01/10/2009		
Which organisation(s) will enforce the policy?			LPA's		
What is the annual change in enforcement cost (£m)?			£n/a		
Does enforcement comply with Hampton principles?			n/a		
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> n/a	<b>Benefits:</b> n/a	
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	n/a	n/a

## 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...?	Impact	Page ref within IA
<b>Statutory equality duties</b> <sup>1</sup> <a href="#">Statutory Equality Duties Impact Test guidance</a>	No	
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	No	
Small firms <a href="#">Small Firms Impact Test guidance</a>	No	
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	
Justice system <a href="#">Justice Impact Test guidance</a>	No	
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	

<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.

## 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	<a href="http://www.communities.gov.uk/documents/planningandbuilding/pdf/flexibilitypermissionsia.pdf">http://www.communities.gov.uk/documents/planningandbuilding/pdf/flexibilitypermissionsia.pdf</a>
2	<a href="http://www.communities.gov.uk/publications/planningandbuilding/killianprettyfinal">http://www.communities.gov.uk/publications/planningandbuilding/killianprettyfinal</a>
3	<a href="http://www.communities.gov.uk/documents/planningandbuilding/pdf/planningsustainablefuture.pdf">http://www.communities.gov.uk/documents/planningandbuilding/pdf/planningsustainablefuture.pdf</a> (p152)
4	

+ 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>										
<b>Total annual costs</b>										
<b>Transition benefits</b>										
<b>Annual recurring benefits</b>	£43m	£43m	£43m	£43m	£43m	£43m	£43m	£43m	£43m	£43m
<b>Total annual benefits</b>	£43m	£43m	£43m	£43m	£43m	£43m	£43m	£43m	£43m	£43m

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



# Evidence Base (for summary sheets)

## Policy context

In 2009 the government became aware of signs of a sharp slowdown in the take-up rate of schemes that already have planning permission.

Where permissions lapse, there are costs and delays associated with putting in and processing an application for a fresh planning permission. This may have the effect of holding back the flow of development through the planning pipeline. Developers would have to reapply for those schemes, with the time and cost implications that carries. And Local Planning Authorities (LPAs) could find themselves dealing with a sudden upsurge in applications as the economy moves out of recession. There were calls from the LGA, the CBI and the BPF for a power to be introduced which would allow the time limits for implementation of existing permissions to be extended, which was subsequently introduced in October 2009. The measures allowed developers with planning permissions granted before October 2009 the opportunity to submit an application for a 'replacement planning permission subject to a new time limit', with less burdensome information and consultation requirements than a full new planning permission. The measure was time limited as the policy was essentially a temporary response to challenging economic circumstances; it is proposed that it is reviewed again in early 2012 where a decision will be taken as to whether to maintain the policy.

However, since the measures were introduced, the Government has corresponded with a number of representatives of the development industry, who expressed concern that the measures introduced in 2009 do not apply to part implemented, phased planning permissions where the development has already started.

Developments in case law<sup>2</sup> have left LPAs uncertain of the extent to which they are able to make minor amendments to planning permissions which have already been granted. Given this uncertainty, they may take a precautionary approach, and either undertake an extensive process of consultation, which may not be justified by the size and nature of the amendment sought, or may even require a new planning application. Recommendation 8 of the Killian Pretty Review<sup>3</sup> called for a more proportionate method of making minor amendments to existing planning permissions. This was taken forward with the introduction of the 2009 amendments.

## Outline of policy proposal (Option 1)

The policy option that was taken forward in 2009 was the following package of measures to provide a clearer and more proportionate approach to minor material and non-material amendments to planning permissions, as well as greater flexibility to maintain the flow of development in current economic circumstances:

### i) Extension of lifetime of existing planning permissions

This change, introduced in October 2009, allows LPAs, at a developer's request, to extend existing individual planning permissions so that schemes which have been delayed would not need to make a fresh planning permission. Only one extension of a permission would be allowed. This is intended to be a temporary measure, which would apply to all permissions that are extant at the time it comes into force: the measure would therefore be in operation for up to three years (depending on the length of time which each individual permission has left to run). The length of time for which each permission may be extended is governed by existing primary legislation; we would expect the existing default period of three years to apply in most cases.

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<sup>2</sup> <http://www.communities.gov.uk/documents/planningandbuilding/pdf/planningsustainablefuture.pdf> (p152)

<sup>3</sup> <http://www.communities.gov.uk/publications/planningandbuilding/killianprettyfinal>

For convenience, the procedure is referred to in this impact assessment as 'extension'; more formally it is an extension of time for the implementation of a planning permission by grant of a new permission for the proposal authorised by the original permission.

