



Department for
Communities and
Local Government

Further changes to statutory consultee arrangements for the planning application process

Government response to consultation



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Introduction

1. This government has introduced a wide range of reforms to speed up and simplify the planning application process to make sure that it effectively helps deliver the development that this country needs, while ensuring that safeguards are in place that offer protections against harmful impacts.
2. In December 2014 the Government published a consultation on “[further changes to statutory consultee arrangements for the planning application process](#)”. The consultation sought views on a package of measures designed to improve the process of statutory consultation on planning applications. The consultation paper proposed the following measures:
 - A proposal to make **Lead Local Flood Authorities** a statutory consultee on for major planning applications with surface water drainage implications.
 - Proposed changes to the **Environment Agency’s** statutory consultation arrangements.
 - A proposal to make **water companies** statutory consultees in respect to planning applications for shale oil and gas development.
3. The changes proposed above would be made by amending the Town and Country Planning (Development Management Procedure) (England) Order 2010¹
4. A total of 185 responses to the consultation were received. The majority of responses were from local government, across the three tiers: district or borough (21%); unitary councils (20%) and county councils (17%). The remainder of responses were from a range of interested parties including water and sewerage companies; internal drainage boards; other public bodies and organisations; professional associations; housebuilders and community groups. A list of respondents is provided at Annex A.
5. This document provides a summary of the responses received to each of the proposals and the Government’s response to them.

¹ And where relevant, an amendment to the Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) Order 2013 to also apply the provisions to special measures cases submitted to the Planning Inspectorate.

Increased Role for Lead Local Flood Authorities

6. The consultation sought views on the proposal to introduce the Lead Local Flood Authority as a statutory consultee on planning applications for major development in relation to surface water drainage. It also sought views on other areas Lead Local Flood Authorities could be consulted on.

Question 1

Do you agree with the proposal to make Lead Local Flood Authorities a statutory consultee on planning applications in relation to surface water drainage, subject to appropriate funding being available?

Summary of Responses

7. There were 154 responses to this question, of which 144 responses (93.51%) agreed with the proposal to make Lead Local Flood Authorities a statutory consultee on planning applications in relation to surface water drainage.
8. There was broad agreement that Lead Local Flood Authorities are the right body to provide technical advice to local planning authorities on planning applications and should be made a statutory consultee to ensure timely advice is provided. Where concerns with the proposal were raised, it tended to be focused around whether Lead local flood authorities were ready to take on this role at 6 April 2015². This was raised by some county councils and unitary authorities, who hold the Lead Local Flood Authority role, citing the need for sufficient time to prepare for the change, as well as adequate financial resources to set themselves up as a statutory consultee with the required technical expertise.
9. All water companies and internal drainage boards agreed with the proposal to make Lead Local Flood Authorities statutory consultees, but most also sought to be made statutory consultees themselves. This view was supported by some local government responses and other individuals.

Government response

10. The Government recognises the strong support for making Lead Local Flood Authorities a statutory consultee on planning applications in relation to surface water drainage, and confirmation that local planning authorities would welcome the expertise and technical advice that will be provided to help reach their decision.

² The Secretary of State for Communities and Local Government announced in a written ministerial statement on 18 December that the Government is strengthening planning policy to expect sustainable drainage systems are provided in new development where it is appropriate. The change will take effect from 6 April 2015.

11. The Government agrees that there is a need for appropriate technical knowledge and expertise within the Lead Local Flood Authority to perform the function of the statutory consultee, and believes that these authorities should be sufficiently prepared for the role. Lead Local Flood Authorities have overall responsibility for local flood risk and in many cases are already providing advice to local planning authorities on a non-statutory basis. It is the Government's view that the role that they have been carrying out to date leaves them well placed to be involved in assessing the surface water drainage proposals including sustainable drainage that they will now be required to comment on as a statutory consultee.
12. The Government has considered the requirements on Lead Local Flood Authorities and will be publishing a New Burdens Assessment. This assessment will establish the payment required to ensure that Lead Local Flood Authorities will have sufficient financial resources to meet the expectations of a statutory consultee.
13. Under the Land Drainage Act 1991, Internal Drainage Boards are responsible for management of water levels and reducing flood risk from ordinary watercourses in their districts. The Government recognises the important role they play in flood risk management and agrees that there may be local instances where they should be consulted on new development proposals on a non-statutory basis. The Government also recognises the assistance water companies could provide local planning authorities, in assessing sustainable drainage proposals. It is considered that the provision of advice from these bodies would best be established through local arrangements.
14. The Government will bring forward the introduction of the Lead Local Flood Authority as a statutory consultee by adding the consultation requirement to Schedule 5 of the Development Management Procedure Order.

