

EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE, LISTED BUILDINGS AND ENVIRONMENTAL IMPACT ASSESSMENT) (ENGLAND) (CORONAVIRUS) (AMENDMENT) REGULATIONS 2020

2020 No. 505

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.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The Town and Country Planning (Development Management Procedure, Listed Buildings and Environmental Impact Assessment) (England) (Coronavirus) (Amendment) Regulations 2020 amend, on a temporary basis, certain requirements placed on local planning authorities and applicants for development requiring an Environmental Impact Assessment (EIA) for publicity and inspection of documents where the authority or applicant (as the case may be) is not able to comply with a particular requirement because it is not reasonably practicable to do so for reasons connected to the effects of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) (“coronavirus”), including restrictions on movement.
- 2.2 The instrument amends the following regulations and will expire on 31 December 2020:
- Town and Country Planning (Development Management Procedure) (England) Order 2015 (“the DMP Order”);
 - The Planning (Listed Buildings and Conservation Areas) Regulations 1990 (“the 1990 Regulations”); and
 - The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (“the 2017 Regulations”).
- 2.3 The amendments apply in respect of applications made to local planning authorities for (1) planning permission, (2) listed building consent, (3) variation or discharge of conditions attached to listed building consent, (4) planning permission for development affecting the setting of a listed building or the character or appearance of a conservation area. The amendments also apply to (5) applications made by local planning authorities to the Secretary of State for listed building consent for the demolition, alteration or extension of a listed building in their area, (6) applications for planning permission or a subsequent application which has been made without an environmental statement where the applicant proposes to submit such a statement, and (7) further information and evidence submitted to support an environmental statement.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument is being laid in breach of the 21-day rule, which requires instruments to be laid at least 21 days before they come into effect. This is necessary because the temporary amendments are urgently required to help local planning authorities (public authorities whose duty it is to carry out specific planning functions for a particular area), and applicants of EIA development (public and private developments which are likely to give rise to significant effects on the environment, which are given consent under the town and country planning laws of England, and for which an assessment is required prior to consent being granted) to meet publicity requirements during the response to the coronavirus pandemic. Without these amendments, applicants could be delayed in obtaining decisions on their applications, risking delays to development once the coronavirus is contained and the economy seeks to recover.

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 the 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.
- 3.3 The instrument does not have any minor or consequential effects outside England.

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 Article 15 of the 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. In all cases the local planning authority must publish prescribed information about the application on a website maintained by them for that purpose and invite representations on the application.
- 6.2 In response to coronavirus this instrument amends those requirements so that, where the local planning authority is not able to comply with a requirement in article 15 of the DMP Order, 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, including restrictions on movement. In such cases 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.

- 6.3 The instrument provides that “persons who are likely to have an interest in an 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. In addition, the reasonable steps that must be taken may include use of social media and communication by electronic means and must be proportionate to the scale and impact of the development.
- 6.4 Article 15(4) and 15(5) both give the option of giving requisite notice by either site display or neighbour notice. A requirement to give requisite notice by site display or neighbour notice is complied with if one of those things happens. There is a separate and additional requirement in article 15(4) (b) to give requisite notice by publishing the notice in a newspaper in the case of applications to which article 15(4) applies.
- 6.5 Article 15 specifies periods for which site notices must be displayed. It 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) is extended from 14 to 21 days. Consequential amendments have been made to article 33(1)(f) (the representations that must be taken into account) and article 34(9)(f) (time periods for decisions). The equivalent periods in respect of applications which are accompanied by an environmental statement remain unchanged at 30 days.
- 6.6 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 that part of the register which relates to land in part of that authority's area must be kept at a place situated in or convenient to that part. 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.
- 6.7 Article 40 is amended 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.
- 6.8 This instrument amends publicity and inspection requirements in regulations 5, 5A, and 13 of the 1990 Regulations and makes a consequential amendment to regulation 2.
- 6.9 Regulation 5 requires local planning authorities to give notice of applications for listed building consent and variation or discharge of conditions attached to listed building consent, by site display and publication of the notice in a local newspaper. They must also publish prescribed information about the application on a website maintained by them. The local planning authority must name a place within the locality where a copy of the application, and associated documents will be open to inspection by the public

at all reasonable hours during the period of 21 days beginning with the date of publication of the notice. If the authority maintains a website for the purpose of the advertisement of applications, the authority must include in the notice the website address where the application and associated documents may be accessed. The local planning authority must take into account representations received within 21 days of notices being given and information being published and may not determine the application before the end of the same periods.

