Department for Communities and Local Government

The Neighbourhood Planning Bill

Further information on how the Government intends to exercise the Bill's delegated powers

Last updated: December 2016

Introduction

1. The Neighbourhood Planning Bill's Delegated Powers Memorandum, prepared to assist the House of Lords Delegated Powers and Regulatory Reform Committee[1] with their scrutiny of the Bill, explains in each case why the Government proposes to take delegated powers and the nature of, and reason for, the procedure that will be applied to any secondary legislation made under those powers. This document provides further information about how the Government intends to exercise the delegated powers conferred by the Bill as at introduction into the House of Lords on 14 December 2016[2].

2. Further information on the Neighbourhood Planning Bill measures can be found in the published policy factsheets and Explanatory Notes which are available on the DCLG and Parliament websites respectively[3].

Bill measures

NEIGHBOURHOOD PLANNING
(Clause 1-5)

3. A technical consultation[4] on the implementation of the neighbourhood planning measures in the Bill was published on 7 September 2016. The consultation was widely publicised and closed on 19 October 2016[5]. The full Government response can be found on the DCLG website[6].

4. This section provides a summary of the parts of the Government response to the consultation which confirms how the Government intends to exercise the neighbourhood planning delegated powers within the Bill.

1 http://services.parliament.uk/bills/2016-17/neighbourhoodplanning/documents.html

2 The Bill measures and Government position may be subject to modification as the Bill proceeds through Parliament.

3 https://www.gov.uk/government/publications/neighbourhood-planning-bill-policy-factsheets *and* http://services.parliament.uk/bills/2016-17/neighbourhoodplanning/documents.html

4 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/551132/Neighbourhood_Planning_regulations_consultation.pdf

5 The consultation was publicised in several ways, including a letter to all local planning authority Chief Planning Officers in England; online via the Notes on Neighbourhood Planning newsletter on www.gov.uk: https://www.gov.uk/government/collections/notes-on-neighbourhood-planning; and via individual emails to neighbourhood planning stakeholders.

6 https://www.gov.uk/government/consultations/implementation-of-neighbourhood-planning-provisions-in-the-neighbourhood-planning-bill

The procedures for modifying neighbourhood plans

5. The Bill inserts a new Schedule A2 to the Planning and Compulsory Purchase Act 2004[7]. The new Schedule A2 sets out a new procedure for modification of a neighbourhood plan and contains a number of powers for the Secretary of State to make regulations setting out the detailed procedures for this modification process.

6. The Government intends to implement the proposal set out in the consultation that the requirements for modifying a neighbourhood plan should replicate as far as possible the existing requirements for making a new plan.

7. The Delegated Powers Memorandum explains how each delegated power in the new Schedule A2 is closely modelled on the existing powers within Schedule 4B of the Town and Country Planning Act 1990. The powers in Schedule 4B have been exercised in the Neighbourhood Planning (General) Regulations 2012 which set out the detailed requirements for making a new neighbourhood plan. The Government intends to exercise the powers in the new Schedule A2 to update the 2012 Regulations to include the detailed requirements for modifying a plan.

A requirement for local planning authorities to review their Statements of Community Involvement at regular intervals

8. The Government intends to implement the proposal as set out in the consultation that local planning authorities should review (and if necessary update) their Statement of Community Involvement (a type of local development document) at least every five years.

9. The Delegated Powers Memorandum confirms that in doing so, the Government will rely on the power in the local development documents measures (Clause 10 of the Bill) for the Secretary of State to make regulations which require local planning authorities to review their Statements of Community Involvement at prescribed intervals. The Government intends to exercise this power by updating the existing Town and Country Planning (Local Planning) (England) Regulations 2012 which set out the procedures for preparing local development documents.

[7] Clause 3(10) of the Bill inserts Schedule 1 to the Bill which inserts the new Schedule A2 to the Planning and Compulsory Purchase Act 2004.

LOCAL DEVLOPMENT DOCUMENTS
(Clause 6-11)

10. Three of the measures in the Bill (Clause 7, 9 and 10), confer powers to make secondary legislation or standards which relate to local development documents.

