

EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (FEES FOR APPLICATIONS, DEEMED APPLICATIONS, REQUESTS AND SITE VISITS) (ENGLAND) (AMENDMENT) REGULATIONS 2017

2017 No. [XXXX]

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.

2. Purpose of the instrument

- 2.1 These Regulations make various changes to the planning application fees charged by local planning authorities. Firstly, they provide for an increase in fees of 20%. Secondly they include a fee to be charged for an application for permission in principle, of £402 per 0.1 of a hectare of the site area. Permission in principle is a new planning consent route designed to separate decision making on ‘in principle’ issues addressing land use, location, and amount of development from matters of technical detail, such as what the buildings will look like¹. Thirdly, they enable any Mayoral development corporation, or urban development corporation, to charge for giving pre-application advice to an applicant about applying for any planning permission, approval or consent under the Town and Country Planning Act 1990 (c.8) (“the 1990 Act”). Fourthly, they provide that a planning application fee will be charged where a local planning authority has withdrawn “permitted development rights” through serving a direction or by a condition imposed on a grant of planning permission. The effect of “permitted development” is that no planning application needs to be made to the local planning authority to obtain planning permission, although in some cases the permitted development right will require the local authority to approve certain matters before the development can proceed (a process generally referred to as “prior approval”). Finally the Regulations also introduce a fee of £96 to be charged by a local planning authority for an application for their prior approval of certain matters before particular classes of permitted development² can proceed.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

¹ The draft Town and Country Planning (Permission in Principle) (Amendment) Order 2017 “the Order” is attached to this EM. If these Regulations are approved, the Order will be made to come into force on the same day as these Regulations so that local planning authorities can charge a fee for permission in principle applications.

² That is, permitted development rights introduced on 15 April 2015 by the Town and County Planning (General Permitted Development) (England) Order 2015 S.I. 2015/596, and on 6 April 2017 by the Town and County Planning (General Permitted Development) (England)(Amendment) Order 2017 S.I. 2017/391. They include allowing the installation of solar PV equipment of up to one megawatt on the roof of a non-domestic building, the erection of a collection facility within the curtilage of a shop, the temporary use of buildings or land for film-making purposes, and the provision of temporary state-funded schools on vacant commercial land.

Other matters of interest to the House of Commons

- 3.2 This entire instrument applies only to England.
- 3.3 This instrument amends the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (S.I. 2012/2920) (“the 2012 Regulations”), which apply in relation to England only (see regulation 1(2) of the 2012 Regulations). The instrument does not have minor or consequential effects outside England.
- 3.4 In the view of the Department, for the purposes of House of Commons Standing Order 83P the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter; and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament; and the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.
- 3.5 The Department has reached this view because it considers that the primary purpose of the instrument relates to planning, which is within the devolved legislative competence of each of the three devolved legislatures: the primary purpose of the subject matter of the instrument is not within Schedule 5 to the Scotland Act 1998 and is not otherwise outside the legislative competence of the Scottish Parliament (see section 29 of that Act); the primary purpose of the subject matter of the instrument is not within Schedule 2 or 3 to the Northern Ireland Act 1998 and is not otherwise outside the legislative competence of the Northern Ireland Assembly (see section 6 of that Act); the primary purpose of the subject matter of the instrument is within Part 1 of Schedule 7 to the Government of Wales Act 2006 and is not within one of the exceptions listed therein, nor is it otherwise outside the legislative competence of the National Assembly for Wales (see section 108 of that Act). Under section 303 of the 1990 Act the Welsh Ministers can, for example, make provision in regulations for the payment of a fee or charge to a local planning authority in respect of the performance of any function or anything calculated to facilitate or is conducive or incidental to the performance of such function (see subsection (1)).

4. Legislative Context

- 4.1 These Regulations amend the 2012 Regulations. The 2012 Regulations were made under section 303 of the 1990 Act, which was substituted by section 199 of the Planning Act 2008 (c.29).
- 4.2 Regulation 3 amends the 2012 Regulations to make provision in relation to fees for applications for permission in principle. Permission in principle and its effect are described in sections 58A, 59A and 70(2ZZA) to (2ZZC) of the 1990 Act (those sections were inserted by section 150 of the Housing and Planning Act 2016.) The permission in principle consent route is a two-stage process. The first (permission in principle) stage is where the local planning authority establishes whether the site is suitable for housing-led development in principle. At the second (technical details consent) stage the local authority will consider the remaining technical details (e.g. the design of buildings). After technical details consent is granted, the developer has planning permission and can get on and build out the site.

- 4.3 Regulation 4 of these Regulations provides that Mayoral development corporations and urban development corporations will charge for giving pre-application advice. Section 198 of the Localism Act 2011 provides for the establishment of Mayoral development corporations and section 202 of that Act provides that the Mayor may decide that the Mayoral development corporation may have planning functions for the area. Where a Mayoral development corporation has planning functions under Part 3 of the 1990 Act, section 7A of that Act applies to make the Mayoral development corporation the local planning authority for the area in question.
- 4.4 Section 135 of the Local Government Planning and Land Act 1980 provides for the establishment of urban development corporations. Section 149 of that Act provides that the Secretary of State may provide for the urban development corporation to have planning functions for its area. Where an urban development corporation has planning functions under Part 3 of the 1990 Act, section 7 of that Act applies to make the urban development corporation the local planning authority for the area in question.
- 4.5 Local authorities have the power to charge for giving pre-application advice under section 93 of the Local Government Act 2003 (power to charge for discretionary services). Regulation 4 of these regulations will put Mayoral development corporations and urban development corporations on the same footing as local authorities in being able to charge for this service.
- 4.6 Regulation 5 relates to permitted development rights. A local planning authority can issue a direction under article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (S.I. 2015/596) which withdraws permitted development rights. The same effect can be achieved by a condition imposed by a local authority on a grant of planning permission.
- 4.7 These Regulations supersede the draft of the same title which was laid before Parliament on 23rd March 2015 and are being issued free of charge to all known recipients of that draft statutory instrument. The draft laid on 23rd March made provision for the charging for pre-application advice by Mayoral development corporations and urban corporations. These Regulations additionally make provision for the other matters mentioned at paragraph 2.1.

5. Extent and Territorial Application

- 5.1 This instrument extends to England and Wales.
- 5.2 This instrument applies only to England as set out in Section 3 under “Other matters of interest to the House of Commons”.

6. European Convention on Human Rights

- 6.1 Alok Sharma, Minister of State for Housing and Planning, has made the following statement regarding Human Rights:

In my view the provisions of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2017 are compatible with the Convention rights.

7. Policy background

What is being done and why

National Fees Increase

- 7.1 Planning application fees were last increased in 2012. These Regulations increase the fees for planning applications by 20% and increase the fee ceilings by 20% for those local authorities that have committed to invest the additional fee income in their planning departments. This commitment has been made by all local planning authorities in England.
- 7.2 The Local Government Association (“the LGA”) works with local planning authorities on issues of capacity and resourcing of their planning functions. In its Housing Commission report “Building our homes, communities and future”, December 2016³, the LGA outlines, based on evidence it has collected in the last three years, that local taxpayers have subsidised a £450 million shortfall in resources going into planning from planning fees, from their local taxes. This averages out at £150m annually.
- 7.3 Government accepted the evidence presented, which was further reinforced through dialogue with individual authorities. In bringing forward the proposed 20% increase in fees the Government is seeking to reduce the funding gap, and estimate that some £80m additional fee income will be raised annually. Therefore, although the fee increase will help to address some of this shortfall, even taking this additional income into account, authorities’ costs will overall still be higher than the fee charged. The fee increase will also provide the opportunity for authorities to consider whether they are adequately resourcing their planning application service and whether the fee increase will provide an opportunity to employ more local authority officers or access more specialist advice and services. The overall impact of the measure will be that additional ring fenced resource will be available to planning departments to support the delivery of an effective planning system.

Introduction of a fee for applications for permission in principle

- 7.4 The Town and Country Planning Act (Permission in Principle) (Amendment) Order 2017 S.I. 2017/xxx (copy attached) which will be made and laid if these Regulations are approved, will give developers the option to apply to the local planning authority for a grant of permission in principle for minor development. Under the 2012 Regulations, local planning authorities are unable to charge a fee to cover the costs of processing permission in principle applications. They are, however, able to charge for an application for technical details consent because it is classed as an application for planning permission.
- 7.5 These Regulations provide for a fee of £402 per 0.1 hectare to cover the costs incurred in processing permission in principle applications including the costs of undertaking consultation and assessment against local and national policy. The permission in principle fee level is modelled on the approach set out in the 2012 Regulations for outline planning applications where the fee level is charged on a per 0.1 hectare basis. The Government’s assessment is that the costs of processing a permission in principle application are proportionately lower than the costs of processing an outline planning application as there will be fewer matters for an authority to consider in an application for permission in principle, therefore, the fee has been set at a proportionately lower level to ensure it is fair to both local planning authorities and developers. It is charged on a per 0.1 hectare basis because the exact number of housing units in the proposed scheme will not be known until the applicant submits the technical details consent

³ <http://www.local.gov.uk/sites/default/files/documents/building-our-homes-commun-359.pdf>

application. The general increase of 20% in fees for planning applications has been reflected in the level set for permission in principle applications.

