

EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (ENGLAND) (AMENDMENT) ORDER 2020

2020 No. 330

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The measures being brought forward by this instrument are intended to support business and the availability of food supply.
- 2.2 The instrument amends the Town and Country Planning (General Permitted Development) (England) Order 2015 (“the General Permitted Development Order”) to introduce a new permitted development right to allow restaurants and cafes, and drinking establishments such as pubs, to additionally provide a takeaway or delivery service for hot or cold food.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument is being laid in breach of the 21-day rule for Parliament to pray against Statutory Instruments.
- 3.2 The Prime Minister announced on 20 March that restaurants, cafes and pubs should close to reduce the spread of coronavirus. Therefore, breaching the 21-day rule reflects the urgent need to support businesses, protect employment and ensure food supply. The measure will enable members of the public, including those who are self-isolating, to have greater access to food. This requires these measures to come into force at the earliest opportunity.
- 3.3 Given that the Prime Minister’s announcement means restaurants, cafes and pubs have been required not to offer food for consumption on the premises, it is important that there are alternative ways in which the businesses can continue to operate and to ensure that an important source of food provision is not lost.
- 3.4 Being able to offer a takeaway and delivery service will minimise the contact between the service provider and the members of the public, reducing the likelihood of exposure to the virus. The number of people self-isolating, which is expected to increase in the coming weeks, is also likely to increase the demand for home food delivery.
- 3.5 Any delay puts further pressure on businesses and reduces the help that can be provided to both those at home and the public more generally.

- 3.6 The amendment made by this instrument allows for the temporary provision of takeaway food for a period of 12 months only (from 10am on 24th March 2020 to 23rd March 2021). Any extension of this period will require a further Statutory Instrument.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.7 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.
- 3.8 The instrument does not have any minor or consequential effects outside England.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

6. Legislative Context

- 6.1 Under Part 3 of the Town and Country Planning Act 1990 (“the 1990 Act”) planning permission is required for the development of land. Planning permission may be granted on application to a local planning authority or by a development order made under the 1990 Act.
- 6.2 This instrument amends the General Permitted Development Order which grants planning permission for a range of specific classes of development, subject to certain limitations and conditions. Planning permission granted under the General Permitted Development Order is known as a “permitted development right”. The effect is that an application for planning permission does not need to be made to the local planning authority, although in some cases permitted development rights require the local planning authority to approve certain matters before development can proceed. This is known as “prior approval”.
- 6.3 Permitted development rights for change of use of buildings make reference to the use classes set out in the Town and Country Planning (Use Classes) Order 1987 (“the Use Classes Order”). The Use Classes Order groups together uses having similar planning impacts and the classes which are relevant to this instrument are:
- A3: Restaurants and cafés
 - A4: Drinking establishments
 - A5: Hot food takeaway
- 6.4 Planning permission to use a building for a particular purpose (“the primary use”) includes a right to use that building for a different purpose, as long as the different purpose is ancillary to the primary use. Planning permission is required in order to commence a concurrent use which is more than ancillary.
- 6.5 Article 4 of this instrument inserts a new Class DA into Part 4 of Schedule 2 of the General Permitted Development Order inserting a new permitted development right to

allow restaurants and cafes, and drinking establishments such as pubs, including those with expanded food provision, to provide a takeaway or delivery service for hot or cold food which has been prepared for consumers, for collection or delivery, to be consumed, reheated or cooked by consumers off the premises.

7. Policy Background

What is being done and why?

- 7.1 The country faces a time of critical challenge for business and the community. To support restaurants and cafes, pubs and other drinking establishments and their employees and suppliers, and ensure access to food for the public and those self-isolating, a new time-limited national permitted development right is being introduced to enable them to provide food for takeaway or delivery.
- 7.2 The right enables premises in the A3 restaurants and cafes, and A4 drinking establishments use class, such as pubs and including those with an expanded food offer under Class AA, to be able to provide a food takeaway and delivery service beyond that which would be considered to be ancillary. The provision of a food takeaway and delivery service is not to be considered as a change to their current planning use.
- 7.3 The instrument also defines the provision of takeaway food which includes those uses for the purpose in Class A5 of the Schedule to the Use Classes Order, and also include both hot and cold food that has been prepared for consumers for collection or delivery to be consumed, reheated, or cooked by consumers off the premises.
- 7.4 To support restaurants and pubs and ensure they can recover after the end of the crisis, the premises will retain their original use class during the period of when the permitted development right in the Order is used and therefore the building and the land within its curtilage remains in its previous lawful use. For the avoidance of doubt, after the relevant period, the premises would revert to its original use. This will not impact on any permitted development rights the premises have under their original uses. The permitted development rights that apply to A5 hot food takeaways will not apply to the A3 and A4 uses during the use of the new right Class DA in the Order as the premises is only providing takeaway food for a temporary period and does not have the status of an A5 use. Nor does this Order alter the scope or eligibility of premises that can be demolished under Part 11 Class B right.
- 7.5 For the avoidance of doubt, the right will apply to those pubs listed as Assets of Community Value to help support them and the local community.
- 7.6 The right is time limited and will cease to have effect from 23rd March 2021. Premises may operate as a use under this Class DA only up to that date.
- 7.7 Given the 12 month time-limited nature of the right and the importance attached to the flexibility it provides, Article 4 of the General Permitted Development Order 2015 does not apply so a local planning authority cannot withdraw the order.
- 7.8 There is no application process, and the business is required only to notify the local planning authority if the site will be used for the temporary provision of takeaway food. We expect this will be by e-mail or in writing.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The General Permitted Development Order was consolidated in 2015. This is the eighth amending instrument to the General Permitted Development Order. There are no current plans for a consolidation.

10. Consultation outcome

10.1 The measures being brought forward in this amending instrument have been drafted as measures to reflect the Prime Minister's 20 March announcement of the temporary closure of restaurants, cafes and pubs. As such there has not be a formal consultation period.

10.2 Stakeholder engagement will continue during the period the instrument is in force.

11. Guidance

11.1 There are no plans to issue specific statutory guidance for this instrument.

12. Impact

12.1 The measures are intended in part to support business at a time of uncertainty, underline the importance of being able respond positively to the needs of the public and recognise the wider community benefit, including those self-isolating, of adapting the food offer being made available. It also removes the cost and time burden of having to submit a planning application in more cases. The measures should also be helpful in ensuring there is a role for charities and voluntary bodies to play in the distribution of food to those asked to self-isolate or who cannot get to the shops.

12.2 The impact on the public sector is a reduction in administrative cost and time of processing planning applications, where the development would have come forward through an application. It also offers clarity to the local planning authority of the importance attached by the Secretary of State to businesses being able to respond positively to offer the temporary provision of takeaway food for the benefit of their employees and the public at this time.

12.3 An Impact Assessment has not been prepared for this instrument because it is making a provision which will have effect for a period of 12 months.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 The impact of the change is deregulatory, reducing bureaucracy and cost in the planning system and so small businesses have not been exempted as they will benefit.

14. Monitoring & review

14.1 As this is a temporary measure of only 12 months, a review will not be carried out as it would be disproportionate.

15. Contact

- 15.1 Julie Shanahan at the Ministry of Housing, Communities and Local Government (Tel: 0303 444 3378 or e-mail: julie.shanahan@communities.gov.uk) can be contacted with any queries on this instrument.
- 15.2 Lucy Hargreaves, Deputy Director for Planning – Development Management, at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Christopher Pincher, Minister of State at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.