HOUSE OF COMMONS LIBRARY

BRIEFING PAPER

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Permitted Development Rights

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Inside:

Contents

Summary

What are permitted development rights?

Permitted development rights (PDRs) are rights to make certain changes to a building without the need to apply for planning permission. They derive from a general planning permission granted by Parliament, rather than from permission granted by the local planning authority (LPA). Before some PDRs can be used, the developer must first obtain "prior approval" in relation to specified aspects of the development from the LPA.

Some PDRs cover building operations, such as home extensions, whereas others cover change of use of buildings. Change of use PDRs, such as office to residential conversion, are covered in another Commons Library briefing, *Planning: change of use* (CBP 01301, 9 May 2019) and so, to minimise repetition, are not discussed at length here.

Removing PDRs

In some circumstances LPAs can suspend PDRs in their area, under Article 4 of the *Town and Country Planning (General Permitted Development) (England) Order 2015*.

Changes since 2013

In May 2013 changes came into force to allow permitted development for home extensions; to increase the size limits for the depth of single-storey domestic extensions from 4m to 8m (for detached houses) and from 3m to 6m (for all other houses), in non-protected areas, for a period of three years. A neighbour consultation scheme on new extensions was introduced by the then Government in response to concerns about the original proposals. This temporary permitted development was extended until May 2019 and the Government has announced that it will be made permanent.

From 15 April 2015, the *Town and Country Planning (General Permitted Development) (England) Order 2015* consolidated and revoked the previous 1995 legislation relating to permitted development in England. It also introduced a number of new PDRs, including the provision of click-and-collect services by shops and enabling greater use of non-domestic properties to provide renewable energy.

Changes were also made in November 2016 to allow for taller mobile masts in a bid to boost mobile connectivity.

What next? Future changes

The Conservative Party manifesto for the 2017 general election indicated that non-fracking drilling would be made permitted development. The consultation on permitted development for shale gas exploration ran from 19 July 2018 to 25 October 2018 and invited views on creating a PDR for non-hydraulic shale gas exploration development in England. The consultation document stated it would only apply to non-hydraulic fracturing operations to take core samples for testing purposes and would not allow injection of any fluids for the purposes of hydraulic fracturing. The responses to the consultation are being analysed.

In October 2018, the Government launched a consultation on supporting the high street and increasing the delivery of new homes by (amongst other things) increasing PDRs. It proposed to

- Allow greater change of use to support high streets to adapt and diversify, to facilitate more leisure and community uses (such as gyms, libraries and health care) and office use as well as homes

- Remove the existing PDR for the installation of, and advertising on, new public call boxes
- Increase size limits for off-street electric vehicle charging points
- Make permanent two time-limited PDRs relating to change of use from storage or distribution to residential use and larger single-storey rear extensions to houses.

In a Written Statement in March 2019, the Housing Secretary, James Brokenshire, confirmed that the Government intended to go ahead with these reforms to PDRs, as proposed in the October 2018 consultation, although the time-limited PDR for change of use from storage to residential would not be extended beyond 10 June 2019.

The Government response to the October 2018 consultation was published in May 2019.

- This briefing paper applies to England only. For information about permitted development in the other UK countries, see section 8 of the joint Library briefing paper Comparison of the planning systems in the four UK countries: 2016 update.
- Commons Library briefings on other aspects of planning can be found on the topic page for housing and planning.

1. Permitted development rights

PDRs are basically rights to make certain changes to a building without the need to apply for planning permission. They derive from a general planning permission granted by Parliament, rather than from permission granted by the local planning authority (LPA). PDRs were previously set out in the *Town and Country Planning (General Permitted Development) Order 1995* (the1995 Order).[1] They are now, since 5 April 2015, contained in the *Town and Country Planning (General Permitted Development) (England) Order 2015* (the 2015 Order).[2] Schedule 2 of this Order sets out the scope of PDRs.

Legislation from April 2015 brought new PDRs into force and replaced the previous law.

