Department for Communities and Local Government

Growth and Infrastructure Bill

Impact Assessment

November 2012
Department for Communities and Local Government

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Title: Growth and Infrastructure Bill **Lead department or agency:** Department for Communities and Local Government (DCLG) **Other departments or agencies:** Department for Environment, Food and Rural Affairs (Defra) Department for Transport (DfT) Department for Energy and Climate Change (DECC) Department for Culture, Media and Sport (DCMS) Department for Business, Innovation and Skills (BIS)	Impact Assessment (IA) **Date:** 12/11/12 **Stage:** Final **Source of intervention:** Domestic **Type of measure:** Primary legislation **Contact for enquiries**: Growth.Infrastructure.Bill@communities.gsi.gov.uk

Summary: Intervention and Options

Cost of Preferred (or more likely) Option

Total Net Present Value	**Business Net Present Value**	**Net cost to business per year** (EANCB on 2009 prices)	**In scope of One-In, One-Out?**	**Measure qualifies as**
£m	£m	£m	Yes	**Out / Zero Net Cost**

What is the problem under consideration? Why is government intervention necessary?

The measures in the Growth and Infrastructure Bill will help to remove unnecessary bureaucracy that can hinder sustainable growth. It will do this through: Improving processes and removing unnecessary processes or requirements so that the planning system is simpler and faster and supports sustainable growth including taking forward some of the measures in the Penfold Review on streamlining overlapping consent regimes; and economic measures to support growth, including: the creation of a new optional 'employee-owner' status for companies to offer; and postponing the revaluation of Business Rates from 2015 to 2017.

Economic measures to support growth, including it is essential that the planning system works proactively and efficiently to promote sustainable development. The National Planning Policy Framework published in March 2012 radically simplified national planning policy, and introduced the presumption in favour of sustainable development. The Bill measures will help to drive implementation of these reforms by ensuring that the planning system becomes faster, more efficient and more positive, while retaining the right protections.

What are the policy objectives and the intended effects? *This provides a summary of the key policy objectives and intended effects, more on each provision is contained in the sections on each individual measure.*

The measures in the Growth and Infrastructure Bill will help to drive implementation of the Government's reforms and remove unnecessary bureaucracy that can hinder sustainable growth. The Bill will:

Improve efficiency by deterring unreasonably slow or poor decisions – planning applications will be allowed to be submitted to the Planning Inspectorate in those few cases where the council has a track record of very poor performance, and Inspectors will have strengthened powers to award costs against unreasonable behaviour when cases go to appeal; by providing for a more proportionate approach to information required in planning applications; by taking forward some of the measures in the Penfold Review on streamlining overlapping consent regimes, including preventing the Town and Village Green registration system being used to stop or delay planned development.

Promote sustainable development, by allowing the reconsideration of the Section 106 agreements for sites which are considered by the developer to be economically unviable due to Section 106 affordable housing requirements; and giving developers of large scale business and commercial development the option, subject to the Secretary of State's agreement of using the streamlined approach for progressing major projects set out in the Planning Act 2008.

Support business, by avoiding local firms and local shops facing unexpected hikes in their business rate bills over the next five years by postponing revaluation 2015 in England to 2017; by repealing redundant requirements for developers and operators of power stations and allowing variations to consents for power stations; and by ensuring that rural areas can share the same benefits as cities, and that everyone across the country can be certain of access to a fast reliable broadband network.

What provisions are contained within the Bill?

Clause 1: Option to make planning application directly to Secretary of State.
Clause 2: Planning proceedings: costs, etc.
Clause 3: Compulsory purchase inquiries: costs.
Clause 4: Limits on power to require information with planning applications.
Clause 5: Modification or discharge of affordable housing requirements.
Clause 6: Enabling a general disposal consent for land held for planning purposes
Clause 7: Electronic communications code: the need to promote growth
Clause 8: Periodic review of mineral planning permissions
Clause 9: Stopping up and diversion of highways
Clause 10: Stopping up and diversion of public paths
Clause 11-14: Town and Village Greens
Clause 15: Power Stations repeal of requirements to give notice
Clause 16: Amending Section 7B(5) of the Gas Act 1986
Clause 17-18: Consents under Electricity Act 1989
Clause 19-20: Modifications of Special Parliamentary Procedure in certain cases
Clause 21: Bringing business and commercial projects (major infrastructure) within Planning Act 2008 regime
Clause 22: Postponement of compilation of rating lists to 2017
Clause 23: Employee Owners

Will policy be reviewed?

The Department will in the normal way undertake a post-legislative review of these provisions within three to five years after Royal Assent.

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister:  Date: 12 November 2012

Planning Minister
Nick Boles MP

Summary: Analysis & Evidence

Full Economic Assessment

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	**High:** Optional	**Best Estimate:**
2012	2012				

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate				

Description and scale of key monetised and non-monetised costs by 'main affected groups'

The policy changes will be of benefit to business, local authorities and communities. We do not expect that any of these bodies will experience costs unless:

- they are deemed to have acted unreasonably (as, then, the changes to the award of costs process would affect them);
- applicants choose to appeal regarding their affordable homes requirements: This may result in administrative costs and/or other costs associated with appeals, but only where applicants believe that the benefits of this course of action outweigh the costs.
- in the case of Local Authorities who are consistently very poorly performing, there may some loss of income where developers choose to have their applications determined by the Planning Inspectorate; and
- d) new overhead line deployment (clause 7) may result in some impact on the visual amenity, although coder operators will remain under statutory obligation to minimise this.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate				

Description and scale of key monetised and non-monetised benefits by 'main affected groups'

These proposals have a number of benefits to businesses and communities. These are summarised below:

- The measures on Local Authority planning performance will promote faster and better quality decisions, benefiting applicants and communities. These are expected to yield direct time and quality improvements to an estimated 90 major applications per annum, with broader impacts on the performance of the planning system as a whole.
- Changes to the award of costs process are anticipated to facilitate positive behaviour throughout the planning and appeals processes, resulting in faster decisions and a reduction in the costs associated with securing planning decisions.
- Limiting the power to require unnecessary information to accompany planning applications will reduce the costs imposed by the planning system, with an illustrative estimate of likely savings of around £6.5m per annum.
- The measure to enable appeal of affordable housing requirements will return some stalled sites to viability, enabling them to proceed, delivering much needed housing and supporting the economic recovery.
- The modification of Special Parliamentary Procedures is expected to reduce the length of the planning process for certain developments and remove the 'deadweight loss' associated with certain processes occurring more than once unnecessarily.
- The clauses taking forward some of the recommendations in the Penfold Review will delivery further flexibility and simplicity in the non-planning consents regime. In particular, the Town and Village Green changes will prevent the registration system being used to stop or delay planned development. The reforms will protect local communities' ability to promote development in their areas through local and neighbourhood plan-making.
- Ofgem's proposed gas Network Innovation Competition is currently being delayed because of regulatory ambiguity in the Gas Act. Until this uncertainty is removed, or another funding mechanism is established, Ofgem will not proceed with the Competition. This would see up to £160 million from industry invested into the gas grid.
- Unnecessarily slow decisions by local planning authorities on the very large business and commercial schemes hinder development. Clause 21 provides an alternative planning route for applicants for large-scale proposals of national significance, which they will be able to decide on a case-by-case basis whether they would prefer to use.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual)			In scope of	Measure qualifies
Costs:	**Benefits:**	**Net:**	Yes	Out / Zero Net Cost

Policy context

The measures in the Growth and Infrastructure Bill will help to **remove unnecessary bureaucracy that can hinder sustainable growth.**

It will do this through:

Improving processes and removing unnecessary bureaucracy so that the planning system is simpler and faster and supports sustainable growth including:

- Improving the efficiency of the planning system as a whole so that decisions are taken faster and sites are unblocked, while retaining the right protections;
- Encouraging sustainable development by making the planning system more straightforward;
- Taking forward some of the measures in the Penfold Review on streamlining overlapping consent regimes; and
- Preventing the Town and Village Green registration system being used to stop or delay planned development. Local communities' ability to promote development through local and neighbourhood plan-making will be protected.

Reforming planning to unlock infrastructure by:

- Providing an alternative, more certain, planning route for applicants for large-scale proposals of national significance, which they will be able to decide on a case-by-case basis whether they would prefer to use;
- Amending the Electricity Act 1989 will mean that if developers want to incorporate the most recent technology and design to increase energy efficiency in their projects, they will in most cases only need to undertake a three month consultation, rather than going through the whole process of applying for consent again. This could unlock investment decisions across a range of technologies, bringing thousands of new jobs and billions of pounds of investment to the UK economy; and
- Removing an ambiguity to the Gas Act which has prevented Ofgem from launching an innovation competition that could attract £160 million of additional investment into the gas network to make it more efficient.

Economic measures to support growth, including:

- The creation of a new optional 'employee owner' status for companies to offer; and
- Postponing the revaluation of Business Rates from 2015 to 2017.

Background to the clauses that relate to the planning system

Several of the clauses relate to the planning system and this section gives some policy background to those.

It is essential that the planning system works proactively and efficiently to support sustainable development. The National Planning Policy Framework has delivered a radical simplification of national planning policy, and has introduced a presumption in favour of sustainable development. It has been widely welcomed by the range of parties involved in the planning system. We are already seeing accelerated plan-making and more positive decision-taking: 65% of all local planning authorities have now published an up to date local plan[1] and approval rates for all applications are at a 10 year high.[2]

The measures in the Growth and Infrastructure Bill will help to drive the effective implementation of these reforms and remove unnecessary bureaucracy that can hinder sustainable growth.

The planning system must continue to play a key role in supporting sustainable growth in this tough economic climate by:

Improving efficiency through swift and high-quality planning decisions that minimise the costs and delays imposed by the planning system; and

Promoting sustainable development, by creating a more positive environment for investment, which is beneficial for communities.

In 2011/12 councils determined 435,000 applications[3]. The majority of these are determined in a timely manner and most are approved. In 2011/12 the proportion of minor and other applications determined within the statutory 8-week timetable was 85% and 93% respectively. However, performance against the statutory time frame for determining major applications has been in decline. In 2011/12 only 58% of major applications were determined within the 13-week timetable compared to 71% in 2008/09. There are very significant variations in the performance of different councils. Timeliness for determination of major applications in the very poorest performing authorities can be as low as 17%. In others, performance is very high and indeed a number of councils have been able to improve performance despite reducing expenditure of planning policy and development management.

[1] Planning Inspectorate (2012) http://www.planningportal.gov.uk/uploads/pins/local_plans/LPA_Core_Strategy_Progress.pdf (as at 31 September 2012)

[2] DCLG (2012) Live Table 120: http://www.communities.gov.uk/documents/statistics/xls/2243967.xls

[3] DCLG (2012) Live Table 124: http://www.communities.gov.uk/documents/statistics/xls/2191172.xls

For example, Surrey Heath increased the proportion of major applications decided within 13 weeks by 58 percentage points (from 42% to 100%), West Somerset by 56 percentage points (from 17% to 73%) and Coventry by 44 percentage points (from 54% to 98%) between 2009/10 and 2010/11, making efficiency savings while driving up performance.

This Bill builds on the steps which the Government has already taken to make the planning system simpler, faster and more positive for all, while retaining the right protections. The Bill will reduce costs and burdens and provide greater certainty for all involved in the planning system through measures that:

- drive up the performance of the planning system through giving applicants the choice to go directly to the Secretary of State where the performance of the local planning authority is very poor and strengthened powers for Planning Inspectors to award costs against unreasonable behaviour when cases go to appeal;
- provide for a more proportionate approach to information in support of planning applications, which could save applicants an estimated £6.5 million annually and will also support the efficient processing of applications by councils;
- enable the development of sites that are currently stalled and economically unviable by allowing the reconsideration of the affordable housing element of Section 106 agreements;
- give applicants for large scale business and commercial development the option, subject to the agreement of the Secretary of State, of using the streamlined approach for progressing major projects set out in the Planning Act; and
- changes the current regime of fixed reviews of Mineral Permissions every 15 years to give Mineral Planning Authorities local discretion over when reviews are required thus giving authorities more flexibility and removing the need for unnecessary reviews.

The Localism Act brought forward significant reforms to make the planning system more responsive to the needs of communities and to hand back powers to councils and communities. The National Planning Policy Framework reaffirmed the central role of the Local Plan within the planning system, and the importance of local communities setting out their own vision to shape the future development of their area to meet the needs of the local population. With these new powers comes the responsibility to run an efficient local planning service that reflects a local community's views and needs for homes, jobs and local facilities. The Bill measures represent a proportionate approach to ensuring this country benefits from swift and high-quality planning services which deliver sustainable development.

Background evidence: the costs of planning

The costs of planning are very significant and can act as a barrier to development. In a report for the Department for Communities and Local Government, Professor Ball of the University of Reading suggested that the transaction costs of development control for major residential development may be up to £3bn a year.[4] In very recent evidence to the DCLG Select Committee, Professor Ball advised that the actual costs are likely to be higher than this. The major components of this relate to 'more than £750m annually in consultant and legal fees' and 'financing costs of holding onto land and other assets whilst their projects are being evaluated' (estimated at £1bn per year). Professor Ball also notes that there are further substantial holding costs associated with land banks required by the uncertainty of development control and for sites that were rejected. This could push financing costs from £1bn "to over £2bn" (and total transaction costs from £3bn to over £4bn).

There are also wider costs of delays and uncertainty if the benefits of development to the economy and society are either delayed or do not happen. The value of delayed development is the present value of the n years of implicit annual market rents of development built plus and estimate of the lost consumer surplus. The size of this impact is expected to be very considerable and be much larger than the transaction costs associated with delays and uncertainty. Taking into account the direct (transaction) and indirect impacts, then the total cost to the economy of development control could be expected to run into several billion pounds.

Further evidence from the quarterly survey of homebuilders conducted by the Home Builder's Federation (HBF) shows that 'planning delays' have been consistently cited as one of the most significant constraints on homebuilding: in June 2012, 77% of respondents considered 'planning delays' a major constraint.

