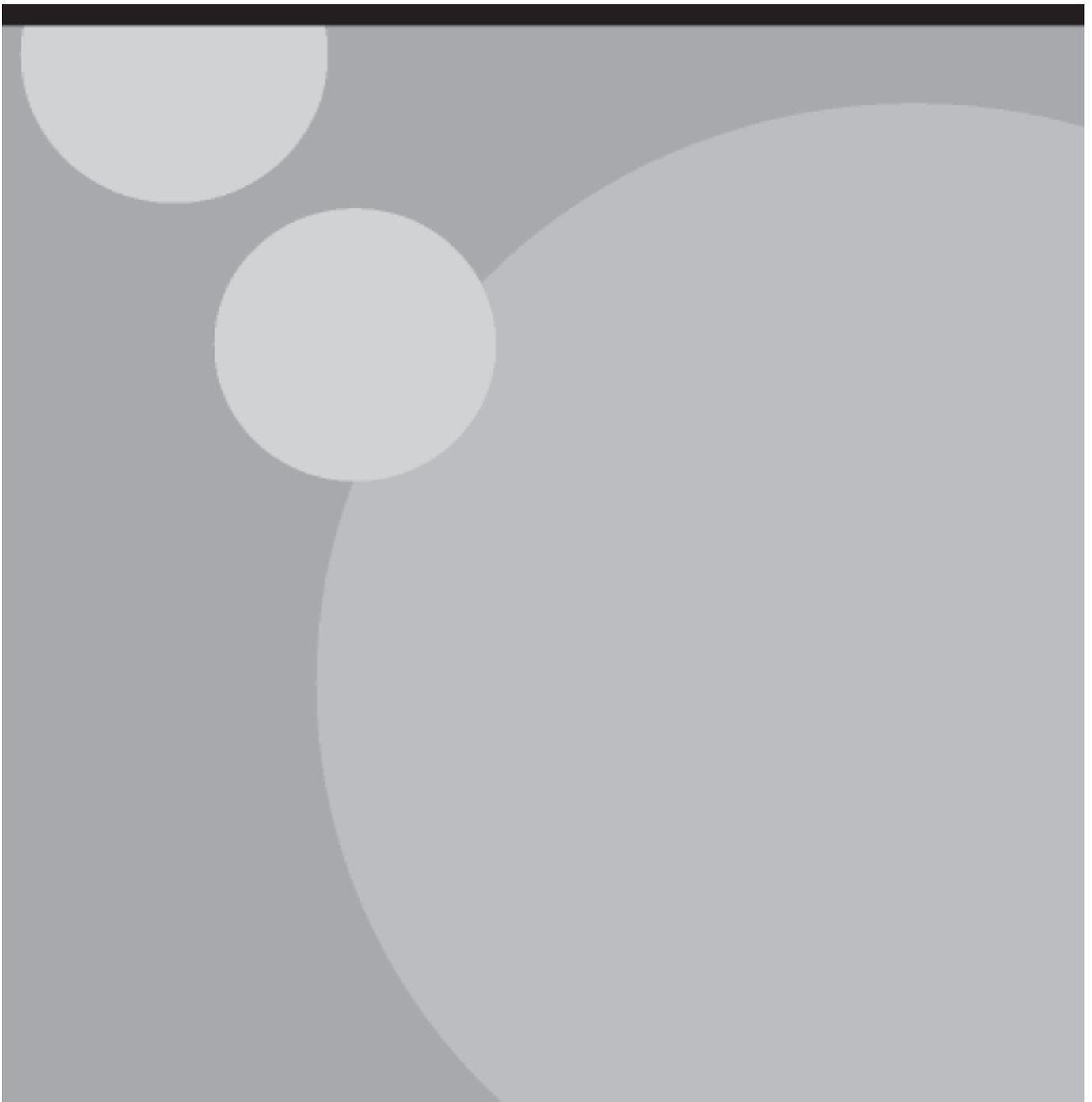




Replacement Appendix D to Department of the
Environment Circular 9/95: General
Development Consolidation Order 1995





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of the Environment Circular 9/95: General
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1. Introduction