### **Summer 2010 update**

**Since introducing the change on 1 October 2009 a number of practitioners have noted that the legislation does not apply to a planning permission in the circumstances where**

- **it is an outline planning permission**
- **the development is permitted to take place in phases**
- **one or more of the phases has already been implemented, and**
- **the developer is having trouble submitting the reserved matters applications for the remaining phases within the timescales set out in the original permission.**

**In such cases, a developer might wish to use this process to extend the time limits for submitting reserved matters applications, but would not be able to use the procedure as currently worded, as the development has already commenced. In view of this, the Department intend to make amendments to the provision in secondary legislation for the process to apply in these circumstances.**

#### **ii) Streamline the process for making minor material amendments to planning permissions through the use of s.73 of the Town and Country Planning Act 1990**

Prior to October 2009, when a developer wants to make a small, but material, change to a scheme that already has planning permission, it was often necessary to submit a further full planning application, which leads to considerable delay, cost and uncertainty for the applicant and additional work for the LPA. The *Killian Pretty Review – Planning Applications: A Faster and More Responsive System*<sup>4</sup> recommended the previous government explore whether a more proportionate approach could be identified. Research by consultants, in consultation with industry including the British Property Federation, revealed that one option was to encourage the greater use of an existing legislative tool which provides developers an opportunity to change the terms of one condition attached to a permission, rather the planning permission as a whole. These changes were taken forward in October 2009.

#### **III) Implement powers to make non-material amendments to planning permissions**

The final part of the 2009 package was to consult on changes to secondary legislation necessary to bring into effect a measure in the Planning Act 2008 which provides a simple and quick mechanism for making non-material amendments to planning permissions. Recent case law had been interpreted by many as restricting the potential for developers and planning authorities to agree even the most minor changes to permission, so this change ensures there is a legal basis for doing so. The change was implemented in October 2009.

### **Costs and benefits of Option 1**

#### **i) Extension of lifetime of existing planning permissions**

Take-up of schemes with permission has been falling in the current market, and this increases the risk of a permission lapsing. In cases where the permission would otherwise have lapsed, the proposal would enable the extension of permission without having to submit an entirely new

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<sup>4</sup> <http://www.communities.gov.uk/publications/planningandbuilding/killianprettyfinal>

application. This would lead to a reduction in administrative costs for LPAs and developers associated with applying for and processing a fresh permission.

It is possible to estimate the number of re-applications for major development that might be taken out of the Planning system. Based upon Planning Portal data on applications received, it is estimated that about 15000 major applications might *potentially* be affected by the legislation. But it is not straightforward to assess how many of these 'eligible' permissions would proceed with having their lifetime extended. There are a number of reasons why the lifetime of an eligible permission might not be extended:

- some development will proceed within the default 3-year period of permission, regardless of the policy change;
- some development will drop out of the system altogether because it is no longer economically viable – an extension to the permission would not rescue the scheme;
- in some cases, the developer or LPA or both may still insist on a fresh application, e.g. because of a significant change in the development plan or national policy since the original grant of permission, or a re-negotiation of planning obligations.

Our initial estimate, based on discussion with stakeholders including BPF, is that developers may seek to extend the time limits for between 5 and 20% of the 15000 eligible schemes – so, between 750 and 3000 schemes, over a 3-year period from October 2009. In addition we assume that the proposal would lead to extending time limits of between 2.5% and 7.5% of the eligible minor and householder schemes. **This implies a total saving to business of £4m to 16m, and reduced fees of £6m to 22m, over the 3-year period.** The basis for these estimates is summarised in Table 1.

Table 1: Estimates of savings through extending lifetime of extant permissions – figures are for the 3-year period from October 2009

	Reduced number of applications <sup>1</sup>	Admin cost saving per application <sup>2</sup>	Fee saving per application <sup>3</sup>	Total admin cost saving	Total fee saving
major	570 to 2,280	£1400	£3,600	£0.8m to 3m	£2m to 8m
major major	180 to 720	£10,000	£3,600	£2m to 7m	£0.6m to 3m
Minor	6,250 to 18,750	£150	£380	£0.9m to £3m	£2m to £7m
Householder	12,500 to 37,500	£70	£100	£0.9m to £3m	£1m to £4m

**Notes:**

**1** Based on estimates for the PwC Administrative Burdens Measurement Project, it is assumed that 25% of major applications are 'major major'.

**2** Based on the PwC Administrative Burdens Measurement Project. The transaction costs of major and major major applications were estimated as £13,568 and £100,071 respectively. We have allowed for applications being sent for a second time being cheaper for developers as the majority of work should be done – the administrative cost of submitting a repeat application is assumed to be 10% of the cost of submitting the original one. Note that these estimates, being averages, may under-estimate the saving from schemes not now having to re-submit whereas once they would have, because such schemes are more likely to be large.

