

EXPLANATORY MEMORANDUM TO
THE TOWN AND COUNTRY PLANNING (HEARINGS AND INQUIRIES
PROCEDURE) (ENGLAND) (AMENDMENT AND REVOCATION) RULES
2015

2015 No. 316

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 These Rules amend the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000 and the Town and Country Planning (Hearings Procedure) (England) Rules 2000 (together “the 2000 Rules”) so that they apply, with modifications, to advertisement appeals. These Rules also revoke the remaining parts of two instruments which saved the Town and Country Planning (Inquiries Procedure) Rules 1974 (“the 1974 Rules”) for the purposes of advertisement appeals.

2.2 These Rules also revoke two redundant instruments relating to major infrastructure projects - the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2002 (in so far as they are still in force) (“the 2002 Rules”) and the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005 (“the 2005 Rules”), and revoke the relevant parts of other instruments which have amended those instruments.

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

None

4. Legislative Context

4.1 Section 9 of the Tribunals and Inquiries Act 1992 allows the Lord Chancellor to make Rules for inquiries and hearings held by or on behalf of Ministers.

Advertisement Appeals

4.2 Section 78 of the Town and Country Planning Act 1990 (“the 1990 Act”) provides for appeals against certain determinations by the local planning authority, and section 220 of the 1990 Act provides for Regulations relating to the control of advertisements. The Secretary of State has the power to determine the appropriate appeals procedure for all advertisement consent and discontinuance notice appeals under section 319A of the 1990 Act (as inserted

by section 196 of the Planning Act 2008 (“the 2008 Act”). The appeals are then determined under the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009, if by written representations, or the 1974 Rules if by hearing or inquiry.

- 4.3 These Rules amend the 2000 Rules so that they, rather than the 1974 Rules, apply to advertisement appeals made after 6th April 2015 which are to be dealt with by an inquiry or a hearing (including appeals against the service of a discontinuance notice under regulation 8 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007).
- 4.4 The Town and Country (Hearings and Inquiries Procedure) (England) (Amendment) Rules 2013 amended the 2000 Rules for the purposes of most appeals. These Rules modify the application of the 2000 Rules so that the 2013 amendments do not apply to advertisement appeals.
- 4.5 The 1974 Rules were amended by the Town and Country Planning (Various Inquiries) (Procedure) (Amendment) Rules 1986 (“the 1986 Rules”, which have been substantially revoked) and revoked by the Town and Country Planning (Inquiries Procedure) Rules 1988, but with savings for the purposes of advertisement appeals (see rule 21 of the 1988 Rules). The 1988 Rules were themselves revoked by rule 21 of the Town and Country Planning (Inquiries Procedure) Rules 1992 (“the 1992 Rules”), rule 21 of which saved the 1974 Rules for the purposes of advertisement appeals.
- 4.6 These Rules revoke the 1986 Rules (so far as still in force) and rule 21 of the 1992 Rules.

Major infrastructure projects

- 4.7 Section 76A of the 1990 Act (inserted by the Planning And Compulsory Purchase Act 2004) includes provisions that allow the Secretary of State to direct that an application for planning permission may be referred to him where he considers it to be of national or regional importance.
- 4.8 The 2002 and 2005 Rules set out the procedure to be followed in respect of inquiries subsequently held for the purposes of such applications. Section 76A and the associated regulations pre-date the introduction of the new and separate 2008 Act regime for consenting nationally significant infrastructure projects. The 2008 Act was amended and extended in 2013 to allow applications for development consent for major commercial and business projects.
- 4.9 These Rules revoke the 2002 Rules (so far as still in force) and the 2005 Rules.

5. Territorial Extent and Application

This instrument applies 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 In January 2013 the Department for Communities and Local Government published a list of statutory instruments applying to the planning sector as part of the Government's 'Red Tape Challenge' initiative, inviting comments on whether each instrument should be revoked, retained or improved.

7.2 Through this process, it was identified that the procedure for appeals against local authority decisions on the display of advertisements, to be determined by a hearing or inquiry, could be included within other existing planning hearing and inquiry rules ("the 2000 Rules") thereby enabling Government to remove redundant secondary legislation.

7.3 The majority of planning appeals against local authority decisions on display of advertisements are handled by the Planning Inspectorate through the written representations procedure. However, it is necessary to maintain provision for such appeals to be determined through a hearing or an inquiry, in the event that the Planning Inspectorate determines that the issues raised by an advertisement appeal require evidence to be tested through questioning, rather than the written representations procedure.

7.4 Now the provisions in the 2008 Act on nationally significant infrastructure planning are in force (and have been expanded to include business and commercial projects) the Secretary of State will no longer need the powers in section 76A of the 1990 Act to direct that infrastructure projects of national or regional significance should be referred to him. Such projects will instead apply for a Development Consent Order under the 2008 Act.

7.5 There have been no recent planning applications where the Secretary of State has used the powers in section 76A of the 1990 Act to direct that an application be referred to him so he can determine the application. Other powers also exist (section 77 of that Act) that allow the Secretary of State to call-in applications for his own determination (although these would be subject to normal procedures for inquiries).

7.6 As no further applications will be referred under section 76A, the 2002 and 2005 Rules for handling inquiries for such projects will no longer be needed. Section 76A of the 1990 Act will be repealed when a suitable legislative opportunity arises.

- ***Consolidation***

7.7 There are currently no plans to consolidate the relevant secondary legislation.

8. Consultation outcome

The Red Tape Challenge Planning Administration theme involved a public consultation in early 2013. Through this process, 129 regulations were identified, out of a total of 182, to either scrap or improve (a 71% reduction). The revocations made in this instrument were identified through this process.

9. Guidance

The Planning Inspectorate will ensure that all existing guidance material and communications with appellants, in relation to advertisement appeals is updated with reference to the appropriate legislation.

10. Impact

No impact assessment has been produced for the measures in this instrument as no impact on the private, public or voluntary sector is foreseen.

11. Regulating small business

This legislation applies to small businesses who may appeal against local authority decisions on the display of advertisements. However, the instrument does not require any new action to be taken by appellants, as it is not changing the process by which appeals are made. Rather, it allows for the revocation of redundant legislation by transferring the advertisement appeal process for hearings and inquiries to existing secondary legislation by amendment.

12. Monitoring & review

This purpose of this instrument is to revoke redundant secondary legislation. No monitoring or review is therefore necessary.

13. Contact

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