



Department for  
Communities and  
Local Government

# The Neighbourhood Planning Bill

## Summary of Impacts

Last updated: January 2017

## Introduction

1. This document provides a summary of the impacts relating to clauses within the Neighbourhood Planning Bill, as introduced to the House of Commons on 7 September 2016, and House of Lords on 14 December 2016. It will continue to be kept under review as necessary during the passage of the Bill.
2. Formal assessments of the regulatory impacts on business and civil society groups have been submitted for validation by the independent Regulatory Policy Committee where appropriate, and will be published accordingly. The New Burdens doctrine has been considered against measures in the Bill. Public Sector Equality Duty assessments have also been carried out where appropriate.

## Aims of the Bill

3. Over the last 50 years we have failed to build enough homes for the next generation. The failure to build homes has made it difficult to find a property to buy or rent in this country. Many people struggle to raise a deposit, preventing them from getting a mortgage and receiving the keys to the front door. With homes getting more and more expensive to buy, new generations are renting for longer. Rents have gone up faster than wages, which has pushed up costs for families trying to make ends meet.
4. We are committed to building more homes and ensuring that our housing market is fit for purpose. There is, however, no silver bullet and correcting the historic undersupply of housing requires a collective effort, including from central and local Government, home builders and local communities.
5. Since 2010, the Government has started to face up to these challenges and we're making good progress. The country is building again, with over 893,000 additional homes delivered since April 2010<sup>1</sup>. Government action and investment in housing over the last six years has made a real difference. Our reformed planning process has granted planning permission for 277,000 new homes in the year to 30 September 2016, nine per cent higher than in the year to September 2015<sup>2</sup>.
6. The Housing and Planning Act 2016 laid important foundations, supporting the supply of land for housing, home ownership and giving housing association tenants the chance to own their own home. But the work is not done.

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<sup>1</sup> DCLG Net Additional Dwellings Statistics <https://www.gov.uk/government/collections/net-supply-of-housing>

<sup>2</sup> DCLG Net Supply of Housing 2015/16, England (15/11/2016)

7. The Neighbourhood Planning Bill will make an important contribution to the Government's overall approach to boosting housing. The Bill contains a focused set of measures on planning and compulsory purchase to help identify and free up more land to build homes, and 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.

## Summary of impacts: Bill measures

### NEIGHBOURHOOD PLANNING

#### (Clause 1-5)

8. Neighbourhood planning was introduced in the Localism Act 2011 to give communities direct power to develop a shared vision for their neighbourhood and shape the development and growth of their local area. The Conservative 2015 General Election manifesto committed to "encourage communities engaged in neighbourhood planning to complete the process and to assist others to draw up their own plans"<sup>3</sup>.
9. We are supporting neighbourhood planning across England through a £22.5 million support programme which has made over 1,800 payments to groups since April 2015. All groups can apply for a grant of up to £9,000. Additional grant and technical support is available to priority groups, including those in urban and more deprived areas. With over 260 plans now in legal force, early findings suggest that when communities get a say over how their area is developed they recognise the benefits that appropriate development can bring. Recently updated analysis suggests that neighbourhood plans in force that provide a housing number have on average planned for approximately 10% more homes than the number for that area set out by the relevant local planning authority<sup>4</sup>.
10. The Housing and Planning Act 2016 introduced measures to speed up and simplify the process and give more power to designated neighbourhood forums. The Neighbourhood Planning Bill will further strengthen the neighbourhood planning process and encourage more communities to take the lead in shaping development in their neighbourhoods. A six week public consultation on the detail of regulations required to implement some of the neighbourhood planning measures in the Neighbourhood Planning Bill opened on 7 September 2016 and closed on 19 October 2016<sup>5</sup>. A summary of consultation

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<sup>3</sup> Conservative General Election Manifesto 2015, p.45

<sup>4</sup> <http://mycommunity.org.uk/resources/progress-on-housing-delivery-through-neighbourhood-planning/>

<sup>5</sup> <https://www.gov.uk/government/consultations/implementation-of-neighbourhood-planning-provisions-in-the-neighbourhood-planning-bill>

responses and a Government response setting out the proposed content of those regulations was published in December 2016<sup>6</sup>.

## **Rationale for intervention**

11. Opposition from local communities to proposals for housing and other development within their neighbourhoods has often been a consequence of their lack of opportunity to influence the shape of that development. Through neighbourhood planning and active participation at an early stage in other plan-making processes, communities have both a voice in decisions and a choice about development in their area. They are more likely to then become the proponents, rather than the opponents, of appropriate growth. 42% of people said they would be more supportive if local people had a say in proposed developments in the neighbourhood<sup>7</sup>.
12. We have learned from the early experiences of neighbourhood groups and local planning authorities, and together with feedback from recent consultations and stakeholder discussions, we have developed a targeted set of measures to strengthen the neighbourhood planning process and better support groups to ensure that neighbourhood plans have the intended impact.

The measures in the Bill will:

- Require local planning authorities and others who decide planning applications to have regard to neighbourhood plans that have been independently examined once the decision has been taken to put the plan to a referendum. This will give communities more confidence that plans that have been independently examined will be respected by decision-makers;
- Give neighbourhood plans full legal effect once they have been approved in each applicable referendum – so that the benefits of the plan are realised at the earliest possible opportunity;
- Introduce a process for modifying neighbourhood plans that is proportionate to the changes proposed;
- Clarify the procedure for modifying the boundary of a neighbourhood area without affecting existing neighbourhood plans or Orders; and,
- Encourage more communities to consider neighbourhood planning by requiring local planning authorities to set out in their Statements of Community Involvement their policies for giving advice or assistance to neighbourhood planning groups.

