Built Environment Reform Programme

Public Consultation in relation to Town and Country Planning Act Amendments, Definition of Development Order & Registered Building Regulations

August 2023

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1.0 INTRODUCTION

What is the purpose of this consultation?

To seek views on proposed changes to primary and secondary legislation.

What is proposed?

As part of the Built Environment Reform Programme and to facilitate the Department of Environment, Food and Agriculture's (DEFA) core functions (Registered Buildings) changes are proposed to the Town and Country Planning Act 1999 ("The Planning Act"). The changes will:

- provide clarity around the definition of development which will mean better understanding for building owners on what can and can't be done without planning approval (these changes, together with planned secondary legislation, will provide an opportunity to ensure very minor works can be excluded from needing approval);
- remove the requirement for concurrent planning and registered building applications for the demolition of unregistered buildings in Conservation Areas, which will streamline the administration of the planning process both for applicants and the Department;
- ensure routine maintenance works to roads and watercourses do not require planning approval;
- introduce enabling powers for the potential introduction of fees (through secondary legislation) in relation to discretionary services, such as the provision of pre-application advice;
- clarify the scope of Registrations for historic buildings to allow these to be amended and to allow for exclusions (having clearer and more targeted controls will remove unnecessary restrictions for owners of such buildings on making some types of changes) and make changes to the appeals process to simplify and streamline it;
- improve and future proof the provisions for Permitted Development Orders; and
- extend the current five year time limit for the implementation of Comprehensive Treatment Areas to 10 years as a pragmatic measure to allow more time for consideration of options.

The above will be supported by DEFA secondary legislation in relation to:

- the definition of development;
- updated Registered Buildings Regulations; and
- (potentially) fees order for discretionary services.

The above changes do not require Cabinet Office (CABO) secondary legislation (Permitted Development Orders) in order to be implemented, nor do they preclude a planned review of Permitted Development as part of the BERP. However, they do 'future proof' the Permitted Development provisions for future/wider reviews.

A review of the Development Procedure Order, Fees Order and Customer Charter is being run in parallel but separately and will be subject to separate consultation in due course. The fees review will focus on what can be achieved within existing vires, but the changes to the Act proposed will enable the future consideration/introduction of fees for discretionary services.

Why are these changes being made?

The Built Environment Reform Programme (BERP) was launched in July 2022 and refreshed in May 2023. It is a package of measures including (but not limited to) improvements to the planning system to facilitate delivery of the Island Plan and Economic Strategy, including the following key objectives of the Island Plan:

- 2 key Brownfield sites developed using substantial private sector leverage (whilst the metric within the Island Plan is key sites, the programme should aim to incentivise and unlock as much development as possible); and
- an additional 1,000 additional homes occupied

The BERP is a two year programme of work set out to develop commitments in Our Island Plan to build great communities. It is overseen by the DEFA but is a joint programme also being delivered by the CABO and the Department for Enterprise (DfE). The legislative changes proposed in this consultation will contribute to the delivery of the programme.

The process for the Registration of historic buildings and dealing with proposals to undertake works to them is a core function of DEFA and although not specifically within BERP, ensuring this process is fit for purpose will contribute to the overall programme as well as the Island Plan emphasis on productivity and delivery.

How and when can I comment?

Comments can be submitted via the Consultation Hub (accessed via https://consult.gov.im/).

The closing date for comments is the 27th October 2023

What will happen next?

The consultation results will be considered and any necessary amendments made to the Town and County Planning Amendment Bill. It is envisaged the Bill will enter Tynwald branches in early 2024. The secondary legislation will be produced, informed by the consultation results, and drafts consulted on in 2024. It is envisaged that these could be in force before the end of 2024.

2.0 PROPOSED CHANGES TO THE PLANNING ACT

Background

The primary act is the Town and Country Planning Act 1999 ("The Planning Act") . This sets out:

- the definition of development;
- that development requires approval;
- that such approval can by granted by way of an order (by Cabinet Office, aka Permitted Development) or by a specific application, granted in accordance with a process as set out in an order (by DEFA, aka a Development Procedure Order);
- that historic assets may be designated as Registered Buildings (DEFA) or Conservation Areas (CABO) and that certain works to/within such may require approval (i.e. parallel system to planning applications) and provisions for relevant secondary legislation; and
- that Area Plans (CABO) have a link to Compulsory Purchase.

