

# NEIGHBOURHOOD PLANNING BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Neighbourhood Planning Bill as brought from the House of Commons on 14 December 2016 (HL Bill 86).

- These Explanatory Notes have been prepared by the Department for Communities and Local Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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## Overview of the Bill

- 1 The Neighbourhood Planning Bill contains measures relating to planning and compulsory purchase and will contribute to the Government's aim of making sure the housing market works for everyone. All the measures in the Bill, apart from those relating to the planning register and local development documents, were announced in the Queen's Speech 2016. The Bill has two key aims. First, to help identify and free up more land to build homes on to give communities as much certainty as possible about where and when development will take place. Second, to speed up the delivery of new homes, in particular by reducing the time it takes to get from planning permission being granted to building work happening on site and new homes being delivered.
- 2 The Bill is made up of three parts. A summary of these parts and their contents is provided below.
  - Part 1: Planning
  - Part 2: Compulsory Purchase
  - Part 3: Final Provisions

## Policy background

### Neighbourhood planning

- 3 The Government's manifesto commitment is to "encourage communities engaged in neighbourhood planning to complete the process and to assist others to draw up their own plans". Over 2,000 communities have taken the decision to produce a neighbourhood development plan or an Order. The Bill is intended to strengthen neighbourhood planning by ensuring that planning decision-makers take account of well-advanced neighbourhood development plans and by giving neighbourhood development plans full legal effect at an earlier stage. It will introduce a proportionate process for modifying neighbourhood development orders and plans and facilitate the modification of neighbourhood areas where a neighbourhood development order or plan has already been made in relation to that area. The Bill also seeks to make the duty on local planning authorities to support neighbourhood planning groups more transparent.

### Local development documents

- 4 Local planning authorities are responsible for preparing local development documents under Part 2 of the Planning and Compulsory Purchase Act 2004. Some of these documents are development plan documents which comprise the 'local plan' and are the starting point for deciding planning applications in the area (along with neighbourhood plans, any spatial development strategy published by the Mayor of London, or a combined authority where it has this function, and policies 'saved' from earlier planning documents).
- 5 Development plan documents are the key documents through which local planning authorities can set out a vision and framework for the future development of the area, engaging with their communities in doing so. Producing these documents should be a shared endeavour – led by the local planning authority but in collaboration with local communities, developers, landowners and other interested parties. The measures in the Bill seek to strengthen this plan-led system by ensuring that all local planning authorities in England identify the strategic priorities for the development and use of land in their areas in an up-to-date plan. The Bill also provides for effective interventions where documents are not in place and seeks to improve the involvement of communities and others in plan-making.

## Planning conditions

- 6 Pre-commencement conditions are planning conditions which prevent any development authorised by a planning permission from taking place until detailed aspects of the development have been approved and the condition has been formally discharged by the applicant. As announced in the 2016 Budget, the Bill will provide that pre-commencement planning conditions are only used by local planning authorities where they have the written agreement of the developer. The Bill also includes a power to allow the Secretary of State to make regulations which prescribe the circumstances where certain conditions may or may not be imposed and descriptions of such conditions for the purpose of ensuring that conditions meet national policy tests.
- 7 The clauses in the Bill will not restrict the ability of local planning authorities to seek to impose conditions that are necessary to achieve sustainable development, in line with the National Planning Policy Framework. It is intended that the process of agreeing pre-commencement conditions before a decision is issued should become a routine part of the dialogue between the applicant and the local planning authority, building on current best practice. In the event that an applicant refuses to accept a necessary pre-commencement condition proposed by a local planning authority, the authority can refuse planning permission. This will maintain appropriate protections for important matters such as heritage, the natural environment, green spaces, and measures to mitigate the risk of flooding.

## Planning Register

- 8 Permitted development rights for change of use to residential use, introduced in recent years, are contributing to housing delivery. The Bill will allow the Secretary of State to require local planning authorities to record specified prior approvals for permitted development rights on the planning register, as is the case for applications for planning permission. This will enable the collection of information on the number of new homes permitted through permitted development, so that the contribution these measures are making to help achieve the Government's housing supply ambitions can be more accurately recorded.

## Compulsory Purchase

- 9 Following the reforms introduced by the Housing and Planning Act 2016, the Bill makes further changes to the law on compulsory purchase. It will seek to do this by clarifying the statutory framework for compensation, which will not affect the fundamental principles on which it is assessed. The Bill will also make further technical changes, such as introducing a general power to obtain temporary possession of land and a requirement to bring compulsory purchase orders into operation within a set period of time. These measures were the subject of a public consultation which closed on 15 May 2016.  
(<https://www.gov.uk/government/consultations/further-reform-of-the-compulsory-purchase-system>).

