EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (DETERMINATION OF APPEAL PROCEDURE) (PRESCRIBED PERIOD) (ENGLAND) REGULATIONS 2009

2009 No. 454

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.

2. Purpose of the instrument

2.1 The Regulations prescribe the period of time within which the Secretary of State must exercise the power under section 319A of the Town and Country Planning Act 1990 ("the 1990 Act") to determine the procedure by which particular proceedings are to be considered.

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

3.1 None

4. Legislative Context

4.1 Section 196 of the Planning Act 2008 inserts new provision into the 1990 Act, the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Planning (Hazardous Substances) Act 1990 (collectively referred to in this memorandum as "the Planning Acts". While the 1990 Act sets out the basic regime for town and country planning and development control in England and Wales, the Planning (Listed Buildings and Conservation Areas) Act provides a self contained code for the protection of architectural heritage and the Planning (Hazardous Substances) Act provides a system for controlling hazardous substances. The new provisions inserted by section 196 give the Secretary of State the power to determine the procedure by which certain proceedings are to be considered. The proceedings which may be covered by the new power include, applications under each of the three Acts which are called in to be determined by the Secretary of State rather than the local planning authority, appeals against the decision of a local planning authority and appeals against enforcement notices issued by the local planning authority.

4.2 Section 196 has been commenced in relation to appeals under section 78 of the 1990 Act, against a decision of a local planning authority in England, and to appeals under section 174 of that Act, against an enforcement notice issued by a local planning authority in England by The Planning Act 2008 (Commencement No. 1 and Savings) Order 2009 (SI 2009/400 (C.22))

4.3 The new power is subject to a requirement that the Secretary of State makes a determination before the end of the prescribed period. These Regulations prescribe that period as 7 working days from receipt of a valid appeal.

4.4 In relation to an appeal under section 78 of the 1990 Act receipt of a valid appeal means receipt by the Secretary of State of the completed form and documents mentioned in article 23(1) of the Town and Country Planning (General Development Procedure) Order 1995 (SI 1995/419). In relation to an appeal under section 174 of the 1990 Act, the receipt of a valid appeal means receipt by the Secretary of State of a notice of appeal under section 174(3) together with the statement of appeal submitted in accordance with regulation 6 of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (SI 2002/2682).

5. Territorial Extent and Application

5.1 This instrument applies to England only.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 At present there are 3 methods by which appeals and called in applications under the Planning Acts can be determined, at a local inquiry, at a hearing and on the basis of written representations. The current system allows the principal parties (being the appellant/applicant and the local planning authority) the opportunity to appear before and be heard by an appointed person, which means that the principal parties can insist upon an oral hearing even for the simplest of cases. The Government believes that this right to appear results in some cases being dealt with by disproportionately complex, time consuming and costly appeal methods.

7.2 Therefore, Parliament has brought forward legislation in the Planning Act 2008. Section 196 and Schedule 10 to that Act, provides the Secretary of State with the power to determine the method by which appeals and called in cases will be dealt with and remove the right to appear before and be heard by a person appointed by the Secretary of State. The new power and amendments will be commenced insofar as they relate to appeals under sections 78 (planning appeals) and 174 (enforcement appeals) of the 1990 Act, from 6th April 2009.

7.3 During debate of these amendments in Parliament, concerns were expressed that parties should have an opportunity to put forward their views as to the most appropriate method for determining the appeal. In order to address these concerns, appellants will be asked to state their preferred method, on the appeal form. When local planning authorities have received notice that an appeal has been made from the appellant they will also be able to contact the Secretary of State and express a view. Local planning authorities will also be formally asked to confirm their agreement to the procedure that has been chosen when they complete a questionnaire relating to the appeal after the start of the process.

7.4 The Secretary of State will determine the appropriate method in each case against Ministerially approved and published criteria, which are to be used to guide this decision.