What needs to be achieved by way of amendment?

A review has been undertaken of the BERP Strategic Objectives (and actions underneath) and the heritage work of DEFA to identify which may require changes to the Planning Act.

The following have been identified as worthy of consideration in relation to the Development Management function:

- CA. Amend Section 6 of the Planning Act to ensure that the following activities fall within the definition of development: Repairs and Rebuilding Works, Hard-surfacing of a domestic garden, Exterior painting of buildings and Placement of Temporary structures (including on wheels);
- CB. Amend Section 6 of the Planning Act to add Demolition of a Building to the definition of development and revoke Section 19 of the Act (Control of Demolition in Conservation Areas);
- CC. Ensure mechanisms are provided so that CA and CB above do not take effect until DEFA has made provision under a Section 6(3)(f) to exclude minor elements of the categories added by CA and CB[1];
- CD. Review Section 6 of the Planning Act and its interaction with the Highways Act 1986 and Flood Management Act 2013 to ensure that routine maintenance works are excluded from the definition of development; and
- CE. Insert a provision in the Act in terms of Fees that provides for charging for discretionary services.

In terms of Registered Buildings the required changes to the Act are set out below.

- CF. Insert a section in the Act that legally defines the extent of registration.
- CG. Permit exclusions of elements/objects that are not of special interest.
- CH. Enable amendments to existing registrations.
- CI. Amend the Act to streamline the decision making process for registrations.

[1] *Please refer to section 3 of this consultation document for details.*

The following changes to the Act have been identified as worthy of consideration in relation to the Planning Policy functions:

- CJ. Review/Expand section 8(4) to ensure that the ability to require Prior Approval as part of a Permitted Development Order can potentially be used as part of any future Permitted Development Order;
- CK. Review/Expand Section 8(5) to ensure the mechanism to direct that a Permitted Development Order (in whole or in part) shall not apply to an area/type of development can potentially be used as part of any future Permitted Development Order; and
- CL. Removal of the 5 year time-limit for the commencement of Comprehensive Treatment Areas (Section 4(2)(b)).

How things should work after the amendments

Amendment CA and CC - Amend Section 6 of the Planning Act *to ensure that the following activities fall within the definition of development: Repairs and Rebuilding Works, Hard-surfacing of a domestic garden, Exterior painting of buildings and Placement of Temporary structures (including on wheels).*

The Planning Act defines 'development' at Section 6. If something falls within the definition of development, then it requires planning approval before it can be undertaken. There are two forms of planning approval – that granted by an order (sometimes known as 'Permitted Development') and that resulting from a planning application. The definition of development is therefore important to ensure the scope of the planning system is appropriate.

The definition of development within Section 6 is quite broad, *"Subject to the following provisions of this section, in this Act "development" means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land"* and followed by illustrative lists of things that do and do not constitute development. This means that confirming whether or not something is development requires professional judgement and reference to Case Law (normally from other jurisdictions), and can depend upon the size, nature, location and context of the site/area. As a result there are some things which are in some cases not development but, where they are held to be development, are not necessarily provided for in the Permitted Development Orders despite being quite minor.

The result of this is confusion for building owners and developers, additional work being required to establish whether or not something is development and then sometimes planning applications being required for things which might reasonably be expected to either be excluded from the definition of development or Permitted Development in at least some cases. There are a number of examples of this, such as the surfacing of front gardens to create driveways, repairs/rebuilding works, exterior paint works and temporary structures (including on wheels).

Therefore, clarifying that these things are development and then making explicit provision for them within a Section 6(3)e Order would provide clarity/certainty for homeowners/builders/developers and reduce the planning resource required to respond to queries in relation to these. The approach of having a broad approach in the Act with an order to adjust the definition gives flexibility to respond to future changing circumstances without requiring changes to primary legislation.

Amendments CB and CC - Amend Section 6 of the Planning Act to add Demolition of a Building to the definition of development (as per the UK Act s.55(1A)) and repeal Section 19 of the Act (Control of demolition in Conservation Areas).
Another issue with the definition of development is that, although it clarifies that the partial demolition of a building or the demolition of an attached building is development, it is silent on the total demolition of a detached building, which has by practice been viewed as "not development". This creates a number of technical issues for the process (for example at what point a planning application for the demolition and replacement of a building has been implemented).

