

**EXPLANATORY MEMORANDUM TO  
THE COMMONS (TOWN AND VILLAGE GREENS) (TRIGGER AND  
TERMINATING EVENTS) ORDER**

**2013 No. [XXXX]**

1. This explanatory memorandum has been prepared by the Department of Communities and Local Government and is laid before Parliament by Command of Her Majesty.

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

2. **Purpose of the instrument**

2.1 The right under section 15(1) of the Commons Act 2006 to register land as a town or village green is restricted where development of land is proposed or permitted under the planning system, including where land is allocated for development in a draft local or neighbourhood development plan. This Order will set out a time limit, in respect of draft plans, after which the right to apply for town or village green registration will resume. The Order will also extend the protection from town or village green registration to development proposed or permitted by Local Development Orders, Neighbourhood Development Orders and orders under the Transport and Works Act 1992.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 This is first exercise of powers under section 15C(5) of the Commons Act 2006 enabling the Secretary of State to amend provisions on the exclusion of the right to make a town and village green application.

4. **Legislative Context**

4.1 Section 15(1) of the Commons Act 2006 (“the 2006 Act”) provides a right to apply for registration of land as a town or village green. Section 16 and Schedule 4 of the Growth and Infrastructure Act 2013 (“the 2013 Act”) introduced a new section 15C and Schedule 1A into the 2006 Act restricting the right to apply for registration of land as a green where one of a number of specified events (“trigger events”) in the planning system occurs. The restriction lifts if and when one of a set of further events in that system (“terminating events”) subsequently occurs in respect of the land.

4.2 Section 15C(5)(a) of the 2006 Act provides power for the Secretary of State to specify additional trigger or terminating events. Section 15C(7) provides that the transitional provision that may be included in an order

specifying additional events allows provision to be made in respect of events that have occurred before the order is made or comes into force.

4.3 During Parliamentary proceedings of the Growth and Infrastructure Bill (as it was) Baroness Hanham undertook to consult on using this power during Lords committee debate on 30 January 2013

<http://www.publications.parliament.uk/pa/ld201213/ldhansrd/lhan104.pdf>

4.4 Following consideration of responses to that consultation, this Order adds additional trigger and terminating events into Schedule 1A and includes provision that these events should be treated as having occurred whether or not they will have occurred before the Order comes into force. This means that, from the date on which the Order comes into force, an application for registration of a town or village green cannot be made in respect of land on which one of the additional trigger events has occurred. The Order makes clear that any application sent before the date on which the Order comes into force will be unaffected. As noted above, this the first use of both the power conferred by section 15C(5)(a) and (7) of the 2006 Act.

## **5. Territorial Extent and Application**

5.1 This instrument applies to England.

## **6. European Convention on Human Rights**

6.1 The Secretary of State for Communities and Local Government has made the following statement regarding Human Rights:

In my view the provisions of the Commons (Town and Village Greens) (Trigger and Terminating Events) Order 2013 are compatible with the Convention rights.

## **7. Policy background**

- What is being done and why

7.1 Applications for town or village green registration can cut across development that is proposed or has received planning permission, resulting in delay, uncertainty and costs to those concerned. This undermines the Government's objective that decisions on the use and development of land should be taken through the planning system, where all material considerations can be taken into account; and that overlapping consent regimes should be addressed.

7.2 Accordingly, the 2013 Act reformed the system for making applications to register land as a new town or village green. This will help stop the misuse of town and village green applications that undermine planned development, whilst protecting its use to safeguard cherished community spaces and ensure the protection of genuine town and village greens. The effect of the reforms is that the right to apply for registration of land as a town or village green is excluded if

any of a number of specified “trigger events” in the planning system occur; with the right to apply for registration resuming if and when one of a number of specified “terminating events” occurs. The 2013 Act covered what are considered to be the main planning processes (namely, applications for planning permission, local and neighbourhood plans, and nationally significant infrastructure projects).

7.3 The government’s intention is that where there is no proposal for development on the land in question, or when a development proposal has been considered, rejected and the right to appeal has run its course, then an application to register the land as a town or village green can be considered in the normal way. However, certain situations can arise in plan-making that are unlikely to be common, but which, if they occurred, would mean that the exclusion failed to lift even when there was no longer a development proposal.

7.4 On 30 January 2013 Baroness Hanham announced in Parliament the Government’s intention to consult on adding new terminating events to deal with the situation where the exclusion could remain in place if draft plans are not taken forward. Accordingly, the Order includes additional catch all terminating events in relation to draft local and neighbourhood development plans, so that if a local plan is not adopted or a neighbourhood plan is not made by the end of the period of two years beginning with the day on which a draft is published for consultation by the local planning authority, the right to make an application for town or village green application may resume.

7.5 The Minister also announced the Government’s intention to consult on setting additional trigger and terminating events in order to protect development proposed or permitted by virtue of three planning procedures not initially included in Schedule 1A, namely Local Development Orders, Neighborhood Development Orders and orders under the Transport and Works Act 1992 in respect of which deemed planning permission is being sought for a scheme. These three procedures provide for public engagement in the order making processes. The Order now laid includes trigger and terminating events in relation to each of these planning procedures. The provisions in this Order do not affect town or village greens that are already registered.

