

BUSINESS AND PLANNING BILL 2020

Memorandum from the Department for Business, Energy and Industrial Strategy to the Delegated Powers and Regulatory Reform Committee

A. INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Business and Planning Bill (“the Bill”). The Bill was introduced in the House of Commons on 25 June 2020. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

B. PURPOSE AND EFFECT OF THE BILL

2. This Bill includes a range of measures to help businesses adjust to new ways of working as the country recovers from disruption caused by the Covid-19 outbreak. These measures will support:
 - a. the transition from immediate crisis response and lockdown towards economic recovery, and
 - b. businesses to implement safer ways of working to manage the ongoing risks from Covid-19, in particular the need for social distancing.
3. Changes are limited to those necessary to help businesses as the country enters the next phase of the response to Covid-19. Thus, all the measures in the Bill are temporary or concern temporary measures, except for:
 - a. clause 13 which permanently broadens an already existing power to grant certificates of temporary exemption. The intention is to use the expanded power temporarily in response to the Covid-19 outbreak.

- b. clause 20 which makes changes to provide for more flexible Planning Inspectorate appeals in line with changes already in place successfully in Wales.
4. A summary of the measures containing delegated powers is set out below:
 5. **Pavement licences.** The Bill temporarily provides for a new streamlined process for premises selling hot or cold food for takeaway or consumption on the premises including cafes, snackbars, bars, pubs and restaurants to be able to put tables and chairs and associated restaurant furniture on the highway, via an application to the local council (*Clauses 1-10: Pavement licences*).
 6. **Alcohol licensing:** The Bill gives premises (with a licence that allows the sale of alcohol for consumption (i) only on the premises or (ii) on and off the premises but in a narrower set of circumstances than those permitted by the measure) temporary permission to sell alcohol for consumption off the premises (*Clause 11: Alcohol licensing*).
 7. **Certificates of temporary exemption for public service and goods vehicles:** The Bill expands the powers to make regulations governing the issue of certificates of temporary exemption from roadworthiness testing to enable such certificates to be issued to HGVs and Public Service Vehicles (buses and coaches) on the basis of road safety risk. This will enable the Driver and Vehicle Standards Agency to manage demand for testing in a manner that prioritises road safety (e.g. to test vehicles used for carrying dangerous goods on schedule while delaying tests of safer vehicles). This would be a permanent change, although the intention is to use the expanded power temporarily in response to the Covid-19 outbreak (*Clause 13: Certificates of temporary exemption for public service and goods vehicles*).
 8. **Planning:** The Bill temporarily provides for a streamlined process for obtaining a temporary variation of planning restrictions on construction site working hours imposed via direct condition, or through a condition with a requirement to submit a Construction Management Plan which details construction site working hours,

to enable developers to request extended construction site working hours. (*Clause 16: Modification of conditions relating to construction working hours*).

9. The Bill extends, (until 1 April 2021), the period within which relevant works must be commenced under planning permissions and listed building consents that have expired or would otherwise expire in the period 23 March 2020 – 31 December 2020 (subject to obtaining an ‘additional environmental approval’ in the case of planning permissions which lapsed before this provision comes into force); and extend the deadline for submission of reserved matters (sometimes called ‘details’) for approval. (*Clause 17: Extension of duration of certain planning permission; Clause 18: Extensions in connection with outline planning permission; Clause 19: Extension of duration of certain listed building consent*).
10. The Bill temporarily suspends a requirement imposed on the Mayor of London to make physical copies of the spatial development strategy (“SDS”) available for inspection by the public, if the strategy is published online. This will help accelerate progress of the emerging SDS to unlock development and support the economy. It will make it safer for planning officers and the general public, and reduce administrative burdens (*Clause 21: Mayor of London’s spatial development strategy: inspection of documents*).

C. SHORT SUMMARY OF POWERS

CLAUSE	POWER CONFERRED	JUSTIFICATION	PARLIAMENTARY PROCEDURE
Clause 5: Conditions	Clause 5(6) contains a power to allow the Secretary of State to publish national condition(s) which will attach to pavement licences.	Allows the specification of matters of detail which may be affected by uncertainties re the duration and impact of the Covid-19 pandemic and social distancing measures on the hospitality industry.	None.
Clause 8: Guidance	Clause 8 allows the Secretary of State to issue guidance.	To assist applicants and local authorities in the smooth operation of the provisions which come into force on Royal Assent.	None.
Clause 10: Expiry of pavement licence provisions.	Clause 10(2) contains a power to extend the period during which the fast track process for obtaining a pavement licence applies.	Uncertainties re the duration and impact of the Covid-19 pandemic and social distancing measures on the hospitality industry.	Draft or made affirmative.
Clause 11: Alcohol licensing.	Clause 11(11) contains a power to make transitional, transitory or saving provision in connection with the expiry of the temporary provisions.	Uncertainties re the duration and impact of the Covid-19 pandemic and social distancing measures on the hospitality industry. Transitional or savings provisions may be needed to ensure a smooth and fair exit from these temporary provisions.	None.

