EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (AMENDMENT) (ENGLAND) ORDER 2013

2013 No. 1101

and

THE TOWN AND COUNTRY PLANNING (COMPENSATION) (ENGLAND) REGULATIONS 2013

2013 No. 1102

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 2013 ("the Order") amends the Town and Country (General Permitted Development) Order 1995 to allow new permitted development rights for change of use; to extend existing permitted development rights for homes and business premises; and to switch off the requirement for prior approval of fixed line broadband apparatus on article 1(5) land.

2.2 The Town and Country Planning (Compensation) (England) Regulations 2013 ("the Compensation Regulations") revoke and replace the Town and Country Planning (Compensation) (England) Regulations 2012, with amendments relating to the compensation rights of land owners where a development order, local development order or neighbourhood development order both grants and withdraws planning permission by permitting development for a time-limited period.

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

3.1 The Order relies on recent amendments to one of the enabling powers, section 60 of the Town and Country Planning Act 1990 ("the 1990 Act"), inserted by section 4 of the Growth and Infrastructure Act 2013, commenced on 25 April 2013.

4. Legislative Context

4.1 Section 55 of the 1990 Act defines "development" for the purposes of the Act to cover both operational development (i.e. building work) and material change of use. Section 57 provides that planning permission is normally required for any development of land. 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 The Order is made under sections 59, 60, 61 and 333(7) of the 1990 Act. These provisions give the Secretary of State power to grant planning permission for categories of development specified in a development order. The General Permitted Development Order is made under these powers and 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.

4.3 Permitted development rights for change of use may make reference to the use classes set out in the Town and Country Planning (Use Classes) Order 1987, which groups together uses having similar planning impacts. The classes in the Use Classes Order which are relevant to this Order are:

A1: Shops
A2: Financial and professional services
A3: Restaurants and cafes
A4: Drinking establishments
A5: Hot food takeaways
B1: Business
B1(a) offices, not within A2
B1(b) research & development, studios, laboratories, high technology
B1(c) light industry
B2: General industrial
B8: Storage or distribution
C1: Hotels
C2: Residential institutions
C2A: Secure residential institutions
C3: Dwellinghouses
D1: Non-residential institutions
D2: Assembly and leisure

Extensions to homes and businesses

4.4 Parts 1, 8, 41 and 42 of Schedule 2 to the General Permitted Development Order grant planning permission for homes and business premises to be extended within

certain size limits and subject to various conditions. Part 1 deals with dwellinghouses, Part 8 with industrial and warehouse development, Part 41 with office buildings, and Part 42 with shops and establishments providing catering, financial or professional services. The Order increases the size limits applicable to extensions to the various types of building for a period of three years.

4.5 The amendments to Part 1 of Schedule 2 rely on new subsections (2B) and (2C) inserted into section 60 of the 1990 Act by section 4 of the Growth and Infrastructure Act 2013. These subsections allow development orders which permit development to dwellinghouses to provide a mechanism for neighbours to be consulted and for the local planning authority to consider the impact of the development on the amenity of neighbours. During the passage of the Growth and Infrastructure Act 2013 through Parliament, Ministers undertook that guidance would be issued on the neighbour consultation scheme which will operate in respect of the increased permitted development rights for householder rear extensions, and also undertook that adjoining neighbours would have 21 days in which to make representations on a proposal for development.

Changes of use

4.6 Part 3 of Schedule 2 to the General Permitted Development Order grants planning permission in respect of various changes of use. The Order amends an existing permitted development right in Part 3 to increase size thresholds so that larger business premises may change to another business use. The Order also creates three new permitted development rights for change of use. These will allow, subject to the prior approval of the local planning authority in respect of certain matters:

(1) for a period of three years, office premises (B1(a)) to change to residential use (C3);
(2) premises in a range of use classes (B1, C1, C2, C2A and D2) to change to use as a state-funded school;
(3) agricultural buildings to change to a number of other uses (A1, A2, A3, B1, B8, C1 and D2)..

4.7 All three permitted development rights rely on new subsection (2A) inserted into section 60 of the 1990 Act by section 4 of the Growth and Infrastructure Act 2013. Subsection (2) allows development orders to provide that the approval of the Secretary of State or the local planning authority may be required in respect of permitted development for change of use.

Temporary changes of use

4.8 Part 4 of Schedule 2 to the General Permitted Development Order grants planning permission in respect of certain temporary buildings and uses. The Order amends Part 4 to introduce two new permitted development rights. Firstly, buildings with a range of uses (A1, A2, A3, A4, A5, B1, D1 and D2) will be permitted to change

to uses having a lesser or similar impact (A1, A2, A3 and B1) for a temporary period of two years, subject to a size limit. Secondly, buildings in most use classes will be permitted to change to use as a state-funded school for a temporary period of one academic year, subject to approval by the Secretary of State for Education.