## Legal background

- 10 The legislation which this Bill amends is set out in a number of Acts of Parliament. This legislation is referred to below with further explanations, where required, set out in the section-by-section commentary.
- 11 The principal planning Act is the Town and Country Planning Act 1990 ('the 1990 Act'). This Bill amends the 1990 Act, as well as the following other planning legislation:
  - a. The Planning and Compulsory Purchase Act 2004 ('the 2004 Act') which brought about changes to the development plan system and to planning control; and
  - b. The Localism Act 2011, through its amendments to the 1990 and the 2004 Act.

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12 The main legislation relating to compulsory purchase, which this Bill amends, is:

- a. the Land Compensation Act 1961;
- b. the Compulsory Purchase Act 1965;
- c. the Land Compensation Act 1973;
- d. the Acquisition of Land Act 1981;
- e. the Compulsory Purchase (Vesting Declarations) Act 1981
- f. the Greater London Authority Act 1999; and
- g. the Housing and Planning Act 2016.

## Territorial extent and application

- 13 Clause 40 sets out the territorial extent of the Bill. If a provision of a Bill extends to a jurisdiction within the United Kingdom, this means that the provision will form part of the law of that jurisdiction. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect.
- 14 The commentary on individual provisions of the Bill includes a paragraph explaining their extent and application which can be summarised as follows:
- Part 1: Neighbourhood Planning, Local Development Documents, Planning Conditions and Planning Register extend to England and Wales, but apply to England only;
  - Part 2: Compulsory Purchase – these provisions extend and apply to England and Wales only, with the exception of clauses 31 and 32 which extend to England and Wales but apply to England only.
- 15 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned.
- 16 In the view of the UK Government, the provisions of the Bill are not within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly.
- 17 If there are amendments relating to matters within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly, the consent of the relevant devolved legislature(s) will be sought for amendments.
- 18 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding the legislative consent motions and matters relating to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

# Commentary on provisions of Bill

## Part 1

## Planning

### Neighbourhood Planning

#### Clause 1: Duty to have regard to post-examination neighbourhood development plan

- 19 This clause amends section 70 of the Town and Country Planning Act 1990 to require a local planning authority or other planning decision-taker to have regard to a post-examination neighbourhood development plan when dealing with an application for planning permission, so far as that plan is material to the application. A post-examination neighbourhood development plan is a plan which, following independent examination, is to be put to a referendum as a result of a decision by the local planning authority or a direction from the Secretary of State.
- 20 This clause extends to England and Wales but applies to England only.

#### Clause 2: Status of approved neighbourhood development plan

- 21 This clause amends section 38 of the Planning and Compulsory Purchase Act 2004 to provide for a neighbourhood development plan for an area to become part of the development plan for that area after it is approved in each applicable referendum (a residential referendum and, where the area is a business area, a business referendum). In the very limited circumstances that the local planning authority might decide not to make the neighbourhood development plan, it will cease to be part of the development plan for the area.
- 22 This clause extends to England and Wales but applies to England only.

#### Clause 3: Modification of neighbourhood development order or plan

- 23 This clause amends section 61M of the Town and Country Planning Act 1990 to enable a local planning authority to modify, only with the consent of the qualifying body for the neighbourhood area, a neighbourhood development order or plan if they consider that the modification does not materially affect any planning permission granted by the order or the policies in the plan.
- 24 This clause also amends the Planning and Compulsory Purchase Act 2004 to insert new Schedule A2 which sets out the process for the modification of a neighbourhood development plan in cases where the proposed modifications would materially affect the policies in the plan but are not so significant or substantial as to change the nature of the plan.
- 25 This clause extends to England and Wales but applies to England only.

#### Schedule 1: New schedule A2 to the Planning and Compulsory Purchase Act 2004

- 26 This Schedule sets out the procedure for making a modification to a neighbourhood development plan. A qualifying body must submit the proposed modifications to the local planning authority. The procedure for making the modifications largely replicates the existing process for making a neighbourhood development order in Schedule 4B to the Town and Country Planning Act 1990, as applied to neighbourhood development plans by section 38A(3) of the Planning and Compulsory Purchase Act 2004. Schedule 4B includes a number of powers for the Secretary of State to make regulations setting out more detailed procedure and these powers are replicated in Schedule A2. However, unlike the process for making a new neighbourhood development plan, examiners are expected to hold hearings only in exceptional circumstances and there is no referendum on the proposed modifications. A local planning authority will be required to make the modified

neighbourhood development plan if that is what the examiner recommends (including modifications recommended by the examiner).

- 27 The local planning authority may only decline to follow the examiner's recommendation where it considers that would breach or be incompatible with any EU obligations or Convention rights.
- 28 This Schedule extends to England and Wales but applies to England only.

