

EXPLANATORY MEMORANDUM TO
**THE TOWN AND COUNTRY PLANNING (PERMITTED DEVELOPMENT,
ADVERTISEMENT AND COMPENSATION AMENDMENTS) (ENGLAND)
REGULATIONS 2019**

2019 No. 907

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 In October 2018, the Ministry of Housing, Communities and Local Government published a consultation with proposed measures to support the high street and increase the delivery of new homes, called *Planning Reform: supporting the high street and increasing the delivery of new homes*. Following consideration of the responses to that consultation, the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 (“the Amendment Regulations”) are being introduced to bring forward some of those proposed measures, as well as making minor technical and clarificatory amendments.
- 2.2 Part 2 of the Amendment Regulations amend the Town and Country Planning (General Permitted Development) (England) Order 2015 (“the General Permitted Development Order”) to:
- make permanent the time limited permitted development right to build a larger rear extension to a dwellinghouse;
 - allow for the erection of taller upstands for off street electric vehicle charging points;
 - amend the existing right to additionally allow the change of use from takeaways to residential use;
 - allow the change of use from retail, takeaways, betting offices, payday loan shops, and launderettes to office use;
 - amend the existing right to additionally allow the temporary change of use to specified community uses: exhibition hall, public library, museum, clinic or health centre, or art gallery (other than for sale or hire), and to extend the period of temporary use from two years to three;
 - remove the existing permitted development right which allows the installation, alteration or replacement of a public call box by or on behalf of an electronic communications code operator subject to certain conditions;
 - make minor amendments and clarifications within the General Permitted Development Order, including to:
 - amend the definition of transport undertakers;
 - clarify that homes permitted under Class Q of Part 3 of Schedule 2 may be no more than 465 square metres;

- update references to the National Planning Policy Framework to refer to the 2019 revision; and
 - amend Class C of Part 4 of Schedule 2 to ensure that where there is a temporary use of a building as a state-funded school, that the building retains its original use or use class and any associated rights to change to a permanent state-funded school.
- 2.3 Part 3 of the Amendment Regulations amend the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (“the Advertisement Regulations”) to remove deemed consent for the display of advertisements on telephone kiosks.
- 2.4 Part 4 of the Amendment Regulations amend the Town and Country Planning (Compensation) (England) Regulations 2015 (“the Compensation Regulations”) to limit to twelve months, the period during which a local planning authority may be liable to pay compensation and to exclude compensation liability altogether where it withdraws the new permitted development right to change use from retail (shops (A1)), financial and professional services (A2), hot food takeaways (A5), betting offices, pay day loan shops and launderettes to office use by making a direction under article 4 of the General Permitted Development Order for which they have given at least twelve months’ notice.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.
- 3.3 The instrument does not have any minor or consequential effects outside England.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 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.

- 6.2 The Amendment Regulations amend 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”.
- 6.3 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 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. The classes in the Use Classes Order which are relevant to the Amendment Regulations are:
- A1: Shops
 - A2: Financial and professional services
 - A5: Hot food takeaways
 - B1(a): Office
 - C3: Dwellinghouses
 - D1: Non-residential institution
 - Certain named sui generis uses.
- 6.4 Advertisements are subject to a separate consent regime within the planning process under Chapter 3 of Part 8 of the 1990 Act. Advertisements are controlled with reference to their effect on amenity and public safety only.
- 6.5 The Compensation Regulations can limit or exclude, in specified circumstances, the liability of local planning authorities to pay compensation on withdrawal of a permitted development right contained within the General Permitted Development Order.

The General Permitted Development Order

Amended permitted development right for householders

- 6.6 Part 1 of Schedule 2 to the General Permitted Development Order grants planning permission in respect of development within the curtilage of a dwellinghouse. The Amendment Regulations amend the Class A right for the extension of dwellinghouses to remove the date by which a larger extension must be complete, thereby making the right permanent.

Amended permitted development right for electrical upstands for recharging vehicles

- 6.7 Part 2 of Schedule 2 to the General Permitted Development Order grants planning permission in respect of minor operations. Class E provides for development of electric vehicle charging points in areas used for off street parking. The Amendment Regulations amend the Class E right to allow for taller upstands.

New and amended permitted development rights for the change of use

- 6.8 Part 3 of Schedule 2 to the General Permitted Development Order grants planning permission in respect of various changes of use of buildings.

