

Local planning regulations: Consultation

Summary of responses





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Introduction

- 1. The Government strongly believes that the key to successful planning is in enabling the building of communities that are attractive and good to live in and the promotion of sustainable development through an up-to-date Local Plan.
- 2. Through reforms set out in the Localism Act, the Government wants to:
 - (i) restore democratic and local control over the planning system;
 - (ii) rebalance the system in favour of sustainable development; and
 - (iii) produce a simpler, quicker, cheaper, less bureaucratic planning system.

Key reforms to achieve these objectives include the abolition of regional strategies, the introduction of neighbourhood planning, and the simplification and streamlining of the process of preparing Local Plans. Local Plans remain central to the planning system. They fully retain their primacy¹ in determining planning applications. These reforms will make the role of Local Plans even more important, as they will set a planning strategy in co-operation with neighbouring councils, as well as setting out the strategic objectives with which neighbourhood plans must conform.

3. The Localism Act introduced the following changes to the way local plans are prepared.

Duty to co-operate

4. The new duty to co-operate requires councils and other public bodies to work together on planning issues. We propose to use the revised local planning regulations to set out the proposed list of bodies that the duty will apply to. We also identified bodies whose views must be taken into account by local councils and other public bodies which are subject to the duty.

Adoption of Local Plan documents

- 5. Local councils are currently required to submit their draft plan for public examination by an independent inspector, appointed by the Secretary of State. Following the examination, the inspector produces a report which may modify the plan, which a local authority must accept before they can formally adopt the plan. These changes can therefore feel imposed and undemocratic.
- 6. In the Localism Act we removed the inspectors' powers to impose changes. Inspectors will report to the local authority and identify conflicts between the plan and national policy and regulatory process. However, they will only be able to recommend modifications to overcome these issues if they are asked to do so by the council itself. Councils will now be able to suggest their own modifications for assessment by the Inspector during the examination, as well as making minor non-material changes themselves. The council is then free to choose to accept the inspector's modifications and adopt the plan, or resubmit a

¹ Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning application decisions to be made in accordance with the local plan, unless relevant material considerations indicate otherwise.

- new plan. This approach is aimed at encouraging a more collaborative process as the examination of a plan proceeds.
- 7. The term 'local plan' has been used in the regulations in place of 'development plan document', in order to make the regulations more accessible. In this document, when we refer to 'Local Plan' this covers the collection of 'development plan documents' for that area. Development plan document is used where the intention is to refer to a single document only.

Withdrawal of Local Plan documents

8. This change in the Act allows a council to withdraw an individual development plan document or documents at anytime before their adoption. If the development plan document has been submitted for independent examination, the council no longer requires a recommendation from the person carrying out the examination or a direction from the Secretary of State that the document should be withdrawn.

Local development scheme

9. Councils must prepare and maintain a local development scheme specifying the subject matter, area and the timetable for the preparation and revision of development plan documents (which will be part of the local Development Plan), supplementary planning documents and the Statement of Community Involvement. Councils are no longer required to submit the local development scheme to the Secretary of State or, if a London Borough, send a copy to the Mayor of London. Councils must publish up to date information on their progress in preparing development plan documents against the local development scheme. Councils have flexibility to decide how best to present this information to the public, for example using on-line timetables. These changes remove central monitoring by distant Whitehall departments, and puts the emphasis on transparency and accessibility of local planning information, so that councils are accountable to local residents.

Reporting to communities

10. Under the Localism Act, councils no longer have to make an annual monitoring report, on the implementation of their local development scheme, to the Secretary of State. But the **duty** to monitor remains, and requires an 'Authorities' Monitoring Report' to be prepared for local people, in the interests of local transparency and accountability. The local planning regulations have been amended to require monitoring information to be made available online and in council offices as soon as it is available to the council, rather than waiting to publish this only on an annual basis.

About the Consultation

The Town and Country Planning (Local Planning) (England) Regulations 2012

- 11. The Department for Communities and Local Government ran a consultation exercise between 15 July and 7 October 2011 on new regulations governing the process by which local councils prepare their local plan and associated documents. These regulations are due to come into force on 6 April 2012.
- 12. Prior to 6 April 2012, the regulations on plan preparation are set out in the Town and Country Planning (Local Development) (England) Regulations 2004, as amended. The Government objectives in revising the regulations were:
 - i) to respond to reforms set out in the Localism Act;
 - ii) to consolidate changes made to the 2004 regulations into a single document; and
 - iii)to ensure the regulations are as effective and simple as possible.
- 13. The consultation period for the draft National Planning Policy Framework overlapped with that of the local planning regulations, running between the 25 July and 17 October 2011. The Localism Bill was passing through its final Parliamentary stages, and became the Localism Act on the 15 November 2011. The sections of the Act which referred to local plan procedures commenced on 15 January 2012. Although the local planning regulations consultation expressly did not seek views on the Localism Bill, including neighbourhood planning, nor the draft National Planning Policy Framework, both clearly influenced the comments made by respondents.
- 14. This paper is a summary of the responses to the consultation.
- 15. The Government objectives in revising the regulations are:
- i) to address the reforms set out in the Localism Act;
- ii) to consolidate changes made to the 2004 regulations into a single document; and
- iii) to ensure the regulations are as effective and simple as possible.

