

EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (PERMITTED DEVELOPMENT AND MISCELLANEOUS AMENDMENTS) (ENGLAND) (CORONAVIRUS) REGULATIONS 2020

2020 No. 632

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.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 These Regulations amend the Town and Country Planning (General Permitted Development) (England) Order 2015 (S.I. 2015/596) (“the General Permitted Development Order”) to allow development to assist in supporting the Government’s economic renewal package following the coronavirus outbreak. They provide an additional allowance for the temporary use of land from 1st July 2020 to 31st December 2020. They also introduce a new permitted development right to allow a local authority to hold a market for an unlimited number of days without the requirement to submit an application for planning permission beginning with 25th June 2020 and ending with 23rd March 2021.
- 2.2 The Regulations also introduce a permanent permitted development right to allow additional storeys to be constructed on existing purpose-built blocks of flats to create new homes. This means that a full application for planning permission is not required for this development, while at the same time allowing for local consideration of key planning matters.
- 2.3 In addition, these Regulations amend existing permitted development rights to ensure that new homes developed through permitted development rights provide adequate natural light for the occupants. In addition, they make minor technical amendments to the General Permitted Development Order and the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (S.I. 2007/783) (“the Advertisement Regulations”).
- 2.4 The Regulations also amend the Town and Country Planning (Compensation) (England) Regulations 2015 (S.I. 2015/598) (“the Compensation Regulations”) to limit the compensation liability where a local planning authority withdraws the new permitted development right to extend upwards existing purpose-built blocks of flats to create additional homes by making a direction under article 4 of the General Permitted Development Order.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The instrument includes urgent time-limited measures to support businesses as coronavirus restrictions are lifted. Regulations 20 and 21 will come into force on the day after the day on which the instrument is laid, in breach of the rule requiring instruments to be laid at least 21 days before they come into effect. These measures will support businesses to re-open swiftly following the relaxation of the coronavirus restrictions. The remainder of the provisions in the instrument will come into force on 1 August 2020.
- 3.2 It also amends the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (S.I. 2007/783) (“the Advertisement Regulations”) to correct an error in the Town and Country Planning Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 identified by the J.C.S.I.

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)

- 3.3 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.
- 3.4 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 key planning matters before development can proceed. This is known as “prior approval”.
- 6.3 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.

- 6.4 Under Part 8 of the 1990 Act, regulations may make provisions for restricting or regulating the display of advertisements. The Advertisement Regulations set out procedures relating to the display of advertisement and grant consent for the display of certain classes of advertisement.

7. Policy background

What is being done and why?

- 7.1 Permitted development rights have an important role to play in the planning system. They provide a more streamlined planning process with greater planning certainty, while at the same time allowing for local consideration of key planning matters through a light-touch prior approval process. Permitted development rights can incentivise certain forms of development by providing developers with a greater level of certainty, within specific planning controls and limitations. Individual rights provide for a wide range of development and include measures to incentivise and speed up housing delivery.
- 7.2 The Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020 (“the Amendment Regulations”) amend Schedule 2 to the General Permitted Development Order as follows:

Permitted development right to hold a market and temporary use of land

- 7.3 To assist the recovery of businesses, following the relaxation of closures introduced to limit the spread of coronavirus, the Amendment Regulations introduce a new right providing an additional number of days which land can be used temporarily for any purpose from 1st July 2020 to 31st December 2020. They also introduce a new permitted development right to allow a market to be held by or on behalf of a local authority. These measures will enable the provision of additional space for markets for the sale of food, drink and other goods and holding outdoor events, helping businesses to operate safely. They will come into force on 25th June 2020 to support businesses to re-open swiftly following the relaxation of the coronavirus restrictions.
- 7.4 Regulation 20 amends Schedule 2 to the General Permitted Development Order by inserting a new Class BA in Part 4 – additional temporary use of land from 1st July 2020 to 31st December 2020. The new right allows the temporary use of land, including land within the curtilage of a building that is not a listed building during this period. Land can be used temporarily for no more than 28 days within that period, of which no more than 14 days can be for holding a market or for motor car and motorcycle racing. The right also allows the erection of moveable structures such as stalls or a marquee on that land. It is available in addition to the existing permitted development right for the temporary use of land in Class B of Part 4 of Schedule 2 of the General Permitted Development Order. The right is time-limited and will cease to have effect from 1 January 2021.
- 7.5 Regulation 21 amends Schedule 2 of the General Permitted Development Order by inserting a new Class BA in Part 12 - holding of a market by or on behalf of a local authority. The new right allows a market to be held, by or on behalf of local authority on an unlimited number of days. It also allows the erection of moveable structures, such as stalls or awnings. The right is time-limited and will cease to have effect from 23rd March 2021.

