

BUSINESS AND PLANNING BILL

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

The Government tabled amendments to the Business and Planning Bill for Report Stage in the House of Lords. These amendments include an amendment to existing delegated powers. This supplementary memorandum explains why these powers have been taken and the reason for the procedure selected.

New Clause after Clause 21: to amend the power in section 78 of the Coronavirus Act 2020 for the Secretary of State, Welsh Ministers and Department for Communities in Northern Ireland to make regulations in relation to meetings of local authorities, to specify additional bodies as local authorities.

Power conferred on: Secretary of State for Housing, Communities and Local Government; the Welsh Ministers; the Department for Communities in Northern Ireland

Power exercised by: Regulations

Parliamentary procedure: Negative resolution procedure

Context and Purpose

1. This new Clause amends the delegated power in section 78 of the Coronavirus Act 2020 for the Secretary of State, the Welsh Ministers in respect of bodies in Wales, and the Department for Communities in Northern Ireland in respect of local authorities in Northern Ireland to make regulations to amend requirements for meetings of local authorities in England and Wales, and Northern Ireland. The requirements include the obligations for local authorities to hold meetings, the requirements on timing and frequency of meetings, the place at which meetings must be held, the way in which people should attend, speak at and vote; and public admission and access to these meetings and access to documents relating to such meetings.

2. The power to make regulations under section 78 of the Coronavirus Act 2020 extends to meetings of a local authority, an executive of a local authority, a joint committee of a local authority, or a committee or sub-committee of the authority of any of those bodies. Section 78(4) provides a power for the Secretary of State the Welsh Ministers or the Department for Communities in Northern Ireland to make supplementary, consequential, incidental, transitional or saving provision in connection with requirements for meetings of local authorities. Such matters may include (for example) the ability to make provision for meetings being held without all the persons, or without any of the persons, being together in the same place, which would enable local authorities to hold meetings remotely.
3. The powers are exercised by way of negative instrument. Clause 78(4)(a) of the Coronavirus Act 2020 contains Henry VIII powers, which may be exercised so as to amend primary legislation. Section 78(3) limits the regulation-making power to meetings required to be held, or held, before 7 May 2021. The regulations which have been made under section 78 are the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 (S.I. 2020/392).
4. The amendment expands the definition at section 78(7) of the Coronavirus Act 2020 of a local authority in England to include Mayoral Development Corporations, Transport for London, Urban Development Corporations and parish meetings. Planning functions are major functions of these bodies:
 - **Mayoral Development Corporations:** Mayoral Development Corporations may be planning authorities for their designated area.
 - **Transport for London:** Transport for London has a role in Spatial Planning in helping planning applicants, the GLA, borough and other stakeholders combine land use and transport planning via inputting into the London Plan and local plans, and seek developer funding for vital transport investment. Under the Town and Country (Development Management Procedure) (England) Order 2010 (S.I. 2010/2184) they must be consulted on all planning applications that impact on the Transport for London Road Network. They are also consultees by either the GLA or borough on planning applications of strategic importance.

- **Urban Development Corporation:** article 3 of the Ebbsfleet Development Corporation (Planning Functions) Order 2015 (S.I. 2015/748) provides that the development corporation is the local planning authority for the development area.
- **Parish Meetings:** Parish meetings may be consultees on planning applications, where neighbourhood plans are being developed or adopted in their area. They will similarly input into local plans, and may be consultees on applications for premises licenses.

Justification for taking the power

5. The amendment to the regulation-making power at section 78 of the Coronavirus Act 2020 is necessary in order to increase the flexibility of Mayoral Development Corporations, Transport for London, Urban Development Corporations and parish meetings over how they can conduct their meetings. The regulations will make provision to allow these bodies to hold meetings remotely and minimise risks to their continuing conduct of business while still upholding democratic principles, and ensure their members and officers can act in accordance with official health guidance.
6. The power to make consequential provision at section 78(4) of the Coronavirus Act 2020 is necessary because provision to ensure meetings can be held flexibly differs among these bodies (as a result of the different statutory regimes in play). For example, there is no provision to enable remote access to meetings of Mayoral Development Corporations or Transport for London, as they are specified in section 100J(1) of the Local Government Act 1972 (the 1972 Act) as principal councils for the purposes of Part VA of the 1972 Act, which requires meetings, including committee meetings, of principal councils to be open to the public, and for copies of agendas and reports for principal council meetings to be available for inspection by members of the public at council offices. The Government needs to ensure that appropriate provision is made to ensure local authority meetings can remain quorate and make valid decisions, and to allow for public and press access. Because these provisions are set out in both primary and secondary legislation, the power needs to be capable of operating on either.

Justification for the procedure

7. The Government proposes to continue to use the negative procedure at section 78(12) of the Coronavirus Act 2020 ensure that provision to modify or disapply the statutory requirements in relation to certain meetings, and to enable flexible attendance at local authority meetings and to deal with ancillary matters, can be made swiftly, including when Parliament is not sitting. The bodies covered by the amendment to the regulation-making power are required to undertake a number of essential planning functions during the ongoing coronavirus pandemic.
8. Use of the negative resolution procedure is required in order to safeguard against an inability to act when Parliament is in recess or the inability to make effective provision at an appropriate pace, which is important for certainty and to allow for Mayoral Development Corporations, Transport for London, Urban Development Corporations and parish meetings to exercise their functions with proper regard for public safety, while continuing to allow for remote public and press access. The regulation-making power is limited, in that it cannot be used in respect of meetings which take place later than 7th May 2021 or an earlier date if specified. If further provision is required for meetings which take place after this date, additional primary legislation would be required. The Government suggests this provides a proportionate approach to the use of the power.
9. While the Henry VIII powers in section 78(4)(a) of the Coronavirus Act 2020 would usually be subject to affirmative procedure, given the necessity for continuous functioning of Mayoral Development Corporations, Transport for London, Urban Development Corporations and parish meetings for an effective exercise of planning functions, any amendments to primary legislation that are required in connection with the exercise of the powers under these clauses would need to be made urgently. The government proposes that the departure from the usual affirmative procedure is justified in this case.