



Ministry of Housing,
Communities &
Local Government

The New Towns Act 1981 (Local Authority Oversight) Regulations

Summary of consultation responses and Government response



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Introduction

On 4 December 2017 the Department for Communities and Local Government published a consultation document seeking views on draft Regulations made under section 16 of the Neighbourhood Planning Act 2017. The Regulations provide the detailed provisions which enable the creation of New Town Development Corporations that are overseen by the local authority or authorities covering the area designated for the new town. The Regulations amend the New Towns Act 1981 to create a new option of local authority oversight rather than replacing the existing provisions for Secretary of State oversight.

The consultation ran for 4 weeks to 2 January 2018. 92 responses were received as follows:

<i>Category</i>	<i>Number of Responses</i>
Individuals	58
Local authorities	17
Professional bodies	6
Other representative groups	6
Developers	5

Not every respondent answered each question, nor where they did so did they provide yes/no answers. We have not therefore provided a detailed statistical analysis. Rather in the question by question breakdown below we have sought to give a sense of the weight of respective views, reflect the wide number of thoughtful comments and provide a similarly considered response to those. We are grateful for the individuals and organisations that took the time to respond to this consultation. The changes we are proposing to make to the Regulations in the light of consultation responses and the other action we will take is summarised in the 'Next Steps' section at the end of the document.

Summary of Responses to Questions

Question 1: Do you support the principle of enabling oversight of the development of an area as a new town to be transferred from the Secretary of State to the local authority or authorities covering the area in the circumstances outlined in paragraphs 2.1 to 2.4?

What consultees said

Local authority respondents were supportive, seeing the Regulations as offering a useful additional option for driving local ambitions for housing delivery at scale.

'The councils believe that this is an important step in providing local planning authorities with a valuable option that could help to deliver a step change in housing delivery' (Local authority)

Professional bodies, parish councils and some individuals were also broadly supportive. Groups representing individuals concerned about development proposals and majority of individuals expressed their opposition, though in many cases this was directed at proposed development rather than the principle of locally led New Town Development Corporations. The views of developers were mixed.

Concerns centred on additional bureaucracy, a loss of democratic accountability and the competence of local authorities to oversee development at a very large scale.

'We believe that central government is delegating too much power to local authorities with inadequate resources and the long-term consequences will be poor' (Representative group)

The need for adequate resourcing for local authorities overseeing a New Town Development was a theme picked up by a number of respondents. Others suggested that central government should retain a right to over-ride decisions of the Oversight Authority in some circumstances or proposed monitoring arrangements, for example annual reporting against a delivery agreement.

There was a widespread view that more clarity was needed about the designation process and the evidence which the Secretary of State would expect to see and consider before agreeing to consult on the designation of an area for a New Town and the establishment of a locally led New Town Development Corporation. There was broad agreement that there should be a proper evidence base to support a designation. Views on what that should entail included evidence of deliverability and why a New Town Development Corporation could better secure development than any existing private sector led schemes; the need

for support from all parish councils covering the area; a commitment to infrastructure provision; and, community support.

Government response

We continue to take the view that - in line with our locally-led approach to new garden communities and our broader commitment to devolve powers to boost local growth - the principle of enabling a local authority or local authorities to have oversight of a New Town Development Corporation, remains the right one. We also take the view that where oversight rests with the local authority or local authorities it should do so unambiguously and not be subject to ongoing interventions from central government that may cloud accountability and create uncertainty.

Equally though we recognise that creating a New Town Development Corporation and making a local authority or local authorities responsible for the oversight of this is a significant step. It is one that should only be undertaken where the Secretary of State is satisfied that this will provide a route to secure better and expedited place making at scale that is deliverable and has local support. We will publish guidance on the Regulations that sets out, amongst other matters, more detail on the process for designation; the factors we would expect the Secretary of State to weigh up in considering whether to consult on a designation; and the evidence that we would expect to have to underpin that consideration.

Question 2: Do you agree that the proposed list of functions to be transferred and functions that may only be exercised with the consent of the oversight authority is the correct one? If not, please specify which other functions you think should or should not be transferred and why.

Question 3: Where the draft Regulations provide for the transfer of functions has this been done correctly? If not please specify the changes you think are required and why.

What consultees said

Responses to these questions reflected views on the prior question about the principle of enabling a local authority or local authorities to oversee a New Town Development Corporation. Those who were opposed to the principle felt that only very limited functions should be transferred from the Secretary of State. Amongst respondents who supported the broad objective of the Regulations, views were focussed almost exclusively on functions related to planning and compulsory purchase, though a few respondents suggested that highways functions should be transferred and others argued for a degree of flexibility on the transfer of functions more generally.

There was significant support for enabling plan making, some or all development management functions and Community Infrastructure Levy raising powers to be transferred where this was agreed prior to designation or thereafter by the Oversight Authority or the local authorities which would become the Oversight Authority.

Some respondents argued for the confirmation of compulsory purchase orders to rest with the Oversight Authority rather than the Secretary of State; others were clear that this should not change. A number of consultees argued for bespoke compulsory purchase powers for locally led New Town Development Corporations to facilitate additional land value capture to fund infrastructure and support high quality place making; for others this was a concern.

