

EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE AND SECTION 62A APPLICATIONS) (ENGLAND) (AMENDMENT) ORDER 2021

2021 No. 746

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.

2. Purpose of the instrument

- 2.1 The Town and Country Planning (Development Management Procedure and Section 62A Applications) (England) (Amendment) Order 2021 amends the Town and Country Planning (Development Management Procedure)(England) Order 2015 (“DMPO 2015”) and the Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) Order 2013 (“the 2013 Order”) to (1) introduce a requirement for a fire statement to be submitted with applications for planning permission for development involving a high-rise residential building in certain circumstances, (2) introduce a requirement that the fire statement is published on the planning register which each local planning authority must maintain, (3) introduce a requirement that the Health and Safety Executive is consulted before the grant of planning permission involving a high-rise residential building in certain circumstances, (4) amend certain periods for representations to be made by the public and statutory bodies before determination of applications for planning permission for development categorised as “public service infrastructure development”, (5) amend the statutory period for determination of applications for planning permission for public service infrastructure development, (6) update the Table in Schedule 4 to DMPO 2015 to reflect the name change of the “Garden History Society” to “The Gardens Trust”.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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 the 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.

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 DMPO 2015 sets out procedures for the submission and determination of applications for planning permission made to local planning authorities and for applications for urgent Crown development made to the Secretary of State under section 293A of the Town and Country Planning Act 1990.

High-rise residential buildings and fire statements

6.2 This Order inserts a new article 9A in DMPO 2015. Article 9A requires an applicant to submit a fire statement with an application for planning permission made to a local planning authority for development which involves the provision of one or more relevant buildings, development of an existing relevant building, or development within the curtilage of a relevant building. A relevant building is a building which (1) contains two or more dwellings or educational accommodation and (2) contains 7 or more storeys or is 18 metres or more in height. A fire statement must be submitted on a form published by the Secretary of State or a form to similar effect (<https://www.gov.uk/government/publications/planning-application-forms-templates-for-local-planning-authorities>). The requirement to submit a fire statement does not apply in the circumstances set out in article 9A(6).

6.3 Article 11 of DMPO 2015 requires a local planning authority to send an acknowledgement of an application when items specified in a list in that article have been received. Article 34 of DMPO 2015 sets out prescribed periods for determination of an application by a local planning authority which are calculated by reference to the date of receipt of such items. This Order adds a fire statement to the lists of items in articles 11 and 34, in the case of application to which article 9A applies.

High-rise residential buildings, fire statements and the planning register

6.4 Section 69 of the Town and Country Planning Act 1990 requires a local planning authority to keep a planning register containing information which includes information about applications for planning permission. This order amends article 40 of DMPO 2015 to require a fire statement to be placed on the register.

High-rise residential buildings and consultation on fire safety issues

6.5 The local planning authority or the Secretary of State (as the case may be) is required to consult one or more statutory bodies before granting planning permission for development which is of a description specified in the Table in Schedule 4 of DMPO 2015 in certain circumstances. This Order adds to the Table a new category of development involving one or more relevant buildings which triggers requirements to consult the Health and Safety Executive before the grant of planning permission in those circumstances.

Public service infrastructure development

- 6.6 Article 3 of this Order inserts a definition of “public service infrastructure development” into article 2 of DMPO 2015. “Public service infrastructure development” is major development which is not development requiring an Environmental Assessment (“EIA development”), where the main purpose of the development is (1) the provision of a health service hospital, a school or institution within the further education sector, an institution within the higher education sector or criminal justice accommodation, or (2) works for the extension or alteration of such a facility.

Publicity of applications for public service infrastructure development

- 6.7 Article 15 of DMPO 2015 requires a local planning authority to publicise an application for planning permission and requires the Secretary of State to publicise an application for urgent Crown development. Publicity must include the date by which representations must be made. Article 16 of DMPO 2015 imposes additional publicity requirements for applications for planning permission within ten metres of relevant railway land. In the case of an application for public service infrastructure development this Order reduces the statutory minimum periods for representations set out in Articles 15 and 16 from 21 to 18 days.