In some areas, called "designated areas", PDRs are more restricted. These are generally in conservation areas, a National Park, an Area of Outstanding Natural Beauty or the Norfolk or Suffolk Broads. In designated areas planning permission will be needed to carry out the changes to the building. It does not necessarily mean that the changes cannot be made, but simply that the LPA will want to consider the proposals in detail first. Restrictions also apply if the property is a listed building.

PDRs do not apply in all areas.

The Planning Portal website has guides to the rules relating to some of the most frequently used PDRs. These include:

- Domestic solar panels
- Extensions
- Loft conversions
- Outbuildings and
- Satellite, TV and radio antenna.

1.1 Neighbour consultation scheme

Before some PDRs can be used, for example for larger single-storey rear extensions, there is a neighbour consultation scheme requirement, which requires notifying the LPA of what is proposed. The LPA will serve a notice on adjoining owners or occupiers (that is, those who share a boundary, including to the rear). If any adjoining neighbour raises an objection within the 21-day period, the LPA will take this into account and make a decision about whether the impact on the amenity of all adjoining properties is acceptable.[3]

1.2 Change of use

As the Commons Library briefing *Planning: change of use* explains at more length, the *Town and Country Planning (Use Classes) Order 1987* puts uses of land and buildings into various categories known as "Use Classes".[4] The categories give an indication of the types of use which may fall within each use class. There are four main categories:

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1 SI 1995/418
2 SI 2015/596
3 For further information about the scheme and its requirements see HM Government, *Permitted Development Rights for Householders: Technical Guidance*, April 2017.
4 CBP 01301, 9 May 2019 and SI 1987/764.

- Class A covers shops and other retail premises such as restaurants and bank branches;
- Class B covers offices, workshops, factories and warehouses;
- Class C covers residential uses; and
- Class D covers non-residential institutions and assembly and leisure uses.

These categories are then further split up into a number of subclasses. The 2015 Order then grants PDRs for change of use where planning permission is not needed for changes in use of buildings within each subclass and for certain changes of use between some of the classes.

Not every use of building is put into a use class under this legislation; those that are not are called "sui generis". Examples are theatres, hostels providing no significant element of care, scrap yards, petrol stations, nightclubs, launderettes, taxi businesses, amusement centres, casinos and betting and payday loan shops. If a building or business is sui generis or the new use is sui generis, then there will normally need to be a planning application to change the use under the procedures set out in the *Town and Country Planning Act 1990*.

Not every use of a building fits within a use class category.

1.3 Prior approval

For many PDRs which relate to change of use of buildings there is a prior approval system, set out in the 2015 Order, which requires the LPA to approve technical aspects of the development, such as its siting, design and transport and highways issues. These pre-approval requirements vary depending on the exact type of change of use PDR. If the LPA decides to refuse prior approval on these issues then the change of use may not go ahead.

Further information about prior approval, what it is and when it is required is provided in MHCLG's Planning Practice Guidance (PPG) on when permission is required.[5]

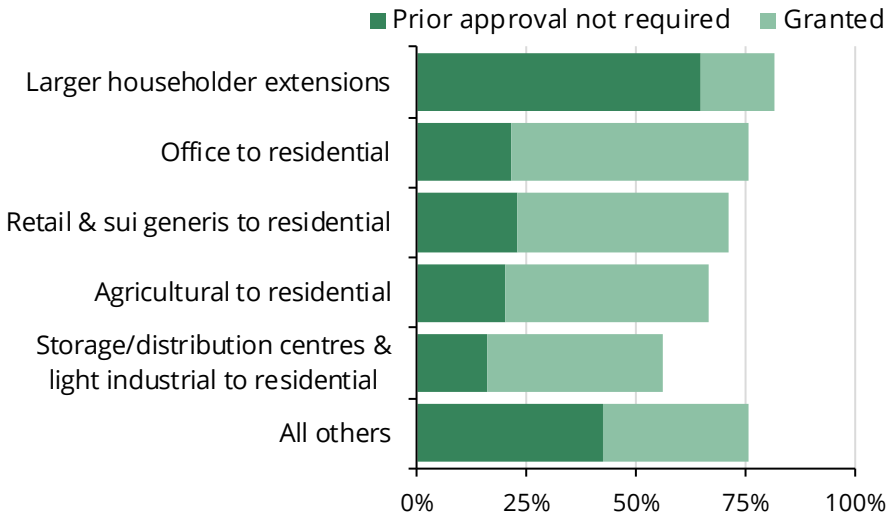
There were around 35,400 applications for prior approval in England in 2018. Of these, around 19,800 (56%) were found not to require prior approval, around 8,300 (23%) had prior approval granted and 7,400 (21%) had prior approval refused. This means that 79% of applications were successful – either because they didn't need prior approval, or because they had prior approval granted. Just over half (53%) of those applications that did require prior approval had it granted.

