EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (AMENDMENT) (ENGLAND) ORDER 2010

2010 No. 654

THE TOWN AND COUNTRY PLANNING (COMPENSATION) (ENGLAND) REGULATIONS 2010

2010 No. 655

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 instrument

2.1. The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2010 amends the Town and Country Planning (General Permitted Development) Order 1995 to:

- expand the scope of non-domestic permitted development, so that certain types of non-domestic development do not require specific planning permission (subject to certain constraints);

- amend the procedure by which local authorities make local directions restricting permitted development rights, so that the approval of the Secretary of State is no longer required; and

- give permitted development rights for buildings used as small scale houses in multiple occupation shared by three to six people, to use as dwellinghouses, so that specific planning permission is not required.

2.2. The Town and Country Planning (Compensation) (England) Regulations 2010 prescribe certain matters for the purposes of section 108 of the Town and Country Planning Act 1990.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 Section 59 of the Town and Country Planning Act 1990 requires the Secretary of State, by order, to provide for the granting of planning permission for development – either by granting planning permission for development specified in the order ("a development order") or to provide for permission to be granted by a local planning authority on an application made to it.

4.2 The Town and Country Planning (General Permitted Development) Order 1995 (S.I. 1995/418) ("the GPDO") is made under section 59 and grants automatic planning permission for various types of development – subject to the limitations and conditions set out in the respective Parts of Schedule 2. These are known, informally, as "permitted development rights". The effect is that no application is needed for planning permission.

4.3 Sections 61A to 61D of the Town and Country Planning Act 1990 provides for the making of local development orders by local planning authorities. A local development order has the same

effect as a development order made under section 59, but only applies in relation to the area or part of the area of the authority that makes it.

4.4 The GPDO also makes provision for a local planning authority to withdraw certain permitted development rights in its area or part of its area, or in respect of a particular development. The existing procedure, set out in articles 4 to 6, requires the Secretary of State's approval for the making of certain kinds of direction.

4.5 Section 108 of the Town and Country Planning Act 1990 provides for compensation to be payable by local authorities in certain cases where planning permission for development granted by a development order or a local development order is withdrawn and where, on a subsequent application for planning permission for that development, the application is refused.

4.6 Section 108 was amended by section 189 of the Planning Act 2008. New subsection (2A) provides that where planning permission of a prescribed description granted by a development order or local development order is withdrawn by the issue of directions under powers conferred by that order, compensation is payable only if an application for planning permission for development formerly permitted by that order is made within 12 months of the directions taking effect. The effect of new subsections (3B) and (3C) is that, where planning permission granted by a development order is withdrawn, there will be no entitlement to compensation where the permission was granted for development of a prescribed description and is withdrawn in the prescribed manner, and notice of the withdrawal is published not less than 12 months or more than 24 months before the withdrawal takes effect. Where planning permission granted by local development order is withdrawn, subsections (3B) and (3D) provide that there will be no entitlement to compensation where notice of the withdrawal is published not less than 12 months or more than 24 months before the withdrawal takes effect.

4.7 Section 55 of the Town and Country Planning Act 1990 defines "development" for the purposes of the Act. Section 55(2)(f) provides that the use of a building or land for any purpose specified in an order made by the Secretary of State does not constitute development. The Town and Country Planning (Use Classes) Order 1987 (S.I. 1987/764) ("the Use Classes Order") sets out various classes of use – change of use within a class itself does not constitute development. In addition, Part 3 of Schedule 2 to the GPDO grants planning permission for development consisting of certain changes of use between classes in the Use Classes Order.

4.8 The Use Classes Order is being amended by the Use Classes (Amendment) (England) Order 2010 (S.I. 2010/653) (the Order is a "no-procedure" order so no separate explanatory memorandum has been provided). The effect of the amendment is to remove from the existing Class C3 (dwellinghouses) small houses in multiple occupation. These will now be in a new Class C4. Part 3 of Schedule 2 to the GPDO is amended by the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2010 to grant planning permission for development consisting of a change of use from Class C4 to Class C3.

5. Territorial Extent and Application

5.1 This instrument applies to England only.

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. Amendments to expand the scope of non-domestic permitted development.

7.1.1 The expansion of the scope of permitted development for non-domestic premises is in response to a review jointly commissioned by the Department for Communities and Local Government and the Department for Business, Enterprise and Regulatory Reform in March 2008 (the Killian Pretty Review). The Killian Pretty Review looked at the planning application process, how it could be improved, and ways to reduce unnecessary bureaucracy so as to make the process swifter and more effective for the benefit of all users.

7.1.2 In 2008, Communities and Local Government commissioned WYG Planning and Design to research the extent to which non-domestic permitted development rights could be expanded to incorporate further types of development. WYG's work influenced the Killian Pretty Review.

7.1.3 The Killian Pretty Review highlighted how obtaining planning permission for some minor non-domestic developments can place burdens on business and local authorities out of proportion with the potential impacts of that development. The Final Report of the Killian Pretty Review was published on 24 November 2008. It recommended that the Government take steps to reduce the number of minor applications that require specific planning permission, including expanding the scope of permitted development for small scale, commercial developments and other minor non-residential developments.

7.1.4 The Government's response to the Killian Pretty Review Final Report was published on 5 March 2009. The Government response placed early priority on reducing planning burdens on business, and signalled that we would consult on proposals to expand the scope of permitted development for non-domestic developments.

7.1.5 The Government subsequently consulted on proposals to expand permitted development in a consultation entitled "Improving Permitted Development" between 30 July and 23 October 2009. This consultation was informed by both the WYG research and Killian Pretty Review findings. This consultation paper can be accessed via the following link: http://www.communities.gov.uk/documents/planningandbuilding/pdf/improvingdevelopmentconsult.pdf

7.1.6. In response to The Pitt Review: Learning lessons from the 2007 floods, published in June 2008, the "Improving Permitted Development" consultation also proposed measures to regulate hard-surfacing as permitted development around non-domestic properties to ensure that it is permeable, as long as there is no risk of groundwater contamination.

7.1.7 The amendments being made to expand the scope of non-domestic permitted development include:

- For **industry and warehouse developments:** To expand existing rights to allow for the construction of new buildings of up to 100 square metres. To extend some of the industry and warehouse rights to research and development uses.
- For **schools, colleges, universities and hospitals:** To expand existing rights to allow new buildings or extensions to existing institutions of up to 25% of the gross floor space of the original building, or 100 square metres, whichever is the lesser.
- For **office buildings:** To introduce new rights to allow for extensions to existing office building of up to 25% of the gross floor space of the original building, or 50 square metres, whichever is the lesser.
- For **shops and financial and professional services establishments:** To introduce new rights to allow extensions for existing shops and financial and professional services establishments of up to 25% of the gross floor space of the original building or 50 square metres, whichever is the lesser.

All of these permitted development rights are subject to certain constraints, designed to minimise impacts on neighbours and the wider environment.

7.1.8 The amendments also include changes to the regulation of hard-surfacing. Certain non-domestic uses are granted new permitted development rights to lay 50 square metres of permeable hard-surfacing. There is a restriction on industry and warehouse development's permitted development right to lay hard surfacing – while an unlimited quantity can still be laid, it will need to be permeable. The permeability requirement will not apply, however, where there is a risk of ground water contamination.

7.2. Amendments to the process for restricting permitted development rights locally and changes to associated compensation provisions.

7.2.1. The Government's intention is to expand the scope of permitted development where appropriate. However, there may be exceptional circumstances where it may be appropriate to withdraw these rights locally, through the use of an Article 4 direction.

7.2.2. Local authorities already have the power to restrict permitted development rights as set out in articles 4 to 6 of the GPDO, although this process currently has shortcomings:

- the role of the Secretary of State in determining the acceptability of such directions is overly onerous, and may act as a disincentive to their use where they would be of local benefit; and
- not all such directions are the subject of local consultation.

7.2.3. The amendments being made to the process for the restriction of permitted development rights by local authorities involve:

- a change to the Secretary of State's role in the process, from one of determination to one of oversight and intervention to amend or revoke directions if necessary;
- a requirement that all directions restricting permitted development rights be subject to public consultation;
- a requirement to notify of a restriction by local advertisement, site notice and, unless it is impractical to do so, serving notice on all owners and occupiers of the land;

We do not propose to change the existing policy test in relation to the withdrawal of permitted development rights - that is, that they should not be withdrawn locally without compelling reasons.

7.2.4. In restricting permitted development rights, local authorities may face claims for compensation if they refuse a planning application for development that would formerly have been permitted. Prior to April 2010 claims for compensation could, theoretically, have been made indefinitely following restriction. Liability to pay compensation therefore acted as a disincentive to restrict permitted development rights where there would be a local benefit in doing so. Given the Government's intention to expand the scope of permitted development where appropriate, there may be an increase in instances where local authorities seek to restrict permitted development rights in their area in response to local circumstances. Section 189 of the Planning Act 2008, to be commenced in April 2010, limits the liability for compensation following the restriction of permitted development rights to 12 months, or prevents claims for compensation if 12 months notice of the revocation is given prior to its coming into force.

7.2.5. Given that numerous directions restricting permitted development rights already exist and that it is in response to extensions to permitted development rights that existing procedures need changing, section 189 will only apply, in the first instance, to recently introduced permitted development rights. Section 189 will therefore be applied only to householder permitted development rights (introduced in October 2008) and certain non domestic permitted development rights (scheduled for introduction in April 2010). Section 189 would also apply where a local development order is amended so as to become more restrictive, or is revoked. Consultation will be undertaken before section 189 is applied in relation to any other permitted development rights.

7.3. Amendments to give permitted development rights for buildings used as small scale houses in multiple occupation shared by three to six people, to use as dwellinghouses, so that specific planning permission is not required.

7.3.1. Problems caused by high concentrations of houses in multiple occupation (HMOs) have been highlighted as an issue in a number of towns and cities across the country. Although not all areas experience problems with high concentrations of HMOs those that do identify problems focused

around: loss of community mix/balance, litter, parking problems, reduced opportunity for low cost ownership, closure of under-used community facilities or pressure on over-used community facilities, anti-social behaviour.

7.3.2. CLG commissioned research work to identify good practice in areas that cope relatively well with high concentrations or HMOs, to test whether these ideas could have a wider application in those areas which have difficulty with such issues and to determine whether and if so what planning policy is a suitable lever to tackle these problems.

7.3.3. The research work concluded that that there was a range of good practice in existence in the form of non-planning and planning related mechanisms to deal with the symptoms arising from high concentrations of HMOs. However, it was felt that these processes have limited impact on the longer term issues surrounding HMOs. The report suggested a wider consultation on proposed amendments to the Use Classes Order and that consideration be given to providing a definition of an HMO potentially along the same lines as the Housing Act 2004.