## **Other policy options considered**

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<sup>6</sup> <https://www.gov.uk/government/consultations/implementation-of-neighbourhood-planning-provisions-in-the-neighbourhood-planning-bill>

<sup>7</sup> British Social Attitudes Survey, 2014.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/412347/British\\_Social\\_Attitudes\\_Survey\\_2014\\_report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/412347/British_Social_Attitudes_Survey_2014_report.pdf)

## Do nothing

13. Communities preparing plans would not have the reassurance provided by legislation that once those plans have made significant progress, decision-makers must give the policies in them due regard where they are relevant to a particular application. There would also continue to be a period of delay between a neighbourhood plan proposal being supported by the community in a referendum and the plan having full legal force by being formally made by the local planning authority. While regulations made under powers in the Housing and Planning Act 2016 reduce this delay to eight weeks, planning decisions taken during that period may not give sufficient weight to the policies in the neighbourhood plan which has only to complete the formality of being made.
14. With the exception of correcting errors, the current process for modifying a neighbourhood plan in order to update it would apply, which is the same as the process for preparing a new plan, regardless of the scale and significance of the changes proposed. As the neighbourhood planning system matures we also anticipate situations where communities may wish to modify the boundaries of a neighbourhood area where a plan or an Order is in force, for example where a new parish council is being proposed. Currently it is not possible to modify a neighbourhood area where that would result in a neighbourhood plan or an order covering more than one neighbourhood area or more than one plan being made for one neighbourhood area.
15. Community members have said that a local planning authority's input and attitude can make a significant difference to neighbourhood planning progress. They wish to better understand the role their authority can play in supporting the process<sup>8</sup>. In the absence of the measures in the Bill, local planning authorities would continue to have a statutory duty to advise or assist communities preparing neighbourhood plans and Orders. Although Government planning guidance encourages local planning authorities to be proactive in providing information to communities about neighbourhood planning they would be under no statutory obligation to set out how they intend to discharge their statutory duty to provide support.

## Non-legislative options

16. DCLG considered non-legislative options, but from the analysis undertaken, only primary legislation can give full legal effect to neighbourhood plans at an earlier stage, enable communities to update

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<sup>8</sup> 'User Experience of Neighbourhood Planning in England Research' Prof Gavin Parker with Tessa Lynn, Matthew Wargent and Locality 2014. <http://mycommunity.org.uk/wp-content/uploads/2016/08/User-experience.pdf>

neighbourhood plans more easily, enable neighbourhood areas to be amended without affecting existing plans or orders, and to make the existing duty to advise or assist more transparent.

17. The National Planning Policy Framework sets out the weight that may be given to relevant policies in emerging plans in decision taking. However, updating policy and guidance cannot give the same reassurance to communities that would be provided by our legislative proposals to require local planning authorities to have regard to neighbourhood plans once they have been independently examined and the decision has been taken to put the plan to a referendum.

### **Key considerations**

18. We anticipate that our reforms will:

- Give communities more confidence that plans that have passed examination will be properly considered by decision-makers;
- Give confidence to those producing neighbourhood plans, that once the wider community has approved the plan, it is the starting point for decisions on planning applications in their area;
- Provide flexibility so that neighbourhood plans can remain effective tools for shaping development in an area and providing certainty to communities and those wishing to bring forward appropriate development; and,
- Encourage more communities to consider neighbourhood planning by improving the clarity and visibility of the support available while also enabling local planning authorities to manage community expectations.

19. There would be no direct cost burdens placed upon businesses or civil society organisations as a result of the reforms. For local planning authorities the proposed measures are a balanced package. While there may be some element of familiarisation costs associated with some reforms, other elements would result in administrative and costs savings. For example, reforms to the process for modifying neighbourhood plans could deliver an average cost saving of between £10,000 and £17,000 per relevant plan<sup>9</sup>.

### **LOCAL DEVELOPMENT DOCUMENTS (Clause 6 – 11)**

20. The Government is committed to a planning system that is plan led. The National Planning Policy Framework reinforces the central role of Local Plans and neighbourhood plans in the planning system. The Framework encourages all local planning authorities to have a Local Plan (and for this to be kept under review) as this is the most effective way of managing development within a local area. Once adopted or

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<sup>9</sup> A 2015 DCLG survey of 35 neighbourhood planning areas found that the average cost of an examination was around £7,000 and the average cost of a referendum was around £10,000.

approved, Local Plans become part of the statutory development plan. The statutory development plan is the starting point for decisions about individual development proposals.

## Rationale for intervention

21. The Government wants to see all parts of England covered by an up to date Local Plan. The majority of local planning authorities (over 70%) have an adopted Local Plan<sup>10</sup>. However, more than a decade since the existing system was introduced, over a quarter of local planning authorities do not have an adopted Local Plan and almost 30% of local planning authorities with an adopted Local Plan have a plan that is more than five years old. Of these authorities only 12 have published a review of their Local Plan<sup>11</sup>.