CLAUSE	POWER CONFERRED	JUSTIFICATION	PARLIAMENTARY PROCEDURE
	<p>Clause 11(12) contains a power to amend the Licensing Act 2003 (modifications of Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005.</p>	<p>A bespoke review mechanism is needed to provide for a quick review of the new licensing permissions to enable any irresponsible behaviour to be dealt with swiftly. This review mechanism may need amendment to ensure that it is fully effective in practice.</p>	<p>Draft or made affirmative.</p>
	<p>Clause 11(14) contains a power to extend the period during which the temporary licensing provisions apply.</p>	<p>Uncertainties re the duration and impact of the Covid-19 pandemic and social distancing measures on the hospitality industry.</p>	<p>Draft or made affirmative.</p>
	<p>Clause 11(15) contains a power to make consequential amendments necessary as a result of the temporary provisions.</p>	<p>Uncertainties re the duration and impact of the Covid-19 pandemic and social distancing measures on the hospitality industry. Licensing legislation is complex and it is possible that further consequential amendments are needed.</p>	<p>Affirmative where regulations amend primary legislation, otherwise negative.</p>

CLAUSE	POWER CONFERRED	JUSTIFICATION	PARLIAMENTARY PROCEDURE
Clause 13: Certificates of temporary exemption for public service and goods vehicles.	Clause 13 amends two delegated powers to broaden the Secretary of State's powers to make regulations governing the issue of certificates of temporary exemption from the test certificate requirement.	Amended powers are required to manage the excessive demand for vehicle testing (caused by Covid-19 disruption) in the coming months in a manner that prioritises road safety.	Negative ¹ .
Clause 16: Modification of conditions relating to construction hours.	Clause 16(2) contains a power for the Secretary of State to issue guidance.	To assist applicants and local authorities in the operation of the provisions which come into force 5 clear days after Royal Assent.	None.
Clause 16: Modification of conditions relating to construction hours.	Clause 16(7) contains a power (i) to extend the period during which a fast track application process for varying restrictions to construction working hours applies and (ii) to vary the date until which restrictions may be varied.	Uncertainties re the duration and impact of the Covid-19 pandemic and social distancing measures, in particular on the operation of construction sites.	Draft or made affirmative.

¹ The existing powers, as with virtually all of the many regulation making powers under the Road Traffic Act 1988, are subject to the negative procedure (following a consultation).

CLAUSE	POWER CONFERRED	JUSTIFICATION	PARLIAMENTARY PROCEDURE
Clause 17(2)	Power for the Secretary of State to issue guidance.	To assist applicants and local authorities in the smooth operation of the provisions which come into force 28 days after Royal Assent.	None.
Clauses 17-19: Extension of certain permissions and consents.	Clauses 17 to 19 contain five delegated powers in clauses 17(7), 17(8), 18(7), 18(8) and 19(3). Clauses 17(7), 18(7) and 19(3) provide powers to amend (i) the duration of the extension of certain permissions and consents (ii) the permissions and consents to which an extension applies, (iii) the date after which no additional environmental approval may be granted, (iv) the expiry date of these provisions. Clauses 17(8) and 18(8) provide powers to make provision for additional approval requirements where the duration of the extension of planning permission is extended.	Uncertainties re the duration and impact of the Covid-19 pandemic and social distancing measures on the construction industry, in particular in relation to the date a widespread resumption of normal construction activity will be possible.	Draft or made affirmative.

CLAUSE	POWER CONFERRED	JUSTIFICATION	PARLIAMENTARY PROCEDURE
Clause 21: Mayor of London's Spatial Development Strategy: electronic inspection.	Clause 21(2) contains a power for the Secretary of State to issue guidance.	To assist local authorities in the smooth operation of the provisions which come into force on Royal Assent.	None.
Clause 21: Mayor of London's Spatial Development Strategy: electronic inspection.	Clause 21 contains a power to extend the period of application of the temporary provision allowing the Mayor to provide the Spatial Development Strategy by appropriate electronic means.	Uncertainties re the duration and impact of the Covid-19 pandemic and social distancing measures, in particular on accessibility of GLA's offices and other places where spatial development strategy would be made available and public confidence.	Draft or made affirmative.
Clause 25: Transitional etc. provision in connection with	Clause 25 contains a power to make transitional, transitory or saving provision in connection with the expiry of the measures.	To deal with situations that straddle the change in the law when the temporary measures come to an end and we return to the pre-existing legal framework.	No procedure.

CLAUSE	POWER CONFERRED	JUSTIFICATION	PARLIAMENTARY PROCEDURE
expiry of measures.			

D. ANALYSIS OF DELEGATED POWERS

Clause 5(6) – Power for the Secretary of State to publish conditions for pavement licences

Power conferred on: Secretary of State

Power exercised by: publication of condition(s)

Parliamentary Procedure: none

Context and purpose

11. See paragraph 12 below.

Justification for taking the power

12. The power has been taken to allow the Secretary of State to publish conditions which will be attached to every grant of a pavement licence as a backstop in case the same matters are not addressed by conditions imposed by the local authority when a pavement licence is granted, or deemed to be granted. This power will be used for example to specify the minimum distance which must be left to allow for pedestrian traffic to pass along the highway. This is a matter of detail which is currently set out in Government guidance and which may be affected by changes to social distancing measures, as such it may be necessary for such a condition to be changed at short notice to ensure public health and safety.

Justification for the procedure

13. No procedure is justified to ensure that swift action could be taken, should the need arise, to respond to changes to social distancing measures.

Clause 8 – Power for the Secretary of State to issue guidance

Power conferred on: Secretary of State

Power exercised by: guidance

Parliamentary Procedure: none

Context and purpose

14. See paragraph 15 below.

Justification for taking the power

15. The power has been taken to assist applicants and local authorities in discharging their power to make an application and to determine an application respectively. It will enable the Secretary of State to set out matters of detail, to address questions from local authorities and applicants which might otherwise arise and to help ensure that the procedures are capable of smooth operation on Royal Assent.