Pre-application advice

- 7.6 The Government is keen to encourage applicants to prepare planning proposals to a high standard before they are submitted, including having discussions at an early stage with the local planning authority to iron out issues and avoid time being wasted on ill-conceived applications.
- 7.7 The first Mayoral development corporation, the London Legacy Development Corporation, was established in 2012 and took on planning functions, including the determination of planning applications. Since then it has been providing pre-application advice free of charge to applicants to aid the planning process. Further corporations have been established at Old Oak and Park Royal and Ebbsfleet taking over a range of planning functions from local planning authorities in those areas.
- 7.8 At the moment, if a developer intends to apply to a local planning authority and wishes to engage in pre-application discussions, it is likely that they would be charged a fee to cover the cost to the local planning authority of giving any pre-application advice. However, if a developer applied to an urban or Mayoral development corporation, they could not be charged for pre-application discussions as those bodies would not have the necessary powers to charge such fees. This results in the cost, which would normally be met by the applicant, being met by the taxpayer. Implementing this change will align Mayoral and urban development corporations with local authorities.

Fees in relation to permitted development rights

- 7.9 The Government seeks to ensure that the threshold at which an application for planning permission is required is set at the right level to minimise administrative burdens and that where local authority consideration is required, it can be obtained in the easiest way possible. The permitted development regime is one mechanism through which this objective is achieved. The Government also recognises the resource commitment for local planning authorities in determining planning applications where permitted development rights have been removed for sound policy reasons. At the moment, where a planning application is necessary because a local planning authority has made an article 4 direction withdrawing permitted development rights or grants planning permission conditional on the withdrawal of permitted development rights, it receives no fee in respect of those planning applications made. During the passage of the Neighbourhood Planning Act 2017 the Government made a commitment to remove this exemption, which means that a planning application fee can be charged where permitted development rights have been removed.
- 7.10 Where there are permitted development rights, there are occasions where it is appropriate for there to be an approval procedure by a local planning authority. Permitted development rights introduced on 15 April 2015 by the Town and Country Planning (General Permitted Development) (England) Order 2015, and its subsequent amendment on 6 April 2017, included the matters set out in the footnote on page 1 of this Memorandum. Prior approval is required enabling the local planning authority to consider matters such as siting and design, transport, noise and light impacts, and flood risks.

- 7.11 The usual fee payable for a prior approval where there is a permitted development involving a change of use has been £80 (although this will increase to £96 in line with the general rise in fees). It is considered that the administrative costs of the authority considering a prior approval application for these three new permitted development rights are similar to those of considering a prior approval application for a change of use and that this is therefore the appropriate fee to charge.

Consolidation

- 7.12 There are no plans to consolidate the 2012 Regulations in the immediate future.

8. Consultation outcome

National Fee Increase

- 8.1 The technical consultation on implementation of planning changes, published in February 2016 “the February 2016 consultation” set out options for how any increase in planning fees should be brought forward (see <https://www.gov.uk/government/consultations/technical-consultation-on-planning>). Section 1 outlined the Government’s proposals on planning application fees, including the proposal to adjust planning fees in line with inflation. 485 responses were received in relation to this inflation-level increase. The majority of respondents, from all sectors, supported increasing planning fees, often citing concerns about resourcing in local authority planning departments.
- 8.2 The Government response to this consultation was published on 7 February 2017, as a supporting document to the Housing White Paper ‘Fixing our broken housing market’ (see <https://www.gov.uk/government/collections/housing-white-paper>). This Paper set out that, subject to the will of Parliament, the Government’s intention is to increase planning fees by 20% from July 2017, for those authorities that commit to invest the additional fee income in their planning department. This increase reflects local planning authorities’ need for additional resources in order to better support their planning functions.

Introduction of a fee for applications for permission in principle

- 8.3 In chapter 2 of the February 2016 consultation, the Government asked for views about the fee that should be set for permission in principle applications. There were 433 responses to the question with a range of views about the approach to setting the fee. Some respondents said that the fee level should be on a cost recovery basis while others argued that the fee should be linked to factors such as development size, value and local authority performance. Others suggested that the Government should base the fee structure on existing models. It was suggested that the fee for permission in principle applications should be low to incentivise take-up. The Government wants to encourage developers to make use of this new route to planning permission.

Pre-application advice

- 8.4 The Government undertook a focused consultation with the local planning authorities whose areas are part of a current or proposed development corporation and with a sample of developers/agents who have expressed an interest in making applications within the areas covered by the existing and proposed development corporations. The consultation ran from 9 January 2015 to 6 February 2015. A total of 4 replies were received, from one local business, the Greater London Authority, one statutory harbour authority and one planning agent. Those who responded were supportive

overall of the proposal that Mayoral development corporations and urban development corporations acting as the local planning authority for a designated area should have the ability to charge for giving pre-application advice to applicants and have their own fee charging schedule, like local authorities. Respondents commented that prior to a fee schedule being adopted it should be published. No concerns were raised through the consultation process and we are including a requirement to publish the proposed fee schedule before any charge can be introduced.

Prior approval fee

- 8.5 Consultations on changes to permitted development rights were carried out as part of the “Technical Consultation on Planning” from July to September 2014, see <https://www.gov.uk/government/consultations/technical-consultation-on-planning>, and the 2016 consultation. There was positive support for the new permitted development rights, but a small number of responses from authorities stated that the level of prior approval fees does not compensate for loss of income from planning application fees or cover their administrative costs. Whilst the Government cannot guarantee that the new increased figure of £96 will fully cover the costs of these applications, it considers that it is an appropriate level of fee having regard to the level of other prior approval fees. Fees income is not the only source of income for local authorities to undertake their planning functions, which are funded in part by other revenue streams.

9. Guidance

- 9.1 The Government has published guidance on Fees for Planning Applications. This will be updated and will be available when the Regulations are made, in order to provide up-to-date advice on these changes.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies has been assessed as negligible. Nationally set planning application fees have not been increased since 2012. In relation to the introduction of a fee for applications for permission in principle, the level of the fee (£402 per 0.1 hectare of the site area) is in line with fees charged for equivalent types of planning application. For the pre-application advice provisions, the primary purpose of the changes is to put Mayoral development corporations and urban development corporations on the same footing as local authorities. The £96 fee for prior approval applications to the local planning authority is a new cost, but one that negates the need to submit a planning application.
- 10.2 In relation to the impact on the public sector, there will be a benefit in (a) the increase in planning application fees and (b) the pre-application advice provisions. The increased fee income will provide additional resource for local planning authorities and the pre-application advice provisions will mean that the cost of giving the advice, which would normally be met by the tax payer, will be met by the applicant. In relation to the prior approval provisions, the impact on the public sector is that authorities will receive a fee for considering a prior approval application in relation to the new permitted development rights, which reflects the administrative cost and will be less than the full planning application fee for that development. In relation to the fee for applications for permission in principle the impact on local planning authorities will be negligible because the fee level is in line with the fees charged for equivalent types of planning application.

- 10.3 An impact assessment was not required to be undertaken for these Regulations. This is because this is not the introduction of a new regime or policy change rather it is the increase across an existing fee regime. However, an impact assessment was prepared in relation to the new permitted development rights introduced by the General Permitted Development Order 2015 as referred to in regulation 5(3) of these Regulations. The assessment was published alongside that Order at <http://www.legislation.gov.uk/uksi/2015/596/impacts>

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 11.3 The basis for the final decision to not take specific action is that the impact does not fall more heavily on small businesses than on other applicants for planning consent, nor is it anticipated that the impact will have a significant effect on the costs for business. The increase in national fees is applied equally across categories of development so the impact on applicants is consistent. In relation to the prior approval provisions, the instrument will have a small positive impact as set out above.

12. Monitoring & review

- 12.1 The 2012 Regulations expire on 21st November 2019 and a review will be carried out of all fees by November 2017, to assess whether the objectives of the Regulations are being achieved and whether the objectives remain appropriate. This review, will include consideration of the changes made by these Regulations. In particular, the Department will review the implementation of the pre-application advice provisions through monitoring of information collected from the accounts of the corporations concerned.

13. Contact

- 13.1 Stephen Gee at the Department for Communities and Local Government Telephone: 0303 444 0013 or email: Stephen.Gee@communities.gsi.gov.uk can answer any queries regarding the instrument.

