

EXPLANATORY MEMORANDUM TO
IMPROVING PLANNING PERFORMANCE: CRITERIA FOR DESIGNATION
(UPDATED 2024)

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government to support the document “Improving Planning Performance: Criteria for Designation (Updated 2024)” (“the Criteria Document”) presented to Parliament in December 2024 and is laid before Parliament by Command of His Majesty.

2. Declaration

- 2.1 Matthew Pennycook, Minister of State for Housing and Planning at the Ministry of Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Lucy Hargreaves, Deputy Director for Planning Development Management, at the Ministry of Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.

3. Contact

- 3.1 Stephen Gee at the Ministry of Housing, Communities and Local Government. Telephone: 0303 444 0013 or email: PDMCorrespondence@communities.gov.uk can be contacted with any queries regarding the Criteria Document.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

- 4.1 The Criteria Document has been updated to confirm the criteria and thresholds to be applied when the Secretary of State considers whether to designate or de-designate local authorities for poor performance in determining planning applications. The updated Criteria Document retains the same performance thresholds, but confirms the new assessment periods which includes a change to the assessment period for speed of decision-making from 24 months to 12 months.

Where does the legislation extend to, and apply?

- 4.2 The extent of this document (that is, the jurisdiction which the document forms part of the law of) is England and Wales.
- 4.3 The territorial application of this document (that is, where the document produces a practical effect) is England.

5. Policy Context

What is being done and why?

- 5.1 The performance of local authorities in determining planning applications is vital for supporting the delivery of new housing and economic growth and providing a high-quality service to applicants and the local community.
- 5.2 The performance of local authorities in deciding planning applications is measured by speed and quality of decision-making. Speed of decision-making is measured by the proportion of applications that are decided within the statutory period or an agreed extended time period. The statutory determination period is 8 weeks for non-major applications and 13 weeks for major applications unless an application is subject to Environmental Impact Assessment, in which case a 16-week period applies. Quality of decision-making is measured by the proportion of total decisions and applications that the local planning authority fails to determine that are allowed at appeal.
- 5.3 Local planning authorities are expected to meet specific performance thresholds. For speed of decision-making this is 70% or more of non-major applications and 60% or more of major applications determined within the statutory period or an agreed extended period. For quality of decision-making the threshold is 10% or less of major decisions (including non-determinations) and 10% or less of non-major decisions (including non-determinations) allowed at appeal.
- 5.4 Where an authority does not meet the required performance thresholds, the Secretary of State can 'designate' an authority as underperforming. If a local authority is designated, applicants to that authority may apply directly to the Planning Inspectorate (on behalf of the Secretary of State) for the category of applications (major, non-major or both) for which the authority has been designated. Designated authorities are also required to prepare an Action Plan demonstrating how the weaknesses that led to poor performance will be addressed. An authority remains designated until such time as the Secretary of State decides to de-designate the authority.
- 5.5 The Criteria Document sets out the criteria to be used by the Secretary of State for designation and de-designation under section 62A of the 1990 Act. The Secretary of State may revise the criteria for designation at any time, subject to a revised Criteria Document being published and laid before Parliament for the statutory 40-day period.
- 5.6 The Criteria Document was last updated in October 2022. The Criteria Document is being updated now to set out the criteria and assessment periods for designation decisions in the first quarter of 2025 and 2026.

What was the previous policy, how is this different?

- 5.7 Since 2018, the performance thresholds for speed and quality of decision-making have remained the same. This update of the Criteria Document maintains the same performance thresholds. Increased transparency of local authority performance, particularly in relation to the use of Extension of Time agreements has been introduced through a new Planning Performance Dashboard. The Dashboard will allow for the active identification of underperforming local authorities, including authorities who are excessively using Extension of Time agreements and will seek improvements from those authorities.

Changes to the assessment period for speed of decision-making

- 5.8 Previously, performance for both speed and quality of decision-making was based on average performance across the previous 24-month period. However, a 24-month assessment period is slow to identify underperformance or recognise improved performance. This meant a designated authority would remain designated for longer, despite good recent performance due to historic poor performance.
- 5.9 The updated Criteria Document has changed the assessment period for speed of decision-making for both major and non-major applications from 24 months to 12 months. Assessing performance across a 12-month period rather than 24 months would not significantly change the number of local authorities at risk of designation, but would allow earlier identification of poor performing authorities so that action can be taken sooner, and it would be more responsive to performance changes.
- 5.10 The assessment period for quality of decision-making will continue to be 24 months. This is because the number of relevant cases is lower than for the speed of decision-making and if measured over 12 months would represent too few cases to provide an accurate measure of performance.

6. Legislative and Legal Context

How has the law changed?

