

EXPLANATORY MEMORANDUM TO

THE INFRASTRUCTURE PLANNING (PUBLICATION AND NOTIFICATION OF APPLICATIONS ETC.) (CORONAVIRUS) (AMENDMENT) REGULATIONS

2020 No. 764

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

2. Purpose of the instrument

- 2.1 The Infrastructure Planning (Publication and Notification of Applications etc.) (Coronavirus) (Amendment) Regulations 2020 amend, on a temporary basis, certain requirements placed on applicants (and the Secretary of State, where appropriate) to make certain documents available at places, including in the vicinity of a proposed project for inspection. The amendments provide that the relevant documents will be made available on a website. The amendments will apply until 31st December 2020. The instrument is necessary because of the restrictions on movement and accessibility that have resulted from the coronavirus pandemic.
- 2.2 The instrument amends the following Regulations:
 - The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (SI 2009/2264)
 - The Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 (SI 2011/2055)
 - The Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (SI 2010/104)
 - The Infrastructure Planning (Environmental Impact Assessment) Regulations (SI 2017/572)
- 2.3 The amendments apply in respect of (1) proposed and accepted applications for a Development Consent Order ('DCO'), (2) applications for non-material changes to a DCO, (3) proposed and actual applications for a material change to, or revocation of, a DCO and amendments proposed to DCOs in exceptional circumstances and (4) procedure for a DCO application where it is proposed to include in the DCO the compulsory purchase of additional land which was not identified and included in the book of reference at the time of the DCO application and which has not been consented to by all persons with an interest in the proposed additional land. The amendments also apply to (5) accepted applications for a DCO where a screening opinion did not take account of all relevant information or an environmental statement is inadequate, and (6) a subsequent application for development is made which requires an updated environmental statement or further information in addition to the updated environmental statement.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument is being laid in breach of the 21-day rule, which requires instruments to be laid at least 21 days before they come into effect. This is necessary because the temporary amendments are urgently required to assist the progressing of the procedural steps relating to proposed and made DCOs (and proposed changes to DCOs) required for nationally significant infrastructure projects (specifically the procedural steps relating to meet statutory obligations to make documents available at a place for inspection) during the coronavirus pandemic. Without these amendments coming into immediate effect, there could be delays to decisions on nationally significant infrastructure development. New nationally significant infrastructure development has the potential to support the UK's economic recovery.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales, and Scotland for limited purposes in accordance with the scope of the Planning Act 2008 (section 240).
- 4.2 The territorial application of this instrument is England and Wales, and Scotland for limited purposes in accordance with the scope of the Planning Act 2008 (section 240).

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 Regulation 4 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 ('the 2009 Regulations') requires an applicant to publicise a proposed DCO application. It requires the applicant to publish a notice of the proposed application and prescribes the matters to be included in the notice, including a statement that the documents, plans and maps showing the nature and location of the proposed development are available for inspection free of charge at the places (including at least one address in the vicinity of the proposed development) and times set out in the notice. Similarly, regulation 8 (when read with section 56(2) of the Planning Act 2008) and regulation 9 of the 2009 Regulations respectively require an applicant to give notice of and publicise a DCO application which has been accepted by the Secretary of State for examination, and prescribe that the notices must state that a copy of the application form and its accompanying documents, plans and maps are available for inspection free of charge at the places (including at least one address in the vicinity of the proposed development) and times set out in the notice.
- 6.2 In response to coronavirus, this instrument amends those requirements in the 2009 Regulations to remove the obligation on the applicant to include in the notice addresses where the documentation is available for inspection. The notice must

specify that the documents are available free of charge on a website, the address of the website and the place on the website where the documents may be accessed: for a proposed application, the website must be one maintained by or on behalf of the applicant; for an accepted application, the website must be one maintained by or on behalf of the Secretary of State. Further, the notice must also indicate a telephone number which can be used to contact the applicant with any enquiries in relation to the documents.