11. These powers will:

- enable the Secretary of State to set a time period during which a local planning authority must request that an examination is resumed where it has been suspended as a result of the Secretary of State withdrawing a direction for local planning authorities to prepare joint local development documents;
- enable the Secretary of State to define what is a corresponding document or a corresponding joint development plan document for the purposes of directing local planning authorities to produce joint local development documents;
- enable the Secretary of State to prescribe intervals at which local development documents must be reviewed and if necessary updated by local planning authorities; and,
- enable the Secretary of State to publish data standards which set technical specifications for local development schemes and local development documents.

Power to direct preparation of joint development plan documents

12. The Delegated Powers Memorandum sets out in particular how the powers in Clause 7 will be modelled on existing powers already set out in the Planning and Compulsory Purchase Act 2004 and applied to the preparation for joint local development documents.

Review of local development documents

13. The Delegated Powers Memorandum also sets out the Government's intention to amend the Town and Country Planning (Local Planning) (England) Regulations 2012 to include the requirement to review local development documents every five years.

Format of local development documents

14. The Delegated Powers Memorandum also provides justification for why the power in Clause 9 for the Secretary of State to publish data standards is necessary. This section explains in more detail how the Secretary of State intends to publish new data standards for local development schemes and documents and the further engagement

and consultation that will be carried out by the Government before this power will be exercised.

15. Since the Open Data White Paper[8] was published in June 2012, transparency and access to data have been put at the heart of government and public services, making it easier for data publishers to release data in standardised, open formats. The Open Data Principles[9] contained within the Open Data White Paper have become a fundamental part of the process of government data publication. The Government encourages local government and the wider public sector to adopt the open standards principles for software interoperability, data and document formats.

16. The Local Plans Expert Group (LPEG) found examples of where new technology has improved engagement with communities on local planning matters, for example through innovative approaches allowing ready access to site allocations, and environmental and heritage designations. However, the Group also found that too often the online presentation of plan documents has not taken advantage of what the technology has to offer. Consequently, the Group made recommendations for shorter, more publically accessible plans and for better use of online technology[10]. A consistent data standard would allow us to act on these recommendations.

17. Clause 9 of the Bill will ensure that the Secretary of State can require that planning data from all local planning authorities on the same specified subject will be published in the same, consistent formats and with the same definitions. The opportunities for exploiting information greatly increase when it is made available in a consistent and linkable form.

18. The Delegated Powers Memorandum sets out the justifications for why the power in Clause 9 of the Bill to publish data standards is required. The Government proposes that the data standards that are developed, in line with the Open Data principles, should apply to local development documents.

19. The Open Data principles are defined by the Government, and provide that data should be:

[8] https://data.gov.uk/sites/default/files/Open_data_White_Paper.pdf

[9] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/459075/OpenStandardsPrinciples2015.pdf

[10] http://lpeg.org/

- accessible (ideally via the internet) at no more than the cost of reproduction, without limitations based on user identity or intent;
- in a digital, machine-readable format for interoperation with other data; and,
- free of restriction on use or redistribution in its licensing conditions[11].

20. The local development documents, where the Open Data principles would apply, comprise of:

- development plan documents (the documents that collectively make up the Local Plan);
- Statements of Community Involvement (a statement of a local planning authority's policy for involving interested parties in matters relating to development in their area); and,
- Supplementary planning documents (these should build upon and provide more detailed advice or guidance on the policies in a development plan document).

21. The Government also proposes to publish data standards for local development schemes. The intention is to require every local planning authority to prepare and maintain a local development scheme specifying the documents that will be development plan documents, their subject matter and geographic area and the timetable for their preparation and revision.

Process for finalising the data to which the standards will apply

22. The Government's piloting of data standards with local planning authorities for registers of brownfield land suitable for housing[12] provides an example of what is possible through the development of data standards. The Government intends to build on this experience to expand the range of planning data available as open data as this will mean increased opportunities to exploit and aggregate data in a transferable, accessible way. The Government intends to work with local planning authorities, users of plans and innovators, to develop the standards; this is consistent with the collaborative ethos of our open data principles.

23. The first phase in the development of the data standards will take the form of a digital planning pilot programme, which will launch in the coming months. This pilot will be run by DCLG, with input from the planning and digital sectors, as well as local government.

[11] Definition of open data can be found here: https://www.gov.uk/service-manual/technology/open-data.html

[12] The Housing and Planning Act 2016 included a power to require local planning authorities to publish statutory registers of brownfield land which is suitable for housing, in accordance with a specified open data standard.

