HOUSE OF COMMONS LIBRARY

BRIEFING PAPER

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Planning Reform Proposals

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Summary

This paper sets out the Government's key planning reform proposals and those changes in the process of being made. Most of these proposed changes would apply to England only. For information about changes in the other UK countries see the joint Library briefing paper Comparison of the planning systems in the four UK countries: 2016 update.

Following commitments made in the Conservative Party 2015 Manifesto document, the Queen's speech on 27 May 2015 announced two new bills which would make changes to planning law: a Housing and Planning Bill and an Energy Bill, both of which have now been introduced to Parliament. The Energy Bill 2015-16 would remove the need to obtain consent from the Secretary of State for onshore wind farms above 50 megawatts in size. The Housing and Planning Bill 2015-16 contains a number of different planning measures which include:

- putting a general duty on all planning authorities to promote the supply of Starter Homes, and providing a specific duty, which will be set out in later regulations, to require a certain number or proportion of Starter Homes on site;
- requiring local authorities to grant "sufficient suitable development permission" of serviced plots of land to meet the demand based on the self-build and custom housebuilding register.
- intervention by the Secretary of State over the production of local plans where local authorities are judged to be too slow; and
- creating a zonal system for brownfield land creating automatic planning permission in principle for housing.

For more detailed information see the Government's February 2016 Implementation of planning changes: technical consultation. For background information to the Bill's measures and reaction to them see Library briefing papers, Housing and Planning Bill and Housing and Planning Bill: Report on Committee Stage.

The Government's July 2015 Productivity Plan, Fixing the Foundations: Creating a more prosperous nation, and the November 2015 Autumn Statement also announced some further changes including:

- "significantly" tightening the "planning guarantee" (the time that planning applications spend in total with decision makers), for minor planning applications; and
- introducing a delivery test on local authorities, to ensure delivery against the homes set out in local plans within a reasonable timeframe.

The Government's August 2015 rural productivity plan, Towards a one nation economy: A 10-point plan for boosting productivity in rural areas, announced changes designed to make the planning process easier in rural areas including the introduction of new and revised permitted development rights. This was followed up by a February 2016 Rural planning review: call for evidence.

In the December 2015 Consultation on proposed changes to national planning policy the Government proposed a number of changes to the National Planning Policy Framework, to support better the development of housing on certain types of land.

The Government has confirmed that it will put on a permanent basis the temporary permitted development right which allows offices to change to residential use. There are also proposals to increase permitted development rights for to shale gas exploration, for upward extensions in London and for change of use to state-funded schools.

1. Key Government announcements on planning

1.1 Conservative Party Manifesto 2015

Following the 2015 General Election, the Conservative Party formed a majority Government. The Conservative Party 2015 Manifesto contained the following planning related proposals, taken from different sections of the document:

- "We will let local people have more say on local planning and let them vote on local issues."
- "We will devolve further powers over skills spending and planning to the Mayor of London."
- "We will support locally-led garden cities and towns in places where communities want them, such as Ebbsfleet and Bicester. When new homes are granted planning permission, we will make sure local communities know up-front that necessary infrastructure such as schools and roads will be provided. We will ensure that brownfield land is used as much as possible for new development. We will require local authorities to have a register of what is available, and ensure that 90 per cent of suitable brownfield sites have planning permission for housing by 2020. To meet the capital's housing needs, we will create a new London Land Commission, with a mandate to identify and release all surplus brownfield land owned by the public sector. We will fund Housing Zones to transform brownfield sites into new housing, which will create 95,000 new homes."
- "We will support Business Improvement Districts and other forms of business-led collaboration on high streets – giving more say to local traders on issues such as minor planning applications, cleaning and parking."
- "Onshore wind now makes a meaningful contribution to our energy mix and has been part of the necessary increase in renewable capacity. Onshore windfarms often fail to win public support, however, and are unable by themselves to provide the firm capacity that a stable energy system requires. As a result, we will end any new public subsidy for them and change the law so that local people have the final say on windfarm applications."

