

NEIGHBOURHOOD PLANNING BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM BY THE DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT

Introduction

1. This supplementary memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to further assist with its scrutiny of the Neighbourhood Planning Bill (“the Bill”), introduced in the House of Lords on 14th December 2016¹
2. This accompanies proposed amendments to the Bill tabled by the Government on 8th March 2017 as these provisions confer or alter powers to make delegated legislation².

Neighbourhood Planning

3. The background to the process for making and modifying a neighbourhood development plan or order³ and the related powers delegated by the Bill measures and the justifications for those powers are set out in paragraphs 3 to 34 of the memorandum published on introduction to the House of Lords⁴. The independent examination of a proposal for a neighbourhood development plan (‘neighbourhood plan’) or order is governed by Schedule 4B of the Town and Country Planning Act (‘the 1990 Act’). The examination is generally carried out by way of written representations. However, an examiner must hold a public hearing where he or she considers it necessary to ensure adequate examination of an issue or to give a person a fair chance to put their case forward⁵.
4. Anyone wishing to make a case for an oral hearing should do so as part of a written representation. Any representations made should address whether or not the plan or order proposal meets the basic conditions and other matters that an examiner must consider in making recommendations to the local planning authority on whether the plan or order should or should not proceed to a referendum or should proceed to a referendum subject to modification⁶.

¹ Since producing a memorandum on introduction of the Bill to the Lords, the Government has also published two supplementary memorandums which consider the Government amendments tabled in advance of Committee and Report stage in the House of Lords. These documents can be found here: <http://services.parliament.uk/bills/2016-17/neighbourhoodplanning/documents.html>.

² See [https://www.publications.parliament.uk/pa/bills/lbill/2016-2017/0106/17106\(a\).pdf](https://www.publications.parliament.uk/pa/bills/lbill/2016-2017/0106/17106(a).pdf).

⁴ This document can be found here:

<https://www.publications.parliament.uk/pa/bills/lbill/2016-2017/0086/Delegated-Powers-Memorandum.pdf>

⁵ See paragraph 9(1) and (2) of Schedule 4B to the 1990 Act.

⁶ See paragraph 8 of Schedule 4B to the 1990 Act.

5. In recommending any modifications to be made to a neighbourhood plan or order, the examiner is restricted to making recommendations which include but are not limited to correcting errors, securing that the plan or order will meet the basic conditions, and ensuring that the plan is compatible with Convention rights⁷.
6. When the examiner makes their recommendations, they must send the report to the qualifying body (parish council or designated neighbourhood forum) responsible for the plan proposal and the relevant local planning authority, and the local planning authority must publish the report⁸.

Amendments to be inserted after clause 6 and to be made to schedule 1, new paragraphs 11(3) to (6) of Schedule 4B to the 1990 Act, and new paragraphs 15(3) to (5) of new Schedule A2 to the Planning and Compulsory Purchase Act 2004 (inserted by Schedule 1 of the Bill): Engagement by examiners with qualifying bodies etc

Powers conferred on: Secretary of State

Powers exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Negative procedure

Context and Purpose

7. During the Committee and Report stages of the Bill in the House of Lords, concerns were raised by peers that as a consequence of the largely written examination procedure, and the scale of modifications being made to neighbourhood plan proposals, those responsible for preparing the plan can feel excluded from the process once 'their plan' has been submitted to the local planning authority.
8. Amendments to amend Schedule 1 and to be inserted after clause 6 of the Bill seek to address these concerns by allowing regulations to set out further requirements that an examiner must consider and comply with. In particular: to provide those involved in the neighbourhood plan-making process with information about any fundamental issues with a neighbourhood plan proposal at an early stage; providing for examiners to publish draft reports containing their recommendations in advance of finalising their report; and requiring examiners to meet with affected groups to, for example, explain any recommendations being made to modify a plan proposal where this would help clarify matters prior to publication of the report. This is intended to minimise cases where those affected find it difficult to understand an examiner's report either because the report fails to include fully reasoned judgements, and / or fails to explain in a jargon free non-technical manner, why the modifications proposed are necessary.

⁷ See paragraph 10 of Schedule 4B to the 1990 Act.

⁸ See paragraph 10(7) and (8) of Schedule 4B to the 1990 Act.

9. The Amendment to be inserted after clause 6 therefore adds to the existing non-exhaustive list in paragraph 11(2) of Schedule 4B to the 1990 Act of procedural matters which may be prescribed in relation to the examination process for new plans and the amendment to Schedule 1 adds to the list of matters in the new Schedule A2 (to be inserted into the 2004 Act by Schedule 1 of the Bill), which sets out the procedural matters which may be prescribed in relation to proposals to modify a plan.

Justification for delegation

10. As set out above, rather than creating a new delegated power, these amendments extend the existing powers, already set out in paragraph 11(2) of Schedule 4B of the 1990 Act, and paragraph 15(2) of the new Schedule A2 inserted by Schedule 1 of the Bill. These extensions will enable regulations to prescribe further matters that an examiner must comply with to ensure that the neighbourhood planning examination process is as open and transparent as possible. The Government's Housing White Paper 'fixing our broken housing market'⁹, consults on how the examination process might be improved. This consultation closes on 2nd May 2017 and the Government intends to consider the responses to this consultation and engage with examiners on the practical implications of any changes to the process to ensure that any procedural requirements set out in regulations are able to operate effectively.
11. The Government then intends to exercise these revised delegated powers by way of an update to the existing Neighbourhood Planning (General) Regulations 2012 ('the 2012 Regulations') which currently set out the detailed procedural requirements for the neighbourhood planning process. Existing powers in relation to neighbourhood planning examinations set out in paragraph 11 of Schedule 4B to the 1990 Act have not been exercised but were delegated to ensure that any essential changes to the examination procedure could be made efficiently, should practical experience deem them to be necessary. The Government wishes to retain this flexibility and exercise any changes by way of amendments to the existing Regulations rather than amending primary legislation.
12. Setting out matters which relate to detailed procedural matters such as neighbourhood planning examinations is consistent with the wider planning regime, where most procedural matters are set out in regulations. This includes but is not limited to the procedural requirements under the 1990 Act for making planning applications, the requirements for making written representations, and the procedure for making and holding planning appeals. Under the Planning Act 2008, which regulates nationally significant infrastructure project applications, the procedures for making applications, consulting interested parties, examining applications and modifying development consent orders are set out in regulations. These delegations allow for requirements to be updated to ensure that procedures operate optimally and would be beneficial in this case to enable the Government to respond effectively to the experience of qualifying bodies, over 350 of which have direct experience their plan being examined, local planning authorities and other

⁹ The White Paper can be found here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/590463/Fixing_our_broken_housing_market_-_accessible_version.pdf

stakeholders involved in the process of examining neighbourhood development plans.

Justification for procedure selected

13. The 2012 Regulations are made under the negative resolution procedure and it is considered appropriate to apply the same procedure to these delegations as they do not merit a higher level of parliamentary scrutiny- it would be a disproportionate use of Parliamentary time to require debates each time that these procedural regulations are amended. Applying the negative procedure would also allow the Government to exercise the powers by way of an update to the 2012 Regulations and it would be advantageous for users of the planning regime to have similar requirements set out in the same instrument.

Department for Communities and Local Government

9 March 2017