

EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (AMENDMENT) (No. 2) (ENGLAND) ORDER 2012

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. 2) Order 2012 amends the Town and Country Planning (General Permitted Development) Order 1995 to allow buildings used as shops, or for financial and professional services, to change to a mixed use incorporating up to two flats (increased from one), and to revert back to those non-residential uses, without the need to apply for planning permission.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 Section 55 of the Town and Country Planning Act 1990 (“the 1990 Act”) defines “development” for the purposes of that Act to include “any material change in the use” of the premises. 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 Section 59 of the 1990 Act gives the Secretary of State the power to grant planning permission by way of specific or general development orders. The Town and Country Planning (General Permitted Development) Order 1995 (S.I. 1995/418) (“the GPDO”) is made under section 59 and grants planning permission without the need for a planning application for various types of development – subject to the limitations and conditions set out in the respective Parts of Schedule 2 to the GPDO. These are known, informally, as “permitted development rights”.
 - 4.3 Section 55(2)(f) of the 1990 Act gives the Secretary of State the power, by order, to specify classes of use for buildings and land, with the effect that use for any purpose within the same class is not considered to be “development” in terms of section 55. 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 does not require a planning application.

- 4.4 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. Class F of Part 3 of Schedule 2 gives permitted development rights related to mixed use of buildings for shops (Class A1), or financial and professional services (Class A2), and a single flat. Class G of Part 3 of Schedule 2 provides for such mixed use buildings to revert to use only as a shop, or for financial and professional services. This instrument extends these permitted development rights to permit mixed use buildings to include up to two flats.

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 wish to create the opportunity to bring vacant and underused properties back into economic use and at the same time contribute to delivering more homes. Currently, the ancillary space associated with a retail unit (A1) or financial/professional services unit (A2) can be converted into residential, as long as the A1 or A2 use is on a floor below the residential part of the building, there remains a ground floor shop frontage/display window, and only a single flat is created as a result of the change of use.

- 7.2 While the current provision allows for converting ancillary A1/A2 space into a single flat, we now want this provision to be extended to no more than two flats so as to incentivise the conversion to housing of vacant space above retail units in town centres and elsewhere.

- 7.3 We would expect that such conversions could often be effected without requiring any other form of planning permission, but if external works (such as separate access) were needed, then a planning application would need to be made.

- *Consolidation*

- 7.5 There are no plans to consolidate the GPDO in the immediate future.

8. Consultation outcome

- 8.1 We consulted in April 2011, on extending permitted development for converting space above shops into flats¹. The consultation sought views on the level of change that would be appropriate given possible land use impacts. A summary of responses to this consultation was published on 3 July 2012². This intended change was announced in the Government's response to the Mary Portas Review of the High Street, published on 30 March 2012³.
- 8.2 34% of respondents to the April 2011 consultation agreed that it would be appropriate to extend the existing permitted development rights which allow the space above shops and other town centre uses (A1 and A2 use) to be converted into a single flat without the need to submit a planning application. A quarter of respondents did not consider such action was merited and the remainder either did not respond or did not indicate a clear preference.
- 8.3 Over 40% of those who supported the proposal were in favour of the imposition of an upper limit on the number of flats that would be allowed. Suggestions for an upper limit generally fell within the range of 2 to 6 flats. Many suggested that there should be a minimum size limit per flat either instead of or in addition to an upper limit of the number of flats, to mitigate against low quality residential development. Others felt that the physical limits of the building and the market would dictate the maximum number of flats
- 8.4 In order to prevent over development of a site with resulting low quality dwellings we wish to limit the number of permitted units to no more than two. A size limit is not being introduced as what will be appropriate is likely to vary in relation to particular buildings and locations. The impacts of these changes are likely to be localised, reflecting particular circumstances such as the suitability and availability of space. We will review the policy in October 2017.

9. Guidance

- 9.1 This amendment extends the existing permission for one flat above a shop and so is not a new initiative. New guidance is not needed.

10. Impact

- 10.1 The impacts of the amendment are likely to be localised reflecting particular circumstances such as the suitability and availability of space. Removing the requirement to make a planning application for up to two flats above an A1 or A2 retail premises is likely to increase the efficiency of stock use. Property owners wishing to develop more than two flats will be free to make a planning application for change of use where they value the residential use more highly than the current A1 or A2 use. The change provides an incentive to owners to reassess whether they are maximising the economic benefits of their assets and

¹ <http://www.communities.gov.uk/publications/planningandbuilding/relaxationchangeconsultation>

² <http://www.communities.gov.uk/publications/planningandbuilding/relaxationchangeresponses>

³ <http://www.communities.gov.uk/publications/regeneration/portasreviewresponse>

to consider whether there would be a value uplift of property where space is suitable for conversion.

10.2 Local authorities will no longer be required to process change of use applications for up to two flats above A1 or A2 retail premises. There will be no net change for local authorities as they will also forego the fee income associated with these applications. The current fee for a change of use application is £335.

10.3 An impact assessment is attached to this memorandum.

11. Regulating small business

11.1 This amendment is deregulatory in effect. It 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 We will monitor progress and evaluate the success of these permitted development rights in October 2017.

13. Contact

13.1 Saima Williams at the Department for Communities and Local Government (Tel: 0303 444 2058 or email: saima.williams@communities.gsi.gov.uk) can answer queries regarding this instrument.