

DEXPLANATORY MEMORANDUM TO
THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (AMENDMENT) (NO. 2) (ENGLAND) ORDER 2013

2013 No. 1868

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 instruments**
 - 2.1. The Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 2013 (“the Order”) amends the Town and Country (General Permitted Development) Order 1995 (“the 1995 Order”) to grant increased permitted development rights in relation to electronic communications infrastructure.
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 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 1995 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 1995 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 approve certain matters.
 - 4.3. Class A of Part 24 of Schedule 2 to the 1995 Order grants planning permission for certain development by electronic communications operators. Class A often imposes limitations conditions on the grant of planning permission. For example, some of the permissions do not apply, or apply in a different way, on categories of land identified in article 1(5) of, and Part 2 of

Schedule 1 to, the 1995 Order (National Parks, areas of outstanding natural beauty, conservation areas, countryside areas of natural beauty and amenity, the Broads, World Heritage Sites) or on sites of special scientific interest (“SSSIs”). Some of the Class A permissions are subject to the approval of the local planning authority on siting and appearance, a process referred to as “prior approval”.

4.4. The Order amends the Class A permitted development rights as follows:

- existing masts may be altered or replaced to increase their height (up to a maximum height of 20 metres) and make them up to a third wider, though not on article 1(5) land or on SSSIs, and subject to prior approval on other land;
- on land other than article 1(5) land and SSSIs, larger dish antennas and more antenna systems (each of which may be operated by up to 3 operators) may be attached to buildings and structures, with different rules above and below 15 metres;
- on article 1(5) land only, up to 3 additional dish antennas and 3 additional non-dish antennas, subject to a size limit, can be added to existing electronic communications apparatus;
- clarification that current size limits for radio equipment housing are in two cases cumulative and in another case not cumulative;
- up to 2 of a new type of antenna (“small cell antenna”) can be attached to buildings and structures other than dwellinghouses, though not on SSSIs, and subject to size limits;
- prior approval provisions for development on land other than article 1(5) land and SSSIs are adjusted to:
 - increase the height at which prior approval is required for antennas attached to buildings and structures (other than masts) from 4 metres to 6 metres;
 - clarify that prior approval is only required where any single development of radio equipment housing is larger than 2.5 cubic metres;
 - dispense with prior approval in relation to radio equipment housing; and
 - clarify that for minor amendments to a proposed development a new application for prior approval is not necessary;
- clarification that where class A permits the development of electronic communications apparatus, that permission extends to certain ancillary development required for the purposes of the apparatus, though not on SSSIs.

5. Territorial Extent and Application

5.1. The Order 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. Digital communications are an integral part of modern-day life. There are over 82 million mobile subscriptions in the UK (Ofcom Quarter 3 - 2012) with data traffic having more than doubled in 2012. However, not everyone has access to the fastest available speeds. This has created a rural divide with poorer access to mobile communications in rural areas. This is harming the rural economy, hurting local businesses and stifling home working.
- 7.2. We are creating new and extended permitted development rights in order to further simplify the planning process whilst retaining appropriate safeguards to support the swifter roll-out of 4th Generation (broadband) mobile services and at the same time providing greater capacity and connectivity for 3rd and 2nd (voice only) Generation services in urban and especially rural areas including article 1(5) land. All of the changes are permanent.
- 7.3. The changes maximise the use of existing sites to minimise the need for new ground-based mobile phone masts. All changes on article 1(5) land and some changes on other land are subject to securing prior approval from the local planning authority on siting and appearance.
- 7.4. Whilst the current provisions of Class A enable the installation of specific mobile infrastructure under permitted development rights, technology and the number of operators now in the market placed has changed significantly since the last update in 2003. In addition, mobile operators often face difficulty in securing quick and successful decisions for the installation of new infrastructure. For example, in England during the period 2008 to 2012 72% of prior approval applications for mobile deployment were successful compared to a national average of 85% (comparable minor planning applications). Furthermore, the number of undecided mobile applications during this period was 18% compared to 9% for other minor non-residential developments.
- 7.5. Our changes will provide planning certainty for the mobile operators that a decision will be reached quickly whilst retaining appropriate safeguards on the siting and appearance of mobile infrastructure. In addition, an updated code of best practice will be published by the Mobile Operators Association on their website (<http://www.mobilemastinfo.com/>) and operators will continue to be covered by the statutory requirements of the Electronic Communications Code and the Electronic Communications Code (Conditions and Restrictions) Regulations 2003.
- 7.6. Increasing the prior approval height threshold of antennas which are allowed under the permitted development right from 4 metres to 6metres will enable the swifter roll-out of 4th Generation (4G) mobile broadband by maximising the use of existing sites. It will also provide additional capacity and connectivity for 3rd Generation (3G) and 2nd Generation (2G – voice only). In addition, the change will also enable operators to place their equipment

further back from the edge of a site – improving the visual impact from the ground.

