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## **Town and Country Planning (Local Development) (England) (Amendment) Regulations 2008 – How they alter procedure relating to Local Development**

The Town and Country Planning (Local Development) (England) (Amendment) Regulations 2008 came into force on 27 June 2008 and they amend the Town and Country Planning (England) Regulations 2004. These Regulations make provisions relating to the Local Development Procedure established under Part 2 of the Planning and Compulsory Purchase Act 2004 and they set out the procedure which Local Planning Authorities must follow when preparing their Local Development Documents and their Local Development Scheme. The regulations are supported by the newly revised PPS12 which sets out government policy on Local Development Frameworks.

The main alterations to local development procedure contained within the 2008 Regulations relate to:

1. The consultation process required to be undertaken by a local planning authority ('LPA') when preparing a Development Plan Documents ('DPDs').
2. The preparation and revision of Local Development Schemes and revision of the Mayor of London's powers.

### **1. Consultation Process when making a DPD**

Under the 2004 regulations a three stage consultation process existed which needed to be complied with when a LPA were making a DPD. These stages are summarised below;

- Stage one: - The LPA had to consult specific and general consultation bodies (but not the public) and take into account their views when preparing a DPD.
- Stage two: - Once the proposed DPD had been prepared in accordance with stage one, the LPA had to make the proposed DPD available for public inspection and wait a period of six weeks for any public representations. The LPA then had to consider any public representations received before moving onto stage three.
- Stage three: - Once all of the public representations had been considered by the LPA, the LPA could then submit their DPD to the Secretary of State for independent examination. The Secretary of State would hold off considering the DPD for a further period of six weeks in which he would allow and consider any further representations before deciding whether or not the DPD was acceptable or needed amending.

The new 2008 regulations seek to simplify the procedure and therefore provide a two stage rather than a three stage consultation process. In addition a new statutory

consultee has been added – the police authority must now be consulted on an LPA's DPD where its area is in or adjoins the area covered by the DPD.

In summary, a change has been made to the first stage of the consultation process to allow public participation at the early preparation stage. The new second stage also allows the LPA to publish and receive representations on the DPD prior to the submission of the DPD to the Secretary of State<sup>1</sup>.

**a) Changes to the preparation /consultation stage – New First Stage**

The new regulations confer an additional statutory requirement on LPAs when they are preparing both their DPD and Statement of Community Involvement. The new Regulation 25 and Regulation 26 stipulate that LPAs must consider whether or not it is appropriate to invite representations, when preparing their DPD and Statement of Community Involvement, from local residents and people who carry on a business in the area (local businesses).

If the LPA does consider that it is appropriate to invite representations from local residents and local businesses, then they have a further obligation – they must make arrangements to invite those representations and any representations received must be considered by them.

Of course, the LPA's pre-existing duty to consult the specific and general consultation bodies remains.

**b) Changes to the timeframe for representations on the final draft of the proposed DPD – New Second Stage**

Previously, the LPA had to wait a period of six weeks from the date on which the DPD and the supporting documentation was made available for public inspection before submitting their DPD to the Secretary of State for independent examination. Once the DPD was submitted to the Secretary of State the Secretary of State would then hold off considering the DPD for a further period of six weeks in which he would allow and consider any further representations. As such there would be a twelve week period in which representations on the DPD could be made.

The 2008 Regulations relax this requirement and instead of having two six week periods the LPA have to specify a single period of six weeks or more in which representations on the DPD can be made. The period which the LPA specify must not be less than six weeks from the date on which the local advertisement was published (stating that the proposed DPD was available for inspection and outlining the procedure in which representations can be made). The LPA have the discretion to specify a period of more than six weeks if they feel more time is needed - giving them more flexibility. If any representations are submitted, the Secretary of State will consider them before his independent examination. There is now no requirement for the Secretary of State to hold off examination for a further period so long as the LPA's specified period has expired and any representations which have been made in that specified period have been considered by the Secretary of State.

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<sup>1</sup> The amendments made by the new 2008 regulations do not apply to a DPD or Statement of Community Involvement which has been submitted to the Secretary of State before 1 September 2008 – they follow the old 2004 regulations.

## **2. Preparation and Revision of Local Development Schemes in London**

In accordance with section 15 of the Planning and Compulsory Purchase Act 2004 LPA's have to submit their Local Development Scheme ('LDS') to the Secretary of State for his comments before the LDS is brought into effect. The Greater London Authority Act 2007 amended section 15 of the 2004 Act to take into account the Mayor of London's powers so that the Mayor of London could comment and make directions on the preparation and or revision of a London Borough Council's LDS<sup>2</sup>. The 2004 regulations which supplement the 2004 Act have therefore been amended to reflect the Mayor of London's new powers.

Now, London Borough Councils must not only submit their LDS to the Secretary of State but also to the Mayor of London within fourteen days after the LDS (or revision of it) has been prepared.

Under the Planning and Compulsory Purchase Act 2004, if the Mayor of London directs that certain amendments need to be made to a LDS or the revision of a LDS, the Secretary of State can direct that either:-

1. The amendments should be disregarded; or
2. The amendments should be accepted with any modifications which the Secretary of State proposes.

The 2008 Regulations provide a time period in which the Secretary of State must consider the Mayor of London's direction (if one has been made). This period is three weeks from the date which the Mayor of London makes his direction. During this 3 week period the LDS cannot be revised.

Not surprisingly the 2008 Regulations also amend the 2004 Regulations so that any direction made by the Mayor of London is taken into account and complied with (subject to the Secretary of States comments) before an LDS is brought into effect.

