

EXPLANATORY MEMORANDUM TO
THE LEVELLING-UP AND REGENERATION ACT 2023 (CONSEQUENTIAL
AMENDMENTS) (NO. 2) (ENGLAND) REGULATIONS 2024

2024 No. 453

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing and Communities and is laid before Parliament by Command of His Majesty.

2. Declaration

- 2.1 Lee Rowley MP, Minister of State for Housing, Planning and Building Safety at the Department for Levelling Up, Housing and Communities confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Lucy Hargreaves, Deputy Director for Development Management, at the Department for Levelling Up, Housing and Communities confirms that this Explanatory Memorandum meets the required standard.

3. Contact

- 3.1 Theresa Donohue at the Department for Levelling Up, Housing and Communities Telephone: 0303 444 1719 or email: PDMCorrespondence@levelling-up.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

- 4.1 This statutory instrument makes minor amendments to existing secondary legislation to reflect new planning enforcement powers introduced by the Levelling-up and Regeneration Act 2023 (“the 2023 Act”). Specifically, it amends the Town and Country Planning (Development Management Procedure) (England) Order 2015 to set out what information local planning authorities should include in their planning enforcement register in respect of enforcement warning notices. It also amends the Planning (Listed Buildings and Conservation Areas) Regulations 1990 (the 1990 Regulations) to set out the procedure which applies should a person served with a listed building temporary stop notice in England claim compensation.
- 4.2 It also makes consequential changes to The Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023 (“the RAS Regulations”) to omit sections inserted by the 2023 Act regarding the power to provide relief from enforcement of planning conditions, enforcement warning notices and restriction on appeals against enforcement notices from the RAS Regulations.
- 4.3 In addition, it revokes The Town and Country Planning (Pre-application Consultation) Order 2020 (“the 2020 Order”) which extended the temporary provisions relating to pre-application consultation in respect of planning permission set out in sections 61W

to 61Y of the Town and Country Planning Act 1990 (“the 1990 Act”), as these have subsequently been made permanent by the 2023 Act.

Where does the legislation extend to, and apply?

- 4.4 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.
- 4.5 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. Policy Context

What is being done and why?

Levelling-up and Regeneration Act 2023: enforcement measures

- 5.1 Effective enforcement is important to maintain public trust and confidence in the planning system. The 2023 Act introduced a package of measures to strengthen local planning authorities’ enforcement powers. These additional powers will allow local planning authorities to take more effective action against breaches of planning control.
- 5.2 This statutory instrument makes minor consequential changes that are required to give full effect to two of the measures in the 2023 Act – enforcement warning notices and temporary stop notices for listed buildings in England.

The Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023

- 5.3 The enforcement powers in Part 7 of the 1990 Act apply with modifications to the RAS Regulations. These regulations established a Responsible Actors Scheme for eligible developers for the purpose of improving the safety and standard of buildings, and established planning and building control prohibitions for those who do not join or comply with the scheme’s conditions. The planning prohibition prevents prohibited persons from carrying out major development and is enforced by local planning authorities.
- 5.4 As the planning prohibition in the RAS Regulations focuses on who is undertaking development rather than what is being developed, some of the enforcement provisions in Part 7 are not relevant and have been omitted from the RAS Regulations.
- 5.5 The 2023 Act makes amendments to Part 7 of the 1990 Act, some of which are not relevant for the purposes of the RAS Regulations. This statutory instrument therefore, makes consequential amendments to the RAS Regulations to exclude these provisions.

The Town and Country Planning (Pre-application Consultation) Order 2020

- 5.6 Sections 61W to 61Y of the 1990 Act make provision allowing for the Secretary of State to require applicants seeking to make an application for planning permission to undertake pre-application consultation with the community and specified bodies where development is of a description specified in a development order. These provisions were introduced in section 122 of the Localism Act 2011 and were originally intended to cease to have effect at the end of 7 years beginning with the day on which they came into effect (December 2020). The Town and Country Planning (Pre-application Consultation) Order 2020 extended these provisions for a further 5 years to December 2025. The 2023 Act removed the time-limit to these provisions set out in section 61Y of the 1990 Act, making them permanent. There is now a need to revoke the 2020 Order as it is no longer needed.

What was the previous policy, how is this different?

