

EXPLANATORY MEMORANDUM TO
THE SUSTAINABLE COMMUNITIES REGULATIONS 2008
2008 No. 2694

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

2. **Description**

2.1 The Sustainable Communities Act 2007 ('the Act'), which was a Private Members Bill, makes provision about promoting the sustainability of local communities. Sections 2 to 5 of the Act concern the making by local authorities of proposals about the sustainability of local communities. These Regulations make provision in connection with the procedure to be followed when proposals of this type are made.

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

3.1 Paragraphs 4.6 to 4.12 discuss the approach which has been taken to the drafting of regulation 4 and why that drafting does not precisely follow the wording of section 5(4) of the Act.

3.2 Paragraphs 7.11 and 7.12 address certain issues concerning the timing of the making and coming into force of the Regulations.

4. **Legislative Background**

4.1 Section 2 of the Act requires the Secretary of State to invite local authorities to make proposals which they consider would contribute to promoting the sustainability of local communities. By virtue of section 2(5), the Secretary of State must issue the first invitation under section 2 within the period of one year beginning with the day on which the Act is passed. The Act was passed on 23 October 2007.

4.2 Sections 3 and 4 of the Act make provision in connection with proposals under section 2. In particular, under section 3 of the Act the Secretary of State must appoint a selector to consider any proposals made by local authorities and to prepare a short-list of those proposals for consideration by the Secretary of State.

4.3 Section 5(1) of the Act requires the Secretary of State to make regulations about the procedure to be followed in relation to proposals under section 2. Any regulations may, in particular, include the matters in section 5(3) of the Act and must include the matters set out in section 5(4); namely these Regulations must-

- require a local authority, before making any proposal under section 2, to establish or recognise a panel of representatives of local persons ('a panel') and consult it about the proposal;
- require a local authority to try to reach agreement about proposals with the panel; and

- require a local authority to have regard to any guidance issued under section 5(5) of the Act.

4.4 Before making regulations section 5(2) of the Act requires the Secretary of State to consult the selector and such other persons who represent the interests of local authorities as the Secretary of State thinks fit.

4.5 Section 5(5) of the Act also requires the Secretary of State to issue guidance to local authorities about making proposals and by virtue of section 5(5)(a) that guidance must include guidance about the inclusion of persons from under-represented groups on a panel. By virtue of section 5(8) “under-represented groups” for this purpose has the meaning given by the regulations

4.6 The drafting of regulation 4 of these Regulations does not follow precisely the wording in section 5(4) of the Act. The following paragraphs explain the approach which has been taken in the Regulations.

4.7 Firstly, the words “before making any proposal under section 2” appear only in section 5(4)(a) of the Act, but in regulation 4 of these Regulations they are included in paragraph (1) and consequently they apply to all the requirements in that regulation.

4.8 For the following reasons we consider that the approach in regulation 4 meets the obligations imposed on the Secretary of State under section 5(4) of the Act-

- Because of the express words “before making any proposal under section 2”, the requirement in section 5(4)(a) of the Act clearly applies in circumstances where an authority makes a proposal in response to an invitation under section 2(1) of the Act. The relevant requirement is to establish or recognise a panel and to consult the panel about the proposal before it is made.
- Ignoring for the moment the words “or other persons consulted under paragraph (a)”, the requirement in section 5(4)(b) of the Act also concerns a panel. As explained in the previous bullet point, a panel will only have been established or recognised in circumstances where a local authority makes a proposal. Further, trying to reach agreement with the panel about proposals must occur before any proposal is made. It follows that the words “before making any proposal under section 2” must equally apply to the requirement in section 5(4)(b).
- Section 5(4)(c) of the Act requires a local authority to have regard to any guidance issued under section 5(5). This section requires the Secretary of State to issue guidance to local authorities. That guidance must include guidance about (in effect) the inclusion of under-represented groups on a panel (section 5(5)(a)) and may include guidance about establishing and consulting a panel (section 5(5)(b)). Again both of these matters will only have any relevance to a local authority which makes proposals and so the words “before making any proposal under section 2” must also apply to the requirement in section 5(4)(c).

4.9 The reason that regulation 4 has been drafted so that the words “before making any proposal under section 2” appear in paragraph (1) is simply one of clarity; namely, to make clear that the requirements only apply in situations where a local authority makes a proposal under section 2.

4.10 Secondly, the words “or other persons consulted under paragraph (a)” (“the relevant words”) in regulation 5(4)(b) of the Act have been omitted from the requirements in regulation 4 of the Regulations. The reason for this is that the inclusion of the words in the Act is an error and they have no practical effect.

4.11 As mentioned above, the Act began life as a Private Members Bill. The Bill was amended during its Commons stages and the relevant words became redundant, although they were not removed before the Bill was introduced in the House of Lords. It would have been possible to amend the Bill in the Lords so that the relevant words were omitted, but doing this would have threatened the passage of the Bill since it would have triggered a Commons consideration of Lords’ amendments stage. The relevant words were, therefore, not removed before the Bill received Royal Assent.

