EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE AND SECTION 62A APPLICATIONS) (ENGLAND) (AMENDMENT) ORDER 2014

2012 No. 1532

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 instruments

2.1 This Order amends the Town and Country Planning (Development Management Procedure) (England) Order 2010 and the Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) Order 2013 ("the Section 62A Order") in order to set out the procedure to be followed when making a connected listed building application under section 62A of the Town and Country Planning Act 1990 ("the 1990 Act").

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

3.1 None.

4. Legislative Context

4.1 This Order is part of the implementation of section 1 of, and Schedule 1 to, the Growth and Infrastructure Act 2013 ("the 2013 Act"). Section 62A of the 1990 Act (which is inserted into the 1990 Act by section 1 of the 2013 Act) gives the Secretary of State the power to designate local planning authorities. Where a local planning authority is designated, a person wishing to obtain planning permission for major development has a choice: they can submit their planning application to the local planning authority in the normal way, or they can submit it to the Secretary of State. Under section 62A(3) of the 1990 Act the person may also submit a connected application. This Order explains the procedure to be followed where a person submits such an application to the Secretary of State. The Order also makes a consequential amendment in relation to section 62A applications to the Planning (Listed Buildings and Conservation Areas) Regulations 1990.

4.2 This Order also amends the Town and Country Planning (Development Management Procedure) (England) Order 2010 ("the 2010 Order") to insert new text into the notice sent to applicants who have been refused planning permission or who have been granted permission subject to conditions. The new text is only relevant where the application is for minor commercial development.

4.3 The Order is made under sections 59, 61(1), 74(1) and 76C of the 1990 Act and section 33 of the Growth and Infrastructure Act 2013.

4.4 In addition to the Order, there will also be a final commencement order for the 2013 Act. The commencement order will bring section 1 of, and Schedule 1 to, the 2013 Act into force on 1st October 2014 for all remaining purposes.

5. Territorial Extent and Application

5.1 The Order, the Rules and the Regulations apply to England only.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

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

7.2 The Government is committed to ensuring that planning applications and related consents are processed promptly and effectively. Section 1 of the Growth and Infrastructure Act amends the Town and Country Planning Act 1990 ("the 1990 Act") by inserting new sections 62A to 62C. Section 62A 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, provided the planning application is for (or the application for reserved matters consent relates to) major development. This Order deals with connected applications for listed buildings consent; there are currently no proposals to provide for any other type of connected applications.

7.3 The conditions which must be satisfied before a planning authority may be designated for this purpose are set out in section 62B. This section also references criteria to be published by the Secretary of State that will set out the measures by which a local planning authority will be considered to be not adequately performing their function of determining applications under Part 3 of the 1990 Act. Section 62B also provides that the criteria must be contained in a document which is laid before both Houses of Parliament. The criteria are to be found in *Improving planning performance - Criteria for designation* which was laid before Parliament on 3rd June 2013.

7.4 Where a planning authority has been designated, planning applicants will have the option of submitting applications for major development directly to the Planning Inspectorate (on behalf of the Secretary of State). This does not

remove powers from under-performing authorities; it only gives applicants the choice of applying to the Inspectorate where they wish to. Once section 62A(3) of the 1990 Act is brought into force applicants will also be able to submit connected applications to the Secretary of State (the Inspectorate).

7.5 The Order sets out the procedures for applying to the Secretary of State in relation to connected applications for listed building consent. As far as possible, the provisions made in the Order are the same as equivalent provisions for planning applications in the Section 62A Order.

7.6 Where connected applications are submitted to the Secretary of State for determination they will be subject to local public consultation in order to provide the opportunity for local people to make their views known. The connected application will be considered alongside the planning application to which it relates – if there is a local hearing the Inspector conducting the hearing will consider both the planning application and the connected application. A connected application cannot be considered by the Secretary of State unless it accompanies a planning application made under Section 62A.

7.7 In relation to the amendment to the 2010 Order, in October 2013 the Town and Country Planning (Appeals) (Written Representations Procedure) (England) (Amendment) Regulations 2013 provided an expedited appeals procedure for certain minor commercial appeals, primarily related to advertisement consent and shop fronts. The amendment to the 2010 Order is a consequential change to the appeal notice set out in the 2010 Order to refer to this new process.

Consolidation

7.8 There is no plan to consolidate the Section 62A Order at the present time.

8. Consultation outcome

8.1 In November 2012 the Government published a consultation on "Planning performance and the planning guarantee". https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/14961/Planning_performance_and_the_planning_guarantee_-_Consultation.pdf

8.2 The consultation sought views on the proposed criteria for assessing local planning authority performance, what thresholds might be used for any designations, how designations would be made, and the consequences of such a designation (including the procedures that would apply where an application is submitted to the Secretary of State, and the basis on which a designation would be lifted).

8.3 The consultation closed on 17 January 2013. In total 227 replies were received. Two thirds (67%) of responses were from local planning authorities; a further 12% were from local government, professional or environmental organisations; and around 12% were from development interests or business groups. The remaining 9% were from individuals.

8.4 Many responses commented on how the proposals relate to local decision-making. In particular the steps which the Government has taken to give councils and communities more control over the way that development takes place in their area and the importance of ensuring effective community engagement in planning decisions that may not in future be made by the local planning authority. No specific comments were made in relation to connected applications being made to the Secretary of State.

8.5 The Government's response to the consultation can be found at https://www.gov.uk/government/consultations/planning-performance-and-the-planning-guarantee.

8.6 In relation to the amendment to the 2010 Order, a consultation document ("Technical review of planning appeal procedures") was published on 1 November 2012 which set out proposals for an expedited procedure for certain minor commercial appeals. Of the 127 responses to the proposal for a minor commercial appeals process, 87% were supportive. 112 commented on the types of appeal which could be included in the minor commercial appeals process, with 84% supporting inclusion of shop front appeals and 85% advertisement consent appeals.

8.7 A full summary of the responses to the appeals consultation and the Government response can be found at the following link. https://www.gov.uk/government/consultations/technical-review-of-planningappeal-procedures

9. Guidance

9.1 There are no plans to issue specific new guidance for this Order. New planning practice guidance has been issued recently in the launch of the new on-line tool at http://planningguidance.planningportal.gov.uk/ that includes explanation of the designation process relating to planning applications. However, the Planning Inspectorate will provide advice on the following website on how to make connected applications to the Secretary of State. http://www.planningportal.gov.uk/planning/planninginspectorate/majorapplications

10. Impact

10.1 The instrument bring into effect provisions in the Growth and Infrastructure Act 2013. A full Impact Assessment was published in relation to the impacts on the business and the public sectors of the proposals contained in section 1 of the 2013 Act and can be found at http://www.legislation.gov.uk/.

11. Regulating small business

11.1 These changes have no impact on small businesses. The burden on business will remain the same whether they apply for listed buildings consent to a local planning authority or, where they so choose, to the Secretary of State.

12. Monitoring & review

12.1 The Department for Communities and Local Government will review and evaluate the success of these procedures.

13. Contacts

13.1 Luke Taylor at the Department for Communities and Local Government (Tel: 0303 4442482 or e-mail: luke.taylor@communities.gsi.gov.uk) can answer any queries regarding the instruments.