

EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (LOCAL AUTHORITY CONSULTATIONS ETC.) (ENGLAND) ORDER 2018

2018 No. 119

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 (Local Authority Consultations etc.) (England) Order 2018 amends the Town and Country Planning (Permission in Principle) Order 2017 (the 2017 Order), the Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMPO), the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), the Town and Country Planning (Section 62A Applications)(Procedure and Consequential Amendments) Order 2013 and the Planning (Listed Buildings and Conservation Areas) Regulations 1990 to (1) extend periods of public consultation before decisions are made to grant planning permission, permission in principle, listed building consent and certain prior approvals for development which is the subject of permitted development rights by one day for each bank or public holiday which occurs during specified periods, (2) amends article 40 of DMPO to require each local planning authority to include certain details about a housing prior approval application in its planning register and (3) reintroduces to DMPO a definition of “relevant nuclear site” which appeared in a previous version of DMPO.

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 the negative 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

Consultation periods

- 4.1 This Order implements a commitment given by Lord Bourne of Aberystwyth during the passage of the Neighbourhood Planning Act 2017 in response to an amendment to the Bill. (Hansard HC Rep 23 February 2017, vol 779, cols 973-76). The Order extends periods of consultation by one day for each bank and public holiday which occurs during prescribed periods of consultation in the following circumstances:
- a) Article 15 of DMPO 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 made under section 293A of the Town and Country Planning Act 1990. This Order extends those

publicity periods unless the application is subject to an Environmental Impact Assessment (EIA) accompanied by an environmental statement under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017/571 or is an application for urgent Crown development. Local planning authorities (or the Secretary of State, as the case may be) are required by Article 33 of DMPO to take into account representations received during the periods referred to in Article 15. This Order extends the corresponding periods in Article 33.

- b) Article 34(9) of DMPO provides that local planning authorities must not decide an application for planning permission before the end of the periods within which representations must be taken into account. This Order extends the corresponding periods in Article 34(9).
- c) This Order does not extend periods of time in Article 13 of DMPO in respect of the notice applicants are required to give to owners and agricultural tenants or in respect of development consisting of the winning and working of minerals by underground operations. This Order does not extend the period of notice local planning authorities are required to give to a relevant railway infrastructure manager under Article 16 of DMPO. In both cases this Order does not extend the corresponding periods in Articles 33 and 34(9).
- d) When the extended periods apply they also apply to the publicity the local planning authority is required to complete if an application for planning permission is referred to the Secretary of State under section 77, or appealed to him under section 78 of the Town and Country Planning Act 1990, and to the period within which representations received must be taken into account by the Secretary of State under Article 33 of DMPO.
- e) 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 extends the time periods for publication by the Secretary of State and the local planning authority of applications which are set out in Articles 13 and 14 of the Town and Country Planning (Section 62A Applications)(Procedure and Consequential Amendments) Order 2013, except when the application is an EIA application accompanied by an environmental application. This Order also extends the minimum time periods within which the Secretary of State may make decisions so that they correspond with the extended representation periods.
- f) This Order extends periods of time which are set out in regulations 5(1) and 5A(2) of the Planning (Listed Building and Conservation Areas) Regulations 1990. These regulations require a local planning authority to publicise an application for listed building consent and an application for planning permission for development affecting the setting of listed buildings or character and appearance of a conservation area.
- g) This Order extends the periods of time set out in regulations 5(2) and 5A(4) within which representations received must be taken into account before decisions are made by the local planning authority. This Order also extends the period of time in regulation 13(4) for which a local planning authority is required

to publicise an application made by the authority to the Secretary of State for consent to demolish, alter or extend a listed building belonging to the authority.

