

EXPLANATORY MEMORANDUM

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE AND SECTION 62A APPLICATIONS) (ENGLAND) (AMENDMENT) ORDER 2013

2013 No. 2932

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 Town and Country Planning (Development Management Procedure and Section 62A Applications) (England) (Amendment) Order 2013 (“the Order”) amends The Town and Country Planning (Development Management Procedure) (England) Order 2010 (“the 2010 Order”) and the Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) Order 2013 (“the 2013 Order”) to introduce the requirement for prospective applicants for planning permission to undertake pre-application consultation with local communities for certain developments involving an installation for the harnessing of wind power for energy production. The requirement will apply where the development involves the installation of more than two turbines or where the hub height of any turbine exceeds 15 metres.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 This instrument is the first exercise of powers under section 61W of the Town and Country Planning Act 1990 (“the 1990 Act”).
4. **Legislative Context**
 - 4.1 This statutory instrument exercises the power in section 61W(1) of the 1990 Act, which was inserted by section 122 of the Localism Act 2011 (“the Localism Act”), to require prospective applicants in specified cases to undertake compulsory pre-application consultation prior to the submission of an application for planning permission. This is the first occasion on which this power has been exercised.
 - 4.2 Where development is specified under section 61W(1), a person proposing to make an application for planning permission is obliged by virtue of section 61W(2) to publicise the proposed application in such manner as they reasonably consider is likely to bring the proposed application to the attention of the majority of persons living at, or otherwise occupying, premises in the vicinity of the land on which the proposed development would take place. The person is also obliged under section 61W(3) to consult specified persons about

the proposed application. Section 61(5) gives the Secretary of State power to specify persons for purposes of 61W(3), but this power has not been exercised in this case.

- 4.3 Where a prospective applicant has been required to undertake pre-application consultation on a proposed application under section 61W(1), and proceeds with the submission of an application for planning permission, section 61X imposes a duty to have regard to any responses received through the consultation process. The applicant must, when deciding whether an application for planning permission should be in the same terms as the proposed application, have regard to any consultation responses received.
- 4.4 Part 2 of the 2010 Order sets out the procedural requirements for making an application for planning permission in England. The Order introduces a new Part 1A prior to Part 2, specifying the kind of development which will be subject to pre-application consultation under section 61W of the 1990 Act, and setting out the particulars which must accompany an application which has been subject to this requirement.
- 4.5 The new article 3A introduced by the Order specifies the type of development to which the requirement to undertake compulsory pre-application consultation with the local community applies. The requirement applies to development involving an installation for the harnessing of wind power for energy production where the development involves the installation of more than two turbines or where the hub height of any turbine exceeds 15 metres. This requirement applies to applications for planning permission made under Part 3 of the 1990 Act, with the exception of applications for planning permission to remove or modify conditions under section 73 of the 1990 Act and applications for a replacement planning permission subject to a new time limit for implementation, as described in article 18 of the 2010 Order. This is a new article as previously no requirement to undertake compulsory pre-application consultation existed for applications for planning permission made under Part 3 of the 1990 Act.
- 4.6 Section 62(8) of the 1990 Act requires that where a type of development is specified in a development order (in this case, the 2010 Order) for the purposes of section 61W(1), that the development order must specify certain requirements in respect of proposed applications subject to the compulsory pre-application consultation duty. In particular, the order must provide that any application for planning permission which was subject to pre-application consultation is to be accompanied by particulars of: (a) how the person complied with section 61W(1); (b) any responses to the consultation; and (c) the account taken of those responses. The new article 3B introduced by the Order sets out these requirements for the purposes of the kind of development specified in article 3A.
- 4.7 Article 10 of the 2010 Order sets out general provisions relating to applications for planning permission. Article 10 is amended by the Order to require, where pre-application consultation is compulsory, that the particulars

set out in new article 3B of the Order must be submitted when an application for planning permission is made.

