
STATUTORY INSTRUMENTS

1992 No. 1563

**TOWN AND COUNTRY PLANNING,
ENGLAND AND WALES**

**The Town and Country Planning General
Development (Amendment) (No. 5) Order 1992**

<i>Made</i>	- - - -	<i>29th June 1992</i>
<i>Laid before Parliament</i>		<i>6th July 1992</i>
<i>Coming into force</i>	- -	<i>27th July 1992</i>

The Secretary of State for the Environment, as respects England, and the Secretary of State for Wales, as respects Wales, in exercise of the powers conferred on them by sections 59, 69, 74(1A), 188, 193, 196(4) and 333(7) of the Town and Country Planning Act 1990(1) and all other powers enabling them in that behalf, hereby make the following Order—

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Town and Country Planning General Development (Amendment) (No. 5) Order 1992 and shall come into force on 27th July 1992.

(2) In this Order “the 1988 Order” means the Town and Country Planning General Development Order 1988(2).

Amendments to the 1988 Order

2. Subject to article 3, the 1988 Order shall have effect subject to the amendments set out in the Schedule.

Savings

3.—(1) The amendments made to the 1988 Order by paragraphs 3 to 8 and 10(b) and (c) of the Schedule shall not apply with respect to applications made under section 64 of the Town and Country Planning Act 1990 before the coming into force of this Order (and accordingly the provisions of the

(1) 1990 c. 8; section 74(1A) was inserted by section 19(1) of the Planning and Compensation Act 1991 (c. 34), section 188 was amended by paragraph 30 of Schedule 7 to that Act, section 193 was substituted by section 10(1) of that Act and section 196(4) was amended by paragraph 33(d) of Schedule 7 to that Act.
(2) S.I.1988/1813; relevant amending instruments are S.I. 1989/603; 1991/2805.

1988 Order amended by those paragraphs shall continue to apply to such applications in the form in which they were in force immediately before the coming into force of this Order).

(2) The amendments made to the 1988 Order by paragraphs 5, 10(a), 12, 13, and 14 of the Schedule shall not apply with respect to applications for established use certificates under section 192 of the Town and Country Planning Act 1990, as originally enacted, made before the coming into force of this Order (and accordingly the provisions of the apply to such applications in the form in which they were in force immediately before the coming into force of this Order).

Revocation

4. Article 2(1) of the Town and Country Planning General Development (Amendment) Order 1989⁽³⁾, article 7 of the Town and Country Planning General Development (Amendment) (No. 3) Order 1991⁽⁴⁾ and article 11 of the Town and Country Planning General Development (Amendment) (No. 4) Order 1992⁽⁵⁾ are hereby revoked.

29th June 1992

Michael Howard
Secretary of State for the Environment

29th June 1992

David Hunt
Secretary of State for Wales

(3) S.I. 1989/603.
(4) S.I. 1991/2805.
(5) S.I. 1992/[1493]

SCHEDULE

AMENDMENTS TO THE 1988 ORDER

1. In article 1—
 - (a) in paragraph (2), in the definition of “existing”, after “machinery” insert “or any use”;
 - (b) delete paragraph (4).
2. In article 3, after paragraph (4) insert—

“(4A) The permission granted by Schedule 2 shall not apply if—

 - (a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful;
 - (b) in the case of permission granted in connection with an existing use, that use is unlawful.”
3. Delete article 9.
4. In article 10, delete “or 9” in each place where it occurs.
5. In article 20(1), for paragraphs (b) to (d) substitute—
 - “(b) an application for a certificate of lawful use or development under section 191 or 192 of the Town and Country Planning Act 1990(6); or
 - (c) an application for approval of reserved matters.”
6. In article 23, delete “or 9” in both places where it occurs.
7. In article 25, delete paragraph (b).
8. In article 26(1), for “An applicant” to “Secretary of State by—” substitute—

“An applicant who wishes to appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990 shall give notice of appeal to the Secretary of State by—”.
9. After article 26 insert—

“Certificate of lawful use or development

26A.—(1) An application for a certificate under section 191(1) or 192(1) of the Town and Country Planning Act 1990 (“the 1990 Act”) shall be in writing and shall, in addition to specifying the land and describing the use, operations or other matter in question in accordance with those sections, include the following information—

- (a) the paragraph of section 191(1) or, as the case may be, section 192(1), under which the application is made;
- (b) in the case of an application under section 191(1), the date on which the use, operations or other matter began or, in the case of operations carried out without planning permission, the date on which the operations were substantially completed;
- (c) in the case of an application under section 191(1)(a), the name of any use class specified in an order under section 55(2)(f) of the 1990 Act which the applicant considers applicable to the existing use;
- (d) in the case of an application under section 191(1)(c), sufficient details of the planning permission to enable it to be identified;

(6) Sections 191 and 192 were substituted by section 10(1) of the Planning and Compensation Act 1991 (c. 34).