2017 No. xx

TOWN AND COUNTRY PLANNING, ENGLAND

**The Town and Country Planning (Permission in Principle)
(Amendment) Order 2017**

<i>Made</i> - - - -	[xx]
<i>Laid before Parliament</i>	[xx]
<i>Coming into force</i> - -	[xx]

The Secretary of State, in exercise of the powers conferred by sections 59, 59A, 61(1), 61W, 62, 65, 69, 70(2ZZC), 71, 74(1), 77(4), 78, 79(4), 96A, 99(2), 293A and 316 of, and paragraphs 7(7), 8(6) and 8A(3) of Schedule 1 to, the Town and Country Planning Act 1990^(a), section 54 of the Planning and Compulsory Purchase Act 2004^(b) and section 213 of the Housing and Planning Act 2016^(c), makes the following Order.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Town and Country Planning (Permission in Principle) (Amendment) Order 2017 and comes into force on [??].

^(a) 1990 c. 8; section 59A was inserted by section 150(2) of the Housing and Planning Act 2016 (c. 22) (“the 2016 Act”); section 61W was inserted by section 122(1) of the Localism Act 2011 (c. 20); section 62 was substituted by section 42(1) of the Planning and Compulsory Purchase Act 2004 (c. 5) (“the 2004 Act”) and amended by paragraphs 7 and 8 of Schedule 12 to the 2016 Act; section 65 was substituted by section 16(1) of the Planning and Compensation Act 1991 (c. 34) (“the 1991 Act”) and relevant amendments are made by paragraph 9 of Schedule 12 to the 2016 Act; section 69 was substituted by paragraphs 1 and 3 of Schedule 6 to the 2004 Act and relevant amendments are made by section 190 of the Planning Act 2008 (c. 29) (“the 2008 Act”) and by paragraph 7 of Schedule 12 to the Localism Act 2011 and by paragraph 10 of Schedule 12 to the 2016 Act; section 70(2ZZC) was inserted by section 150(3) of the 2016 Act; section 71 was amended by section 16 of, and paragraph 15 of Schedule 7 to, the Planning and Compensation Act 1991 (“the 1991 Act”) and by paragraph 15 of Schedule 12 to the 2016 Act; section 74 was amended by sections 19(1) and 84(6) of, and paragraph 17 of Schedule 7 and Part 1 of Schedule 19 to, the 1991 Act and paragraph 9 of Schedule 12 to the 2011 Act and by paragraph 17 of Schedule 12 to the 2016 Act; section 77(4) was amended by paragraph 18 of Schedule 7 to the 1991 Act; section 78 was amended by section 17(2) of the 1991 Act, section 43(2) of the 2004 Act, paragraph 7 of Schedule 7 and paragraphs 1 and 2 of Schedule 11 to the 2008 Act, section 123 of the 2011 Act and paragraph 8 of Schedule 1 to the Growth and Infrastructure Act 2013 (c. 27) (“the 2013 Act”) and by paragraph 21 of Schedule 12 to the 2016 Act; section 79(4) amended by paragraph 23 of Schedule 12 to the 2016 Act; section 96A was inserted by section 190 of the 2008 Act and relevant amendments were made by S.I. 2017/276; section 293A was inserted by section 82(1) of the 2004 Act and amended by paragraph 34 of Schedule 12 to the 2016 Act; section 298A was inserted by paragraph 10 of Schedule 3 to the 2004 Act; paragraph 7 of Schedule 1 was substituted by paragraph 16 of Schedule 6 to the 2004 Act and amended by paragraph 1 of Schedule 8 to the 2011 Act, and by paragraph 41 of Schedule 12 to the 2016 Act; paragraph 8 of Schedule 1 was substituted by paragraph 53 of Schedule 7 to the 1991 Act and by paragraph 41 of Schedule 12 to the 2016 Act; and paragraph 8A was inserted by section 142 of the 2016 Act.

^(b) 2004 c. 5.
^(c) 2016 c. 22.

(2) In this Order “the 2017 Order” means the Town and Country Planning (Permission in Principle) Order 2017^(d).

Amendment of the Town and Country Planning (Permission in Principle) Order 2017

2. The 2017 Order is amended in accordance with the following provisions.

Amendment to article 2

3. In article 2 (interpretation) of the 2017 Order insert the following definitions in the appropriate places—

““by site display” means by posting the notice in question by firm fixture to some object so that the notice is displayed in such a way as to be easily visible and legible by members of the public;”;

““infrastructure manager” means any person who, in relation to relevant railway land—

- (a) is responsible for developing or maintaining the land; or
- (b) manages or uses the land, or permits the land to be used for the operation of a railway;”;

““relevant railway land” means land—

- (a) forming part of any operational railway; or
- (b) which is authorised to be used for the purposes of an operational railway under—
 - (i) a planning permission granted or deemed to be granted,
 - (ii) a development consent granted by an order made under the Planning Act 2008^(e), or
 - (iii) an Act of Parliament,

including viaducts, tunnels, retaining walls, sidings, shafts, bridges, or other structures used in connection with an operational railway and excluding car parks, offices, shops, hotels or any other land which, by its nature or situation, is comparable with land in general rather than land which is used for the purpose of an operational railway;”;

““residential development” means development the main purpose of which is housing development;”.

Insertion of new Part 2A

4. After Part 2 of the 2017 Order insert—

“Part 2A

Permission in principle: applications to local planning authorities

Permission in principle

5A.—(1) A local planning authority may grant permission in principle on an application to the authority in accordance with the provisions of this Order.

(2) Subject to article 5B, for the purposes of section 59A(1)(b) of the 1990 Act^(f), the description of development in relation to which a local planning authority may grant permission in principle is residential development of land.

(3) When granting permission in principle under paragraph (1) the local planning authority must—

^(d) S.I. 2017/402.

^(e) 2008 c. 29.

^(f) Section 59A was inserted into the 1990 Act by section 150(2) of the Housing and Planning Act 2016 (c. 22).

- (a) in relation to the housing development, specify the minimum and maximum net number of dwellings which are, in principle, permitted; and
 - (b) in relation to the non-housing development (if any is, in principle, permitted), specify the scale of any such development which is, in principle, permitted and the use to which it may be put.
- (4) In this article—
- “maximum net number of dwellings” means the maximum number of dwellings on the land after the proposed development less the number of dwellings on the land immediately prior to the date the application for permission in principle is submitted; and
- “minimum net number of dwellings” means the minimum number of dwellings on the land after the proposed development less the number of dwellings on the land immediately prior to the date the application for permission in principle is submitted.

Exemption of certain developments

5B.—(1) A local planning authority may not grant permission in principle, on an application to the authority, in relation to development which is—

- (a) major development;
- (b) habitats development;
- (c) householder development; or
- (d) Schedule 1 development.

(2) A local planning authority may not grant permission in principle, on an application to the authority, in relation to Schedule 2 development unless—

- (a) the local planning authority has adopted a screening opinion under regulation 6 of the EIA Regulations that the development (up to and including the maximum net number of dwellings) is not EIA development;
- (b) the Secretary of State has made a screening direction under regulation 7 of the EIA Regulations that the development is not EIA development; or
- (c) the Secretary of State has made a direction under regulation 63 of the EIA Regulations that the development is exempted from the application of those Regulations.

(3) Where it appears to the local planning authority that—

- (a) an application for permission in principle which is before them for determination may be Schedule 2 development; and
- (b) the development in question has not been the subject of a screening opinion or screening direction,

paragraphs (5) and (6) of regulation 6 of the EIA Regulations apply as if the receipt of the application were a request made under regulation 6(1) of those Regulations.

(4) For the purposes of paragraphs (2) and (3), the EIA Regulations have effect in relation to applications for permission in principle as if the reference to an application for planning permission in Part 2 (screening) and in regulation 63 of the EIA Regulations were a reference to an application for permission in principle.

(5) In this article—

- “EIA development” has the same meaning as in regulation 2 of the EIA Regulations;
- “EIA Regulations” means the Town and Country Planning (Environmental Impact Assessment) Regulations 2017^(e);
- “European offshore marine site” has the meaning given in regulation 15 of the Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007^(h);

^(e) S.I. 2017/571.

^(h) S.I. 2007/1842, regulation 15 was amended by S.I. 2012/1928.

“European site” has the meaning given by regulation 8 of the Conservation of Habitats and Species Regulations 2010⁽ⁱ⁾;

“habitats development” means development which is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects) and is not directly connected with or necessary to the management of the site;

“house” does not include a building containing one or more flats, or a flat contained within such a building;

“householder development” means development of an existing dwelling, or development within the curtilage of such a dwelling for any purpose incidental to the enjoyment of the dwelling, but does not include change of use or change in the number of dwellings in a building;

“major development” means development involving any one or more of the following—

- (a) the provision of dwellings where the number of houses to be provided is 10 or more;
- (b) the provision of a building or buildings where the floor space to be created is 1,000 square metres or more; or
- (c) development carried out on a site having an area of 1 hectare or more;

“maximum net number of dwellings” has the same meaning as in article 5A; and

“Schedule 1 development” and “Schedule 2 development” have the same meanings as in regulation 2 of the EIA Regulations.

