

EXPLANATORY MEMORANDUM TO
THE TOWN AND COUNTRY PLANNING (BROWNFIELD LAND REGISTER)
REGULATIONS 2017

2017 No. 403

THE TOWN AND COUNTRY PLANNING (PERMISSION IN PRINCIPLE) ORDER
2017

2017 No. 402

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.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of these instruments

- 2.1 The Regulations place a duty on those local planning authorities which have responsibility for housing development in their area, (usually the district council) to prepare, publish and maintain a register of previously developed land (known commonly as “brownfield land”) which is suitable for residential development.
- 2.2 The Order makes provision in relation to the new planning consent route known as ‘permission in principle’ – in particular in relation to permission in principle granted when land is allocated in a register under section 14A of the Planning and Compulsory Purchase Act 2004 (“brownfield land register”).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This is the first exercise of the powers in sections 59A and 70(2ZZC) of the Town and Country Planning Act 1990 (“the 1990 Act”). This is also the first use of the power in section 14A of the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”). Sections 59A and 70(2ZZC) of the 1990 Act and section 14A of the 2004 Act were inserted by sections 150 and 151 of the Housing and Planning Act 2016 (“the 2016 Act”).

Other matters of interest to the House of Commons

- 3.2 As these instruments are subject to the negative procedure and have 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 The Regulations provide for the preparation of brownfield land registers. The regulations are made under section 14A of the 2004 Act, which was inserted by section 151 of the 2016 Act.
- 4.2 The Order grants permission in principle for land allocated in Part 2 of such registers. The Order is a development order made under section 59A of the 1990 Act. Section 59A was inserted into the 1990 Act by section 150 of the 2016 Act. The development order will provide that land which has been entered onto Part 2 of the Register of previously developed land is granted “permission in principle”. Section 59A of the 1990 Act also makes provision for a development order to provide for permission in principle to be granted on sites allocated in local and neighbourhood plans or following an application made to the local planning authority. Secondary legislation providing for permission in principle to be granted on sites allocated in local and neighbourhood plans will be prepared separately.

5. Extent and Territorial Application

- 5.1 These instruments extend to England and Wales.
- 5.2 These instruments apply only to land in England.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

- 7.1 The Regulations fulfil the objective set out in the Government’s manifesto to ensure that brownfield land is used as much as possible for housing and to require local authorities to have registers of brownfield land suitable for housing. Local authorities already collect information on housing land supply, including brownfield land, as evidence for local plans. But the data collected is not necessarily consistent or easily accessible.
- 7.2 The brownfield registers policy is intended to support a general increase in housing supply. It is envisaged that registers will:
- provide up to date publicly available common information on brownfield land that is suitable for housing;
 - improve the quality and consistency of data on suitable brownfield land which will provide certainty for developers and communities;
 - encourage investment in local areas; and
 - provide a means through which permission in principle may be granted for housing-led development on suitable brownfield sites.

The data from registers will also be used to help assess the progress that local authorities are making in getting planning permissions in place for housing on suitable brownfield sites.

- 7.3 The current planning application process asks developers to provide substantial amounts of information up-front, even as part of an application for outline planning

permission. This means that developers will often have to expend significant time and cost prior to achieving certainty that any development will be able to go ahead in principle. Permission in principle introduces a new way of obtaining planning permission for housing-led development. This consent can only be obtained in relation to housing-led development (i.e. the main purpose of the development is housing).

- 7.4 Permission in principle is designed to separate decision making on ‘in principle’ issues addressing land use, location, and amount of development from matters of technical detail, such as what the buildings will look like. The aim is to give up-front certainty that the fundamental principles of development are acceptable before developers need to get into costly, technical matters. It will also ensure that the principle of development only needs to be established once in the process. Permission in principle must be followed by an application for technical details consent covering remaining detailed matters such as the design of buildings, development layout and landscaping schemes. Applications for technical details consent must be decided by the local planning authority in accordance with the terms of the permission in principle. A grant of permission in principle plus a grant of technical details consent equates to full planning permission.

Consolidation

- 7.5 These instruments are a first exercise of new powers and as such consolidation is not applicable.

8. Consultation outcome

- 8.1 A technical consultation on the implementation of planning changes was undertaken between 18 February and 25 April 2016. Over 800 responses were received. In relation to the preparation of brownfield registers, the consultation set out the Government’s proposals for identifying suitable sites; publicity and consultation; the proposed content of registers and the Government’s intended requirements for publishing and updating the data. The proposals outlined in the consultation document were generally supported, particularly the proposals for identifying suitable sites and using the Strategic Housing Land Availability Assessment (SHLAA) process as the starting point. However, there were calls for our proposals to reflect the SHLAA process even more closely and for decisions about entering sites on registers to take the National Planning Policy Framework and local plans into account. Other issues raised included the implications for local plans and requests for the exclusion of particular types of land. The Regulations set out a process that is aligned to the SHLAA process as far as possible and include exemptions for certain types of land. Local planning authorities will be subject to the duty in section 14A(7) of the 2004 Act to have regard to the development plan, national policy and guidance when exercising their functions under the Regulations.
- 8.2 In relation to our proposals for publicity and consultation, there was support for mandatory consultation where a local authority intends to grant permission in principle for suitable sites on their registers. But there were calls for more detail about our proposals for giving authorities discretion in other circumstances. The Regulations include a mandatory requirement on local authorities to consult in relation to sites on their registers for which they intend to grant permission in principle. Where authorities enter sites on registers but do not intend to grant permission the Regulations provide local authorities with discretion to consult.

