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STATUTORY INSTRUMENTS

2023 No. 1279

TOWN AND COUNTRY PLANNING, ENGLAND

The Town and Country Planning (General Permitted Development etc.) (England) (Amendment) (No. 2) Order 2023

<i>Made</i> - - - -	<i>28th November 2023</i>
<i>Laid before Parliament</i>	<i>30th November 2023</i>
<i>Coming into force</i> - -	<i>21st December 2023</i>

The Secretary of State makes this Order in exercise of the powers conferred by sections 59, 60, 61 and 333(7) of the Town and Country Planning Act 1990(a) and section 54 of the Planning and Compulsory Purchase Act 2004(b).

Citation, commencement, extent and application

1.—(1) This Order may be cited as the Town and Country Planning (General Permitted Development etc.) (England) (Amendment) (No. 2) Order 2023 and comes into force on 21st December 2023.

(2) This Order extends to England and Wales, and any amendments made by this Order have the same application as the instrument amended.

Amendments to the Town and Country Planning (General Permitted Development) (England) Order 2015

2. The Town and Country Planning (General Permitted Development) (England) Order 2015(c) is amended in accordance with articles 3 to 10.

Amendments to Class M of Part 7 of Schedule 2

3.—(1) Class M (extensions etc for schools, colleges, universities, prisons and hospitals) of Part 7 (non-domestic extensions, alterations etc) of Schedule 2 is amended as follows.

(2) In paragraph M.1 (development not permitted)—

(a) in sub-paragraph (a), in both places, for “21st April 2021” substitute “the relevant date”;

(a) 1990 c. 8. Amendments have been made to section 59 which are not relevant to this Order. Section 60 was amended by section 4(1) of the Growth and Infrastructure Act 2013 (c. 27) and section 152 of the Housing and Planning Act 2016 (c. 22).

(b) 2004 c. 5.

(c) S.I. 2015/596; relevant amending instruments are S.I. 2016/1040, 2017/391, 2018/119, 2018/343, 2019/907, 2021/428, 2021/814, 2021/1464, 2022/278 and 2023/747.

- (b) in sub-paragraph (g)(iii)—
 - (i) in sub-paragraph (aa), for “in closed conditions;” substitute “; and”;
 - (ii) for sub-paragraph (bb), substitute—
 - “(bb) in the case of a closed prison, the development does not involve the erection, extension or alteration of any building beyond the perimeter as it stood on the relevant date.”;
 - (iii) omit sub-paragraph (cc).
- (3) In paragraph M.2 (conditions)—
 - (a) in sub-paragraph (h), for “date.” substitute “date;”;
 - (b) after sub-paragraph (h), insert—
 - “(i) where proposed development under Class M relates to the erection, extension or alteration of an open prison building, before beginning development the developer must—
 - (i) assess the contamination and flood risks of the development;
 - (ii) identify measures to reduce, so far as practicable, any contamination or flood risks of the development;
 - (iii) where the development is in an area within Flood Zone 3, carry out prior consultation in accordance with paragraph M.2B (procedure for prior consultation under Class M); and
 - (iv) provide written notification to the local planning authority of the proposed development with the documents and information listed in sub-paragraph (j);
 - (j) the documents and information specified in sub-paragraph (i)(iv) are—
 - (i) a written description of the proposed development;
 - (ii) a plan indicating the site and showing the proposed development;
 - (iii) a drawing, prepared to an identified scale, showing—
 - (aa) in the case of a building to be erected, the proposed external dimensions and elevations of that building; and
 - (bb) in the case of a building to be extended or altered, the external dimensions and elevations of that building both before and after the proposed extension or alteration;
 - (iv) the proposed commencement date;
 - (v) written confirmation that development will not take place on any land used as a playing field, and remaining in that use, at any time in the 5 years before the proposed commencement date;
 - (vi) the developer’s contact address; and
 - (vii) the developer’s email address if the developer is content to receive communications electronically.”.
- (4) After paragraph M.2A (procedure for applications for prior approval under Class M), insert—

“Procedure for prior consultation under Class M

M.2B.—(1) Where a developer is required to carry out prior consultation under paragraph M.2(i)(iii), the developer must consult the Environment Agency as to the flood risks of the proposed development.

(2) The developer must notify the Environment Agency specifying the date by which the Environment Agency must respond (being 21 days from the date the notice is received or such other period as may be agreed with the Environment Agency) (“the closing date”).

