

## **EXPLANATORY MEMORANDUM TO**

### **THE TOWN AND COUNTRY PLANNING (FEES FOR APPLICATIONS, DEEMED APPLICATIONS, REQUESTS AND SITE VISITS) (ENGLAND) REGULATIONS 2012**

**2012 No. [XXXX]**

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

#### **2. Purpose of the instrument**

These Regulations consolidate, with amendments, the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989 (S.I. 1989/193) (“the 1989 Regulations”) and instruments which have amended those Regulations, in relation to England. The principal amendments include raising existing fees in line with inflation and introducing two new fees. Fees were last increased in 2008 and the proposed increase addresses the current shortfall created by inflation.

#### **3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 These Regulations introduce two new fees.

3.2 The first new fee is in regulation 12, which provides for a fee to be paid in respect of applications for urgent crown development. These applications are made to the Secretary of State under section 293A of the Town and Country Planning Act 1990 (“the TCPA 1990”). Section 303(4) of the TCPA 1990, as substituted by the Planning Act 2008, allows the Secretary of State to charge a fee for handling applications made under section 293A of the TCPA 1990. This is the first time this power is being used, and relates to applications made directly to the Secretary of State. It requires the fee that would otherwise be paid to the local planning authority to be paid to the Secretary of State.

3.3 The second new fee is in regulation 18, which provides for a fee to be paid in respect of applications to local planning authorities under section 17 of the Land Compensation Act 1961 (certificates of appropriate alternative development), as substituted by section 232 of the Localism Act 2011. Consideration of such applications requires specialist work by the authority, which we consider should be paid for by the applicant.

#### **4. Legislative Context**

4.1 The 1989 Regulations were made under powers in section 87 of the Local Government, Planning and Land Act 1980 (c. 65) and related to applications made or deemed to have been made under provisions of the Town and Country Planning Act 1971 (c. 78) (“the TCPA 1971”). That section and those provisions were repealed as part of the consolidation of the planning legislation in 1990.

4.2 By virtue of section 2 of the Planning (Consequential Provisions) Act 1990 (c. 11), the 1989 Regulations have effect as if they had been made under section 303 of the TCPA 1990, and relate to applications made or deemed to have been made under provisions of that Act. The current draft regulations are made under section 303 of the TCPA, which was substituted by section 199 of the Planning Act 2008 (c. 29).

4.3 The last time the 1989 Regulations were amended, by S.I. 2010/472, the Committee was very clear that any future amendments should be done through a consolidation. In the Sixth Report of Session 2009-10, the Committee said:

**“1.1 The Committee draws the special attention of both Houses to these draft regulations on the ground that they further amend regulations which need to be consolidated.**

1.2 These regulations amend the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989. Though the power under which the 1989 regulations were made has been repealed, the 1989 regulations continue in force under section 2 of the Planning (Consequential Provisions) Act 1990 as if made under section 303 of the Town and Country Planning Act 1990. They have been amended on over a dozen occasions, and have, since the enactment of the Government of Wales Act 1998, been amended separately for England and for Wales.

1.3 There is an obvious need for consolidation. The Secretary of State is now the appropriate person to make regulations under section 303 only in relation to England. In a memorandum printed as the Appendix the Department for Communities and Local Government accepts the need for consolidation and says it intends to consolidate the next time changes are needed to the 1989 regulations. The Committee welcomes this statement and draws it to the attention of both Houses.”

4.4 Following the Committee’s Report, in order to increase fees in line with inflation and introduce new fees, the Department has consolidated the 1989 Regulations so far as they apply to England. As part of the consolidation, the following provisions are not replicated in the draft Regulations.

4.5 Regulations 1(2)(e), 1(3)(c), 2(2), 10(1)(b), (6) and (13), and 11(8) of the 1989 Regulations are no longer required because they relate to applications under provisions which have been repealed, or are otiose. Regulation 1(2)(h) has been removed to improve the drafting. It is considered that this provision relates to the manner in which an application is to be made, rather than being a type of application. The fee referred to in regulation 1(2)(h) is, however, provided for in paragraph 7 of Schedule 1 to these Regulations.

## **5. Territorial Extent and Application**

This instrument applies to England.

## **6. European Convention on Human Rights**

Greg Clark, Minister of State for the Department for Communities and Local Government, has made the following statement regarding Human Rights:

In my view the provisions of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 are compatible with the Convention rights.

## **7. Policy background**

7.1 Ensuring that local planning authorities can recover their costs in relation to handling planning applications is central to the delivery of an effective planning system. Whilst planning application fees are a small part of the overall costs of development, they are important in meeting local authority costs of providing an efficient local planning service. Delays in the consideration of planning applications have significant consequences for applicants and damage the credibility of the planning system.

7.2 Effective and efficient local authority planning departments are at the cornerstone of delivering economic growth. Local planning authorities are responsible through their local plans for giving applicants greater certainty about when and where development is permitted and what types of development are allowed. This policy framework is essential to delivering an efficient and effective development management service through timely decisions on planning applications - giving applicants the confidence to submit planning applications for new development proposals and business the confidence to invest in an area. At a time when we are asking local councils and planning departments to take a lead in creating the conditions for growth, it is very important to ensure that they have the necessary resources to deliver that role.