- 8.3 There was general support for our proposals for information requirements; publishing standardised data and keeping it up to date. There was support also for a proforma to be provided for this data. The Regulations set out the information that is required to be entered on registers for suitable sites. They also include provisions for updating registers and making information available to the Secretary of State. There were concerns about the implications of measures to incentivise performance and calls for more detail about how the process would operate in practice. We are committed to ensuring that local authorities make good progress in preparing and keeping their registers up to date. We will monitor process and if necessary consider the need for measures to incentivise performance.
- 8.4 In relation to permission in principle, the consultation set out the Government's proposals for the detailed operation of permission in principle granted for sites allocated in brownfield registers and on applications. It also set out the Government's proposals for technical details consent. Issues covered included what matters should be considered when local planning authorities are deciding whether to grant permission in principle, how sensitive sites should be considered, how the community and others should be engaged in the process, information requirements and expiry and determination periods.
- 8.5 The proposals were generally supported. The majority of respondents agreed that location, use and amount of development should be matters under consideration when a local planning authority is deciding whether to grant permission in principle. However, there were calls to widen the scope to include other matters. The Government's view is that the consideration of additional matters is not necessary to reach an in-principle decision and that such matters can be more effectively addressed at a later stage. On sensitive sites, the majority of respondents were of the view that EIA and Habitats development should be exempt from a grant of permission in principle. Both the Order and the Regulations provide that EIA development and Habitats development are exempt from inclusion in the registers or a grant of permission in principle.
- 8.6 There was widespread support for the Government's proposals for engagement at the permission in principle stage, which are in line with current requirements for planning applications where statutory consultation and publicity are mandatory. On engagement at the technical details consent stage, many respondents did not support the proposal for engagement with the community and others to be at the discretion of the local planning authority. The Government has considered the issues raised by the responses and has decided to provide for mandatory publicity and statutory consultation at the technical details consent stage (where the statutory consultee requests it at the permission in principle stage). Given that publicity and consultation will already have taken place earlier in the process, these requirements are more light touch than those prescribed for the permission in principle stage.
- 8.7 The majority of respondents supported the Government's proposals for proportionate information requirements for permission in principle and technical details consent applications though some raised concerns about the robustness of the process. Some respondents emphasised the need to make clear at the permission in principle stage what information is required as part of a technical details consent application. Others argued that there would be insufficient information available to make a decision on whether to grant permission in principle. For technical details consent applications, the Order provides for local planning authorities to request supplementary information

over and above the information requirements, where this is necessary to support decision-making.

8.8 There was no clear view on the duration of a grant of permission in principle through a brownfield register, but the majority of respondents supported the proposal that local planning authorities should have the power to vary its length. The Government has provided that the default duration of a grant of permission in principle through a brownfield register is 5 years and the Housing and Planning Act 2016 enables local authorities to change its length at the time of entering the land on Part 2 of the register. On determination periods for the technical details consent applications, a significant number of respondents supported the Government's proposed determination periods of 5 weeks for minor development and 10 weeks for major development. However, some expressed concerns that the Government's proposals would not allow full consideration of the issues. Our view is that the proposed determination periods allow sufficient time for a robust process to be followed and these have therefore been prescribed in the Order.

8.9 The Government's response to the technical consultation is available on the Departmental website at <https://www.gov.uk/government/consultations/implementation-of-planning-changes-technical-consultation>

9. Guidance

9.1 We will publish guidance to support the introduction of brownfield land registers and permission in principle. It is our intention to publish it by June 2017. In relation to brownfield land registers the guidance will cover, for example, the complementary role that registers are expected to play alongside local plans, optional and mandatory consultation requirements, information requirements and the our proposals for assessing progress in getting planning permission in place on suitable brownfield sites. With regard to permission in principle, the guidance will address our expectations about the detailed practical operation of the policy. We will also support authorities through an active programme of continuous engagement to coincide with the instruments coming into force. This will include making information available about the policies and requirements on the Department's website.

10. Impact

10.1 An Impact Assessment has not been prepared for the Regulations as they do not impact on business. The preparation of registers will have impacts on local authorities. These costs will be funded by the Government and kept under review.

10.2 The Order is assessed as having a deregulatory impact on business, and no impact on charities or voluntary bodies. A validation impact assessment will be published alongside the Explanatory Memorandum on www.legislation.gov.uk. The Order will also have an impact on local planning authorities where they follow the requirements that are necessary to grant sites permission in principle. These costs will be funded by the Government and kept under review.

11. Regulating small business

11.1 The Regulations do not apply to activities that are undertaken by small businesses. The Order will apply to the activities of small businesses and the Government has assessed that the Order will have no regulatory impact.

12. Monitoring & review

- 12.1 The Government will measure progress made by local planning authorities in getting planning permissions in place for suitable sites on registers. Progress will be assessed on an annual basis once the registers are in place. The Government has provided for a review of the Order by X March 2022, which is a requirement under Small Business, Enterprise and Employment Act 2015.

13. Contact

- 13.1 Mide Beaumont at the Department for Communities and Local Government
Telephone: 030 3444 4246 or email: mide.beaumont@communities.gsi.gov.uk can answer any queries regarding the instrument.