- 4.8 Article 29 of the 2010 Order makes provision for the validity of applications for planning permission and the time limits within which applications must be determined. It makes separate provision for “valid” applications, where all relevant requirements have been met, and for “non-validated” applications, where there is a dispute about the reasonableness of any specific requirements imposed by a local planning authority. In both cases, Article 29 is amended by the Order to provide that where pre-application consultation is compulsory the particulars specified in article 3B are a mandatory requirement.
- 4.9 Similar amendments are made to the 2013 Order in respect of applications for planning permission submitted directly to the Secretary of State in instances where a local planning authority has been designated under section 62A of the 1990 Act (“section 62A applications”). New articles 3A and 3B are inserted into the order, which make the same provision in respect of section 62A applications as is required by the new articles 3A and 3B of the 2010 Order. Article 8 of the 2013 Order makes general provision in respect of section 62A applications. This Article is amended by the Order to require, where pre-application consultation is compulsory, that the particulars set out in new article 3B of the 2013 Order must be submitted when a 62A application is made.
- 4.10 The provision made by sections 61W, 61X and 61Y of the 1990 will lapse, by virtue of section 122(3) of the Localism Act, on the date seven years from the day on which section 122 comes fully into force. Article 1(2) of the Order provides for the Order to cease to have effect on the same date.

5. Territorial Extent and Application

- 5.1 This instrument 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

- 7.1 Prior to the Order, pre-application consultation was a discretionary activity for all forms of development under the 1990 Act. The National Planning Policy Framework published in March 2012 recognises the potential that early engagement by prospective applicants can have on the efficient and effective operation of the planning system for all parties.
- 7.2 Section 122 of the Localism Act 2011 amended the 1990 Act to introduce a new statutory requirement for prospective applicants to undertake compulsory consultation with local communities prior to the submission of certain applications for planning permission. The purpose of the Localism Act

provision is to further strengthen the role of local communities in the planning process. It helps to ensure that the views of local communities are known and considered earlier in the planning process and helps to promote better quality applications for planning permission.

- 7.3 In autumn 2012 the Department of Energy and Climate Change undertook an Onshore Wind Call for Evidence, where community engagement was a key theme. Responses received to the Call for Evidence indicated that honest, open and early dialogue is key to building effective relationships between communities and applicants, with good quality pre-application discussion offering the potential to improve outcomes for the community.
- 7.4 Following the outcome of the Call for Evidence and responses received, the Onshore Wind Call for Evidence: Government Response was published in June 2013 and formally announced the Government's intention to introduce compulsory pre-application consultation with local communities for more significant onshore wind development.
- 7.5 The Order will require prospective applicants for planning permission for onshore wind developments involving more than 2 turbines or where the hub height of any turbine exceeds 15 metres to undertake to pre-application consultation with local communities. In this instance and having carefully considered the issues, we have linked the threshold to the point at which onshore wind development requires screening to determine whether there is a likelihood of significant environment effects under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. The requirement to undertake compulsory pre-application consultation will be the responsibility of the prospective applicant for planning permission (and must be undertaken prior to the submission of an application for planning permission).
- 7.6 The Order does not set out specific requirements, beyond the requirement to publicise the proposed application in section 61W and to take account of consultation responses, in terms of the steps a prospective applicant for planning permission must take when carrying out compulsory pre-application consultation. This reflects the view that there is no one-size fits all approach to pre-application consultation and decisions as to the requirements in terms of the nature and extent of consultation are best made at the local level on a case by case basis. This measure will not affect or alter the statutory consultation that all applications for planning permission must go through after they have been submitted to the local planning authority as set out in article 13 of the 2010 Order.
- 7.7 Enhancing the role of communities in the planning system is a key driver for the pre-application consultation requirements introduced by the Localism Act. The aim of the Order is to encourage local community involvement to be proactive rather than reactive. Although prospective applicants will, as a result of the measure, be required to undertake pre-application consultation with the local community, they are also likely to benefit from the policy. Giving local

communities a better chance to shape proposals from an earlier stage gives them an opportunity to express their opinion earlier in the process.

