

EXPLANATORY MEMORANDUM TO
THE TOWN AND COUNTRY PLANNING (PRE-APPLICATION CONSULTATION)
ORDER 2020

2020 No. 1051

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Housing, 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 the instrument

- 2.1 This Order (“the Order”) extends the date for which existing provisions inserted in the Town and Country Planning Act 1990 (“the 1990 Act”) by subsections (1) and (2) of section 122 of the Localism Act 2011 (“the 2011 Act”) apply. Those provisions require local community consultation by prospective developers before submitting certain planning applications. This currently only applies to applications for certain types of onshore wind turbines.
- 2.2 The amendments made to the 1990 Act by subsections (1) and (2) of section 122 of the 2011 Act (“subsections (1) and (2)”) are subject to a sunset clause which means that, without this order, the amendments would expire on the 16 December 2020.
- 2.3 The Order provides that the amendments to the 1990 Act made by subsections (1) and (2) of the 2011 Act will now apply until the 15 December 2025.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 Subsection (3) of section 122 of the 2011 Act imposes a 7 year time limit on certain provisions for compulsory pre-application consultation, contained within subsections (1) and (2). That time limit is due to expire on the 16th December 2020 and the provisions will therefore cease to have effect unless they are extended in accordance with subsection (4) of section 122 of the 2011 Act. This Order extends those provisions.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.
- 3.3 The instrument does not have any minor or consequential effects outside England and Wales.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

6. Legislative Context

6.1 Sections 61W to 61Y and subsections (7) and (8) of section 62 of “the 1990 Act” were inserted by subsections (1) and (2) of section 122 of the 2011 Act. The effect of these amendments is to require prospective developers to consult communities before submitting certain planning applications, and to provide an order making power for the Secretary of State to specify further types of development for which pre-consultation could be required.

6.2 Where pre-consultation is required, the person who intends to apply for planning permission must first consult with the local community before a planning application is submitted. When a planning application is submitted, applicants should provide evidence of the pre-application consultation that has been undertaken and how the views of the local community have been considered.

6.3 The existing 2011 Act provisions have only been applied to applications for onshore wind turbine development for energy production as set out in Article 2 of The Town and Country Planning (Development Management Procedure) (England) Order 2015.

6.4 A time limit of 7 years applies to the 2011 Act pre-application consultation provisions. This is set out at subsection (3) of section 122 in the 2011 Act. In consequence of this time limit the pre-application consultation provisions will expire on the 16 December 2020 unless they are extended.

6.5 Subsection (4) of section 122 in the 2011 Act enables the 7 year time limit to be extended by a further 7 years. This Order extends the pre-application consultation provisions by a further 5 years. The effect is that those provisions will apply until the 15 December 2025.

7. Policy background

What is being done and why?

7.1 Consultation and community engagement are key to ensuring local people have an important role in the planning system. Effective consultation helps inform good and responsible decision-making by local planning authorities and ensures that those decisions and the actions that flow from them properly reflect and respond to the needs of the local community. The views of local people about the potential impact of development in their area helps to ensure that decision-makers have relevant information to allow them to reach a sound decision.

7.2 The requirements to carry out pre-application consultation currently applies to applications for certain types of onshore wind turbine applications. Pre-application consultation between applicants and the local community allows for collaborative working between interested parties at an early stage to identify, understand and seek to

resolve issues associated with a proposed development. Local planning authorities are still required to consult in the normal way and undertake a formal period of consultation of no less than 21 days, prior to deciding a planning application, even when there has been pre-application consultation between an applicant and the local community.

- 7.3 The decision to introduce regulations to require applicants to undertake pre-application consultation with local communities was taken in 2015 and was informed by consultation undertaken by the Department for Energy and Climate Change in 2013 (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/205423/onshore_wind_call_for_evidence_response.pdf) which concluded that making pre-application engagement mandatory would ensure that the views of communities were taken into account at an early stage, and give local people a genuine opportunity to influence and shape decisions about projects affecting their area.
- 7.4 However, it remains important that applicants consult with local communities before submitting an application for wind turbine development and that local communities have the opportunity to comment on any proposals before the formal submission of an application.
- 7.5 This order extends the existing practices for 5 years and will provide certainty to businesses and local communities and ensure the requirement to undertake community engagement, which is now common practice for major development (in accordance with national planning policy and guidance) continues.
- 7.6 The current powers are being extended to enable the Secretary of State to make regulations requiring compulsory consultation with the local community for other forms of development before a planning application is submitted, if required. There are no current plans to make any such regulations.
- 7.7 The requirements for pre-application consultation with the local community, where required, as provided by this instrument expire on 15 December 2025.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 There are no plans to consolidate the instruments referred to in paragraphs 2.1 and 2.2 of this Explanatory Memorandum.

10. Consultation outcome

- 10.1 These changes have not been subject to formal consultation as they retain the status quo and extend existing provisions. However, the Department for Business, Energy and Industrial Strategy, who have policy responsibility for wind turbines, have engaged with the wind turbine industry who are broadly content with retention of the current powers.

11. Guidance

- 11.1 No guidance will be issued by MHCLG as the instrument does not make any changes to the provisions already in force. The requirements for pre-application community consultation for onshore wind turbines are set out in Article 3 of The Town and Country Planning (Development Management Procedure) (England) Order 2015 and guidance on the consultation requirements for planning applications can be found online in the Government's Planning Practice Guidance (<https://www.gov.uk/guidance/consultation-and-pre-decision-matters>).

12. Impact

- 12.1 This Order provides that the existing provisions will continue to have effect so there will be no change to the existing impacts.
- 12.2 The measure impacts upon businesses that are required to undertake pre-application community consultation for onshore wind turbines (as required by Article 3 of The Town and Country Planning (Development Management Procedure) (England) Order 2015). There have been 65 applications using this route since 2013 with costs per application estimated at £10,000.
- 12.3 An Impact Assessment has not been prepared for this instrument because existing provisions will continue to have effect so there will be no change to existing impacts on businesses.

13. Regulating small business

- 13.1 This measure impacts upon activities carried out by small businesses. This Order provides that the existing provisions will continue to have effect and so the impacts to small business are unchanged.

14. Monitoring & review

- 14.1 This instrument will expire on 15 December 2025. Its impact will be kept under review.

15. Contact

- 15.1 Andrew Fay at the Ministry of Housing, Communities and Local Government (Tel: 0303 444 6808 or email: andrew.fay@communities.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Lucy Hargreaves, Deputy Director for Planning – Development Management, at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Christopher Pincher, Minister of State at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.