- 7.6 Under existing rights, developers can use their allowance of up to 28 days for any purpose, of which up to 14 days can be to hold a market or for motor car and motorcycle racing, under Class B of Part 4 of Schedule 2 of the General Permitted Development Order. Separately the new right in Class BA of Part 4 provides an additional allowance of 28 days for any purpose, of which up to 14 days can be to hold a market or for motor car and motorcycle racing, from 1st July 2020 to 31st December 2020. This effectively allows land to be used for any purpose without an application for planning permission for 56 days, of which 28 days can be to hold a market or for motorsports, until 31 December 2020, If the developer is also a local authority, then in addition to using their allowance under Class B and Class BA of Part 4 to use land any purpose, they can also use Class BA of Part 12 of Schedule 2 to hold a market for any number of days until 23rd March 2021.

Permitted development right for the construction of new homes on detached blocks of flats

- 7.7 Following the consultation, *Planning Reform: Supporting the high street and increasing the delivery of new homes* (October 2018), which closed in January 2019, legislative changes are being made to introduce a new permitted development right to allow existing purpose-built, detached blocks of flats to extend upwards to provide additional homes. This measure is necessary to support key Government priorities and national policy to boost housing delivery and increase densities by making effective use of existing buildings and avoiding the need to develop greenfield sites. The permitted development right to extend existing purpose-built blocks of flats upwards forms part of the Government's Covid-19 economic renewal package by enabling new homes to be delivered more easily. As set out in the policy paper *Planning for the Future*, Government also intends to introduce further permitted development rights for building upwards, including for new and bigger homes
- 7.8 Regulation 22 amends Schedule 2 of the General Permitted Development Order by inserting a new Part 20, Class A - New dwellinghouses on detached blocks of flats. This allows existing purpose-built detached blocks of flats, of 3 storeys or more, to extend upwards to create new self-contained homes.
- 7.9 National policy, as set out in the revised National Planning Policy Framework¹ (paragraph 118), supports extending commercial and residential buildings upwards to provide new homes including where development would be consistent with the prevailing height and form of neighbouring properties and the overall street scene, and can maintain safe access and egress for occupiers. The right delivers an element of the type of development supported by the broader policy.
- 7.10 The right allows the construction of 2 additional storeys of new homes on the topmost residential storey of existing, detached, purpose-built blocks of flats of 3 storeys or more above ground level, together with engineering operations, replacement or installation of additional plant, construction of safe access and egress and construction of ancillary facilities, if necessary. The right does not allow for these additional works to be undertaken without the construction of the new storeys and homes.
- 7.11 The right applies to blocks built since 1st July 1948 (being those granted planning title under the current planning system) and 5th March 2018 when the intention to introduce a permitted development right to build upwards was first announced.

¹ <https://www.gov.uk/government/publications/national-planning-policy-framework--2>

Allowing an additional 2 storeys on top of purpose-built detached blocks of flats of 3 or more storeys is considered to provide more certainty for developers and local authorities, and so encourage take up, while protecting local amenity.