Consultation before applying for permission in principle

5C. For the purposes of section 61W of the 1990 Act (requirement to carry out pre-application consultation) a person must carry out consultation on a proposed application for permission in principle for any residential development involving an installation for the harnessing of wind power for energy production where—

- (a) the development involves the installation of more than 2 turbines; or
- (b) the hub height of any turbine exceeds 15 metres.

Applications for permission in principle

5D.—(1) An application for permission in principle must—

- (a) be made in writing, to the local planning authority for the area in which the land is situated, on a form published by the Secretary of State (or a form to substantially the same effect);
- (b) include the particulars specified or referred to in the form;
- (c) be accompanied, whether electronically or otherwise, by—
 - (i) a plan which identifies the land to which the application relates;
 - (ii) except where the application is made by electronic communications or the local planning authority indicate that a lesser number is required, 3 copies of the form; and
 - (iii) where consultation is required by virtue of article 5C, particulars of—
 - (aa) how the applicant complied with section 61W(1) of the 1990 Act;
 - (bb) any responses to the consultation that were received by the applicant; and
 - (cc) the account taken of those responses by the applicant.

(2) A plan required to be provided by paragraph (1)(c)(i) must be drawn to an identified scale and must show the direction of North.

(3) Where an application is made using electronic communications to transmit a form to the local planning authority, the applicant is taken to have agreed—

- (a) to the use of such communications by the local planning authority for the purposes of the application;

⁽ⁱ⁾ S.I. 2010/490, regulation 8 was amended by S.I. 2012/1927.

- (b) that the applicant’s address for those purposes is the address incorporated in, or otherwise logically associated with, the application; and
- (c) that the applicant’s deemed agreement under this paragraph subsists until the applicant gives notice in writing of the withdrawal of consent to the use of electronic communications under article 7A.

Applications in respect of Crown land

5E. An application for permission in principle in respect of Crown land^(j) must be accompanied by—

- (a) a statement that the application is made in respect of Crown land; and
- (b) where the application is made by a person authorised in writing by the appropriate authority^(k), a copy of that authorisation.

Acknowledgement etc of applications

5F.—(1) When the local planning authority receive an application which—

- (a) complies with the requirements of article 5D; and
- (b) is accompanied by the fee required to be paid in respect of the application,

the authority must, as soon as is reasonably practicable, send to the applicant an acknowledgement of the application in the terms (or substantially in the terms) set out in Schedule 1.

(2) Where, after sending an acknowledgement as required by paragraph (1), the local planning authority consider that the application is invalid, they must as soon as reasonably practicable notify the applicant that the application is invalid.

(3) In this article, an application is invalid if it is not a valid application within the meaning of article 5S(3).

Publicity for applications for permission in principle

5G.—(1) An application for permission in principle made to a local planning authority must be publicised by the authority—

- (a) in accordance with the requirements in paragraph (3), and
- (b) by giving requisite notice by site display in at least one place on or near the land to which the application relates for not less than 14 days.

(2) Where the notice referred to in paragraph (1)(b) is, without any fault or intention of the local planning authority, removed, obscured or defaced before the period of 14 days referred to has elapsed, the authority is to be treated as having complied with the requirements of paragraph (1)(b) if they have taken reasonable steps for protection of the notice and, if need be, its replacement.

(3) The following information must be published on a website maintained by the local planning authority—

- (a) the address or location of the proposed development;
- (b) a description of the proposed development;
- (c) the date by which any representations about the application must be made, which must not be before the last day of the period of 14 days beginning with the date on which the information is published;
- (d) where and when the application may be inspected; and
- (e) how representations may be made about the application.

^(j) For the definition of “Crown land” see section 293 of the 1990 Act.

^(k) See section 293(2) of the 1990 Act for the definition of “the appropriate authority”.

(4) Where the local planning authority have failed to satisfy the requirements of this article in respect of an application for permission in principle at the time—

- (a) the application is referred to the Secretary of State under section 77 (reference of applications to Secretary of State) of the 1990 Act^(l), or
- (b) any appeal to the Secretary of State is made under section 78(2) (appeals in relation to non-determined applications) of the 1990 Act^(m),

this article continues to apply as if such referral or appeal to the Secretary of State had not been made.

(5) Where paragraph (4) applies, the local planning authority must inform the Secretary of State as soon as they have satisfied the relevant requirements in this article.

(6) In this article “requisite notice” means notice in the appropriate form set out in Schedule 1 or in a form substantially to the same effect.

(7) Paragraphs (1) and (2) apply to applications for permission in principle made to the Secretary of State under section 293A of the 1990 Act (urgent Crown development: application)⁽ⁿ⁾ as if the references to a local planning authority were references to the Secretary of State.

Notification of applications for permission in principle within 10 metres of relevant railway land

5H.—(1) This article applies where the development to which an application for permission in principle relates is situated within 10 metres of relevant railway land.

(2) The local planning authority must, except where paragraph (3) applies, publicise an application for permission in principle by serving requisite notice on any infrastructure manager of relevant railway land.

(3) Where an infrastructure manager has instructed the local planning authority in writing that they do not require notification in relation to—

- (a) a particular description of development,
- (b) a particular type of building operation, or
- (c) specified sites or geographical areas (“the instruction”),

the local planning authority is not required to notify that infrastructure manager.

(4) The infrastructure manager may withdraw the instruction at any time by notifying the local planning authority in writing.

(5) In this article “requisite notice” means a notice in the appropriate form as set out in Schedule 1 or in a form substantially to the same effect.

Notice of reference of applications to the Secretary of State

5I. On referring any application for permission in principle to the Secretary of State under section 77 (reference of applications to Secretary of State) of the 1990 Act pursuant to a direction given under that section, a local planning authority must serve on the applicant a notice—

- (a) setting out the terms of the direction and any reasons given by the Secretary of State for issuing it; and
- (b) stating that the application has been referred to the Secretary of State.

^(l) Section 77 was amended by paragraph 18 of Schedule 7 to the Planning and Compensation Act 1991 (c. 34) (“the 1991 Act”), paragraph 2 of Schedule 10 to the Planning Act 2008 (c. 29) (“the 2008 Act”) and paragraph 10 of Schedule 12 to the Localism Act 2011 (c. 20) (“the 2011 Act”).

^(m) Section 78 was amended by section 17(2) of the 1991 Act and paragraphs 1 and 3 of Schedule 10 (amendments in force for certain purposes and to come into force for remaining purposes on a date to be appointed, *see* S.I. 2009/400) and paragraphs 1 and 2 of Schedule 11 to the 2008 Act.

⁽ⁿ⁾ Section 293A was inserted by section 82(1) of the Planning and Compulsory Purchase Act 2004 (c. 5).

Consultations in relation to applications for permission in principle

5J.—(1) Before determining whether to grant a permission in principle for development of land which, in their opinion, falls within a category set out in the Table in Schedule 4 to the Town and Country Planning (Development Management Procedure) (England) Order 2015^(o), a local planning authority must consult each body mentioned in relation to that category.

(2) The local planning authority must also consult any body with whom they would have been required to consult on an application for planning permission for the development proposed.

(3) The duty to consult a body pursuant to paragraph (1) or (2) does not apply where—

- (a) the local planning authority are the body;
- (b) the local planning authority are already required to consult the body under paragraph 7 of Schedule 1 to the 1990 Act^(p);
- (c) the body has advised the local planning authority that it does not wish to be consulted; or
- (d) the development is subject to any standing advice published by the body in relation to the category of development.

(4) The exception in paragraph (3)(d) does not apply where the standing advice was published more than 2 years before the date of the application for permission in principle and the advice has not been amended or confirmed as being current by the body within that period.

(5) The Secretary of State may give directions to a local planning authority requiring that authority to consult any body mentioned in the directions in relation to any category of development specified in the directions.

(6) Where a local planning authority are required to consult a body pursuant to this article before determining whether to grant permission in principle—

- (a) they must give notice of any application for permission in principle to the body, unless the applicant has served a copy of the application on that body; and
- (b) subject to paragraph (7), they must not determine the application until at least 14 days after the date on which notice is given under sub-paragraph (a) or, if earlier, 14 days after the date of service of a copy of the application on the body by the applicant.

(7) Paragraph (6)(b) ceases to apply if before the end of the period referred to in that paragraph—

- (a) the local planning authority have received representations concerning the application from the bodies consulted; or
- (b) the bodies consulted have given notice that they do not intend to make representations.

(8) The local planning authority must, in determining the application, take into account any representations received from any body consulted.

Consultations before the grant of planning permission: urgent Crown development

5K.—(1) This article applies in relation to applications for permission in principle made to the Secretary of State under section 293A of the 1990 Act^(q).

(2) Before determining whether to grant a permission in principle for development of land which, in the opinion of the Secretary of State, falls within a category set out in the Table in Schedule 4 to

^(o) S.I. 2015/595.