**3** Average application fees are estimated at £4100 for major, £550 for minor, and £150 for householder development, based on 2007/8 statistics on fee income and numbers of major and minor applications received. In order to estimate a fee saving per application, from these figures are subtracted the proposed fees for extensions to applications - £500, £170 and £50 for major, minor and householder schemes respectively.

For LPAs, we assume that the reduced administrative cost associated with processing re-submitted applications is negated by the reduction in fee income.

A further potential benefit of the proposal is that, through reducing delays associated with re-application, some development might be encouraged to come forward earlier. But we cannot be certain that the proposal would bring forward development – it may have the perverse effect of incentivising developers to delay implementing permissions within 3 years, in the expectation of rising land values as the market recovers. For the purposes of this assessment, we assume that the net effect on timing of development is neutral.

Other costs and benefits, not monetised here, are as follows:

- There will be a small one-off cost to the Planning Portal of amending the standard application form and a cost to the LPA of training staff in the new procedure.
- The proposed changes mean that the majority of statutory consultees would not need to be reconsulted for extension applications, which would result in a reduced burden on them.
- Greater certainty for developers and LPAs that major developments will still go ahead.

### Summer 2010 update

In August 2010, CLG reviewed the accuracy of the estimates undertaken in table 1, above. Every time an applicant sought to make a planning application under the extensions procedure introduced in October 2009, he or she would need to download the form from the Planning portal website.

Data collected from the Planning portal indicates that the forms were downloaded on 38,826 occasions between October 2009 and June 2010, an average of 4,314 times per month. On an annual basis, this would apply on 51,768 occasions. Whilst some of the downloads would not result in a new planning application, there will also be occasions where planning consultants download a form once, then save it and reprint it. Taking these variables into account, it has been assumed that in two thirds of instances a form downloaded resulted in a planning application, and thus avoiding the need for an applicant to submit a full new planning application. No data is available on what type of applications the forms would apply to, but assuming the previous split, the Department is in a position to use this evidence to estimate the actual number of planning applications submitted under the new procedures.

	Estimated number of applications (2009)	Actual number of applications (estimated)	Proportion of the total number of applications
major	570 to 2,280	1,311	3.8%
major major	180 to 720	414	1.2%
Minor	6,250 to 18,750	10,905	31.6%
Householder	12,500 to 37,500	21,880	63.4%
<b>Total</b>	<b>19,630 to 59,250</b>	<b>34,512</b>	

The analysis shows that the amount of forms downloaded from the Planning portal website roughly correlates with the estimated number of applications the process would generate in the original impact assessment.

The impact of the change with respect to extensions to partially implemented, outline planning permissions, as set out in the 'policy context' section above, is that these amendments are likely to help achieve the higher end of the spectrum of predicted admin savings achieved in the extensions to planning permissions element of the flexibility for planning applications policy, as set out in the Impact assessment prepared in October 2009. These admin savings were estimated at £4m - £16mn over 10 years (see page 3). This was based on assumptions, as set out in table 1 of the evidence base of the IA (page 8) that there would be a reduction of between 570 to 2280 major applications per annum, and 180 - 720 major major applications per annum, as the result of the new policy over a three year period.

The impact of the minor change being brought forward here has been assessed through a review of the statistics of five local planning authorities, which are considered to reflect an accurate cross section of planning authorities across the UK, of which there are 328 in total. In each case, the LPAs planning register has been reviewed to how many

applications per year were submitted in outline. The results indicated that 71 outline applications were received in total across the five authorities, an average of 14.2 per authority (or 4657 nationally).

Of the total number of outline applications submitted, only a small proportion of these applications represent significant major and major major applications (through which a phased approach would even warrant considered on the part of the developer) (estimated at 50% of the total) . and of these, only a fraction are genuinely phased at the application stage (<20%). It is estimated therefore that the amount of eligible applications is under 500 per year. Of these 500 applications, it is estimated that the circumstances for which the amendment applies would apply in under 10% of cases (<50), as quite specific circumstances would need to prevail where the development was originally approved, it had partially been implemented, and there was a difficulty preventing the applicant from submitting reserved matters applications for the remaining parts of the site.

The overall impact of the amendment to the policy, therefore, is to effect a slight increase in the number of major and major major applications to which the flexibility policy applies, over the final two year period of the policy, which in turn would result in a slightly greater reduction in the total number of applications submitted by developers (estimated at being less than 50 applications per annum – see above). Admin savings increase marginally; however, due to rounding, the admin savings remain at £4m - £16m. As there is no change to the fee for such applications, however, there would be no change in the predicted fee savings, nor would it impact on any other areas of the policy, including non-material and minor material amendments, which provide the bulk of the predicted savings over a 10 year period.

