

EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (ENGLAND) (AMENDMENT) (CORONAVIRUS) ORDER 2021

2021 No. 467

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 This Order amends the Town and Country Planning (General Permitted Development) (England) Order 2015 (S.I. 2015/596) (“the General Permitted Development Order”).
- 2.2 To support hospitality businesses and historic visitor attractions to utilise outdoor space as we exit coronavirus restrictions, this Order introduces a new temporary permitted development right in force from the day after this Order is laid until 1 January 2022 to allow for the provision of moveable structures on land within the curtilage of cafes, restaurants and drinking establishments such as pubs including where these are listed buildings, and historic visitor attractions only where they are listed buildings.

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 On 22 February, the Government published the Covid-19 Response Spring 2021, setting out the roadmap for cautiously easing lockdown restrictions in England. On 5 April, the Government announced that the 4 tests for easing restrictions (as set out in the roadmap) has been passed. The Health Protection (Coronavirus, Restrictions) (Steps and Local Authority Enforcement Powers) (England) (Amendment) Regulations 2021 (S.I. 2021/455) amended the Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021 (S.I. 2021/364) (“the Steps regulations”) to move all of England into Step 2 on 12 April 2021. The move from Step 1 to Step 2 of the roadmap removes a number of the restrictions that were in place under Step 1, including enabling the reopening of outdoor hospitality venues and outdoor attractions.
- 3.3 The Government considers that breaching the 21-day rule is necessary to support these venues to re-open safely under Step 2 as soon as possible, enabling them to erect temporary moveable structures to support greater use of outdoor spaces. This measure will therefore come into force from the day after the Order is laid.

- 3.4 Any delay could prevent these already hard-hit businesses which have been unable to open for large parts of the past year as a result of the coronavirus pandemic from being able to open profitably as well as safely under Step 2.

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)

- 3.5 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.

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 Order 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.
- 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:
- Class E (b) – use “for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises”
 - Uses with no class specified, in Article 3 (6) (p) – use “as a public house, wine bar, or drinking establishment”
 - Uses with no class specified, in Article 3 (6) (q) – use “as a drinking establishment with expanded food provision”

7. Policy background

What is being done and why?

- 7.1 England moved to Step 2 of the roadmap on 12 April. This enabled the majority of outdoor settings to reopen, including outdoor hospitality venues and outdoor attractions.

- 7.2 Article 2 of this Order amends the General Permitted Development Order to insert a new Class BB in Part 4 of Schedule 2. Class BB allows for the provision of moveable structures within the existing curtilage of cafes, restaurants and drinking establishments such as pubs including where these venues are listed buildings, and historic visitor attractions only where they are listed buildings.
- 7.3 This measure will be in force from the day after this Order is laid and will cease to have effect after 1 January 2022, before which point any temporary moveable structures would need to be removed.
- 7.4 This measure does not apply within the curtilage of a scheduled monument.
- 7.5 This measure does not permit a moveable structure to be used for the display of an advertisement.
- 7.6 The permitted development right in this Order is being put in place to support the economic recovery of hospitality businesses and heritage attractions by allowing for the temporary provision of moveable structures within the existing curtilage, increasing outdoor seating capacity through new spaces to eat and drink in, such as temporary marquees, and enabling heritage visitor attractions to operate while minimising the need for visitors to gather in enclosed spaces, for example through the use of temporary moveable structures for ticket sales.
- 7.7 To be clear, this measure does not remove the obligation to apply for listed building consent under the Planning (Listed Building and Conservation Area) Act 1990 where the provision of a moveable structure would require such an application. Therefore the provision of any moveable structure must not cause the alteration, demolition or extension of a listed building in any manner which would affect its character as a building of special architectural or historic interest.
- 7.8 The use of any moveable structure must be in accordance with the relevant legal restrictions for the opening and operating of indoor and outdoor hospitality, as defined under the Steps regulations. A link to relevant guidance is also given in section 11 below.
- 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 twenty-third amending instrument to the General Permitted Development Order. There are no current plans for a consolidation.
- 10. Consultation outcome**
- 10.1 The time-limited changes to assist businesses have not been subject to consultation. Government has, however, carried out engagement with local authorities and businesses on how public spaces can be safely managed to facilitate social distancing. We have also worked with Historic England on the development of this policy in relation to listed buildings and the definition of a ‘historic visitor attraction’.

11. Guidance

- 11.1 There are no plans to issue specific statutory guidance for this instrument, however the Government ‘Reopening business and venues’ guidance covers what is classed as an indoor or outdoor venue, and can be found online <https://www.gov.uk/government/publications/reopening-businesses-and-venues-in-england/reopening-businesses-and-venues>. Guidance on working safely during coronavirus for restaurants, pubs and bars is also available online <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19/restaurants-offering-takeaway-or-delivery>.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is to support them through the roadmap out of lockdown, through increased outdoor capacity by allowing temporary moveable structures to be provided.
- 12.2 The impact on the public sector is a reduction in administrative cost and time of processing planning applications, particularly where moveable structures within the curtilage of listed buildings would have required planning permission.
- 12.3 An Impact Assessment has not been prepared for this instrument because it is a temporary measure intended to support businesses as we move along the roadmap out of lockdown.

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, a review will not be carried out as it would be disproportionate.

15. Contact

- 15.1 Joseph Lowes at the Ministry of Housing, Communities and Local Government Telephone: 0303 444 2289 or email: joseph.lowes@communities.gov.uk can be contacted with any queries regarding the 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.