

## EXPLANATORY MEMORANDUM TO

### THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (ENGLAND) (AMENDMENT) ORDER 2018

2018 No. 343

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of Her Majesty.

#### 2. Purpose of the instrument

- 2.1 The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2018 (“the Amendment Order”) amends the Town and Country Planning (General Permitted Development) (England) Order 2015 (“the General Permitted Development Order”) to:
- extend the existing temporary permitted development right to change the use of buildings in storage or distribution use to residential use;
  - increase the size limits that apply to permitted development on agricultural land;
  - amend the existing right to change use of agricultural buildings to residential use to allow up to a total of five dwellinghouses, subject to limitations and conditions. In addition, to increase the floor space limits of agricultural buildings permitted to change use to residential use for larger dwellinghouses;
  - make permanent the existing temporary removal of requirements to submit prior approval applications for telecommunications development in protected areas in connection with fixed-line broadband installation;
  - make a technical change to introduce a modified procedure in relation to consideration of prior approval applications for permitted development rights in order to provide time for the Secretary of State to consider whether to call in a prior approval and to determine it as appropriate; and make clarifying amendments within the General Permitted Development Order, including to update the definition of “military explosive storage area” and “building”, to set out definitions of “railway undertakers” and “transport undertakers”, and to clarify that in respect of Classes C, M, N and Q of Part 3 of Schedule 2 applications for prior approval may be made only for either a) change of use, or a) change of use together with b) building operations, and that development permitted by Class C of Part 9 of Schedule 2 is by transport undertakers.

#### 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 this instrument is subject to the negative procedure and has 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 Permitted development rights for change of use of buildings make reference to the use classes set out in the Town and Country Planning (Use Classes) Order 1987 (“the Use Classes Order”), which groups together uses having similar planning impacts. The classes in the Use Classes Order which are relevant to the Amendment Order are:

**A1: Shops**

**A2: Financial and professional**

**A3: Restaurant or café**

**B1(c): Light industrial**

**B8: Storage or distribution**

**C3: Dwellinghouses**

- 4.4 The Use Classes Order also refers to certain uses as ‘sui generis’ uses, i.e. those for which no Class is specified. These uses are not grouped with any other uses.

### *New and amended permitted development rights for the change of use*

- 4.5 Part 3 of Schedule 2 to the General Permitted Development Order grants planning permission in respect of various changes of use of buildings. The Amendment Order amends and extends these rights as follows:
- amendments are made to Classes C, M, N and Q to clarify the extent to which development is permitted by paragraphs C.1(b), M.1(b), N.1(b) and Q.1(b);
  - the existing temporary permitted development right in Class P to change use of buildings from storage or distribution centres (Class B8 of the Use Classes Order) to dwellinghouses is extended, provided both that prior approval is given, or deemed to be given, before 10 June 2019 and that development is completed within 3 years of the prior approval date;
  - amendments are made to Class Q to allow the development of up to a maximum total of five dwellinghouses. The cumulative floor space permitted to change use from agricultural use is first extended from 450 square metres to 465 square metres to allow for up to three “larger dwellinghouses”. The right is further amended to provide up to five “smaller dwellinghouses”, subject to

limitations and conditions. The residential floor space of each such smaller dwellinghouse cannot exceed 100 square metres. The amended right provides that no more than five dwellinghouses may be developed under Class Q in total, including any previous development under Class Q.

