EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) (AMENDMENT) ORDER 2012

2012 No. 636

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

This Order amends the Town and Country Planning (Development Management Procedure) (England) Order 2010 ("DMPO") in relation to statutory consultees and to the keeping of registers by local planning authorities, in England.

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

None.

4. Legislative Context

4.1 Section 59 of the Town and Country Planning Act 1990 (c. 8) ("the 1990 Act") provides that the Secretary of State must by order provide for the granting of planning permission. Such an order is referred to as a "development order".

4.2 The DMPO is a general development order which makes provision about planning applications and related matters, including provision as to information to be kept by local planning authorities on their planning registers (articles 36, 37 and 38); as to who must be consulted on particular planning applications (article 16 and Schedule 5); and as to the procedure for making local development orders (article 34).

4.3 Section 69 of the 1990 Act requires local planning authorities to keep a publicly accessible planning register of such information as is prescribed in a development order. Section 188 makes similar provision as to the keeping of an enforcement register.

Legislative background to neighbourhood planning matters

4.4 Chapter 3 of Part 6 of the Localism Act 2011 (c. 20) ("the 2011 Act") creates a new neighbourhood planning regime in England mainly by inserting new provisions into the 1990 Act and the Planning and Compulsory Purchase Act 2004 (c. 5) ("the 2004 Act"): *see* Part 1 of Schedule 9, and Schedules 10 and 11, for the provisions inserted into the 1990 Act, and Part 2 of Schedule 9 for the provisions inserted into the 2004 Act. The 1990 Act provides that within a designated neighbourhood area a parish council or a designated neighbourhood forum may propose a neighbourhood development order (*see* Schedule 4C for community right to build orders). Schedule 12 to the 2011 Act makes consequential amendments, including to section 69 of the 1990 Act in respect of neighbourhood planning matters.

Legislative background to planning enforcement orders

4.5 The 2011 Act enables a local planning authority to apply to a magistrates' court for a planning enforcement order in cases involving the deliberate concealment of an apparent breach of planning control: *see* section 124. If the court decides to make the order, the authority may take enforcement action in respect of the apparent breach or any of the matters constituting the apparent breach at any time in the enforcement year: *see* section 171BA of the 1990 Act which has been inserted by section 124 of the 2011 Act. In parallel with this change, the 2011 Act also extends the categories of information to be contained in the register that a district planning authority or council for a metropolitan district or London borough is required to maintain by section 188 of the 1990 Act. In addition to information about enforcement notices, stop notices and breach of condition notices, the register must contain information relating to planning enforcement orders.

5. Territorial Extent and Application

This instrument applies to England.

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 The 2011 Act introduced a new system of neighbourhood planning, which enables specified groups representing local communities to prepare neighbourhood development plans and neighbourhood development orders. Neighbourhood development orders that have been made by a local planning authority following a local referendum have the same effect as a grant of planning permission: the development to which they relate can be implemented without the need for a further planning application. Local planning authorities are already required to keep a planning register setting out certain information about the planning applications which have been submitted to them for determination, and on the decisions they have made on those applications. To ensure an equal level of transparency in relation to neighbourhood development orders, local planning authorities will additionally be required to add information on each neighbourhood development order proposal which is submitted to them, and on what subsequently happens to that proposal (i.e. if it is withdrawn or refused or if, following a referendum, it is supported and so made – or not supported and so not made).

7.2 Local planning authorities are required to keep a register of enforcement notices and of other enforcement action, so that the public, including potential purchasers of land are aware of any disabilities applying to that land. The 2011 Act introduced a new type of enforcement action to deal with cases where unauthorised development has been deliberately concealed from the local planning authority, usually with a view to obtaining immunity from enforcement action when the time limits for taking such action expire.

7.3 Where such concealment has occurred, it is open to the local planning authority to apply to the magistrates' court for a "planning enforcement order" which enables them to take enforcement action, within an "enforcement year" even if the normal time limits have expired. This instrument provides for planning enforcement orders to be recorded in the authority's enforcement register.

7.4 Before granting planning permission, a local planning authority may have to consult one or more authorities or persons. This Order makes two minor changes in respect of these statutory consultation arrangements. Firstly, it removes the need for any consultation with Regional Development Agencies ("RDAs"). This change is consequential on the abolition of the RDAs under section 30 of the Public Bodies Act 2011 (c. 24). Secondly, it provides that consultation responses for development which would involve the loss of agricultural land should be sent directly to Natural England (an agency of Defra) who now administers the responses in practice, rather than to the Secretary of State for the Environment, Food and Rural Affairs.

Consolidation

7.5 These are the first amendments to be made to the DMPO since its consolidation in October 2010.

8. Consultation outcome

No consultation was carried out. The amendments relating to registers are consequential on provisions in the 2011 Act. The removal of references to the RDAs is consequential on provisions in the Public Bodies Act 2011. The change in consultation arrangements for applications for development involving the loss of agricultural land is administrative and formalises existing arrangements for dealing with these consultations.

9. Guidance

No guidance is considered to be required on this Order specifically, but the Department will be publishing guidance on neighbourhood planning and the enforcement provisions of the 2011 Act in due course. Local planning authorities will be informed of the changes made by this Order.

10. Impact

This Order is mainly about the information that must be placed on registers by the local planning authority. There is no impact on business or the third sector.

11. Regulating small business

There is no effect on small business.

12. Monitoring & review

This will be undertaken as part of routine consideration of the effectiveness of the planning system as a whole.

13. Contact

Tammy Adams at the Department for Communities and Local Government, Tel: 030344 41710 or email: tammy.adams@communities.gsi.gov.uk can answer any queries regarding articles 3 and 4 of the instrument.

Robert Segall at the Department for Communities and Local Government, Tel: 030344 41717 or email: robert.segall@communities.gsi.gov.uk can answer any queries regarding article 5 of the instrument.