#### Clause 4: Changes to neighbourhood areas etc

- 29 This clause amends the Town and Country Planning Act 1990 and the Planning and Compulsory Purchase Act 2004 to facilitate the modification of a neighbourhood area and provide for what is to happen to a neighbourhood development order or plan that has already been made in relation to that area. This might be necessary, for example, where a community governance review leads to changes to a parish boundary or the creation of a new parish, or where parish councils choose to undertake neighbourhood planning together or to plan for their own area where they have previously acted together.
- 30 This clause extends to England and Wales but applies to England only.

#### Clause 5: Assistance in connection with neighbourhood planning

- 31 This clause amends section 18 of the Planning and Compulsory Purchase Act 2004. That section requires a local planning authority to prepare a statement of community involvement setting out the authority's policy for involving interested parties in the preparation of local development documents. Clause 5 would require an authority to also set out their policy for discharging the duty to give advice or assistance to qualifying bodies to facilitate proposals for neighbourhood development plans (including proposals for the modification of neighbourhood development plans) or orders.
- 32 This clause extends to England and Wales but applies to England only.

### Local development documents

#### Clause 6: Content of development plan documents

- 33 This clause amends sections 19 and 35 of the Planning and Compulsory Purchase Act 2004 ('the 2004 Act') to require local planning authorities in England to identify the strategic priorities for the development and use of land in the authority's area. Each authority must set out policies to address those priorities in their development plan documents unless they are satisfied that these priorities are addressed in a spatial development strategy that covers their area (in Greater London or in the area of a combined authority that has the function of preparing a spatial development strategy). Authorities must make clear in each monitoring report published under section 35 of the 2004 Act the extent to which they are relying on policies in a spatial development strategy to deliver their strategic priorities, and where the relevant policies are to be found.
- 34 This clause extends to England and Wales but applies to England only.

#### Clause 7: Power to direct preparation of joint development plan documents

- 35 This clause inserts new sections 28A to 28C of the Planning and Compulsory Purchase Act 2004 and makes consequential amendments. New section 28A enables the Secretary of State to direct two or more local planning authorities to prepare a joint development plan document where that will facilitate the more effective planning of the development and use of land in the area of one or more of those authorities.
- 36 The direction may specify the area to be covered by the joint document, the matters to be covered and the timetable for the document's preparation. New section 28B applies Part 2 of the 2004 Act to

a joint development plan document as it applies to any other development plan document. New section 28C makes provision about the consequences of the modification or withdrawal of a direction, including a power to define in regulations what is a “corresponding document” for these purposes. Sections 21 and 27, and Schedule A1, to the 2004 Act are amended to enable costs to be apportioned between authorities where it is necessary for the Secretary of State to intervene in the preparation of a joint development plan document (including where other specified bodies are invited to prepare the document).

37 This clause extends to England and Wales but applies to England only.

### Clause 8: County Councils’ default powers in relation to development plan documents

38 Clause 8 introduces Schedule 2, which enables the Secretary of State to invite a county council to prepare a development plan document for a local planning authority in their area.

39 This clause extends to England and Wales but applies to England only.

### Schedule 2: County council’s default powers in relation to development plan documents

40 Schedule 2 amends Schedule A1 to the Planning and Compulsory Purchase Act 2004. That Schedule enables the Secretary of State to invite the Mayor of London or a combined authority to prepare a development plan document for an authority in their respective areas. Intervention is permitted only where the Secretary of State thinks that a local planning authority are failing or omitting to do anything it is necessary for them to do in connection with the preparation, revision or adoption of the document. The amendment enables the Secretary of State to additionally invite a county council to prepare a document for a local planning authority in their area.

41 Where a county council accepts the invitation, they are responsible for preparing the document and having it examined. They may then approve the document (or approve it subject to modifications recommended by the inspector) or direct the local planning authority to consider adopting it. The Secretary of State may ‘call in’ or require modifications to be made to a document being prepared by a county council as he or she can in relation to any other development plan document.

42 This schedule extends to England and Wales but applies to England only.

### Clause 9: Format of local development schemes and documents

43 This clause amends section 36 of the Planning and Compulsory Purchase Act 2004 to enable the Secretary of State to publish data standards which set technical specifications for local development schemes and local development documents or data contained in them. Local planning authorities must comply with these standards when preparing, publishing, maintaining or revising any such scheme or document.

44 The clause also amends section 15(8AA) of the 2004 Act to enable the Secretary of State or the Mayor of London (in the case of a London borough council) to direct a local planning authority to revise a local development scheme so that it complies with published data standards.

