Draft Regulations laid before Parliament under section 303(8)(a) of the Town and Country Planning Act 1990 for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2013 No.

TOWN AND COUNTRY PLANNING, ENGLAND

The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2013

Made - - - -	*2013*
Coming into force - -	*1st October 2013*

The Secretary of State, in exercise of the powers conferred by sections 303 and 333(2A) of the Town and Country Planning Act 1990(**a**), makes the following Regulations:

In accordance with section 303(8)(a) of that Act, a draft of this instrument has been laid before and approved by resolution of each House of Parliament.

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2013 and come into force on 1st October 2013.

(2) These Regulations apply in relation to England only.

(3) In these Regulations "the 2012 Regulations" means the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(**b**).

Amendment in relation to Secretary of State pre-application advice

2. After regulation 2 of the 2012 Regulations insert—

"Pre-application advice about applying under section 62A of the 1990 Act

2A.—(1) Where the Secretary of State gives advice about applying for any permission, approval or consent under section 62A of the 1990 Act ("pre-application advice"), a fee shall be paid to the Secretary of State.

(**a**) 1990 c. 8. Section 62A was inserted by section 1 of, and paragraph 5 of Schedule 1 to, the Growth and Infrastructure Act 2013 (c. 27). Section 303 was substituted by section 199 of the Planning Act 2008 (c.29). Section 303(1A) was inserted by Section 1 of, and paragraph 10 of Schedule 1 to, the Growth and Infrastructure Act 2013. Section 333(2A) was inserted by section 118(1) of, and paragraphs 1 and 14 of Schedule 6 to, the Planning and Compulsory Purchase Act 2004 (c. 5).

(**b**) S.I. 2012/2920.

(2) The fee payable in respect of pre-application advice shall be the time (in hours or parts thereof) spent by a planning inspector, or as the case may be, a planning officer, giving such advice multiplied by—

(a) where the advice is given by a planning inspector, the hourly rate for a planning inspector; or

(b) where the advice is given by a planning officer, the hourly rate for a planning officer.

(3) The hourly rate for a planning inspector, and for a planning officer, shall be—

(a) set from time to time by the Secretary of State;

(b) calculated by reference to the average hourly cost to the Secretary of State of providing the services of a planning inspector or, as the case may be, a planning officer;

(c) set at a level which ensures that, taking one financial year with another, the income from fees charged for pre-application advice does not exceed the cost of providing that advice; and

(d) published by the Secretary of State in such manner as the Secretary of State considers appropriate.

(4) In this regulation—

"planning inspector" means a person appointed by the Secretary of State under section 76D(1) of, or paragraph 1 of Schedule 6 to, the 1990 Act(**a**) at any time in the 12 months preceding the request for advice; and

"planning officer" means an officer of the Department for Communities and Local Government working for the part of that Department known as the Planning Inspectorate."

Amendments in relation to applications under section 62A of the 1990 Act

3.—(1) In regulation 1(4) of the 2012 Regulations—

(a) before sub-paragraph (a) insert—

"(za) to the giving of advice about applying under section 62A of the 1990 Act for any permission, approval or consent;"

(b) after sub-paragraph (b)(ii) insert—

"(iia) applications under section 62A (applications made directly to Secretary of State) of the 1990 Act;"

(2) In regulation 10(7)(a) of the 2012 Regulations after "local planning authority" insert ", or, in the case of an application under section 62A of the 1990 Act, the Secretary of State,".

(3) After regulation 11 of the 2012 Regulations insert—

"**Fees payable in respect of applications under section 62A of the 1990 Act**

11A.—(1) When an application is made under section 62A of the 1990 Act a fee is payable to the Secretary of State.

(2) A fee is only payable under this regulation if a fee would have been payable to a local planning authority under these Regulations (excluding regulation 8 or 9) had the application been made to that authority ("the relevant authority").

(3) The amount of the fee payable to the Secretary of State under paragraph (1) shall be the same as the amount of the fee that would have been payable to the relevant authority under these Regulations.

(**a**) Section 76D was inserted into the 1990 Act by section 1 of, and paragraph 5 of Schedule 1 to, the Growth and Infrastructure Act 2013 (c. 27).

(4) Where all the conditions set out in paragraph (5) are satisfied, paragraph (1) shall not apply to—

(a) an application for planning permission, which is made following the granting of planning permission (by the Secretary of State under section 62A of the 1990 Act), for development which the Secretary of State is satisfied is development of the same character or description as the development to which the application relates, on an application for planning permission made by or on behalf of the same applicant; or

(b) an application for approval of one or more reserved matters, which is made following the granting of approval (by the Secretary of State under section 62A of the 1990 Act) of details relating to the same reserved matters authorised by the same outline planning permission, on an application made by or on behalf of the same applicant.

