

EXPLANATORY MEMORANDUM TO
THE SUSTAINABLE COMMUNITIES REGULATIONS 2012
2012 No. 1523

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 To set out the procedures for dealing with proposals submitted by local authorities to the Secretary of State under the Sustainable Communities Act 2007 (the Act).
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 The principal aim of the Act is to promote the sustainability of local communities i.e. encouraging the improvement of the economic, social or environmental well-being of the authority's area, or part of its area (see section 1). It imposes a duty on the Secretary of State to assist local authorities in promoting the sustainability of local communities in the ways specified in the Act.
 - 4.2 Sections 2 to 5 provided for the Secretary of State to publish action plans in connection with implementing proposals that promote the sustainability of local communities and enabled local authorities and local communities to participate in the formulation and implementation of those proposals. This was accomplished by the Secretary of State inviting local authorities to make proposals that they considered would contribute to promoting sustainability in their areas. The Secretary of State was required to appoint a "selector", representing local authorities' interests, to consider these submitted proposals. The selector, in co-operation with the Secretary of State, drew up a shortlist, before the Secretary of State decided which of these proposals should be implemented.
 - 4.3 The Act was amended by the Sustainable Communities Act 2007 (Amendment) Act 2010, removing the requirements of sections 2 to 5 of the Act with regard to subsequent invitations. The amended Act introduced new powers to make regulations and provided scope for additional persons able to submit proposals. The second invitation was issued on 15 December 2010. These Regulations are the first to be made under the amended Act.

5. Territorial Extent and Application

5.1 This instrument extends to England and Wales, but applies to England only.

6. European Convention on Human Rights

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

7. Policy background

- What is being done and why

7.1 The Sustainable Communities Act 2007 was amended in 2010 (the Sustainable Communities Act 2007 (Amendment) Act 2010) to enable the Secretary of State to issue a second invitation for proposals under the Act and to improve the process for receiving, considering and deciding proposals under the Act. The first invitation had a deadline of 31 July 2009 to submit proposals and no further proposals could be submitted after that deadline. Local authorities were invited to submit their proposals to the Selector (the Local Government Association), who short listed proposals and submitted them to the Secretary of State for consideration. The Secretary of State took the final decision on all proposals submitted to him.

7.2 Under the second invitation, local authorities were invited to submit proposals directly to the Secretary of State via the Barrier Busting portal on the Department for Communities and Local Government's website. There are no deadlines for submitting proposals to the Secretary of State. Information on the action that Government is taking on proposals will be available online so that councils and communities can track progress.

7.3 The Regulations will require local authorities to consult their communities on Sustainable Communities Act proposals and try to reach agreement before submitting them to the Secretary of State for consideration. However, the duty to consult will not be as prescriptive as it was during the first round where authorities were required to hold panels of local people to discuss their proposals before submission to the Selector.

7.4 These Regulations will provide a mechanism which will enable local authorities to ask the Secretary of State to reconsider his decision if they are unhappy with it. They can do this by asking the selector to review the Secretary of State's decision. The role of selector – a person who represents the interests of local authorities - will then be to consider the proposal afresh and decide whether the proposal should be re-submitted to the Secretary of State for consideration. This additional check and scrutiny should ensure that the proposals that are re-submitted are suitable for re-consideration by the Secretary of State.

7.5 In considering proposals, the selector will receive advice from a panel of persons who represent the interests of local authorities and local persons. This should ensure that a range of interested opinions have been taken into consideration before a proposal is submitted to the Secretary of State. The selector's opinions on any proposals resubmitted to the Secretary of State are to be supported by reasons. This should help to explain why the proposal is worthy of implementation.

7.6 The Secretary of State will have a duty to consider proposals re-submitted by the selector and try to reach agreement with the selector on his eventual decision. He will also have a duty to publish his decision. The final decision therefore rests with the Secretary of State but there is a requirement to give reasons for the decision made regarding implementation of the proposals.

- Consolidation

7.7 Not applicable

8. Consultation outcome

8.1 The consultation on Regulations covering the second invitation took place between March and June 2011. The consultation document sought responses on introducing Regulations that would require the Secretary of State to

- Consider a request by the selector to take action to remove a bureaucratic barrier, which the Secretary of State has previously decided not to implement;
- Consult and try to reach agreement with the selector before he decides whether or not it can be implemented, or implemented in part, and how the proposals will be implemented;
- Publish his decisions, with reasons;
- State any action he will take with a view to implementing the proposal
- Publish an update on that action, should it not be complete within one year
- Introduce regulations which give the selector the discretion to appoint an advisory panel to assist it in its duties. This would be supported by non-statutory arrangements
- We believe all other arrangements can be adequately addressed within the selector's terms of reference and the memorandum of understanding

8.2 24 responses were submitted to the consultation on Regulations and the majority of responses supported the proposals in the document. A number of responses asked that the regulations should include a duty on local authorities to consult their communities on Sustainable Communities Act proposals and to try to reach agreement before submitting them to the Secretary of State for consideration. The Government has agreed to include this requirement in the regulations.

8.3 In addition, a number of the responses asked that the Regulations should include a power for parish and councils to submit proposals under the Sustainable Communities Act 2007. The Government has decided that it will consult on this proposal as required by the Sustainable Communities Act 2007 (Amendment) Act 2010.

8.4 The summary of responses to the consultation and the Government's response will be published on the Department's website when the Regulations are laid.

9. Guidance

9.1 The Department will publish a copy of the Regulations on its website. The invitation letter of 15 December 2010 provides details of how to submit an SCA proposal. In addition we will issue a press notice when the regulations are laid.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There are no new burdens on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The outcome should result in an improved process for managing SCA proposals by giving local authorities an opportunity to submit proposals and appeal against the Secretary of State's decision if they are unhappy with it.

13. Contact

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