

EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (FEES FOR APPLICATIONS, DEEMED APPLICATIONS, REQUESTS AND SITE VISITS) (ENGLAND) (AMENDMENT) REGULATIONS 2019

2019 No. 1154

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 These regulations make amendments to the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (S.I. 2012/2920) (the “2012 Regulations”). Firstly, they remove Regulation 1(3) which otherwise would mean that the 2012 Regulations would cease to have effect ‘at the end of the period of seven years beginning with the day on which these regulations come into force’. The date that the 2012 Regulations would be due to expire pursuant to regulation 1(3) is 21 November 2019. Secondly, they amend regulation 14 of the 2012 Regulations to include a £96 fee for an application for prior approval to build a larger rear extension to a dwellinghouse without the need for a full planning application being made.

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 This entire instrument applies only to England.
- 3.3 This instrument amends the 2012 Regulations, which apply in relation to England only (see Regulation 1(2) of the 2012 Regulations). The instrument does not have minor or consequential effects outside England.
- 3.4 In the view of the Ministry, for the purposes of House of Commons Standing Order 83P, the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter; and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament; and the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.
- 3.5 The Ministry has reached this view because it considers that the primary purpose of the instrument relates to planning, which is within the devolved legislative competence of each of the three devolved legislatures: the primary purpose of the subject matter of the instrument is not within Schedule 5 to the Scotland Act 1998 and

is not otherwise outside the legislative competence of the Scottish Parliament (see section 29 of that Act); the primary purpose of the subject matter of the instrument is not within Schedule 2 or 3 to the Northern Ireland Act 1998 and is not otherwise outside the legislative competence of the Northern Ireland Assembly (see section 6 of that Act); the primary purpose of the subject matter of the instrument is within Part 1 of Schedule 7 to the Government of Wales Act 2006 and is not within one of the exceptions listed therein, nor is it otherwise outside the legislative competence of the National Assembly for Wales (see section 108 of that Act). Under section 303 of the 1990 Act the Welsh Ministers can, for example, make provision in regulations for the payment of a fee or charge to a local planning authority in respect of the performance of any function or anything calculated to facilitate or is conducive or incidental to the performance of such function (see subsection (1)).

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England as set out in Section 3 under “Other matters of interest to the House of Commons”.

5. European Convention on Human Rights

- 5.1 Kit Malthouse, Minister of State for Housing and Planning, has made the following statement regarding Human Rights:
- 5.2 In my view the provisions of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2019 are compatible with the Convention rights.

6. Legislative Context

- 6.1 These regulations amend the 2012 Regulations. The 2012 Regulations were made under section 303 of the Town and Country Planning Act 1990 (the “1990 Act”), which was substituted by section 199 of the Planning Act 2008 (c.29).
- 6.2 Pursuant to regulation 1(3) of the 2012 Regulations, the 2012 Regulations expire on 21 November 2019.
- 6.3 Regulation 2 of these regulations removes regulation 1(3) of the 2012 Regulations. This ensures that the 2012 Regulations continue to operate after 21 November 2019 and that local planning authorities can continue to charge a fee for planning applications described in those regulations. The commencement of regulation 2 provides for it to come into force ahead of the remaining provisions of the Regulations, on the day after the day on which the Regulations are made. This is to ensure, in light of the current legislative timetable, that the removal of regulation 1(3) of the 2012 Regulations comes into force prior to the expiry of the 2012 Regulations.
- 6.4 The Town and Country Planning (General Permitted Development) (England) Order 2015 (“the General Permitted Development Order”) grants planning permission in respect of certain prescribed development (commonly referred to as permitted development rights). Part 2 of the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) Regulations 2019 (S.I.2019/907) (“the 2019 Permitted Development Amendment Regulations”) amended Part 1 of Schedule 2 of the General Permitted Development Order making permanent the time-limited right to build a larger rear extension to a dwellinghouse.

