

EXPLANATORY MEMORANDUM TO
THE NEIGHBOURHOOD PLANNING (GENERAL) REGULATIONS 2012

2012 No. 637

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.
2. **Purpose of the instrument**
 - 2.1 The Regulations set out the procedure for the designation of neighbourhood areas and neighbourhood forums and for the preparation of neighbourhood development plans and neighbourhood development orders (including community right to build orders). A separate instrument will be brought forward in relation to neighbourhood planning referendums.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 The Regulations are the first exercise of the powers in sections 61E to G, 61L and 61M of the Town and Country Planning Act 1990 (“the 1990 Act”) and sections 38A and B of the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”).
 - 3.2 As the Regulations make amendments to the Town and Country Planning (Environmental Impact Assessment) Regulations 2011, we have taken this opportunity to correct a number of typographical errors in that instrument, including four points which the JCSI reported on in its 30th Report (2010-12 session).
4. **Legislative Context**
 - 4.1 Chapter 3 of Part 6 of the Localism Act 2011 creates a new neighbourhood planning regime in England mainly by inserting new provisions into the 1990 Act and the 2004 Act (*see* Part 1 of Schedule 9, and Schedules 10 and 11, for the provisions inserted into the 1990 Act, and Part 2 of Schedule 9 for the provisions inserted into the 2004 Act).
 - 4.2 The 1990 Act provides that within a designated neighbourhood area a parish council or a designated neighbourhood forum may propose a neighbourhood development order and Schedule 4B (as read with the modifications in Schedule 4C for community right to build orders) sets out the framework for making such orders.
 - 4.3 The 2004 Act provides that within a designated neighbourhood area a parish council or a designated neighbourhood forum may propose a neighbourhood development plan and Schedule 4B to the 1990 Act (as applied, with modifications, by section 38A of the 2004 Act) sets out the framework for making such plans.
 - 4.4 The Regulations build on the statutory frameworks in the 1990 Act and the 2004 Act in relation to the process for designating neighbourhood areas and neighbourhood forums and the preparation of neighbourhood development plans and neighbourhood development orders.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

- 7.1 Neighbourhood planning seeks to enable communities to come together to shape the development and growth of their local area through the production of a neighbourhood development plan or neighbourhood development order or a Community Right to Build Order.
- 7.2 The Localism Act 2011 inserts new provisions into the 1990 Act and 2004 Act for communities to come together to draw up a neighbourhood development plan or neighbourhood development order or a community right to build order. Take up of the new right will be voluntary and at the discretion of neighbourhoods and communities.
- 7.3 Part 2 of the Regulations makes provision for the designation of a neighbourhood area. The parish council or a community group will apply to the local planning authority for an area to become a neighbourhood area for neighbourhood planning purposes. Regulation 5 provides for the information that should accompany an area application and regulation 6 requires a local planning authority to publicise the area application, and invite representations (allowing a minimum of 6 weeks for those representations to be received). When a local planning authority has made their decision on an application, regulation 7 provides for this decision to be publicised together with details of any designation where appropriate.
- 7.4 Part 3 of the Regulations makes provision for the procedure for designating an organisation or body as a neighbourhood forum to act in relation to the related neighbourhood area where there is no parish council. Regulation 8 provides for the information that must be submitted with an application to a local planning authority for designation as a neighbourhood forum. On receiving an application the local planning authority must publicise the application and seek representations (allowing a minimum of 6 weeks for those representations to be received). Under the 1990 Act once a neighbourhood forum has been designated another neighbourhood forum cannot be designated for the area until that existing neighbourhood forum designation expires or is withdrawn. Regulation 9 requires a statement to this effect to be publicised with an application for forum designation in order to alert others who may wish to consider designation. When a local planning authority has decided whether or not to designate a neighbourhood forum regulation 10 provides for this decision to be publicised and where a neighbourhood forum has been designated, also provides for their details to be publicised.

