

Lords Committee criticise Department over two pieces of building and planning legislation

3 years ago



In its [26th report of Session 2021-22](#) the House of Lords Secondary Legislation Scrutiny Committee has raised concerns about two instruments laid before Parliament by the Department for Levelling Up, Housing and Communities (DLUHC) which make changes to building regulations and planning law.

The Building Regulations etc. (Amendment) (England) Regulations 2021 make changes to provide a “meaningful and achievable” increase to the energy efficiency standards for buildings. These include a new way of measuring energy efficiency, changes in the regulation of on-site electricity generation to ensure it is appropriately installed, changes to address the risk of overheating in new residential buildings and provisions in relation to ventilation standards in new and existing buildings where building work is being carried out.

The Explanatory Memorandum (EM) that accompanies the instrument includes links to consultation responses and Impact Assessments which provide further information. However, the Committee found that the EM assumes an extensive understanding of the current Building Regulations and how they are being developed and does not provide a proper stand-alone explanation of the full effects of the instrument or how the changes are expected to operate. The Committee had to obtain substantial additional information from the Department and strongly felt that members of the public should not have to consult other sources of information when reading the instrument, especially when the policy area concerned is as complex and technical as the one covered by this instrument.

The Committee concluded that the Department should revise the EM and drew the Regulations to the

special attention of the House on the ground that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation.

The Committee also considered the Town and Country Planning (General Permitted Development etc.) (England) (Amendment) (No. 3) Order 2021. This instrument, amongst other changes, makes permanent a time-limited permitted development right which was originally introduced in 2021 and allows for one moveable structure (a marquee or gazebo for example) to be erected and used in the area surrounding pubs, cafés, restaurants, or historic visitor attractions without the need for planning permission.

While the Committee acknowledges the intention to support the economic recovery in the wake of the effects of the pandemic, it remains concerned that some of the temporary measures originally introduced to address these effects are now being made permanent despite the adverse impact they may have on members of the public. Under the new arrangements, people who have concerns about a development will be unable to raise concerns through the planning process.

The Department has not published the Government's response to a consultation on these changes which was conducted between September and November 2021. This is especially concerning as the results show that while there was support for making the changes permanent, two-thirds of individuals who responded expressed concerns about noise and the impact such moveable structures might have on the appearance and access to heritage sites.

The Committee concluded that despite raising [similar concerns previously](#) this is yet another example of changes being made permanent through secondary legislation; essentially a legislative process under which the changes will not be subject to the robust parliamentary scrutiny and debate that would have been guaranteed had they been implemented using primary legislation. Impactful and permanent changes have once again been made under the pretext of the pandemic under circumstances which could hardly have been anticipated when the original primary legislation was passed.

Lord German, Member of the Secondary Legislation Scrutiny Committee said,

“Our November 2021 special report [Government by Diktat: A call to return power to Parliament](#) raised concerns about departments providing insufficient explanatory material to allow Parliament to carry out effective scrutiny of secondary legislation or indeed to properly state the purpose and operation of an instrument. That report also examined how secondary legislation could be used to make temporary measures permanent when such changes would have been more appropriately made using primary legislation to allow for thorough scrutiny by Parliament. The two instruments considered by the Committee in its 26th report represent further examples of these practices.

“For an Explanatory Memorandum to fulfil its purpose, it must provide Parliament, those affected by changes in the law and the wider public with a clear and accessible, stand-alone explanation of the effect of an instrument and how it is intended to operate. The Building Regulations (Amendment) 2021 fail on this point and need to be revised accordingly.

“The changes introduced by the Town and Country (Amendment) (No. 3) Order making permanent previously time-limited provisions to the planning regulations around moveable structures may have an adverse impact on members of the public and yet they will have no right to object under the planning

process. This issue may outweigh any economic benefits to towns and city centres arising from their implementation.

“It is regrettable that despite previous concerns raised, the Department has continued to employ secondary legislation to make temporary measures introduced during the pandemic permanent and also that the Department implements these changes prior to publishing the Government’s response to their consultation, especially given the concerns raised by two-thirds of the respondents.”

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