- 6.8 Article 33 of DMPO 2015 requires the local planning authority to take into account representations made during the periods referred to in articles 15 and 16. This Order makes corresponding amendments to the periods in article 33.

- 6.9 This Order also substitutes paragraph (7) of Article 33 to correct an error made when that paragraph was amended by S.I. 2018/119. S.I 2018/119 which amended article 15 of DMPO 2015 by adding an extra day to minimum periods for representations publicised in accordance with article 15, where a bank or public holiday falls within the relevant period. That measure did not apply to (1) publicity under article 15 of DMPO 2015 for an EIA application accompanied by an Environmental Statement or an application for urgent Crown development or (2) to publicity of applications for planning permission under article 13 or 16 of DMPO 2015. The substitution of paragraph (7) of article 33 corrects an error when the corresponding provision was inserted into article 33 by SI 2018/119.

- 6.10 Article 34(9) of DMPO 2015 provides that local planning authorities must not determine applications for permission before the end of the periods within which representations must be taken into account. This Order makes corresponding amendments to the periods in article 34(9), in the case of applications for public service infrastructure development.

Public service infrastructure development and consultation

- 6.11 Articles 18, 19, 20, 21, 24, 25 and 25A of DMPO 2015 impose certain consultation requirements on local planning authorities or the Secretary of State (as the case may be) before the grant of planning permission for development. In the case of applications for public service infrastructure development this Order reduces the statutory minimum periods for representations by consultees from 21 to 18 days. This Order make a consequential change to article 22 of DMPO 2015 in relation to the requirements to consult which are prescribed for the purpose of section 54(2)(b) of the Planning and Compulsory Purchase Act 2004.

Determination of applications for public service infrastructure development

- 6.12 Article 34 of DMPO 2015 prescribes periods for determination of applications for planning permission by local planning authorities. This Order amends article 34 by providing that the determination period for an application for public service infrastructure development is ten weeks beginning with the day immediately following that on which the application is received by the authority.

The Gardens Trust

- 6.13 This Order updates the Table in Schedule 4 of the DMPO 2015 to reflect the name change of the “Garden History Society” to the “Garden Trust”.

Amendments to the section 62A Order

- 6.14 Section 62A of the Town and Country Planning Act 1990 enables a person to make an application for planning permission to the Secretary of State instead of making it to a local planning authority if the Secretary of State has designated the local planning authority using his powers under section 62A(1) (poorly performing authorities). This Order makes corresponding changes to the section 62A Order in respect of applications for planning permission involving high-rise residential buildings and public service infrastructure development.

7. Policy background

What is being done and why?

- 7.1 The purpose of the new requirements in this Order is to ensure fire safety matters as they relate to land use planning are incorporated at the planning application stage for schemes involving a relevant high-rise residential building, before permission is granted for development, with the Health and Safety Executive becoming a statutory consultee for this purpose.
- 7.2 Following the Grenfell Tower fire in June 2017 the Government commissioned the Independent Review of Building Regulations and Fire Safety led by Dame Judith Hackitt. The report highlighted the need to transform the fire and building safety regime and recommended that requirements around fire safety needed to be addressed at the planning application stage, and that this should require input from those with the relevant expertise.
- 7.3 In April 2020 the Government published “A reformed building safety regulatory system: government response to the ‘Building a Safer Future’” which proposed a new approach for development involving a relevant high-rise residential building so that fire safety issues which impact on planning, including emergency fire vehicle access to a building and whether there are adequate water supplies in the event of a fire, should be considered before planning permission is granted. To aid the local planning authority in their decision as to whether to grant planning permission, the developer would be required to submit with their planning application a fire statement setting out fire safety considerations specific to the development.
- 7.4 The purpose of the changes being introduced by this Order is to bring forward thinking on fire safety matters as they relate to land use planning to an earlier stage in the development process. This will result in schemes which better integrate thinking on fire safety, as opposed to revisiting and revising a consented scheme later in the development process due to the impact of fire safety requirements.