- 1.1. Article 4 directions are one of the tools available to local planning authorities in responding to the particular needs of their areas. They do this by allowing authorities to withdraw the 'permitted development' rights that would otherwise apply by virtue of the *Town and Country Planning (General Permitted Development) Order 1995* as amended (the 'GPDO'). An article 4 direction does not prevent the development to which it applies, but instead requires that planning permission is first obtained from the local planning authority for that development.
- 1.2. This Appendix supersedes Appendix D of Department of the Environment *Circular 9/95: General Development Order Consolidation 1995*, and reflects changes to the article 4 process introduced in April 2010,¹ and changes to related compensation arrangements introduced in October 2010.²

2. The use of article 4 directions

- 2.1. Local planning authorities should consider making article 4 directions only in those exceptional circumstances where evidence suggests that the exercise of permitted development rights would harm local amenity or the proper planning of the area.³
- 2.2. In deciding whether an article 4 direction would be appropriate, local planning authorities should identify clearly the potential harm that the direction is intended to address.
- 2.3. In deciding whether an article 4 direction might be appropriate, local planning authorities may want to consider whether the exercise of permitted development rights would:
 - Undermine the visual amenity of the area or damage the historic environment;

¹ The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2010 (Statutory Instrument 2010/654), and The Town and Country Planning (Compensation) (No. 2) (England) Regulations 2010 (Statutory Instrument 2010/1220).

² The Town and Country Planning (Compensation) (No.3) (England) Regulations 2010 (Statutory Instrument 2010/2135).

³ For all article 4 directions the legal requirement is that the local planning authority is satisfied that it is expedient that development that would normally benefit from permitted development rights should not be carried out unless permission is granted for it on an application (see paragraph (1) of article 4 of the GPDO). Additionally, for directions with immediate effect, the legal requirement is that the local planning authority considers that the development to which the direction relates would be prejudicial to the proper planning of their area or constitute a threat to the amenity of their area (see paragraph (1)(a) of article 6 of the GPDO).

- Undermine local objectives to create or maintain mixed communities;
- Lead to the subdivision of agricultural land other than for purposes reasonably necessary for agriculture, or to the loss of agricultural land;
- Lead to an intensification of development in close proximity to a military or aviation safeguarding zone;
- Have a direct and significant adverse effect on a flood risk area, flood defences and their access, the permeability of ground, and management of surface water or flood risk;
- Lead to an intensification of development or use in areas affected by coastal erosion.

2.4. There should be a particularly strong justification for the withdrawal of permitted development rights relating to:

- A wide area (e.g. those covering the entire area of a local planning authority, National Park or Area of Outstanding Natural Beauty).
- Agriculture and forestry development. Article 4 directions related to agriculture and forestry will need to demonstrate that permitted development rights pose a serious threat to areas of exceptional beauty or topography.
- Cases where prior approval powers are available to control permitted development;
- Blanket directions aimed at imposing full planning controls over a wide range of telecommunications development;
- Leisure plots and uses;
- The installation of microgeneration equipment.

2.5. Local authorities should regularly monitor and review the appropriateness of their article 4 directions, considering whether the original rationale for the directions remains valid.

3. Powers to make article 4 directions

3.1. Provided there is justification for both its purpose and extent, it is possible to make an article 4 direction covering:

- Any geographic area from a specific site to a local authority wide
- Permitted development rights related to operational development or change in the use of land;
- Permitted development rights with temporary or permanent effect.

3.2. In procedural terms there are two main types of article 4 direction:

- Non-immediate directions (permitted development rights are only withdrawn upon confirmation of the direction by the local planning authority following local consultation); and
- Immediate directions (where permitted development rights are withdrawn with immediate effect, but must be confirmed by the local planning authority following local consultation within six months, or else the direction will lapse).

See Annex A for a step-by-step guide summarising the process of making an article 4 direction.

