

2016 No. 873

TOWN AND COUNTRY PLANNING, ENGLAND

The Neighbourhood Planning (General) and Development Management Procedure (Amendment) Regulations 2016

<i>Made</i>	- - - -	<i>5th September 2016</i>
<i>Laid before Parliament</i>		<i>7th September 2016</i>
<i>Coming into force</i>	- -	<i>1st October 2016</i>

The Secretary of State, in exercise of the powers conferred by sections 61E(4)(b), 61F(12)(b), 61G(11), (12) and (13), 74(1)(c), 333(2A) and (7) of, and paragraph 8(6) of Schedule 1 (as applied by paragraph 8A(3) of that Schedule) to, and paragraph 1 of Schedule 4A to, and paragraphs 13(1), 13A, 13B(4)(a) and 13C of Schedule 4B to, the Town and Country Planning Act 1990(a), and sections 38A(3), 38A(4)(b), 38C and 122(3) of the Planning and Compulsory Purchase Act 2004(b), makes the following Regulations.

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Neighbourhood Planning (General) and Development Management Procedure (Amendment) Regulations 2016 and come into force on 1st October 2016 (“the commencement date”).

(2) These Regulations apply in relation to England only.

(3) In these Regulations—

“the 1990 Act” means the Town and Country Planning Act 1990;

“the 2012 Regulations” means the Neighbourhood Planning (General) Regulations 2012(c);

“the 2015 Order” means the Town and Country Planning (Development Management Procedure) (England) Order 2015 Order(d); and

“area application”, “neighbourhood forum application”, “order proposal” and “plan proposal” have the meaning given by regulation 3 of the 2012 Regulations.

(a) 1990 c.8. Sections 61E to 61G were inserted by paragraph 2 of Schedule 9 to the Localism Act 2011 (c.20). Section 61E(4)(b) was amended by section 140(2) of the Housing and Planning Act 2016 (c. 22) (“the 2016 Act”). Section 61G(12) and (13) were inserted by section 139 of the 2016 Act. Section 333(2A) was inserted by paragraph 14(2) of Schedule 6 to the Planning and Compulsory Purchase Act 2004 (c. 5). Amendments have been made to section 333(4) that are not relevant to these Regulations. Paragraph 8 of Schedule 1 was substituted by paragraph 53(5) of Schedule 7 to the Planning and Compensation Act 1991 (c.34). Amendments have been made to paragraph 8 that are not relevant to these Regulations. Paragraph 8A of Schedule 1 was inserted by section 142 of the 2016 Act. Schedule 4A was inserted by Schedule 1 to the Planning and Compulsory Purchase Act 2004 (c. 5). Amendments have been made to Schedule 4A that are not relevant to these Regulations. Schedule 4B was inserted by Schedule 10 to the Localism Act 2011. Paragraphs 13A to 13C of Schedule 4B were inserted by section 140(1) of the 2016 Act. See section 336(1) of the 1990 Act for definition of “prescribed”. Amendments have been made to section 336(1) that are not relevant to these Regulations.

(b) 2004 c.5. Sections 38A to 38C were inserted by paragraph 7 of Schedule 9 to the Localism Act 2011. Section 38A(4)(b) was amended by section 140(3) of the 2016 Act. See section 38A(12) for definition of “prescribed”.

(c) S.I. 2012/637, amended by S.I. 2015/20.

(d) S.I. 2015/595.

Amendment of the 2012 Regulations

2.—(1) The 2012 Regulations are amended as follows.

(2) After regulation 5 insert—

“Designation of the whole of the area of a parish council

5A.—(1) This regulation applies where—

- (a) a local planning authority receive an area application from a parish council;
- (b) the area specified in the application consists of the whole of the parish council’s area; and
- (c) if any part of the specified area is part of a neighbourhood area, none of that neighbourhood area extends outside the parish council’s area.

(2) The local planning authority must exercise their powers under section 61G of the 1990 Act to designate the specified area as a neighbourhood area.

