



Department for
Communities and
Local Government

Making it easier to set up new town and parish councils

Discussion paper

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Introduction

The Government wants to make it easier to set up new town and parish councils. This discussion paper presents a range of proposals that would help achieve this. We would like your views on these, as well as any other comments or ideas. Details of how to contribute are at the end of this document.

1. The neighbourhoods we live in are often the places where we are most ready to get involved. The government wants to make it as easy as possible for people to play an active part in society and improve their neighbourhoods. There are a number of new ways people can do this which have been created by the Localism Act 2011. Many of these do not require formal governance structures.
2. Sometimes, neighbourhood level local governance can make it easier to take action. In many areas, there are town and parish councils, the most local level of government. These councils provide formal democratic representation for the neighbourhood and have the ability to deliver services to the community, as well as being able to influence other decision making bodies. There are around nine and a half thousand such councils in England, but they tend not to exist in more urban areas, and so sixty-three per cent of the population is not covered by one.
3. There is a mechanism by which local authorities (district, borough or unitary councils) can decide to create new parish councils (which can then resolve to be called town, neighbourhood, village or community councils). This is called a 'community governance review'. However, a number of partners - individuals, members of town and parish councils and organisations which represent and support them have argued that this process has a number of problems.
4. We want to make it easier and simpler for people to set up town and parish councils where they do not exist. We want to tilt the balance in favour of community groups, where there is the demonstrable support of a majority of local people. Where local people express popular support for the creation of a town or parish council, the local authority should work with the community to achieve that.
5. This paper therefore sets out three options to make the process for creating a new parish council simpler and better.

Problems with the current process for setting up a new parish council

6. The current process for setting up a new parish council is set out in the Local Government and Public Involvement in Health Act 2007 and in DCLG's 'Guidance on Community Governance Reviews, published in 2010. (This is available at www.communities.gov.uk/publications/localgovernment/guidancecommunitygovernance2010.) A description of how the process works is set out at Annex A at the end of this paper.
7. The current process presents a number of problems for those wanting a new parish council to be set up.
 - It's **demanding** for campaigners. They must obtain the support of ten per cent of the electorate (or a greater proportion in smaller areas) to trigger a community governance review. A good working understanding of the local authority's procedures may be required.
 - The process **doesn't allow designated neighbourhood forums** for neighbourhood planning a distinct role in the process of creating a new parish council. They have to trigger a review in the same way as any other group.
 - Community governance reviews have **too wide a scope**. They can cover the whole of the local authority area; consider a wide range of issues and consult a wide range of people.
 - It **takes a long time**. There is no time limit for a local authority to set the terms of reference for a community governance review; once it has done so, it can take up to a year to carry the review out.
 - There is **no right of appeal**. The 2007 legislation removed the requirement for the consent of the Secretary of State for the creation of the new town or parish councils. The Government believes that these should remain local decisions. Some campaigners have argued that a right of appeal would allow a community a redress if they felt that a local authority had been unfair in a decision not to create a new parish council.
8. Any changes to the process for creating a new parish council should strike the right balance between making it simpler to set a new council up and ensuring that any new parish council has the support of local people. If, for example, the support of only a very few people was required to trigger or even to decide the process in favour of creating a new parish council, it might be created even when the majority of people were not in favour of its creation. That would make it redundant and potentially even an unwanted burden on the local community.

Is this an accurate summary of the challenges within the current process for setting up a new parish council?

Options for making it easier to set up new parish councils

9. As set out in paragraph four above, the Government believes that where local people express support for the creation of a town or parish council, the local authority should work with the community to achieve that. The following pages set out a range of options in support of that position, making it easier to set up new town and parish councils.
10. For simplicity, a number of changes have been grouped together into three options. Elements of the various options are interchangeable and they are not in opposition to each other. For example, one approach might be to make some changes to statutory guidance (using elements of option one) and then to make some changes to the law using a Legislative Reform Order (using elements of options two and three.) The approach taken need not be exclusively and entirely to follow a single option.