- 6.9 The Amendment Regulations introduces a new right (Class JA) for buildings in use as retail (shops (A1)), financial and professional services (A2)), hot food takeaways (A5), betting offices, pay day loan shops and launderettes to change use to an office (B1 (a)).
- 6.10 In addition, the Amendment Regulations amend the Class M right to allow for the change of use of hot food takeaways (A5) to residential use, subject to prior approval by the local planning authority.
- 6.11 Part 4 of Schedule 2 to the General Permitted Development Order grants planning permission in respect of the temporary use of land or buildings. The Amendment Regulations amends Class D to broaden the range of uses to which premises may change to include specified community uses. These community uses include; for the provision of any medical or health service (D1(a)), the display of works of art (otherwise than for sale or hire) (D1(d)), museums (D1(e)), for a public library or public reading room (D1(f)) and public hall or exhibition hall (D1(g)). The Amendment Regulations also extend the period for the temporary use from two years to three.

Amended permitted development rights for electronic communication code operators

- 6.12 Part 16 of Schedule 2 to the General Permitted Development Order grants planning permission in respect of certain development by or on behalf of electronic communications code operators for the purpose of their electronic communications code network. The Amendment Regulations remove from Class A, Part 16 of Schedule 2, the right to install, alter or replace a public call box where the ground or base area of the structure would not exceed 1.5 square metres subject to the requirement to apply for a determination as to whether the prior approval of the local planning authority is required as to the siting and appearance of the development.

Other minor amendments and clarifications

- 6.13 The Amendment Regulations also:
- amends article 2(1) to clarify that “transport undertakers” means, in addition to the definition of transport undertakers in section 329 of the Highways Act 1980, any person authorised to carry on a road transport or tramway undertaking, therefore they may benefit from Class C of Part 9;
 - clarifies that dwellinghouses developed under Class Q of Part 3 of Schedule 2, for the change of use from agricultural buildings to residential use may not be bigger than 465 square metres;
 - updates the references to the National Planning Policy Framework to refer to the 2019 revision; and
 - amends Class C of Part 4 of Schedule 2 to ensure that where there is a temporary use of a building as a state-funded school, that the building retains its original use or use class and any associated rights to change to a permanent state-funded school.

Consent for the display of advertisements

- 6.14 Under Part 8 of the 1990 Act, regulations may make provisions for restricting or regulating the display of advertisements so far as appears to the Secretary of State to be expedient in the interests of amenity or public safety. The Advertisement

Regulations set out procedures relating to the display of advertisements. The Advertisement Regulations grant consent for the display of certain classes of advertisement (“deemed consent”). Where deemed consent is not granted, and express consent is required, the procedure for making an application for express consent is comparable to that for making an application for planning permission. Local planning authorities are required to exercise their powers under the Advertisement Regulations in the interests of amenity and public safety, taking into account the provisions of the development plan, so far as they are material and any other relevant factors.

Compensation

- 6.15 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 1990 Act. 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.
- 6.16 The Compensation Regulations limit, to twelve months, the period during which a local planning authority may be liable to pay compensation in relation to the permitted development right in Class P of Part 3 of Schedule 2 to the General Permitted Development Order which will come to an end on the 10th of June 2019. The Amendment Regulations amend the Compensation Regulations to exclude compensation liability altogether where the local planning authority withdraws the new permitted development right in Class JA of Part 3 or Schedule 2 to the Order, by a direction under article 4 of the Order for which they have given at least 12 months’ notice.
- 6.17 These changes are being made to place limits on the compensation liability of local planning authorities arising from the implementation of the measures which are being brought forward following the government consultation in 2018.

7. Policy background

What is being done and why?

- 7.1 Following the consultation *Planning Reform: supporting the high street and increasing the delivery of new homes* legislative changes are being made to support housing delivery and enable high streets to adapt and diversify. These measures are necessary to support key Government agendas and cannot be delivered through other measures such as guidance.
- 7.2 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 certainty, whilst including specific planning controls and limitations. Permitted development rights support key Government agendas such as high streets and housing.