- 3.3. There are certain permitted development rights that cannot be withdrawn by any article 4 direction (as specified in articles 4(1) and 4(2) of the GPDO). These exemptions are to ensure permitted development rights related to national concerns, safety, or maintenance work for existing facilities cannot be withdrawn.
- 3.4. Additionally, if a direction would affect certain statutory undertakers' permitted development rights (as specified in article 4(3) of the GPDO) this must be explicitly stated in the direction.
- 3.5. Immediate directions can only be used to withdraw a small number of permitted development rights.⁴
- 3.6. Non-immediate directions can be used where the threat from the exercise of permitted development rights is not immediate, or where permitted development rights cannot be withdrawn by an immediate direction.
- 3.7. Local planning authorities could elect to make a non-immediate direction in instances where it would be legally possible to make an immediate direction- i.e. although there are only certain types of permitted development rights that may be restricted by an immediate direction, it does not follow that these rights must be restricted by an immediate direction. The immediacy of the threat and potential compensation liability may be considerations in determining whether to use a non-immediate or immediate direction.
- 3.8. Article 4 directions cannot be used in relation to any type of development other than those explicitly granted permitted development rights through the GPDO, nor can they be applied retrospectively to development undertaken before a direction comes into force, or to development that has been commenced at the time that a direction comes into force.
- 3.9. Any planning application required as a consequence of an article 4 direction is exempt from the usual planning application fee.

⁴ Development permitted by Parts 1-4 and 31 of Schedule 2 to the GPDO (development within the curtilage of a dwellinghouse, minor operations, changes of use, temporary buildings and uses, and demolition of buildings).

4. Role of the Secretary of State

- 4.1. Whereas before April 2010 the Secretary of State confirmed certain article 4 directions, it is now for local planning authorities to confirm all article 4 directions (except those made by the Secretary of State) in the light of local consultation.
- 4.2. The Secretary of State will only exercise their powers in relation to article 4 directions if there are very clear reasons why intervention at this level is necessary.
- 4.3. The Secretary of State has the power to make a direction modifying or cancelling most article 4 directions at any point.⁵ The Secretary of State cannot, however, modify directions related to permitted development rights under Parts 1-4 and 31 of Schedule 2 to the GPDO that apply exclusively to listed buildings, and cannot cancel or modify directions related to development specified in paragraphs 3(a) to (j) of article 6 of the GPDO.
- 4.4. The Secretary of State also has the power to make an article 4 direction.⁶ Should this happen, the local planning authority will be notified as soon as practicable after making the direction, and it will be for the local planning authority to notify those affected by the direction.

5. Modification, cancellation and monitoring of article 4 directions

- 5.1. A local planning authority can, by making a subsequent direction, cancel an article 4 direction made by them.⁷ To modify an article 4 direction, a local authority would have to cancel the existing direction and prepare a replacement direction incorporating the required modifications in accordance with the procedure in Annex A. Where a direction would cancel an existing article 4 direction, the same procedures apply as for making a new direction of that type.
- 5.2. A local planning authority does not have the power to modify or cancel a direction made by the Secretary of State.

6. Compensation

- 6.1. There are circumstances in which local planning authorities may be liable to pay compensation having made an article 4 direction, although the potential liability is limited in many cases by the time limits that apply.

⁵ Set out in paragraph (13) of article 5 of the GPDO.

⁶ Set out in paragraph (1) of article 4 of the GPDO.

⁷ Set out in paragraph (13) of article 5 of the GPDO.

- 6.2. Local planning authorities may be liable to pay compensation to those whose permitted development rights have been withdrawn if they:
- refuse planning permission for development which would have been permitted development if it were not for an article 4 direction; or
 - grant planning permission subject to more limiting conditions than the GPDO would normally allow, as a result of an article 4 direction being in place.
- 6.3. Compensation may be claimed for abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights.⁸
- 6.4. All claims for compensation must be made within 12 months of the date on which the planning application for development formerly permitted is rejected (or approved subject to conditions that go beyond those in the GPDO).
- 6.5. Additionally, for certain permitted development rights withdrawn by an article 4 direction, compensation may only be claimed if an application for planning permission is submitted within 12 months following the effective date of the direction (and, if 12 months prior notice of the withdrawal of permitted development rights is given, there is no ability to claim compensation.) These specified permitted development rights are currently set out in Statutory Instrument 2012/749, but may apply to permitted development rights subsequently introduced.
- 6.6. Specific compensation provisions apply in relation to statutory undertakers, who may additionally claim for loss of profits.⁹

⁸ See Section 108 of the *Town and Country Planning Act 1990* as amended.

