

EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (ENGLAND) (AMENDMENT) ORDER 2017

2017 No. 391

AND

THE TOWN AND COUNTRY PLANNING (COMPENSATION) (ENGLAND) (AMENDMENT) REGULATIONS 2017

2017 No. 392

1. Introduction

- 1.1 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 instruments

- 2.1 The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2017 (“the Amendment Order”) amends the Town and Country Planning (General Permitted Development) (England) Order 2015 (“the General Permitted Development Order”) to introduce permitted development rights to allow for the provision of temporary schools on vacant commercial land, to allow buildings to be used for temporary schools for a longer period, and to allow larger extensions to be added to existing school buildings. The Amendment Order also makes minor amendments to the permitted development right which allows dwellinghouses to be enlarged, and makes several other minor amendments to clarify wording in the General Permitted Development Order.
- 2.2 The Town and Country Planning (Compensation) (England) (Amendment) Regulations 2017 amend the Town and Country Planning (Compensation) (England) Regulations 2015 (“the Compensation Regulations”), to limit and exclude, in specified circumstances, the liability of local planning authorities to pay compensation on withdrawal of the permitted development right for the provision of temporary schools on vacant commercial land which is to be introduced by the Amendment Order.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As these instruments are subject to negative resolution procedure and have not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Under Part 3 of the Town and Country Planning Act 1990 (“the 1990 Act”) planning permission is required for the development of land. Planning permission may be granted on application to a local planning authority or by a development order made under the 1990 Act.
- 4.2 The Amendment Order amends the General Permitted Development Order which grants planning permission for a range of specific classes of development, subject to certain limitations and conditions. Planning permission granted under the General Permitted Development Order is known as a “permitted development right”. The effect is that an application for planning permission does not need to be made to the local planning authority, although in some cases permitted development rights require the local planning authority to approve certain matters before development can proceed. This is known as “prior approval”.
- 4.3 Article 3 of the Amendment Order amends Class A of Part 1 of the General Permitted Development Order. Class A allows the enlargement, improvement or other alteration of a dwellinghouse, within specified limitations. Sub-paragraphs A.1(e) to (j) contain limitations relating to the size of the ‘enlarged part’ of the dwellinghouse. The April 2016 version of the Government’s [Technical Guidance](#) on permitted development rights for householders¹ stated that the “enlarged part” of a dwellinghouse should be understood to be “the part(s) of a dwellinghouse comprising any enlargements of the original house, whether built under permitted development rights or following any application for planning permission, and whether the enlargement is undertaken on a single occasion or added incrementally”.
- 4.4 In *Hilton v Secretary of State for Communities and Local Government (CO/309/2016)* the High Court determined, contrary to this guidance, that ‘enlarged part’ refers only to the development which is proposed under Class A. In light of this decision, the Amendment Order makes a number of consequential amendments (see paragraphs 7.2 to 7.4).
- 4.5 Existing permitted development rights allow:
- a building used for certain commercial purposes to change use to a school (Class T of Part 3);
 - any building to be used as a state-funded school for up to a year (Class C of Part 4);
 - a school to be erected, extended or altered within certain limitations (Class M of Part 7).

Articles 4 to 6 of the Amendment Order extend Class C of Part 4 and Class M of Part 7, and introduce a new right to provide temporary schools on vacant commercial land.

- 4.6 Where planning permission granted by a development order is withdrawn, those with an interest in the land may have a right to compensation from the local planning authority under section 108 of the Town and Country Planning Act 1990. In relation to specified permitted development rights (including the existing permitted development rights for schools listed above), the Compensation Regulations limit to twelve months the period during which a local planning authority may be liable to pay compensation. They also exclude compensation liability altogether in certain

¹https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/516238/160413_Householder_Technical_Guidance.pdf

circumstances (for example where the local planning authority withdraws the right under Article 4 of the General Permitted Development Order by giving 12 months' notice).

5. Extent and Territorial Application

5.1 The extent of these instruments is England and Wales.

5.2 The territorial application of these instruments is England.

6. European Convention on Human Rights

6.1 As these instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 Permitted development rights reduce bureaucracy and cost by removing the requirement to apply for planning permission for certain types of development. They serve to facilitate or incentivise such development by providing developers with a greater level of speed and certainty, whilst including specific planning controls and limitations.

Amendments relating to the enlargement of a dwellinghouse

7.2 Government's intention is to give householders freedom to enlarge their properties within clear limitations. The householder permitted development rights in Class A of Part 1 of the General Permitted Development Order balance the freedom for householders to develop their properties to meet their changing needs with the rights of neighbours to be heard where larger developments are proposed. The limitations contained in Class A are intended to ensure that larger developments which could have more significant impacts are considered at a local level through the planning application process.

7.3 The decision in *Hilton*, referred to in paragraph 4.4 above, would allow a total enlarged space to be created which would not have been permitted under Class A as a single development. For example, it would allow a single storey extension to be joined to an existing two storey extension (or vice versa), creating a total enlargement which would not have been permitted under Class A as a single extension. It would also allow an existing extension which exceeds the limitations contained in Class A to be further enlarged. The amendments contained in Article 3 remove such developments from the scope of permitted development rights. This does not mean that such larger spaces cannot be developed. It simply means that a planning application will be required so that local impacts can be considered.