- 7.12 Adding additional storeys to purpose-built blocks of flats will generally be more practical to deliver as, for example, they may already have separate internal means of access and escape, such as separate lift shafts and staircases. They are therefore likely to be suitable to benefit from the permitted development right. Nevertheless, this does not mean that they will necessarily be able to meet building and fire safety requirements, which are covered by separate regimes.
- 7.13 The right is subject to a maximum height limit for the newly extended building of 30 metres. This height limit recognises sensitivities around local amenity and is considered to be practical in terms of carrying out the building works. All development, whether granted permission following a planning application or through a national permitted development right is legally required to comply with the Building Regulations 2010 (S.I. 2010/2214), as amended (“the Building Regulations”). Where additional storeys and homes are added to a building some aspects of the building as a whole may also be required to be upgraded under Building Regulations.
- 7.14 Given the potential impact on neighbours during the construction of the additional storeys and any engineering works to strengthen the building, the developer must prepare a report setting out the proposed hours of operation and how they intend to minimise any adverse impacts of noise, dust, vibration and traffic movements during the building works on occupiers of the building and neighbouring premises.
- 7.15 The right is subject to obtaining prior approval from the local planning authority, which will consider certain matters relating to the proposal. In line with the existing permitted development rights for change of use to residential, these allow for the consideration of potential transport and highways impacts as well as contamination and flood risks. Prior approval is also needed on the appearance of the proposal. The right does not apply in Conservation Areas, National Parks and the Broads, areas of outstanding natural beauty, or sites of special scientific interest. The right does not apply if the building is a listed building or scheduled monument, or if the land on which the building is sited is within the curtilage of a listed building or scheduled monument.
- 7.16 As the new right permits upwards development of existing buildings there are additional prior approval considerations. These are consideration of any impacts a taller building may have on air traffic and defence assets and on protected vistas in London. Where an aerodrome, technical site or defence asset is identified on a safeguarding map provided to the local planning authority, prior approval cannot be granted for development where an operator of a site, the Civil Aviation Authority or Secretary of State for Defence has responded to consultation on the application indicating that that the development should not proceed.
- 7.17 The right requires prior approval consideration in respect of the provision of adequate natural light in all habitable rooms. The application for prior approval must therefore be accompanied by detailed floor plans indicating the dimensions and proposed use of each room, the position and dimensions of windows, doors and walls, and the proposed elevations of the homes. Local planning authorities are expected to exercise their planning judgement when considering the detailed floor plans and elevations in their assessment of adequate natural light in habitable rooms. The right contains a

definition of habitable rooms which mirrors the definition as set out in Regulation 19. Local planning authorities are required to refuse prior approval applications where inadequate natural light is provided.

- 7.18 The local planning authority is required to make a decision on an application for prior approval under the right within 8 weeks. The right does not provide a default deemed consent if the local planning authority fails to make a decision within this time, reflecting the significance of the matters under consideration including the potential impacts of the proposed development on the amenity of neighbours. If a decision has not been made within 8 weeks there is a right of appeal to the Secretary of State for non-determination of the prior approval application.

Natural light

- 7.19 Legislative changes are also being made to the General Permitted Development Order in response to concerns raised about the quality of homes delivered in some developments under existing permitted development rights for changes of use to housing. The measure will improve the quality of new homes delivered under permitted development rights by requiring that adequate natural light is provided in all habitable rooms.
- 7.20 The Amendment Regulations introduce a new matter for prior approval consideration in respect of the provision of adequate natural light in all habitable rooms. This requirement will apply to developments to be delivered by Class M, N, O, PA and Q in Part 3 of Schedule 2 the General Permitted Development Order and also in the new Class A of Part 20 of Schedule 2, as set out above.
- 7.21 Detailed floor plans indicating the dimensions and proposed use of each room, the position and dimensions of windows, doors and walls, and the elevations of the homes are required to be submitted as part of the prior approval application under paragraph W of Part 3 of Schedule 2 to the General Permitted Development Order to enable the local planning authority to consider the provision of adequate natural light. Local planning authorities are expected to exercise their planning judgement when considering the detailed floor plans in their assessment of adequate light in habitable rooms. The definition of “habitable rooms” is set out in regulation 19. Local planning authorities are required to refuse prior approval applications where inadequate natural light is provided.
- 7.22 As regulations 13 to 18 impose these additional requirements to existing permitted development rights the transitional provisions in regulation 27 are designed to provide assurance to developers who have already submitted an application for prior approval in respect of Classes M, N, O, PA and Q. Applications for prior approval submitted before 1st August 2020 will be determined in accordance with the right as in force at that time. Those with a prior approval event (as defined in the Amendment Regulations) before 1st August 2020 may continue to rely on the permitted development right as though the amendments made by the Amendment Regulations had not been made. They will have three years in which to complete the development. Those refused prior approval before 1st August 2020 will have the right to appeal in line with the regulations in force at the time of the application for prior approval.