Question 2

If Lead local flood authorities were to be made a statutory consultee on development in relation to surface water drainage, do you agree that this should be limited to major development?

15. The Government is keen to avoid over-consultation of the Lead Local Flood Authority to ensure that their statutory consultation role is focused on development where they are likely to add the most value. This question proposed to limit the statutory consultation of Lead Local Flood Authorities to major development.³

Summary of responses

16. There were 143 responses to this question. The responses were split with 61 agreeing that the statutory consultee role for Lead Local Flood Authorities should be limited to major development and 82 respondents disagreeing.

³ As set out in Article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2010

17. Of those who agreed with the proposal, the majority did so based on the resource and capacity requirements of the Lead Local Flood Authority, and how this would limit the number of applications they could practically comment on.
18. Most of those who disagreed explained that their primary concern was the impact of small development on flood risk, through the cumulative impact of those developments, particularly smaller urban infill sites. Most also explained that a single development in an area of high surface water flood risk can be just as damaging, if not more so, than a much larger development elsewhere. Many who agreed with the proposal also flagged these points as a concern.
19. Respondents consistently commented that if a major threshold were implemented, it should be on a temporary or phased basis. Suggestions on when to remove the threshold ranged from 12 months to 3 years.

Government response

20. The Government is keen to keep the statutory requirement to consult Lead Local Flood Authorities focused on the developments where they will add the most value - to avoid over consultation. The Government agrees with those respondents who suggested that minor development should be handled through local arrangements and advice. As set out in the New Burdens Assessment, it is expected that in the first year of their statutory consultee role the Lead Local Flood Authority will develop standing advice. Local planning authorities will be able to reference this standing advice when assessing minor development applications, and where further clarification is required they are able to consult the Lead Local Flood Authority on a non-statutory basis. For defined 'critical drainage areas' or areas at high risk of flooding from rivers and the sea the Environment Agency will remain a statutory consultee for all development in these areas (except for non-residential extensions with a footprint of a less than 250sq. metres or a domestic extension).
21. The Government will therefore take forward the proposal to limit the statutory consultee role for Lead Local Flood Authorities to major development in relation to surface water drainage. The policy for sustainable drainage systems will be kept under review.

Question 3

Do you think that there is a case for Lead local flood authorities to be a statutory consultee on the following issues? If so, do you think this consultation requirement should apply to developments of a certain size, and/or in certain risk locations?

- a) development with groundwater management implications?**
- b) development in proximity to ordinary watercourses?**
- c) any other local flood risk issues?**

Summary of Responses

22. Overall, there was a broad level of support in principle amongst councils and other respondents for the proposals at a, b and c. There were however, a number of differing views. Of those who answered this question, 88% supported proposal a), 93% supported proposal b) and 91% supported proposal c). Those in support of the

proposals commented that Lead Local Flood Authorities have been given local flood risk responsibilities, know their areas and should be well-placed to understand the problems in their areas.

23. Many had reservations about implementation with concerns around the implications for funding and resources. There was also a concern about the technical expertise and knowledge of Lead Local Flood Authorities and whether they are able to advise local planning authorities at present, particularly in relation to groundwater issues. However, these reservations were not shared by all and a number of Lead Local Flood Authorities consider they should be given the roles proposed for all the issues in question 3, although time will be needed to prepare for such a role. In relation to groundwater, some suggested responsibilities should continue to sit with the Environment Agency. The Agency's role on groundwater is limited to a strategic oversight role, except in areas at high flood risk from rivers and the sea (and designated critical drainage areas) where the Agency will comment on all sources of risk.
24. A number of respondents felt consultation of the Lead Local Flood Authority should be left to local discretion and agreement between local planning authorities and Lead Local Flood Authorities. Respondents suggested that consultation should be risk based, with standing guidance provided for minor applications. This would minimise the potential burden on Lead Local Flood Authorities.
25. There was generally consensus that consultation should not be based on the size of a development. There are suggestions that Lead Local Flood Authorities should also be consulted in other identified flood risk areas, including Critical Drainage Areas; and that Internal Drainage Boards should also be statutory consultees for surface water and other local flood risks.

Government response

26. The Government recognises the points made by respondents to the consultation and has noted the support for these proposals and some reservations. It is also noted that capacity and resources are a consistent theme raised that could impact on the present ability of some Lead Local Flood Authorities to provide advice on planning applications. The Government will examine further the case for expanding the statutory consultation role of Lead Local Flood Authorities, beyond providing advice on surface water drainage, in due course.

