

EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (ENGLAND) (AMENDMENT) ORDER 2016

2016 No. 332

AND

THE TOWN AND COUNTRY PLANNING (COMPENSATION) (ENGLAND) (AMENDMENT) REGULATIONS 2016

2016 No. 331

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 2016 (“the Amendment Order”) amends the Town and Country Planning (General Permitted Development) (England) Order 2015 (“the General Permitted Development Order”) to:
- allow the changes of use of certain buildings to residential use;
 - introduce new permitted development rights allowing the drilling of boreholes for the purposes of carrying out groundwater monitoring, carrying out seismic monitoring, or locating and appraising the condition of mines, which is preparatory to potential petroleum exploration; and
 - make several amendments to clarify wording within the General Permitted Development Order.
- 2.2 The Town and Country Planning (Compensation) (England) (Amendment) Regulations 2016 amend the Town and Country Planning (Compensation) (England) Regulations 2015 (“the Compensation Regulations”), to limit or exclude, in specified circumstances, the liability of local planning authorities to pay compensation on withdrawal of the permitted development right for the change of use of light industrial premises to dwellinghouses which is 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 this instrument is subject to negative resolution 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 Sections 59, 60, 61 and 333(7) of the Town and Country Planning Act 1990 give the Secretary of State power to grant planning permission for categories of development specified in a development order. The General Permitted Development Order is made under these powers and grants planning permission for a range of specific types 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 give “prior approval” of certain matters.
- 4.2 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 services
 - B1:** Business
 - B1(a): offices, not within A2
 - B1(c) light industry
 - B2: general industrial
 - B8:** Storage or distribution
 - C3:** Dwellinghouses
- 4.3 The Use Classes Order also refers to certain uses as ‘sui generis’ uses. These uses are not grouped with any other uses and include launderettes, which are referred to in the Amendment Order.

New and amended permitted development rights for the change of use

- 4.4 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:
- planning permission is granted for launderettes to change to dwellinghouses, subject to the limitations and conditions set out in Class M;
 - the existing temporary permitted development right in Class O to change buildings in office use to dwellinghouses is made permanent, with a condition allowing the local planning authority to consider certain noise impacts. The exemption from this right of areas listed in article 2(5) of the General Permitted Development Order is removed with effect from 31 May 2019;
 - a new temporary permitted development right for the change of use of buildings in light industrial use to dwellinghouses is created, subject to limitations and conditions including the prior approval of the local planning authority in respect of certain matters.

Article 4 Directions

- 4.5 Local planning authorities may remove permitted development rights within their area by making a direction under article 4 of the General Permitted Development Order, subject to certain exceptions listed in article 4. By virtue of section 17(2) of the

Interpretation Act 1978, article 4 directions made before the Amendment Order will remain effective in relation to the amended rights, according to the terms of the direction.

New permitted development rights relating to potential mineral exploration

- 4.6 Classes J and K of Part 17 of Schedule 2 to the General Permitted Development Order grant permitted development rights in respect of development consisting of the drilling of boreholes; the carrying out of seismic surveys; and the making of other excavations for the purpose of mineral exploration. Each of these classes expressly provides that it does not permit development if it consists of the drilling of boreholes for petroleum exploration.
- 4.7 The Amendment Order introduces new permitted development rights allowing the drilling of boreholes for the purposes of carrying out groundwater monitoring, carrying out seismic monitoring, or locating and appraising the condition of mines, which is preparatory to potential petroleum exploration. This will help support environmental monitoring needed in respect of petroleum exploration.

Other amendments

- 4.8 Section 28 of the Small Business, Enterprise and Employment Act 2015 requires the Secretary of State to conduct a review of regulatory provisions made after 1 July 2015. The Amendment Order inserts a review clause into the General Permitted Development Order. Although the General Permitted Development Order was made before 1 July 2015, a review of amendments made after this date should logically be extended to the whole of the framework set out in the General Permitted Development Order.
- 4.9 The Amendment Order makes a number of minor amendments to clarify wording in the General Permitted Development Order, and to require developers to submit to the local planning authority a statement specifying the number of additional homes which will be created under permitted development rights allowing the change of use of buildings to residential use.