Other minor amendments and clarifications

- 7.23 Minor technical and clarificatory amendments are being made to the General Permitted Development Order and the Advertisement Regulations in response to matters raised about their operation.
- 7.24 Regulation 3 of the Amendment Regulations amends the definitions of “dwellinghouse” and “flat” in article 2 of the General Permitted Development Order for the operation of the new Part 20 and the time-limited Part 12A of Schedule 2 permitted development rights.
- 7.25 Regulation 4 of the Amendment Regulations clarifies that an applicant and a local planning authority may agree to a longer period to determine prior approval applications. This applies to applications which are subject to a time period specified in Schedule 2 of the General Permitted Development Order, or which are subject to a time period of 8 weeks as no time period has been specified.
- 7.26 Regulation 5 of the Amendment Regulations allows applications for prior approval for a larger single storey rear extension to a house, permitted by Class A.1(g) of Part 1 of Schedule 2 to the General Permitted Development Order, to be subject to a prior approval fee. This fee is set out in the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012, as amended.
- 7.27 Regulation 6 of the Amendment Regulations clarifies that for the purposes of the alteration of the roof of a house, permitted by Class B of Part 1 of Schedule 2 to the General Permitted Development Order, a rear or side extension, sometimes referred to as an “outrigger”, includes an original projection or a subsequent extension of the house that extends from the rear or side of the principal part of the original house. This is to ensure that roof alterations permitted by Class B of Part 1 apply to any original part or subsequent rear or side extension which extends out from the principal part of the original house.
- 7.28 Regulations 6 to 12 of the Amendment Regulations introduces a new limitation to Classes A to H of Part 1 of Schedule 2 of the General Permitted Development Order so that a new home built under the new Part 20 (construction of new dwellinghouses), introduced by Regulation 22, does not benefit from any of the permitted development rights under Part 1 (development within the curtilage of a dwellinghouse).
- 7.29 Regulation 24 of the Amendment Regulations amends the Advertisement Regulations by re-inserting the definitions of “electronic communications apparatus”, “electronic communications service” and “telephone kiosk” into the interpretation paragraph of Part 2 of Schedule 3 to assist with any residual references to those phrases in the Advertisement Regulations.

Compensation Regulations

- 7.30 Regulation 26 of the Amendment Regulations amends the Compensation Regulations by adding the new Part 20 of Schedule 2 to the General Permitted Development Order into the list of permitted development rights for which compensation on withdrawal of the right is limited. This limits to 12 months the period during which a local planning authority may be liable to pay compensation and excludes compensation liability where it withdraws permitted development rights in Part 20 by making a direction under article 4 of the General Permitted Development Order for which they have given at least 12 months’ notice.

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 thirteenth 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 twelfth amending instrument to the Compensation 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 proposal for new homes on existing blocks of flats was included in the *Planning Reform: supporting the high street and increasing the delivery of new homes* consultation published in October 2018. The consultation offered three options for building up. For residential and certain commercial premises, it was proposed to either allow building up to the height of the highest roofline in a terrace; or to the height of the prevailing roofline in the locality. A third option was to allow additional storeys to be built on top of existing purpose-built free standing blocks of flats over 5 storeys.