- 7.7. Enabling wall mounted antenna of up to 6 metres in height will maximise the potential of buildings or structures where it is not possible to use the roof, subject to prior approval (siting and appearance). This also minimises the need for ground-based masts.
- 7.8. Enabling the number of antenna systems (typically a set of between 4 to 6 actual antenna) to be increased on buildings and structures will maximise the use of existing sites, minimise the need for new ground based masts.
- 7.9. Permitting up to 3 operators to share an antenna system will encourage and facilitate the sharing of equipment and sites to minimise the need for additional sites and mobile infrastructure. There are currently 4 operators in the market. Setting the limit at 3 operators will encourage operators to reach agreement quickly on sharing of antenna systems.
- 7.10. Including ancillary structures in any permission for electronic communications apparatus will remove inconsistency of interpretation by local planning authorities i.e. some including the ancillary structures within permitted development rights whereas others require a separate application. This causes delays and additional planning fee cost to the operators.
- 7.11. Allowing 2 small cell antennas on buildings or structures on article 1(5) land and other land (though not on SSSIs) will minimise the number of new ground-based masts and provide a quick solution for operators to roll out greater network capacity and 4G. This development is subject to prior approval on article 1(5) land.
- 7.12. Increasing aggregated dish antenna thresholds supports the increased number of antenna systems on buildings and structures. These dishes provide point-to-point transmission of signals received from antenna to other buildings or structures for onward transmission to the end-user. We are retaining the existing requirement that no individual dish antenna is to exceed 0.9 metres in diameter on buildings or structures below 15 metres in height and 1.3 metres above 15 metres in height.
- 7.13. Clarifying that the existing permitted development right for radio housing cabinets of up to 2.5 cubic metres is not cumulative removes the inconsistency of interpretation by local planning authorities i.e. some treat 2.5 cubic metres as a cumulative limit for all such development on article 1(5) land and on SSSIs, requiring a planning application to be submitted for any development above this limit, whereas others apply a 2.5 cubic metre limit to each separate development proposal. This can cause delays and additional planning fee costs to the operators. We have also clarified that the volume limits of 90 cubic metres for ground based and 30 cubic metres for rooftop radio housing cabinets are cumulative.

- 7.14. Allowing additional antennas (3 additional dish antenna of up to 0.6m in diameter and 3 additional antenna of up to 3m in height) to be fitted to existing operational electronic communications apparatus on buildings and structures (including masts) will provide greater connectivity for 3G and 2G services and support the swifter roll-out of 4G on article 1(5) land, where antenna development is currently very limited under permitted development rights and often requires a planning application. This change will minimise the need for new ground-based masts and is subject to prior approval.
- 7.15. Clarifying that a minor change to development proposed in a prior approval application agreed between a mobile operator and the relevant local planning authority does not require a new application will remove the inconsistency of interpretation by local planning authorities i.e. some agree to the change by letter whereas others require a separate application. This can cause delays and additional planning fee costs to the operators.
- 7.16. Allowing existing ground-based mobile phone masts to increase in height up to a maximum height of 20 metres, and to increase in width by a third, will maximise the use of existing sites and minimise the need for new ground-based masts. This will not apply on article 1(5) land or on SSSIs and will be subject to prior approval (siting and appearance) on all other land.

Consolidation

- 7.17. There are no plans to consolidate the 1995 Order in the immediate future.

8. Consultation outcome

- 8.1. The Department for Communities and Local Government and the Department for Culture Media and Sport consulted in May 2013 on 11 proposals to change permitted development rights under Part 24, Schedule 2 of the 1995 Order and the Electronic Communications (Conditions and Restrictions) Regulations 2003. The consultation closed on 14 June 2013. The Department for Culture and Media Sport concluded that changes were not needed to its regulations in order for those in the 1995 Order to have effect. Changes being brought forward are therefore only being made to the 1995 Order.
- 8.2. We consulted on a number of measures to promote the sharing of equipment, support the roll-out of 4G technology and provide greater capacity and connectivity for 2G (voice only) and 3G. There were 70 responses to the consultation: 26% from local authorities and parish councils, 13% from professional trade associations, 33% from the mobile sector and operators, 13% from members of the public, 7% from the voluntary sector and 8% from other organisations.
- 8.3. All the measures were supported by a majority of respondents, with many receiving high levels of support. Parish councils strongly supported the expansion of mobile infrastructure in rural areas, as did 2 rural professional trade associations. One national charity sought clarification of the changes to the Electronic Communications Code (Conditions and Restrictions)