(3) Where this regulation applies, regulations 6 and 6A do not apply.”.

(3) In regulation 6, in paragraph (c) omit the words from “—(i)” to “cases,”.

(4) In regulation 6A—

- (a) omit paragraph (2)(b);
- (b) after paragraph (2) insert—

“(3) Where the application has not been determined by the date prescribed in paragraph (2), the local planning authority must exercise their powers under section 61G of the 1990 Act so as to secure that the whole of the area specified in the application is designated as a neighbourhood area unless on that date—

- (a) some or all of the specified area has been designated as a neighbourhood area; or
- (b) some or all of the specified area is specified in another area application and that other area application has not been determined.”.

(5) After regulation 9 insert—

“Prescribed date for determination of a neighbourhood forum application

9A.—(1) Where a local planning authority receive a neighbourhood forum application, which they do not decline to consider under regulation 11, the authority must determine the application by the date prescribed in paragraph (2).

(2) The date prescribed in this paragraph is—

- (a) in a case where the neighbourhood area to which the application relates falls within the areas of two or more local planning authorities, the date which is the last day of the period of 20 weeks beginning with the day immediately following that on which the application is first publicised in accordance with regulation 9;
- (b) in all other cases, the date which is the last day of the period of 13 weeks beginning with the day immediately following that on which the application is first publicised in accordance with regulation 9.

(3) The date prescribed in paragraph (2) does not apply where, on that date, the authority are considering another neighbourhood forum application and that other application relates to an area which consists of or includes some or all of the neighbourhood area to which the application mentioned in paragraph (1) relates.”.

(6) After regulation 17 insert—

“Decision on examiner’s recommendations

17A.—(1) This regulation applies where an examiner has made a report under paragraph 10 of Schedule 4B to the 1990 Act (applied by section 38A(3) of the 2004 Act) in relation to a plan proposal.

(2) The persons prescribed for the purposes of paragraph 13(1) of that Schedule are—

- (a) the qualifying body;
- (b) any person whose representation was submitted to the examiner of the plan proposal in accordance with regulation 17(d); and
- (c) any consultation body which is referred to in the consultation statement mentioned in regulation 15.

(3) Representations invited under paragraph 13(1) must be submitted on or before the date which is the last day of the period of 6 weeks beginning with the day immediately following that on which the local planning authority first invited representations.

(4) On or after the date prescribed in paragraph (5) the local planning authority must decide what action to take in response to each recommendation made by the report mentioned in paragraph (1).

(5) The date prescribed in this paragraph is—

- (a) where the local planning authority and the qualifying body agree a date, that date;
- (b) where sub-paragraph (a) does not apply but paragraph 13 of Schedule 4B to the 1990 Act (applied by section 38A(3) of the 2004 Act) applies—
 - (i) where the authority refer the issue to independent examination, the date which is the last day of the period of 5 weeks beginning with the day immediately following that on which they receive the report of the examiner on that issue;
 - (ii) where the authority do not refer the issue to independent examination, the date which is the last day of the period of 5 weeks beginning with the day immediately following the date prescribed in paragraph (3);
- (c) in all other cases, the date which is the last day of the period of 5 weeks beginning with the day immediately following that on which the local planning authority receive the report mentioned in paragraph (1).”.

(7) After regulation 18 insert—

“Prescribed date for making a neighbourhood development plan

18A.—(1) The date prescribed for the purposes of section 38A(4)(b) of the 2004 Act is the date which is the last day of the period of 8 weeks beginning with the day immediately following that on which the last applicable referendum is held.

(2) Paragraph (1) does not apply where proceedings for questioning anything relating to an applicable referendum are brought in accordance with section 61N(3) of the 1990 Act (applied by section 38C(2)(d) of the 2004 Act) before the neighbourhood development plan is made.”.

(8) After regulation 24 insert—

“Decision on examiner’s recommendations

24A.—(1) This regulation applies where an examiner has made a report under paragraph 10 of Schedule 4B to the 1990 Act in relation to an order proposal.

