

**EXPLANATORY MEMORANDUM TO  
THE TOWN AND COUNTRY PLANNING (LOCAL DEVELOPMENT) (ENGLAND)  
(AMENDMENT) REGULATIONS 2009**

**2009 No. 401**

- 1.**     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     These Regulations amend the Town and Country Planning (Local Development) (England) Regulations 2004, S.I. 2004/2204 (“the 2004 Regulations”) in consequence of changes made to Part 2 of the Town and Country Planning Act 2004 (“the 2004 Act”) by section 180 of the Planning Act 2008 (“the 2008 Act”). They also add the Homes and Communities Agency (“HCA”) as a statutory consultee.

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

3.1     None

**4.     Legislative Context**

4.1     The 2004 Regulations were made under the 2004 Act, Part 2 of which established a new system of local development planning. This involves local planning authorities (“LPAs”) preparing documents known as local development documents (“LDDs”) which set out the LPA’s policies for the development and use of land in the area, and are prepared according to a project plan known as a Local Development Scheme (“LDS”).

4.2     Under the 2004 Act, documents known as development plan documents (“DPDs”) are defined as LDDs. Other types of LDDs are referred to in the 2004 Regulations as supplementary planning documents (“SPDs”).

4.3     Section 180 of the 2008 Act will come into force in accordance with the Planning Act 2008 (Commencement No 1 etc.) Order 2009 and amends sections 15, 17, 18 and 19 of the 2004 Act to remove certain duties on LPAs. Under the 2008 Act, LPAs will no longer have to specify SPDs and statements of community involvement (“SCIs”) in a LDS; no longer have to prepare a sustainability appraisal (“SA”) report for their SPDs; and no longer have to submit SCIs to the Secretary of State for examination.

4.4     Section 180 also amends sections 37 and 38 of the 2004 Act to define a DPD as an LDD that is specified in the LDS.

4.5 These Regulations amend the 2004 Regulations in consequence of the changes mentioned above, and come into force at the same time as section 180 of the 2008 Act.

4.6 In addition to the consequential changes, these Regulations add the HCA (the body established by the Housing and Regeneration Act 2008) as a statutory consultee when preparing DPDs, and they remove the requirement for LPAs to consult the Secretary of State for Transport when preparing a SCI.

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

5.1 This instrument applies to 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 In December 2005, the then Chancellor of the Exchequer and Deputy Prime Minister commissioned Kate Barker to undertake a review of land use planning. Part of her remit was to examine how planning policy and procedures could better deliver economic growth and prosperity alongside other sustainable development goals. The review sought out views from a range of stakeholders, including planning experts, academics, practitioners, environmental groups, retailers, developers, business representative groups and government agencies.

7.2 Kate Barker's review reported in December 2006 and (under Chapter 4) it highlighted certain deficiencies that had already become apparent in the reforms to the local planning regime brought in by the 2004 Act. It set out some recommendations whereby the production of LDDs and plans could be simplified and made faster.

7.3 Chapter 8 of the Planning White Paper (May 2007) developed these themes further and posed consultation questions about proposals that sought to achieve a simpler and faster system. These received a favourable response overall. Certain proposals, not requiring changes to the 2004 Act, were consulted on at the beginning of 2008 in the document "Streamlining Local Development Frameworks". Following a favourable response overall, most of these proposals were incorporated into the Town and Country Planning (Local Development) (England) (Amendment) Regulations 2008 ("the 2008 Regulations"). Policy guidance (PPS12) was revised to reflect them. Other proposals required changes to the 2004 Act and were incorporated into section 180 of the 2008 Act. These Regulations bring into effect those changes.

7.4 Regulation 2(2) amends the definition of "specific consultation bodies". These are bodies with which LPAs must engage in fulfilling certain functions under the 2004 Regulations. It makes explicit that, where relevant, the requirement to consult

the Secretary of State for Transport is in regard to his functions concerning railways and as the Highways Agency and consultation should therefore be with the most local manifestations of those functions. It adds the HCA to the definition of “specific consultation bodies” because the objectives and powers of the HCA (set out in Part 1 of the Housing and Regeneration Act 2008) mean that it is a vital organisation for LPAs to engage with in relation to local development. This requirement will not commence until 6 April 2010 to avoid delay to DPDs still in preparation.