24. The outputs of the pilot will inform which specific data standards can bring most value to the planning system, and determine which local development documents the standards should be applied to. This will take the form of a detailed data specification (that defines the format and structure of data).

25. The Government wants to ensure that there is ample opportunity for local planning authorities to understand and provide input into the development of the data standards. In addition to launching the pilot, the Department intends to consult local planning authorities on the proposed data standards. This consultation is anticipated to take place in 2017/18. The consultation will also provide an opportunity for local planning authorities to raise any associated implementation challenges and any financial implications associated with compliance with the data standards.

Type of data being considered for inclusion in the data standards

26. The Government proposes to focus initially on developing data standards for development plan documents and local development schemes, to be followed later by examining opportunities for standards across other local development documents, such as Statements of Community Involvement. The Government believes that looking at development plan documents in the first instance should take priority over other planning documents, given that key planning data, such as site allocations, is held in development plan documents. The following are types of data that could be included in the data standards:

- **Geospatial data** – for example, the coordinates and size of sites allocated for development.

- **Plan data** – for example:
  - policies (and associated site allocation) on the housing requirement, economy and jobs, infrastructure, and environment;
  - key information that supports a particular plan policy(s); and,
  - data contained in a policies map (a map that illustrates geographically the application of policies in the adopted development plan).

- **Local Development Scheme data** – on the development plan documents to be prepared in an area, their subject matter, their geographic coverage; and the timetable for their preparation and revision.

PLANNING CONDITIONS
(Clause 12)

27. Clause 12 inserts section 100ZA into the Town and Country Planning Act 1990. Section 100ZA(1) allows the Secretary of State to provide that certain planning conditions may or may not be imposed in defined circumstances in secondary legislation. Subsection (6) of that section allows the Secretary of State to prescribe circumstances when planning permission can be granted subject to a pre-commencement condition without the written agreement of the applicant to that condition (as required by subsection (5)). A consultation on the implementation of the conditions measure in the Bill was published on 7 September 2016 and closed on 2 November 2016[13].

28. This section provides a summary of the Government response to the consultation and further details of how the Government intends to exercise these delegated powers. The full Government response can be found on the DCLG website[14].

Prohibiting specific types of planning conditions

29. The Government intends to use the power in section 100ZA(1) to prevent the use of certain types of conditions that do not meet the long-established policy tests for planning conditions set out in the National Planning Policy Framework[15]. The consultation sought views on whether the following conditions should be prohibited:

    - Conditions which unreasonably impact on the deliverability of a development e.g. disproportionate financial burden;
    - Conditions which reserve outline application details;
    - Conditions which require the development to be carried out in its entirety;
    - Conditions which duplicate a requirement for compliance with other regulatory requirements e.g. building regulations;
    - Conditions requiring land to be given up; and,
    - Positively worded conditions requiring payment of money or other consideration.

30. The Government notes that many respondents stated that the guidance was already sufficient without provision being made in legislation. However, we believe it is necessary to ensure that

[13] http://planningguidance.communities.gov.uk/blog/guidance/use-of-planning-conditions/what-approach-should-be-taken-to-imposing-conditions/
[14] https://www.gov.uk/government/consultations/improving-the-use-of-planning-conditions
[15] http://planningguidance.communities.gov.uk/blog/policy/

conditions applied by local planning authorities meet the six policy tests set out in the National Planning Policy Framework. We intend to do this through secondary legislation, expressly prohibiting each of the six types of conditions above and have prepared an indicative draft of the regulations at Annex A of this document.

31. However, in light of the consultation responses, we recognise the need to provide greater clarity on the detail of the types of conditions we propose to prohibit so the draft regulations will be subject to further consultation before being made. We also intend to prepare updated guidance to support this measure, should the Bill provisions come into force.

When planning permission can be granted subject to a pre-commencement condition without the written agreement of the applicant

32. Section 100ZA(6) allows the Secretary of State to prescribe circumstances where local planning authorities can grant planning permission subject to a pre-commencement condition without the written agreement of the applicant. We intend to use the power to dis-apply the need for written agreement where the applicant has not provided a substantive response to a notice from the local authority seeking written agreement to a pre-commencement condition within the period specified in the notice not being shorter than ten working days, unless a longer period is agreed between the parties.

