

EXPLANATORY MEMORANDUM TO
THE NEIGHBOURHOOD PLANNING (GENERAL) AND DEVELOPMENT
MANAGEMENT PROCEDURE (AMENDMENT) REGULATIONS 2016

2016 No. 873

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.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 These Regulations amend the Neighbourhood Planning (General) Regulations 2012 (“the 2012 Regulations”) and the Town and Country Planning (Development Management Procedure) (England) Order 2015 (“the 2015 Order”).
- 2.2 The 2012 Regulations, as amended by the Neighbourhood Planning (General) (Amendment) Regulations 2015, make provision in relation to the neighbourhood planning regime established by the Localism Act 2011 and modified by the Housing and Planning Act 2016 (“the 2016 Act”). These Regulations amend the 2012 Regulations to make further provision in relation to the designation of neighbourhood areas and forums, the consideration of the recommendations of an examiner of a neighbourhood development order or plan proposal, intervention by the Secretary of State in that consideration, and the making of a neighbourhood development order or plan. These Regulations also amend the 2015 Order to make provision for neighbourhood forums to be notified of planning applications in their areas and to make representations on applications they are notified of.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 These regulations are the first use of the powers in sections 61E(4)(b), 61G(12) and (13) of, paragraph 8A(3) of Schedule 1 to, and paragraphs 13A to 13C of Schedule 4B to, the Town and Country Planning Act 1990 (“the 1990 Act”) and section 38A(4)(b) of the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”). Sections 61E(4)(b) of the 1990 Act and 38A(4)(b) of the 2004 Act were amended by sections 140(2) and (3) of the 2016 Act, respectively. The other provisions mentioned above were inserted in the 1990 Act by sections 139, 140(1), 141 and 142 of the 2016 Act.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative 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 Chapter 3 of Part 6 of the Localism Act 2011 created the neighbourhood planning regime in England mainly by inserting new provisions in the 1990 Act and the 2004 Act (see Part 1 of Schedule 9 and Schedules 10 and 11 of the Localism Act 2011, for the provisions inserted into the 1990 Act, and Part 2 of Schedule 9 of the Localism Act 2011 for the provisions inserted into the 2004 Act).
- 4.2 Part 6 of the 2016 Act made further amendments to the relevant provisions of the 1990 Act and 2004 Act. Further detail on the amendments is set out below.
- 4.3 Section 139 of the 2016 Act amends section 61G of the 1990 Act to enable the Secretary of State to prescribe in regulations circumstances in which a local planning authority must designate as a neighbourhood area all of the area applied for.
- 4.4 Section 140 of the 2016 Act amends the 1990 Act and 2004 Act to enable the Secretary of State to prescribe in regulations dates by which a local planning authority must act in response to the recommendations made by the examiner of a neighbourhood development order or plan proposal (including imposing time limits for the submission of representations where the authority proposed decision differ from that recommended by the examiner), and dates by which a plan or order must be made following approval in each applicable referendum.
- 4.5 Section 141 of the 2016 Act inserted new paragraphs 13B and 13C of Schedule 4B to the 1990 Act. Those provisions enable the Secretary of State to intervene to put a neighbourhood development order proposal to referendum and to make regulations governing the procedure for intervention and other matters (the provisions are applied to neighbourhood development plan proposals by section 38A(3) of the 2004 Act).
- 4.6 Section 142 of the 2016 Act inserted a new paragraph 8A of Schedule 1 to the 1990 Act. This enables a neighbourhood forum to require their local planning authority to notify them of planning applications, or alterations to those applications, in the neighbourhood area for which the forum are designated. Paragraph 8A(3) applies the powers in paragraph 8(6) of that Schedule for the Secretary of State to make provision in a development order in respect of representations on such applications.

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 only.

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 provisions of the Housing and Planning Act 2016 mentioned in paragraph 4 above were aimed at speeding up and simplifying neighbourhood planning, in particular by enabling the Secretary of State to prescribe circumstances in which, and dates by which, certain local planning authority decisions must be taken, to intervene

to put a draft neighbourhood development order or plan to referendum, and to enable neighbourhood forums to make representations on planning applications.