Regulations 2003 in relation to ancillary equipment and extending existing mobile phone masts to up to 20 metres in terms of visual amenity. The mobile industry broadly supported the proposals while recommending even greater freedoms. Responses from planners and their professional trade association were mainly supportive of the proposals, while seeking greater restrictions in some areas, for example, that telecommunications equipment should be set back from the edge of buildings and structures and that ancillary access and safety equipment should be subject to planning permission. One heritage body, whilst supportive overall, shared the planners' trade associations concerns. Finally, a number of points of technical detail were raised which we have considered together with the Department for Culture Media and Sport. The Government's full response to the consultation is available here: <https://www.gov.uk/government/publications?page=2&topics%5B%5D=planning-and-building>

- 8.4. This Order largely implements the proposals in the consultation document, but with the following adjustments:
- **Proposal 4 – Antenna:** rather than change the definition of antenna we have included an interpretative provision to the effect that where class A permits the development of electronic communications apparatus, that permission extends to certain ancillary development required for the purposes of the apparatus, though not on SSSIs. Proposal 4 is thus merged with Proposal 8.
 - **Proposal 5 - Small cell antenna:** following technical feedback to the consultation and further work with the Department for Culture Media and Sport and a number of industry experts we have refined the definition for small cell antenna. Two such antennas will be permitted regardless of building or structure height. This is a growth area for mobile technology which enables mobile operators to swiftly and cost-effectively roll-out mobile connectivity, minimising the need for new ground-based masts. We are therefore extending the permitted development right from protected areas to non-protected areas as well. The size of the small cell antenna will be restricted by reference to surface area and volume.
 - **Proposal 7 - radio housing cabinets:** we will clarify that the 2.5 cubic centimetre size limit consulted upon is not cumulative and for the avoidance of doubt confirm that the current upper limits of 90 cubic metres for ground based radio housing cabinets or 30 cubic metres on a roof are cumulative.
 - **Proposal 8 – ancillary equipment:** this has been merged with proposal 4.
 - **Proposal 9 - addition of 2 dish antenna and 2 antenna on existing buildings, structures or masts in protected areas:** following technical feedback received we have amended the proposal to 3 dish antenna and 3 antenna to allow 360 degree coverage (each antenna covers 120 degrees). The size limitations remain.
 - **Proposal 10 – agreed changes between a mobile operator and the local planning authority do not require a new application:** in light of feedback received this applies to minor changes only.

9. Guidance

- 9.1. There are no plans to issue guidance for this instrument.

10. Impact

- 10.1. These changes are deregulatory in effect enabling mobile operators and their contractors to install mobile infrastructure more quickly. These changes reduce the burden on business and the cost and time for businesses in not having to apply for planning permission or prior approval. The Impact Assessment estimates an Equivalent Annual Net Cost to Business of -£1.8 million per-annum. As now, prior approval will continue to apply in protected areas.
- 10.2. These changes increase permitted development rights for mobile operators to support the swifter roll-out of 4 G, whilst providing greater connectivity and capacity for 3G and 2G (voice only). As users of electronic communications, charities and voluntary bodies will benefit from these developments, we do not consider there will be any negative impact on such bodies.
- 10.3. The Order extends permitted development rights in relation to development that would previously have required a planning application or a prior approval application, and local planning authorities will no longer benefit from the fees which would have been payable in relation to those applications. However, such fees are simply to cover their costs in relation to a specific application and are on a not for profit basis. A fee will remain where the permitted development is subject to prior approval which is also on a not for profit basis. There is therefore no additional cost to local authorities.
- 10.4. An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on the Office of Public Sector Information website. The Impact Assessment's one-in, two-out status and the equivalent annual net cost to business are subject to validation from the Regulatory Policy Committee. We will publish the final validated Impact Assessment once received.

11. Regulating small business

- 11.1. These changes are deregulatory in effect and whilst mobile operators (which are large businesses) will benefit directly from the changes, small businesses and those working at home, particularly in rural areas, will also benefit from having improved access to 4G superfast broadband or better connectivity through 3G and 2G (voice only) enabling them to compete with businesses which already benefit from access to superfast fixed broadband. Enhanced mobile telephony will assist small businesses to better coordinate their resources, to more effectively deploy their time and to keep in closer touch with their markets than at present. We do not consider there will be any negative impact on small businesses.

12. Monitoring & review

- 12.1. The Departments will monitor progress and evaluate the success of these changes in spring 2018.

13. Contact

- 13.1. Andy Swyer at the Department for Communities and Local Government (Tel: 0303 444 2956 or e-mail: andy.swyer@communities.gsi.gov.uk) can answer any queries regarding the Order.