7.3.4. On May 13 2009 CLG issued a consultation paper aimed at testing the validity of concerns and to explore what, if anything, might be proposed as a solution. The consultation outcome showed a clear preference for amending the Use Classes Order.

7.3.5. In the light of the research findings and consultation responses CLG has decided to amend the Use Classes Order to introduce a specific definition of a HMO along the same lines of the Housing Act 2004. This will be done by means of a separate statutory instrument.

7.3.6. However, we recognise that this change to the Use Classes Order could also reduce flexibility in the private rented sector and could deter families from purchasing HMO properties. Given that the land use impact of a HMO to dwellinghouse change is considered to be negligible, planning permission is not considered necessary to move from the new C4 class to C3.

7.3.7. We are therefore making this associated amendment to the GPDO to allow a change from a HMO to a C3 dwellinghouse to be permitted development, which means that an application for planning permission will not be required.

- ***Consolidation***

7.4. There are no plans to consolidate the GPDO.

8. Consultation outcome

8.1. Amendments to expand the scope of non-domestic permitted development.

8.1.1. Approximately 200 responses were received to the "Improving Permitted Development" consultation: 40% from local authorities, 10% from other government bodies, 15% from business, 10% from campaign groups, 10% from individuals, and 15% from other respondents.

8.1.2. Respondents broadly supported extending permitted development rights for shops, offices, institutions and industry (including the regulation of hard-surfacing, although often raising points regarding the detail of the rights proposed). Many respondents noted that minor developments of the scale proposed for these types of developments often result in considerable benefit to business in operational terms. These proposals were supported on the basis that they would give shops, offices, institutions and industry more certainty, in that they would be able to proceed with minor development knowing it is permitted, rather than having to go through the planning application process (including the administration and cost) where a successful outcome is not always guaranteed. Proposals in relation to the permeable hard surfacing were broadly welcomed, as respondents recognised the adverse impact that impermeable surfacing can have on surface water run off and associated flooding.

8.1.3. The consultation proposed the expansion of a "prior approval" regime in the planning system for alterations to shop fronts and the installation of Automated Teller Machines (ATMs). We intend to introduce these changes at a later date, alongside necessary changes to planning application fee regulations. The consultation also proposed that permitted development rights be granted for air conditioning units. Respondents raised a number of issues regarding this proposal and further work is needed to consider the issues that have been raised. These proposals do not feature in this instrument.

8.1.4 A summary of the consultation responses and a formal Government response on the way forward will be published shortly.

8.2. Amendments to the process for restricting permitted development rights locally and changes to associated compensation provisions.

8.2.1. Proposals for changes to the process by which directions restricting permitted development rights are made by local authorities were supported (either unconditionally or conditionally) by around 71% of respondents. In response to issues that emerged from consultation, we have strengthened the arrangements for public notification of a new direction.

8.2.2. The "Improving Permitted Development" consultation asked whether the amendments made by section 189 should apply to restrictions made in respect of those extensions to permitted development rights also being consulted upon in that document. Around 86% of those who responded to this question expressed support or qualified support for applying the s189 amendments to permitted development rights proposed in the consultation.

8.3. Amendments to give permitted development rights for buildings used as small scale houses in multiple occupation shared by three to six people, to use as dwellinghouses, so that specific planning permission is not required.

8.3.1. CLG conducted a public consultation between 13 May and 7 August 2009. The consultation offered three options:

Option 1: Promotion of best practice (non-legislative, focus on local management);
Option 2: Amend the Use Classes Order. Two alternatives were put forward (1) to amend the threshold currently in the current dwellinghouse use class to refer 'to not more than three residents living together as a single household'; (2) to provide a specific definition of an HMO along the lines of the Housing Act 2004.
Option 3: To define an HMO within the Use Class Order and to make changes between the dwellinghouse use class and the new class permitted development. Local authorities would then be able to use existing direction making powers under the GPDO to remove these permitted development rights if there was a local issue with HMOs.

8.3.2. 948 consultation responses were received:

75% from individuals
9% from local authorities
6% from residents associations
2% from environmental and community groups
2% from professional and academics
1% from students including unions
1%from Government bodies
<1% from business
2% from other organisations

8.3.3. Of those respondents who expressed a preference in terms of the options, 92% expressed a preference for amending the Use Classes Order along the lines of Option 2. The use of good

practice measures was identified as a preferred option by only 6% of respondents. 94% of respondents expressing a view considered the current planning framework to be a barrier to the effective management of HMOs by local planning authorities. Of those responding 94% felt that the promotion of best practice could not sufficiently deal with the problems associated with high concentrations of HMOs.

8.3.4 The consultation specifically asked whether, if amendments were made to the Use Classes Order, a property that has obtained planning permission for use as a HMO should require planning permission to revert back to a C3 dwellinghouse. Over three quarters of respondents who answered this question thought that planning permission should not be required in these circumstances.

8.3.5. A more detailed analysis of the consultation outcome can be found at: http://www.communities.gov.uk/publications/planningandbuilding/housesmultipleresponses.

9. Guidance

All new guidance will be available on the Planning Portal, the Government's online planning service.

9.1. *Amendments to expand the scope of non-domestic permitted development.*

9.1.1. Guidance on the new non-domestic permitted development rights will be published at the same time as the legislation comes into effect.

9.2. *Amendments to the process for restricting permitted development rights locally and changes to associated compensation provisions.*

9.2.1 Guidance will be produced to assist in explaining the revised process for making article 4 directions. It will also reaffirm the existing policy on the circumstances under which such directions are justified. Those parts of Circular 09/1995 which will be out of date as a result of the changes to the article 4 process will be revoked. Guidance will also cover changes to arrangements for payment of compensation where permitted development rights are withdrawn.

9.3. *Amendments to give permitted development rights for buildings used as small scale houses in multiple occupation shared by three to six people, to use as dwellinghouses, so that specific planning permission is not required.*

9.3.1. Circular ODPM 03/2005, Changes of Use of Buildings and Land will be updated to reflect this change in legislation.

10. Impact

10.1. Amendments to expand the scope of non-domestic permitted development.

10.1.1. The impact on business, charities and voluntary bodies is positive - removing further types of development from the need to gain specific planning permission from the local planning authority will result in both administrative and planning fee savings.

10.1.2. The impact on the public sector is largely neutral, aside from initial familiarisation costs with amended legislation. It is assumed that planning fees relate directly to the work involved on behalf of the relevant planning authority, therefore any reduction in fees will be mirrored in a reduction in associated work by the relevant planning authority.

10.1.3. An impact assessment is attached to this memorandum.

10.2. Amendments to the process for restricting permitted development rights locally and changes to associated compensation provisions.

10.2.1. The impact on business, charities and voluntary bodies is neutral. This is a largely procedural change that will not affect the test for where a direction restricting permitted development rights is appropriate. Owing to a new consultation requirement on all such directions, business, charities, and voluntary bodies will have a greater input into the process.

10.2.2. The impact on the public sector is largely neutral. The requirement to consult on all directions restricting permitted development rights will be an additional burden to local authorities, as will the requirement to serve notice on site. On the other hand, the process will be led from start to finish by the local planning authority and should therefore provide more certainty and a shorter process overall for local authorities. Applying Section 189 of the Planning Act 2008 to certain restrictions of permitted development rights will also reduce the compensation liability local authorities may face when restricting permitted development rights.

10.2.3. An impact assessment is attached to this memorandum.

10.3. Amendments to give permitted development rights for buildings used as small scale houses in multiple occupation shared by three to six people, to use as dwellinghouses, so that specific planning permission is not required.

10.3.1. The impact is that planning permission will not be needed for change of use of a property from a C4 HMO to use as a C3 dwellinghouse. This will mean that the owners will not bear the costs associated with such applications.

10.3.2. The impact on the public sector is that local authorities will not need to determine such applications, thereby allowing a redirection of resources to where they are most needed.

10.3.3. The impact of this amendment is considered as part of the overall impact assessment for the associated change to the Use Classes Order. The impact assessment is available at: http://www.communities.gov.uk/publications/planningandbuilding/hmoimpactassessment

11. Regulating small business

11.1. Amendments to expand the scope of non-domestic permitted development; Amendments to the process for restricting permitted development rights locally and changes to associated compensation provisions.

11.1.1. The legislation applies to small business.

11.1.2 The legislation will mostly expand permitted development rights for non-domestic premises. There will therefore be a significant positive impact of this legislation for small businesses, because certain non-domestic premises will be able to undertake minor forms of development without the need to obtain planning permission from the local planning authority. Removing the need to obtain specific planning permission will save businesses costs (both administrative and in fees) and time. It will also provide them with a greater degree of certainty as to what can be done without the need to apply for planning permission from the local planning authority.

11.1.3 Although requiring new or replacement industrial hard-surfacing to be permeable will be a restriction on current permitted development rights (where there is no restriction on the type of surfacing that may be laid), the costs of this restriction are outweighed by the benefits in terms reduced risk from surface water run off and flooding and by the benefits of other extensions to permitted development rights elsewhere for industry. Given that the legislation has a positive impact, no steps have been taken in relation to minimising the impacts upon on small firms employing up to 20 people.

11.1.3 The final decision on what action to take to assist small business has been determined on the basis that the impact of legislation would be positive.

11.2. Amendments to give permitted development rights for buildings used as small scale houses in multiple occupation shared by three to six people, to use as dwellinghouses, so that specific planning permission is not required.

11.2.1. The legislation applies to all owners of C4 HMO properties. It applies in the same way to small firms as it will to everyone else. Small firms will not incur the costs of submitting a planning application for a change of use from a C4 HMO to use as a C3 dwellinghouse.

11.2.2 The final decision on what action to take to assist small business is that this amendment will have a positive impact on them.

12. Monitoring & review

12.1. *Amendments to expand the scope of non-domestic permitted development; Amendments to the process for restricting permitted development rights locally and changes to associated compensation provisions.*

12.1.1. This policy will be reviewed three years after implementation. CLG receives regular feedback from local planning authorities, practitioners and professional bodies on all areas of planning. We will monitor progress and evaluate the success of this policy change as part of our overall monitoring of permitted development rights.

12.1.2 We will monitor progress on the amendments to article 4 procedures and in relation to the application of section 189 in liaison with Government Offices.

12.2. Amendments to give permitted development rights for buildings used as small scale houses in multiple occupation shared by three to six people, to use as dwellinghouses, so that specific planning permission is not required.