Option one - amending existing guidance

11. This option proposes a number of changes to the existing system be made through the statutory guidance issued by the Secretary of State. Local authorities must have regard to this guidance in carrying out governance reviews.

Timescales

12. Although the maximum timescale for community governance reviews, twelve months, is established in the Local Government and Public Involvement in Health Act 2007, guidance could strongly encourage authorities to complete the process in less time. As the process must involve consultation, a review period of six months could be a reasonable period for the entire review. Guidance could also suggest that the terms of reference for a review should be set promptly, for example within three months. Currently there is no limit on this.

Scope

13. The current process requires that the local authority have regard to the need to secure that community governance within the area under review is effective and convenient. The amended guidance could make it clear that the right weight should be given to what is effective and convenient for the local community, separately from for the local authority itself. For example, a local authority may regard it as more convenient to have a single method of engaging communities across the local authority area. That may at present be a reason not to create a new town or parish council. That does not necessarily mean, though, that a new parish council would not be effective or convenient from the point of view of the community in a particular area. (While there is no definitive interpretation of 'effective and convenient', with the words carrying their ordinary meaning, the current guidance explains effectiveness and convenience in terms of the proposed parish council being viable in terms of providing at least some services and easy to reach and accessible to local people.)
14. Guidance could be changed to make governance reviews clearer about what considerations they take into account. It would still be open to a local authority to carry out a governance review covering a wider area than the neighbourhood area for which a parish council is proposed by campaigners. In such cases, though, the review should set out how the authority intends to take into account and balance the views of consultees in different areas.
15. The guidance could be clear that a review can recommend different governance arrangements for different parts of the local authority area. The Government believes that different approaches in different parts of a local authority area are healthy and that diversity should be encouraged. This would reflect the rich tapestry that currently exists in many places.

Internal review of decision

16. While the government believes that the decision to create a new parish council should remain a local one rather than be subject to a right of appeal, guidance could propose that as a matter of good practice, the local authority could carry out a review of a decision not to create a town or parish council if campaigners want one. Local

authorities will often have review mechanisms already. It should be made clear to campaigners what route they have within the local authority for review of a decision they are not happy with. The review could be carried out on the application of a specified number of local people - perhaps on payment of a fee, to discourage vexatious applications having little merit. We are interested to hear from local authorities about how this issue can best be addressed.

Election timetables

17. The community governance review process could be made to work better by positioning it relative to electoral cycles to avoid long delays between the start of a campaign and the first elections. The opportunity to present a petition could be linked to each electoral cycle. Working back from the date of an election, the local authority could set out a timetable for the various parts of the process which would need to be met in order to come to a final decision on a petition in time to fit with a forthcoming election. This would identify when a petition to create a new council could most conveniently be considered.

Implementation

18. Implementation of this option would involve amending existing statutory guidance. Local authorities would, as now, be obliged to have regard to this guidance. These changes to the statutory guidance would require a new burdens assessment to be carried out.

Advantages and disadvantages

19. The advantage of this approach are that the changes made by guidance are able to address many of the difficulties with the process outlined in paragraph seven.
20. The disadvantage of this approach is that it cannot address those features of the existing process set out in the primary legislation and so, for example, keeps the current number of signatures required for a valid petition.

Option two - changing the law (including doing so after amending guidance)

21. This option proposes:

- changing the threshold for a petition for a community governance review;
- limiting the scope for the local authority's consideration of the issues in a community governance review; and
- shortening the timetable for the community governance review, and linking the timetable to the electoral cycle more clearly

Petition threshold

22. The number of signatures a petition needs in order to trigger a community governance review could be halved, as follows: For electorates of below 500, 25 per cent; 125 signatures for electorates between 500 and 2,500; and 5 per cent for electorates above 2,500.

23. The aim in setting these limits is to ensure that the process is accessible to campaigners, enabling genuine campaigns with popular support to lead to a community governance review which will then take into account broader community views. Balance also needs to be had to ensure that the threshold is not lowered so far that reviews could be triggered without real support.