- h) Section 62A of the Town and Country Planning Act 1990 enables a person to make an application for listed building consent which is connected¹ with an application for planning permission to the Secretary of State. This Order extends the periods of time in articles 37 and 38 of the Town and Country Planning (Section 62A Applications)(Procedure and Consequential Amendments) Order 2013 for publicity of the application by the Secretary of State and the local planning authority and the corresponding periods within which representations received must be taken into account by the Secretary of State.
- i) In the case of an application for planning permission made under section 62A of the Town and Country Planning Act 1990 which affects the setting of a listed building or the character or appearance of a conservation area, this Order also extends the periods of time in regulations 5A(2B) and 5A(2C) of the Planning (Listed Buildings and Conservation Areas) Regulations 1990 for publication by the Secretary of State and the local planning authority of applications for planning permission and the periods within which representations received must be taken into account before decisions are made by the Secretary of State in regulation 5A(4).
- j) This Order extends the period of publicity by local planning authorities for applications for permission in principle under Article 5G of the 2017 Order except in the case of an application for urgent Crown development made under section 293A of the Town and Country Planning Act 1990.
- k) Local planning authorities are required by Article 5R of the 2017 Order to take into account representations received during the periods referred to in Article 5G. This Order extends the corresponding periods in Article 5R. Article 5S of the 2017 Order provides that local planning authorities must not decide an application for permission in principle before the end of the periods within which representations must be taken into account. This Order extends the corresponding periods in Article 5S.
- l) This Order does not extend the period of notice local planning authorities are required to give to a relevant railway infrastructure manager under Article 5H of the 2017 Order or corresponding periods in Articles 5R and 5S.
- m) When the extended periods apply, they also apply to the publicity the local planning authority is required to complete if an application for permission in principle is referred to the Secretary of State under section 77, or appealed to him under section 78 of the Town and Country Planning Act 1990 and to the representations which must be taken into account by the Secretary of State.
- n) This Order extends the period of notice local planning authorities are required to give under GPDO to adjoining owners or occupiers of proposed development which is subject to certain permitted development rights and for which an application is required for the local planning authority's prior approval or for a determination as to whether such prior approval is required. These permitted development rights are set out under Part 1 of Schedule 2 (development within

¹ See article 2 of the Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) Order 2013 for the definition of "connected listed building application".

the curtilage of a dwelling house), Part 3 of Schedule 2 (changes of use), Part 4 of Schedule 2 (temporary buildings and uses), Part 7 of Schedule 2 (non-domestic extensions, alterations etc.), Part 14 of Schedule 2 (renewable energy) and Part 16 of Schedule 2 (communication).

The Planning Register

- 4.2 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. Section 17 of the Neighbourhood Planning Act 2017 inserted a new section 69A into the Town and Country Planning Act 1990 which extended the scope of this register by allowing the Secretary of State to require that information about specified prior approval applications or notifications for permitted development rights are placed on it.
- 4.3 This Order makes regulations under section 69A prescribing the information about prior approval applications and notifications which must be placed on the planning register.

Relevant nuclear site

- 4.4 This Order amends DMPO by inserting a definition of “relevant nuclear site” for the purposes of consultation that local planning authorities are required to undertake with the Office for Nuclear Regulation before granting planning permission for certain development.

5. Extent and Territorial Application

- 5.1 This instrument extends to England and Wales.
- 5.2 This instrument applies only to land in 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

Consultation periods

- 7.1 Before determining applications local planning authorities are required to undertake consultation. They must take into account representations made within prescribed periods and may not determine the application before the end of those periods. Local planning authorities must determine planning applications within a defined period, ranging from 5-16 weeks (depending on the type of development).
- 7.2 The current legal framework does not include provision to specifically exclude bank or public holidays from the calculation of consultation periods. The periods prescribed for consultation are minimum periods. Local planning authorities have discretion to extend consultation periods, and some do choose to add additional days to consultation periods during holiday periods (or for other reasons). Lord Bourne agreed to require local planning authorities to extend the length of any public consultations regarding a planning application if any public or bank holiday fell within the consultation period by one day for each public or bank holiday, to ensure there is sufficient time to comment on planning applications.
- 7.3 The commitment made by Lord Bourne to extend consultation periods needs to be balanced with ensuring that the planning system allows local planning authorities to

make decisions as quickly as possible to speed up the delivery of housing and other development. In assessing how best to give effect to the commitment the Department has considered those applications where the consultation period is currently 21 days or less and where the requirement is for the local planning authority (or Secretary of State) to consult the public. Consequently, the requirement to add days to the consultation period is limited in this Order to applications for planning permission, permission in principle, listed building consent and for development affecting the setting of listed buildings or character and appearance of a conservation area, and applications for “prior approval” in connection with planning permission granted by development order where the local planning authority is required to give 21 days’ notice of proposed development to adjoining owners or occupiers.