22. The Government committed to bringing forward proposals to streamline the production of Local Plans<sup>12</sup>. In September 2015 a group of experts (the Local Plans Expert Group) was commissioned to make recommendations in this area. The Group reported in March 2016 and the recommendations were opened up to public comment.

23. The Government has considered the report by the Local Plans Expert Group and agrees with the central thrust of the Group's recommendations. Most of these recommendations do not require primary legislation, however those that do have informed the measures in the Bill. We are also using measures in the Bill to open up plan-making data, to unlock the value of public sector information which risks being undervalued and therefore under provided by data holders. We want to do this by requiring certain planning data to be published to a consistent, accessible and transparent standard.

24. The measures in the Bill will:

- Require each local planning authority in England to identify the strategic priorities for the development of their area and address these priorities through policies in their development plan documents or through policies in a spatial development strategy that covers their area;
- Enable the Secretary of State to require local planning authorities to review local development documents at prescribed intervals;
- Allow for better collaboration across geographic boundaries by enabling the Secretary of State to direct two or more local planning authorities to prepare a joint development plan document where there is a clear case for doing so;

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<sup>10</sup> The Local Plans referred to are development plan documents adopted or approved under the 2004 Act that set the strategic planning policies for a local planning authority's area.

<sup>11</sup> Figures as at 31 December 2016. This information is updated as plans complete the examination process, and when the Planning Inspectorate receives updates from local planning authorities on publications and adoptions.

<sup>12</sup> Fixing the Foundations: Creating a more prosperous nation, HMT July 2015  
<https://www.gov.uk/government/publications/fixing-the-foundations-creating-a-more-prosperous-nation>

- Supplement the powers already available to the Secretary of State to intervene in plan making to enable a county council to be invited to prepare or revise a Local Plan as a more local alternative to the Secretary of State intervening more directly;
- Enable the publication of data standards that local development schemes and documents must comply with in order to promote easier engagement in plan making and stimulate innovation; and,
- Encourage more communities to work with their local planning authority to shape development in their area by requiring local planning authorities to set out how they would involve communities in the work they do in the early stages of plan making.

## **Other policy options considered**

### Do nothing

25. It is important that the planning system supports the delivery of the high quality new homes that the country needs. Local Plan coverage is still incomplete. Plans guide development to the most suitable locations, where there is the necessary infrastructure in place, and provide certainty for communities and for those looking to invest in an area.

26. If the Government was not to legislate plans may not come forward, including in some of the areas of highest demand where new homes are needed the most. Additionally where plans are in place they may not be kept up-to-date. This could result in less development, due to the costs to applicants associated with delays and uncertainty. Additionally the development that does come forward may be sub-optimal from the community's perspective.

27. The Bill will require local planning authorities to set out their policy for involving communities and others in the authority's early stages of plan-making. According to the British Social Attitudes Survey 2014, 56 per cent of Britons would support more homes being built in their local area, compared to 21 per cent that would oppose more houses being built near them<sup>13</sup>. But people do want to have the opportunity to influence the nature of local development and know that development will deliver real benefits to people. Under this option a local planning authority would remain under a statutory duty to set out their policies on how the authority would involve the community. But this would be at a point when the 'in principle' decision has already been taken on the type of plan to be prepared and the subject matter. This would reduce the opportunity for communities to engage in the early stages of the process and express a view on the wider drivers of change in an area or the type of development plan documents that they think their local planning authority should produce.

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/412347/British\\_Social\\_Attitudes\\_Survey\\_2014\\_report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/412347/British_Social_Attitudes_Survey_2014_report.pdf)

28. The Bill will make it possible for the Secretary of State to invite a county council to prepare a plan for a local planning authority in their area that has failed to prepare (or revise) a plan that they have committed to prepare. Measures in the Housing and Planning Act 2016 allow targeted intervention to get plans in place, and keep decision making local wherever possible. However, under the 'do nothing' option if a district council failed to progress their plan (despite having every opportunity to do so) the Secretary of State would need to intervene directly rather than choose a more local alternative. Doing nothing is not a preferred option because wherever possible we want to have the opportunity to explore options that enable plans to be produced at the most appropriate local level.
29. The Local Plans Expert Group drew attention to concerns about the effectiveness of the duty to co-operate under section 33A of the Planning and Compulsory Purchase Act 2004 and also about the difficulties some areas have in providing for the housing needed. Under the 'do nothing' option where effective planning across administrative boundaries is not taking place there is a risk of delaying or preventing the delivery of the housing and other essential development.
30. Local planning authorities, as public bodies, are required to make certain information available<sup>14</sup> on a case by case basis in response to specific requests, where possible and appropriate in open format. There would be no assurance that data in local development documents would be made available in a consistent format. As a result datasets could not be aggregated and compared easily. This could raise the cost of dealing with this type of public sector information and, in some cases, deter potential users from engaging with public sector information altogether.

### Non Legislative Options

31. The National Planning Policy Framework and Government planning guidance already set out our expectation that all local planning authorities should have an up-to-date Local Plan in place; this is not happening. Primary legislation will underline the importance of the plan-led system and ensure their production is given the necessary priority.
32. Joint plan-making can facilitate effective planning for cross-boundary issues. We are pursuing non legislative options in line with our commitment to strengthening guidance to improve the operation of the duty to co-operate between authorities. We are keen to use non-regulatory approaches wherever possible. But where effective planning across administrative boundaries is not happening, non-legislative measures alone would not give us the ability to act and

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<sup>14</sup> See for example the requirements set out in the *Re-use of Public Sector Information Regulations 2015* and the *Local Government Transparency Code*.

provide communities with certainty, clarity and a plan for delivering the housing and other development and infrastructure they need.