The costs of planning delays have also been the focus of a number of other industry reports. The costs imposed by planning delays on projects already within the application process, as well as the costs which arise as a consequence of the 'shelving' of sites deemed economically unviable in the context of perceived planning delays, but which would be viable if avoidable planning delays were removed are large[5]. Other things equal, an increase in planning delays or uncertainty concerning how long a planning authority will take to decide an application, increases the risk associated with building houses. Office of Fair Trading (2008) and the Calcutt Review note that increased costs as a result of delay may encourage sub-optimal industry practice.

[4] Ball, M (2010) http://www.communities.gov.uk/documents/507390/pdf/1436960.pdf

[5] Michael Ball (2010), http://www.communities.gov.uk/documents/507390/pdf/1436960.pdf

Background to the clauses that take forward recommendations from the Penfold Review

An important part of the government's agenda to promote economic growth and enhance the competitiveness of the business environment in the UK is reforming the planning system.

In addition to the planning system, there are several consent regimes that business must apply for depending on how they wish to develop or operate properties. In 2010 Adrian Penfold was asked to conduct a review on non-planning consents.

Despite the economic, social and environmental benefits non-planning consents deliver, the Penfold Review found them to be "numerous and complex". The government is implementing several measures to ensure these regimes operate in the most flexible and simplified way possible, whilst delivering the benefits they were established to achieve.

The Growth and Infrastructure Bill covers:

- Requests for right of way orders (to close or divert a public right of way for development);
- Requests for stopping up orders (to close or divert roads or footways);
- Town and village green registration system;
- Repealing requirements for power station operators to notify the Secretary of State when proposing to use gas or petroleum as fuel.

Background to the Review

Adrian Penfold, Head of Planning and Environment at British Land, was asked by government in 2010 to conduct a review of non-planning consents to:

- explore whether the process for obtaining non-planning consents is delaying or discouraging business investment
- identify areas where there is scope to support investment by streamlining processes, removing duplication and improving practices

Adrian Penfold published his final report in July 2010. Government published their response in November 2010, welcoming the recommendations.

In November 2011 government published an implementation report, setting out a programme to:

- Scrap unnecessary development consents and simplify others;
- Reform the remits and working practices of the public bodies granting or advising on development consents;

- Set a clear timescale for deciding development consent applications; and
- Make it easier to apply for development consents.

The measures included in the Bill encompass provisions from three government Departments - Defra, DfT and DECC.

Contents

This Impact Assessment provides information on each clause in the Bill, with the exception of the Employee Owner clause (23) where a full Impact Assessment will be published following the ongoing consultation. The sections follow the same order as the Bill itself.

Clause 1: Option to make planning application directly to Secretary of State (DCLG)

This policy allows planning applications to be submitted to and decided by the Planning Inspectorate (on behalf of the Secretary of State), where the local planning authority has a track record of very poor performance in the speed or quality of its decision-making. This will support growth by allowing decisions to be taken more quickly, and with more decisions that are 'right first time' (avoiding the time and expense of a planning appeal).

Problem under consideration

The Government's reforms have created a simpler and more inclusive planning system. Most councils are dealing with planning applications efficiently, and the approval of planning applications is at a ten year high at 88 per cent. When appeals against council decisions are made the majority do not succeed. But the picture is far from uniform – many major applications take far too long to decide, and a few councils lose a high proportion of appeals, which is why we are taking specific action to address those.

Over the past few years there has been a decline in the speed with which local planning authorities decide major planning applications. This is in spite of a reduction in the number of cases that authorities have to process. Over the three years 2008/9 to 2011/12 the proportion of major applications determined within the statutory timescale of 13 weeks fell from 71% to 58%, at the same time as a corresponding decline of 18% in the number of decisions.

Equally, feedback on the early implementation of the National Planning Policy Framework has suggested that some authorities may not be embracing the positive approach to decision-making that it requires, with in some places a high proportion of appeals being allowed (albeit that until recently most appeals will have been determined on policy that pre-dated the final publication of the National Planning Policy Framework). The overall success rate for planning appeals involving major development in 2011-12 was 43%.

Rationale for intervention

Unnecessarily slow decisions – and planning refusals that are later found not to be justified – hinder development and growth, and mean that applicants incur unnecessary costs. This is a particular issue with major schemes, given the relatively high cost of preparing them, their importance for growth and the extent to which they are not being decided on time.

The purpose of this reform is not to centralise planning, rather to ensure that all local authorities meet an acceptable minimum standard that one would reasonably expect from an administrative and quasi-judicial process, thereby removing uncertainty for both applicants and local residents.

This policy will give applicants for major development a more certain and timely route for having their application decided, in those places where the local planning authority has a track record of very poor performance in either the speed or quality of its decision-making. This will happen by giving applicants in such places the option of applying direct to the Planning Inspectorate.

The Planning Inspectorate decides casework on behalf of the Secretary of State; their decisions will fully reflect the relevant development plan policies and national policies in the National Planning Policy Framework. We expect that the Inspectorate will be able to deliver quicker decisions on major planning applications where an applicant is allowed to apply directly to it as a result of the council having a track record of persistent delays.

These are direct effects. Indirectly, the risk of an authority being subject to these measures due to particularly poor performance will send a wider signal to all Planning Authorities about the importance of timely and positive decision making. We expect this to have some wider benefit in terms of more approvals, fewer appeals and more timely decisions across the country as a whole.

Impact of intervention

Although landowners and developers promoting major development will benefit directly in areas where the planning authority has a track record of poor decision-making, there will be important knock-on benefits for home buyers and commercial occupiers, due to an improved and more timely supply of development as a result. Communities will also benefit indirectly from the greater certainty that arises from faster decisions.

The policy will have a direct impact on those planning authorities that are designated as poorly performing, as some of the major planning applications that would otherwise have been submitted to them will instead go to the Planning Inspectorate (along with the application fee). Ultimately though, the policy is intended to prompt such authorities to improve, and indeed to encourage all authorities to maintain an effective planning service.

Summary of Benefits and Costs

Slow planning decisions – and schemes that are turned down for no good reason – are bad for the economy and bad for communities. They delay much-needed investment and the homes, jobs and facilities that local people need. This measure will deal with the few places where planning is clearly not effective, as well as sending a wider message to all councils about the importance of positive and timely planning decisions.

The policy will have a positive financial effect on businesses, which benefit from:

- Faster decisions in places where the council has been a frequent source of delay (enabling a quicker start on site, if the application is approved)
- More major applications being approved on first submission should authorities have a high incidence of refusals being overturned at appeal (also enabling developments to proceed more quickly)
- And, as a consequence, fewer instances where applicants need to incur the additional costs of pursuing an appeal

A good performing planning service should deliver a decision which is both timely and positive (i.e. which looks for opportunities to approve the proposal, taking into account its 'fit' with policy and any other material considerations). While the indicators used to assess these factors in implementing the policy have yet to be finalised, for the purpose of this assessment we have used:

- **Timeliness**, defined as the average number of major applications decided within 13 weeks as a percentage of all major decisions, assessed over a two year period.
- **Proportion of major decisions overturned**, defined as the number of appeals involving major development that are lost, as a percentage of all major decisions made (and again assessed over a two year period).

As applicants will have a choice of whether to submit a major application direct to the Planning Inspectorate when an authority has been designated as poorly performing, they will do so only if they expect there to be a benefit in terms of a quicker or more positive decision. We have made some initial estimates of the potential scale of impact:

The precise benchmarks for designating authorities as 'poor performing' will be subject to consultation, but for illustrative purposes only we have assumed that:

- The authorities whose timeliness measure is less than 30%, or whose proportion of major decisions overturned is greater than 20%, are subject to these measures.
- Timeliness and the proportion of major decisions overturned are calculated from data which has already been submitted as part of the planning statistics data return.
- Where an authority is designated, at least 50% of major applications will go direct to the Planning Inspectorate for decision (some applicants will want to submit to the planning authority as usual, where they have a good working relationship with the authority). We do not have evidence to support the scale of assumed diversion to the Planning Inspectorate, but 50% is a conservative working assumption.
- For applications submitted to the Planning Inspectorate because the planning authority is poor performing in terms of timeliness, at least 80% of these cases will be determined within 13 weeks. This will represent a significant improvement over the 30% or fewer currently delivered on time by the authorities that would be subject to these measures on the basis of the approach modelled in this impact assessment.

- Where major applications go direct to the Planning Inspectorate because an authority has a track record of poor decisions, there will be some applications that are now approved 'first time' by the Planning Inspectorate, rather than (in the absence of the policy) being refused by the planning authority, appealed and only then approved by the Inspectorate. The proportion of major applications that benefit in this way will reflect the appeal success rate in the authorities that are designated.

Based on these assumptions – and the current data on planning performance over the past two financial years – we estimate that 180 major applications per annum would be eligible for submission directly to the Planning Inspectorate, on the basis of authorities being designated for slow processing speeds.

If 50% of these eligible applications were actually to be submitted to the Inspectorate, this would mean that 90 major applications per annum would benefit from a faster decision –.whereas fewer than 30% (27) of these would previously have been determined within 13 weeks in authorities designated as poorly-performing, **now 80% (72) will be determined within 13 weeks. As a result applicants will benefit from reduced delay costs**.

In the first instance, no major applications would qualify for submission direct to the Planning Inspectorate as a consequence of authorities having a record of poor quality decisions, as currently no authority has more than 20% of its major decisions overturned at appeal. Nonetheless the mere existence of the measure – and the 20% threshold – will have an indirect benefit, as it will act as a disincentive to poor decision-making by authorities.

We have not attempted to quantify the indirect benefits of the policy in sending a message to all authorities about the importance of timely and positive decisions; but it is likely that this wider impact will result in some improvement in application processing times and approval rates nationally.

These will be ongoing benefits for the period during which each under-performing council is subject to these measures (and councils will only cease to be subject to these measures where their performance has improved).

We have not identified any costs to business as a result of the proposal. We have not identified any direct costs or benefits to the voluntary sector.

Risks

There is a potential risk that the policy could prompt authorities to simply refuse some applications that are nearing the 13 week deadline for a decision, to help maintain 'good' performance on speed of decisions. This risk however is mitigated by the fact that such refusals could be overturned on appeal (so the authority would risk being identified as poorly-performing based on the quality of its decisions).

It could also fail to reflect instances where both the authority and the applicant recognise that more time than 13 weeks is required to negotiate a particularly

complex proposal. To mitigate against this we propose to allow schemes that are subject to Planning Performance Agreements to be exempt from the assessment as to whether an authority is poorly performing, regardless of whether the Planning Performance Agreement is agreed before or after the submission of the application (Planning Performance Agreements are bespoke timetables agreed between the authority and the applicant). We will consult on this and other detailed aspects of the proposal, such as the metrics to be used to determine poor performance, before we confirm our approach.

More broadly there will be concern about a loss of local control over planning decisions when they are made by the Planning Inspectorate. Although the policy will mean a temporary loss of local control over some major decisions, it is not designed to allow unreasonable proposals to gain approval as a way circumventing the local planning authority. Applications submitted directly to the Planning Inspectorate will be robustly assessed by the Inspectorate, taking into account the views of the local community in the usual way, and the policy will improve the speed of these decisions and help to ensure the correct decision is taken first time. The policy should also encourage councils to maintain and improve their planning performance, so that they avoid being designated in the first place.

Clause 2: Planning proceedings: costs, etc (DCLG)

This strengthens the powers of the Secretary of State to award costs against unreasonable behaviour when cases go to appeal. In practice these powers are usually exercised by inspectors.

Problem under consideration

A timely and effective planning system is important in enabling economic growth. The Government wants to ensure positive decision taking in the shortest time possible in order that development can proceed where planning permission is granted. It is therefore imperative that all parties in the process behave reasonably and act in a timely manner; not doing so can lead to delay and added costs.

Any applicant who is unsuccessful in gaining planning permission on their planning application has the right to take their case to appeal. Each party to the appeal, primarily the appellant or the local planning authority, normally meets their own expenses. Where a party has acted unreasonably causing another party to incur unnecessary or wasted expenses in the appeal process, they may apply to the Planning Inspectorate to seek an award of costs. The decision on whether to award costs is made by an inspector, and is not related to the appeal outcome. The award meets costs necessarily and reasonably incurred by the aggrieved party in the appeal process. The level of costs is negotiated between the parties, and is set by the Courts where agreement cannot be reached.

The problem with the current system is that appellants are disincentivised from appealing for an award of costs. This is because of the cost of taking the appeal for costs to the courts and the fact that organisations are often not willing to damage their relationship with the local planning authority.

Rationale for intervention

The policy objective is to support development by encouraging all parties in the planning process to behave reasonably; for example by refusing applications only where there are sound reasons to do so; pursuing appeals only where there are good arguments why the council's decision should be overturned; and providing adequate information and/or evidence in line with appeal deadlines.

The clauses in the Bill strengthen the existing regime by removing the requirement for an appellant to proactively seek an award of costs. Inspectors will be able to decide on an award of costs automatically where, in their opinion, a party has clearly behaved unreasonably. Enabling inspectors to initiate an award of costs in full or in part for a wider range of procedures, even where one has not been sought by either party, will encourage all parties to behave reasonably at all stages of the planning process.

Extending the scope for the Planning Inspectorate to recover the Secretary of State's costs will act as a further incentive to behave reasonably throughout the planning process thereby reducing wasted expense to the public purse. The Secretary of State already has power to recover his own costs associated with a procedural delay in relation to an inquiry. Under the new proposal, this power will apply to all appeals and procedures in whole or in part. The power will be used in exceptional cases, where a party has behaved wholly unreasonably, for instance by providing no evidence at inquiry or withdrawing its case immediately prior to an event.

Impact of intervention

The changes proposed will strengthen the award of costs regime and will help to promote reasonable behaviour at all stages of the planning process, thus reducing delays and leading to quicker development. Currently 30% of inquiries are adjourned. This may be because a party is ill-prepared, or fails to attend. A reduction in the number of adjournments will lead to cost and time savings on major developments.

In 2011/12 the Planning Inspectorate determined over 19,500 appeals, primarily refusals of planning permission[6], but also including enforcement appeals and listed building consent appeals. The Planning Inspectorate considered 1,918 applications for an award of costs, and ultimately a total of 722 costs awards were made (equating to only 3.7% of appeal decisions). The number of costs awards has largely remained constant over the past three years (see table below).

