



Department for
Communities and
Local Government



Department
for Environment
Food & Rural Affairs

Consultation on registration of new town or village greens: Proposed amendments to Schedule 1A (Exclusion of Right under section 15) to the Commons Act 2006

Summary of responses and Government response

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If you have any enquiries regarding this document/publication, email contactus@communities.gov.uk or write to us at:

Department for Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Telephone: 030 3444 0000

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Introduction

1. In July 2013, The Government published a consultation paper, Consultation on registration of new town or village greens: Proposed amendments to Schedule 1A (Exclusion of Right under section 15) to the Commons Act 2006. The paper sought views on proposed amendments to Schedule 1A (Exclusion of Right under section 15) to the Commons Act 2006.

2. The Growth and Infrastructure Act 2013 inserted a new section 15C and Schedule 1A into the Commons Act 2006 to reform aspects of the system for making applications to register land as a new town or village green. The reforms address overlapping consent regimes that can cause delay, cost and complexity to the planning system and will help in stopping the misuse of such applications that undermine planned development, whilst protecting its use to safeguard cherished community spaces and ensure the protection of genuine town and village greens. Schedule 1A sets out the circumstances in which the right to make an application for town or village green registration under section 15(1) of the Act ceases to apply, by reference to specified trigger events, and when it becomes exercisable again, by reference to specified termination events.

3. The consultation paper proposed further changes to Schedule 1A and set out proposals for additional terminating events to ensure that all outcomes of plan-making are covered and that the exclusion on applications for town and village green registration is not open ended if there is no longer a development proposal, but draft plans are not withdrawn, adopted or made. The consultation paper also set out the need for a series of additional trigger and terminating events in order to protect development proposed and/or permitted by virtue of three matters not already included in Schedule 1A, namely in relation to Local Development Orders, Neighbourhood Development Orders and Orders under the Transport & Works Act 1992. This document provides a summary of the responses received to the proposals.

Overview of Responses

4. We received 37 responses to this consultation. The table below indicates the profile of the respondents,

Respondent type	Number of respondents	% of total respondents
District, borough and county councils	11	30%
Professional bodies / practitioners	7	19%
Developers and their representative bodies	8	22%
Parish, town and community councils and their representative bodies	7	19%
Environment/charity sector	3	9%
Individuals	1	3%

Local Plans

Question 1. We propose to introduce a new terminating event in regard to land identified for potential development in draft local plans, being the expiry of a two year period from when the draft plan is published for consultation. Do you agree with the aim of this proposal?

Question 2. If 'yes' to question 1, do you think 2 years is appropriate? If not, what different period would you suggest and why?

5. The current trigger event for draft local plans, set out in Schedule 1A of the Commons Act 2006, is on publication of a draft plan, where the right to make a town or village green application ceases to apply. The current corresponding terminating event when the right becomes exercisable again is when the draft plan is withdrawn or when the plan is adopted by the local planning authority. The consultation proposes an additional 'catch all' terminating event, the expiry of a two year period starting when a draft local plan is published for consultation.

6. 75% of respondents to question 1 agreed with the proposal for a new terminating event. However there was some disagreement over whether two years is appropriate. 39% of respondents to question 2 said they considered two years appropriate while some felt that two years represented the absolute maximum or should be reduced to a one year period. However the majority of the 36% of respondents who disagreed suggested the time period should be increased; five years was suggested by some respondents to provide a stable policy framework. Some respondents raised concerns that if plans are not adopted within two years, there would be the possibility of an application for town and village green registration to be submitted. Setting a time period was also considered to be potentially counter-productive by encouraging objectors to challenge plan making to prevent adoption within two years. Other respondents noted that a range of unforeseen issues may arise, which could legitimately delay the final adoption of a Local Plan beyond a two year time scale.

Government Response

7. We intend to take forward our proposals to introduce a new 'catch all' terminating event for land identified for potential development in draft local plans, with the period set at two years from publication of the plan. The publication stage is reached when a plan is published under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012. We acknowledge the concerns raised by respondents that this period may not be long enough for all plans to reach adoption, but we consider it a reasonable period and we are working closely with the Planning Inspectorate on the time taken to prepare plans. The majority of recent plans that have reached publication stage have been adopted within this period and two years allows for amendments to be made to reflect soundness issues, where necessary.

8. The achievement of up to date development plan coverage is a priority for the Government, to enable local planning authorities to accommodate and manage the development needs of their areas. Setting a longer period for the proposed new catch all terminating event would undermine this wider priority. If a plan is considered to be fundamentally flawed and the local planning authority decide to withdraw it and then publish a new draft for consultation, that would constitute a new trigger event and the two year period would start afresh at that point.

Neighbourhood Plans

Question 3. We propose to introduce a new terminating event in regard to land identified for potential development in draft neighbourhood plans, being the expiry of a two year period from when the draft plan is published by the local planning authority for consultation. Do you agree with the aim of this proposal?