1.2 The Productivity Plan

In the Government's 10 July 2015 Productivity Plan, "Fixing the Foundations: Creating a more prosperous nation" chapter 9 contained a number of proposed planning reforms. In summary these include:

- a threat of direct intervention by the Secretary of State over the production of local plans where local authorities are judged to be too slow;
- the creation of a zonal system for brownfield land involving automatic permission for housing;

- a tighter planning performance regime which would mean local authorities would be judged to be underperforming if 50 per cent or fewer decisions meet statutory timetables or who fail to process minor applications in line with a significantly tighter "planning guarantee"; and
- new legislation to allow major infrastructure projects with an element of housing to be considered as part of the Planning Act 2008 regime and treated as nationally significant infrastructure projects (NSIPs).[1]

For reaction to the planning proposals in the productivity plan, see:

- RTPI, RTPI's detailed response to planning reforms announcement, 10 July 2015;
- LGA briefing: Budget and national Productivity Plan: housing and planning announcements, 16 July 2015; and
- "The tough new tasks the government's productivity plan sets for local authorities" Planning, 16 July 2015.

1.3 The Rural Productivity Plan

In the Government's August 2015 rural productivity plan, Towards a one nation economy: A 10-point plan for boosting productivity in rural areas, as well as some changes already announced in the July 2015 Productivity plan, it announced changes aimed at making planning easier in rural areas including: new permitted development rights, a fast-track planning certificate process for minor development, and making it easier to develop a neighbourhood plan and allocate land for starter homes.

This was followed up by a February 2016 Rural planning review: call for evidence.

1.4 The Autumn Statement November 2015

The November 2015 Autumn Statement included a number of proposed changes to the planning system as follows:

> **Local plans** – The government will bring forward proposals for a delivery test on local authorities, to ensure delivery against the homes set out in local plans within a reasonable timeframe.
>
> **Neighbourhood plans** – The government will ensure that local communities can allocate land for housing through neighbourhood plans, even if that land is not allocated in the local plan.
>
> **Starter Homes** – The government will amend planning policy to ensure the release of unused and previously undeveloped commercial, retail and industrial land for Starter Homes, and support regeneration of previously developed, brownfield sites in the greenbelt, by allowing them to be developed in the same way as brownfield sites elsewhere, providing it delivers Starter Homes. This will be subject to local consultation, such as through neighbourhood plans.

[1] Planning Portal, Osborne unveils package of planning reforms, 16 July 2015

SME house builders – The government will halve the length of the planning guarantee and amend planning policy to support small sites, while ensuring protection for existing gardens.

Section 106 – The government will bring forward proposals for a more standardised approach to viability assessments, and extend the ability to appeal against unviable section 106 agreements to 2018.

Quality of decision making – To support decision-making in line with local plans and the principles in the National Planning Policy Framework, the government will bring forward proposals to strengthen the performance regime, by lowering the threshold for the quality of decisions to 10% of all major decisions overturned on appeal. Wider circumstances, such as the status of the local plan and whether appeals relate to this, will be taken into account.

Planning conditions – The government will review the operation of the deemed discharge of planning conditions.

For reaction to some of these proposals see:

- CPRE, Autumn Statement and Spending Review – housing, 25 November 2015
- British Property Federation, Property industry comments on Autumn Statement planning announcements, 25 November 2015
- Home Builders Federation, Follow up to Spending Review, 27 November 2015
- RTPI response to the Spending Review and Autumn Statement, 27 November 2015
- "The Spending Review: 5 key implications" Planning, 27 November 2015 [subscription required]

1.5 Consultation on proposed changes to National Planning Policy

In its December 2015 Consultation on proposed changes to national planning policy the Government proposed a number of changes to the National Planning Policy Framework, with the intention of better supporting the development of housing on certain types of land. These proposals are explained further in section 4 under relevant headings of this briefing paper below, but together include:

- Changing the definition of affordable housing;
- Increasing residential density around commuter hubs;
- Supporting new settlements, development on brownfield land and small sites, and delivery of housing agreed in Local Plans;
- Supporting new settlements;
- Supporting housing development on brownfield land and small sites;
- Ensuring housing is delivered on land allocated in plans;
- Supporting delivery of starter homes;
- Enabling development on unviable and underused commercial and employment land;
- Encouraging starter homes within mixed use commercial developments;
- Encouraging starter homes in rural areas; and

- Enabling communities to identify opportunities for starter homes on brownfield land in the Green Belt.

This consultation is the subject of a current inquiry by the House of Commons Communities and Local Government select committee. Oral and written evidence submitted in relation to this inquiry is available from the committee's website.