Justification for the procedure

16. The guidance relates to the operation of the provisions and as such it is appropriate for there to be no procedure attached to its publication.

Clause 10 – Expiry of pavement licence provisions

Clause 10(2) Power to amend the duration of this temporary measure and the latest date on which such a licence will be able to run

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: draft or made affirmative procedure

Context and Purpose

17. Under the Government's latest social distancing guidelines, cafés, restaurants and bars will be allowed to open for indoor seating from 4th July, providing the businesses adhere to social distancing guidelines. In practice, this means significantly less indoor seating capacity which will have a considerable impact on financial sustainability of these businesses.

18. Accordingly, the Government wants to enable such businesses to place temporary outdoor seating on the pavement and highway outside their premises, to address reductions in their seating capacity and enhance their financial capacity, where it is safe and appropriate to do so. However, at present the placing of tables and chairs on the highways requires a licence from the local council under Part 7A of the Highways Act 1980 ("HA 1980"). Part 7A was

introduced by the Local Government Miscellaneous Provisions Act 1982 and imposes a complex regulatory framework. Such licences can therefore be costly and time-consuming to acquire. Some London Boroughs require businesses to apply through the London Local Authorities Act, and Westminster has its own procedure. Some local planning authorities also require planning permission.

19. The new licensing regime for which this Bill provides will be a less onerous mechanism for businesses selling food or drink to obtain licences to place temporary furniture including stalls for selling or serving food or drink, or associated with the consumption of food and drink, on a highway. It will be separate to the existing regimes and importantly, the host of consents required under the existing regime from non-statutory bodies, from 'walkway consent', and 'frontagers' (who all have a right to 'veto' or impose conditions on the application) will not be required. There will also be a shortened consultation: from minimum of 28 calendar days to a minimum of 5 working days, which allows those with an interest to comment on the proposal, and after 10 working days starting from the day after receipt of a valid application, should the council not issue the applicant with a decision there will be deemed consent. The licence will be valid for a 12 month period from the day after consent is deemed, but no licence will be able to run to later than 30 September 2021. Local authorities will be able to revoke licences on specified grounds. When these licences are granted the land will also benefit from automatic planning permission, for change of use of the land to use for outdoor seating.

Justification for taking the power

20. The power to amend the duration of this temporary measure and the latest date on which such a licence will be able to run is required to provide flexibility, given the uncertainties as to the duration of the COVID-19 pandemic and the nature of future social distancing requirements and the impact of social distancing measures on the hospitality industry. Use of secondary legislation to amend the expiry date for this provision will allow for swift amendment if necessary, and allows the Secretary of State to respond to the situation without needing to return to Parliament for further primary legislation. Social distancing guidelines will have considerable impact on the capacity of businesses selling food and drink such as cafes, pubs and restaurants to accommodate customers. This measure enables them to make use of outdoor space to maximise their capacity whilst adhering to

social distancing guidelines, but this will be weather dependent. Setting the end date at 30 September 2021 means these measures will apply through the summer months in 2020 and 2021 when the weather is likely to be most suitable for outdoor eating, and potentially businesses most profitable months. This also gives businesses an opportunity to extend licences, using the current system if they want to extend beyond 30 September 2021. In many cases this process can take many weeks (if not months), so a shorter time period will not sufficiently provide the certainty the sector needs.

Justification for the procedure

21. It is proposed that either the made affirmative or draft affirmative procedure may be used here in order to provide Parliament with thorough scrutiny of the use of this provision. Whilst decisions with regard to the grant of pavement licences will remain with local councils, it is acknowledged that use of the power to extend the period during which applications can be made by extending the application of this temporary provision beyond the period approved by Parliament through this Bill needs careful scrutiny given the potential for residents to be adversely affected by noise and obstructions on the pavements. It is proposed that the Government may need the made affirmative as a back-up to ensure that this provision can remain in force if Parliament is not sitting at the time regulations need to be made to extend the measure (which would be before 30 September 2021) or if the need to extend arises unexpectedly so that there is not sufficient time to complete the normal draft affirmative procedure before the provisions expire, which is possible given the unpredictability of the COVID-19 pandemic. The draft affirmative procedure may be used if less urgency is required.

Clause 11 – Alcohol licensing

Clause 11(11) - Power to make transitional, transitory or saving provision in connection with the expiry of the temporary provisions

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: None

Context and purpose

22. Clause 11(11) contains a power to make transitional, transitory or saving provision in connection with the expiry of the temporary provisions. This power may be needed, either in tandem with the power to extend the expiry date of these provisions or on its own, to either extend these temporary measures or to ensure a smooth and fair exit from them.

Justification for taking the power

23. Uncertainties relating to the duration and severity of the Covid-19 pandemic mean that it is very difficult to plan precisely for the termination of these temporary measures in September 2021. It is possible that the measures may be extended, in whole or in part, or they may need to be exited in a phased manner. For this reason it is necessary to have a delegated power to allow for different outcomes in the autumn of next year. It will also be necessary to align with policies from other Departments to ensure a joined up policy as temporary measures introduced during the pandemic are ended.

Justification for the procedure

24. This power is subject to no procedure as is common practice for transitional provisions powers.

Clause 11(12) - Power to amend the Licensing Act 2003 (modifications of Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Draft or made affirmative.