33. The consultation asked for views on whether it would be necessary to make provision for a default period, after which an applicant's written agreement would be deemed to have been given, if no response has been received. The majority of respondents to the consultation agreed that a default period should be introduced, to help reduce the risk of delay to decisions. The most frequently suggested time period was ten working days. Some respondents questioned at what point the default period would begin, and whether the period would restart following the response of the applicant.

34. The Government does not expect that there will be many instances where an applicant does not respond to a request for agreement to impose a pre-commencement condition. However, we note that the majority of respondents agreed that we should introduce this default measure, to avoid undue delay in the process. The Government therefore intends for the default period to commence once the local planning authority has given notice of its intention to impose a pre-commencement condition to the applicant. The default period would

then elapse no earlier than ten days later on the date specified in the notice, unless a longer period had been agreed by the local authority and applicant.

PLANNING REGISTER
(Clause 13)

Regulations to place prior approval applications for Permitted Development Rights for additional homes on the planning register

35. Clause 13 of the Bill enables the Secretary of State to require local planning authorities to place information about specified types of prior approval applications or notifications for permitted development rights on the planning register, similar to the existing provisions for applications for planning permission. It allows the Secretary of State, through secondary legislation, to require prior approval applications that relate to policy priorities to be placed on the register, or at a future date to remove this requirement.

36. The relevant background and justification for the necessity of this delegated power is set out in the Bill's Delegated Powers Memo. The Government has also published draft regulations ('the draft Order') to provide an indicative example of how the Government intend to exercise the powers in Clause 13. This can be found at Annex A.

37. The draft Order imposes a requirement to place on the register prior approval applications which provide information about housing delivery. Where new permitted development rights are introduced to deliver policy priorities, regulations may be brought forward to place these on the planning register. At a future date the requirement for certain applications to be recorded on the planning register may also be removed by regulations.

38. The draft Order sets out amendments to the Development Management Procedure Order 2015, which would implement the Government's intention. They require local planning authorities to place information on prior approval applications for any permitted development rights which result in a net increase in dwelling houses on the planning register. Currently, these are permitted development rights that allow changes to residential use from retail uses (A1 and A2), office use (C3), storage or distribution centres (B8), agricultural buildings, amusement arcades, casinos, betting shops and pay day loan shops, subject to prior approval. From September 2017, light industrial use (B1(c)) will be able to change to residential use under a

permitted development right, and would also appear on the planning register.

39. Initially, the Government intends only to require information relating to prior approval applications for the small number of permitted development rights, which are contributing to the delivery of additional homes, to be placed on the planning register. This will mean there will be consistent public access to data on the number of homes allowed through permitted development rights in England. There is no intention at this stage to extend the requirement to place any other prior approval applications on the planning register, although the Department is aware that some local planning authorities already do so.

40. The draft Order requires a local planning authority to register a copy of the prior approval application and accompanying information including, but not limited to a description of the development, plans and drawings and the net increase in dwelling houses proposed. The local planning authority will also be required to record the date on which an application for prior approval is received, any decision taken, and the date on which it was taken. For the permitted development rights for change to residential use, development may begin when 56 days have expired if the local planning authority has not given notice refusing prior approval.

41. Where a developer has appealed a decision to refuse prior approval, the draft Order requires any decision made by the Secretary of State in respect of that appeal, and the date on which it was made, to be recorded on the planning register.

COMPULSORY PURCHASE
(Clause 14-36)

42. The Temporary Possession clauses of the Bill (Clause 14-26) confer two powers to make regulations. A power under Clause 24(1) to make further provision in relation to the exercise of the power to take temporary possession set out in Clause 14(2) of the Bill, and a power under Clause 21(4) and (5) of the Bill to specify the rate of interest (and make any further provision) for advance payments of compensation which are paid late under Clause 21(1) of the Bill.

43. The relevant background and justification for these powers is set out in the Bill's Delegated Powers Memorandum. The Memorandum sets out in particular, how the power in Clause 21(4) to specify an interest rate is modelled on similar existing provision in section 52B of the Land

Compensation Act 1973 (inserted by section 196(3) of the Housing and Planning Act 2016) and explains how the Government intends to exercise this. It also sets out the circumstances where the Government intends to use any regulations made under Clause 24(1) to limit and define the exercise of the power to take temporary possession under Clause 14(2).

44. This section sets out further details about those different circumstances and provides indicative examples of the provision that regulations made by the Government under the power in Clause 24(1) ("the temporary possession regulations") are likely to cover.

