

NEIGHBOURHOOD PLANNING BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

1. The Government has tabled further amendments to the Neighbourhood Planning Bill in advance of Lords Committee stage due to commence on 31 January 2017. These include two amendments which modify existing delegated powers in the Bill, a new delegated power and a duty to issue guidance. This supplementary memorandum explains the nature of the new delegated power and the modifications to existing powers and the reasons for these. There is also a new duty to issue guidance in the amendments, and further information about this is provided below.

Amendment to clause 11 of the Bill: Power for Secretary of State to prescribe matters to be included in Statements of Community Involvement

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative procedure

Context and Purpose

2. This amendment allows the Secretary of State to produce Regulations which prescribe matters which local planning authorities must address in their Statements of Community Involvement.
3. Local planning authorities are under a statutory duty to prepare a statement of community involvement ('SCI')¹. An SCI is a type of local development document, which is a planning document prepared under Part 2 of the Planning and Compulsory Purchase Act 2004 ('the 2004 Act').
4. The purpose of an SCI is to set out the local planning authority's policy on the involvement of interested parties in the exercise of the authority's specified statutory functions relating to the preparation and revision of local development documents and development management (i.e. deciding planning applications)². How they do this is at the local planning authorities' discretion. However, commonly the content of authorities' SCIs reflects the framework provided by the (Local Planning) (England) Regulations 2012 (the "Local Planning Regulations") which prescribe the process for consultation and publicity on local development documents.
5. Clauses 5 and 11 of the Bill would extend the matters to be set out in an SCI to include 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) and orders and

¹ See section 18(1) of the Planning and Compulsory Purchase Act 2004

² See section 18(2) of the Planning and Compulsory Purchase Act 2004.

the authorities' functions under Section 13 (the survey function of local planning authorities) and Section 15 (preparation and maintenance of a local development scheme) of the 2004 Act.

6. We seek to ensure that, for these new functions, the Government can prescribe matters relating to the process for involving interested parties. For example prescribing such matters for functions under Sections 13 and 15 would ensure clarity about who an authority proposes to involve and, when, how, and whether those involved will have an opportunity to make representations and if so, how, and whether those involved will be informed of the outcome of their involvement. The Government also seeks to ensure clarity about how local planning authorities intend to advise qualifying bodies³ on the relationship between the development plan documents referred to in an authority's local development scheme and neighborhood development plans. The Government intends to set out the requirements for doing so in the existing Local Planning Regulations.

Justification for delegation

7. Section 19(6) of the 2004 Act provides a power for the Secretary of State to prescribe regulations which set out the form and content of local development documents⁴. Such matters are currently set out in the Local Planning Regulations, which as procedural matters sit best in secondary legislation, in terms of subject matter and the need for procedural requirements to be updated as required. For example, it would not be appropriate to change primary legislation every time updates to procedures, as the result of local planning authority engagement, were required. This amendment will allow for like matters, concerning procedure, to be treated in the same way.

Justification for procedure

8. The negative procedure is appropriate as this is the procedure which currently applies in relation to the existing Local Planning Regulations which, as explained above, deal with similar procedural requirements which do not merit a higher level of scrutiny. The Government intends to exercise this power by amending those Regulations so that all procedural aspects for the preparation of local development documents will be contained in the same instrument. This will improve the accessibility of this legislation for applicants, decision makers and other users of the planning regime.

Amendments to clause 1 and addition of a new clause to the Bill: Extension of existing delegated powers in paragraph 8(6) of Schedule 1 to the Town and Country Planning act 1990 to apply new automatic notification requirements in relation to neighbourhood planning

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

³ See section 61E (6) of the 1990 Act which provides that a "qualifying body" means a parish council, or an organisation or body designated as a neighbourhood forum, authorised for the purposes of a neighbourhood development order to act in relation to a neighbourhood area as a result of section 61F of the 1990 Act.