2. Planning reform in the Energy Bill 2015-16

The Conservative Party 2015 Manifesto contained a policy to give "local people" a "final say" on windfarm applications. In respect of this the Queen's speech 2015 announced the Government's intention to remove onshore wind farms (of over 50MW in size) from the nationally significant infrastructure project development consent regime, as established by the Planning Act 2008. Under the Planning Act 2008 regime the Secretary of State for Energy and Climate change is the final decision maker on whether to grant development consent to wind farms of this size. These onshore wind developments would instead require planning permission granted by the relevant local planning authority.

Once this change is made applications for wind farms over 50MW will have to follow the same procedures and policies as exists for smaller wind farm development. Planning policy introduced by the Government in June 2015 states that when determining planning applications for wind energy development involving one or more wind turbine, local planning authorities should only grant planning permission if:

- the development site is in an area identified as suitable for wind energy development in a Local or Neighbourhood Plan, and:
- that following consultation, it can be demonstrated that the planning impacts identified by affected local communities have been fully addressed and therefore the proposal has their backing.[2]

There was some concern from the renewables industry when this policy was introduced that it would create uncertainty for developers of wind farms submitting planning applications, in particular about how the community backing test would be interpreted. A number of applications were withdrawn following it introduction.[3] A number of renewables developers are now reported to be working with local authorities to identify suitable sites.[4]

At committee stage in the House of Lords concerns were raised by Labour and Liberal Democrat Members about what would happen to planning applications for onshore wind farms where there was not yet a neighbourhood plan in place. The Minister, Lord Bourne, said that there were a "transitional arrangement" for when a valid planning application for a wind energy development has already been submitted to a local planning authority and the development plan does not identify suitable sites and that:

> In such instances, local planning authorities can find the proposal acceptable if, following consultation, they are satisfied that it has

2 House of Commons: Written Statement (HCWS42), 18 June 2015
3 "How a wind energy policy shift is affecting local plans and applications" *Planning*, 4 September 2015
4 Ibid

addressed the planning impacts identified by local communities and therefore has their backing.[5]

The Bill

Clause 79 of Energy Bill 2015-16 (Bill 92) removes the obligation to get consent from the Secretary of State, under section 36 of the Electricity Act 1989, to construct, extend or operate an onshore wind farm in England or Wales. When combined with later secondary legislation to amend the Planning Act 2008, this will mean that the developer of onshore wind greater than 50MW will need to apply for planning permission under the Town and Country Planning Act 1990 (TCPA 1990), generally to the local planning authority (subject to any changes made to the general planning regime in Wales by the Welsh Ministers, for a project in Wales).[6]

The Government has clarified that it expects that applications which have already been made under section 36 of the Electricity Act 1989 but not yet decided when clause 79 comes into force, will continue to be considered under that Act (i.e. with the Secretary of State for Energy and Climate Change taking the decision).[7] The impact assessment highlights that there are three onshore wind farms of over 50MW at a pre-application stage in England and Wales which would be affected by the change in the Bill and so would be considered by the relevant local authority.[8]

The Bill has completed its stages in the House of Lords and is now in the House of Commons.

5 HL Deb 14 Sep 2015 c1668
6 Energy Bill [HL] Bill 92 2015-16 Explanatory Notes, para 176
7 Energy Bill [HL] Bill 92 2015-16 Explanatory Notes, para 177
8 Department of Energy and Climate Change, Energy Bill Impact Assessment: Transfer of consenting powers for onshore wind generating stations to local authorities, July 2015, p2

3. Planning reform in the Housing and Planning Bill 2015-16

On publication of the *Housing and Planning Bill* the Government said it would kick-start a "national crusade to get 1 million homes built by 2020" and transform "generation rent into generation buy." The supply-side measures in the Bill are primarily focused on speeding up the planning system with the aim of delivering more housing. There is also a clear focus on home ownership, with measures to facilitate the building of Starter Homes and self/custom build housing.

The Bill was presented on 13 October 2015 and had its Second Reading on 2 November 2015. It is now progressing through the House of Lords having completed its stages in the House of Commons. Progress of the Bill and transcripts of the debates is available on the Housing and Planning Bill 2015-16 page of the Parliament website.