45 This clause extends to England and Wales but applies to England only.

### Clause 10: Review of local development documents

46 This clause amends section 17 of the Planning and Compulsory Purchase Act 2004 to enable the Secretary of State to prescribe in regulations the intervals at which local planning authorities must review their local development documents. Where an authority reviews a document but decides not to revise it, they must publish their reasons.

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47 This clause extends to England and Wales but applies to England only.

### Clause 11: Statements of community involvement

48 This clause amends section 18 of the Planning and Compulsory Purchase Act 2004 to require local planning authorities to set out in their statements of community involvement policies for involving interested parties in the preliminary stages of plan-making.

49 This clause extends to England and Wales but applies to England only.

## Planning Conditions

### Clause 12: Restrictions on power to impose planning conditions

50 This clause inserts a new section 100ZA into the Town and Country Planning Act 1990. This section provides that a local authority cannot grant planning permission subject to any pre-commencement conditions, without first obtaining the applicant's written agreement to the terms of that condition. A 'pre-commencement condition' is a planning condition imposed on a grant of planning permission, which the applicant must discharge before work can commence on site.

51 This section also provides the Secretary of State with the power to make regulations about what kind of conditions may or may not be imposed on a grant of planning permission, and in what circumstances. Under this section, the Secretary of State can only make provision by regulations if the Secretary of State is satisfied that such provision is appropriate for the purpose of ensuring that conditions imposed by local authorities are necessary to make the development acceptable in planning terms; relevant to the development and planning considerations generally; sufficiently precise to make them capable of being complied with and enforced, and reasonable in all other aspects – in line with the policy on conditions in the National Planning Policy Framework. The section also contains a requirement to carry out a public consultation before making any such regulations.

52 This clause extends to England and Wales but applies to England only.

### Schedule 3: Planning conditions: consequential amendments

53 This Schedule makes a number of consequential amendments to the Town and Country Planning Act 1990.

54 This Schedule extends to England and Wales but applies to England only.

## Planning Register

### Clause 13: Register of planning applications etc

55 This clause inserts a new section 69A, into the Town and Country Planning Act 1990. It extends the scope of the planning register established under section 69 of the 1990 Act by allowing the Secretary of State to require that information about specified prior approval applications or notifications for permitted development rights is placed on this register. The clause enables the Secretary of State to introduce regulations which prescribe the information and prior approval applications and notifications which must be placed on the planning register.

56 This clause extends to England and Wales and applies to England only.

## Part 2

# Compulsory Purchase Etc

### Chapter 1

#### *Temporary possession of land*

#### Clause 14: Power to take temporary possession of land

- 57 This clause gives all those with a power to acquire land (e.g. local authorities and certain agencies, and statutory undertakers etc.) by agreement or compulsorily the power to take temporary possession of land for purposes connected with the purposes of the scheme by agreement or compulsorily.
- 58 This clause extends and applies to England and Wales only.

#### Clause 15: Procedure for authorising temporary possession etc

- 59 This clause provides that compulsory temporary possession must be authorised in the same way as the associated compulsory acquisition of land, for example through a compulsory purchase order. It sets out the information which must be included in the authorising instrument.
- 60 This clause extends and applies to England and Wales only.

#### Clause 16: Notice requirements

- 61 This clause requires acquiring authorities to give at least three months' notice to those with an interest in the land and occupiers before taking temporary possession and requires the notice to specify the period for which the acquiring authority is to take temporary possession of the land.
- 62 This clause extends and applies to England and Wales only.

#### Clause 17: Counter-notice

- 63 This clause provides that an 'owner' (defined as a freeholder or leaseholder) of the temporary possession land may serve a counter-notice on the acquiring authority within 28 days of the notice of their intended entry limiting the period for which the acquiring authority may take temporary possession to either 12 months in the case of a dwelling (or part of a dwelling) or six years in any other case. The acquiring authority may then either accept the notice and limit the period of temporary possession as requested, withdraw the notice of intended entry or purchase the owner's interest in the land and must give notice of its decision to the owner within 28 days of the counter-notice. In addition, a leaseholder can opt to require the acquiring authority to either not take the land temporarily or to permanently acquire the lease.
- 64 If the owner's interest is purchased, the material detriment provisions in the Compulsory Purchase Act 1965 or the Compulsory Purchase (Vesting Declarations) Act 1981 may apply if only part of the owner's house, building or factory is taken.
- 65 This clause extends and applies to England and Wales only.

#### Clause 18: Refusal to give up possession

- 66 This clause applies the enforcement provisions in section 13 of the Compulsory Purchase Act 1965 (where an owner or occupier of the land refuses to give up land to an acquiring authority) so that references in that Act to taking possession of land are taken to be references to taking temporary possession of land. This means that, where a person refuses to give up possession of the land, an acquiring authority can issue their warrant to a sheriff or enforcement officer to gain possession of the land on its behalf.
- 67 This clause extends and applies to England and Wales only.

