

2017 No. 403

TOWN AND COUNTRY PLANNING, ENGLAND

**The Town and Country Planning (Brownfield Land Register)
Regulations 2017**

<i>Made</i>	- - - -	<i>20th March 2017</i>
<i>Laid before Parliament</i>		<i>23rd March 2017</i>
<i>Coming into force</i>	- -	<i>16th April 2017</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 14A and 122(1)(a) and (3) of the Planning and Compulsory Purchase Act 2004(a).

Citation and commencement

1. These Regulations may be cited as the Town and Country Planning (Brownfield Land Register) Regulations 2017 and come into force on 16th April 2017.

Interpretation

2. In these Regulations—

“the TCPA 1990” means the Town and Country Planning Act 1990(b);

“development” has the meaning given by section 55 of the TCPA 1990;

“dwelling” includes a flat contained within a building of one or more flats;

“entry date” in relation to any land, means the date on which land is entered in Part 1 of the register;

“flat” means a separate and self-contained set of premises constructed or adapted for use for the purpose of a dwelling and forming part of a building from some other part of which it is divided horizontally;

“hazardous substances” has the meaning given by regulation 3 of the Planning (Hazardous Substances) Regulations 2015(c);

“housing development” means development for the provision of dwellings;

“infrastructure manager” in relation to relevant railway land means any person who—

(a) is responsible for developing or maintaining the land; or

(b) manages or uses the land, or permits the land to be used for the operation of a railway;

(a) 2004 c.5; for the definition of “prescribed” see section 122(1). Section 14A was inserted by section 151 of the Housing and Planning Act 2016 (c.22).

(b) 1990 c.8.

(c) S.I. 2015/627 to which there are amendments not relevant to these Regulations.

“maximum net number of dwellings” means the maximum number of dwellings on the land after the proposed development less the number of dwellings on the land immediately prior to the entry of the land on Part 1 or Part 2 of the register, as the case may be;

“minimum net number of dwellings” means the minimum number of dwellings on the land after the proposed development less the number of dwellings on the land immediately prior to the entry of the land on Part 1 or Part 2 of the register, as the case may be;

“neighbourhood forum” means an organisation or body designated by a local planning authority under section 61F of the 1990 Act(a);

“non-housing development” means development other than housing development;

“operational railway” means a railway which is in use;

“permission in principle” has the same meaning as in section 58A of the TCPA 1990(b);

“planning permission” means permission under Part 3 of the TCPA 1990 but does not include permission in principle;

“previously developed land” has the same meaning as land of that description in the National Planning Policy Framework issued by the Department for Communities and Local Government, as it has effect from time to time(c);

“register” means a brownfield land register kept under regulation 3;

“relevant railway land” means land—

- (a) forming part of any operational railway; or
- (b) which is authorised to be used for the purposes of an operational railway under—
 - (i) a planning permission granted or deemed to be granted,
 - (ii) a development consent granted by an order made under the Planning Act 2008(d), or
 - (iii) an Act of Parliament,

including viaducts, tunnels, retaining walls, sidings, shafts, bridges, or other structures used in connection with an operational railway and excluding car parks, offices, shops, hotels or any other land which, by its nature or situation, is comparable with land in general rather than land which is used for the purpose of an operational railway;

“requisite notice” means notice in the form set out in Schedule 1 to these Regulations or in a form substantially to the same effect; and

“residential development” means development the main purpose of which is housing development.

Requirement to keep a register

3.—(1) Each local planning authority(e) must prepare and maintain a register of previously developed land which —

- (a) is within their area, and
- (b) meets the criteria in paragraph (1) of regulation 4.

(2) Each local planning authority must publish their register by 31st December 2017.

(3) The register to be prepared, maintained and published by each local planning authority in accordance with this regulation is to be known as that local planning authority’s “Brownfield Land Register”.

(4) The register must be kept in 2 parts.

(a) Section 61F of the Town and Country Planning Act 1990 was inserted by section 116(1) of, and paragraphs 1 and 2 of Part 1 of Schedule 9 to, the Localism Act 2011 (c.20).

(b) Section 58A of the 1990 Act was inserted by section 150 of the Housing and Planning Act 2016 (c.22).

(c) See Annex 2 of the National Planning Policy Framework <http://planningguidance.communities.gov.uk/wp-content/themes/planning-guidance/assets/NPPF.pdf>.

(d) 2008 c.29.

(e) See section 37 of the Planning and Compulsory Purchase Act 2004 (c.5) for the definition of “local planning authority”.

(5) In these Regulations, a reference to “Part 1” or “Part 2” is a reference to Part 1 or Part 2 of the register.

Criteria

4.—(1) The criteria referred to in paragraph (1)(b) of regulation 3 are, in relation to each parcel of land—

- (a) the land has an area of at least 0.25 hectares or is capable of supporting at least 5 dwellings;
- (b) the land is suitable for residential development;
- (c) the land is available for residential development; and
- (d) residential development of the land is achievable.