^(p) Paragraph 7 of Schedule 1 was substituted by section 118(1) of, and paragraphs 1 and 16 of Schedule 6 to, the Planning and Compulsory Purchase Act 2004 (c. 5), and was amended by paragraph 3 of Schedule 5 to the Local Democracy, Economic Development and Construction Act 2009 (c. 20), paragraph 1 of Schedule 8 and Schedule 25 to the Localism Act 2011, and paragraph 41 of Schedule 12 to the Housing and Planning Act 2016 (c. 22).

^(q) Section 293A was inserted by section 82(1) of the Planning and Compulsory Purchase Act 2004 (c. 5).

the Town and Country Planning (Development Management Procedure) (England) Order 2015^(f), the Secretary of State must consult each body mentioned in relation to that category.

(3) The Secretary of State must also consult any body with whom the Secretary of State would have been required to consult on an application for planning permission for the development proposed.

(4) The duty to consult a body pursuant to paragraph (2) or (3) does not apply where—

- (a) the Secretary of State is required to consult the body under section 293A(9)(a) of the 1990 Act;
- (b) the body has advised the Secretary of State that they do not wish to be consulted; or
- (c) the development is subject to any standing advice published by the body in relation to the category of development.

(5) The exception in paragraph (4)(c) does not apply where the standing advice was issued more than 2 years before the date of the application for permission in principle and the advice has not been amended or confirmed as being current by the body within that period.

(6) Where the Secretary of State is required to consult a body pursuant to this article before determining whether to grant permission in principle—

- (a) the Secretary of State must give notice of the application for permission in principle to the body, unless the applicant has served a copy of the application on that body; and
- (b) subject to paragraph (7), the Secretary of State must not determine the application until at least 14 days after the date on which notice is given under sub-paragraph (a) or, if earlier, 14 days after the date of service of a copy of the application on the body by the applicant.

(7) Paragraph (6)(b) ceases to apply if before the end of the period referred to in that paragraph—

- (a) the Secretary of State has received representations concerning the application from the bodies consulted; or
- (b) the bodies consulted have given notice that they do not intend to make representations.

(8) The Secretary of State must, in determining the application, take into account any representations received from any body consulted.

Consultation with county planning authority

5L. In relation to applications for permission in principle, the period prescribed for the purposes of paragraph 7(7)(c) of Schedule 1 to the 1990 Act is 14 days.

Representations by parish council or neighbourhood forum before determination of application

5M.—(1) Where, in relation to an application for permission in principle—

- (a) a parish council is given information pursuant to paragraph 8(1) of Schedule 1 to the 1990 Act^(g); or
- (b) a neighbourhood forum is given information pursuant to paragraph 8A of that Schedule,

the council or the forum, as the case may be, must, as soon as practicable, notify the local planning authority who are determining the application whether it proposes to make any representations about the manner in which the application should be determined, and must make any representations to that authority within 14 days of the notification of the application.

(2) A local planning authority must not determine any application in respect of which a parish council or neighbourhood forum are required to be given information before—

^(f) S.I. 2015/595.

^(g) Paragraph 8(1) of Schedule 1 was substituted by paragraph 53 of Schedule 7 to the Planning and Compensation Act 1991 (c. 34) and amended by paragraph 41 of Schedule 12 to the Housing and Planning Act 2016 (c. 22). Paragraph 8A was inserted by section 142 of the Housing and Planning Act 2016.

- (a) the council or the forum, as the case may be, inform them that it does not propose to make any representations;
- (b) representations are made by that council or forum; or
- (c) the period of 14 days mentioned in paragraph (1) has elapsed,

whichever occurs first; and in determining the application the authority must take into account any representations received.

(3) The local planning register authority must notify the parish council, or as the case may be, the neighbourhood forum of—

- (a) the terms of the decision on any such application; or
- (b) where the application is referred to the Secretary of State—
 - (i) the date when it was so referred; and
 - (ii) when notified to the authority, the terms of the Secretary of State’s decision.

(4) For the purposes of paragraph (3), “the local planning register authority” has the same meaning as in article 40 of the Town and Country Planning (Development Management Procedure) (England) Order 2015⁽¹⁾.

Duty to respond to consultation and annual reports

5N.—(1) Subject to paragraph (2), for the purposes of applications for permission in principle, the requirements to consult which are prescribed for the purposes of section 54(2)(b) of the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”) are those contained in—

- (a) articles 5J and 5K of this Order and Schedule 4 to the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as applied by those articles);
- (b) article 5L of this Order;
- (c) paragraph 4(2) of Schedule 1 to the 1990 Act; and
- (d) paragraph 7 of Schedule 1 to the 1990 Act.

(2) A requirement to consult under paragraph (zb)(iii) of Schedule 4 to the Town and Country Planning (Development Management Procedure) (England) Order 2015 is not a prescribed requirement for the purposes of section 54(2)(b) of the 2004 Act.

(3) The period prescribed for the purposes of section 54(4)(a) of the 2004 Act in relation to applications for permission in principle is 14 days beginning with the day on which—

- (a) the document on which the views of consultees are sought, or
- (b) where there is more than one such document and they are sent on different days, the last of those documents,

is received by the consultee, or such other period as may be agreed in writing between the consultee and the local planning authority.

(4) The information to be provided to the consultee for the purposes of the consultation, pursuant to section 54(5)(b) of the 2004 Act, is such information as will enable that person to provide a substantive response.

(5) For the purposes of this article and pursuant to section 54(5)(c) of the 2004 Act, a substantive response is one which—

- (a) states that the consultee has no comment to make;
- (b) states that, on the basis of the information available, the consultee is content with the development proposed;
- (c) refers the local planning authority to current standing advice by the consultee on the subject of the consultation; or
- (d) provides advice to the local planning authority.

⁽¹⁾ S.I. 2015/595.

(6) Each consultee who is, by virtue of section 54 of the 2004 Act and this article, under a duty to respond to consultation must give to the Secretary of State, not later than 1st July in each year (beginning on 1st July 2018), a report as to that consultee's compliance with section 54(4) of the 2004 Act in relation to the application for permission in principle.

(7) The report must—

- (a) in relation to the first report, relate to the period from [??date of coming to force of this SI??] until 31st March 2018; and
- (b) in relation to subsequent reports, relate to the period of 12 months commencing on 1st April in the preceding year.

(8) Each report must contain—

- (a) a statement as to the number of occasions on which the consultee was consulted by a local planning authority;
- (b) a statement as to the number of occasions on which a substantive response was given to a local planning authority within the period referred to in section 54(4) of the 2004 Act; and
- (c) in relation to occasions on which the consultee has given a substantive response outside the period referred to in section 54(4) of the 2004 Act, a summary of the reasons why the consultee failed to comply with the duty to respond within that period.

Directions by the Secretary of State

5P.—(1) The Secretary of State may give directions restricting the grant of permission in principle by a local planning authority, either indefinitely or during such a period as may be specified in the directions, in respect of any development or in respect of development of any class so specified.

(2) A local planning authority must deal with applications for permission in principle for development to which a direction given under paragraph (1) applies, in such manner as to give effect to the direction.

Development departing from the development plan

5Q. A local planning authority may in such cases and subject to such conditions as may be prescribed by directions given by the Secretary of State under this Order, grant permission in principle for development which does not accord with the provisions of the development plan in force in the area in which the land to which the application relates is situated.

Representations to be taken into account

5R.—(1) A local planning authority must, in determining an application for permission in principle, take into account any representations made where any notice of, or information about, the application has been—

- (a) given by site display under article 5G, within 14 days beginning with the date when the notice was first displayed by site display;
- (b) served on an infrastructure manager under article 5H, within 14 days beginning with the date when the notice was served on that person, provided that the representations are made by any person who they are satisfied is such an infrastructure manager; or
- (c) published on a website under article 5G, within the period of 14 days beginning with the date on which the notice or information was published.

(2) A local planning authority must give notice of their decision to every person who has made representations which they were required to take into account in accordance with paragraph (1).

(3) Paragraphs (1) and (2) apply to applications referred to the Secretary of State under section 77 of the 1990 Act⁽⁴⁾ and to applications made to the Secretary of State under section 293A(2) of the

⁽⁴⁾ Section 77 was amended by paragraph 18 of Schedule 7 to the Planning and Compensation Act 1991, section 40(2)(d) of the Planning and Compulsory Purchase Act 2004 (c. 5) (“the 2004 Act”) and is to

1990 Act^(v) and paragraphs (1) and (2) apply to appeals to the Secretary of State made under section 78 of the 1990 Act^(w), as if the references to—

- (a) a local planning authority were to the Secretary of State; and
- (b) determining an application for permission in principle were to determining such an application or appeal, as the case may be.

Time periods for decisions

5S.—(1) Subject to paragraph (6), where a valid application has been received by a local planning authority the authority must within the period specified in paragraph (2) give the applicant notice of their decision or notice that the application has been referred to the Secretary of State.