Proposals

45. There are a wide range of circumstances in which the need for temporary possession of land might arise and so we need to make different provision to deal with those different circumstances in "the temporary possession regulations". We have, and will continue to, carry out extensive engagement with stakeholders and as a result of the engagement that has already taken place, we consider that it is likely to be necessary for the temporary possession regulations to make bespoke provision relating to the following.

Orders under the Pipe-lines Act 1962 and Gas Act 1965

46. Development consent orders can modify or exclude a statutory provision which relates to any matter for which provision has been made in the order[16]. Similar provisions also apply to orders made under the Transport and Works Act 1992 and the Harbours Act 1964. This means that Orders made under these regimes could contain provisions allowing acquiring authorities to exclude the temporary possession powers in the Bill (once brought into force) and substitute them with alternative temporary possession powers or modify them. However, where compulsory acquisition is authorised by an Order under the Pipe-lines Act 1962 or the Gas Act 1965 there is currently no corresponding power to modify or exclude statutory provisions relating to matters for which provision has been made in the Order.

47. The Government therefore proposes to explore with stakeholders how the power in Clause 24(2) (a) (for temporary possession regulations to exclude or modify the temporary possession measures in the Bill) and Clause 24(2) (b) (for regulations to make provision that appears to be necessary or expedient for giving full effect to the temporary measures

[16] See section 120 of the Planning Act 2008.

in the Bill) could be exercised so that Orders under the Pipe-lines Act 1962 or Gas Act 1965 will be able to include tailored temporary possession provisions similar to those that will be available to other similar bespoke consenting regimes.

Special kinds of land

48. The Government proposes that the temporary possession regulations should provide that temporary possession will only be allowed where the confirming authority is satisfied that it would not cause serious detriment to the owners or users of the land, for the following special kinds of land:

- land forming part of a common, open space or fuel or field garden allotment[17];
- land held by the National Trust inalienably[18];
- local authority owned land[19]; and,
- land held by statutory undertakers.[20]

49. Where an authorising instrument also contains the compulsory acquisition of any such land, and that land is subject to special parliamentary procedure, it will be more efficient for the temporary possession land to also be subject to special parliamentary procedure. However, in general, we consider that the serious detriment test should be sufficient to afford the necessary protection to this kind of land. Therefore, where there is associated compulsory acquisition of such land which is not subject to special parliamentary procedure, this procedure will not apply to the temporary possession.

50. In addition, the temporary possession regulations will provide that for statutory undertakers' land where the acquiring authority proposes the removal of certain apparatus[21] belonging to the statutory undertaker, temporary possession will only be allowed where the confirming authority is satisfied that the removal is necessary for the purposes for which the temporary possession is required.

51. These special kinds of land are afforded additional protection from compulsory acquisition and the Government believes that it is

[17] Section 19 of the Acquisition of Land Act 1981

[18] Section 18 of the Acquisition of Land Act 1981

[19] Section 17 of the Acquisition of Land Act 1981

[20] Section 16 of the Acquisition of Land Act 1981

[21] Apparatus vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking, or electronic communications apparatus kept installed for the purposes of an electronic communications code network.

necessary to provide a similar level of protection for such land in temporary possession cases.

Separate authorising instrument for temporary possession alone

52. The Government proposes through the temporary possession regulations to allow certain acquiring authorities (e.g. those whose powers of compulsory acquisition are granted by Development Consent Orders) to seek temporary possession powers through a different authorising instrument in such circumstances.

53. In most cases we would expect acquiring authorities to be seeking authorisation for the compulsory purchase of the land for the scheme and the land needed temporarily in the same authorising instrument. However, there may be circumstances where temporary possession needs to be sought separately.

54. Clause 15(2) of the Bill provides that temporary possession should be authorised by the same type of instrument as is or would be required for the compulsory purchase. However, where the compulsory purchase had been sought through a Development Consent Order, for example, this would not be possible. We therefore need to make provision in the temporary possession regulations to ensure a fair and consistent approach to temporary possession.

The treatment of parties with a subordinate interest in land (e.g. leasehold interest) that is the subject of temporary possession

55. There is a need to address the impacts of temporary possession of land subject to subordinate interests such as leases, tenancies or mortgages. For example, leaseholders may remain responsible to the landlord and vice versa for observing the terms of the lease, such as for the use, repair and payment of rent. However, as neither party will have control of the land during the temporary possession period they may not be able to meet their respective obligations under the lease.