The planning provisions of the Bill are outlined in the sections below, and are explored in more detail in the Library briefing paper, Housing and Planning Bill and Housing and Planning Bill: Report on Committee Stage.

On 18 February 2016 the Government published an Implementation of planning changes: technical consultation. Further information about some of the proposals from this consultation are set out in the sections below. The consultation closes on 15 April 2016.

3.1 Starter homes

The Bill puts into legislation the Government's commitment to provide a number of Starter Homes, sold at a discount, for first-time buyers under the age of 40. Starter Homes would be sold at a discount of at least 20% of the market value. Specifically, the Bill puts a general duty on all planning authorities to promote the supply of Starter Homes, and provides a specific duty, which will be determined in later regulations, to require a certain number or proportion of Starter Homes on site.

3.2 Self-build and custom housebuilding

The Bill adds to and amends the Self-build and Custom Housebuilding Act 2015, which requires local authorities to keep a register of people seeking to acquire land to build or commission their own home. The Bill specifically requires local authorities to grant "sufficient suitable development permission" of serviced plots of land to meet the demand based on this register. Draft Planning Practice Guidance on Self-build and Custom Housebuilding was published by the Government in February 2016.

In its February 2016 Implementation of planning changes: technical consultation the Government proposes that for the small sites register, small sites should be between one and four plots in size and that sites should just be entered on the small sites register when a local authority is aware of them without any need for a suitability assessment.

3.3 Neighbourhood planning

The Bill introduces measures which are designed to speed-up and simplify the neighbourhood planning system. It gives the Secretary of State powers to set certain time limits for parts of the process of making a neighbourhood development plan or order. It also allows the Secretary of State to intervene in the process if local authorities are not using their neighbourhood planning powers within these prescribed limits. Further information about these limits is now set out in the Government's Implementation of planning changes: technical consultation. The Bill allows the Secretary of State to intervene if a LPA is failing or omitting to do anything it is necessary for them to do in connection with the preparation, revision or adoption of a local plan. Again further information on when the Secretary of State will be able to intervene is set out in the consultation.

3.4 Local plans

With the aim of encouraging more local authorities to have a local plan in place, the Bill gives the Secretary of State greater powers to intervene in the local plan making process. Specifically it would allow the Secretary of State to intervene if a local authority was failing or omitting to do anything it is necessary for them to do in connection with the preparation, revision or adoption of a local plan.

The Government's Implementation of planning changes: technical consultation proposes to prioritise Government intervention where:

- there is under delivery of housing in areas of high housing pressure;
- the least progress in plan-making has been made;
- plans have not been kept up-to-date;
- intervention will have the greatest impact in accelerating local plan production.[9]

3.5 Planning in Greater London

The Bill gives the Mayor of London greater powers to call-in certain types of planning application for his own determination. The explanatory notes envisage that this power would give the Mayor of London greater control over protection of wharves and sightlines.

3.6 Planning permission in principle and local registers of land

With a view to enabling more housing to be built on brownfield land the Bill introduces a new duty for local authorities to keep a register of brownfield land within its area. This would then tie in with a new system of allowing the Secretary of State to grant "planning permission in principle" for housing on sites identified in these registers. Planning permission in principle would then have to be combined with a new

[9] HM Government, Implementation of planning changes: technical consultation 18 February 2016, p41-42

"technical details consent" granted by the local authority before development could go ahead.

In its February 2016 Implementation of planning changes: technical consultation the Government proposes that there should be three "qualifying documents" that would be capable of granting permission in principle. These are: future local plans; future neighbourhood plans; and brownfield registers. Permission in principle granted from these documents would last for five years. It is also proposed that applicants for minor development should be able to apply for permission in principle on application. The consultation proposes that the "in principle matters" should relate to the location, the uses and the amount of development on a particular site.

