

2013 No. 2114

TOWN AND COUNTRY PLANNING, ENGLAND

The Town and Country Planning (Appeals) (Written Representations Procedure and Advertisements) (England) (Amendment) Regulations 2013

<i>Made</i>	- - - -	<i>27th August 2013</i>
<i>Laid before Parliament</i>		<i>3rd September 2013</i>
<i>Coming into force</i>	- -	<i>1st October 2013</i>

The Secretary of State, in exercise of the powers conferred by sections 220, 323 and 333(1) and (2A) of the Town and Country Planning Act 1990(a), makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Town and Country Planning (Appeals) (Written Representations Procedure and Advertisements) (England) (Amendment) Regulations 2013 and shall come into force on 1st October 2013.

(2) These Regulations apply in relation to England only.

Amendments to the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009

2.—(1) Subject to regulation 4 the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009(b) are amended in accordance with this regulation.

(2) In regulation 2(1) (interpretation)—

(a) after the definition of “the Act” insert—

““advertisement application” means an application for express consent to display an advertisement made under Part 3 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007(c); and

“advertisement consent appeal” means an appeal under section 78(1) of the Act (as applied by regulations made under section 220 of the Act(d)) in relation to an advertisement application, except an appeal against the grant of any consent which is granted subject to conditions.”

(a) 1990 c. 8. Section 323 was amended by paragraph 26 of Schedule 3 to the Tribunals and Inquiries Act 1992 and paragraph 12 of Schedule 10 to the Planning Act 2008. Section 333(2A) was inserted by paragraph 14 of Schedule 6 to the Planning and Compulsory Purchase Act 2004.

(b) S.I. 2009/452.

(c) S.I. 2007/783, which has been amended in ways not relevant to these Regulations.

(d) Section 78 has been amended in ways not relevant to these Rules. See regulation 17 of S.I. 2007/783 for the application of section 78..

- (b) after the definition of “electronic communication” insert—
- ““full statement of case”—
- (a) means, in relation to the appellant, the full statement of case (if any) submitted by the appellant with their notice of appeal under article 33 of the Town and Country Planning (Development Management Procedure) (England) Order 2010 (appeals)(a); and
 - (b) in relation to everyone else, 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;”;
- (c) after the definition of “local planning authority” insert—
- ““minor commercial appeal” means an appeal under section 78(1) of the Act in relation to a minor commercial application, except an appeal against the grant of any planning permission, consent, agreement or approval which is granted subject to conditions;
- “minor commercial application” means—
- (a) an application for planning permission for development of an existing building or part of a building currently in use for any of the purposes set out in the Schedule to these Regulations, or
 - (b) an application for any consent, agreement or approval required by or under a planning permission, development order or local development order in relation to such development,
- where such an application does not include a change of use, a change to the number of units in a building, or development that is not wholly at ground floor level or that would increase the gross internal area of a building;”
- (3) In regulation 3 (application)—
- (a) in paragraph (2) for sub-paragraph (a) substitute—
 - “(a) either—
 - (i) a householder appeal is made in relation to an application which was made on or after 6th April 2009; or
 - (ii) an advertisement consent or minor commercial appeal is made in relation to an application which was made on or after 1st October 2013; and”;
 - (b) for paragraph (3)(a) substitute—
 - “(a) an appeal which is not a householder, advertisement consent or minor commercial appeal is made—
 - (i) under section 78 of the Act in relation to an application which was made on or after 6th April 2009; or
 - (ii) under section 78 of the Act, as applied by regulations made under section 220 of the Act, in relation to an application determined, or a discontinuance notice served, on or after 1st October 2013; and”;
 - (c) after paragraph (3) insert—
 - “(3A) For the purposes of paragraph (3)(a)(ii) an application is deemed to be determined if—
 - (a) a determination has not been made; and
 - (b) the period after which an appeal can be made has expired(b).”

(a) S.I. 2010/2184, as amended by an Order made on the same day as this amendment, and in other ways not relevant to these Regulations.

(b) See the modified section 78(2) in Parts 3 and 4 of Schedule 4 to S.I. 2007/783.

(4) In the heading of Part 1 insert “, Advertisement Consent and Minor Commercial” after “Householder”.

(5) In the heading of regulation 10 (decision on householder appeal under Part 1) substitute “, advertisement consent and minor commercial appeals” for “appeal”.

(6) In regulation 12 (questionnaire) substitute “1 week” for “2 weeks”.

(7) In regulation 13 (notice to interested persons)—

(a) in paragraph (1) substitute “1 week” for “2 weeks”; and

(b) in paragraph (2)(e) and (f) substitute “5 weeks” for “6 weeks”.

