

EXPLANATORY MEMORANDUM TO
THE TOWN AND COUNTRY PLANNING (LOCAL PLANNING) (ENGLAND)
(AMENDMENT) REGULATIONS 2016

2016 No. 871

1. Introduction

- 1.1 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 These Regulations amend the Town and Country Planning (Local Planning) (England) Regulations 2012 (“the 2012 Regulations”).
- 2.2 The 2012 Regulations make provision in relation to the local planning regime established by the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”), amended by the Localism Act 2011 (“the 2011 Act”) and modified by the Housing and Planning Act 2016 (“the 2016 Act”). These Regulations amend the 2012 Regulations to implement measures in the 2016 Act regarding local development schemes; and the Secretary of State’s powers to intervene in plans at examination and in preparation, particularly where the Mayor of London or a combined authority has been invited to intervene in a plan. Regulations are also amended following proposals consulted on to include neighbourhood forums as a specific consultation body in relation to plan-making.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Part 2 of the 2004 Act sets out the framework for development plan documents (local plans). Section 15 of the 2004 Act sets out provisions relating to local development schemes; sections 21 and 27 of the 2004 Act set out the Secretary of State’s powers to intervene, and the Secretary of State’s default power to prepare or revise a development plan document.
- 4.2 Part 6 of the 2016 Act made further amendments to the relevant provisions of the 2004 Act. Further detail on the amendments is set out below.
- 4.3 Section 143 of the 2016 Act amends section 15 of the 2004 Act to ensure that the Secretary of State, or the Mayor of London, in the case of a London borough, may

prepare a local development scheme for an authority that has failed to prepare one and direct the authority to bring the scheme into effect.

- 4.4 Section 145 of the 2016 Act amends section 21 of the 2004 Act to make clear what is to happen where the Secretary of State withdraws (or partially withdraws) a direction he has made in relation to intervening in a development plan document.
- 4.5 Section 146 of the 2016 Act substitutes a new section 27 of the 2004 Act to enable the Secretary of State, where he thinks that a local planning authority are failing or omitting to do anything it is necessary for them to do in connection with the preparation, revision or adoption of the document, to direct a local planning authority to prepare or revise a document, to submit that document to independent examination, to publish the recommendations of the person appointed to carry out the examination, and to consider whether to adopt the document.
- 4.6 Section 147 of, and Schedule 11 to, the 2016 Act inserts a new section 27A into the 2004 Act to enable the Secretary of State to invite the Mayor of London or a combined authority to prepare a development plan document for a local planning authority that is a London borough council or a constituent authority of the combined authority (as the case may be), where the Secretary of State thinks that the local planning authority are failing or omitting to do anything it is necessary for them to do in connection with the preparation, revision or adoption of the document.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is 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 provisions of the 2016 Act mentioned in paragraph 4 above were aimed at making the Secretary of State's powers of intervention more proportionate and flexible. In particular enabling the Secretary of State to invite the Mayor of London or a combined authority to prepare a development plan document where appropriate, rather than the Secretary of State having to do this work himself.
- 7.2 These Regulations are made to implement these new measures. They implement the commitments made during the passage of the 2016 Act and proposals set out in the consultation described in paragraph 8 below.
- 7.3 Neighbourhood forums as a specific consultation body. Regulation 3 amends the 2012 Regulations to add neighbourhood forums as a specific consultation body. A neighbourhood forum is regarded as a specific consultation body if any part of the neighbourhood forum area areas is in, or adjoins, the local planning authority's area.
- 7.4 Direction by the Mayor of London relating to a local development scheme. When the Mayor of London gives a direction to a local planning authority relating to a local development scheme, the 2012 Regulations prescribe that a copy of the direction must

be sent to the Secretary of State. Regulation 4 amends these Regulations to ensure the same process applies where the Mayor has prepared a local development scheme for a local planning authority, and is directing the authority to bring the scheme into effect.

- 7.5 Direction in respect of a local plan. The 2012 Regulations prescribe that when the Secretary of State directs a local planning authority under section 21(1) of the 2004 Act, the local planning authority must make the direction and their local plan available to the public. Regulation 5 amends the 2012 Regulations to ensure that the above process takes place for all directions relating to local plan process which are made or withdrawn by the Secretary of State, the Mayor of London or a combined authority.
- 7.6 Call in by the Secretary of State. The 2012 Regulations set out the process under which the Secretary of State can call in a local plan from a local planning authority for his own approval. Where the Mayor of London or a combined authority are exercising their default powers in Schedule A1 to the 2004 Act to prepare a local plan, regulations 6 and 9 amend the 2012 Regulations to include provisions for the Secretary of State to call in such a local plan from the Mayor of London or the combined authority. It ensures that when Secretary of State makes a direction to the Mayor of London or combined authority, they must provide the documents required to the local planning authority and direct the local planning authority to make the directions and the documents available to the public.
- 7.7 Secretary of State's default power. The 2012 Regulations set out the process under which the Secretary of State prepares a local plan e.g. where the local planning authority has failed to do so. Where the Mayor of London or a combined authority are exercising their default powers in Schedule A1 to the 2004 Act to prepare a local plan, regulations 7 and 10 amend the 2012 Regulations to include provisions for when the Mayor of London or the combined authority prepare a local plan after being invited to do so by the Secretary of State. It ensures that the same provisions which apply to the Secretary of State also apply to the Mayor of London and the combined authority.
- 7.8 Availability of documents. The 2012 Regulations sets out the requirements for local planning authorities to incorporate revisions to a local plan, and to make the local plan available to the public as soon as reasonably practicable after a revision is adopted by the local planning authority or approved by the Secretary of State. Regulation 8 amends the 2012 Regulations to ensure that the same provisions are followed when the Mayor of London or a combined authority approve a revision to a local plan.

Consolidation

- 7.9 Not applicable.

8. Consultation outcome

- 8.1 The Department formally consulted on a number of proposed reforms to the regulations governing neighbourhood planning from 18 February 2016 to 15 April 2016 as part of a wider consultation on reforms to the planning system (available at: <https://www.gov.uk/government/consultations/implementation-of-planning-changes-technical-consultation>). There were over 800 responses to the consultation, of which around 400 commented on some or all of the neighbourhood planning proposals. Just under half of those respondents represented local planning authorities and around a quarter were from parish councils.

- 8.2 Overall, there was support for the proposals from the majority of respondents. Support was particularly strong among parish councils and neighbourhood forums. The various measures were supported by around a third to around a half of local authorities. Some authorities expressed views about their resourcing and the need to consider internal reporting procedures to ensure that new prescribed dates were met.
- 8.3 The Government's response to the neighbourhood planning elements of the consultation and a summary of the responses will be placed in the Library of each House of Parliament and is available on the Department for Communities and Local Government website (<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>).

9. Guidance

- 9.1 The Department's planning practice guidance, which is a web-based resource (available at: <http://planningguidance.planningportal.gov.uk/>) includes guidance on local planning.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is minimal as the amendments made to regulations are consequential rather than substantive.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 These Regulations do not contain provision for review and section 28 of the Small Business, Enterprise and Employment Act 2015 (duty to review regulatory provisions in secondary legislation) does not apply as these Regulations do not make regulatory provision in relation to any qualifying activity or amend regulatory provision made in relation to any qualifying activity.

13. Contact

- 13.1 Katherine Hunt at the Department for Communities and Local Government Tel: 0303 444 3648 or email: katherine.hunt@communities.gsi.gov.uk can answer any queries regarding the instrument.