

EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT ETC.) (ENGLAND) (AMENDMENT) (NO. 2) ORDER 2023

2023 No. 1279

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing and Communities and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This Order amends the Town and Country Planning (General Permitted Development) (England) Order 2015 (S.I. 2015/596), as amended (“the General Permitted Development Order”) to make changes to “permitted development rights”, which are a grant of national planning permission under the General Permitted Development Order. It amends existing permitted development rights to expand the capacity of open prison buildings, permit solar equipment in a wider range of settings and makes minor changes to the permitted development right for electronic communications. It also introduces a new permitted development right to allow the development of solar canopies in off-street parking areas and makes consequential changes to the Town and Country Planning (Development Management Procedure) (England) Order 2015 (S.I. 2015/595) (“the Development Management Procedure Order”).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 Article 11(a) corrects an error in the Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order (S.I. 2023/747) reported by the Joint Committee on Statutory Instruments in its Forty-Eighth Report of Session 2022-2023.

4. Extent and Territorial Application

- 4.1 The extent of this instrument is England and Wales.
- 4.2 The 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 General Permitted Development Order grants planning permission for a range of specific classes of development. 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 Permitted development rights are subject to conditions and limitations to control impacts and to protect local amenity. There can be different conditions and limitations to control the same development in certain areas that are designated for their beauty, cultural importance or other characteristics, such as conservation areas, Areas of Outstanding Natural Beauty, National Parks and World Heritage sites, defined and referred to as “article 2(3) land” in the General Permitted Development Order.
- 6.4 The Development Management Procedure Order prescribes the permitted development rights that are subject to the duty to respond to consultation imposed on statutory consultees (also prescribed in the Development Management Procedure 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 support growth by providing certainty and reducing the time and cost of submitting a planning application. Permitted development rights can incentivise certain forms of development and provide flexibilities and planning freedoms to different users, including businesses, local authorities and local communities.
- 7.2 This Order amends the General Permitted Development Order as follows:

Amendments to an existing permitted development right to support open prisons
- 7.3 The Government is committed to delivering 20,000 modern prison places, ensuring there is sufficient prison capacity within the existing estate while continuing to protect communities.
- 7.4 An existing permitted development right, Class M of Part 7 of Schedule 2 of the General Permitted Development Order, allows for extensions etc for schools, colleges, universities, prisons and hospitals. It applies only to prisons with a closed perimeter. To support the Ministry of Justice in providing necessary additional capacity within the existing prison estate, Article 3 amends the permitted development right to also apply to open prisons. This will provide for additional prison accommodation and supporting facilities within open prisons. It will not provide for the development of additional open prisons, nor will it have any effect on the category of prisoners accommodated.
- 7.5 The existing permitted development right is subject to limitations and conditions. These include the size and height of any new buildings. In particular the erection of new buildings or extensions is limited to 25% of the cumulative footprint of the existing prison buildings or 250 square metres whichever is the greater. In the case of open prisons the limitations apply to open prison buildings as they were on 21

December 2023. Development may not take place on playing fields. In the case of article 2(3) land, the building must be constructed using materials that have a similar appearance to that in the original building. No changes are being made to these existing limitations and conditions.

- 7.6 For development within an open prison, the local planning authority must be notified with details of the proposed development before work commences. In addition, a new condition requires the Ministry of Justice to assess the contamination and flood risks of development within an open prison, identify any practical measures to reduce such risks and where the development is in Flood Zone 3 undertake a prior consultation with the Environment Agency.

New and amended permitted development rights for solar equipment

- 7.7 The British Energy Security Strategy (BESS), published in April 2022, committed the Government to undertake a consultation on relevant permitted development rights for rooftop solar equipment and consider the best way to make use of rooftops of public sector buildings. Deployed at scale, solar equipment can support the government in reaching a wide range of linked commitments key to reaching net zero, including UK-wide deployment of domestic and commercial battery storage and electric vehicle charging infrastructure. From February – April 2023 the Government consulted on a number of amendments to permitted development rights to further support the deployment of solar equipment.
- 7.8 There are four existing permitted development rights which allow for the installation of solar equipment on and within the curtilages of domestic and non-domestic buildings. Articles 4 – 7 make changes to these permitted development rights to facilitate and encourage the take up of solar equipment.
- 7.9 Article 4 amends Class A of Part 14 of Schedule 2 to the General Permitted Development Order to allow the development of solar equipment on flat roofs of domestic premises. This will increase the number of rooftops that are able to benefit from the permitted development right. To manage visual impacts, where solar equipment would be installed on a flat roof, it can be no higher than 0.6 metres above the highest part of the roof (excluding the chimney). Where solar equipment would be installed on a flat roof in article 2(3) land, prior approval is required with regard to the impact of the appearance of the solar equipment on the article 2(3) land.
- 7.10 Article 5 amends Class B of Part 14 to allow the development of stand-alone solar equipment within the curtilage of domestic buildings in conservation areas where it is installed closer to the highway than the dwellinghouse. In these cases, the solar equipment can be no higher than 2 metres and is subject to prior approval with regard to the impact of the appearance of the solar equipment on the character of the conservation area. Article 7 makes similar changes with respect to stand-alone solar equipment within the curtilage of non-domestic buildings in article 2(3) land (Class K of Part 14).
- 7.11 Article 6 removes the 1 megawatt (MW) electricity generation threshold that currently applies to solar equipment on non-domestic buildings (Class J of Part 14). This means that there is no limit on the electricity generated by rooftop solar equipment on non-domestic buildings.
- 7.12 Article 8 introduces a new permitted development right to allow the installation of solar canopies in non-domestic off-street car parks at ground level (Class OA of Part

14). Solar canopies are defined in Article 9 and must be installed with solar equipment and open on all sides unless adjoining a building.

