

EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (ENGLAND) (AMENDMENT) REGULATIONS 2020

2020 No. 1243

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 These Regulations make a number of amendments to the Town and Country Planning (General Permitted Development) (England) Order 2015 (S.I. 2015/596) (“the General Permitted Development Order”).
- 2.2 As announced to Parliament on 30 September “[The Government] will legislate so that all homes built through permitted development rights must meet space standards” HC Deb (30 September 2020) vol. 681 col. 440, these Regulations will introduce a requirement for all new development of dwellinghouses brought forward under permitted development rights to comply, as a minimum, with the nationally described space standards as published by the Department of Communities and Local Government on 27 March 2015.
- 2.3 These Regulations also provide an additional allowance for the temporary use of land from 1 January 2021 to 31 December 2021. They also extend to 23 March 2022 the permitted development right to allow a local authority to hold a market for an unlimited number of days without the requirement to submit a planning application. This is a time limited right which would otherwise have fallen away after 23 March 2021.
- 2.4 These Regulations also extend until 23 March 2022 a permitted development right to allow restaurants, cafes, drinking establishments and drinking establishments with an expanded food offer to provide temporarily takeaway food in order to support businesses, protect employment and ensure food supply during the coronavirus pandemic. This is a time limited right which would otherwise have fallen away after 23 March 2021.
- 2.5 As announced in the Written Ministerial Statement of 14 July 2020 ref UIN HCWS367, these Regulations bring forward an amendment that exempts theatres, concert halls and live music venues from the permitted development right for the demolition of buildings in Class B to Part 11 of Schedule 2 to the General Permitted Development Order. This permanent change is to protect these venues, preventing their unnecessary loss as a result of having to close due to the coronavirus pandemic.
- 2.6 These Regulations also extend until 31 December 2021 a temporary permitted development right which was brought forward early in the response to the Covid-19 pandemic to allow emergency development of land by local authorities and health service bodies. This is time limited right which would otherwise have fallen away after 31 December 2020.

- 2.7 These Regulations additionally extend from 6 months to up to 12 months the existing permitted development right under Class Q of Part 19 of Schedule 2 to the General Permitted Development Order to allow development by or on behalf of the Crown on Crown land for purposes such as preventing an emergency, reducing, controlling or mitigating the effects of an emergency or taking other action in connection with an emergency. This is a permanent change. A new additional right to allow for development of Crown land for purposes relating to a pandemic for a period of 12 months is also introduced.
- 2.8 These Regulations also amend the Compensation Regulations to ensure that compensation is only payable on a refused application of the demolition of a theatre, music performance venue or concert hall within 12 months of these Regulations coming into force.

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 as it applies only to development in 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 These 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 Town and Country Planning (Compensation) (England) Regulations 2015 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.

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. They can benefit public bodies by allowing them to respond to particular challenges and emergencies quickly without the need to go through the formal planning application process.
- 7.2 There are certain developers who have provided housing under national permitted development rights, which is below an acceptable standard, and as a result we have introduced a requirement that all new homes delivered under permitted development rights are no smaller than 37 square metres and meet the nationally described space standards, to ensure that homes are suitable for all occupiers.
- 7.3 In response to the coronavirus pandemic a number of temporary permitted development rights were put in place in March, April and June 2020. These were delivered through the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2020 (SI 2020/330) to allow for the temporary provision of takeaway food from restaurants, cafes and pubs; the Town and Country Planning (General Permitted Development) (Coronavirus) (England) (Amendment) Order 2020 (SI 2020/412) which allows emergency development by a health service body or local authority; and the Town and Country Planning (General Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Order 2020 (SI 2020/632) to allow a local authority to hold a market for an unlimited number of days and provide an additional allowance for the temporary use of land. These rights have been used by local authorities and health service bodies to support communities through additional service and health provision and help businesses to continue to operate. An extension of these temporary rights will enable businesses to operate and vital facilities to continue to respond to coronavirus and, if necessary, provide services while an application for planning permission for longer term use is considered by the local planning authority in line with local and national policy.
- 7.4 These Regulations amend the General Permitted Development Order as follows:

Amendment in relation to space standards

- 7.5 Regulation 3 of these Regulations amends Article 3 of the General Permitted Development Order to ensure that permission is not granted under Schedule 2 to that Order unless each dwellinghouse complies with the nationally described space standards which were published by the Department of Communities and Local Government on 27 March 2015, which should be read together with the notes added on 19 May 2016.
- 7.6 This change will ensure that all new homes provided through permitted development rights meet a minimum space per occupier and bedroom. These standards are reflected in Gross Internal Area measured and denoted in square metres (m²). In

particular the gross internal floor area of any new homes must also, as a minimum, be no smaller than 37 square metres, including where this may provide a studio flat.