7.6 Under separate procedures, local planning authorities and communities have the ability to designate land as Local Green Space as part of their development plan preparation. This will enable communities to achieve special protection for green areas of particular importance to them, where such areas are identified through local and neighbourhood plan preparation and are consistent with the local planning of sustainable development.

#### Local Development Orders

7.7 Local Development Orders are made by the local planning authority and grant deemed planning permission for specified types of development within a defined area or on a specified site. Their use has been relatively limited, but they are a planning simplification measure and it is expected that take up will increase, especially in Enterprise Zones.

7.8 To ensure that protection is provided for operational development for which a Local Development Order grants permission, the Order sets two trigger events and corresponding terminating events. The first trigger event occurs when a draft order granting permission for operational development of the land under consideration is first published for consultation. This will ensure that no town or village green application is made for that land while the draft order is under consideration. The Order establishes three corresponding terminating events which will mean that the right to apply for town or village green registration would resume when:

- a) the draft order is withdrawn.
- b) the order is adopted.
- c) the expiry of a two year period beginning with the day on which that draft order is published for consultation.

7.9 The second trigger event occurs when a Local Development Order is adopted and would protect land with permission for operational development. Four corresponding terminating events are specified being:

- a) the order expires.
- b) the order is revoked by either the local planning authority or the Secretary of State.
- c) the land is no longer identified for development following a revision to the order.
- d) the local planning authority issues a direction under the provision included in the order specifying that the permission granted by the order does not apply in respect of the land.

7.10 After the terminating events have occurred, the right to apply for town or village green registration resumes.

7.11 Although local development orders may make provision for the order to expire or be withdrawn after a specified time period, provision may be made to the effect that development commenced before that date may be completed. Further, in circumstances where a local development order is formally revoked or revised by the local planning authority, or where a direction is issued under powers conferred by the order which withdraws the permission, the order may also provide for permission to remain in place for development commenced but not completed at that time. The terminating events described above make clear, where permission conferred by an order ceases to apply, the exclusion of the right to make a town and village green application normally lifts. However, the Order, by the addition of notes 3 and 4 to Schedule 1A of the 2006 Act, makes clear that a terminating event is not to be treated as having occurred if permission to finish incomplete development remains in place.

#### Neighbourhood Development Orders

7.12 Neighbourhood Development Orders are prepared by parish councils or neighbourhood forums and grant deemed planning permission for specified

types of development within a defined area or on specified sites. They are a new planning simplification procedure introduced in the Localism Act 2011. Several orders are in preparation but none have yet been made. It is expected that use of these orders will increase, as they provide communities with the ability to specify the types and location of development that they wish to see come forward, without the need to apply for express planning permission.

7.13 As in the case of Local Development Orders, the Order establishes two trigger events and corresponding terminating events to ensure that land on which a Neighbourhood Development Order permits operational development is protected. The first such trigger event, which would exclude the right to apply for town or village green registration, would occur when a draft order granting permission for operational development of land is first published for consultation. This will enable the completion of procedures for the draft order to be finalised. Three corresponding terminating events, when the right to apply for town or village green registration would resume, are specified:

- a) the draft order is withdrawn.
- b) the order is made by the local planning authority.
- c) the expiry of a two year period beginning with the day on which that draft is published for consultation by the local planning authority expires.

7.14 The second trigger event occurs when an order is made by the local planning authority. Three corresponding terminating events are set:

- a) the order expires.
- b) where the order provides that development must have commenced within a specified period, that period expires without development having been commenced.
- c) the order is revoked.

7.15 After the terminating events have occurred, the right to apply for town or village green registration resumes.

7.16 As in the case of Local Development Orders, Neighbourhood Development Orders may make provision for the permission granted by the order to expire after a specified period, and may also include provision permitting completion of development commenced but not completed at that time. Further, where a neighbourhood development order is revoked then any incomplete development may, in some cases, be completed by virtue of provision in the 1990 Act. By inserting notes 5 and 6 to Schedule 1A, the Order ensures that where permission granted by a Neighbourhood Development Order is withdrawn or revoked, that this is not to be treated as a terminating event where permission for completion of development remains in place.

## Orders under the Transport and Works Act 1992

7.17 Orders made under the Transport and Works Act 1992, with associated applications for deemed planning permission in respect of land, are made in respect of certain infrastructure schemes (mainly railways and tramways) that are required to support communities and for growth. The Order establishes a trigger event on publication of a notice that an application for an Order under the Transport and Works Act has been made which contains a statement that a request for deemed planning permission is being made. This will enable the procedures under which a draft order is considered, along with the application for deemed planning permission, to take place without the risk of a town or village green application being made. Three corresponding terminating events are specified:

- a) the request for a direction for deemed planning permission is withdrawn.
- b) in circumstances where the direction is refused, all means of challenging the refusal in legal proceedings in the United Kingdom are exhausted.
- c) in circumstances where the direction is given, the period within which the development to which the direction relates must be begun expires without the development having been begun.