- 6.5 The prescribed permitted development under Class A, which enables householders to build a larger rear extension to a dwellinghouse, is subject to the prior approval of certain matters by the local planning authority for which a fee can be charged. Regulation 3 of these regulations amends regulation 14 of the 2012 Regulations to provide a fee of £96 for any applications for prior approval to build a larger rear extension to a dwellinghouse.
- 6.6 Regulation 3 of these regulations further amends regulation 14 of the 2012 Regulations to provide for applicants to be exempt from paying the prior approval fee in two certain circumstances. Firstly, where a corresponding application for planning permission on the same site is made at the same time as the application for prior approval, and secondly where the development which is the subject of the prior approval application consists of operations designed to provide access to disabled persons or provide facilities to secure that person's greater safety, health or comfort.
- 6.7 Regulation 4 makes transitional provision to ensure that the fee introduced by regulation 3 is not payable in respect of applications for prior approval to build a larger rear extension to a dwellinghouse being made before the coming into force of regulation 3.

7. Policy background

What is being done and why?

Removing Regulation 1(3) from the 2012 Regulations

- 7.1 Regulation 1 (3) of the 2012 Regulations introduced a sunset clause which stated that the 2012 Regulations would cease to have effect 'at the end of the period of seven years beginning with the day on which these regulations come into force'.
- 7.2 A sunset clause is introduced when it is felt that Parliament should have the chance after a fixed period to decide again on the merits of provisions subject to such clause. The date that the 2012 Regulations would be due to expire is 21 November 2019.
- 7.3 A post-implementation review of the 2012 Regulations was carried out and laid before Parliament in December 2017, as required by Regulation 19 of the 2012 Regulations. The review considered whether the 2012 Regulations had achieved their objectives of ensuring an effective planning application fee regime. The review concluded that 'The Government considers in light of the evidence gathered from the 2016 Consultation¹ and the 2017 Consultation², the Objectives of the Regulations remain appropriate as they benefit both applicant and local planning authority in providing for the proper consideration of planning applications.'³
- 7.4 In light of these conclusions and the introduction of a 20 per cent planning application fee increase in January 2018, the Government considers it appropriate for regulation 1(3) of the 2012 Regulations to be removed in order to ensure that local planning

¹ 2016 technical consultation on implementation of planning changes published on 17 February 2016. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/589744/Summary_of_responses_to_the_technical_planning_consultation.pdf

² 2017 consultation 'Planning for the right homes in the right places: consultation proposal' published on 14 September 2017. <https://www.gov.uk/government/consultations/planning-for-the-right-homes-in-the-right-places-consultation-proposals>

³ Paragraph 19 - http://www.legislation.gov.uk/ukxi/2012/2920/pdfs/ukxi0d_20122920_en.pdf

authorities can continue to charge a fee for planning applications as set out in the 2012 Regulations.

Introducing a fee for an application for prior approval to build a larger rear extension to a dwellinghouse

- 7.5 The Secretary of State has powers to grant planning permission by development order in England for specified development. These national permitted development rights as set out in the General Permitted Development Order are deregulatory: removing the need for a planning application, and therefore reducing bureaucracy and cost. Permitted development rights subject to prior approval allow for local consideration only of specific planning matters.
- 7.6 The 2019 Permitted Development Amendment Regulations have made permanent the previously time-limited permitted development right to build a larger rear extension to a dwellinghouse.
- 7.7 Currently this type of prior approval receives no fee despite the resource requirement from local planning authorities in determining them. The Government has introduced fees for other ‘permanent’ prior approval applications which include a similar administrative burden. Therefore, the Government considers it appropriate to introduce a £96 fee for applications for prior approval to build a larger rear extension to a dwellinghouse, now that this permitted development right is no longer time-limited in scope but is permanent. It is considered that the administrative costs of the authority in considering a prior approval for this permitted development right is similar to those of considering other prior approvals and that this is therefore the appropriate fee to charge.

Consultation

- 7.8 The proposal to make permanent the time-limited permitted development for a larger rear extension to a dwellinghouse with a prior approval fee of £96 was included in the Planning Reform: Supporting the high street and increasing the delivery of new homes consultation published in October 2018 <https://www.gov.uk/government/consultations/planning-reform-supporting-the-high-street-and-increasing-the-delivery-of-new-homes>. There was strong support among the 226 responses on whether to introduce an appropriate fee for prior approval applications for this permitted development right. There was recognition of the resource impact on local planning authorities in consulting on and considering these applications. Although prior approval consideration is limited to the impact on the amenity of adjoining premises, only where an objection has been made, there were concerns that the volume of applications diverts resources from other planning applications which attract fees.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act

9. Consolidation

- 9.1 Not applicable.