Furthermore, Section 19 of the Planning Act requires the demolition of a Building within a Conservation Area to have Registered Building Consent (even if it is not registered). Therefore proposals to redevelop sites require two applications – a planning application for the development and a Registered Building application for the demolition. It also means that someone wishing to remove for example a modern domestic shed from a back garden in a Conservation Area would technically require Registered Building Consent.

The proposed amendments would mean that only one application was required for redevelopments within Conservation Areas, thereby reducing the administrative burden. It would also result in a clearer process for all involved. As with Amendment CA, the Use of a Section 6(3)(e) Order would be appropriate to facilitate implementation of this change.

Amendment CD - Review Section 6 of the Planning Act and its interaction with the Highways Act 1986 and Flood Management Act 2013 to ensure that routine maintenance works are excluded from the definition of development.
It is noted that there are some activities undertaken by statutory undertakers which are included within the permitted development order but in other jurisdictions (for example England) are specifically excluded from the definition of development. This makes it clearer where such activities are to not be regulated by the planning system but by separate existing processes/legislation.

It is important that there are adequate limitations in terms of:

- who can do the works (e.g. relevant Department, Statutory Board or Local Authority);
- where they can do them (e.g. in relation to roads, Public Highways – given varying definitions of roads);
- for underground works (repairing pipes) that the surface is returned to previous condition (e.g. paving made good); and
- associated works (e.g. Works compounds) still constituting development - noting that the Town and Country Planning (Permitted Development) (temporary use or development) Order 2015 relates to works with planning approval.

CE - Insert a provision in the Act in terms of Fees that provides for charging for discretionary services (as per s.199 of the UK Planning Act 2008).
As part of the wider programme it is intended to review planning fees. Previous reviews have been quite targeted and looked at increases/exceptions and some targeted introductions. This review is to be more wide-ranging and initial work has indicated that in order to provide the range and quality of services our customers require, we may need to include charges for discretionary services.

An example of a discretionary service that it may be appropriate to at least consider charging for in some instances is pre-application advice (when someone asks to discuss a potential application before it is formally submitted). Although this is a well-established part of planning, it is not something DEFA currently charges for.

Many authorities in England have over the last 10-15 years started charging for this and legislation was be amended to allow for this. The Island's current planning fees are made under the Interpretation Act 2015 which does not reflect the relevant wording of the English legislation which is used to charge for discretionary planning services.

The initial review of fees proposed is programmed to take place prior to the Act coming into operation, and so could not include pre-application fees in the future (although could still explore them). However to avoid ruling out the option of wider fees it is proposed to include enabling powers within the Town and Country Planning Act. The fees would be subject to the negative Tynwald procedure (as they are currently when made under the Interpretation Act).

Amendment CF - Insert a section in the Act that legally defines the extent of registration.
There has historically been an inconsistent approach to showing the extent of registrations – some use address and some use a map with a red-line boundary. This has raised a number of issues and confusion, not least given the similarity to red-line boundary maps included with planning applications and the lack of consistent approach.

It is considered that the most efficient way to address this is to provide clarification as to the legal extent of registration. The sections of the Act providing designation powers are almost identical to those from the English and Welsh 'Planning (Listed Buildings and Conservation Areas) Act 1990'. When parts of that Act were used as templates for the creation of the Island's own registration functions, the section that legally defines the extent of designation was not also incorporated.

Defining the extent of registration provides legal clarity for all parties and has been tested and established in English case law precedents which the Isle of Man would be dependent upon in the absence of on-Island case law. The definition would need to include any object or structure fixed to the building and any object or structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so since before the enactment date of the relevant part of planning legislation (1983), which introduced provisions for Registered Buildings to the Isle of Man. The definition should also reference the provision for things to be specifically excluded from a given registration (see below).

The proposed approach to the definition provides clarity and protection for historic structures which should be protected such as historic boundary walls or other features, the status of which currently is unclear in many cases. Officers currently address this by including in the register entry summary boundary walls and other objects or structures; this however does not make provision for any elements that may not have been seen or are later discovered or uncovered. The nature of the proposed definition would make it clear that it did not include objects/structures that were not historic that were constructed past a specific date.

