

EXPLANATORY MEMORANDUM TO
THE TOWN AND COUNTRY PLANNING (LOCAL PLANNING, DEVELOPMENT
MANAGEMENT PROCEDURE, LISTED BUILDINGS ETC.) (ENGLAND)
(CORONAVIRUS) (AMENDMENT) REGULATIONS 2020

2020 No. 1398

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 This instrument amends a number of instruments in relation to town and country planning in response to the coronavirus pandemic.
- 2.2 Part 2 of this instrument relates to local planning and spatial development strategies. It amends the Town and Country Planning (London Spatial Development Strategy) Regulations 2000 (S.I. 2000/1491) (“the 2000 Regulations”), the Town and Country Planning (Local Planning) (England) Regulations 2012 (S.I. 2012/767) (“the 2012 Regulations”), and the Combined Authorities (Spatial Development Strategy) Regulations 2018 (S.I. 2018/827) (“the 2018 Regulations”).
- 2.3 The amendments extend the duration of temporary modifications introduced earlier this year in response to the coronavirus pandemic. The existing temporary changes, which were due to expire at the end of December 2020, remove requirements on local planning authorities, the Mayor of London and mayoral combined authorities to make certain documents available for inspection at premises and to provide hard copies on request. The documents must, instead, be made available on the relevant authority’s website. Part 2 of this instrument extends the duration of the temporary modifications until the end of 31 December 2021.
- 2.4 Part 3 of this instrument alters the expiry date of the temporary amendments introduced earlier in the year in response to the coronavirus pandemic by the Town and Country Planning (Development Management Procedure, Listed Buildings and Environmental Impact Assessment) (England) (Coronavirus) (Amendment) Regulations 2020 (S.I. 2020/505) (“the May 2020 Regulations”) to the Town and Country Planning (Development Management Procedure) (England) Order 2015 (S.I. 2015/595) (“the DMP Order”), the Planning (Listed Building and Conservation Areas) Regulations 1990 (S.I. 1990/1519) (“the 1990 Regulations”) and the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (S.I. 2017/571) (“the 2017 Regulations”).
- 2.5 The existing temporary changes which are due to expire at the end of December 2020 amended certain requirements placed on local planning authorities, the Secretary of State or an inspector dealing with an application or appeal (as the case may be) and an applicant or appellant for development requiring an Environmental Impact Assessment (EIA). The amendments relate to requirements for publicity and the availability of documents at an address in the locality. The requirements are modified

where there is an inability to comply with a particular requirement because it is not reasonably practicable to do so for reasons connected to the coronavirus pandemic.

- 2.6 This instrument provides that the amendments made to the 2017 Regulations by Part 4 of the May 2020 Regulations expire on 24 December 2020 instead of 31 December 2020. This instrument extends the duration of the remaining temporary amendments to publicity requirements until 30 June 2021 and the duration of temporary amendments to the requirements relating to the availability of documents at an address in the locality to 31 December 2021.
- 2.7 Part 4 of this instrument temporarily amends the 2017 Regulations from 24 December 2020. It replicates the amendments made to regulation 2, 19 and 20, and with regard to the insertion of regulation 23A by the May 2020 Regulations to make minor corrections and to correct an omission (see new Regulation 19A). It also amends the requirements placed by regulation 25 of the 2017 Regulations on local planning authorities, the Secretary of State or an inspector dealing with an application or appeal (as the case may be) and an applicant or appellant for development requiring an EIA when additional information respecting an environmental statement is provided. The amendments to the 2017 Regulations in relation to publicity apply between 24 December 2020 and 30 June 2021 and the amendments in relation to the availability of documents apply between 24 December 2020 and 31 December 2021.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As this instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 Part 2 of this instrument amends the 2000 Regulations, the 2012 Regulations and the 2018 Regulations to extend the duration of existing temporary modifications. The modifications are needed as a result of the effects of the coronavirus pandemic.
- 6.2 By way of background, earlier this year, the Town and Country Planning (Spatial Development Strategy) (Coronavirus) (Amendment) Regulations 2020 (SI 2020/765) inserted a new Part 5 into the 2000 Regulations and a new Part 4 into the 2018 Regulations. The new Parts temporarily disapply requirements on the Mayor of

London and mayoral combined authorities (with spatial development strategy making powers) to make certain documents available for inspection at premises and to provide hard copies on request. The documents must, instead, be made available on the relevant authority's website. The temporary modifications apply during "the relevant period". Regulations 2 and 4 of this instrument extend the end date of this period from 31 December 2020 to 31 December 2021.

