

**EXPLANATORY MEMORANDUM TO
THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT
PROCEDURE) (ENGLAND) (AMENDMENT NO. 2) ORDER 2012**

2012 No. 2274

**THE PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS)
(AMENDMENT) (ENGLAND) REGULATIONS 2012**

2012 No. 2275

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 (Development Management Procedure) (England) (Amendment No. 2) Order 2012 (“the Order”) amends the Town and Country Planning (Development Management Procedure) (England) Order 2010 (“the DMPO”) to change the rule relating to applications for grant of a replacement planning permission. The Order also introduces an additional requirement into the DMPO in relation to local planning authorities’ decision notices. The Planning (Listed Buildings and Conservation Areas) (Amendment) (England) Regulations 2012 (“the Regulations”) amends the Planning (Listed Buildings and Conservation Areas) Regulations 1990 (“the 1990 Regulations”) to change the rule relating to applications for consents to works where an associated application for grant of a replacement planning permission is made.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 *The Order*

Part 2 of the DMPO sets out the procedures connected with making planning applications in England. The first amendment in the Order relates to one type of application: an application for planning permission made to replace a planning permission granted on or before 1st October 2009 where the development authorised under that permission has not yet begun and the time limit within which to start that development has not expired (“a replacement application”). The reference to 1st October 2009 was included as the measure was intended to be temporary, short-term measure (which would largely expire by 2012) designed to assist developers during the economic downturn.
 - 4.2 Under the DMPO a replacement application is exempt from the requirement to provide a design and access statement, plans and drawings (articles 6 and 8 of the DMPO) and consultation requirements are less onerous (article 18 of the DMPO). Additionally a replacement application is subject to a lower application fee by virtue of paragraph 7B of Schedule 1 to the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989.

- 4.3 Unless provided for expressly, planning permissions expire 3 years after they are granted if development has not started (see section 91 or 92 of the Town and Country Planning Act 1990). Because of this 3 year default rule and the reference to 1st October 2009 in article 18 of the DMPO, by 1st October 2012 most existing planning permissions in relation to which a replacement application could be made will have expired.
- 4.4 Article 2 of the Order amends article 18 of the DMPO. The amendment has the effect of changing the class of the planning permissions in relation to which a replacement application may be made. It provides that the original planning permission to which the replacement application relates must have been granted on or before 1st October 2010, rather than 1st October 2009.
- 4.5 Article 31 of the DMPO sets out a requirement for local planning authorities to give notice of their decision or determination of a planning application. The second amendment in the Order relates to what must be included in local authority decision notices to include a statement explaining how the local planning authority has worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising in relation to dealing with a planning application.

The Regulations

- 4.6 The 1990 Regulations, amongst other things, set out procedures for making applications for listed building or conservation area consent. The amendments in the Regulations relates to one type of consent application: an application for listed buildings or conservation area consent to replace a consent which is granted on or before 1st October 2009 where the works have not yet begun and the time limit within which to start those works has not expired and the consent applied for is needed to carry out development is subject to a renewal application to which the DMPO refers (“a consent renewal application”). As with the DMPO, the reference to 1st October 2009 was included as the measure was intended to be short-term measure (which would largely expire by late 2012) designed to assist developers during the economic downturn.
- 4.7 Under the 1990 Regulations a consent renewal application is exempt from the requirement to provide a design and access statement (regulation 3A of the 1990 Regulations). Unlike most planning applications, no fees are payable for applications for listed buildings or conservation area consent.
- 4.8 Unless provided for expressly listed buildings or conservation area consents expire 3 years after they are granted if the works have not started (see section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990). Because of this 3 year default rule and the reference to 1st October 2009 in regulation 3 of the 1990 Regulations, by 1st October 2012 most existing consents in relation to which a consent renewal application could be made will have expired.
- 4.9 Regulation 2 of the Regulations amends regulation 3 of the 1990 Regulations. As with the amendment to the DMPO, the amendment has the effect of changing the class of the consents in relation to which a consent renewal application may be made. It provides that the original consent to which the consent renewal application relates must have been granted on or before 1st October 2010, rather than 1st October 2009.