(2) In this regulation—

“achievable” in relation to residential development of any land means that, in the opinion of the local planning authority, the development is likely to take place within 15 years of the entry date, having regard to—

- (a) any information publicly available; and
- (b) any relevant representations received;

“available for residential development” in relation to any land means—

- (a) the relevant owner (or, where there is more than one, all the relevant owners), has expressed an intention to sell or develop the land and at a date not more than 21 days before the entry date there is no evidence indicating a change to that intention, having regard to—
 - (i) any information publicly available on that date; and
 - (ii) any relevant representations received;
- (b) the developer has expressed an intention to develop the land and at a date not more than 21 days before the entry date there is no evidence indicating a change to that intention, having regard to—
 - (i) any information publicly available on that date; and
 - (ii) any relevant representations received; or
- (c) in the opinion of the local authority there are no issues relating to the ownership of the land or other legal impediments which might prevent residential development of the land taking place, having regard to—
 - (i) any information publicly available on that date; and
 - (ii) any relevant representations received;

“the developer” means the developer in control of the land on the prescribed date;

“heritage asset” means a building, monument, site, place, area or landscape which has been identified by the local planning authority as having heritage interest or is—

- (a) a property appearing on the World Heritage List kept under article 11(2) of the UNESCO Convention for the Protection of the World Cultural and National Heritage adopted at Paris on 16th November 1972^(a);
- (b) included in the schedule of monuments compiled by the Secretary of State under section 1 of the Ancient Monuments and Archaeological Areas Act 1979 (schedule of monuments)^(b);

(a) See <http://whc.unesco.org/en/list>

(b) 1979 c.46.

- (c) a listed building within the meaning of section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990^(a) (listing of buildings of special architectural or historic interest);
- (d) a garden or other land included in a register compiled by the Historic Buildings and Monuments Commission for England under section 8C of the Historic Buildings and Ancient Monuments Act 1953^(b); or
- (e) an area designated as a conservation area under section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (designation of conservation areas);

“owner” in relation to any land means any person who—

- (a) is the estate owner in fee simple; or
- (b) is entitled to a tenancy granted or extended for a term of years certain of which not less than 15 years remain unexpired;

“the prescribed date” is the day 42 days before the entry date for the land;

“the relevant owner” means in relation to any land, the owner of the land on the prescribed date;

“relevant representations” in relation to the definition of “achievable”, paragraphs (a), (b) and (c) of the definition of “available for residential development”, and paragraph (d) of the definition of “suitable for residential development”, means—

- (a) as regards land to be entered in Part 1, any representations which are—
 - (i) relevant to the definition or paragraph of the definition in question; and
 - (ii) received by the local planning authority—
 - (aa) as a result of any procedures carried out in accordance with paragraph (6)(a) of regulation 5,
 - (bb) before the end of the relevant period specified in accordance with paragraph (6)(b) of regulation 5;
- (b) as regards land to be entered in Part 2, any representations which are—
 - (i) relevant to the definition or paragraph of the definition in question; and
 - (ii) received by the local planning authority—
 - (aa) as a result of any of the procedures carried out in accordance with paragraph (7) of regulation 5,
 - (bb) by the date, or before the end of the relevant period, specified in accordance with regulation 9 or 13, as the case may be; and

“suitable for residential development” in relation to any land means that the land at the entry date—

- (a) has been allocated in a local development plan document^(c) for residential development;
- (b) has planning permission for residential development;
- (c) has a grant of permission in principle for residential development; or
- (d) is, in the opinion of the local planning authority, appropriate for residential development, having regard to—
 - (i) any adverse impact on—
 - (aa) the natural environment;
 - (bb) the local built environment, including in particular on heritage assets;

(a) 1990 c.9.

(b) 1953 c.49. Section 8C was inserted by section 33 of, and paragraph 10 of Schedule 4 to, the National Heritage Act 1983 (c. 47). The Historic Buildings and Monuments Commission of England is also known as “Historic England”.

(c) See section 37 of the Planning and Compulsory Purchase Act 2004 (c.5).

- (ii) any adverse impact on the local amenity which such development might cause for intended occupiers of the development or for occupiers of neighbouring properties; and
- (iii) any relevant representations received.

Entry of land in the register

5.—(1) The local planning authority must enter land in Part 1 where the land falls within the description in paragraph (1)(a) of regulation 3 and meets the criteria in paragraph (1) of regulation 4.

(2) The local planning authority must also enter land in Part 2 where—

- (a) the land falls within the description in paragraph (1)(a) of regulation 3,
- (b) the land meets the criteria in paragraph (1) of regulation 4, and
- (c) the authority have decided to allocate the land for residential development, having followed the procedures mentioned in paragraph (7).

(3) The local planning authority may enter land in Part 1 where the land falls within the description in paragraph (1)(a) of regulation 3 and meets the criteria in paragraphs (1)(b) to (d) of regulation 4, but does not meet the criterion in paragraph (1)(a) of regulation 4 (area of site or quantity of development).

(4) The local planning authority must also enter land in Part 2 where—

- (a) they have exercised their discretion to enter land in Part 1 in accordance with paragraph (3), and
- (b) they have decided to allocate the land for residential development, having followed the procedures mentioned in paragraph (7).