- 6.3 Similarly, in July 2020, the Town and Country Planning (Local Planning) (England) (Coronavirus) (Amendment) Regulations 2020 (SI 2020/731) inserted new regulation 36A into the 2012 Regulations. Regulation 36A makes temporary modifications to Part 9 of the 2012 Regulations, so that a document is taken to be made available by a local planning authority in accordance with regulation 35 when published on the authority's website. It temporarily disapplies the requirement to make the document available for inspection at the authority's principal office (and at such other places within its area as the authority considers appropriate) and the requirement to provide a hard copy on request. The modifications apply during "the relevant period". Regulation 3(2) of this instrument extends the end date of this period from 31 December 2020 to 31 December 2021.
- 6.4 Regulation 3(3) of this instrument also makes a permanent minor amendment to paragraph 1(2) of Schedule 2 to the 2012 Regulations to insert a missing reference to paragraph 1(1)(d) of that Schedule. This amendment is unrelated to the coronavirus pandemic and document inspection.
- 6.5 Part 3 of this instrument amends the May 2020 Regulations to extend the duration of temporary amendments made by that instrument to the DMP Order and the 1990 Regulations as a result of the effects of the coronavirus pandemic. Part 3 also amends the May 2020 Regulations so that the amendments to the 2017 Regulations expire on 24 December 2020 instead of 31 December 2020. Part 4 of this instrument makes fresh temporary amendments to the 2017 Regulations which commence on 24 December 2020.
- 6.6 By way of background, regulation 4 of the May 2020 Regulations amended Article 15 of the DMP Order. Article 15 DMP Order requires local planning authorities to publicise applications for planning permission made to them by giving requisite notice. The prescribed methods for giving requisite notice depend on the type of development for which permission is sought. The effect of the amendment is that, where a local planning authority is not able to comply with a requirement to (a) give requisite notice by site display, or (b) serve the notice on an adjoining owner or occupier, or (c) by publication of the notice in a local newspaper because it is not reasonably practicable for reasons connected to the effects of coronavirus, the local planning authority must (a) give requisite notice to the extent that it is reasonably practicable to do so, and (b) take reasonable steps to inform any persons who are likely to have an interest in the application of the website on which requisite notice of the application is published. The reasonable steps that are taken may include use of social media and communication by electronic means and the persons who are likely to have an interest in a planning application must include the persons who live or work in, or otherwise have a direct connection with, the area in which the proposed development is located.
- 6.7 Article 15 of the DMP Order also prescribes the information local planning authorities must include in their publicity. That information includes the date by which representations must be made (by reference to prescribed minimum periods) and

details of where and when the application may be inspected. Article 33 requires local planning authorities to take into account representations received before the end of the relevant publicity period. Article 34 prohibits local planning authorities from determining applications before the end of the relevant publicity period. The minimum period for representations which must be given when notice of an application is published in a newspaper or on a website maintained by the authority under article 15 (publicity) was extended from 14 to 21 days by regulation 5 of the May 2020 Regulations. The equivalent periods in respect of applications which are accompanied by an environmental statement remain unchanged at 30 days.

