EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (FEES FOR APPLICATIONS, DEEMED APPLICATIONS, REQUESTS AND SITE VISITS) (ENGLAND) (AMENDMENT) REGULATIONS 2013

2013 No.

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 These Regulations amend the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (S.I. 2012/2920) ("the 2012 Regulations").

2.2 The principal amendments give effect to provisions in the Growth and Infrastructure Act 2013 that enable certain planning applications to be made directly to the Secretary of State, and provisions in the Enterprise and Regulatory Reform Act 2013 that remove the requirement to seek conservation area consent to demolish certain buildings in conservation areas. Amendments also introduce a fee for prior approval required in relation to permitted development rights for changes of use. In addition the amendments bring in measures to underpin the planning guarantee set out in the Government's 'Plan for Growth' (March 2011) by making provision for a refund of the fee where an application for planning permission is not determined within 26 weeks. Two minor technical amendments are also proposed to the 2012 Regulations.

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

3.1 These Regulations are the first use of the power in section 303(1A) of the Town and Country Planning Act 1990 ("the 1990 Act"). The power, which was inserted by paragraph 10 of Schedule 1 to the Growth and Infrastructure Act 2013, provides for a fee where an application is submitted to the Secretary of State under section 62A of the 1990 Act and also allows the Secretary of State to charge a fee for providing advice to applicants in relation to applications under section 62A.

4. Legislative Context

4.1 The 2012 Regulations were made under section 303 of the 1990 Act, which was substituted by section 199 of the Planning Act 2008 (c. 29) and amended by paragraph 10 of Schedule 1 to the Growth and Infrastructure Act 2013.

4.2 A number of the proposed amendments to the 2012 Regulations follow from provisions in the Growth and Infrastructure Act 2013 and in the Enterprise and Regulatory Reform Act 2013. The Government proposes to bring section 1 of, and Schedule 1 to, the Growth and Infrastructure Act 2013 into force in October 2013 and publish and lay

the designation criteria document before Parliament in June 2013 so that the process set out in section 62B of the 1990 Act can take place before section 1 is brought fully into force in October, 2013. Applicants do not have to make their planning application to the Secretary of State; section 62A of 1990 Act gives the applicant the choice of making an application to the Secretary of State, or may continue to make an application to the local planning authority instead. Section 62A(1)(b) of 1990 Act sets out that only applications which are defined as 'major development' can be made to the Secretary of State. Major development is to be defined in subordinate legislation which the Government intends to have in place for October. The intention is that major development will take the same meaning as in article 2 of the Town and Country Planning (Development Management Procedure) (England) Order 2010.

4.3 These Regulations cross-refer to a development order made under section 76C of the 1990 Act. A development order under that power will be made before these Regulations are made and will be a new development order (modelled on the Town and Country Planning (Development Management Procedure) (England) Order 2010) which will set out how the Secretary of State will handle planning applications which are submitted to him instead of to the designated local planning authority. The intention is to make the development order, which is a negative procedure order, in September and then immediately after make the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2013.

5. Territorial Extent and Application

This instrument applies to England.

6. European Convention on Human Rights

Nick Boles, Parliamentary under Secretary of State at the Department for Communities and Local Government, has made the following statement regarding Human Rights:

In my view the provisions of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2013 are compatible with the Convention rights.

7. Policy background

7.1 Timely decisions on planning applications give applicants the confidence to submit planning applications for development, give businesses the confidence to invest, and give greater certainty for communities.

7.2 The Government is committed to ensuring that planning applications and related consents are processed promptly. The 'Plan for Growth' (March 2011) announced the planning guarantee to underpin this commitment. The planning guarantee means that planning applications should not spend more than 12 months in total with decision-making bodies, including any time spent at appeal. In practice the guarantee means that cases should spend no more than 26 weeks with either the local planning authority or, in the case of appeals, the Planning Inspectorate.

7.3 In addition the Growth and Infrastructure Act 2013 includes a measure to enable quicker and better decisions where there are clear failures in local planning authority performance as a result of consistently failing to meet statutory deadlines. In these circumstances applicants will have the option of submitting applications for major development directly to the Planning Inspectorate (on behalf of the Secretary of State). This measure is aimed only at those situations where councils are clearly failing to deliver an effective service. Apart from its direct effects, the Government anticipates that this measure will stimulate an increased focus on performance across planning authorities generally, and will help to ensure that the planning guarantee is met.

7.4 It is recognised that some applications need more than the statutory time period to be determined, and may occasionally require more time than the planning guarantee allows for, especially where the issues are particularly complex. In these circumstances the National Planning Policy Framework encourages the use of planning performance agreements. These involve a bespoke timetable agreed between the authority and the applicant where it is clear at the pre-application stage that more time than the statutory period will be required to reach a decision. Similarly, applicants and authorities may enter into a post-application agreement to extend the time period for determination, where it becomes clear that more time is needed to decide the application.

7.5 Whilst planning application fees are a small part of the overall costs of development, they are important in meeting the costs of those charged with determining applications and therefore in providing an efficient planning service. Where, in future, the Planning Inspectorate is determining a planning application submitted directly to the Secretary of State, the amendments to the 1990 Act in the Growth and Infrastructure Act allow for fees in relation to planning applications under section 62A of the 1990 Act to be payable to the Secretary of State.

