EXPLANATORY MEMORANDUM TO

THE INFRASTRUCTURE PLANNING (BUSINESS OR COMMERCIAL PROJECTS) REGULATIONS 2013

2013 No. [XXXX]

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

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

2. Purpose of the instrument

2.1 The purpose of this instrument is to set out the types of business or commercial projects that can potentially be authorised using the existing authorisation process for nationally significant infrastructure projects under the Planning Act 2008. This new category of projects was added through the Growth and Infrastructure Act 2013.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 Section 26 of the Growth and Infrastructure Act 2013 amended Part 5 of the Planning Act 2008 to enable certain types of business or commercial projects falling within a prescribed description to be authorised under the planning regime that applies to nationally significant infrastructure projects. These Regulations contain that prescribed description. Development that is or forms part of a project falling with the prescribed description can be authorised under that planning regime if that project meets the other requirements in section 35 of the Act and the Secretary of State gives a direction under that section. Before making a direction, the Secretary of State must think that the particular project is of national significance.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State, Nick Boles, has made the following statement regarding Human Rights:

In my view the provisions of The Infrastructure Planning (Business or Commercial Projects) (England) Regulations 2013 are compatible with the Convention rights.

7. Policy background

7.1 The Government, through the Growth and Infrastructure Act 2013, has expanded the nationally significant infrastructure planning regime to include certain business and commercial projects. Developers of certain projects will be able to 'opt-in' to the nationally significant infrastructure regime, where the projects are of national significance. Following an application from the developer to use this route, the Secretary of State will decide whether to issue a direction. The Secretary of State may give a direction if the Secretary of State thinks that t a project is 'nationally significant' and it meets the other requirements in section 35 of the Planning Act 2008. The effect of a direction is that the development that is subject to the direction must obtain consent through the nationally significant infrastructure planning regime under the Planning Act 2008.

7.2 The Government has expanded the scope of the nationally significant infrastructure planning regime to include certain business and commercial projects due to concerns over the speed with which these applications are being handled by local planning authorities. In recent years, there has been a decline in the speed with which local planning authorities have been determining large-scale major planning applications, despite a reduction in the number of cases that authorities have to process. Over the four years 2008/09 to 2011/12, the proportion of large-scale major applications that were determined within 13 weeks fell from 68% to 47%[1], at the same time as a corresponding fall from 481 large-scale major commercial and industrial decisions to just 320 decisions. At the same time, the number of cases in this category taking over 52 weeks to decide increased from 8% to 13%.

7.3 The Government recognises that the most significant business and commercial schemes can raise complex and controversial issues and may require a number of different associated consents. They may also be the subject of a call-in request or appeal, which can add to the time taken to determine the scheme, resulting in additional costs and uncertainty for the applicant as well as the local planning authority and other parties. These features potentially delay much needed investment in projects which could be beneficial for growth and the wider economy.

7.4 To help address these concerns, the extension of the regime to business and commercial projects will enable developers of certain projects to 'opt-in' to the nationally significant infrastructure planning regime, where projects are of national significance. The benefits of the nationally significant infrastructure regime includes statutory timetabling which requires a decision

[1] Large-scale major commercial development is defined here as including office/research and development/light industry; general industry, storage and warehousing with a floor area greater than 10,000 m² 2011/12 https://www.gov.uk/government/organisations/department-for-communities-and-local-government/series/planning-applications-statistics

to be made within 12 months from the start of the examination, and the 'one stop shop' approach to development consent – a Development Consent Order automatically remove the need to obtain several consents that would otherwise be required and may remove the need for other consents on a case by case basis.

7.5 These regulations prescribe the types of projects which can be authorised as a business or commercial project under the nationally significant infrastructure planning regime. Developers will need to seek a direction from the Secretary of State that a project is nationally significant. The Government has published in a Written Ministerial Statement the factors that the Secretary of State will need to take into account when considering whether a project was nationally significant.