Question 4. If 'yes' to question 3, do you think 2 years is appropriate? If not, what different period would you suggest and why?

9. The current trigger event set out in Schedule 1A of the Commons Act 2006, where the right to make a town or village green application ceases to apply in relation to draft neighbourhood plans, is when a neighbourhood development plan is published by the local planning authority for consultation. The current corresponding terminating event, when the right becomes exercisable again, is when the draft plan is withdrawn or the plan is made. The consultation proposes an additional 'catch all' terminating event, the expiry of a two year period starting when a draft neighbourhood plan is published for consultation by the local planning authority.

10. 78% of respondents to question 3 agreed with the proposal for a new terminating event. 53% of respondents to question 4 agreed that two years was an appropriate period. 25% of respondents disagreed and the majority of these suggested a period longer than two years. Respondents suggesting a longer period and their reasons for this were also broadly similar to those in response to the local plans proposals. For the most part there was concern that two years would be insufficient time for plans to be made, with some respondents noting that neighbourhood planning is a new system with little experience of the time taken for plans to be made.

Government Response

11. We intend to take forward our proposals to introduce a new 'catch all' terminating event for land identified for potential development in draft neighbourhood plans, with the period set at two years from publication of the plan by the local planning authority for consultation under Regulation 16 of the Neighbourhood Planning (General) Regulations 2012. Experience of neighbourhood plan preparation is evolving and we consider that a two year period strikes the right balance. We consider that moving the trigger event to earlier in the plan preparation process may result in an unnecessarily long period over which an application for town or village green registration would be prevented. Also, during early engagement and at the pre-submission consultation stage, proposals are not necessarily fully formed and may not identify land for potential development.

Local Development Orders

Question 5. Do you agree that protection from town and village green applications should be extended to Local Development Orders?

Question 6. If your answer to Question 5 is 'yes', do you agree that the proposed trigger and terminating events in regard to development proposals covered by Local Development Orders are appropriate? We are particularly interested in views on whether the proposed terminating event at the expiry of a two year period after a draft order has been published for consultation is appropriate.

Question 7. Do you agree that in a situation where development has been started but not completed at a time where permission under a Local Development Order is withdrawn, but permission to complete the development remains in place, then the terminating event should not to be treated as having occurred?

12. The consultation sought views on extending protection from applications for town or village green registration to Local Development Orders, which grant deemed planning permission for specified types of development within a defined area or specified sites; with the introduction of two trigger events and corresponding terminating events. The first proposed trigger event, which would exclude the right to apply for town or village green registration, would occur when a draft order is first published for consultation. Three corresponding terminating events, when the right to apply for town or village green registration would resume, were then proposed, being:

- a) The draft order is withdrawn
- b) The order is adopted
- c) The expiry of a two year period beginning with the day on which that draft order is published for consultation

13. The second proposed trigger event would occur when a Local Development Order is adopted. Four corresponding terminating events were then proposed being:

- a) The order expires
- b) The order is revoked by either the local planning authority or the Secretary of State
- c) The land is no longer identified for development following a revision to the order
- d) The local planning authority issues a direction under the provision included in the order specifying that the permission granted by the order does not apply in respect of the land

14. 78% of respondents to question 5 agreed that protection from town or village green applications should be extended to Local Development Orders. Those who objected to the proposal considered it unnecessary and excessive as, in their view, there is no evidence to demonstrate that it is a problem.

15. 61% of respondents to question 6 agreed with the proposed trigger and terminating events. However, some expressed some confusion over the adoption of a Local

Development Order being listed as a corresponding terminating event for the first trigger event and as the second trigger event. Some respondents considered that two years was too short a period, whereas others considered that orders were likely to be adopted quickly and that a one year period might be appropriate.

16. 75% of respondents to question 7 agreed that in a situation where development has been started but not completed at a time where permission under a Local Development Order is withdrawn, but permission to complete the development remains in place, then the terminating event should not be treated as having occurred. 17% of respondents to question 7 disagreed. Some considered that it could lead to developers doing very little on a site but the community being unable to apply for town or village green registration.

Government Response

17. We intend to take forward the proposals for extending the protection from applications for town or village green registration to Local Development Orders that propose or grant permission for operational development. We recognise that this is a precautionary measure and that, because of the limited use of this planning procedure since it was introduced in 2004, there is little evidence that it has been a problem in the past. We expect to see more use made of these orders, which are a planning simplification measure, for example in Enterprise Zones. We know that applications to register land as a town or village green have caused delay and additional costs in respect of the main planning processes and cut across the determination of land use through the planning system. We therefore consider that the precautionary approach of extending the protection to Local Development Orders is reasonable and this is confirmed by the high level of support from respondents to the consultation.