Scope of review

24. Under this option, authorities would still be able to carry out a governance review covering a wider area than that originally covered by the petition, but reviews would need to consider each proposed parish council area separately, as each neighbourhood has distinct needs and features. It would not be open to an authority to use the desirability of a different governance arrangement in one area as a reason to reject a proposal for a parish council in another.

25. The review would operate from the presumption that a parish council would be effective and convenient, unless consultees presented evidence to the contrary, as there is no shortage of evidence to show that town and parish councils can be so. Those living in the area to be served by the proposed council should be the ones to decide about the effectiveness and convenience of the new parish council.

Timescale

26. This option would reduce the maximum time period for community governance reviews to six months. This allows for the consultation required in the process. Similarly, the legislation could be amended to set a maximum time period for setting terms of reference once a valid petition had been received - for example, three months. Alternatively, a single limit of nine or twelve months for the whole process, from receipt of petition (rather than from agreement of terms of reference) may be a simpler, more realistic option.

Links to electoral timetables

27. As with the proposal on electoral timetable under option one, the opportunity to present a petition for the creation of a parish council can be linked to each cycle of the electoral timetable. A change to the legislation could require local authorities to publish timescales linked to the electoral cycle, within which petitions should be ideally submitted, so that if the local authority decides in favour, the establishment of the council itself is not delayed by a long wait for the next election. This would not prevent out of cycle petitions from being submitted, but would enable local authorities and campaigners to prepare their resources at a sensible time.

Implementation

28. Implementation of this option would involve using a Legislative Reform Order to amend primary legislation. It could be done following changes to the statutory guidance. It would make changes to petition arrangements, require authorities to adopt different timescales for governance reviews and make changes to the scope of those reviews, all of which is set out in existing legislation. It would place an obligation on authorities to publish schedules within which they will consider petitions for new parish councils. These changes to the process would require a new burdens assessment to be carried out.

Advantages and disadvantages

29. The advantages of the proposals described in this option are that they would address a wide range of the problems with the current process, including lowering the thresholds for a valid petition, whilst still requiring a petition to establish an initial degree of community support. It addresses an issue of engagement at the initial petition stage whilst maintaining the safeguards contained within the carrying out of the community governance reviews in taking into account the views of the broader community.

30. The disadvantage of this option is that lowering the threshold for a petition triggering a community governance review runs the risk that petitions which do not have sufficient community backing will be considered, potentially wasting resources or leading to the creation of a council which is not wanted by the local community. This risk is a concern and therefore views as to the scale of that risk, and the potential value or not of a lowering of the threshold, would be welcomed.

Option three - making it easier for neighbourhood forums to start the process for creating a new parish council

31. This option proposes that a neighbourhood forum could submit an application to trigger a community governance review, rather than having to submit a petition with the required number of signatures. For areas without a designated neighbourhood forum the existing process of a petition would remain.
32. The neighbourhood planning powers in the Localism Act allow town and parish councils to develop neighbourhood plans for their local areas, which, when accepted by the local authority and agreed by the local population in a referendum, become part of the planning framework. In areas where there is not a town or parish council, neighbourhood planning can be carried out by anyone who wants to set up or join a group which is designated as a 'neighbourhood forum' by the local authority. The minimum requirements are that neighbourhood forums must be open to those living and working in the neighbourhood area, have the purpose of promoting or improving the well-being of the area, have a written constitution and have at least 21 members.
33. There are a number of reasons why a neighbourhood forum should be involved in the process of creating a new parish council. Firstly, a designated neighbourhood forum has an open membership of people with a genuine interest in the local community and a focus on improving local well-being. Secondly, the neighbourhood planning process should generate community interest and engagement in the idea of shaping and improving the neighbourhood. That may mean that it can also be a good starting point for considering the creation of a town or parish council. Thirdly, when that forum has had a neighbourhood plan agreed at a referendum, it has shown that it has community support in developing proposals for the future of the neighbourhood. It may therefore be appropriate to allow it to start the process of creating a parish council more easily than the current petition process allows.