33. Requiring authorities to set out how they would involve communities in the work they do to prepare for plan-making will ensure that no community can be left in any doubt about the ways in which they can participate in wider plan-making in their area. We considered further guidance but existing Government planning guidance already encourages authorities to identify and engage at an early stage with all those that may be interested in the development of an area<sup>15</sup>.
34. Local planning authorities have been moving in the right direction on open data and there are some good examples of action to foster the learning and sharing of approaches to opening up data. We considered working with local planning authorities to understand best practice in digital planning and develop a common format and structure of planning data that could then be disseminated by the local government sector as best practice. While there are local planning authorities that are producing planning data to an open data standard, there is divergence in these standards. Not legislating would mean continued inconsistency across local planning authorities that would prevent data being reliably combined and compared.

### **Key considerations**

35. We anticipate that the measures outlined above will:
- Achieve comprehensive and up to date plan coverage across England, while giving local planning authorities more choice over the planning tools they use to address the development needs of their area;
  - Ensure plans are in place to support the delivery of more homes in the areas where they are needed most;
  - Raise awareness and as a consequence, increase participation in wider plan-making, by requiring authorities to set out in one place the different ways that communities can get involved; and,
  - Facilitate greater transparency and access to data in planning documents.
36. There would be no direct cost burdens placed upon businesses or civil society organisations as a result of the reforms.
37. We consider that the majority of the measures do not bring additional costs to local planning authorities. There may be circumstances where a direction to two or more authorities to prepare a joint plan could increase costs for one or more of the authorities. The specific costs will vary depending on the stage of plan making that each individual authority has reached at the point of a direction and the nature of any existing joint working arrangements (for example any joint

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<sup>15</sup> <http://planningguidance.communities.gov.uk/blog/guidance/local-plans/preparing-a-local-plan/>

commissioning of evidence). Any increase in costs may be balanced by cost savings from preparing a joint plan (for example through sharing the cost of examining a plan or through the sharing of expertise). We anticipate using the power sparingly and, as any such costs would arise only after issuing the direction, we would assess them at that time.

38. We also anticipate that there may be some increased costs for local planning authorities associated with preparing and publishing the required datasets arising from the requirement for authorities to comply with the proposed data standards. Authorities must publish local development documents. As public bodies they must also make a document available on receipt of an individual request, where possible and appropriate in open format. The introduction of a consistent data standard for how such information is made available may introduce additional costs. However, we would anticipate offsetting benefits to authorities in the medium to longer term. For example, providing wider access to planning data may reduce information requests from the public. We intend to work with local planning authorities and with users of the planning system to develop the technical standards. We will also consult on the draft standards and continue to undertake a suitable estimate of any new burdens. Indirectly, the measure should provide opportunities for businesses and others to benefit from the access and use of the datasets. We also anticipate wider societal benefits of publishing this information for example increased democratic participation in planning.

## **PLANNING CONDITIONS (Clause 12)**

39. Planning conditions play an important role in addressing the impacts of development. However, the inappropriate use of conditions, in particular pre-commencement conditions<sup>16</sup>, can bring unnecessary costs and delays to development. The Government wishes to address the issue of pre-commencement conditions being imposed unnecessarily.

40. To tackle this, the Bill will:

- a) Prohibit local planning authorities from imposing pre-commencement conditions, unless they have first obtained written agreement from the applicant. Introducing this measure will build on current best practice, where many authorities are already engaged in early discussions with applicants on conditions; and,

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<sup>16</sup> Planning conditions that require the developer to take action before any development can begin, when they relate to matters that are capable of being discharged later in the development process.

- b) Prohibit the use of certain types of planning conditions, which clearly do not meet the well-established policy tests in the National Planning Policy Framework<sup>17</sup>

41. We sought views on both measures in our consultation: 'Improving the use of planning conditions'<sup>18</sup> which closed on 2 November 2016. A response to the consultation has now been published<sup>19</sup> alongside a document which outlines how the Government intends to exercise regulations related to these measures<sup>20</sup>. Any regulations made under these provisions in the Bill will be subject to a separate impact assessment. The measures put forward in the consultation will not change the way conditions can be used to achieve sustainable development in line with the National Planning Policy Framework. Existing protections for important matters such as heritage, the natural environment, green spaces, and the mitigation of flooding will remain.

### **Rationale for intervention**

42. When applied reasonably, planning conditions can help shape developments in a way that meets the objectives of the National Planning Policy Framework. There are concerns, however, that too many, overly restrictive and unnecessary planning conditions are routinely attached to planning permissions, which can have a significant negative impact and curtail delivery of housing development. Such conditions do not meet the policy tests in paragraph 206 of the National Planning Policy Framework.

43. Building on action already taken to improve the use of conditions set out in the consultation paper, the Government announced in this year's Budget its intention to legislate to ensure that pre-commencement conditions can only be used with the written agreement of the applicant. The intended effect is that authorities will be less able to impose conditions that unreasonably delay new development, and which do not meet the national policy tests.

