EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (AMENDMENT AND CONSEQUENTIAL PROVISIONS) (ENGLAND) ORDER 2014

2014 No. 564

and

THE TOWN AND COUNTRY PLANNING (COMPENSATION) (ENGLAND) (AMENDMENT) REGULATIONS 2014

2014 No. 565

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 and Consequential Provisions) (England) Order 2014 ("the Order") amends the Town and Country (General Permitted Development) Order 1995 ("the General Permitted Development Order") to allow new permitted development rights for change of use and, in some cases, for associated operational development. These changes will simplify the change of use system and promote the provision of new homes, nurseries and schools in England. The Order also makes consequential amendments to the Town and Country Planning (Development Management Procedure) England Order 2010.

2.2 The Town and Country Planning (Compensation) (England) (Amendment) Regulations 2014 ("the Compensation Regulations") amend the Town and Country Planning (Compensation) (England) Regulations 2013 to limit the circumstances in which compensation is payable in the event that the new permitted development rights are withdrawn.

3. Matters of special interest to the Joint Committee on Statutory Instruments *or* the Select 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 General Permitted Development Order is made under these powers and grants planning permission for many different types of 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 approve certain matters (a process generally referred to as "prior approval").

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
B1: Business
C1: Hotels
C2: Residential institutions
C2A: Secure residential institutions
C3: Dwellinghouses
D2: Assembly and leisure

Dwellinghouses

4.4 Part 1 of Schedule 2 to the General Permitted Development Order is amended to make it clear that permitted development rights relating to dwellinghouses do not extend to buildings which have changed to residential use only as permitted development under new Classes IA (retail to residential) and MB (agricultural to residential) which this Order inserts into Part 3 of Schedule 2. Class B of Part 1 is also amended to clarify a reference to the measurement of eaves when exercising permitted development rights to enlarge the roof of a dwelling house, in light of a judgment of the High Court in the case of Waltham Forest LBC v Secretary of State for Communities and Local Government [2013] EWHC 2816 (Admin). Finally, there are clarificatory amendments to the prior approval procedures in Class A of Part 1, which mirror those for Part 3 prior approvals (see paragraphs 4.7 and 4.8 below).

Changes of use

4.5 Part 3 of Schedule 2 to the General Permitted Development Order is amended to create a number of new permitted development rights for change of use, some of which also permit associated operational development:

- **Class CA**: shops (A1) may become banks, building societies, friendly societies or credit unions;
- **Class IA**: shops (A1), and premises used to provide financial and professional services to visiting members of the public (A2), may change to residential use (C3);
- **Class K**: business premises (B1), hotels (C1), residential institutions (C2), secure residential institutions (C2A) and premises used for assembly and leisure (D2) may become registered nurseries;
- **Class MA**: agricultural buildings may become registered nurseries or state-funded schools;
- **Class MB**: agricultural buildings may change to residential use (C3).

4.6 There are some minor amendments to Class M of Part 3 (agricultural changes of use), informed both by comments received by the Department about the operation of this provision, and by further policy development in the context of the new agricultural changes of use permitted development rights contained in this Order.

Prior approvals

4.7 In light of feedback on these provisions since they were enacted in 2013, the prior approval procedures in paragraph N of Part 3 of Schedule 2 to the General Permitted Development Order are amended to clarify that local planning authorities:

- must only consider the National Planning Policy Framework to the extent that it is relevant to the matter on which prior approval is sought;
- may attach conditions to grants of prior approval, as long as those conditions are relevant to the matter on which prior approval is sought;
- may refuse the application if they are not satisfied that the proposed development qualifies as permitted development, or if they have insufficient information to establish whether the proposed development qualifies as permitted development; and
- may invite further information from applicants relevant to the matters on which prior approval is sought or to the question of whether the proposed development qualifies as permitted development.

4.8 A related amendment to the Town and Country Planning (Development Management Procedure) Order 2010 clarifies that local planning authorities are not under any legal obligation to determine Part 3 prior approval applications within the standard period prescribed for other types of planning consent. There is no need for such a requirement because a local planning authority's failure to determine a Part 3 prior approval application within the period specified in Part 3 results in planning permission being granted under the General Permitted Development Order without prior

approval, as long as the development complies with any other conditions, limitations or restrictions attached to the development in question.