Context and Purpose

25. These temporary provisions contain a new bespoke review mechanism to allow for a quick review in the case of any irresponsible behaviour resulting from these new licensing permissions. The review mechanism is modelled on existing review procedures in the Licensing Act 2003 but is accelerated. It can also be

instigated by a wider range of responsible authorities and on a wider range of grounds. This is to ensure that new provisions do not give rise to breaches of the licensing objectives (the prevention of crime and disorder, public safety, the prevention of public nuisance, the protection of children from harm) and are operated sensibly by the licence holders who take advantage of them. The power is only to modify existing secondary legislation. The power will be temporary, only lasting as long as these temporary provisions are in force.

Justification for taking the power

26. Although the review mechanism has been modelled on existing procedures, there are significant differences that might prove problematic in practice. It is possible that urgent amendment would be needed to ensure that the reviews operate effectively and efficiently, and it is therefore necessary to take a power to allow this to happen. If the underlying legislation was amended it would also be necessary to make modifications using this power to ensure consistency.

Justification for the procedure

27. The affirmative procedure is appropriate given that reviews of conditions may affect the livelihoods of licence holders or the nuisance experienced by neighbours living close by licensed establishments. It is therefore important that the review procedure is carefully considered and justified and the affirmative procedure is therefore considered appropriate. Similar amendment powers in the Licensing Act 2003 are subject to the negative resolution procedure but given the exceptional nature of these provisions the affirmative procedure is appropriate.

Clause 11(14) - Power to extend the duration of this temporary measure

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Draft or made affirmative.

Context and Purpose

28. In order to allow for social distancing inside licensed premises it is likely that the capacity of such premises will be reduced significantly. In such circumstances

many such premises profitability will also be reduced significantly. In order to allow such premises to operate whilst maintaining social distancing the Government wishes to give an automatic easement to premises with on sales licences and limited off sales licences to allow them to make off sales of alcohol which will allow them to serve alcohol to customers outside of the premises.

Justification for taking the power

29. The alcohol licensing easement provided for in this Bill will be temporary, expiring on 30 September 2021, which is intended to allow time for the economy to recover. It is currently not clear what the impact of Covid-19 and these provisions will be on the hospitality industry and whether or not these provisions might be needed beyond September 2021 so it is necessary to allow for an extension subject to Parliamentary approval.
30. The power to amend the duration of this temporary measure is required given the uncertainties as to the duration of the COVID-19 pandemic and the nature of future social distancing requirements and the impact of social distancing measures on the hospitality industry. Use of secondary legislation to amend the expiry date for this provision will allow for swift amendment if necessary, and allows the Secretary of State to respond to the situation without needing to return to Parliament for further primary legislation. Setting the end date at 30 September 2021 means these measures will apply through the summer months in 2020 and 2021 when the weather is likely to be most suitable for benefiting from off sales, and potentially businesses most profitable months.

Justification for the procedure

31. It is proposed that either the made affirmative or draft affirmative procedure may be used here in order to provide Parliament with thorough scrutiny of the use of this provision. It is acknowledged that use of the power to extend the period during which the easement may apply by extending the application of this temporary provision beyond the period approved by Parliament through this Bill needs careful scrutiny given the potential impact of these provisions in local neighbourhoods. It is proposed that the Government may need the made affirmative as a back-up to ensure that this provision can remain in force if Parliament is not sitting at the time regulations need to be made to extend the measure (which would be before 30 September 2021) or if the need to extend

arises unexpectedly so that there is not sufficient time to complete the normal draft affirmative procedure before the provisions expire, which is possible given the unpredictability of the COVID-19 pandemic. The draft affirmative procedure may be used if less urgency is required.

Clause 11(15) - A power to make consequential amendments necessary as a result of this temporary measure

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Affirmative where regulations amend primary legislation, otherwise negative.

Context and Purpose

32. These new provisions significantly amend the Licensing Act 2003 for a temporary duration, applying some sections of that Act and inserting new provisions. These changes inevitably give rise to consequential amendments, both within that Act and in other legislation. It is possible that further consequential amendment will be required when the provisions are operational.

Justification for taking the power

33. Licensing legislation is complex and cross-refers to legislation in a number of different policy areas. The full impact of these new temporary provisions will not be known until they are in operation and it is possible that further consequential amendment might be needed to ensure that the legislation is fully effective. The provisions are temporary, meaning that this power will only have temporary effect. The power is also very limited, allowing only provision for consequential amendment so cannot be used to make new provision. It has also been necessary to draft these temporary licensing provisions carefully to ensure fairness amongst the holders of alcohol licences which has involved the suspension of certain licence conditions in existing licences. Such legislative practice is unprecedented in the field of alcohol licensing and it is possible that further minor amendment will be needed to level the playing field further and ensure that no licence holders are put in a worse position as a result of this legislation.

Justification for the procedure

34. Where the power is used to amend primary legislation the affirmative resolution procedure is appropriate. Where secondary legislation is amended the negative resolution procedure is appropriate.

Clause 13 – Certificates of temporary exemption for public service and goods vehicles

Clause 13 - Expanded powers to make regulations governing the issue of certificates of temporary exemption from the test certificate requirement

Power conferred on: *Secretary of State*

Power exercised by: *Regulations*

Parliamentary Procedure: *Negative procedure (following consultation)*

Context and Purpose

35. Clause 13 expands the Secretary of State's powers under sections 48 and 53 of the Road Traffic Act 1988 to make regulations governing the issue of certificates of temporary exemption from the test certificate requirement (imposed on the users of motor vehicles other than goods vehicles by section 47(1) and on the users of goods vehicles by section 53(1) and (2)).