- 7.13 There are a number of limitations and conditions. Solar canopies are permitted up to a maximum height of 4 metres from ground level and cannot be within 10 metres of the curtilage of a dwellinghouse or block of flats. They cannot be used for displaying advertisements. Where a solar canopy would be installed above a permeable surface, provision must be made to direct run-off water from the solar canopy to a permeable or porous area or surface within the parking area. Where the development is no longer needed, it must be removed as soon as reasonably practicable and the land must be restored to its original condition so far as reasonably practicable.
- 7.14 Development is not allowed within the curtilage of a dwellinghouse or block of flats, within the curtilage of a listed building or on a scheduled monument or land within its curtilage. In order to prevent solar canopies being installed on temporary car parks, it is not permitted where the parking area has been provided under Class B (temporary use of land) of Part 4 (temporary buildings and uses).
- 7.15 Prior approval is required from the local planning authority in relation to the solar canopy's siting (which includes consideration of siting with regard to non-protected trees in the car park), design and external appearance, in particular the impact of glare on the occupiers of neighbouring premises. If the development is in article 2(3) land, there is an additional matter for prior approval with regard to the impact of the appearance of development on that land. Development must be completed within 3 years of either prior approval being granted or not required.

Amendments in respect of electronic communications

- 7.16 An existing permitted development right, Class A of Part 16 of Schedule 2 to the General Permitted Development Order, provides flexibility to electronic communications code operators to install, alter or replace electronic communications apparatus.
- 7.17 The Government consulted on amendments to this permitted development right in 2021 to support the delivery of mobile infrastructure. Amendments to the permitted development right were made through The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2022 (S.I. 2022/278) ("the Amendment Order 2022") and the Government response to the consultation was published in March 2022. However minor amendments are required to ensure that legislation delivers the policy intention set out in the Government's response to the consultation for upgrading rooftop masts and deploying small cell systems.
- 7.18 The April 2023 UK Wireless Infrastructure Strategy set out that clarificatory amendments would be made "in relation to the definition of small cell systems and the application of constraints on the alteration or replacement of a mast". Article 10 makes three changes to clarify that the conditions set out in the permitted development right at A.2(3)(c)(ii)&(iia), A.2(3)(d)(i)&(ii), and A.2(4)(d)&(e) of Class A of Part 16 are intended to apply to ground-based rather than building-based masts; removes the power level which limited the deployment of small cell systems under Part 16; and ensures that the definition of safeguarded areas under paragraph A.4 reflects that safeguarding maps are also provided to local planning authorities under Article 31(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

Other amendments in respect of consultation

- 7.19 Article 11 makes minor amendments to article 22 of the Development Management Procedure Order in respect of the duty to respond to consultation. Article 22(1) is amended to refer to paragraph M.2(i)(iii) of Part 7 so that the Environment Agency must respond to a consultation about flood risk for open prisons. It also corrects the reference in article 22(1)(e) to refer to paragraph BC.3(3) of Part 4 (see paragraph 3.1 above).

8. European Union Withdrawal and Future Relationship

- 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 is a consolidation of an earlier instrument. This is the twenty-eighth amending instrument to the General Permitted Development Order. There are no current plans for a consolidation.

10. Consultation outcome

Amendments to an existing permitted development right to support open prisons

- 10.1 We consulted on amending the existing permitted development right for extensions etc of schools, colleges, hospitals, universities and prisons, Class M of Part 7, to additionally apply to open prisons as part of the wider *Consultation on additional flexibilities to support housing delivery, the agricultural sector, businesses, high streets and open prisons; and a call for evidence on nature-based solutions, farm efficiency projects and diversification*. This consultation ran from 24 July 2023 to 25 September 2023 and the Government response to the consultation will be published in due course. This statutory instrument only introduces the proposals from this consultation that relate to open prisons. If any of the other measures are taken forward, a separate statutory instrument would introduce these changes.
- 10.2 Those supporting the proposal recognised it was a pragmatic change as the permitted development right already applies to prisons. Those that did not support the proposal considered that such development should be brought forward on the basis of a planning application which would then allow for local consideration.
- 10.3 Following responses received to the consultation, we are, as proposed, applying the existing limitations and conditions currently set out in the permitted development right to open prisons and requiring the developer to notify the local planning authority of the details of the development prior to commencement and, additionally, to assess the contamination and flood risks of the development, identify any practical measures to reduce such risks and undertake a prior consultation with the Environment Agency where the development is in Flood Zone 3.