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## Clause 19: Compensation

- 68 This clause provides that those with an interest in the land, or a right to occupy the land, are entitled to compensation for any loss or injury sustained as a result of the temporary possession. Compensation must take into account the value of a leasehold interest in the land for the period of temporary possession. Any disputes about compensation payable may be referred to the Upper Tribunal (Lands Chamber).
- 69 This clause extends and applies to England and Wales only.

## Clause 20: Advance payments

- 70 This clause provides for the advance payment of any compensation due to a claimant (as set out in clause 19 of the Bill). Before taking possession of the land, the acquiring authority must give notice (under clause 16 of the Bill) specifying a period after which temporary possession can be taken. A person who receives such a notice can then make a request in writing for advance payment of compensation. The request must set out the basis on which the claimant is or is going to be entitled to compensation and provide sufficient information to enable the acquiring authority to estimate the amount of compensation in respect of which the advance payment is to be made (under clause 19). The process is modelled on the provisions dealing with advance payments of compensation where land is acquired by compulsion.
- 71 This clause extends and applies to England and Wales only.

## Clause 21: Interest on advance payments of compensation paid late

- 72 This clause requires the acquiring authority to pay interest on any outstanding amount of an advance payment of compensation which remains due after the last date on which it should have been paid. The rate of interest payable will be specified in regulations made by the Treasury.
- 73 This clause extends and applies to England and Wales only.

## Clause 22: Consequential amendments

- 74 This clause provides that temporary possession land is included in the list of categories of land which are blighted land.
- 75 It also extends the right to enter and survey land in section 172 of the Housing and Planning Act 2016 by making it available in connection with a proposal to take temporary possession under clause 14 of the Bill. A consequential amendment is also made to the definition of “acquiring authority” in section 172 to clarify its meaning in this context.
- 76 This clause extends and applies to England and Wales only.

## Clause 23: Powers of acquiring authority in relation to land

- 77 This clause allows the acquiring authority to use the land as if it had acquired all interests in it and, in particular, provides the power to remove or erect buildings or other works and remove any vegetation. The power to use land is also subject to limitation of the use to the purposes for which the land was acquired and to any regulations limiting the ways in which the land can be used.
- 78 This clause extends and applies to England and Wales only.

## Clause 24: Supplementary provisions

- 79 This clause provides the Secretary of State with the power to make regulations in relation to the power to take temporary possession. Different provisions may be necessary for different types of land to be occupied (such as residential), or for different types of acquiring authority. It also enables the Secretary of State to specify notice requirements and the circumstances under which the original occupier may be deemed to still be in occupation, such as preserving a right to a new tenancy.

80 This clause extends and applies to England and Wales only.

### Clause 25: Interpretation

81 This clause is self-explanatory.

82 This clause extends and applies to England and Wales only.

### Clause 26: Application to Crown land

83 This clause is self-explanatory.

84 This clause extends and applies to England and Wales only.

## Chapter 2

### **Other provisions relating to compulsory purchase**

#### Clause 27: No-scheme principle

85 Compensation for land taken by compulsory purchase is assessed in the “no-scheme world”. This assumes that the scheme underlying the compulsory purchase was cancelled on the valuation date (the date of entry and taking possession of the land – if not agreed earlier). Compensation for interests in land is its open market value in the “no-scheme world”, disregarding both any increase or decrease in the value of the land which is solely attributable to the particular purpose for which it is acquired, and the acquiring authority’s need for the land for that purpose.

86 The principles and assumptions concerning the no-scheme world and the extent of the scheme to be disregarded are mainly to be found in sections 6 to 9 of the Land Compensation Act 1961 and around 100 years of case law on these provisions and their predecessors.

87 This clause clarifies the principles and assumptions for the “no-scheme world”, taking into account the case law and judicial comment.

88 Subsection (3) inserts new sections 6A to 6E to replace sections 6 to 9 of the 1961 Act.

89 The new Section 6A sets out the main principle that any increases or decreases in value caused by the scheme or decreases caused by the prospect of the scheme must be disregarded and lists the assumptions to be made. Subsection 6A(10) provides a cross-reference to the planning assumptions in section 14 of the 1961 Act. Once the no-scheme world has been established, the planning assumptions are then engaged to determine what (if any) planning permissions would be available for that land in the circumstances of the no-scheme world.

90 New section 6D defines ‘the scheme’ for the purposes of establishing the no-scheme world. The default case is set out in subsection (1), being the scheme underlying the compulsory acquisition. Subsections (2) to (6) provide for special cases.