- 6.3 Regulation 6 of the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 ('the 2011 Regulations') requires an applicant to publicise an application made to the Secretary of State to make a non-material change to a DCO. It requires the applicant to publish a notice of the non-material change application and prescribes the matters to be included in the notice, including a statement that the documents, plans and maps showing the nature and location of the land, and accompanying the application, are available for inspection on a website and also, free of charge, at the places (including at least one address in the vicinity of the proposed development) and times set out in the notice.
- 6.4 Regulation 14 of the 2011 Regulations requires an applicant to publicise a proposed application for a material change to a DCO. It requires the applicant to publish a notice of the proposed application and prescribes the matters to be included in the notice, including a statement that the documents, plans and maps showing the nature and location of the land are available free of charge at the places (including at least one address in the vicinity of the proposed development) and the times set out in the notice. Similarly, regulations 19, and 20 respectively require an applicant to give notice of and publicise, a submitted application for a material change to a DCO, and prescribe that the notices must state that a copy of the application and its accompanying documents, plans and maps are available for inspection free of charge at the places (including at least one address in the vicinity of the land) and times set out in the notice.
- 6.5 Regulations 55 and 56 of the 2011 Regulations respectively require the Secretary of State to give notice and publicise that they are considering making a material change to a DCO without an application having been made due to exceptional circumstances. It requires the Secretary of State to publish a notice, which must include a statement that a copy of the proposed order and any accompanying documents, plans and maps are available for inspection free of charge at the places (including at least one address in the vicinity of the land) and times set out in the notice.
- 6.6 In response to coronavirus, this instrument amends those requirements in the 2011 Regulations to remove the obligation on the applicant (or the Secretary of State in the case of regulations 55 and 56) to include in the notices the addresses where the documentation is available for inspection. The notice must specify that the documents are available free of charge on a website, the address of the website and the place on the website where the documents may be accessed. In the case of Regulation 14, the website must be one maintained by or on behalf of the applicant; in the case of Regulations 6, 19, 20, 55 and 56, the website must be one maintained by or on behalf of the Secretary of State. Further, each notice must also indicate a telephone number which can be used to contact the applicant (or the Secretary of State, or their representative, in the case of regulations 55 and 56) with any enquiries in relation to the documents.

- 6.7 Regulations 7 and 8 of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 ('the 2010 Regulations') respectively require an applicant to give notice of and publicise the proposed provision for additional land to be subject to compulsory acquisition which was not identified and included in the book of reference at the time of their original DCO application and which has not been consented to by all persons with an interest in the proposed additional land. The regulations prescribe the matters to be included within the notices, including a statement that a copy of the proposed provision, the map, the revised draft order and any information submitted with the proposed provision are available for inspection free of charge at the places (including at least one address in the vicinity of the additional land) and times set out in the notice.
- 6.8 In response to coronavirus, this instrument amends those requirements in the 2010 Regulations to remove the obligation on the applicant to include in the notice the addresses where the documentation is available for inspection. The notice must specify that the documents are available free of charge on a website maintained by or on behalf of the Secretary of State, the address of the website and the place on the website where the documents may be accessed. Further, the notice must also indicate a telephone number which can be used to contact the applicant with any enquiries in relation to the documents.
- 6.9 The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ('the 2017 Regulations') transpose Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment ('the EIA Directive') and its subsequent amendment by Directive 2014/52/EU, in respect of the nationally significant infrastructure project regime. The 2017 Regulations set out the requirements for the publicity and inspection of environmental statements and related documents, as part of the process for relevant EIA development.
- 6.10 The relevant publicity requirements in the 2017 Regulations are specified in regulations 19, 20, 22 and 24.
- 6.11 Regulation 19 of the 2017 Regulations requires an applicant to publicise that consideration of their DCO application has been suspended until an environmental statement has been provided and publicised. The regulation requires the applicant to include within the notice certain information, including that the environmental statement is available for inspection free of charge at the places (including at least one address in the vicinity of the proposed development) and times set out in the notice. Similarly, regulation 20 of the 2017 Regulations requires an applicant to publicise that consideration of their DCO application has been suspended until further information and any other information required for the environmental statement has been provided and publicised. The regulation requires the applicant to include within the notice certain information, including that the environmental statement, the further information and any other information are available for inspection free of charge at the places (including at least one address in the vicinity of the proposed development) and times set out in the notice.
- 6.12 Regulation 22 of the 2017 Regulations requires an applicant to publicise that they are making a subsequent application (being an application for approval of a matter in pursuance of a requirement imposed by a DCO) which requires an update to the environmental statement. An application for a material change to a DCO is also treated as a subsequent application for the purpose of regulation 22 of the 2017