44. Many planning applicants have commented that the onerous and extensive use of pre-commencement conditions is unreasonably holding up the delivery of sites. This has featured consistently in annual reports issued by house builders as a cause of unjustifiable delay in the completion of new development.

45. These proposals 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. We

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<sup>17</sup> <http://planningguidance.communities.gov.uk/>

<sup>18</sup> <https://www.gov.uk/government/consultations/improving-the-use-of-planning-conditions>

<sup>19</sup> <https://www.gov.uk/government/consultations/improving-the-use-of-planning-conditions>

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/578317/Further\\_information\\_on\\_how\\_the\\_Government\\_intends\\_to\\_exercise\\_the\\_Neighbourhood\\_Planning\\_Bill\\_s\\_delegated\\_powers.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/578317/Further_information_on_how_the_Government_intends_to_exercise_the_Neighbourhood_Planning_Bill_s_delegated_powers.pdf)

expect that this process would become a part of the dialogue between the applicant and the local planning authority, building on current best practice. In the unlikely 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.

46. Where the negotiation between the applicant and the local planning authority results in pre-commencement conditions either being modified, moved to post-commencement, or removed altogether, this will reduce costs and delays for all parties associated with responding to conditions that do not meet the policy tests in the National Planning Policy Framework.
47. Government planning guidance has set out examples of conditions that should not be used, as they do not meet the policy tests in the National Planning Policy Framework. These include, for example, conditions which unreasonably impact on the deliverability of a development, and conditions which unnecessarily require compliance with other regulatory requirements.

### **Other policy options considered**

#### Do nothing

48. Although the National Planning Policy Framework and planning guidance already ask local planning authorities to ensure that the planning conditions they seek to impose are reasonable, and to agree the proposed conditions with an applicant before a decision is taken, planning applicants remain concerned about the imposition of conditions which in some cases do not meet the national policy tests. Strengthening guidance without regulatory impetus is unlikely to improve the situation. Under this option the current delays and costs would remain unchanged.

#### Require local planning authorities to consult planning applicants on pre-commencement agreements, while retaining the authorities' ability to impose such conditions as they believe to be necessary

49. Whilst this would build on current best practice in requiring a greater level of engagement between applicants and local planning authorities on the use of conditions, it would still allow local planning authorities to apply conditions without the agreement of the applicant, thus retaining the status quo. This option is therefore unlikely to impact on local planning authority behaviour as strongly as our preferred option.

### **Key considerations**

*Requirement for local planning authorities to obtain written agreement from the applicant before they can impose pre-commencement conditions*

50. Where the negotiation between applicant and local planning authority results in pre-commencement conditions either being modified, moved to post-commencement, or removed altogether, this will reduce costs and delays associated with responding to conditions that do not meet the policy tests in the National Planning Policy Framework. The misuse of pre-commencement conditions can also have the effect of unnecessarily front-loading costs on development, so there should be benefits by ensuring that conditions avoid such impositions
51. As part of an informal consultation on the potential benefits of this measure, the applicants that we contacted told us that all or almost all of the planning permissions they receive have pre-commencement conditions attached. In some cases, they believe that the conditions do not comply with the policy tests in the National Planning Policy Framework. They also believe that a considerable majority of pre-commencement conditions could be resolved at a later stage of development, reducing costs and delays. The costs (staff time, interest on the price paid for land, and foregone profits as a result of credit and other constraints on scale) that planning applicants incur in discharging those conditions vary considerably, especially between small sites and very large developments.
52. A reduction in the number of pre-commencement conditions or the time taken to discharge them would therefore represent a considerable benefit to business. A small number of respondents identified a risk that negotiating pre-commencement conditions with the local planning authority could result in further delays or a refusal of planning permission in some cases. However, it would be an applicant's choice as to whether they respond to a consultation on conditions from the local authority, or refuse to agree to a pre-commencement condition. Although we are not able to quantify the full extent of the likely benefits on a national basis, due to the absence of national data on planning conditions, overall we have concluded from the evidence we have gathered that the potential benefits from being able to negotiate the content of pre-commencement conditions are likely to outweigh the (voluntary) costs to business identified above.
53. For local planning authorities the main benefit will be that by agreeing with the applicant as to which pre-commencement conditions are really needed, they will have less of a burden in terms of the number of conditions that they need to approve for the applicants once planning permission has been granted. By speeding up the process, the measure will also help close the gap between permissions and starts on site and bring new housing to market much more quickly.

*Wider application of primary legislation to prohibit specific types of condition*

54. This measure will reduce the number of conditions imposed by local planning authorities, which do not meet the policy tests in the National Planning Policy Framework. This will help ensure that the requirements that applicants need to fulfil in order to comply with conditions on planning permission will be reduced to only those that are reasonable, and necessary in the public interest. As mentioned above, the likely scale of savings cannot be fully quantified due to the absence of national data on planning conditions. Any regulations made under these provisions in the Bill will be subject to a separate impact assessment.

*Requirement for local planning authorities to obtain written agreement from the applicant before they can impose pre-commencement conditions*

55. An applicant may choose to respond to the local planning authority's engagement on proposed pre-commencement conditions, informing them of their view on the proposed conditions. We estimate that there would be a small additional staff cost to planning applicants in writing to the local planning authority informing them of their agreement or refusal to the pre-commencement conditions. Other costs of decision making or scrutiny of conditions would be incurred without the Bill measures, as the applicant would have to understand the conditions before beginning works on site. Informal consultation with the Home Builders Federation has supported our view of these costs.