(5) The conditions referred to in paragraph (4) are—

(a) that the application is made within 12 months of the date of the grant of planning permission or grant of approval of details of reserved matters, as the case may be;

(b) that the application relates—

(i) in the case of an application for planning permission, to the same site as that to which the grant of planning permission related, or to part of that site, and to no other land except land included solely for the purpose of providing a different means of access to the site; or

(ii) in the case of an application for approval of reserved matters, to the same site as that in respect of which the approval was granted, or to part of that site (and no other land);

(c) in the case of an application for planning permission which is not made in outline, that the planning permission which has been granted is not an outline planning permission; and

(d) that no application made by or on behalf of the same applicant in relation to the whole or any part of the site has already been exempted by paragraph (4).

(6) Where all the conditions set out in paragraph (7) are satisfied, paragraph (1) shall not apply to—

(a) an application for planning permission which is made following the withdrawal (before notice of decision was issued) of a valid application for planning permission made to the Secretary of State under section 62A of the 1990 Act by or on behalf of the same applicant;

(b) an application for planning permission which is made following the refusal of planning permission (by the Secretary of State under section 62A of the 1990 Act) on a valid application for planning permission made by or on behalf of the same applicant;

(c) an application for approval of one or more reserved matters which is made following the withdrawal (before notice of decision was issued) of a valid application made to the Secretary of State under section 62A of the 1990 Act by or on behalf of the same applicant for approval of details relating to the same reserved matters in relation to the same outline planning permission; or

(d) an application for approval of one or more reserved matters which is made following the refusal (by the Secretary of State under section 62A of the 1990 Act) to approve details relating to the same reserved matters which were submitted in a valid application made by or on behalf of the same applicant and in relation to the same outline planning permission.

(7) The conditions referred to in paragraph (6) are—

(a) that the application is made within 12 months of—

(i) in the case of an earlier valid application which was withdrawn, the date when that application was received; or

(ii) in any other case, the date of the refusal;

(b) that the application relates—

(i) in the case of an application for planning permission, to the same site as that to which the earlier application related, or to part of that site, and to no other land except land included solely for the purpose of providing a different means of access to the site; or

(ii) in the case of an application for approval of reserved matters, to the same site as that to which the earlier application related, or to part of that site (and no other land);

(c) in the case of an application for planning permission, that the Secretary of State is satisfied that it relates to development of the same character or description as the development to which the earlier application related (and to no other development);

(d) in the case of an application for planning permission which is not made in outline, that the earlier application was also not made in outline;

(e) that the fee payable in respect of the earlier application was paid; and

(f) that no application made by or on behalf of the applicant in relation to the whole or any part of the site has already been exempted by paragraph (6).

(8) In this regulation "valid application" has the same meaning as in article 29(3) of the Development Management Procedure Order (but with the references in that definition to articles 5, 6, 8 and 12 of that Order being construed as references to those articles as applied by a development order made pursuant to section 76C of the 1990 Act)(**a**).

(9) Any fee paid under this regulation shall be refunded if the application is rejected as invalid."

Amendment in relation to conservation areas

4.—(1) After regulation 5 of the 2012 Regulations insert—

"**Exception – applications relating to demolition of unlisted etc buildings in conservation areas**

5A. Regulation 3 shall not apply where the local planning authority to whom the application is made are satisfied that the application relates solely to development which is relevant demolition (within the meaning of section 196D of the 1990 Act(**b**))."

Amendment in relation to refund of fees

5.—(1) After regulation 9 of the 2012 Regulations insert—

"Refund of fees in relation to planning applications not determined within 26 weeks

9A.—(1) Subject to paragraph (2), any fee paid by an applicant in respect of an application for planning permission or for the approval of reserved matters shall be refunded to the applicant in the event that the local planning authority fail, or the Secretary of State, in relation to an application made under section 62A of the 1990 Act fails, to

(**a**) Section 76C was inserted into the 1990 Act by section 1 of, and paragraph 5 of Schedule 1 to, the Growth and Infrastructure Act 2013 (c. 27).

(**b**) Section 196D was inserted into the 1990 Act by paragraph 6 of Schedule 17 to the Enterprise and Regulatory Reform Act 2013 (c. 24).

determine the application within 26 weeks of the date when a valid application was received by the local planning authority or the Secretary of State, as the case may be.

(2) Paragraph (1) does not apply where—

(a) the applicant and the local planning authority, or, in the case of an application under section 62A of the 1990 Act, the Secretary of State, have agreed in writing that the application is to be determined within an extended period;

(b) the Secretary of State gives a direction under section 77 of the 1990 Act(**a**) in relation to the application before the period mentioned in paragraph (1) has expired;

(c) the applicant has appealed to the Secretary of State under section 78(2) of the 1990 Act(**b**) before the period mentioned in paragraph (1) has expired; or

(d) any person who is aggrieved by any decision of the local planning authority or the Secretary of State in relation to the application has made an application to the High Court before the period mentioned in paragraph (1) has expired.