- 7.5 Regulation 11 enables a local planning authority to decline to consider subsequent applications for designation as a neighbourhood forum where a neighbourhood forum has already been designated for a neighbourhood area. Regulation 12 provides for a neighbourhood forum designation to be withdrawn where a neighbourhood forum requests this.
- 7.6 Part 5 of the Regulations provides the procedure for producing and making neighbourhood development plans. The 2004 Act provides that a qualifying body (a parish council or a neighbourhood forum for the area) may propose a neighbourhood development plan for a neighbourhood area. Regulation 14 provides for pre-submission consultation and publicity by the qualifying body. Schedule 1, paragraph 1, lists bodies to be consulted if the qualifying body considers that body has an interest that may be affected by the plan proposal.
- 7.7 Regulation 15 sets out the information that must accompany a neighbourhood development plan proposal when submitted to the local planning authority; this includes a consultation statement. Schedule 2 requires that the qualifying body provides information that will enable the local planning authority to make an assessment under the Conservation of Habitats and Species Regulations 2010 where a plan proposal is likely to have significant effects on a European site or European offshore marine site. Regulation 16 requires a local planning authority to publicise plan proposals submitted to it, seek representations (allowing a minimum of 6 weeks for those representations to be received) and to notify any of the bodies referred to in the qualifying body's consultation statement. If satisfied that the plan proposal meets the requirements in the 1990 Act (paragraph 6 of Schedule 4B) the local planning authority must appoint an independent examiner with the consent of the qualifying body. Regulation 17 requires that the plan proposal, any representations received and any other documents submitted by the qualifying body be submitted by the local planning authority to the independent examiner. The independent examiner will assess whether or not the plan proposals complies with the basic conditions set out in the 1990 Act (paragraph 8(2) of Schedule 4B – including those prescribed in paragraph 1 of Schedule 2 to the Regulations) and issue a report of their findings. Regulation 18 requires the local planning authority to publicise its decisions having considered the independent examiner's recommendations. If a referendum is held into the making of a plan proposal and there is a vote in favour of the proposal, regulations 19 and 20 provide for the local planning authority to publicise their decision and where they make the plan, for that plan to be published.
- 7.8 Part 6 of the Regulations make provisions for neighbourhood development orders and community right to build orders. The 1990 Act provides that a qualifying body (a parish council or a neighbourhood forum for the area) may propose a neighbourhood development order for a neighbourhood area. The Act also provides for community right to build organisations to propose community right to build orders which are a particular type of neighbourhood development order (see 7.12 below). Orders proposed by a parish council, neighbourhood forum or community right to build organisation, once brought into force after a successful referendum, grant planning permission for development consistent with the order. Section 61J of the 1990 Act precludes a neighbourhood development order providing for the granting of planning permission for any development that is 'excluded development'; Schedule 2, paragraph 4, of the Regulations (which inserts a new regulation 78A into the Conservation of Habitats and Species Regulations 2010) excludes development which is likely to have a significant

effect on a European Site or a European offshore marine site unless it is directly connected with or necessary to the management of that site.

- 7.9 Regulation 21 provides for pre-submission consultation and publicity by a qualifying body. Schedule 1, paragraph 2, lists bodies that should be consulted if the qualifying body considers that body has an interest that may be affected by the order proposal and also certain other bodies who must be consulted if the development falls with any of the categories in the Table in Schedule 1. Regulation 22 sets out the information that must accompany a neighbourhood development order or community right to build order proposal when submitted to the local planning authority; this includes a consultation statement and, where appropriate, an archaeology statement. Where the development described in a neighbourhood development order proposal is ‘Schedule 2 development’ (as defined in regulation 2 (1) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011), an environmental statement must be submitted (Schedule 3 to the Regulations makes further provision relating to environmental impact assessments).
- 7.10 Once an order proposal has been submitted to the local planning authority, Regulation 23 requires the local planning authority to publicise it, seek representations (allowing a minimum of 6 weeks for those representations to be received) and notify any of the bodies referred to in the qualifying body’s consultation statement. As with plan proposals if the local planning authority is satisfied that the submitted order proposal meets the requirements in the 1990 Act (paragraph 6 of Schedule 4B), an independent examiner is appointed with the consent of the qualifying body; regulation 24 provides for the submission of documents to the independent examiner. The independent examiner will consider whether or not the order proposals complies with the basic conditions (see paragraph 8(2) of Schedule 4B – including the condition prescribed in paragraph 2 of Schedule 3 to the Regulations) and will issue a report of their findings. Regulation 25 requires the local planning authority to publicise the report and its decisions having considered the independent examiner’s recommendations and findings. As with plan proposals, where a referendum has been held into the making of an order proposal, regulations 26 and 27 provide for the local planning authority to publicise their decision as to whether or not to make the order and where, they make the order, for that order to be published.
- 7.11 Part 8 of the Regulations makes provisions in relation to the modification or revocation of neighbourhood development plans, neighbourhood development orders or community right to build orders. In particular provision is made for publicising the local planning authority’s decision to modify or revoke, notifying interested parties and arrangements for making modified documents available or in the case of a revoked neighbourhood development plan or order, ceasing to do so.
- 7.12 Parts 4 and 7 of the Regulations make provisions for community right to build orders: these orders are a particular type of development order. The neighbourhood development order provisions of the 1990 Act apply to them with the modifications set out in Schedule 4C to the 1990 Act. Part 4 of the Regulations makes provisions in relation to additional conditions that an organisation or body must satisfy in order to be a community organisation. These include allowing anyone from the area to be a voting member of the organisation and ensuring that such members have majority voting rights for the body, are in the majority on its board or governing body and prescribing the way profits must

be used and assets distributed on a winding up. Part 7 of the Regulations makes provision in relation to the exclusion of enfranchisement rights (*see* paragraph 11 of Schedule C to the 1990 Act) in relation to particular properties or types of properties in an area covered by a community right to build order. Enfranchisement rights may not be exercised by tenants where they have been excluded in a community right to build order. The order proposal must set out the enfranchisement rights to be excluded, and the properties or types of properties affected by the exclusion. Landlords of properties in the area affected by the exclusion must endorse the face of each tenancy they grant with a notice as to the exclusion of the right. A local planning authority must decline to consider any proposal for a community right to build order where they consider the development falls within Annex 2 of the EIA directive and is likely to have significant effects on the environment or is likely to have significant effects on a European Site or a European offshore marine site (*see* paragraph 6 of Schedule 4C to the 1990 Act).

