

EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) (AMENDMENT) ORDER 2023

2023 No. 142

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing and Communities and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 The Town and Country Planning (Development Management Procedure) (England) (Amendment) Order 2023 amends the Town and Country Planning (Development Management Procedure) (England) Order 2015 (“DMPO 2015”), amending the Table in Schedule 4 to DMPO 2015 by adding Active Travel England (ATE) as a statutory consultee on planning applications under Part III of the Town and Country Planning Act 1990 (TCPA) where development involves any or more of the following thresholds:
- a) the number of dwellings is 150 or more; or
 - b) the provision of a building or buildings, where the use is not exclusively for the provision of dwellings, and the floor space to be created by the development is 7,500 square metres of internal floorspace or more; or
 - c) development is carried out on a site having an area of 5 hectares or more.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdictions which the instrument forms part of the law of) is England and Wales.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) 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 Section 54 of the Planning and Compulsory Purchase Act 2004 (PCPA) requires persons who must be consulted on certain planning applications (statutory consultees) to respond to the relevant local planning authority (LPA) or the Secretary of State where the LPA or Secretary of State must consult those bodies before permission, approval or consent is given. Section 71 of the TCPA empowers the Secretary of

State to prescribe, through a development order, the period of consultation that a local planning authority is required to undertake before they can determine an application for planning permission or permission in principle.

- 6.2 The consultee must provide a substantive response in a prescribed manner. Much of this process is prescribed in DMPO 2015, for which the following articles apply in relation to the new statutory consultee.
- 6.3 Article 18 of DMPO 2015 requires that for development which falls within a category set out in the Table in Schedule 4 (statutory consultees) the LPA (including the Secretary of State when they are decision maker) must allow a minimum of 21 days for representations before determining the application (or 18 days in the case of public service infrastructure development). Exclusions to this apply, for example: article 18(1)(c) excludes LPAs from this requirement if they have been advised by the statutory consultee that they do not wish to be consulted, and article 18(1)(d) applies where a category of development is subject to any standing advice published by the statutory consultee.
- 6.4 Article 22 of DMPO 2015 requires statutory consultees to provide the consultor with a substantive response within 21-days (or 18 days in the case of public service infrastructure development). A substantive response can be one which:
 - a) states that the consultee has no comment to make;
 - b) states that, on the basis of the information available, the consultee is content with the development proposed;
 - c) refers the consultor to current standing advice by the consultee on the subject of the consultation; or
 - d) provides advice to the consultor
- 6.5 Article 23 (DMPO 2015) – Duty to respond to consultations annual reports – requires statutory consultees to report annually to the Secretary of State on their performance with regard to their duty to respond to consultations.
- 6.6 In addition to planning applications which can be submitted directly to local planning authorities, applications for planning permission and permission in principle can also be submitted directly to the Secretary of State under section 62A of the TCPA where the LPA has been designated for poor performance under s62B of the TCPA.

Section 62A Order

- 6.7 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). Through Article 17 of S62A Order, the requirement to include Active Travel England as a statutory consultee (on prescribed planning applications) is sufficiently covered and hence no amendment has been made to the S62A Order.

7. Policy background

What is being done and why?

- 7.1 In July 2020, the Government published Gear Change¹, its vision to increase cycling and walking to help tackle some of the most challenging issues we face as a society – improving air quality, combatting climate change, improving health and wellbeing, addressing inequalities and tackling congestion on our roads.
- 7.2 Gear Change set out the actions required at all levels of government to make this a reality, grouped under four themes:
- a) better streets for cycling and people;
 - b) cycling and walking at the heart of decision-making;
 - c) empowering and encouraging local authorities; and
 - d) enabling people to cycle and protecting them when they do.
- 7.3 In support of this the Government announced in July 2020 the establishment of ATE as part of the new cycling and walking plan. ATE was formally established as an executive agency in August 2022, with a focus on technical advice, review and inspection functions. One of the early proposals agreed across Government was to also make ATE a statutory consultee for planning applications.
- 7.4 The aim of this Order is to establish ATE as a statutory consultee in the planning application process, ensuring that active travel is embedded in major developments from the outset, thereby helping to meet the agency’s core goal that half of all journeys in towns and cities to be cycled and walked by 2030.

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 plans for a consolidation.

10. Consultation outcome

- 10.1 From 30 March to 13 April 2022, the Department for Transport conducted an evidence-gathering survey on what ATEs wider role in the spatial planning system might look like, including as a statutory consultee on planning applications and what threshold number of residential units it should be consulted on.
- 10.2 The survey showed that support was strongest for ATE to be consulted on all major applications of 10 residential units and above. However, it was agreed that this would have a significant impact on ATEs available resources and the requirement to respond to all consultation responses within 21-days (or 18 days for public service infrastructure development). Consequently, through negotiation between ATE, DfT and DLUHC it was decided that the threshold be set higher, to cover all planning applications with a development size (meeting or exceeding): 150 residential units and 7,500 square metres commercial area.

¹ <https://www.gov.uk/government/publications/cycling-and-walking-plan-for-england>

10.3 The duty to consult ATE will only apply to applications for planning permission submitted on or after 1 June 2023 (the ‘coming into force’ date).

11. Guidance

11.1 Guidance on the new statutory consultee will be provided in the Department’s online planning practice guidance².

12. Impact

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

12.2 The impact on the public sector is negligible.

12.3 A full Regulatory Impact Assessment has not been prepared for this instrument.

12.4 New burdens associated with local planning authorities are considered ‘de-minimis’. Costs are also considered negligible in terms of any ‘one-off’ IT systems updates.

13. Regulating small business

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

14. Monitoring & review

14.1 The Department for Levelling Up, Housing and Communities will monitor the implementation of the new statutory consultee and its performance, including undertaking a review, one-year from the date of the instrument coming into force, of the thresholds for applications. The review does not commit DLUHC to make any amendments to DMPO 2015.

15. Contact

15.1 Sean O’Byrne at the Department for Levelling Up, Housing and Communities, email: Sean.O’Byrne@levellingup.gov.uk can be contacted with any queries regarding ATE’s role as a statutory consultee and any other aspects of the instrument.

15.2 Lucy Hargreaves, Deputy Director for Planning - Development Management at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rachel Maclean, Minister of State for Housing and Planning at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.

² <https://www.gov.uk/government/collections/planning-practice-guidance>