

**EXPLANATORY MEMORANDUM TO**  
**THE TOWN AND COUNTRY PLANNING GENERAL (AMENDMENT)**  
**(ENGLAND) REGULATIONS 2018**

**2018 No. 99**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 This instrument allows planning permission granted by all interested planning authorities in England to themselves to run with the land so that, for example, if such an authority later sells the land before developing it under the permission, the purchaser will be able to develop the land under that permission. This removes a restriction by which some categories of interested planning authority can only grant to themselves planning permission that is personal to themselves (and to any joint developer named in the application for the planning permission).

**3. Matters of special interest to Parliament**

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

- 3.1 None.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 Part 3 of the Town and Country Planning Act 1990 (c. 8) (“the 1990 Act”) makes provision about the control of development, including planning permission. In particular, section 75(1) lays down a general principle that any grant of planning permission to develop land shall (unless the permission itself otherwise provides) enure for the benefit of the land and of all persons for the time being interested in it.
- 4.2 The Town and Country Planning General Regulations 1992 (S.I. 1992/1492) (“the 1992 Regulations”) applies Part 3 of the 1990 Act, with modifications, to most land of an interested planning authority. For this purpose, an “interested planning authority” is any body which exercises any of the functions of a local planning authority in relation to land which the authority has an interest in (section 316(6) of the 1990 Act). Generally speaking, when an interested planning authority applies for planning permission to develop its own land, the authority will determine the application itself (regulation 3 of the 1992 Regulations).
- 4.3 However, regulation 9 of the 1992 Regulations modifies the effect of section 75(1) of the 1990 Act in relation to planning permission granted in such cases. Instead of

ensuring for the benefit of the land, the planning permission enures only for the benefit of the applicant i.e. the interested planning authority (and anyone who had been named as a joint developer with it in the application for planning permission).

- 4.4 In relation to England, regulations 9A and 9AA of the 1992 Regulations (which were inserted by S.I. 1998/2800 and S.I. 2011/1589 respectively) disapply regulation 9 in the case of unitary authorities and urban development corporations respectively. The effect is that planning permission that such authorities grant to themselves enures for the benefit of the land under the general rule laid down in section 75(1) of the 1990 Act.
- 4.5 This instrument provides for regulations 9, 9A and 9AA to be omitted from the 1992 Regulations, so far as they apply in relation to England. Thus, section 75(1) of the 1990 Act will apply to planning permission which *all* interested planning authorities in England grant to themselves, i.e. it will enure for the benefit of the land.

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

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is 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 The 1992 Regulations enable local planning authorities to determine their own development proposals on land in which they have an interest. The Regulations stipulate that where a planning authority grants permission for its own development, the resulting permission is ‘personal’ to the authority and cannot be implemented by a future owner of the land.
- 7.2 Under these rules, a developer purchasing land from for example a county or district council and wishing to undertake the same development would need to re-apply for planning permission. This adds time, expense and risk and limits delivery options for authorities in two-tier areas that are seeking to take a proactive role in accelerating development on their own land.
- 7.3 However, this restriction does not apply to unitary authorities (including London Boroughs) and Urban Development Corporations. Such bodies can therefore, dispose of land to developers with the benefit of planning permission. This gives them the flexibility to proactively promote development of their land holdings by selling on ‘development-ready’ land, reducing risk for developers – including small-scale and custom builders.
- 7.4 This measure is intended to put all local authorities on the same footing so that they can all dispose of land with the benefit of planning permission they have granted to themselves.
- 7.5 The change will not apply to any planning permission granted before 23 February 2018.

### ***Consolidation***

7.6 There are no plans to consolidate the 1992 Regulations.

### **8. Consultation outcome**

8.1 A proposal was included in the Housing White Paper, *Fixing our broken housing market*<sup>1</sup>, seeking views on extending the power to all local authorities to dispose of land they have an interest in with the benefit of planning permission they have granted themselves. The White Paper was subject to consultation between 7 February 2017 and 2 May 2017.

8.2 Over 700 responses were received from a wide cross-section of respondents. The proposal received considerable support. The key reasons given by those in favour were that it would allow local authorities to bring forward public sector land for development more quickly and efficiently.

8.3 A minority of respondents expressed concern about the potential for misuse of the power given that the grant of planning permission can increase land values – the suggestion was that this could provide a conflict of interest that might affect planning decision-taking. However, this was raised as a general concern about all authorities rather than a specific concern about the particular types of authorities which cannot currently dispose of land with the benefit of planning permission (and would therefore benefit from the proposed amendment).

8.4 We are not aware of a particular propriety issues arising in unitary authority areas, where authorities can already dispose of land with the benefit of planning permission. The current rules which apply to unitary authorities are considered to contain sufficient safeguards to protect against misuse:

- local authorities have to advertise and consult on their own applications in the same way as any other application
- applications by local authorities cannot be determined by a committee, sub-committee or officer of the authority concerned for the management of any land or buildings to which the application relates
- like any other planning application, local authorities' own applications must be decided in accordance with the development plan unless material considerations indicate otherwise and take account of relevant planning objections made by local residents

8.5 After carefully considering all the responses received, the Government has decided to take forward this proposal to put all authorities on the same footing in terms of the effect of planning permission they grant to themselves. The Government response to the consultation will be published on Ministry of Housing, Communities and Local Government's website.

### **9. Guidance**

9.1 We will update the Ministry of Housing, Communities and Local Government's online planning guidance to reflect this change.

---

<sup>1</sup> <https://www.gov.uk/government/publications/fixing-our-broken-housing-market>

**10. Impact**

- 10.1 The impact on business, charities or voluntary bodies is negligible.
- 10.2 The impact on the public sector is limited to those local authorities which are currently only able to grant themselves planning permission that is personal to themselves. The impact on them is expected to be positive as it will allow them to bring forward public sector land for development more quickly and efficiently.
- 10.3 An Impact Assessment has not been prepared for this instrument.

**11. Regulating small business**

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

**12. Monitoring & review**

- 12.1 The impact of the Regulations will be kept under review.

**13. Contact**

- 13.1 Theresa Donohue at the Ministry of Housing, Communities and Local Government Telephone: 030 3444 1719 or email: [theresa.donohue@communities.gsi.gov.uk](mailto:theresa.donohue@communities.gsi.gov.uk) can answer any queries regarding the instrument.