Compensation

4.9 Where planning permission granted by a development order is withdrawn (which local planning authorities may do by making a direction under article 4 of the General Permitted Development Order), land owners may have a right to compensation under section 108 of the 1990 Act. The Compensation Regulations make provision, in relation to the new permitted development rights granted in the Order, for compensation only to be payable in respect of planning applications made within 12 months of the date an article 4 direction takes effect. The Compensation Regulations also allow local planning authorities to avoid compensation liability on withdrawal of the new permitted development rights by publicising their intention to make an Article 4 direction at least one year, and not more than 2 years, ahead of the Article 4 direction taking effect.

Other related instruments

4.10 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 the new type of prior approval application introduced by the Order, which combines approval for change of use with approval for operational development (i.e. building works).

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 permitted development rights in order to make it easier for businesses to make best use of their premises; deliver more homes; support high streets; simplify the change of use system; support sustainability by promoting the reuse of buildings; and facilitate the provision of registered nurseries and state-funded schools. The new permitted development rights, most of which sit within Part 3 of Schedule 2 to the General Permitted Development Order, are as follows.

7.2 Under new Class IA, premises in A1 and A2 use, i.e. **shops and premises offering financial and professional services to visiting members of the public** will be able to change use to a **dwellinghouse** (C3) and carry out

associated building works, so that businesses can reuse their premises while increasing housing supply. The prior approval of the local planning authority will be required on various matters to ensure that the change of use and any associated works do not create unacceptable impacts. The local planning authority may consider transport and highways impacts, contamination risks, flooding risks, the design and external appearance of the building, and undesirable impacts on shopping facilities. Shopping impacts will be assessed in relation to the effect of the development on the sustainability of key shopping centres and the provision of services. This is intended to enable local planning authorities to protect valued and successful retail provision in key shopping areas, such as town centres, while bringing underused shop units back into use outside those areas. Local planning authorities may consider the impact of the development on the provision of important local services, such as post offices, though only there is a reasonable prospect of the premises being occupied by another retail use. Up to 150 square metres of retail space will be able to change to residential use. The new right does not apply to land protected by article 1(5) of the General Permitted Development Order (National Parks, the Broads, areas of outstanding natural beauty, conservations areas, World Heritage Sites and certain areas specified under the Wildlife and Countryside Act 1981).

7.3 New Class CA will allow **shops** (A1) to change to **banks, building societies, credit unions or friendly societies** (uses which sit within A2) enabling effective re-use of retail premises to provide essential financial services and support high streets.

7.4 Under new Class MB **agricultural buildings** will be able to change to up to three **dwellinghouses** (C3), and carry out associated building works, so that rural businesses can diversify while increasing housing supply. The rights will not apply to land protected by article 1(5) of the General Permitted Development Order (National Parks, the Broads, areas of outstanding natural beauty, conservations areas, World Heritage Sites and certain areas specified under the Wildlife and Countryside Act 1981). Prior approval (covering highways, transport and noise impacts, risks of contamination and flooding, location and siting of the building, and the design and external appearance of the building) is required to ensure that the change of use and any associated works do not create unacceptable impacts. Up to 450 square metres of agricultural building will be able to change to residential use for up to three dwellings.

7.5 An amendment to Class K will enable premises in **business** (B1), **hotels** (C1), **residential institutions** (C2), **secure residential institutions** (C2A), and **assembly and leisure** (D2) use classes to change use to a **registered nursery providing early years childcare** to increase childcare places and support working families. Prior approval (covering highways, transport and noise impacts and risk of contamination) is required to ensure that the change of use does not create unacceptable impacts. An amendment to Part 2 of Schedule 2 to the General Permitted Development Order to enable nurseries to build higher fences fronting a highway, provided they do not obstruct views for people using the highway (as currently applies to all

schools). An amendment to Part 32 of Schedule 2 to the General Permitted Development Order will enable premises which have changed to use as registered nursery to carry out the same sort of building works as schools under permitted development.

7.6 New Class MA will allow **agricultural buildings** to change to **a registered nursery providing childcare or a state-funded school** to increase school and childcare places and support rural communities. Prior approval (covering highways, transport and noise impacts, risks of contamination and flooding, siting and location) is required to ensure that the change of use does not create unacceptable impacts. Buildings which have become schools or nurseries under Class MA will be able to carry out minor works under Class B of Part 41 of Schedule 2 to the General Permitted Development Order. This will enable a hard surface playground to be developed within the curtilage of the building within an overall size limit of 500 square metres, applicable to the building's floor area and land within the curtilage.

