

EXPLANATORY MEMORANDUM TO
THE TOWN AND COUNTRY PLANNING (LOCAL PLANNING) (ENGLAND)
(AMENDMENT) REGULATIONS 2017

2017 No. 1244

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 This instrument makes amendments to the Town and Country Planning (Local Planning) (England) Regulations 2012 (“the 2012 Regulations”) in consequence of some of the changes introduced by the Neighbourhood Planning Act 2017 (“the 2017 Act”). The instrument prescribes the time period for review of certain local development documents. The instrument also makes consequential amendments to the 2012 Regulations as a result of changes introduced by sections 9 and 10 of the 2017 Act. Finally, the instrument amends the 2012 Regulations to remove the requirement for development plan documents submitted to the Secretary of State under section 20 of the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”) to be submitted both in paper form and electronically.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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

- 4.1 The 2012 Regulations make provision in relation to the local planning regime established by the 2004 Act, amended by the Localism Act 2011 and modified by the Housing and Planning Act 2016. They set out the procedure to be followed by local planning authorities (“authorities”) in relation to the preparation of local plans and supplementary planning documents, including in relation to consultation with interested persons and bodies and the documents which must be made available at each stage.
- 4.2 The 2012 Regulations have been amended by the Town and Country Planning (Local Planning) (England) (Amendment) Regulations 2012 and the Town and Country Planning (Local Planning) (England) (Amendment) Regulations 2016. This instrument makes amendments to the 2012 Regulations to implement various provisions of the 2017 Act, including the power to prescribe the time period for review of local development documents (section 12 of the Act) and to prescribe the

meaning of “corresponding document” and “corresponding joint development plan document” in relation to the Secretary of State’s power to direct joint plan-making (section 9). This instrument also amends regulation 22 of the 2012 Regulations to remove the requirement for development plan documents submitted to the Secretary of State under section 20 of the 2004 Act to be submitted both in paper form and electronically.

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

Review of local development documents

- 7.1 This statutory instrument sets a period of five years within which an authority should undertake an assessment of whether its development plan documents, and its Statement of Community Involvement remain up to date. This will help ensure that plans are kept up to date.
- 7.2 Where an authority reviews a document but decides not to update it, they must publish their reasons. In the Housing White Paper ‘Fixing our broken housing market’¹, published in February 2017, the Government stated its intention to set out in regulations a requirement for local development documents to be reviewed at least once every five years (paragraph 1.8). These regulations set the interval as five years from the date of adoption and apply this requirement to development plan documents and statements of community involvement.
- 7.3 There is already a policy expectation, set through the National Planning Policy Framework (“NPPF”)² (paragraph 153) and Planning Practice Guidance³, paragraph 008 Reference ID: 12-008-20140306 that authorities should regularly review their plans to respond flexibly to changing circumstances (paragraph 1.3). Moving this policy expectation into legislation will strengthen existing expectations, ensuring that all areas have up-to-date plans in place which address the needs of the local community and accurately reflect changes to local circumstances.
- 7.4 Currently there is no expectation that authorities must review their Statements of Community Involvement at set periods. These statements are prepared by the authority and lay out how they will involve the local community, organisations and other interested parties in the preparation of local development documents and determining planning applications. Requiring authorities to regularly review their

¹ Available at <https://www.gov.uk/government/publications/fixing-our-broken-housing-market>

² Available at <https://www.gov.uk/government/publications/national-planning-policy-framework--2>

³ Available at <https://www.gov.uk/guidance/local-plans--2>

Statements of Community Involvement will ensure that authorities have a clear and relevant strategy for engaging the local community throughout the planning process.

- 7.5 The proposed changes build on the report published in March 2016 by the Local Plans Expert Group (“LPEG”) <http://lpeg.org/>, a group commissioned by the Government to recommend measures or reforms that may be helpful in ensuring the efficient and effective production of Local Plans, and the subsequent consultation within the Housing White Paper published in February 2017. We held engagement meetings with key stakeholders regarding the proposals to set an expectation of reviews every 5 years from adoption.

Plan Submission

- 7.6 The requirement for authorities to submit both paper and electronic copies of the submission documents for examination has been removed, so that authorities can submit either a digital or paper copy. This will increase flexibility for local authorities and support the Government’s digital agenda.