(5) Paragraphs (2) and (4) are subject to regulation 14 (exemptions).

(6) Before the local planning authority enter land in Part 1 they—

- (a) may carry out procedures (including consultation) as they see fit; and
- (b) must take into account any representations received, within such period as the local authority may specify, when carrying out such procedures.

(7) Before the local planning authority enter land in Part 2, they must follow the applicable procedures in regulations 6 to 9 (publicity and notification) and 10 to 13 (consultation).

Publicity of proposal to enter land in Part 2

6.—(1) A local planning authority must publicise their proposal to enter land in Part 2 by giving requisite notice in at least one place on or near the land for not less than 21 days.

(2) The requisite notice must be given by posting it by firm fixture to some object and the notice must be sited and displayed in such a way as to be easily visible to and legible by members of the public.

(3) Where the notice is, without any fault or intention of the local planning authority, removed, obscured or defaced before the period of 21 days referred to in paragraph (1) has elapsed, the authority are to be treated as having complied with the requirement if they have taken reasonable steps for protection of the notice, and, if need be, its replacement.

(4) The following information must be published on a website maintained by the local planning authority—

- (a) the statement “If the land is entered in Part 2 of the Brownfield Land Register it will be granted permission in principle, which establishes the suitability, in principle, of land for housing-led development” or a statement to substantially the same effect;
- (b) the information required by paragraphs 1(1)(a), (b), (c), (f), (k), (l), (m)(ii) and (o) of Schedule 2;

- (c) the information required under regulation 26 of the Planning (Hazardous Substances) Regulations 2015^(a) (planning approvals for projects related to hazardous substances) where—
 - (i) development of the land would, in the opinion of the local planning authority, be a relevant project for the purpose of that regulation, and
 - (ii) the local planning authority are the competent authority for the purpose of that regulation;
- (d) the date by which any representations about the proposed entry of the land in Part 2 must be made, which must not be before the last day of the period of 14 days beginning with the date on which the information is published;
- (e) where and when the information specified in sub-paragraphs (b) and (c) of this paragraph may be inspected; and
- (f) how representations may be made about the proposed entry of the land in Part 2.

Land within 10 metres of relevant railway land

7.—(1) Where the land is situated within 10 metres of relevant railway land, the local planning authority must, except where paragraph (2) applies, publicise their proposal to enter it in Part 2 by serving requisite notice on any infrastructure manager of relevant railway land.

(2) Where an infrastructure manager has instructed the local planning authority in writing that they do not require notification in relation to any land or geographical areas specified in the instruction, the local planning authority are not required to notify that infrastructure manager.

(3) The infrastructure manager may withdraw the instruction at any time by notifying the local planning authority in writing.

Notification for parish councils and neighbourhood forums of proposal to enter land in Part 2

8. Where the council of any parish, or a neighbourhood forum, (“the relevant body”) in the area of the local planning authority have—

- (a) requested the authority to notify it of a proposed entry of land in Part 2, and
- (b) the land to which the proposed entry relates is within the area of the relevant body,

the local planning authority must notify the relevant body of the proposed entry by serving requisite notice on it.

Time periods for representations to be made following publicity or notification

9.—(1) A local planning authority must, in considering whether to enter land in Part 2, take into account any representations made within the period specified, or the date specified, in paragraphs (2) to (4) as the case may be.

(2) Where any notice about the proposed entry of land in Part 2 has been given by site display under paragraph (1) of regulation 6, the period specified is 21 days beginning with the date when the notice was first displayed.

(3) Where any information about the proposed entry of land in Part 2 has been published on a website under paragraph (4) of regulation 6, the date specified is the date given in accordance with paragraph (4)(d) of that regulation.

(4) Where any notice about the proposed entry of land in Part 2 has been served on an infrastructure manager under paragraph (1) of regulation 7, or on the council of a parish or on a neighbourhood forum under regulation 8, the period specified is—

(a) S.I. 2015/627 to which there are amendments not relevant to these Regulations.

- (a) 42 days beginning with the date when the notice was served on that person or body, where first publication of Part 2, (in accordance with paragraph (2) of regulation 3), has not yet taken place, or
- (b) 21 days beginning with the date when the notice was served on that person or body, where first publication of Part 2, (in accordance with paragraph (2) of regulation 3), has taken place.

Consultation with county planning authorities before entering land in Part 2

10.—(1) The local planning authority must consult the county planning authority where—

- (a) they propose to enter land in Part 2;
- (b) there is a county planning authority for the area within which the land is situated; and
- (c) residential development of the land would, in the opinion of the local planning authority, fall within sub-paragraph (4) of paragraph 7 of Schedule 1 to the TCPA 1990 (consultation by a district planning authority with the county planning authority for their area in certain circumstances).

(2) Paragraph (1) does not apply where—

- (a) the local planning authority is the county planning authority for the area, or
- (b) the county planning authority has advised the local planning authority that they do not wish to be consulted about proposed entries in Part 2 of land situated within a particular area, and the land in question falls within that area.