New and amended permitted development rights for solar equipment

- 10.4 The *permitted development rights: supporting temporary recreational campsites, renewable energy and film-making consultation* was open from 28 February 2023 to 25 April 2023. The consultation invited views on changes to permitted development rights which would support the installation of solar equipment, temporary recreational campsites, local authority led development and temporary film-making. The

Government response to the consultation will be published in due course. A summary of the responses on the new and amended permitted development rights for solar equipment is provided below.

- 10.5 The proposal to amend the existing permitted development right that allows for solar equipment on domestic buildings (Class A of Part 14) to permit installations on flat roofs was supported by respondents so that more domestic rooftops can benefit from this flexibility. Respondents raised concerns that the proposal to permit the installation of solar equipment on the wall of a domestic building that fronts a highway in a conservation area could give rise to impacts on the character of the conservation area. Therefore we have not brought forward this proposal.
- 10.6 The consultation sought views on amending the existing permitted development right that allows for the installation of stand-alone ground-mounted solar equipment in the curtilages of domestic buildings to permit solar equipment where it would be installed closer to the highway than the domestic building in conservation areas (Class B of Part 14). Similarly, it was proposed that the permitted development right that allows for the installation of stand-alone ground-mounted solar equipment in the curtilages of non-domestic buildings was amended to permit solar equipment where it would be installed closer to the highway than the non-domestic building in article 2(3) land (Class K of Part 14). Respondents supporting these proposals recognised that it would provide further flexibility on the positioning of stand-alone solar equipment, however others were cautious that installations could harm the character of these protected areas. As such, we are proceeding with these changes but requiring that, in these instances, the solar equipment is limited up to 2 metres in height and is subject to prior approval.
- 10.7 Respondents supported the proposals to remove the 1MW threshold for solar equipment on non-domestic buildings which we have brought forward. Respondents were also supportive of permitting solar equipment on the roof of a non-domestic building which fronts a highway in article 2(3) land (Class J of Part 14), recognising that it would maximise rooftop solar coverage. However respondents thought that wall-mounted solar equipment which fronts a highway in article 2(3) land could result in visual impacts on that land and we have not brought forward this proposal.
- 10.8 The consultation also sought views on the introduction of a new permitted development for solar canopies. Following responses received to the consultation we are proceeding with the proposed limitations and conditions that were consulted on in most cases. We had proposed that the permitted development right would not apply to article 2(3) land, however we received feedback through the consultation that solar canopies will utilise existing car parks, reducing the new for solar on greenfield sites. Therefore, rather than exclude the permitted development rights from these areas, we have introduced an additional matter for prior approval where the development is in article 2(3) land. In response to feedback received to the consultation we are also introducing additional limitations including, for example, that solar canopies cannot be used for advertising.

Amendments in relation to electronic communications

- 10.9 The changes to the permitted development right in respect of electronic communications are minor amendments to deliver the policy intention set out by Government in its *Response to the Technical Consultation on changes to permitted*

development rights for electronic communications infrastructure published in March 2022.

11. Guidance

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

12. Impact

12.1 The new and amended permitted development rights are deregulatory in effect, reducing bureaucracy and planning costs. There will be a small decrease in cost and time burdens to businesses in having to submit a planning application for some solar equipment installations. There is no, or no significant, impact on charities or voluntary bodies.

12.2 There is no significant impact on the public sector. The impact on local planning authorities is in some cases a reduction in administrative cost and time of processing planning applications, where the development would otherwise have come forward through a planning application. For example, currently where a landowner seeks to install a solar canopy in a non-domestic off-street car park, a planning application is required. Permitting solar canopies and requiring prior approval by the local authority will likely result in savings for the local authority. Similarly providing additional flexibility for open prisons will also reduce burdens for local authorities in processing a smaller number of applications.

12.3 The amendments to the electronic communications are clarificatory amendments, intended to achieve the policy objectives set out in the Amendment Order 2022. An assessment of impact was undertaken at the time. As the changes contained in this statutory instrument are clarificatory and do not change the original policy intention, it does not give rise to new direct costs or benefits to business.

12.4 A full impact assessment has not been prepared for this instrument.

13. Regulating small business

13.1 Those parts of the legislation relating to new and amended permitted development rights for solar equipment apply to activities that may be undertaken by small businesses. The impact of the change is deregulatory, providing a small reduction in bureaucracy and cost in the planning system and so small businesses have not been exempted as they will benefit. The amendment to the permitted development right to allow for development within existing open prisons may be used by the Ministry of Justice and therefore will benefit the public sector. It is not therefore relevant to small businesses.

14. Monitoring & review

14.1 The impact of the changes are small, as set out in the previous sections. The Department for Levelling Up, Housing and Communities will continue to monitor permitted development rights with changes made accordingly to ensure intended outcomes are achieved. A statutory review clause has not therefore been included for this particular instrument.

15. Contact

- 15.1 Amy Brookes at the Department for Levelling Up, Housing and Communities, Telephone: 0303 444 4811 or email: amy.brookes@levellingup.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Lucy Hargreaves, Deputy Director for Development Management, at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lee Rowley, Minister of State at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.