7.5 Regulation 2(3) and (4) reflects changes to sections 15 and 17 of the 2004 Act made by section 180 of the 2008 Act. The effect of this is to remove SPDs and the SCI from the LDS. The policy intention is to give LPAs greater flexibility in preparing SPDs without having to amend their LDSs, a course which would require approval from the Secretary of State.

7.6 Regulation 2(5) and (6) reflects the change to section 19(5) of the 2004 Act, which removes the requirement for a sustainability appraisal (“SA”) report to be prepared for all SPDs. The policy intention is to bring to an end the duplication of effort and poor use of resources resulting from LPAs having to prepare a SA report even when a SA had already been prepared for an overarching DPD to which the SPD was required to be in conformity with under regulation 13(8) of the 2004 Regulations.

7.7 Regulation 2(8) removes the requirement for LPAs to consult the Secretary of State for Transport in the preparation of their SCIs.

7.8 Regulation 2(7), (9) and (10) reflects the changes made to section 18 of the 2004 Act. The consequence of this change means that the SCI is no longer required to be submitted to the Secretary of State for independent examination. The policy intention is to remove what was widely seen as an ineffective and burdensome requirement. It is also hoped that LPAs and their local partners will use the SCI more flexibly as a tool for planning and monitoring their community engagement activities for a wider range of functions as set out in the Local Government and Planning White Papers in 2006 and 2007 respectively.

- ***Consolidation***

7.9 There are no plans to consolidate the 2004 Regulations. The 2004 Regulations have been amended on one previous occasion, in 2008.

## **8. Consultation outcome**

8.1 The policy issues in these Regulations were consulted on as part of the Planning White Paper which was published on the DCLG website on 21 May 2007. The consultation period ran over 12 weeks to 17 August 2007.

8.2 As well as the public, specific responses were sought from professional planning organisations such as the Royal Town Planning Institute and Town and Country Planning Association; LPAs and regional planning bodies; key equalities organisations; infrastructure and utilities providers; third sector and business and property sector umbrella organisations; non-departmental public bodies; and groups with particular environmental interests.

8.3 Detailed responses to this consultation can be found on the DCLG website at the following link, but responses relating to the changes made by these Regulations are discussed in paragraphs 8.5 to 8.31.

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/backgroundreporta.pdf>

8.4 The Government's response to the Planning White Paper consultation outcome can be found at the following link:

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/governmentresponse.pdf>

### **Removing the requirement for SCIs to be subject to independent examination**

8.5 Question 34 in the White Paper asked: "We think it is important to enable a more joined up approach to community engagement locally. We propose to use the new 'duty to involve' to ensure high standards but remove the requirement for the independent examination of the separate planning SCIs. Do you agree?"

8.6 A large majority of those who answered the question agreed that the use of the 'duty to involve' process would be an improvement over the present system, particularly government bodies and businesses.

8.7 The 'duty to involve' had been outlined in the 2006 Local Government White Paper and was incorporated into section 138 of the Local Government and Public Involvement in Health Act 2007. It came into force on 1 April 2009. The requirement is for a local authority to take steps it considers appropriate to involve representatives of local persons in the exercise of their functions. In particular the requirement covers providing information and consulting about functions and appropriate involvement in other ways. Statutory guidance for the 'duty to involve' can be found in the document "Creating Strong, Safe and Prosperous Communities" (July 2008).

8.8 Changes were made in 2008 to regulations 25 and 26 of the 2004 Regulations, which gave LPAs a similar duty to the 'duty to involve' when preparing their DPDs and SCIs, thereby requiring consideration of greater engagement with individuals and businesses than before.