- 7.7 The detailed nationally described space standards can be found online <https://www.gov.uk/government/publications/technical-housing-standards-nationally-described-space-standard>.
- 7.8 In relation to homes delivered under permitted development rights, this requirement will come into effect on 6 April 2021, and will apply to applications for prior approval submitted on or after that date.
- 7.9 These Regulations amend Schedule 2 to the General Permitted Development Order as follows:

Permitted development right for the temporary use of land

- 7.10 To continue to assist businesses these Regulations amend the right under Class BA of Part 4 of Schedule 2 of the General Permitted Development Order providing an additional number of days which land can be used temporarily for any purpose from 1 January 2021 to 31 December 2021. This measure will continue to enable the provision of additional space to hold outdoor events, helping businesses to operate safely.
- 7.11 Regulation 4 amends Class BA of Part 4 of Schedule 2 of the General Permitted Development Order to allow for the additional temporary use of land from 1 January 2021 to 31 December 2021. This amended right allows land to 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 2022. 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 for any purpose, they can also use Class BA of Part 12 of Schedule 2 to hold a market for any number of days until 23 March 2022, as set out in paragraph 7.22 below.
- 7.12 For the avoidance of doubt, this amendment will come into force on 1 January 2021. The existing right allowing the temporary use of land from 1 July 2020 to 31 December 2020 will continue to have effect until that date.

Amendment to permitted development right to allow the temporary provision of takeaway food

- 7.13 Regulation 5 of these Regulations extends a temporary permitted development right under Class DA in Part 4 of Schedule 2 of the General Permitted Development Order to allow restaurants and cafes, and drinking establishments such as pubs and those with expanded food provision, to provide a takeaway or delivery service for hot or cold food which has been prepared for consumers, for collection or delivery, to be consumed, reheated or cooked by consumers off the premises.
- 7.14 These Regulations extend the temporary period after which this right will cease to have effect from the 23 March 2021 to the 23 March 2022.

- 7.15 There is no need for businesses to re-notify the local planning authority if the site will continue to be used for the temporary provision of takeaway food if they have done so prior to the extension of this right.
- 7.16 To support restaurants and pubs and ensure they can recover after the end of the crisis, the premises will retain their original use class during the period of when the permitted development right in the Order is used. Consequently the building and the land within its curtilage would remain in its previous lawful use. For the avoidance of doubt, after the relevant period, the premises would revert to its original use. This will not impact on any permitted development rights the premises have under their original uses.
- 7.17 For the avoidance of doubt, the right will apply to those pubs listed as Assets of Community Value to help support them and the local community.

Exempting concert halls, venues for live music performance and theatres from the permitted development rights for demolition of a building

- 7.18 Regulation 6 of these Regulations makes a permanent amendment to Class B in Part 11 of Schedule 2 to the General Permitted Development Order by exempting concert halls, venues for live music performance and theatres from the permitted development right for the demolition of a building.
- 7.19 This is to protect the theatre and live music venue industry, meaning any proposal for demolition of such venues is to receive local consideration as part of a planning application in accordance with the local plan for the area, national planning policy and any other material considerations.
- 7.20 The Written Ministerial Statement of 14 July 2020 ref UIN HCWS367 signalled the policy intention of the Government to lay these regulations to prevent the loss of cultural venues.
- 7.21 Regulation 12(3) of these Regulations allows for demolition for which a prior approval has already been granted prior to these Regulations coming into force, or where an application for prior approval has been submitted prior to 3 December 2020, to continue as if this amendment has not been made.
- 7.22 Amendment to permitted development right to hold a market
- 7.23 Regulation 7 of these Regulations also amends Class BA in Part 12 of Schedule 2 of the General Permitted Development Order, extending the expiry date of this measure from 23 March 2021 to 23 March 2022. This right allows a market to be held, by or on behalf of a 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 23 March 2022.
- 7.24 As set out in paragraph 7.10 above then in addition to using their allowance under Class B and Class BA of Part 4 to use land any purpose, a local authority can also use this right to hold a market for any number of days until 23 March 2022.