In relation to the registers of brownfield land, the consultation proposes that a "key component" of the evidence base for this work would be the local authority's Strategic Housing Land Availability Assessment process. The definition of brownfield land would be that land which meets the definition of "previously developed land" as defined in Annex 2 of the NPPF. Sites would also be assessed against specific criteria that will be set out in regulations to ensure that they are suitable for housing. The Government expects the register to be updated on an annual basis. The consultation restates the Government's aim to ensure that 90% of suitable brownfield sites have planning permission for housing by 2020. It also makes clear the Government's intention to introduce measures to ensure that progress is made against this target by local authorities. Specifically it proposes that local planning authorities that had failed to make sufficient progress against the brownfield objective would be unable to claim the existence of an up-to-date five year housing land supply when considering applications for brownfield development, and therefore the NPPF's presumption in favour of sustainable development would apply. This means that planning permission should be granted unless "any adverse impacts of doing so would significantly and demonstrably outweigh the benefits […] or specific policies in this Framework indicate development should be restricted."[10]

3.7 Permitted development rights

The Bill would allow a prior approval process to be introduced for building operation permitted development rights and other development orders. The idea is to allow local authorities greater scope to take into account local conditions and sensitivities before these rights can be used.

3.8 Designation for poor performance

The *Growth and Infrastructure Act 2013* provided for applicants for major development to apply direct to the Secretary of State (in practice a Planning Inspector), rather than the local planning authority, where the LPA has been officially "designated", by the Secretary of State, for

[10] HM Government, National Planning Policy Framework, March 2012, para 14

having a record of very poor performance in the speed or quality of its decisions on *major* development applications. The Bill would extend the ability to designate in relation to *non-major* applications.

The February 2016 Implementation of planning changes: technical consultation proposes the following threshold ranges for designation in relation to non-major applications:

- speed of decisions: where authorities fail to determine at least 60-70 per cent of applications for non-major development on time, over the two year assessment period, they would be at risk of designation
- quality of decisions: where authorities have had more than 10-20 per cent of their decisions on applications for non-major development overturned at appeal, they would be at risk of designation.[11]

The earliest that the first designations would be made would be the final calendar quarter of 2016.

3.9 Financial benefits

The Bill would require local authorities to produce a report of the financial benefits associated with accepting the planning application. This could, for example cover financial benefits such as income from the community infrastructure levy, and grants or other financial assistance from Government, such as the New Homes Bonus.

3.10 Nationally significant infrastructure projects and housing

At present a development consent order (DCO) for a nationally significant infrastructure project (NSIP) cannot grant consent for housing. The Bill would change this so that the DCO could grant consent for housing which is linked to an application for an NSIP, for example, for housing provided for workers during the construction or operation phase of a NSIP. The Bill also allows for consent to be granted for housing where there is no functional link, but where there is a close geographical link between the housing and the NSIP.

3.11 Urban development corporations

The Bill makes permanent some temporary changes that exist already relating to the establishment of urban development corporations (UDCs). It sets out the consultation requirements needed before an UDC can be established and provides for the order creating the UDC to be subject to the negative resolution procedure (instead of the affirmative resolution procedure).

3.12 Compulsory purchase reform

This part of the Bill implements many of the changes proposed in the Government's Technical consultation on improvements to compulsory

[11] HM Government, Implementation of planning changes: technical consultation 18 February 2016, p46

purchase processes: including: giving a// acquiring authorities the same powers of entry for survey purposes prior to a compulsory purchase order being made; to introduce a standard warrant provision in relation to the proposed new common power of entry for survey; and to introduce a standard notice period of 14 days for entry for survey purposes; developing targets and clearer timetables for the confirmation stage of the compulsory purchase order process; allowing the Secretary of State to delegate decisions to a planning inspector in certain circumstances; and making changes to the process of taking possession of the land and on the timing of the acquisition process. This part of the Bill would extend to both England and Wales. Further information about what the Government intends to do is also set out in the October 2015 Compulsory purchase process: government response to consultation.

3.13 Pilot schemes for competition in processing planning applications

A new clause 43 tabled by the Government at the Report Stage of the *Housing and Bill 2015-16* on 5 January 2016 would give the Secretary of State the power, by regulations, to introduce pilot schemes for competition in the processing (but not the determining) of applications for planning permission.[12]

The February 2016 Implementation of planning changes: technical consultation asks for views on who should be able to compete for the processing of planning applications, which applications could they compete for and on how fee setting in competition test areas should operate.