91 Subsection (2) clarifies that for urban development areas, new towns and Mayoral development areas, ‘the scheme’ is the development of any land for the purposes for which the area is (or was) designated.

92 Subsections (3) and (4) provide that where regeneration or redevelopment will be enabled by a “relevant transport project” then, when the regeneration or redevelopment comes forward, the underlying scheme can be considered to include the relevant transport project subject to the conditions and safeguards in new section 6E.

93 Subsection (5) provides for circumstances where the scheme that is to be disregarded is larger than the area of land to be acquired by compulsion. In order for this to apply, the acquiring authority must identify the larger scheme at the outset, unless otherwise agreed by the parties or with the permission of the Upper Tribunal in special circumstances.

94 This clause extends and applies to England and Wales only.

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## Clause 28: Repeal of Part 4 of the Land Compensation Act 1961

- 95 This clause repeals Part 4 of the Land Compensation Act 1961 and related provisions so that a claimant is no longer entitled to claim additional compensation where, within 10 years of the completion of the compulsory purchase by the acquiring authority, a planning decision is made granting consent for additional development on the land. The claimant used to be entitled to claim the additional amount that would have been payable with the consent.
- 96 This clause extends and applies to England and Wales.

## Clause 29: Time limit for confirmation notices

- 97 Where a compulsory purchase order is confirmed by the confirming authority (the authority with the power to authorise the acquiring authority's compulsory acquisition), the acquiring authority is required to serve a confirmation notice upon every owner, tenant and occupier, to affix a confirmation notice on or near the land comprised in the compulsory purchase order, and to publish a confirmation notice in one or more local newspapers circulating in the locality in which that land is situated.
- 98 This clause amends section 15 of the Acquisition of Land Act 1981 by introducing a six week statutory time limit for issue of the confirmation notices unless a longer period is agreed in writing between the acquiring authority and the confirming authority. It also provides for the confirming authority to issue the confirmation notices, and recover the costs of doing so, where an acquiring authority fails to do so.
- 99 This clause extends and applies to England and Wales only.

## Clause 30: Compensation for disturbance

- 100 Persons in lawful possession of, but without any further interest in, land which is to be compulsorily acquired (licensees) are entitled to compensation for disturbance representing the losses caused by reason of losing possession of the land. Where the person is carrying on a trade or business then regard is had, when calculating the losses, to the period for which the land occupied by the person might reasonably have been expected to be available for the purpose of the person's trade or business.
- 101 For secure tenancies (those with the protection of Part 2 of the Landlord and Tenant Act 1954), the right of a tenant to apply for a new tenancy is taken into account in the assessment of compensation for the acquisition of the interest of the landlord or tenant.
- 102 Disturbance payments for licensees and secure tenancies is to be contrasted with the current position for minor tenancies (a tenancy with less than a year left to run, or a tenancy from year to year) and for unprotected tenancies (those without the protection of Part 2 of the Landlord and Tenant Act 1954). Case law (*Bishopsgate Space Management v London Underground* [2004] 2 EGLR 175) has held that for these purposes it has to be assumed that the landlord would terminate the tenant's interest at the first available opportunity following notice to treat, whether or not that would happen in reality.
- 103 This clause brings the assessment of compensation for disturbance for minor and unprotected tenancies into line with that for licensees and secure tenancies by providing that regard should be had to the likelihood of the tenancy to be continued or renewed, the period for which the tenancy might reasonably have been expected to continue, and the terms and conditions of such a tenancy.
- 104 This clause extends and applies to England and Wales only.

## Clause 31: GLA and TfL: joint acquisition of land

- 105 Transport for London ('TfL') can seek compulsory purchase powers only for transport and highways purposes, and the Greater London Authority ('GLA') can seek compulsory purchase powers only for housing and regeneration purposes.

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106 This clause applies where the GLA and TfL agree that the purposes for which they may acquire land compulsorily would be advanced by one or both of them acquiring land for a joint project. The purposes for which the GLA may acquire land are extended to include those of TfL. Similarly, the purposes for which TfL may acquire land are extended to include those of the GLA. This therefore enables either body to acquire all the land required for a combined transport and regeneration or housing scheme on behalf of the other.

107 This clause extends to England and Wales and applies to England only.

### Clause 32: Overriding easements: land held on behalf of GLA or TfL

108 This clause amends the provisions for overriding easements in sections 203 to 206 of the Housing and Planning Act 2016 to ensure they work as intended for the Greater London Authority and Transport for London. The GLA and TfL have land-holding subsidiary companies, and can only carry on particular specified activities for a commercial purpose through a taxable body. These subsidiary companies do not have independent compulsory purchase powers. The provisions in the 2016 Act would therefore not function as intended without the amendments made by clause 32.