Amendment to permitted development right to allow for development by local authorities and health service bodies in relation to emergencies

- 7.25 Regulation 8 of these Regulations extends the temporary period for the permitted development right under Class A in Part 12A of Schedule 2 to allow local authorities and health service bodies to carry out development (both works and change of use) of

facilities required in undertaking their roles responding to the spread of coronavirus, without a requirement to submit a planning application.

- 7.26 These Regulations extend the temporary period after which this right will cease to have effect from 31 December 2020 to 31 December 2021.
- 7.27 This temporary right is being extended due to the ongoing spread of coronavirus and the need to secure capacity in the NHS over the winter months, through for example the provision of the Nightingale Hospitals.

Amendment to permitted development right to allow for development by the Crown relating to an emergency

- 7.28 Regulation 9 of these Regulations amends the permitted development right to allow for development by the Crown relating to an emergency under Class Q in Part 19 of Schedule 2.
- 7.29 This amendment allows for an extension of the time period for which development can take place, from 6 months to 12 months and is a permanent amendment.
- 7.30 This recognises that a national effort to tackle emergencies may extend beyond 6 months, such as enabling Courts and test and trace facilities to continue to operate without interruption.
- 7.31 This also amends the requirement to restore the land to its original condition allowing for continued use where planning permission for that development has been granted either through another permitted development right or under an application for permission under Part 3 of the Town and Country Planning Act 1990.

Permitted development right for development by the Crown relating to a pandemic

- 7.32 Regulation 10 of these Regulations inserts a new permanent permitted development right to allow for development by the Crown for the purposes of preventing a pandemic, reducing, controlling or mitigating the effects of a pandemic, or taking other action in connection with a pandemic under Class QA of Part 19 of Schedule 2.
- 7.33 This new permanent right allows for development by the Crown in the case of a pandemic for up to 12 months. This right is additional to that under Part Q of Part 19 of Schedule 2 which allows for emergency development by the Crown for up to 6 months.
- 7.34 This right is granted subject to a condition that the land must be restored to its original condition prior to development, and any buildings, plant, machinery, structures and erections permitted under Class QA must be removed. This requirement to restore the land to its original condition does not apply where permission has been granted for that development under another permitted development right or an application under Part 3 of the Town and Country Planning Act 1990.
- 7.35 The existing permitted development right in Class Q of Part 19 has been used to address matters from the current Covid-19 pandemic, which is an emergency for the purposes of development allowed by the right. This additional right (Class QA) provides a further period of development for matters relating to a pandemic, and can be used in addition to the right in Class Q to address an emergency.

The Compensation Regulations

- 7.36 Regulation 11 of the Regulations amends the Compensation Regulations by adding Class B of Part 11 of Schedule 2 to the General Permitted Development Order in so far as it relates to the demolition of a theatre, music performance venue or concert hall into the list of permitted development rights for which compensation on withdrawal of the right is limited in various ways provided for in the Compensation Regulations. The effect of this regulation is that as the amendments to Class B remove rights to demolish theatres, music venues and concert halls, compensation is only payable in respect of refusal of planning applications made within 12 months beginning on the date that the regulation took effect.

Transitional and saving provisions

- 7.37 Regulation 12(1) of the Regulations allows for development which has previously been granted, by the prior approval of details, the determination that prior approval is not required, by appeal, or by the expiration of 56 days from the date the local planning authority received the application under Class M, N, O, P, PA or Q of Part 3 (Changes of use) and Class A, ZA, AA, AB, AC or AD of Part 20 (Construction of New Dwellinghouses) of Schedule 2 of the General Permitted Development Order to continue without the requirement to meet the nationally described space standards.
- 7.38 Regulation 12(2) of the Regulations allows for development for which an application for prior approval or an appeal has been submitted under Class M, N, O, P, PA or Q of Part 3 or Class A, ZA, AA, AB, AC or AD of Part 20 of Schedule 2 of the General Permitted Development Order before the 6 April 2021 to proceed without the requirement to meet the nationally described space standards.