(3) In this regulation "valid application" is—

(a) where the application is made to a local planning authority, to have the same meaning as in article 29(3) of the Development Management Procedure Order;

(b) where the application is made under section 62A of the 1990 Act, to have the same meaning as in article 29(3) of the Development Management Procedure Order (but with the references in that definition to articles 5, 6, 8 and 12 of that Order being construed as references to those articles as applied by a development order made pursuant to section 76C of the 1990 Act)."

Amendment in relation to fees for certain applications under the General Permitted Development Order

6.—(1) Regulation 14 of the 2012 Regulations is amended as follows.

(2) In paragraph (1), before sub-paragraph (a) insert—

"(za) for an application under any Part of that Schedule relating to development which involves the making of any material change in the use of any buildings or other land, £80;"

(3) After paragraph (1), insert—

"(1A) This regulation shall not apply to impose a fee in relation to an application of a type described in paragraph (1)(za) ("the approval application") where—

(a) a fee is payable under these Regulations for an application for planning permission made in respect of proposals for development of a site which includes buildings or other land which are the subject of the approval application, and

(b) that application for planning permission is made on the same date and by or on behalf of the same applicant as the approval application."

Amendment in relation to particular fees

7.—(1) Schedule 1 to the 2012 Regulations is amended as follows.

(2) In paragraph 7(1) of Part 1, after "article 18(1)(b)" insert "or (c)".

(3) In the table in Part 2 of Schedule 1, in paragraph (1)(b), for "additional hectare" substitute "additional 0.1 hectare".

(**a**) Section 77 of the 1990 Act was amended by paragraph 18 of Schedule 7 to the Planning and Compensation Act 1991 (c. 34), section 40(2)(d) of the Planning and Compulsory Purchase Act 2004 (c. 5), paragraph 2 of Schedule 10 to the Planning Act 2008 (c. 29) and paragraph 10 of Schedule 12 to the Localism Act 2011 (c. 20).

(**b**) Section 78(2) of the 1990 Act was amended by section 17(2) of the Planning and Compensation Act 1991, section 43(2) of the Planning and Compulsory Purchase Act 2004 and section 123(3) of the Localism Act 2011.

Signed by authority of the Secretary of State for Communities and Local Government

Parliamentary Under Secretary of State
Department for Communities and Local Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 ("the 2012 Regulations").

Regulations 2 and 3 make amendments for fees in relation to applications for planning permission and for approval of reserved matters under section 62A of the Town and Country Planning Act 1990 ("the 1990 Act"). Regulation 2 inserts a new regulation 2A which sets out how the fee for pre-application advice will be calculated in relation to such applications. In practice the advice will be provided, and the fees charged, by the Planning Inspectorate, an executive agency of the Department for Communities and Local Government. Regulation 3 inserts a new regulation 11A which provides that the fee for applications under section 62A is to be paid to the Secretary of State and is to be the same as the fee the applicant would have paid under the 2012 Regulations had the application been made to a local planning authority. Regulation 3 also makes a number of consequential amendments to the 2012 Regulations in relation to planning applications under section 62A.

Regulation 4 inserts a new regulation 5A into the 2012 Regulations which provides that there is no fee for submitting an application for planning permission in respect of the demolition of certain buildings in a conservation area.

Regulation 5 inserts a new regulation 9A into the 2012 Regulations which provides that any fee paid by an applicant in respect of an application for planning permission or for the approval of reserved matters is to be refunded where the local planning authority (or the Secretary of State in relation to an application made under section 62A of the 1990 Act) fails to determine the application within 26 weeks of the date when a valid application was received. It also provides that a refund is not payable where the applicant and the authority (or the Secretary of State) have entered into an agreement to extend the time for determination of the application.

Regulation 6 amends regulation 14 of the 2012 Regulations to provide that the fee for an application for prior approval under Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 relating to development which involves the making of any material change in the use of any buildings or other land is £80. It also provides that no fee for a prior approval application where a planning application for the same site is submitted at the same time by or on behalf of the same person.

Regulation 7 makes two minor amendments to Schedule 1 to the 2012 Regulations.

Except for regulation 5, the main provisions of these Regulations implement provisions in the Growth and Infrastructure Act 2013 and in the Enterprise and Regulatory Reform Act 2013; both were subject to full Impact Assessments which can be found on http://www.legislation.gov.uk/ Copies of the Impact Assessments may be obtained from the Planning Directorate, 1st Floor, Zone J1, Department of Communities and Local Government, Eland House, Bressenden Place, London, SW1E 5DU.

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DRAFT STATUTORY INSTRUMENTS

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