7.6 The Government is keen to encourage applicants to undertake as much preparation as possible on planning proposals, including discussions at an early stage with the planning authority, before a planning application is submitted. This is to reduce wasted time and resources, by both applicant and the authority, on ill-conceived projects. Local planning authorities are able to charge for such advice under section 93 of the Local Government Act 2003 which provides a general power for authorities to charge for discretionary activities. The Growth and Infrastructure Act 2013 inserts a provision into the 1990 Act to allow the Planning Inspectorate to make a similar charge for pre-application advice.

7.7 An objective of government is to ensure that the threshold of where planning permission is required is set at the right level to minimise administrative burdens and that where permission is required, it can be obtained, where appropriate, in the easiest way possible. The permitted development regime is one mechanism through which this objective is achieved. On occasion, there are likely to be matters arising from a proposed change of use where it is reasonable that a local planning authority or the Secretary of State may wish to ensure that they can manage the impacts sensitively; the use of a prior approvals procedure is intended to accommodate such situations. A fee is payable to meet the administrative costs of the authority considering the application. The Regulations includes a provision setting a standard fee for all prior approvals relating to change of use permitted developments.

Fees for the Secretary of State to consider applications made to him as a result of local authorities being designated under section 62A of the 1990 Act (inserted by section 1 of the Growth and Infrastructure Act 2013).

7.8 Section 1 of the Growth and Infrastructure Act 2013 amends the Town and Country Planning Act 1990. In particular it allows a planning application, an application for reserved matters consent and certain connected applications to be made directly to the Secretary of State, where the local planning authority has been designated by him (the intention being to make such designations where an authority has a record of very poor performance). Regulation 3 makes provision for the fee for such applications to be paid to the Secretary of State (in practice the fee would be paid to the Planning Inspectorate, the part of the Department for Communities and Local Government that will administer such applications on behalf of the Secretary of State). The fee to be paid to the Secretary of State is calculated in accordance with the 2012 Regulations and would be exactly the same as if it were to be paid to the local planning authority.

Secretary of State (Planning Inspectorate) to be able to charge a fee for pre-application advice

7.9 Regulation 2 provides for the Secretary of State (through the Planning Inspectorate) to charge a fee for the provision of pre-application advice in relation to planning applications which may be submitted to the Secretary of State as a result of a local authority being designated under section 62B of the 1990 Act (inserted by section 1 of the Growth and Infrastructure Act 2013). Regulation 2 sets outs when the pre-application fee will be charged. The charge is the aggregate of the hourly rate for a planning inspector and the hourly rate for a Planning Officer in the Planning Inspectorate. The rate will be published by the Secretary of State: it is planned to publish the fees on the Planning Inspectorate website.

Refund of the fee for applications which take longer than 26 weeks

7.10 Regulation 5 brings into effect a measure to underpin the planning guarantee, and provides that the planning application fee must be refunded to the applicant where the planning application is not determined within 26 weeks from the date a valid application is made. Regulation 5 provides that where a Planning Performance Agreement has been entered into, or there is a written agreement to extend the period of time for determination, the requirement to refund a fee will not apply. Regulation 5 provides that if an appeal is submitted against non-determination of a planning application and that appeal is submitted before the 26 weeks expires no refund will be payable. The refund will also not apply in cases where there is a deemed planning application following the submission of an appeal against a planning enforcement notice or which involve re-determinations following a successful judicial review, or applications called-in by the Secretary of State.

Fee to replace a partially implemented outline planning permission under article 18(1)(c) of the Town and Country Planning (Development Management Procedure) (England) Order

7.11 In 2009 the Government introduced temporary provisions that enable a developer to apply for planning permission with a lower fee and reduced information and consultation requirements, where an unimplemented and extant planning permission already exists. The scope of the provisions was widened in 2010 to include partially

implemented outline planning permissions. However, at that time the Fees for Planning Applications Regulations were not adjusted to reflect this update. The effect is that the fee currently payable in respect of an application to replace a partially implemented outline planning permission is as per a new application for outline planning permission. Although such applications still benefit from the reduced information and consultation requirements, this inconsistency diminishes the financial benefits to applicants. The amendment in regulation 7 would mean that the lower fee introduced in 2009 would also apply to applications of the type described in article 18(1)(c) of the Town and Country Planning (Development Management Procedure) (England) Order 2010.

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Abolition of conservation area consent

7.12 The Enterprise and Regulatory Reform Act 2013 removes the requirement to seek conservation area consent to demolish unlisted buildings in conservation areas in England. Instead, proposals for the demolition of these buildings will now be considered by the local planning authority through an application for planning permission. There is currently no fee for applications for conservation area consent. In order to maintain the status quo, regulation 4 provides for planning applications for the demolition of an unlisted building in a conservation area to be exempt from the requirement to pay a fee under regulation 3 of the 2012 Regulations.