- 7.3 The Amendment Regulations amend Schedule 2 to the General Permitted Development Order as follows:

Permitted development right for householders

- 7.4 To enable further householders to benefit from a larger extension to their home without the need for a planning application, Regulation 4 amends the Part 1 of Class A of Schedule 2 permitted development right for enlargement, improvement or alteration of a dwellinghouse (C3). The amendment removes the date by which the larger extension must be completed, thereby making the right permanent. Those with prior approval no longer have to complete the development by 30 May 2019, including where this is set out in a letter granting prior approval. Any existing article 4 direction in respect of larger extensions to dwellinghouses will remain in force unless it is expressly time limited. Applicants will no longer be required to notify the local planning authority that the development is complete.

Permitted development right for electrical upstands for recharging vehicles

- 7.5 The Government is committed to increasing the usage of zero emission vehicles to improve air quality, the environment, and cut fuel costs. The Road to Zero Strategy sets out that by 2050 nearly all cars and vans should be zero emission vehicles. To support the expanded usage of electric vehicles, the existing permitted development right is being amended in order that it keep pace with modern technology for rapid charging. Regulation 5 amends Class E of Part 2 of Schedule 2 to allow for taller upstands for off street electric vehicle charging points. The height limit for off street charging point upstands is increased from 1.6 to 2.3 metres. To protect the amenity and character of residential areas, the height limit for a charging point upstand is not increased where it is within the curtilage of a dwellinghouse, or block of flats. Regulation 5 also defines “block of flats” as a building which consists of at least two flats, for the purposes of Class E of Part 2 of Schedule 2.

Permitted development rights to support the high street

- 7.6 To support greater diversity of uses and increase footfall on the high street, regulation 6 of the Amendment Regulations introduces a new permitted development right to allow retail (shops (A1)), financial and professional services (A2), hot food takeaways (A5), betting offices, pay day loan shops, and launderettes to change up to 500 square metres of floorspace to office use (B1(a)). This new Class JA of Part 3 of Schedule 2 right applies to buildings that were in such uses on 29 October 2018, the date the consultation was launched, or if not in use on that date in such uses when last in use. The right is subject to prior approval by the local planning authority in respect of transport and highways impacts, impacts of noise from commercial and retail premises on the intended occupiers, and the consideration of the loss of that use on the adequate provision of services or the sustainability of that shopping area. Regulations 13 and 14 of the Amendment Regulations set out that offices delivered under Class JA may not benefit from rights in Part 7, Classes F and G of Schedule 2 to the Order, to extend or alter an office building, or to lay a hard surface for an office building. In order to limit the compensation liability on local planning authorities, regulation 18 of the Amendment Regulations amends the Compensation Regulations to exclude compensation liability altogether where the local planning authority withdraws the new permitted development right in Class JA of Part 3 or Schedule 2 to the Order, by

a direction under article 4 of the Order for which they have given at least 12 months' notice.

- 7.7 To further support both high streets and housing delivery, regulation 7 of the Amendment Regulations amends the existing Class M right of Part 3 of Schedule 2 to additionally provide for change of use from hot food takeaways (A5) to residential use (C3), subject to the same matters for prior approval. Existing article 4 directions made under the General Permitted Development Order in respect of Class M, will apply to the amended right, and there are no new compensation liabilities in such cases.
- 7.8 To support business start-ups and community uses on the high street, regulation 11 of the Amendment Regulations amends the existing Class D of Part 4 of Schedule 2 permitted development right for the temporary change of use to additionally allow for the change of use to certain named community uses in the D1 Non-residential institution use class: clinic or health centre (D1(a)), art gallery (for the display of works of art (other than for sale or hire)) (D1(d)), museum (D1(e)), public library or public reading room (D1(f)), public hall or exhibition hall (D1(g)). In addition, to allow longer time to establish a business or community use, the period of temporary use is extended from 2 years to 3 years.