- 6.1 Section 62A of the 1990 Act gives the Secretary of State the power to designate or de-designate local authorities for poor planning performance. Under section 62B of the 1990 Act, the criteria to be used for designation or de-designation must be set out in a document to be published by the Secretary of State and laid before Parliament for a period of 40 days. The Criteria Document takes effect if, at the end of this period, there has been no resolution in either House that the document should not be approved.
- 6.2 Once the criteria have effect, section 62B(1)(b) of the 1990 Act stipulates that a local authority may be designated if “by reference to those criteria, the Secretary of State considers that there are respects in which the authority are not adequately performing their functions of determining applications under this Part”.
- 6.3 Section 153 of the Housing and Planning Act 2016 amended sections 62A and 62B of the 1990 Act to allow the Secretary of State to prescribe the descriptions of applications in respect of which an authority may be designated. The Town and Country Planning (Section 62A Applications) (Written Representations and Miscellaneous Provisions) Regulations 2013 have been amended by the Town and Country Planning (Section 62A Applications) (Amendment) Regulations 2016 to prescribe and define applications for “non-major development” alongside applications for “major development”.
- 6.4 The Government laid the Criteria Document “Improving Planning Performance-Criteria for Designation” before Parliament on 22 November 2016. In the 2016 Criteria Document, the performance thresholds were set at 50 per cent for major applications raising to 60 per cent in 2018, and 65 per cent for non-major applications raising to 70 per cent in 2018. The threshold for quality of decision-making was set at 10 per cent in 2018. These thresholds have remained the same for all subsequent updates of the Criteria Document in 2018, 2020 and 2022, with the only material change to each update being to the relevant assessment period as the previous periods expired.

Why was this approach taken to change the law?

- 6.5 The only change to the Criteria Document is to the relevant assessment periods as those in the 2022 Criteria Document have now expired, including a reduction in the assessment period for speed of decision-making from 24 months to 12 months. The updated Criteria Document retains the same thresholds for designation as the 2022 Criteria Document.
- 6.6 Updating the Criteria Document in this way is the only possible approach to make the necessary changes to the criteria for designation.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 Government consulted on the proposal to change the assessment period for speed of decision-making from 24 months to 12 months in the consultation “An Accelerated Planning System”. The consultation ran from 6 March 2024 to 1 May 2024. Due to a change in government, there are currently no plans to publish a formal response to this consultation.
- 7.2 284 responses were received to the proposal, of which 55 per cent of respondents supported the proposal and 32 per cent did not (13 per cent did not know). Respondents who supported the proposal considered that it would be a more accurate representation of current performance. Concerns raised by respondents who did not support the proposal included that a low volume of applications, particularly for major applications, over 12 months could make a designation decision unreasonable on the basis that short-term dips in performance could have a greater impact on performance than at present. However, under the existing designation criteria, the Secretary of State can consider such circumstances, or any other exceptional circumstances, which in their opinion would make a designation unreasonable.
- 7.3 The Accelerated Planning System consultation also consulted on proposals to introduce a new performance measure for speed of decision-making based on the proportion of applications determined against statutory periods only. There was limited support for this proposal by both local planning authorities and developers who prefer the flexibility that Extension of Time agreements can provide if this assists with achieving a positive outcome. 32 per cent of respondents supported the proposal and 55 per cent did not (13 per cent did not know).
- 7.4 The government plans to invest in local planning authority skills and resourcing by increasing planning fees and through the Department’s Capacity and Capability programme. Introducing new performance metrics or raising thresholds before these resources are in place could risk destabilising local authority planning departments and impact overall service delivery. Therefore, the government does not intend to implement this proposal at present, but will review in the future after additional resources have been introduced their impact on planning performance has been assessed. Instead, the government will focus on enhancing the transparency of planning performance data through the Planning Performance Dashboard. This will allow for the active identification of underperforming local authorities, including authorities who are excessively using Extension of Time agreements and will seek improvements from those authorities.

8. Applicable Guidance

- 8.1 No guidance is required.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 A full Impact Assessment has not been prepared for the updated Criteria Document as no significant changes are made to the criteria for designation.

Impact on businesses, charities and voluntary bodies

- 9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the changes are minor in nature. The criteria for designation may have a beneficial impact on business, charities and voluntary bodies by encouraging the efficient determination of planning applications.
- 9.3 The Criteria Document does not impact small or micro businesses.
- 9.4 There is no, or no significant, impact on the public sector because performance will be assessed by reviewing data which local planning authorities already provide.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 The Ministry of Housing, Communities and Local Government publishes data on the performance of local planning authorities quarterly and will review and evaluate the operation of this measure.
- 10.2 The government is proposing to invest in local planning authority skills and resourcing by increasing planning fees and through the Department's Capacity and Capability programme. It is right to expect the performance of local planning authorities to improve in time, once these measures have been introduced.
- 10.3 The Department proposes to undertake a further review of the Criteria Document in 2026. This will provide an opportunity to review the designation criteria and performance thresholds, following the expected improvement in performance in local authorities. The Secretary of State may also revise the criteria for designation at any time, subject to a revised Criteria Document being published and laid before Parliament for the statutory 40-day period.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

- 11.1 None.

12. European Convention on Human Rights

- 12.1 As the Criteria Document is not subject to Parliamentary procedure and does not amend primary legislation no statement is required.

13. The Relevant European Union Acts

- 13.1 This document is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").