109 This clause extends to England and Wales and applies to England only.

### Clause 33: Timing of advance payments of compensation

110 Clauses 33 to 35 make a number of technical amendments to the provisions on advance payments of compensation in the Land Compensation Act 1973 (“the LCA 1973”) (as amended by Part 7 of the Housing and Planning Act 2016). The amendments ensure the changes made by the 2016 Act work as intended in all cases, in particular where the land is subject to a mortgage.

111 Clause 33 amends sections 52 and 52ZC of the LCA 1973 to ensure that, where an acquiring authority is required to make an advance payment to a claimant or a payment to a mortgagee, the payment does not have to be made before the authority has received any further information required under section 52(2A)(b) (to estimate the amount of compensation) or under section 52ZC(2)(b) (to establish the amount of the mortgage).

112 This clause extends and applies to England and Wales only.

### Clause 34: Interest on advance payments of compensation

113 This clause makes a technical amendment to section 52A(2B) of the LCA 1973 (inserted by section 196 of the Housing and Planning Act 2016).

114 Section 52A(2B) is intended to ensure that in respect of any period in relation to which an acquiring authority is required to pay interest under section 52B, it does not have to pay interest under section 52A on the same amount. Section 52A(2B) currently provides that the interest payable under section 52A(2) is limited to the interest which accrues on the difference between the total amount and “the paid amount”. The “paid amount” (as defined in section 52A(2A)) may not, however, always equate to the amount which is accruing interest under section 52B. Clause 34, therefore, replaces “the paid amount” with “the amount in respect of which the authority is required to pay interest under section 52B”.

115 This clause extends and applies to England and Wales only.

### Clause 35: Interest on payments to mortgagee paid late

116 This clause ensures that where a payment to a mortgagee under section 52ZA or 52ZB of the LCA 1973 is paid late, interest is payable to the claimant (in the same way as when an advance payment to a claimant is paid late).

117 This clause extends and applies to England and Wales only.

## Clause 36: Compensation for temporary severance of land after vesting declaration

118 This clause amends Schedule A1 to the Compulsory Purchase (Vesting Declarations) Act 1981 to include an equivalent provision to paragraph 28(5) of Schedule 2A to the Compulsory Purchase Act 1965. The amendment makes clear that the Upper Tribunal may require an acquiring authority to pay compensation for temporary severance, under section 7 of the 1965 Act, when the authority executes a general vesting declaration and enters on the part of a claimant's land that it needs for its scheme, while a material detriment claim is being considered by the Tribunal; and the Tribunal subsequently determines that the acquiring authority must take additional land from the claimant. The Upper Tribunal may require the authority to pay compensation for the temporary severance of the land it planned to take from the additional land.

119 This clause extends and applies to England and Wales only.

## Part 3

### Final Provisions

120 Clauses 37- 40 and 42 are self-explanatory.

## Commencement

121 Clause 41 provides that the provisions in Part 3 (extent, commencement and short title) of this Bill, together with the powers conferred by the Bill to make secondary legislation within clauses 3, 7, 10 and Schedule 1 (neighbourhood planning and local development documents) and clause 13 (planning register) will come into force on the day on which the Bill is passed. All other provisions of this Bill will be commenced by Regulations at least two months after Royal Assent.

## Financial implications of the Bill

122 The provisions in Part 2 of Bill provide for the circumstances where public authorities may be liable to pay compensation (and in some circumstances interest on that compensation) to persons who have an interest in or a right to occupy land which is compulsorily acquired or which is subject to temporary possession. These provisions will therefore have an impact on public expenditure.

## Compatibility with the European Convention on Human Rights

123 Section 19 of the Human Rights Act 1998 requires a Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the Bill with the Convention Rights (as defined by section 1 of that Act). Lord Bourne of Aberystwyth, Parliamentary Under Secretary of State for Communities, has stated that in his view the provisions of the Neighbourhood Planning Bill are compatible with Convention rights.

124 The Government has published a separate European Convention on Human Rights memorandum with its assessment of compatibility of the Bill's provisions with the Convention rights (see related documents below).

