EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) (AMENDMENT AND TRANSITIONAL PROVISION) ORDER 2026

2026 No. 215

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Matthew Pennycook, Minister of State for Housing and Planning at the Ministry of Housing, Communities and Local Government, confirms that this Explanatory Memorandum meets the required standard.

2.2 Lucy Hargreaves, Deputy Director for Planning – Development Management, at the Ministry of Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Stephen Borrows at the Ministry of Housing, Communities and Local Government can be contacted by email at the following address with any queries regarding the instrument: stephen.borrows@communities.gov.uk. Alternatively, the department can be contacted by telephone: 0303 444 0000.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This Order amends article 18(5) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 ('the 2015 Order'). Article 18(5) currently provides that where a local planning authority is required by or under article 18 (including by directions under article 18(4)) or 20 to consult a person or body ('consultee') before granting planning permission, the local planning authority must give notice of the application to the consultee and must not determine the application until 21 days (unless the development is public service infrastructure development, in which case 18 days) has elapsed or all consultees have responded (or given notice that they do not intend to respond).

4.2 This Order amends article 18(5) of the 2015 Order so that the above requirements apply when a local planning authority is so required to consult before determining (either to grant or refuse) an application for planning permission.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. Policy Context

What is being done and why?

5.1 Consultation directions by the Secretary of State under article 18(4) of the 2015 Order are a well-established part of the planning system. For example, the Town and Country Planning (Consultation) (England) Direction 2024 ('the Consultation Direction') requires local planning authorities to notify the Secretary of State before granting planning permission following a planning application of types prescribed in the Consultation Direction, for potential 'call in'. Any decision to 'call-in' an application is made in line with the government's policy[1]. Article 18(4) directions are also used as 'safeguarding' directions for major infrastructure projects[2].

5.2 In a Written Ministerial Statement 'Next phase of planning reform'[3] on 18 November 2025 the Secretary of State made a commitment to Parliament to take a more active role in the planning process. The Government announced its intention to extend the current Consultation Direction and require local planning authorities to notify the Secretary of State where they intend to refuse an application for 150 homes or more.

5.3 The Ministry has identified that the amendments to the 2015 Order made by this Order are necessary to ensure that the requirement to consult the Secretary of State in those cases is given proper effect. It is also current practice that when local planning authorities carry out consultation under Articles 18 or 20 they do not determine applications for planning permission until at least 21 days (18 in the case of public service infrastructure development) have elapsed (or all consultees have responded or given notice that they do not intend to respond) however, this is not currently reflected in the drafting of Article 18(5) which applies only to the requirements to consult before granting of permission.

6. Legislative and Legal Context

How has the law changed?

6.1 Article 18(4) of the 2015 Order enables the Secretary of State to give directions to local planning authorities requiring them to consult any person or body named in the directions, in any case or class of case specified in the directions before granting planning permission. This has been used in the Consultation Direction which specifies type of applications in respect of which local planning authorities must consult the Secretary of State.

6.2 Article 18(5) of the 2015 Order provides that, where a local planning authority is required to consult by or under article 18 (including by a direction under article 18(4)) or article 20 before granting planning permission, they (a) must give notice of the application to the consultee and (b) must not determine the application until at least 21

[1] House of Commons Hansard Ministerial Statements for 26 Oct 2012 (pt 0001) https://publications.parliament.uk/pa/cm201213/cmhansrd/cm121026/wmstext/121026m0001.htm#12102628000003

[2] See for example Safeguarding Directions for development affecting the route and associated works for the East West Railway Project (November 2025) https://ewr-production-files.s3.eu-west-2.amazonaws.com/public/ListsBlockMedia/ae499fd4e8/Updated-Safeguarding-Directions-November-2025-1.pdf

[3] https://questions-statements.parliament.uk/written-statements/detail/2025-11-18/hcws1062

days (18 in the case of public service infrastructure development) have elapsed, (or all consultees have responded or given notice that they do not intend to respond).

6.3 The Ministry has identified that article 18(5) of the 2015 Order would not apply in a case where an article 18(4) direction only requires consultation before refusal of planning permission. Article 2 of this Order therefore amends article 18(5) so that it applies to any requirement to consult before determining a planning application (whether by way of grant or refusal).

6.4 Article 3 makes transitional provision. The amended provision does not apply to applications for planning permission which have been submitted to a local planning authority, but not determined, before the commencement of this Order if the relevant article 18(4) direction was in force before the commencement of this Order. This ensures that existing applications subject to existing consultation and safeguarding directions made under article 18(4) are not affected by the change.

Why was this approach taken to change the law?

6.5 This is the only possible approach to make the necessary change.

7. Consultation

Summary of consultation outcome and methodology

7.1 There has been no public consultation on the change being introduced through this statutory instrument because it is a minor, technical change to article 18(5) of the 2015 Order necessary to facilitate the government's intended policy change to extend the current Consultation Direction set out in paragraph 5.2 above.

8. Applicable Guidance

8.1 General guidance on the planning application process, including consultations and when Secretary of State must be consulted, is set out in existing Planning Practice Guidance[4].

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument as no impact, or no significant impact, on the private, voluntary or public sector is foreseen. The changes brought forward in this order are enabling powers only.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The instrument does not include a statutory review clause. The Ministry of Housing, Communities and Local Government will continue to monitor the use of Article 18 of the 2015 Order.

[4] www.gov.uk/guidance/determining-a-planning-application and www.gov.uk/guidance/consultation-and-pre-decision-matters

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").