- 5.7 Previously, where a local planning authority considered that a breach of planning control might be acceptable in planning terms, they could informally invite a retrospective planning application to allow them to fully consider the impacts of the development. It was up to developers to decide if and when to submit such an application. In some cases, this resulted in unauthorised development remaining in place for long periods of time whilst an application was awaited and ran the risk of unauthorised development inadvertently becoming immune to enforcement action.
- 5.8 The 2023 Act gives local planning authorities in England a new power to issue an enforcement warning notice. Where a local planning authority becomes aware of a breach of planning control and it appears to them that there is a reasonable prospect of the development being granted planning permission if an application were made, they can issue an enforcement warning notice. The notice states the apparent breach of planning control and confirms that, unless a planning application is made within the period specified in the notice, further enforcement action may be taken.
- 5.9 Enforcement warning notices are intended to formalise the process for inviting retrospective planning applications. They allow local planning authorities to set clear timescales for submission of applications, speeding up the process and helping to ensure that development does not inadvertently become immune to enforcement action.
- 5.10 As with other types of enforcement action (such as enforcement notices) local planning authorities must record details of any enforcement warning notices issued in their planning enforcement register. The purpose of this statutory instrument is to set out what information must be included in a local planning authority's enforcement register in respect of enforcement warning notices and when an enforcement warning notice should be removed from the enforcement register.

Levelling-up and Regeneration Act 2023: Listed building temporary stop notices

- 5.11 The 2023 Act gives local planning authorities in England a new power to issue a temporary stop notice where they think works may have been carried out to a listed building without the necessary listed building consent.
- 5.12 A temporary stop notice allows works to a listed building to be paused for up to 56 days, while the facts of the case are established and the local planning authority decides what, if any, further enforcement action to take. Failure to comply with a notice is an offence, with a maximum penalty of an unlimited fine.
- 5.13 Temporary stop notices have been a long standing and valuable tool for dealing with alleged breaches of planning control under the 1990 Act. This measure addresses a gap in the enforcement powers of local planning authorities in England in relation to listed buildings and will help to protect heritage assets.
- 5.14 In some circumstances compensation may be payable for any loss or damage directly attributable to the effect of a temporary stop notice. This statutory instrument amends the 1990 Regulations to set out the procedure and timeframe for claiming compensation in such cases.

The Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023

- 5.15 The RAS Regulations applied the enforcement provisions in Part 7 of the 1990 Act with modifications where a prohibited person breaches the planning prohibition. The RAS Regulations focus on who is undertaking development rather than what is being

developed. As a result, some of the enforcement provisions in Part 7 of the 1990 Act were not relevant for the purposes of the RAS Regulations and were therefore omitted from the RAS Regulations.

- 5.16 The 2023 Act introduces two new enforcement measures which are also not relevant for the purposes of the RAS Regulations: relief from enforcement of planning conditions and enforcement warning notices. The 2023 Act also amends an existing measure which is already excluded from the RAS Regulations: restriction on appeals against enforcement notices. Without these consequential changes, these measures would apply to the enforcement of the planning prohibition even though they are not relevant. This statutory instrument therefore makes consequential amendments to omit the new measures from the RAS Regulations so that they are not a form of enforcement action that can be used under the Responsible Actors Scheme. It also makes consequential amendments to maintain the approach on restrictions on appeals against enforcement notices that was originally adopted for the RAS Regulations.

The Town and Country Planning (Pre-application Consultation) Order 2020

- 5.17 The provisions for pre-application consultation introduced in section 122 of the Localism Act 2011 contained a sunset provision, so they would cease to have effect after 7 years. This sunset provision reflected a concern in Parliament at the time that the approach was novel. There has been a broad consensus across the planning sector that early and timely engagement between developers, communities, and statutory consultees, before an application for planning permission is submitted to a local planning authority, is important in helping to address issues early on and avoid delays occurring at the formal application stage. The powers have not been widely used (only in relation to wind turbines meeting a specified criteria), but they are no less seen as an important means by which to compel pre-application engagement, give communities a voice, and build their confidence to influence decisions affecting their local area. This is why the powers introduced by the Localism Act 2011 were extended by the 2020 Order and have since been made permanent by the 2023 Act.

6. Legislative and Legal Context

How has the law changed?

- 6.1 These regulations make consequential amendments to three pieces of secondary legislation: the 1990 Regulations; the Town and Country Planning (Development Management Procedure) (England) Order 2015 and the RAS Regulations. These regulations also revoke the Town and Country Planning (Pre-application Consultation) Order 2020.
- 6.2 Regulation 2 of this instrument amends regulation 9 of the 1990 Regulations. Regulation 9 of the 1990 Regulations sets out the timeframe and procedure for claims for compensation under sections 27 to 29 of the Planning (Listed Buildings and Conservation Areas) Act 1990. The amendment inserts a reference to section 44AC of the Planning (Listed Buildings and Conservation Areas) Act 1990 so that the timeframe and procedure for claims for compensation set out in regulation 9 also applies to claims under that section.
- 6.3 Regulation 3 amends article 43 of the Town and Country Planning (Development Management Procedure) (England) Order 2015. Every district planning authority and the council of every metropolitan district or London borough are required to keep a register of enforcement and stop notices and other enforcement action. The details required to be entered on that register are prescribed by article 43 the Town and

Country Planning (Development Management Procedure) (England) Order 2015. The amendment inserts new provisions into article 43, setting out the information required to be kept on the enforcement register in relation to enforcement warning notices and when an enforcement warning notice should be removed from the enforcement register.