#### Other amendments

- 4.6 A number of permitted development rights in the General Permitted Development Order are subject to a prior approval process which allows the local planning authority to consider specified aspects of the development. The Amendment Order modifies the time limits that apply for consideration of prior approval applications where the Secretary of State is considering whether to, or decides to, exercise his power to give directions for a prior approval application to be referred to him instead of being dealt with by the local planning authority, as per section 77(1) of the Town and Country Planning Act 1990.
- 4.7 Classes A and B of Part 6, Schedule 2 to the General Permitted Development Order permit certain agricultural development, subject to specified conditions and limitations including on the ground area which would be covered by development and the permitted increase in cubic content of the original building. These are extended by the Amendment Order from 465 square metres to 1,000 square metres and from 10% to 20% respectively.
- 4.8 The Amendment Order also:
- updates the definition of “military explosive storage area” in article 2(1) of the General Permitted Development Order. This is an area within which certain development is not permitted;
  - amends the definition of “building” in article 2(1) (interpretation) to add Classes P (storage or distribution centre to dwellinghouses) and PA (premises in light industrial use to dwellinghouses) to the list of classes for which the definition of “building” does not include any part of a building;
  - clarifies that development permitted by Class C of Part 9 of Schedule 2 to the General Permitted Development Order is by transport undertakers and defines “railway undertakers” and “transport undertakers” in article 2(1) of the General Permitted Development Order for the purposes of interpreting Part 8 and Part 9 of Schedule 2; and
  - makes permanent the previously temporary removal in Paragraph A.2.(5) of Part 16 (communications) of Schedule 2 to the General Permitted Development Order of the requirement to submit a prior approval application for telecommunications installations in protected areas in connection with the provision of fixed-line broadband. Article 2(3) of the General Permitted Development Order sets out the protected areas.

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

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England.

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

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

## 7. Policy background

### *What is being done and why*

#### **Permitted development rights for the change of use**

- 7.1 Permitted development rights have long been part of the planning system. They reduce bureaucracy and cost in respect of low impact development. They can also incentivise certain forms of development by providing developers with a greater level of speed and certainty, whilst including specific planning controls and limitations. Permitted development rights support key Government agendas, such as housing.
- 7.2 In support of this, the Amendment Order amends permitted development rights for the change of use of buildings to residential use (C3 dwellinghouse) in Part 3 of Schedule 2 to the General Permitted Development Order, as described below:
- 7.3 The Class Q permitted development right for the change of use from agricultural buildings to residential use is amended to allow for the development of a total of up to five dwellinghouses on the existing agricultural unit, within specified limits and subject to conditions.
- 7.4 The amended right (including any previous development under Class Q) allows for:
- up to three larger dwellinghouses with a maximum cumulative total residential floor space of 465 square metres (Q.1(b)) or
  - up to five smaller dwellinghouses each with no larger than 100 square metres of residential floor space (Q.1 (c)), or
  - a mix of larger and smaller dwellinghouses within a total of no more than five dwellinghouses, of which no more than three may be larger dwellinghouses with a maximum cumulative total of 465 square metres residential floor space (Q.1(d)),
- to be developed on the agricultural unit in one or more agricultural buildings.
- 7.5 The right allows for up to three larger dwellinghouses. The limit on the amount of agricultural floor space that may change to residential use has been increased from 450 square metres under the existing right to 465 square metres to marry with the size limits of agricultural buildings that previously may have been erected under the Part 6 permitted development rights. The permitted development of up to three larger dwellinghouses may result in no more than a cumulative total of 465 square metres of floor space in residential use.
- 7.6 Each of the (up to five) smaller dwellinghouse may have a residential (C3) floor space no larger than 100 square metres. This allows for a proportion of agricultural floor space to change use to residential and the addition of an internal floor within the existing limitations of the right, including that building operations are permitted only where they are reasonably necessary to convert the building to residential use.
- 7.7 Smaller dwellinghouses may have no more than 100 square metres of floor space in residential use. Larger dwellinghouses may have between 100 square metres and no more than 465 square metres of floor space in residential use.
- 7.8 Other homes on the agricultural unit which were not developed under Class Q do not count towards the total of smaller or larger dwellinghouses for the purposes of this right.