- 6.10 Regulation 5A places similar requirements on local planning authorities in relation to applications for planning permission for development affecting the setting of a listed building or the character or appearance of a conservation area.
- 6.11 Section 13 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the 1990 Act”) requires local planning authorities (other than London Borough Councils) to notify the Secretary of State if they intend to grant listed building consent. This is so that the Secretary of State can decide whether to require the application to be referred to him for determination under section 12 of the 1990 Act. Section 14 of the 1990 Act requires London Borough Councils to notify the Historic Buildings and Monuments Commission for England (i.e. “Historic England”) unless they have determined to refuse an application for listed building consent. If Historic England direct the authority to refuse consent, the authority may notify the Secretary of State so that he can decide whether to require the application to be referred to him for determination under section 12 of the 1990 Act.
- 6.12 The Secretary of State has power under section 15 of the 1990 Act to issue a Direction disapplying the duties in section 13 and 14. The Secretary of State has issued the “Arrangements for handling heritage applications-Notification to Historic England and National Amenity Societies and the Secretary of State (England) Direction 2015” (“the 2015 Direction”). The effect of regulation 13 of the 1990 Regulations is that, if the local planning authority (a) have notified Historic England and specified national amenity societies, in accordance with the 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.
- 6.13 The amendments to the 1990 Regulations give the same flexibility to local planning authorities if they are not able to comply with a prescribed publicity requirement or make arrangement for physical inspection of documents because it is not practicable to do so for reasons connected to coronavirus, including restrictions of movement.
- 6.14 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. The 2017 Regulations set out the requirements for the publicity and inspection of environmental statements, as part of the process for relevant EIA development.
- 6.15 The relevant publicity requirements in the 2017 Regulations are specified in regulations 19, 20, 23 and 25. This instrument amends the publicity requirements and

the inspections' requirements for relevant documents in line with the changes to the DMP Order.

- 6.16 The procedure where an environmental statement is submitted to a local planning authority in regulation 19 is amended such that copies of relevant documents shall be transmitted electronically, wherever possible.
- 6.17 Where an applicant submits an environmental statement after the planning application has been submitted, the applicant is responsible for publicising the environmental statement under regulation 20. This instrument amends these requirements to ensure that where the applicant is not able to notify the public of this development by posting on the site a notice or publishing a notice in a local newspaper circulating in the locality because it is not reasonably practicable for reasons connected to the effects of coronavirus, including restrictions on movement, then the applicant can publicise this notice by alternative means. An applicant must take reasonable steps to communicate the notice to people who are likely to have an interest in a planning application, including people who live or work in, or otherwise have a direct connection with, the area in which the proposed development is located.
- 6.18 The reasonable steps that an applicant must take may include use of social media and communication by other electronic means, and must include posting on the site a notice or publishing a notice in a local newspaper circulating in the locality where it is reasonably practicable to do so. This instrument disapplies the requirement for physical inspection of documents. The notice published will instead state the website at which documents related to the application can be viewed online. The applicant must, when submitting the environmental statement, include a statement that information has been published in accordance with this regulation and explain the steps that were taken to bring the planning application to the attention of people who live or work in, or otherwise have a direct connection with, the area in which the proposed development is located.
- 6.19 This instrument inserts regulation 23A which disapplies the requirement for an applicant to ensure availability of copies of the environmental statement at a named address in the locality under regulation 23, where it is not able to do so because it is not reasonably practicable for reasons connected to the effects of coronavirus, including restrictions on movement. Regulation 23A instead requires applicants to ensure that the environmental statement is made available by appropriate alternative means (including publishing the statement on a website) and take reasonable steps to inform any persons who are likely to have an interest in the application or appeal to which the environmental statement relates of the website.
- 6.20 This instrument also amends the requirements in regulation 25 which sets out the publicity and public inspection requirements that must be followed where an applicant or an appellant has submitted an environmental statement and the relevant planning authority, the Secretary of State or the inspector dealing with an application or appeal requires that the environmental statement be supplemented with additional information by the applicant or appellant. This regulation is amended to bring it in line with regulation 20. The amended requirements apply where the recipient of further information is not able to (a) publish a notice in a local newspaper, (b) make copies of the further information available for inspection at an address in the locality in which the land is situated, or (c) make copies of the further information available to be obtained at that address, because it is not reasonably practicable to do so for reasons connected with the effects of coronavirus, including restrictions on movement.