In conclusion, it is considered that the change in drafting proposed will help achieve the higher range of savings as predicted in the original impact assessment, without having a material impact on the overall conclusion of the October 2009 IA, which the amendment will help reinforce.

ii) Streamline the process for making minor material amendments to planning permissions through the use of s.73 of the Town and Country Planning Act 1990

For developers, there is a cost and time saving in being able to use s.73 rather than submitting an entirely fresh application. They are required to submit only minimal information, rather than having to generate the plethora of documents necessary for a completely new application. But we have allowed for applications being sent for a second time (our baseline for comparison) being cheaper for developers as the majority of work should be done – overall the administrative cost saving through the s73 route is assumed to be 10% of the cost of submitting the original application. The costs of submitting an original application are again based on the PwC Administrative Burdens Measurement Project: the transaction costs of minor, major and major major applications were estimated as £1,450, £13,568 and £100,071 respectively. Note that these estimates, being averages, may under-estimate the saving from schemes not now having to re-submit whereas once they would have, because such schemes are more likely to be large.

Also, the flat-rate fee of £170 which applies to s.73 applications is substantially lower than the fee which would be required for a completely new application, which on large schemes could be over £100,000. Average fees associated with major, major major, and minor applications are assumed to be £4,100, £4,100 and £550 respectively – these are internal estimates based on statistics on number of minor and major applications, and fee income, received in 2007/8.

For LPAs, s.73 applications are much quicker and cheaper than completely new applications to determine, although this is offset by the reduced fee income.

It is possible to estimate the number of re-applications for development that might be taken out of the Planning system under this change. CLG's development control statistics only break down the type of development in terms of decisions made (which is lower than applications submitted), but we have estimated total numbers of applications submitted by scaling up the numbers of decisions made in 2008 on each type of development assuming that proportions remain constant. Only a fraction of the total numbers of applications will be re-applications with minor material changes and would thus stand to benefit from the proposed change. Based upon discussions with stakeholders, we have assumed that 5 to 20%, 5 to 20%, and 2.5 to 7.5% of major, major major and minor applications respectively, would be affected. **Overall, we estimate a saving of £4m to 14m per annum in administrative costs for business, and £5m to 18m per annum in fee savings.** The basis for these estimates is summarised in Table 2.

As relatively few householders are likely to seek changes via s.73, given the more straightforward nature of householder planning permissions and the likelihood that fewer conditions will apply to them, we have excluded householder applicants from these calculations.

Table 2: Estimates of savings arising from streamlining of process for making minor material amendments – figures are per annum

	Total number of applications per annum	% of applications affected	Reduced number of re-applications	Admin cost saving per application	Fee saving per application	Total admin cost saving	Total fee saving
major	13,700	5 to 20%	1700	£1,400	£3,930	£0.9m to 4m	£3m to 11m
major major	4,300	5 to 20%	500	£10,000	£3,930	£2m to 9m	£0.8 to 3m
minor	152,700	2.5 to 7.5%	7600	£150	£380	£0.6m to 2m	£1m to 4m

Other costs and benefits are as follows:

- The proposed changes mean that the majority of the statutory consultees would not need to be reconsulted for s.73 applications, which would result in a reduced burden on them.
- Developers will be able to respond and adapt more effectively, cheaply and quickly where the need to make minor amendments to an existing permission becomes apparent. Given this, our estimates of savings may be regarded as conservative.

### III) Implement powers to make non-material amendments to planning permissions

For developers, there are cost and time savings in being able to make non-material amendments without submitting an entirely fresh application. Our approach to estimating administrative and fee savings is analogous to that used above for minor material amendments. Again a flat-rate fee of £170 applies to new applications (we have disregarded the small fee and administrative savings arising for householder applications).

For LPAs, non-material amendment applications will be much quicker and cheaper than completely new applications to determine, although this is offset by the reduced fee income.

**Overall, we estimate a saving of £4m to 14m per annum in administrative costs for business, and £5m to 18m per annum in fee savings.** The basis for these estimates is summarised in Table 3.