(2) The persons prescribed for the purposes of paragraph 13(1) of that Schedule are—

- (a) the qualifying body;
- (b) any person whose representation was submitted to the examiner of the order proposal in accordance with regulation 24(f); and

(c) any consultation body which is referred to in the consultation statement mentioned in regulation 22.

(3) Representations invited under paragraph 13(1) must be submitted on or before the date which is the last day of the period of 6 weeks beginning with the day immediately following that on which the local planning authority first invited representations.

(4) The local planning authority must decide what action to take in response to each recommendation made by the report mentioned in paragraph (1) by the date prescribed in paragraph (5).

(5) The date prescribed in this paragraph is—

- (a) where the local planning authority and the qualifying body agree a date, that date;
- (b) where sub-paragraph (a) does not apply but paragraph 13 of Schedule 4B to the 1990 Act applies—
 - (i) where the authority refer the issue to independent examination, the date which is the last day of the period of 5 weeks beginning with the day immediately following that on which they receive the report of the examiner on that issue;
 - (ii) where the authority do not refer the issue to independent examination, the date which is the last day of the period of 5 weeks beginning with the day immediately following the date prescribed in paragraph (3);
- (c) in all other cases, the date which is the last day of the period of 5 weeks beginning with the day immediately following that on which the local planning authority receive the report mentioned in paragraph (1).”.

(9) After Regulation 25—

“Prescribed date for making a neighbourhood development order

25A.—(1) The date prescribed for the purposes of section 61E(4)(b) of the 1990 Act is the date which is the last day of the period of 8 weeks beginning with the day immediately following that on which the last applicable referendum is held.

(2) Paragraph (1) does not apply where proceedings for questioning anything relating to an applicable referendum are brought in accordance with section 61N(3) of the 1990 Act before the neighbourhood development order is made.”.

(10) After regulation 31 insert—

“PART 8A

Intervention by the Secretary of State

Requests to intervene and dealing with requests

31A.—(1) This regulation applies where a qualifying body requests the Secretary of State to intervene—

- (a) in relation to an order proposal, under paragraph 13B of Schedule 4B to the 1990 Act; or
- (b) in relation to a plan proposal, under that paragraph as applied by section 38A(3) of the 2004 Act.

(2) The request must be in writing and give reasons for the request.

(3) In a case where sub-paragraph (1)(b) or (c) of paragraph 13B of Schedule 4B to the 1990 Act applies, the request must be submitted to the Secretary of State by the date prescribed in paragraph (4).

(4) The date prescribed in this paragraph is the last day of the period of 6 weeks beginning with the day immediately following that on which the local planning authority

first publish their decision in accordance with regulation 18(2) (in the case of a plan proposal) or 25(2) (in the case of an order proposal).

(5) The Secretary of State may appoint an inspector^(a) to make any decision falling to be made by the Secretary of State under paragraph 13B of Schedule 4B to the 1990 Act in relation to the proposal.

(6) The Secretary of State or the inspector may direct the authority to refrain from taking any action that is specified in the direction that the authority would otherwise be required or entitled to take under paragraph 12 or 13 of that Schedule in relation to the proposal.

Information provided to the Secretary of State

31B. Where a qualifying body makes a request in accordance with regulation 31A in relation to an order proposal or a plan proposal, the local planning authority must send to the Secretary of State or the inspector appointed under paragraph (5) of that regulation—

- (a) the report made by the examiner of the proposal under paragraph 10 of Schedule 4B to the 1990 Act;
- (b) in a case where sub-paragraph (1)(b) or (c) of paragraph 13B applies, the decision statement published in accordance with regulation 18(2) (in the case of a plan proposal) or 25(2) (in the case of an order proposal);
- (c) in the case of a plan proposal, each of the documents referred to in regulation 17;
- (d) in the case of an order proposal, each of the documents referred to in regulation 24;
- (e) any representations received by the authority in response to an invitation under paragraph 13(1) of Schedule 4B to the 1990 Act;
- (f) any other document held by the local planning authority that the authority consider to be relevant to the consideration of the request by the Secretary of State or the inspector; and
- (g) any other document held by the local planning authority that is requested by the Secretary of State or the inspector.