12.2.1.CLG receives regular feedback from local planning authorities, practitioners and professional bodies on all areas of planning. We will monitor progress and evaluate the success of this policy change as part of the overall monitoring of the change to the Use Classes Order on an ongoing basis through this feedback.

12.2.2.More specifically we will review the overall policy change 3 years after implementation. In order to provide a baseline for the review, CLG will commission a survey of local authorities on the impacts of HMOs now. This survey will be repeated in 3 years. We propose that elements such as the mix of housing within key areas previously identified as having a problem with high numbers of HMOs be evaluated.

13. Contact

13.1. *Amendments to expand the scope of non-domestic permitted development; Amendments to the process for restricting permitted development rights locally and changes to associated compensation provisions.*

Tom Bristow at the Department for Communities and Local Government (Tel: 0303 444 1714 or email: tom.bristow@communities.gsi.gov.uk) can answer queries regarding the non-domestic permitted development, article 4 directions and compensation aspects of this instrument.

13.2 *Amendments to give permitted development rights for buildings used as small scale houses in multiple occupation shared by three to six people, to use as dwellinghouses, so that specific planning permission is not required.*

Susan Turner at the Department for Communities and Local Government (Tel: 0303 444 1721 or email: susan.turner@communities.gsi.gov.uk) can answer queries regarding the houses in multiple occupation aspects of this instrument.

Summary: Intervention & Options

Department /Agency:	Title: Impact Assessment of amendments to the permitted development regime in the planning system: Introducing new rights for certain types of non-domestic development, and new regulation for hard surfacing.	
Communities and Local Government		
Stage: Final stage	**Version:** 2	**Date:** 25 February 2010

Related Publications:

"Improving Permitted Development" consultation paper

The Killian Pretty Review, Planning Applications: A faster and more responsive system

Non Householder Minor Development Consents Review, White Young Green Planning and Design

Available to view or download at:

http://www.communities.gov.uk/documents/planningandbuilding/pdf/improvingdevelopmentconsult.pdf

http://www.planningportal.gov.uk/uploads/kpr/kpr_final-report.pdf

http://www.communities.gov.uk/documents/planningandbuilding/pdf/finalconsentsreview.pdf

Contact for enquiries: Tom Bristow **Telephone:** 0303 444 1714

What is the problem under consideration? Why is government intervention necessary?

Obtaining planning permission for some types of non-domestic development can place unnecessary burdens on business, out of proportion with the potential impacts of that development, as well as diverting resources within Local Planning Authorities (LPAs) away from more strategic concerns. Removing the need for specific planning consent for certain types of minor development will reduce burdens on businesses who wish to expand or improve their premises as well as make the planning system more proportionate and efficient. Additionally, impermeable hard surfaces installed around non-domestic properties exacerbates problems with surface water run off and associated flooding, and therefore the regulation of non-domestic hard surfacing to ensure its permeability where possible will mitigate these problems.

What are the policy objectives and the intended effects?

- to ensure the planning system responds proportionately to the impacts associated with proposed developments;
- to reduce the administrative burden for businesses by allowing greater freedom to undertake minor development without the need to apply for full planning permission;
- to reduce the number of planning applications processed annually, thereby allowing local planning authorities to focus on issues of greater strategic importance; and
- to encourage the use of permeable materials where hard-surfacing is required for non domestic properties in order to reduce surface water run-off and associated flooding.

What policy options have been considered? Please justify any preferred option.

Option 1: 'No change' to permitted development legislation.

Option 2:

(i) extend permitted development rights to certain types of non-domestic development;

(ii) introduce regulation of non-domestic permitted development rights in relation to hard surfacing, to encourage the use of permeable hard-surfacing where possible. This would be a grant of new permitted development rights to lay permeable hard surfacing in relation to shops, offices, and institutions, but a change to industrial and warehouse development's current permitted development right, so that an unlimited quantity of hard-surfacing can still be laid, as long as it is now permeable.

Option 2 is the preferred option, as it will make the planning system more proportionate to the scale of development, thereby increasing efficiency. It will also encourage the use of permeable materials aimed at aimed at reducing surface water run off and associated flooding.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The policy will be reviewed three years after implementation. Further details are given in the evidence base.

Ministerial Sign-off For Final Stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

John Healey

.....Date: 8th March 2010

Summary: Analysis & Evidence

Policy Option: 2	Description: Amendments to the permitted development regime in the planning system: Introducing new rights for certain types of non-domestic development, and new regulation for hard surfacing.

COSTS

ANNUAL COSTS		Description and scale of **key monetised costs** by 'main affected groups' Net loss of fee revenue for Local Planning Authorities: annual £3 - 6m; 10 year PV £25 - 48m (not included in totals as transfer). More applications for Certificates of Lawful Development (25 – 50% of affected applications): annual £2 - 4m; PV £18 - 37m additional cost to applicants. Costs to businesses of permeable materials: annual £0 to 9m 10 year PV £0 - 76m. Cost to business of planning permissions £0 - 2m; 10 year PV £0 -15m.
One-off (Transition)	**Yrs**	
£		
Average Annual Cost (excluding one-off)		
£ 2 - 15 million	10	**Total Cost** (PV) **£ 18 - 128 million**

Other **key non-monetised costs** by 'main affected groups': There may be impacts upon third parties from development which no longer would require specific planning permission, but these are likely to be minimal given that the permitted development rights are subject to limitations and conditions designed to reduce impacts upon neighbouring properties and the wider environment. There may also be some negative impact on firms which specialise in the production / installation of impermeable hard surfacing materials. Potential administrative and compensatory costs to LPAs where they bring in local restrictions to permitted development rights. These should be minimised by associated changes to policy in this area covered by a separate impact assessment. Costs for LPAs of familiarisation with new regulations

BENEFITS

ANNUAL BENEFITS		Description and scale of **key monetised benefits** by 'main affected groups' Fee and admin cost savings for business: annual £24 - 45m; 10 year PV £206 - 384m Net resource savings for Local Planning Authorities assumed to be equal to loss in fee revenue: annual £3 - 6m; 10 year PV £25 - 48m (not included in totals as transfer). Benefits from reduced floods: £0.5m; 10 year £4m.
One-off	**Yrs**	
£		
Average Annual Benefit (excluding one-off)		
£ 24.5 – 45.5 million	10	**Total Benefit** (PV) **£ 210 - 388 million**

Other **key non-monetised benefits** by 'main affected groups' There are additional non-monetised benefits connected with the hard-surfacing regulations - there will be savings in the energy costs of treating sewerage; improved water quality through reduced water pollution; and a reduction in the urban heat island effect when gravel is used instead of asphalt.

Key Assumptions/Sensitivities/Risks The assumptions used in monetising the costs are laid out in the evidence base. There is the risk of negative impacts on third parties of others exercising their permitted development rights. However the developments which they apply to have also been extensively considered in WYG's 2008 study of minor non domestic development consents and brought forward into policy with conditions to ensure the impact beyond the host property is minimal. Additionally, we are amending the article 4 process via which local authorities can restrict permitted development rights allowing local authorities to act quickly where the cumulative impacts of permitted development rights have a negative impact in their area.

Price Base Year 2009	Time Period Years 10	**Net Benefit Range** (NPV) **£ 82 - 370 million**	**NET BENEFIT** (NPV Best estimate) **£ 226 million**

What is the geographic coverage of the policy/option?	England
On what date will the policy be implemented?	April 2010
Which organisation(s) will enforce the policy?	Local Authorities

What is the total annual cost of enforcement for these organisations?			£ Unknown	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			N/A	
What is the value of the proposed offsetting measure per year?			£ N/A	
What is the value of changes in greenhouse gas emissions?			£ Unquantifiable	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)

Increase of £ 4.6m Decrease of £ 29.5 m **Net Impact** **£ -25** m

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**

Evidence Base (for summary sheets)

Background

(i) Permitted development rights

The Killian Pretty Review highlighted how obtaining planning permission for some non-domestic development can place burdens on business out of proportion with the potential impacts of that development. The Government's response to the Killian Pretty Review[1] welcomed many of the recommendations and agreed to consult on measures to *"create a planning application process which is more proportionate, that operates more efficiently and effectively, and is more easily understood by all involved"*. It also acknowledged that reducing the burden of the planning system on applicants has taken on a new imperative given the current economic climate, and placed an early priority on reducing the need for planning permission for some small scale development types by business.

The planning system exercises different degrees of control over different types of development, and in doing so recognises that a proportionate approach is an appropriate way of dealing with different degrees of impact. Permitted development is development granted an automatic planning permission by virtue of the Town and Country Planning (General Permitted Development) Order 1995 (as amended). Developments which are "permitted development" do not require specific planning permission from the relevant Local Planning Authority (LPA). Permitted development rights are established on an impacts based approach; if a development would have no or minimal impact, it is an unnecessary burden on the applicant to prepare an planning application and pay the associated fee, and an equally unnecessary burden on LPAs to have to assess and determine applications for such minor development.

Other more significant development requires the submission of a planning application which allows the LPA to consider whether the development is acceptable both in principle and in detail, whether the development accords with local, regional, and national plans, and to consult both stakeholders and public.

WYG Planning and Design reported to Communities and Local Government on the extent to which non-domestic permitted development rights could be expanded to incorporate further types of development[2]. WYG's work influenced the Killian Pretty Review, which proposed that approximately 35,000 minor non-domestic planning applications could be removed from the system annually in England. Prioritising proposals related to shops, offices, institutions, and industry, the "Improving Permitted Development" consultation paper contained proposals to extend permitted development rights so as to remove approximately 25,000 applications from the planning system annually.

(ii) Hard surfacing

Surface water flooding occurs wherever high rainfall events exceed the drainage capacity in an area. Such events can lead to serious damage of property and possessions. Increasing urbanisation and 'urban creep' (increased amounts of hard-surfacing in urban areas) are likely to increase flooding. Sir Michael Pitt's Review of the summer 2007 floods[3] recommended that householders should no longer be able to lay large amounts of impermeable surfaces in front garden areas without needing planning permission, and recommended that the Government should consult on extending this restriction further to back gardens and business premises. In October 2008 permitted development rights for hard-surfacing of front gardens was granted so

[1] Available from the CLG website: http://www.communities.gov.uk/publications/planningandbuilding/killianprettyresponse
[2] Non Householder Minor Development Consents Review, White Young Green Planning (November 2008) Available from: http://www.communities.gov.uk/publications/planningandbuilding/finalconsentsreview
[3] The Pitt Review, Learning Lessons from the 2007 Floods, Cabinet Office (2008)
Available from: http://archive.cabinetoffice.gov.uk/pittreview/thepittreview/final_report.html

long as permeable paving was used or provision made for the water to run off to a permeable area. In response to the Pitt Review, the "Improving Permitted Development" consultation proposed to regulate hard-surfacing for certain non-domestic premises. The consultation proposed new permitted development rights for shops, offices and institutions (schools, colleges, hospitals and universities) to lay hard-surfacing provided it is permeable where there is no risk of groundwater contamination, and a restriction on industrial and warehouse development's current permitted development right so that an unlimited quanity of hard-surfacing can still be laid, as long as it is permeable where there is no risk of ground water contamination.