Table 1: Award of cost decisions (2009/10 to 2011/12)[7]

Costs cases		**2009/10**	**2010/11**	**2011/12**
Decisions		1,898	2,005	1,918
Awards	To appellant	573	516	541
	To Local planning authority	206	190	175
	To other party	8	9	6
	Total	787	715	722

[6] Section 78 planning permissions only

[7] The Planning Inspectorate (2012): http://www.planningportal.gov.uk/planning/planninginspectorate/statistics

Summary of Benefits and Costs

Based on 2011/12 figures, 75% of cost awards are made to appellants (equating to 2.7% of appeals). As 40% of appeals are business led, it is reasonable to take a view that an equivalent proportion of these awards are granted to business, thereby meaning that businesses would recoup any wasted expense where an award is made in their favour.

Applicants do not always seek an award of costs in order to maintain a positive relationship with the local planning authority in a location where it may wish to seek further planning permission in the future. Therefore when a Planning Inspector has extended powers to initiate an award of costs there may be an increase in the number of costs awarded to applicants. It may however, additionally lead to more claims being awarded against business led appellants to local planning authorities. Currently only 24% of awards of costs are made to local planning authorities, suggesting that they sometimes actively decide not to pursue an award. Based on the experience of Inspectors, the broad assumption is that this measure will lead to an increase in the number of costs awarded at least in the short term until longer term behaviour changes.

It is not possible to estimate the change in the number of costs awards. By way of illustration Table 2 sets out the additional annual cost awards if the total number of awards increases by 5%, 10% or 20%. The illustration is based on the current split of awards made.

Table 2: Illustration of additional cost awards

Increase in total awards	**Proportion of awards to: authorities; appellants; other parties)**	**Additional annual awards to authorities**	**Additional annual awards to appellants**	**Additional annual awards to other parties**
5%	24%; 75%; 1% (as in 2011/12	9	26	1
10%	24%; 75%; 1% (as in 2011/12	17	54	1
20%	24%; 75%; 1% (as in 2011/12	34	108	2

The level of costs awarded reflects the costs necessarily and reasonably incurred in the process of the appeal.

Granting further powers to the Planning Inspectorate to recover the Secretary of State's costs has the potential to impact on both local planning authorities and appellants (of which around 40% will be businesses). The assumption is that this would apply only to a limited number of appeals, where a party has behaved wholly unreasonably, and it is not possible to accurately forecast the number of awards to be made in future.

The policy intent is to drive positive behaviour and accordance with required deadlines, thereby leading to improved timeliness and effectiveness in the planning process. Therefore any additional expense can be avoided, and appellants will only be adversely impacted if they themselves behave unreasonably. Appellants should benefit from a faster process driven by a culture of more reasonable behaviour during the planning process.

Clarifying in rules and regulation the scope in which the Planning Inspectorate may initiate an award of costs may lead to an increase in the number of award of costs Inspectors make in practice at least in the short term until party behaviour improves. The Planning Inspectorate forecast that the majority of additional awards of costs will be made to appellants, 40% of which are business.

Other Impacts

Under the new proposals, Local Planning Authorities will face additional expense only if they behave unreasonably. As the policy driver is to avoid the need for an award of costs, the intention is not to see an additional burden placed on Local Authorities, but rather that savings are accrued by all parties by preventing unreasonable behaviour and wasted expense. Current experience suggests that local planning authorities are less inclined to seek an award of costs. Once the Inspectorate uses its wider powers to initiate costs, there may be a non-quantified increase in the number of costs awarded to local planning authorities.

Any increase in the volume of costs applications handled by the Planning Inspectorate has potential to add to their administrative costs. We will monitor this.

The purpose of this measure is to act as a further incentive fo positive behaviour from all parties in an appeal to ensure that procedures are adhered to, thus enabling decisions to be made in a timely manner and development to commence where the appeal is allowed. Communities will benefit from more timely decisions which will help deliver much-needed investment and the homes, jobs and facilities that local people need.

Clause 3: Compulsory purchase inquiries: costs (DCLG)

This expands the provision to award objectors their abortive costs when a public inquiry is cancelled, and therefore avoids the need to hold an inquiry solely to award abortive costs.

The proposed solution is to legislate to allow the Secretary of State to award costs to successful objectors even if the Compulsory Purchase Order inquiry was cancelled or they did not appear. This is similar to a provision in the Town and Country Planning Act 1990 (section 322A) which enables the Secretary of State to awards costs when a planning inquiry is cancelled.

Problem under consideration

Compulsory Purchase Orders allow authorities to compulsorily purchase land to carry out a function which Parliament has decided is in the public interest. Landholders can object to the Compulsory Purchase Order, in which case there is a public local inquiry. If a Compulsory Purchase Order is not confirmed, all objectors are successful. An objector can also be successful if their plot of land is removed from the Compulsory Purchase Order, either because the scheme can proceed without it, or an agreement can be reached with the acquiring authority that the land can be developed by the present owner in conjunction with the scheme. However, successful objectors at Compulsory Purchase Order inquiries can only be awarded their costs if they appear in person, or are represented, at the inquiry.

This means that at present, if a Compulsory Purchase Order inquiry is cancelled because the acquiring authority decides not to proceed with the Order or the scheme, there is no provision to award objectors their abortive costs; that is, the costs incurred in preparing for the Compulsory Purchase Order inquiry. In short, this means that if the original inquiry is cancelled, and the acquiring authority is unwilling to pay, successful objectors cannot be awarded their abortive costs until another inquiry is set up for them to appear at. Also, where an inquiry is held, a successful objector (usually someone who has agreed with the acquiring authority that their land will be excluded from the order) must appear at the inquiry to be awarded their costs, even if they have nothing to say.

Rationale for intervention

The intended effect of the intervention is to expand the provision to award objectors their abortive costs when a public inquiry is cancelled, thereby avoiding the need to hold an inquiry solely to award abortive costs.

The intervention would mean that costs would also be awarded to successful objectors who did not need to appear at an inquiry that did take place; e.g. because they had reached a late agreement with the acquiring authority that

their land was not needed for the scheme. As it stands, successful objectors who fail to appear at an inquiry cannot be awarded abortive costs.
This will save the Secretary of State the time and expense of arranging a specific costs inquiry and save affected objectors uncertainty and delay before receiving their costs. Successful objectors who have made arrangements prior to the inquiry to have their land excluded will be spared time and expense of making an appearance for no purpose.

Impact of intervention

This will have a beneficial ongoing impact on landowners who are successful objectors at Compulsory Purchase Order inquiries:

Any type of landowner could be affected, but those capable of undertaking development themselves are more likely to be able to make an arrangement with the acquiring authority to do so, thus enabling the land to be removed from the Compulsory Purchase Order.

Summary of Benefits and Costs

- There are no costs to businesses/landowners. This policy will ensure that all objectors entitled to an award of costs will receive them and not miss out on a technicality.
- The benefit to a landowner in any particular case could amount to tens of thousands of pounds, depending on the complexity of the case and the amount of professional advice required to prepare the case for the inquiry
- This will not change any of the reasons for which costs will be awarded, it simply allows an unnecessary process to be avoided. As such there will be no costs to business, but there will be benefit in avoiding the loss of costs, and the time lost in appearing at an extra inquiry.

Clause 4: Planning application information requirements (DCLG)

This change amends the legislative framework through which local planning authorities can request information in support of planning applications, to ensure that such requests are reasonable and relevant to the determination of the application in question. This will reduce the amount of unnecessary information requests which can be placed upon applicants at pre validation stage and will consequently result in savings and reduced burdens for applicants. The power for local planning authorities to ask for information that is genuinely needed to consider the planning issues associated with the determination of the application in question will be unaffected.

Problem under consideration

There is an ongoing concern on the part of many applicants about disproportionate requests made by some local planning authorities for information in support of planning applications. The National Planning Policy Framework sets out a clear policy framework for local planning authorities to ensure that they only request supporting information that is relevant, necessary and material to the application in question. This approach however is currently not fully aligned with the primary legislative framework, which gives local authorities very broad powers to request information in support of planning applications.

Our policy objective in making these changes therefore is to provide for a more proportionate approach to information requirements for applicants.

The changes we propose can be summarised as:

- Amending the primary legislative framework to ensure a more proportionate approach to information requests is instituted at local authority level, leading to behavioural changes by local authorities.
- Introducing a requirement that requests for information must be reasonable having regard to the nature and scale of the proposed development and that the subject-matter of the information is likely to be a material consideration in the determination of the application in question.

Rationale for intervention

A longstanding criticism of the planning system is that it imposes disproportionate and unrealistic expectations on applicants in terms of the amount of information they are required to submit in support of planning applications. The Killian Pretty Review (2008) identified a need for government to tackle the increasing complexity in information requirements, with case study research indicating a variation in the consistency and reasonableness on the part of local authorities in information requests[8]. Case study research carried out as part of the review found that almost half (48%) of the cases surveyed had problems with the registration procedure – with 20% reporting substantial problems causing delay and exhibiting poor practice.

In our recent consultation on information requirements almost 4 in 5 respondents supported stronger scrutiny of the local lists of information requests prepared by councils, with many, including the National Farmers Union, the Home Builders Federation and the Royal Institute of British Architects arguing strongly that greater rights to challenge information requests are needed. The department has, on a number of occasions, sought to address this through amendments to both policy and secondary legislation, most recently through a consultation earlier this year proposing a series of streamlining measures[9].

However, we are aware of an ongoing concern with the wording of Section 62(3) of the Town and Country Planning Act 1990, which provides that local authorities can request any information they consider necessary in association with any planning application. The Growth and Infrastructure Bill provides an opportunity to address these concerns by clarifying what can reasonably be considered to be 'necessary'. It will do this by bringing the provisions in primary legislation into line with the policy framework set out in paragraph 193 of the National Planning Policy Framework. This states that local planning authorities should only request supporting information that is relevant, necessary and material to the application in question.

Impact of intervention

The key impact of the change is likely to be behavioural, by addressing the current situation in which local planning authorities are the sole arbiters of what information is necessary in any given case. Information requests have to be justified by reference to the limits set out in primary legislation. This will ensure that information requests are focussed on matters likely to be of genuine relevance to the determination of the application in question, and reasonable having regard to the scale and nature of the proposed development.

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[8] Ove Arup and Partners Ltd and Addison & Associates (2008) Killian Pretty Review, review of case studies. http://www.planningportal.gov.uk/uploads/kpr/kpr_research-report-1.pdf

[9] http://www.communities.gov.uk/publications/planningandbuilding/streamlininginfoconsultation

Summary of Benefits and Costs

The change will provide for a more proportionate approach to be achieved towards information requirements imposed on applicants by local planning authorities. The overall benefit for business stems from a reduction in the level of (unnecessary) information requested at the pre-validation stage. A secondary impact involves faster decisions as a consequence of fewer delays at the validation stage. Both changes will reduce costs for business.

The average number of decisions made annually on householder applications, minor applications, and major applications between 2009 and 2011 has been used to estimate the savings. Decisions on householder and minor development applications totalled approximately 334,000 applications on average per year between 2009 and 2011 out of 449,000 applications in total or just over three quarters of all decisions. Major developments accounted for a further 13,700 decisions on average per annum.

Table 3 derives estimates of the savings which might arise for applicants as a result of our proposals. This is done by combining the applications data set out above with estimates of approximate costs for preparing a planning application - these are summarised in Arup research for the department[10]. For illustrative purposes, the analysis here assumes that proposals will result in a 10% saving in the overall cost of applying for planning permission, across 10% of the total number of applications progressed each year.

[10] http://www.communities.gov.uk/publications/planningandbuilding/benchmarkingcostsapplication

Table 3: Estimated savings for applicants under a central scenario assuming 10% reduction in costs[11]

Type of application	Average annual number of applications (09-11)	Number of applications benefiting p.a.	Cost per application	Savings per application	Total annual saving	Net Present Value (10 yrs)
House-holder development	208,600	20,860	£687	£69	£1.4 m	£11.9m
Minor development: not dwellings	75,900	7,590	£1,085	£108	£0.8 m	£6.8m
Minor development: dwellings	49,600	4,960	£4,000	£400	£2 m	£16.5 m
Major development: dwellings	5,700	570	£24,873	£2,487	£1.4 m	£11.8m
Major development: not dwellings	8,000	800	£11,641	£1,164	£0.9m	£7.8 m
Total	**347,800**	**34,780**			**£6.5 m**	**£54.8m**

Other Impacts

The proposed changes will local authorities to ensure that information they request in support of planning applications is proportionate to the scale and type of development. This will reduce the number of requests for supporting information which is unnecessary but which applicants currently have to provide (and pay for) in order for their application to be validated.

Reduced information requirements will lead to lower costs for some applications by reducing the number of documents which applicants have to prepare. Local planning authorities should also benefit, as there should then be less documentation to review for each application. Consequently, applications should take less time to process.

We expect that the change will help local authorities streamline their validation procedures, leading to cost savings through the reduction of unnecessary information requests.

We also intend to introduce complementary changes to secondary legislation, which will have the effect of re-introducing a right of appeal where a council has failed to validate an application and the statutory time limits for determining a planning application has passed. This will address the impact of

[11] Numbers may not sum correctly due to rounding.

recent court decisions that have challenged the Planning Inspectorate's ability to consider such appeals.[12]

[12] The court decision in question is Newcastle upon Tyne vs Secteratry of State for Communities and Local Government, 2009. An electronic copy of the judgement is available at: http://www.4-5graysinnsquare.co.uk/uploads/docs/section9/Newcastle_CC_v_Sec_of_State_for_Communities.pdf

Clause 5: Modification or discharge of affordable housing requirements (DCLG)

To encourage the development of sites that are currently stalled, this measure allows the reconsideration of the affordable housing element of Section 106 agreements for sites on the grounds of economic viability.

Problem under consideration

The strategic problem to be addressed is low levels of housing delivery alongside high numbers of stalled housing sites with planning permission. The objective is to unlock stalled development by allowing and encouraging applicants to renegotiate the level of affordable housing agreed as a planning obligation where doing so may improve the viability of their sites and therefore allow currently stalled development to proceed. This will bring forward viable development, including affordable housing, and help to unlock local growth.