How would it work?

34. This option would remove the requirement for a designated neighbourhood forum which has had a neighbourhood plan passed at referendum to submit a petition if it wanted to trigger a community governance review. Instead, it would just submit an application to the local authority in the manner currently prescribed for a petition - setting out the area to be covered by the new parish council. This would trigger a community governance review in the same way as a valid petition.
35. The proposal would need to go through all the subsequent steps of a community governance review by the local authority, including consultation, so the whole community would still have a voice in the process. The local authority would, as now, examine and decide on the proposal in the community governance review.
36. Members of a neighbourhood forum would not have an automatic right to sit on the new parish council if it were to be created. They would need to stand for election just as other candidates would. However, should the local authority decide to create a

parish council, the forum members could play a role in any 'shadow council' set up in advance of the first elections to the new parish council.

Using guidance

37. Guidance could be used to support forums which have not yet got to the referendum stage but have already identified a local desire to seek the creation of a new parish council. The guidance could suggest that where a neighbourhood forum wanted to develop the proposal for a parish council before its neighbourhood plan had been approved by a referendum, it could approach the local authority to raise the issue. The local authority and the forum could work together to set out a proposal to the community. The neighbourhood planning process will include a range of opportunities to engage with the local community. The concept of a new parish council could be explored with the local community alongside discussions on neighbourhood planning. This would build on the community interest generated through neighbourhood planning to gather evidence on the appetite for a new parish council, to inform any future community governance review.

Implementation

38. Implementation of the right to submit an application for creation of a council rather than prepare a petition would require amending primary legislation with a Legislative Reform Order, as it would change the process set out in the existing primary legislation. These changes would require a new burdens assessment to be carried out.

Advantages and disadvantages

39. The advantages of this option are that a neighbourhood forum would be able to build on the interest in neighbourhood issues which may be built up through the neighbourhood planning process much more easily than at present; and where a neighbourhood forum initiates the process, the neighbourhood area is already defined (rather than requiring a separate process to agree what constitutes the neighbourhood to be covered by the proposed parish council).
40. The disadvantage of this option is that in removing the requirement for a petition showing strong community backing, a campaign may be developed without sufficient popular support, as for option two.

Have we identified appropriate solutions, taking into account the balance between making it easier to set up new councils and the risks of making the process too easy? What other solutions are there?

Which is/are the best approach/approaches to making it easier to set up new town and parish councils?

Making the change - a call for evidence

41. Our starting point is that the decision to create a new parish council should remain with the local authority as the existing legislation requires. And, as set out above, the Government is also clear that where local people express popular support for the creation of a parish council, the local authority should work with the community to achieve that.
42. This discussion paper is intended to collect evidence about the costs and benefits of town and parish councils as well as responses to the proposals outlined above. The information collected will be used to inform how proposals are implemented, and inform any new burdens assessment required to accompany the changes.
43. We are particularly interested to hear from recently formed town and parish councils and individuals and groups considering campaigning for the creation of town or parish councils, and from the local authorities in those areas.
44. We are keen to improve our evidence base on the process of forming new town or parish councils, in particular relating to the period since 2008 during which the Secretary of State has not had a role in the process. We want to learn from available good practice about how the process can work best.
45. We also want to hear practical suggestions from those engaged in the process as to how else it might be improved.
46. Decisions on what options to pursue in improving the current process will be based on the evidence and views gathered in the consultation. In particular, options to amend the existing primary legislation through a Legislative Reform Order require clear evidence of the need for and costs and benefits of this change that would justify such an approach (showing that the benefits outweighed the costs) before being taken forward.

