

EXPLANATORY MEMORANDUM TO
THE COMBINED AUTHORITIES (SPATIAL DEVELOPMENT STRATEGY)
REGULATIONS 2018

2018 No. 827

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 This instrument makes provision in relation to the spatial development strategies for the combined authorities of Greater Manchester, Liverpool City Region and the West of England. The instrument provides for the form and content of the spatial development strategy, the procedures to be followed in relation to the preparation, withdrawal, publication, making, review, alteration or replacement of the strategy, and for the availability of certain documents related to the strategy.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters of special interest to the House of Commons

- 3.2 This entire instrument applies only to England.
- 3.3 As this instrument is subject to negative resolution 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 Part 6 of the Local Democracy, Economic Development and Construction Act 2009 (“the 2009 Act”), as amended by the Cities and Local Government Devolution Act 2016, provides for the establishment of combined authorities for the areas of two or more local authorities in England. Combined authorities are bodies corporate which may be given power to exercise specified functions of a local authority, and power to exercise functions of any other public authority. Mayoral combined authorities are chaired by a mayor for the area of the combined authority who is elected by the local government electors for the area of a combined authority.
- 4.2 Three mayoral combined authorities have been given, by Order, the power to exercise in their area the functions relating to spatial development strategies that were given to the Mayor of London by the Greater London Authority Act 1999 (“the 1999 Act”). Specifically, these functions are set out in:
- section 334 (the spatial development strategy);
 - section 335 (public participation);
 - section 336 (withdrawal);

- section 337 (publication);
 - section 338 (examination in public);
 - section 339 (review of matters affecting the strategy);
 - section 340 (reviews of the strategy);
 - section 341 (alteration or replacement);
 - section 342 (matters to which the Mayor is to have regard);
 - section 346 (monitoring and data collection); and
 - section 348 (Mayor's functions as to planning).
- 4.3 The three mayoral combined authorities are for Greater Manchester, Liverpool City Region and the West of England. The Orders that gave these powers to the mayoral combined authorities are the Greater Manchester Combined Authority (Functions and Amendment) Order 2016 (SI 2016/1267), the Liverpool City Region Combined Authority (Functions and Amendment) Order 2017 (SI 2017/430) and the West of England Combined Authority Order 2017 (SI 2017/126).
- 4.4 In each area, the functions relating to the spatial development strategy are functions that must be exercised by the Mayor for the area of the combined authority. In addition, for the Mayor to publish a spatial development strategy, the Mayor must have the unanimous support of the constituent council members of the combined authority. The Mayor is required to review the strategy from time to time or at the direction of the Secretary of State and must secure the unanimous support for these reviews.
- 4.5 This instrument sets out the detail in relation to the production of the spatial development strategy by the Mayor of the Greater Manchester Combined Authority, the Mayor of the Liverpool City Region Combined Authority and the Mayor of the West of England Combined Authority for their area. The instrument largely mirrors the Town and Country Planning (London Spatial Development Strategy) Regulations 2000 (SI 2000/1491) ("the London Spatial Development Strategy Regulations"). In addition the instrument makes provision for the publication of diagrams so that the strategy may contain diagrams on a map base to identify strategic allocations.
- 4.6 The legislation refers to the combined authority, as the body to which the functions are legally conferred, but the Schedule containing the prescribed forms states that 'the Mayor of the combined authority' has prepared, published and issued proposals for amendment and replacement. This is in the interest of clarity and transparency for members of the public because these combined authority functions are exercisable by the Mayor.

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.

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 These Regulations enable the Mayors of the Greater Manchester, Liverpool City Region and West of England Combined Authorities to exercise their powers to produce and amend spatial development strategies by specifying the required form, content and procedure for a spatial development strategy and requirements for the availability of documents. The Department has worked with each Combined Authority whilst drafting this instrument and although there is no requirement for their consent to these Regulations, they are content with the instrument.
- 7.2 These Regulations mirror those that enable the Mayor of London to produce and amend the London Spatial Development Strategy, which are summarised below:
- The form and content of the spatial development strategy are specified including that its title must include the words ‘spatial development strategy’, and that it must include a reasoned justification of the Mayor’s strategy. The documents and considerations to which the strategy must have regard are also listed.
 - The procedure for the spatial development strategy is set out. The Mayor and each planning authority of the constituent councils of the combined authority must advertise its strategy, make it available for inspection at their principal offices and send it to Natural England, the Environment Agency and Historic England. Following a 12 week period of representations, or 6 weeks if the proposed alterations are minor, the Mayor must make available for inspection a copy of each of the representations until the proposed strategy is published or withdrawn.
 - As soon as the Secretary of State has appointed a panel to conduct the examination in public, the Mayor will send the panel a copy of all the representations. At least 12 weeks before the examinations and after consulting the Mayor, the panel will publish and advertise a draft list of the matters to be examined and the people who will be invited to the examination, and invite representations on that draft list. At least six weeks before the examination, and after consulting the Mayor, the panel must notify those persons invited to take part, publish and advertise a list of the matters to be examined, and invite written submissions. The report of the panel must be sent to the Mayor and the Secretary of State, and within eight weeks the Mayor must make the report available for inspection and send it to the constituent councils.
 - The Mayor shall not publish their strategy until they have sent to the Secretary of State (a) a statement of their intention to publish (b) a copy of the strategy and (c) a statement of reasons if any panel recommendations have not been accepted, and a period of at least six weeks has elapsed since the Secretary of States has received the documents. The Mayor must advertise that the strategy is to be published, make available the relevant documentation and send that documentation to the Secretary of State and the constituent councils. To withdraw a strategy, the Mayor must give notice by advertisement.
 - A number of requirements are specified in relation to the duty to make documents available and the availability of the strategy after publication.

