

EXPLANATORY MEMORANDUM TO
THE TOWN AND COUNTRY PLANNING (LOCAL PLANNING)
(ENGLAND) REGULATIONS 2012

2012 No. 767

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 The Regulations (a) consolidate the existing Town and Country Planning (Local Development) (England) Regulations 2004 and the amendments made to them; and (b) make new provision and amendments to take account of the changes made by the Localism Act 2011.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 Part 2 of the Planning and Compulsory Purchase Act 2004 (“ the 2004 Act”) provides that taken as a whole the planning documents of a local planning authority must set out the authority’s policies relating to the development and land use in their area (section 17). The 2004 Act provides that in preparing their planning documents, such as local plans, a local planning authority must have regard to national policies and other strategies (section 19) and must have them independently examined in order to assess whether the local plan is sound (section 20).
 - 4.2 The Localism Act 2011 (sections 110 to 113) made a number of amendments to Part 2 of the 2004 Act. In particular, the Act-
 - inserts a duty to co-operate into section 33A of the 2004 Act;
 - removes the requirement to submit the local development scheme (a document which sets out the list of planning documents for the area and the dates by which they will be reviewed and revised) to the Secretary of State and, in the case of authorities in London, to the Mayor of London, and amends their powers in relation to such schemes;
 - amends the provisions for independent examination so the examiner must consider whether the authority had complied with

the duty to co-operate and provides that the examiner may only recommend modifications if requested to do so;

- gives the local planning authority a power to withdraw a local plan after it has been submitted to examination but before adoption (previously this was only possible if directed to withdraw by the examiner or the Secretary of State), but the Secretary of State retains the power to direct that a local plan is withdrawn;
- makes amendments to the provisions relating to adoption of local plans to mesh with the new provisions on examiners' modifications;
- amends the monitoring report provisions for local plans to give local planning authorities more flexibility as to when they prepare the reports and how often.

4.3 The Regulations build on the statutory framework in the 2004 Act in relation to the preparation and adoption by local planning authorities of development plan documents (which are called "local plans" in the Regulations as this term is more readily understood) and supplementary planning documents. Supplementary planning documents are a category of planning documents, not referred to in the 2004 Act, which supplement the policies in a local plan. Unlike local plans, supplementary planning documents are not required to be submitted to independent examination.

4.4 The Regulations set out the procedure to be followed by local planning authorities in relation to the preparation of local plans and supplementary planning documents, including as to consultation with interested persons and bodies and the documents which must be made available at each stage. The Regulations also set out the procedure under which a local plan is to be prepared where the Secretary of State uses his intervention powers in section 21 of the 2004 Act or takes over the making of a local plan under section 27 of the 2004 Act.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

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 policy aim behind the new regulations is to reflect the reforms set out in the Localism Act 2011, consolidate the changes made to the 2004 Regulations into a single document; and ensure the new regulations are as effective and simple as possible.

7.2 The main changes, compared to the existing 2004 Regulations are:

- Local planning authorities are required to make information on their planning activity available to their communities as soon as it is ready, and to do so on-line. These authorities will still be required to publish monitoring reports that will be made publicly available, rather than being sent to the Secretary of State.
- The new regulations prescribe additional bodies that are subject to the 'duty to co-operate' under section 110 of the Localism Act 2011. The regulations also prescribe that local planning authorities must have regard to the views of local enterprise partnerships under the 'duty to co-operate'.
- The Marine Management Organisation has been included on the Statutory Consultee list.

- Consolidation

7.2 The Regulations consolidate the Town and Country Planning (Local Development) (England) Regulations 2004 and the amendments made to them principally in 2008 and 2009.

8. Consultation outcome

8.1 In July 2011 the Government went out to consultation on proposals for new regulations which reflected the reforms set out in the Localism Act 2011, consolidated changes made to the 2004 regulations into a single document; and ensured the regulations were as effective and simple as possible.

8.2 The consultation closed on 7 October 2011. The Government received 199 responses to its consultation, the majority of which came from county and district councils (90) and parish and town councils (52). Many of the responses were influenced by the consultation on the draft National Planning Policy Framework (the Framework), which was also running at this time.

8.3 Respondents were concerned about the apparent conflicting terminology between the development plan documents as described in the draft regulations which were published, and the local plan referred to in the draft National Planning Policy Framework consultation. The Government accepts this concern and has decided to use the term 'local plan' in the Regulations when referring to 'development plan documents'.

- 8.4 Responses to the consultation asked for the inclusion of a variety of bodies on the list of prescribed bodies for the new duty to co-operate. The Government has retained the list of bodies in the consultation draft of the regulations, as other additions would place too great a burden on authorities concerned.
- 8.5 Some respondents argued that the burden of releasing information as soon as it was available was too onerous. The Government believes that it is very important for local authorities to be transparent with the data they have collected. The provision ensures that local authorities do not have to wait to publish data in their yearly report, if it would be useful for people to see it earlier. The data can still be compiled into a yearly report, as the local authority considers appropriate.
- 8.6 Respondents raised a number of additional points, including minor amendments to improve clarity, many of which we have taken forward. Some comments were related to powers that originate in the 2004 Act, including changes made by the recent Localism Act 2011, for example comments on the extent of independent examiner's powers.
- 8.7 In response to consultation comments, the consultation period for supplementary planning documents has been changed so that there is only a statutory minimum period of 4 weeks, and no maximum period. This is to give local authorities the flexibility to tailor consultation periods to suit the needs of the local community, whilst ensuring a minimum standard is maintained.

9. Guidance

- 9.1 The consultation on the draft National Planning Policy Framework asked for views on what any separate planning guidance should cover, and who is best placed to provide it. Ministers are considering the responses to these questions as they decide a way forward.

10. Impact

- 10.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is minimal.
- 10.3 An Impact Assessment was prepared for the amendments to local plan policies in the Localism Act 2011, the *Local Plan Reform Impact Assessment*, which was deposited in the Library of each House of Parliament and is available from the Department.

11. Regulating small business

- 11.1 The Regulations have no impact on small businesses.

12. Monitoring & review

12.1 No monitoring or review of these regulations is anticipated.

13. Contact

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