Rationale for change

The planning system provides a mechanism through which the impacts and external costs of development to third parties can be taken into consideration when new development is proposed. However, applying for planning permission places a large administrative burden on business, estimated at around £1.1 billion in 2006.[4] Where a development has little or no impact upon neighbouring properties or the wider environment, the burden of associated administrative work and of the planning fee itself is disproportionate. A more proportionate response to minor developments with little or no such impact would reduce the burden on business and give businesses greater freedom to expand. It would also remove applications from the planning system, allowing LPAs to focus their resources on development proposals with more significant impacts. Therefore, the Government considers that where developments have negligible impacts beyond the host property there is a case for allowing them to be permitted development.

There is currently little incentive for businesses to mitigate surface water run-off effects from their properties by using permeable materials. They do not bear the full cost or consequences of the decision to lay impermeable hard-surfacing, because the impacts on flood risk and water pollution may be felt further down the drainage catchment. Changes to existing policy so that the use of permeable materials is made permitted development should incentivise their use when a business chooses to lay hard-surfacing.

Policy objectives

The policy objective is to remove from the planning system those relatively minor, non-contentious developments for which businesses currently need to submit a full planning application, by extending permitted development rights for a range of non-domestic developments. This measure is part of a broader move to make the planning system more proportionate with regard to the way it controls development, to allow development with little or no impact can be undertaken without the burden of the planning application process for either applicants or LPAs.

In addition, the proposals consulted upon in the improving permitted development consultation address the risk of increased surface water flooding caused by the increased use of impermeable hard-surfacing. The proposals mean that businesses that want to lay a certain amount of hard-surfacing will not need to obtain planning permission, as long as permeable paving is used or water runs off to a permeable surface.

The intended effects of the proposals include:

- Reducing the burden of the planning system on business;
- Reducing the need for LPAs to assess applications for developments which will have minimal impact upon neighbours and the wider environment;
- Reducing surface water run-off from impermeable surfaces laid on non-domestic properties.

[4] Administrative Burdens of Regulation – Communities and Local Government
http://www.communities.gov.uk/documents/corporate/pdf/regulation-burden.pdf

Consultation outcome

Consultation was on a variety of different proposals for non-domestic permitted development rights that were not exclusive- i.e. different proposals could be supported, amended, or rejected independently of one another. Additionally, the consultation paper sought views on both the principle and detail of proposals- we have been careful to take account of respondents' comments on both the rationale behind and minutiae of detail associated with each proposal.

Approximately 200 responses were received to the “Improving Permitted Development” consultation: 40% from LPAs, 10% from other government bodies, 15% from business, 10% from campaign groups, 10% from individuals and 15% from other respondents. Roughly 10% of those who responded to the consultation commented specifically on the impact assessment. A Summary of Consultation Responses will be published alongside the legislative changes which enacting these policies.

Respondents broadly supported extensions to permitted development rights for shops, offices, institutions and industry (including regulation of hard-surfacing). Developers welcomed the reduction in administration and planning application fees that would result if certain non-domestic developments were made permitted development. Many respondents noted that minor developments of the scale proposed for extensions to permitted development rights often result in considerable benefit to business in operational terms. Equally, proposals were supported as they would give shops, offices, institutions and industry more certainty in that they would be able to undertake minor development knowing that it is permitted, rather than having to go through the uncertainty of the planning application process where a successful outcome is not always guaranteed. Proposals in relation to the permeable hard-surfacing were broadly welcomed, as respondents recognised the adverse impact impermeable surfacing can have on surface-water run off and associated flooding.

The consultation proposed the expansion of a “prior approval” regime in the planning system for alterations to shop fronts and the installation of Automated Teller Machines (ATMS). We intend to introduce these changes at a later date, alongside necessary changes to planning application fee regulations. The consultation also proposed that permitted development rights be granted for air conditioning units. Respondents raised a number of issues regarding this proposal and further work is needed to consider the issues that have been raised. These proposals are therefore not considered as part of this impact assessment.

Respondents tended to respond less in relation to the monetised impacts of proposals than with how proposals sat within the planning system (i.e. whether reclassifying certain forms of non domestic development as permitted development would be appropriate given potential associated impacts and how proposals would relate to sustainable development). Where respondents did explicitly comment on the assumptions in the impact assessment, we have addressed this at the relevant points in the impact assessment text.

Several respondents commented that the impact assessment did consider the impact of the intensification of use these proposals will entail on the local amenity. Whilst we acknowledge that proposals may result in an increased intensity of use, we have taken steps to reduce the potential impacts of this. For example, we have amended our proposals for permitted development rights for extensions to “high street premises” so that only shops and financial / professional services establishments (Classes A1 and A2 of the Use Classes Order) would benefit from these rights, rather than more intensive uses such as restaurants, cafes, pubs, bars, hot food takeaways. Intensification of use is additionally very difficult to quantify, specifically as it would have to be weighed against the theoretical benefit such proposals would accord to business (i.e. greater economic activity, prevention of foreclosure, improvements in local amenity, etc.).

Options consulted upon in the "Improving Permitted Development" consultation paper (excluding those which are not being pursued at this time)[5]

Option 1: Do nothing

The current system would remain unchanged; businesses would continue to have to obtain planning permission for minor, largely non-contentious development, irrespective of associated impacts. LPA resources would also be required to assess more routine applications as opposed to those of greater strategic importance.

Option 2: Extend permitted development rights for a range of non-domestic development

(a) Shops and financial and professional services establishments (Use classes A1-A2[6]):

- Extend permitted development rights to allow extensions for existing shops and financial and professional services establishments (Classes A1 and A2 of the Use Classes Order) of up to 25% of the gross floor space of the original building, or 50 square metres, whichever is the lesser.
- Certain constraints would apply, including restrictions on height and proximity to boundaries, and a requirement that materials used matched those of the existing building in historically or aesthetically sensitive areas.

(b) Offices (Use class B1):

- Extend permitted development rights to allow extensions for existing offices (Class B1(a) of the Use Classes Order) of up to 25% of the gross floor space of the original building, or 50 square metres, whichever is the lesser.
- Certain constraints would apply, including restrictions on height and proximity to boundaries, and a requirement that materials used matched those of the existing building in historically or aesthetically sensitive areas.

(c) Schools, colleges, universities and hospitals:

- Extend permitted development rights to allow new buildings or extensions for existing institutions of up to 25% of the gross floor space of the original building, or 100 square metres, whichever is the lesser.
- Certain constraints would apply, including restrictions on height and proximity to boundaries, and a requirement that materials used matched those of the existing building in historically or aesthetically sensitive areas.

(d) Industry and Warehousing:

- Extend permitted development rights to allow industrial and warehouse development (including research and development uses) to construct new buildings of up to 100 square metres. Industrial and warehouse uses already have permitted development rights to extend and alter existing buildings so long as the development would not exceed 10% of the floor space of the original building or 500 square metres, whichever is the lesser, in sensitive areas (eg. conservation areas) or 25% of the floor space of the original building or 1000 square metres, whichever is the lesser in non-sensitive areas.
- Certain constraints would apply, including restrictions on height and proximity to boundaries, and a requirement that materials used matched those of the existing building in historically or aesthetically sensitive areas.

[5] The consultation paper proposed permitted development rights for air conditioning units. It also proposed the introduction of a prior approval regime for alterations to shopfronts and the installation of Automated Teller Machines (ATMs). As these proposals require further consideration they are not being taken forward into legislation in April 2010 and therefore this impact assessment does not address them.

[6] Use classes as set out in the Town and Country Planning (Use Classes) Order 1987(as amended)

(e) Regulate hard-surfacing in certain non-domestic premises

- Allow shops, offices, and institutions to lay 50 square metres of permeable hard-surfacing as permitted development.
- Restrict on industrial and warehouse development's current permitted development right so that an unlimited quantity of hard-surfacing can still be laid, as long as it is permeable where there is no risk of ground water contamination. (Currently there is no requirement for it to be permeable).
- The permeability requirement would not apply, however, where there was a risk of ground water contamination. The Government intends to publish related guidance on this matter.

Cost / Benefit Analysis

The sectors/groups most likely to be affected are:

- Businesses (those business who wish to expand or improve their premises)
- Local planning authorities;
- Third parties affected by new development.

Option 1: Do nothing

There would be no additional costs or benefits in choosing the "do nothing" option. However, the inefficiency of the current system for both users and administrators would persist.

- Business would continue to be required to submit planning applications for proposals which are likely to have little or no impact beyond the host property, resulting in administrative burdens for them;
- Businesses would continue to pay the planning application fee and administrative costs for developments with little or no impact beyond the host property, and this may act as a disincentive to them from pursuing development; and
- LPAs would continue to dedicate resources to determining applications for development with little or no impact beyond the host property in a way which is disproportionate to the impact of development. This would draw LPA resources away from more strategic applications and issues.

Option 2: Extend permitted development rights for certain types of non-domestic developments and new regulation for hard surfacing

(i) Extend permitted development rights for certain types of non-domestic developments

Benefits - summary

Businesses will benefit from no longer having to apply for planning permission for certain developments, and therefore would not have to pay the application fee or the administrative costs associated with preparing a planning application. In addition, businesses will have a greater degree of certainty, in that they would be able to undertake certain developments in the knowledge that they were permitted. The uncertainty of whether planning permission will be granted, and the uncertainty about how long it might take to obtain a decision will be removed, making it easier for businesses to plan small-scale extensions.

Local planning authorities will be able to re-prioritise resources so as to spend more time dealing with more significant applications or issues, rather than on developments which tend to be minor and non-contentious. These proposals will make the planning system more proportionate in its approach to development, thereby increasing efficiency in the system. contribute towards a more efficient planning system by improving proportionality in the approach taken.

The proposed changes outlined at Option 2 (a) – (d) will withdraw approximately 9,600 planning applications from the planning system annually (approximately 6% of all minor applications)[7].