3.14 Section 106 planning obligations

Section 106 planning obligations can be sought by local authorities to help mitigate adverse impacts of development to make it acceptable in planning terms. At Report Stage of the Bill on 5 January 2016 the Government tabled new clauses 30 and 31. New Clause 30 provides for a dispute resolution process to speed up section 106 negotiations. The Housing and Planning Minister Brandon Lewis explained this new provision as follows:

> New clause 30 and new schedule 4 set out a dispute resolution process to speed up section 106 negotiations in order to help housing starts to proceed more quickly. They provide for a person to be appointed to help resolve outstanding issues in relation to section 106 planning obligations. The new process will also apply only in situations where the local planning authority would be likely to grant planning permission if satisfactory planning obligations were entered into, ensuring that we only target sites where prolonged negotiations could stall development.
>
> After the appointed person issues their report on that mechanism, the parties will still be free to agree their own terms if they do not agree with the report, but only if they do so quickly. We want to encourage the parties to tie up their loose ends quickly. We are

[12] HC Deb 5 Jan 2016 c218-219

> consulting on the finer detail of the process and we will bring forward regulations in due course.[13]

Chapter 10 of the February 2016 Implementation of planning changes: technical consultation gives further information about how the proposed dispute resolution mechanism would work.

New Clause 31 would provide the Secretary of State with powers to restrict the enforcement of planning obligations in relation to affordable housing in certain situations. Brandon Lewis said that Government would later consult on how to use this power, which would be introduced through regulations.[14]

13 HC Deb 5 January 2016 c216-7
14 HC Deb 5 January 2016 c217

4. Forthcoming changes not in the Bills

The following section sets out the planning reform proposals which have been announced by Government, but which do not have provision in either the Energy Bill 2015-16 or the Housing and Planning Bill 2015-16.

4.1 Nationally Significant Infrastructure Projects: related consents

Nationally Significant Infrastructure Projects (NSIPs) are usually large scale developments (relating to energy, transport, water, waste water or waste) which require a type of consent known as a "development consent order (DOC)" under procedures governed by the *Planning Act 2008* (the 2008 Act) and amended by the *Localism Act 2011*.

Any developer wishing to construct a NSIP must first apply for consent to do so. For such projects, the Planning Inspectorate examines the application and will make a recommendation to the relevant Secretary of State, who will make the decision on whether to grant or to refuse development consent. The process is timetabled to take approximately 15 months from start to finish. The 2008 Act sets out thresholds above which certain types of infrastructure development are considered to be nationally significant and require development consent.[15] For more information about this process see Library standard note Planning for Nationally Significant Infrastructure.

The former Government's Technical Consultation on Planning, July 2014 in respect of NSIPs proposed giving developers the option of gaining ten other related consents as part of the DCO (e.g. consents concerning European protected species, water discharge, trade effluent, flood defence, water abstraction and impoundment licences). In the Government's National Infrastructure Plan 2014 it set out how it would proceed with this proposal:

> 15.21 The government is also continuing to make practical improvements to the Nationally Significant Infrastructure Planning regime and will take forward work to:
>
> - bring more non-planning consents into the Development Consent Order regime, starting with three consents covering water discharge and trade effluent during this Parliament; the European Protected Species licence will be brought into the regime early in the new Parliament, once a legislative vehicle is identified, in a way that ensures robust decision making; the government is currently working towards bringing flood defence consents into the environmental permitting framework next year, followed by water abstraction and impoundment licenses as soon as possible after that.

[15] National Infrastructure Planning website, *Planning Inspectorate role* [on 10 April 2013]

The formal response to this part of the Technical Consultation on Planning was published in March 2015. In it the former Government confirmed how it would proceed with bringing related consents into the DCO regime, some of which are due to be done over the course of the 2015-2020 Parliament:

> 37. After careful analysis of the consultation responses, the Government considers that the proposal to streamline is appropriate and three consents concerning discharge for works purposes and trade effluent will be removed from the section 150 list during this Parliament, with European Protected Species Licence to follow early in the next Parliament when a suitable legislative vehicle is identified. The remaining six consents will be streamlined between 2015 and 2017 when taking forward work to consolidate consents within the Environmental Permitting Regulations. This is summarised in Table 2.
>
> 38. The Government is not persuaded by the suggestion that section 150 should be repealed in its entirety. Consents are retained on the section 150 list for safety, security or technical reasons.[16]

