

EXPLANATORY MEMORANDUM TO
THE ENVIRONMENTAL ASSESSMENT OF PLANS AND PROGRAMMES
(AMENDMENT) REGULATIONS 2020

2020 No. 1531

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 The Environmental Assessment of Plans and Programmes (Amendment) Regulations 2020 (“this instrument”) makes permanent the temporary changes made by the Environmental Assessment of Plans and Programmes (Coronavirus) (Amendment) Regulations 2020 (“the SEA Coronavirus Regulations”) with some further minor changes.
- 2.2 The SEA Coronavirus Regulations, which came into force on 16th July 2020, amended the Environmental Assessment of Plans and Programmes Regulations 2004 (“the SEA Regulations”) by introducing temporary modifications that apply until 31st December 2020. The SEA Coronavirus Regulations removed requirements placed on responsible authorities and the Secretary of State for documents relating to strategic environmental assessment (“SEA”) to be available for physical inspection by members of the public at an address, for consultees to be informed of that address and for a copy of those documents to be available to be obtained from that address. The SEA Coronavirus Regulations replaced this with a duty to make the documents available for online inspection, and for consultees to be informed of the website address where this can be inspected. Amending these requirements in the SEA Regulations was necessary for reasons connected to the effects of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) (“coronavirus”), including restrictions on movement.
- 2.3 This instrument makes the changes introduced by the SEA Coronavirus Regulations permanent and puts in place additional inspection requirements to ensure that access to documents is maintained for those without access to the internet. In addition to publishing documents on a public website, responsible authorities (or the Secretary of State, as the case may be) will now be required to: make available a telephone number for the public to raise enquiries in relation to any documentation published; provide by mail hard copies of any documentation upon request, subject to a reasonable charge and provided it is reasonably practicable to do so given precautions and other measures relating to coronavirus; and provide copies of any documentation by email upon request. Guidance will set out that authorities may also offer electronic copies of documents available on USB flash drive to those with access to a computer but without access to the internet, and that they may wish to consider waiving any charge for hard copies of documents to members of the public who are unable to access the documentation electronically or find it difficult to do so

- 2.4 These amendments apply in respect of all plans and programmes (and modifications to them) to which the SEA Regulations apply. The includes plans, programmes or modifications that set the framework for future development consent of projects and are subject to a determination that they are likely to have significant environmental effects. These plans, programmes and modifications are prepared by bodies at a local, regional and national level.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument is being laid in breach of the 21-day rule, which requires instruments to be laid 21 days before they come into effect. This is necessary because this instrument makes permanent the temporary measures that are already in effect and are due to expire on 31st December 2020. Without these replacement measures coming into effect on 31st December 2020, responsible authorities and the Secretary of State may be unable to comply with the duties placed upon them in relation to the display and inspection of relevant documents, including during the coronavirus pandemic, which could delay the delivery of plans, programmes and modifications that may support the recovery of the UK's economy.

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.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is England only, except to a minor extent where plans, programmes or modifications relate to England and another country.

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 The SEA Regulations (as amended) transpose Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (“the SEA Directive”) in respect of plan and programmes (including modifications to them) relating solely to the whole or any part of England or to England (whether as to the whole or part) and any other part of the United Kingdom. The SEA Regulations set out the requirements for allowing the inspection of various documents relating to the SEA process by the responsible authority (as defined in regulation 2 of the SEA Regulations) or, where applicable, the Secretary of State.
- 6.2 The relevant inspection requirements in the SEA Regulations are regulations 11, 13, 15 and 16. This instrument removes regulation 18 from the SEA Regulations which modified, for a limited time, the inspection requirements in each of these regulations.