Compensation liability

- 4.10 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, the Compensation Regulations limit compensation liability in specified circumstances, and exclude compensation liability altogether in specified circumstances including:
- when a time-limited permitted development right comes to an end;
 - when notice of withdrawal of the right is given in the manner prescribed in the Compensation Regulations. This includes giving advance notice of withdrawal under article 4 of the General Permitted Development Order, provided notice is given in the manner specified.

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. Department for Communities and Local Government housing completions data shows an increase of over 8,000 in the number of homes delivered in England through a change of use in 2014/15 over the previous year. It is reasonable to assume that a proportion of these homes would have been delivered through permitted development, primarily office to residential which has the highest volume of applications and has been in place the longest, allowing homes to be built out.
- 7.2 The government has an ambition to support the delivery of one million new homes by 2020, and to encourage the best use of brownfield land. In support of this commitment, the Amendment Order introduces new or amended permitted development rights for the change of use of buildings to residential use (C3), by amending Schedule 2, Part 3 of the General Permitted Development Order as described below.
- 7.2.1 Class M is extended to apply to launderettes. This permits the change of use of retail, betting offices or pay day loan shops to residential, and allows for building works which are reasonably necessary to make this change. This is intended to support housing delivery and mixed and vibrant high streets that provide a balance of retail, leisure and residential use. The right is subject to a prior approval process which enables the effect of the development on the adequate provision of services to be considered, as is the case for other retail uses within Class M.
- 7.2.2 The existing, temporary permitted development right in Class O for the change of use of office buildings to residential is made permanent, with the inclusion of a condition which will allow the local planning authority to consider mitigation proposals in respect of noise from surrounding commercial uses. Department for Communities and Local Government planning application statistics show that there has been a high take up of the right, with nearly 4,000 permissions since April 2014. When the right was introduced in 2013, the areas listed in article 2(5) of the General Permitted Development Order were exempted so that local planning authorities could protect office space in key business areas. The Amendment Order extends these exemptions until 30 May 2019 to give local planning authorities time to withdraw the Class O rights, where appropriate, by issuing article 4 directions in line with national policy, without incurring liability for compensation (see paragraph 7.3 below).
- 7.2.3 A new permitted development right (Class PA) is introduced for a three year period to allow light industrial buildings to change use to residential. The right will have effect from 1 October 2017, to enable local authorities to issue a direction withdrawing the right under article 4 of the General Permitted Development Order where appropriate,

and in line with national policy, without incurring liability for compensation (see paragraph 7.3 below). The right enables light industrial buildings that may already be sited in residential areas to be used to provide new homes. It is subject to a prior approval process which enables the impact the change of use would have on existing industrial or storage and distribution services to be considered.

- 7.3 Class PA 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 Town and Country Planning Act 1990. These exclusions and limitations therefore apply to Class M and Class O of Part 3 of Schedule 2 (as amended), as well as to new Class PA (see paragraph 4.10 above).