10. Consultation outcome

- 10.1 Paragraph 7.3 sets out the detail of the outcome of the post-implementation review of the 2012 Regulations. Paragraph 7.8 provides detail on the consultation in respect of the proposal to make permanent the time-limited permitted development for a larger rear extension to a dwellinghouse.

11. Guidance

- 11.1 The Government has published guidance on Fees for Planning Applications. This will be updated and made available following these regulations being made.

12. Impact

- 12.1 A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

Removing Regulation 1(3) from the 2012 Regulations

- 12.2 The regulations remove regulation 1(3) of the 2012 Regulations which ensures that the 2012 Regulations can continue to operate after 21 November 2019. With the exception of the prior approval fee, considered separately below, the regulations do not introduce a new fee regime or policy change rather it would allow for the continuation of an existing fee regime.

- 12.3 By removing rather than extending the existing sunset clause, the impact on applicants and local authorities is minimal as the regulations will ensure the continuity of national fee charging that achieves certainty, transparency and consistency for applicants across all local authorities in England and will ensure that local planning authorities are better able to adequately resource the consideration of planning applications in the future.

- 12.4 Regulation 19 of the 2012 Regulations required the Secretary of State to carry out a review of the 2012 Regulations. That review was published in December 2017 and it concluded that the objectives of the 2012 Regulations (as amended) remained appropriate and that the objectives were best met within a framework of a national fee regime. The published review can be found at http://www.legislation.gov.uk/ukxi/2012/2920/pdfs/uksiod_20122920_en.pdf.

Introducing a fee for an application for prior approval to build a larger rear extension to a dwellinghouse

- 12.5 An assessment of the overall impact of making permanent the time-limited permitted development for a larger rear extension to a dwellinghouse was undertaken as part of the 2019 Permitted Development Amendment Regulations. A copy of that assessment of impact can be inspected at the Planning Directorate, the Ministry of Housing, Communities and Local Government, 2 Marsham Street, London, SW1P 4DF.
- 12.6 With regard to the introduction of a £96 fee for applications for prior approval to build a larger rear extension to a dwellinghouse, the £96 fee represents a new cost, but is a reduced fee compared to a fee for a full planning application of £206. The impact on business, charities or voluntary bodies has therefore been assessed as negligible.
- 12.7 The fee exception under regulation 4 of the 2012 Regulations which exempts full planning applications from an application fee where such an application is made for development which consists of an extension of a dwellinghouse for the purpose of providing means of access or facilities or greater safety, health or comfort for a

disabled person who lives there, is replicated and applied to prior approvals applications in respect of the now permanent permitted development for the same kind of development. This means that the fee introduced by regulation 3 is not payable for such applications. We consider this mitigates the direct impact of the prior approval fee on disabled persons in a manner consistent with the existing 2012 Regulations.

- 12.8 In relation to the overall impact on the public sector, local authorities will benefit through the introduction of a fee for a prior approval application, which reflects the administrative costs and time for processing these applications and will mitigate against the loss of full planning application fees which, now that the relevant permitted development right is permanent, will be permanently non-payable.
- 12.9 The Government has introduced fees for other permanent prior approval applications which include a similar administrative burden, therefore the Government considers it appropriate to introduce a £96 fee for prior approval applications for large rear extensions, now that this permitted development right is no longer time-limited in scope, in order to provide local planning authorities with the resources they need to determine these applications.
- 12.10 An assessment of the above impact of these regulations has been completed. Copies may be inspected at the Planning Directorate, the Ministry of Housing, Communities and Local Government, 2 Marsham Street, London SW1P 4DF.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 The basis for the final decision to not take specific action is that the impact does not fall more heavily on small businesses than on other applicants for planning consent, nor is it anticipated that the impact will have a significant effect on the costs for business.

14. Monitoring & review

- 14.1 The Small Business, Enterprise and Employment Act 2015 requires that regulatory provisions made after 1 July 2015 are reviewed 5 years after their commencement to consider whether the objectives could be achieved with less regulation. Given that these Regulations are not considered to have a significant impact on the costs for business, ongoing monitoring and review is not required.

15. Contact

- 15.1 Alex Philpott at the Ministry of Housing, Communities and Local Government (Tel: 0303 444 1463 or e-mail alex.philpott@communities.gov.uk) can answer any queries on this instrument.
- 15.2 Lucy Hargreaves, Deputy Director for Planning – Development Management, at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Kit Malthouse, Minister of State at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.