- 6.3 Regulation 3 of this instrument inserts definition of “coronavirus” and “public website” into regulation 2 of the SEA Regulations.
- 6.4 Regulation 11 of the SEA Regulations sets out that where the responsible authority determines whether or not a plan, programme or modification is likely to have significant environmental effects in accordance with regulation 9(1), that authority must keep a copy of the determination, and any accompanying statement of reasons, available for inspection at its principal offices. The responsible authority must take such steps as it considers appropriate to bring to the attention of the public the address where those documents can be inspected, and a copy obtained. Regulation 11 also sets out that where the authority receives a direction from the Secretary of State that a plan, programme or modification is likely to have significant environmental effects in accordance with regulation 10(3), the authority must keep a copy of the direction and of the Secretary of State's statement of his reasons for giving it available for inspection at its principal offices, and to take such steps as it considers appropriate to bring to the attention to the public the address where those documents can be inspected, and a copy obtained.
- 6.5 Regulation 4 of this instrument modifies regulation 11 to remove the requirement to keep a copy of those documents at its principal office and replaces this with requirements for the authority to publish these documents on a public website, to provide by post or email a copy of these documents where it receives a request to do so (and it is reasonably practicable to provide copies by post, for reasons connected to the effects of coronavirus), and to provide a telephone number for the public to make relevant enquiries in relation to the documents. The notification requirements are modified accordingly so that the address of the website where the documents may be viewed and downloaded free of charge is brought to the attention of the public, as well as the fact that the documents may be obtained by post or email upon request, whether a charge will be made to obtain a copy by post (as well as the amount of that charge), and the contact information for making such a request or for making enquiries about these document by telephone. This modification specifies that if a charge is required to provide copies of documents by post, that charge shall be of a reasonable amount.
- 6.6 Regulation 13 of the SEA Regulations requires the responsible authority to inform persons who, in the authority's opinion, are affected or likely to be affected by, or have an interest in the decisions involved in the assessment and adoption of the plan, programme or modification concerned (“the public consultees”) of the address at which a copy of every draft plan, programme or modification for which an environmental report has been prepared in accordance with regulation 12 and its accompanying environmental report (“the relevant documents”) may be viewed, or from which a copy may be obtained, and to keep a copy of these documents available at its principal office for inspection by the public.
- 6.7 Regulation 5 of this instrument modifies regulation 13 to remove the requirement on the responsible authority to keep a copy of the relevant documents at the authority’s principal office and replaces this with requirements for the authority to publish these documents on a public website, to provide by post or email a copy of these documents where it receives a request to do so (and it is reasonably practicable to provide copies by post, for reasons connected to the effects of coronavirus), and to provide a telephone number for the public to make relevant enquiries in relation to the documents. The notification requirements are modified accordingly, so that the public consultees are informed of the address of the website where the relevant documents

can be viewed and downloaded free of charge, as well as the fact that the documents may be obtained by post or email upon request, whether a charge will be made to obtain a copy by post (as well as the amount of that charge), and the contact information for making such a request or for making enquiries about these document by telephone. This modification specifies that if a charge is required to provide copies of the relevant documents by post, that charge shall be of a reasonable amount.

- 6.8 Regulation 15 of the SEA Regulations sets out procedural requirements where the Secretary of State indicates to a Member State of the European Union that it wishes to enter into consultations in respect of the likely transboundary environmental effects of a plan, programme or modification in that Member State, and the measures envisaged to reduce or eliminate such environmental effects. Where such consultations take place, regulation 15 required the Secretary of State to either provide the consultation bodies (as defined in regulation 4) with a copy of the draft plan or programme and the relevant environmental report, or specify the address at which those documents may be inspected. The Secretary of State must also inform such persons as, in the Secretary of State's opinion, are affected or likely to be affected by, or have an interest in the decisions involved in the assessment and adoption of the plan, programme or modification concerned ("the transboundary consultees") of the address at which a copy of the draft plan or programme and the relevant environmental report provided may be inspected, or from which a copy may be obtained.
- 6.9 Regulation 6 of this instrument modifies regulation 15 to remove the requirement on the Secretary of State to keep a copy of these documents (now referred to as "the relevant transboundary documents") at a physical address and replaces this with requirements for the Secretary of State to publish these documents on a public website, to provide by post or email a copy of these documents where the Secretary of State receives a request to do so (and it is reasonably practicable to provide copies by post, for reasons connected to the effects of coronavirus), and to provide a telephone number for the public to make relevant enquiries in relation to the documents. The notification requirements are modified accordingly so that the address of the website where the relevant transboundary documents may be viewed and downloaded free of charge is brought to the attention of the transboundary consultees, as well as the fact that the documents may be obtained by post or email upon request, whether a charge will be made to obtain a copy by post (as well as the amount of that charge), and the contact information for making such a request or for making enquiries about these document by telephone. This modification specifies that if a charge is required to provide copies of documents by post, that charge shall be of a reasonable amount.
- 6.10 Regulation 16 requires that, as soon as reasonably practicable after the adoption of a plan, programme or modification for which an environmental assessment has been carried out under the SEA Regulations, the responsible authority shall make a copy of that plan or programme and its accompanying environmental report available at its principal office for inspection, and take such steps as it considers appropriate to bring to the attention of the public the address at which a copy of these documents may be viewed or from which a copy may be obtained. The responsible authority must then inform the consultation bodies (as defined in regulation 4), the public consultees, and (where appropriate) the Secretary of State of matters including the address as which a copy of the plan, programme or modification (as adopted), its accompanying environmental report, and a statement containing specified particulars (relating to how certain matters have been taken into account, and how reasonable alternatives and

monitoring measures have been considered) may be viewed, or from which a copy may be obtained.