8.9 The main points arising from question 34 of the Planning White Paper with regard to the removal of examination for SCIs were:

- the proposal would speed up the process because the examination of SCIs had added little to the process.
- the 'duty to involve' must provide a clear standard approach that would allow all participants to fully engage with the system
- clarification was needed on the definition of 'duty to involve', and guidance was sought on the protocol for local authorities]

8.10 The Planning White Paper said that legislation was being sought to remove the requirement for the independent examination of the separate planning SCIs, using the new Best Value 'duty to involve' as the means of ensuring high standards across all local authority and local strategic partnership activities.

### Analysis of responses to question 34

	Answered	Yes	Yes but	No
Government Bodies	180	80%	17%	3%
Public	26	62%	12%	27%
Environment and community groups	127	51%	17%	31%
Business	53	77%	17%	6%
Professionals and academics	29	62%	31%	7%
<b>All</b>	<b>415</b>	<b>68%</b>	<b>18%</b>	<b>14%</b>

8.11 68% of those who answered the question agreed with the proposal to use the 'duty to involve'. Support was particularly strong from government bodies and businesses, who considered that the changes would speed up the process and free up resources. Support was expressed for a clear, standard approach to community involvement from government bodies and environment and community groups.

8.12 18% offered qualified support, seeking clarification of the 'duty to involve'.

8.13 14% of those who answered the question disagreed with the proposals. Many were concerned that their opportunity to be involved would be compromised. Change was resisted by some respondents, who supported the current SCI practice and believed that the proposals would bring limited benefit. Opposition was strongest from the general public and environmental and community groups.

### Concerns

8.14 Concerns over the proposal to remove the independent examination of the SCI were:

- the opportunity for direct involvement of local communities and business organisations must be available at the earliest opportunity
- further clarity and guidance is required on the terminology used and the protocol and measures for 'duty to involve'
- the LPAs' approach must still be independently assessed (possibly by the Government Office of the region)
- the common approach across council services and the statutory requirements to consult do not provide enough flexibility
- local authority planners need more training in community involvement
- there should be a clear role for Planning Aid under 'duty to involve' (Planning Aid is a service provided through the Royal Town Planning Institute to help community groups engage with the planning system)

### Government response

8.15 The Government welcomed the support for this proposal given by the majority of those who responded to this question in the White Paper. The Department noted the concern raised by those taking part in the community consultation exercise undertaken by Planning Aid as well as other respondents that this change might harm the extent of community engagement in the plan process. As was made clear in the White Paper, the intention is to enable a local authority to more easily integrate the

SCI within a broader approach to community engagement. A joined up approach to involvement and consultation is encouraged in both the new PPS12 and the *Creating Strong, Safe and Prosperous Communities - Statutory Guidance* for local authorities and their partners', which was published in July 2008. The 2008 Regulations have already strengthened the requirement for LPAs to consider how they should seek to engage with the public and local businesses in the preparation of their DPDs and SCIs.

8.16 On 10 February 2009, the Audit Commission, Commission for Social Care Inspection, Healthcare Commission, HM Inspectorate of Constabulary, HM Inspectorate of Prisons, HM Inspectorate of Probation and Ofsted published the joint inspectorate Comprehensive Area Assessment ("CAA") framework document. This said 'Information from the Place Survey and the National Survey of Third Sector Organisations, introduced by government in 2008, will contribute to evidence on meeting the 'duty to involve.' By considering how well local partners engage local people, CAA will assess how well these duties (including planning functions) are carried out.'

### **Removing the requirement to list SPDs in LDSs**

8.17 Question 36 in the White Paper asked: Do you agree in principle that there should not be a requirement for SPDs to be listed in the LDS?

8.18 The proposal to remove the requirement to list SPDs in the LDS was welcomed by a large majority of those who answered the question, particularly government bodies. Approximately one-quarter of those agreeing included comments.

8.19 The main points were:

- concern at the loss of the informative role of the LDS and need for informal list in its stead and that the change should not be a back door route to bad policy
- respondents suggested that due process of local consultation and scrutiny would still need to take place.

