

EXPLANATORY MEMORANDUM TO

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

2020 No. 412

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 The measures being brought forward by this instrument are intended to allow development that can assist in addressing the Government priority of responding to the spread of coronavirus by local authorities, as defined in section 78(7) of the Coronavirus Act 2020, and health service bodies which are the National Health Service Commissioning Board; the Care Quality Commission; a clinical commissioning group established under section 14D of the National Health Service Act 2006; Health Education England; the Health Research Authority; the Health and Social Care Information Centre; the Human Fertilisation and Embryology Authority; the Human Tissue Authority; Monitor; the National Institute for Health and Care Excellence; a Special Health Authority; an NHS trust in England; a NHS foundation trust in England; and a company formed under section 223 of that Act and wholly owned by the Secretary of State.
- 2.2 The instrument amends the Town and Country Planning (General Permitted Development) (England) Order 2015 (“the General Permitted Development Order”) to introduce a new permitted development right 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 to respond to the spread of coronavirus, without a requirement to submit a planning application.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument is being laid in breach of the 21-day rule for Parliament to pray against Statutory Instruments.
- 3.2 The Prime Minister addressed the nation on 23 March setting out the measures that would come into force immediately to help alleviate the pressure coronavirus was placing on local authorities and health service bodies. Therefore, breaching the 21-day rule is a recognition of heavy demands already being experienced by the health and care services and the need that has been identified for increasing the existing infrastructure. There is a need to bring forward a range of new uses and additional facilities which will require both change of use for existing buildings and new temporary modular buildings for uses such as surge sites which are suitable for use as

hospitals, health facilities, testing centres, coroner facilities, mortuaries, accommodation, and for storage and distribution including for community food hubs. These sites are needed urgently which requires that these measures come into force at the earliest opportunity so that the development that has taken place and will take place is covered by this right.

- 3.3 The urgent need to respond to the impact on public health of the spread of coronavirus means health service bodies and local authorities are triaging extremely high numbers of additional patients, carrying out medical and clinical testing and treatment with requirements for additional coroner facilities, mortuary space and accommodation for staff, volunteers and equipment, vehicle parking and facilities for community hubs. It is therefore important that development to accommodate these increased demands is brought forward at pace and that the planning process supports this objective.
- 3.4 This instrument seeks to avoid the delay that the making, submitting and processing of planning applications would inevitably involve. In view of the circumstances surrounding coronavirus, which falls into the category of an emergency for the purposes of the Order, not adhering to the 21 day rule is thought necessary and justifiable.
- 3.5 The amendment made by this instrument provides permitted development rights for development which could be used for the provision of additional temporary health and local authority facilities until 31 December 2020. Any extension of this period will require a further Statutory Instrument. Temporary permission until the end of 2020 allows sufficient time for the NHS and local authorities, who in the short term have to focus resources on their response to the spread of coronavirus, to determine their needs going forward and, if necessary, make an application for planning permission for longer term use which will be considered by the local planning authority in line with local and national policy.

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)

- 3.6 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.
- 3.7 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 This instrument amends 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”. Prior approval is not required in respect of the right introduced through this instrument.
- 6.3 Permitted development rights for change of use of buildings can make reference to the use classes set out in the Town and Country Planning (Use Classes) Order 1987 (“the Use Classes Order”). The Use Classes Order groups together uses having similar planning impacts. Those uses that are not within a use class are known as sui generis, reflecting that they are in a class of their own. The permitted development right can grant permission for uses that are not limited to a particular use class and which can be described in the instrument, as is the case in this instrument where the permission is for development by a local authority or health service bodies on land owned, leased, occupied or maintained by it for the purposes of preventing an emergency; reducing, controlling or mitigating the effects of an emergency; and taking other action in connection with an emergency.
- 6.4 The instrument introduces Part 12 A, Class A into Schedule 2 of the General Permitted Development Order inserting a new permitted development right to allow local authorities and health service bodies to undertake development where there is considered to be an emergency. A definition of emergency is provided in the Interpretation of Class A, A3.(1) as an event or situation which threatens serious damage to human welfare in a place in the United Kingdom. A3.(2) sets out those events or situations which involve, cause or may cause threat of serious damage to human welfare. They are loss of human life; human illness or injury; homelessness; damage to property; disruption of a supply of money, food, water, energy, or fuel; disruption of a system of communication; disruption of facilities for transport; or disruption of services relating to health.

7. Policy background

What is being done and why?