(3) In this regulation “county planning authority” has the same meaning as in section 1 of the TCPA 1990.

Consultation with the Mayor of London before entering land in Part 2

11.—(1) Where the council of a London borough (“the local planning authority”) propose to enter land in Part 2 and residential development of the land would, in their opinion, fall within the Schedule to the Town and Country Planning (Mayor of London) Order 2008(a) (potential strategic importance applications and categories of development), the local planning authority must consult the Mayor of London.

(2) Paragraph (1) does not apply where—

- (a) the Mayor has advised the local planning authority that the Mayor does not wish to be consulted about proposed entries in Part 2 of land situated within a particular area, and the land in question falls within that area, or
- (b) the land falls within article 3 of that Order (land excluded from the application of section 2A of the TCPA 1990(b)).

Consultation with other persons, bodies or authorities before entering land in Part 2

12.—(1) Where a local planning authority propose to enter land in Part 2 and residential development of the land would, in the opinion of the local planning authority, fall within a category set out in the Table in Schedule 4 to the Town and Country Planning (Development Management Procedure) (England) Order 2015(c), the local planning authority must consult any person, body or authority mentioned in relation to that category.

(a) S.I. 2008/580.

(b) Section 2A was inserted into the 1990 Act by section 31 of the Greater London Authority Act 2007 (c.8). It gives the Mayor of London power to direct that applications for planning permission of potential strategic importance must be determined by the Mayor in place of the local planning authority.

(c) S.I. 2015/595; Schedule 4 was amended by S.I. 2016/873.

(2) The local planning authority must also consult any person, body or authority with whom they would have been required to consult in relation to an application for planning permission for residential development of the land.

(3) The duty to consult a particular person, body or authority in accordance with paragraph (1) or (2) does not apply where—

- (a) that authority is the local planning authority;
- (b) that person, body or authority has advised the local planning authority that they do not wish to be consulted about proposed entries in Part 2 situated within a particular area, and the land in question falls within that area; or
- (c) that person, body or authority has published standing advice in relation to a category of development and the potential development falls within that category.

(4) The exception in paragraph (3)(c) does not apply where the standing advice was published before the period of 2 years ending with the date that requisite notice in relation to that land was given in accordance with paragraph (1) of regulation 6.

Time periods for representations to be made by consultees

13.—(1) Where a local planning authority is required to consult any person, body or authority (“consultee”) before entering land in Part 2—

- (a) the local planning authority must give notice to the consultee; and
- (b) subject to paragraph (2), the local planning authority must not enter the land in Part 2—
 - (i) until at least 42 days after the date on which notice is given under sub-paragraph (a) where first publication of Part 2, (in accordance with paragraph (2) of regulation 3), has not yet taken place; or
 - (ii) until at least 21 days after the date on which notice is given under sub-paragraph (a) where first publication of Part 2, (in accordance with paragraph (2) of regulation 3), has taken place.

(2) Paragraph (1)(b) does not apply if before the end of the relevant period referred to in that paragraph the local planning authority have received from all consultees—

- (a) representations concerning the proposed entry of land in Part 2, or
- (b) notice that they do not intend to make representations.

(3) In considering whether to enter land in Part 2, the local planning authority must take into account any representations received from any consultee before the end of the relevant period referred to in paragraph (1)(b).

Exemptions for certain types of land

14.—(1) A local planning authority must not enter land in Part 2, where residential development of that land could be Schedule 1 development.

(2) A local planning authority must not enter land in Part 2, where residential development of that land could be Schedule 2 development, unless—

- (a) the local planning authority—
 - (i) have the information listed in paragraphs (2)(a) and (b) of regulation 5 of the EIA Regulations 2011,
 - (ii) have specified the maximum net number of dwellings which in their opinion the land is capable of supporting,
 - (iii) are of the view that the information and specified number referred to in paragraphs (i) and (ii) respectively, together with any such other information they may have about residential development of the land, are sufficient for them to adopt a screening opinion under regulation 5 of the EIA Regulations 2011, and

- (iv) adopt a screening opinion under regulation 5 of the EIA Regulations 2011 that potential residential development up to and including the number of dwellings referred to in paragraph (ii) will not be EIA development;
 - (b) the Secretary of State has made a screening direction under paragraph (3) of regulation 4 or paragraph (4) of regulation 6 of the EIA Regulations 2011 that the development is not EIA development; or
 - (c) the Secretary of State has made a direction under paragraph (4) of regulation 4 of the EIA Regulations 2011 that the development is exempted from the application of those Regulations.
- (3) For the purposes of paragraph (2)(a), regulation 5 (requests for screening opinions of the local planning authority) of the EIA Regulations 2011 applies with the following modifications—
- (a) as if a person had requested the local planning authority to adopt a screening opinion and had provided them with the information referred to in paragraph (2) of that regulation;
 - (b) as if the potential residential development of the land, for the maximum net number of dwellings, were an application for planning permission;
 - (c) paragraph (5) were omitted and replaced by—
“(5) An authority may adopt a screening opinion.”; and
 - (d) paragraphs (3) to (4) and (6) to (8) were omitted.
- (4) A local planning authority must not enter land in Part 2 where residential development of that land could be habitats development, unless—
- (a) they have specified the maximum net number of dwellings which in their opinion the land is capable of supporting; and
 - (b) they are satisfied that development up to and including that number would not be habitats development.
- (5) In this regulation—
- “EIA development” has the same meaning as in paragraph (1) of regulation 2 of the EIA Regulations 2011;
- “the EIA Regulations 2011” means the Town and Country Planning (Environmental Impact Assessment) Regulations 2011(a);
- “habitats development” means development which—
- (a) is likely to have a significant effect on a qualifying European site (either alone or in combination with other plans or projects), and
 - (b) is not directly connected with or necessary to the management of the site;
- “qualifying European site” means—
- (a) a European offshore marine site within the meaning of regulation 15 of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007(b); or
 - (b) a European site within the meaning of regulation 8 of the Conservation of Habitats and Species Regulations 2010(c); and
- “Schedule 1 development” and “Schedule 2 development” have the same meaning as in paragraph (1) of regulation 2 of the EIA Regulations 2011.