5. Territorial Extent and Application

5.1 This instrument applies to 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

7.1 In 2009 the Government amended legislation to introduce a new category of planning application which allows developers with an unimplemented planning permission to apply for a replacement planning permission for the same development, subject to a new time limit. These measures were introduced on a temporary basis in response to the economic downturn which saw a slump in the build-out of schemes with planning permission. Their effect was to enable applicants to apply, at reduced cost, to their local planning authority for a new planning permission to replace an existing permission which is in danger of lapsing, in order to obtain a longer period in which to begin development. In October 2010 the scope of this provision was extended to include partially implemented outline permissions.

7.2 These provisions apply to permissions granted on or before 1st October 2009. Planning permission is typically granted subject to a three year time limit on implementation, although a longer (or shorter) period may be set by a local planning authority in some cases if considered appropriate. As such, the vast majority of extant permissions which could be the subject of an extension application will expire on 1st October 2012.

7.3 When the original measures were introduced in 2009 it was made clear that the policy was a temporary response to the current economic circumstances, and would be kept under review. Given that the economic outlook remains uncertain, the Department is amending the DMPO and 1990 Regulations to extend the scope of these measures by one year. The amendments allow applicants with unimplemented extant permissions granted on or before 1st October 2010 to apply for a replacement permission for the same development subject to a new time limit for implementation. Such applications will be subject to a lower fee, less onerous information and consultation requirements and a design and access statement will not be required.

7.4 The amendment to decision notices for planning applications reflects the new approach to planning and presumption in favour of sustainable development, as set out in the National Planning Policy Framework (NPPF). In particular, paragraphs 186 and 187 of the NPPF encourage local authorities to take a positive and proactive approach to development proposals focussed on solutions. The amendment to the statutory requirements regarding the notification of decisions will give applicants greater confidence in the approach taken by local authorities and will come into force on 1st December 2012.

Consolidation

7.5 Not applicable.

8. Consultation outcome

- 8.1 The principles of the policy were agreed in summer 2009 following consultation on giving greater flexibility for planning permissions. A full summary of responses was published on 22 January 2010 and is available on the Department's website. Further informal consultation was undertaken in July 2010 regarding the extension of these powers to cover the unimplemented phases of outline permissions. The response to this subsequent exercise is summarised in the Explanatory Memorandum to the DMPO. The amendments explained above have the effect of extending this policy by one year.
- 8.2 The changes to planning decision notices reflects efforts by the Government to embed a more positive and proactive culture in planning practice, focussed on solutions. Extensive consultation on these principles has already been undertaken as part of the NPPF.

9. Guidance

- 9.1 The Department is to amend the October 2010 guidance 'Greater Flexibility for Planning Permissions' to take account of the amendments explained above.

10. Impact

- 10.1 The amendments to the rule relating to applications for grant of a replacement planning permission are considered to have a positive impact on businesses and individuals applying for planning permission. The regulatory impact assessment of the effect that this measure will have on the costs of business and the voluntary sector is currently under discussion with the RPC and will be published when discussions are concluded.
- 10.2 In relation to the changes to planning decisions notices, we consider that the impact on local authorities will be minimal. We have not prepared an impact assessment for this proposal as the positive and proactive approach, focussed on solutions, has already been set out in the National Planning Policy Framework, which was assessed separately.

11. Regulating small business

- 11.1 The policy is likely to benefit all types of business including small and micro businesses. This will be set out in the Impact Assessment for the replacement planning permissions element of the Statutory Instrument, which will be published in due course.

12. Monitoring & review

- 12.1 The numbers of applications made using these new powers and procedures will be monitored through the Planning Portal (the Government's on-line planning service).

13. Contact

Tom Winter at the Department for Communities and Local Government Tel: 0303 444 1305 or email: tom.winter@communities.gsi.gov.uk can answer any queries regarding the instrument.