Amendments in respect of public call boxes

- 7.9 Electronic communication code operators, registered by Ofcom, the communications regulator, have broad permitted development rights in Class A of Part 16 of Schedule 2 to the General Permitted Development Order for the purpose of the operator's electronic communications network. To respond to the concerns about the impact on amenity from the proliferation of public call boxes, regulation 16 of the Amendment Regulations removes the permitted development right which allows the installation, alteration or replacement of a public call box. This would not prevent a new public call box being installed, rather in the future it would be the subject of consideration through a full planning application. The amendment has no effect on existing public call boxes to the extent that an operator will be able to maintain, alter and replace them.
- 7.10 To deliver certainty on the scope of the change, regulation 19 of the Amendment Regulations provides a definition of a public call box where none existed before. This amendment does not impact on other rights within Class A which continue to allow, for example, the installation of the small cell systems that will be required for 5G networks, and for which no prior approval is required.
- 7.11 Advertisements fall into three categories. Those that require no consent to be displayed, those with deemed consent, which can be displayed subject to certain conditions and limitations, and others where express consent has to be sought from the local planning authority before they can be displayed. Regulation 17 of the Amendment Regulations removes the deemed consent to display an advertisement on the glazed surface of a telephone kiosk subject to certain conditions. This means that where an applicant decides they wish to place an advertisement, an application for express consent will be needed to display an advertisement on a public call box. This is a separate planning process.
- 7.12 A surface of an existing public call box which was used for displaying an advertisement on or before commencement of the Amendment Regulations can continue to be used for that purpose.

- 7.13 Regulation 19 of the Amendment Regulations provides for transitional arrangements in respect of applications for prior approval made before the commencement of the Amendment Regulations, and any subsequent appeals. Where a “prior approval event” (as defined in regulation 19) has occurred before or after commencement of the Amendment Regulations (whichever is applicable), operators may continue to rely on the permitted development right as though the changes to the General Permitted Development Order had not been made. A prior approval event includes prior approval granted after commencement of the Amendment Regulations, in relation to an appeal lodged within 6 months of the date of the notice of refusal of a prior approval application which was submitted prior to the commencement date.
- 7.14 Development must begin within 5 years of the date of prior approval, or, in any other case not later than the expiration of 5 years beginning with the date on which the local planning authority received the application for prior approval.
- 7.15 This change is being brought forward to remove a right which was introduced when landline telephony was the means of phone communication and to support the development of a network which is now in place. The recent proliferation of public call box prior approval applications suggests that in some cases, the right being used for purposes other than that which was originally intended. This has raised concern in some areas about the adverse impact on the local amenity. At the same time, the increased number of prior approval applications for additional public call boxes in city centres have raised planning concerns regarding the adverse impact on highway safety, accessibility and the cumulative impact on the street scene of additional structures on the pavement, which can lead to an impact on the amenity of the area and a less attractive high street. The Class A right is therefore being amended to require a planning application for any new public call box and provide greater opportunity for local consideration of the installation of new public call boxes. Removing deemed advertisement consent allows for local consideration of the merits of the placing of an advertisement on any new public call box. It would not affect the ability to display an advertisement on the surface of a public call box which was used for displaying an advertisement on or before 24th May 2019.
- 7.16 Compensation may be payable by the local planning authority to a person interested in the land where planning permission is refused or granted subject to conditions other than those imposed by the General Permitted Development Order on an application for permission made within 12 months of the permitted development right being removed.

Other minor amendments and clarifications

- 7.17 Regulation 8 of the Amendment Regulations makes clear that dwellinghouses (C3) developed under Class Q of Part 3 of Schedule 2, for the change of use from agricultural buildings to residential use may not be bigger than 465 square metres.
- 7.18 Regulations 9, 12 and 15 of the Amendment Regulations amend references to the 2012 National Planning Policy Framework to reflect that a revised version was published in February 2019. References in paragraph W(10)(b) of Part 3 of Schedule 2, paragraph E.3(10)(c) of Class E of Part 4 of Schedule 2, paragraph J.4(8)(a) of Class J of Part 14 of Schedule 2, and the related footnotes now refer to the 2019 National Planning Policy Framework.
- 7.19 Regulation 10 of Amendment Regulations makes clear that where there is a temporary use of a building as a state-funded school under Class C of Part 4, the building retains

its original use or use class. This means that where appropriate, certain buildings which are in use as a temporary state-funded school, retain their original use or use class and associated rights and may seek to change to a state-funded school permanently under Classes S and T of Part 3 of Schedule 2, during the period of temporary use.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The General Permitted Development Order was consolidated in 2015. This is the seventh amending instrument to the General Permitted Development Order. There are no current plans for a consolidation.

9.2 The Compensation Regulations were consolidated in 2015. This is the fourth amending instrument to the regulations. There are no current plans for a consolidation.

9.3 This is the fifth amending instrument to the Advertisement Regulations. There are no current plans for a consolidation.