Information to be included in the register

15. The register must contain the information specified in Schedule 2.

(a) 2011/1824, amended by S.I.s 2012/637, 2013/2140 and 2013/2879.
 (b) S.I. 2007/1842, regulation 15 was amended by S.I. 2012/1928.
 (c) S.I. 2010/490, regulation 8 was amended by S.I. 2012/1927.

Public inspection of the register

16.—(1) The register must be kept available for public inspection at the principal office of the local planning authority.

(2) Where the register kept by a local planning authority under this regulation is kept using electronic storage, the authority may make the register available for inspection by the public on a website maintained by the authority for that purpose.

Revision of the register

17.—(1) The local planning authority must review the entries in the register at least once within each register year in accordance with this regulation.

(2) Where the local authority has entered land in the register in accordance with paragraph (1) or (2) of regulation 5 and the land no longer meets the criteria in paragraph (1) of regulation 4, the local planning authority must remove the entry from Part 1, and if applicable Part 2.

(3) Where the local planning authority has entered land in the register in accordance with paragraph (3) or (4) of regulation 5 and the land no longer meets the criteria in paragraphs (1)(b) to (d) of regulation 4, they must remove the entry from Part 1, and if applicable Part 2.

(4) Subject to paragraphs (5) and (6), the local planning authority must update, as necessary, the information required under Schedule 2 in relation to each entry of land in the register.

(5) The local planning authority must not update the information required under paragraph 2 of Schedule 2 in relation to an entry of land in Part 2.

(6) Where—

- (a) the local planning authority consider that the information required under paragraph 1(1)(m), (1)(n) or (1)(o) of Schedule 2 in relation to an entry of land in Part 1 should be updated,
- (b) there is an entry in Part 2 in relation to that land, and
- (c) development of that land has been granted permission in principle by a development order made under section 59A(1)(a) of the TCPA 1990 based on that entry,

the local planning authority must—

- (i) remove the entry of land from Part 2; and
- (ii) amend the information in Part 1.

(7) Before the local planning authority remove entries of land from Parts 1 and 2 under paragraphs (2) or (3), or amend information in Part 1 under paragraph (6)(ii) they—

- (a) may carry out such procedures (including consultation) as they see fit; and
- (b) must take into account any representations received, within such period as they may specify, as a result of such procedures.

(8) Where development of land was granted permission in principle by a development order made under section 59A(1)(a) of the TCPA 1990, and that grant has expired, the local planning authority must remove the relevant entry of land from Part 2.

(9) The local planning authority must consider in accordance with paragraphs (2) and (3), the criteria mentioned in regulation 4, as if—

- (a) for “entry date” in each place that it occurs in the definitions of “achievable” and “available for residential development”, there were substituted “review date”; and
- (b) for the definition of “relevant representations”, there were substituted—
 - ““relevant representations” in relation to the definition of “achievable”, paragraphs (a), (b) and (c) of the definition of “available for residential development”, and paragraph (d) of the definition of “suitable for residential development”, means any representations which are—
 - (a) relevant to the definition or paragraph of the definition in question; and

- (b) received by the local planning authority—
 - (i) as a result of any procedures carried out by the local planning authority in accordance with paragraph (7)(a) of regulation 17;
 - (ii) before the end of the relevant period specified in accordance with paragraph (7)(b) of regulation 17;”.
- (10) In this regulation—
 - “register year” means—
 - (a) for the first year, the year beginning on the date on which that part of the register is published for the first time;
 - (b) for subsequent years, the year beginning with the anniversary of the date on which that part of the register was published for the first time; and
 - “review date” in relation to an entry of land in the register means the date on which that entry of land is reviewed under paragraph (1).

Information to be given to the Secretary of State

18.—(1) The Secretary of State may require a local planning authority to bring the register up to date by such date as the Secretary of State may specify.

(2) The Secretary of State may require a local planning authority to provide the Secretary of State with such information in relation to the register, in such form and by such date, as the Secretary of State may specify.

