



Built Environment Reform Programme

Public Consultation - Definition of Development Order & Registered Building Regulations

July 2024

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1.0 INTRODUCTION

What is the purpose of this consultation?

This consultation seeks views on two pieces of draft secondary legislation which are to be made under the Town and Country Planning Act - a Definitions of Development Order and updated Registered Building Regulations.

Why are changes being made?

Work is ongoing to reform a number of areas of planning legislation. These changes will work together to:

- ensure our processes are clear, accessible and proportionate (with appropriate fees);
- provide a responsive approach to customer service and focus on positive outcomes;
- make it easier for people to undertake small improvements to their properties; and
- implement targeted protection of the most valuable parts of our built heritage.

The work will support the implementation of the wider [Built Environment Reform Programme](#) .

In 2023 [Public Consultation](#) took place on proposed changes to the Town and Country Planning Act which included proposals to:

- 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; and
- 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.

The consultation included an outline of the secondary legislation that would be required to implement the changes – the Definitions of Development Order and updated Registered Building Regulations. Following that consultation the draft Bill has been updated and has now entered Tynwald Branches (25.06.24). The Bill could come into force in mid-2025, which would be by way of an Appointed Day Order following Royal Assent. Whilst the Bill progresses through the approvals process it provides an opportunity to develop the detail of the secondary legislation, with the intention that the secondary legislation would come into force at the same time as the Bill.

The drafting of the secondary legislation has taken into account the results of the above consultation and further comments are now invited on the details of the proposals.

How and when can I comment?

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

The consultation asks a number of questions as set out in this document/online.

What will happen next?

The draft order and regulations are not in final form and are intended to illustrate DEFA's proposed policy but may be subject to change as further work is carried out. The consultation results will be considered and any necessary amendments made to the Order and the Regulations. The final versions of the orders will be 'made' by the DEFA and must then be approved by Tynwald. It is envisaged that the orders will come into force in mid-2025, subject to the Planning Amendment Bill coming into force.

2.0 DEFINITION OF DEVELOPMENT

Introduction

The overall approach is to clearly establish within the Act the broad principle that certain things are capable of being development and then use secondary legislation to provide the detail of when such matters are excluded from being development. This will then give both property owners and the Department clear parameters to work within when establishing whether or not something requires a planning application. This will remove the need for detailed case-by-case assessment of very minor works.

There are two ways to allow something to occur without needing approval via a planning application – it can be excluded from the definition of development (and therefore placed out of the scope of the planning system) or it can be given a 'blanket' planning approval via a Development Order (often called "Permitted Development") which can be subject to conditions.

The definition of development is set out in Section 6(1) of the Planning Act as, "...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". 6(2) provides an illustrative (not exhaustive) list of things which do constitute development and 6(3) provides an illustrative list of things which do not constitute development. 6(3)(e) gives the Department powers to add to the list of things which are not development (in a "Definitions of Development" order), but not to add to the list of things which are development.

For example, 6(3)(a) indicates that development excludes, "the carrying out for the maintenance, improvement or other alteration of any building or 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".

In practice, it requires professional judgement and case-by-case consideration (often with reference to case law) to determine whether something is sufficient to constitute development or if the appearance of a building is "materially" affected. There are a number of common works which therefore sometimes constitute development, which creates uncertainty for property owners and additional work for the Department.

Broad Approach and Changes being made to the Act

Demolitions

The Planning Bill amends section 6 (meaning of "development") of the Act to widen the meaning of "development" and to expand the list of matters which do not qualify as "development". The Bill will therefore extend the list at 6(2) of things that do constitute development to include Temporary structures (including on wheels), Hard-surfacing of a domestic garden, Repairs and Rebuilding Works, and Exterior painting of buildings. This will provide a clear basis for the Department to produce a Definitions of Development Order which sets thresholds/circumstances to exclude those same things from constituting development in many cases. This will provide clarity for all parties and allow the Department to provide for the appropriate level of detail in the classification of "development".

The definition of development clarifies that the partial demolition of a building or the demolition of an attached building is development, however 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). Again, the Bill will add all demolition to the definition of development with exclusions to be provided via a Definitions of Development Order.

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 not to be regulated by the planning system but by separate existing processes/legislation.

Demolitions in Conservation Areas

The Bill will revoke section 19 (control of demolition in conservation areas) of the Act.

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 itself registered). Therefore, proposals to redevelop sites currently 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 to Section 6 together with the omission of Section 19 would mean that only one application was required for redevelopments within Conservation Areas and the demolition of very small buildings, such as sheds, can be excluded from needing consent.