10.2 There were 326 responses to the proposal from local planning authorities, members of the public, business and interest groups who provided a range of comments. Those supporting such a permitted development right recognised that increasing density may relieve pressure for additional housing sites, allow for additional homes to be created by transport hubs and in town centres, and reduce the need for development in the green belt. Where concerns were raised, we have sought to address this through the prior approval process where possible.

10.3 A summary of responses to the consultation and the government's response was published in May 2019 and is available at: <https://www.gov.uk/government/consultations/planning-reform-supporting-the-high-street-and-increasing-the-delivery-of-new-homes>. This committed to further engagement with interested parties on the technical details of the proposals in light of the complexity involved in designing such a right.

10.4 In view of the consultation responses and subsequent further engagement with interested parties it was decided that a permitted development right to allow an additional 2 storeys to be built on top of existing purpose-built, detached blocks of flats of 3 storeys or more, up to a maximum height of 30 metres, would best support the Government's Covid-19 economic renewal package. It would provide most certainty for developers and local planning authorities, and therefore encourage take up and enable new homes to be delivered more easily.

10.5 To address concerns raised through the consultation process the right allows the developer to construct appropriate and safe access, including means of escape from

fire for the new and existing flats. The right also requires the developer to provide a report on how the impacts of the construction on the occupiers of the existing block of flats and adjoining buildings will be mitigated and is subject to additional prior approval considerations, compared with existing permitted development rights which create new homes. These allow for the additional consideration of the impact on air traffic and defence assets and on protected vistas in London. They require consideration of the impact on the amenity of the existing block of flats, including on leasehold flats within the block, as well as on neighbouring premises. Amenity includes matters such as overlooking, privacy and loss of light. The local planning authority must notify all owners and occupiers of the existing block of flats, including leaseholders, as well as adjoining owners or occupiers of the proposed development.

- 10.6 The time-limited changes to assist businesses following the relaxation of closures introduced to limit the spread of coronavirus have not been subject to consultation. Government has, however, carried out engagement with local authorities and business on how public spaces can be safely managed to facilitate social distancing.

11. Guidance

- 11.1 There are no plans to issue specific statutory guidance for this instrument. However, the Ministry of Housing, Communities and Local Government intends to issue a circular letter to building control bodies reminding them of the building and fire safety requirements, including restrictions on the use of combustible materials, for the whole building when additional residential storeys are added. It will be available at <https://www.gov.uk/government/collections/building-regulations-divisional-circular-letters>.

12. Impact

- 12.1 The impact on business, charities or the voluntary bodies for the measure to build upwards is to reduce the cost and time burden of having to submit a planning application in more cases. Owners of buildings to which this permitted right applies will also benefit from land value uplift.
- 12.2 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. Regulations to set a fee per dwelling, which will reflect the consideration required for a prior approval application compared with a full planning application, will be brought forward at an early opportunity to offset local authorities' costs of considering these applications.
- 12.3 We have not identified a cost to business from meeting the new requirement in respect of the provision of adequate natural light in new homes delivered under Class M, Class N, Class O, Class PA and Class Q of Part 3 of Schedule 2 of the General Permitted Development Order. We expect that developers want to bring forward homes that are good quality and marketable. We do not have evidence indicating that this is likely to be a widespread issue.
- 12.4 A Regulatory Impact Assessment for this instrument is currently being considered by the Regulatory Policy Committee.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 Overall, the impact of the changes is deregulatory. The permitted development right to build upwards is deregulatory in effect, helping to reduce bureaucracy and cost in the planning system. The change in respect of adequate natural light in habitable rooms is regulatory, adding a reasonable requirement to existing rights.

14. Monitoring & review

14.1 The Ministry of Housing, Communities and Local Government will monitor progress and carry out a review by 2025 in line with the requirements of the Small Business, Enterprise and Employment Act 2015.

15. Contact

15.1 Julie Shanahan at the Ministry of Housing, Communities and Local Government (Tel: 0303 444 3378 or e-mail: julie.shanahan@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 Christopher Pincher, Minister of State at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.