Question 1: Do you agree that the revised regulations effectively reflect the changes proposed in the Localism Bill?

Question 2: Do you agree with the list of bodies included in the duty to cooperate

Question 3: Do you agree the revised regulations effectively consolidate the 2004 regulations with the revisions in 2008 and 2009?

Question 4: Are there any ways in which the regulations should be changed in order to improve the process of preparing local plans, within the powers set out in the Planning and Compulsory Purchase Act 2004 and the Localism Bill?

17. The consultation was conducted according to the Code of Practice for consultation.

Consultation Questions

- 18. This section summarises responses to the questions posed in the consultation document
- 19. In total, 199 individuals and organisations responded to the consultation, the vast majority from local government, and parish and town councils.

Responses by organisation

Table 1: Responses by type of respondent

Type of Organisation	Number of Responses
Business, Consultant or Professional Advisor	9
Individual	6
Local Government	90
National Representative Body	8
Other Public Body	9
Parish Council	52
Private Developer or House Builder	3
Professional Body	6
Voluntary Sector or Charitable Organisation	16
Total	199

General comments

- 20. A number of responses commented on the draft National Planning Policy Framework, on which the Government also consulted at this time, including on the terminology of 'Local Plan'. We have sought to clarify this term in both the regulations and in the final Framework.
- 21. Many parish and town councils expressed the view that they should be prescribed bodies under the Duty to Cooperate, and this influenced their responses on other questions. The purpose of the Duty to Co-operate is to ensure that public bodies co-operate to achieve effective strategic planning, including across local authority boundaries. The Government does not

propose to alter the requirement in the current regulations for local councils to consult parish or town councils in the preparation of their Local Plans. In addition, the role of town and parish councils in the planning process has been strengthened through the new neighbourhood planning powers introduced by the Localism Act. Town and parish councils are encouraged to take advantage of the opportunity to prepare a neighbourhood plan, which will form part of the statutory Development Plan for the local area. The powers to produce a neighbourhood plan, or order, commence in April 2012.

- 22. The Government therefore does not propose to add parish and town councils to the list of bodies to whom the duty to co-operate will apply on strategic planning matters.
- 23. Some respondents sought clarification on how neighbourhood plans would interact with the local planning regulations, and queried whether there could be consolidation between the two regimes. The process for preparing a neighbourhood plan or order is different from the preparation of a council's Local Plan, and so they are governed by separate regulations.
- 24. The first set of regulations for neighbourhood planning were consulted on between 13 October 2011 and 5 January 2012, and will come into force on 6 April. Further regulations are required on referendums. Neighbourhood planning is a system led by the community, through parish/ town councils or neighbourhood forums in the neighbourhood area. Local Plans are led by the local authority in consultation with the community, across the whole local authority area. The processes for preparing and examining neighbourhood plans (or neighbourhood development orders), will be significantly more light touch and will allow a wider group of appropriately qualified planning professionals to conduct the examination. We do not feel that consolidation would bring the clarity that some respondents are seeking, but we are considering whether there is a need to provide further guidance in light of responses to the consultations on the neighbourhood planning regulations, the National Planning Policy Framework, and this consultation.
- 25. A large number of comments sought minor changes to clarify the operation of the regulations, and where appropriate we have addressed these.

Question 1: Do you agree that the revised regulations effectively reflect the changes proposed in the Localism Bill?

26.35% respondents agreed, or strongly agreed, that the revised regulations effectively reflected the changes made in the Localism Act. 40% of respondents neither agreed nor disagreed with the statement in question 1. This may be because the Localism Bill was still progressing through Parliament, and had not yet been finalised. 25% disagreed, or strongly disagreed with question 1. The respondents that strongly disagreed were almost exclusively parish and town councils (24 out of 25). The responses

- provided by parish, and town, councils to this question reflect their comments on the duty to cooperate (question 2).
- 27. The Government believes that the final regulations will effectively implement the changes brought about by the Localism Act.

Question 2: Do you agree with the list of bodies included in the duty to cooperate