Power to direct joint plan-making

- 7.7 Section 33A of the 2004 Act, introduced by section 110 of the Localism Act 2011 places authorities under a “duty to cooperate” with neighbouring authorities and other bodies when preparing development plan documents. The NPPF states (para 153) that each authority should produce a local plan for its area but authorities should work collaboratively to ensure that strategic priorities across local boundaries are properly coordinated. This includes working together to meet development needs which cannot wholly be met within their own areas.
- 7.8 Authorities can also choose to produce joint local development documents. The NPPF encourages such joint plan-making. The number of authorities that have opted to produce joint plans is, however, fairly limited. In its report to the Government in March 2016 LPEG’s recommendation 12 said:
- 7.9 “The Government should make clear that, where authorities in a Housing Market Area (“HMA”) have failed to reach sufficient agreement on meeting and distributing housing needs by March 2017, the Government will use powers to make Regulations to direct the preparation of a Joint Local Plan for the HMA (or a suitable geography such as transport corridors) within a prescribed timetable. Legislation may be necessary to this effect. Guidance would also be necessary...to guide the governance arrangements for such plans.”
- 7.10 The 2004 Act empowers the Secretary of State to modify a local development document that he thinks is unsatisfactory; or to “call in” a document that an authority is preparing for the Secretary of State’s own consideration; or prepare a development plan document that an authority is failing to prepare itself; or ask the Mayor of London or a combined authority to prepare the documents instead. The 2017 Act amended the 2004 Act, giving the Secretary of State powers to direct a group of neighbouring authorities to prepare plans jointly, either as individual authorities working together on a joint development plan document or as a joint committee. The Secretary of State will be able to direct the area and subject matter of the document that is to be jointly prepared, and the timetable for its production. The Secretary of State may modify or withdraw such a direction by notice in writing to the authorities to which it was given. If an independent examination was being undertaken in respect of a joint development plan document to which the direction related it must be

suspended as a consequence of the direction. A period of 3 months is allowed for an authority to whom the direction applied to request that the Secretary of State withdraw or modify the direction. The Secretary of State may, before the end of that period, if requested to do so by an authority to which the direction applied make a further direction that (a) the examination into the joint plan is resumed in relation to (i) any corresponding document prepared by an authority to which the direction applied, or (ii) any corresponding joint development plan document prepared by two or more authorities to which the direction applied, and (b) any step taken for the purposes of the suspended examination has effect for the purposes of the resumed examination. This instrument prescribes the meaning of ‘corresponding document’ and ‘corresponding joint development plan document’ in relation to joint local plans prepared under direction by the Secretary of State.

- 7.11 A joined-up plan making process where authorities work together, and where key decisions are taken together, will provide communities with certainty, clarity and a plan for delivering the housing and other development and infrastructure they need. As well as this the Government indicated at the Commons Committee stage of the Neighbourhood Planning Bill 2017, the power related to joint planning is likely to be used only rarely and in reality be deployed after detailed consideration of the individual case, and used where agreement between authorities is remote.
- 7.12 The Housing White Paper clarified the Government’s position on Local Plan interventions, and indicated authorities would have an opportunity to put forward any exceptional circumstances before action was taken. Joint plans prepared following a direction by the Secretary of State will be subject to the same legal requirement to consult the public (including parish councils and designated neighbourhood forums) and other interested parties. Representations must be taken into account.

County council strategic plans

- 7.13 Currently county councils in two-tier areas (where there is also a lower tier of district councils) have plan-making functions limited to preparing minerals and waste plans. However, in some areas their participation in plan-making can be valuable, given their wider functions (e.g. as highway and education authorities) or the brokerage role they can play in encouraging cooperation between district councils in their area. County councils also have a wider role in plan-making through their participation in joint committees.
- 7.14 The Government made clear at Commons Committee on the Neighbourhood Planning Bill that this power is not expected to be used regularly, but should it be necessary to invite a county council to prepare a plan this would provide a more local alternative to the Secretary of State intervening more directly. As with the power to require joint plan-making, this power will apply in circumstances where the Secretary of State considers that it would lead to more effective plan-making in the area concerned. For example, where districts are failing to cooperate effectively and where the county council’s involvement would help. The Secretary of State will be able to direct the geographic scope, the subject matter and the timescale of the document that the county council will prepare. The county council will be able to recover its reasonable costs from the relevant district authorities.