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- (e) in the case of an application under section 192(1)(a), the use of the land at the date of the application (or, when the land is not in use at that date, the purpose for which it was last used) and the name of any use class specified in an order under section 55(2)(f) of the 1990 Act which the applicant considers applicable to the proposed use;
 - (f) the applicant's reasons, if any, for regarding the use, operations or other matter described in the application as lawful; and
 - (g) such other information as the applicant considers to be relevant to the application.
- (2) An application to which paragraph (1) applies shall be accompanied by—
- (a) a plan identifying the land to which the application relates;
 - (b) such evidence verifying the information included in the application as the applicant can provide; and
 - (c) a statement setting out the applicant's interest in the land, the name and address of any other person known to the applicant to have an interest in the land and whether any such other person has been notified of the application.
- (3) Where such an application specifies two or more uses, operations or other matters, the plan which accompanies the application shall indicate to which part of the land each such use, operation or matter relates.
- (4) Article 10(1) and 23(4) shall apply to an application for a certificate to which paragraph (1) applies as they apply to an application for planning permission.
- (5) When the local planning authority receive an application to which paragraph (1) applies and any fee required to be paid in respect of the application, they shall, as soon as reasonably practicable, send to the applicant an acknowledgement of the application in the terms (or substantially in the terms) set out in Part I of Schedule 3.
- (6) Where, after sending an acknowledgement as required by paragraph (5), the local planning authority consider that the application is invalid by reason of the failure to comply with the preceding paragraphs of this article or any other statutory requirement, they shall, as soon as practicable, notify the applicant that his application is invalid.
- (7) The local planning authority may by notice in writing require the applicant to provide such further information as may be specified to enable them to deal with the application.
- (8) The local planning authority shall give the applicant written notice of their decision within a period of 8 weeks beginning with the date of receipt by the authority of the application and any fee required to be paid in respect of the application or, except where the applicant has already given notice of appeal to the Secretary of State, within such extended period as may be agreed upon in writing between the applicant and the authority.
- (9) For the purpose of calculating the appropriate period specified in paragraph (8), where any fee required has been paid by a cheque which is subsequently dishonoured, the time between the date when the authority send the applicant written notice of the dishonouring of the cheque and the date when the authority receive the full amount of the fee shall not be taken into account.
- (10) Where an application is refused, in whole or in part (including a case in which the authority modify the description of the use, operations or other matter in the application or substitute an alternative description for that description), the notice of decision shall state clearly and precisely the authority's full reasons for their decision and shall include a statement to the effect that if the applicant is aggrieved by the decision he may appeal to the Secretary of State under section 195 of the 1990 Act.
- (11) A certificate under section 191 or 192 of the 1990 Act shall be in the form set out in Schedule 6.

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(12) Where a local planning authority propose to revoke a certificate issued under section 191 or 192 of the 1990 Act in accordance with section 193(7) of that Act, they shall, before they revoke the certificate, give notice of that proposal to—

- (a) the owner of the land affected;
- (b) the occupier of the land affected;
- (c) any other person who will in their opinion be affected by the revocation; and
- (d) in the case of a certificate issued by the Secretary of State under section 195 of the 1990 Act, the Secretary of State.

(13) A notice issued under paragraph (12) shall invite the person on whom the notice is served to make representations on the proposal to the authority within 14 days of service of the notice and the authority shall not revoke the certificate until the expiry of all such periods allowed for making representations have expired.

(14) An authority shall give written notice of any revocation under section 193(7) of the 1990 Act to every person on whom notice of the proposed revocation was served under paragraph (12).”

10. In article 27—

- (a) in paragraph (3), delete “or 95 (applications for established use certificates)”;
- (b) for paragraph (4) substitute—

“(4) The register kept by the local planning register authority shall also contain the following information in respect of every application for a certificate under section 191 or 192 of the Town and Country Planning Act 1990 relating to the authority’s area—

- (a) the name and address of the applicant;
- (b) the date of the application;
- (c) the address or location of the land to which the application relates;
- (d) the description of the use, operations or other matter included in the application;
- (e) the decision (if any) of the local planning authority in respect of the application and the date of such decision; and
- (f) the reference number, date and effect of any decision of the Secretary of State on an appeal in respect of the application.”