56. The Government therefore proposes to make provision in the temporary possession regulations to clarify landlords' and tenants' obligations to each other during the temporary possession period. We intend to make provision that the covenants, terms and conditions of subordinate interests shall be unenforceable against any party in respect of any period of temporary possession. We also intend to make provision to address issues such as how break clauses and rent review provisions under leases should be dealt with where temporary possession powers are exercised.

57. This is to ensure that parties affected receive fair compensation and are not disadvantaged at the end of the temporary possession period.

Protected tenancies under the Landlord and Tenant Act 1954

58. The Government proposes to provide that where, on the date an acquiring authority takes possession of the land temporarily:

    - the tenant is in occupation within the meaning of section 23 of the Landlord and Tenant Act 1954; and,
    - maintains an intention to resume occupation after the temporary possession period ends,

    The tenant will be treated as being in occupation of the premises for the purposes of any rights to a new tenancy under Part 2 of the Landlord and Tenant Act 1954.

59. This is because occupiers with a protected tenancy under Part 2 of the Landlord and Tenant Act 1954 have a right to apply for a grant of a new tenancy provided they remain in occupation. Where the land is the subject of temporary possession, those tenants will no longer be in occupation and would lose this right to apply for the grant of a new tenancy.

Notice of intended entry

60. Clause 16 requires acquiring authorities to serve a notice of intended entry on each person who has an interest in or right to occupy the land before taking temporary possession. The clause sets out the basic information to be included in the notice being the period after the end of which the acquiring authority may take temporary possession of the land (notice period) which must not be less than three months and the period for which the acquiring authority is to take temporary possession of the land.

61. The Government proposes that the temporary possession regulations prescribe what additional information should be included in the notice of intended entry in different circumstances. For example, where an acquiring authority intends to undertake works on the land, it may be helpful for the notice of intended entry to set out details of the works and proposed timescales.

Sale of land during temporary possession period

62. The Government proposes that the temporary possession regulations prescribe the circumstances in which an acquiring authority may be

required to acquire land permanently where an owner is obliged to sell the temporary possession land and set out the basis of the valuation of the land concerned in these circumstances.

63. This is necessary because there may be circumstances where, during the temporary possession period, those who own or administer the title to the land may wish/need to sell the land (e.g. in the event of death or divorce, or if an owner was declared bankrupt). We consider it is highly unlikely in these circumstances that any third party would want to buy the land at its market value where temporary possession powers are being exercised.

Re-instatement following temporary possession

64. The Government proposes to make provision in the temporary possession regulations that the acquiring authority must reinstate the temporary possession land to 'the reasonable satisfaction of the owner of the land' at the end of the temporary possession period.

65. Depending on what purpose the land has been used for during the temporary possession period, there may be a need to reinstate it to its previous condition before it can be returned to the owner. This will clearly depend on the particular circumstances of each case and so it is difficult to set out specific criteria on how land should be reinstated which would be relevant in all cases.

ANNEX A – draft regulations as of December 2016

Planning Conditions

STATUTORY INSTRUMENTS

201X No.

TOWN AND COUNTRY PLANNING, ENGLAND

Made - - - -	***
Laid before Parliament	***
Coming into force - -	***

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 100ZA(1) and (6) of the Town and Country Planning Act 1990([22]).

In accordance with section 100ZA(2) of that Act the Secretary of State is satisfied that the provision made in these Regulations is appropriate for the purpose of ensuring that any condition imposed on a grant of planning permission in England is necessary to make development acceptable in planning terms, relevant to the development and to planning considerations generally, sufficiently precise to make it capable of being complied with and enforced, and reasonable in all other respects.

In accordance with section 100ZA(3) of the Town and Country Planning Act 1990 the Secretary of State has carried out a public consultation.

Citation, commencement, application and expiry

1.— (1) These Regulations may be cited as the Town and Country Planning (Planning Conditions) Regulations 201X and come into force on [date].

(2) These Regulations apply to conditions on a grant or modification of planning permission which was granted or modified on or after [date].

(3) These Regulations cease to have effect at the end of the period of seven years beginning with the day on which these Regulations come into force.

Limitations on the use of planning conditions

2.—(1) A planning condition may not be imposed on a grant of planning permission where it is—

(a) a condition that requires the development([23]) to be completed;

([22]) 1990 c. 8; section 100ZA was inserted by section [12] of the Neighbourhood Planning Act 2017. For the definition of "prescribed" see sections 100ZA(9) and 336(1).