Amendment CG. - Permit exclusions of elements/objects that are not of special interest.
Under the current legislation and provisions, it is not possible to omit certain elements of a building from a registration (such as a modern extension). This would be a helpful ability to make registrations more targeted and proportionate - it is in the interests of both the heritage asset and the owner to avoid requiring Registered Building Consent for the removal/alteration of features which are not of historic interest (noting that where a 'normal' planning application is required for such works their impact on those features which are registered would be a material consideration).

Provision is therefore required within the Act that in the register compiled or approved under this section, an entry for a building may provide that a specified object or structure is not to be treated as part of the building for the purposes of this Act (either in terms of requiring Registered Building Consent or of being of special architectural or historic interest for the purposes of Section 16(3).

Amendment CH. - Enable amendments to existing registrations.
Under the current legislation and provisions, it is not possible to make an amendment to existing register entries. This is because Schedule 2 currently refers to entering buildings onto the register or amending the register by removing them. It is considered that some of the older registrations would benefit from review firstly to provide information as to their special interest and to omit parts of buildings (see preceding change in relation to this) which might not be of special interest. The only current means to achieve this would be the de-registration of a building and to simultaneously re-register.

The ability to amend registrations would be beneficial in being able to keep all registrations up to date should they need changing and provide clarity to whether certain elements were considered part of the registration.

This matter had also arisen in England and was addressed by the introduction of powers into their Act via amendments incorporated into the Enterprise and Regulatory Reform Act 2013. The most effective way to achieve this is by making similar legislative changes to Schedule 2 of the Isle of Man Planning Act.

Amendment CI. Amend the Act to streamline the decision making process for registrations.
The process for appealing a registration decision is confusing and unclear. In addition the current process allows for two opportunities to apply to remove a building from the register (each with its own appeal) - one at time of registration and one after a period of time specified in the regulations (currently 5 years). It would be simpler and more appropriate to allow a statutory right of appeal against registration at the time the registration is made (noting that this would not preclude the Department proposing the removal of a building from the register in the event that circumstances changes in the future – for example the building was destroyed).

The current situation is:

- Step 1 - Department decides to propose registration (or amendment) and consults on this
- Step 2- Department decides to continue with registration in light of consultation and communicates resulting decision to building owner - para 2(2)
- Step 3 - Owner applies to reverse the decision by applying to have the building de-registered - para 2(2)(a), and Department determines this application (in accordance with regulations made under para 3)

- Step 4 - If the Department refuses that application, it can be appealed (the secondary legislation allows an appeal process as per final sentence of para 3) and the Department determines the appeal

So to register a building the Department has to in effect make the decision to register it 4 times in a row, which is very inefficient for everyone concerned and means the whole process takes a very long time which again is unhelpful.

What is proposed is that after a registration decision is made (Step 2) the owner can appeal that decision (i.e. goes straight to step 4). In terms of applications by the owner (or anyone) to de-register a building after a registration decision has been made, it is proposed that this need not be provided for in Schedule 2 because:

- these provisions only relate to applications to remove a building from the list – separate provisions exist to make an application at any time to demolish or do works to a registered building (which include an appeals process) and are unaffected by the these changes;
- there is nothing to stop an owner seeking the review of an existing Registration at any time which the Department can then undertake in accordance with Part 3 (and noting that the other changes we are proposing will mean existing entries can be amended); and
- the current provisions mean the owner can only ask for a building to be de-registered (not amended) and can only do so after a prescribed period (currently once every 5 years) but in reality if there was a genuine change in circumstances (e.g. building was destroyed by fire) a review would be needed before that.

It is noted that for example the Welsh Government's Technical Advice Note states the following in relation to later decisions to remove a building from the list, *"Requests to de-list buildings can also be made, but will only be considered in the light of new evidence relating to the special architectural or historic interest of the building. The condition of a building, and the cost of repairing or maintaining it are not grounds for delisting: where there are development proposals, these issues are most appropriately addressed through the listed building consent process".*

Amendment CJ - Review/Expand section 8(4) to ensure that the ability to require Prior Approval as part of a Permitted Development Order can potentially be used as part of any future Permitted Development Order.