(2) The period specified in this paragraph is—

- (a) 5 weeks beginning with the day immediately following that on which the application is received by the local planning authority; or
- (b) unless the applicant has already given notice of appeal to the Secretary of State, such extended period as may be agreed in writing between the applicant and the local planning authority.

(3) In this article “valid application” means an application which—

- (a) complies with the requirements of article 5D, and
- (b) consists of any fee required to be paid in respect of the application (and for this purpose, lodging a cheque for the amount of a fee is to be taken as payment),

and a valid application is taken to have been received where the last of the documents or particulars referred to in article 5D(1) have been received by the authority and any fee required has been paid.

(4) Where a fee due in respect of an application has been paid by a cheque which is subsequently dishonoured—

- (a) paragraph (2)(a) has effect as if for “the application is received by the local planning authority” there were substituted “the local planning authority are satisfied that they have received the full amount of the fee”; and
- (b) paragraph (2)(b) has effect as if, at the end, there were added “once the authority are satisfied that they have received the full amount of the fee”.

(5) A local planning authority must provide such information about applications made under article 5D as the Secretary of State may by direction require and any such direction may include provision as to the persons to be informed and the manner in which the information is to be provided.

(6) A local planning authority must not determine an application for permission in principle where any notice of, or information about, the application has been—

- (a) given by site display under article 5G, before the end of the period of 14 days beginning with the date when the notice was first displayed by site display;
- (b) served on an infrastructure manager under article 5H, before the end of the period of 14 days beginning with the date when the notice was served on that person; or
- (c) published on a website under article 5G, within the period of 14 days beginning with the date on which the notice or information was published.

be amended by paragraphs 1 and 2 of Schedule 10 to the Planning Act 2008 (c. 29) on a date to be appointed and paragraph 18 of Schedule 12 to, the Localism Act 2011 (c. 20) (“the 2011 Act”).

(^v) Section 293A was inserted by section 82(1) of the 2004 Act.

(^w) Section 78 was amended by section 17(2) of the Planning and Compensation Act 1991, section 40(2)(e) and 43(2) of the 2004 Act and paragraphs 1 and 3 of Schedule 10 (amendments in force for certain purposes and to come into force for remaining purposes on a date to be appointed, *see* S.I. 2009/400) and paragraphs 1 and 2 of Schedule 11 to the Planning Act 2008 (c. 29).

Written notice of decision or determination relating to a planning application

5T.—(1) When the local planning authority give notice of a decision in relation to an application for permission in principle—

- (a) where permission in principle is refused, the notice must state clearly and precisely their full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision; or
- (b) where permission in principle is refused in pursuance of a direction given by the Secretary of State, the notice must give details of the direction.

(2) Where paragraph (1)(a) applies, the notice must also include a statement explaining, whether, and if so how, in dealing with the application, the local planning authority have worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising in relation to dealing with an application.

(3) Where paragraph (1)(a) or (b) applies, the notice must be accompanied by a notification in the terms (or substantially in the terms) set out in Schedule 1.

Applications for non-material changes to permission in principle

5U.—(1) This article applies in relation to an application made under section 96A(4) of the 1990 Act^(*) for a non-material change to a permission in principle.

(2) An application must be made in writing to the local planning authority on a form published by the Secretary of State (or a form substantially to the same effect).

(3) Where a local planning authority receive an application made in accordance with paragraph (2) they must give the applicant notice in writing of their decision on the application within 28 days of receipt of the application or such longer period as may be agreed in writing between the applicant and the authority.

Appeals in relation to permission in principle applications

5V.—(1) An applicant who wishes to appeal to the Secretary of State under section 78 of the 1990 Act must give notice of appeal to the Secretary of State by serving on the Secretary of State within—

- (a) the time limit specified in paragraph (3); or
- (b) such longer period as the Secretary of State may at any time allow,

a completed appeal form, obtained from the Secretary of State, together with such of the documents specified in paragraph (4) as are relevant to the appeal.

(2) As soon as reasonably practicable after giving notice of appeal under paragraph (1), the applicant who wishes to appeal must serve on the local planning authority—

- (a) a copy of the completed appeal form mentioned in paragraph (1); and
- (b) a copy of the documents mentioned in paragraphs (4)(d) and (f) to (h) (where those paragraphs apply).

(3) The time limit mentioned in paragraph (1) is 6 months from—

- (a) the date of the notice of the decision or determination giving rise to the appeal; or
- (b) in any other case, the expiry of the specified period.

(4) The documents mentioned in paragraph (1) or (2) are—

- (a) a copy of the application which was sent to the local planning authority which has occasioned the appeal;
- (b) all plans, drawings and documents sent to the authority in connection with the application;

^(*) Section 96A was inserted by section 190 of the Planning Act 2008 (c. 29) and amended by S.I. 2017/276.

- (c) all correspondence with the authority relating to the application;
- (d) any other relevant plans, documents or drawings relating to the application which were not sent to the authority;
- (e) the notice of the decision or determination, if any;
- (f) subject to paragraph (5), the applicant's full statement of case (if they wish to make additional representations);
- (g) subject to paragraph (5), a statement of which procedure (written representations, a hearing or an inquiry) the applicant considers should be used to determine the appeal; and
- (h) subject to paragraph (5), a draft statement of common ground if the applicant considers that the appeal should be determined through a hearing or an inquiry.

(5) The relevant documents required in paragraphs (4)(d) and (4)(f) to (h) are not required to accompany the notice under paragraph (1) or be sent to the local planning authority under paragraph (2) where—

- (a) a direction is given by the Secretary of State under section 321(3) of the 1990 Act (matters related to national security)^(y); or
- (b) section 293A of the 1990 Act (urgent Crown development)^(z) applies.

(6) The Secretary of State may refuse to accept a notice of appeal from an applicant if the completed appeal form required under paragraph (1) and the documents required under paragraph (4) are not served on the Secretary of State within the time limit specified in paragraph (3).

(7) The Secretary of State may provide, or arrange for the provision of, a website for use for such purposes as the Secretary of State thinks fit which—

- (a) relate to appeals under section 78 of the 1990 Act^(aa) and this article; and
- (b) are capable of being carried out electronically.

(8) Where a person gives notice of appeal to the Secretary of State using electronic communications, the person is taken to have agreed—

- (a) to the use of such communications for all purposes relating to the appeal which are capable of being carried out electronically;
- (b) that the person's address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, the person's notice of appeal; and
- (c) that the person's deemed agreement under this paragraph subsists until notice is given in accordance with article 7A that the person wishes to revoke the agreement.

(9) In this article—

“draft statement of common ground” means a written statement containing factual information about the proposal which is the subject of the appeal that the applicant reasonably considers will not be disputed by the local planning authority;

“full statement of case” means, and is comprised of, a written statement which contains full particulars of the case which a person proposes to put forward and copies of any documents which that person intends to refer to or put in evidence; and

“specified period” means the period specified in article 5S.”.

^(y) There are amendments to section 321 which are not relevant to this Order.

^(z) Section 293A was inserted by section 82(1) the Planning and Compulsory Purchase Act 2004 (c. 5).

^(aa) Section 78 was amended by section 17(2) of the Planning and Compensation Act 1991, section 40(2)(e) and 43(2) of the Planning and Compulsory Purchase Act 2004 (c. 5) (“the 2004 Act”) and paragraphs 1 and 3 of Schedule 10 (amendments in force for certain purposes and to come into force for remaining purposes on a date to be appointed, *see* S.I. 2009/400) and paragraphs 1 and 2 of Schedule 11 to the Planning Act 2008 (c. 29).

Substitution of article 6

5. For article 6 (planning register: permission in principle) of the 2017 Order substitute—

“6.—(1) The planning register kept by each local planning register authority must also include, as Part 2A, a part relating to permissions in principle.

(2) Part 2A of the planning register must consist of three sections—

- (a) the first section must contain, in respect of every permission in principle granted pursuant to article 4 (permission in principle on allocation of land in a brownfield land register) in relation to land in the area of the local planning register authority—
 - (i) a copy (which may be photographic or in electronic form) of the entry in the brownfield land register which relates to the land;
 - (ii) the date the permission in principle takes effect and the date it expires; and
 - (iii) the name of the local planning authority which allocated the land in the brownfield land register;
- (b) the second section must contain, in respect of every application for permission in principle relating to land in the area of the local planning register authority made or sent to the authority and not finally disposed of, a copy (which may be photographic or in electronic form) of each application together with any accompanying plan and drawings; and
- (c) the third section must contain, in respect of every application for permission in principle relating to land in the area of the local planning register authority which has been finally disposed of—
 - (i) a copy (which may be photographic or in electronic form) of the application and of any plans and drawings submitted in relation to it;
 - (ii) particulars of any direction given under the 1990 Act or this Order in respect of the application;
 - (iii) the decision, if any, of the local planning authority in respect of the application, the date of such decision and the name of the local planning authority; and
 - (iv) the reference number, the date and effect of any decision of the Secretary of State in respect of the application, whether on appeal, on an application under section 293A(2) of the 1990 Act (urgent Crown development: application) or on a reference under section 77 of the 1990 Act (reference of applications to Secretary of State).

