

EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (BORDER FACILITIES AND INFRASTRUCTURE) (EU EXIT) (ENGLAND) SPECIAL DEVELOPMENT ORDER 2020

2020 No. 928

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 From January 2021 new border controls will be introduced for all goods imported from the European Union (EU). This instrument grants temporary planning permission for development consisting of the use of land, in specified parts of England, for border processing and the associated stationing of vehicles (particularly goods vehicles) entering or leaving Great Britain, and the provision of facilities and infrastructure associated with this use. The use must in each case be approved by the Secretary of State for Housing Communities and Local Government (SSHCLG); the development can only be carried out by or on behalf of defined border departments; it must end by 31 December 2025; and all reinstatement works must be completed no later than 31 December 2026.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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.
4.2 The territorial application of this instrument is England only.

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 The establishment of border processing facilities will typically involve a material change in the use of land and operational development on sites: both of these

constitute development for the purposes of section 55 of the Town and Country Planning Act 1990 (“TCPA”) and therefore planning permission is required before they can be progressed. There are a number of different routes by which planning permission can be given. Some involve legislation; others, an administrative application under existing legislation such as TCPA. The Special Development Order route has been chosen in this case because it allows permission to be granted in a timely manner (in view of the urgent need for border processing facilities to be developed) whilst also providing effective mechanisms to ensure development is appropriate. The same route was used in 2019 to grant planning permission for border processing facilities that might have become necessary if the United Kingdom (UK) had exited the European Union (EU) without a transition period (see. S.I.s 2019/1228, 1230 and 1231).

7. Policy background

What is being done and why?

- 7.1 The UK left the EU on 31 January 2020. A transition period is now in place until 31 December 2020. During this period the UK must comply with all EU rules and laws. There will be changes after the transition period, whether or not an agreement is reached on the new relationship between the UK and the EU. This Special Development Order is an important component of the Government’s preparations for an orderly transition to the new system of controls to secure the border of Great Britain from 1 January 2021.
- 7.2 From 1 January 2021 the UK will introduce new controls that apply to all goods imported from the EU. This will require building new border facilities in Great Britain for carrying out required checks, such as customs compliance, transit, and Sanitary and Phytosanitary (SPS) checks. While port operators would normally provide the border facilities, there is limited space for the new facilities at some ports. Additionally, the Government is aware that the impact of coronavirus may have affected the ability of port operators and businesses to provide the necessary infrastructure by the end of the year.
- 7.3 The integrity of the border is essential for the security of the UK and one of the primary defences against a range of threats. It is also used to enforce international sanctions and embargoes, supporting the UK’s foreign policy and national security objectives. Where there is limited space at ports for new infrastructure, the Government will provide new inland sites where checks and other border processes will take place.
- 7.4 Special Development Orders are a long-established part of the planning system, designed for handling planning proposals of national significance. This Special Development Order will expedite the planning process and is therefore critical to the urgent delivery of nationally important border facilities. The temporary planning permission granted by the SDO can only be implemented by, or on behalf of, Her Majesty’s Revenue and Customs, the Department for Business, Energy and Industrial Strategy, the Department of the Environment, Food and Rural Affairs and the Department for Transport (defined as border departments in the Special Development Order).
- 7.5 The Government continues to engage with port operators to understand further the capacity at ports to accommodate and deliver the required infrastructure from January

2021. Consequently, the Government is evaluating the exact number and location of sites it will need to deliver. The land to which the Special Development Order applies has access to the strategic road network serving those ports with relevant EU trade and where the Government is not yet able to conclude that border facilities are required and can be delivered within those ports. The Government may, therefore, need to provide the facilities inland.

- 7.6 The planning permission is subject to several conditions. Development that would have significant effects on the environment is not permitted nor is development permitted on land within sensitive areas such as protected environmental habitats, National Parks, Areas of Outstanding Natural Beauty, and European sites.
- 7.7 The SSHCLG's approval must be sought and given before the development of a specific site can start. For the SSHCLG to consider such a request the border department will need to submit an evidenced proposal for his consideration. By way of example, the submission will need to confirm that the environmental effects of the development accord with the conditions of the planning permission. The permission also requires SSHCLG's separate approval of a Construction Management Plan (CMP), Operational Management Plan (OMP), and Reinstatement Plan to control the effects of the development during its lifecycle.

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

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because it relates to preparations for an orderly transition to the new system of controls to secure the border of Great Britain from 1 January 2021.

9. Consolidation

- 9.1 Not applicable.

10. Consultation outcome

- 10.1 The Town and Country Planning Act 1990 does not impose a statutory requirement to consult before making a Special Development Order. The urgent need for border facilities to be in place prior to the ending of the Transition Period, taken with the detailed work needed before the Special Development Order could be made, meant that engagement on the provisions of the Special Development Order has not been possible.
- 10.2 There has, however, been significant engagement in order to gather industry insight to inform the need for, and location of, inland border facilities provided directly by Government. Government officials have had numerous discussions with a range of stakeholders including individual ports and established government forums with industry. Additionally, a video conference with around 200 representatives from the border industry were provided information on the Government's plans and an opportunity to comment; participants were encouraged to respond further in writing. The Government continues to engage with port operators to understand the capacity at ports to accommodate and deliver the required infrastructure from January 2021 and has started local engagement on the suitability and feasibility of prospective sites.

10.3 Substantive engagement is a requirement on the relevant border department ahead of seeking approval for any site-specific proposal from the SSHCLG. The Special Development Order sets out those who must be given an opportunity to comment on the proposed development. These parties include, for example, owners and occupiers adjacent to the site and on access routes to the site (residents, businesses and others), the relevant parish council, the local planning, highway, police and fire authorities, and the statutory environmental bodies. A report on engagement with these parties, and their views, must be included in a submission for a site-specific approval by the SSHCLG.

11. Guidance

11.1 Not relevant.

12. Impact

12.1 No significant long-term impact is expected from this instrument as it is a temporary measure. This instrument does not place any additional regulatory burden upon the private or public sector.

12.2 This instrument grants temporary permission for inland border facilities and infrastructure associated with this use that are urgently needed and of national importance in respect of security and the trade of goods, including essential goods. The Order does not affect landowner or existing occupiers' commercial rights. The use of any specific site will be negotiated by the with the landowner by a third-party mediator (acting for the relevant border department) on market-rate terms and will not disrupt any existing business operations without compensation.

12.3 Through the granting of permission this instrument enables public bodies to carry out and enforce the new border controls that will apply to all goods imported to Great Britain from the EU at the end of the Transition Period. It includes measures and conditions as summarised in section 7 above to control the effects of the development during its lifecycle.

13. Regulating small business

13.1 This instrument does not place any additional regulatory burdens upon small businesses.

14. Monitoring & review

14.1 This instrument does not include a statutory review clause as the instrument is not regulatory in nature.

15. Contact

15.1 Michael Salmon at the Ministry of Housing, Communities and Local Government Telephone: 0303 444 2891 or email: Michael.salmon@communities.gov.uk can be contacted with any queries regarding the instrument.

15.2 Simon Gallagher, Director of Planning, at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rt Hon Robert Jenrick MP, Secretary of State for Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.