Rationale for intervention

The viability of sites is affected by a number of factors. Site viability is fundamentally about land values – whether there is enough value available (based on likely sales prices for the units) - to cover basic build costs, other costs, developer returns and financing costs. House prices are a strong determinant in land prices. All other factors being equal, development costs do not vary between areas. House prices – in effect the demand for housing – determine the residual land value. Planning obligations impose costs on developers and subsequently affect the viability of sites. Some of the most significant planning obligations can be the contributions for affordable housing.

In March 2012, there were currently 1,400 housing schemes of over 10 units that are stalled – (up to 75,000 units)[13]. Many of these stalled sites will have been agreed prior to the housing market downturn. 62% of stalled units predate April 2010[14]. Whilst there will be a number of factors why these sites are stalled, the value of section 106 agreements, agreed in more favourable market conditions, may now be affecting the viability of sites.

Research from 2007/08 (the peak of the last housing boom) found that where affordable housing section 106 agreements were present on sites they averaged close to £600k per obligation[15]. Between 2003/04 and 2007/08 the value of affordable housing obligations agreed in England increased from £1.2bn (03/04) to £2.6bn (07/08), an increase of 117% . Over the same period

[13] The source of the data is Glenigan (https://www.glenigan.com/), a private firm that supplies HCA with information on the status of planning applications for internal use. Information from Glenigan is commercially available for a fee.
[14] Glenigan data as at March 2012.
[15] DCLG (2010), The Incidence, Value and Delivery of Planning Obligations in England in 2007-08, http://www.communities.gov.uk/documents/planningandbuilding/pdf/1517816.pdf

house prices increased by only 39%[16] (and land values by around 50%.[17] This means that, for many sites, it is simply not viable to accept these kinds of figures.

Some local authorities have undertaken voluntary renegotiation of section 106 agreements to aid development but a 2012 Local Government Association survey[18] found that nearly two-thirds of responding local authorities had not renegotiated section 106 agreements over the last two years. Case studies demonstrate how a positive approach can unlock sites and bring forward development. While existing legislation allows for voluntary renegotiation of section 106 agreements at any time, it prevents formal review and appeal until five years have elapsed since the agreement was made.

The proposition is to bring forward primary legislation to allow developers to appeal specifically the affordable housing element of their section 106 planning obligations, if they consider they have evidence to show that the affordable housing is making the scheme unviable. Local authorities may choose to assess whether the affordable housing demand should be reduced to aid viability. If the local authority and developer do not agree, or if the local authority chooses not to determine the application, the developer will have the right to appeal to the Planning Inspectorate for determination.

A separate proposal, to allow formal renegotiation of wider section 106 planning obligations agreed prior to April 2010, has already been consulted on. The intended effect of the two approaches is to unlock a proportion of the 1,400 schemes that are currently stalled.

Case Studies

The following case studies provide examples where the level of affordable housing required for a development has been successfully renegotiated and these sites have progressed or completed:

Skegness, Lincolnshire: A site with 461 dwellings was granted planning consent with 23% affordable housing in 2007. Development had started but the developer argued the scheme was no longer able to support 23% affordable housing. Viability appraisal showed that 10% affordable housing, as suggested by the developers, was a more viable option and a revised planning consent was given on this basis.

Newquay, Cornwall: An application was approved in 2008 for outline permission for up to 200 units, with 35% affordable housing. In July 2010 the applicant applied to reduce the affordable housing units on viability grounds. This was reduced to 27.6% along with a small reduction in the off-site financial contribution.

[16] Land Registry data available from; http://www.landregistry.gov.uk/public/house-prices-and-sales/search-the-index

[17] Valuation Office Agency (2011): http://www.voa.gov.uk/dvs/_downloads/pmr_2011.pdf

[18] LGA survey of 576 local councillors: http://www.local.gov.uk/c/document_library/get_file?uuid=11cf5bc8-88ed-46a5-82e0-7b6fb3f4ed02&groupId=10171

Changes within local markets

Land Registry data[19] shows that house prices across England and Wales are, on average, 11% lower than peak levels recorded in 2007. This figure however paints an incomplete picture of what has happened at the local level. As an example, between 2007 and 2009, the price of a new build property in Ribble Valley fell by 60%. By contrast the price of new housing in Mole Valley increased by 24% over the same period.

Affordable housing requirements are set at a local level to reflect the needs of the local community on the basis of local housing market conditions. If planning obligations for a given scheme are fixed - in this case the requirements set out for affordable housing contributions - but housing prices are dynamic, then the viability of that development will change as house prices adjust. In the context of the price figures outlined above, it is highly likely that there are a number of schemes located in areas where price falls were sufficient – given affordable housing requirements set at the height of the market – to have made them unviable, but which could potentially become viable following a renegotiation of these requirements.

Table 4 uses house price data[20] for 2007 and 2009 to demonstrate the variation in local housing market conditions – the change in house prices is used to group local authority's markets for new build property.

Table 4: Number of Planning Authorities in different performance categories for new build markets

Strong	Resilient	Weak	Very weak
> 0%	> -10% < 0%	> -20% < -10%	> -20%
59	100	96	60

Half of the authorities for which data are available performed either 'weakly' or 'very weakly' between 2007 and 2009.

There are 520 stalled schemes (28,000 units) in areas which performed 'weakly' in the new build market between 2007 and 2009[21]. A further 221 sites (11,000 units) are classed as 'stalled' in areas which, using our criteria, performed 'very weakly' in the new build market between 2007 and 2009. **This means that around half of stalled schemes are in 'weak' or 'very weak' markets and may therefore benefit from the proposed changes.**

Impact of intervention

The ability to appeal specifically the affordable housing element of a planning obligation will ensure that sites are unlocked where there is clear evidence that affordable housing is a viability constraint. It will allow developers to

[19] Land Registry data available from; http://www.landregistry.gov.uk/public/house-prices-and-sales/search-the-index

[20] Calculations for local authority areas based on Land Registry data, available at; http://www.landregistry.gov.uk/home (as at March 2012).

[21] Glenigan data as at March 2012.

reduce their financial burdens through section 106 obligations and enable development to proceed. Decisions will be evidence-based and applicants will provide evidence for local authorities on the impact of affordable housing contributions for the viability of sites. Housing development will bring local economic benefit and will provide much needed new homes.

It is difficult to estimate exactly how many units could be affected since individual section 106 agreements, including affordable homes requirements, are locally negotiated and will have varying impacts on viability.

The proposals will also ensure that local authorities are able to deliver the maximum number of market and affordable housing given local market conditions.

Government continues to support the delivery of affordable housing. In addition to the £19.5 billion public and private investment in the affordable homes programme, the Government announced on 6 September that an additional £300 million is being made available for the provision of 15,000 additional affordable homes and to bring 5,000 additional homes back into use. The Government will issue debt guarantees worth up to £10 billion to support delivery of both new market rented housing and affordable housing.

Summary of Benefits and Costs

There will be a cost to applicants through the renegotiation and specific appeal procedure, but applicants will judge this cost against the overall benefits in securing revised section 106 terms. The benefits to business far outweigh any potential costs.

The comparison of data on stalled sites and of house price changes above indicates that half of stalled sites are in weak local markets. As outlined above, and using Land Registry data to segment local housing markets, around 740 of the 1,400 sites identified as 'on hold' are in 'weak' or 'very weak' local markets.

Not all sites have section 106 agreements attached. This is supported by evidence from Crook et al (2010), who show that around 90% of the schemes (of a size applicable to Glenigan stalled site data)[22], have planning agreements in place. Given that 740 stalled sites are in 'weak' or 'very weak markets, this would imply that up to 666 sites may potentially consider an appeal.

As this estimate of sites with a section 106 agreement is based on the 2007/08 position, and not all planning obligations contain affordable housing, it's possible that the impact may be lower than 666 appeals. Additionally, if an applicant does not expect to succeed at appeal, or feels that a renegotiation of affordable housing agreements will be insufficient to unlock the site, the number of appeals from currently stalled sites may be lower still. As an

[22] Crook et al (2010), The incidence, value and delivery of planning obligations in England in 2007/08: http://www.communities.gov.uk/publications/planningandbuilding/planningobligationsreport

example, if 50% of schemes suffer from viability problems and have an existing affordable housing commitment, then the potential impact might be between 333 and 666 sites. As noted, this is an illustrative example and should be treated as such.

The estimates above deal with the stock of currently stalled sites. Agreements that are made in future as part of new permissions will reflect the changes in market conditions we have seen in recent years. However, if these permissions are not built out immediately (as is likely given the nature of large scale house building), it is possible that there may be future changes to local market conditions which mean that once appropriate affordable housing agreements subsequently impact negatively on viability and stall sites. This would increase the potential impact set out above.

Planning Inspectorate decisions on the affordable housing requirement will be valid for 3 years. Development which proceeds beyond 3 years will need to reconsider affordable housing requirement in view of prevailing market conditions. This should provide an incentive to build out in the first 3 year period.

It is expected that there will be zero net costs to business, since it can reasonably be assumed that firms will only enter into an appeal where the expected benefits of doing so exceed the expected costs of lodging an appeal.

Other Impacts

The proposal will have impact on local government where there are applications for renegotiation and on the Planning Inspectorate where we estimate there could be in excess of 315 appeals resulting from this proposition. It is the intention to resource the Planning Inspectorate adequately to deal with the additional work and this will include specialist viability advice where it is required. The impact on local government will vary, depending on demand for renegotiation. Where councils have been voluntarily renegotiating obligations, the impact is likely to be reduced.

Risk

There is the risk that an applicant is successful in revising downwards its affordable homes obligation, where the initial requirement set by the local authority did not make the site unviable. To mitigate this risk, guidance will encourage open book assessments. A focus on evidence will be required, particularly on changes in assumptions used in existing viability assessments.

Failing to allow renegotiation carries the risk that while there may be more planned affordable housing, in practice none is delivered. Although renegotiation may reduce total planned numbers in certain local markets, it should secure higher levels of actual delivery.

Clause 6: Enabling a general disposal consent for land held for planning purposes (DCLG)

Local authorities have wide powers to acquire, appropriate and dispose of land. The main constraint on disposal of land is that if the authority wishes to dispose of land at less than the best consideration reasonably obtainable, they must obtain the consent of the Secretary of State. In order to avoid the Secretary of State having to give decisions on minor disposals, the Secretary of State has the power to give general consents for specified classes of disposal for housing land and other land not held for planning purposes[23].

Problem under consideration

The general consent for the disposal of 'other' land by local authorities at less than best consideration has been made under the Local Government Act 1972. There is, however, no provision to give a general disposal consent for land held for planning purposes in the Town and Country Planning Act 1990. This means that all disposals at less than best consideration for planning land must be subject to a specific consent by the Secretary of State, however small the undervalue.

Rationale for intervention

The current system encourages local authorities to appropriate land held for planning purposes for some other purpose to take advantage of the general disposal consent under the Local Government Act 1972, which may be risky if easements or covenants that were not known about subsequently come to light. This measure will therefore make it easier for local authorities to choose, if they wish, to dispose of surplus land held for planning purposes, helping get more brownfield land back in to productive use.

The Impact of intervention

The effect of this proposal will be to enable the Secretary of State to give general consents for the disposal of land held for planning purposes at less than the best consideration reasonably obtainable. Correcting this legislative anomaly will avoid local authorities having to artificially appropriate land from planning to another purpose to take advantage of the Local Government Act 1972 consents and would remove unnecessary burdens and delays.

Overall impact is expected to be small as there are very few applications for specific consent for disposals of land held for planning purposes. Since April 2011, there have been four cases under section 233 of the Town and Country

[23] There are 3 types of land – that held for housing purposes, that held for planning purposes, and land held for all other purposes (eg education, highways etc)

Planning Act 1990, but only one of those would have benefited from a general consent set at the same level as for disposals under the Local Government Act 1972.

During this period there were a further 12 applications for specific consent that were outside the scope of the Local Government Act 1972 general consent.

Summary of Benefits and Costs

There are no costs to local authorities or to those purchasing from them. The position of people who own private rights of way or take the benefit of restrictive covenants would be unchanged, as if a specific consent is given under section 233 Local Government Act 1972, the other provisions of that Act would still apply. The impacts will be ongoing. Businesses/purchasers will benefit as the timing of the transaction will be within the local authority's control, which means that funding deadlines can be met with more certainty. Once land that has been acquired or appropriated for planning purposes is disposed of, any subsequent development with planning permission will take the benefit of other sections in the Town and Country Planning Act 1990, which allows private rights of way, easements and restrictive covenants to be extinguished or overridden (on the payment of compensation). This allows regeneration schemes, for example, to be designed in the best way possible.

Other impacts

Although local authorities should prepare their case for disposal to a similar standard to that required by the Secretary of State (for audit purposes), they will no longer have to submit cases covered by a general consent to the Secretary of State. There will also be benefits for other organisations that may benefit from purchasing land at less than best consideration, such as educational organisations and arts charities.