4.2 National Infrastructure Commission

A National Infrastructure Commission (NIC) was set up by Government as an independent body on 5 October 2015. Its role, among other things, is to look at the UK's future needs for nationally significant infrastructure projects (NSIPS) over the next 10 to 30 years.[17] These needs will then be articulated into National Infrastructure Assessments (NIAs). In January 2016 HM Treasury published, National Infrastructure Commission: consultation to seek views on how the NIC should operate in advance of legislation being laid to underpin its functions and remit. The consultation sets out what would happen to the NIC's recommendations within its NIAs

> 4.8 The government intends to legislate that it must lay NIAs before Parliament, and to place a duty on HM Treasury to respond on behalf of the government within a specific timeframe. In this response, agreed collectively by ministers, HM Treasury would have to detail how the recommendations will be taken forward or, in areas where the government disagrees with the commission, what other measures it proposes to meet the identified needs or what its alternative assessment is.
>
> 4.9 The recommendations from specific infrastructure studies will be published and made available to Parliament. It will be open to the government to lay these recommendations before Parliament if it feels there is a case for doing so, and the legislation will therefore anticipate a means for the government to do this.
>
> 4.10 Those recommendations accepted by the government would become Endorsed Recommendations. The government's response and the Endorsed Recommendations would be considered to be government policy.[18]

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16 HM Government, *Streamlining the consenting process for nationally significant infrastructure planning: The Government's response to the Summer 2014 Technical Consultation*, March 2015

17 National Infrastructure Commission, *About us* [on 15 February 2016]

18 HM Treasury, National Infrastructure Commission: consultation, 7 January 2016

The consultation also seeks views on how to better reflect infrastructure needs in planning policy. Specifically the consultation proposes that:

- Endorsed Recommendations from the NIC would be added to National Policy Statements (NPSs).
- Endorsed Recommendations from the NIC are likely to be material considerations in both the NSIP and the locally-led planning regime.
- There would be a timetable to review or replace a National Policy Statement when endorsing recommendations.[19]

The consultation closes on 17 March 2016.

4.3 Section 106 contributions

Section 106 contributions, sometimes known as "planning obligations" or "planning gain" stem from agreements made under section 106 of the *Town and Country Planning Act 1990*. They are agreements made between the developer and the LPA to meet concerns about the costs of providing new infrastructure or affordable housing levels.

In the Autumn Statement 2014 and the National Infrastructure Plan 2014 the former Government said that it would take further measures to speed up section 106 negotiations to speed up the end-to-end planning process. Specifically this would include issuing revised guidance, consulting on a faster process for reaching agreement, and considering how timescales for agreement could be introduced, and improving transparency on the use of section 106 funds.[20]

A consultation, Section 106 planning obligations - speeding up negotiations, was published on 20 February 2015. The consultation sought views on proposals on two issues:

- Speeding up the negotiation and completion of Section 106 planning obligations; and
- Whether the requirement to provide affordable housing contributions acts as a barrier to development providing dedicated student accommodation.

The proposals to speed up negotiation of section 106 obligations included:

- setting clear time limits so section 106 negotiations are completed in line with the existing 8 to 13 week target for planning applications to be processed rather than letting them slow the whole planning process down;
- requiring parties to start discussions at the beginning of the planning application process, rather than the current system where negotiations can often start towards the end;
- a dispute resolution process where negotiations stall preventing development;
- using standardised documents to avoid agreements being drafted from scratch for each and every application;

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19 HM Treasury, National Infrastructure Commission: consultation, 7 January 2016, section 7

20 HM Government, National Infrastructure Plan 2014, December 2014, para 15.23

- potential legislation in the next Parliament to give new measures teeth.[21]

The former Government responded to the consultation on 25 March 2015 and confirmed that it would make changes to the National Planning Practice Guidance, to promote the use of standard clause and promote greater use of pre-application engagement by all parties. This has now been done. The response also said that it would "undertake further discussions with relevant parties to further support dedicated student accommodation". It said that responses indicated that the Government should also consider further a basis for strengthening the legislative framework for resolving delays in negotiating Section 106 agreements.[22]

In the HM Treasury's July 2015 Productivity Plan, Fixing the foundations: Creating a more prosperous nation, the Government announced its intention to introduce a dispute resolution mechanism for section 106 agreements, in order to "speed up negotiations and allow housing starts to proceed more quickly."[23] Provision for this has now been added to the *Housing and Planning Bill 2015-2016*: see section 3.14 above.

