



Sustainable Communities Act 2007

Inspiring the Big Society: a consultation on regulations under the Sustainable Communities Act





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About this consultation

Scope of the consultation

Topic of this consultation:	Under section 5B of the Sustainable Communities Act 2007 the Secretary of State may make regulations about proposals by local authorities to improve the sustainability of local areas, submitted following an invitation by the Secretary of State. If the Secretary of State wishes to make regulations, he is required to consult local authorities and representative bodies.
Scope of this consultation:	This consultation invites views on regulations governing the relationship between the Secretary of State and the selector on proposals submitted following the second invitation under the Sustainable Communities Act issued on 15 December 2010.
Geographical scope:	The Sustainable Communities Act extends to England and Wales, but only applies to local authorities in England.
Impact Assessment:	Impact Assessments are needed where proposals impact upon business or the voluntary sector, or have significant costs (above £5m pa) for the public sector. Our assessment is that the proposals in this consultation will not bring about such impacts; although this consultation seeks the views of those likely to be affected by the proposals.

Basic Information

To:	The consultation seeks the views of local government, its partners, communities and individuals.
Body/bodies responsible for the consultation:	The Big Society: Barrier Busting policy team in the Department for Communities and Local Government is responsible for this consultation.

Duration:	This consultation will run from 29 March 2011 to 20 June 2011.
Enquiries:	For further information on this consultation document please email sca@communities.gsi.gov.uk or telephone 030 3444 0000 and ask for the Barrier Busting Team.
How to respond:	Please email responses to: sca@communities.gsi.gov.uk or write to: Barrier Busting Team, Department for Communities and Local Government, 7/G10 Eland House, Bressenden Place, London, SW1E 5DU.
Additional ways to become involved:	This is an online consultation only. However, if you would like this document in another format, or would like to feed in your views in another way, please contact the Department.
After the consultation:	A summary of responses to the consultation and the Government's response will be made available after the closing date and will be published on the Department for Communities and Local Government's website.
Compliance with the Code of Practice on Consultation:	This consultation complies with the Code of Practice on consultation at: www.bis.gov.uk/policies/better-regulation/consultation-guidance

Background

Getting to this stage:	There have been discussions with external partners with experience of implementing the Act following the first invitation. The principles of this document, and potential arrangements for considering proposals following the second invitation, have been discussed with the Local Government Association and other external partners.
Previous engagement:	The Sustainable Communities Act 2007 (Amendment) Act 2010 ("the Amendment Act"), which inserted the requirement for this consultation, was debated in Parliament in April 2010.

Section 1

Introduction

- 1.1 On 15 December 2010 the Secretary of State issued a second invitation to local authorities under the Sustainable Communities Act 2007 (“the Act”). He invited councils to consult people, ask them how they would like to see their local area improved and to take whatever action they see fit to make it happen. The Localism Bill will give them far more freedom and flexibility to do this.
- 1.2 If councils, having consulted and reached agreement with their local communities, find that a bureaucratic barrier prevents them from taking action, they can submit a formal ‘proposal’ asking Government to remove the barrier through the new online portal at <http://barrierbusting.communities.gov.uk>. This portal is also open to anyone who wishes to ask the Government to remove a barrier which is stopping local action. We would, for example, welcome requests to remove barriers from organisations such as town and parish councils, and County Associations of Parish Councils.
- 1.3 The Act was amended in April 2010 to allow the procedures for receiving, considering and deciding proposals under the Act to be improved.
- 1.4 The Act now allows the arrangements for the consideration of proposals submitted in response to the invitation to be set out in regulations, following a period of consultation. There will be no deadlines for the submission of proposals, which can now be submitted straight to the Government at any time. Information on the action the Government is taking on the proposals will be available online so that councils and communities can track progress.
- 1.5 The Act, and the proposed draft regulations set out in this consultation, is a means to hold government to account and ensure each proposal is given the fullest consideration.

Section 2

Regulations and the role of selector

Statutory requirements following the first invitation

- 2.1 The arrangements which governed the first Sustainable Communities Act invitation in 2007 were set out in sections 2 – 5, the Sustainable Communities Regulations 2008, and associated statutory guidance.¹
- 2.2 Councils were required to submit proposals to a selector within a specified time frame, and had to consult communities in a specific way before doing so. The Local Government Association was appointed as the selector on 14 February 2008. It was required to present a short-list of proposals to the Secretary of State who was then required to consult the selector and try to reach agreement before deciding whether or not proposals could be implemented.