The majority of prior approval applications in 2018 were for larger householder extensions: 74% of the total. 6% of applications were for agricultural to residential change of use, 6% were for office to residential change of use, and 2% were for retail and sui generis uses to residential change of use. As the chart overleaf shows, applications for larger householder extensions were more likely to be found not to require prior approval, and as such tended to be more successful than other types of prior approval applications.[6]

5 MHCLG, *Guidance: when is permission required?* 6 March 2014, updated 15 March 2019

6 MHCLG, *Live Table PDR2*, 21 March 2019

Accepted prior approval applications by PDR type
England, 2018



Source: MHCLG, Live Table PDR2, 21 March 2019

The number of prior approval applications has been relatively stable apart from some seasonal variation since 2014. Around 9,500 applications are made each quarter on average, of which around 80% are successful. [7]

Further statistics on PDRs are available from MHCLG's quarterly *Planning applications in England* publication, or from its Live Tables on PDRs.

[7] MHCLG, Live Table PDR2, 21 March 2019

2. Local authority ability to suspend PDRs (Article 4 Directions)

In some circumstances, LPAs can suspend PDRs (including those relating to change of use) in their area. LPAs have powers under Article 4 of the 2015 Order to remove PDRs. While Article 4 directions are confirmed by LPAs, the Secretary of State must be notified and has wide powers to modify or cancel most directions at any point.[8]

PDRs can be removed if a local authority makes an Article 4 direction.

Article 4 directions must be made in accordance with guidance given in the National Planning Policy Framework, which directs that there must be a clear justification for removing national PDRs:

> 53. The use of Article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the well-being of the area (this could include the use of Article 4 directions to require planning permission for the demolition of local facilities). Similarly, planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.[9]

The Planning Practice Guidance (PPG) on when planning permission is required says that, provided there is justification for both its purpose and extent, it is possible to make an Article 4 direction to:

- cover an area of any geographic size, from a specific site to a local authority-wide area
- remove specified permitted development rights related to operational development or change of use
- remove permitted development rights with temporary or permanent effect.[10]

LPAs can be liable to pay compensation in some circumstances, where PDRs are withdrawn.

There are circumstances in which LPAs may be liable to pay compensation having made an Article 4 direction. The PPG says that, if an LPA makes an Article 4 direction, it can be liable to pay compensation to those whose PDRs have been withdrawn, but only if it then subsequently:

- refuses planning permission for development which would otherwise have been permitted development; or
- grants planning permission subject to more limiting conditions than the General Permitted Development Order

The grounds on which compensation can be claimed are limited to abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights.

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8 Department for Communities and Local Government (DCLG), *Extending permitted development rights for homeowners and businesses: technical consultation*, November 2012: page 20

9 MHCLG, *National Planning Policy Framework*, CP 48, February 2019: page 38

10 MHCLG, *Guidance: When is permission required? What can an article 4 direction do?*: paragraph 037, revised 6 March 2014

> Paragraph: 042 Reference ID: 13-042-20140306
>
> Revision date: 06 03 2014[11]

Before April 2010, the Secretary of State confirmed certain Article 4 directions, but it is now for LPAs to confirm all Article 4 directions (except those made by the Secretary of State) in the light of local consultation. An LPA must, as soon as practicable after confirming an Article 4 direction, inform the Secretary of State via the National Planning Casework Unit. The Secretary of State does not have to approve Article 4 directions, and will only intervene when there are clear reasons for doing so.[12]

The withdrawal of PDRs does not necessarily mean that planning consent would not be granted. It simply means that an application has to be submitted, so that the LPA can examine the plans in detail.

