EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (SECTION 62A APPLICATIONS) (HEARINGS) (AMENDMENT) RULES 2016

2016 No. 955

1. Introduction

1.1 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 The Town and Country Planning (Section 62A Applications) (Hearings) (Amendment) Rules 2016 ("the 2016 Rules") amend the Town and Country Planning (Section 62A Applications) (Hearings) Rules 2013 ("the 2013 Rules"). The 2013 Rules (together with the Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) Order 2013 ("the 2013 Order") and the Town and Country Planning (Section 62A Applications) (Written Representations and Miscellaneous Provisions) Regulations 2013 ("the 2013 Regulations") provide for the procedure to be followed where a local planning authority has been "designated" by the Secretary of State under section 62A of the Town and Country Planning Act 1990. When a local planning authority has been designated under section 62A, certain types of planning and connected applications may be made directly to the Secretary of State instead of to the local planning authority itself.

2.2 Changes were made to the section 62A regime by the Housing and Planning Act 2016. Those changes extend the regime beyond local authority performance in determining applications for major development by permitting the Secretary of State, amongst other things, to prescribe those types of application which may be covered by a section 62A designation.

2.3 The 2013 Regulations are amended by the Town and Country Planning (Section 62A Applications) (Amendment) Regulations 2016 ("the 2016 Regulations") to prescribe and define applications for "non-major development" alongside applications for "major development" as categories of application for which a local planning authority may be designated.

2.4 The 2016 Rules make amendments to the 2013 Rules which are consequential to the changes made by the 2016 Regulations (the 2013 Rules govern hearings for applications made to the Secretary of State under section 62A). The amendments introduce a notice period of 5 working days for applications for non-major development. The notice period of 10 working days for major development remains unchanged.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The 2016 Rules are made under section 9 of the Tribunals and Inquiries Act 1992. (Although the Rules are made by the Lord Chancellor under section 9 of the Tribunals and Inquiries Act 1992, the Department for Communities and Local Government has policy responsibility for Town and Country Planning). They amend the 2013 Rules. The amendments are consequential to the exercise of powers introduced by the Housing and Planning Act 2016, implemented by the 2016 Regulations, which extend those types of application to which a designation under section 62(1)(a) of the 1990 Act might apply.

5. Extent and Territorial Application

5.1 The Regulations apply to England only.

5.2 The territorial application of this instrument is England.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 Local Planning Authorities need to make their decisions on time and make sure that decisions are 'right first time' to give applicants the confidence to submit planning applications for development, businesses the confidence to invest and to provide greater certainty for communities.

7.2 The Growth and Infrastructure Act 2013 introduced the existing designation regime, which assesses local planning authority's performance on the speed and quality of their decisions on applications for major development. Where an authority is designated, planning applicants have the option of submitting applications for major development (and connected applications) directly to the Planning Inspectorate (who act on behalf of the Secretary of State). Performance data indicates that this regime has been effective in speeding up applications for major development[1].

7.3 The Government announced in the Productivity Plan (July 2015) the intention to extend the designation regime to include an assessment of local planning authorities' performance on determining applications for non-major development. To achieve this, section 153 of the Housing and Planning Act 2016 amends sections 62A and 62B of the Town and Country Planning Act 1990 to allow the Secretary of State to prescribe the descriptions of applications in respect of which an authority may be designated. The 2013 Regulations are amended to prescribe and define applications for "non-major development" alongside applications for "major development".

[1] 83% of major applications were decided on time in April to June 2016, compared with 57% in July to September 2012, the quarter in which the designation regime was first announced.

7.4 The 2013 Rules set out the procedures to be followed for hearings where an application has been submitted to the Secretary of State under section 62A (see paragraph 7.2). Hearings are held by the Planning Inspectorate to decide the complex applications submitted to them by applicants in designated authority areas. Whilst we expect most applications for non-major development to be dealt with by written representations, some may be sufficiently complex to require a Hearing. The 2013 Rules currently require that the Planning Inspectorate provide 10 working days' notice to interested parties of their intention to hold a hearing. This is because, currently, only applications for major development are subject to the designation regime. This period will continue to apply for applications for major development, but for applications for non-major development, the 2016 Rules will introduce a requirement for the Planning Inspectorate to provide 5 working days' notice. This is consistent with the time period usually given to interested parties when planning authorities hold committee meetings to decide applications.

Consolidation

7.5 There are no plans to consolidate the 2016 Rules in the immediate future.

8. Consultation outcome

8.1 The Government published a consultation covering detailed proposals to support implementation of the Housing and Planning Act between 18 February and 15 April 2016 (see https://www.gov.uk/government/consultations/implementation-of-planning-changes-technical-consultation). Chapter 7 "Expanding the approach to planning performance" sought views on implementing the government's proposals to extend the designation framework to include a local authority's performance in determining applications for non-major development. The Government is finalising its response to the consultation and it will be published online at https://www.gov.uk/government/publications. The 2016 Rules make changes which are consequential to the proposals set out in the consultation, and were not specifically addressed.

9. Guidance

9.1 The Government has published guidance on the designation of local planning authorities which will be updated to provide advice on these changes.

10. Impact

10.1 The impact on business, charities or voluntary bodies of the amendments described at 2.3 above is that applications for non-major development are likely to be processed more quickly, with the quality of decision assured, resulting in greater certainty for applicants. The changes made by the 2016 Rules are consequential to these amendments, and there are no additional impacts.

10.2 There is no impact on the public sector.

10.3 This instrument is consequential to amendments described in paragraph 2.3 above, which bring into effect provisions in the Housing and Planning Act 2016. A full Impact Assessment was published in relation to the impacts on the business and public sectors of the proposal contained within Section 153 of the 2016 Act and can be found at http://www.legislation.gov.uk/.

11. Regulating small business

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

12. Monitoring & review

The changes the 2016 Rules make to the 2013 Rules are consequential to the amendments described in paragraph 2.3 above, and are not regulatory. However, a review clause under section 28 of the Small Business, Enterprise and Employment Act 2015 was inserted into the 2013 Order by the 2016 Regulations. The review conducted under that Order will seek to understand the sum effect of the measures, including the consequential amendments made by the 2016 Rules.

13. Contact

13.1 Matthew Carney at the Department for Communities and Local Government Telephone: 0303 444 1230 or email: matthew.carney@communities.gsi.gov.uk can answer any queries regarding the instrument.