Operational development in schools

4.9 Part 32 of Schedule 2 to the General Permitted Development Order grants planning permission for the erection, extension and alterations of schools, subject to various conditions and limitations, and for the provision of hard surfaces on school land. The Order amends Part 32 to extend these permitted development rights to premises approved for use as a state-funded school for the purposes of the new right in Part 4 to temporarily change use to school use. There is also an amendment to Part 2 of Schedule 2 to enable all schools (including schools approved under Part 4) to build higher fences fronting a highway, provided they do not obstruct views for people using the highway.

Fixed broadband

4.10 Part 24 of Schedule 2 to the General Permitted Development Order grants planning permission for certain development by electronic communications operators. The Order amends Part 24 to remove, for a period of five years, the current requirement for the local planning authority to approve siting and design in relation to the construction, installation, alteration or replacement of telegraph poles, cabinets or wires for the provision of fixed line broadband services on article 1(5) land. The prior approval will remain in place for any development on land in a Site of Special Scientific Interest (SSSI).

Compensation Liability

4.11 Where planning permission granted by a development order, a local development order or a neighbourhood development order is withdrawn, land owners may have a right to compensation under section 108 of the 1990 Act. The Compensation Regulations make provision to ensure that no compensation right arises when a time-limited permitted development right granted in a development order made by the Secretary of State, such as those described in paragraphs 4.4, 4.6(1) and 4.8 above, comes to an end. To ensure consistency the Compensation Regulations make similar provision in relation to local development orders and neighbourhood development orders. This is the first use of the power in section 108(3E) of the 1990 Act to prescribe certain matters in relation to the withdrawal of planning permission granted by a neighbourhood development order.

Other Related instruments

4.12 The Town and Country Planning (Development Management Procedure) (England) Order 2010 will be amended to ensure that where statutory consultees are consulted by the local planning authority as part of a prior approval application in connection with a change of use, they must respond to that consultation within 21 days.

4.13 The Town and Country Planning (Fees for Applications, Deemed Applications Requests and Site Visits (England) Regulations 2012 will be amended to introduce a fee for prior approval applications under Part 3 of Schedule 2 of the General Permitted Development Order.

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 We are creating new and extended permitted development rights in order to make it easier for homeowners and businesses to invest in their homes and premises; simplify the change of use system; support sustainability by promoting the reuse of buildings; facilitate the provision of new state-funded schools; facilitate the swift roll-out of broadband and kick-start local economies.

7.2 The new permitted development rights are as follows:

Agricultural buildings under 500m^2 will be able to change to a number of other uses (A1, A2, A3, B1, B8, C1 and D2) so that rural communities have more opportunity and incentive to diversify their operations and thereby contribute towards rural prosperity and job creation. For buildings between 150m^2 and 500m^2, prior approval (covering flooding, highways and transport impacts, and noise) is required, to ensure that the change of use does not create unacceptable impacts.

Premises in B1, C1, C2, C2A, D1 and D2 use classes will be able to change use permanently to a **state-funded school**, subject to prior approval covering highways and transport impacts and noise. A temporary permitted development right which allows a building in any use class to change use to a state-funded school for one academic year will help to ensure that the opening of new schools

is not delayed by the planning system and will allow for minor associated physical development.

Premises in **B1(a) office use will be able to change to C3 residential use**, subject to prior approval covering flooding, highways and transport issues and contamination. This will bring underused offices back into effective use and provide new homes.

Buildings with A1, A2, A3, A4, A5, B1, D1 and D2 uses will be permitted to **change use for a period of up two years** to A1, A2, A3 and B1 uses. This will help create flexible accommodation for new and start-up businesses, allow businesses to adapt swiftly to changing conditions and contribute to the viability and vitality of town centres.

There will be **increased thresholds for business change of use**. Thresholds will change from 235m^2 to 500m^2 for permitted development for change of use from B1 or B2 to B8 and from B2 or B8 to B1. This increase will help provide vital flexibility to enable the quick responses necessary to support business growth.

For a period of three years there will be **increased limits for home and business extensions**, outside of article 1(5) land and Sites of Special Scientific Interest (SSSIs). This will apply to householder rear extensions, where the size limits will double, and to offices, industrial and warehouse development, shops and establishments providing catering, financial or professional services, where the size limits and allowable percentage increases will double. These changes will allow homeowners and businesses to invest in and extend their homes and premises to adapt to changing circumstances without the time and cost barriers of having to move or make a planning application. This will support business expansion and provide a boost to the local economy. A neighbour consultation scheme will operate in respect of the new larger home extensions, for which there will be no fee.