36. Public service vehicles adapted to carry more than eight passengers and goods vehicles cannot (as a general rule) be used on a road unless a test certificate has been issued within the past year. Certificates of temporary exemption have been issued to all heavy vehicles that were due to be tested from late March onwards following disruption to the testing regime caused by COVID-19. This disruption will lead to excessive test demand in the coming months as scheduled tests and delayed tests fall due.

37. The Driver and Vehicle Standards Agency (DVSA) intends to manage this excessive demand in a manner that prioritises road safety – certificates of temporary exemption will be issued for safer vehicles (such as newer vehicles kept by operators with high assessed standards) and the resulting capacity in

the testing regime will ensure that vehicles with higher risk profiles or kept by operators with poor compliance records (as assessed by the DVSA) are tested on schedule.

38. The existing powers in the Road Traffic Act 1988 allow for certificates of temporary exemption to be issued in prescribed circumstances. These powers are being expanded to provide a clear basis for taking factors such as the DVSA's assessment of risk into account and to allow for the revocation of certificates (if, for example, a vehicle with a certificate is transferred to a less reputable operator).

Justification for taking the power

39. This policy should be implemented by expanding existing delegated powers so that regulations can, if necessary, be rapidly revised in response to a change in circumstances (whether caused by COVID-19 or another future event). This is in keeping with the general approach to road traffic law and the legislation underpinning the vehicle testing regime, where the vast majority of technical and administrative detail is contained in secondary legislation.

Justification for the procedure

40. We consider that the negative procedure is appropriate for the exercise of these expanded powers as the existing powers are subject to this procedure and the Road Traffic Act 1988 imposes a duty on the Secretary of State to consult with representative organisations before making regulations, so the views of interested persons will be taken into account before any change in approach to issuing certificates of temporary exemption. (These powers can only be exercised in relation to heavy vehicles and the views of their users – overwhelmingly commercial entities - are well represented by organisations.)

Clause 16 - Modification of conditions relating to construction working hours

New section 74B(6)TCPA 1990, as inserted by clause 16(2) power for the Secretary of State to issue guidance

Power conferred on: Secretary of State

Power exercised by: guidance

Parliamentary Procedure: none

Context and purpose

41. See paragraph 42 below.

Justification for taking the power

42. The power has been taken to assist applicants and local authorities in discharging their power to make an application and to determine an application respectively. It will enable the Secretary of State to set out matters of detail and to address questions from local authorities and applicants which might otherwise arise which will help to ensure that the procedures are operational upon commencement of the provisions which will be 5 clear days after Royal Assent.

Justification for the procedure

43. The guidance relates to the operation of the provisions and as such it is appropriate for there to be no procedure attached to its publication.

Clause 16(7) Power to extend the period during which a fast track application process for varying restrictions to construction working hours applies and to vary the date until which restrictions may be varied

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: draft or made affirmative procedure

Context and Purpose

44. In the planning regime, construction site working hours are controlled through planning conditions. In England, section 57 of the Town and Country Planning Act 1990 ("TCPA 1990") provides that planning permission is required for the carrying out of any development of land. Planning permissions may be obtained in a number of different ways, set out in section 58 of the TCPA 1990. A planning

condition is a condition or limitation imposed on a planning permission. Local Planning Authorities (“LPAs”) (and as the case may be, the Secretary of State) may grant planning permission and when doing so may impose “such conditions as they think fit” (sections 70(1)(a) and 72 of the TCPA 1990). This power is broad but must be interpreted in light of material factors such as Government planning policy (set out for the most part in the National Planning Policy Framework), its planning guidance on the use of conditions, and relevant case law. Limitations on working hours may be imposed either directly by a planning condition or indirectly if a planning condition is imposed requiring approval of a construction management document which includes permitted working hours (together referred to as planning conditions in the following discussion).

45. Clause 16 will introduce a new process offering a quick and straightforward route for landowners (or persons acting on their behalf) to apply for approval of variation of planning conditions to enable longer working hours on site.
46. The process will be an application by a developer to the LPA detailing the requested amended construction working hours to which the LPA would be deemed to have consented after 14 days, unless the LPA either consents to the variation, determines that it should be refused or, with the agreement of the applicant, determines that different hours, or a different start or end date to that set out in the application should be allowed. The effect of an actual consent, deemed consent or a different determination would be that existing planning conditions covering construction working hours would be varied for a time limited period that expires at the latest on 1st April 2021 (after which the original conditions would come back into force). Construction sites where work is taking place to alter or extend just one, existing, individual house will be excluded from the scope of the provisions. Mining operations are also excluded.
47. Clause 16(2) makes temporary modifications to the TCPA 1990. It provides that the Act has effect as if new sections 74B to 74D were inserted. New section 74B deals with an application to a LPA for a variation in planning conditions relating to construction working hours and subsection (8) provides that the date that it is proposed that the varied conditions will cease to have effect may not be later than 1 April 2021. New section 74C(4) provides that any variation of planning conditions granted under these provisions will be time limited, to expire on a date not later than 1 April 2021. Clause 16(6) provides that this clause, other than the

power to make regulations to extend those dates, which is contained in clause 16(7), will expire on 1 April 2021.

48. Clause 16(7) provides that in each of new sections 74B(8) and 74C(4) and clause 16(6) the date of 1 April 2021 may be substituted, through regulations, by a later date. Whilst it is proposed to take a general power, the intention would be to exercise it only where social distancing measures are to remain in place beyond 1 April 2021.