- 7.9 Those who already have prior approval (or deemed prior approval) under Class Q for up to three dwellinghouses may make a further application under Class Q provided the limitations on total numbers of smaller and larger dwellinghouses and total cumulative floor space of larger dwellinghouses are not exceeded. Any dwellinghouses developed, or permitted, under Class Q prior to this amendment will be considered to be either smaller or larger dwellinghouses as defined in Q.3. If one or more larger dwellinghouses has been developed under Q, additional larger dwellinghouses may be developed within a cumulative total of three, provided the cumulative residential floor space of the larger dwellinghouses is no more than 465 square metres. Smaller dwellinghouses, each with residential floor space no larger than 100 square metres, may be developed as long as the total number of dwellinghouses developed under the right (including any previous development under Class Q) does not exceed five, and each smaller dwellinghouse has no more than 100 square metres of residential floor space. Subsequent applications for additional dwellinghouses where prior approval has previously been granted under Class Q will be determined on their own merits, including with regard to the matters for prior approval set out in Q.2.(1) such as siting and location. The appropriate fee is payable.
- 7.10 All other limitations and conditions remain unchanged, including the requirement that the external dimensions of the dwellinghouse(s) may be no larger than the original agricultural building. The existing limitation disapplying the permitted development right under Class Q where development on the agricultural unit has been carried out under Part 6, paragraphs A.1 (b) and B.2 (d) to erect a new agricultural building within ten years from the date of the last use of Class Q continues to apply.
- 7.11 In all cases, applicants may apply only for either the change of use (a), or for the change of use with building operations ((a) together with (b)). The right does not allow for a separate application or development under (b) alone.
- 7.12 Existing Article 4 directions made in respect of Class Q will continue to apply to the amended right. There are therefore no compensation liabilities in respect of existing Article 4 directions.
- 7.13 Applications for prior approval under Class Q must specify how many larger dwellinghouses and how many smaller dwellinghouses will be developed as a result of this application (paragraph W.(2)(bb)). Where there has been previous development under Class Q, the application must also set out how many larger and how many smaller homes have been developed previously on the agricultural unit.
- 7.14 The amendments to Class P for the change of use from storage or distribution to residential use will allow for further changes of use under the temporary right by allowing for prior approval to be granted on or before 10 June 2019. This is a change to the previous approach which required the change of use to take place before 15 April 2018. This allows for a further year to submit a prior approval application, and for prior approval to be determined. In addition, P.1 (k) provides all those granted prior approval three years from the date of that prior approval in which to change use.
- 7.15 Existing Article 4 directions will remain in force for the extended period, unless amended by the local planning authority, or an individual direction includes a specific end date. There are no compensation liabilities from the extension.

#### **Permitted development rights for agriculture**

- 7.16 Through the Rural Review of Planning and subsequent consultation alongside the Housing White Paper the Government proposed new measures to support rural

housing and modern farming methods. The Amendment Order amends Classes A and B of Part 6 of Schedule 2 to the General Permitted Development Order to allow for greater agricultural development including for larger agricultural buildings and extensions.

- 7.17 Class A is amended to increase the existing ground area limit for the erection of new agricultural buildings, works or structures (in certain circumstances as set out in paragraph A.1.(e)) from 465 square metres to 1,000 square metres. Class B is amended to increase the existing area limit for the extension or alteration of agricultural buildings, or the installation of plant, machinery or a hard surface from 465 to 1,000 square metres, and to allow for an increase of up to 20% of the cubic size of an agricultural building.

### **Permitted development rights for telecommunications**

- 7.18 The Government is committed to enabling the delivery of superfast broadband to support business and communities. In ‘Fixing the Foundations: Creating a more prosperous nation’ (July 2015) the Government made clear its support for the continued roll-out of high speed broadband infrastructure, including in protected areas, such as National Parks. Section 7 of the Digital Economy Act 2017 amends section 109 of the Communications Act 2003 to remove the sunset clause in respect of the application of the electronic communications code to certain areas including National Parks. The Amendment Order now makes a complementary amendment in respect of the operation of permitted development rights in protected areas including National Parks. Article 14 amends Part 16 Class A (paragraph A.2 (5)) to no longer require that the disapplication of a requirement for prior approval is conditional on development being completed on or before 30 May 2018. This has the effect of permanently removing the prior approval requirements in respect of the construction, installation, alteration or replacement of telegraph poles, cabinets or lines, in connection with the provision of fixed-line broadband in protected areas (article 2 (3) land).