- 6.11 Regulation 7 of this instrument modifies regulation 16 to remove the requirement for the responsible authority to keep a copy of the plan or programme, its accompanying environmental report and a statement of particulars (collectively, “the relevant adoption documents”) at its principal office and replaces this with requirements for the authority to publish these documents on a public website, to provide by post or email a copy of the documents where it receives a request to do so (and it is reasonably practicable to provide copies by post, for reasons connected to the effects of coronavirus), and to provide a telephone number for the public to make relevant enquiries in relation to the documents. The notification requirements are modified accordingly so that the address of the website where the relevant adoption documents may be viewed and downloaded free of charge is brought to the attention of the public, as well as the fact that the documents may be obtained by post or email upon request, whether a charge will be made to obtain a copy by post (as well as the amount of that charge), and the contact information for making such a request or for making enquiries about these document by telephone. This modification specifies that if a charge is required to provide copies of documents by post, that charge shall be of a reasonable amount.
- 6.12 Regulation 8 of this instrument removes regulation 18 of the SEA Regulations, which contains the transitory modifications added by the SEA Coronavirus Regulations.
- 6.13 These amendments are compatible with the SEA Directive. The European Commission has been notified in accordance with Article 13 of the SEA Directive.

7. Policy background

What is being done and why?

- 7.1 Open and accessible inspection of the relevant documentation is vital to ensuring that affected individuals and groups can comment on plans, programmes and modifications at the prescribed points during the adoption process. Ensuring that all affected individuals are able to inspect the relevant documents and therefore make informed comments in response to consultations is a core part of effective consultation. Effective consultation is vital to the adoption of effective plans, programmes and modifications that reflect the views of those that they affect. This is essential to ensure that decisions that flow from these plans, programmes and modifications are well informed and take into consideration the views of those affected by them. This is necessary to facilitate inclusive environmental decision making.
- 7.2 The effects of the coronavirus pandemic, including restrictions on movement from social distancing, made it more difficult for relevant authorities (and the Secretary of State, where relevant) to discharge the statutory requirements to publicise plans, programmes and modifications by making certain documents available for physical inspection. This is because the social distancing requirements in response to the coronavirus pandemic have resulted in many public buildings being closed temporarily, or less accessible than before the pandemic. As a result, temporary measures were introduced in the SEA Coronavirus Regulations to move inspection of certain planning documents online.

- 7.3 In keeping with the ambition to move towards digitalising the planning system set out in the Planning for the Future white paper, we now want to put these changes (moving from physical inspection at an address) on a permanent basis, before the temporary modifications introduced by the SEA Coronavirus Regulations stop applying on 31st December 2020. In addition, these permanent measures will ensure the continued progression of plans, programmes and modifications during the ongoing coronavirus pandemic.
- 7.4 It is considered that without the instrument, it is likely that responsible authorities will delay bringing plans, programmes and modifications forward because they may not be able to comply with the necessary consultation and publicity requirements. The SEA Regulations apply to a broad range of plans, programmes and modifications including transport plans, land use and spatial plans and other plans and programmes that set out the future development consent of projects. Delaying important plans, programmes and modifications that set out the framework for new development from coming forward may result in housing and other development stalling, negatively impacting on the economy or result in less sustainable development where there is no framework in place for development consent.
- 7.5 The move to more digital processes and virtual events has been broadly welcomed. As recognised in the Written Ministerial Statement (May 2020) digital process and virtual events present opportunities to increase participation in the planning process. In the Planning for the Future white paper, we have set out an ambition to “move the democracy forward in the planning process and give neighbourhoods and communities an earlier and more meaningful voice in the future of their area as plans are made, harnessing digital technology to make it much easier to access and understand information about specific planning proposals”. This is now possible because internet usage is at such a high level across the country. Data set out by the Office for National Statistics informed that 87% of all adults used the internet daily or almost every day and an estimated that 93% of households have internet access in 2019. In practice relevant documents are already made available online by authorities through their websites, and this has in recent years become the principal way for many of those interested to access documents, with provision of documents at central hubs a less effective and significant part of engagement. Best practice already demonstrates that authorities deploy alternative methods of engaging the minority of the community who do not have internet access.
- 7.6 This instrument therefore permanently modifies the requirements in the SEA Regulations for relevant documents to be made physically available and for the responsible authority or Secretary of State to notify the public (or a defined set of consultees) of a physical address where they are available. Instead, the responsible authority will be required to make the documents available on a website, and instead of providing a physical address where documents can be inspected, the responsible authority or Secretary of State should notify the public (or the same defined set of consultees) of the website address where they can be inspected. The requirements for physical copies to be made available at a set location has been removed, but hard copies will still be available by post on request, where this is reasonably practicable and subject to a reasonable charge. These changes are detailed in sections 6.4 to 6.11.
- 7.7 These changes have the potential to reduce access to relevant documentation for those without access to the internet at home. It is noted that the effects of coronavirus,