7.18 After the terminating events have occurred, the right to apply for town or village green registration resumes.

- Consolidation

7.19 The Order inserts new provisions into Schedule 1A of the Commons Act 2006. No consolidation is necessary at this time.

## **8. Consultation outcome**

8.1 Consultation on the draft Order ran for 6 weeks, from 5 July to 19 August 2013. A six week period was considered to be proportionate and adequate, as the matter is relatively limited in scope, the underlying principles are established in the Growth and Infrastructure Act 2013 and we are building upon existing provisions. In addition to publication on the Government web site, GOV.UK, we contacted all those organisations that were consulted on reform of town and village green legislation in July 2011, together with additional business and development organisations with a particular interest in the scope of proposals set out in this document.

8.2 37 responses were received to the consultation from a range of bodies including district, borough and county councils; parish town and community councils; developers and their representative bodies; professional bodies; and the environment and charity sector. 75% of respondents to the question relating to the principle of adding a new terminating event for local plans agreed with it; and 78% of respondents agreed with the principle of introducing a similar terminating event in respect of neighbourhood plans.

8.3 There was some disagreement among respondents over whether two years is an appropriate period for the proposed catch all terminating event. Most respondents who disagreed felt it was insufficient time for local planning authorities to get plans adopted. However, the majority of recent local plans that have reached publication stage have been adopted within this period. The achievement of up to date development plan coverage is a priority for the Government, to enable local planning authorities to accommodate and manage the development needs of their areas. Setting a longer period for the proposed new catch all terminating event would undermine this wider priority. There is less experience in respect of neighbourhood plan preparation, but there was, accordingly, also less concern expressed about the two year period for these plans.

8.4 There was also general support for the principle of extending the regime to Local Development Orders (78% of respondents to that question), Neighbourhood Development Orders (75% of respondents to that question) and orders under the Transport and Works Act (58% of respondents to that question). Those opposing considered that the measures are unnecessary, but Government's view is that this precautionary measure is necessary to ensure that decisions as to whether development takes place should be taken in the planning system and related consent regimes. The measures are needed so that development proposed by the types of orders to which it relates can be protected and are introduced in light of issues that have arisen in respect of planning applications and plan making. If no such orders come forward, which identify a particular area of land for development, then the exclusion on the right to apply for town or village green application will not apply to that land.

8.5 61% of respondents to the trigger and terminating events for Local Development Orders agreed with the proposed trigger and terminating events. There was a more even split of responses to the respective question for Neighbourhood Development Orders; 42% of respondents agreed with the proposed trigger and terminating events and 36% disagreed. Such orders are a procedure for communities to define and simplify the processes for the type of development they would like to see in their areas. Government's view is that it is only right that the order making process should be allowed to conclude and a two year period should be sufficient to enable the order to proceed from publication to being made, but will keep this under review. 61% of respondents to the question of the appropriateness of the trigger and terminating events for Transport and Works Act Orders considered they are appropriate

8.6 A detailed analysis of the consultation responses will be published on the GOV.UK website at <https://www.gov.uk/government/publications>

## **9. Guidance**

9.1 The Department for Environment, Food and Rural Affairs provides guidance for commons registration authorities and other interested parties on the registration of new town and village greens. This can be found at

<https://www.gov.uk/town-and-village-greens-how-to-register> and will be updated to reflect the provisions in the Order.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies who put forward development proposals is deregulatory, as confirmed by the Regulatory Policy Committee, when it issued the Regulatory Triage Assessment confirmation for these proposals in May 2013.

10.2 In so far as additional protection will be of direct benefit for business, by virtue of avoiding potential costs and delays, it represents an extension of the same deregulatory benefits that will be achieved in regard to the development consenting regimes already protected under the provisions of the Commons Act 2006, as amended by the Growth and Infrastructure Act 2013.

10.3 The impact on the public sector is potentially beneficial. Commons registration authorities will be faced with reduced administrative costs, in situations where the Order will prevent the submission of town and village green applications. There may be some additional administrative costs to commons registration authorities, local planning authorities and the Planning Inspectorate, because of the need to consider the additional trigger and terminating events, but we consider that overall these will be minimal.

10.4 An Impact Assessment will be published on the website [www.gov.uk](http://www.gov.uk). The impact assessment draws on evidence in an earlier impact assessment of proposed reforms to the town and village green legislation that was published by the Department for Environment, Food and Rural Affairs in September 2012. That assessment remains up to date.

## **11. Regulating small business**

11.1 The legislation does not impose an additional regulatory burden on small business.

## **12. Monitoring & review**

12.1 The Department will keep the provisions of this Order under review, in particular the two year catch all period.

12.2 The Department for Environment, Food and Rural Affairs keeps under review the effectiveness of the Commons legislation as a whole.



### **13. Contact**

13.1 Pamela Roberts at the Department of Communities and Local Government (Tel: 030344 44359 or email: [Pamela.Roberts@communities.gsi.gov.uk](mailto:Pamela.Roberts@communities.gsi.gov.uk)) can answer any queries regarding the instrument.