Regulations (pursuant to regulation 17 of the 2011 Regulations). Regulation 22 of the 2017 Regulations requires the applicant to include within the notice certain information, including that the updated environmental statement and supporting documents are available free of charge at the places (including at least one address in the vicinity of the proposed development) and times set out in the notice. Similarly, regulation 24 of the 2017 Regulations requires an applicant to publicise that consideration of their subsequent application is suspended, pending additional information required for the updated environmental statement being provided and publicised. Again, an application for a material change to a DCO is also treated as a subsequent application for the purpose of regulation 24 of the 2017 Regulations. Regulation 24 of the 2017 Regulations requires the applicant to include within the notice certain information, including that the updated environmental statement and supporting documents are available for inspection free of charge at the places (including at least one address in the vicinity of the proposed development) and times set out in the notice.

- 6.13 In response to coronavirus, this instrument amends those requirements in the 2017 Regulations to remove the obligation on the applicant to include in the notices the addresses where the documentation is available for inspection. The notice must specify that the documents are available free of charge on a website maintained by or on behalf of the Secretary of State or relevant authority (as appropriate), the address of the website and the place on the website where the documents may be accessed. Further, the notices must indicate a telephone number which can be used to contact the applicant with any enquiries in relation to the documents.
- 6.14 The instrument also disapplies regulation 27(1) to remove the obligation on the applicant to make a reasonable number of copies of the environmental statement or an updated environmental statement available at specified addresses.
- 6.15 The amendments are compatible with the EIA Directive and Directive 2014/52/EU and only apply for a limited period of time.
- 6.16 Regulation 6 of the instrument makes transitional provision. The effect of regulation 6 is that, where there has been partial compliance with a particular notification or publication duty (listed in regulation 6(3)) at the time when the amendments in this instrument either take effect or cease to have effect, the outstanding compliance will be subject to the requirements of that duty as they stood at the time of the partial compliance.

7. Policy background

What is being done and why?

- 7.1 Consultation, transparency and community engagement are key to effective decision-making in the nationally significant infrastructure project regime under the Planning Act 2008. Effective consultation helps inform good and responsible decision making and ensures that those decisions and the actions that flow from them properly reflect and respond to the needs of the local community. The views of the public about the potential impact of development helps to ensure that decision-makers have relevant information to allow them to reach a sound decision.
- 7.2 Public consultation is embedded in the nationally significant infrastructure project regime. At various stages, applicants (and the Secretary of State where relevant) are required to make documents available at places (including at least one address in the

vicinity of the land affected by the proposal) for physical inspection. However, the effects of the coronavirus pandemic, including restrictions on movement from social distancing, have made it more difficult for applicants (and the Secretary of State where relevant) to discharge the statutory requirements to publicise applications by making certain documents available at specified places for physical inspection. This is because the social distancing requirements in response to the coronavirus pandemic have resulted in many public buildings being closed temporarily. Even if, as restrictions are eased, some suitable buildings in the vicinity of the relevant land were to open, members of the community, especially people who have been identified as clinically extremely vulnerable, may be unable or unwilling to travel to such places in order to view the relevant documentation for some time.

