

EXPLANATORY MEMORANDUM TO
THE NEIGHBOURHOOD PLANNING (PRESCRIBED DATES) REGULATIONS 2012

2012 No. 2030

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 The Regulations prescribe the dates for the purposes of paragraphs 14(4) and (6) and 15(3) of Schedule 4B to the Town and Country Planning Act 1990 (“the 1990 Act”) in relation to referendums and additional referendums as the date on which such a referendum is held.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 The Regulations are the first exercise of the powers in paragraphs 14(4) and (6) and 15(3) of Schedule 4B to the 1990 Act.
4. **Legislative Context**
 - 4.1 Chapter 3 of Part 6 of the Localism Act 2011 creates a new neighbourhood planning regime in England mainly by inserting new provisions into the 1990 Act and the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”) (*see* Part 1 of Schedule 9, and Schedules 10 and 11 to the Localism Act 2011, for the provisions inserted into the 1990 Act, and Part 2 of Schedule 9 to the Localism Act 2011 for the provisions inserted into the 2004 Act).
 - 4.2 The 1990 Act makes provisions for neighbourhood development orders and Schedule 4B (as read with the modifications in Schedule 4C for community right to build orders) sets out the framework for making such orders.
 - 4.3 The 2004 Act makes provisions for neighbourhood plans and provides that Schedule 4B to the 1990 Act (as applied, with modifications, by section 38A of the 2004 Act) sets out the framework for making such plans.
 - 4.4 Schedule 4B to the 1990 Act provides that before a neighbourhood development order or plan can come into force a referendum or, in the case of an area designated as a business area under section 61H of the 1990 Act, a referendum and an additional referendum, must be held.
 - 4.5 Paragraph 14(4) and (6) and 15(3) of Schedule 4B to the 1990 Act provides that the persons entitled to vote in these referendums is to be determined by reference to their status on a prescribed date.
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 Neighbourhood planning seeks to enable communities to come together to shape the development and growth of their local area through the production of a neighbourhood plan or neighbourhood development order.
- 7.2 Before a neighbourhood plan, neighbourhood development order or community right to build order can come into force a referendum and, in the case of designated business areas, also an additional referendum must be held. In relation to a referendum a person is entitled to vote if on the prescribed date the person would be entitled to vote in a local government election in the referendum area (or in a GLA election if the neighbourhood area is in the City of London). In relation to an additional referendum a person is entitled to vote if on the prescribed date the person is a non-domestic ratepayer in the referendum area.
- 7.3 These Regulations provide that the date of the referendum or additional referendum is the prescribed date. This date was chosen in order to align with the equivalent rule for elections – for example in local government elections a person is entitled to vote if they are on the register of local government voters on the day of the poll (see section 2 of the Representation of the People Act 1983).

Consolidation

- 7.4 Not applicable.

8. Consultation outcome

- 8.1 Consultation was conducted on the main neighbourhood planning regulations. No further consultation has been undertaken for the current Regulations.

9. Guidance

- 9.1 The Department published an easy to understand guide to Neighbourhood Planning on 13 October 2011 (available at - www.communities.gov.uk/publications/planningandbuilding/introductionneighbourplanning). The Department recognises the need to supplement this with more detailed guidance and is considering the appropriate means of doing this.

10. Impact

- 10.1 Neighbourhood planning is a voluntary activity, it is for individual organisations - a parish council or community organisation or businesses – to choose to produce, lead or

participate in the production of a neighbourhood plan or a neighbourhood development order or a community right to build order.

- 10.2 The 1990 Act places a duty on local planning authorities to assist communities in the preparation of neighbourhood development orders and plans to take the plans or orders through a process of examination and referendum. Funding has been identified through the Comprehensive Spending Review (up to £50 million over the comprehensive spending review period) to support those local authorities who incur additional burdens as a result of the 1990 Act and 2004 Act requirements on neighbourhood development orders and plans. A full Impact Assessment of the effect that Neighbourhood Planning will have on the costs of business and the public sector is available from the Department.
- 10.3 No impact assessment has been prepared for these Regulations as no impact on the private or voluntary sectors is foreseen.

11. Regulating small business

- 11.1 Not applicable.

12. Monitoring & review

- 12.1 Regulation 2 of the Neighbourhood Planning (General) Regulations 2012 requires the Secretary of State to review the operation and effect of those Regulations and lay a report before Parliament within 5 years after they come into force and every 5 years after that. It is considered that a separate review of the current Regulations is not necessary.

13. Contact

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