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11 MHCLG, *Guidance: When is permission required? Is compensation payable where permitted development rights have been withdrawn?*: paragraph 042, revised 6 March 2014

12 As above: paragraph 051, revised 6 March 2014

3. Key changes to PDRs

3.1 Home and business extensions

In a Written Statement in September 2012, the coalition Government announced that it would extend PDRs for three years in order to make it easier for homeowners and businesses to extend their properties.[13] That was followed in November 2012 by a consultation, in which the Government proposed:

- Increasing the size limits for the depth of single-storey domestic extensions from 4m to 8m (for detached houses) and from 3m to 6m (for all other houses), in non-protected areas, for a period of three years. No changes are proposed for extensions of more than one storey.
- Increasing the size limits for extensions to shop and professional/financial services establishments to 100m2, and allowing the building of these extensions up to the boundary of the property (except where the boundary is with a residential property), in non-protected areas, for a period of three years.
- Increasing the size limits for extensions to offices to 100m2, in non-protected areas, for a period of three years.
- Increasing the size limits for new industrial buildings within the curtilage of existing industrial premises to 200m2, in non-protected areas, for a period of three years.
- Removing some prior approval requirements for the installation of broadband infrastructure for a period of five years.

We also wish to explore whether there is scope to use permitted development to make it easier to carry out garage conversions.[14]

Concern about the effect of this new right on neighbouring occupiers was expressed in a debate during the third reading stage of the then *Growth and Infrastructure Bill 2012-13* in the House of Lords on 26 March 2013. Following this, the then Secretary of State for Communities and Local Government, Eric Pickles, offered to provide neighbours with more of a say on the new PDRs. He then wrote to MPs to explain the neighbour consultation scheme:

- Homeowners wishing to build extensions under the new powers would notify their local council with the details.
- The council would then inform the adjoining neighbours – this already happens for planning applications.
- If no objections are made to the council by the neighbours within a set period, the development can proceed.
- If objections are raised by neighbours, the council will consider whether the development would have an unacceptable impact on neighbours' amenity.

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13 HC Deb 6 Sep 2012 cc29WS

14 DCLG, *Extending permitted development rights for homeowners and businesses,* 12 November 2012: pages 2-3

- This is a form of 'prior approval' process which allows for consideration by ward councillors, and (if the council wishes) by a Planning Committee.
- There will be no fee for householders to go through this process.

These proposals are similar to a policy originally recommended by Zac Goldsmith and Lord Deben (then John Gummer) in their 2007 Quality of Life report.[15]

An amendment to add this neighbourhood consultation scheme was added to the then Bill in the House of Lords on 22 April 2013.[16]

In his letter, Eric Pickles confirmed that Government would go ahead with new household and business extension PDRs. The Government published a summary of consultation responses in May 2013.[17] The new PDRs came into force from 30 May 2013, through the *Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013*.[18] The new rules applied initially for a three year period.

In the July 2014 technical consultation on planning, the Government proposed putting some of its temporary PDRs on a permanent basis, including the temporary increase in size limits allowed for single storey rear extensions on dwelling houses. The Government did not respond formally to this part of the technical consultation before the 2015 general election. In the *Town and Country Planning (General Permitted Development) (England) Order 2015,* however, which came into force on 15 April 2015, the temporary size limit PDR for domestic extensions was extended for a further three years, until May 2019.[19] In addition to this, the previously time-limited PDR for extensions to shops, offices, industrial and warehouse buildings was made permanent in the 2015 regulations.

In April 2017 the then Government updated the permitted development rights for householders: technical guidance, which explains the rules on householder permitted development, protection for neighbours and the wider environment.

More recently, the October 2018 consultation on supporting the high street and increasing the delivery of new homes by (amongst other things) increasing PDRs outlined areas where the Government proposed to create or amend PDRs. One of its proposals was to make permanent the time-limited PDR relating to larger single-storey rear extensions to houses.[20]

For more detail about the October 2018 consultation and its outcomes, see Commons Library briefing, *Planning: change of use* (CBP 01301, 9 May 2019).