Assessing the impacts

47. In general, our policy intention for any changes to the primary legislation through a Legislative Reform Order - placing requirements on local authorities when considering campaigns for the creation of new town and parish councils - would be that those processes be no more expensive than the current system. Activity such as carrying out a governance review, as set out under the current system as well as following any changes, carries a cost. The intention in our proposals is to simplify and speed up the process. But any changes to the existing process (for example, changes to the timescale) will require a new burdens assessment.
48. One benefit of a town or parish council will be greater local engagement in service design and delivery - that a community is getting services which fit more closely with what it wants and needs. There are many examples, for instance in the 2010 National Association of Local Councils (NALC) report 'Localism in Practice'.
49. However, quantifying precisely the potential financial benefits to be gained from a town or parish council is difficult, because of the wide range of activities they

undertake - many of them discretionary and not having easily available comparators
- and because not all the benefits can be monetised.

50. We therefore want to hear evidence on the costs and benefits of new town and parish councils as part of the consultation process.

This paper was published on 31 October 2012. **We welcome your views by 9 January 2013.**

We welcome comments from anyone with an interest in this subject. In particular, we are interested to hear from those involved in campaigns to create new town and parish councils, existing town and parish councils and Associations of Local Councils, national organisations supporting town and parish councils, local authorities and national organisations supporting them.

Please send your views to:

Making it easier to set up new town and parish councils
Big Society and Community Rights Division
Department for Communities and Local Government
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Bressenden Place
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Or by email to:

decentralisation@communities.gsi.gov.uk

Annex A: The current process for setting up a new parish council

The process begins either with the local authority choosing to carry out a review, or with a local community which wants a new parish council petitioning the local authority to create a new parish council. As well as setting out that it proposes the creation of a new parish council it must propose the boundaries for the new parish. If the local authority receives a valid petition with sufficient signatures, it must carry out a community governance review. The number of signatures required is:

- 50 per cent of the electors for neighbourhood areas with fewer than 500 electors;
- 250 electors for areas with between 500 and 2,500 electors; or
- 10 per cent of the electors for areas with over 2,500 electors.

Having set the terms of reference for the review, the council must carry it out within 12 months.

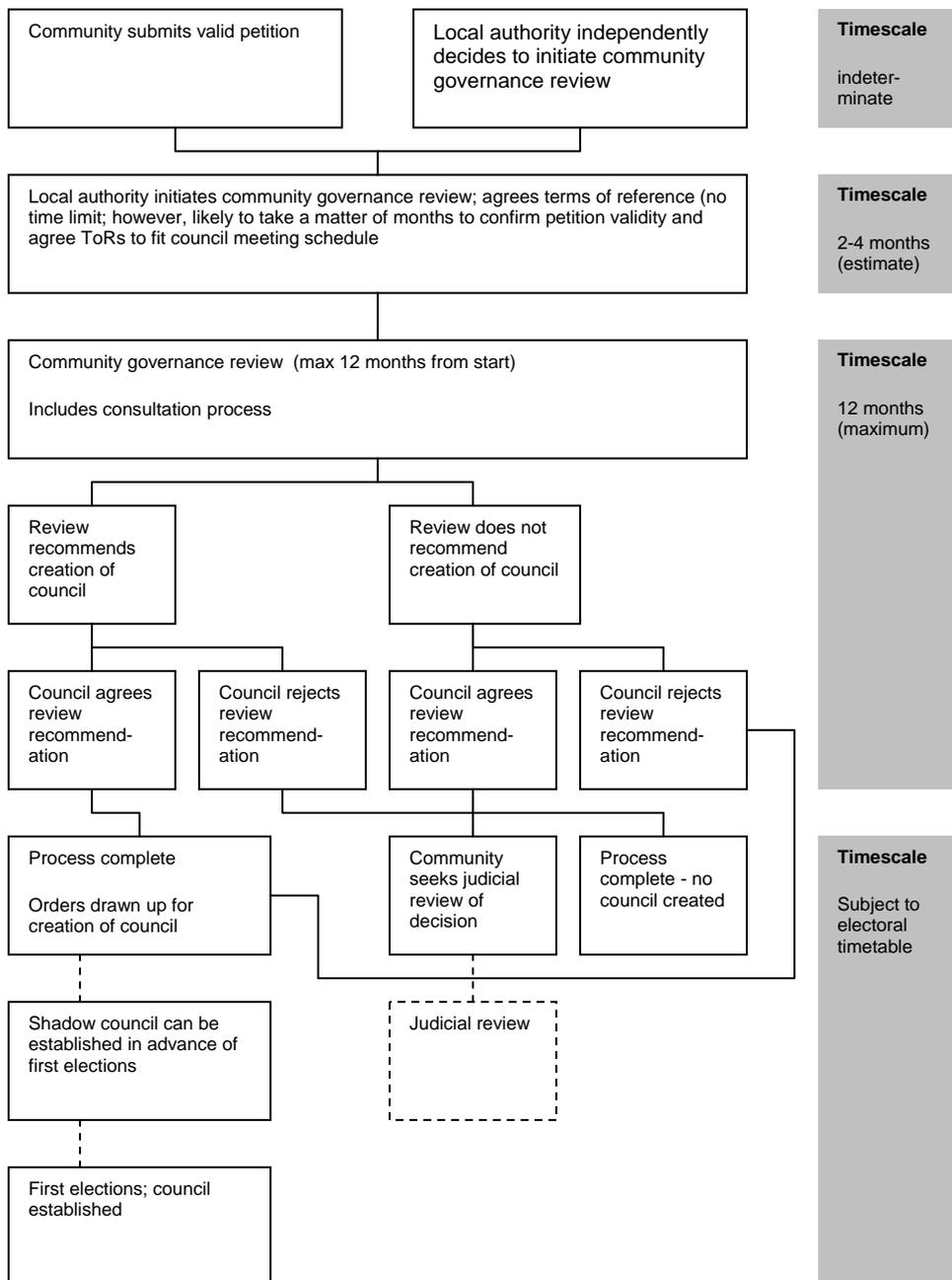
The local authority can decide what geographical area the review will cover. It might, for example, choose to take the opportunity receiving a petition offers to carry out a single, efficient review addressing governance arrangements for the whole local authority area. Or it might review the arrangements in the area that has petitioned.