Permitted development rights relating to potential mineral exploration

- 7.4 The Government is committed to ensuring that we maximise economic recovery of the country's hydrocarbon resources. Exploring and developing our shale gas and oil resources in particular, in a responsible and sustainable way, could potentially bring substantial benefits and help meet our objectives for secure energy supplies, economic growth and lower carbon emissions.
- 7.5 Certain environmental monitoring and investigative activities need to take place as a precursor to, and to inform, potential planning proposals for the exploration and extraction of petroleum. Unlike other types of mineral development, there is currently a requirement on an operator when seeking to undertake petroleum exploration to seek planning permission from the relevant mineral planning authority to drill boreholes for these activities.
- 7.6 Classes J and K of Part 17 of Schedule 2 to the General Permitted Development Order currently grant permitted development rights in respect of development consisting of the drilling of boreholes; the carrying out of seismic surveys; or the making of other excavations for the purpose of mineral exploration. Class J permits development for a period of 28 days. Class K permits development for up to 6 months, provided the developer has given notice to the relevant mineral planning authority. In certain circumstances, the mineral planning authority may make a direction restricting development rights under Class K. Both classes are subject to limitations and conditions. In particular, development is not permitted if it consists of the drilling of boreholes for petroleum exploration.
- 7.7 The Amendment Order therefore introduces a new permitted development right which will help support environmental monitoring in preparation for petroleum exploration. It allows the drilling of boreholes for the purposes of carrying out groundwater monitoring, carrying out seismic monitoring, or locating and appraising the condition of mines, where this is preparatory to potential petroleum exploration. This will enable developers to carry out certain monitoring and investigative activities much earlier than they can currently under the planning process. It is not considered that the carrying forward of these activities would generally give rise to impacts which require an application for planning permission. The changes should help provide early reassurance that environmental impacts are being properly considered by the regulatory regime.
- 7.8 New Class JA will allow such development to take place for a period not exceeding 28 consecutive days. Class JA sets out a number of circumstances in which

development is not permitted, and also provides that development is subject to conditions.

- 7.9 Under new Class KA, where a developer has notified the mineral planning authority for its area in writing of its intentions, such development may take place for a period not exceeding 24 months (in the case of the drilling of boreholes for carrying out groundwater monitoring) or 6 months (in the case of drilling of boreholes for carrying out seismic monitoring, or locating and appraising the condition of mines) unless the mineral planning authority has otherwise agreed in writing. In the case of Class KA, a mineral planning authority that has been notified of intended development may, in certain circumstances, make a direction restricting permitted development rights if satisfied that it is expedient that development should not proceed unless permission is granted for it on an application. As with Class JA, Class KA is subject to exclusions and conditions.
- 7.10 The Order also makes small changes in respect of the existing permitted development rights under Classes J and K of Part 17 of Schedule 2 to the General Permitted Development Order. Class J is amended so that development will not be permitted in the Broads. Both classes are amended so that, in line with new classes JA and KA, the height restriction on any structure assembled or provided in respect of permitted development is raised from 12 metres to 15 metres, in line with modern drilling techniques.

Consolidation

- 7.11 The General Permitted Development Order and the Compensation Regulations consolidate previous legislation and came into force on 15 April 2015 (SI 2015/596 and SI 2015/598). These are the first amendments and there are no current plans for further consolidation.

8. Consultation outcome

Permitted development rights for the change of use

- 8.1 A consultation on the measures in the Amendment Order regarding the change of use was carried out from 31 July to 29 September 2014, as part of the “Technical Consultation on Planning”, (<https://www.gov.uk/government/consultations/technical-consultation-onplanning>) which covered a range of planning related measures. A package of new and amended permitted development rights taking forward many of the proposals included in this consultation came into force in April 2015.
- 8.2 In total over 940 responses were received on the permitted development rights consultation proposals, from a range of organisations and individuals in the public and private sector.
- 8.3 There was varying support for the proposed permitted development rights for the change of use from offices, light industrial, and launderettes to residential use. Although the delivery of additional homes was welcomed by both individuals and local planning authorities, there was some concern, particularly from local planning authorities, that the office to residential permitted development right could impact on existing businesses and did not provide for affordable housing.
- 8.4 In October 2015 Ministers announced that following further consideration the government would make permanent the permitted development right for the change of use from office to residential, and bring forward the proposals to allow the change of

use from light industrial buildings and launderettes to residential. This decision was taken as a result of the high take-up of the temporary right to change offices to residential use (see paragraph 7.2.2) and the role that the government believes permitted development rights are able to play in helping to achieve its housing ambitions. It considers that the high take-up of the office to residential permitted development right is a result of the greater level of certainty which the streamlined process provides. In drafting this order, it has sought to achieve the same benefits whilst enabling key impacts to be controlled at a local level. Specifically, in response to concerns raised in the consultation, the government has included the exemptions and conditions listed in paragraph 7.2 – 7.2.3.