We wish to provide for the **roll out of specific fixed-line broadband services in rural areas,** especially the hard to reach rural areas. Currently prior approval (covering siting and appearance) is required when installation of specific broadband infrastructure is carried out on Article 1(5) land or SSSIs. We are removing this requirement as it applies to article 1(5) land, but not SSSIs, for a period of five years in order to provide certainty to encourage operators to invest in infrastructure with additional financial support from the Government's £530 million for the provision of superfast broadband in rural areas.

- ***Consolidation***

7.3 There are no plans to consolidate the General Permitted Development Order in the immediate future, although this may be considered following the Red Tape Challenge.

8. Consultation outcome

8.1 The measures in the Order have been subject to various consultations:

Home and business extensions and fixed operator broadband: A consultation paper was published in November 2012. We consulted on a package of changes to ease planning restrictions and costly bureaucracy that discourages families and businesses from making improvements to their property and that makes it harder to roll out superfast broadband. There were 10 questions on the detail of the proposals. The majority of consultees favoured retaining the existing planning framework. The consultation proposals are all being brought forward with the exception of the conversion of garages for family use. A neighbour consultation scheme in respect of home extensions has been introduced in response to concerns on the impact on the amenity of neighbours. A summary of responses to this consultation was published on 9 May 2013.

Change from commercial to residential use: A consultation paper was published in April 2011 on granting permitted development rights to allow change of use from the whole B class (which covers commercial premises, warehousing and distribution, and heavy industrial uses) to residential use. Following the consultation, where the majority of consultees favoured retaining the existing planning controls, a policy statement was included at paragraph 51 of the National Planning Policy Framework. A summary of responses to this consultation was published on 3 July 2012. On 6 September 2012 it was announced that the Government would introduce permitted development rights to enable change of use from B1(a) office use to residential use. Local planning authorities were invited to submit evidence if they believed there was an exceptional case for properties in their authority to be exempted from the new right. The request could be made on the basis of either national or local economic impacts.

Reuse of buildings: A consultation paper was published in July 2012. Views were sought on four proposals to grant permitted development rights for change of use, in order to make better use of existing buildings. The proposals covered agricultural buildings; temporary change of use for commercial purposes for up to two years; hotels to change to residential use; and an increase the size thresholds for change within the B class office and industrial uses. The majority of consultees favoured retaining the existing planning framework and generally supported the use of prior approval should permitted development rights be bought forward. The proposals as consulted have been brought forward with of the exception of proposal in relation to hotel use. A summary of responses to this consultation was published on 9 May 2013.

Schools development: A consultation paper was published in October 2010. The consultation was designed to explore ways of relaxing planning controls for change of use to a school. Views were sought on four options including making no changes; giving permission for all uses to become school; giving permission

for all uses to become schools, but with conditions; and giving permission for some uses to become schools. The majority of consultees favoured retaining the existing planning framework. A summary of responses to this consultation was published on 15 August 2011. Following consultation the Secretary of State for Communities and Local Government and the Secretary of State for Education made a Written Ministerial Statement – Planning for Schools Development to Parliament on 8 August 2011. The proposals set out in the Order follow on from the Statement to support the provision for new state-funded schools.

9. Guidance

9.1 The Householder Permitted Development Rights: Technical Guidance will be updated to provide details of the increased permitted development rights for rear extensions and the associated prior approval (the neighbour consultation scheme). Other guidance will be brought forward as part of the Department's wider review of planning practice guidance.

10. Impact

10.1 Consultation stage impact assessments were published as part of the consultation process for these measures. Following consultation and decisions on the details of the measures being brought forward, updated impact assessments, which also cover the impact of the Compensation Regulations, have been published at https://www.gov.uk/government/publications

11. Regulating small business

11.1 The new permitted development rights and amendments are deregulatory in effect. They will help reduce bureaucracy in the planning system and remove the cost and time burden to businesses of having to submit a planning application

12 Monitoring & review

12.1 The Department will monitor progress and evaluate the changes to the five-year time-limited permitted development rights relating to broadband infrastructure after four years. We will start to review the impact of the three-year time-limited permitted development rights relating to commercial to residential change of use after a year. The changes to householder and business extensions will be monitored on an on-going basis with a view to determining whether the three-year period should be extended further. The other measures, including the Compensation Regulations, will be reviewed in April 2019.

13. Contact

Maria Stasiak at the Department for Communities and Local Government Tel: 0303 444 1624 or e-mail: maria.stasiak@communities.gsi.gov.uk can answer any queries regarding the instrument.