Proposed statutory requirements under the second invitation

- 2.3 Sections 2 – 5 of the Act do not apply to the second invitation, issued on 15 December 2010. This provides an opportunity to reassess the arrangements for the submission and consideration of proposals to ensure they are less bureaucratic and prescriptive.
- 2.4 We do not intend to regulate the actions of local authorities who wish to respond to the invitation, or to regulate the duties of the selector. Councils will no longer be required within regulations to take specific steps before submitting a proposal, or to submit proposals to a set deadline. However, the second invitation made clear our expectation that councils using the Act would not just consult people for their ideas on how to improve their area, but go further – to engage in open dialogue, and try to reach agreement with people on how to take innovative action.
- 2.5 This concept of “trying to reach agreement” remains at the heart of the Act, both at a local and central government level. We are turning government upside down to provide a personal service, dedicated to removing as many barriers to localism as possible. There may be times when a council which has reached agreement with communities and submitted a proposal under the Act is dissatisfied with the reasons given about why a particular barrier cannot be removed.

¹ SI 2008 No. 2694 The Sustainable Communities Regulations 2008 and *Creating Strong, Safe and Prosperous Communities, Annex 1*, 2008.

- 2.6 We intend, therefore, to give the selector a clear role in providing challenge to government in such cases, by allowing it to re-submit a proposal and placing a statutory requirement on central government to itself consult and try to reach agreement with the selector prior to reaching a final decision.
- 2.7 We propose, therefore, to introduce regulations requiring the Secretary of State to take the following action:
- **to consider a request by the selector to take action to remove a bureaucratic barrier, which the Secretary of State has previously decided not to implement**
 - **to consult and try to reach agreement with the selector before he decides whether or not it can be implemented, or implemented in part, and how proposals will be implemented**
 - **to publish his decision, with reasons**
 - **to state any action he will take with a view to implementing the proposal; and**
 - **to publish an update on that action, should it not be complete within one year.**
- 2.8 We also intend to give the selector the discretion to appoint an advisory panel to assist it in its duties.

Non-statutory arrangements

- 2.9 We will work with the Local Government Association to agree new terms of reference detailing the remit of the selector, which we intend to expand to include key roles for organisations such as the National Association of Local Councils, and Local Works – the coalition of grass-roots organisations dedicated to effectively implementing the Act.
- 2.10 We intend to give the selector as much flexibility as possible over its activities and their terms of reference will ensure transparency in how it expects to carry out its role. There will also be a new memorandum of understanding to govern the relationship between the selector and the Department for Communities and Local Government. This will cover all other practical arrangements for implementing the Act. Both the terms of reference and the memorandum of understanding will be made public.
- 2.11 Before the regulations are laid before Parliament, the Government is required to consult on their contents. Your views are invited on the following questions:

Do you agree with our plans to place within regulations:

a requirement on the Secretary of State:

- a. **to consider a request by the selector to take action to remove a bureaucratic barrier, which the Secretary of State has previously decided not to implement**
- b. **to consult and try to reach agreement with the selector before he decides whether or not it can be implemented, or implemented in part, and how proposals will be implemented**
- c. **to publish his decision, with reasons**
- d. **to state any action he will take with a view to implementing the proposal; and to publish an update on that action, should it not be complete within one year²; and**

a discretion for the selector to appoint an advisory panel to assist it in its duties?

We believe all other arrangements can be adequately addressed within the selector's terms of reference and the memorandum of understanding. Do you agree? If you do not, please tell us what else you would like to see included, and why these need to be placed within regulations.

² Bullets c) and d) are required under section 5(B)(2) of the Act to be contained within regulations, should they be made.

Consultation criteria

This consultation document and consultation process have been planned to adhere to the code of practice on consultation issued by the Department for Business, Innovation and Skills and is in line with the seven consultation criteria, which are:

1. Formal consultation should take place at a stage when there is scope to influence the policy outcome.
2. Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

The Department for Communities and Local Government will process your personal data in accordance with DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed these criteria? If not or you have any other observations about how we can improve the process please contact:

DCLG Consultation Co-ordinator
Zone 6/H10
Eland House
Bressenden Place
London
SW1E 5DU

or by e-mail to: consultationcoordinator@communities.gsi.gov.uk

Consultation process

Please note that responses to this consultation document should be received no later than 20 June 2011.

Responses and any comments about this consultation should be emailed to:
sca@communities.gsi.gov.uk

The consultation document will only be available on the DCLG website at:
www.communities.gov.uk/corporate/publications/consultations/

A summary of responses to this consultation paper will be published on the DCLG website within three months of the closing date of this consultation. Unless you specifically state that your response, or any part of it, is confidential, we shall assume that you have no objection to it being made available to the public and identified on the DCLG website. Confidential responses will be included in any numerical summary or analysis of responses.