Costs - summary

Local authorities would lose the planning application fee revenue for these developments. However, fee revenue is proportional to the resources needed to process planning applications, and there will be a commensurate savings by LPAs by not having to resource the processing of these types of applications.

There may also be some additional costs to LPAs:

- If LPAs wish to restrict permitted development rights locally, they would have to make directions under article 4 of the GPDO (as amended in April 2010). These directions restrict permitted development rights locally in exceptional circumstances where the exercise of such rights causes a specific local problem. There is an administrative burden on LPAs in making such directions, and in doing so LPAs may be liable to pay compensation where they refuse an application for planning permission for development that was formerly permitted development. It should be noted that the April 2010 changes to procedures for Article 4 directions are aimed at making it easier for LPAs to make Article 4 directions, and at the same time s.189 of the Planning Act 2008 will be commenced which will limit the compensation liability of LPAs. A separate impact assessment on this has been prepared.

  It was not possible to quantify the impact of these costs for LPAs in the consultation stage impact assessment owing to lack of evidence, and consultation responses did not provide evidence which would allow us to do this. In particular it is not clear how likely it is that an LPA would seek to restrict the permitted development rights proposed in the consultation paper via a direction under article 4 of the GPDO.

- Any changes to permitted development rights will require familiarisation on the part of users. LPAs may also have to respond to more requests for Lawful Development Certificates. As there is a fee associated with such a request, however, any uplift in application for LDCs should not place an additional burden on LPA resources.

There may be impacts upon third parties from developments which no longer would require specific planning permission, but these are likely to be minimal given that the permitted development rights are subject to limitations and conditions designed to reduce impacts upon neighbouring properties and the wider environment. Additionally, if in these extensions to non domestic permitted development rights prove particularly problematic within particular areas, LPAs have the power to restrict these rights through Article 4 of the GPDO, which would in effect require the submission of a planning application to the LPA in order for a development to obtain planning permission.

(ii) New regulation for hard surfacing

Summary of impacts

High street uses (i.e. those falling within Classes A1-A5 of the Use Classes Order), offices and institutions will be able to lay 50 square metres of permeable hardsurfacing as permitted development. The extension of permitted development rights to this type of development will mean that these types of non-domestic premises will be able to lay permeable hard-surfacing without incurring the costs of applying for planning permission. This will be a direct saving for those businesses, and remove further applications from the planning system. This in turn will allow LPAs to prioritise their resources towards more significant applications and issues.

[7] As explained in the assumptions used for estimating the costs and benefits, these proportions have been calculated using the total number of minor development applications for 2006/07.

LPAs will face a reduction in revenue from planning application fees, but this is assumed to have a neutral impact as the fee is intended to meet the costs of processing the application, and the LPA will no longer have to process these types of applications.

In monetising the benefits (below), it is assumed that only those businesses which would have laid permeable materials anyway benefit from the proposal. In reality, the proposal should incentivise businesses wanting to lay hard-surfacing to use permeable materials, as long as the cost of choosing such materials is less than the cost of preparing and submitting a planning application. This should lead to greater use of permeable surfacing than is currently the case, which will have the associated benefit of reducing the surface run-off area which in turn will contribute to reducing the risk of flooding.

Impacts on industrial and warehouse developments

The proposed changes to permitted development rights for hard-surfacing on industrial and warehouse sites represent a restriction when compared with the rights.

The proposed changes will benefit those whose properties are at risk of flooding by reducing the liability to flooding as a result of surface run-off. As well as the reduced cost of cleaning up after floods, there may be other potential benefits from the reduction in impermeable hard-surfacing: savings in the energy costs of treating sewerage; reduction in the urban heat island effect if gravel is used instead of asphalt; and enhanced water resources via ground water recharge.

Businesses wanting to lay hard-surfacing without applying for planning permission will now need to use permeable materials or ensure that there is drainage to a permeable surface. This may impose extra costs on businesses due to the greater cost of permeable materials, if under the "do nothing" scenario they would have chosen to use hard-surfacing which was impermeable. Some businesses may choose to incur the extra costs of applying for planning permission instead of choosing a permeable solution.

LPAs may face a small increase in the numbers of planning applications related to hard-surfacing from those businesses which do not choose a permeable solution. It is assumed that the resource costs to LPAs of having to assess such planning applications will be met by the associated fee which accompanies each application, and that this is not therefore a net cost for LPAs.

Monetised costs and benefits

Key assumptions made in the calculation of costs and benefits of Option 2:

(a) – (d) Extending permitted development rights to further types of non-domestic development

- The number of affected applications has been estimated based on the sample studied in the WYG report[8]. The report looked at a sample of just over 500 planning applications made in 2006/07, and so extrapolation of the total number of applications affected by our proposed changes has been made with reference to the total number of minor applications for that year. Respondents to the consultation claimed that the small sample size may lead to the estimates of applications saved being over or under estimated. We acknowledge that the savings calculated below are dependent on the estimate of the number of applications affected, but feel that it is appropriate to use the WYG survey as the best evidence available to us. In England, there were **151,100** minor applications in 2006/07 and in England and Wales, there were **163,961**. This compares with a total of 622,746 applications across all types of development.
- The sample of minor planning applications used in the WYG analysis included applications from both England and Wales. Of the total sample of minor applications (504), 97% were from England. This compares with 92% of all minor planning applications in 2006/07 which

[8] Non Householder Minor Development Consents Review, White Young Green Planning (November 2008) Available from: http://www.communities.gov.uk/publications/planningandbuilding/finalconsentsreview

were from England. The proposals only apply to development in England. In order to account for this, the WYG estimates of the numbers of applications saved have been adjusted by applying the proportions of applications in the sample to the total number of minor development applications in England.

Table 1: Estimated numbers of minor applications affected

Type of development (WYG study)	Proportion of sample	Estimated number of minor applications affected
Shops	2.8%	4200
Offices and industry	1.4%	2100
Institutions and leisure	2.2%	3300
TOTAL		**9600**

- Where development is made permitted development, businesses save both the fees that accompany a planning application, and the administrative costs associated with preparing a planning application. The fee for a minor non-domestic planning application is currently **£335** where the floorspace of the building would be increased by over 40 square metres but not more than 75 square metres, and **£170** where floorspace would not be altered or where the increase would be under 40 square metres[9]. The administrative cost of preparing a planning application is taken from the PwC administrative burdens measurement project which estimated it to be **£1450** for a minor development. For comparison, more recent research completed by Arup looked at a sample of applications made by SMEs for office and industrial development concerning establishment of premises[10]. These included applications for the installation of shop fronts, signage and new outbuildings. Although not directly comparable to all the development types above, it seems likely that the costs of this type of application would also act as a proxy for the administrative costs incurred by businesses in submitting applications of these types. The median cost given in the report for these types of applications is £1875 which includes the planning application fee. Without the fee, this would be £1540 which is close to the PwC figure. Table 2 sets out the estimated saving for businesses of extending permitted development rights to further types of non-domestic development.

Table 2: Estimated savings for businesses

	Annual savings - fees	Annual savings – administrative costs	Total annual savings	10 year savings (present value)
Applications which become Permitted Development	£ 3.2 million (9600*£335)	£ 14 million (9600*£1450)	£ 17.2 million	£ 147 million

- The same estimates have been used to calculate the loss of fee revenue to LPAs both annually and discounted over 10 years. However, planning fees are intended to cover the resource that LPAs use in processing planning applications. Therefore it is assumed that although LPAs lose this revenue, resources which can be valued using the fee revenue as a proxy would be freed up in planning departments and could be redeployed to work on applications for more significant developments.

[9] Planning Fees are laid out in Circular 4/2008 available from: http://www.communities.gov.uk/publications/planningandbuilding/743603

[10] Benchmarking the Costs to Applicants of Submitting a Planning Application, Arup (May 2009) Available from: http://www.communities.gov.uk/publications/planningandbuilding/benchmarkingcostsapplications

- There may be an increase in requests for Lawful Development Certificates (LDCs) as users may be confused by the system and seek to confirm via the LPA whether a proposed development is allowed under permitted development or not under the changes. Respondents to the consultation suggested that we may have underestimated the number of applications for Lawful Development Certificates that might be made. However, we think it is unlikely that a large proportion of the businesses affected will request Lawful Development Certificates once permitted development rights are extended to the specified types of development, as many are likely either to use planning consultants for advice on proposed development and the planning system, or have in-house teams that deal with issues related to their premises. We have assumed that between 25% and 50% of the businesses affected by the changes to permitted development would apply for an LDC. LDCs cost half the normal planning fee when they are applied for in relation to proposed developments, and it is assumed that the administrative costs involved in preparing an application for an LDC would be half those for a planning application.

Table 3

Scenario	Increased annual costs	10 year present value costs
25% of businesses request LDC	£2 million	£18 million
50% of businesses request LDC	£4 million	£37 million

(e) Hard-surfacing

New permitted development rights for high street uses (Class A1-A5 of the UCO), offices and institutions to have up to 50 square metres of permeable hard-surfacing

- Shops, offices and institutions make up over 60% of all commercial property in England[11]. In 2008, there were 1,346,547 commercial properties in England, meaning approximately 850,000 properties will be affected by the proposals.

- The proposals would extend permitted development rights for the specified types of commercial property to lay up to 50m^2 of hard-surfacing as long as the material used is permeable. A comparison of the costs of laying 50m^2 of impermeable hardsurfacing (including the costs of applying for planning permission, both fees and the administrative cost) with the costs of laying 50m^2 of permeable hardsurfacing suggests that the change in policy will incentivise shops, offices and institutions to lay permeable surfacing rather than impermeable surfacing due to the cheaper overall cost. These cost comparisons are shown in Table 4 below and are based on cost estimates for different surfaces provided by consultants[12].

Table 4: Costs of laying permeable and impermeable hard surfacing

Hard surfacing option	Cost per m^2	Cost per 50m^2 + planning permission	Difference (Impermeab
Impermeable surfacing (asphalt) with planning permission	£66.90	£4965	£1179
Permeable surfacing (asphalt)	£75.72	£3786	
Impermeable surfacing (concrete blocks) with planning permission	£65.50	£4895	£30
Permeable surfacing (concrete blocks)	£97.30	£4865	

- There is no available evidence on how many planning applications relating to laying hard-surfacing for shops, offices and institutions are made annually. In estimating the benefits a modelling assumption has been used that between 0.5% (4250) and 2% (17000) of these types of commercial properties might lay hard-surfacing each year and therefore may benefit

[11] CLG statistics for Commercial and Industrial Property

[12] Understanding permeable and impermeable surfaces: Technical report on surfacing options and Cost Benefit Analysis (2009) Available from: http://www.communities.gov.uk/publications/planningandbuilding/permeablesufacesreport

from not having to apply for planning permission and bearing the associated costs – the planning fee of £170 and administrative costs of £1450.