Proposed Content of the Definitions of Development Order

Whilst the following matters are to be included in the Act as development, provisions will be made in the Definitions of Development Order for circumstances where exclusions apply:

- Removal and Replacement of Chimneys (removal without replacement would still require an application);
- Domestic Hardstandings;
- Painting of the exterior of buildings; and
- Demolitions of smaller buildings.

The detail of the proposal and caveats that apply in each case are set out in the draft order and summarised/explained below (including summary table).

Repairs and Rebuilding Works

Development (including repairs) does not include maintenance, improvement or other alteration of any building or 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 or 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 is not development 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 subject to the caveats as set out in the draft order.

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 in the circumstances set out in the draft order.

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 smaller demolitions from definition of development, as set out in the draft order.

Summary Table – Definitions of Development

Works	Current Situation	Proposed Situation
Repairs and Rebuilding Works AND Hard-surfacing of a domestic garden AND Exterior painting of buildings	If officers judge that the works could affect the external appearance or otherwise constitute development then approval is required by way of a planning application. This has to be confirmed on a case by case basis by submitting details and awaiting a response. Where an application is required it then has to be made, advertised and assessed and may or may not be approved.	If works meets the relevant criteria (which will be set out in legislation and published) then no application required. If exceeds relevant criteria then will require approval via an application.
Demolition in a Conservation Area	Requires Registered Building Consent (even if not a Registered Building) If attached to another building or partial demolition also requires planning approval as well.	If meets the relevant criteria (which will be set out in legislation and published) then no application required. If exceeds criteria then will require approval. If a replacement building is proposed then a single application can include both elements.
Demolition outside a Conservation Area	If complete demolition of a freestanding building then no application required, although if a replacement building is proposed this can confuse what should/shouldn't be in that application and what works are required to implement any consent. If attached to another building or partial demolition requires approval (although there are some Permitted Development provisions for partial demolitions).	

Consultation Questions

Q1. Do you think the proposals are broadly appropriate in relation to the Removal and Replacement of Chimneys? (Yes/No)

Would you suggest any changes?

Q2. Do you think the proposals are broadly appropriate in relation to Domestic Hardstandings? (Yes/No)

Would you suggest any changes?

Q3. Do you think the proposals are broadly appropriate in relation to the Painting of the exterior of buildings? (Yes/No)

Would you suggest any changes?

Q4. Do you think the proposals are broadly appropriate in relation to the Demolition of smaller buildings? (Yes/No)

Would you suggest any changes?

3.0 REGISTERED BUILDINGS REGULATIONS

Introduction

Our historic environment is a central part of our cultural heritage and our sense of national identity. It gives us a tangible link with our history and an irreplaceable record which contributes in many ways to our understanding of both the present and the past. The sensitive reuse of historic buildings can often result in high quality and locally distinctive developments, which helps to ensure our towns and villages are attractive, vibrant and economically successful places.

The Town and Country Planning Act provides for different types of applications. Proposals for most works require a Planning Application. The Act also provides DEFA with the ability to place buildings on a register where they are special historic value, and any works which would affect its character as a building of special architectural or historic interest to such building require Registered Building Consent. Sometimes works require both types of applications but some works (for example interior changes) may require only Registered Building consent.

There are currently 317 Registered Buildings. In the last three years 46 properties have been proposed for registration (with 44 registered). In the last ten years there have been two applications to deregister properties that have not been in response to a registration. Between 2020 – 2023 there was a mean yearly average of 67 applications Registered Building Consent applications¹.

The process for registering buildings, and determining applications for carrying out works, is set out partly in the Act and partly in the Town and Country Planning (Registered Building) Regulations 2013. Various improvements are proposed to these, as set out below².

Broad Approach and Changes being made to the Act

It is the role of the planning process to facilitate the appropriate safeguarding, management and use of this irreplaceable resource, in order to maximise the benefits they bring to the quality of life of current and future generations. This can be achieved by:

- implementing robust and targeted protection of the most valuable parts of our built heritage;
- implementing clear, accessible and proportionate processes to facilitate investment in, and management of, heritage assets; and
- ensuring decision making is evidence based and robust.

The Planning Bill amends section 14 (the protected buildings register) of the Act to provide that an object, whether fixed to a building or not, may or may not be included in the entry in the register of protected buildings in respect of that building.

¹ This includes applications to demolish buildings in Conservation Areas, as such proposals currently require RB consent even if not registered, although this is proposed to change with the changes to the Act.

² The designation of Conservation Areas is a Cabinet Office function and outside the scope of this consultation.

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). Making provision for this would enable registrations to be more targeted and proportionate. This could 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).