(3) Subject to paragraph (4), every entry in Part 2A of the planning register must be made—

- (a) in the case of entries required under paragraph (2)(a), within 14 days of entering the land into Part 2 of the brownfield land register; and
- (b) in the case of entries required under paragraph (2)(b) or (c), within 14 days of the receipt of an application, or of the giving or making of the relevant direction or decision, as the case may be.

(4) A copy of any application for permission in principle made under section 293A(2) of the 1990 Act (urgent Crown development: application) and of any plans and drawings submitted in relation to it must be placed on Part 2A of the register within 14 days of the date on which the local planning authority is consulted on the application by the Secretary of State.

(5) For the purposes of paragraph (2), an application is not treated as finally disposed of unless and until—

- (a) it has been decided by the authority (or the period specified in article 5S has expired without their giving a decision) and the time limit specified in article 5V has expired without any appeal having been made to the Secretary of State;
- (b) it has been referred to the Secretary of State under section 77 of the 1990 Act (reference of applications to the Secretary of State) or an appeal has been made to the Secretary of State

under section 78 of the 1990 Act^(bb), the Secretary of State has issued a decision and the period of 6 weeks specified in section 288 of the 1990 Act^(cc) has expired without any application having been made to the High Court under that section;

- (c) an application has been made to the High Court under section 288 of the 1990 Act and the matter has been finally determined, either by final dismissal of the application by a court or by the quashing of the Secretary of State's decision and the issue of a fresh decision (without a further application under section 288 of that Act); or
- (d) it has been withdrawn before being decided by the authority or the Secretary of State, as the case may be, or an appeal has been withdrawn before the Secretary of State has issued a decision.

(6) In this article—

“local planning register authority” has the same meaning as in article 40 of the Town and Country Planning (Development Management Procedure) (England) Order 2015^(dd); and

“planning register” means the register kept by a local planning register authority under article 40 of that Order.”.

Amendment of article 7

6. In article 7 (prescribed period under section 70(2ZZC) of the 1990 Act) of the 2017 Order for “granted pursuant to article 4 is 5 years” substitute—

“—

- (a) granted pursuant to article 4 is 5 years; and
- (b) granted following an application to the local planning authority is 3 years.”

Insertion of article 7A

7. After article 7 (prescribed period under section 70(2ZZC) of the 1990 Act) of the 2017 Order insert—

“Electronic communications

7A. Where a person is no longer willing to accept the use of electronic communications for any purpose of this Order which is capable of being carried out electronically, the person must give notice in writing—

- (a) withdrawing any address notified to the Secretary of State or to a local planning authority for that purpose; or
- (b) revoking any agreement entered into or deemed to have been entered into with the Secretary of State or with a local planning authority for that purpose,

and such withdrawal or revocation takes effect on the date specified by the person in the notice which date must not be less than 7 days after the date on which the notice is given.”.

Insertion of Schedule 1

8. Before the Schedule to the 2017 Order insert, as Schedule 1 to the 2017 Order, the Schedule set out in Schedule 1 to this Order and renumber the existing Schedule to the 2017 Order as Schedule 2.

^(bb) Section 78 was amended by section 17(2) of the Planning and Compensation Act 1991, sections 40(2)(e) and 43(2) of the 2004 Act and paragraphs 1 and 3 of Schedule 10 (amendments in force for certain purposes and to come into force for remaining purposes on a date to be appointed, *see* S.I. 2009/400), paragraphs 1 and 2 of Schedule 11 to the Planning Act 2008 (c. 29), paragraphs 1 and 11 of Schedule 12 to the 2011 Act and paragraphs 1 and 8 of Schedule 1 to the Growth and Infrastructure Act 2013 (c. 27) .

^(cc) Section 288 was amended by paragraph 25 of Schedule 3 to the Tribunals and Inquiries Act 1992 (c. 53).

^(dd) S.I. 2015/595.

Amendments to secondary legislation

9. Schedule 2 to this Order, which makes amendments to secondary legislation, has effect.

Signed by authority of the Secretary of State for Communities and Local Government

Address
Date
Name
Parliamentary Under Secretary of State
Department for Communities and Local Government

SCHEDULE 1

Article 8

“Schedule 1

Articles 5F, 5G, 5H and 5T

Notices

Acknowledgement to be sent to applicant on receipt of application for permission in principle

Thank you for your application dated..... which I received on.....

I am still examining your application form and accompanying plan to see whether they comply with the law*

If I find your application is invalid because it does not comply with the statutory requirements then I will write to you again as soon as I can*

If, by [*insert date at end of period of 5 weeks beginning with the day immediately following the date when the application was received*]..... you have not been given a decision in writing and:

- you have not been told that your application is invalid; or
- *you have not been told that your fee cheque has been dishonoured; or
- you have not agreed in writing to extend the period in which the decision may be given,

then you can appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990. You cannot appeal if your application has already been referred to the Secretary of State. To make an appeal you must use a form which you can get online from www.gov.uk/government/organisations/planning-inspectorate or from the Planning Inspectorate at Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN. If you wish to appeal you must do so within 6 months from [*insert date at end of period of 5 weeks beginning with the day immediately following the date when the application was received*].

* delete if not relevant

Publicity for applications for permission in principle – requisite notice

Town and Country Planning (Permission in Principle) Order 2017

NOTICE UNDER ARTICLE 5G* OR 5H OF APPLICATION FOR PERMISSION IN PRINCIPLE

(*to be displayed by site display on or near the site [OR to be served on infrastructure manager])

Proposed development (a)

I give notice that (b) is applying to the (c) Council for permission in principle to (d).....

*The proposed development to which the application relates is situated within 10 metres of relevant railway land

Members of the public may inspect copies of-

- the application
- the plan
- and any other documents submitted with it

at (e) during all reasonable hours until (f)

Anyone who wishes to make representations about this application should write to the Council at (g) by (f)

Signed.....(Council's authorised officer)

On behalf of (c).....Council

Date.....

* delete as appropriate

Insert:

(a) address or location of proposed development

(b) applicant's name

(c) name of the Council

(d) description of the propose development

(e) address at which the documents may be inspected

(f) date giving a period of at least 14 days, beginning with the date when the notice is first displayed where visible or accessible on or near the site or served on the infrastructure manager (as the case may be)

(g) address of the Council

Notification of decision where permission in principle refused

TOWN AND COUNTRY PLANNING ACT 1990

NOTIFICATION TO BE SENT TO AN APPLICANT WHEN A LOCAL PLANNING AUTHORITY REFUSE PERMISSION IN PRINCIPLE

[the following is to be endorsed on notices of decision]

Appeals to the Secretary of State

- If you are aggrieved by the decision of your local planning authority to refuse permission in principle for the proposed development, then you can appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990.
- If you want to appeal against your local planning authority's decision then you must do so within 6 months of the date of this decision notice.
- Appeals must be made using a form which you can obtain online from www.gov.uk/government/organisations/planning-inspectorate or from the Planning Inspectorate at Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN.
- The Secretary of State can allow a longer period for making an appeal, but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in making an appeal.
- The Secretary of State need not consider an appeal if it seems to the Secretary of State that the local planning authority could not have granted permission in principle for the proposed development having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.
- In practice the Secretary of State does not refuse to consider appeals solely because the local planning authority based their decision on a direction given by the Secretary of State."

SCHEDULE 2

Article 9

Amendments to secondary legislation

Amendment of the Town and Country Planning General Regulations 1992

1.—(1) The Town and Country Planning General Regulations 1992^(ee) are amended as follows.

(2) In regulation 1, in the definition of “planning permission” for “, except in regulations 7 to 9, includes” substitute “includes permission in principle^(ff) and, except in regulations 7 to 9, also includes”.

(3) In Schedule 3—

(a) in Part 1, for the words “Planning permission for” to “(e) (Delete where appropriate).” substitute—

“**[Planning permission / Permission in principle]** *(delete as appropriate)*

for.....(a)

at.....(b)

WE GIVE NOTICE THAT THE(c) Council have made an order under [section 97](#) of the Town and Country Planning Act 1990 to

[revoke the above **planning permission** [to the following extent(d)]]

[revoke the above **permission in principle** [to the following extent(d)]]

[modify the above **planning permission** as follows(e)]

[modify the above **permission in principle** as follows(e)]

^(ee) S.I. 1992/1492 to which there are amendments not relevant to this Order.

^(ff) Permission in principle and its effect are described in sections 58A, 59A and 70(2ZZA) to (2ZZC) of the 1990 Act, these provisions were inserted into that Act by section 150 of the Housing and Planning Act 2016.