(b) a condition that requires the applicant to pay money or to provide some other form of consideration except where the carrying out of development is prevented or restricted until such condition is fulfilled;

(c) a condition that requires compliance with a legislative requirement, other than an optional requirement as described in regulation 4(1A)(b) or 36(2)(b) of the Building Regulations 2010([24]);

(d) a condition that requires the disposal or conveyance of an interest in the land to a particular person (except a condition which prevents or restricts the carrying out of development until an agreement has been entered into in accordance with section 30 of the Highways Act 1980([25]));

(e) in the case of a grant of outline planning permission([26]), a condition which reserves a determinable matter for the subsequent approval of the local planning authority.

(2) A condition which imposes costs on the applicant may only be imposed on a grant of planning permission if the costs do not make the development in question economically unviable.

(3) In this regulation—

"determinable matter" means a matter particularised in the application set out in sufficient detail to enable the local planning authority to determine the matter, unless the application specifies that a matter is referred to for illustrative purposes only;

"interest" means a freehold or leasehold interest.

Imposition of pre-commencement condition without the agreement of the applicant

3.—(1) The requirement under section 100ZA(5) of the Town and Country Planning Act 1990 does not apply where—

(a) the local planning authority (or the Secretary of State, as the case may be) gives notice in writing to the applicant that, if planning permission is granted, they intend to grant subject to the pre-commencement condition specified in the notice, and

(b) the applicant does not provided a substantive response to the notice by the date in paragraph (3)(b).

(2) Where notice has been given under paragraph (1) the application for planning permission must not be determined until the applicable date has passed.

(3) The notice referred to in paragraph (1)(a) must include—

(a) the text of the proposed pre-commencement condition([27]), and

(b) the date by which any response must be received, being a date not less than 10 working days after the day on which the notice is given or such later date as may be agreed by the applicant and the authority or the Secretary of State in writing.

(4) In this regulation,

"a substantive response" means a response which—

(a) states that the applicant does not agree for the proposed condition to be imposed, or

(b) provides comments on the proposed condition.

([23]) See section 55 of the Town and Country Planning Act 1990 for the definition of "development"; section 55 was amended by sections 13, 14, 31 and 84 of, and Schedules 6 and 19 to, the Planning Compensation Act 1991 (c.34); and by sections 49, 118 and 120 of, and Schedule 6 and 9 to, the Planning Compulsory Purchase Act 2004 (c.5).

([24]) S.I. 2010/2214 as amended by S.I. 2015/767.

([25]) 1980 c.66.

([26]) See section 92 of the Town and Country Planning Act 1990 (c.8) for the definition of "outline planning permission".

([27]) See section 100ZA of the Town and Country Planning Act 1990 (c.8) for the definition of "pre-commencement condition".

Review of these Regulations

4.—(1) Before the end of the review period, the Secretary of State must—

(a) carry out a review of these Regulations,

(b) set out the conclusions of the review in a report, and

(c) publish the report.

(2) The report must in particular—

(a) set out the objectives intended to be achieved by the regulatory system established by these Regulations,

(b) assess the extent to which those objectives are achieved, and

(c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(3) "Review period" means the period of five years beginning with the day on which these Regulations come into force.

Signatory text

Name
Address — Minister for Planning
Date — Department for Communities and Local Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 100ZA of the Town and Country Planning Act 1990, which was inserted by section [12] of the Neighbourhood Planning Act 2017 allows the Secretary of State to make regulations setting out the kinds of conditions that may or may not be imposed on a grant of planning permission, and in what circumstances. Regulation 2 provides a list of conditions which may either never be imposed on any grant of planning permission, or which may only be imposed in certain circumstances.

Section 100ZA also provides that a local planning authority cannot grant planning permission subject to pre-commencement conditions (as defined in section 100ZA(7) of that Act) without first obtaining the applicant's written agreement to the terms of that condition. However, this requirement is subject to such exclusions as may be prescribed by the Secretary of State. Regulation 3 provides that planning permission may be granted subject to a pre-commencement condition without the applicant's written agreement provided the applicant has been notified of the intention to impose a pre-commencement condition and has not responded within the time period specified in the notice.