As part of the community governance review, the local authority will consult the local community about the creation of the proposed parish council.

If at the conclusion of a community governance review the local authority decides to create a new parish council, this is done with a reorganisation order. However, the new parish council will not be formally constituted until elections for councillors are held. This can be at the same time as the next local authority elections, or (if that would mean a long delay) the local authority can choose to hold earlier elections for the parish, before it falls into line with the normal electoral cycle for the local authority area at the next local authority elections.

In the period after the decision to create a new parish council but before the first elections to it, the local authority may set up a 'shadow council' for the parish. This is a body created to assist with the transition to the full council. It can develop standing orders for the council and make early plans. It is only there as a caretaker and the decisions it makes are not binding on the new parish council when it is elected.

The current process for setting up a new parish council



Annex B: Parish councils - Key facts

- There are around nine and a half thousand town and parish councils in England
- Town and parish councils cover approximately ninety per cent of the area of England, but only approximately thirty-seven per cent of the population.
- They are mostly found in shire areas (in rural locations and market town) and less in urban areas. (For example, there is currently only one parish council in Birmingham; and one has been agreed within London, though it has not yet come into existence.)¹
- Where a town or parish council does not exist one can be created if the local authority decides to do so through a 'community governance review', started by a petition of local people.
- Town and parish councils are formally elected by local people and therefore have a democratic mandate when negotiating with and influencing other decision making bodies.
- The range of services provided by parish councils varies widely, but typically includes leisure facilities, cultural activities and community grants. They can take on some local services from the local authority, by agreement with it; or deliver them as a contractor (for example following exercise of the Community Right to Challenge in the Localism Act 2011).
- In future, in areas charging Community Infrastructure Levy, local planning authorities will be required to pass a proportion of Community Infrastructure Levy money raised from development in the area directly to town and parish councils where the development is situated. They will be able to spend the funds on the infrastructure that they want or on the ongoing costs of providing infrastructure. (In areas without a local council the local planning authority will retain the funds and will engage with their communities in determining how to spend the receipts).

¹ ONS boundary data, May 2010