- 7.4 The maximum number of days by which a consultation may need to be extended as a result of these amendments, under the current pattern (in England) of eight bank or public holidays, would be three. At Christmas and Easter, up to three public or bank holidays may fall within a 21 day period.
- 7.5 Periods of time are not extended where the application for planning permission is for EIA development as the relevant consultation period has recently increased to 30 days under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017/571.
- 7.6 The extended periods are limited to the consultation that local planning authorities or the Secretary of State are required to undertake. They have not been applied to the notices that applicants have to give in particular circumstances (for example under Article 13 of DMPO), thereby ensuring that there is no impact on developers, businesses and other applicants. The recipients of such notices may make additional representations during the period of public consultation by the local planning authority. Periods of time are not extended where applications are made to the Secretary of State for urgent Crown development, as this would undermine the established special procedure to speed up the process for determining such planning applications.
- 7.7 Periods of time are not extended when consultation is required with individuals or bodies acting in their official capacity, for example consultation with a railway infrastructure manager under Article 16 of DMPO, consultation with specific bodies holding particular expertise under Article 18 of DMPO or with parish councils. Some statutory consultees are under a duty to respond to consultation, and the National Planning Policy Framework makes clear that they should provide advice in a timely manner to assist local planning authorities in issuing timely decisions, helping to ensure that applicants do not experience unnecessary delays and costs.
- 7.8 Local planning authorities retain discretion to extend consultation periods where they consider it appropriate, and can choose to replicate the provisions in this Order for other consultees when there is a bank or public holiday during the consultation period.

The Planning Register

- 7.9 National permitted development rights reduce bureaucracy and cost by removing the requirement to apply for planning permission for certain types of development. In appropriate cases, the prior approval of the local planning authority is required on specific matters only.
- 7.10 As noted in paragraph 4.2 above, the Secretary of State may prescribe that specific prior approval applications or notifications for permitted development rights should

be placed on a local authority planning register. Placing housing prior approval applications, i.e. those applications which will create additional residential homes, on a planning register will ensure there is consistent public access to data on the increase in homes approved through permitted development rights. This will increase transparency, making local communities aware of development permitted in their area and help central and local government further understand the impact of these rights.

Relevant nuclear site

- 7.11 An amendment is made, re-instating the definition of ‘relevant nuclear site’. Currently DMPO makes the Office for Nuclear Regulation a statutory consultee in relation to planning applications for “development within an area which has been notified to the local planning authority by the Office for Nuclear Regulation because of the presence within the vicinity of toxic, highly reactive, explosive or inflammable substances on a relevant nuclear site”. DMPO does not include a definition of “relevant nuclear site” despite a definition being included in the Town and Country Planning (Development Management Procedure) (England) Order 2010. This has been identified as an omission.

Consolidation

- 7.12 There are no immediate plans to consolidate the instruments referred to in paragraph 2.1 of this Explanatory Memorandum.

8. Consultation outcome

Consultation periods

- 8.1 We have discussed the practical impacts of the amendments extending the length of any public consultations regarding a planning application with the Local Government Association and others working in local planning authorities and private practice, and the measure was debated during the passage of the Neighbourhood Planning Act 2017. The Order makes a small change to part of the process for determining planning applications.
- 8.2 The Local Government Association has suggested that there may be an impact on local planning authorities’ resources in amending their systems, and others commented that local planning authorities would need time to amend their systems, in conjunction with their software providers.
- 8.3 Almost all local planning authorities purchase software services to process applications as part of their planning function. We have alerted the most commonly used provider of software services to local planning authorities to these proposed changes.
- 8.4 In order to allow sufficient time for local planning authorities to adjust their software systems, and train staff, the amendments will not be brought into effect until 1 June 2018. Local planning authorities are also being notified of the amendments once the Order is made. This provides four months’ notice of the changes, and a further two months before the provisions will apply as the first scheduled public or bank holiday after the coming into force date is at the end of August.

Planning Register

- 8.5 We have discussed placing housing prior approval applications on local authority planning registers with the Local Government Association and the measure was debated during the passage of the Neighbourhood Planning Act 2017. This provides

greater transparency for the public and sets out steps which some local planning authorities already carry out. We have alerted the key service providers to these proposed changes.

9. Guidance

9.1 Planning Practice Guidance will be amended to reflect the changes.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

The impact on the public sector

10.2 A new burdens assessment has been prepared in relation to extending consultation periods where a public/bank holiday falls within the relevant period, and in relation to placing housing prior approval applications on planning registers.

10.3 Having sought feedback from the main software provider, the Local Government Association and selected local authorities, we have assessed that the costs to local planning authorities to amend their systems to accommodate these changes will be low.

10.4 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

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

12. Monitoring & review

12.1 The Department will monitor progress and carry out a review of the changes introduced by this Order in April 2022.

13. Contact

13.1 Alison Bowerbank at the Ministry of Housing, Communities and Local Government, (telephone: 0303 444 1936 or email: Alison.bowerbank@communities.gsi.gov.uk) can answer any queries regarding the instrument.