Justification for taking the power

49. The power to amend the date until which planning restrictions in relation to working hours on construction sites can be extended under fast track application process through secondary legislation provides flexibility, given the uncertainties created by the COVID-19 pandemic and consequent 'lockdown' period, as referred to above. In particular, the full impact of the crisis and social distancing requirements on the construction industry and the operation of construction sites is not yet clear and it is not known by what date a widespread resumption of normal construction activity will be possible. Use of secondary legislation to amend the expiry date for this provision will allow for swift amendment if necessary, and allows the Secretary of State to respond to the situation without needing to return to Parliament for further primary legislation. It is currently anticipated that the backlog of construction activity resulting from the lockdown period may have cleared by April 2021, or that social distancing restrictions will be lifted resulting in construction sites being able to operate at full capacity again, but there is a need for a power to extend if this is not the case. A clear end date is important given that there is potential for impacts on neighbouring uses and 1 April 2021 aligns with the end date for the measures to extend planning permissions.

Justification for the procedure

50. It is proposed that either the made affirmative or draft affirmative procedure may be used here in order to provide Parliament with thorough scrutiny of the use of this provision. Whilst decisions with regard to changes of planning conditions in relation to individual construction sites will remain with LPAs, it is acknowledged that use of the power to extend the period during which applications can be made

to vary restrictions on construction working hours beyond the period approved by Parliament in this Bill needs careful scrutiny given the potential for residents to be adversely affected by noise. It is proposed that the government may need the made affirmative as a back-up to ensure that this provision can remain in force if Parliament is not sitting at the time regulations need to be made to extend the Bill or if the need to extend arises unexpectedly so that there is not sufficient time to complete the normal draft affirmative procedure before the provisions expire, which is possible given the unpredictability of the COVID-19 pandemic. The draft affirmative procedure may be used if less urgency is required.

Clauses 17 – 19 - Extension of certain permissions and consents

New section 93B(14)TCPA 1990, as inserted by clause 17(2) power for the Secretary of State to issue guidance

Power conferred on: Secretary of State

Power exercised by: guidance

Parliamentary Procedure: none

Context and purpose

51. See paragraph 52 below.

Justification for taking the power

52. The power has been taken to assist applicants and local authorities in discharging their power to make an application and to determine an application respectively. It will enable the Secretary of State to set out matters of detail and to address questions from local authorities and applicants which might otherwise arise and will help to ensure that the procedures are capable of smooth operation on commencement of these provisions which will be 28 days after Royal Assent.

Justification for the procedure

53. The guidance relates to the operation of the provisions and as such it is appropriate for there to be no procedure attached to its publication.

Clauses 17(7), 18(7) and 19(3) - powers to amend (i) the duration of the extension of certain permissions and consents (ii) the permissions and consents to which an extension applies, (iii) the date after which no additional environmental approval may be granted, and (iv) the expiry date of these provisions, by amending dates set out on the face of the Bill

Clauses 17(8) and (9) and 18(8) and (9) – powers to make connected provision relating to additional approval requirements

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: draft or made affirmative procedure

Context and Purpose

54. Planning permissions and listed building consents (“relevant permissions”) are generally required to be subject to time-limiting conditions, which require the relevant works to begin before a certain date. If no relevant works are lawfully carried out before that date, the relevant permission expires, and is ‘lost forever’. Conversely, if some relevant works are carried out before that date, then the relevant permission is said to have been ‘implemented’ and may continue to be built out indefinitely thereafter.

55. Many relevant permissions have expired since the COVID-19 disruption and restrictions began and many more are due to expire before they will be over. Provision has therefore been made to extend any time limits for commencing relevant works which would otherwise expire during the period 23 March 2020 – 31 December 2020, so that they will instead expire after that period is over. This is to ensure that, where appropriate, planning conditions do not stand in the way of flexibility necessary to facilitate the safe operation of construction sites during the response to the COVID-19 pandemic and to proceed with developments otherwise delayed as a result of COVID-19. The provision includes relevant permissions which have already expired since the ‘lockdown’ period began (or which will expire before the legislation comes into force) – effectively ‘reinstating’ them. Where a lapsed planning permission is reinstated, the extension of the time

limit for commencing development will only apply if developers have applied for and been granted (or deemed to be granted) an 'additional environmental approval'. An 'additional environmental approval' is a confirmation that, if the development (if being granted planning permission now) would require an assessment under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and/or the Conservation of Habitats and Species Regulations 2017, such assessment was previously carried out and remains up-to-date.

56. Clauses 17 to 19 make temporary modifications to certain planning legislation.
57. Clause 17 provides that where so-called 'full' planning permission was granted in relation to the development of land in England subject to a condition that the development to which the permission relates must be begun not later than a date between the coming into force of this clause and 31 December 2021, that condition is instead deemed to require that development must be begun not later than 1 April 2021.
58. Clause 17 also provides that where full planning permission was granted in relation to the development of land in England and subject to a condition that the development to which the permission relates must be begun not later than a date between 23 March 2020 and the coming into force of this clause, and the developer applies for and is granted 'additional environmental approval', that condition is instead deemed to require that development must be begun not later than 1 April 2021.
59. Clause 18 applies in relation to outline planning permissions for development of land in England and provides that where outline permission was granted subject to a condition that application for the approval of reserved matters (sometimes informally referred to as 'details') must be made not later than a date between 23 March 2020 and 31 December 2020, that condition is instead deemed to require that such application must be made not later than 1 April 2021.
60. Clause 18 also provides that where outline permission was granted subject to a condition that development to which the permission relates must be begun not later than a date between the coming into force of this clause and 31 December 2020, that condition is instead deemed to require that development must be begun not later than 1 April 2021.
61. Clause 18 also provides that where outline permission was granted subject to a condition that development to which the permission relates must be begun not

later than a date between 23 March 2020 and the coming into force of this clause, and the developer applies for and is granted 'additional environmental approval', that condition is instead deemed to require that development must be begun not later than 1 April 2021.