15 Secretary of State for Communities and Local Government Letter to MPs, *Making it easier for families to improve their home*, 19 April 2013
16 HL Deb 22 April 2013 c1229
17 DCLG, *Extending permitted development rights for homeowners and businesses: Technical consultation: Summary of responses*, May 2013
18 SI 2013/1101. See DCLG, *New measures coming into force ensure the very best use is made of empty and underused buildings*, 9 May 2013
19 SI 2015/596
20 MHCLG, *Planning Reform: Supporting the high street and increasing the delivery of new homes*, October 2018: pages 9-10

In a Written Statement in March 2019, the Housing Secretary, James Brokenshire, confirmed that the Government intended to introduce a number of reforms to PDRs - as proposed in the October 2018 consultation on supporting the high street and increasing the delivery of new homes - although the time-limited right for change of use from storage to residential would not be extended beyond 10 June 2019.[21] The PDR for larger single storey rear extensions would be made permanent, with a "proportionate" fee:

> (…) We will also make permanent the time-limited right to build larger single storey rear extensions to dwelling houses and to introduce a proportionate fee. I do not intend to extend the time-limited right for change of use from storage to residential. This right will lapse on 10 June 2019.[22]

The Government response to the October 2018 consultation was published in May 2019. In it, the Government remarked that its proposal here had attracted considerable support:

> 47. There were 231 responses to this question with considerable support to make the right permanent and retain the neighbour consultation on the impact on their amenity. The high level of take-up of this right was seen as an indicator of its value and use. The amenity test was recognised as helping manage any impacts. However, there were some concerns that these larger extensions result in larger, less affordable housing stock.[23]

The *Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019* were laid before Parliament on 3 May 2019, to come into force on 25 May 2019.[24]

Earlier comment on extending PDRs to home extensions

In December 2012, the House of Commons Communities and Local Government Select Committee published a report on the proposed changes to PDRs.[25] The Committee found that the Government had failed to take account of the environmental and social implications of its proposal and that the Government was wrong to justify the changes on solely economic grounds. It called this an "unbalanced approach".[26] The Committee concluded that the proposed changes to PDRs should not be made. It recommended that if the Government did go ahead

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21 HC Deb 13 March 2019 c20WS
22 As above
23 MHCLG, *Government response to consultation on Planning Reform: Supporting the high street and increasing the delivery of new homes: A summary of responses to the consultation and the government's response*, May 2019: page 16
24 SI 2019/907. Further background information is provided in the Regulations' Explanatory Memorandum.
25 Communities and Local Government Select Committee, *The Committee's response to Government's consultation on permitted development rights for homeowners*, HC 830 2012–13, 20 December 2012
26 As above: page 16

with the proposals, a number of adjustments should be made and further reviews conducted.[27]

Professional organisations, such as the Royal Town Planning Institute (RTPI) and the Planning Officers Society, were also critical of the proposals to extend PDRs for domestic properties. The RTPI said that the Government had not considered the issue of neighbour disputes potentially caused by the new developments. The organisation was also concerned that the proposals, as framed in terms of percentage of the curtilage of a property, could lead to new extensions covering the entire back garden of a property.[28]

The Planning Officers Society said that there was no evidence to suggest that the planning system was deterring householders from extending their properties. It said that the cost of getting planning permission was a small percentage of the total build cost and that there was no evidence to suggest that it was this cost that deterred householders from developing their properties. It said that the existing system was positive in the number of approvals and that it exercised the "necessary controls on inappropriate development."[29]

Some organisations responded positively to the Government's proposals. The North East Chamber of Commerce said that the proposals would provide the incentive to boost the number of property extensions and provide a "much-needed stimulus for the construction sector" and that the proposals had the potential to create new jobs and more work for the construction sector. It also said, however, that Government should consider how access to funding for development could be improved alongside the proposals.[30]

Following details of the neighbour consultation scheme being published, an article in the specialist publication, *Planning*, reported concern that the scheme would cost councils money, as they would not receive a fee for this service.[31]

3.2 Telecommunications masts and mobile connectivity

In May 2013, a Government consultation, *Mobile connectivity in England: technical consultation*, proposed to increase PDRs for the heights of antennae on existing buildings and structures and an increase in height for existing masts:

> **Proposal 1:** On existing buildings and structures, increase the current permitted development height limit for antenna from up to 4 metres to up to 6 metres before the prior approval threshold

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27 Communities and Local Government Select Committee, *The Committee's response to Government's consultation on permitted development rights for homeowners*, Seventh Report of Session 2012–13, HC 830, 20 December 2012, p16-17

28 Royal Town Planning Institute, *Response to Extending Permitted Development Rights Consultation*, 21 December 2012

29 Planning Officers Society, *Response to Extending Permitted Development Rights Consultation*, 11 December 2012

30 North East Chamber of Commerce, *Response to Extending Permitted Development Rights Consultation*, 12 December 2012

31 "Neighbour consultation 'could cost councils'", *Planning*, 3 May 2013

> applies under existing permitted development rights. This applies to land in non-protected areas only.
>
> (...)
>
> **Proposal 11:** Existing masts (on land in non-protected areas) can be increased in height from up to 15 metres to up to 20 metres and width by up to a third as permitted development with prior approval for siting and design.[32]

These changes then came into force from 21 August 2013 through the (now superseded) *Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 2013*.[33]

In July 2015 the Government published a review of how the planning system in England could support the delivery of mobile connectivity. This consultation document called for views on the effectiveness of the existing system of PDRs for telecommunications infrastructure, whether this should be streamlined and sought views on whether it should be changed to include taller masts. A Written Statement in March 2016 confirmed the changes that would be made as a result of this review:

> Where a site is already used for telecommunications infrastructure, we will extend permitted development rights to allow taller ground based masts to be built. The threshold for new ground based masts will increase from 15 metres to 25 metres in non-protected areas and a new permitted development right allowing new masts of up to 20 metres will be introduced in protected areas. To ensure that there is appropriate community engagement a prior approval will apply where a new mast is being built, meaning consideration will always be given to how to minimise the visual impact of masts.
>
> Operators will also be able to increase the height of existing masts to 20 metres in both non-protected and protected areas without prior approval; between 20 metres and 25 metres in non-protected areas with a prior approval; and have a new automatic right to upgrade the infrastructure on their masts in protected areas to align with existing rights in non-protected areas. There will be a height restriction of 20 metres on highways and residential areas to accommodate vehicle lines of sight and pedestrian access.
>
> In addition, we will lift restrictions on the number of antennae allowed on structures above 30 metres, while removing the prior approval requirement for individual antenna greater than 6 metres in height in non-protected areas and for 2 small cell antennae on residential premises in both non-protected and protected areas as the visual impact is limited.
>
> We will also grant rights so small cell antenna on residential and commercial premises can face highways, and increase from 6 to 18 months the right for operators to be able to install emergency moveable transmission equipment.[34]

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32 DCLG, *Mobile connectivity in England: technical consultation*, May 2013
33 SI 2013/1868
34 HCWS631, 17 March 2016

These changes were then brought into force by the *Town and Country Planning (General Permitted Development) (England) (Amendment) (No 2) Order 2016* from 24 November 2016.[35]

3.3 Reform of General Permitted Development Order and new PDRs: 2015

In Budget 2014 the then Government announced a review of the 1995 General Permitted Development Order:

> …the government will review the General Permitted Development Order. The refreshed approach is based on a three-tier system to decide the appropriate level of permission, using permitted development rights for small-scale changes, prior approval rights for development requiring consideration of specific issues, and planning permission for the largest scale development.[36]

A number of new permitted development rights were introduced in April 2015.

In the Government's July 2014 Technical consultation on planning a number of new PDRs were proposed. The coalition Government did not formally respond to this part of the Technical consultation on planning before the 2015 general election. It did however, confirm that a number of changes would be made in its 25 March 2015 written statement to Parliament[37] and through publication of the following statutory instruments:

- *The Town and Country Planning (General Permitted Development) (England) Order 2015* (the 2015 Order)[38]
- *The Town and Country Planning (Compensation) (England) Regulations 2015*[39] and
- *The Town and Country Planning (Use Classes) (Amendment) (England) Order 2015*[40]