- 7.3 In addition to the provisions from the London Spatial Development Strategy Regulations described above, these Regulations make provision for the publication of diagrams so that strategies may contain diagrams that use a map base to identify strategic allocations. This is in line with the policies set out in the February 2017 Housing White Paper “Fixing Our Broken Housing Market”.¹ This states that in order to make plans easier to produce, the Government plans to enable spatial development strategies, produced by new combined authorities or elected Mayors, to allocate strategic sites. This is only applicable where these strategies require unanimous agreement of members of the combined authority concerned, which is the case in each of these combined authorities.
- 7.4 The provisions have also been updated to reflect the need for strategies to be advertised on the combined authorities’ websites which was not standard practice in 2000 when the London Spatial Development Strategy regulations were published.

8. Consultation outcome

- 8.1 There is no requirement for consultation when making these Regulations although the combined authorities support the provisions including the changes from the regulations for the London Spatial Development Strategy. However, as consultations were undertaken by the combined authorities before the spatial development strategy functions were conferred, and referred to in the Explanatory Memorandums accompanying the Orders that conferred these powers, they are described below. There was also a Government consultation in relation to combined authorities being able to make strategic allocations in spatial development strategies, and this is described below. These Regulations make provisions relating to the examination in public of the spatial development strategies. Accordingly, the Lord Chancellor has been consulted who has raised no issues.
- 8.2 In Greater Manchester the consultation ran for 8 weeks from 21 March to 18 May 2016. Of the 50 respondents who commented on Greater Manchester Combined Authority’s planning, housing and regeneration proposals with comments that were in-scope, 74 per cent were supportive of the proposals as a whole. Of the 17 key stakeholders, 12 were supportive (including the National Housing Federation and the Homes and Communities Agency – now Homes England), and one unnamed key stakeholder did not support the proposals.
- 8.3 In the Liverpool City Region the consultation ran for 6 weeks from 24 June to 5 August 2016. In relation to the proposals on housing and planning there were 182 responses, and 74 per cent responded positively, including all the key stakeholders. There were 24 positive consultation responses specifically regarding the Spatial Framework element of their proposals, and four negative consultation responses, with comments made in relation to Compulsory Purchase Orders, land transfer, the Land Commission and Mayoral Development Corporations. Riverside Group (a housing association) welcomed the development of a Spatial Framework in the context of building a strategic partnership on housing at city region level. The Homes and Communities Agency (now Homes England) also supported conferral of these responsibilities.
- 8.4 In the West of England the consultation ran for six weeks from 4 July to 15 August 2016. One question asked respondents whether they thought the mayoral combined

¹ <https://www.gov.uk/government/publications/fixing-our-broken-housing-market>

authority would improve planning processes and decisions so that the right houses were built in the right places. 47 per cent of respondents thought that it would, 35 per cent of respondents thought it would not, and 17 per cent of respondents did not know. Among those who thought it would not concerns were raised about decisions no longer being taken locally and a lack of confidence in a mayoral combined authority being able to deliver within the planning system.

- 8.5 With the publication of the Housing White Paper on 7 February 2017, the Government launched a consultation on changes to planning policy and legislation in relation to planning for housing, sustainable development and the environment. This consultation, which closed on 2 May 2017, set out 38 principal consultation questions. Respondents were invited to reply online using an internet survey or to email or post written comments. There were 1,393 responses to the Housing White Paper consultation, including 300 from local authorities. On 5 March 2018 the Government published a summary of consultation responses and the Government's view on the way forward.²
- 8.6 The consultation asked if respondents agreed with proposals to use regulations to allow spatial development strategies to allocate strategic sites, where these strategies require unanimous agreement of the members of the combined authority. There were 768 responses to this question, and considerable support (64 per cent) for the proposal. Most respondents agreed that spatial development strategies should be allowed to allocate sites only if the spatial development strategy was subject to unanimous agreement from the combined authority, although some developers were concerned this could cause delay. A number of local authorities, voluntary bodies and individuals pointed to the need to ensure public involvement, accountability and/or scrutiny in spatial development strategy preparation, and to maintain safeguards such as sustainability appraisal or strategic environmental assessment. Some respondents wanted clarity on the term 'strategic site'.

9. Guidance

- 9.1 No guidance is necessary to accompany these Regulations. The Government continues to work with the mayoral combined authorities to support their implementation of the devolution deals.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is that it will enable the Mayors of the Greater Manchester, Liverpool City Region and West of England Combined Authorities to publish spatial development strategies, which act as the framework for managing planning across the area of the combined authority, and the future development of Local Plans. This will allow for the appropriate development of the necessary homes and services to meet the needs of the 5.2 million people living in these city regions.
- 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.

² <https://www.gov.uk/government/consultations/fixing-our-broken-housing-market-consultation>

12. Monitoring & review

- 12.1 The combined authorities are required under the devolution agreements reached with Government to put in place an extensive programme of evaluation, agreed with HM Treasury, of the devolution agreements.

13. Contact

- 13.1 Nick Humfrey at the Ministry of Housing, Communities and Local Government, Telephone: 0303 44 44826 or email: nick.humfrey@communities.gsi.gov.uk can answer any queries regarding the instrument.