Consolidation

- 7.8 There are no plans to consolidate either The Town and Country Planning (Development Management Procedure) (England) Order 2010 or Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) Order 2013 in the immediate future.

8. Consultation outcome

- 8.1 Between September and November 2012, the Department of Energy and Climate Change undertook an Onshore Wind Call for Evidence. The aim was to gather information and evidence from a range of sources to understand how communities can have more say over, and receive greater economic and wider social benefits from hosting onshore wind farms. There were two parts to the Call for Evidence, community engagement was one of the key themes in Part A. Information was sought on the different types of engagement practices being carried out between onshore wind developers and communities, including engagement before making an application for planning permission.
- 8.2 The Department of Energy and Climate Change received a total of 1,111 responses from across the UK, of which 929 were from individuals and 182 from groups or organisations. To gain a more in depth understanding of responses, the Department of Energy and Climate Change held a series of meetings and telephone interviews with a cross section of respondents, community groups, local authorities, Non-Government Organisations (NGOs), environmental groups, statutory consultees, onshore wind developers and operators. A stakeholder advisory group was established to assist the Department of Energy and Climate Change in analysing the responses and recommend practical actions.
- 8.3 The responses were polarised, reporting either strongly positive or strongly negative views on onshore wind. Around 970 responses, largely from individuals, reported negative experiences with onshore wind developments and expressed concerns about Government policies on onshore wind energy and planning. Around 140 of the responses were assessed as supportive or neutral on onshore wind energy. Many provided detailed information, case studies and other documentary evidence in their replies of positive engagement practices, as well as innovative and well received types of community benefits.
- 8.4 There was a general consensus that honest, open and early dialogue is key to building effective relationships between communities and developers. It is also accepted that more needs to be done to encourage this good practice. The evidence received through the Call for Evidence was clear that where developers already carry out pre-application consultation on a voluntary basis, the design and siting of projects can be enhanced in a way that is mutually beneficial. Local people can have a unique knowledge of the place where they

live and could provide useful input to enhance the design of projects. Good quality pre-application discussion can enable improved outcomes for the community and helps ensure that the views of communities are taken into account at an early stage.

- 8.5 Following the outcome of the Onshore Wind Call for Evidence and responses received, the Government Response published in June 2013 formally announced the Government's intention to introduce compulsory pre-application consultation with local communities for more significant onshore wind development.

9. Guidance

- 9.1 We intend to prepare some concise supporting planning practice guidance for inclusion on the Department for Communities and Local Government's planning practice guidance web-based resource. In addition, as announced in the Onshore Wind Call for Evidence: Government Response, the Department of Energy and Climate Change is also working to produce new best practice guidance on engagement for both developers and communities.

10. Impact

- 10.1 The requirement is considered to be a low cost regulatory proposal by the Regulatory Policy Committee. The final equivalent annual net cost to business figure is subject to final validation by the Regulatory Policy Committee. The Regulatory Policy Committee is currently considering a copy of the Validation Impact Assessment. The cleared Validation Impact Assessment will be published at <https://www.gov.uk/government/publications>.

11. Regulating small business

- 11.1 The requirement applies to small business. Local communities may have concerns regardless of the size of the business progressing the scheme. The intention of applying the requirement to all prospective applicants for planning permission is to ensure that local communities are engaged at an earlier stage in the planning process.

12. Monitoring & review

- 12.1 The Department for Communities and Local Government receives regular feedback from local planning authorities, practitioners, professional bodies and the general public on all aspects of planning. We will monitor progress and evaluate the success of this change.
- 12.2 The provisions of the Town and Country Planning Act 1990 inserted by section 122 of the Localism Act 2011 will cease to have effect 7 years from the date on which they come fully into force. The Order will cease to have effect on the same date.

13. Contact

Darren McCreery at the Department for Communities and Local Government
Tel: 0303 444 4352 or email: Darren.McCreery@communities.gsi.gov.uk can
answer any queries regarding the instrument.