Where the recipient of further information is not able to comply with these requirements they can instead publicise this by alternative means and must take reasonable steps to communicate the notice to people who are likely to have an interest in a planning application, including people who live or work in, or otherwise have a direct connection with, the area in which the proposed development is located.

- 6.21 The amendments 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 inspection of documents by the public at a specified UK address is not reasonably practicable. Further guidance is provided at: <https://www.gov.uk/guidance/environmental-impact-assessment>

7. Policy background

What is being done and why?

- 7.1 Consultation, transparency and community engagement are key to effective decision-making in local planning authorities. Effective consultation helps inform good and responsible decision-making and ensures that those decisions and the actions that flow from them properly reflect and respond to the needs of the local community. The views of local people about the potential impact of development in their area helps to ensure that decision-makers have relevant information to allow them to reach a sound decision. It is important that local planning authorities identify and consider all relevant planning issues associated with a proposed development.
- 7.2 The longstanding publicity requirements for planning applications, set out in the instruments which are being amended, enable local people to be aware of planning applications in their area, providing them with an opportunity to respond to consultation. However, the effects of the coronavirus, including restrictions on movement from social distancing, have made it more difficult for local planning authorities (and applicants) to discharge the statutory requirements to publicise applications. In particular:
- the provision and public inspection of physical site notices requires travel to sites at a time when travel is discouraged;
 - the closure of some local planning authority offices and encouragement of home-working has made it difficult in practice to issue large volumes of neighbour notification letters;
 - some local and regional newspapers have stopped publishing printed versions, making it more difficult to adhere to the local newspaper publicity requirement in some areas; and
 - local people now face difficulties physically inspecting documents related to planning applications at the local planning authority's offices due to the temporary closure of many offices and social distance guidance which discourages travel.
- 7.3 These constraints risk creating delays to development once the coronavirus is contained and the economy seeks to recover, as an application cannot be determined if it has not been publicised by giving requisite notice.
- 7.4 In order for local planning authorities to continue to make sound decisions on planning applications during the response to coronavirus, this instrument gives them more flexibility to meet their publicity requirements. Where they can, local planning

authorities will still be required to meet the specific requirements to erect site notices, issue neighbour notification letters and place newspaper adverts to publicise applications. However, where they are not able to do so because it is not reasonably practicable to comply with a particular requirement due to the effects of the coronavirus, including restrictions on movement, local planning authorities can take other reasonable steps to publicise applications.

- 7.5 The instrument extends the minimum time periods for representations where the local planning authority places a newspaper advert, and where it is required to publicise the application on its website, from 14 days to 21 days (or longer where there are public and bank holidays). The time period for EIA development is unchanged, at 30 days.
- 7.6 The instrument makes clear that local planning authorities may use electronic and digital forms of publicity to bring planning applications to the attention of the public. This will help to ensure that public participation in the planning application process continues during the response to coronavirus. This alternative publicity must also be proportionate to the scale and nature of the development proposed by the application.
- 7.7 As our accompanying guidance will make 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.
- 7.8 It is a statutory requirement for each local planning authority to maintain a register which includes applications for planning permission in relation to their area. The planning register must be kept at the principal office of the local planning register authority or that part of the register which relates to land in part of that authority's area must be kept at a place situated in or convenient to that part. They may also make it available for inspection via a website.
- 7.9 These requirements have been temporarily changed so that if the local planning authority is not able to make the planning register available for physical inspection because it is not reasonably practicable for reasons connected to the effects of coronavirus, including restrictions on movement, it is not required to do so. However, in those circumstances it must make the planning register available on a website.
- 7.10 This instrument does not remove the requirement that an applicant, who is not the owner of the land, must serve notice on the owner of the land or tenant of an agricultural holding before making an application for planning permission, so they are aware of the proposed application. Similar requirements apply to applicants for listed building consent. It also does not change the publicity requirements for a number of specialist (little used) planning consents, including special development orders, local development orders, simplified planning zones and enterprise zones. A full list of the applications to which the flexibilities do apply will be set out in guidance. For applications for EIA development accompanied by an environmental statement the local planning authority is currently required to publicise the application and the environmental statement by site notice and through an advertisement in a local newspaper. A copy of the environmental statement should also be made available for inspection by the public at a chosen address (usually the offices of the local authority) and on the local authority's website. Temporary changes have been made to allow

local planning authorities to take reasonable steps to publicise EIA applications and decisions to all interested parties if they are unable to discharge any of the specific publicity requirements because it is not reasonably practicable for reasons connected with the effects of coronavirus, including restrictions on movement.