Clause 7: Electronics Communications code: the need to promote growth (DCMS)

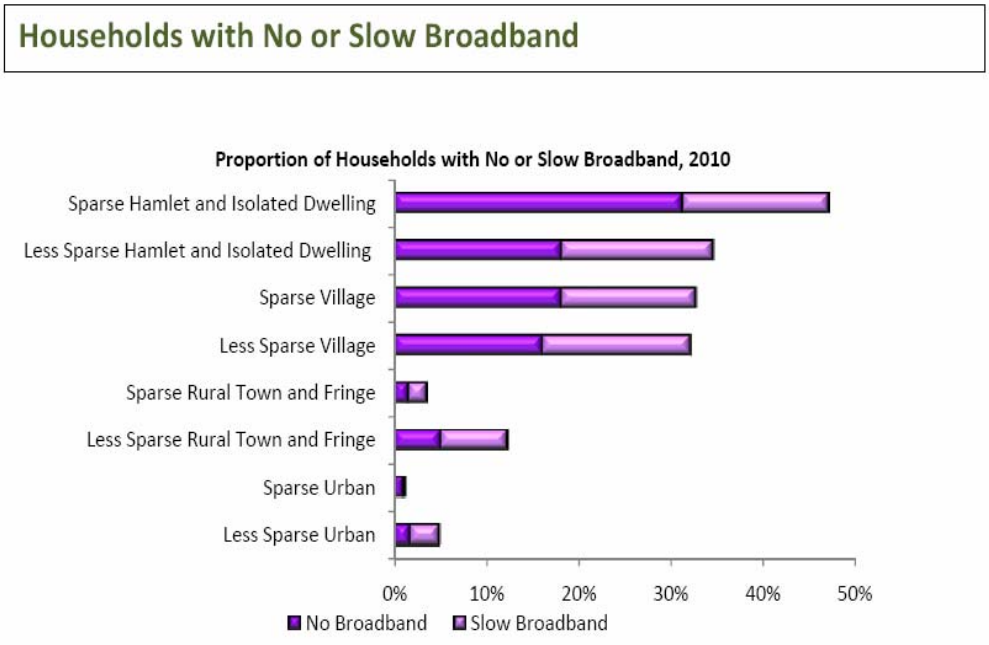
This adds the need to promote growth to the list of considerations to be taken into account when making regulations under section 109 of the Communications Act 2003. It will allow secondary legislation to be amended to relax planning controls to speed up the deployment of fixed broadband infrastructure to support growth.

Problem under consideration

Effective, reliable and fast communications are a vital prerequisite for the economic prosperity and social sustainability of England – and should be available to everyone, wherever they live and work. To support growth in all areas of the country, broadband connectivity needs to be available as quickly and as widely as possible and be deployed as cost effectively as possible, with a degree of certainty for communications providers in order to facilitate investment decisions.

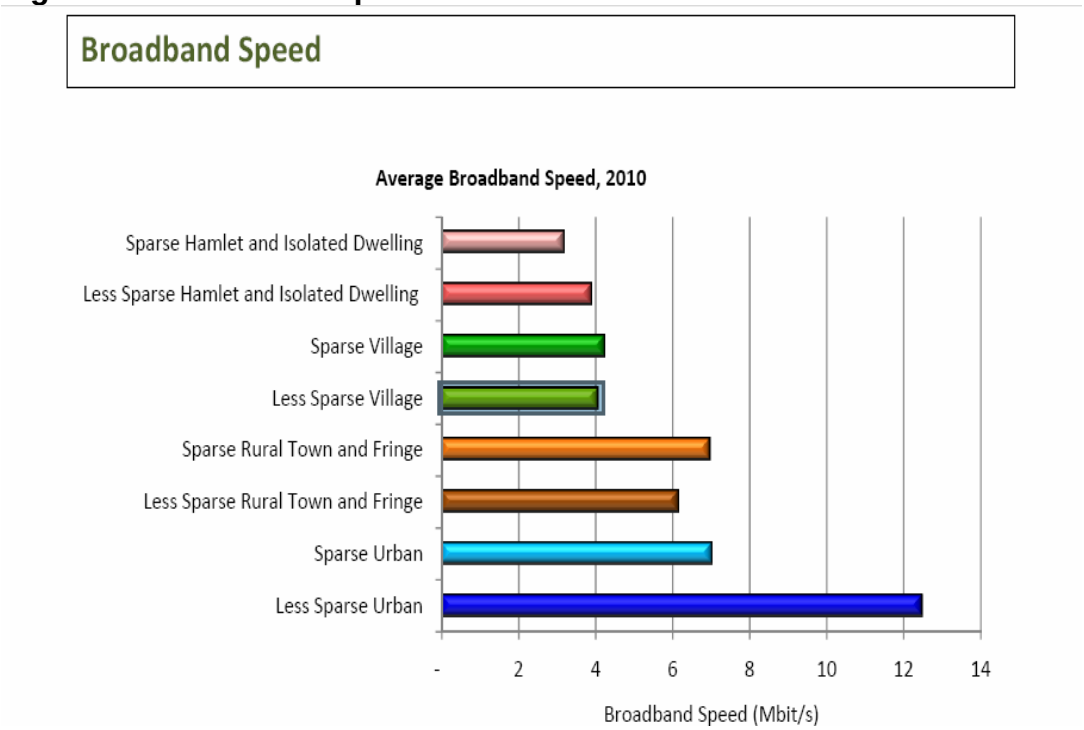
Research from Defra in 2010[24] showed that average broadband speeds were slower in rural areas than in urban areas and a higher proportion of rural households have slow or no broadband.

Figure 1: Households with No or Slow Broadband



[24] http://www.defra.gov.uk/statistics/files/broadband.pdf

Figure 2: Broadband Speed



Rationale for intervention

It is important for growth and international competitiveness that we deliver on our ambition for the UK to have the best superfast broadband network in Europe by 2015. The current planning prior approval requirements for the installation of fixed communications apparatus in protected areas are not conducive to achieving that aim as they can cause uncertainty and delay which can impact adversely on investment decisions and costs.

We have received reports where multiple sites have had to be surveyed and prior approval applications submitted, only for agreement still not to be reached, and delays in some cases of up to two years. Examples have been provided by BT based on their experience of rolling out broadband over the last two years with delays ranging from 12 – 27 months.

Reducing the cost of deployment and creating certainty for the market is therefore essential to enable commercial deployment to go as far as it can and ensure public funds are invested efficiently to capitalise on these benefits.

The intention is for Clause 7 to be used to enable the introduction of a temporary 5-year relaxation of planning requirements for cabinets and new poles everywhere except in Sites of Special Scientific Interest. In November Government **will be consulting on the proposals** to remove the prior approval requirement for broadband cabinets in protected areas, except for in Sites of Special Scientific Interest and on the proposal to remove the current restriction on the deployment of new overhead lines in the same areas.

Impact of intervention

By introducing this measure the Government is proposing to make it easier for firms to invest in broadband infrastructure. The effect of the proposed interventions, which will be the subject of consultation, will reduce the burden of the planning system on business by removing uncertainty and delay, will help reduce the costs of deployment, and allow broadband to be rolled out more quickly. They will help ensure that communications providers will deploy to as many homes and businesses as possible, and that as many people as possible can benefit from superfast broadband.

It is estimated that **approximately 4.375m additional homes will receive superfast broadband as a result of this intervention**, mostly in rural areas, which may otherwise have been left unserved without additional subsidy or intervention. There may be some small-scale adverse impact on visual amenity, as well as some increased operating cost to providers should they decide to deploy new overhead lines as a result of this. More detail will be known following consultation.

Costs and benefits

As Clause 7 is an enabling measure, the costs it will incur and the benefits it will attract depend on the extent to which communications providers take advantage of the opportunities it presents. In calculating likely costs and benefits we have made a number of assumptions about the likely use of the planning relaxations and our modelling has not been informed by the business plans of broadband operators.

Benefits

Clause 7 will reduce costs for providers, in terms of planning, administration and installation costs. The impact of this is improved access to superfast broadband for up to 4.375m households, most of which will be in more suburban and rural areas where the commercial case for deployment is more challenging under existing rules. Greater access in these communities will help diversify the local economy and enable greater growth than without this improved infrastructure.

Improved Access to Broadband - The reduction in installation costs that the use of overhead lines implies will mean that more communities will potentially be connected to fixed-line broadband than if underground installation had still been mandatory. This will mean that more communities will have access to broadband than if the measure had not been introduced.

The extent of this effect is difficult to estimate. This is because the advantages of faster broadband over other types of internet connection in the UK have not been estimated. However, US research suggests that consumers are prepared to pay more for faster broadband speeds although the relationship is far from linear. We assume that customers will be willing to pay an extra £5 per month for a doubling of broadband speed.

In addition, we assume that it will possible for commercial broadband suppliers to profitably extend their services to all areas of the UK with a population density of 150 per square kilometre. Given that 78% of the UK population can currently access broadband this means that roughly 4.375 million more people will be able to access super-fast broadband than at present. If we assume take-up among those is 20% then the measure will generate consumer benefits of at least £16.98 million p.a.

Reduced Planning Costs - The new procedures will remove costs to local authorities which are incurred under the permitted development regulations and which are passed on as planning costs to Communications Providers. The extent of these costs depends on the use that is made of the measure. We assume that 25 poles per km and 20% of the estimated total of 100,000 cabinets would have required prior approval over 5 years.

Reduced Administration Costs - For each cabinet and kilometre of overhead line Communications Providers must incur administration costs associated with obtaining planning permissions. These are internal to the companies and are in addition to the associated planning payments to local authorities. We assume that each prior approval application involves £1,000 of internal administration for firms involved.

Reduced Infrastructure Costs - The removal of the absolute restriction on overhead lines will significantly reduce the cost of installing a similar length underground. The difference in installation costs is given in the table below and amounts to £6,900 per km. Hence, it is expected that for the five years over which the measure will be in place savings of £9.45 million p.a. will be made. This is likely to extend the margin beyond which it is not profitable to install super-fast broadband. However, this financial advantage is partly reduced by the extra risk of service failure that will be incurred by overhead installation.

It is not expected that the costs of installing cabinets will be materially affected by the measure.

Reduced Operating Costs - The siting of poles and cabinets will be determined by the Communications Providers subject only to consideration of any objection by local authorities. It is likely that communications providers will seek to optimise their installations of equipment to ensure they are operated at minimum cost. The extent of this effect is difficult to estimate because it is likely to emerge over time and initially, at least, is unlikely to be large. For this reason, we have not attempted to monetise it. However, we have estimated the change in wayleaves and maintenance that will result from the increased deployment of overhead lines.

The monetised cost assumptions are summarised in the table below. A significant but un-monetised benefit to highlight is that increased certainty resulting from the shorter consultation period with planning authorities will allow civil engineering resources to be managed more effectively.

Costs

There may be some impact on costs as a result of Clause 7, but these are expected to be restricted to visual amenity and increased operating costs for operators (particularly for new overhead deployment), who will need to weigh up the costs and benefits. As a result of this, providers may target specific areas rather than widespread deployment.

Visual amenity - Code operators **will remain under statutory obligation to minimise any impact on the visual amenity**, but some impact is possible particularly in relation to new overhead line deployment. The extent of this effect will depend upon the extent of the extra use that is made of the proposed deregulation. The likely use in the case of overhead lines will vary between communications provider. For the purposes of this Impact Assessment we assume that over 5 years there will be a 10% increase in overhead lines; an increase of 325 kilometre per annum .

Environmental Costs - All Sites of Special Scientific Interest are exempt from the de-regulation. The extent of any environmental costs will depend on the use that is made of this enabling clause. It has not been possible to obtain reliable estimates of this.

Increased Operating Costs - Overhead lines are subject to significant wind loadings and greater variations in temperature than underground installations. As a consequence, they are assumed to require more maintenance than underground lines. Thus, instead of annual maintenance at 10% of capital cost, as in the case of underground lines, overhead lines are assumed to require maintenance of 15% of capital cost. An additional risk factor of 10% is applied to the initial capital cost to cover the vulnerability to high winds and other natural events.

Table 5: summary of Clause 7 costs and benefits (£ MILLION, NPV 2011-2023, IN 2011 PRICES)

COSTS:	**£m**
Loss of visual amenity(1)(2)(3)	0.62
Extra business risk(4)	28.95
TOTAL COSTS	29.57
BENEFITS:	
Customer benefits(5)(6)	16.98
Reduced infrastructure costs(7)	9.45
Reduced operating costs(8)	2.49
Reduced planning costs(9)	12.57
Reduced administration costs(10)	5.11
Reduced costs of delay(11)	3.54
TOTAL BENEFITS	50.14
NET BENEFITS	20.57
To customers	16.36
To business	4.20

Notes:

1. 325 km p.a. of underground installation is replaced by overhead lines. This is approximately a 10% increase in the total length of overhead lines over 5 years.
2. Households affected are assumed to be willing to pay an extra £0.5 per km p.a. to underground overhead lines.
3. 125 households are affected per km of overhead line installed.
4. Risk factor for overhead installation assumed to be 10% of installation cost per annum.
5. Overhead installation extends coverage to an extra 1,822 households p.a.
6. 20% of households are assumed to take up super-fast broadband and are willing to pay an extra £5 per month to do so.
7. Reduced costs of installing overhead compared to underground lines.
8. Reduced payments on maintenance and wayleaves in connection with overhead lines compared to underground installation.
9. Payments to local authorities for prior approval for poles and cabinet installations that will not be paid because of the measure. Assumes 25 poles per km and 20% of the estimated total 100,000 cabinets would have required prior approval over 5 years.
10. Assumes that each prior approval application involves £1,000 of internal administration for firms involved.
11. Assumes 20% of cabinets that currently require prior approval would have been delayed for 6 months by being rejected. Assumed cost per cabinet is £30,000 and cost of capital (price of time) is 7% p.a.

Clause 8: Periodic review of mineral planning permissions (DCLG)

This changes the current regime of fixed reviews of Minerals Permissions every 15 years to give mineral planning authorities discretion over when reviews are required thus removing the need for unnecessary reviews

Problem under consideration/Rationale for intervention

Minerals are essential to support sustainable economic growth and our quality of life. Government's objective is that planning should help deliver their prudent and efficient use to secure their long-term conservation and that they are extracted in a way which does not lead to unacceptable impacts or pollution.

Minerals extraction is a temporary use of land, although the length of period for extraction varies and depends on factors such as volume of resource and annual rate of extraction. Many sites have an extraction period of no more than five to ten years, but this can be substantially longer for some sites. These include large scale aggregate (principally crushed rock) sites, silica sand, ball clay and small-scale building stone quarries. Since minerals extraction can have an adverse effect on the environment, and that impact will change over the lifetime of extraction and restoration, it is important to ensure that the operational and aftercare conditions are of a consistently high standard.

Existing legislation requires that, for sites granted permission prior to 1982 there is an initial review of planning conditions to bring them up to modern standards. Thereafter these sites, and all sites granted permission after 1982, are subject to a periodic review of mineral planning permissions at fixed intervals of 15 years.