⁹ See Sections 279-282 of the *Town and Country Planning Act 1990* as amended.

Annex A (of revised Appendix D) Article 4 direction process

1. *Check whether an article 4 direction is appropriate, and whether the direction should come into force following consultation or immediately*
(see section 3 of this guidance)

2. *Draft an article 4 direction*

Annex B provides a model for non-immediate directions, Annex C a model for directions with immediate effect. A local model may be used, but it must contain all the information set out in the appropriate model in this guidance.

3. *Serve notice locally and notify the Secretary of State* as soon as practicable after the direction has been made, adhering to requirements of details to be contained in the notice.*

3.1. *Local notification procedure*

Notice of an article 4 direction shall be given by the local planning authority:

- by local advertisement (as defined in article 1(2) of the GPDO)
- by site display at no fewer than two locations within the area to which the direction relates (or if the direction relates to a particular development, on that site) for a period of not less than six weeks);
- individually on every owner and occupier of every part of the land within the area or site to which the direction relates (unless it is impracticable because it is difficult to identify or locate them, or the number of owners or occupiers within the area to which the direction relates would make individual service impracticable- this exemption from individual service of notice does not apply, however, when the owner/ occupier is a statutory undertaker or the Crown);
- between County planning authorities and district/ local authorities within whose county or district the area/ site to which the direction relates is situated (where both tiers exist).

3.2. *Notifying the Secretary of State*

On the same day that notice of an article 4 direction is first published or displayed locally, the local planning authority shall notify the Secretary of State. A copy of the direction (and a map defining the area/ site to which it relates) as well as a copy of the local consultation notices should be sent to the National Planning Casework Unit:

NPCU@communities.gsi.gov.uk

5 St Philip's Place
Colmore Row
Birmingham
B3 2PW

It may not be possible to send a copy of the local publicity notices themselves on the same day as those affected by the direction are notified- it is therefore acceptable to send a copy of the notices as will be published.

4. *Determine whether to confirm the direction*

Any representations received during consultation must be taken into account by the local planning authority in determining whether to confirm a direction (see paragraphs (9) and (10) of article 5 of the GPDO). Material changes to the direction resulting from consultation will require re-consultation. Immediate directions will expire six months after they come into force, unless confirmed. The local planning authority shall not confirm a direction until after the expiration of either a period of at least 28 days following the latest date on which any notice relating to the direction was served or published, or such longer period as may be specified by the Secretary of State (after having been notified by the local planning authority of making a direction).

5. Direction comes into force

If confirmed by the local planning authority, a non-immediate direction will come into force on the date specified in the notice that the local planning authority served originally on those that would be affected (see article 5(7) of the GPDO). Taking into account representations received during consultation may require that the direction comes into force later than specified in the initial notice of the direction. Once confirmed both non-immediate and immediate directions permanent (unless cancelled by the local planning authority or Secretary of State).

6. Serve notice locally and notify the Secretary of State as soon as practicable after the direction has been confirmed, adhering to requirements of details to be contained in the notice.* This requirement neither applies to immediate directions related exclusively to Conservation Areas where the development is specified in 6(3) (a) to (j) of the GPDO, nor to directions related exclusively to listed buildings where permitted development rights withdrawn are in Parts 1-4 and 31 of Schedule 2 to the GPDO.

6.1. Local notification procedure
See stage 3.1.

6.2. Notifying the Secretary of State
As soon as practicable after the direction has been confirmed the local planning authority shall send a copy of the confirmed direction to the Secretary of State (see stage 3.2.).