Notification where Secretary of State proposes to differ from examiner

31C. The persons prescribed for the purposes of sub-paragraph (4)(a) of paragraph 13B of Schedule 4B to the 1990 Act are—

- (a) the qualifying body; and
- (b) in the case of a plan proposal,
 - (i) any person whose representation was submitted to the examiner of the proposal in accordance with regulation 17(d); and
 - (ii) any consultation body which is referred to in the consultation statement mentioned in regulation 15;
- (c) in the case of an order proposal,
 - (i) any person whose representation was submitted to the examiner of the proposal in accordance with regulation 24(f); and
 - (ii) any consultation body which is referred to in the consultation statement mentioned in regulation 22.

(a) An inspector is a person appointed by the Secretary of State for that purpose: see paragraph 13C(c) of Schedule 4B to the 1990 Act, inserted by section 141(1) of the Housing and Planning Act 2016 (c. 22).

Publication of directions

31D.—(1) This regulation applies where the Secretary of State or the inspector appointed under paragraph (5) of regulation 31A gives a direction under sub-paragraph (2) or (3) of paragraph 13B of Schedule 4B to the 1990 Act.

(2) The direction must be accompanied by a statement setting out the reasons of the Secretary of State or the inspector for making the direction.

(3) As soon as possible after receiving the direction, the local planning authority must—

(a) publish—

(i) the direction and the reasons; and

(ii) the report made by the examiner under paragraph 10 of Schedule 4B to the 1990 Act (if that report has not been published in accordance with regulation 18(2)(c) (in the case of a plan proposal) or 25(2)(c) (in the case of an order proposal)),

on their website and in such other manner as they consider is likely to bring the direction and, as the case may be, the report to the attention of people who live, work or carry on business in the neighbourhood area; and

(b) send a copy of the direction and reasons to the qualifying body.”.

Amendment of the 2015 Order

3.—(1) The 2015 Order is amended at follows.

(2) After article 25 insert—

“Representations by neighbourhood forum before determination of application

25A. Where a neighbourhood forum(a) for a neighbourhood area(b) are given information in relation to an application under paragraph 8A(1) of Schedule 1 to the 1990 Act (local planning authorities: distribution of functions)(c)—

(a) the forum must, as soon as practicable, notify the local planning authority who are determining the application whether the forum proposes to make representations about the manner in which the application should be determined, and must make any representations to that authority within 21 days of the notification to the forum of the application; and

(b) article 25(2) to (4) applies, in relation to any such application, as if any reference to a council of a parish or to the parish (however expressed) were a reference to the neighbourhood forum or neighbourhood area, as appropriate.”.

(3) In article 38, after paragraph (3)(b), insert—

“(ba) a neighbourhood forum for a neighbourhood area any part of which is in or adjoins the area of the local planning authority;”.

(4) In Schedule 4, in paragraph (d) of the table—

(a) in the *Description of development* column, at the end insert “or a neighbourhood area for which a neighbourhood forum has been designated”; and

(b) in the *Consultee* column, at the end insert “or the neighbourhood forum (as the case may be)”.

(a) A neighbourhood forum is an organisation or body designated by a local planning authority under section 61F of the 1990 Act.

(b) A neighbourhood area is an area designated by a local planning authority under section 61G of the 1990 Act.

(c) Paragraph 8A of Schedule 1 to the 1990 Act was inserted by section 142 of the Housing and Planning Act 2016 (c.22).

Transitional provisions

4.—(1) The amendments made by regulation 2(2) to (4) do not apply in relation to an area application first publicised by the local planning authority in accordance with regulation 6 of the 2012 Regulations before the commencement date.

(2) Where a neighbourhood forum application was first publicised by the local planning authority in accordance with regulation 9 of the 2012 Regulations before the commencement date, the amendments made by regulation 2(5) apply in relation to that application as if it was first publicised on the commencement date.

