

**EXPLANATORY MEMORANDUM TO**  
**THE TOWN AND COUNTRY PLANNING (SECTION 62A APPLICATIONS)**  
**(AMENDMENT) REGULATIONS 2016**

**2016 No. 944**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for 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 (Section 62A Applications) (Amendment) Regulations 2016 (“the Regulations”) amend the Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) Order 2013 (“the 2013 Order”) and the Town and Country Planning (Section 62A Applications) (Written Representations and Miscellaneous Provisions) Regulations 2013. Those instruments (together with the Town and Country Planning (Section 62A Applications) (Hearings) Rules 2013 (“the 2013 Rules”) provide for the procedure to be followed where a local planning authority has been “designated” by the Secretary of State under section 62A of the Town and Country Planning Act 1990. When a local planning authority has been designated under section 62A, certain types of planning and connected applications may be made directly to the Secretary of State instead of to the local planning authority.
- 2.2 Changes were made to the section 62A regime by the Housing and Planning Act 2016. Those changes extend the regime beyond local authority performance in determining applications for major development by permitting the Secretary of State, amongst other things, to prescribe those types of application which may be covered by a section 62A designation.
- 2.3 These Regulations prescribe applications for non-major development as a separate category of applications in respect of which a local authority can be designated, alongside applications for major development. A local authority can be designated for either or both categories. The Regulations define major and non-major development, and make provision further to these changes. The Regulations also provide for the review of the 2013 Order by the end of September 2021.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 This is the first exercise of the section 62A(1A) power.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

#### **4. Legislative Context**

The Regulations are made under sections 62A and 76C of the Town and Country Planning Act 1990 and section 28 of the Small Business, Enterprise and Employment Act 2015. They amend the 2013 Order and the 2013 Regulations. Consequential amendments to the 2013 Rules are being made separately. The amendments are being made further to the power introduced by the Housing and Planning Act 2016 which extends those types of application to which a designation under section 62A(1)(a) of the 1990 Act might apply.

The obligation to review the operation of the 2013 Order by the end of September 2021 was inserted further to section 28 of the 2015 Act.

#### **5. Extent and Territorial Application**

- 5.1 The Regulations apply to England only.
- 5.2 The territorial application of this instrument is England.

#### **6. European Convention on Human Rights**

- 6.1 As the instrument is subject to negative resolution and does not amend primary legislation, no statement is required.

#### **7. Policy background**

##### *What is being done and why*

- 7.1 Local Planning Authorities need to make their decisions on time and make sure that decisions are ‘right first time’ to give applicants the confidence to submit planning applications for development, businesses the confidence to invest and to provide greater certainty for communities.
- 7.2 The Growth and Infrastructure Act 2013 introduced the existing designation regime, which assesses a local planning authority’s performance on the speed and quality of their decisions on applications for major development. Where an authority is designated, planning applicants have the option of submitting applications for major development (and connected applications) directly to the Planning Inspectorate (who act on behalf of the Secretary of State). Performance data indicates that this regime has been effective in speeding up applications for major development<sup>1</sup>.
- 7.3 The Government announced in the Productivity Plan (July 2015) the intention to extend the designation regime to include an assessment of local planning authorities’ performance on determining applications for non-major development. To achieve this, section 153 of the Housing and Planning Act 2016 amends sections 62A and 62B of the Town and Country Planning Act 1990 to allow the Secretary of State to prescribe the descriptions of applications in respect of which an authority may be designated. The 2013 Regulations are amended to prescribe and define applications for “non-major development” alongside applications for “major development”.
- 7.4 The definition of “Major development” is the same as that used in Article 2 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (“the 2015 Order”) and “Non-major development” is defined as any application

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<sup>1</sup> 83% of major applications were decided on time in April to June 2016, compared with 57% in July to September 2012, the quarter in which the designation regime was first announced.

for development that does not come within the ambit of the definition for “Major development”.