The powers within the Act that provide for Prior Approvals could be reviewed and expanded to ensure they are sufficient for future Permitted Development Orders, if required. However, this of course does not preclude a planned review of Permitted Development as part of the BERP progressing in the interim based on existing provisions. The majority of Permitted Development is worded so that the authorised works can simply be undertaken, as long as they comply with any limitations/conditions in the order. Therefore no interaction with planning officers is mandated. Prior Approval is where one or more of the conditions attached to the planning approval given under the Development Order requires certain elements to be approved by the planning authority. This is not the same as a planning application, because for prior approval the planning approval already exists (i.e. in the Permitted Development Order) and so the application is not for the principle of the development, but to comply with the relevant conditions. Of course failure to comply with those conditions would mean that any development carried out was not authorised by the order and so built without the benefit of planning approval.

Prior Approvals are not used in many cases within the Manx Planning System (they are within the Telecommunications Permitted Development Order), but are widely used in the England and Wales Permitted Development Order (which is also more wide ranging than the Manx Order in terms of 'normal' Permitted Development). Prior Approvals are used for things like: some forms of domestic extensions, changes of use from agricultural or commercial buildings to dwellinghouses and the demolition and rebuilding of buildings. In each of these cases there are also a significant number of conditions/limitations which may exclude something from being permitted altogether. The Prior Approval process requires applicants to pay the relevant fee, provide information (form, plans and supporting info such as a flood risk assessment), the Planning Authority to carry out consultation and to then determine the application, and the decision can then be appealed. The order limits what the authority can take into account in the determination of the application, so focuses on things like visual appearance, living standards, highway safety, impact on neighbouring properties etc. The target timescale for the determination of such applications is 8 weeks (unless longer is agreed), and some default to approval if not determined.

Prior Approvals could potentially offer benefits of allowing certain types of application to have a lighter touch approach. On the other hand they add a layer of complexity by introducing a new system (that has parallels with the planning application system) and the need to correctly determine whether or not a proposal meets the Permitted Development requirements in the first place (the onus of which appears to fall on the applicant). It may be that the focus/clarity on considerations could more easily be achieved through other policy approaches and careful thought would also be required about how these provisions interfaced with other legislation, such as the Climate Change Act 2021. However, there may be certain types of developments or areas where it is appropriate.

An amendment would also be helpful to allow the making of separate secondary legislation which set out the process for determining a prior approval application - this could be achieved by widening the scope of Development Procedure Orders at Section 10.

Amendment CK - Review/Expand Section 8(5) to ensure the mechanism to direct that a Permitted Development Order (in whole or in part) shall not apply to an area/type of development can potentially be used as part of any future Permitted Development Order.

The current orders which provide for Permitted Development have a provision that allows a direction to be made that the order (in whole or in part) does not apply to an area or type of development. Again, whilst this has not been used it is a helpful safeguard and it would be prudent to ensure the provisions in the Act remain fit for purpose (although noting that as Permitted Development is made by Cabinet Office and the directions are made by Cabinet Office, so the alternative is to simply amend or revoke an order).

Amendment CL - Removal of the 5 year time-limit for the commencement of Comprehensive Treatment Areas.

A relatively simple change has been identified that would facilitate the BERP – the removal (or at least relaxation) of the 5 year time-limit for the commencement of Comprehensive Treatment Areas (Section 4(2)(b)), to allow a more realistic time frame. It is suggested that this be increased to 10 years (for any Area Plan already in force and for any future Area Plan, unless a future plan explicitly includes a different number).

Question 1 – Do you think the policy intentions described are appropriate? (please give reasons for your answer)

Question 2 – Do you think the proposed amendments set out in the draft Bill will achieve the policy intentions set out above? (if not please give reasons)

Transitional/Saving Provisions

The revocation of the requirement of approval for the demolition of buildings within Conservation Areas must not come into force until such demolitions are classed as development (to avoid a period where historic buildings could be demolished) – both these provisions are proposed as part of this work.

Because most Planning Approvals have a condition giving 4 years to commence (and then no deadline for completion) there will be developments which involve the total demolition of an existing building but do not explicitly give consent for this as it is not currently development or count towards commencement. Some of these will be in Conservation Areas and so have Registered Building Consents for the demolition work. Transitional provisions are therefore required that do not apply the changes to the definition of development or the repeal of Section 19 to development undertaken in accordance with Planning / Registered Building applications approved prior to the date of the changes coming into force.