including travel restrictions have made access to physical documents more difficult, even if physical inspection requirements were retained. However, to minimise the impact of moving toward a greater emphasis on online inspection of documents, this instrument also puts in place various mitigation measures to minimise any restriction of access. Authorities will be required, when notifying the public of the website address where documentation is available, also to notify them of a telephone number where they can raise enquiries in relation to the documentation. Authorities are also required to provide by email a copy of any documentation published to any person who requests one. Once the social distancing requirements in response to the coronavirus pandemic are relaxed authorities may also be able to post hard copies of documents when requested to do so, and when this is reasonably practicable they will be required to do so. Where there are separate coronavirus measures in place temporarily removing a requirement for the provision of physical copies of any type of document (such as for local plans, for example), it is unlikely to be reasonably practicable for authorities to provide physical copies of those documents (or their supporting documents) under these regulations. This will be subject to a reasonable discretionary charge.

7.8 Other than as set out at section 7.8, the instrument does not modify the requirement for responsible authorities or the Secretary of State to notify individuals they determine could be affected by plans, programmes and modifications in accordance with the SEA Regulations.

7.9 Guidance will be published by MHCLG to coincide with this instrument coming into force.

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 immediate plans to consolidate these changes.

10. Consultation outcome

10.1 No formal public consultation has been carried out on these measures but the changes have been in place since July 2020. MHCLG officials are not aware of any concerns having been raised with regard to these measures, and the Department has not, to date, received any formal or informal correspondence indicating any problems.

11. Guidance

11.1 Updated guidance will be published to support responsible authorities in interpreting the SEA Regulations in light of this instrument.

11.2 This guidance will address the following topics:

- explain the changes to publicity and inspection requirements placed on responsible authorities and the Secretary of State; and
- suggest alternative ways a responsible authority may consider making the relevant documents available to individuals the ability to inspect documents.

- 11.3 This guidance will be published in the SEA guidance collection on gov.uk when the SI comes into force.

12. Impact

- 12.1 There is no, or no significant impact on business, charities or voluntary bodies.
- 12.2 There is no significant impact on the public sector. The changes are not anticipated to cause significant costs to responsible authorities or the Secretary of State. The measures will remove the need for public bodies to print and display large documents, and where hard copies are required the authority can make a reasonable charge for them.
- 12.3 An Impact Assessment has not been prepared for this instrument because there is no impact on business, charities or voluntary bodies. The changes made by this instrument make permanent an existing temporary amendment which removed certain requirements placed on relevant authorities to make certain documents available for inspection; those documents will be made available on a website instead. There is no change to the documents themselves, or the process of preparing a strategic environmental assessment. We would expect relevant authorities to benefit from small cost and time savings due to no longer needing to provide physical documents for inspection.

13. Regulating small business

- 13.1 The legislation does not apply to the regulation of small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation will be through key stakeholder groups.
- 14.2 The regulation does not include a statutory review clause as the measures proposed will have no significant impact on business.

15. Contact

- 15.1 Ryan Shean at the Ministry of Housing, Communities and Local Government; email: ryan.shean@communities.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Jenny Preece, Deputy Director for Planning Infrastructure, at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Christopher Pincher at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.