- It is not thought that there will be an associated increase in requests for Lawful Development Certificates relating to this type of development as the proposal is expected to be straightforward to interpret.

Table 5: Estimated savings to shops, offices and institutions - range depends on proportion of businesses affected annually (0.5% - 2%)

Saving	Saving to individual business	Assumed number of commercial properties laying hard surfaces each year	Annual saving	10 year PV saving
Reduction in planning fees	£170	4,250 – 17,000	£1m to £3m	£6m to £25m
Reduction in administrative cost	£1450	4,250 – 17,000	£6m to £25m	£53m to £212m
TOTAL	**£1620**		**£7m to £28m**	**£59m to £237m**

Industry and warehousing developments to retain the current permitted development right to lay an unlimited amount of hard-surfacing, subject to a new restriction that it is a permeable surface

The monetisation of the costs and benefits of this change in policy has been informed by cost-benefit analysis completed by consultants for Communities and Local Government[13].

- After implementation of the policy, businesses wishing to lay hard-surfacing on an industrial or warehousing site will either have to apply for planning permission if they wish to lay an impermeable surface, or benefit from permitted development rights if they choose to use permeable materials.

- The benefits from the policy arise from the estimated reduction in surface run-off area compared to the "do nothing" scenario where businesses face no incentive to use permeable materials. The smaller run-off area leads to a reduction in sewer floods and combined sewer overflows – a 1% reduction in run-off surfaces leads to a 9% reduction in sewer related flooding. The Environment Agency estimates that the average cost of a sewer flood is £39,000 and the costs of combined sewer overflows as £51,000.

- Approximately 33% of commercial properties in England are used for industry and warehousing and there are 1,346,547 commercial properties in total. In calculating the costs and benefits it is assumed that 2.5% of these properties would want to lay 50 square metres of hard-surfacing each year on their sites. The consultation stage impact assessment asked consultees to specifically comment on this assumption. As no consultees commented specifically on this assumption, we have not made any changes.

- The range of costs has been estimated based on a range of assumptions about current practice. Currently hard surfacing laid on industrial and warehousing sites can be designed to drain to a permeable surface and not to the sewer. Potentially, there are ways for a business to lay hard-surfacing which meets the requirement for permeability without incurring the extra cost of permeable materials. This explains the zero cost at the lower end of the estimated cost range.

[13] Ibid

- However, it is also possible that businesses will comply with the restriction to permitted development rights by using permeable materials or applying for planning permission in order to use impermeable materials. The high end of the range of costs has been calculated assuming 90% of the businesses that wish to lay hard-surfacing choose to use permeable materials, while the remaining 10% apply for planning permission and incur the associated costs. The additional costs of applying for planning permission for that 10% of businesses will be just under £2m annually - £0.2m in fees and £1.6m in administrative costs (PV £0 - £15m).

- The costs per m^2 for permeable and impermeable materials are as shown above in Table 4.

- Assumptions need to be made about the proportion of businesses choosing different types of permeable materials. There is a greater cost premium for permeable over impermeable concrete blocks than there is for permeable over impermeable asphalt. In the consultation stage impact assessment, it was assumed that 50% of the businesses using permeable materials would choose concrete block paving and 50% would choose asphalt. This assumption provides a high end estimate of the costs to businesses. It is likely that in many cases, businesses will choose the cheaper permeable material which will reduce their additional costs relative to the "do nothing" scenario.

- The range of costs also reflects different estimates of the price elasticity of demand[14]. There is no evidence of how sensitive industry demand for hard-surfacing will be to the increase in costs of materials used. The estimates of the price elasticity of demand used range from 0.5 to 2 which reflects the methodology used when estimating demand for permeable materials for the impact assessment related to hard-surfacing in front gardens[15] . The higher the price elasticity of demand, the greater the fall in quantity demanded when the cost of laying hard-surfacing increases.

Table 6: Costs and benefits of permitted development rights for permeable surfaces on industrial sites

Price elasticity of demand	Annual cost	Annual benefit	10 year PV costs	10 year PV benefits	Net present value (10 years)
0.5	£11m	£0.5m	£91m	£4m	£-87m
1	£9m	£0.5m	£78m	£4m	£-74m
2	£6m	£0.5m	£51m	£4m	£-47m

For the purposes of the impact assessment, the costs and benefits have both been measured over 10 years, in order to ensure consistency across the analysis of the different policy proposals. However, the benefits of reduced flooding are cumulative, and so the average annual benefit would increase if the benefits of a reduction in run-off surface were calculated over a longer time period. Over a longer time-frame the costs of permeable surfacing would also be likely to fall as suppliers of permeable materials responded to increased demand. The cost premium for permeable materials is assumed to remain constant over the 10 year period of the analysis but this may be an over-cautious assumption.

[14] The price elasticity of demand measures the sensitivity of demand for hard surfacing in relation to changes in its price.
[15] http://www.opsi.gov.uk/si/si2008/em/uksiem_20082362_en.pdf

Table 7: Summary of the Costs and Benefits

Benefits			
	Proposed change		
	Extending permitted development rights to further types of non domestic development	Permitted development rights for permeable hard surfacing laid by shops, offices and industrial premises	TOTAL
Fee and admin cost saving for business (10 year PV)	£147m	£59m – £237m	£206m - £384m
Net resource savings for LPAs – equivalent to fee savings (10 year PV)	£20m - £24m	£4m - £25m	£24m - £49m
Reduction in cost of clearing up floods (10 year PV)	-	£4m	£4m
TOTAL	£167m - £171m	£67m - £266m	£234m – £437m
Costs			
Fee and admin costs for business from increase in Lawful Development Certificates (10 year PV)	£18m - £37m	Not applicable – it is not thought that there will be an increase in LDCs as the change in policy should be straightforward to interpret.	£18m - £37m
Fee and admin costs for business from applications relating to hardsurfacing on industrial premises	-	£0 - £15m	£0 - £15m
Costs of permeable materials for industrial premises	-	£0 - £76m*	£0 - £76m
Net loss of fee revenue for LPAs	£20m - £24m	£4m - £25m	£24m - £49m
TOTAL	£38m - £61m	£4m - £116m	£42m - £177m
NET BENEFIT (not including costs and benefits to LPAs)	£110m - £129m	£-28m - £241	**£82m - £370m**

*Costs could be zero if hardsurfacing is laid on industrial premises in a way that meets the requirements for permeability without the use of permeable surfacing (draining to a permeable area for example). The top end of the range of costs is based on estimated cost of installing permeable surfacing over impermeable surfacing assuming inelastic demand.

Administrative Burdens

The change in administrative burdens has been calculated as follows:

(i) *Extend permitted development rights for certain types of non-domestic developments*

Annual **reduction** in administrative burden from the changes to minor applications (not related to hard-surfacing): £14 million (Table 1)

Annual **increase** in administrative burden from increased requests for LDCs (not related to hard-surfacing): £3 million (midpoint of range)

(ii) *New regulation for hard surfacing*

Annual **reduction** in administrative burden from permitted development rights for permeable surfaces for shops, offices and institutions: £15.5 million (midpoint of range in Table 5)

Annual **increase** in administrative burden for industry applying for planning permission to lay impermeable surfaces: £1.6 million

The total reduction in the administrative burden on business is **£25 million.**

Equalities Impact Assessment

An equalities screening of the policies covered by this impact assessment indicated that none of the policies would have a differential impact on any equalities groups and a full equalities impact assessment was not needed.

Monitoring and Evaluation

CLG receives regular feedback from local planning authorities, practitioners and professional bodies on all areas of planning- particularly in relation to permitted development rights and third party objections to development that has been undertaken as permitted development. Additionally CLG may receive direct calls from those affected by permitted development rights and also monitors online forums which discuss the practical implementation of these policies. Through extensive liaison with the Planning Portal we will ensure the guidance on the website reacts to comments received in relation to permitted development rights. There are therefore multiple avenues through which we expect to receive feedback on the policy and we will monitor progress and evaluate the success of this policy change as part of the overall and ongoing monitoring of permitted development rights.

We will additionally work closely with Government Departments in reviewing changes to the process by which local authorities restrict permitted development rights as Government Departments act as the Secretary of State in relation to these directions. The policy will additionally be reviewed three years after implementation

Enforcement

Local Planning Authorities are already expected to investigate possible breaches of planning control, and to take enforcement action where they consider it expedient to do so.

Sanctions

No new sanctions are proposed.

Specific Impact Tests

Competition assessment

There is no impact on competition from most of the proposals covered in this impact assessment. The proposals are de-regulatory across the board and therefore it is not envisaged that they will unduly advantage or disadvantage any interests over any others. However, it is possible that firms that specialise in impermeable paving and surfaces are competing against firms that specialise in permeable paving and surfaces. It is therefore possible that reducing demand for impermeable paving and surfaces through the measures proposed will restrict competition to a degree. It is expected that this will be mitigated by firms switching their business to permeable paving. The only constraint for such a switch will be the skills needed to lay permeable paving.

Small Firms' Impact Test

There should in general be no adverse impact on small firms from this proposal. If anything, we expect that the measures will advantage SMEs to a greater degree than large business given that, for example, in proportionate terms, an extension to a small business premise of 50 square metres would make more of a difference in operational terms than the same size of extension to a larger office complex. Also the administrative burden of applying for planning permission for such development will have a proportionately greater impact on SMEs.

Some small firms that specialise in impermeable paving and surfaces may be adversely affected by this measure if they face reduced demand for their product. The extent of the effect will depend on their ability to convert their business to the supply of permeable paving and surfaces. As mentioned above, this will be dependent on the skills of employees within the business.

Legal Aid Impact Test

There will be no legal aid impact from this proposal.

Sustainable Development, Carbon Assessment, other Environment

We do not envisage that the proposals to extend permitted development rights to a range of uses, including shops, offices, institutions and industry, will lead to significant increased carbon or other greenhouse gas emissions. Whilst an enlarged building "footprint" will require a concomitant increase in heating/ventilation, the requirements of current building regulations could mean that, in many cases, the overall building efficiency increases.

The proposals with regard to permeable paving will encourage sustainable drainage which aims to mimic natural drainage systems and uses less energy and other resources than are used by conventional techniques of transporting, treating, and disposing of surface water via the sub-surface sewerage systems.

Health Impact Assessment

There are not expected to be any detrimental health impacts from this proposal.