⁴ This does not but does not currently provide for matters relating to neighbourhood planning functions.

Parliamentary procedure: Negative procedure

Context and purpose

9. Paragraphs 8 and 8A of Schedule 1 to the Town and Country Planning Act 1990 ('1990 Act') place a duty on local planning authorities to notify parish councils and designated neighbourhood forums ('qualifying bodies') respectively of any relevant planning applications in their area. This duty currently only applies when a qualifying body requests to be notified. The procedures for a qualifying body to make written representations once notified are set out in Articles 25 and 25A of the Town and Country Planning (Development Management Procedure) (England) Order 2015⁵ (the DMPO) which are made under the power in paragraph 8(6) of Schedule 1 to the 1990 Act.
10. The amendments to clause 1 and the new clause to be inserted after clause 1 introduce new automatic notification requirements into paragraphs 8 and 8A of Schedule 1. The requirements will apply to qualifying bodies who have a neighbourhood plan in their area which has passed examination stage and planning decision makers must have regard to under section 70 of the 1990 Act.
11. The amendments in the new clause to be inserted after clause 1 will have the effect of extending the power in paragraph 8(6) of Schedule 1 to the 1990 Act so that further matters which relate to the new automatic notification procedure can be set out in the DMPO.

Justification for the Delegation

12. There is no new delegation here; the effect of the amendment is that it will extend the matters which may be prescribed under the existing delegated power at paragraph 8(6) of Schedule 1, (the power to set out related procedural requirements in a development order, under which Article 25 and 25A of the DMPO is made). As with the other matters of procedure for planning application processes, the time periods for making representations are prescribed in the DMPO. The use of secondary legislation for the prescription of procedure is keeping with the current procedural requirements that apply to almost every other consultation and notification procedure throughout the planning regime.

Justification for the procedure

13. This is an extension of an existing power to which the negative procedure applies so a higher level of parliamentary scrutiny would not be appropriate.

⁵ S.I 2015/595

Amendment to clause 6: Duty for the Secretary of State to issue guidance on addressing housing needs relating to old age or disability

Power conferred on: Secretary of State

Power exercisable by: Guidance

Parliamentary procedure: Not applicable

Context and Purpose

14. This amendment imposes a duty on the Secretary of State to issue guidance to local planning authorities on how their local development documents, taken as a whole, should address housing needs that result from old age or disability. It inserts this duty into section 34 of the 2004 Act, which also provides that a local planning authority must have regard to guidance issued by the Secretary of State in exercising their functions under Part 2 of that Act.
15. If the Secretary of State fails to issue guidance or a local planning authority fails to have regard to that guidance when preparing their local development documents, the failure to comply with a statutory duty can be judicially reviewed.
16. The Government intends to clarify the existing policy relating to older and disabled people to ensure that local planning authorities have clear policies for addressing the needs of such groups. This will be combined with further changes to planning guidance, with a clear focus on sharpening up the relevant local evidence base to help local planning authorities to formulate appropriate and clear policies

Justification for delegation

17. National planning policy and guidance are cornerstones of the town and country planning system. The preparation of local development documents and individual planning decisions both necessitate the weighing up of a complex variety of factors. Published national policy and guidance assists local planning authorities to understand the matters that the Government expects them to take into account, rather than creating hard and fast legislative rules about such decisions, which would difficult to create and undesirably inflexible.
18. The creation of a new duty on the Secretary of State to issue guidance, to which local planning authorities must have regard under section 34 of the 2004 Act, retains the principle that legislation should not prescribe the substance of local development documents whilst ensuring that the housing needs arising from age or disability are covered in guidance and must be had regard to, as set out above.

Justification for Procedure

19. The Government's position is that planning guidance need not be subject to parliamentary scrutiny. Such guidance is not legislation to be slavishly followed by planning decision makers, rather it is guidance to which decision maker must have regard.

