

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

2020 No. 734

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 (Coronavirus) (Amendment) Regulations 2020 amend the Environmental Assessment of Plans and Programmes Regulations 2004 (“the SEA Regulations”), on a temporary basis until 31st December 2020. The instrument modifies 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. This instrument will temporarily replace 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 is necessary for reasons connected to the effects of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) (“coronavirus”), including restrictions on movement.
- 2.2 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 these temporary amendments are urgently required to allow responsible authorities and the Secretary of State to meet the inspection requirements for plans, programmes and modifications made in accordance with the SEA Regulations during the response to coronavirus. Without these amendments, responsible authorities and the Secretary of State would be unable to comply with the duties placed upon them in relation to the display and inspection of relevant documents. This will 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 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 inserts regulation 18 into the SEA Regulations which modifies, for a limited time, the inspection requirements in each of these regulations.
- 6.3 Regulation 11 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 principle offices. The responsible authority must 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. 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 principle 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.
- 6.4 Regulation 13 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 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.

- 6.5 Regulation 15 sets out comparable requirements where the Secretary of State indicates to a Member State of the European Union that, before the adoption of the plan, programme or modification, or its submission to the legislative procedure for adoption, the United Kingdom wishes to enter into consultations in respect of that plan or programme, concerning the likely transboundary environmental effects of implementing it. and the measures envisaged to reduce or eliminate such environmental effects. Where such consultations take place the Secretary of State may 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 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 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.
- 6.6 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.
- 6.7 In accordance with regulation 18, each of these requirements shall, until 31st December 2020, be read so that the authority must instead make these documents available on a website, and to take such steps as it considers appropriate to bring to the attention of the relevant consultees the website address where those documents can be inspected. The requirement that a physical copy of the documents can be obtained from its principle office is omitted.
- 6.8 The amendments are compatible with the SEA Directive and only apply for a limited period of time. 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 coronavirus, which include restrictions on movement, the closure of principle offices and increased home working have made the physical inspection of documents more difficult, for a number of reasons:
- the display and inspection of physical documents require travel to principle offices at a time when travel for non-essential purposes is discouraged;
 - the closure of some principle offices of responsible authorities means that it may be impossible to provide a physical address for inspection;
 - the closure of principal offices and home working may make providing hard copies difficult, give the potentially substantial print runs of large documents; and
 - if offices were to open during periods of relaxed social distancing, those who are shielding, or are vulnerable may still be unable or unwilling to travel to inspect physical documents.
- 7.3 Changes in social distancing guidelines that came into force on 4th July 2020 have given an opportunity for some venues used for document display and inspection to open. However, not all of these venues will necessarily open and on-going social distancing requirements may make these sites less accessible than before. In addition to this, there is the possibility of such measures being introduced in local areas in the future if the Government considers it necessary to do so (for example, the Government's announcement on 29th June 2020 extending or reintroducing localised coronavirus lockdown measures in and around Leicester). This means that the next phase of the response to the coronavirus pandemic may involve local variation in the accessibility of sites for document display.
- 7.4 The issues set out above place constraints on the ability of the responsible authorities and the Secretary of State to comply with existing legislative inspection requirements set out in the SEA Regulations.
- 7.5 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.
- 7.6 The instrument modifies, on a temporary basis until 31st December 2020, 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 has been removed. These changes are detailed in sections 6.3 to 6.7.

- 7.7 These changes have the potential to reduce access to relevant documentation for those without access to the internet at home. The effects of coronavirus, including travel restrictions have made access to physical documents more difficult. To minimise the impact of this, guidance will encourage responsible authorities to continue to provide physical copies for physical inspection, but only where public health guidance and the effects of coronavirus, including restrictions of movement allows. It is not considered proportionate to make it a requirement that hard copies of documents continue to be provided on an individual basis because – (i) documents required by the SEA Regulations can be of considerable length and providing them could lead to significant costs to responsible authorities; (ii) the next phase of the response to coronavirus may involve local variations in the accessibility of sites and restrictions on movement; and (iii) some responsible authorities may not have access to print facilities during the coronavirus pandemic. Furthermore, it is considered that the allowing plans, programmes and modifications to continue coming forward justifies this approach.
- 7.8 Other than as set out at section 7.6, 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 These are temporary measures being urgently brought forward in response to concern that plans, programmes and modifications which require an assessment in accordance with the SEA Regulations will be unable to meet their statutory inspection duties given the effects of coronavirus, including restrictions on movement. Given the urgent timescales, there has been no public consultation carried out on the changes. The changes have been supported by a planning barrister and similar changes for other aspects of the planning system have been supported by industry stakeholders including local planning authorities. Additionally, similar changes to the Environmental Impact Assessment regime for both the Town and Country Planning Act 1990 and the Planning Act 2008 have been supported by stakeholders.

11. Guidance

- 11.1 Guidance will be published to support responsible authorities in interpreting the SEA Regulations in light of this instrument. This guidance is necessary to minimise the effects of these changes on individuals who do not have the ability to inspect the relevant documents online.
- 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;
 - suggest alternative ways a responsible authority may consider making the relevant documents available to individuals the ability to inspect documents; and
 - encourage that where public health guidance and the effects of coronavirus allows, responsible authorities should continue to make the relevant documents available for public inspection.
- 11.3 This guidance will be published in the SEA guidance collection on gov.uk. This can be found [here](#).

12. Impact

- 12.1 There is no significant, impact on business, charities or voluntary bodies. The changes are temporary and are not anticipated to cause a cost to business of greater than £5 million.
- 12.2 There is no significant impact on the public sector. The changes will have effect for less than 12 months and is 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.
- 12.3 A full Impact Assessment has not been prepared for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

13. Regulating small business

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

14. Monitoring & review

- 14.1 This instrument will expire on 31st December 2020. The impact of the instrument will be kept under review.

15. Contact

- 15.1 Kate Johnson at the Ministry of Housing, Communities and Local Government; email: kate.johnson@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.