Consequential amendment to the Functions and Responsibilities Regulations 2000

19.—(1) The Local Authorities (Functions and Responsibilities) Regulations 2000(a) are amended in accordance with paragraph (2).

(2) In Schedule 1 (functions not to be the responsibility of an authority’s executive), in column (1) (function), in Part A (functions relating to town and country planning and development control), below the entry numbered “31” insert “32. Duty to enter land in Part 2 of the brownfield land register.” and at the corresponding place in column (2) (provision of act or statutory instrument) insert “Regulation 3 of the Town and Country Planning (Brownfield Land Register) Regulations 2017.”.

Signed by authority of the Secretary of State for Communities and Local Government

Gavin Barwell
Minister of State

20th March 2017

Department for Communities and Local Government

(a) S.I. 2000/2853; Part A of Schedule 1 was amended by S.I. 2004/2211, 2005/929, 2007/2593 and 2013/2146, there are other amendments but none are relevant.

SCHEDULE 1

Regulation 2

Publicity of intention to enter land in Part 2 of the Register

Town and Country Planning (Brownfield Land Register) Regulations 2017

NOTICE UNDER REGULATION 6(1), 7(1) OR 8(1) OF PROPOSAL TO ENTER LAND IN PART 2 OF THE BROWNFIELD LAND REGISTER AND FOR IT TO BE GRANTED PERMISSION IN PRINCIPLE

*(to be displayed by site display on or near the site, or served on infrastructure managers,
parish councils or neighbourhood forums)*

Land at (a).....
(b).....Council
gives notice that they propose to include this land in Part 2 of their Brownfield Land Register as land allocated for residential development. If the land is included in Part 2 of that register, it will be granted permission in principle, which establishes the suitability in principle for housing-led development of the land. The net number of dwellings which the Council considers the land is capable of supporting is between.....(c) and(d) together with non-housing development of.....(e)
The land is situated within 10 metres of relevant railway land*
Members of the public may inspect copies of the proposed entry in the register and associated information at (f).....;
during all reasonable hours until (g).....
Anyone who wishes to make representations about the proposed entry should write to the Council at (h).....or
(i).....
by (g).....

Signed.....(Council's authorised officer)

On behalf of.....Council

Date

*delete where inappropriate

Insert:

(a) address or location of the land

(b) name of the Council

(c) minimum net number of dwellings which the Council considers the land is capable of supporting

(d) maximum net number of dwellings which the Council considers the land is capable of supporting

(e) description of any proposed non-housing development

(f) address at which the proposed entry may be inspected

(g) date giving:

(i) in the case of a site notice, a period of 21 days, beginning with the date when the notice is first displayed where visible or accessible on or near the site;

(ii) where the notice is served on an infrastructure manager, parish council or neighbourhood forum and first publication of Part 2 of the register has not yet taken place, a period of 42 days beginning with the date of service of the notice; or

(iii) where the notice is served on an infrastructure manager, parish council or neighbourhood forum and first publication of Part 2 of the register has taken place, a period of 21 days beginning with the date of service of the notice;

(h) address of the Council

(i) email address of the Council

SCHEDULE 2

Regulation 15

Information to be included in the Register

1.—(1) The register must contain the following information in relation to each entry of land in Part 1—

- (a) the local authority's own reference for the land;
- (b) the name and address of the land;
- (c) a plan which identifies the land;
- (d) location co-ordinates to identify a point on the land expressed as an east/west component and a north/south component;
- (e) the co-ordinate reference system used for paragraph (d);
- (f) the area of the land in hectares;
- (g) the name of the local authority;
- (h) the uniform resource identifier "URI" of the local authority expressed in the form <http://opendatacommunities.org/id/> followed by the relevant type of authority and name of the local authority;
- (i) the ownership status of the land expressed as—
 - (i) where the ownership is known to the local planning authority—
 - (aa) "owned by a public authority",
 - (bb) "not owned by a public authority", or
 - (cc) "mixed ownership";
 - (ii) "unknown ownership" where the ownership is unknown or partly unknown to the local planning authority;
- (j) where the land is "deliverable" a note to that effect;
- (k) the planning status of the land, expressed as—
 - (i) "permissioned",
 - (ii) "not permissioned", or
 - (iii) "pending decision";
- (l) where the planning status is "permissioned"—
 - (i) the date that such permission was granted or deemed to have been granted; and
 - (ii) whether the grant of permission is—
 - (aa) "full planning permission",
 - (bb) "outline planning permission",
 - (cc) "reserved matters approval",
 - (dd) "permission in principle",
 - (ee) "technical details consent",
 - (ff) "planning permission granted under a local development order, a mayoral development order or a neighbourhood development order", or
 - (gg) "other";
- (m) (i) a description of any proposed housing development; or
 - (ii) the minimum and maximum net number of dwellings, given as a range, which, in the authority's opinion, the land is capable of supporting;
- (n) the minimum net number of dwellings which, in the authority's opinion, the land is capable of supporting;

- (o) where the development includes non-housing development, the scale of any such development and the use to which it is to be put;
- (p) the date that the land was first entered in the register; and
- (q) where applicable, the date that information about the land was last updated in the register.