The Bill also updates the definition of "registered building". 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 caused confusion, not least given the similarity to red-line boundary maps included with planning applications and the lack of consistent approach. The Bill provides clarification as to the legal extent of registration. 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 Bill amends Schedule 2 (the Protected Buildings Register) to the Act to provide that entries on the protected buildings register may be amended and for the serving of notices in respect of such entries and omits the provisions relating to the procedure for removing an entry from the register. 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 secondly to omit parts of buildings (provided for by Clause 8 of the Bill) which might not be of special interest. The only current means to achieve this would be the de-registration of a building and to re-register. The ability to amend registrations would therefore facilitate ensuring all registrations are up-to-date should they need changing and provide clarity as to whether certain elements were considered part of the registration.

There is currently no process to directly appeal a registration decision, instead the owner must first apply to de-register the building and, if that is refused, may then appeal. 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). The Bill proposes to streamline the process by allowing the relevant secondary legislation (Registered Building Regulations) to provide a single 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 change in the future – for example the building was destroyed by fire). As is currently the place, provision would remain for an application to be made for full or partial demolition of a registered building.

Proposed Changes to the Registered Building Regulations

A full replacement of the regulations is proposed, with the new regulations based on the updated Development Procedure Order (DPO) for planning applications which was laid before Tynwald in June 2024. This will mean that there is consistency between the orders and mean that the improvements made to a number of issues within the DPO are replicated with equivalent provisions within the Registered Building Regulations, including changes to:

- the triggers for appeal and how people are able to participate in appeals;
- add a requirement for applicants to provide a copy of the application to owners of the land;
- set out the process for applications for Approval of Information Required by a Condition;
- ensure that any application made by the Department will be considered by the planning committee by default (with any appeal considered by Council);
- require reasons for approvals as well as refusals (reflecting existing practice); and
- remove the target timescale for the determination of Applications (so that these can instead be established via Departmental customer care policies) whilst retaining the provisions for appeals against non-determination.

In addition to the above, the key changes to the Registered Building Regulations also include:

- clarifying the process for making registration decisions (including de-registrations or amendments to existing registrations) – including requirements for consultation;
- setting out the process for a building owner to appeal a registration decision; and
- requiring inspectors considering registration decision appeals to have specialist qualifications/experience.

The table below compares the existing process for making a registration decision and the proposed streamlined process.

Summary Table – Registration Decisions

Existing Process	Proposed Process
A Proposal to Register Notice (and Building Preservation Notice if required) is issued	A Proposal to Register Notice (and Building Preservation Notice if required) is issued
A consultation period of not less than 21 days takes place	A consultation period of not less than 21 days takes place
A registration decision is made	A registration decision is made
An application to de-register can be submitted within 21 days of the registration decision	
A consultation period of not less than 21 days takes place	
The application to de-register is determined	
An appeal of an application to de-register decision can be lodged within 21 days	An appeal of a registration decision can be lodged within 3 months
21 days for submission of Statements of Case and either 14 days for rebuttal statements or a hearing	21 days for submission of Statements of Case and either 14 days for rebuttal statements or a hearing
The application to de-register is determined (Inspector Recommendation and Ministerial Decision)	The application to de-register is determined (Inspector Recommendation and Ministerial Decision)

Transitional Provisions

The draft regulations set out in regulation 32 the Savings and transitional provisions. In addition it should be noted that it is envisaged that the Appointed Day Order for the Planning Amendment Act (with which the Regulations would run concurrently as set out in section 1) will include provisions such that if a Registration Decision is made just before the changes come into force and the owner wishes to challenge that decision, they can do so under the new process.

Draft content of Appointed Day Order (Extract)

Where, before these Regulations come into operation, a registration decision notice to register a building under Schedule 2 to the Act has been served and an application to de-register that building under paragraph 2(2) —

- has not yet been made by the time these Regulations come into operation; and
- is still within the window of time in which that application could be made, the registration decision notice will instead be treated as if it were a registration decision notice issued in accordance with Part 2 of these Regulations.

Where the above applies, the relevant provisions of Part 4 (Appeals) of the regulations will apply to any such appeal brought, and the time in which that appeal must be brought will begin from the date that the decision notice was originally issued under Schedule 2 to the Act.

Consultation Questions

*Q5. Do you think the proposals are broadly appropriate in in relation to the registration process?
(Yes/No)*

Would you suggest any changes?

Q6. Do you think the proposals are broadly appropriate in in relation to the process for making an application to do works to a Registered Building? (Yes/No)

Would you suggest any changes?

*Q7. Do you think the proposals are broadly appropriate in in relation to the appeals process?
(Yes/No)*

Would you suggest any changes?