EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (MODIFICATION AND DISCHARGE OF PLANNING OBLIGATIONS) (AMENDMENT) (ENGLAND) REGULATIONS 2013

2013 No. 147

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.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

These Regulations amend the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992 ("the 1992 Regulations"). They amend the "relevant period" after which applications to vary certain agreements made under section 106 of the Town and Country Planning Act 1990 ("the TCPA") can be made. They make provision so that this cannot act to delay an application that could otherwise be made under the existing legislation.

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

3.1 The change to the relevant period in section 106A(3) of the TCPA will apply to agreements made under section 106 of the TCPA ("section 106 agreements") entered into before these Regulations come into force. To that extent, they will have some retroactive effect.

3.2 The policy intention is to target those developments where agreements were reached in a different economic context. If the measure did not apply to existing agreements its purpose would be frustrated, and its impact would be negligible. At the point the legislation came into force it would not apply to any section 106 agreements, so would not be able to encourage development when it is needed the most. The Department considers that the overriding public interest in economic recovery justifies any retroactive impact.

4. Legislative Context

4.1 Under section 106 of the TCPA, developers can enter into a binding agreement in relation to land that they have an interest in. These are known as "section 106 agreements" or "planning obligations". The purpose of section 106 agreements is to make development acceptable in planning terms.

4.2 Section 106A of the TCPA provides for a formal application to the local planning authority to amend a planning obligation. Under section 106A(3), such an application can only be made after the expiry of a prescribed period. There is currently no period prescribed under section 106A(4)(a), so the default period of 5 years from when the obligation was entered into in section 106A(4)(b) applies.

4.3 Section 333(2A) of the TCPA allows regulations to make different provision for different purposes.

4.4 The 1992 Regulations set out various matters relating to applications made under section 106A of the TCPA.

4.5 This instrument inserts a new regulation 2A into the 1992 Regulations. Regulation 2A will prescribe a period under section 106A(4) in relation to planning obligations entered into on or before 6th April 2010. The period will be one month from the date these Regulations come into force. Regulation 2A(3) ensures that this will not apply where the default period would expire in that time, so that these Regulations do not act to delay any applications.

5. Territorial Extent and Application

This instrument extends to England and Wales, and applies only to England. Regulation 2A(2) restricts the application of the instrument 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

The Government is concerned at the high levels of stalled development and the lost economic growth this represents. To address stalled development it is encouraging renegotiation of section 106 agreements where they are impacting on viability. To support this, Government is allowing and encouraging earlier reconsideration and, if necessary, appeal of full section 106 agreements entered into prior to April 2010. The intention is to allow stalled development to become viable through facilitating renegotiation of section 106 agreements. This measure is complemented by Government supported mediation of section 106 agreements and by measures in the Growth and Infrastructure Bill to allow an appeal against the affordable housing elements of planning obligations.

8. Consultation outcome

8.1 The department received 205 consultation responses. A significant majority of respondents thought that the proposal would support the renegotiation of stalled sites (74% of those who answered the question) and that the cut-off date for renegotiations of 6th April was reasonable (66%).

Overall, 51% were in support of the general proposal for formal renegotiations. Groups significantly in favour were Private Developers and Professional Trade Associations (95%). Local authorities were generally split, of the 91 who responded 45% were in favour and 51% against.

8.2 There were a number of recurrent themes in the consultation responses. For those in favour of the proposal affordable housing requirements were overly onerous, local authorities were described as reluctant or unable to negotiate, and section 106 demands were increasing. For those against there were concerns that there are other reasons for stalled developments.

9. Guidance

The policy intent of this SI was set out in the Housing Strategy (November 2011). The Department will continue to liaise with the Law Society and professional planning bodies to explain the purpose and function of these changes.

10. Impact

10.1 The impact on business will be limited to those businesses involved in development. Businesses will be able to require the local authority to reconsider section 106 agreements and, if necessary, appeal against refusal to modify them. Some businesses may benefit by securing less onerous planning obligations.

10.2 The impact on the public sector is that stalled development could be unlocked, delivering local economic benefit. Local Authorities will potentially incur costs of renegotiating agreements and may see some anticipated, but not delivered, obligations reduced. Any additional costs would be temporary as this provision only applies to section 106 agreements from April 2010 or earlier.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on the OPSI website.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The legislation provides a benefit to small businesses. It assists small developers by allowing earlier reconsideration of planning obligations they are subject to.

12. Monitoring & review

12.1 The changes set out in this instrument aim to assist in bringing forward stalled development. The level of stalled development will be monitored by the Department. In addition, the number of appeals received by the Planning

Inspectorate will be monitored. The outcome will be subject to internal review after 12 months.

13. Contact

Please email the Community Infrastructure Levy mailbox at CIL@communities.gsi.gov.uk