(3) The development must not begin—

(a) before the occurrence of one of the following—

(i) the receipt by the developer of responses to the consultation required by this paragraph, or

(ii) the day after the closing date;

(b) in any event, before the developer takes into account any representations received on or before the closing date as a result of consultation under this paragraph.

(4) Where the developer receives representations on or before the closing date, as a result of consultation under this paragraph, the developer must as soon as reasonably practicable send to the local planning authority—

(a) a copy of the representations, and

(b) a statement explaining how the developer has taken the representations into account.”.

(5) In paragraph M.3 (interpretation of Class M)—

(a) before the definition of “footprint”, insert—

““closed prison” means a prison used for the confinement of prisoners in closed conditions located on a site with a closed perimeter;”;

(b) after the definition of “footprint”, insert—

““open prison” means a prison used for the confinement of prisoners in open conditions located on a site without a closed perimeter;”;

(c) after the definition of “published admission number”, insert—

““relevant date” means 21st December 2023 in the case of the development of an open prison building and 21st April 2021 in the case of all other development;”.

Amendments to Class A of Part 14 of Schedule 2

4.—(1) Class A (installation or alteration etc of solar equipment on domestic premises) of Part 14 (renewable energy) of Schedule 2 is amended as follows.

(2) In paragraph A.1 (development not permitted)—

(a) in sub-paragraph (a)—

(i) after the first occurrence of “wall or” insert “, in the case of a pitched roof;”;

(ii) after the second occurrence of “wall or” insert “pitched”;

(b) in sub-paragraph (b), at the beginning, before “it” insert “in the case of solar PV or solar thermal equipment on a pitched roof;”;

(c) after sub-paragraph (b), insert—

“(ba) in the case of solar PV or solar thermal equipment on a flat roof, it would result in the highest part of the solar PV or solar thermal equipment being more than 0.6 metres higher than the highest part of the roof (excluding any chimney);”.

(3) In paragraph A.2 (conditions)—

(a) at the end of sub-paragraph (b), omit “and”;

- (b) after sub-paragraph (b), insert—

“(ba) in the case of solar PV or solar thermal equipment installed on a flat roof located on article 2(3) land, before beginning development the developer must apply to the local planning authority for a determination as to whether the prior approval of the local planning authority will be required with respect to the impact of the appearance of the solar PV or solar thermal equipment on that land;

(bb) in relation to an application under sub-paragraph (ba), paragraphs J.4(3) to J.4(12) of this Part apply as if “Class A” substitutes the reference to “Class J” in paragraph J.4(4); and”.

Amendments to Class B of Part 14 of Schedule 2

5.—(1) Class B (installation or alteration etc of stand-alone solar equipment on domestic premises) of Part 14 of Schedule 2 is amended as follows.

- (2) In paragraph B.1 (development not permitted)—

(a) in sub-paragraph (b)(i), after “height” insert “or, in the case of stand-alone solar on land in a conservation area which would be installed so that it is nearer to any highway which bounds the curtilage than the part of the dwellinghouse or block of flats which is nearest to that highway, 2 metres in height”;

- (b) in sub-paragraph (b)(ii), omit “within a conservation area or”.

- (3) In paragraph B.2 (conditions)—

(a) at the end of sub-paragraph (a), omit “and”;

- (b) after sub-paragraph (a), insert—

“(aa) in the case of stand-alone solar installed in a conservation area nearer to any highway which bounds the curtilage than the part of the dwellinghouse or block of flats which is nearest to that highway, before beginning development the developer must apply to the local planning authority for a determination as to whether the prior approval of the local planning authority will be required with respect to the impact of the appearance of the stand-alone solar on the character of the conservation area;

(ab) in relation to an application under sub-paragraph (aa), paragraphs J.4(3) to J.4(12) of this Part apply as if “Class B” substitutes the reference to “Class J” in paragraph J.4(4); and”.

Amendments to Class J of Part 14 of Schedule 2

6.—(1) Class J (installation or alteration etc of solar equipment on non-domestic premises) of Part 14 of Schedule 2 is amended as follows.

- (2) Omit paragraph J.1(d).

- (3) Omit paragraph J.3.

Amendments to Class K of Part 14 of Schedule 2

7.—(1) Class K (installation or alteration etc of stand-alone solar equipment on non-domestic premises) of Part 14 of Schedule 2 is amended as follows.