The requirement for planning approval for the complete demolition of free standing buildings, hard surfacing of gardens and painting of buildings must not come into force until at least some of these works have been included within a Section 6(3)(e) order to exclude them from the definition of development (to avoid a situation where a huge increase in unnecessary planning applications for very minor works occurs). Transitional provisions will be required which allows demolition works necessary to implement a development where the application was made prior to the changes but the resulting approval does not specifically include the demolition and the site is outside a Conservation Area.

In relation to Comprehensive Treatment Areas, it is noted that the Area Plan for the East does not in itself define a time period (as it simply quotes the Act) so if Area Plans are given the freedom to state a longer time period a transitional provision may be required for the Area Plan for the East (and to extend the period beyond 01.12.25 – which is 5 years after the plan came into operation).

Question 3 – Do you think the transitional provisions are adequate? (please give reasons for your answer)

3.0 DEFINITION OF DEVELOPMENT ORDER

Broad Approach

If something is excluded from the definition of development then it is outside the scope of the planning system, whereas if something is Permitted Development then it is within scope but considered to be not requiring of the scrutiny of a full planning application. Where full approval is granted (e.g. for a new building) then this can be subject to conditions that revoke permitted development rights, but such conditions cannot be used to dis-apply a Definition of Development Order (a Section 6(3)(e) Order). The Isle of Man currently has a range of Permitted Development Orders, and the review of some of these is a separate work-stream within the Built Environment Reform Programme. In most cases, where works are within the definition of development but do not warrant the full scrutiny of a planning application, the use of Permitted Development is the most appropriate tool to respond. Therefore the Definition of Development Order is intended to be very targeted and deal only with changes which result from changes to the definition of development which would not be better addressed as permitted development.

Proposed Content

Repairs and Rebuilding Works

Development (including repairs) does not include the carrying out for the maintenance, improvement or other alteration of any building of works which affect only the interior of the building, or do not materially affect the external appearance of the building. Whilst it is proposed to clarify that repairs and rebuilding works are development, this would still be subject to the caveat at S6(3) that, *"The following operations shall not be taken for the purposes of this Act to involve development — (a) the carrying out for the maintenance, improvement or other alteration of any building of works which — (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building; and are not works for the alteration of a building by providing additional space in it underground…"*

Therefore repairs which did not alter the external appearance would still not be development. However, rebuilding works could potentially constitute development even if they do not materially alter the appearance.

Therefore, if works are undertaken to replace a roof or windows on a like-for-like basis then this would not normally be taken to be development. However, if there are material differences then such replacements could constitute development (although may be permitted development). If works are undertaken to remove and rebuild a chimney then, depending on scale, this is arguably development as it contains an element of partial demolition (that may not be permitted development) and rebuilding.

To avoid this grey area it is proposed that provision be made to clarify that the removal and replacement of chimneys as long as they are externally like for like (which would involve partial demolition and so is development) – this would allow for e.g. false chimneys.

Hard-surfacing of a domestic garden

The amendments to the definition of development clarify that hardstanding of domestic gardens constitute development, however in many cases such works will have negligible impact and so could appropriately be excluded from the definition of development. In England, permitted development allows front gardens to be paved if permeable/drained or less than 5m otherwise and there are no restrictions on rear gardens. In assessing applications for hard-standings on the Isle of Man, the Residential Design Guide suggests limiting hard surfacing to 50% of frontages (para 6.3.9). In the Isle of Man many applications also include alterations to access, and such works would still require planning approval. Safeguards would also be appropriate to ensure that significant works of embanking or terracing to support a hard surface would still be development.

It is therefore proposed to exclude from the definition of development domestic hardstandings where:

- no part of the top surface of the hardstandng is more than 0.3 metres above the ground level directly underneath as existed before the works;
- the hardstanding comprises either an area of less than 5 sq m (total area of all hard standings) of impermeable material or permeable (or porous) surfacing which allows water to drain through, such as gravel, permeable concrete block paving or porous asphalt, or if the rainwater is directed to a lawn or border to drain naturally;
- any hardstanding situated on land between a wall forming the principal elevation of the dwellinghouse and a road covers less than the greater of 51% of that land or the proportion of that land which was hardsurfaced prior to the works being carried out; and
- if the dwelling is within a Conservation Area, no hardstanding is situated on land between a wall forming the principal elevation of the dwellinghouse and a road.