The operation of periodic review of minerals planning permission has raised two issues:

- Modern conditions imposed on planning permissions – as part of an initial grant or permission or as a result of a review – are now deemed sufficiently robust and fit for purpose. Consequently, there is a general consensus that many permissions no longer require a rigorous review every fifteen years; and

- Legislation requires that the mineral planning authority serves at least 12 months notice to the mineral operator that it wants to carry out a review. Although infrequent, there have been instances when mineral planning authorities have not provided sufficient notice about the review. In such

circumstances, there is some uncertainty/confusion as to how mineral operators and mineral planning authorities should deal with this situation.

To deal with these two issues, the Bill amends Schedule 14 of the Environment Act 1995 which provides a more discretionary power and will allow mineral planning authorities to extend the time between reviews, or not to have one at all. Should a review be carried out, then the period before the first review and between the first and any subsequent reviews, must be no less than 15 years.

Impact of intervention

Mineral planning authorities will have greater discretion as to when to carry out a periodic review, so enabling them to consider each case on its merits, and not feel pressured to start the review process by an arbitrary date.

The minerals industry will benefit from reduced costs in carrying out a review, especially in those cases where a detailed environmental impact assessment is required, and firms may generate additional revenue through prolonged use of the site.

Local communities will not be disadvantaged because of: the nature of existing planning permissions; existing powers for mineral planning authorities to inspect sites; for recent permissions (set out both in previous minerals planning guidance and, more recently, in the National Planning Policy Framework), the strong policy expectation that any development does not have an unacceptable adverse impact on human health or the natural or local environment.

Summary of Benefits and Costs

The minerals industry anticipates that, under the current system, over 250 sites will be subject to periodic review between 2012 and 2027. Reducing the number or delaying the timing of reviews will save businesses the cost of preparing an environmental statement and negotiating with the mineral planning authority, statutory consultees and the local community.

There are no exact estimates available for the cost of preparing an Environmental Statement for a periodic review, but costs will vary considerably on the location and size of the minerals site. Some parts of the minerals industry claim that the costs are usually between £250,000 and £300,000[25] where an environmental statement is required, whilst other estimates quote an average of £59,000[26].

Other Impacts

[25] Articles in Planning magazine dated August 2010 and April 2011

[26] Letter to DCLG dated 20 September 2012

There may be a benefit and cost saving to mineral planning authorities (local government) as, should they provide a more flexible approach to review of conditions, and it will save them time and resources in handling applications for reviews of conditions.

Risk

The proposals outlined above ensure that reviews cannot happen more frequently than at present but do not inhibit mineral planning authorities from performing reviews less frequently if that is considered appropriate. Whilst it would seem reasonable that firms operating in the minerals industry would always prefer less frequent reviews, the same is not necessarily applicable to mineral planning authorities which evaluate minerals activity in relation to local and national objectives. If the planning authority believes that an activity is no longer meeting local and national needs, then (provided that fifteen years have elapsed since the permission was granted and the authority abides by period of notice requirements) it is still within its rights to perform a review.

Clause 9: Stopping up and diversion of highways (in response to Penfold Review) (DFT)

Background

Stopping up orders are a form of non-planning consents which are made to close a road for redevelopment purposes, providing certain planning permissions have been granted. Once a stopping up order is made, the carriageway and/or footway concerned ceases to be a public highway and may be built upon. Together with land-use planning they play a vital role in enabling investment and therefore growth in local communities.

Typically, planning permission determines whether a development should be permitted while stopping up or diversion orders provide permission to move or block a public way in order to carry out the development. Without a stopping up order, the developer is constrained in the extent to which he can develop his site since the grant of planning permission does not automatically grant permission to obstruct a public highway.

Legislation covering stopping up/extinguishment orders where planning permission is in place is set out in section 247 - 248 of the Town and Country Planning Act 1990. Stopping up orders authorise the extinguishment (stopping up) or diversion of any highway where it is no longer needed or permits development to proceed. The provisions apply to all highways and authorise their stopping up or diversion where the decision maker is “satisfied that it is necessary to do so in order to enable development to be carried out” (where planning permission has been granted).

Summary of measure

The proposal on stopping up is to enable applications for a highways stopping-up order to be processed in parallel with the application for planning permission (whereas under the existing legislation the process of considering an application for a stopping-up order can, in most cases, only start after the relevant planning permission has been granted).

Rationale for Intervention

Section 247 - 248 of the Town and Country Planning Act gives powers to the Secretary of State to stop up or divert any highway where it is no longer needed or permits development to proceed. The statutory protection of highways is required because of the right of the public to use them. As the powers lie with the Secretary of State, it is his/her authority to alter them that is required.

Policy Objectives

These proposals would streamline the application process for highway and transport consents and contribute to the Coalition Government's growth agenda.

The primary objectives for the proposed reform are: to improve the application process and introduce a streamlined service that encourages investment and provides early certainty on timing of applications.

The clause is about enabling developers to make concurrent applications, although they do not have to take up the option. The same rights and processes would exist as at present. There is low risk that it would entail greater costs than benefits for developers.

Costs and Benefits

Planning applications for development, and therefore for the associated stopping up orders may be sought by any size of business - but whatever the size the required procedures, costs and delays are the same.

Each development is individual – with particular costs and financial risks. There is no central source of average cost to business of the delay in executing a granted planning permission, nor of the work in making an application for a stopping up order.

The benefits to developers are difficult to quantify - depending on the time gain from concurrent procedures, and the funding of the development (price of money etc). An indication of the benefits can be seen in the table below which sets out the potential time taken under the new clause covering simple and large planning cases and stopping up orders without objections and with objections (and hence Public Inquiry). Local Authorities have a target to deal with simple planning applications within 8 weeks and to deal with larger ones within 13 weeks. The table shows that the new clause would deliver a time saving to business over the current process, whatever the size of the planning application.

Table 6: Time taken to process applications for stopping up orders (weeks)

	Current Process	Under the new clause	Explanation
Simple planning, No objection	16 - 21 Min and Max	8- 13 Min and Max	Both applications made at same time. Objection periods run concurrently. Min time allows 8 weeks for planning plus currently achieved 8 weeks for processing stopping up order. Max figure allows for the 13 week target for processing stopping up orders
Simple planning Objections	16+	10+	The public inquiry needed for objections into stopping up objections extends the time The two weeks above the minimum time is to cater for consideration of objections before deciding on the need for a public inquiry
Large planning No objection	21- 26 Min and Max	13	The stopping up order takes less time to process, if there are no Objections, than large planning applications.
Large planning Objections	21+	15+	The arrangement of a public inquiry adds to the maximum time for deciding a large planning application.

Monetised and non-monetised costs and benefits of the clause (including additional administrative burden)

a) Developers

As with the current system there would be no costs to the developers of applying for a Stopping Up order. They would not have to pay for the stopping up application or any attendant public inquiries, nor for any advertising costs associated with notifying the public of the proposed stopping up order, in contrast to the way in which they have to pay for planning applications.

Whilst the applicant would not incur any costs in applying for the stopping up order, the developer would have to bring forward preparation of the documentation and perhaps face revision work in the event of his planning application having to be altered in response to the planning authority's views. This clause provides the developer with the option of applying for a stopping up order at most 8 weeks earlier than at present - being the time that is the target for local authorities taking the decision on small planning applications (for larger applications the target for decision is 13 weeks).

There is the risk of abortive work if, due to lack of early discussion with planning authority, the stopping up order is erroneous or if the planning application has to be altered in such a way that changes to the stopping up proposal are required. However, under this new provision, the concurrent submission of a Planning and Stopping Up order would not be mandated. Developers could choose to wait until Planning Approval is granted before making an application for the Stopping Up order (as now) if they judge the risks to be too great to outweigh the benefits of an early decision.

The developer would gain a benefit in having the stopping up order quicker than at present – although the speed of decision would depend on objections received and any public inquiry necessary. Only 2-3% of stopping up applications are referred to a Public Inquiry.

(b) Local Authorities
There are no monetised costs associated with this provision. The only difference from the current process is the bringing forward of costs: the local highway authority would bring forward the cost of considering the highways proposal, namely when the planning and highways applications are submitted at the same time.

The highway authority would become aware of planning applications that might affect highways earlier than at present. The early engagement with the planning authority could result in more accurate and acceptable applications for both planning and stopping up. The local authority gets the benefit of earlier delivery of development and consequent economic growth.

(c) Department for Transport
Central government costs in delivering the stopping up order process would remain the same. Government bears the costs of the administrative processes - including the costs of any public inquiry. A team of 6.8 FTEs is involved in delivery stopping up orders, at a cost about £225,000 per year. The cost of placing advertisements to inform the public of proposed stopping up orders in the London Gazette and local newspapers, being about £475,000, will continue as a cost to Government.

(d) Planning Inspectorate
There is unlikely to be much impact on the Planning Inspectorate. Only 2-3% of applications end up being taken to Public Inquiry.

(e) Public
There will be no impact on the public: they will still retain the opportunity to object to the proposals and to have their objections, if not withdrawn, heard at a Public Inquiry.

Risks and Assumptions

Discussions with some developers belonging to the British Property Federation indicate that developers would be prepared to invest in stopping up preparation earlier than now to potentially get the gain of early approval.

It is assumed that the shortening of the timescales from making a planning application to receipt of the Stopping Up order would allow developers to start work earlier than under the current system. This may not be the case if there are other factors which cause delays (e.g. access to finance, other statutory processes) that are not addressed by the Penfold Review or other interventions by the Government.

Clause 10: Reforms to public rights of way in response to Penfold Review (Defra)

This change removes the current constraint that a rights of way diversion or stopping up order may only be made after planning permission has been granted.

Problem under consideration/Rationale for intervention

The Penfold Review of non-planning consents found that non-planning consents have a serious impact on how efficiently and effectively the end-to-end development process operates. Rights of way consents were seen as a significant source of risk and cost from delay because there is currently a statutory requirement that a rights of way order (required to implement a planning permission) can only be made after the planning permission has been granted and there is no timetable set for decision makers' consideration of applications.

Data compiled by the Ramblers suggests that over the 20-year period from 1986 to 2005 the average number of orders applied for each year as a consequence of planning applications ranged from 413 to 489[27]. However, this data does not distinguish between orders made under section 257 of the Town & Country Planning Act 1990, which will be the subject of this proposed clause and section 247, to which clause 9 applies to. Around 40 such orders a year are referred to the Secretary of State for a decision.

Impact of intervention

The intervention will help planning permissions for development to be obtained more quickly by enabling the statutory processes for planning permission and rights of way orders to run concurrently rather than sequentially as at present. Government intervention is necessary to remove a constraint that is exists in current primary legislation.

[27] page 167 of 'Rights of Way – A guide to law and practice

Summary of Benefits and Costs

The proposed amendment to the existing primary legislation will simply remove the current constraint that provides that a rights of way order cannot be made until the planning permission that requires it is granted. The removal of this constraint does not require developers to initiate the rights of way order-making process earlier; it merely gives them the option of doing so. In most cases doing so will reduce the end-to-end time for obtaining the necessary consents, reducing delay uncertainty and cost. But there is a risk that, where a planning permission is refused, or is altered in some way during consideration of the planning application, an order making process started at the time the application for planning permission is made, could prove abortive or have to be re-started, causing developers to incur costs that would not have been incurred if they had waited until the planning application was determined[28]. For this reason, it will remain open to developers to continue to use the current process if they prefer, enabling developers to make the judgment about when to initiate the rights of way order-making process.

[28] Local authorities can recover the cost from the developer, with the exception of costs that result directly to the submission of an opposed order to the Secretary of State

Clauses 11-14: Town and Village Greens (Defra)

What is the problem with the existing Town and Village Green registration system?

The rising number of applications, which are free to applicants, is resulting in large costs to local authorities. Where applications affect development the Town and Village Green registration system can undermine the democratically accountable planning process. Many applications fail but nevertheless incur long delays, uncertainty and costs to local authorities and landowners. Some are using the process to prevent or delay development that is needed and wanted by the wider community. Communities can wait for years to discover the impact of applications on development proposals which causes unnecessary anxiety.

The Penfold review into non-planning consents recommended reducing the impact of the Town and Village Green registration system on sites which have planning permission. A report for Defra in 2009 noted the problem of the planning and Town and Village Green registration systems working in parallel: 'the most significant finding from this research so far is the existence of two parallel systems between which there is minimal communication: the Town and Village Green registration process and planning system. In our view this seems to be problematic… the processes in each system rarely seem to take explicit account of issues / decisions in the parallel system, even though they can have significant importance for each other'.[29]

What was the response to consultation proposals?

There were 277 responses to the consultation from a wide variety of sources including developers, retail chains, councils, legal firms, third sector organisations and individuals. The majority agreed that there is a need for reform, although there was disagreement on some of the options proposed. However there was a common view that overall reform is desirable – with a range of reasons provided. These included reducing applications of limited merit, reducing the costs and increasing the efficiency of the process, reducing what can be significant impacts on landowners and reducing impacts on communities arising from applications frustrating development.

[29] DEFRA, Study of Determined Town and Village Green Applications, October 2009, p.49

What are the policy objectives and intended effects?

The reforms will prevent the registration system being used to stop or delay planned development. Local communities' ability to promote development through local and neighbourhood plan-making will be protected.

We also want to reduce the financial burden on local authorities in considering applications and the costs to landowners whose land is affected by applications.

The reforms will not affect existing registered Town and Village Greens at all: there are over 4,600 of these, and they will continue to be given the most stringent protection afforded to land in this country. Additionally, local communities can give special protection to green areas of particular importance to them by designating such areas as Local Green Space in their local or neighbourhood plan. People will still be able to make an application to register designated Local Green Space as a town or village green.

To deliver this, the reforms will

- Prevent town or village green applications where a planning permission has been granted or where a planning application has been publicised and the decision is still to be made.

- Prevent Town and Village Green applications for land 'identified for potential development' in local and neighbourhood plans, including draft plans.

- Allow landowners to make a statement with the effect that their land cannot be registered as a Town and Village Green.

- Improve the flexibility we have to set fees for Town and Village Green applications and other applications under Part 1 of the Commons Act 2006.