- 6.8 Regulation 5 of this instrument substitutes Part 5 (expiry) in the May 2020 Regulations with a new Part 5 containing expiry and savings provisions. New regulation 18 extends the amendments to articles 15, 33 and 34, in relation to publicity and the period for representations, which were due to expire on 31 December 2020 to 30 June 2021.
- 6.9 Section 69 of the Town and Country Planning Act 1990 requires local planning authorities to keep a planning register in accordance with prescribed requirements and to keep the register available for inspection by the public at all reasonable hours. Article 40 of the DMP Order requires the register to be kept either at the principal office of the local planning authority or in the part of the authority's area to which the applications relate. Where the register is kept using electronic storage, the authority may make the register available for inspection by the public on a website maintained by the authority for that purpose. Regulation 6 of the May 2020 Regulations amended Article 40 so that, where the local planning authority is not able to make the planning register available for physical inspection because it is not practicable to do so for reasons connected to coronavirus, including restrictions on movement, the authority is discharged of its obligation to do so, if the authority makes the register available for inspection on a website maintained by the authority. Regulation 5 of this instrument extends the amendment to article 40, in relation to physical inspection of the Planning Register which was due to expire on 31 December 2020 to 31 December 2021.
- 6.10 Part 3 of the May 2020 Regulations amended the publicity and document inspection requirements in regulations 5, 5A and 13 of the 1990 Regulations. Regulations 5 and 5A of the 1990 Regulations place requirements on local planning authorities in relation to publicity and the provision of an address for physical inspection of applications for listed building consent and variation or discharge of conditions attached to listed building consent and applications for planning permission for development affecting the setting of a listed building or the character or appearance of a conservation area. The effect of regulation 13 of the 1990 Regulations is that, in the case of applications by local planning authorities (other than London Borough Councils) relating to the execution of works for the demolition, alteration or extension of listed buildings, if the local planning authority (a) have notified Historic England and specified national amenity societies of an application for listed building consent, in accordance with the "Arrangements for handling heritage applications-Notification to Historic England and National Amenity Societies and the Secretary of State (England) Direction 2015" 2015 Direction, (b) received an objection to the application from any of the bodies notified within the specified period and (c) do not propose to refuse the application, the authority must refer the application to the Secretary of State for determination by him. Before sending the application to the Secretary of State the local planning authority must comply with similar requirements to publicise the

application and make it available for physical inspection as those in regulations 5 and 5A.

- 6.11 In line with the amendments made to the DMP Order, the amendments made by Part 3 of the May 2020 Regulations to the 1990 Regulations gave flexibility to local planning authorities if they were not able to comply with a prescribed publicity requirement or make documents available for physical inspection because it is not practicable to do so for reasons connected to coronavirus including restrictions on movement.
- 6.12 Regulation 5 of this instrument extends the amendments to the 1990 Regulations in relation to publicity requirements, which were due to expire on 31 December 2020, to 30 June 2021. It extends the amendments to the 1990 Regulations in relation to physical inspection of documents to 31 December 2021.
- 6.13 Part 4 of the May 2020 Regulations amended the 2017 Regulations. The 2017 Regulations (as amended) transpose Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (“the EIA Directive”) and its subsequent amendment by Directive 2014/52/EU, in respect of the town and country planning system in England. Regulations 19, 20, 23 and 25 of the 2017 Regulations set out certain requirements regarding environmental statements and information relating to those statements as part of the process for relevant EIA development regarding publicity and making environmental statements and information relating to those statements available at a physical address. Part 4 of the May 2020 Regulations amended the publicity requirements and the requirements to make documents available at a physical address, in line with the changes to the DMP Order.
- 6.14 Regulation 5 of this instrument brings forward the expiry of the amendments to the 2017 regulations made by the May 2020 Regulations from 31 December 2020 to 24 December 2020.
- 6.15 Part 4 of this instrument makes fresh amendments to the 2017 Regulations which commence on 24 December 2020 using the power in section 2(2) of the European Communities Act 1972, firstly to put right an omission (see new regulation 19A) and to make other minor corrections. Secondly, to help the reader understand the complex changes made to regulation 25 of the 2017 Regulations, amendments were split into two time periods each with its own Regulation (see Regulations 25A and 25B). When we brought forward the expiry of the amendments made by the May 2020 Regulations we made a saving in respect of the amendment to regulation 25 because, when the replacement provisions inserted by Part 4 of this instrument come into force on 24 December 2020 the replacement easement for regulation 25 will be in regulations 25A and 25B (rather than regulation 25). There will be no operational impact of these changes.
- 6.16 New Regulation 19A corrects an omission. Regulation 19A applies when a relevant planning authority which is in receipt of an application for EIA development accompanied by an environmental statement is required to send a notice to a person under regulation 19(3)(d). Regulation 19A provides that, if the authority is unable to include in the notice a physical address where the documents are available it must provide the address of a website where they are available.
- 6.17 The amendments to the 2017 Regulations are compatible with the EIA Directive and Directive 2014/52/EU and only apply for a limited period of time and where the

effects of coronavirus mean that satisfying requirements for publicity and availability of the documents to the public at a specified UK address is not reasonably practicable

- 6.18 Further guidance is provided at <https://www.gov.uk/guidance/environmental-impact-assessment>.

7. Policy background

What is being done and why?

- 7.1 These Regulations are part of the Government's emergency response to the Coronavirus pandemic.