- 28. Responses to this question focussed on proposing, or supporting, the inclusion of bodies that are subject to the Duty to Co-operate. Suggestions were made, and support was given, for the inclusion of utility and infrastructure providers, town, parish and village councils, county councils, and groups who promote particular issues, such as the Forestry Commission and Sport England. The Duty to Co-operate only applies to public bodies which are prescribed in these regulations, and requires those bodies to co-operate on strategic planning matters. However, this does not alter the ability of any party to make representations to local councils on the preparation of their plan.
- 29. Many of the suggested bodies are already statutory consultees for the purposes of plan preparation (and indeed on planning applications). Local councils must, where appropriate, seek the views of the statutory consultee during their plan preparation, and councils may then have regard to these views as they make decision on their draft plan. The views of statutory consultees are therefore already fed into the plan preparation process, and it is not necessary for these bodies to all be replicated under the Duty to Cooperate, except where the Government wishes to ensure cooperation on resolving strategic issues. The final regulations contain a list of statutory consultee bodies at regulation 2.
- 30. The Government is committed to ensuring that appropriate, but targeted joint-working is enshrined through the Duty-to-Co-operate and consultation bodies specified in the regulations. The regulations will require the bodies prescribed by the Duty to have regard to the views of Local Enterprise Partnerships in relation to strategic planning matters. Local Nature Partnerships have not been prescribed for this purpose, as the Partnerships have not yet been implemented. However, the Government believes that the Partnerships will make a valuable contribution to planning in their areas. As soon as possible after Local Nature Partnerships have been designated in summer 2012, the Government will amend these regulations to require bodies bound by the Duty to also have regard to the views of Local Nature Partnerships on strategic planning matters.
- 31. Some respondents requested further information on how the Duty to Cooperate will work in practice. The Government committed to considering whether guidance would be needed to address these comments.

Question 3: Do you agree the revised regulations effectively consolidate the 2004 regulations with the revisions in 2008 and 2009?

- 32. The majority of respondents did not offer comments on this question. Those that did often included issues raised under question 4; these comments are therefore captured below. Some respondents requested clarity on the status, and procedure of Statements of Community Involvement a point also raised under question 4.
- 33. Statements of Community Involvement are not part of the Local Plan (development plan documents), nor are they supplementary planning documents. The Statements set out how a council is going to engage with its community when preparing development plan documents or supplementary planning documents. The Government's view is that Statements of Community Involvement are already set out in previous legislation, the Planning and Compulsory Purchase Act 2004 (section 18), which remains in place. Local councils are able to tailor engagement on the Statement to meet the need of the local community.

Question 4: Are there any ways in which the regulations should be changed in order to improve the process of preparing Local Plans, within the powers set out in the Planning and Compulsory Purchase Act 2004 and the Localism Bill?

- 34. The majority of respondents provided additional comments when answering this question, covering an array of issues. The main areas of comment were:
 - Requirement to publish monitoring information as soon as it is available;
 - How to report on the duty to co-operate;
 - Comments regarding Inspector's powers, examination process and modifications and re-submission of development plan documents;
 - The need to send out hard copies rather than electronic to consultation bodies and the Secretary of State;
 - Contents of local development schemes and statements of community involvement:
 - Removal of county council duty to survey area;
 - Differences in consultation and high court challenge periods between development plan documents and supplementary planning documents;
 - The draft National Planning Policy Framework's proposals on a certificate of conformity;
 - Suggestions to improve clarity of the regulations, and correct possible errors.
- 35. The Government feels it is right that communities should have access to monitoring information collected by local councils as soon as possible, and

that a frequent release of information was less burdensome to local councils than the resources required to collect a vast array of information at one time. The information can still be compiled into an annual report with contents to be determined at the council's discretion, having satisfied the requirements of the Act and regulations.

- 36. The Government agrees that Inspectors should be proactive in signalling issues and the need for modifications during the examination, however the changes introduced by the Localism Act mean that Inspectors cannot make modifications to a plan unless asked to by the council. As is the case now, we expect local councils to work with inspectors, during the examination process, to agree any necessary changes to deliver a robust and sound plan. This reflects the flexibility and best practice approach that the Planning Inspectorate already encourages in the examination process. The requirements to send paper copies to consultation bodies, and the Secretary of State, assists efficient processing of documents at these organisations.
- 37. The local development scheme, as set out in section 15 of the Planning Compulsory Purchase Act 2004, sets out a local council's timetable for producing the development plan documents that make up the Local Plan. The Statement of Community Involvement, as set out in section 18 of the 2004 Act, sets out a council's policy on community involvement in the preparation of their Local Plan and determination of planning applications. The Government believes it is for local councils to decide how best to set out this information, without further prescription in regulations.
- 38. County councils are a key part of the planning system, and take the lead in planning for waste and minerals. Under these new regulations, counties are subject to the Duty to Cooperate, and as such must work with local councils to ensure a robust approach to strategic planning. The Government has put in place legislation to remove the regional planning tier, which area surveying by the county council was designed to support. County councils are still required by the 2004 Act, to conduct surveys to support those matters on which they act as the local planning authority (minerals and waste.)
- 39. The Government agrees with respondents who argued that the 6 weeks maximum period for consultation on supplementary planning documents is too restrictive. The 4 week minimum is sufficient, and it is up to local councils to determine what if any additional time is needed to meet the needs to its community. However, the Government feels that, on balance, the other differences in timings for development plan documents and supplementary planning documents should remain, as these reflect the differences in consultation and examination requirements.
- 40. The Government is currently considering points raised in both the local planning regulations and draft National Planning Policy Framework consultations on the proposed certificate of conformity. The Government is

- also considering other transitional measures, which will advantage Local Plans, when the final National Planning Policy Framework is published.
- 41. A small number of suggestions regarding clarity and possible errors have been addressed, and changes made to the final regulations.