- 7.5 A fire statement must be submitted with certain applications and will support the consideration of information on fire safety as it relates to land use planning matters. The information provided within a fire statement should be relevant to the development, and proportionate to the scale, type and complexity of the proposal.
- 7.6 A fire statement must be submitted with an application for planning permission for development which involves, the provision of one or more relevant buildings, or development of an existing relevant building, or development within the curtilage of a relevant building (unless an exemption applies).
- 7.7 Applications are exempt from the requirement to submit a fire statement where the application is for a material change in use of a relevant building and the material change of use would result in the building no longer being a relevant building; the application is for a material change in use of land or buildings within the curtilage of a relevant building and the material change of use would not result in the provision of one or more buildings; the application is for permission to develop land without compliance with conditions under section 73 of the Town and Country Planning Act 1990 or the application is for outline planning permission. Applications for outline planning permission will be exempt from the requirement to submit a fire statement because matters such as layout and scale can be reserved.
- 7.8 The fire safety matters contained in a fire statement are relevant only to the extent they are relevant to land use planning. The level of detail and focus of information within a fire statement should not contain the breadth and depth of information on fire safety which will be submitted at building control application stage. Requirements of the fire statement at planning stage will not duplicate or require compliance with the building regulations or the Fire Safety Order, and local planning authorities will not be responsible for any building regulation matters or the enforcement of building control requirements.
- 7.9 In response to Dame Judith Hackitt's recommendations, relevant buildings are defined as those which contain two or more dwellings or educational accommodation and meet the height condition of 18m or more in height, or 7 or more storeys (see article 9A of DMPO 2015 as inserted by article 4 of this Order).

High-rise residential buildings, fire statements and the planning register

- 7.10 The Order also amends article 40 of DMPO 2015 to require that the fire statement is placed in Part 2 of the local planning authority's planning register. Part 2 of the planning register contains a permanent record of applications for planning permission and decisions.

High-rise residential buildings and consultation on fire safety issues

- 7.11 A new regime will be introduced via the Building Safety Bill and will establish a new Building Safety Regulator. This new regulator will become a statutory consultee for certain development proposals involving a relevant high-rise building, but this role will initially be undertaken by the Health and Safety Executive. The Table in Schedule 4 to DMPO 2015 has been amended to provide for consultation with the Health and Safety Executive before planning permission is granted in certain circumstances where development proposals involve a relevant high-rise building. Relevant applications for permission to develop land without compliance with conditions will also trigger the requirement to consult if the authority considers it appropriate to do so.

- 7.12 Applications for planning permission will be exempt from the requirement to submit a fire statement in certain circumstances, for example where the application is for outline planning permission. Where development is likely to involve the provision of one or more relevant buildings the local planning authority will be required to consult the Health and Safety Executive.
- 7.13 The Health and Safety Executive will be required to meet certain requirements as a consequence of the consultation being prescribed for the purposes of section 54 of the Planning and Compulsory Purchase Act 2004. These include a requirement to provide a substantive response to consultation within the meaning of article 22 DMPO 2015 and to provide a report each year to the Secretary of State.