- 7.11 In relation to applications for EIA development where the applicant submits an environmental statement after the planning application has been submitted, it is the applicant who is responsible for publicising the environmental statement. The temporary publicity requirements ensure that where the applicant is not able to inform the public by site notice or by publication of the notice in a newspaper circulating in the locality, because this is not reasonably practicable for reasons connected to the effects of coronavirus, including restrictions on movement, then the applicant can publicise this notice by alternative means, including publishing the statement on a website.
- 7.12 In such circumstance the notice requirements are also changed, and the applicant is not required to have a copy of the environmental statement and associated documents at an address in the vicinity to be inspected, or to provide physical copies of these documents on request. Instead the applicant must make these documents available for inspection on the internet.
- 7.13 Where an applicant makes use of these flexibilities the applicant must provide a certificate stating the steps that were taken to bring the planning application to the attention of people who are likely to have an interest in the application, and why these steps were reasonable.
- 7.14 Where an applicant or an appellant is required to submit further information to supplement an environmental statement, it is the relevant planning authority, the Secretary of State or the inspector dealing with the application or appeal who is responsible for publicising further information. The temporary publicity requirements ensure that where the recipient of further information is not able to give notice by publication of a notice in a newspaper circulating in the locality, or to make copies of the further information available for inspection or collection from an address in the locality, because it is not reasonably practicable for reasons connected to the effects of coronavirus, including restrictions on movement, then the recipient can publicise this notice by alternative means, including publishing the statement on a website.
- 7.15 In such circumstance the notice requirements are also changed, and the applicant is not required to have a copy of the environmental statement and associated documents at an address in the vicinity to be inspected, or to provide physical copies of these documents on request. Instead the applicant must make these documents available for inspection on the internet.
- 7.16 The changes could have the potential to reduce access to information, and the ability to make representations, for those people who do not have internet access at home. The effects of coronavirus, including restrictions on movement, have made it practically difficult for these people to access the traditional publicity routes. Accordingly, we consider the measures in this instrument to be justified to ensure the planning system continues to function. The measures are considered to be proportionate and meet a fair balance between the potential impact on the ability of individuals to participate in decision making which may affect them and the wider public interest during the response to coronavirus.

- 7.17 The temporary flexibilities on publicity provided by this instrument expire on 31 December 2020.
- 7.18 Guidance will be published by MHCLG to coincide with the regulations coming into force, and will – (i) explain the changes to publicity and inspection requirements (ii) suggest alternative ways a local planning authority (or applicant in the case of EIA development) may consider to bring applications to the attention of the public, (iii) aim to support local independent news reporting, and (iv) make clear that where they can, local planning authorities will still be required to meet the specific requirements to erect site notices, issue neighbour notification letters and place newspaper adverts to publicise planning applications and arrange physical inspection of documents.

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 or trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

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

10. Consultation outcome

- 10.1 The temporary measures being urgently brought forward in this amending instrument have been drafted in response to local planning authorities' concerns about meeting their statutory publicity and inspection duties given the effects of coronavirus, including restrictions on movement. Given the urgent timescales, there has been no public consultation. However, the Local Government Association and its Planning Advisory Service, which provides advice on planning matters to local planning authorities, are supportive.

11. Guidance

- 11.1 Guidance will be issued by MHCLG to coincide with the regulations coming into force.

12. Impact

- 12.1 This is a temporary measure which principally affects local planning authorities. However, the changes to the 2017 Regulations will, to a degree, affect applicants of EIA development which are most likely to be private developers of large-scale residential, commercial or infrastructure development. However, these applicants will also be able to make use of the new flexible publicity arrangements, with assistance from local authorities in their use of electronic communication to ensure consultees and interested parties have a copy of the environmental statement and other associated documents.
- 12.2 An Impact Assessment has not been prepared for this instrument because it is making a provision which will have effect for a period of less than 12 months.

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 EIA regulations which only apply to large-scale developments.

14. Monitoring & review

- 14.1 This instrument will expire on 31st December 2020. Its impact will be kept under review.

15. Contact

- 15.1 Sean O’Byrne at the Ministry of Housing, Communities and Local Government (Tel: 0303 444 1974 or email: sean.o’byrne@communities.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Lucy Hargreaves, Deputy Director for Planning – Development Management, at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Christopher Pincher, Minister of State at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.