- 6.4 Regulation 4 amends the Schedule to the RAS Regulations. The RAS Regulations apply Part 7 of the 1990 Act to breaches of the planning prohibition, with modifications as set out in the Schedule to the RAS Regulations. The 2023 Act made amendments to Part 7 of the 1990 Act. Regulation 4(2) of this statutory instrument inserts two additional provisions to Paragraph 1 of the Schedule to the RAS Regulations so that section 196E of the 1990 Act (power to provide relief from enforcement of planning conditions) and section 172ZA of the 1990 Act (Enforcement warning notice: England) are omitted from the RAS Regulations. Regulation 4(3) of this statutory instrument relates to ground (a) enforcement notice appeals which are excluded from the scope of the RAS Regulations. A ground (a) appeal is where it is asserted by the Appellant that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The enforcement notice grounds of appeal are contained within section 174 of the 1990 Act. The 2023 Act substitutes s.174(2A) and (2B) of the 1990 Act and replaces them with (2A), (2AA), (2AB), (2AC), and (2B). Sections 174(2A) and (2B) of the 1990 Act are excluded by the RAS Regs so this change is to exclude from the RAS Regs the sections being replaced by the 2023 Act. Therefore regulation 4(3) amends paragraph 9(b) of the Schedule to the RAS Regulations to omit the new sections added by the 2023 Act (2AA, 2AB, 2AC).
- 6.5 Regulation 5 is a minor and technical provision to revoke the 2020 Order, which extended the temporary effect of Sections 61W to 61Y (pre-application consultation in respect of planning permission) of the 1990 Act. This follows section 122 of the 2023 Act putting those sections on a permanent footing.

Why was this approach taken to change the law?

- 6.6 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

Levelling-up and Regeneration Act 2023: enforcement measures

- 7.1 There has been no public consultation on the changes being introduced through this statutory instrument which reflect the enforcement reforms in the 2023 Act. They are minor, technical changes in nature which are necessary to give full effect to reforms in the 2023 Act. Key stakeholders were engaged in the development of those reforms, and they were subject to detailed Parliamentary scrutiny during the passage of the Act through Parliament.

The Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023

- 7.2 The statutory instrument makes only consequential changes to the RAS Regulations so no consultation was required.

The Town and Country Planning (Pre-application Consultation) Order 2020

- 7.3 There has been no public consultation on the change being introduced through this statutory instrument. This is a minor and technical change in nature; the 2020 Order is

no longer required now that the 2023 Act has made the pre-application provisions they extended permanent. These provisions were subject to detailed Parliamentary scrutiny during the passage of the Act through Parliament.

8. Applicable Guidance

- 8.1 The government's planning practice guidance on enforcement (<https://www.gov.uk/guidance/ensuring-effective-enforcement>) will be updated to coincide with these measures coming into effect.
- 8.2 The planning practice guidance in relation to the RAS Regulations will be updated to reflect the consequential changes (<https://www.gov.uk/guidance/building-safety-planning-enforcement-and-the-responsible-actors-scheme-the-ras-enforcement-ppg>).
- 8.3 Guidance relating to pre-application consultation, the subject of The Town and Country Planning (Pre-application Consultation) Order 2020, is set out in government's planning practice guidance (<https://www.gov.uk/guidance/consultation-and-pre-decision-matters>). This guidance remains exact following this change.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 A full Impact Assessment has not been prepared for this instrument because the changes being made are purely administrative and will not have a significant cost impact on any party.

Impact on businesses, charities and voluntary bodies

- 9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the changes are procedural and minor in nature.
- 9.3 The legislation does not impact small or micro businesses.
- 9.4 There is no, or no significant, impact on the public sector because the changes are procedural and minor in nature.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 The approach to monitoring this legislation is through routine engagement with the sector and key stakeholders.
- 10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

- 11.1 None.

12. European Convention on Human Rights

- 12.1 The Minister of State for Housing, Planning and Building Safety has made the following statement regarding Human Rights:

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

13. The Relevant European Union Acts

- 13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).