EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE AND SECTION 62A APPLICATIONS) (ENGLAND) (AMENDMENT NO. 2) ORDER 2013

2013 No. 3194

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 This Order amends the Town and Country Planning (Development Management Procedure) (England) Order 2010 (S.I. 2010/2184) ("the 2010 Order") and the Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) Order 2013 (S.I. 2013/2140) ("the Section 62A Order").

2.2 The Order amends the requirements for applicants in relation to the notification of owners etc of land for applications for development consisting of the winning and working of oil or natural gas in relation to land to be used solely for underground operations.

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

3.1 None

4. Legislative Context

4.1 Part 2 of the 2010 Order and Part 2 of the Section 62A Order set out the procedures connected with making planning applications in England (the Section 62A Order applies in relation to planning applications made to the Secretary of State pursuant to section 62A of the Town and Country Planning Act 1990). The amendments in article 2 of the Order amend Part 2 of the 2010 Order. The amendments in article 3 of the Order amend Part 2 of the Section 62A Order.

4.2 Article 2 amends article 6 of the 2010 Order to provide that planning applications in relation to certain types of winning and working of minerals (but not an application under section 73 or 73A(2)(c) of the Town and Country Planning Act 1990 or an application mentioned in article 18(1)(b) or (c) of the 2010 Order) are to be made on a form published by the Secretary of State (this is the same approach as is taken for standard planning applications).

4.3 Article 2 also amends article 11 of the 2010 Order, the amendment changes the form of notification of owners which is to apply to planning

applications for development consisting of the winning and working of oil or natural gas (including exploratory drilling). Article 3 amends article 9 of the Section 62A Order to achieve the same effect.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

7.1 The Government is committed to an effective and efficient planning system. Over the last twelve months it has taken forward a series of measures to simplify and streamline the arrangements for making and determining planning applications in England. At the same time, the Government is committed to a diverse, efficient and low-carbon energy supply, but recognises that gas, alongside low-carbon technologies, will continue to play an important role in our energy mix in the coming decades as the country moves to a low-carbon economy. Within that context, the Government is keen to maximise indigenous production where it can, whilst ensuring that there remains a robust, comprehensive and safe regulatory regime in place.

7.2 The Government considers that the underground operations for the winning and working of oil or natural gas are different in character to other forms of onshore development, including other forms of underground development because in relation to this form of development:

- the development on the surface is limited and takes place on a relatively small surface area;
- extraction takes place at a significant depth below the earth's surface, and at such depths the boreholes are between only 6-12 inches in diameter;
- extraction takes place over a significant underground area, involving multiple landowners and/or agricultural tenancies; and
- at such depths it is often not possible to identify the exact route of any lateral drilling, so the area of development on a planning application necessarily has to be drawn widely to ensure it is broad enough to cover any potential route of lateral drilling. A widely drawn area would necessarily require the notification of significant numbers of owners.

It, therefore, wants to ensure that application requirements for onshore oil or natural gas development are fit for purpose and appropriate.

7.3 Section 65 of the Town and Country Planning Act 1990 and article 11 of the 2010 Order (and article 9 of the Section 62A Applications Order) set out the manner in which applicants are to give notice of their planning applications to owners or tenants of any land to which the application relates.

Currently for development involving the winning and working of minerals by underground workings an applicant must notify the owners and the tenants of the land to which the application relates by: (1) serving each owner and tenant; (2) publishing a notice in a local newspaper and (3) putting up a local site notice in each parish in which the land is situated. The Government considers that due to the different character of the underground workings it is not reasonable and is not practicable to require applicants for planning permission for underground oil or natural development to serve individual owners or tenants of land across a such widely drawn area.

7.4 The amendments to article 11 (and article 9) therefore amend the manner in which notification is given to owners and tenants for this type of development so that in relation to development of land which is underground only the applicant must notify the owner and tenants by: (1) publishing a notice in a local newspaper and (2) putting up a local site notice in each parish or ward (where the land is unparished) in which the land is situated.

7.5 Currently, all planning applications, except those concerned with mining operations or the winning and working of mineral-deposits, must be submitted on a form published by the Secretary of State (or one substantially like it) – the forms are published online on the Planning Portal. The Government considers that there are significant advantages to providing a single application form, including improving the consistency of applications and preventing the need for applicants to familiarise themselves with different forms. Article 2 amends the 2010 Order to provide for the Secretary of State, not the local planning authority, to publish the form of planning applications for oil or natural gas by underground operations (no such amendment is needed to the Section 62A Order as all section 62A planning applications must be made on forms published by the Secretary of State (of forms to like effect)).

8. Consultation outcome

8.1 The Government published a paper setting out its proposals for revised requirements relating to planning applications for onshore oil or natural gas in September 2013. The paper, amongst other things, invited comments on the following issues:

a) its proposed approach to notice requirements for planning applications for underground operations for onshore oil and gas extraction; and

b) the proposed, questions and structure of the standard application form

8.2 Overall, 285 responses were received to the proposals from a range of bodies including 9 from local authorities and public agencies; 10 from Non Government Organisations; 13 from business, developers and private sector organisations; and the remainder being representations from individuals. Of this total, over 40% only provided general comments about shale gas.

8.3. There were 162 respondents to the question of notification arrangements. Those in favour of the changes were largely from industry and other private sector organisations. They considered that the proposals were logical and that it would be impractical to serve notice individually on all owners given the scale of subsequent underground workings. In contrast those against the changes were from Non Government Organisations, local authorities and individuals who felt that the proposal would risk landowners being left unaware of any subsurface activity on land which they owned, and the consequences of that. They also considered that the proposal could hasten or abet trespassings.

8.4 The Government is clear that it is not seeking to remove the requirement to notify landowners of applications for development which relates to their land even when the development is far beneath the surface, but we consider the form of notification for deep underground development does not need to be given by individual notices to each landowner. Furthermore, the Government recognises that the requirement to notify is distinct from the right of an applicant to simply enter onto land without permission. Nor will these measures affect or alter any discretionary pre-application consultation between the applicant and local communities (including landowners), or any other publicity or consultation requirements that planning applications must go through.

8.5 Taking all considerations into account, the Government will proceed with its proposed changes to the form of notification for oil and gas proposals.

8.6 The overwhelming majority of the respondents agreed with the principle of introducing a standard application form for oil and gas, and the Government plans to proceed with this approach. There will be some detailed changes to some of the questions and guidance accompanying the form in the light of the responses received.

8.7 A detailed analysis of the consultation responses will be published on the GOV.UK website at www. https://www.gov.uk/government/publications shortly.

9. Guidance

9.1 The Government intends to amend the existing planning practice guidance in early 2014 to reflect the changes made by the Order.

10. Impact

10.1 The amendments in the Order will have a small positive impact for businesses. There is no envisaged impact on the public sector caused by these proposals.

10.2 This measure was confirmed as deregulatory by the Regulatory Policy Committee on 21 August 2013. We will publish the Impact Assessment once it has been validated.

11. Regulating small business

11.1 The amendments in the Order are deregulatory in effect and will impact small businesses positively.

12. Monitoring & review

12.1 The Department for Communities and Local Government receives regular feedback from local authorities, practitioners, professional bodies, industry and the general public on all aspects of planning. We intend to monitor and evaluate the success of the amendments in the Order.

13. Contact

Mark Plummer at the Department for Communities and Local Government, tel 0303 444 1708 or email: mark.plummer@communities.gsi.gov.uk can answer any queries regarding the instrument.