Amendments to clause 12(1) (New section 100ZA of the 1990 Act): Restrictions on power to impose planning conditions

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative procedure

Context and Purpose

20. Paragraphs 60 to 76 of the Government’s delegated powers memorandum for the Neighbourhood Planning Bill detailed two regulation-making powers in new section 100ZA of the Town and Country Planning Act 1990 (“1990 Act”); to prescribe (1) the conditions may or may not be imposed on a grant of planning permission, and in what circumstances (subsection (1)), and (2) the circumstances in which the local planning authority may grant planning permission subject to a pre-commencement condition without the written agreement of the applicant as required in subsection (5) of the new section 100ZA (subsection (6)).
21. The clause as introduced allows the Secretary of State to exercise the power in subsection (1) in respect of any grant of planning permission under Part 3 of the 1990 Act, including where permission is granted by an order made under that Part.
22. A grant of planning permission by order streamlines the planning process by removing the need for a planning application. National grants of permission are made through the Town and Country Planning (General Permitted Development) (England) Order 2015 which allows certain building works and changes of use to be carried out without being necessary to make a planning application. Planning permission is granted locally through, for example, local or neighbourhood development orders. Local development orders are made by the local planning authority and grant planning permission to specific types of development within a defined area, whilst a neighbourhood development order grants planning permission within a specific neighbourhood area.
23. The Government consulted⁶ on the use of this delegated power to prohibit six types of conditions: conditions which unreasonably impact on the deliverability of a development, conditions which reserve outline application details, conditions which require the development to be carried out in its entirety, conditions which duplicate a requirement for compliance with other regulatory requirements, conditions requiring land to be given up, and positively worded conditions requiring payment of money or other consideration.
24. Such conditions, or other conditions as may be prescribed, whilst they may be unreasonable on a grant of permission following the consideration of a planning application, may not be unreasonable in a permission granted by an order. This is because the order may relate to general development of a particular description, and

⁶ The consultation and response can be found here: <https://www.gov.uk/government/consultations/improving-the-use-of-planning-conditions>

even where specific, an individual application will not have been considered, so a development order may need to set out clearly the parameters of the permitted development.

25. Therefore, a grant of permission through an order, while it can involve the imposition of conditions similar to those attached to a grant of permission following the consideration of an application, is a very different exercise. The order often grants permission in the absence of the specifics of the development which will avail itself of the permitted right. Nevertheless, an applicant will have a choice between complying with the conditions and applying for planning permission.
26. Following consideration of the responses received to the consultation, we have concluded that this regulation-making power should be constrained to “relevant grants of planning permission”. Subsection (9)(a) is amended to provide that a relevant grant of planning permission is any grant of planning permission in response to an application to develop land made under Part 3 of the 1990 Act. The effect of these changes is that the delegated power in subsection (1) is constrained such that it applies to fewer exercises of powers in the 1990 Act. Rather than applying to any grant of planning permission in Part 3, it will apply to those grants of permission on an application made under that Part.
27. As a result, consequential amendments are made to Schedule 3 of the Bill to remove those paragraphs which amended sections of the 1990 Act which concern development orders, simplified planning zones and enterprise zones. The power has been dis-applied in respect of simplified planning zones and enterprise zones because, similarly to development orders, these are areas of land identified by local planning authorities for specific development where the planning process is relaxed, by setting out classes of development which are permitted without an application. Any regulations made under subsection (1) would also not apply to section 90 of the 1990 Act which allows development control procedures to be bypassed for development by local authorities, National Park authorities and statutory undertakers where Government authorisation is required for the development.

Justification for the delegation

28. This amendment will constrain the broader power which was justified in paragraphs 66 to 73 of the delegated powers memorandum. There is therefore no delegation which requires further justification.

Justification for the procedure

29. The power will be subject to the negative procedure for the reasons justified in paragraphs 74 to 76 of the delegated powers memorandum.

DCLG

24 January 2017