Local development documents and spatial development strategies

- 7.2 They extend the current temporary disapplication of requirements on local planning authorities when preparing their local development documents, or Mayors when preparing spatial development strategies, to make certain documents available for inspection at principal offices (and at such other places as considered appropriate), and to provide hard copies on request. The documents must, instead, be made available for inspection on the relevant authority's website.
- 7.3 There is uncertainty about the future spread of Coronavirus and the extent of associated restrictions. However, the effects of Coronavirus continue to make the physical inspection of documents more difficult, for a number of reasons:
- The continued closure of many principal offices to the public means that it may be difficult to provide a physical address for inspection or to receive postal requests for hard copies of documents;
 - Where principal offices are closed and home working is taking place, providing hard copies of documents, on request, may be difficult, given the potentially substantial print runs of large documents; and
 - Where offices are open to the public, those who are vulnerable may still be unable or unwilling to travel to inspect documents at premises.
- 7.4 Government is extending these temporary measures for 12 months until 31 December 2021. This period is deemed to be appropriate given the current level of uncertainty about the future spread of Coronavirus and the extent of associated restrictions. It is also considered appropriate given the policy mitigation provided (see guidance section below in respect of appropriate mitigation measures where a person finds it difficult to inspect a document by electronic means) and in the context of the findings of our sector engagement on the current temporary measures (see consultation details in section 10 below), which suggests that any negative impacts from the measures will continue to be limited.

Development management and listed building consent: publicity and availability of documentation

- 7.5 The May 2020 Regulations provide temporary flexibilities, until 31 December 2020, for local planning authorities, the Secretary of State or inspector, applicants or appellants (as applicable) to use alternative methods if they are not able to comply with the usual requirements to publicise information or provide a physical address where documents can be inspected or copies obtained (as applicable) because it is not reasonably practicable to do so for reasons connected to the effects of

coronavirus. Alternative methods of publicity can include use of social media and other forms of electronic communication and the documents may be made available on a website. Where it is still possible to comply with a particular requirement it must be complied with. Depending on the circumstances the requirements are:

- the display of site notices by local planning authorities
- the sending of a notice by local planning authorities to neighbouring owners and occupiers or, in the case of an application for EIA development accompanied by an environmental statement to a person with an interest in the application who is unlikely to become aware of it by means of a site notice or newspaper advertisement
- the publication by the local planning authority of a notice in a newspaper circulating in the local area
- the publication of a notice by an applicant for EIA development who proposes to submit an environmental statement after the planning application has been submitted by site display and by publication in a local newspaper
- the publication of a notice in a local newspaper about further information and evidence in respect of an environmental statement by the recipient of that information (local authority, Secretary of State, or inspector).
- Depending on the circumstances notice must contain physical addresses where documents must be made available to be inspected or copies obtained. Notices must also contain the date by which representations must be made which is calculated by reference to the date of publicity and the date documents are made available.
- a local planning authority must make available for physical inspection their Planning Register which contains applications for planning permission at their principal office or an office in the relevant area. A local planning authority must also make applications for listed building consent available for inspection at a physical address in the locality.
- applicants who submit an environmental statement for EIA development must make a reasonable number of copies available at an address in the locality, named in notices.
- the recipient of further information and evidence relating to an environmental statement must also make copies of that information available at a physical address.

7.6 These regulations extend the current temporary provisions that allow alternative methods of publicity to be used and that allow documents to be made available on a website rather than at a physical address.

7.7 The regulations extend the temporary flexibilities in relation to the requirements placed on local planning authorities, applicants, the Secretary of State or an Inspector (as the case may be) to make documents available at a physical address for 12 months to align with the requirements in relation to local development documents and spatial development strategies and for the same reasons set out in paragraph 7.3 above. It may be difficult where offices are closed and home working is taking place to provide hard copies of documents, on request, and where offices are open to the public, those who are vulnerable may still be unable or unwilling to travel to inspect documents at premises.