The Government proposed to allow local authorities to produce SPDs without them having to refer to central government or list the documents in the LDS.

### **Analysis of responses to question 36**

	Answered	Yes	Yes but	No
Government Bodies	183	76%	13%	11%
Public	24	46%	13%	42%
Environment and community groups	126	53%	15%	32%
Business	58	50%	21%	29%
Professionals and academics	32	44%	16%	41%
<b>All</b>	<b>423</b>	<b>61%</b>	<b>15%</b>	<b>24%</b>

## **Supporting**

- 8.20 Typical supporting statements were:
- support the greater flexibility and ‘lighter touch’ from Government
  - consider that the new system will reduce delay and simplify the process of producing SPDs
  - appreciate the opportunity for documents like Parish Design Statements to be adopted as SPDs without being included in the LDS.

## **Concerns**

- 8.21 Concerns expressed included:
- SPDs should be listed as they provide useful information to stakeholders and the public about the LPA’s intent
  - an alternative way of providing information about SPDs needs to be found and adhered to by all LPAs
  - proposals would result in a loss of clarity and full and proper referencing
  - SPDs must retain their purpose and influence
  - LPAs will pursue planning policies that should instead be considered and tested through a DPD
  - LPAs should not have to change their plan-making arrangements so frequently
  - part of the current delay in plan-making system is sign-off by Government Offices
  - LPA must ensure that SPDs are appropriate and not excessive
  - impact on Planning Delivery Grant and staff resources
  - increased flexibility may result in LPAs not progressing SPDs or DPDs in a timely manner.

## **Government response**

8.22 The Government welcomed the support given to this proposal by the majority of those who responded to the question directly. The purpose of this change is to allow local authorities the freedom to commence work on and adopt SPDs without prior Government approval. However the Department noted the concerns expressed about a possible reduction in information available and consequential reduction in transparency in the plan-making process. In the updated policy (PPS12), the Department urged local authorities to publish on their websites “real time” information on the progress of all planning documents. In relation to the concern about a possible reduction in scrutiny of SPDs, it is important to note that this proposal does not affect the arrangements for the public consultation on SPDs. LPAs will also need to consider how they fulfil the ‘duty to involve’ in regard to their SPDs.

## **Removing the requirement for sustainability appraisal of all SPDs**

8.23 Question 37 in the Planning White Paper asked: Do you agree in principle that there should not be a blanket requirement for SPDs to have a SA unless there are

impacts that have not been covered in the appraisal of the parent DPD or an assessment is required by the SEA Directive?

8.24 A large majority of those who answered the question supported the proposals for the blanket requirement for SA of all SPDs to be dropped, with just over one-fifth of those agreeing making comments. The weakest support was from the public.

8.25 The main points were:

- less onerous processes and less repetition of appraisals if carried out at a higher level
- increased flexibility and improved accessibility of SPDs to community groups
- uncertainty about how the proposals would work in practice and need for clear guidance on when a SA would be needed
- DPDs provide the generic context for any SPDs and thus cannot ensure that all aspects of the SPDs have been fully appraised.

The Government proposed that it should not be necessary for a SA to be carried out for every SPD. This question sought views on the principle of doing this, but noted that a further consultation would be undertaken on full guidance as to when SAs would be needed.

### Analysis of responses to question 37

	Answered	Yes	Yes but	No
Government Bodies	179	83%	16%	1%
Public	27	41%	15%	44%
Environment and community groups	110	68%	15%	17%
Business	47	66%	21%	13%
Professionals and academics	32	63%	31%	6%
<b>All</b>	<b>395</b>	<b>72%</b>	<b>17%</b>	<b>10%</b>

### Support

8.26 Typical supportive comments were:

- SA was covered by higher level appraisals already
- support the reduction in administrative burden
- believe proposals will streamline the process and make more efficient use of time and resources
- consider that proposals will encourage greater involvement from community groups who found SA requirements daunting
- support greater flexibility and 'lighter touch' from Government
- there should be no requirement for SA of any SPD
- there is scope for a 'supplementary' SA, to cover the gaps between a broad 'parent' DPD and a more detailed SPD (e.g. Village Design Statements)
- producing fewer SAs would increase the value of those that are produced.



