EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (AMENDMENT) (ENGLAND) (No. 4) ORDER 2013

2013 No. 2435

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) (No. 4) Order 2013 ("the Order") amends the Town and Country Planning (General Permitted Development) Order 1995 ("the Principal Order") to provide that "relevant demolition" (demolition of certain unlisted buildings in conservation areas in England) is not "permitted development" for the purpose of Class B of Part 31 of Schedule 2 to the Principal Order. The Town and Country Planning (General Permitted Development) (Amendment) (England) (No. 3) Order 2013 ("the No. 3 Order"), which also comes into force on 1st October 2013, makes equivalent amendment to Class A of Part 31. This Order is required because it has come to our attention that without an equivalent amendment to Class B, demolition of gates, fences, walls etc in a conservation area would be permitted under that class.

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

3.1 The Department regrets that the 21 day rule will be breached in order to ensure that the exclusion of "relevant demolition" from the permitted development rights in Class B of Part 31 applies from same the date the No. 3 Order comes into force. Unless the Order comes into force on 1st October there is a risk to the protection of walls, fences etc situated in a conservation area in England, the demolition of which would be permissible without the need to seek planning permission.

4. Legislative Context

4.1 Section 55 of the Town and Country Planning Act 1990 ("the 1990 Act") defines "development" for the purposes of the Act. Section 57 provides that planning permission is normally required for any development of land and under section 58, planning permission may be granted on application to a local planning authority or by way of a development order under the 1990 Act.

4.2 Paragraphs 12 and 13 of Schedule 17 to the Enterprise and Regulatory Reform Act 2013 ("the 2013 Act") amended sections 74 and 75 of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the Listed Buildings Act") to provide that the requirement for conservation area consent in respect of the demolition of certain unlisted buildings in a conservation area ("relevant demolition") no longer applies to England. Instead, an application for full planning permission must be made, and paragraph 6 of Schedule 17 to the 2013 Act amended the Town and Country Planning Act 1990 to insert

a new section 196D into that Act which makes it an offence to fail to obtain the required planning permission for relevant demolition.

4.3 The Principal Order grants planning permission for a range of predominantly minor development, subject to certain limitations and conditions. Development granted planning permission under the General Permitted Development Order is known as "permitted development", and the effect is that no application needs to be made to the local planning authority to obtain planning permission, although in some cases the permitted development right will require the local planning authority to give "prior approval" of certain matters.

4.4 The No. 3 Order amended Class A of Part 31 (demolition of buildings) of Schedule 2 to the Principal Order to provide that "relevant demolition" is not permitted development. This Order amends Class B of Part 31 to ensure that "relevant demolition" is also excluded from permitted development rights under that class.

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 the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 The Listed Buildings Act provides that certain unlisted buildings in a conservation area must not be demolished without conservation area consent. There has been a long standing aim, however, to abolish conservation area consent so as to streamline the heritage protection system. The Penfold Review of non-planning consents in 2010 recommended a measure to abolish the separate conservation area consent regime. The recommendation was enacted through the provisions in Schedule 17 of the 2013 Act. The aim in respect of the demolition of unlisted buildings in conservation areas in England (now referred to as "relevant demolition") is to transfer the protections in the conservation area consent regime to the planning regime, while leaving the level of protection for unlisted buildings in conservation areas unchanged.

7.2 This instrument adds to the amendments to the Principal Order contained in the No. 3 Order by removing the relevant demolition of the whole or any part of any gate, fence, wall or other means of enclosure from the permitted development rights for demolition. This means that full planning permission is now required for such demolition, and so ensures that all the protections of the conservation area consent regime are transferred to the planning regime.

Consolidation

7.3 There are no plans to consolidate the Principal Order in the immediate future.

8. Consultation outcome

8.1 No consultation was carried out for this instrument as, together with the No. 3 Order, the Town and Country Planning General (Amendment) (England) Regulations 2013 and the Enterprise and Regulatory Reform Act 2013 (Consequential and Saving Provisions) (England) Order 2013 it simply replaces and replicates the existing protections for the demolition of unlisted buildings in conservation areas under the heritage system.

9. Guidance

9.1 Guidance will be brought forward as part of the Department's wider review of planning practice guidance

10. Impact

10.1 A full Impact Assessment has not been prepared for this instrument as, while it simplifies the process, no direct impact on business, charities or voluntary bodies is foreseen.

11. Regulating small business

11.1 The legislation applies to small business, but there is no new impact since the new secondary legislation replicates the heritage system in the planning regime.

12. Monitoring & review

12.1 No formal monitoring or review is necessary, as this instrument is one of a group that replaces the current protection regime for regulating the demolition of unlisted buildings in conservation areas.

13. Contact

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