8. Consultation outcome

- 8.1 In September 2015 Ministers commissioned a panel of experts - LPEG - to examine what measures or reforms might be helpful in ensuring the efficient and effective production of Local Plans. On 16 March 2016 LPEG published their report which made 47 recommendations for plan reform. It was open for representations until 27 April 2016 and 143 representations were received. When the Housing White Paper was published in February 2017, alongside it the Government also published its response to the House of Commons Communities Select Committee report on LPEG⁴. These two documents set out how the Government intended to respond to LPEG's recommendations, taking into account the representations received.
- 8.2 Recommendation 17 of the LPEG report was to place a statutory duty on authorities to produce a local plan and to maintain an up to date local plan. This received general support from respondents; however, a number were concerned that authorities are insufficiently resourced to meet such a duty. There was support from developers and trade bodies for time limiting out-of-date plans; however there were mixed views from other respondents, including authorities. There was concern about potential significant resource implications, particularly if the principle of 'saved' policies were to be abandoned. Similarly there was concern over the proposed timescales and it was suggested there should be a more flexible approach before special measures were considered. There were concerns that such a duty would negatively affect the quality of Local Plans, as the process would be rushed in order to complete them within prescribed timescales. Some respondents felt more information was needed to understand how such a duty could be introduced in terms of phasing and exemptions for local authorities at certain stages in the process.
- 8.3 The Government's response to LPEG's report (February 2017)⁵ stated "measures in the Neighbourhood Planning Bill will enable the Secretary of State to prescribe the intervals at which local development documents must be reviewed, to ensure plans are up to date"(p5). The Housing White Paper confirmed that a requirement to review every 5 years will be taken forward in order to strengthen our expectations about keeping plans up to date. These regulations mean that authorities must complete a review of local plans and statements of community involvement every five years from their adoption date. If the authority finds through the review that policies need to be updated this can take place over a longer timescale. If the review finds that policies do not need updating, the authority must publish their reasons for this decision within five years of the adoption date. This approach builds on existing national planning policy and guidance; and is considered to strike the right balance between keeping plans up to date to respond to changing circumstances, and allowing authorities enough time to carry out updates.
- 8.4 Respondents to LPEG and the White Paper raised a number of additional issues including the desire for planning to move to becoming more digital and be open to the use of new technology, which is reflected in the changes to submission requirements in respect of digital and paper copies.
- 8.5 Recommendation 12 of the LPEG report was for the Government to make clear that, where authorities in a HMA have failed to reach sufficient agreement on meeting and

⁴ Available at <https://www.gov.uk/government/publications/local-plans-expert-group-report-to-the-secretary-of-state>

⁵ Available at <https://www.gov.uk/government/publications/report-of-the-local-plans-expert-group-government-response-to-the-clg-select-committee-inquiry>

distributing housing needs by March 2017, the Government should use powers to make Regulations to direct the preparation of a Joint Local Plan for the HMA (or a suitable geography such as transport corridors) within a prescribed timetable. For the proposal under Recommendation 12 although there was general support from developers, some local government bodies expressed concern it might cause delays or lead to a ‘one size fits all’ approach which would not be appropriate.

- 8.6 The Government also undertook a technical consultation on the detailed regulations to implement some of the neighbourhood planning measures in the Neighbourhood Planning Bill between 7 September and 19 October 2016. This consultation included a question on a requirement for authorities to review their Statements of Community Involvement at least every five years. The Government’s response published in December 2016 stated due to the strong overall support for the proposal it would be taken forward.
- 8.7 There has been no direct consultation relating to directing a group of authorities to work together or invite a county council to prepare development plan documents for one or more LPAs in their area. However, as above, given the precedent in the NPPF and planning guidance, it was not considered to be a fundamental change.

9. Guidance

- 9.1 Further policy guidance will be provided through a revised NPPF in 2018. Planning Practice Guidance will be updated to reflect this and add further clarity on the changes. Both will be available on the Gov.uk website.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no negative impact on the public sector.
- 10.3 A summary of impacts was prepared alongside the 2017 Act covering the review of local development documents and concluded that ‘there would be no direct cost burdens placed upon businesses or civil society organisations as a result of the reforms. We consider that the majority of the measures do not bring additional costs to local planning authorities.’
- 10.4 In relation to joint plan-making, there is no overall impact on the public sector. There may be circumstances where a direction to two or more authorities to prepare a joint plan could increase costs for one or more of the authorities. The specific costs will vary depending on the stage of plan making that each individual authority has reached at the point of a direction and the nature of any existing joint working arrangements (for example any joint commissioning of evidence). Any increase in costs may be balanced by cost savings from preparing a joint plan (for example through sharing the cost of examining a plan or through the sharing of expertise). We anticipate using the power sparingly and, as any such costs would arise only after issuing the direction, we would assess them at that time.

11. Regulating small business

- 11.1 This instrument does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 The Department for Communities and Local Government will review and evaluate the success of the changes after 5 years, or earlier if circumstances require.

13. Contact

- 13.1 Nina Miles at the Department of Communities and Local Government

Telephone: 0303 444 4709 or email: nina.miles@communities.gsi.gov.uk can answer any queries regarding the instrument.