## Concerns

8.27 Concerns over the proposals included:

- SA is useful if the situation has changed since the parent DPD was adopted or if there are deficiencies in the DPD's SA
- any SPD seen by any relevant party to have potential economic, social or environmental impacts should be subject to Strategic Environmental Assessment ("SEA")
- economic sustainability of DPDs should be appraised with the same fervour as environmental sustainability
- SPDs covering sites which have not been through the DPD process will not have been appraised
- normal considerations should only be set aside where there are overwhelming reasons in favour of a development
- SPDs need better consultation at the initial and final stages
- removal of requirement for SA runs counter to objectives of improving sustainability
- SA of parent DPD will not cover the necessary detail for specific SPDs
- LPA could use SPD/Gs to progress policy that has not been properly scrutinised
- proposals would allow later SPDs to bypass SEA
- proposals to produce less SAs undermine commitment to tackling climate change
- where plans are caught by SEA Directive, SEA should be carried out, not SA.

8.28 Some respondents expressed a need for clarification on certain points or extra information. These included:

- clarification of when the decision will be made as to whether an SPD will require SA or not
- the need for clear language used in the consultation text
- the need for additional information before proposals could be fully supported
- who would check that SA was carried out when required, and when would this happen?
- the need for clarification between the requirements for SPDs, DPDs and Unitary Development Plans
- guidance is needed to help judge the effects of SPDs and decide whether SA is needed.

## Government response

8.29 The Government welcomed the support given to this proposal by the majority who responded to the question directly. The Department noted the concern that there needs to be clear guidance about when a SA would be needed. This guidance is being taken forward as part of the Plan-Making Manual, which is advice for LPAs provided by the Government and builds on good practice examples submitted by LPAs. LPAs will still need to screen their SPDs to ensure that legal requirements for SA are met where there are impacts that have not been covered in the appraisal of the parent DPD or where an assessment is required by the SEA Directive.

## **9. Guidance**

9.1 On-line government guidance will be updated to reflect these changes through the Plan-Making Manual which is hosted on the Planning Advisory Service website. As the measures are largely deregulatory, this guidance will be minimal and will focus on changes relating to the removal of the requirement for all SPDs to be subject to SA.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is likely to be neutral or may result in savings. The measures are intended to provide flexibility and a more joined-up approach by LPAs and their partners in the engagement of their communities. This should result in less duplication of effort for businesses, charities and voluntary bodies in terms of attending events or filling in consultation forms.

10.2 The impact on the public sector is likely to result in savings because there will be greater flexibility for LPAs and their partners in the preparation of SCIs. There will be savings for the Planning Inspectorate because it will no longer be required to inspect SCIs. The removal of the requirement for the vast majority of SPDs to undergo a SA should also result in savings for LPAs.

10.3 An Impact Assessment has not been prepared for this instrument specifically, because Part B of the Planning Bill's Impact Assessment covered the impacts of these measures. This can be located at:  
<http://www.communities.gov.uk/publications/planningandbuilding/planningbill> .

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 The measures in this instrument are part of a package of wider reforms to improve the quality and speed of the planning system. The Department for Communities and Local Government works with the Government Offices for the regions, the Planning Advisory Service, the Planning Inspectorate and the Commission for Architecture and the Built Environment to monitor the progress of the production of sound DPDs. Where production of DPDs is at risk of slippage, these organisations work together to provide support to LPAs.

## **13. Contact**

13.1 Paul Whittlesea at the Department for Communities and Local Government. Tel: 020 7944 3453 or email: [paul.whittlesea@communities.gsi.gov.uk](mailto:paul.whittlesea@communities.gsi.gov.uk) for any queries regarding the instrument.