Exterior painting of buildings

The amended definition of development would include, "painting of the exterior of buildings", but it is proposed that this be excluded from the definition of development where:

- it is for the purpose of advertisement, announcement or direction; and
- it does not include the application of paint or colour to a Building within a Conservation Area to which paint has not previously been applied.

Placement of Temporary structures (including on wheels)

It is not proposed to include any exemptions to this within the Definition of Development Order, and it is noted that several of the existing provisions for Permitted Development - for example the Town and Country Planning (Permitted Development) (Temporary Use or Development) Order 2015 – may allow such structures.

Demolitions

The current definition of development relates to partial demolitions and demolitions where attached to another building which is not to be demolished, and then the Permitted Development makes provision for, *"The demolition of part of a building where the rest of the building is not also demolished. Exceptions: Operations within this Class are not permitted if the part of the building in question is visible on an elevation of the building as seen from any highway which bounds the curtilage of the building".* Demolition works within Conservation Areas require consent under a separate part of the Act (irrespective of whether they are development).

The amendments to the Act would mean the definition of development included all demolitions of buildings but remove the requirement for separate consents for demolitions in Conservation Areas (and maintain the pre-amendment situation for proposals with planning applications made before the amendments came into effect). This means that where a proposal for a new building involves the demolition of an existing one, both elements can be included in a single planning application. The result should be very few applications which are solely for demolition, although it is likely that people may wish to demolish and not replace: part of a building, smaller ancillary buildings (e.g. sheds) and/or walls/gates/fences.

It is noted that in England demolitions are development which in many cases require planning approval, although, fences/walls/gates/means of enclosure which are outside Conservation Areas and although buildings under 50 cubic metres are excluded from the definition of development. Jersey takes a similar approach and includes within the Permitted Development the demolition of various minor buildings.

Therefore it is proposed to exclude the following from the definition of development:

- the demolition of a building the volume of which is under 50 cubic metres; and
- the demolition of fences/walls/gates/means of enclose which are not located within a Conservation Area.

Question 4 – do you think the proposed approach and scope of the Definitions of Development Order is appropriate? Please give reasons for your answer

Question 5 – do you have any detailed suggestions for matters to be included/addressed?

4.0 REGISTERED BUILDINGS REGULATIONS

Broad Approach

The process for registering buildings and determining applications for works to them is set out in the Town and Country Planning (Registered Buildings) Regulations 2013 (as amended). A number of issues have been identified with this process and the response to these will require amendments to the Act (as set out in section 2) and subsequent updates to the regulations, as set out below.

Proposed Content

It is proposed that the Regulations will be amended to remove any redundant elements created by previous changes to primary and secondary legislation and facilitate the currently proposed amendments to the Act in the ways set out below.

Notification and consultation process for adding, updating or removing a building from the Register
The regulations will be updated to include notification of amendments to entries. It is proposed that the notice period for consultation responses will be increased from 21 days to 28 days.

Applications for Registered Building Consent
Provisions for consent applications will be located in their own section for clarity.

Appeals from decisions of the Department
The regulations will be updated to provide the process of appealing a registration decision. The process shall as per the existing final decision process involve an independent planning inspector. It is considered that the time frame for requesting such an appeal shall be extended from 21 days to a period of 3 months, this is in line with other jurisdictions and make provision that appellants have sufficient time to compile their case.

Demolition of buildings in conservation areas
The changes proposed to the Act would mean that the existing section which makes the provision of registered building consent applications for demolition of non-registered building within conservation areas would removed as such demolitions would require planning approval.

Other matters
The overall process for the determination of an application to undertake works to a Registered Building (including demolition) will be reviewed alongside wider work to review and update the Development Procedure Order (which governs how planning applications are dealt with). As part of this, consideration will be given to the role of Interested Person Status (the ability to trigger and take part in an appeal).

Question 6 – do you think the proposed approach and scope of the updated Registered Buildings Regulations is appropriate? Please give reasons for your answer.

Question 7 – do you have any detailed suggestions for matters to be included/addressed?