

EXPLANATORY MEMORANDUM TO
THE PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS)
(AMENDMENT) (ENGLAND) REGULATIONS 2015

2015 No. 809

AND

THE TOWN AND COUNTRY PLANNING GENERAL (AMENDMENT) (ENGLAND)
REGULATIONS 2015

2015 No. 807

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 Planning (Listed Buildings and Conservation Areas) (Amendment) (England) Regulations 2015 (“the Listed Buildings Regulations”) amend the Planning (Listed Buildings and Conservation Areas) (England) Regulations 1990 (“the 1990 Regulations”) to reduce requirements to notify Historic England of applications for planning permission to those for which its resources and technical expertise will add most value. They also reduce the requirement to refer certain applications by local planning authorities for listed building consent to the Secretary of State for determination to those for which this safeguard is most necessary.
 - 2.2 The Town and Country Planning General (Amendment) (England) Regulations 2015 (“the Town and Country Planning Regulations”) amend the Town and Country Planning General Regulations 1992 (“the 1992 Regulations”) to reduce the requirement to refer certain applications by local planning authorities for planning permission to the Secretary of State for determination to those for which this safeguard is most necessary.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the Act”) provide that decision-makers exercising planning functions owe special duties in relation to listed buildings and their settings and conservation areas. Publicity requirements for planning applications for development that the authority think will affect the setting of a listed building or the appearance of a conservation area are set out in the 1990 Regulations.

- 4.2 Under section 82(2), provisions of the Act apply to applications by local authorities as they do to other applications, except where modified by Regulations. The 1990 Regulations modify the procedural requirements of the Act by providing that listed building consent applications by a local planning authority must be made to the Secretary of State.
- 4.3 Regulation 2(4) of the Listed Buildings Regulations narrows the requirement for applications for listed building consent by local planning authorities to be referred to the Secretary of State for determination.
- 4.4 Prior to amendment by the Enterprise and Regulatory Reform Act 2013 (Abolition of Conservation Area Consent) (Consequential and Saving Provisions) (England) Order 2013 (S.I. 2013/2146) the 1990 Regulations required applications for conservation area consent by local authorities to be made to the Secretary of State. When the requirement for conservation area consent was removed by Schedule 17 to the Enterprise and Regulatory Reform Act 2013, a provision of equivalent effect requiring applications for planning permission for relevant demolition by a local planning authority to be made to the Secretary of State was inserted into the 1992 Regulations by the Town and Country Planning General (Amendment) (England) Regulations 2013 (S.I. 2013/2145).
- 4.5 Regulation 2(2) of the Town and Country Planning Regulations narrows the requirement for applications for planning permission for relevant demolition by local planning authorities to be referred to the Secretary of State for determination.
- 4.6 These amendments are part of a suite of amendments that streamline and simplify requirements for local planning authorities to consult with and notify heritage organisations and the Secretary of State in respect of certain applications for listed building consent and planning permissions. Related amendments are described in paragraph 7.7.

5. Territorial Extent and Application

- 5.1 Both sets of Regulations apply to England only.

6. European Convention on Human Rights

- 6.1 As the instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

- 7.1 Historic England must be consulted on, or notified of, certain applications for planning permission (affecting heritage assets) and listed building consent. However, the

government believes that the current requirements for doing so are overly complex, inconsistent and confusing. There are different requirements in Greater London from the rest of England and different types of heritage assets are treated in different ways.