Improved arrangements for consulting the Environment Agency

27. The Government is keen to reduce unnecessary consultation in the planning application process. Having considered the statutory roles of the Environment Agency, the existing statutory consultation requirements in the Development Management Procedure Order and the proposals for the Lead Local Flood Authority role in the consultation document, the Government proposed the removal or alteration of a number of statutory consultation requirements on the Environment Agency.

Question 4

Do you agree with the proposed changes as set out in Table 1:

- a) to remove paragraph q(ii)?**
- b) to remove paragraph r?**
- c) to remove paragraph s?**
- d) to amend paragraph t?**
- e) to remove paragraph u?**
- f) to remove paragraph y?**
- g) to remove paragraph z?**
- h) to remove paragraph zf?**

Summary of Responses

28. There was broad agreement to all proposals to amend the statutory consultee responsibilities of the Environment Agency. Of those who responded to these proposals, support ranged from 58% to 74% of respondents. The majority of local government respondents supported the proposals, recognising the benefits of reducing the burden on the Environment Agency so that their resources can be focused on other areas of development.

29. Concerns focused on minor development that would not meet the Environmental Impact Assessment thresholds. This would mean that the Environment Agency would not be provided with the opportunity to comment. This was particularly raised as a concern for the proposal to remove paragraph (r) when proposals for petrol filling stations can pose a risk to groundwater and drinking water supply, but are not covered by Environmental Permitting Regulations.

30. Similar concerns were noted for the proposal to remove paragraph (u), which relates to development of cemeteries. Local planning authorities were concerned that they should not be expected to provide judgement on proposals or assess the potential water impact. As there are relatively few applications received for cemeteries, local authorities were keen that this role remains with the Environment Agency.

Government response

31. The Government recognises the support for these proposals and is keen to proceed in the interests of reducing unnecessary burdens on the Environment Agency. The concerns raised in relation to planning applications for petrol stations and cemeteries will require further consideration. The Government will therefore keep paragraphs (r) and (u) within the Development Management Procedure Order and will work with the Environment Agency and others as necessary to consider alternative options. The remainder of the proposals will be taken forward.

Increased role for Water Companies

32. The consultation sought views on the proposal as to whether water companies should be made statutory consultees for shale oil and gas planning applications.

Question 5

Do you have views on whether water companies should be made statutory consultees in respect to shale oil and gas development?

Summary of Responses

32. 102 respondents commented on Q5 with 99 (98%) in favour of making water companies statutory consultees in respect to shale oil and gas development.

33. Three key reasons emerged from the consultation for making water companies statutory consultees:

1) It would ensure that water companies are involved early in the planning process so that they can work with shale gas operators to develop solutions to any water-related issues that will work for all stakeholders and satisfy the regulatory duties of water companies;

2) Statutory inclusion in the planning process would enhance the confidence of the regulators and the public by demonstrating that any impacts of shale gas development on drinking water and drinking water sources will be fully taken into account as part of the decision making process; and

3) The Water UK and UK Onshore Operators Group (UKOOG) Memorandum of Understanding, while a model of good practice, has no formal legal status and cannot therefore command the same level of public confidence as that which a statutory mechanism would provide in terms of water companies views being considered as part of the decision making process.

34. The 29 water companies that responded agreed with the broad proposal to make water companies statutory consultees in respect to shale oil and gas development, and this view was supported by the responses of local government and other individuals. A small number of respondents stated that the statutory consultee role for water companies should be broader than the proposed scope of shale oil and gas.

Government response

35. The Government recognises the strong support for making water companies statutory consultees in respect to shale oil and gas development. The Government intends to focus the requirement to consult water companies on proposals involving hydraulic fracturing given the level of water usage linked to shale oil and gas development. We will keep this under review. The majority of respondents supported the statutory consultee role as proposed.

36. The Government is bringing forward in the Infrastructure Bill a requirement that no well consent can be issued which allows high volume hydraulic fracturing⁴ unless the relevant water and sewerage company has been consulted before the grant of planning permission for development involving hydraulic fracturing. Reflecting the responses to this consultation, the Government will add a requirement that planning authorities consult relevant water and sewerage undertakers in respect to shale oil and gas development to Schedule 5 of the Development Management Procedure Order.

⁴ This relates to hydraulic fracturing exceeding prescribed levels of fluid injection taking place in land at a depth of 1,000 metres or more