(2) Where—

- (a) land has been entered in Part 1,
- (b) first publication of Part 1, (in accordance with paragraph (2) of regulation 3), has taken place, and
- (c) the local planning authority have given requisite notice in accordance with paragraph (1) of regulation 6 of their intention to enter that land in Part 2,

the local planning authority must, within the period of 7 days beginning with the date on which the notice was first displayed, record in Part 1 in relation to that land the statement “proposed for residential development (permission in principle)”.

2. In relation to each entry of land in Part 2, the register must contain—

- (a) the minimum net number of dwellings, and the maximum net number of dwellings, given as a range, which, in the authority’s opinion, the land is capable of supporting; and
- (b) where the development includes non-housing development, the scale of any such development and the use to which it is to be put.

3. In relation to each entry of land in Part 2, the register must contain the information required by paragraph (3) of regulation 26 of the Planning (Hazardous Substances) Regulations 2015^(a) where—

- (a) development of that land would, in the opinion of the local planning authority, be a relevant project for the purpose of that regulation; and
- (b) the local planning authority is the competent authority for the purpose of that regulation.

4. Where land is entered in Part 2, Part 2 of the register must, in relation to that land, contain the statement “allocated for residential development for the purposes of section 59A of the Town and Country Planning Act 1990 (permission in principle)” and the statement in Part 1, required by paragraph 1(2), if any, must be removed.

5.—(1) In this Schedule—

“co-ordinate reference system” is—

- (a) the world geodetic system (WGS84), expressed as longitude and latitude;
- (b) the ordinance survey national grid reference system (OSGB36), expressed as easting and northing; or
- (c) the European terrestrial reference system 1989 (ETRS89), expressed as longitude and latitude;

“deliverable” means that there is a reasonable prospect that residential development will take place on the land within 5 years beginning with the entry date;

“development” in relation to an unused grant of planning permission, has the meaning given by section 336 of the TCPA 1990;

“full planning permission” means a planning permission, other than a grant of technical details consent, granted by the local planning authority under section 70, 73 or 73A of the TCPA 1990;

“mixed ownership” in relation to land means that the land is partly owned by a public authority;

(a) S.I. 2015/627 to which there are amendments not relevant to these Regulations.

“other”, in relation to land the planning status of which is “permissioned”, means that the land has a grant or deemed grant of planning permission which does not fall within the definitions of the terms mentioned in paragraph 1(1)(i)(ii)(aa) to (ff);

“outline planning permission” means a planning permission for the erection of a building subject to a condition requiring reserved matters approval granted by the local planning authority under section 92 of the TCPA 1990;

“owner” in relation to the ownership status of land has the same meaning as in paragraph (2) of regulation 4;

“pending decision” means that an application for planning permission or permission in principle has been made or is deemed to have been made and has not been finally disposed of;

“permissioned” means that in respect of the land, there is a grant of permission in principle or an unused grant, or unused deemed grant, of planning permission and “not permissioned” is to be construed accordingly;

“planning permission granted under a local development order, mayoral development order or a neighbourhood development order” means permission granted under an order made under section 61A, 61DA or 61E of the TCPA 1990;

“public authority” in relation to the ownership status of the land means that the land is held by or on behalf of a public authority mentioned in Part 1 of Schedule 19 to the Equality Act 2010(a);

“reserved matters approval” in relation to an outline planning permission means approval given under section 92 of the TCPA 1990 for any of the following matters in respect of which details have not been given in the application—

- (a) access;
- (b) appearance;
- (c) landscaping;
- (d) layout; and
- (e) scale;

“technical details consent” means planning permission granted following an application under section 70(2ZZB) of the TCPA 1990(b);

“type of authority” means a district council, a London borough council, a metropolitan district council, a county council, the Broads Authority, a National Park authority, a Mayoral development corporation or the Homes and Community Agency; and

“unused”, in relation to land, means that development of the land has not been initiated in accordance with section 56 of the TCPA 1990.