56. Furthermore, some local planning authorities already discuss proposed conditions before they are added to a planning permission, as advised by Government planning guidance.

57. Applicants could avoid these additional staff costs in cases in which they agreed with the proposed conditions and chose not to respond. To this end, our consultation asked for views on introducing a standard response period, after which the authority could proceed to decide the application with the condition imposed. Respondents strongly supported the measure, with the majority proposing a period of 10 working days, based largely on the need to ensure that the process for agreeing conditions was not unnecessarily delayed by the applicant. There would be no cost to the applicant of making use of the standard response period, and we consider this a permissive measure for business with no non-voluntary costs. We intend to introduce a default period of 10 days. This will not affect the ability for local authorities to agree a longer timescale with the applicant nor will the default measure expressly exempt certain conditions as this would add unnecessary complexity to the process.

58. We consider that, given the engagement with industry on this policy, and the straight-forward nature of the proposed change, any one-off familiarisation costs have already been incurred (i.e. would also be incurred under the 'do nothing' option).

59. As at present, applicants will continue to have the option of appealing against: a refusal of planning permission; an approval with conditions that they do not accept; or against non-determination if the local planning authority does not issue a decision on the application within the statutory deadline.
60. Some concerns have been raised that the requirement for local planning authorities to consult applicants on conditions will result in delays to decision making. However, the proposed requirement builds on existing best practice referred to in planning guidance, that a local planning authority should agree the proposed conditions with an applicant before a decision is taken, and as early in the planning application process as possible. The proposed Bill measures could result in more appeals in the shorter term; however we anticipate that national guidance on the measure and the threat of costs on appeal where parties cannot substantiate their position should reduce this risk.
61. As a result of the Bill measures, local planning authorities would be required to consult applicants on pre-commencement conditions before issuing planning permission in every case. As stated above, Government planning guidance already advises that it is best practice for a local planning authority to agree proposed conditions with an applicant before a decision is taken. It is equally open to both the local planning authority and the applicant to initiate discussions about conditions. Agreeing conditions early is beneficial to all parties involved in the process.
62. Consultation responses in support of the measure confirmed our assumption that the potential for fewer pre-commencement conditions needing to be discharged would reduce costs and workloads for both businesses and local planning authorities. There were concerns about the potential impacts on developers, suggesting that the process could increase costs due to the need to provide more detail upfront, including expenditure on consultants during the agreement process. As previously stated, the measure simply embeds current best practice of proactive and early engagement between parties. The measure also ensures that pre-commencement conditions meet policy tests, resulting in commensurate time savings post permission.

*Wider application of primary legislation to prohibit specific types of condition*

63. Our initial assessment is that there will be no costs to business or local authorities from the removal of unnecessary conditions. However, in light of consultation responses we will issue a separate consultation on the draft regulations in order to obtain a better idea of the potential impacts.
64. Guidance will also be updated to support the changes and set out how all the measures brought forward will work successfully with the existing process.

## **PLANNING REGISTER (Clause 13)**

65. Permitted development rights with prior approval provide a light touch approach to granting planning permission for development where the type of development is considered acceptable but some specific planning issues still require local consideration. It is a simpler, less costly process to deliver homes and make use of existing buildings.
66. Local planning authorities are required to record applications for planning permission on the planning register, and the Government's external data supplier uses that publicly available information in order to determine the number of homes for which planning permission has been granted. There is currently no similar requirement to place applications for prior approval for permitted development on the planning register.
67. The Bill proposes extending an existing power which enables the Secretary of State to require local planning authorities to record details of a planning application on their planning registers to cover prior approval applications for specified permitted development rights.

### **Rationale for Intervention**

68. A number of new permitted development rights have been introduced in recent years for change of use to residential use from office, retail, agricultural and warehouse uses. The data we collect from local planning authority returns indicates that over 12,300 prior approval applications for change to residential use have been able to proceed under permitted development rights since 2014, having been granted prior approval or where prior approval was not required. However this data cannot be broken down to obtain information on how many homes this represents.
69. This proposal to extend the Secretary of State's power to require local planning authorities to record details of specific applications for prior approval for permitted development rights on the planning register would enable us to more accurately determine the contribution of these measures to achieving the Government's housing ambitions.

### **Other policy options considered**

#### Do nothing

70. Under this option local communities would be unaware of the development approved in their area. The Government would be unable to determine how many homes are approved through permitted development rights and their contribution to increasing housing supply.

## Other Options Considered

71. We have considered asking local planning authorities to submit this information along with other statistical returns they provide on the overall number of prior approval applications they receive. However that would require them to extract and process the data. Alternatively, placing prior approval applications on the planning register allows Government to extract the data as is currently done for planning applications.
72. If the information were provided direct to Government it would also not be available to the local community on a case by case basis.