18. In response to the confusion expressed about the use of the adoption of the order as a trigger and terminating event, we have done this to make a distinction between the stages before and after an order is adopted. For draft orders, the trigger point is publication of a draft order. At this point the right to apply for registration of a town or village green will be excluded in respect of land on which operational development is proposed to be permitted by the draft order. The adoption of the order is the terminating event, which enables resumption of the right to apply for town or village green application, if land is no longer proposed for development in the draft order. After adoption of the order, adoption is a trigger event and excludes the right to apply for town or village green registration if the order grants permission for operational development of the land in question. Different views were expressed about the reasonableness of adopting a two year time period. There is limited evidence on which to base a time period, due to relatively little use of the Local Development Order making powers; however we consider that two years will allow sufficient time for the relevant procedures to be completed and orders made, but is not so long that it results in an unnecessarily long period of exclusion from the right to apply for town or village green registration. We will keep this under review.

19. In response to the question concerning the situation where development has started but not completed at a time where permission under a Local Development Order is withdrawn, we intend to ensure that the terminating event should not be treated as having occurred where permission to complete development remains in place. This is consistent with the situation where development that has commenced before a planning permission expires may still be completed without the need for further permission. It is also consistent

with our overall approach that where permission is granted for a development, then the exclusion on the right to apply for town or village green registration should apply. This will provide certainty for all concerned.

Neighbourhood Development Orders

Question 8. Do you agree that protection from town and village green applications should be extended to Neighbourhood Development Orders (including Community Right to Build Orders)?

Question 9. If your answer to Question 8 is 'yes', do you agree that the proposed trigger and terminating events in regard to development proposals covered by Neighbourhood Development Orders are appropriate? We are particularly interested in views on whether the proposed terminating event at the expiry of a two year period after a draft order has been published for consultation is appropriate.

Question 10. Do you agree that in a situation where development has been started but not completed where permission under a Neighbourhood Development Order is withdrawn, but permission to complete the development remains, then the terminating event should not to be treated as having occurred?

20. The consultation sought views on extending protection from applications for town or village applications registration to Neighbourhood Development Orders, which grant deemed planning permission for specified types of development within a defined area; with the introduction of two trigger events and corresponding terminating events. The first proposed trigger event, which would exclude the right to apply for town or village green registration, would occur when a draft order is first published for consultation. Three corresponding terminating events, when the right to apply for town or village green registration would resume, were then proposed, being:

- a) The draft order is withdrawn
- b) The order is made by the local planning authority
- c) The expiry of a two year period beginning with the day on which that draft is published for consultation by the local planning authority expires

21. The second proposed trigger event would occur when an order is made by the local planning authority. Three corresponding terminating events were proposed, being:

- a) The order expires
- b) Where the order provides that development must have commenced within a specified period, that period expires without development having been commenced
- c) The order is revoked

22. 75% of respondents to question 8 agreed that protection should be extended to Neighbourhood Development Orders. Those in disagreement consider that there is a lack of evidence for the proposal and that it represents an excessive measure.

23. Compared to the similar question for Local Development Orders, there was a more even split of responses to question 9. 42% of respondents agreed with the proposed trigger and terminating events in question 9 and 36% disagreed, with the proposed two year time period being a concern. Similarly to the other proposals, a number of those in disagreement felt that the proposed two year period should be longer to allow for judicial review and unforeseen events that may delay the process. One respondent suggested that the trigger event should occur earlier in the process, as a Neighbourhood Development Order requires the publication of a proposed neighbourhood area before the publication of a draft Neighbourhood Development Order.

24. 72% of respondents to question 10 agreed that where development has been started but not completed where permission under a Neighbourhood Development Order is withdrawn, but permission to complete the development remains, then the terminating event should not to be treated as having occurred. 19% of respondents disagreed and their reasons for their disagreement were broadly similar to those in disagreement with the similar proposal for Local Development Orders.

Government Response

25. We intend to take forward the proposals for extending the protection from applications for town or village green registration to Neighbourhood Development Orders that propose or grant permission for operational development. We recognise that this is a precautionary measure as no Neighbourhood Development Orders have yet been made, although several are in preparation. Such orders are a procedure for communities to define and simplify the processes for the type of development they would like to see in their areas. It is only right that the order making process should be allowed to conclude and we consider that a two year period to enable the order to proceed from publication to adoption is reasonable, but is not so long that it results in an unnecessarily long period of exclusion from the right to apply for town or village green registration. We will keep this under review.

26. We know that applications to register land as a town or village green have caused delay and additional costs in respect of the main planning processes and cut across the determination of land use through the planning system. We therefore consider that the precautionary approach of extending the protection to Neighbourhood Development Orders is reasonable and this is confirmed by the high level of support from respondents to the consultation.