- 7.1 The country is undergoing a time of critical challenge for its health and care services in responding to the spread of coronavirus. To enable local councils and health service bodies to respond and provide facilities to limit its spread, treat, test, care for and manage the recovery of an extremely high number of patients and to provide additional mortuary facilities where necessary a new time-limited national permitted development right is being introduced. This right recognises that the detail of any development required will not necessarily be known in advance and as such provides a broad right that recognises the emergency nature of the responses required. The right will enable development including, but not limited to, the change of use of existing premises; erection of temporary buildings, structures, plant and machinery; vehicle parking and storage space.
- 7.2 The right recognises the serious nature of the call on the public sector and the need for a broad right. It recognises that both local authorities and health service bodies are accountable public bodies who will make choices in terms of the location and nature

of any new facilities that are both necessary and proportionate in the public interest. As publicly accountable bodies, they are expected to make reasonable judgement as to the benefits and impact of development in particular locations for the provision of additional facilities. The right therefore enables local authorities and health service bodies to carry out development which could include, but not be limited to, the change of use of existing buildings such as conference facilities and university buildings, the erection of temporary buildings or structures, including on land owned, leased, occupied or maintained by the health service bodies or local authorities or on their behalf, to provide health facilities such as temporary hospitals, coroner facilities, mortuaries and testing units. It also allows the change of use of existing buildings and land, the erection of temporary buildings or structures for associated storage facilities, distribution centres for food and other commodities, and the provision of plant, machinery and hard surfaces for parking and storage. The right also allows for the change of use of existing buildings such as hotels to provide temporary accommodation for staff, volunteers in the health sector and those who may be homeless.

- 7.3 Any premises changing use will retain their original use class during the period of when the permitted development right in the Order is used and therefore the building and the land within its curtilage remains in its previous lawful use. For the avoidance of doubt, after the relevant period, premises or land would revert to its original use. This will not impact on any permitted development rights that the premises have under their original uses.
- 7.4 The right, which is modelled on a similar right to develop Crown land in an emergency (Part 19, Class Q of Schedule 2 of the Order), will allow development across England, including in conservation areas, National Parks, the Broads and to a listed building. It does not remove the need for listed building consent should that be considered necessary. Class A1 sets out the circumstances where development is not permitted which are where the site is, or forms part of a site of special scientific interest; is a military explosives storage area; or the site is a scheduled monument. Class A1 provides limitations of development within 5 metres of any boundary of the curtilage of a dwelling house and also provides limits on the height of any new building or any enlarged, improved or altered building.
- 7.5 The instrument provides for a time limited right that will cease to have effect after 31 December 2020. Should the facilities be required beyond 31 December 2020 a planning application can be submitted.
- 7.6 The right is subject to the condition that any buildings, plant, machinery, structures or erections permitted by Class A are removed before the expiry of a period of 12 months beginning with the date on which the use of the land ceases for the purposes of the right. Also within the same period the land is required to be restored to its condition before the development took place, or, if the developer is not also the local planning authority to such other state as may be agreed in writing between the local planning authority and the developer.
- 7.7 There is no application process, and health service bodies and local authorities who are not the planning authority are required only to notify the local planning authority of the use of the development on a site as soon as practicable after commencing development. We expect this will be by e-mail or in writing.

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

10. Consultation outcome

10.1 The measures being brought forward in this amending instrument have been drafted as part of the national response to the Prime Minister's address of 23 March setting out how the country must respond to limiting the spread of coronavirus. As such there has not been a formal consultation period.

10.2 Stakeholder engagement will continue during the period the instrument is in force.

11. Guidance

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

12. Impact

12.1 The measures will provide an opportunity for businesses, charities and voluntary bodies to play a role in supporting health service bodies and local authorities in dealing with the impacts of coronavirus.

12.2 The measures are intended to support local authorities and health service bodies to respond to the spread of coronavirus through the provision of additional temporary health, care and storage facilities without the need to submit a planning application. It removes the cost and time burden of having to submit a planning application where the additional facilities are required urgently.

12.3 An Impact Assessment has not been prepared for this instrument because it is making a provision available only to health service bodies and local authorities which will have effect for a period of less than 9 months.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by the public sector and does not apply to activities that are undertaken by small businesses.

13.2 The impact of the change is deregulatory, reducing bureaucracy and cost in the planning system.

14. Monitoring & review

14.1 As this is a temporary measure of less than 9 months, a review will not be carried out as it would be disproportionate.

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)

- 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.