- (2) In paragraph K.1 (development not permitted)—

(a) in sub-paragraph (b)(i), after “height” insert “or, in the case of stand-alone solar installed on article 2(3) land so that it is nearer to any highway which bounds the curtilage than the part of the building which is nearest to that highway, 2 metres in height”;

- (b) omit sub-paragraph (b)(ii).
- (3) In paragraph K.2 (conditions)—
 - (a) at the end of sub-paragraph (a), omit “and”;
 - (b) after sub-paragraph (a), insert—

“(aa) in the case of stand-alone solar installed on article 2(3) land nearer to any highway which bounds the curtilage than the part of the building which is nearest to that highway, before beginning development the developer must apply to the local planning authority for a determination as to whether the prior approval of the local planning authority will be required with respect to the impact of the appearance of the stand-alone solar on that land;

(ab) in relation to an application under sub-paragraph (aa), paragraphs J.4(3) to J.4(12) of this Part apply as if “Class K” substitutes the reference to “Class J” in paragraph J.4(4); and”.

Insertion of Class OA in Part 14 of Schedule 2

8. After Class O (installation etc of flue for combined heat and power on non-domestic premises) of Part 14 of Schedule 2, insert—

“Class OA - installation etc of a solar canopy on non-domestic, off-street parking

Permitted development

OA. The installation, alteration or replacement of a solar canopy within an area lawfully used as off-street parking other than for a dwellinghouse or a block of flats

Development not permitted

OA.1. Development is not permitted by Class OA—

- (a) if any part of the development—
 - (i) exceeds 4 metres in height above ground level;
 - (ii) is within 10 metres of the curtilage of a dwellinghouse or a block of flats;
- (b) within the curtilage of a dwellinghouse or a block of flats;
- (c) on a site designated as a scheduled monument or on land within the curtilage of a scheduled monument;
- (d) within the curtilage of a listed building;
- (e) for the display of an advertisement; or
- (f) if the off-street parking area is in use by virtue of Class B (temporary use of land) of Part 4 (temporary buildings and uses).

Conditions

OA.2.—(1) Development is permitted by Class OA subject to the following conditions.

(2) In the case of development above a permeable surface, provision is made to direct run-off water from the solar canopy to a permeable or porous area or surface within the off-street parking area.

(3) Before beginning development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the local planning authority will be required with respect to—

- (a) the solar canopy's siting, design and external appearance, in particular the impact of glare on the occupiers of neighbouring premises; and
- (b) in the case of a solar canopy on article 2(3) land, the impact of the appearance of the solar canopy on that land.

(4) Paragraphs J.4(3) to J.4(12) of this Part apply in relation to an application under sub-paragraph (3) as if "Class OA" substitutes the reference to "Class J" in paragraph J.4(4).

(5) Development must be completed within a period of 3 years starting with the date on which—

- (a) prior approval is given; or
- (b) a determination that such approval is not required is given or the period for giving such a determination set out in paragraph J.4(9)(c) of this Part has expired without the applicant being notified whether prior approval is required, given or refused.

(6) Where the solar canopy is no longer needed, it is removed as soon as reasonably practicable and the land is restored to its condition before the development took place so far as reasonably practicable."

Amendment to Class P of Part 14 of Schedule 2

9. In Class P (interpretation) of Part 14 of Schedule 2, after the definition of "safeguarded land" insert—

""solar canopy" means a canopy structure—

- (a) installed with solar PV or solar thermal equipment, and
- (b) open on all sides or, in the case of development adjoining a building, on three sides;"

Amendments to Class A of Part 16 of Schedule 2

10.—(1) Class A (electronic communications code operators) of Part 16 (communications) of Schedule 2 is amended as follows.

(2) In paragraph A.2(3)—

(a) in paragraph (c)—

(i) in sub-paragraph (ii)—

(aa) in the opening words, after "mast" insert ", other than on a building,";

(bb) in paragraph (bb), after "level" insert "excluding any antenna";

(ii) in sub-paragraph (iia), in the opening words, after "mast" insert ", other than on a building,";

(b) in paragraph (d)(i)—

(i) in the opening words, after "mast" insert ", other than on a building,";

(ii) in sub-paragraph (bb), after "level" insert "excluding any antenna".

(3) In paragraph A.2(4)—

(a) in paragraph (d), in the opening words—

- (i) after “mast”, insert “, other than on a building,”;
 - (ii) after “taller”, in the first place it appears, insert “(excluding any antenna)”;
 - (b) in paragraph (e), in the opening words, after “mast” insert “, other than on a building,”.
- (4) In paragraph A.4 (interpretation of Class A)—
- (a) for the definition of “safeguarding map” substitute—
 - ““safeguarding map” means—
 - (a) a map which meets the definition of “safeguarding map” in the Safeguarding Direction;
 - (b) a map issued under article 31(1) of the Procedure Order or any previous powers to the like effect;”;
 - (b) in the definition of “small cell system”, omit sub-paragraph (b).