7.5 The new power requires the Secretary of State to determine the procedural method within a prescribed period. The Regulations prescribe the period as 7 working days from receipt of a valid appeal. This period has been set at 7 days to allow the Secretary of State to consider the material that has been submitted. This time frame also gives a reasonable period of time within which the principal parties can inform the Secretary of State as to their preferred method. In the least complex appeals, the Secretary of State may be able to make such a determination within a shorter timeframe, but we consider that 7 working days allows time to consider fully more complex cases.

8. Consultation outcome

8.1 The proposal for the Secretary of State to determine the appeal method against Ministerially approved and published criteria was consulted upon in the consultation paper 'Improving the Appeal Process in the Planning System – Making it proportionate, customer focused, efficient and well resourced[1]'. In response to the proposal 67% of respondents viewed this proposal positively. There were many positive responses regarding the improved efficiency that this proposal could deliver, although there were also concerns that the overall quality of the appeals process should not to be compromised. Providing strict and transparent criteria that would reduce the burden of inquiries was seen as fundamental for the achievement of improving efficiency without impacting on the quality of the service. In relation to the criteria, which were also consulted upon, very few comments were made on the wording of the criteria themselves. In the light of consultation responses and further discussion with stakeholders some minor changes to the wording of the criteria have been made and the criteria will be published on the Planning Inspectorate's website.

8.2 Many Government respondents commented that an important consideration was that there were sometimes exceptional circumstances where the public interest was so acute that a public inquiry or hearing was necessary for third parties. Both Government and business respondents considered it important that principal parties had the opportunity to put forward a case for a particular appeal method to be followed. In addition, some respondents suggested that it would be important for the Planning Inspectorate to demonstrate that representations from the principal parties regarding their appeal method preferences had been taken into account.

8.3 Those that responded negatively to the proposal were concerned that parties would no longer be able to put their case orally and that the use of the written representations procedure could affect the quality of the decision making. Respondents also highlighted the importance of inquiries which allow for cross-examination in complex cases. There were also concerns raised about the perception that the Planning Inspectorate may develop a tendency to select written representation procedures because of the greater cost implications of inquiries and hearings.

[1] The consultation paper can be accessed via the following link: http://www.communities.gov.uk/archived/publications/planningandbuilding/improvingappealconsultation

8.4 The Government considered carefully the responses to the consultation but concluded that that the power would enable a proportionate approach to be applied across all appeal types, would be fair to all and make the most efficient use of resources. The Government acknowledged that this proposal meant that in some cases where there may have been an expectation of putting a case by oral representations, this will not now be possible. However, the Government believes that where used appropriately, the use of the written representations procedure will not detract from the quality of decision making. Legislation was therefore brought forward which is now contained in the Planning Act 2008 as described above. The criteria for determining the appeal method, have been approved by Ministers, and will be published and reviewed regularly (see paragraph 12.1), to ensure that the appropriate appeal method is selected. Where the complexity of a case or exceptional circumstances demanded it, a hearing or inquiry would still be held.

8.5 The length of the prescribed period that is being set by these regulations was not consulted upon. However, in consultation with the Planning Inspectorate we consider that 7 days is a reasonable timeframe to allow the Secretary of State to make a decision on the most appropriate appeal method in the light of published criteria and taking into account all of the available evidence. This timeframe also allows the Planning Inspectorate to seek further information from the parties, where necessary, to inform their decision.

9. Guidance

9.1 The Planning Inspectorate will publish guidance on a range of appeal measures, including how the power to determine the appeal method will be exercised and the criteria against which evidence will be assessed.

10. Impact

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

10.2 There is no impact on the public sector.

10.3 An Impact Assessment for section 196 of the Planning Act 2008 is available at www.communities.gov.uk/documents/planningandbuilding/pdf/561912.pdf.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Advisory Panel on Standards for the Planning Inspectorate has been asked to monitor the new process for determining the appeal method and report to Ministers on its effectiveness. In addition, the Planning Inspectorate proposes to review the criteria against which determinations will be made as part of the annual business review process.

13. Contact

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