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 twentieth amending instrument to the General Permitted Development Order. There are no current plans for a further consolidation.

10. Consultation outcome

- 10.1 The introduction of a space standard in residential permitted development rights is informed by MHCLG commissioned research '*Research into the quality standard of homes delivered through change of use permitted development rights*' July 2020 and the ongoing review of housing delivery. The existing temporary rights which these Regulations extend regarding provision of takeaway food and emergency development by local authorities and health service bodies have operated effectively, and due to their introduction to assist in the response to the Covid-19 pandemic we have not consulted on these. Similarly, the extension of permanent rights for emergency Crown development and the new right for Crown development in case of a pandemic will support important measures in response to the Covid-19 pandemic including test and trace facilities and Court facilities and are therefore likely to be uncontroversial.

11. Guidance

- 11.1 The nationally described space standards can be found online at <https://www.gov.uk/government/publications/technical-housing-standards-nationally-described-space-standard>. There are no plans to issue specific statutory guidance for this instrument.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies will vary between measures. This is explained below.
- 12.2 The impact on the public sector is also explained in relation to measures which will impact it below.
- 12.3 Ensuring homes built through permitted development rights must comply with the nationally described space standards will prevent a small number of developers from providing homes below an acceptable standard using permitted development rights. The change makes clear that homes provided under permitted development rights must comply with these standards.
- 12.4 The amendment in relation to the temporary provision of takeaway food will result in a benefit to owners of permitted venues as they will not need to apply to the local planning authority for this temporary use. The measure is temporary.
- 12.5 The impact on business, charities or voluntary bodies of the removal of theatres, music venues or concert halls from permitted development right to demolish and rebuild will mean that owners need to apply to their local planning authority for permission to demolish such buildings, resulting in an application fee. This may impact on a small number of owners as many of the buildings in this category are listed buildings and would not have been eligible for permitted developments of this nature. Few of these buildings have been demolished and rebuilt over the last decade.
- 12.6 The extensions to the temporary use of land for markets, use of Crown land for development and permitted development rights for the development of land relating to public health buildings directly affect public bodies. These temporary changes will help provide flexibility to local authorities and health bodies in dealing with the coronavirus pandemic as well as reducing administrative burdens from not needing to seek full planning permission.
- 12.7 Most of the amendments in this instrument are either temporary, directly impact the public sector or have small direct impacts on business. Therefore, a full impact assessment has not been provided for every amendment in these Regulations. An assessment is being prepared for the temporary provision of takeaway food and for the introduction of mandatory space standards for homes delivered through permitted development rights, and these will be published on legislation.gov.uk in due course.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 Where businesses are directly impacted as a result of these amendments small businesses are impacted in the same way as larger businesses and are not treated differently.
- 13.3 The extension to the temporary permitted right to allow businesses to serve takeaway food without planning permission will benefit businesses and in particular small

businesses who make up a large proportion of the hospitality sector. As indicated above the removal of the permitted development right to demolish and rebuild theatres, music venues and concert halls may impact a small number of businesses which may include small businesses. Those small businesses will be affected in the same way as large businesses if they wish to demolish and rebuild these buildings they will be required to apply through full planning permission.

- 13.4 The amendment requiring the use of space standards in permitted developments may impact some small businesses, but the change is likely to only affect a few businesses carrying out unsuitable developments.

14. Monitoring & review

- 14.1 As many of the changes are either temporary or make adjustments to other instruments providing clarity, and in accordance with Section 28(2)(b) of Part 2 of the Small Business, Enterprise and Employment Act 2015 a statutory review clause has not been included for this particular instrument as it is not appropriate. The Ministry of Housing, Communities and Local Government will monitor permitted development rights and will need to consider the temporary rights before these expire along with other measures associated with the coronavirus pandemic.

15. Contact

- 15.1 Joseph Lowes at the Ministry of Housing, Communities and Local Government (Tel: 0303 444 2289 or e-mail: joseph.lowes@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.