62. Clause 19 applies in relation to listed building consents in England and provides that where listed building consent was granted subject to a condition that works to which the consent relates must be begun not later than a date between 23 March 2020 and 31 December 2020, that condition is instead deemed to require that works must be begun not later than 1 April 2021.

63. In both clauses 17 and 18, no 'additional environmental approval' may be granted (or deemed to be granted) after 31 December 2020, except on an appeal lodged before that date.

64. The effects of clauses 17 to 19 summarised above are to expire at the end of 1 April 2021.

65. Clauses 17(7), 18(7) and 19(3) provide powers for the Secretary of State to by regulations amend the duration of the extension of relevant permissions referred to above and the relevant permissions to which it applies by substituting a later date for the following dates:

- a. the latest time limits which will be modified by these provisions (31 December 2020);
- b. the date to which relevant time limits for commencement of relevant works will be extended (1 April 2021);
- c. the date after which no application for additional environmental approval may be granted or deemed to be granted, except on appeal (31 December 2020); and
- d. the date at the end of which these provisions expire (1 April 2021).

66. In addition, clauses 17(8)-(9) and 18(8)-(9) allow the Secretary of State to make provision for any further extension of permissions (arising from an amending of relevant dates through regulations) to be subject to further approval. It is anticipated that the most likely use of this power would be to re-apply the requirement to obtain 'additional environmental approval', or an approval similar to it, in respect of any further extensions.

67. These powers therefore provide additional flexibility for the Secretary of State to lengthen the extension of relevant permissions and to widen the dates of the relevant permissions covered by the provision, should the prevailing

circumstances necessitate (e.g. the need for a prolonged or reinstated period of social distancing as a result of the COVID-19 pandemic), by way of affirmative regulations.

Justification for taking the powers

68. It is proposed to take a power to substitute, by way of secondary legislation, the dates of 1 April 2021 and 31 December 2021 with later dates, given the uncertainties associated with the unprecedented COVID-19 pandemic. It is currently not yet clear, for example, if there may be further future 'lockdowns' should there be a resurgence of the virus or what the nature of any ongoing social distancing requirements will be. Consequently, it is uncertain how the continued crisis will affect developers and construction sites, and, in particular, by what date a widespread resumption of normal construction activity will be possible. It is therefore not possible at the time of drafting the Bill to have certainty that the presently proposed extension of relevant permissions where the commencement deadline falls between 23 March 2020 and 31 December 2020 ("the relevant period end date"), to 1 April 2021 ("the revised commencement deadline") will be sufficient to mitigate the impact of COVID-19 on the development industry.
69. Providing for an extension of the duration of planning permissions until 1 April 2021 is considered to be fair and proportionate to the impact that COVID-19 is having on the development industry. The lockdown is not only affecting the development industry in their ability to get on-site to implement planning permissions, but there are also concerns about the impacts it is having on the wider stock of planning permissions coming through the system upon which the industry relies. Setting the date at 1 April 2021 also reflects the possibility of any prolonged period of social distancing restrictions. This will provide certainty to the industry and local authorities and would avoid the need for further administrative action should a shorter initial extension period have necessitated a further extension and reassessment of permissions. In addition, in setting this date, we have taken into account compliance with EIA and Habitat Directives which restrict how far planning permissions can be extended.
70. It is therefore anticipated that it may be necessary to amend both the revised commencement deadline and the relevant period end date. Taking a power to do so in secondary legislation is needed to provide the flexibility to respond to the

fluid situation without placing the excessive demand on Parliamentary time that would be associated with primary legislation for this purpose.

71. If such periods are further extended in this way, then it may be appropriate to subject such further extensions (or some of them) to a requirement to obtain further approval – for example, to minimise any risk of such further extensions not complying with environmental safeguards. This could, for example, require further-extended consents to (re-)undergo the ‘additional environmental approval’ process. It is therefore proposed to include powers to do so.

Justification for the procedure

72. It is proposed that the affirmative procedure should be used here in relation to these powers, in order to give Parliament proper opportunity to scrutinise any extension of the revised commencement deadline or the relevant period end date and related further approval requirements. Either the made affirmative or draft affirmative procedure may be used. It is proposed that the government may need the made affirmative as a back-up to ensure that these provisions can remain in force if Parliament is not sitting at the time regulations need to be made to extend the Bill or if the need to extend arises unexpectedly so that there is not sufficient time to complete the normal draft affirmative procedure before the provisions expire, which is possible given the unpredictability of the COVID-19 pandemic. The draft affirmative procedure may be used if less urgency is required.

Clause 21 - Mayor of London’s Spatial Development Strategy: electronic inspection

New section 43(4C) GLA Act 1999, as inserted by clause 21(1) power for the Secretary of State to issue guidance

Power conferred on: Secretary of State

Power exercised by: guidance

Parliamentary Procedure: none

Context and purpose

73. See paragraph 74 below.

Justification for taking the power

74. The power has been taken to assist local authorities in making arrangements to allow electronic inspection of the spatial development strategy by the public. It will enable the Secretary of State to set out matters of to which local authorities must have regard both as to how the strategy should be made available electronically and as to the arrangements that should be made to mitigate the effects on those who could find it difficult or impossible to access the document by electronic means.