Race, Disability, Gender and Other Equality

We do not expect any adverse impacts as a result of this proposal.

Human Rights

We do not expect a negative impact on human rights from this proposal.

Rural Proofing

We do not believe this proposal will have a negative impact on rural areas.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	*Results in Evidence Base?*	*Results annexed?*
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

Summary: Intervention & Options

Department /Agency:	Title:	
Communities and Local Government	**Impact Assessment of changes to the process by which directions restricting permitted development rights are made by local authorities**	
Stage: Final	**Version:** 2	**Date:** 25th February 2010
Related Publications: Improving Permitted Development consultation http://www.communities.gov.uk/documents/planningandbuilding/pdf/improvingdevelopmentconsult.pdf		

Tom Bristow 0303 444 1714

What is the problem under consideration? Why is government intervention necessary?

Government aims to increase what development may be undertaken without the need to apply for planning permission to ensure the planning system operates efficiently. The exercise of permitted development rights may, however, be inappropriate in exceptional circumstances.

Local Planning Authorities (LPAs) can restrict permitted development rights locally by making directions by virtue of the Town and Country Planning (General Permitted Development) Order 1995 (the GPDO) and by amending or revoking a Local Development Order- i.e. a locally defined extension to permitted development rights- if it proves problematic. The current process of restricting permitted development rights is, however, subject to shortcomings which may disincentivise the restriction of permitted development rights locally where restriction would be locally beneficial.

What are the policy objectives and the intended effects?

The policy objectives are to:

- Expedite the process of restricting permitted development rights in exceptional circumstances
- Minimise the local authority liability in making such a direction; and
- Increase local accountability and effectiveness of notification procedures.

What policy options have been considered? Please justify any preferred option.

Option 1: Do nothing

Option 2: i) Enact changes to the process by which all directions restricting permitted development rights are made by local authorities;

(a) remove the requirement for Secretary of State approval;

(b) require a public consultation period for all directions; and

(c) allow notice of directions to be served on the land as well as by local advertisement where individual notification is impossible.

ii) Commence Section 189 of the Planning Act 2008 (which limits liability to pay compensation to 12 months following restriction or provides no recourse for compensation if 12 months notification in advance of withdrawal is given)

Option 2 was the preferred option consulted upon in the Improving Permitted Development consultation between 30 July and 23 October 2009 as it mitigates the existing shortcomings with the procedure for making directions restricting permitted development rights. Following consideration of the consultation responses option 2 (which was the preferred option) has been taken forward.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Proposals will be reviewed in close liaison with Government Offices (who act as the Secretary of State for directions restricting permitted development) three years after implementation.

Ministerial Sign-off For Final stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

John Healey

.....Date: 8th March 2010

Summary: Analysis & Evidence

Policy Option: 2	Description: **Enact changes to the process by which all directions restricting permitted development rights are made by local authorities and apply Section 189 of the Planning Act 2008 which removes liability for compensation**

COSTS

ANNUAL COSTS	
One-off (Transition) **Yrs**	Description and scale of **key monetised costs** by 'main affected groups' The costs have not been monetised as it is not possible to predict where such directions may be made by LPAs, and the numbers and types of applications which will be affected.
£	
Average Annual Cost (excluding one-off)	
£	**Total Cost** (PV) **£**

Other **key non-monetised costs** by 'main affected groups' The changes may encourage greater use of directions to withdraw permitted development rights. LPAs will bear the costs of consultation when introducing a direction, and of processing applications. Developers and householders will face the administrative costs of making applications in areas where directions are brought in.

BENEFITS

ANNUAL BENEFITS	
One-off **Yrs**	Description and scale of **key monetised benefits** by 'main affected groups' The benefits have not been monetised. Such directions are discretionary in nature and the benefits will be specific to the local area where they are used.
£	
Average Annual Benefit (excluding one-off)	
£	**Total Benefit** (PV) **£**

Other **key non-monetised benefits** by 'main affected groups' There will be environmental or social benefits where an LPA restricts permitted development rights locally where these would otherwise lead to negative impacts on the local area. LPAs would face reduced liability to pay compensation. There will be a democratic benefit of public consultation on directions.

Key Assumptions/Sensitivities/Risks Risk that consultation and site notification of all directions will place an additional burden on local authorities. But the benefits of greater transparency of such directions, and cost saving from removing requirement for SoS approval, should outweigh the cost of additional burdens.

Price Base Year	Time Period Years	**Net Benefit Range** (NPV) **£**	**NET BENEFIT** (NPV Best estimate) **£**

What is the geographic coverage of the policy/option?			England	
On what date will the policy be implemented?			April 2010	
Which organisation(s) will enforce the policy?			LPAs	
What is the total annual cost of enforcement for these organisations?			£	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			N/A	
What is the value of the proposed offsetting measure per year?			£ N/A	
What is the value of changes in greenhouse gas emissions?			£ N/A	
Will the proposal have a significant impact on competition?				
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)

Increase of £	Decrease of £	**Net Impact £**

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**

Background

The Government aims to introduce greater permitted development rights where appropriate, thereby reducing the burden of the planning system on business and rendering the planning system more proportionate in regulating the impact of development.

Permitted development rights- i.e. the right to legitimately undertake minor development without the need for specific planning permission- are granted nationally by the GPDO as amended. Additionally, local authorities can extend permitted development rights locally by virtue of powers granted by the *Town and Country Planning (General Development Procedure) Order 1995* (the GDPO) as amended to make Local Development Orders (LDOs).

On occasions the exercise of permitted development rights may cause a specific local problem. The right to undertake minor alterations to dwelling houses, for example, might be unacceptable in areas of particular architectural heritage. LPAs may already restrict permitted development rights in exceptional circumstances by making directions by virtue of article 4 of the GPDO or amending / revoking an LDO if it proves problematic. The process by which directions restricting permitted development rights are made currently has shortcomings:

- the role of the Secretary of State in determining the acceptability of such directions is overly onerous and may disincentivise their use where exceptional circumstances exist. Although legislation sets out of the role of the Secretary of State, Government Offices act as the Secretary of State in relation to directions restricting permitted development rights. Therefore for the sake of consistency it is the role of the Secretary of State that is referred to throughout in this impact assessment.

- not all such directions are the subject of local consultation;

- it is currently the case that notice of directions restricting permitted development rights must be served on individual landowners/ tenants, or where this is unfeasible via local advertisement- the former being overly onerous, the latter too lenient to ensure effective notification of all who would be affected; and

- local authorities may face claims for compensation for an indefinite period following withdrawal of permitted development rights.

With greater permitted development rights comes the greater likelihood of LPAs needing to restrict those rights. The Government therefore consulted on proposals to amend the process by which LPAs make directions restricting permitted development rights in the Improving Permitted Development consultation paper between 30 July and 23 October 2009:

- that the Secretary of State's role be reduced from determination to oversight and intervention if necessary;

- that all directions are the subject of local consultation; and

- that where it is unfeasible to serve individually, notice must be served by local advertisement and additionally by site display.

- that Section 189 of the Planning Act 2008 should apply to where certain permitted development rights are withdrawn (i.e. householder permitted development rights and those extensions to non-domestic permitted development rights consulted upon in the Improving Permitted Development consultation paper) and where Local Development Orders are amended so as to become more restrictive or are revoked. Section 189 of the Planning Act 2008 provides for local authorities' liability to pay compensation following restriction of permitted development rights to be limited to 12 months (or negated if notice of the direction restricting permitted development rights is given 12 months in advance of the restriction coming into place). Given that numerous directions restricting permitted development rights already exist, and that new compensation arrangements should only apply to recent changes to permitted development rights, Section 189's application to the restriction of any further permitted development rights will be consulted upon on a case-by-case basis.

The Government's purpose is therefore not to alter or weaken the exceptional circumstances policy test where such a direction would be appropriate, but to ease the process of making a direction where this test has been met. The ability of LPAs to decide what is appropriate locally is also consistent with devolution of decision making to the local level.

Planning legislation prior to scheduled changes in April 2010

Prior to scheduled changes to the GDPO in April 2010, LPAs could restrict permitted development rights under articles 4(1), 4(2) and 5(4) of the GPDO. In addition, LPAs may extend permitted development rights locally via making an LDO by virtue of Parts 61(A)-(D) of the Town and Country Planning Act 1990 and Article 2B of the GDPO, and may equally amend or revoke an LDO under the same provisions.

Directions restricting permitted development rights under article 4(1) could be used to restrict any permitted development rights (except Class B of GPDO Schedule 2 Part 22 or Part 23 Class B). Directions under this section were not the subject of public consultation and only took effect once the Secretary of State had approved them and notice was served on the landowner/ tenant. There was no obligation on the LPA to notify those affected of its intention to make an article 4(1) direction- a notification duty only arose once the direction was confirmed.

Under Article 4(2) of the GPDO, LPAs could restrict certain permitted development rights in Conservation Areas. A direction under 4(2) was the subject of consultation for at least 21 days, and no Secretary of State approval was needed. Article 4(2) directions came into force on the date on which notice is first served but will expire after 6 months unless the authority confirms the direction before that time.

Article 5(4) of the GPDO allowed for immediate restriction of certain permitted development rights, did not require public consultation, but had a six month life unless approved by the Secretary of State.

The Planning Act 2008

Section 189 of the Planning Act 2008 introduced provisions relating to compensation to the effect that if planning permission is withdrawn by way of an a direction restricting permitted

development rights or by the amendment or revocation of an LDO, compensation will only be payable if an application made for development formerly permitted is rejected within 12 months following the restriction coming into force. Section 189 also provides that if an LPA gives at least twelve months notice in advance of the withdrawal having effect, no compensation will be payable.

Policy objectives

The aims of the policy are to:

- increase local accountability and effectiveness of notification procedures;

- expedite the process of restricting permitted development rights without changing the policy consideration for where doing so is appropriate; and

- minimise local authority liability faced in making such a direction.

Policy Options

1) Baseline: do nothing.

2) i) Changes to the process by which all directions restricting permitted development rights are made:

(a) change the Secretary of State's role in the process of making directions restricting permitted development rights from one of determination, in the instances where this is currently required, to one of oversight and intervention to amend or revoke directions if necessary.

(b) require public consultation on all directions restricting permitted development rights.

(c) to require notice by local advertisement, site notice and, unless it is impractical to do so, serving notice on all owners and occupiers of the land.

ii) Commence Section 189 of the Planning Act 2008 and apply it via regulations to directions restricting permitted development rights related to the extensions to non-domestic development consulted upon in the Improving Permitted Development consultation (and restriction of householder permitted development rights as previously consulted upon). Section 189 allows for either liability to be limited to 12 months following restriction or negated altogether if 12 months notice of the restriction is given in advance of that restriction.