- 8.5 Among the responses to the consultation, there was general agreement that compensation liability should be limited in order not to impose additional costs on a local planning authority which has withdrawn the new rights by issuing an article 4 direction in order to protect the wellbeing or amenity of the area. The Town and Country Planning (Compensation) (England) (Amendment) Regulations 2016 address this concern as described in paragraph 7.3 above.

Permitted development rights relating to potential mineral exploration

- 8.6 The measures in the Amendment Order which permit development comprising the drilling of boreholes were subject to two separate public consultations, in March and August 2015.
- 8.7 The first consultation was carried out from 5 March to 16 April 2015, and included proposals to introduce permitted development rights for the drilling of boreholes for the purposes of groundwater monitoring for petroleum exploration. The consultation included proposals to introduce a temporary right (for development not exceeding 28 days) and a longer term right which permitted development for up to 6 months (or longer if agreed with the relevant mineral planning authority). In total 28 responses were received to the consultation from industry representatives, the Environment Agency, local authorities, landowners and individual members of the public. Seventeen of these responses supported the proposal, did not express an outright view for or against, or considered that additional conditions or exemptions were required in taking the proposal forward. Eleven representations were against the proposals.
- 8.8 Following consideration of the responses received to the March consultation, the Government consulted between 13 August to 24 September 2015 on additional proposals to extend the proposed new rights to cover boreholes for seismic investigation and monitoring and for the location and appraisal of mine workings. The Government also consulted on a proposal to extend the timescale of the longer term right to allow the drilling of boreholes for ground water monitoring for up to 24 months.
- 8.9 Twenty three responses were received to these further consultation proposals, from industry representatives, water companies, local authorities, the Environment Agency and the Coal Authority, environmental groups and individual members of the public.
- 8.10 Those respondents supporting the measures emphasised the need to allow environmental monitoring data to be made available at an early stage of the planning process. This would better inform any future consideration of proposals for petroleum exploration itself. Those who were opposed to these proposals expressed a general concern about potential shale development in general. Concern was also raised about potential loss of accountability and scrutiny of planning impacts. More

details of the responses to the consultation and the Government's response to these can be found under <https://www.gov.uk/government/consultations/further-amendments-to-permitted-development-rights-for-petroleum-exploration-site-investigation-and-monitoring>.

- 8.11 Having carefully considered responses, the Government decided to take forward its proposed measures. As proposed in the consultation, these rights will be subject to the same relevant restrictions and conditions as are applied in respect of existing rights for mineral exploration under Classes J and K of Part 17 to Schedule 2 of the General Permitted Development Order, with some changes to address some of the matters raised in response to the consultations.
- 8.12 The Government has also decided to make changes to the existing permitted development rights under Classes J and K of Part 17 to Schedule 2 relating to mineral exploration. Development for mineral exploration will no longer be permitted under Class J in the Broads. The height restriction on any structures assembled or provided in respect of development under Class J and K has also been raised from 12 metres to 15 metres.

9. Guidance

- 9.1 There are no plans to issue specific new guidance for these statutory instruments. Planning guidance is available through the on-line tool at <http://planningguidance.planningportal.gov.uk/>

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 Validation impact assessments for the new and amended permitted development rights for the change of use, and the drilling of boreholes, which assesses the direct costs on business, will be published on legislation.gov.uk.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by businesses, including small businesses. The new and 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 Department for Communities and Local Government will monitor progress and carry out a review of these permitted development rights by April 2021.

13. Contact

- 13.1 Maria Darby at the Department for Communities and Local Government (Tel: 0303 444 1463 or e-mail: maria.darby@communities.gsi.gov.uk) can answer any queries regarding that element of this instrument relating to permitted development rights for the change of use and other amendments referred to in 4.8 and 4.9.
- 13.2 Roger Wand at the Department for Communities and Local Government (Tel: 0303 444 1688 or e-mail: roger.wand@communities.gsi.gov.uk) can answer any queries regarding that element of this instrument relating to permitted development rights for the drilling of borehole measures.