(8) In regulation 14 (representations)—

(a) in paragraph (3) substitute “full statement of case” for “written representations” and “5 weeks” for “6 weeks”;

(b) omit paragraph (4);

(c) in paragraph (5) omit the words from “and shall send a copy” to the end;

(d) for paragraph (6) substitute—

“(6) The appellant shall send 2 copies of any comments they have on the local planning authority’s representations to the Secretary of State within 7 weeks of the starting date; and the Secretary of State shall, as soon as practicable after receipt, send a copy of those further comments to the local planning authority”;

(e) in paragraph (7) omit the words “and the local planning authority” and substitute “7 weeks” for “9 weeks”;

(f) after paragraph (7) insert—

“(7A) Subject to regulation 15(2)(b) (third party representations) the Secretary of State may disregard further information from the local planning authority which was not sent within 5 weeks of the starting date unless that further information has been requested by the Secretary of State.”; and

(g) in paragraph (8) omit “, (4)”.

(9) In regulation 15 (third party representations)—

(a) in paragraph (1) substitute “5 weeks” for “6 weeks”; and

(b) in paragraph (2)(b) substitute “ending within 7 weeks of the starting date” for “of not less than 2 weeks”.

(10) In Regulation 18(2)(f) (Mayor of London: modifications to regulation 14)—

(a) after paragraph (i) insert—

“(ia) after paragraph (1) insert—

“(1A) Where the documents referred to in paragraph (1) include a full statement of case, the appellant shall send that full statement of case to the Mayor as soon as practicable after the starting date.”;”;

(b) in paragraph (iii) in inserted paragraph (4A)—

(i) insert “do so in the form of a full statement of case and” after “the Mayor shall”;

(ii) substitute “that full statement of case” for “those representations”; and

(iii) substitute “5 weeks” for “6 weeks”;

(c) for paragraph (iv) to (vii) substitute—

“(iv) at the end of paragraph (5) insert “and the Mayor, and shall send a copy of any representations made to the Secretary of State by the Mayor to the appellant and to the local planning authority”;

(v) in paragraph (6), after “the local planning authority’s” insert “or the Mayor’s”, and after “local planning authority” insert “and the Mayor”;

(vi) after paragraph (6) insert—

“(6A) The local planning authority and the Mayor shall send 3 copies of any comments they have on each other’s representations to the Secretary of State within 7 weeks of the starting date; and the Secretary of State shall, as soon as practicable after receipt, send a copy of those further comments to the other party and the appellant.”;

(vii) for paragraphs (7) and (7A) substitute—

“(7) The Secretary of State may disregard further information from the appellant, the Mayor and the local planning authority which was not sent within 7 weeks of the starting date unless that further information has been requested by the Secretary of State.”;

(viii) in paragraph (8) substitute “(3), (4A), (6) and (6A)” for “(3) and (6)”.

(11) After regulation 20 (revocation transitional and saving provision) insert—

“SCHEDULE

Regulation 2(1)

Minor commercial development uses

Shops

1. Use for all or any of the following purposes—

- (a) for the retail sale of goods other than hot food,
- (b) as a post office,
- (c) for the sale of tickets or as a travel agency,
- (d) for the sale of sandwiches or other cold food for consumption off the premises,
- (e) for hairdressing,
- (f) for the direction of funerals,
- (g) for the display of goods for sale,
- (h) for the hiring out of domestic or personal goods or articles,
- (i) for the washing or cleaning of clothes or fabrics on the premises,
- (j) for the reception of goods to be washed, cleaned or repaired,
- (k) as an internet café, where the primary purpose of the premises is to provide facilities for enabling members of the public to access the internet,

where the sale, display or service is to visiting members of the public.

Financial and professional services

2. Use for the provision of—

- (a) financial services,
- (b) professional services (other than health or medical services), or
- (c) any other services (including use as a betting office) which it is appropriate to provide in a shopping area,

where the services are provided principally to visiting members of the public.

Restaurants and cafes

3. Use for the sale of food and drink for consumption on the premises.

Drinking establishments

4. Use as a public house, wine-bar or other drinking establishment.

Hot food takeaways

5. Use for the sale of hot food for consumption off the premises.”

Amendments to the Town and Country Planning (Control of Advertisements) (England) Regulations 2007

3.—(1) The Town and Country Planning (Control of Advertisements) (England) Regulations 2007^(a) are amended in accordance with this Regulation.