- 7.5 The Regulations also define the applications that are excluded from the meaning of “relevant application” for the purposes of section 62A of the 1990 Act, preventing those applications from being submitted to the Planning Inspectorate where an authority is designated. Those applications relate to planning permission in respect of development already undertaken and householder planning applications, which are best dealt with locally. We expect that the robust action plan that will be required to be put in place will, where necessary, directly address the weaknesses of the local authority’s processing of these applications and applications more generally<sup>2</sup>.
- 7.6 Consequential to these changes, the Regulations make a range of amendments to the procedure established by the 2013 Order (which specifies the procedure related to the making of an application to the Secretary of State when a section 62A designation has been made). These include a number of changes to publicity requirements and time periods for decision making which are necessary to reflect the different procedure which applies to applications for major and non-major development. The Regulations make provision, as far as possible, which mirrors equivalent provision in the 2015 Order.
- 7.7 After the Regulations come into force, the Government will lay a revised Criteria Document that will set out the separate thresholds used to assess if an authority is adequately performing their function of determining applications for major and non-major development. The current thresholds for major development are 50% or fewer applications decided within the statutory period<sup>3</sup> for speed and 20% or more decisions on planning applications that are then subsequently overturned at appeal for quality. Thresholds for applications for non-major development will be announced shortly.

### **Consolidation**

- 7.8 There are no plans to consolidate the 2013 Order and 2013 Regulations in the immediate future.

## **8. Consultation outcome**

- 8.1 The Government published a consultation covering detailed proposals to support implementation of the Housing and Planning Act between 18 February and 15 April 2016 (see <https://www.gov.uk/government/consultations/implementation-of-planning-changes-technical-consultation>).
- 8.2 Chapter 7 “Expanding the approach to planning performance” sought views on what thresholds might be used for designation on applications for non-major development, the approach to designation and de-designation, and excluding applications for householder developments from the category of applications which may be made directly to the Planning Inspectorate.
- 8.3 There was broad agreement across all respondents that the general operation of the designation regime should be the same for both applications for major and non-major development and that performance on applications for major and non-major development should be assessed separately. Respondents were mixed on the question of restricting the submission of householder applications to the Planning Inspectorate.

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<sup>2</sup> See “Improving planning performance: Criteria for designation (revised 2015)”

<sup>3</sup> Or agreed extended period

Many respondents considered that, where an authority is designated, all applicants without distinction should have the right to opt to make those applications directly to the Secretary of State, whilst other respondents felt this exclusion was acceptable, subject to the designated authority preparing a robust action plan directly addressing any under-performance in handling householder applications.

- 8.4 The Government is finalising its response to the consultation and it will be published online at <https://www.gov.uk/government/publications>

## **9. Guidance**

- 9.1 The Government has published guidance on the designation of local planning authorities which will be updated to provide advice on these changes.

## **10. Impact**

- 10.1 The impact on business, charities or voluntary bodies is, as has been the case in respect of applications for major development (see paragraph 7.2 above), that applications for non-major development are likely to be processed more quickly with the quality of decision assured, resulting in greater certainty for applicants.
- 10.2 There is no impact on the public sector. Performance will be assessed by reviewing data which local planning authorities already provide.
- 10.3 These instruments bring into effect provisions in the Housing and Planning Act 2016. A full Impact Assessment was published in relation to the impacts on the business and public sectors of the proposal contained within section 153 of the 2016 Act and can be found at <http://www.legislation.gov.uk/>.

## **11. Regulating small business**

- 11.1 These changes have no significant impact upon small businesses. The burden on business will remain the same whether they apply for planning permission to a local planning authority or, where they so choose, to the Secretary of State.

## **12. Monitoring & review**

- 12.1 The Department for Communities and Local Government will review and evaluate the success of these procedures in order to understand the sum effect of the measures.

## **13. Contact**

- 13.1 Matthew Carney at the Department for Communities and Local Government  
Telephone: 0303 444 1230 or email: [matthew.carney@communities.gsi.gov.uk](mailto:matthew.carney@communities.gsi.gov.uk) can answer any queries regarding the instrument.