27. In response to the question concerning the situation where development has started but not completed at a time where permission under a Neighbourhood Development Order is withdrawn, we intend to ensure that the terminating event should not be treated as having occurred where permission to complete development remains in place. This is consistent with the situation where development that has commenced before a planning permission expires may still be completed without the need for further permission. This will provide certainty for all concerned.

Transport and Works Act Orders

Question 11. Do you agree that protection from town and village green applications should be extended to Transport and Works Act Orders which include a request for deemed planning permission?

Question 12. If your answer to Question 11 is 'yes', do you agree that the proposed trigger and terminating events in regard to development proposals covered by Transport and Works Act Orders are appropriate?

28. The consultation sought views on extending protection from applications for town or village green registration to Orders under the Transport and Works Act 1992 with associated applications for deemed planning permission in respect of land. The consultation proposed introducing a trigger event on publication of a notice that an application for an Order under the Transport and Works Act has been made which contains a statement that a request for deemed planning permission is being made. Three corresponding terminating events are then proposed, being:

- a) The request for a direction for deemed planning permission is withdrawn
- b) In circumstances where the direction is refused, all means of challenging the refusal in legal proceedings in the United Kingdom are exhausted
- c) In circumstances where the direction is given, the period within which the development to which the direction relates must be begun expires without the development having been begun

29. 58% of respondents to question 11 agreed that protection from applications for town and village green registration should be extended to orders made under the Transport and Works Act where they included a request for deemed planning permission. 22% of respondents disagreed and 19% neither agreed nor disagreed.

30. 61% of respondents to question 12 agreed that the proposed trigger and terminating events for development proposals covered by Transport and Works Act Orders are appropriate. 33% of respondents neither agreed nor disagreed with the proposal.

Government Response

31. We intend to take forward the proposals for extending the protection from applications for town or village green registration to Orders made under the Transport and Works Act 1992, where they include a request for deemed planning permission. These Orders make provision for infrastructure projects and the Act includes provision to apply for deemed planning permission, without the need for the promoter to apply for planning permission from the local planning authority. We consider it important that this consenting regime should be allowed to function efficiently to enable infrastructure schemes that support community wellbeing and growth to be provided. The suspension of the right to apply for town or village green registration while such orders are considered will reduce the potential for delay to the process. The majority of respondents support this proposal.

Evidence or Insights on the Likely Impact of the Proposals

Question 13. Can you provide any evidence or insights on the likely impact of the proposals outlined in this document?

32. 57% of respondents offered comments under this question, but for the most part summarised the comments they had made on the previous questions. One respondent suggested that the proposals should be extended to cover the making of a Compulsory Purchase Order, and orders under the Harbours Act 1964 and Electricity Act 1989, where applications for town or village green registration may also delay development.

33. Some respondents raised concerns about the need for clarification of the trigger and terminating events and for improvements to the process for registration of applications for town and village greens. One respondent suggested that councils should be provided with an enabling power to extend the 2 year period by a reasonable timeframe, where this is decided by the council to ensure that the legislation is pragmatic and does not lead to unintended consequences.

34. Some respondents considered that the trigger points were set too late in the process to provide protection for development proposals and that they should be set at an earlier stage, such as public consultation prior to the submission of a planning application; requests for screening opinions under the Environmental Impact Assessment regime; and publication of advertisements in respect of unregistered land.

35. Some respondents do not consider that there will be any benefits to the community from the proposals. Other respondents with experience of town and village green registration considered that there were already sufficient safeguards in the system.

Government Response

36. Where respondents commented on the likely impact of proposals it was largely based on their experience of the current system or their concerns that the proposals did not adequately address all the instances where development may be prevented from proceeding, or delayed by an application for town or village green registration.

37. There were broadly two considerations raised by these representations. Firstly, the extension of the inclusion of trigger and terminating events to other consent regimes. We consider that our proposals cover the main planning processes and that it would be unreasonable to extend the restrictions to other related regimes without further consultation and assessment of impacts, for what are likely to be relatively infrequent applications. Secondly, respondents raised concerns about the trigger points being set too late in the planning process. We acknowledge that setting an earlier trigger event may provide more certainty, but this must be balanced with the need to set a trigger event that starts when there is clarity on where development is proposed and does not result in a disproportionate period during which an application for town or village green registration is prohibited. We consider that the triggers we propose strike an appropriate balance. The trigger points commence when draft orders are publicised and draft plans published for consultation, which will clearly define land that is proposed for development. We consider

that our proposals will incentivise the developer and the local planning authority to deal with proposals expeditiously, thereby reducing uncertainty for all parties.

38. We consider that nationally set trigger points will provide certainty for all parties and we do not propose to change the system to enable councils to vary nationally set trigger points. However, we recognise the importance of ensuring that the trigger and terminating points are set appropriately and do not result in unintended consequences for business and communities. We therefore intend to keep the system under review.