(2) In paragraph 1 of Part 3 of Schedule 4—

(a) in sub-paragraph (c)—

(i) for the substituted subsection (3) substitute—

“(3) An applicant who wishes to appeal under subsection (1) or (2) shall give notice of appeal to the Secretary of State by—

(a) serving on the Secretary of State within—

(i) 8 weeks from the date of receipt of the local planning authority’s decision, or, as the case may be, within 8 weeks from the expiry of the period mentioned in subsection (2); or

(ii) such longer period as the Secretary of State may, at any time, allow, a completed appeal form, obtained from the Secretary of State; and

(b) serving on the local planning authority a copy of the completed appeal form mentioned in sub-paragraph (a) as soon as reasonably practicable.”; and

(ii) in the inserted subsection (3A) substitute “appeal form mentioned in subsection (3)(a)” for “notice mentioned in subsection (3)”;

(b) for sub-paragraph (d) substitute—

“(d) omit subsection (4);

(da) omit subsections (4A) to (4D); and”;

(c) in sub-paragraph (e) insert “79(3),” before “253(2)(c)”.

(3) In paragraph 2(b) of Part 3 of Schedule 4 substitute “subsections (2) to (4)” for “subsection (4)”.

(4) In the version of section 78 in Part 4 of Schedule 4—

(a) for subsection (3) substitute—

“(3) An applicant who wishes to appeal under subsection (1) or (2) shall give notice of appeal to the Secretary of State by—

(a) serving on the Secretary of State within—

(i) 8 weeks from the date of receipt of the local planning authority’s decision, or, as the case may be, within 8 weeks from the expiry of the period mentioned in subsection (2); or

(ii) such longer period as the Secretary of State may, at any time, allow, a completed appeal form, obtained from the Secretary of State; and

(b) serving on the local planning authority a copy of the completed appeal form mentioned in sub-paragraph (a) as soon as reasonably practicable.”;

^(a) S.I. 2007/783 which has been amended in ways not relevant to these Regulations.

- (b) in subsection (3A) substitute “appeal form mentioned in subsection (3)(a)” for “notice mentioned in subsection (3)”;
 - (c) omit subsection (4); and
 - (d) in subsection (5) substitute “, 288(10)(b) and 319A(7)(b)” for “and 288(10)(b)”.
- (5) In the version of section 79 in Part 4 of Schedule 4 omit subsections (2) and (3).
- (6) In paragraph 1 of Part 5 of Schedule 4—
- (a) for the substituted subsection (2) substitute—
 - “(2) A person who wishes to appeal under subsection (1) shall give notice of appeal to the Secretary of State by—
 - (a) serving on the Secretary of State—
 - (i) before the date on which the discontinuance notice is due to take effect under regulation 8(4), taking into account where appropriate of any extension of time under regulation 8(6), of those Regulations; or
 - (ii) such longer period as the Secretary of State may allow, a completed appeal form, obtained from the Secretary of State; and
 - (b) serving on the local planning authority a copy of the completed appeal form mentioned in sub-paragraph (a) as soon as reasonably practicable.”;
 - (b) in the substituted subsection (3) substitute “The appeal form mentioned in subsection (2)(a)” for “A notice of appeal”; and
 - (c) omit the substituted subsection (4).
- (7) In paragraph 2 of Part 5 of Schedule 4 after sub-paragraph (a) insert—
- “(aa) omit subsections (2) and (3);”.

Savings

4.—(1) Regulation 2 does not apply in relation to type A or type B appeals (within the meaning in article 33(7) of the Town and Country Planning (Development Management Procedure) (England) Order 2010 (appeals)(a)).

- (2) Regulation 2(6) to (10) does not does not apply in relation to—
 - (a) any appeal under section 78 of the Town and Country Planning Act 1990 as applied by regulations made under section 220 of that Act; or
 - (b) any appeal transferred out of Part 1 of the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009 under regulation 9 of those Regulations.

Transitional provision

5.—(1) Paragraph (3) applies in relation to any appeal relating to an advertisement application or minor commercial application made before these Regulations come into force, but determined on or after that date.

- (2) For the purposes of paragraph (1) an application is deemed to be determined if—
 - (a) a determination has not been made; and
 - (b) the period after which an appeal can be made has expired**(b)**.

(3) Regulation 2(3)(b) applies in relation to the relevant appeals as if in the substituted sub-paragraph (a) “, advertisement consent or minor commercial” was omitted.

(a) S.I. 2010/2184, as amended by an Order made on the same day as these Regulations and in other ways not relevant to these Regulations.

(b) See the modified section 78(2) in Parts 3 and 4 of Schedule 4 to S.I. 2007/783 in relation to advertisement applications, and articles 29(2) and 30 of S.I. 2010/2184 in relation to minor commercial applications.