- 7.3 Changes in social distancing guidelines that came into force on 4th July 2020 have given an opportunity for some venues used for document display and inspection to open. However, not all of these venues will necessarily open and on-going social distancing requirements may make these sites less accessible than before. In addition to this, there is the possibility of such measures being introduced in local areas in the future if the Government considers it necessary to do so (for example, the Government's announcement on 29th June 2020 extending or reintroducing localised coronavirus lockdown measures in and around Leicester). This means the next phase of the response to the coronavirus pandemic may involve local variation in the accessibility of sites for document display.
- 7.4 This instrument temporarily removes various publicity and notification requirements in the Regulations set out in paragraph 2.2 above and as described in more detail in section 6 above. The requirements in question relate to obligations on applicants (or Secretary of State where relevant) to put documents at specified locations including in the vicinity of the proposed project for inspection at certain procedural stages for proposed or made DCOs (or changes to DCOs). Instead, the relevant documents must be made available for inspection on a website maintained by or on behalf of either the applicant or the Secretary of State (depending on the procedural step concerned). The documents must be available for online inspection free of charge and with a telephone number which can be called to raise any enquiries in relation to the relevant documentation.
- 7.5 As is currently the case, copies of any of the documents referred to in the regulations amended by the instrument should be provided by the applicant or the Secretary of State (as the case may be) on request and a charge may be applied.
- 7.6 The changes could have the potential to reduce access to information, and the ability to make representations, for those people who do not have internet access at home. However, the effects of coronavirus, including restrictions on movement, have made it practically difficult for these people to access the traditional route of inspecting documents at a place in the vicinity of the relevant land. Accordingly, we consider the measures in the instrument to be justified to ensure the nationally significant infrastructure planning regime continues to function. The measures are considered to be proportionate and meet a fair balance between the potential impact on the ability of individuals to participate in decision making which may affect them and the wider public interest during the response to the coronavirus pandemic.
- 7.7 The transitional provision is needed because completion of the various steps required by the notification and publication duties may take place over successive weeks and may therefore straddle the coming into force of the instrument, or the amendments

within it ceasing to have effect. It will likely only apply to a limited number of cases considering the narrow circumstances under which it is triggered. It is considered necessary to mitigate the risk of applicants (or the Secretary of State, as the case may be) beginning to comply with a particular notification or publication duty and having to begin again if, during that process, the amendments in the instrument either come into force or cease to have effect, thereby changing the requirements of that duty, with consequent potential delay to development under the NSIP regime. Once the process of complying with a particular notification or publication duty has begun, the process should be completed under the requirements as they stood at that point in time.

- 7.8 The temporary changes to the publicity and notification requirements provided by this instrument expire on 31st December 2020.
- 7.9 Guidance will be published by MHCLG to coincide with this instrument coming into force that will encourage applicants to engage proactively with local authorities and local communities to find alternative means to provide access to the documentation where required, to ensure on-going fair participation in the planning process.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 There are no current plans for a consolidation.

10. Consultation outcome

- 10.1 The temporary measures being urgently brought forward in this amending instrument have been drafted in response to concerns about meeting statutory publicity and notification requirements given the effects of the coronavirus pandemic, including restrictions on movement and accessibility. Given the urgent timescales, no formal public consultation has been carried out on the proposed changes. The changes made by the instrument have been supported by the National Infrastructure Planning Association.

11. Guidance

- 11.1 Guidance will be published by the Ministry of Housing, Communities and Local Government to coincide with this instrument coming into force.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies. The changes made by the instrument are temporary and are not anticipated to cause a cost to business of greater than £5 million.
- 12.2 There is no, or no significant, impact on the public sector. The changes made by the instrument are temporary and the changes are focussed on assisting applicants to bring forward nationally significant infrastructure projects and to facilitate public consultation on such projects during the coronavirus pandemic.

12.3 An Impact Assessment has not been prepared for this instrument because there is no, or no significant, impact on business, charities or voluntary bodies and the changes made are temporary for less than 12 months.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses. The legislation relates to proposed large-scale nationally significant infrastructure projects as provided for in the Planning Act 2008.

14. Monitoring & review

14.1 The amendments in this instrument are temporary and take effect only until 31st December 2020. Its impact will be kept under review.

15. Contact

15.1 Kate Johnson at the Ministry of Housing, Communities and Local Government Telephone: 0303 444 2588 or email: kate.johnson@communities.gov.uk can be contacted with any queries regarding the instrument.

15.2 Jenny Preece, Deputy Director for Planning-Infrastructure at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

15.3 Christopher Pincher, Minister of State at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.