*In all cases notice of an article 4 direction must:

- Include a description of the development and the area/ site to which the direction relates (ad the case may be);
- Include a statement of the effect of the direction;
- Specify that the direction is made under article 4(1) of the GPDO;
- Name a place where a copy of the direction and a copy of a map defining the area/ site to which it relates (as the case may be) can be seen at all reasonable hours;

Where notice is of the making of any article 4 direction the notice must additionally:

- Specify a period of at least 21 days, stating the date on which that period begins, within which any representations concerning the direction may be made to the local planning authority.

Where notice is of the making of a non-immediate article 4 direction, the notice must additionally;

- Specify a date on which it is proposed that the direction will come into force (which must be at least 28 days later, but no longer than two years after, the date upon which the consultation period begins)

Annex B Model for a non-immediate article 4 direction

TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT)
ORDER 1995 AS AMENDED

DIRECTION MADE UNDER ARTICLE 4(1) TO WHICH ARTICLE 5 APPLIES

WHEREAS (*insert council name here*) being the appropriate local planning authority within the meaning of article 4(4) of the GPDO, are satisfied that it is expedient that development of the description(s) set out in the Schedule below should not be carried out on the land shown edged/coloured on the attached plan, unless planning permission is granted on an application made under Part III of the Town and Country Planning Act 1990 as amended,

NOW THEREFORE the said Council in pursuance of the power conferred on them by article 4(1) of the Town and Country Planning (General Permitted Development) Order 1995 hereby direct that the permission granted by article 3 of the said Order shall not apply to development on the said land of the description(s) set out in the Schedule below:

SCHEDULE¹⁰

1. *To be completed when making the article 4 direction.*
Made under the Common Seal of
(*Insert council name here*).....
thisday of.....20.....
The Common Seal of the Council was affixed to this Direction
in the presence of
Chief Executive Officer

2. *To be completed when confirming the article 4 direction.*
Confirmed under the Common Seal of
(*Insert council name here*).....
thisday of.....20.....
The Common Seal of the Council was affixed to this Direction
in the presence of
Chief Executive Officer

¹⁰ The development to be controlled should be described in the words of Schedule 2 to the GPDO and the description should be followed by the words 'being development comprised within Class...of Part...of Schedule 2 to the said Order and not being development comprised within any other Class'. If control is to be limited to a particular description of the development comprised within a Part, the wording should be adapted accordingly.

Annex C Model for an immediate article 4 direction

TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) ORDER 1995, AS AMENDED

DIRECTION MADE UNDER ARTICLE 4(1) TO WHICH ARTICLE 6 APPLIES

WHEREAS (*insert council name here*) being the appropriate local planning authority within the meaning of article 4(4) of the Town and Country Planning (General Permitted Development) Order 1995, as amended, are satisfied that it is expedient that development of the description(s) set out in the Schedule below should not be carried out on the land shown edged/coloured on the attached plan, unless planning permission is granted on an application made under Part III of the Town and Country Planning Act 1990, as amended.

NOW THEREFORE the said Council in pursuance of the power conferred on them by article 4(1) of the Town and Country Planning (General Permitted Development) Order 1995, as amended, hereby direct that the permission granted by article 3 of the said Order shall not apply to development on the said land of the description(s) set out in the Schedule below.

THIS DIRECTION is made under article 4(1) of the said Order and, in accordance with article 6(7), shall remain in force until (*insert date*) (being six months from the date of this direction) and shall then expire unless it has been confirmed by the appropriate local planning authority in accordance with paragraphs (9) and (10) of article 5 before the end of the six month period.

SCHEDULE¹¹

1. *To be completed when making the article 4 direction.*
Made under the Common Seal of
(*Insert council name here*).....
thisday of.....20.....
The Common Seal of the Council was affixed to this Direction
in the presence of
Chief Executive Officer

2. *To be completed when confirming the article 4 direction.*
Confirmed under the Common Seal of
(*Insert council name here*).....
thisday of.....20.....
The Common Seal of the Council was affixed to this Direction
in the presence of
Chief Executive Officer

¹¹ The development to be controlled should be described in the words of Schedule 2 to the GPDO and the description should be followed by the words 'being development comprised within Class...of Part...of Schedule 2 to the said Order and not being development comprised within any other Class'. If control is to be limited to a particular description of the development comprised within a Part, the wording should be adapted accordingly.