Justification for the procedure

75. The guidance relates to the operation of the provisions and as such it is appropriate for there to be no procedure attached to its publication.

Clause 21(3) Power to extend the period of application of the temporary provision allowing the Mayor of London to provide the Spatial Development Strategy for inspection free of charge by appropriate electronic means

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: draft or made affirmative procedure

Context and Purpose

76. The public health social distancing restrictions in place as a result of the COVID-19 pandemic have required the closure of many offices and public places, such as libraries, as well as prohibiting unnecessary travel. One of the consequences of this is that it may not be possible for the Mayor to comply with the statutory requirement to make the spatial development strategy available for public inspection, and even if this can be complied with, there is no guarantee that people will be able, or willing, to travel to the principal offices of the Greater London Authority to view the spatial development strategy. Similarly, the prohibition of unnecessary travel and the closure of offices means that it is difficult for relevant

employees to access buildings in order to supply copies of the spatial development strategy on request.

77. This difficulty is being addressed by temporarily permitting the Mayor to publish the spatial development strategy electronically during this emergency COVID-19 period.
78. Clause 21 temporarily modifies section 43 of the Greater London Authority Act 1999. It provides that until 31 December 2020 the statutory requirement in section 43(3) and (4) of the Greater London Authority Act 1999 requiring the Mayor of London to (a) make the spatial development strategy available for inspection at the principal offices of the Greater London Authority and (b) supply a copy of the Strategy on request for a reasonable fee, do not apply if a copy of the current version of the spatial development strategy is available for inspection free of charge by electronic means in a reasonably convenient way.
79. Clause 21 also provides that before making arrangements to make the spatial development strategy available by electronic means, the Mayor must have regard to any guidance issued by the Secretary of State as to (a) how a copy of the current version of the spatial development strategy should be made available by electronic means and (b) any arrangements that may be appropriate to mitigate the effects on a person of not being able to inspect a copy or finding it difficult to do so.
80. Clause 21(3) provides that the period that this temporary modification applies may be extended by substituting, by way of regulations, another date for the expiry date of 31 December 2020.

Justification for taking the power

81. It is proposed to take a power to extend the period that this temporary modification applies given the uncertainties associated with the unprecedented COVID-19 crisis. As referred to above, it is currently not yet clear, for example, there will be further future 'lockdowns' should there be a resurgence of the virus or what the nature of any ongoing social distancing requirements will be. In addition, it is unclear how long it will take before the public's confidence will be restored and people will feel comfortable to return to places such as libraries and council offices where they will be able to physically inspect documents. Taking a power to amend the duration of these temporary provisions is needed to provide the flexibility to

respond to the unfolding situation as necessary, without having to go back to Parliament in order to amend primary legislation.

82. This temporary flexibility in relation to the inspection of the spatial development strategy is directly related to the impact of COVID-19 and the need for social distancing rules. At present, there is uncertainty around when the social distancing rules will be completely eased. The end date of the calendar year has been chosen to provide clear certainty to the Mayor who is likely to publish ahead of this date. This also aligns with the end date of temporary publicity regulations for Town and Country Planning Act applications (made last month). If COVID-19 continues, flexibility to extend the date in relation to this measure is needed.

Justification for the procedure

83. It is proposed that the affirmative procedure would be appropriate here in order to ensure that Parliament has proper scrutiny of use of this provision and can ensure that the period of temporary application of the modifications to the relevant provisions is only extended beyond the period approved by Parliament through this Bill if appropriate. This is particularly important given that some members of the public, particularly the elderly and those from certain socio-economic groups, may be less likely to be able to access documents online and may therefore be disadvantaged as a result of being unable to physically inspect documents. It is proposed that the government may need the made affirmative as a back-up to ensure that this provision can remain in force if Parliament is not sitting at the time regulations need to be made to extend the Bill or if the need to extend arises unexpectedly so that there is not sufficient time to complete the normal draft affirmative procedure before the provisions expire, which is possible given the unpredictability of the COVID-19 pandemic. The draft affirmative procedure may be used if less urgency is required.

Clause 25 (Transitional etc provision in connection with expiry)

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: no procedure

Context and Purpose

84. All of the substantive provisions of the Bill are subject to expiry, with the exception of clause 20 (procedure for certain planning proceedings) and clause 13 (which broadens an already existing power to grant certificates of temporary exemption).

85. Clause 25 provides a power to make transitional, transitory or saving provision in connection with the expiry of any Bill provision. This power may be exercised by regulations.

Justification for taking the power

86. Much as a transitional provisions power is normally needed in a Bill to deal with situations that straddle the change in the law when new provisions in a Bill are commenced similarly transitional provisions may be needed when the temporary provision made by this Bill comes to an end and we return to the pre-existing legal framework.

87. Every effort has been made to identify transitional issues which may arise in connection with the expiry of Bill provisions. However, given that the Bill has been worked up at pace, it is considered prudent to take a limited power to make transitional etc. provision. This power is limited in the sense that it may only be used to make transitional, transitory or saving provision in connection with expiry.

Justification for the procedure

88. This power is subject to no procedure as is common practice for transitional provisions powers.

Department for Business, Energy and Industrial Strategy

25th June 2020