7.3 Fees for planning applications are currently set at a national level. A public consultation was held on the options for proceeding with fee setting in the future to enable authorities to recover the costs of processing most types of planning application. This included allowing fees for planning applications to be set at a local level by local authorities. The consultation lasted for 12 weeks from 15 November 2010 to 7 January 2011.

7.4 The last time planning application fees were increased was in 2008, based on research conducted by Arup that was published in May 2007. The research concluded there was a shortfall between fee income and associated costs of some £66 million. Further research by Arup in 2009, concluded that despite a fee increase in 2008 a significant proportion of authorities were still failing to recover approximately 10% of their costs through fees.

7.5 Following the public consultation, the Government considered all the responses it received. It has also considered subsequent work (a 'benchmarking exercise') undertaken by the Local Government Group on the costs of determining planning applications and planning application fees in two thirds of authorities. This supported the view of the Arup research that there was a continuing gap between local authority costs and application fees despite councils taking steps to respond to the reduction in planning applications. The Local

Government Group exercise indicated that councils were spending, on average, 26% more on determining planning applications than is raised through fees.

7.6 We have considered the case for decentralisation of planning fees which was one of the options set out in the consultation paper. Evidence suggests that this is an option that could be pursued but one which is complex and needs significant further development and assessment with local planning authorities. This is not being pursued now because there is an urgent need to address the immediate and continuing gap on cost recovery for planning application fees. The consequence of this gap is that the performance of planning services is declining as authorities have reduced staff. The full cost of the service is also not being borne by the applicant but is being subsidised by the tax payer.

7.7 The regulations seek to increase the fees for planning applications by 15% to address the cost inflation that has occurred since the fees were last raised in 2008. The regulations also consolidate the previous regulations to make them more accessible for applicants and authorities. This will help address the continuing gap on cost recovery for planning application fees and help give business a more efficient planning service that contributes to the delivery of economic growth. We are not asking applicants to bear a rise equivalent to the full shortfall but rather are proposing a more modest and manageable increase which will be set centrally. This would raise some £32 million extra in the coming year, enabling councils to maintain and improve the standard of their planning services.

7.8 Two fees are increasing by more than 15% as they were unintentionally omitted from the previous adjustment to fees in 2008. In regulation 10A(6)(b) of the 1989 Regulations (fees for applications for certificates of lawful use or development), the fee in relation to additional dwellinghouses in excess of 50 is being increased from £80 to £115. In paragraph 15(2)(b) of Schedule 1 to the 1989 Regulations, the fee in relation to each 0.1 hectare above 2.5 hectares is also being increased from £80 to £115. To ensure consistency with other fee categories, the fee increase for these two categories provides for the adjustment that should have been made in 2008 and the current 15% increase.

#### *Certificates of appropriate alternative development.*

7.9 There is currently no fee payable for applications which are made to the local planning authority for a certificate of alternative appropriate development. Although such applications are infrequent, they require specialist work by the authority's staff, the cost of which is currently met by the local tax payer. Authorities are obliged to issue a certificate of appropriate alternative development on application and in order to do this, they have to decide what descriptions of development would have received planning permission on the relevant land had the scheme underlying the compulsory purchase order been cancelled. We therefore propose to set a fee of £195.

## **8. Consultation outcome**

8.1 The Department consulted on proposals to decentralise fee setting to local authorities from 15 November 2010 to 7 January 2011. The Department received 425 formal responses to the consultation; 51% (219) from local authorities; 32% (137) from the private sector in the form of businesses, consultants or developers (including a common response on behalf of 43 private planning consultants) and 6% (25) from voluntary / community or other third sector organisations, including Registered Social Landlords; 10% (44) from other types of

organisation or responses from individuals. The majority (62%) of respondents supported local planning authorities being able to set their own fees and 71% of respondents agreed that there are applications that did not currently attract a fee but should. However, there were significant representations raised by the development industry concerning any fee increase and the transparency of locally set fees.

8.2 The Department will be publishing a report of the consultation and this will be available on the Department's website.

## **9. Guidance**

The Department intends to issue further advice to accompany the changes (this will replace Circular 04/2008 - Planning-related fees).

## **10. Impact**

A full Impact Assessment of the effect that the Regulations will have on the costs of business and the public sector is available from the Department and is annexed to the Explanatory Memorandum.

## **11. Regulating small business**

11.1 Whilst the proposals affect small businesses the impact does not fall more heavily on small businesses than on other applicants for planning consent, nor is it anticipated that the impact will have a significant effect on the costs for business.

11.2 The proposals to increase existing centrally set fees bring these regulations out of scope of the moratorium on regulations for micro businesses and start ups.

## **12. Monitoring and review**

The Department will review the implementation of the Regulations through monitoring national statistical data in order to understand the sum effect of these changes.

## **13. Contact**

Alex Turner at the Department for Communities and Local Government can answer queries regarding the instrument. Tel 0303 444 3818 or email: [alex.turner@communities.gsi.gov.uk](mailto:alex.turner@communities.gsi.gov.uk)