Public service infrastructure development

- 7.14 In the National Infrastructure Strategy published alongside the Spending Review on 25 November 2020, the government set out an ambitious long-term investment strategy to improve the country’s infrastructure and public services.
- 7.15 In support of this, in December 2020, the Ministry of Housing, Communities and Local Government published a consultation on measures to support housing delivery, economic recovery, and public service infrastructure. Specifically, the consultation explored making changes to the planning system to provide greater planning certainty by introducing a faster planning application process for these types of development.
- 7.16 Currently, securing planning permission for public service infrastructure development, such as hospitals, schools and prisons can often take significant time, leading to project delays and cost increases. As set out in the consultation, recent experience has shown that the determination by local planning authorities of applications for such substantive public service developments has often taken considerably longer than the statutory timetable of 13 weeks.
- 7.17 This aim of this Order is to encourage greater prioritisation by local planning authorities of “public service infrastructure development” applications, by providing for shorter timescales for representations to be made in the case of certain publicity and consultation requirements. and a shorter statutory period for determination of the application.
- 7.18 The amended timescales apply to applications for permission for “public service infrastructure development” which is a new category of “major development”. The definition of “major development” includes development carried out on a site having an area of 1 hectare or more, and/or involving the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more. The modified process does not apply to applications for EIA development.
- 7.19 For the new faster process to be effective, it is focussed on applications for planning permission for certain ‘public service infrastructure developments’. That is, applications for planning permission where the main purpose is the provision of a health service hospital, a school or institution within the further education sector, an institution within the higher education sector, or criminal justice accommodation (not including immigration or removal detention centres), or works for the extension or alteration of such a facility.
- 7.20 Pre-application engagement is strongly encouraged in the National Planning Policy Framework ([NPPF](#)) and is good practice that is already a regular feature of the process for many of these types of projects. The Order amends certain periods which must be

allowed for representations in respect of applications for “public service infrastructure development”, reducing them from the current 21 calendar day statutory period to 18 calendar days. The 18-day period is a statutory minimum and the discretion to extend the period for representations is maintained. The amended period for representations also applies in the case of certain requirements to consult with statutory bodies. When complying with requirements to publicise the application to the local community local planning authorities are required to add an extra day for every day within the period which is a bank or public holiday.

- 7.21 The Order also introduces a shorter determination period of 10 weeks for “public service infrastructure development” applications. This shorter period is to incentivise prompt consideration of these applications whilst providing sufficient time for necessary consultation and consideration. The amendment does not remove the ability for the applicant and the local planning authority to agree an extension of time where issues remain to be resolved.
- 7.22 We intend to amend the National Planning Policy Framework to make it clear that local planning authorities are expected to take a proactive approach to engaging with key delivery bodies and other stakeholders at the pre-application stage to identify and resolve key planning issues before applications are submitted.
- 7.23 Amendments have also been made to certain forms and letters in Schedules 1 and 3 to DMPO 2015 to reflect the 10-week determination period for applications for “public service infrastructure development” and the amended periods for representations.
- 7.24 This Order makes amendments to the 2013 Order to impose similar requirements when applications are made to the Secretary of State under section 62A of the Town and Country Planning Act 1990 in respect of high-rise residential buildings and applications for “public service infrastructure development”.
- 7.25 In order for the government to monitor the progress of these important developments the Secretary of State intends to issue a direction under article 34(8) of DMPO 2015 to require local planning authorities to notify the Secretary of State when they receive a planning application for “public service infrastructure development” as defined in this Order, and provide information on the timing of the decision. The Direction will be made available at: <https://www.gov.uk>.

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 / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 There are no plans for a consolidation.

10. Consultation outcome

High-rise residential buildings and fire safety

- 10.1 In June 2019 the Ministry of Housing, Communities and Local Government consulted on its proposed reforms to improve building safety (Building a Safer Future, proposals for reform of the building safety regulatory system) which proposed creating a planning gateway so that before planning permission is granted planning

applicants should submit a fire statement and that local planning authorities should seek expert advice before granting planning permission, to ensure early consideration of fire safety.

- 10.2 The development of these new requirements was informed by policy design trials and stakeholder events which involved participants from the Building Safety Programme's Early Adopters' scheme, local planning authorities across England, the Planning Inspectorate, Health and Safety Executive, the fire safety professionals and fire engineers, house builders, and housing providers. The Ministry has also worked with the Joint Regulators Group, the Local Government Association, the National Fire Chiefs Council and the Home Office.
- 10.3 On 10 May 2021 the Ministry published a draft fire statement form and accompanying guidance, information on planning gateway one and the draft statutory instrument, to assist stakeholders and industry (including planning applicants and local planning authorities) to prepare for its implementation.