A significant number of respondents felt that the relationship between the plans of the New Town Development Corporation and local plan documents was unclear and voiced a number of concerns that reflected that uncertainty, for example the risk of duplication or contradictions between plans. There was a strong call for greater clarity.

'Clarifying the statutory powers of locally led New Town Development Corporations will help create a planning framework that large developers...can have confidence in.'
(Developer)

One respondent argued for the option of a site selection process outside the local plans process (though following similar stages); another for allowing New Town Development Corporations to use the Development Consent Orders process.

Government response

We will publish guidance on the Regulations which will seek to emphasise the flexibility which the legislation provides around the drafting and approval of plans and the granting of planning permission. We recognise that the right approach will depend on specific local circumstances and we share the wish of consultees to avoid duplication or the production of contradictory documents.

In general, we would expect the locally led New Town Development Corporation, working closely with the Oversight Authority, to produce a masterplan for the whole area. This would then be approved by the Oversight Authority. However, the Regulations also provide flexibility to facilitate the incorporation of the masterplan for the new town in local plans prior to seeking designation to avoid the duplication of work.

It will be for the Oversight Authority to grant permission for development. This can be achieved either through the usual mechanisms or through use of a local development order. We would encourage consideration being given to the use of local development orders where appropriate as a means of securing high quality development at pace and strengthening the planning certainty of new town projects.

The planning authority with plan-making functions is the CIL charging authority for an area. We do not consider therefore it is appropriate to make the locally led New Town Development Corporations into charging authorities.

In line with the principle that functions which would ordinarily rest with the Secretary of State should not be transferred to the Oversight Authority, we consider that the Secretary of State should continue to confirm any compulsory purchase orders.

We consider that the changes proposed by respondents to the consultation in respect of the compulsory purchase provisions in the New Towns Act 1981 are out of scope of the Regulations. We recognise, however, that the Government's current compulsory purchase guidance does not cover the powers of New Town Development Corporations, whether overseen by the Secretary of State or local authorities. This reflects that these powers have not been used in recent years. To address this we will prepare new guidance on the use of New Town Development Corporations' compulsory purchase powers.

Question 4: Do you agree that the draft Regulations appropriately support the delivery of high quality, sustainable communities and their long-term stewardship? If not, how should they go further or include less prescription?

What consultees said

Respondents who addressed this question almost all emphasised the need for high quality place making and long-term stewardship to be central to these Regulations.

'It is essential that "new towns" are clearly distinguished in terms of quality and long term communal ownership of assets from the generality of large scale housing schemes' (Professional body)

Some dissenting voices expressed scepticism about this being realised in practice. Many more argued that the Regulations should go further. Some respondents felt that the aims of the Oversight Authority in overseeing the development of the New Town should be extended to include for example climate change mitigation, carbon negative development and support for community participation.

There was general concern that there should be an effective mechanism for high aspirations to be realised in practice, particularly around long-term community stewardship.

'The word stewardship chases a higher vision – that the local community should benefit more directly from the project of which it is a part.' (Individual)

Suggestions to bolster provisions on stewardship included placing more explicit requirements on the New Town Development Corporation to plan for its post-dissolution legacy; making a community stewardship body a 'relevant transferee' for the purposes for

the apportionment of property, assets, rights and liabilities on the dissolution of the Corporation; and, requiring the Secretary of State to have regard to the stewardship objectives of the Oversight Authority in making the Order to dissolve the Corporation.

Government response

We have been clear that we want and expect New Towns that are delivered by locally-led New Town Development Corporations to stand out from the ordinary as exemplars of high quality and good design, and be sustainable for the long term. In the light of consultation responses we are making changes to the draft Regulations to broaden the aims of the Oversight Authority with regard to long-term stewardship of New Towns. Planning for the participation of the community and legacy arrangements are included as additional aims for the Oversight Authority. Prior to designation of an area for a new town, the Secretary of State will want to be satisfied that the proposals before him are consistent with the statutory aims of the oversight authority.

We do not consider that it is necessary to make provision for a stewardship body to be a relevant transferee for the purposes of the allocation of assets to a stewardship body on the dissolution of the locally led New Town Development Corporation. This is because paragraph 2 of Schedule 10 to the New Towns Act 1981 already allows for part of the development corporation's property to be transferred to a person other than a relevant transferee, e.g. a stewardship body. The guidance on the Regulations we will publish will set out our expectation that the Secretary of State will wish to be satisfied that appropriate legacy arrangements have been made for the long term community stewardship of the New Town, both prior to making the Order establishing, and dissolving, the locally led New Town Development Corporation.

Question 5: Do you agree with the proposals for Board membership set out in Paragraph 22 of Schedule 1 of the draft Regulations? If not, how should these be changed?

What consultees said

A significant proportion of respondents agreed with the proposals for Board membership, subject to minor changes or points of clarification. Some local authority respondents suggested that whether the chairman and deputy chairman of the Board should be independent members and whether there was an independent majority on the Board should be a matter for the Oversight Authority to determine.