- (4) Regulation 3 does not apply in relation to—
- (a) an application for express consent under Part 3 of the 2007 Regulations if—
 - (i) it was determined before these Regulations come into force, or
 - (ii) the date after which an appeal can be made expired before these Regulations come into force^(a); or
 - (b) a discontinuance notice served under regulation 8 of the 2007 Regulations before these Regulations come into force.
- (5) In this regulation—
- “the 2007 Regulations” means the Town and Country Planning (Control of Advertisements) (England) Regulations 2007;
- “advertisement application” has the same meaning as in regulation 2(2)(a); and
- “minor commercial application” has the same meaning as in regulation 2(2)(c).

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

Nick Boles
Parliamentary Under Secretary of State
Department for Communities and Local Government

27th August 2013

(a) See the modified section 78(2) in Parts 3 and 4 of Schedule 4 to S.I. 2007/783.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009 (“the 2009 Regulations”) for most appeals made under section 78 of the Town and Country Planning Act 1990 (“the Act”). They do not apply in relation to type A or B appeals within the meaning of article 33(7) of the Town and Country Planning (Development Management Procedure) (England) Order 2010 (“the DMPO”) (appeals relating to development that is substantially the same as development in respect of which an enforcement notice has been served).

These Regulations expand the scope of the expedited procedure in Part 1 of the 2009 Regulations. This procedure will now be used to determine advertisement consent and minor commercial appeals, with those terms defined in article 2(1) as amended, as well as householder appeals. Minor commercial appeals relate to minor development to a building in use for a purpose set out in the inserted Schedule to the Regulations. This Schedule reproduces the uses in Part A of the Schedule to the Town and Country Planning (Use Classes) Order 1987^(a). To support this change in relation to advertisement appeals, these Regulations amend the Town and Country Planning (Control of Advertisement) (England) Regulations 2007 (“the Advertisement Regulations”). The appellant’s notice of appeal must now be on a form obtained from the Secretary of State, and copied to the local planning authority. Similar changes are being made in relation to minor commercial appeals through the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2013 (“the DMPO Amendment Order”).

Article 33(2)(b) of the DMPO sets out the documents that must be submitted with an appeal form. At the same time as making these Regulations, article 33(2)(b) is being amended so that the appellant is required to provide their “full statement of case” to the Secretary of State and the local planning authority when making an appeal. This is effected through the DMPO Amendment Order.

These Regulations make a number of changes to Part 2 of the 2009 Regulations that follow on from that to reduce the time for certain stages in the written representations process. The “full statement of case” replaces any further representations that may have been made by the appellant in addition to their notice of appeal under rule 14(4). The appellant will not be able to submit any further representations within 6 weeks of the starting date as they currently can do. Further representations made by the local planning authority, and representations made by the Mayor, are now referred to as “full statements of case”.

The local planning authority will have one week less to notify third parties of the appeal, and the local planning authority and third parties will have to submit their representations earlier than currently. The appellant will then have until up to seven weeks from the starting date to respond to any issues raised by the local planning authority’s further representations. The local planning authority will not be able to make further comments on the appellant’s case at this stage. The local planning authority and the appellant will have until up to seven weeks from the starting date to comment on any third party representations.

These Regulations make consequential changes to the operation of the procedure when the Mayor of London is involved. The appellant is required to send all of their documents to the Mayor. The Mayor is required to submit initial comments one week earlier, and will only be able to provide further comments on the local planning authority’s representations. These changes to Part 2 of the Regulations do not apply in relation to advertisement appeals, or appeals transferred out of Part 1.

Similar changes are being made to the procedure for hearings and inquiries at the same time through the Town and Country Planning (Hearings and Inquiries Procedure) (England) (Amendment) Rules 2013 (“the Amendment Rules”). Amendments are also being made to the requirements for making listed building and conservation area appeals through the Planning

(a) S.I. 1987/764. Part A has been amended by S.I. 1991/1567 and 2005/84.

(Listed Buildings and Conservation Areas) (Amendment No 2) (England) Regulations 2013 (“the Listed Buildings Amendment Regulations”) so that the appellant is required to submit their full case when they make an appeal. Although they do not relate to these Regulations, the Listed Buildings Amendment Regulations are part of the same package of changes.

The Advertisement Regulations apply sections 78 and 79 of the Act with modifications. These Regulations update the Advertisement Regulations to take account of changes made to those sections since the Advertisement Regulations were made. Principally, these changes reflect the insertion of section 319A into the Act by section 196 of the Planning Act 2008, which allows the Secretary of State to determine the procedure to be used to determine certain appeals.

A combined impact assessment is being prepared for these Regulations, the DMPO Amendment Order, the Listed Buildings Amendment Regulations and the Amendment Rules. The assessment will be placed in the Library of each House of Parliament and on the Department for Communities and Local Government website (<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>).

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