4.12 Because the words no longer have any practical effect, they have not been included in the Regulations.

5. Territorial Extent and Application

This instrument applies in relation to England only.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Sustainable Communities Bill was introduced to Parliament as a Private Members Bill. It was sponsored in the House of Commons by Nick Hurd MP and in the House of Lords by Lord Marlesford. The Bill was supported through Parliament by the Government and all of the main English political parties. It is the result of a five year campaign led by a coalition of organisations under the banner Local Works.

7.2 Sections 2 to 5 of the Act provide a mechanism for local people to ask central government to take action, via their local authority, to promote the sustainability of their area. It is a new way for local authorities to ask central government to take action which they believe would better enable them to improve the economic, social or environmental well-being of their area. The scope of the Act is very broad and, in particular, there is no limit to the type of proposal that a local authority can make, provided any proposal is within this broad scope. It is for local people to decide what they think needs to be done to promote the sustainability of their area.

7.3 The policy underlying the Regulations is to set out minimum requirements about the making of proposals under section 2 of the Act and requirements which comply with the requirements imposed on the Secretary of State under section 5 about the content of the Regulations. The Regulations have, therefore, been drafted so that they incorporate those matters which the Secretary of State is required to include under section 5 of the Act and certain other limited procedural matters (such as the requirement in regulation 6 for the selector to prepare a report). In short, local authorities are seen as being best

placed to know how to involve people in their areas, including under-represented groups, in the process of making proposals.

7.4 Under section 5(2) of the Act, the Secretary of State is required to consult the selector before making any regulations. The Secretary of State appointed the Local Government Association ('the LGA') to this role under section 3(1) of the Act prior to the consultation discussed further in paragraph 7.5 below. The selector was also involved

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- in discussions with officials prior to the formal consultation exercise about the consultation process for the draft Regulations and the accompanying guidance, and
- in discussions with officials following in the consultation to agree the approach which has been taken in the Regulations.

7.5 Draft Regulations were published on 19 February 2008 as part of the 3 month consultation exercise, alongside draft guidance under section 5(5) of the Act ('the section 5(5)(guidance'). The consultation document was disseminated to the Bill backers and sponsors as well as to all local authority chief executives in England. We received 57 responses to the consultation exercise and published a formal response on the Communities and Local Government website in July 2008.

7.6 The consultation asked four questions concentrating on the policy approach taken in drafting both the Regulations and the section 5(5) guidance. Most responses recommended generic action and did not specify whether it should be to either the guidance or the Regulations.

7.7. Following the consultation it was decided not to amend the Regulations to specify in more detail the steps to be taken by the selector in considering proposals or drawing up a shortlist, which was felt at this stage to be a matter for agreement between the Secretary of State and the LGA. It was also decided not to amend the guidance to include further details about establishing and consulting a panel.

7.8 However, the guidance was amended to take account of some of the issues raised in the consultation, in particular, the following-

- to make parish involvement more explicit,
- to set the requirements of the Act more clearly in context with other legislative requirements, and
- to ensure that some of the definitions and processes align more closely with the main Strong Safe and Prosperous Communities guidance, to which the SCA guidance is an Annex. Further details about this guidance and the Act under which it was issued are given in paragraph 7.10 below.

7.9 It was decided not to amend the draft Regulations at this stage, but instead to review their operation within a suitable timeframe following the completion of the first round of proposals under section 2 of the Act. This review is likely to focus on whether

the ‘light touch’ approach to the Regulations has been successful, or whether additional regulation would be sensible for future invitations under section 2.

7.10 As mentioned above, the section 5(5) guidance was published as an Annex to the Creating Strong, Safe and Prosperous Communities guidance on 9 July, as part of a package of papers issued for the launch of the Empowerment White Paper *Communities in control: Real people, real power*. Linking the section 5(5) guidance with the guidance issued under the Local government and Public Involvement in Health Act 2007 was considered to be of sufficient importance (in terms of ensuring a joined up and consistent approach by local authorities) to justify its publication in advance of these Regulations. This statutory guidance sets out how many of the key measures in the Local Government and Public Involvement in Health Act 2007 (including the framework for Local Area Agreements, Joint Strategic Needs Assessments, the new best value regime and the preparation of sustainable community strategies) will enable local authorities to engage their citizens, lead their communities and find new and more effective ways to deliver high quality services with their partners.

7.11 Ideally, the guidance would have been published after the Regulations came into force, given that the section 5(5) guidance includes guidance in relation to “under-represented groups” and “panels” and that the Regulations make provision in relation to both those terms. However, both the guidance and the Department’s response to the consultation would have made clear the approach the Department was proposing to take in relation to the term “under-represented groups” and the constitution of “panels”. That approach has not subsequently changed. Further in the guidance it is made clear, where relevant, that matters are subject to Parliamentary approval.

7.12 The Regulations will come into force after the last date on which the Secretary of State is required to issue the first invitation under section 2 of the Act. This is due to a lack of resources within the Department. The Regulations will, however, have been made before the first invitation is issued under section 2 and, since that process is likely to take some considerable time, we do not anticipate that any practical difficulties will occur.

8. Impact

8.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is a new procedure for local authorities to make proposals to the Secretary of State that they believe would contribute to promoting the sustainability of their local communities. Other public sector agencies may be involved in the panels of representatives of local persons that local authorities establish or recognise for the purposes of regulation 4(3)(a) of the Regulations.

9. Contact

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