(3) Where the report made by the examiner of an order proposal or a plan proposal under paragraph 10 of Schedule 4B to the 1990 Act was received by the local planning authority before the commencement date, the amendments made by regulation 2(6) and (8) apply in relation to that proposal as if the report was received on the commencement date.

(4) The amendments made by regulation 2(7) and (9) do not apply in relation to the making of a neighbourhood development plan or neighbourhood development order where the last applicable referendum was held before the commencement date.

(5) The amendments made by regulation 2(10) do not apply where—

- (a) in relation to a plan proposal, the local planning authority first publish their decision in relation to that proposal in accordance with regulation 18(2) of the 2012 Regulations before the commencement date; and
- (b) in relation to an order proposal, the local planning authority first publish their decision in relation to that proposal in accordance with regulation 25(2) of the 2012 Regulations before the commencement date.

(6) The amendments made by regulation 3(2) do not apply in relation to any relevant planning application^(a) received by the local planning authority before the commencement date.

(7) The amendments made by regulation 3(3) do not apply in relation to a local development order where the consultation period mentioned in article 38(5)(b) of the 2015 Order began before the commencement date.

(8) The amendments made by regulation 3(4) do not apply in relation to any application made under section 293A of the 1990 Act^(b) before the commencement date.

Signed by authority of the Secretary of State for Communities and Local Government

Gavin Barwell
Minister of State

5th September 2016

Department for Communities and Local Government

EXPLANATORY NOTE

(This note is not part of these Regulations)

The Localism Act 2011 (c. 20) provided a statutory regime for neighbourhood planning through amendments to the Town and Country Planning Act 1990 (c. 8) and the Planning and Compulsory Purchase Act 2004 (c. 5). The Housing and Planning Act 2016 (c. 22) made further amendments.

The Neighbourhood Planning (General) Regulations 2012 (S.I. 2012/637, “the 2012 Regulations”), as amended by the Neighbourhood Planning (General) (Amendment) Regulations 2015 (S.I. 2015/20, “the 2015 Regulations”), make provision in relation to the neighbourhood planning regime. These Regulations further amend the 2012 Regulations.

(a) For the meaning of “relevant planning application” see paragraph 8A(2) of Schedule 1 to the 1990 Act, inserted by section 142 of the Housing and Planning Act 2016 (c. 22).

(b) Section 293A was inserted by section 82(1) of the Planning and Compulsory Purchase Act 2004 (c. 5).

Regulation 2(2) to (4) amend the 2012 Regulations to prescribe circumstances in which a local planning authority must designate all of the area specified in a neighbourhood area application.

Regulation 2(5) inserts a new regulation 9A of the 2012 Regulations, which prescribes the date by which a local planning authority must determine a neighbourhood forum application.

Regulation 2(6) inserts a new regulation 17A of the 2012 Regulations. This prescribes the date by which a local planning authority must decide what action to take in response to the recommendations of the examiner of a neighbourhood development plan proposal and, where the proposed decision differs from that recommended by the examiner, the persons who must be notified and the date by which representations must be submitted. Regulation 2(8) makes equivalent provision for neighbourhood development order proposals.

Regulation 2(7) inserts a new regulation 18A of the 2012 Regulations, which prescribes the date by which a local planning authority must make a neighbourhood development plan approved at referendum. Regulation 2(9) makes equivalent provision for neighbourhood development orders.

Regulation 2(10) inserts a new Part 8A of the 2012 Regulations. This provides for cases where a qualifying body requests the Secretary of State to intervene to decide whether to put a proposal for a neighbourhood development order or plan to referendum.

Regulation 3 amends the Town and Country Planning (Development Management Procedure) (England) Order 2015 (S.I. 2015/595) to make provision for cases where a neighbourhood forum is notified of a planning application in their area, and for forums to be consulted on local development order proposals and applications for urgent Crown development.

Regulation 4 makes transitional provision.

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

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