## Related documents

125 The following documents are relevant to the Bill and can be read at the stated locations:

- The Neighbourhood Planning Bill 2016:  
<http://services.parliament.uk/bills/2016-17/neighbourhoodplanning.html>
- ECHR memorandum:  
<https://www.gov.uk/government/publications/neighbourhood-planning-bill-overarching-documents>
- Delegated powers memorandum:  
<http://services.parliament.uk/bills/2016-17/neighbourhoodplanning/documents.html>
- Neighbourhood Planning Bill policy factsheets:  
<https://www.gov.uk/government/publications/neighbourhood-planning-bill-policy-factsheets>
- The Conservative Party Manifesto 2015, April 2015:  
<https://www.conservatives.com/manifesto>
- The Queen's Speech 2016: <https://www.gov.uk/government/speeches/queens-speech-2016>
- The Housing and Planning Act 2016:  
<http://www.legislation.gov.uk/ukpga/2016/22/contents/enacted/data.htm>

## Annex A – Territorial extent and application in the United Kingdom

The commentary on individual provisions of the Bill includes a paragraph explaining their extent and application. The territorial extent and application of each part of the Bill is summarised as follows:

- Part 1: Neighbourhood Planning, Local Development Documents, Planning Conditions, and Planning Register – these provisions extend to England and Wales, but apply to England only.
- Part 2: Compulsory Purchase – these provisions extend and apply to England and Wales with the exception of clauses 31 and 32 which extend to England and Wales but apply to England only.
- Part 3: Final Provisions – these clauses extend and apply to the UK.

In the view of the Government of the United Kingdom, clauses 1 to 13 and Schedules 1 to 3 (Neighbourhood Planning, Local Development Documents, Planning Conditions and Planning Register) relate exclusively to England and it would be within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly to make corresponding provision.<sup>1</sup>

In the view of the Government of the United Kingdom clauses 14 to 36 (Compulsory Purchase) relate exclusively to England or England and Wales and it would be within the legislative competence of the Scottish Parliament or Northern Ireland Assembly to make corresponding provision.

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<sup>1</sup> References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
<i>Neighbourhood Planning</i>								
Clause 1 to 5	Yes	No	No	No	Yes	Yes	Yes	No
<i>Local Development Documents</i>								
Clause 6 to 11	Yes	No	No	No	Yes	Yes	Yes	No
<i>Planning Conditions</i>								
Clause 12	Yes	No	No	No	Yes	Yes	Yes	No
<i>Planning Register</i>								
Clause 13	Yes	No	No	No	Yes	Yes	Yes	No
<i>Compulsory Purchase</i>								
Clause 14 to 30	Yes	Yes	No	No	No	Yes	Yes	No
Clause 31 and 32	Yes	No	No	No	No	Yes	Yes	No
Clauses 33 to 36	Yes	Yes	No	No	No	Yes	Yes	No
Schedule 1	Yes	No	No	No	Yes	Yes	Yes	No
Schedule 2	Yes	No	No	No	Yes	Yes	Yes	No
Schedule 3	Yes	No	No	No	Yes	Yes	Yes	No

*These Explanatory Notes relate to the Neighbourhood Planning Bill as brought from the House of Commons on 14 December 2016 (HL Bill 86)*

## Minor or consequential effects<sup>2</sup>

There are no provisions which apply to England only that have minor or consequential effects outside England and there are no provisions which apply to England and Wales that have minor or consequential effects outside England and Wales.

## Subject matter and legislative competence of devolved legislatures

- a. Part 1 and clauses 1 to 13 of the Bill make provision in relation to town and country planning. Town and country planning is a devolved matter in Scotland, Wales and Northern Ireland (town and country planning is a conferred matter by virtue of Schedule 7, part 1, paragraph 18 of the Government of Wales Act 2006; it is not a reserved matter listed in Schedule 5 to the Scotland Act 1998; and is not an excepted or reserved matter in Schedule 2 or 3 of the Northern Ireland Act 1998). The Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly could therefore make corresponding provision in respect of these measures.
- b. Part 2 and clauses 14 to 31, and 33 to 36 of the Bill make provision in relation to compulsory purchase. Compulsory purchase is reserved in Wales. It is not a conferred matter in Schedule 7 of the Government of Wales Act 2006 and is therefore not within the legislative competence of the Assembly. Compulsory Purchase is not reserved under the Scotland Act 1998 and it is not an excepted or reserved matter under the Northern Ireland Act 1998. The Scottish Parliament and the Northern Ireland Assembly could therefore make corresponding provision in respect of these measures.
- c. Clause 32 of the Bill makes provision in relation to overriding easements. Land law is reserved in Wales. It is not a conferred matter in Schedule 7 of the Government of Wales Act 2006 and is therefore not within the legislative competence of the Assembly. Land law is not reserved under the Scotland Act 1998 and it is not an excepted or reserved matter under the Northern Ireland Act 1998. The Scottish Parliament and the Northern Ireland Assembly could therefore make corresponding provision in respect of this measure.

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<sup>2</sup> References in this Annex to an effect of a provision being minor or consequential are to its being minor or consequential for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.



# NEIGHBOURHOOD PLANNING BILL

## EXPLANATORY NOTES

These Explanatory Notes relate to the Neighbourhood Planning Bill as brought from the House of Commons on 14 December 2016 (HL Bill 86).

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