- 7.13 Parts 5 and 6 of the Regulations require qualifying bodies to consult interested parties on their proposals; Schedule 1 makes provision for the bodies to be consulted where appropriate.
- 7.14 Schedule 2 makes provision for neighbourhood planning in relation to the Habitats Directive. The Directive requires that any plan or project likely to have a significant effect on a European site must be subject to an appropriate assessment. To achieve this, paragraph 1 prescribes a basic condition that a neighbourhood development plan can only be made if it is not likely to have a significant effect on a European site or a European offshore marine site. Paragraphs 2 to 5 of the Schedule amend the Conservation of Habitats and Species Regulations 2010 so as to apply its provisions to neighbourhood development orders and neighbourhood development plans. In particular paragraph 4 inserts new Regulation 78A which provides that a neighbourhood development order may not grant planning permission for development which is likely to have a significant effect on a European site or a European offshore site.
- 7.15 Schedule 3 makes provision for neighbourhood planning in relation to the Environmental Impact Assessment Directive (“the EIA Directive”). The EIA Directive requires that EIA development must be subject to a development consent process. To enable this, Schedule 3 prescribes a basic condition that applies where development which is the subject of a proposal for a neighbourhood development order is of a type caught by the EIA Directive, and applies the relevant provisions of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (“the EIA Regulations”) with appropriate modifications (Regulation 32 and paragraphs 1 to 4 and 6 of Schedule 3). Paragraphs 5 and 7 to 13 of Schedule 3 correct errors in the EIA Regulations.

Consolidation

- 7.16 Not applicable.

8. Consultation outcome

- 8.1 Consultation on the neighbourhood planning regulations ran for 12 weeks from the 13 October 2011 to 5 January 2012. There were 436 responses to the consultation of which the largest number (45%) were from parish councils, 22% of responses were from local

authorities / local planning authorities; 13% from community, voluntary or charitable organisations and 6% from business.

- 8.2 The consultation specifically sought views on whether the proposed approach to the regulations (that they should be appropriate but light touch) is workable and proportionate: the majority of those who expressed a view on the specific questions posed in the consultation document either agreed or neither agreed nor disagreed with the approach we have taken to the regulations
- 8.3 A number of respondents raised matters related to key provisions within the Localism Act 2011 and general issues which are not relevant to the regulations themselves. A number of respondents thought that the regulations should be more prescriptive, for example there were requests for consultation methods to be prescribed or for the regulations to set out detailed criteria that local planning authorities should use when assessing requests for the designation of neighbourhood areas or neighbourhood forums. Whilst respondents raise reasonable points the Department believe that these matters are not suited to regulations due to the range of proposals that may come forward under neighbourhood planning. The issues raised are best addressed in guidance.
- 8.4 A number of respondents to the consultation commented on the ordering of the regulations and the need for greater clarity about: the stage in the neighbourhood planning process that a regulation applied to; and whether the regulations related to actions to be undertaken by a parish council or neighbourhood forum or the local planning authority. The sequencing and labelling in the regulations have been revised to address these points.

9. Guidance

- 9.1 The Department published an easy to understand guide to Neighbourhood Planning on 13 October 2011 (available at <http://www.communities.gov.uk/publications/planningandbuilding/introductionneighbourplanning>). The Department recognises the need to supplement this with more detailed guidance and is considering the appropriate means of doing this.

10. Impact

- 10.1 Neighbourhood planning is a voluntary activity, it is for individual organisations - a parish council or community organisation or businesses – to choose to produce, lead or participate in the production of a neighbourhood development plan or a neighbourhood development order or a community right to build order.
- 10.2 The 1990 Act places a duty on local planning authorities to assist communities in the preparation of neighbourhood development plans and orders to take the plans or orders through a process of examination and referendum. Funding has been identified through the Comprehensive Spending Review (up to £50 million over the comprehensive spending review period) to support those local authorities who incur additional burdens as a result of the 1990 Act and 2004 Act requirements on neighbourhood development plans and orders.

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

11. Regulating small business

11.1 The Localism Act 2011 provides that designated neighbourhood forums can include those who work in a neighbourhood area, that forums can have an explicit business purpose and it requires forums to be open to those engaged in business in a broad sense. However, neighbourhood planning is a voluntary activity and it is for individual businesses and employees to choose whether or not they wish to participate.

12. Monitoring & review

12.1 Regulation 2 requires the Secretary of State to review the operation and effect of these Regulations and lay a report before Parliament within 5 years after they come into force and every 5 years after that. Exceptions to this are Regulations 32 and 33 and Schedules 2 and 3 which are to be subject to any review under the Regulations into which the provisions are inserted.

13. Contact

Gareth Bradford at the Department for Communities and Local Government Tel: 0303 444 4277 or email: gareth.bradford@communities.gsi.gov.uk can answer any queries regarding the instrument.