- 7.2 The Government therefore, consulted in summer 2014 on a package of measures to simplify arrangements while maintaining an adequate level of protection for the historic environment. The measures:
- reduce and simplify current arrangements;
 - ensure a consistent approach across the different types of heritage asset;
 - align the requirements inside and outside Greater London as far as possible without amending primary legislation;
 - ensure Historic England's resources and expertise are focused where they can add most value i.e. where proposals involve the most important heritage assets or have the potential to cause greatest harm to a heritage asset through demolition.
- 7.3 Local planning authorities are also required to notify and refer certain of their own applications, and applications by Historic England, to the Secretary of State. Alongside proposed changes to the requirements to engage with Historic England, the government consulted on proposals to simplify and reduce the requirements relating to notification and referral to the Secretary of State while ensuring that there are adequate protections in place to facilitate intervention by the Secretary of State in appropriate cases.
- 7.4 The Listed Buildings Regulations amend regulation 5A of the 1990 Regulations to narrow the requirements for local planning authorities to notify Historic England of applications for planning permission for development they think would affect:
- the setting of a listed building: the Regulations reduce the notification requirement from applications they think would affect the setting of all grades of listed buildings to only those that are classified as Grade I or II*; and
 - the character or appearance of a conservation area: the Regulations reduce the notification requirement from all such applications to only those involving the erection of a new building or extension of an existing building, where the area of land in respect of which the application is made is more than 1000 square metres.
- 7.5 The Listed Building Regulations amend regulation 13 of the 1990 Regulations to allow local planning authorities to determine certain of their own applications for listed building consent that are currently determined by the Secretary of State. Only in cases where Historic England or one of the National Amenity Societies objects (where there is a requirement to notify them of the application), and where the local planning authority do not propose to refuse the application, will applications be referred to the Secretary of State for determination. The requirements to notify Historic England and National Amenity Societies on applications for listed building consent (including those made by local planning authorities) are set out in a Direction issued by the Secretary of State for Communities and Local Government (see paragraph 7.7 below).
- 7.6 The Town and Country Planning Regulations amend regulation 4A of the 1992 Regulations to allow local planning authorities to determine certain of their own

applications for planning permission for relevant demolition (i.e. demolition of an unlisted building in a conservation area) that are currently determined by the Secretary of State. In order to ensure that applications are referred to the Secretary of State for determination where necessary, the Regulations introduce a requirement for local planning authorities to notify Historic England of all these applications. They also clarify that the application must be publicised in the same way as any other application to the local planning authority. Only in those cases where Historic England, having been notified in accordance with the Regulations, objects to the application and where the local planning authority do not propose to refuse it, will applications be referred to the Secretary of State for determination.

7.7 Other proposals from the package of measures that were consulted on are being delivered through:

- Schedule 4 to the Town and Country Planning (Development Management Procedure) (England) Order 2015 (S.I. 2015/595), which comes into force on 15 April 2015. This deals with requirements to consult Historic England on certain planning applications (these are additional to the requirements to notify Historic England set out in paragraph 7.4 above) and the Garden History Society on planning applications affecting registered parks and gardens; and
- Arrangements for handling heritage applications – notification to Historic England and National Amenity Societies and the Secretary of State (England) Direction 2015, which comes into force on 15 April 2015
<https://www.gov.uk/government/collections/planning-circulars>. This deals with requirements to notify Historic England and the National Amenity Societies of certain listed building consent applications and the circumstances in which Historic England’s own applications for listed building consent should be referred to the Secretary of State for determination.
- Consolidation

7.8 The Department does not intend to consolidate either of these regulations at this time.

8. Consultation outcome

8.1 In July 2014 the Government published a consultation on “Technical Consultation on Planning”
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/339528/Technical_consultation_on_planning.pdf

8.2 Section 4 of the consultation sought views on a package of measures to improve the end-to-end planning application process. This included proposals to reduce and simplify the requirements to consult and notify Historic England on heritage related applications for planning permission and listed building consent. It also contained proposals to reduce and simplify the requirements to notify and refer such applications to the Secretary of State.

8.3 The consultation closed on 28 September 2014. A total of 389 responses were received in relation to section 4, which contained heritage and other unrelated proposals. 43% of respondents were local authorities, 10% were prospective applicants and the largest group of respondents (47%) came from a broad range of groups including parish councils, businesses, voluntary organisations and members of the public.

8.4 All of the heritage proposals attracted a high level of support. The Government's response to the consultation can be found at:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397719/150122_Planning_application_process_improvements.pdf.

9. Guidance

9.1 Existing planning guidance on the consultation requirements for heritage related applications will be updated to reflect the new requirements.

10. Impact

10.1 There is no direct impact on business, charities or voluntary bodies from these measures as they affect only public sector bodies.

10.2 The impact on the public sector is positive as the measures will reduce the need for unnecessary notification, reference and consultation and allow local planning authorities and Historic England to focus their resources where they are most needed.

10.3 An Impact Assessment has not been prepared for these instruments as the measures impact only on the public sector and as such fall outside the scope of the Reducing Regulation Committee.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Department for Communities and Local Government will review and evaluate the success of these changes.

13. Contact

13.1 Theresa Donohue at the Department for Communities and Local Government Tel: 0303 444 1719 or email: Theresa.donohue@communities.gsi.gov.uk can answer any queries regarding the instrument.