Regulation 4 requires the Secretary of State to review the operation and effect of these Regulations and to publish a report within five years after the Regulations come into force. Following the review it will fall to the Secretary of State to consider whether the Regulations should be allowed to expire as regulation 1(3) provides, be revoked early, or continue in force with or without amendment. A further instrument would be needed to continue the Regulations in force with or without amendments or to revoke them early.

[Section 12(2)] of the Neighbourhood Planning Act 2017 provides that section 100ZA has effect in relation to conditions on a grant or modification of a planning permission only if the permission is granted or modified on or after the coming into force of that section. The provisions made in these Regulations apply only to conditions on a grant or modification of planning permission granted or modified after the coming into force of these Regulations.

[Details on publication of an impact assessment to be confirmed.]

STATUTORY INSTRUMENTS

2017 No. xx

TOWN AND COUNTRY PLANNING, ENGLAND

Made - - - -	***
Laid before Parliament	***
Coming into force - -	***

The Secretary of State, in exercise of the powers conferred by section 69A of the Town and Country Planning Act 1990([28]), makes the following Order:

Citation and commencement

5. This Order may be cited as the Town and Country Planning (Development Management Procedure) (England) (Amendment) Order 2017 and comes into force on [date].

Amendments to the Town and Country Planning (Development Management Procedure) (England) Order 2015: planning register entries for certain prior approval applications

6.—(1) The Town and Country Planning (Development Management Procedure) (England) Order 2015([29]) is amended as follows.

7. After article 40(4) insert—

"(4A) The register must also contain the following information in respect of every housing prior approval application (see sub-paragraph (4B)) relating to their area—

(a) a copy (which may be photographic or in electronic form) of each application together with any accompanying plans and drawings;

(b) all information submitted with or in respect of the application, including any statement specifying the net increase in dwellinghouses proposed by the development;

(c) the date on which the application was received;

(d) a copy (which may be photographic or in electronic form) of any planning obligation or section 278 agreement proposed or entered into in connection with the application or any decision of the local planning authority or the Secretary of State in respect of the application;

([28]) 1990 c. 8. Section 69A was inserted by section [13] of the Neighbourhood Planning Act 2017.
([29]) S.I. 2015/595.

(e) particulars of any modification to any planning obligation or section 278 agreement included in the register in accordance with sub-paragraph (d);

(f) particulars of any direction given under the 1990 Act or this Order in respect of the application;

(g) the decision, if any, of the local planning authority in respect of the application, including details of any conditions subject to which permission was granted, the date of such decision and the name of the local planning authority; and

(h) the reference number, the date and effect of any decision of the Secretary of State in respect of the application, whether on appeal or on a reference under section 77 of the 1990 Act (reference of applications to Secretary of State)([30]).

(4B) In sub-paragraph 4A—

"housing prior approval application" means a prior approval application([31]) which is—

(a) required by the terms of any planning permission granted by the Permitted Development Order for development which will create additional dwellinghouses, before such development may begin; and

(b) made in accordance with the requirements of that Order.

Transitional provision

8. The requirements in article 3 of this Order do not apply to any prior approval application made to a local planning authority before [date].

Signatory text

Name
Address — Minister for Planning
Date — Department for Communities and Local Government

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Town and Country Planning (Development Management Procedure) (England) Order 2015 (the "DMPO") by requiring each local planning register authority (defined in Article 40(1) of the DMPO) to include certain details about housing prior approval applications in its planning register. This includes any statement specifying the net increase in dwellinghouses proposed by the development which is submitted with the application.

A housing prior approval application is defined in Article 3 of this Order as an application to the local planning authority for the approval of the authority, or a determination as to whether such approval is required, which is—

(a) required by any planning permission granted by the GPDO for development which will create additional dwellinghouses, before such development may begin; and

(b) made in accordance with the requirements of the GPDO.

([30]) Section 77 was amended by paragraph 18 of Schedule 7 to the Planning and Compensation Act 1991 (c. 34), section 40(2)(d) of the 2004 Act and paragraph 10 of Schedule 12 to the Localism Act 2011 (c. 20) ("the 2011 Act) and is to be amended by paragraphs 1 and 2 of Schedule 10 to the Planning Act 2008 (c. 29) on a date to be appointed.

([31]) "Prior approval application" is defined in section 69A Town and Country Planning Act 1990, which was inserted by section [13(2)] of the Neighbourhood Planning Act 2017.