The key aims of the reforms are to:

- Prevent the Town and Village Green registration system being used to stop or delay planned development. The reforms will protect local communities' ability to promote development in their areas through local and neighbourhood plan-making.

- Reduce the financial burden on local authorities in considering applications, and the costs to landowners whose land is affected by applications.

- Remove unnecessary uncertainty and delays, which are difficult for those affected in the community.

Costs

Commons Registration Authorities - new duty to liaise with planning authorities regarding whether land is subject to the planning exclusion, but the costs are *de minimis* and will be covered by savings from reforms. There is also a cost of recording declarations, but this will be passed on to applicants.

Planning authorities - cost of advising commons registration authorities as per above but the cost is *de minimis*.

Landowners - cost of making declarations, numbers are unknown though the benefit is likely to outweigh cost

Town and Village Green applicants - must use the planning process to protect land (no new costs anticipated, and may be savings on legal and evidence gathering costs) or submit Town and Village Green application at a time when there is no exclusion due to a planning event.

Benefits

Communities will benefit as developments will proceed in accordance with the democratically accountable local planning process. For an example (one of the consultation responses): In Saham Toney, Norfolk, Hastoe Group built ten houses on a piece of land which had been farmed for centuries by a local family that wished the site to be used for affordable housing. The use of the field for local housing had been consulted on and there had been an overall positive response from the local community. After the homes had been built, a Town and Village Green application was lodged. Two and a half years later the housing residents, owners, and Hastoe are still awaiting an outcome, with the combined legal fees to Hastoe, the landowner and the taxpayer sitting at a reported £50k.

As current Town and Village Green applications will not be affected by the clause, this particular example will not be resolved as a result of the legislation, but it serves to illustrate the sorts of benefits that might result in some cases.

Savings to developers / landowners (£3.4m medium annual estimate) and registration authorities (£1.3m medium estimate) who no longer have to deal with estimated 35-65% of the annual flow of applications which would not be submitted as a result of reform. Decisions on the land use of such sites would be dealt with through the planning system. Registration authorities would save on processing and public inquiry costs; landowners/developers on fighting applications, delays to projects.

There is potentially a more substantial second round effects (depending upon planning decisions where a site is developed which would otherwise have been successfully designated without reform): avoidance of land value depreciation; social and economic development of local areas; net loss of green space. We have introduced, however, a new planning protection for valuable green open spaces, via the National Planning Policy Framework.[30] Appraisal of and decisions on the benefits of development are best taken through the democratically accountable planning process.

Key Assumptions

30-50% of Town and Village Green applications are made as a result of planning applications; 5-15% of Town and Village Green applications are in areas covered by local plans.

The baseline costs for developers and Town and Village Greens based on data from surveys and evidence submitted as part of the consultation and therefore may suffer from selection bias.

Any unintended consequences of the reforms will be monitored through the continuation of the biennial Town and Village Green application activity survey of commons registration authorities.

[30] For more information on Local Green Space designation, please see; http://www.communities.gov.uk/documents/communities/pdf/1973339.pdf

Clause 15: Power stations, repeal of requirements to give notice (DECC)

This clause repeals the requirement for developers or operators of gas or oil fired power stations to notify the Secretary of State:

- when proposing to build a new power station that would use gas or oil as fuel, or converting an existing power station to use gas or oil as fuel,
- and to notify the Secretary of State of contracts for the supply of gas.

Section 14 of the Energy Act 1976 implemented two EU Directives that gave Member States powers to control gas and oil supplies after the 1973 energy crisis. The purpose was primarily to reserve gas supplies for domestic heating and industrial use rather than as a default fuel source for power stations. These powers were last used in 1997 as the legislative base to implement a moratorium on the construction of gas-fired power stations.

However, the two EU fuel control directives that Section 14 implemented, EC/404/75 and EC/405/75,were revoked in 1991 and 1997 respectively and these powers no longer have any practical application in controlling the use of gas in power stations. There are more recent policy instruments - for example the measures we are introducing in Energy Market Reform legislation – that are or will be more effective in managing energy supplies in the UK. As Section 14 now has no practical application, its repeal will have no impact on industry.

Applications for new generating stations greater than 50MW in England and Wales are exempted under the Planning Act 2008; generating stations under 10MW are exempted by secondary legislation; and gas contracts under 12 months are exempted by secondary legislation. This leaves only proposed gas generating stations between 10MW and 49MW in England and Wales and 10MW and over in Scotland that should notify the Secretary of State.

There is no logical rationale for the current position. Further, Government is not aware of any notifications for generating stations between 10MW and 49MW in the past 10 years.

So there is no cost to business by the removal of this legislation.

Clause 16: Amending Section 7B(5) of the Gas Act 1986 (DECC)

Ofgem's proposed gas £160 million Network Innovation Competition is currently being delayed because of regulatory ambiguity in the Gas Act. Until this uncertainty is removed, or another funding mechanism is established, Ofgem will not proceed with the Competition.

Clause 16 amends section 7B(5)(b)(ii) of the Gas Act 1986, which relates to the conditions which Ofgem may include in a licence granted to a gas transporter under section 7 of the Gas Act 1986. Our view, and the regulatory presumption since 2005, is that a licence condition could require a licensee under section 7 of the Gas Act 1986 to increase his charges for the conveyance of gas and to pay the amounts so raised to holders of any licences under the Act (i.e. including licensees other than gas shippers or suppliers), but the law currently lacks transparency. The amendment in Clause 16 puts the issue beyond doubt, allowing the gas Network Innovation Competition to proceed. This would see up to £160 million from industry invested into the gas grid. This money will be used to promote innovation, to enable the gas network to meet future challenges to providing a sustainable energy system more cost effectively and with fewer environmental impacts.

As the provision does not change the substance of section 7B of the Gas Act 1986, but rather clarifies it, we consider that there is no impact on industry, except to provide greater clarity in the legislation.

Furthermore as section 7B(5) is only an enabling clause, any new policy or regulation introduced under section 7B would need to undergo its own impact assessment and statutory consultation before it could be made by Ofgem.

Clauses 17 and 18: Allowing variations to consents under Section 36 of the Electricity Act 1989 (DECC)

The proposal provides developers with a means of constructing already consented power stations along revised lines without having to go through a full Planning Act application process, which would take significantly longer and cost significantly more. It will therefore not impose any additional obligations on or costs to business. It may impose a small additional cost on Government (handling applications to vary existing consents), but it is likely that this will be largely offset by receipt of processing fees (and should be seen against the background that Government receives no fees for processing Planning Act cases). At the same time, it could have highly beneficial impacts by enabling the construction of a number of power generating plants presently consented under the Electricity Act 1989 but not yet constructed.

Around 12 GW of generating capacity (with an estimated combined value in the region of £16 billion) has been consented under Section 36 but not constructed, spread across a large number of existing consents. At present, developers are in many cases holding off from construction for a variety of non-planning related commercial reasons, but there is a risk that a tipping point will come later in the decade when the market will encourage building but will find that its bank of existing consents is not as useful as it had hoped. For instance, gas turbine manufacturers are constantly finding ways to produce more power with the same size of blades and less fuel; environmental standards become stricter, forcing changes in design; more efficient wind turbines come on the market. All these developments can cause changes from the original designs (and therefore potentially conflict with the terms of the original Section 36 consent) when a consent comes to be implemented.

Whilst developers remain unable to apply to have consents under Section 36 varied, they face a choice – in cases where their preferred design is no longer the one for which they have consent – between:

- building to a sub-optimal or outmoded specification;
- building to their preferred design, but only after incurring significant further expenditure and delay by applying for development consent under the Planning Act 2008; or
- abandoning the project and writing off their development costs to date.

We want them to have a quicker and cheaper way (as compared to (ii)) of updating their consents in line with their preferred design. In practice, our view is that this proposal to permit changes to Electricity Act 1989 consents

could save developers at least a year in achieving consent compared to Planning Act timescales. Developers would also save about £280k in fees per application (about £20k for Electricity Act 1989 compared to at least £300k under Planning Act 2008), and make a further saving through simpler Electricity Act 1989 processes compared to extensive Planning Act 2008 front loading procedures (mostly consultants' fees but we are not able to quantify this owing to a lack of data).

Clauses 19-20: Modifications of Special Parliamentary Procedure in certain cases (DCLG)

This amends provisions for Special Parliamentary Procedure where specially protected land is compulsorily acquired for nationally significant infrastructure projects granted consent under the Planning Act 2008 and also for compulsory purchase orders made and confirmed under the Acquisition of Land Act 1981. In both cases, the changes being made will help avoid or minimise the delays to the implementation of approved developments, thereby reducing costs to developers and improving economic growth.

Problem under consideration

For the compulsory acquisition of certain types of specially protected land Special Parliamentary Procedure is triggered. Specially protected land can be that of a local authority, statutory undertaker, land owned by the National Trust, commons and open space.

Under Special Parliamentary Procedure the decision on the consent made by a Minister is transferred to a Committee of MPs and Peers for further examination. While the Special Parliamentary Procedure process is undertaken, the development consent cannot be implemented and work on the infrastructure project cannot start.

The intention in the Planning Act 2008 was that Special Parliamentary Procedure considerations should be restricted to just the compulsory acquisition element of the consent decision. However, in practice it appears that the rules on Special Parliamentary Procedure are such that the Special Parliamentary Procedure proceedings in a given case can be turned into a re-hearing of the substantive merits of the whole infrastructure project because of inconsistency between The Statutory Orders (Special Procedure) Act 1945 and the Planning Act. The inconsistency effectively grants Parliament a right of veto over projects that the Secretary of State will have already approved and allows objectors a second chance to appeal even though they will have already had the opportunity to have their representations heard.

This inconsistency was raised in the report of the Chairman, Ways and Means Committee and the Chairman of Committees in their joint report into petitions received under the Special Parliamentary Procedure process for the Rookery South Energy from Waste proposal in Bedfordshire. The report urged the Government "**to rectify these anomalies as a matter of priority**" because "the provisions of the 1945 Act apply to the Order as a whole, and since the 2008 Act did not amend the 1945 Act, we now have a statutory framework which is internally contradictory."[31]

The Planning Act already ensures that anyone affected by compulsory acquisition proposals has the right to be heard at a specific compulsory acquisition hearing as part of the examination process of a project, and moreover, the checks and balance of the Secretary of State making the final decision on consent renders Special Parliamentary Procedure unnecessary in many cases. The delays and costs to applicants resulting from a project being subject to Special Parliamentary Procedure could potentially affect the viability of existing development projects, as well as influencing future investment decisions.

Rationale for intervention

Where Special Parliamentary Procedure considers the entire development consent, and not just the acquisition of land element, unnecessary costs are imposed on business, given that each project will have already been approved by the Secretary of State following an appraisal process.

The delays caused can be significant – the Rookery South energy from waste infrastructure project currently subject to Special Parliamentary Procedure is already facing a delay of more than a year since consent was granted.

The intention, therefore, is to make amendments to the primary legislation governing Special Parliamentary Procedure so that its use on nationally significant infrastructure projects is strictly limited to those situations where there is a genuine need for further consideration by Parliament of the compulsory acquisition of land.

Amendments to legislation will reduce the number of infrastructure projects where Special Parliamentary Procedure is triggered. Where Special Parliamentary Procedure is still triggered, consideration by Parliament will be limited to the compulsory purchase element of the project. This latter change is also being made for compulsory purchase of special land made under the Acquisition of Land Act 1981, thereby ensuring that the procedures for Special Parliamentary Procedure under this Act are consistent with those in the Planning Act 2008.

[31] The Rookery South (Resource Recovery Facility) Order 2011: Report on petitions against the Order - Chairman of Committees, House of Lords and Chairman of Ways and Means, House of Commons can be found here: http://www.publications.parliament.uk/pa/specialprocorder/294/29405.htm#a6

The effects of these changes will bring deregulatory benefits to infrastructure developers and costs savings from either not having to go through the Special Parliamentary Procedure process, or from a quicker Special Parliamentary Procedure process that only considers the compulsory acquisition of land.

Impact of intervention

The reforms to Special Parliamentary Procedure being proposed are:

- Amendments to the Statutory Orders (Special Procedure) Act 1945 to ensure that in all cases involving the compulsory acquisition of special land under the Planning Act 2008 and the Acquisition of Land Act 1981, Special Parliamentary Procedure can only consider the compulsory acquisition of land and not the whole development consent for a project;

- Amendments to primary legislation to bring Special Parliamentary Procedure for nationally significant infrastructure projects under the Planning Act 2008 in line with other consent regimes (e.g. the Transport and Works Act) by removing the requirement for Special Parliamentary Procedure where the infrastructure project involves the compulsory acquisition of local authority land and land of statutory undertakers.

- Amendments to the primary legislation (Planning Act 2008) on Special Parliamentary Procedure for the acquisition of open space to provide more discretion to the Secretary of State to decide that Special Parliamentary Procedure should not apply where acquisition of open space was only needed on a temporary basis. In other cases, where the acquisition of open space would be permanent, the applicant is required to provide alternative suitable land in exchange for the land required; otherwise Special Parliamentary Procedure is triggered. It is therefore also proposed to give the Secretary of State additional discretion to certify that such exchange land need not be provided in cases where it may not be available, or where the costs of providing such land would be prohibitive. This would then mean that Special Parliamentary Procedure would not then be triggered. This discretion could only be used where there was a strong public interest for the national infrastructure project to proceed more quickly than if it was subject to Special Parliamentary Procedure.

No changes are being made in respect of the other types of special land currently subject to Special Parliamentary Procedure - National Trust land, Commons and fuel and field garden allotments.

The changes identified above recognise the need for legislation in cases where certain types of land are acquired for development, but also highlight the need for a change in its application, as well as a reduction in the scope of Special Parliamentary Procedures.

Summary of Benefits and Costs

The Bill is intended to reduce the burden on business by providing net benefits to infrastructure developers. These benefits will be achieved through the three amendments;

- Ensuring that the Special Parliamentary Procedure considers only the compulsory acquisition of land will have time-saving benefits for applicants as Parliamentary committees will no longer consider the consent element. The amendment will not affect the time spent considering the initial application, but is anticipated to speed up the Special Parliamentary Procedure component.