(2) For the purposes of the definition in sub-paragraph (1)—

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- (a) 2010 c.15; Part 1 of Schedule 19 has been amended by section 26(2) of, and paragraph 34 of Part 2 of Schedule 5 to, the Budget Responsibility and National Audit Act 2011 (c.4); section 99 of, and paragraphs 380 and 383 of Part 3 of Schedule 16 to, the Police Reform and Social Responsibility Act 2011 (c.13); sections 178 and 237 of, and paragraph 62 of Part 2 of Schedule 16 and Parts 26 and 32 of Schedule 25 to, the Localism Act 2011 (c.20) and section 222 of, and paragraph 62 of Schedule 22 to, that Act; section 30(3) of, and Schedule 6 to, the Public Bodies Act 2011 (c.24); section 55(2) of, and paragraphs 182(a) to (d) of Schedule 5 to, the Health and Social Care Act 2012 (c.7), section 150(5) of, and paragraph 19 of Schedule 13 to, and section 277 of, and paragraph 13 of Schedule 19 to, that Act; section 39(1) of, and paragraph 70 of Part 1 of Schedule 5 to, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10); section 114(1) of, and paragraphs 131(a) and (b) of Part 2 of Schedule 18 to, the Financial Services Act 2012 (c.21); section 15(3) of, and paragraphs 180 and 183 of Part 2 of Schedule 8 to, the Crime and Courts Act 2013 (c.22); section 25(4) of, and paragraph 26 of Part 1 of Schedule 4 to, the Enterprise and Regulatory Reform Act 2013 (c.24); section 116(1) of, and paragraph 102 of Part 5 of Schedule 12 to, the Energy Act 2013 (c.32); section 40(5) of, and paragraph 16 of Schedule 4 to, the Financial Services (Banking Reform) Act 2013 (c.33); section 109(2) of, and paragraph 27 of Part 4 of Schedule 7 to, the Care Act 2014 (c.23) and section 96(2) of, and paragraph 35 of Part 4 of Schedule 5 to, that Act; section 181(1) of, and paragraph 96 of Part 3 of Schedule 11 to, the Anti-social Behaviour, Crime and Policing Act 2014 (c.12); section 23(1) of, and paragraph 31 of Schedule 5 to, the Cities and Local Government Devolution Act 2016 (c.1); section 184 of, and paragraph 15 of Schedule 25 to, the Finance Act 2016 (c.24); and SIs 2011/1060, 2012/2007, 2014/892 and 2014/3184.
 - (b) Paragraph (2ZZB) was inserted into section 70 of the TCPA 1990 by section 150(3)(b) of the Housing and Planning Act 2016 (c.22).

- (a) of the terms mentioned in paragraph 1(1)(i)(ii)(aa) to (ee), such permission, consent or approval may also have been granted or given—
 - (i) by the Secretary of State following an application made to the Secretary of State under section 62A of the TCPA 1990,
 - (ii) by the Secretary of State following the referral of an application under section 77 of that Act,
 - (iii) by the Secretary of State in deciding an appeal under section 78 of that Act, or
 - (iv) by the Secretary of State in deciding an enforcement appeal under section 177(5) of that Act,
 as the case may be;
- (b) of “pending decision”, an application has not been finally disposed of unless and until—
 - (i) it has been decided by the authority (or any time prescribed under section 74(1)(d) of the TCPA 1990 for dealing with the application has expired without their giving a decision) and any time prescribed under section 78(3) of the TCPA 1990 has expired without any appeal having been made to the Secretary of State;
 - (ii) if it has been referred to the Secretary of State under section 77 of the TCPA 1990 or an appeal has been made to the Secretary of State under section 78 of the TCPA 1990, the Secretary of State has issued a decision and the period of 6 weeks specified in section 288 of the TCPA 1990 has expired without any application having been made to the High Court under that section;
 - (iii) if an application has been made to the High Court under section 288 of the TCPA 1990, the matter has been finally determined, either by final dismissal of the application by a court or by the quashing of the Secretary of State’s decision and the issue of a fresh decision (without a further application under section 288); or
 - (iv) it has been withdrawn before being decided by the authority or the Secretary of State, as the case may be, or an appeal has been withdrawn before the Secretary of State has issued a decision; and
- (c) of “reserved matters approval”, “layout” and “scale” have the same meanings as in paragraph (1) of article 2 of the Town and Country Planning (Development Management Procedure) (England) Order 2015(a).

(a) S.I. 2015/595.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations place a duty on each local planning authority responsible for determining applications for housing development to prepare, maintain and publish a register of previously developed land (commonly known as “brownfield land”) which is suitable for residential development. “Previously developed land” has the same meaning as in the National Planning Policy Framework, as it has effect from time to time. A copy of that document may be inspected at the Department for Communities and Local Government, Fry Building, 2 Marsham Street, London, SW1P 4DF.

The register must be in 2 parts. Brownfield land will be entered in Part 1 where it meets the criteria in regulation 4(1) and in Part 2 where it has also been allocated by the local planning authority for residential development following mandatory publicity (as set out in regulations 6 to 9) and consultation procedures (as set out in regulations 10 to 13). Where land is entered in Part 2 of the register, it will be granted permission in principle under section 59A of the Town and Country Planning Act 1990 (c. 8). Permission in principle and its effect are described in sections 58A, 59A and 70(2ZZA) to (2ZZC) of that Act (those sections were inserted by section 150 of the Housing and Planning Act 2016).

Regulations 14 to 18 make provision for exemptions, information which must be included for each entry in the register, public inspection of the register, review and revision of the register and provision of a power for the Secretary of State to be able to require local planning authorities to give the Secretary of State information in relation to their registers.

The World Heritage List referred to in paragraph (2) of regulation 4 of these Regulations can be obtained by writing to World Heritage Centre, UNESCO, 7, Place de Fontenoy, 7532 Paris 07 SP, France.

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen. The Explanatory Memorandum is published alongside the Regulations on www.legislation.gov.uk.

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£6.00

UK2017032023 03/2017 19585

<http://www.legislation.gov.uk/id/uksi/2017/403>

ISBN 978-0-11-115708-4



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