Amendment to the Town and Country Planning (Development Management Procedure) (England) Order 2015

11. In article 22(1) (duty to respond to consultation) of the Town and Country Planning (Development Management Procedure) (England) Order 2015(a)—

- (a) in sub-paragraph (e), for “BC.2(d)” substitute “BC.3(3)”;
- (b) after sub-paragraph (e), insert—

“(ea) paragraph M.2(i)(iii) of Part 7 of Schedule 2 to the Permitted Development Order (extensions etc for schools, colleges, universities, prisons and hospitals);”.

Signed by authority of the Secretary of State for Levelling Up, Housing and Communities

28th November 2023

Lee Rowley
Minister of State
Department for Levelling Up, Housing and Communities

(a) S.I. 2015/595. An amendment was made to article 22(1) by S.I. 2023/747. Other amendments have been made to article 22(1) which are not relevant to this Order.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order primarily amends the Town and Country Planning (General Permitted Development) (England) Order 2015 (“the GPDO”). The GPDO provides for the granting of planning permission for certain classes of development without the requirement for a planning application to be made under Part 3 of the Town and Country Planning Act 1990 (c. 8). The classes of permission, together with their accompanying conditions, limitations and restrictions, are set out in Schedule 2 to the GPDO.

Article 3 amends Class M (extensions etc for schools, colleges, universities, prisons and hospitals) of Part 7 (non-domestic extension, alterations etc) of Schedule 2 to the GPDO. It expands the existing permitted development right to include “open prisons” as defined in paragraph M.3. The provision also introduces, for the development of open prisons, a requirement to notify the local planning authority before commencing development and to consult the Environment Agency where the development is in an area within Flood Zone 3.

Article 4 amends Class A (installation or alteration etc of solar equipment on domestic premises) of Part 14 (renewable energy) of Schedule 2 to the GPDO to allow the installation of solar photovoltaic equipment and solar thermal equipment (together “solar equipment”) on a flat roof and introduces a requirement to apply to the local planning authority for a determination as to whether its prior approval is needed where that development is on article 2(3) land (for example land within a National Park, a conservation area, an area of outstanding natural beauty, or a World Heritage Site).

Article 5 amends Class B (installation or alteration etc of stand-alone solar equipment on domestic premises) of Part 14 of Schedule 2 to the GPDO to permit stand-alone solar equipment in a conservation area where the solar equipment is closer to a highway than the part of the premises nearest the highway. In that case, it restricts the maximum height of the solar equipment to 2 metres and introduces a requirement to apply to the local planning authority for a determination as to whether its prior approval is needed.

Article 6 amends Class J (installation or alteration etc of solar equipment on non-domestic premises) of Part 14 of Schedule 2 to the GPDO to allow the development of solar equipment on a roof slope fronting a highway on article 2(3) land and removes the 1 megawatt capacity threshold for the installation of solar PV.

Article 7 amends Class K (installation or alteration etc of stand-alone solar equipment on non-domestic premises) of Part 14 of Schedule 2 to the GPDO to permit stand-alone solar equipment on article 2(3) land where the solar equipment is closer to a highway than the part of the premises nearest the highway. In that case, it restricts the maximum height of the solar equipment to 2 metres and introduces a requirement to apply to the local planning authority for a determination as to whether its prior approval is needed.

Article 8 introduces new Class OA into Part 14 of Schedule 2 to the GPDO. Class OA permits the installation, alteration and replacement of a solar canopy on non-domestic, off-street parking. Class OA is subject to various limitations, including that no part of the development may exceed 4 metres in height or be within 10 metres of the curtilage of a dwellinghouse or block of flats. Class OA contains a requirement to apply to the local planning authority for a determination as to whether its prior approval is needed.

Article 10 amends Class A (electronic communications code operators) of Part 16 (communications) of Schedule 2 to the GPDO to limit some of the conditions to ground-based masts only, ensure that height calculations for masts exclude any antennas, and adjust the definitions of “safeguarding map” and “small cell system”.

Article 11 corrects an erroneous reference and amends article 22(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 to include paragraph M.2(i)(iii) of Part 7 of Schedule 2 to the GPDO which places a duty on the Environment Agency to respond to consultation.

An Explanatory Memorandum is published alongside this instrument at www.legislation.gov.uk.

An impact assessment has not been produced for this instrument.

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