10. Consultation outcome

10.1 The proposals to make permanent the time-limited permitted development right for a larger rear extension to a dwellinghouse, extend permitted development rights for change of use to residential, introduce a new right for change of use to office use, allow the installation of taller upstands for off street electric vehicle charging points, extend the right for temporary flexible uses, remove the permitted development right to install new public call boxes and the deemed consent for advertisements on new telephone kiosks were included in the *Planning Reform: supporting the high street and increasing the delivery of new homes consultation* published in October 2018.

10.2 There were 522 responses to the consultation from local planning authorities, members of the public, business and interest groups. There was general support for the consultation proposals. A range of comments were provided including on potential impact of the change of use to office use and from hot food takeaways to residential use on the vitality of shopping areas; the potential impact on the amenity of an area of advertisements on taller electric vehicle charging points; and the potential noise and transport impacts of extending the right for temporary flexible uses to community uses. There was overwhelming support for the proposal to remove the permitted development right for the installation of public call boxes and associated deemed advertisement consent. Representations were made by some electronic communications code operators regarding the potential impact of the proposed changes on the provision of public telephones and services and the ability to cross subsidise their continued provision from advertising.

10.3 As a result of the comments received in regard to impacts, the Government has included a prior approval for the change of use to office use to allow consideration of the loss of the existing use on the adequate provision of services or on the sustainability of that shopping area. This prior approval already applies to Class M of

Part 3 of Schedule 2 to the General Permitted Development Order and will therefore apply to change of use from hot food takeaways to residential use.

- 10.4 The Advertisement Regulations allow a modest unilluminated advertisement on an electric vehicle charging point and any further advertisement would require an application for advertisement consent.
- 10.5 The Amendment Regulations provide transitional arrangements in respect of public call boxes. The remainder of Class A of Part 16 is unchanged, and code operators retain the right to install other apparatus, such as for 5G, small cells etc, as provided for by the right.
- 10.6 Other proposals relating to permitted development rights for the delivery of additional new homes in the consultation, such as to extend buildings upwards or to demolish and rebuild, raised matters that require further consideration and the time limited right for the change of use from storage or distribution to residential use will not be made permanent. A full report on the report on responses will be published at the time the Amendment Regulations are laid before Parliament:
<https://www.gov.uk/government/consultations/planning-reform-supporting-the-high-street-and-increasing-the-delivery-of-new-homes>.

11. Guidance

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

12. Impact

- 12.1 The impact on business, charities or the voluntary bodies for the majority of the measures, is to reduce the cost and time burdens of having to submit a planning application in more cases. The planning application fee to install new public call boxes for the purposes of communication as part of the- communications network is less than that for prior approval, although there may be additional costs for the preparation of a planning application. Electronic communication code operators will be able to continue to display an advertisement on the glazed surface of a telephone kiosk on which an advertisement is being displayed on commencement of the Amendment Regulations. They will incur additional costs where they choose to apply for express consent to display an advertisement on a public call box in other circumstances.
- 12.2 For the rights set out above apart from for a public call box, the overall 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. There may be additional costs in respect of public call boxes, which will be met by the planning application fee. There may be some indirect costs to local planning authorities where compensation is sought following the removal of the permitted development right for public call boxes, and the permitted development right from storage and distribution to residential use coming to an end.
- 12.3 An assessment of impact has been prepared. Copies may be inspected at the Planning Directorate, the Ministry of Housing, Communities and Local Government, 2 Marsham Street, London SW1P 4DF.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 The new and amended permitted development rights are deregulatory in effect, helping to reduce bureaucracy and cost in the planning system. Regulatory amendments in respect of public call boxes will impact on electronic communications code operators, including any that are small businesses.

14. Monitoring & review

- 14.1 The Ministry of Housing, Communities and Local Government will monitor progress and carry out a review of these permitted development rights by April 2024 in line with the requirements of the Small Business, Enterprise and Employment Act 2015.

15. Contact

- 15.1 Maria Darby at the Ministry of Housing, Communities and Local Government (Tel: 0303 444 1463 or e-mail: maria.darby@communities.gov.uk) can be contacted with any queries on this instrument.
- 15.2 Lucy Hargreaves, Deputy Director for Planning – Development Management, at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Kit Malthouse, Minister of State at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.