

EXPLANATORY MEMORANDUM TO
THE NEIGHBOURHOOD PLANNING (GENERAL) AND DEVELOPMENT
MANAGEMENT PROCEDURE (AMENDMENT) REGULATIONS 2017

2017 No. 1243

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 These regulations make amendments to the Neighbourhood Planning (General) Regulations 2012 (“the 2012 Regulations”) in consequence of the implementation of section 4 of the Neighbourhood Planning Act 2017 (“the 2017 Act”), which makes provision in relation to the modification of a neighbourhood development plan. These regulations make amendments to the provisions in relation to the procedure for making neighbourhood development plans in Part 5 of the 2012 Regulations, to also apply these provisions to the modification of a neighbourhood development plan.
- 2.2 These regulations also correct a minor error in regulation 17A(4) of the 2012 Regulations. In addition, they make consequential amendments to the Town and Country Planning (Development Management Procedure) (England) Order 2015 to reflect the changes in relation to notification of applications to neighbourhood planning bodies, as a result of the coming into force of section 2 of the 2017 Act.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Regulations are the first exercise of powers in Schedule A2 to the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”), which is inserted by section 4 of the 2017 Act.

Other matters of interest to the House of Commons

- 3.2 This entire instrument applies only to England.
- 3.3 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

- 4.1 Chapter 3 of Part 6 of the Localism Act 2011 created the neighbourhood planning regime in England mainly by inserting new provisions in the Town and Country Planning Act 1990 (“the 1990 Act”) and the 2004 Act (see Part 1 of Schedule 9 and Schedules 10 and 11 to the Localism Act 2011, for the provisions inserted into the 1990 Act, and Part 2 of Schedule 9 to the Localism Act 2011 for the provisions inserted into the 2004 Act). The neighbourhood planning regime allows local communities to set planning policies in their area through a neighbourhood

development plan and to grant planning permission for specific development through neighbourhood development orders.

- 4.2 The 2012 Regulations built on the statutory frameworks in the 1990 Act and the 2004 Act in relation to the process for designating neighbourhood areas and neighbourhood forums and the preparation of neighbourhood development plans and neighbourhood development orders. The 2012 Regulations have also been amended by the Neighbourhood Planning (General) (Amendment) Regulations 2015 and the Neighbourhood Planning (General) and Development Management Procedure (Amendment) Regulations 2016. These Regulations make further amendments to the 2012 Regulations and to the Town and Country Planning Development Management Procedure (England) Order 2015 in consequence of the coming into force of section 2 and section 4 of the 2017 Act.
- 4.3 Section 2 of the 2017 Act amends Schedule 1 of the 1990 Act to require a local planning authority or the Secretary of State to automatically notify qualifying bodies (town or parish councils or designated neighbourhood forums in areas where there is no town or parish council) of any future planning applications or alterations to those applications in the relevant neighbourhood area, where there is an advanced neighbourhood plan and the qualifying body has not confirmed in writing to the local planning authority that it does not wish to be notified. Section 4 of the 2017 Act amends section 61M of the 1990 Act and inserts new Schedule A2 into the 2004 Act, to provide a new procedure for the modification of neighbourhood development plans where the proposed modifications would materially affect the policies in the plan but are not so significant or substantial as to change the nature of the plan.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 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 procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 The Regulations make a consequential amendment to the Town and Country Planning (Development Management Procedure) (England) Order 2015, in order to support the implementation of section 2 of the 2017 Act, which puts beyond doubt that qualifying bodies will be aware of future planning applications in their area. Local planning authorities must automatically notify qualifying bodies of any future planning applications or alterations to those applications in the relevant neighbourhood area where there is an advanced neighbourhood plan and the qualifying body has not confirmed in writing to the local planning authority that it does not wish to be notified.
- 7.2 The Regulations also implement the new streamlined procedure for the modification of a neighbourhood development plan set out in section 4 of and Schedule 1 to the 2017 Act, to incentivise communities to keep their plans up-to-date. This streamlined procedure applies where proposed modification(s) to a plan which is already in force

would materially affect the policies in the plan, but would not be so significant or substantial as to change the nature of a plan. The main differences between the existing modification procedure and new procedure introduced by this instrument is that under the new procedure the recommendations of the independent examiner of a plan will, in most cases, be binding and there will be no referendum before a modified plan comes into legal force.

- 7.3 Finally, the Regulations correct an error relating to the statutory time period that applies to a local planning authority's decision on the recommendation of the independent neighbourhood planning examiner.

8. Consultation outcome

- 8.1 The Department formally consulted on proposed reforms to the regulations to implement certain neighbourhood planning provisions in the Neighbourhood Planning Bill (now Act) between 7 September 2016 and 18 October 2016. The consultation document and the summary of responses/Government response document are available online: <https://www.gov.uk/government/consultations/implementation-of-neighbourhood-planning-provisions-in-the-neighbourhood-planning-bill>
- 8.2 The Department received 86 responses to the consultation. The two largest groups of respondents were local planning authorities (22%) and Town\Parish Councils (17%). Two consultation questions directly relate to these Regulations.
- 8.3 Firstly, the proposal that regulations setting out the detail of the process for modifying an existing neighbourhood plan should replicate as far as possible the existing regulations for making a new plan. All respondents responded to this question and the proposal received overwhelming support (over 90%). The Government response stated that the proposal would be implemented as set out in the consultation. Aligning the regulations in this way will ensure consistency between the process for making a new neighbourhood plan and the process for modifying an existing plan, which will benefit existing and future users of the neighbourhood planning system. Secondly, the consultation stated that the Department did not consider that the proposals would have significant financial impacts on local planning authorities, business, neighbourhood planning groups or on civil society organisations and sought views on potential positive or negative financial implications. There were 45 responses to this question and the Government response stated that after considering the responses, we remain of the view that the proposals would not have a significant financial impact. In relation to local planning authority costs, (which have been funded since 2012 under the New Burdens arrangements) the Government response stated that as with all local authority New Burdens, DCLG will keep funding arrangements under review.

9. Guidance

- 9.1 The Department's planning practice guidance, which is a web-based resource (available at: <https://www.gov.uk/government/collections/planning-practice-guidance>) includes guidance on neighbourhood planning. The Department intends to update the guidance to reflect the changes made by these Regulations.

10. Impact

- 10.1 As stated above, the Department does not consider that these Regulations will have significant financial impacts on local planning authorities, business, neighbourhood planning groups or on civil society organisations.

10.2 A Regulatory Impact Assessment has not been prepared for this instrument. A Neighbourhood Planning Bill Summary of Impacts document summarised the impacts of the provisions of the Bill in January 2017. The document is available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/582706/Summary_of_Impacts_-_House_of_Lords.pdf

11. Regulating small business

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

12. Monitoring & review

12.1 These Regulations do not contain provision for review.

13. Contact

13.1 Christopher Mountain at the Department for Communities & Local Government (0303 444 1785) Christopher.mountain@communities.gsi.gov.uk can answer any queries regarding the instrument.