8. Consultation outcome

8.1 The Government consulted on proposals for extending the nationally significant infrastructure planning regime to business and commercial developments in November 2012 for a period of 6 weeks and published its response in June 2013. The consultation sought views on the following questions:

1. A proposed list of development types;

2. Whether thresholds should apply, and, if so, whether those in the consultation document were appropriate;

3. Our assessment of the factors that the Secretary of State would need to take into account when considering whether a project was nationally significant;

4. Whether retail projects should not be a prescribed business or commercial project;

5. Whether a National Policy Statement (or Statements) should be prepared for the new business and commercial category; and,

6. Whether there were any other comments on the proposals.

8.2 One hundred and two responses were received, including from a range of developers, local authorities, environmental organisations and members of the public.

8.3 In response to the consultation, the Government concluded that developers of nationally significant projects falling within the following broad descriptions of development should generally be able to use the nationally significant infrastructure planning regime:

o Offices and research and development

- o Manufacturing and processing
- o Warehousing, storage and distribution
- o Conference and exhibition centres
- o Leisure, tourism and sports and recreation
- o Aggregate and industrial minerals

8.4 The Government also decided in response to the views expressed through the consultation that proposals involving the extraction of coal, oil and gas or peat will not be included in the new business and commercial category. This position will be kept under review. In addition, the Government decided not to set statutory thresholds through the accompanying secondary legislation but intends to publish a policy document setting out the factors that the Secretary of State will take into account including indicative thresholds.

8.5 The proposal not to include retail as a prescribed form of development in the accompanying regulations was widely welcomed by respondents to the consultation and the Government plans to maintain that position. The Government also continues to consider that the case for a National Policy Statement, or Statements, for business and commercial projects is not strong. The Government will keep this position under review.

9. Guidance

9.1 The Government has set out in a Written Ministerial Statement the factors that the Secretary of State will consider when determining whether a project is of national significance.

9.2 A range of guidance is available for developers using the nationally significant infrastructure regime, including on Pre-application Consultation; Examination; Fees; Compulsory Acquisition; Forms; and Associated Development. The Planning Inspectorate also publishes a range of advice notes on the day to day operation of the regime.

10. Impact

10.1 These Regulations prescribe the types of business or commercial projects that can potentially be authorised via the nationally significant infrastructure planning regime. The Government's overarching aim has been to provide an additional option for authorising for large-scale proposals of national significance.

10.2 Developers of major schemes will be able to decide on a case by case basis whether they would prefer to use the nationally significant infrastructure planning regime and will only do so where there is a net benefit to their business. The responsibility for the vast majority of commercial and business planning applications will remain with local planning authorities. An impact assessment for these proposals was prepared as part of the Growth and Infrastructure Act 2013.

10.3 Local people and other parties affected by a proposed development will have an opportunity to be heard through the nationally significant infrastructure planning regime's procedures for pre-application consultation, representations and examination. The infrastructure planning regime seeks to use a more inquisitorial mode of examination and not an adversarial one which many people can find difficult to engage with and can deter people from giving evidence at hearings. Planning Inspectors will also seek to use the written representations mode of examination where possible but parties can request the right to be heard at a hearing.

10.4 A full impact assessment was prepared for these proposals as part of the Growth and Infrastructure Act an Impact Assessment and as such, a further Impact Assessment has not been prepared for this instrument. The Growth and Infrastructure Act Impact Assessment is available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/39364/121219_Growth_and_Infrastructure_Impact_Assessment.pdf

11. Regulating small business

11.1 The regulations apply to business and commercial projects that would be considered of national significance and as such, are unlikely to apply to small businesses. The vast majority of such projects would involve to multi-million pound capital costs and as such, we take the view that a small business is very unlikely to submit an application for a development which is likely to be considered of national significance.

12. Monitoring & review

12.1 The Department for Communities and Local Government will keep the major infrastructure regime under the Planning Act under review, including how it applies to business and commercial projects.

13. Contact

13.1 Sue Lovelock at the Department for Communities and Local Government. Tel: 0303 4443759 or email: Susan.Lovelock@communities.gsi.gov.uk can answer any queries regarding the instrument.