EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (SECTION 62A APPLICATIONS) (PROCEDURE AND CONSEQUENTIAL AMENDMENTS) ORDER 2013

2013 No. 2140

THE TOWN AND COUNTRY PLANNING (SECTION 62A APPLICATIONS) (HEARINGS) RULES 2013

2013 No. 2141

THE TOWN AND COUNTRY PLANNING (SECTION 62A APPLICATIONS) (WRITTEN REPRESENTATIONS AND MISCELLANEOUS PROVISIONS) REGULATIONS 2013

2013 No. 2142

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 The Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) Order 2013 ("the Order"), the Town and Country Planning (Section 62A Applications) (Hearings) Rules 2013 ("the Rules") and the Town and Country Planning (Section 62A Applications) (Written Representations and Miscellaneous Provisions) Regulations 2013 ("the Regulations") set out the procedure to be followed when making a planning 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 This is the first exercise of the powers in sections 62A and 76C of the 1990 Act.

4. Legislative Context

4.1 These three instruments support 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 application to the local planning authority in the normal way, or they can submit it to the Secretary of State. These instruments explain

the procedure to be followed where a person submits such an application to the Secretary of State.

4.2 The Order is made under sections 2A and 76C of the 1990 Act and section 33 of the 2013 Act. The 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.) The Regulations are made under section 62A and 323(1A) of the 1990 Act.

4.3 In addition to the Order, the Rules and the Regulations, there are two further instruments which support the implementation of section 1 of the 2013 Act: a commencement order and an amendment to the existing fees regulations. The fees to be charged by the Secretary of State for planning applications he determines pursuant to section 62A of the 1990 Act are described in the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2013 which amended the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012. The amending Regulations have been approved by both Houses of Parliament, were signed by the Minister when the instruments to which this Memorandum relate were signed, and come into force on 1st October 2013. The commencement order, bringing section 1 of, and Schedule 1 to, the 2013 Act into force on 1st October 2013 for all remaining purposes (except in relation to connected applications) was made at the same time.

4.4 The current intention is to commence the provisions in relation to connected applications in April 2014.

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 instruments are subject to negative resolution procedure and do 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 give 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. The legislation also allows the Secretary of State to determine "connected applications" such as applications for listed building consent. These regulations do not cover such "connected applications", as it is not intended to commence these provisions until 2014.

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 to 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 for a period of forty days, and that they may come into effect only if neither House has voted against the document during this period. The Government laid *Improving planning performance - Criteria for designation* before Parliament on 3 June 2013. Neither House resolved against the criteria for designation and de-designation during the forty day period provided for in section 62B and therefore they came into effect at the end of that period.

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 any powers from under-performing authorities; it merely gives applicants the choice of applying to the Inspectorate where this is clearly justified.

7.5 The Regulations define "major development" for the purposes of section 62A of the 1990 Act. The definition of major development is similar to that used in article 2 of the Town and Country Planning (Development Management Procedure) (England) Order 2010 (SI 2010/2184) ("the 2010 Order") except that we have applied a threshold to waste development and minerals development.

7.6 The Order sets out the procedures for applying to the Secretary of State. The provisions made in the Order are, as far as possible, the same as equivalent provisions in the 2010 Order.

7.7 Many responses to the consultation commented on how the proposals relate to local decision-making, and 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. The Government remains committed to devolving power and to planning decisions being made locally wherever possible. These measures are safeguards, to be used where the local planning service is not being delivered effectively so that planning applicants and local communities are not disadvantaged.

7.8 Where applications are submitted to the Secretary of State for determination, they will still be subject to local consultation. In order to provide the opportunity for local people to make their views known, in the majority of cases a local hearing will be held.

7.9 The Rules set out the procedures to be followed for hearings, and are in place of the Committee process which most major planning applications would be subject to when dealt with by a local planning authority. In some circumstances, representations on applications will be dealt with by means of written representations only and will not be subject to a hearing process. The Town and Country Planning (Section 62A Applications) (Written Representations and Miscellaneous Provisions) Regulations 2013 set out the procedures to be followed in such cases.

Consolidation

7.10 These are new instruments and as such there is no need to consolidate them.

8. Consultation outcome

8.1 In November 2012 the Government published a consultation on "Planning performance and the planning guarantee".

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, and 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. Related questions were about the extent to which additional data collection and monitoring would be required, and the importance of ensuring effective community engagement in planning decisions that may not in future be made by the local planning authority.

8.5 A number of responses pointed to the potential reasons for slower decisions being made on applications for major development during recent years. These included a perceived move away from a focus on the speed of performance by the Government; the time needed to negotiate positive outcomes on some proposals; and in some cases the impact of the economic downturn on local planning authority resources.

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

9. Guidance

9.1 There are no plans to issue guidance for these instruments.

10. Impact

10.1 These instruments 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 planning permission 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 in order to understand the sum effect of the measures.

13. Contacts

13.1 Michael Bingham at the Department for Communities and Local Government (Tel: 0303 44 44413 or e-mail: michael.bingham@communities.gsi.gov.uk) can answer any queries regarding the instruments.