Table 3: Estimates of savings arising from streamlining of process for making non-material amendments – figures are per annum

	Total	% of	Reduced	Admin cost	Fee	Total	Total fee
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	number of applications per annum	applications affected	number of re-applications	saving per application	saving per application	admin cost saving	saving
major	13,700	5 to 20%	1700	£1,400	£3,930	£0.9m to 4m	£3m to 11m
major major	4,300	5 to 20%	500	£10,000	£3,930	£2m to 9m	£0.8 to 3m
minor	152,700	2.5 to 7.5%	7600	£150	£380	£0.6m to 2m	£1m to 4m

Other costs and benefits, not monetised here, are as follows:

- The public may sometimes not be consulted on applications where previously they would have been consulted.
- However, there will be greater transparency and consistency between different LPAs in how decisions on minor material and minor non-material applications are dealt with.
- The public will have easier access to decisions on minor non-material amendments, as they will be recorded on the planning register.
- For LPAs, there will be a reduced risk of challenge, as there will be a prescribed procedure for dealing with these applications.
- There will be a small one-off cost to the Planning Portal of amending the standard application form and a cost to the LPA of training staff in the new procedure.

### Uncertainties and sensitivities

A key potential impact of extending lifetime of extant permissions is bringing forward new development, and the benefits that would flow from this. But, given considerable uncertainty as to the effects, including possible perverse incentives to delay development, for the purposes of this assessment we assume the net effect on timing of development is neutral.

There is a range of uncertainty around our estimates of savings – these are sensitive to a number of assumptions, including:

- the numbers of applications that would be affected by the 3 proposals;
- PwC's estimates of administrative burdens for business. Note that applying these estimates, being averages, may under-estimate the saving from schemes not now having to re-submit whereas once they would have, because such schemes are more likely to be large.
- internal estimates of average fee levels.

**Admin Burden savings:** The saving of £18.6m reported in the summary table takes the annual admin cost savings to business estimated to arise from the minor and non-material amendments proposals, and one-tenth of the admin cost saving to business estimated to arise from the extending lifetime proposal over the relevant three-year period.

### Specific Impact Tests

In all cases the changes proposed relate to planning permissions which have already undergone extensive scrutiny and been judged acceptable. By definition, there will either be no change to the original permission except to the length of time for which it is valid, or possible changes will be either minor or non-material.

We have screened these proposals for their impact on competition, small firms, legal aid, health, race, disability, gender, human rights and rural proofing, and do not consider that there are any impacts. The screening process also determined that the proposal would not have any impact on equalities issues.

### 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.

**Basis of the review:** [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];

The policy was originally developed as a proactive reaction to the views expressed by partners, including business and local authorities themselves. The 2009 IA did not include a developed monitoring and evaluating plan, and it was not possible to use this as a basis for the review. The 2010 review, the outcome of which is set out in this IA, was generated specifically by correspondence and subsequent meetings with practitioners in the sector. The time limited nature of the 'extensions' policy means that it will expire in most circumstances in 2012. For this reason, it is proposed that the policy will next be reviewed in January 2012, unless partners alert us to pressing reasons why it should be done beforehand.

**Review objective:** [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?]

One key objective of the review would be to answer the question whether the ability to extend planning applications should continue to apply, taking in to account the economic circumstances in early 2012. At the same time, the issue of how well the process of minor material and non material amendments is operating, and whether further changes are necessary in this area.

**Review approach and rationale:** [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]

The review approach would analyse objectively the current economic circumstances and available data on planning applications. It would be sensitive to other, wider reforms made to the planning system between now and 2012, and assess the future of the policy against this background. Partners' views would be taken in to account as part of this process.

**Baseline:** [The current (baseline) position against which the change introduced by the legislation can be measured]

The baseline data is essentially the number of applications submitted under the new measures, as measured by the number of application forms downloaded from the planning portal. Application form download statistics will provide a quantitative assessment of the success of the policy, a qualitative assessment of the policy effects will be sourced through correspondence and discussion with stakeholders, LPA's and developers in particular, but also third parties.

**Success criteria:** [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]

In early 2012 the department will review all three areas of the policy to establish the extent to which the estimated savings have been realised and to inform further consideration of the future of the flexibility measures introduced in 2009. The methodology used to gauge this success will be to look at the amount of application forms downloaded from the planning portal over a three year period for the three different application types. This should account for the overall take up of the measures, giving a statistical basis to estimate whether the estimated number of reduced applications on a national level have been realised.

A further element of the review will be to take a snapshot of three local planning authorities, one in London,

one regional urban authority and one rural authority, and review their own planning registers to establish the take up rate and the success rate of applications submitted under these procedures. This will act as a counter balance to data amassed nationally from the planning portal website. If necessary, it might also be necessary to talk to LPAs and developers to determine whether the process has in fact realised administrative savings. as it was predicted to do in the IA.

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

Monitoring takes place through

- planning application form download statistics
- development control statistics undertaken by CLG
- correspondence with stakeholders.

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