- The second amendment will reduce the number of projects which go through Special Parliamentary Procedure. The delays caused by unnecessary Special Parliamentary Procedure processes can have significant consequences for scheme viability.

- The third amendment is again designed to reduce the scope of Special Parliamentary Procedure which will have the effect of simplifying the planning process for a number of projects, and result in significant time savings for certain developments by reducing the burdens on business of both delay and barriers to development such as the requirements for exchange land where none is available).

The changes proposed have clear benefits for applicants by reinforcing the certainty that the Planning Act 2008 provides to applicants. Greater certainty is likely to increase confidence in the planning process, and has the potential to increase the propensity to make an application. The post-decision effects of a faster Special Parliamentary Procedure process ensure that projects which have already been deemed to yield net benefits are able to start more quickly than is currently the case.

Other Impacts

No adverse effects on the voluntary sector or the wider public of these proposals have been identified. The Planning Act 2008 already ensures that anyone affected by the compulsory acquisition of land has the right to be heard at a specific compulsory acquisition hearing as part of the examination process. Representations made as part of the examination process will be part of the overall ministerial consideration on whether to grant development consent (including the compulsory acquisition of land).

Currently there is one project that is subject to Special Parliamentary Procedure, and there are two other major projects in the pipeline where Special Parliamentary Procedure may be triggered.

Future projects will benefit from the changes being proposed, depending on whether these future infrastructure projects involve the compulsory acquisition of special land which would trigger Special Parliamentary Procedure. It is highly likely that such projects will come forward, but it is not realistic to quantify how many there will be. The benefits from amending Special

Parliamentary Procedure provisions will be one-off in terms of a particular project, when compared to the current regulations

Clause 21: Bringing business and commercial projects within Planning Act 2008 regime (DCLG)

This broadens the 2008 Planning Act's scope so that a much wider range of infrastructure development can be brought within the nationally significant infrastructure planning regime. This will allow applicants for large scale business and commercial development to apply to the Secretary of State for the option of using the streamlined approach set out in the Planning Act.

Problem under consideration

Over the past few years there has been a decline in the speed with which local planning authorities have been determining large-scale major planning applications despite a reduction in the number of cases that authorities have to process. Over the four years 2008/09 to 2011/12 the proportion of large-scale major[32] applications determined within 13 weeks fell from 68% to 47% at the same time as a corresponding fall from 481 large-scale major commercial and industrial decisions to just 320 decisions. At the same time the number of cases in this category taking over 52 weeks to decide increased from 8% to 13%.

Large-scale major business and commercial schemes can, by their nature, be complex and controversial and may require a number of different associated consents. They may also be the subject of a call-in request or appeal which can add to the time taken to determine the scheme, resulting in additional costs and uncertainty. These features potentially delay much needed investment in projects which could be beneficial for growth and the UK economy.

Rationale for intervention

Unnecessarily slow decisions by local planning authorities on the very large business and commercial schemes hinder development. The length of time taken to reach a planning decision imposes delay and uncertainty costs on an applicant and might, in some cases, deter investment in development which would be of economic benefit to the country as a whole.

Additional delay arising as a result of an appeal by the applicant or the Secretary of State calling-in an application for his own determination will also add to the total costs incurred for the applicant and other parties, including the local planning authority. There may also be a delay to any potential benefits - economic, social or environmental - that might have been realised had the application been determined more quickly.

[32] Large-scale major commercial development is defined here as including office/research and development/light industry; general industry, storage and warehousing with a floor area greater than 10,000 m². DCLG Live Table 126 (2012) http://www.communities.gov.uk/documents/statistics/xls/2191181.xls

For some of the very large business and commercial applications the issues raised will be complex, novel and difficult for the local planning authority, or planning authorities involved, should a proposed development straddle or have impacts across more than one local planning authority's area.

A planning route already exists for infrastructure schemes of national significance with a streamlined and time-tabled approach to examination and decision making. Extending this planning route to large-scale major business and commercial applications will help to speed up decision-making for those complex schemes of national significance which would have taken a local planning authority over a year to determine and which may also have been the subject of call-in or an appeal.

This proposal therefore proposes using an existing planning route so that business and commercial development of national significance (to be prescribed in secondary legislation) can be brought within the nationally significant infrastructure regime if desired by the applicant and should the Secretary of State agree to their request. The Secretary of State will consider requests received on a case-by-case basis.

Formal consultation will be carried out on the types of development which the Secretary of State proposes to prescribe in regulations. Forms of development which could form part of that consultation include:

- Warehousing and storage
- Manufacturing and processing proposals
- Office development, including research and development facilities
- Extractive industries (mining and quarrying)
- Major tourism proposals and leisure venues
- Mixed –use developments (where this includes two or more of the above uses but does not include housing)

Impact of intervention

The aim of these proposals is to provide an alternative planning route for applicants for large-scale proposals of national significance. The responsibility for the vast majority of commercial and business planning applications will remain with local planning authorities.

We will be consulting on the detail but the focus of the scheme will be on the small number of large-scale major projects (i.e. for developments where the floor space to be built is 10,000m^2 or more, or where the site area is 2 hectares or more) which could take over a year to determine. In 2011-12 13% (41 decisions) of large-scale major commercial and industrial applications[33] took over 52 weeks to decide.

[33] Large-scale major commercial development is defined as including "office/research and development/light industry; general industry, storage and warehousing. DCLG Live Table 126 (2012) http://www.communities.gov.uk/documents/statistics/xls/2191181.xls

Not all applicants will want to take up the opportunity to move to a different regime, and will want to fully understand the costs and benefits before making a decision to do so. Our initial assessment of the number of new commercial and business cases likely to be referred to the Planning Act regime is between 10 and 20 per annum.

Applicants who make a successful request to the Secretary of State to use the infrastructure planning regime will make their applications direct to the National Infrastructure Directorate of the Planning Inspectorate. Planning Inspectors will examine the application and hear representations from interested parties. They will also make a recommendation to the Secretary of State who will take the final decision.

Local people and other parties affected by a proposed development will still have an opportunity to be heard. The infrastructure planning regime seeks to use a more inquisitorial mode of examination and not an adversarial one which many people can find difficult to engage with and can deter people from giving evidence at hearings. Planning Inspectors will also seek to use the written representations mode of examination where possible but parties can request the right to be heard at a hearing.

Making an application for development consent direct to the Secretary of State means that applicants have no right of appeal but it also removes the risk of delay due to "call-in". However, applicants and other parties affected by the application can challenge the Secretary of State's decision through the courts in the usual way.

Summary of Benefits and Costs

The proposals give applicants for commercial and business development the option to approach the Secretary of State to request that their scheme is of national significance and should be taken through the infrastructure planning regime. Applicants will be able to decide on a case-by-case basis whether they would prefer to use the infrastructure planning regime and will only do so where they see a net benefit.

The infrastructure planning regime, because of the statutory timetabling process (six months for examination; three months for recommendation and three months for decision) will take one year from acceptance of the start of the examination period. Therefore, choosing to submit large-scale major applications, that face longer local authority processing times, will be of benefit.

The level of the benefit that applicants experience following the implementation of the proposed changes will depend on how much time is saved on each application (in comparison to the current process). There will be increased certainty of a decision date due to the timetabling approach and the removal of the risk of appeal or call-in.

For large applications, the current fees vary. Fees for the infrastructure regime appear broadly comparable although there will be cases where fees are higher. Applicants will only choose to use the regime where the benefits of increased certainty and timeliness are greater than the marginal cost (if any) of submitting their application through the alternative route. The proposal is therefore of net benefit to developers that choose to use it.

Infrastructure planning fees are established in regulations and charged at different stages in the application's consideration. The final level of fees will depend on the scale and complexity of the proposal and the time spent examining the proposal.

Government has set out, in its Infrastructure Planning (Fees) Regulations 2010 Guidance, "typical" fees for different types of cases. These are £75,000 for single Inspector/Commissioner case; £209,000 for a normal panel (three Inspectors/Commissioners) and £394,000 for a large panel case (more than three Inspectors/Commissioners).

The Guidance indicated that whilst the fees for "Large Panel" cases are relatively significant, we would expect only the most controversial or complex cases to require this level of resource. The vast majority of cases are expected to be handled by a Single Commissioner or Panel of three Commissioners (i.e. a "Normal Panel").

Applicants currently pay a range of planning fees to local planning authorities for the consideration and determination of their planning applications. The fees can range, for example from £170 for a development (not dwellings) where the gross floor space does not exceed 40m^2 to a ceiling of £250,000 for the largest schemes. The scale of the fees therefore depends on the nature and scale of the planning application. Proposals are currently in place (and a draft Statutory Instrument is before Parliament) which would increase the current fee level by 15% but retain the existing ceilings, including the £250,000 ceiling.

Transferring proposals into the nationally significant infrastructure regime will mean that different fees will apply and applicants would have to pay those associated with major infrastructure applications instead. It is not possible to compare one specific scheme costs with another as the circumstances will vary considerably from case to case. However, Table 7 shows four anonymised examples of actual Secretary of State planning decision cases and the likely planning fees that would have applied with a comparison of typical fees for major infrastructure applications. These suggest that the fees, other than for the most complex cases, will be broadly comparable. Where there is an increase in fees for opting to use the major infrastructure regime, applicants will decide whether the benefits or increased certainty and timeliness are greater than the additional cost.

Table 7: Comparison of application fees for large schemes

	Scheme A **Manufacturing proposal:** 145,000m^2 development	**Scheme B** **Large mixed use scheme:** 86,000m^2 development	**Scheme C** **Employment development:** 69,000m^2 development	**Scheme D** **Minerals application:** 137 ha development
Likely level of local authority fees for these schemes	£205,198. (proposed revised fees £235,977)	£126,381. (proposed revised fees £145,337)	£103,959 (proposed revised fees £119,552)	£65,000 (proposed revised fees £65,000)
"Typical" Planning Inspectorate Fees for these types of cases	£209,000 (Normal Panel case)	£209,000 (Normal Panel case)	£75,000 (Single Commissioner)	£75,000 (Single Commissioner)
Costs to the applicant under existing fees regime	£3,802	£86,219	A saving of £28,959	£10,000
Costs to applicant under revised local authority fees regime before Parliament compared with Planning Inspectorate fees.	A potential saving of £26,977	A potential cost of £63,663	A potential saving of £44,552	A potential cost of £10,000

Clause 22: Postponement of compilation of rating lists to 2017 (DCLG)

Business rate bills are calculated from the rateable value for the property and the multiplier (tax rate) set by the Government. Rateable values are based on annual rental values and are updated every five years at a general revaluation. Revaluations do not raise any extra revenue but redistribute the rates burden amongst ratepayers. It follows that after a period of exceptional changes to the economy and property market large numbers of ratepayers would have faced increases in the rates bill at the 2015 revaluation. Therefore, to provide business certainty, the Government intends to postpone the next revaluation in 2015 to 2017. Thereafter revaluations will continue to take place every 5 years.

Problem under consideration

Non-domestic rates are a tax on occupiers or, for empty property, owners of non-domestic property. The full bill is a product of the rateable value for the property and the relevant multiplier for the year. The net yield in England is £24.1 billion. Rateable values are, broadly speaking, based upon the rental value of the property and are assessed independently by the Valuation Office Agency. All rateable values are reassessed every five years at a general revaluation.

The purpose of revaluation is to redistribute the rates burden based on up to date rateable values. Therefore, revaluation is not intended to change the total paid in business rates but it does result in some ratepayers seeing increases in bills and some seeing reductions. Outside revaluations ratepayers know that the multiplier can only rise with inflation which provides certainty for business.

The next revaluation in England is due in 2015. Since the last revaluation in 2010 the market has seen extraordinary movements in values due to the exceptional economic circumstances. The Valuation Office Agency's best estimate of rateable value movements as at January 2012 suggests there had been a 14 percent drop in values in England since the last revaluation. Because revaluations are revenue neutral overall the tax take would have had to rise by 20 percent to 56.9p in the pound following the 2015 revaluation. Proceeding with a revaluation at this time would, therefore, create an unacceptable degree of uncertainty for business ratepayers. Many ratepayers could have faced increases in rates. This would impede growth.

Rationale for intervention

The uncertainty from a revaluation in the current economic climate may cause business to delay decisions and divert time and resources away from

delivering growth. This uncertainty could also cause business to set aside resources which they might otherwise invest on expansion.

The Government believes that a postponement to 2017 strikes the right balance between providing certainty for business and maintaining up-to-date rateable values.

Impact of intervention

Revaluation is not intended to change the total paid in business rates but it does result in some ratepayers seeing increases in bills and some seeing reductions. Postponing the 2015 revaluation would therefore postpone future changes in business rate bills. When the next revaluation does take place in 2017 the resulting changes in bills would be different from a revaluation conducted in 2015.

As new 2015 rateable values do not yet exist, a full and accurate picture of the distributional impacts for either a 2015 or 2017 revaluation based on actual rateable values is not available. Preparing such data would require the completion of the revaluation exercise itself at considerable and disproportionate cost. Nevertheless, initial estimates have been prepared by the Valuation Office Agency based on professional judgements informed by limited rental market evidence up to January 2012. The Valuation Office Agency's estimates show that, assuming that there were no further change in rental markets and that all properties saw values change in line with the overall trend for their sector, 800,000 premises could have faced a real term increase in their rates bill compared to 300,000 seeing a fall in rates. Their estimates show that sectors such as convenience stores, hotel, pubs and petrol stations would have seen significant tax increases. The Valuation Office Agency have published their research entitled 'high level estimates of non-domestic rental and rating assessment movements for England' www.voa.gov.uk.

Summary of Benefits and Costs

The Government's objective in postponing the 2015 revaluation is to support all business rate-payers by providing additional certainty over rate bills. The Government believes this measure will secure non-monetised savings for business in terms of the time and resources they may have otherwise spend preparing for the business rates revaluation in 2015.

Beyond this, the basis for valuation and collection of non-domestic rates will otherwise remain the same. The postponement of the 2015 revaluation by 2 years will, in the short term, allow the Valuation Office Agency to focus more resources upon continuing to improve the valuation process and supporting local authorities with the rates retention system.