7.7 These new permitted development rights will not apply in sites of special scientific interest, safety hazard areas or military explosives storage areas; nor do they apply to scheduled monuments. With the exception of new Class CA the rights will also not apply to listed buildings.

7.8 A permitted development right relating to roof extensions to dwellinghouses is clarified by an amendment to paragraph B.2(b) of Part 1 of Schedule 2 to the General Permitted Development Order. The High Court interpreted the previous rule to mean that a measurement relating to the enlargement of the roof of a dwellinghouse should be taken from the inside edge of the **eaves** of the house. The amendment clarifies that the measurement should be taken from the outside edge of the eaves, measured along the roof line, as was the original policy intention. We have also taken the opportunity to clarify that retaining the eaves of the original roof should allow for their reinstatement if works have necessitated their temporary removal, and that a roof enlargement cannot extend out beyond the original wall of the dwelling house.

Consolidation

7.9 The Government has announced its intention to consolidate the General Permitted Development Order in response as part of the Government's Planning Red Tape Challenge initiative, which was conducted over the summer of 2013. This identified ways to reduce the burden of regulation and make the planning system simple clear and easy to use. It is the intention that this consolidation will be delivered in this Parliament.

8. Consultation outcome

8.1 A consultation on the measures in this order was carried out for 10 weeks from August to October 2013. Over 850 responses were received from a range of parties. The majority of responses agreed with freeing up the planning controls for change of use, and supporting the use of prior approval

to ensure the impact of any change is acceptable. Support for allowing shops and financial services to change to homes highlighted the need to ensure the policy supported town centres, while recognising changes in shopping habits resulting in an over supply of retail units in some areas. There was support for allowing local planning authorities to take a view on the impact of the proposal via a prior approval. Responses also supported prior approval for any external works to ensure these were sympathetic to the surrounding street scheme and welcomed that these changes would not apply to article 1(5) land. Consultees also welcomed the change of use from shops to banks or building societies, as long as this could be tightly defined to ensure other financial services such as betting shops and pay day loan shops were excluded from this provision.

8.2 In response to comment about the impact of allowing change from an agricultural building to a dwelling house in protected areas, such as National Parks, the Government decided that this right will not apply to article 1(5) land. Some respondents were concerned that allowing demolition and rebuild of agricultural buildings could result in the loss of historic buildings and also have an impact on the character of an area. In response the Government decided that full demolition and rebuild will not be permitted development. Limited physical alterations to enable the change of use will be permitted.

8.3 Consultation responses also identified a need to protect tenant farmers in circumstances where a building may be converted from agricultural use leaving the tenant unable to practically run their business. To address this, the express consent of both the landlord and tenant will be required before a change of use takes place, and where an agricultural tenancy has been brought to an end, in whole or in part, in order to take advantage of the new rights, development will not be allowed for a year unless the landlord and the tenant have agreed that the building is no longer needed for agricultural purposes.

8.4 Measures to allow change of use from agricultural buildings to registered nurseries providing childcare and state funded schools, and from a range of other uses to state-funded schools were broadly supported by the consultation responses, recognising the need to support the provision of childcare generally and increase opportunities for educational provision in rural areas.

8.5 A summary of consultation responses was published on 13 March 2014.

9. Guidance

9.1 The Householder Permitted Development Rights: Technical Guidance will be updated to reflect the clarification of how the measurement is to be taken relative to the eaves in relation to the enlargement of the roof of a dwelling house.

10. Impact

10.1 The impact on business, charities or voluntary bodies is to reduce the cost and time burdens of having to submit a planning application.

10.2 The impact on the public sector is a reduction for local planning authorities in the administrative cost and time of processing planning applications. Where prior approval is required the local planning authority will receive a fee for this work, although it will be less than the full planning application fee for that development.

10.3 An Impact Assessment has been published on - http://www.legislation.gov.uk

11. Regulating small business

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

12. Monitoring & review

12.1 The new permitted development rights will reduce bureaucracy for businesses and local planning authorities and contribute to the delivery of more homes, nurseries and schools.

12.2 The Department will monitor progress and carry out a review of the changes to permitted development rights in April 2019.

13. Contact

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