## **Key considerations**

73. There is no cost to developers or other businesses as any requirement to place information on the planning register would be for local planning authorities. There is already a requirement on planning applicants to provide the number of homes in their prior approval applications.
74. It is worth noting that while the change increases costs to local authorities relative to the current cost of processing a prior approval, development carried out under the permitted development rights providing additional homes would previously have been recorded by local planning authorities when a full planning application was required. Some local planning authorities already record applications for prior approval for permitted development rights on the planning register. For them there would be no additional burden in meeting a requirement to place information on the planning register.
75. The proposal to extend the Secretary of State's power to require local planning authorities to record details of applications for prior approval for specified permitted development rights on the planning register would provide more accurate data on how permitted development rights are contributing to housing supply and enable better consideration of their impact.
76. Placing these applications on a public register would also increase transparency by enabling the local community to be aware of developments proposed and approved in their area.

## **COMPULSORY PURCHASE (Clause 14-36)**

77. The Government's current guidance<sup>21</sup> emphasises that compulsory purchase is intended as a last resort to secure the assembly of the land

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<sup>21</sup> Compulsory purchase process and the Crichel Down Rules: guidance (October 2015): <https://www.gov.uk/government/publications/compulsory-purchase-process-and-the-crichel-down-rules-guidance>

needed for the implementation of projects. Acquiring authorities<sup>22</sup> must also always demonstrate that there is a compelling case in the public interest to acquire the land which outweighs the owners' private property rights. The Government does not propose to change these core principles.

78. A number of changes have been made to improve the system in recent years and the Government consulted on a package of reforms in March 2015<sup>23</sup> which were taken forward in the Housing and Planning Act 2016. The responses to the consultation that preceded the 2016 Act made suggestions for further reforms. In spring 2016, the Government consulted on a further package of proposals, which form the basis for the measures in the Bill and attracted broad support across sectors as being necessary to make the compulsory purchase process clearer, fairer and faster for all those involved.

79. The Bill includes measures to:

- Set out a clearer way to identify market value (the no scheme world), including extending the scheme to include transport projects in defined circumstances;
- Define the 'no scheme' world for orders made by Mayoral Development Corporations;
- Repeal redundant legislation (section 15 and Part 4 Land Compensation Act 1961);
- Simplify the process by enabling transport and regeneration bodies to make combined orders;
- Ensure that compensation due to those with an interest in the land arising from minor tenancies is calculated on the same basis as others who are in lawful possession but have no further interest in the land;
- Give all acquiring authorities the power to temporarily use land for the purposes of delivering their scheme; and,
- Introduce a new legislative requirement to bring compulsory purchase orders into operation within a certain period.

80. The Bill also includes three minor technical changes to the Housing and Planning Act 2016, on overriding easements, advance payments and material detriment which will ensure the Act operates in the way it was intended. The changes have no additional material impact from that assessed for the Housing and Planning Act.

## **Rationale for intervention**

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<sup>22</sup> Acquiring authorities are bodies with compulsory purchase powers. Many public bodies with statutory powers have compulsory purchase powers, including: local planning authorities; statutory undertakers; and some executive agencies, including the Homes and Communities Agency

<sup>23</sup> <https://www.gov.uk/government/consultations/improving-the-compulsory-purchase-process>

81. In early 2015, there was a consultation on a package of reforms which were taken forward in the Housing and Planning Act 2016. Consultation on the earlier package of reforms revealed the need to go even further, so that the process of assessing compensation is faster clearer and fairer, and the system and legislation are simplified. A package of further reforms was published for consultation in March 2016<sup>24</sup> and, having regard to the consultation responses, the Government proposes to take forward those proposals requiring primary legislation in this Bill<sup>25</sup>.
82. The most significant proposal would reform the context within which compensation is negotiated (often a very significant and complex part of finalising a compulsory purchase deal) by more clearly defining the scheme which must be disregarded to establish the ‘no scheme world’.
83. Our proposals would ‘wipe the slate clean’ of over 100 years of conflicting statute and case law and establish a clear statutory framework for agreeing compensation. This framework would be based on the existing long standing and fundamental principle that compensation should be based on the market value of the land in the absence of the scheme underlying the compulsory purchase.

### **Other policy options considered**

84. We are keen to use non-regulatory approaches wherever possible. However, for the elements included in this package, only amendments to legislation can deliver the proposed reforms. Hence we considered two main options, to take forward legislation or to do nothing.

#### Do nothing

85. The principal impacts of doing nothing would be that:
- The lack of clarity about calculating compensation would continue – with the associated delays and potential for compensation not reflecting economic losses;
  - The inconsistency in approach on matters such as the bodies covered by the provisions of Schedule 1 to the Land Compensation Act 1961 and the powers available for temporary possession by acquiring authorities would also persist;
  - The unfairness of compensation arrangements for some occupiers would remain. Namely that those occupiers who are licensees with no interest in the land will continue to be entitled to more

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/509062/Further\\_reform\\_of\\_the\\_compulsory\\_purchase\\_system\\_-\\_consultation.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/509062/Further_reform_of_the_compulsory_purchase_system_-_consultation.pdf)

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/551059/CPO\\_Phase\\_2\\_reform\\_govt\\_response.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/551059/CPO_Phase_2_reform_govt_response.pdf)

generous compensation, than short term tenants and lessees with a break clause in their leases;

- Section 15(1) and Part 4 of the Land Compensation Act 1961 would not be repealed, with the opportunity to reduce uncertainty and unnecessary complexity lost;
- Some public sector bodies would continue to be prevented from bringing forward a joint compulsory purchase order for transport and regeneration purposes; and,
- Unacceptable long delays may continue between a compulsory purchase order being confirmed and the publication of a statutory notice to that effect, to bring the order into operation, prolonging uncertainty for many key parties.