Consultation responses

Approximately 200 responses were received to the Improving Permitted Development consultation: 40% from LPAs, 10% from other government bodies, 15% from business, 10% from campaign groups, 10% from individuals and 15% from other respondents. We intend to publish a summary of consultation responses, which will provide further detail on comments received in response to consultation, alongside regulations enacting these proposals.

Although generally positive about the role directions restricting permitted development rights play in the planning system, responses were mixed as to whether such directions reduce the burden on local planning authorities or act as additional administrative burdens (especially in relation to their preparation, in subsequently having to determine planning applications without the typical associated fee, and enforcement work to ensure restrictions are adhered to). Although certain respondents believed that requiring consultation and site notification of all directions restricting permitted development rights would place a slight additional burden on local authorities, respondents believed that increasing the transparency of such directions would outweigh any additional burdens. Increased up-front involvement by those who would be affected by article 4 directions may mean there is less need to subsequently amend such directions (thus potentially saving administrative work further down the line), and may potentially also reduce the number of claims for compensation given the process is subject to greater local transparency. The general perspective on proposed changes was that they would reduce the procedural burden incurred by local authorities seeking to restrict permitted development rights without relaxing the exceptional circumstances where such a direction would be justified.

Respondents pointed to the need to clarify a number of issues in guidance, chiefly in relation to where such directions are appropriate, on what grounds the Secretary of State might intervene to modify or cancel a direction, and how compensation relates to the restriction of permitted development rights. We intend to publish revised guidance accompanying these procedural changes.

Concern was expressed about the proposal to allow site notice in place of individual notification in relation to land owned by statutory undertakers and the Crown (given that they may hold assets which are not regularly staffed or visited). In response to this concern, legislation has been drafted so as to ensure notice of an article 4 direction must always be served on statutory undertakers and the crown individually.

Sectors and groups affected

The groups that could be affected by directions restricting permitted development rights are numerous; however we are not changing the policy basis on which a direction restricting permitted development rights needs to demonstrate exceptional circumstances but only the procedure by which they are established. These are proposals that should therefore only directly affect LPAs and the Secretary of State.

Others who may be indirectly affected (dependent on the scope of the individual direction) include:

- shops, offices, institutions, industry (restricted compensation)
- the wider public who might be affected by someone else's proposed development
- landowners
- developers

The impacts of an individual article 4 direction will, however, be assessed at the time those directions are made.

Costs and benefits

(1) Baseline: Do nothing

Methodologically it is extremely difficult to quantify the impact of these changes for various reasons:

- there is no readily accessible information on the number of article 4 directions in place;
- article 4 directions may relate to anything from an individual development to the entire area of a local authority;
- article 4 directions may restrict from a specific element of a permitted development right (e.g. the right to paint a property any colour) to all permitted development rights across all GPDO classes; and
- there is no readily accessible source with which to determine how many and what level of claims of compensation have been made in relation to the withdrawal of permitted development rights (consultation responses indicated, however, that claims for compensation are rare- many respondents were unaware of the existing compensation arrangements).

Given these issues with the ability to effectively quantify the costs and benefits of policy changes to article 4 directions, the following section sets out a detailed consideration of potential non-monetised impacts.

Costs

Overall, if nothing is done to ease the process by which LPAs make directions restricting permitted development rights, the factors currently acting as a disincentive to establish directions restricting permitted development rights would remain. Where exceptional circumstances exist authorities would either be dissuaded from establishing a direction restricting permitted development rights, or, if they chose to establish a direction restricting permitted development rights, be required to undergo an unnecessarily onerous process and face the possibility of significant and on going liability to pay compensation. The disincentives to establishing directions restricting permitted development rights can result in costs manifested in the quality of the built environment where permitted development rights that cause a specific local problems are not restricted.

Policy proposal (i)

(a) the need to gain Secretary of State approval for directions restricting permitted development

rights could disincentivise their use as a tool to manage development effectively- i.e. with no change, there is no guarantee that the work undertaken in making such a direction will not prove abortive, and the timing of the process is uncertain (there is no time-limit for approval from the Secretary of State).

(b) The limitations on democratic accountability of certain directions would remain. On the other hand if certain directions restricting permitted development rights are to be made and approved by the LPA without referral to the Secretary of State it is appropriate that there is greater public input into the direction making process. The introduction of a consultation requirement allows local people to have a voice in the management of their area and to raise opposition if they feel permitted development rights is being unfairly withheld.

(c) The current problems of serving notice effectively on individual land owners/ residents will continue to cause a problem in areas where there are a considerable number of involved parties, or situations where it is difficult to determine which individuals to notify. Notice of directions to be posted on site, as well as by local advertisement in addition to requiring individual notice where this is practical.

Policy proposal (ii). Under 'no change' the current liability LPAs face when restricting permitted development rights either by directions or amending or revoking an LDO would remain as a disincentive to introduce restrictions where this would be justified or expose local authorities to significant liability where they chose to restrict. Responses to consultation demonstrate that the ability to claim compensation following withdrawal of permitted development rights is not universally understood, compensation is rarely sought in practice, and therefore introducing a 12 month limit on claims would have a small impact in terms of those whose rights have been restricted.

Benefits

The public would face fewer restrictions to their permitted development rights given that the process as it currently stands may dissuade LPAs from establishing Directions restricting permitted development rights (whereas policy proposals may increase their use). This may, however, be counter-productive as LPAs may be reluctant to restrict permitted development rights where this would be of local benefit.

Option 2 - Amend process for making directions restricting permitted development rights (the preferred option In consultation)

Costs
Policy proposal (i)

(a) reducing the role of the Secretary of State in the process of preparation directions restricting permitted development rights would reduce the administrative burden on both local authorities given that this would remove an additional process and degree of uncertainty, and the Secretary of State. As the Secretary of State would, however, retain a power to amend or cancel directions, in most instances as now, this administrative saving for the Secretary of State would

not be absolute as each direction would still require some form of oversight.

(b) there would be a minimal increase in administrative burdens on LPAs given the requirement to consult on all directions restricting permitted development rights. LPAs will, however, be able to draw upon existing consultation procedures and up-front consultation may benefit the implementation of directions restricting permitted development rights further down the line as well as increasing public involvement in the process. Additionally, in situations where it is unfeasible to service notice individually (owing to difficulty locating individual landowners/ tenants or the direction would affect a prohibitively large number of individuals) notice can be served via advertisement and site notice.

(c) entails costs associated with putting up site notices, though this would be minimal.

Policy proposal (ii) Householders/non domestic developers may find that their desired development is no longer permitted development and they will no longer be entitled to compensation- subject to 12 month's notice having been given. It is difficult to quantify the associated monetary cost as it is difficult to predict how national permitted development rights will be altered in the future, and therefore how and where LPAs might seek to restrict these in practice. We believe, however, the loss to applicants through reducing LPA liability to pay compensation would be minimal (see costs of 'do nothing' option in relation to proposal 3).

There would, additionally, be familiarisation costs on the part LPAs in adopting the new process, though this must be offset against longer-term benefits.

Benefits

Generally there should be minimal impacts on business. An amended process of establishing directions restricting permitted development rights will allow LPAs to better regulate development in their area in line with their development plan (which must take account of economic issues alongside social and environmental issues and general amenity). The consultation requirement on all directions will, in addition, allow for greater public involvement in the process. Given that the burden on LPAs in making a direction restricting permitted development rights would be reduced, a higher quality built environment may result as disincentives to restrict permitted development rights would be reduced whilst the test of where such directions would be appropriate remain unchanged.

Policy proposal (i)

(a & b) the local democratic accountability of directions restricting permitted development rights process would be increased and the Secretary of State would retain an oversight role.

(c) Requiring allowing an LPA to notify by means of a site notice and local advertisement will be a more effective mechanism of ensuring those whose rights are to be restricted are informed.

Policy proposal (ii) time limited LPA liability to pay compensation would again reduce a disincentive for LPAs to apply Directions, where it is appropriate and exceptional circumstances exist, a survey by Roger Tyms identified that 31 per cent of LPAs were reluctant to apply

Directions restricting permitted development rights because of the threat of compensation.[16]

Monitoring and evaluation

Monitoring

Proposals will be reviewed in close liaison with Government Offices (who act as the Secretary of State for directions restricting permitted development) three years after implementation. A number of consultation responses stressed the importance of monitoring this policy given that restriction of permitted development rights is a contentious issue.

Enforcement

It is expected that proposals will not have a significant increase on LPA burdens.

Sanctions

No new sanctions are proposed.

Specific impact tests

Competition assessment

A competition filter has been carried out which indicates this measure will have no significant impact on competition.

Small firms' impact test

The regulation does not specifically apply to small business and we have not identified any specific impact relating to them.

Legal aid

There are no Legal Aid costs associated with this proposal.

Sustainable development

Directions restricting permitted development rights are important mechanisms to ensure that development is restricted where appropriate; in particular where the cumulative exercise of permitted development rights causes a local environmental problem. Directions restricting permitted development rights are therefore useful mechanisms which can contribute towards environmental sustainability and social vitality. Proposals increase the public accountability of Directions restricting permitted development rights and encourage greater freedom for LPAs to condition development in their area.

Other environment

Directions restricting permitted development rights are tools that can be used to restrict permitted development rights where appropriate and are therefore a positive tool for ensuring environmental protection.

[16] Keith Thomas (1997) Development Control: Natural and Built Environment, http://books.google.co.uk/books?id=Ty7PKCad7FcC&pg=PA74&lpg=PA74&dq=roger+tyms+article+4+direction&source=bl&ots=RNZNXLRz6T&sig=s_O9owes0_8bZFSaEvEWwIJQdi4&hl=en&ei=FHdLSpinGIeD-Qa0opzfBQ&sa=X&oi=book_result&ct=result&resnum=1

Carbon assessment
There are no carbon costs associated with this proposal.

Health impact assessment
There are no health impacts associated with this proposal.

Race, disability, gender and other equality
We do not expect any adverse impacts as a result of this proposal.

Human rights
These proposals have no expected impact on human rights.

Rural proofing
Having engaged the views of the Commission for Rural Communities, we believe this measure will not have a negative impact on rural areas. Unsightly physical sub-division of agricultural land that leads to a degradation of local amenity is a particular problem, for example, that directions restricting permitted development rights can help mitigate against.

Type of testing undertaken	Results in Evidence Base?	Results annexed?
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No