(delete as appropriate).”

- (b) in Part 2, for the words “Planning permission for” to “(e) (Delete where appropriate).” substitute—

“[**Planning permission / Permission in principle**] *(delete as appropriate)*

for.....(a)

at.....(b)

TAKE NOTICE THAT THE(c) Council have made an order under [section 97](#) of the Town and Country Planning Act 1990 to

[revoke the above **planning permission** [to the following extent(d)]]

[revoke the above **permission in principle** [to the following extent(d)]]

[modify the above **planning permission** as follows(e)]

[modify the above **permission in principle** as follows(e)]

(delete as appropriate).”

Amendment of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000

2.—(1) The Town and Country Planning (Inquiries Procedure) (England) Rules 2000^(gg) are amended as follows.

(2) In rules 3(1) and 4(2), after “planning permission” insert “or permission in principle”.

(3) In the modified text in rule 23(2)(b) and (h), after “planning permission” insert “or permission in principle”.

(4) In rule 23B—

(a) before paragraph (3)(a) insert—

“(za) before the definition of “applicant” insert—

““the 2017 Order” means the Town and Country Planning (Permission in Principle) Order 2017;”;

(b) in the modified text in paragraphs (3)(a), (b) and (e) after “2010 Order” insert “, article 5V of the 2017 Order”; and

(c) in the modified text in paragraphs (5)(f)(ii), (h)(i), and (i), (6), (8)(b) and (9)(b) after “2010 Order,” insert “article 5V of the 2017 Order”.

(5) In the modified text in paragraph 2 of Part 2 of the Schedule, after “planning permission” insert “or permission in principle”.

Amendment of the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000

3.—(1) The Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000^(hh) are amended as follows.

(2) In rule 2(1)—

(a) in the appropriate place insert the following definition—

““the 2017 Order” means the Town and Country Planning (Permission in Principle) Order 2017;”;

^(gg) S.I. 2000/1624. Rule 23B was inserted by S.I. 2013/2137. There are other amendments not relevant to this Order.

^(hh) S.I. 2000/1625 to which there are amendments not relevant to this Order.

- (b) in the definition of “draft statement of common ground”, after “2010 Order” insert “, article 5V of the 2017 Order”; and
 - (c) in the definition of “full statement of case”, after “2010 Order” insert “, article 5V of the 2017 Order”.
- (3) In rules 3(1) and 4(2), after “planning permission” insert “or permission in principle”.
- (4) In rules 6(8), (12) and (13), 10(7), 16(10) and 22(1), after “2010 Order,” insert “article 5V of the 2017 Order”.
- (5) In the modified text in rule 24(2)(b), (f) and (g), after “planning permission” insert “or permission in principle”.

Amendment of the Town and Country Planning (Hearings Procedure) (England) Rules 2000

4.—(1) The Town and Country Planning (Hearings Procedure) (England) Rules 2000⁽ⁱⁱ⁾ are amended as follows.

(2) In rule 2(1)—

(a) in the appropriate place insert the following definition—

““the 2017 Order” means the Town and Country Planning (Permission in Principle) Order 2017;”

(b) in the definition of “draft statement of common ground”, after “2010 Order” insert “, article 5V of the 2017 Order”; and

(c) in the definition of “full statement of case”, after “2010 Order” insert “, article 5V of the 2017 Order”.

(3) In rules 6(6) and (7), 7(6), 11(9) and 18(2) after “2010 Order,” insert “article 5V of the 2017 Order”.

Amendment of the Local Authorities (Functions and Responsibilities) (England) Order 2000

5.—(1) The Local Authorities (Functions and Responsibilities) (England) Order 2000^(jj) is amended as follows.

(2) In the table in Schedule 1—

(a) in item 5—

(i) in column (1), after “planning permission” insert “or permission in principle”;

(ii) in column (2), after “Sections” insert “59A(1)(b),”; and

(b) in items 8 and 10, in column (1), after “planning permission” insert “or permission in principle”.

Amendment of the Planning (National Security Directions and Appointed Representatives) (England) Rules 2006

6.—(1) The Planning (National Security Directions and Appointed Representatives) (England) Rules 2006^(kk) are amended as follows.

(2) In rule 6(2) and (3), after “planning permission” insert “or permission in principle”.

Amendment of the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009

7.—(1) The Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009^(ll) are amended as follows.

⁽ⁱⁱ⁾ S.I. 2000/1626 to which there are amendments not relevant to this Order.
^(jj) S.I. 2000/2853 to which there are amendments not relevant to this Order.
^(kk) S.I. 2006/1284 to which there are amendments not relevant to this Order.
^(ll) S.I. 2009/452 to which there are amendments not relevant to this Order.

(2) In regulation 2, in the definition of “full statement of case”, after “Order 2010 (appeals)” insert “or article 5V of the Town and Country Planning (Permission in Principle) Order 2017”.

Amendment of the Town and Country Planning (Development Management Procedure) (England) Order 2015

8.—(1) The Town and Country Planning (Development Management Procedure) (England) Order 2015^(mm) is amended as follows.

(2) In article 1 (application), at the end, insert—

“(5) Nothing in this Order applies to an application for permission in principle^(mm).”.

Amendment of the Planning (Hazardous Substances) Regulations 2015

9.—(1) The Planning (Hazardous Substances) Regulations 2015^(oo) are amended as follows.

(2) In regulation 26(6), in sub-paragraphs (a), (b) and (c), after “planning permission”, in each place it occurs, insert “or permission in principle”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which applies in England only, makes provisions in relation to permission in principle. In particular it amends the Town and Country Planning (Permission in Principle) Order 2017 (S.I. 2017/402) (“the 2017 Order”) to allow local planning authorities to grant permission in principle for development the main purpose of which is housing development on an application to the authority in accordance with provisions inserted into that Order by this instrument. Permission in principle and its effect are described in sections 58A, 59A and 70(2ZZA) to (2ZZC) of the Town and Country Planning Act 1990 (“the 1990 Act”) (those sections were inserted by section 150 of the Housing and Planning Act 2016 (c. 22)).

Article 4 inserts provisions into the 2017 Order in relation to applications for permission in principle. Inserted article 5A provides that a local planning authority may grant permission in principle on an application made to the authority and prescribes the type of development for which permission in principle may be granted. Inserted article 5B excludes certain classes of development from being granted permission in principle under article 5A (in particular it excludes major development, habitats development, householder development and EIA development). Inserted article 5C provides that where the non-housing part of any development is specified wind turbine development then there is requirement to undertake consultation before making the application. Inserted articles 5D to 5T set out the procedure for making and determining applications for permission in principle – this procedure is similar to the existing process for planning permissions. (Article 8 inserts a Schedule 1 into the 2017 Order which includes related notices.) Inserted article 5U sets out the procedure for applying for a non-material change to a permission in principle. Inserted article 5V sets out the procedure for appealing against a refusal of permission in principle.

Article 5 substitutes a new article 6 (planning register) in the 2017 Order. The new article 6 requires the planning register to include details of each permission in principle, whether granted following an allocation of land in a register under section 14A of the Planning and Compulsory Purchase Act 2004, or granted following an application for permission in principle.

Article 6 amends article 7 (prescribed period under section 70(2ZZC) of the 1990 Act) of the 2017 Order by prescribing (as 3 years) the period during which a technical details application must be determined in

^(mm) S.I. 2015/595.

⁽ⁿⁿ⁾ Permission in principle and its effect are described in sections 58A, 59A and 70(2ZZA) to (2ZZC) of the 1990 Act, these provisions were inserted into that Act by section 150 of the Housing and Planning Act 2016.

^(oo) S.I. 2015/627.

accordance with the permission in principle where that permission in principle is granted following an application to a local planning authority.

Article 7 inserts a new article 7A into the 2017 Order. This new article enables an applicant to notify the authority that it no longer wishes to be contacted electronically.

Article 8 inserts a new Schedule 1 into the 2017 Order setting out notices in relation to applications for permission in principle.

Article 9 and Schedule 2 set out a number of amendments to secondary legislation relating to permission in principle.

The documents referred to in this Order can be obtained as follows:

Form for applications for permission in principle or non-material change to a permission in principle
www.gov.uk/government/publications/planning-application-forms-templates-for-local-planning-authorities

or in writing from:

The Planning Directorate, Department for Communities and Local Government, Fry Building, 2 Marsham Street, London SW1P 4DF.

Form for appeals
www.gov.uk/government/organisations/planning-inspectorate

or in writing from:

The Planning Directorate, Department for Communities and Local Government, Fry Building, 2 Marsham Street, London SW1P 4DF.

An Impact Assessment was prepared in relation to the policy in section 150 of the Housing and Planning Act 2016 and can be found at www.parliament.uk/documents/impact-assessments/IA16-002C.pdf No impact assessment has been prepared in relation to this Order as negligible impact is foreseen on the private, voluntary or public sectors.