The first of these statutory instruments consolidated and revoked the 1995 General Permitted Development Order and made a number of policy changes. The explanatory memorandum to these regulations set out the scope of the new PDRs, which related to

- A new PDR for a three year period allowing storage or distribution buildings (B8) to change use to residential (C3)
- A new PDR allowing amusement arcades/centres and casinos (sui generis) to change use to residential (C3)
- A three year extension to the PDR for larger householder rear extensions, to 30 May 2019
- A new PDR allowing change of use from shops (A1) to financial and professional services (A2)
- Removing betting offices and payday loan shops from the A2 use class and making them sui generis
- A new PDR allowing shops (A1), financial and professional services (A2), betting offices, payday loan shops and casinos to change use to restaurants and cafes (A3)

35 SI 2016/1040
36 HM Treasury, *Budget 2014*, 19 March 2014: paragraph 1.147
37 HC Deb 25 March 2015 c131WS
38 SI 2015/596
39 SI 2015/598
40 SI 2015/597

- A new PDR allowing shops (A1) and financial and professional services (A2) to change use to assembly and leisure uses (D2), within specified size limits
- A new PDR allowing retailers to erect click and collect facilities within the curtilage of their existing shop
- A new PDR allowing retailers to modify the size of their existing shop loading bay
- A new PDR for temporary filming and associated operational development for the sole purpose of commercial filmmaking
- A new PDR for the installation, alteration or replacement of solar photovoltaics on the roofs of non-domestic buildings
- A PDR to make permanent the time-limited increased PDRs for extensions to shops, offices, industrial and warehouse buildings
- A new PDR allowing waste operators for "sui generis" waste management facilities to replace plant or machinery or buildings on land within the curtilage of a waste management facility and ancillary to the main waste management operation and
- A new PDR to allow sewerage undertakers to install a pumping station, valve house, control panel housing or switch-gear house.[41]

Changes made by these statutory instruments came into force on 15 April 2015.

3.4 Shale gas and oil monitoring and investigation

PDR for preparatory work

From 6 April 2016 (and following a March 2015 consultation), the *Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016* allows during a period not exceeding 28 consecutive days the drilling of boreholes for the purposes of (a) carrying out groundwater monitoring; (b) seismic monitoring or (c) locating and appraising the condition of mines, in each case which is preparatory to potential petroleum exploration.[42] This right is subject to a number of exceptions (for example where drilling would be carried out within a National Park or protected groundwater source area) and a number of conditions (including no operations between 6pm-7am, and notification to the Environment Agency).

This work can be carried out to establish baseline information on the groundwater environment without the need for planning permission, although other regulatory consents, such as a petroleum exploration and development licence (PEDL), would still be required.

The Commons Library briefing on shale gas and fracking provides an overview (CBP 06073, 6 November 2018)

41 *The Town and Country Planning (Use Classes) (Amendment) (England) Order 2015, SI 2015/597:* Explanatory Memorandum

42 MHCLG, *Amendment to permitted development rights for drilling boreholes for groundwater monitoring for petroleum exploration: technical consultation*, March 2015

Consultation on PDR for non-hydraulic shale gas exploration

The consultation on permitted development for shale gas exploration ran from 19 July 2018 to 25 October 2018. The consultation document invited views on creating a PDR for non-hydraulic shale gas exploration development in England:

> 6. The purpose of this consultation is to seek views on the principle of whether non-hydraulic fracturing shale gas exploration development should be granted planning permission through a permitted development right, and in particular the circumstances in which it would be appropriate. Any permitted development right would not apply to the appraisal and production operations of shale gas extraction.[43]

The consultation document stated it would only apply to non-hydraulic fracturing operations to take core samples for testing purposes. It would not allow injection of any fluids for the purposes of hydraulic fracturing. The consultation proposed the following definition for non-hydraulic fracturing shale gas exploration:

> Boring for natural gas in shale or other strata encased in shale for the purposes of searching for natural gas and associated liquids, with a testing period not exceeding 96 hours per section test.[44]

The consultation document also set out the proposed limitations and exclusions from permitted development on environmental and other grounds:

> 23. The Government remains committed to ensuring that the strongest environmental safeguards are in place. The formulation of any permitted development right will have regard to environmental and site protection laws such as those for Areas of Outstanding Natural Beauty, Scheduled Monuments, conservation areas4, Sites of Special Scientific Interest and World Heritage Sites, National Parks or Broads5.
>
> 24. By law, development which is likely to have significant effects on the environment requiring an Environmental Impact Assessment would not be permitted development. If the proposed development would fall into Schedule 2 of the Environmental Impact Assessment Regulations, it would only be permitted where a local planning authority has issued a screening opinion determining that the development is not Environmental Impact Assessment development, or where the Secretary of State has directed that it is not Environmental Impact Assessment development, or that the development is exempt from the Environmental Impact Assessment Regulations.
>
> 25. Some existing permitted development rights also exclude various other types of land. For example there are restrictions on agricultural change of use on sites designated as a scheduled monument, safety hazard areas, and military explosive areas. Others do not permit development on land safeguarded for aviation or defence purposes.[45]

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43 MHCLG, *Permitted development for shale gas exploration: Consultation*, July 2018: page 7
44 As above: page 10
45 As above: page 11

Parliamentary scrutiny of planning for fracking (2018)

The Housing, Communities and Local Government Select Committee published a report on planning guidance on fracking on 5 July 2018 which made a number of recommendations on the Government's planning proposals, including that fracking planning applications should not be brought under the Nationally Significant Infrastructure Projects (NSIP) regime nor acquire PDRs. The Committee also concluded that it would be "inappropriate" for fracking to be regulated by one single body and proposed the Government's Shale Environmental Regulator should be renamed and repurposed as the Shale Information and Coordination Service.[46] The Committee is awaiting a Government response.

On 12 September 2018, a Westminster Hall debate led by Conservative MP Lee Rowley considered planning permission for shale gas exploration. Concerns were raised in relation to the Government's proposals for PDRs and extending the NSIP regime. The Minister for Energy and Clean Growth (Claire Perry) responded to a number of the concerns:

> As set out in our manifesto, we intend to consult on what can be done to the planning process. As well as looking at moving production rights into a national regime, as we have done for other complicated energy sources, we have considerably increased the level of support for local authorities and local decision makers. We have set up training; we have provided funding. I will shortly appoint a shale gas commissioner, who will have deep and extensive constituency knowledge of the issue and will be out there, helping local residents to understand some of the challenges that exist. To put the myth-buster in place again, we are not overriding local decision making; there are plenty of opportunities for decision makers to express their views in the pre-consultation stage, as is done for other complicated and difficult energy policies.[47]

On 31 October 2018, a further Westminster Hall debate on shale gas development was led by Mark Menzies MP. It focused on local involvement in shale gas development and the Government proposals on planning changes: Mark Menzies called for greater local involvement in "major decisions such as the approval of shale gas sites".[48] The Minister for Housing, Kit Malthouse, replied, emphasising that the Government had not yet made a decision as a result of the planning consultations, and acknowledging the importance of community engagement:

> My hon. Friend the Member for Fylde highlighted the importance of community engagement in the planning process. I reassure him that we remain fully committed to ensuring that local communities are fully involved in planning decisions that affect them, and to making planning decisions faster and fairer. Those are long-standing principles and I am adamant that we should

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46 Housing, Communities and Local Government Select Committee, Planning guidance on fracking, Eight Report of Session 2017-19, HC 767, 5 July 2018
47 HC Deb 12 September 2018 Col 328WH
48 HC Deb 31 October 2018 Col 397WH

> stick to them. However, we understand that communities feel that they are often not consulted closely enough before planning applications are submitted to the local planning authority by developers. As my hon. Friend highlighted, that can lead to opposition to developments and a longer application process.[49]

3.5 Prior approval for building operation permitted development

Section 152 of the *Housing and Planning Act 2016* introduced a prior approval process for building operation PDRs (as opposed to change of use PDR) and other development orders. The idea was to delegate this matter to LPAs so that "local conditions and sensitivities can be taken into account".[50]

[49] HC Deb 31 October 2018 Col 409WH
[50] Housing and Planning Bill Explanatory Notes, Bill 75 EN 2015-16: page 44

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