- 7.2 These regulations are made under those new powers and under pre-existing powers. They implement the commitments made during the passage of the 2016 Act and proposals set out in the consultation described in paragraph 8 below.
- 7.3 *Designation of neighbourhood areas.* Regulations 2(2) to 2(4) amend the 2012 Regulations to prescribe two cases where a local planning authority must designate all of the neighbourhood area applied for. The first case is where a parish council applies for the whole parish to be designated as a neighbourhood area or applies to enlarge an existing designation of a smaller part of the parish to cover the whole of the parish. But this requirement does not apply where some of the parish is already part of a neighbourhood area that extends beyond the parish boundaries. The second case is where a local planning authority has not determined an application for designation of a neighbourhood area by the date prescribed in existing regulations. This requirement does not apply where any part of the area applied for has already been designated or is included in an area designation application that has not yet been decided. These exceptions are intended to avoid adverse impacts on neighbourhood development orders or plans that have already been made or which are in preparation.
- 7.4 *Designation of neighbourhood forums.* Regulation 2(5) amends the 2012 regulations to prescribe a date by which a local planning authority must decide a neighbourhood forum application. A longer period is allowed where the application is submitted to more than one authority. The requirement does not apply where an authority receive more than one application which relates to some or all of the same neighbourhood area. This exception is intended to give authorities time to work with prospective forums to resolve any competing applications.
- 7.5 *Decision on examiner's recommendation.* Following receipt of the report of the examiner of a neighbourhood development order or plan proposal, the local planning authority must decide what action to take in response to each of the recommendations. Regulations 2(6) and 2(8) amend the 2012 Regulations to insert new regulation 17A (which applies in relation to neighbourhood development plan proposals) and new regulation 24A (which applies in relation to neighbourhood development order proposals). The new provisions prescribe the date by which the authority must make their decision and, where their proposed decision differs from that recommended by the examiner, the persons that the authority must notify and a time limit for the submission of any representations.
- 7.6 *Prescribed date for making a neighbourhood plan or order.* Regulation 2(7) prescribes a date by which a neighbourhood development plan must be made by a local planning authority after the proposal has been approved in each applicable referendum. Regulation 2(9) makes equivalent provision for the making of neighbourhood development orders. In each case, there is an exception where a legal challenge has been brought in relation to the decision to hold a referendum or around the conduct of a referendum.
- 7.7 *Intervention by the Secretary of State.* Regulation 2(12) inserts a new Part 8A of the 2012 Regulations. The regulations in this new Part prescribe the procedure to be followed where a qualifying body (a parish council or neighbourhood forum responsible for neighbourhood planning in a neighbourhood area) requests the Secretary of State to intervene under the powers described at paragraph 4.5 above.

- 7.8 *Representations by neighbourhood forums on planning applications.* Regulation 3 amends the Town and Country Planning (Development Management Procedure) (England) Order 2015, to insert a new article 25A. That article makes provision for neighbourhood forums to make representations on planning applications that they have requested to be notified of under the right described at paragraph 4.6 above. The local planning authority must not determine the application before the forum has made representations, has notified the authority that they do not wish to do so or, if no representation or notification is received, 21 days have elapsed.
- 7.9 *Transitional provisions.* Regulation 4 sets out transitional provisions.

Consolidation

- 7.10 Not applicable.

8. Consultation outcome

- 8.1 The Department formally consulted on a number of proposed reforms to the regulations governing neighbourhood planning from 18 February 2016 to 15 April 2016 as part of a wider consultation on reforms to the planning system (available at: <https://www.gov.uk/government/consultations/implementation-of-planning-changes-technical-consultation>). There were over 800 responses to the consultation, of which around 400 commented on some or all of the neighbourhood planning proposals. Just under half of those respondents represented local planning authorities and around a quarter were from parish councils.
- 8.2 Overall, there was support for the proposals from the majority of respondents. Support was particularly strong among parish councils and neighbourhood forums. The various measures were supported by around a third to around a half of local authorities. Some authorities expressed views about their resourcing and the need to consider internal reporting procedures to ensure that new prescribed dates were met.
- 8.3 A report of the consultation has been prepared and placed in the Library of each House of Parliament and on the Department for Communities and Local Government website (<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>).

9. Guidance

- 9.1 The Department's planning practice guidance, which is a web-based resource (available at: <http://planningguidance.planningportal.gov.uk/>) includes guidance on neighbourhood planning. The Department intends to update the guidance to reflect the changes made by these Regulations.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is minimal as we believe that local planning authorities already meet the new requirements introduced by these Regulations in the majority of cases.
- 10.3 An Impact Assessment has not been prepared for this instrument.
- 10.4 Neighbourhood planning is a voluntary activity; it is for individual parish councils, community organisations or businesses to choose to produce, lead or participate in the

production of a neighbourhood development plan or neighbourhood development order (including a community right to build order). There is no new additional direct cost to businesses or civil society organisations arising from the reforms.

- 10.5 Funding has been identified to support those local authorities that incur additional burdens as a result of the duties imposed under the 1990 Act and 2004 Act in relation to neighbourhood planning. We have carried out a new Burdens Assessment for the new regulations, and on the basis of this we do not consider that our reforms are introducing a requirement for additional administration or expenditure by local authorities. Authorities will be required to make decisions within certain time limits. In many cases they are already meeting these timescales, however there are a minority of cases where the timescales are not currently met and local authorities will need to make decisions more quickly than in the past. This is likely to be possible in a number of ways, including greater delegation of decision-making in line with government planning guidance.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.
- 11.2 Neighbourhood planning is entirely voluntary. It is for individual businesses and employees to choose whether or not they wish to participate they choose their involvement and the level of it freely. The proposals do not give rise to any additional requirements or costs on business.

12. Monitoring & review

- 12.1 These Regulations do not contain provision for review and section 28 of the Small Business, Enterprise and Employment Act 2015 (duty to review regulatory provisions in secondary legislation) does not apply as these Regulations do not make regulatory provision in relation to any qualifying activity or amend regulatory provision made in relation to any qualifying activity. Neighbourhood planning is an activity that may be carried on by a voluntary or community body but these Regulations do not place any additional requirements on business or voluntary or community bodies.
- 12.2 The Government is committed to speeding up and simplifying the neighbourhood planning process. If evidence suggests that these measures are not effective, further measures will be considered as appropriate.

13. Contact

- 13.1 Jenny Frew at the Department for Communities and Local Government Tel: 0303 444 1343 or email: jenny.frew@communities.gsi.gov.uk can answer any queries regarding the instrument.