Public service infrastructure development

- 10.4 In December 2020, MHCLG consulted on "Supporting housing delivery and public service infrastructure", which ran from 3 December 2020 to 28 January 2021 and attracted 879 responses, including from developers, local planning authorities, members of the public, business and interest groups, who provided a range of comments. The government response to the consultation is available online at: <https://www.gov.uk/government/consultations/supporting-housing-delivery-and-public-service-infrastructure/outcome/supporting-housing-delivery-and-public-service-infrastructure-government-response>

11. Guidance

- 11.1 Guidance on the new requirements relating for both high rise residential buildings and fire safety and public service infrastructure development will be provided in the Ministry's online [planning practice guidance](#).
- 11.2 The requirements of both new regimes only apply to applications for planning permission submitted on or after 1 August 2021.

12. Impact

High-rise residential buildings and fire safety

- 12.1 The impact on business, charities or voluntary bodies is primarily related to the requirement that applicants will have to provide additional information with a planning application. New Article 9A establishes a fire statement as a national information requirement in the circumstances described above and will have a small impact on the development industry. The majority of the cost to industry will arise from the resource requirement of producing the fire statement. As the impacts are expected to be low, a full regulatory impact assessment has not been published.
- 12.2 Fire statements are intended to provide information that is focussed and concise, specific and relevant to the development, and proportionate to the scale, type and complexity of the proposal. The level of detail and focus of information should not contain the breadth and depth of information on fire safety which will be submitted at building control application stage.

- 12.3 The requirement to submit a fire statement with an application is limited to those circumstances set out above, and it is estimated that, on average, they will be required to be submitted with around 800 applications each year. As a consequence, we estimate that the total cost to business will be small.
- 12.4 Planning gateway one will bring forward fire safety matters as they relate to land use planning in the development process to the earliest possible stage and result in better schemes which fully integrate thinking on fire safety. This could potentially reduce costs for developers due to the decreased likelihood of consented schemes being revised later in the development process due to the impact of fire safety requirements.
- 12.5 The Health and Safety Executive have been resourced to undertake the role of statutory consultee for applications which involve or are likely to involve a relevant building. They have recruited a skilled team with specialist knowledge and expertise and are testing systems and training staff to ensure they are ready to respond to the new requirements from 1st August 2021.
- 12.6 We expect planning gateway one to involve some small adjustments to case management systems in local planning authorities.

Public service infrastructure development

- 12.7 There is no, or no significant, impact on business, charities or voluntary bodies. The impact on the public sector is small. A full Regulatory Impact Assessment has not been prepared.
- 12.8 The main impact on local planning authorities is a reduction in the time allowed to determine those applications which fall within scope of the modified procedure. The resource implications of this are expected to be minimal; given the frequency with which these schemes come forward we would expect most authorities to have to deal with no more than one per year. This shorter timescale for determination should also encourage positive, proactive, and effective pre-application engagement between all parties, including statutory consultees, on relevant applications for public service infrastructure development.
- 12.9 New burdens associated with local planning authorities implementing the modified planning application process are considered ‘de-minimis’. Costs are also considered negligible in terms of any ‘one-off’ IT systems updates.

13. Regulating small business

High rise residential buildings and fire safety

- 13.1 High rise development is principally undertaken by medium/large developers, and it is unlikely that small builders will be submitting planning applications for development to which the new requirement to provide a fire statement will apply.

Public service infrastructure development

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

14. Monitoring & review

- 14.1 The Ministry of Housing, Communities and Local Government will monitor the implementation of both new regimes, including how the notification requirement is operating, to gauge whether the modified process is used as intended.

15. Contact

- 15.1 Rachel Smalley at the Ministry of Housing Communities and Local Government email: Rachel.Smalley@communities.gov.uk can be contacted with any queries regarding the high rise residential buildings and fire safety aspects of the instrument. Sean.O'Byrne@communities.gov.uk can be contacted with any queries regarding the public service infrastructure development aspects of 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.