### **Key considerations**

*Setting out a clearer way to identify market value (the no scheme world) when agreeing levels of compensation and repeal redundant legislation*

86. Establishing the principle of the 'no scheme world' (i.e. the valuation of the land being compulsorily purchased should disregard any land value uplift or decrease that is caused by the proposed scheme) and clarifying the definition of what constitutes a scheme, would not change the amount of compensation which is paid but would make the process of agreeing the compensation easier. It would benefit both acquiring authorities and claimants by reducing complexity in the calculation of compensation and therefore should reduce the costs associated with negotiating and reaching agreement.
87. In terms of potentially widening the definition of what constitutes the scheme to include transport infrastructure projects, the impacts would vary.
88. It will mean that the public should benefit from increases in land values arising from public investment in certain transport projects, rather than private interests. This would benefit acquiring authorities because they would have to pay less compensation or in some cases no more compensation than they would otherwise have had to. Many of the acquiring authorities bringing forward these regeneration schemes would be backed by private sector business (who would therefore pay less compensation). There would be no additional costs for acquiring authorities.
89. However, the proposal would also mean that potential claimants may receive less compensation than they would otherwise have done, in those limited circumstances defined in the Bill. The gross cost to potential claimants would be the 'windfall' payments foregone as a result of the changes in definitions. But we expect the costs to claimants would be limited. There would be a limited number of schemes where the new provision would apply. In some cases, we would expect potential claimants to bring forward alternative

regeneration plans in order to realise the value of their land, rather than passively waiting for public intervention.

90. The repeal of section 15(1) of the Land Compensation Act 1961 may provide marginal benefits for acquiring authorities by reducing complexity in the process of agreeing compensation. The repeal of Part 4 of the 1961 Act would remove an unnecessary administrative burden on acquiring authorities arising from having to keep former owners notified of planning consents issued and remove the risk of having to pay extra compensation if a more valuable permission is granted within the time limits contained in the 1961 Act. We do not expect the repeal of section 15(1) of the Land Compensation Act 1961 or repeal of Part 4 of that Act to impose additional costs on parties.

*Putting Mayoral Development Corporations on the same footing as new town and urban development corporations for the purposes of assessing compensation*

91. This means that a Mayoral Development Corporation can acquire land in the designated area at the value assuming no development had taken place in the corporation area since it was first designated. Acquiring authorities (and in 20% of cases, businesses who are backing compulsory purchase orders) would benefit because they may have to pay less compensation or in some cases no more compensation than they would otherwise have had to. There would be no additional costs for acquiring authorities.
92. Claimants may receive less compensation than they would otherwise have done. However, the impact is likely to be limited as there are likely to be only a small number of Mayoral Development Corporations. In addition, the change in compensation only relates to claimants foregoing an uplift in the value of their interest as a result of the actions of the Mayoral Development Corporation. All other aspects of compensation would be unchanged

*Ensuring that compensation due to businesses with an interest in the land arising from unprotected and minor tenancies is calculated on the same basis as others who are in lawful possession but have no further interest in the land*

93. This would result in additional costs to acquiring authorities. However, these are unlikely to be significant in the context of total scheme costs. Some of the cost would be borne by private sector acquiring authorities. Affected claimants (businesses) would benefit from receiving more compensation.

*Simplifying the process by enabling transport and regeneration bodies to make combined orders*

94. This would be beneficial for acquiring authorities as it would enable Greater London Authority/Transport for London to promote schemes that would otherwise be too complicated or uncertain to bring forward.

95. The impact on claimants would be minimal in cases where the only change is to combine two compulsory purchase orders that could currently be submitted at the same time for a comprehensive scheme. If the number of compulsory purchase orders increased, so would the number of claimants. However, there would be no net impact on such claimants as they would be fully compensated for any losses.

96. There is a positive wider economic impact because a larger number of beneficial schemes would be brought forward without introducing any substantive new costs for parties.

*Providing consistent powers for all acquiring authorities to temporarily use land for the purposes of delivering their scheme*

97. The impact for acquiring authorities is likely to be beneficial because:

- Currently, acquiring authorities often work round the issue by acquiring the land (or a right over it) permanently, but providing assurance to the owner that the land would be returned after a certain period. Alternatively they have to opt for a sub-optimal construction approach. Providing for temporary possession should therefore allow acquiring authorities to reduce project costs and speed up project delivery;
- Setting out the basis of compensation may reduce payments, because acquiring authorities would not be at risk of making 'ransom payments' where claimants attempt to extract more of the value of the development than their own losses; and,
- There would be less time wasted negotiating with landowners.

98. Claimants would also benefit in terms of:

- Having greater certainty that their land would be returned within a certain period; and,
- Obtaining compensation for temporary works more quickly.

99. There may be some limited costs for claimants as they may not be able to extract ransom payments from acquiring authorities. We expect that these circumstances are limited in number. However, since ransom payments received by claimants are over and above any costs they incur, this change will make the system fairer.

*Introducing a new legislative requirement to bring compulsory purchase orders into operation within a certain period*

100. Claimants would have greater certainty on the timescale within which an order is likely to be brought into effect. We do not expect this measure would introduce new costs for parties.