

EXPLANATORY MEMORANDUM TO
THE HOUSING AND PLANNING ACT 2016 (PERMISSION IN PRINCIPLE ETC)
(MISCELLANEOUS AMENDMENTS) (ENGLAND) REGULATIONS 2017

2017 No. [XXXX]

1. Introduction

- 1.1 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 This instrument makes a number of consequential or miscellaneous amendments to four Acts of Parliament. The amendments are necessary as part of the project to implement the new planning consent route known as ‘permission in principle’.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This is the first use of the powers in sections 59A and 70(2ZZC) of the Town and Country Planning Act 1990 (“the 1990 Act”).

Other matters of interest to the House of Commons

- 3.2 This entire instrument applies only to England.
- 3.3 In the view of the Department, 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.

4. Legislative Context

- 4.1 Section 150 of the Housing and Planning Act 2016 inserted sections 58A, 59A and 70(2ZZA) to (2ZZC) into the 1990 Act. Together they introduce a new form of planning consent into the town and country planning regime for England, permission in principle. On its own permission in principle does not allow development of the land. Section 57 of the 1990 Act continues to provide that in order to develop the land planning permission is still required. But where permission in principle is granted for land an applicant may obtain planning permission by applying for technical details consent (section 70(2ZZB) of the 1990 Act). On an application for technical details consent the local planning authority must determine that application in accordance with the permission in principle (section 70(2ZZA) of the 1990 Act).
- 4.2 A number of other instruments form the package needed to implement the provisions relating to permission in principle, namely:

- The Town and Country Planning (Permission in Principle) Order 2017;
- The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2017; and
- The Town and Country Planning (Register of Previously Developed Land) Regulations 2017.

4.3 These will provide for the granting of permission in principle for land on Part 2 of the brownfield land registers (made under section 14A of the Planning and Compulsory Purchase Act 2004), for consequential amendments to secondary legislation, for the procedure in relation to applications for permission in principle and technical details consent, for the fees to be charge in relation to such applications and for local planning authorities to prepare and maintain a register of brownfield land. The intention is to lay these instruments in 2017.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales only.

5.2 The territorial application of this instrument is set out in Section 3 under “Other matters of interest to the House of Commons”.

6. European Convention on Human Rights

6.1 The Minister of State, Gavin Barwell, has made the following statement regarding Human Rights:

“In my view the provisions of the Housing and Planning Act 2016 (Permission in Principle etc) (Miscellaneous Amendments) (England) Regulations 2017 are compatible with the Convention rights.”

7. Policy background

What is being done and why

7.1 The current planning application process asks developers to provide substantial amounts of information up-front, even as part of an application for outline planning permission. This means that developers will often have to expend significant time and cost prior to achieving certainty that any development will be able to go ahead in principle. The Government is introducing permission in principle consent to tackle these issues. This consent can only be obtained in relation to housing-led development. The Government’s intention is to increase the efficiency of the planning process with more certainty established earlier about whether land is suitable for the development of new homes.

7.2 ‘Permission in principle’ is designed to separate decision making on ‘in principle’ issues addressing land use, location, and amount of development from matters of technical detail, such as what the buildings will look like. The aim is to give up-front certainty that the fundamental principles are acceptable before developers need to get into costly, technical matters. It will also ensure that the principle of development only needs to be established once in the process. A grant of permission in principle would be followed by an application to agree the technical details of the scheme before the applicant has permission to develop the site. Powers secured through the Housing and Planning Act 2016 allow permission in principle to be granted when

local authorities or qualifying bodies choose to allocate housing-led development in future local and neighbourhood plans or local authorities identify land on brownfield land registers (which they will be required to set up under section 14A of the Planning and Compulsory Purchase Act 2004 once the Town and Country Planning (Register of Previously Developed Land) Regulations 2017 come into force). The 2016 Act also makes provision for permission in principle to be granted on an application to the local planning authority.

- 7.3 These Regulations are part of the package of legislation to implement the permission in principle consent route. The aim of these changes is to ensure that certain provisions that currently only apply to existing planning consents will also consistently apply to the new permission in principle consent route when it comes in to existence.

Changes to the Commons Act 2006

- 7.4 The existing powers in the Commons Act 2006 exclude the right to apply for a site to be registered as a town and village green where certain trigger events occur including when an application for planning permission is made or the site is allocated for housing in a development plan. A trigger event switches off the right to apply for registration of a village green, and a terminating event switches that right back on. In general Schedule 1A provides that where land is proposed to be allocated for development, for example in a development plan, the right to apply for registration of a village green is switched off for so long as that proposal and any subsequent allocation subsists. The amendment to Schedule 1A in this instrument makes provision for trigger and terminating events in relation to (a) proposals to allocate, and (b) allocations of, land for development which flow from a local planning authority including land in Part 2 of the register under section 14A of the Planning and Compulsory Purchase Act 2004. (Section 59A(1) of the Town and Country Planning Act 1990 provides that the Secretary of State may make a development order which grants permission in principle in relation to land included in a qualifying document. A register under section 14A is a qualifying document. The Secretary of State intends to make a development order which provides that land included in Part 2 of register under section 14A is granted permission in principle.). These changes will ensure that the arrangements for excluding the right to apply for a site to be registered as a town and village green will apply consistently to sites on brownfield registers under consideration for permission in principle.

Consolidation

- 7.5 Not applicable.

8. Consultation outcome

- 8.1 The Government has not consulted on these changes as they are consequential or miscellaneous.

9. Guidance

- 9.1 The Government will be publishing policy guidance in relation to permission in principle.

10. Impact

- 10.1 No impact on business, charities or voluntary bodies has been identified from these changes.
- 10.2 The impact on the public sector for these changes is expected to be negligible.
- 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 Department for Communities and Local Government will review and evaluate the success of the changes.

13. Contact

- 13.1 Robert Griffith at the Department for Communities and Local Government Telephone: 0303 444 2696 or email: Robert.griffith@communities.gsi.gov.uk can answer any queries regarding the instrument.