Permitted development rights for changes of use: prior approvals

7.13 Section 60(2A) of the 1990 Act (inserted by section 4 of the Growth and Infrastructure Act 2013) provides that where planning permission is granted under a development order for development that is for a change of use (commonly referred to as a permitted development right), such an order may require that certain matters are subject to prior approval of the local planning authority or the Secretary of State before the change of use is begun.

7.14 Regulation 6 amends regulation 14 of the 2012 Regulations to provide a fee of £80 for any prior approval change of use application. Regulation 6 also provides for applicants to be exempt from paying this fee where a corresponding planning application for planning permission on the same site is made at the same time as the prior approval application.

Correction of typographical errors

7.15 Regulation 7 amends the 2012 Regulations to correct a typographical error by inserting “0.1” between the words “additional” and “hectare” in Schedule 1, Part 2, Category 3(1)(b).

8. Consultation outcome

8.1 The Government consulted on policy proposals for implementing section 1 of the Growth and Infrastructure Act 2013 to enable quicker and better decisions where there are clear failures in local planning authority performance, by giving applicants the option of

applying directly to the Planning Inspectorate. The consultation[1] ran from 22 November 2012 to 17 January 2013; a total of 227 replies were received, the majority (67%) from councils. Those responding wished to understand more fully the practical arrangements for the Planning Inspectorate to consider applications, including pre-application advice. Where responses considered the issue of fees, it was mainly to express dissatisfaction with the proposal that local planning authorities should be required to perform administrative tasks in connection with an application to be determined by the Planning Inspectorate without receiving a proportion of the fee. The Government considers that the administrative tasks demanded of local planning authorities in relation to section 62A applications (eg adding details to the local planning register) are not burdensome and do not warrant sharing of the fee. Additionally the Government considers any such administrative burden that does arise from this measure should be seen as part of the disincentive to performing poorly. It therefore intends to proceed with the proposal.

8.2 The consultation also sought views on the proposed scope of the planning guarantee, and on the proposal for a fee refund to underpin it. The majority responding (67% of which were local authorities) disagreed with this proposal, the argument most commonly made was that the fee is intended to meet the costs of processing and negotiating an application, not to guarantee a decision within 26 weeks. However the Government believes that by paying a fee, applicants are entitled to a certain level of service. The application fee would be refunded only where an application has taken twice as long (or more) than the statutory period allows; and would not apply where the applicant and authority have agreed that more time is genuinely needed to determine the application. It therefore intends to proceed with this proposal, but with this safeguard in place.

8.3 As part of the 2011 Growth Review,[2] the Government undertook to review how change of use is handled in the planning system. A general call for evidence through the publication of an Issues Paper was made in July 2011.[3] The Government then published '*New opportunities for sustainable development and growth through the reuse of existing buildings'* for consultation on 3 July.[4] There were over 900 responses to the consultation.

8.4 There was a general acknowledgement that some relaxations were needed to help kick-start the economy. 72% of respondents agreed that limits and thresholds should be put in place to ensure inappropriate development did not take place.

8.5 Views on the prior approval process were sought as part of this consultation. Although overall the prior approval process was considered to be burdensome, over 50% of respondents supported introducing prior approvals for change of use. This was in order that local authorities could consider the impact of the new use, including impacts from traffic, flooding and noise.

8.6 The proposals to abolish conservation area consent were first consulted on in 2007 in the White Paper, *Heritage Protection for the 21st Century*. The consultation response was generally favourable resulting in the inclusion of the proposals in a draft Heritage

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1 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/14961/Planning_performance_and_the_planning_guarantee_-_Consultation.pdf.

2 http://cdn.hm-treasury.gov.uk/2011budget_growth.pdf

3 https://www.gov.uk/government/publications/change-of-land-use-in-the-planning-system-issues-paper

4 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8351/2171937.pdf

Protection Bill in 2008 (which did not proceed due to lack of parliamentary time). The proposals then emerged as a recommendation from the Penfold Review of non-planning consents in 2010.

9. Guidance

The Department intends to issue further advice to accompany the changes as part of its wider review of planning practice guidance (this will replace Circular 04/2008 - Planning-related fees).

10. Impact

With the exception of the planning guarantee and the two minor technical amendments to the 2012 Regulations, these regulations bring into effect provisions in the Growth and Infrastructure Act 2013 and in the Enterprise and Regulatory Reform Act 2013; both were subject to full Impact Assessments published on http://www.legislation.gov.uk/. An Impact Assessment addressing the provisions in Regulation 5 has been published alongside these Regulations and is also available on http://www.legislation.gov.uk/.

11. Regulating small business

11.1 Whilst the proposals affect small businesses the impact does not fall more heavily on small businesses than on other applicants for planning consent, nor is it anticipated that the impact will have a significant effect on the costs for business.

11.2 The proposals are out of scope of the moratorium on regulations for micro business and start ups.

12. Monitoring and review

The Department will review the implementation of the Regulations through monitoring national statistical data in order to understand the sum effect of these changes.

13. Contact

Alan Cornock at the Department for Communities and Local Government, tel 0303 444 1646 or email: alan.cornock@communities.gsi.gov.uk can answer any queries regarding the instrument.