7.4 Paragraphs A.1(c) and (d) of Class A use the phrase 'the part of the dwellinghouse enlarged' to refer to the development proposed under Class A. The court's definition of 'enlarged part' is consistent with these paragraphs. Consequently the Amendment Order does not change the court's definition, but instead makes the consequential amendments outlined above. The technical guidance will be updated to reflect this definition together with the consequential amendments contained in Article 3.

The extension and introduction of new permitted development rights for schools

- 7.5 Government wishes to help school providers adapt more quickly to changing demand for school places, making the best use of existing buildings or land. In particular, where there is an identified need for school places, Government intends to enable schools to expand where necessary, or to open quickly on temporary sites and in temporary buildings in order to meet demand whilst permanent sites are secured and developed.
- 7.6 The time and cost of seeking full planning permission for extensions or temporary buildings could result in school openings or expansions being delayed, or admissions being frozen or reduced as a result of building capacity issues. The measures contained in the Amendment Order are intended to ensure schools can respond more quickly to changing needs and meet short term needs whilst planning for the long term.

Compensation

- 7.7 Consistent with other permitted development rights relating to schools, Class CA (the permitted development right introduced in the Amendment Order to allow temporary school buildings to be provided on vacant commercial land) has been added to the list of permitted development rights in respect of which the local authority's liability to pay compensation on their withdrawal is limited or excluded in certain circumstances, under section 108 of the 1990 Act (see paragraph 4.8 above).

Consolidation

- 7.8 The General Permitted Development Order and Compensation Regulations, which came into force on 15 April 2015, consolidated previous legislation. There are no current plans for further consolidation.

8. Consultation outcome

- 8.1 The proposals to extend existing permitted development rights for schools and introduce the new right for temporary schools on vacant commercial land were included in the [Technical Consultation on the Implementation of Planning Changes²](#), published in February 2016. There were 304 respondents to questions relating to these proposals, with most responses received from local planning authorities. There was general support for the proposals. The more detailed responses related to potential impacts the respondents felt should be dealt with in the design of the new right to provide temporary schools on vacant commercial land. Potential flood risk, impacts on highways, and impacts on neighbouring amenities were the most common issues raised, as well as the potential loss of play space and the need to ensure the sustainable location of new schools.
- 8.2 As a result, Government has included within the new right a prior approval to enable local consideration of these issues, as well as contamination risks, siting and design impacts and flood risk. In addition, a condition that safeguards existing neighbouring residential use has been included. The regulations will also ensure that the relevant Secretary of State is satisfied that each site is suitable for use as a school. No provision has been made in relation to playing fields because the regulations already

²https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/507019/160310_planning_consultation.pdf

protect playing fields where a school is being extended (see paragraph M.1(c) of Part 7 of Schedule 2 of the General Permitted Development Order), and nothing in the Amendment Order removes this protection. For more detail on the response to consultation, see the [summary of the responses and Government response](#)³ which was published on 7 February 2017.

9. Guidance

- 9.1 There are no plans to issue specific guidance for these statutory instruments, but Government's [Technical Guidance](#)⁴ will be updated to reflect the decision in *Hilton* and the changes described in paragraphs 4.3 and 4.4 above.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is a reduction in administrative cost and time of making or processing planning applications where the development would have come forward through an application, although there will also be a reduced fee for prior approval work compared to a planning application fee.
- 10.3 A full regulatory Impact Assessment has not been prepared for these instruments as no impact on the public or voluntary sector is foreseen.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses. The new and amended permitted development rights for schools contained in the Amendment Order are deregulatory in effect; helping to reduce bureaucracy and cost in the planning system for the benefit of all businesses. The planning costs for publicly funded schools are borne by the Education Funding Agency or local authorities. There are no predicted costs to business.
- 11.2 Other amendments contained in the Amendment Order are intended to clarify the wording of the General Permitted Development Order. Amendments relating to householder permitted development rights following the *Hilton* decision serve to restore controls previously understood to be in place where larger spaces are created. The amendment to the Compensation Regulations ensures that compensation liability for the new permitted development right for the provision of a temporary school on vacant commercial land is treated in the same way as other permitted development rights for schools. As such, small businesses are not likely to face any negative impacts because of their size.

12. Monitoring & review

- 12.1 The Small Business, Enterprise and Employment Act 2015 requires that regulatory provisions made after 1 July 2014 are reviewed 5 years after their commencement to consider whether the objectives could be achieved with less regulation. A clause requiring such a review was inserted into the General Permitted Development Order by the Town and Country Planning (General Permitted Development) (England)

³https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589744/Summary_of_responses_to_the_technical_planning_consultation.pdf

⁴https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/516238/160413_Householder_Technical_Guidance.pdf

(Amendment) Order 2016 (S.I 2016/332). These permitted development rights will be reviewed at the latest by October 2021.

13. Contact

- 13.1 Kirsti Johnson at the Department for Communities and Local Government, telephone: 0303 444 1735 or email: Kirsti.johnson@communities.gsi.gov.uk can answer any queries regarding these instruments.