- 7.8 The regulations also extend the temporary flexibilities in relation to publicity (site notices, the sending of notices to individuals and local newspaper notices) until 30 June 2021. Many local planning authorities have been able to revert to undertaking publicity in the normal way in accordance with their Statement of Community Involvement. However, retaining the ability to use alternative means to publicise planning applications is deemed necessary given the current level of uncertainty about the future spread of coronavirus and the extent of associated restrictions.
- 7.9 The regulations also make savings provisions such that if a publicity exercise commences shortly before the expiry of a relevant easement the relevant easement continues to apply to that exercise. The purpose of the savings provisions is to provide certainty that a publicity notice which refers to a period for representations which is calculated by reference to the date publicity commenced in reliance on a publicity easement or by reference to a date documents were made available on a website continues to be valid, notwithstanding the expiry of the relevant easement. As our accompanying guidance made clear, in the case of local newspapers that are no longer in circulation, local planning authorities should have regard to the fact that a local newspaper may have an online version that could be used as a form of digital publicity. This will help to ensure that public participation in the planning application process continues during the response to coronavirus and would support local independent news reporting.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 There are no immediate plans to consolidate the instruments amended by this instrument.

10. Consultation outcome

- 10.1 No formal consultation has taken place on these measures. Having considered feedback from two national planning bodies: The Local Government Association's Planning Advisory Service (PAS) and the Planning Officers' Society (POS) it is Government's intention to extend the temporary measures for local development documents and spatial development strategies for a 12-month period. PAS confirmed that they have not heard of any issues or concerns about the current measures. POS have also not heard of any issues or concerns and were supportive of a 12-month extension because of the certainty it would provide for local planning authorities.
- 10.2 Engagement with PAS also confirmed that the temporary publicity and physical inspection requirements for planning applications and EIA development have been broadly welcomed by local planning authorities and have worked well since their introduction.

11. Guidance

- 11.1 In relation to the measures in respect of local development documents and spatial development strategies, Government guidance was provided for local planning authorities, the Greater London Authority and the relevant mayoral combined

authorities over the summer. This covers arrangements for appropriate mitigation where persons are not able to access the relevant documents by electronic means or are finding it difficult to do so. This guidance will be updated to reflect the revised end date for these measures. For local planning authorities and mayoral combined authorities, guidance can be found at: <https://www.gov.uk/guidance/plan-making#covid19>. The guidance for the Greater London Authority can be found at: <https://www.gov.uk/government/publications/making-current-spatial-development-strategies-available-digitally-draft-guidance>.

- 11.2 The Government's Planning Practice Guidance which can be found at <https://www.gov.uk/guidance/consultation-and-pre-decision-matters#covid19> will be updated to reflect the new expiry dates for the temporary publicity and physical inspection requirements in respect of the applications in scope and how they apply where actions span the expiry dates referenced above.

12. Impact

- 12.1 There is no, or no significant, impact on charities or voluntary bodies.
- 12.2 The impact on the public sector is as follows. The temporary modifications being extended by Part 2 of this instrument impact on local planning authorities, the Greater London Authority and those mayoral combined authorities with spatial development strategy making powers. The extension of the temporary measures should make it safer for planning officers and the public and ensure plan-making is not delayed due to difficulties in making documents available for physical inspection during the coronavirus pandemic.
- 12.3 The temporary measures in relation to development management and listed buildings principally affect local planning authorities. However, the regulations affect applicants of EIA development which are most likely to be private developers of large-scale residential, commercial or infrastructure development. However, applicants for EIA development have been able to make use of the new flexible publicity and inspection arrangements, with assistance from local authorities in their use of electronic communication to make environmental statements available.
- 12.4 An Impact Assessment has not been prepared for this instrument. There is not expected to be an impact on business as a result of extending these measures. The impact on the public sector is set out above. However, the measures do not have any significant financial or resource implications for the public bodies listed.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses given the principal impact on business is through the change to the 2017 Regulations which apply to larger scale developments.

14. Monitoring & review

- 14.1 The temporary measures in relation to spatial development strategies and local development documents will expire on 31 December 2021. Subject to certain savings provisions and to the expiry on 24 December 2020 of the amendments made to the 2017 Regulations by the May 2020 Regulations, the temporary publicity measures in relation to development management (including EIA development) and listed buildings will expire on 30 June 2021. Where the measures in relation to those matters

concern the availability of documents at a physical address, they will expire on 31 December 2021. The impact of the temporary measures will be kept under review.

15. Contact

- 15.1 Christopher Mountain at the Ministry of Housing Communities and Local Government can be contacted on Christopher.Mountain@communities.gov.uk with any queries regarding the instrument.
- 15.2 Alison Bowerbank at the Ministry of Housing, Communities and Local Government can be contacted on Alison.Bowerbank@communities.gov.uk with any queries regarding the instrument.
- 15.3 Lucy Hargreaves at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.
- 15.4 Christopher Pincher, Minister of State at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.