### **Other amendments**

- 7.19 Article 3 makes clear that Class P and Class PA apply to existing buildings no larger than 500 square metres, and do not apply to part of larger buildings. It also amends the definition of a “military explosive storage area”, within which certain development is not permitted, to include safeguarding zones around military explosive storage areas within the defined area. It also includes the relevant definitions of “railway undertakers” and “transport undertakers”, for the purpose of interpreting Parts 8 and 9 of Schedule 2 of the General Permitted Development Order, as set out in the Highways Act 1980.
- 7.20 Article 4 ‘stops the clock’ in respect of called-in applications for prior approval to ensure deemed consent is not granted where a decision is not made within the relevant prescribed period. This allows for due consideration by the Secretary of State as to whether to call in an application for prior approval in line with the national criteria, and then to determine it as appropriate without deemed consent being granted. Obligations on the local planning authority in respect of consultation and notification of consultees and/or adjoining occupiers and owners will continue to apply. Where the Secretary of State decides not to call the application in for his own decision-making, the local planning authority will have the remaining time of the relevant

period in which to determine the application. This applies across the General Permitted Development Order.

- 7.21 Articles 6, 7 and 8 make clear that Classes C, M, and N of Part 3 of Schedule 2, permit development which is either the change of use (a), or the change of use together with building operations reasonably necessary to convert the building in question ((a) together with (b)). Article 11 also clarifies that separate prior approval applications or development under (b) alone is not permitted. Prior approval applications for development constituting (a) together with (b) must include relevant information in respect of the change of use and building or other operations (paragraph W.2 (a)).
- 7.22 Article 14 clarifies that development permitted by Class C of Part 9 of Schedule 2 to the General Permitted Development Order is development by transport undertakers.

### ***Consolidation***

- 7.23 The General Permitted Development Order, which came into force on 15 April 2015, consolidated amendments made to the General Permitted Development Order 1995. This is the sixth Amendment Order to amend the General Permitted Development Order. There are no current plans for a consolidation.

## **8. Consultation outcome**

- 8.1 Alongside the Housing White Paper we consulted from 7 February 2017 to 2 May on measures to support housing in rural areas and modern farming. 46% of the 175 respondents agreed with the proposal to extend Part 6 permitted development rights to allow for larger agricultural development. There were a range of responses, with some seeking higher thresholds and others concerned about the impact of permitted development on protected areas. Following the consultation, we are amending the rights to allow for larger agricultural buildings, works and extensions as set out in articles 12 and 13.
- 8.2 59% of the 185 respondents supported the proposal for a permitted development right to allow conversion of up to 750 square metres of floor space for up to five dwellings for rural workers. Some responses suggested that to ensure homes meet local need there should be a rural worker occupancy restriction, price restriction, or a limit on the size of the homes, while others considered that any increase in local supply would help address local housing need. Following the consultation we are amending Class Q to increase the existing threshold and allow the change of use of up to five homes. The smaller homes may each be no larger than 100 square metres to help ensure affordability for rural families. The Government response to the Housing White Paper consultation can be found at:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/685297/Government\\_response\\_to\\_the\\_housing\\_White\\_Paper\\_consultation.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/685297/Government_response_to_the_housing_White_Paper_consultation.pdf)
- 8.3 The Government is extending for a year the temporary right for the change of use from storage to residential use (Class P) while further consideration is given to the future of the right.

## **9. Guidance**

- 9.1 There are no plans to issue specific statutory guidance for this instrument.

## **10. Impact**

- 10.1 The impact on business, charities or the voluntary bodies is to reduce the cost and time burdens of having to submit a planning application in more cases.
- 10.2 The impact on the public sector is a reduction in administrative cost and time of 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 An assessment of impact will be published alongside the Explanatory Memorandum on the [legislation.gov.uk](https://www.legislation.gov.uk) website.

## **11. Regulating small business**

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 The amended permitted development rights are deregulatory in effect; helping to reduce bureaucracy and cost in the planning system. 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 2015 are reviewed 5 years after their commencement to consider whether the objectives could be achieved with less regulation. The Ministry of Housing, Communities and Local Government will monitor progress and carry out a review of these permitted development rights by April 2023.

## **13. Contact**

- 13.1 Maria Darby at the Ministry of Housing, Communities and Local Government (Tel: 0303 444 1463 or e-mail: [maria.darby@communities.gsi.gov.uk](mailto:maria.darby@communities.gsi.gov.uk)) can answer any queries on this instrument.