A number of other respondents expressed concern that independent members appointed by the Oversight Authority would be genuinely independent of the local authorities and more generally there was a concern to ensure that conflicts of interest were avoided, that

the appointment process should be a transparent one, and that those appointed had the requisite skills.

'LAs should be compelled to set up a clear and transparent recruitment process for appointing independent members based on merit and track record and current suitability' (Individual)

Some respondents felt that making the Oversight Authority responsible for Board appointments gave too much control and one respondent argued that some appointments should be made by the private sector instead. Some representative groups and individuals argued strongly for community representation on the Board.

One respondent suggested that a minimum number of local authority Board members should be prescribed. Others were concerned to ensure that the membership of the Board could be changed to reflect a change to the area designated for the New Town where that meant an additional local authority area was covered.

Government response

We consider, in the light of consultation responses, that the proposals for Board membership in the draft Regulations remain the right ones. The guidance we will publish will provide further detail on the government's expectations on the appointment of independent Board members; the experience and skills that should be represented on the Board; and the appointment of a representative of the local community.

We do not consider it necessary to prescribe a minimum size for the Board or its composition more closely. We are satisfied that the existing legislation allows for Board membership to be changed reflecting any changes to the area of the New Town. We have though made provision for the size of the Board to be increased, to a greater number than the eleven members currently prescribed in section 3(2) (c) of the New Towns Act 1981, where the number of local authorities covering the area of the New Town is greater than five and an independent majority could not therefore be maintained otherwise.

Question 6: Are there any issues with the draft Regulations not picked up in the questions above you would like to raise? If so, please set these out.

What consultees said

Almost all local authority respondents and a number of others expressed significant concern about the requirement in the draft Regulations for the New Town Development Corporation to seek HM Treasury consent for borrowing in excess of £100 million.

Consultees argued strongly that this was arbitrary, ran counter to the localist principles of the Regulations, would create unacceptable risk to delivery and for investors, and would act as a deterrent to locally led New Town Development Corporations being established. Some respondents also suggested that the existing aggregate borrowing cap of £4.6 billion for all New Town Development Corporations should also be removed.

Consultees suggested that a more rational and better approach would be to agree a level of borrowing that reflected the particular circumstances of each New Town Development Corporation, as part of discussions with HM Treasury in advance of designation.

A number of consultees emphasised the importance of making proper provision for infrastructure from the outset and adequate resourcing from government to enable local authorities to undertake the significant work and analysis required not only after designation but also before it, for example to demonstrate that a locally led New Town Development Corporation would provide a viable and effective route to delivery.

‘The process for exploring and developing these models will be complex, time consuming and expensive and the Government should set out a plan for supporting local authorities to make the most of these opportunities.’ (Representative group)

A few respondents sought more clarity on the relationship between the Oversight Authority and the New Town Development Corporation, on issues of scrutiny and how the legislation could accommodate changes to the area of the New Town and composition of the Oversight Authority over time.

Government response

In the light of consultation responses, we have removed from the final Regulations any requirement for a locally led New Town Development Corporation to seek HM Treasury consent for borrowing. Instead, as consultees suggested, borrowing levels for the locally led New Town Development Corporation will be agreed between HM Treasury and the local authorities which will form the Oversight Authority as part of agreeing the financial parameters within which the New Town Development Corporation will operate. This will be agreed on a case-by-case basis in advance of the Secretary of State consulting on the designation of an area for a New Town. This will be set out in the guidance we will publish.

We acknowledge that for very long term projects like the delivery of a New Town there needs to be flexibility to accommodate changes in boundaries, for example where the designated area is comprised of a number of non-contiguous sites that may be completed at different times, and to the composition of the Oversight Authority. We consider that existing provisions enable this to happen.

We recognise that where local authorities play a leadership role in the delivery of a new garden city, town and village and take the decision that a locally led New Town

Development Corporation is the right delivery vehicle, this has resource implications. Through our garden cities, towns and villages programme the government has to date provided £22 million of capacity funding, and direct expertise and advice. We will continue to provide advice and support to local authorities where we consider that their proposals for a locally led New Town Development Corporation provide a robust route to delivering a new garden community.

Next Steps

Alongside publication of this analysis of consultation responses we are laying in Parliament final Regulations, amended to reflect views expressed in this consultation process as set out above. In summary the changes we have made between the draft and final Regulations:

- Broaden the aims of the Oversight Authority with regard to long-term stewardship of New Towns by including planning for the participation of the community and legacy arrangements as additional aims for the Oversight Authority.
- Remove the requirement for HM Treasury consent for borrowing by the locally led New Town Development in excess of £100 million

Subject to Parliamentary approval of the Regulations, local authorities may wish to hold preliminary discussion with the Ministry of Housing, Communities and Local Government and subsequently seek the designation of an area for a New Town and creation of a locally led New Town Development Corporation. Guidance on the Regulations will be published to assist local authorities in understanding the government's expectations around that process.