- (c) in paragraph (5), for “, paragraph (3) or paragraph (4)” substitute “or paragraph (3)”.

11. In article 28—

- (a) after paragraph (1) insert—

“(1A) That register shall also contain the following information with respect to every breach of condition notice served in relation to land in the area of the authority maintaining the register—

- (a) the address of the land to which the notice relates or a plan by reference to which its situation can be ascertained;
- (b) the name of the serving authority;
- (c) the date of service of the notice;
- (d) details of the relevant planning permission sufficient to enable it to be identified;
- (e) a statement or summary of the condition which has not been complied with and the requirements of the notice, including the period allowed for compliance.”;

- (b) for paragraph (2) substitute—

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“(2) All entries relating to an enforcement notice, stop notice or breach of condition notice shall be removed from the register if—

- (a) in the case of an enforcement notice or stop notice, the relevant enforcement notice is quashed by the Secretary of State;
- (b) in the case of a breach of condition notice, the notice is quashed by a court;
- (c) in any case, the relevant notice is withdrawn.”;

(c) for paragraph (4) substitute—

“(4) Where a county planning authority issue an enforcement notice or serve a stop notice or a breach of condition notice they shall supply the information specified in paragraph (1) or (1A), as the case may be, in relation to the notice to the district planning authority in whose area the land to which the notice relates is situated and shall inform that authority if the notice is withdrawn or the relevant enforcement notice or breach of condition notice is quashed.”;

(d) in paragraph (5), after “paragraph (1)” insert “and (1A)”.

12. Delete article 29.

13. In the form set out in Part I of Schedule 3, for “or for an established use certificate” substitute “or for a certificate of lawful use or development”.

14. For Schedule 6 to the 1988 Order substitute—

“SCHEDULE 6

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191 AND 192
TOWN AND COUNTRY PLANNING GENERAL DEVELOPMENT ORDER 1988: ARTICLE
26A*CERTIFICATE OF LAWFUL USE OR DEVELOPMENT*

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The (a) _____ Council hereby certify that on (b) _____ the use*/operations*/matter* described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged*/hatched*/coloured* (c) _____ on the plan attached to this certificate, was*/would have been* lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason(s)

Signed _____ (Council's authorised officer).

On behalf of (a) _____ Council

Date _____

First Schedule

(d)

Second Schedule

(e)

Notes

1 This certificate is issued solely for the purpose of section 191*/192* of the Town and Country Planning Act 1990 (as amended).

2 It certifies that the use*/operations*/matter* specified in the First Schedule taking place on the land described in the Second Schedule was*/would have been* lawful, on the specified date and, thus, was not*/would not have been* liable to enforcement action under section 172 of the 1990 Act on that date.

3 This certificate applies only to the extent of the use*/operations*/matter* described in the

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First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use*/operations*/matter* which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.

*4 The effect of the certificate is also qualified by the proviso in section 192(4) of the 1990 Act, as amended, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters relevant to determining such lawfulness.

* delete where inappropriate

Insert:

- (a) name of Council
 - (b) date of application to the Council
 - (c) colour used on the plan
 - (d) full description of use, operations or other matter, if necessary, by reference to details in the application or submitted plans, including a reference to the use class, if any, of the Use Classes Order within which the certificated use falls
 - (e) address or location of the site
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EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Town and Country Planning General Development Order 1988 by making provision in respect of breach of condition notices and certificates of lawful use or development, which were introduced by the Planning and Compensation Act 1991.

The main amendments are—

- (1) the introduction of a requirement that permitted development rights may only be exercised in relation to an existing use or building if the use or the construction of the building is lawful (paragraph 2 of the Schedule);
- (2) the prescription of procedural and other requirements in relation to certificates of lawful use or development (paragraph 9 of the Schedule);
- (3) the introduction of registration requirements in relation to breach of condition notices (paragraph 11 of the Schedule).

The Order also makes various amendments to the 1988 Order consequential on the repeal by the 1991 Act of the provisions of the Town and Country Planning Act 1990 relating to applications to determine whether planning permission is required and for established use certificates and their replacement with provisions relating to certificates of lawful use or development.

The amendments to the 1988 Order are subject to the savings set out in article 3 .

Article 4 revokes previous amendment order provisions which are superseded by this Order.

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