In the November 2015 Autumn Statement the Government said it will bring forward proposals for a more standardised approach to section 106 viability assessments, and extend the ability to appeal against unviable section 106 agreements to 2018.[24]

Application to developers of ten homes or fewer

In November 2014 the Government amended its planning practice guidance to exempt developments of ten homes or fewer from being required to make section 106 contributions which related to affordable housing provision. The idea was to reduce costs for builders of smaller sized housing developments. Several councils however were upset about the loss of income that this policy change caused, so took the Government to court and were successful in their challenge. The Government then withdrew its policy exempting housing developments of few than ten homes from section 106 agreements in July 2015. The Government has been granted leave to appeal this judgement and so there may be further policy changes in this area following the outcome of this appeal when it is known. According to the specialist publication, Planning, the case is scheduled to go before the Court of Appeal in March 2016.

In the Housing and Planning Bill 2015-16 a new clause was added at Report Stage to provide the Secretary of State with powers to restrict the enforcement of planning obligations in relation to affordable housing in certain situations. Housing and Planning Minister Brandon

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21 Gov.uk press release, *New measures will speed up housebuilding*, 23 February 2015

22 HM Government, Section 106 Planning obligations – speeding up negotiations Student accommodation and affordable housing contributions: Government Response to consultation, March 2015, p13

23 HM Treasury, Fixing the foundations: Creating a more prosperous nation, July 2015, para 9.17

24 HM Government, *Spending review and autumn statement 2015*, 27 November 2015, section 12

Lewis said that Government would later consult on how to use this power, which would be introduced through regulations.[25]

Full information about the Government's attempt to change the policy and the court case is provided in section 3 of the Library briefing paper, *Planning Obligations (Section 106 Agreements)*.

4.4 Local and neighbourhood plans

There are some measures on speeding up local and neighbourhood plan that are now part of the *Housing and Planning Bill 2015-16*, (see section 3 above). Prior to this on 15 September 2015 the Government announced that it had set up an "expert panel" to consider how to simplify the local plan making process. This panel will be chaired by Chair John Rhodes, from Quod (Planning Consultants). Further information about the panel and its members is set out in the press release, Launch of new group of experts to help streamline the local plan-making process, 15 September 2015.

On 20 November 2015 the Government published Neighbourhood Planning & Local Planning Service Redesign & Capacity Building: Pilot Programme for Local Authorities. This announced that a pot of £600,000 resource grant funding is being made available in the 2015 to 2016 financial year to be awarded to a series of pilot authorities to help them:

- better support neighbourhood planning by piloting ways of making neighbourhood planning an integral part of their planning service, for example in relation to Local Plan-making, or
- to identify ways of involving or delegating planning decisions to neighbourhood planning groups, or
- to make changes to their service to ensure that they have an up-to-date Local Plan in place by 2017[26]

The deadline for applications has now passed.

In the November 2015 Autumn Statement the Government said that it will bring forward proposals for a "delivery test" on local authorities, to ensure delivery against the homes set out in local plans within a reasonable timeframe.[27] The Autumn Statement also said that Government will ensure that local communities can allocate land for housing through neighbourhood plans, even if that land is not allocated in the local plan.[28]

4.5 Duty to cooperate

The *Localism Act 2011* also introduced a legal "duty to co-operate" on local planning authorities in preparing plans that relate to "strategic

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25 HC Deb 5 January 2016 c217
26 HM Government, Neighbourhood planning and local planning: service redesign and capacity building [downloaded on 24 November 2015]
27 HM Government, Spending review and autumn statement 2015, 27 November 2015, section 12
28 Ibid

matters" (including housing) that would have a significant impact on at least two planning areas. The different relevant bodies from these different areas are expected to demonstrate how they have worked together.

In the HM Treasury's July 2015 Productivity Plan, Fixing the foundations: Creating a more prosperous nation the Government said that it would "strengthen guidance to improve the operation of the duty to cooperate on key housing and planning issues, to ensure that housing and infrastructure needs are identified and planned for."[29]

4.6 Housing on commuter hubs and commercial land

In the HM Treasury's July 2015 Productivity Plan, Fixing the foundations: Creating a more prosperous nation the Government said that it will "will consider how policy can support higher density housing around key commuter hubs. The government will also consider how national policy and guidance can ensure that unneeded commercial land can be released for housing."[30]

In its December 2015 Consultation on proposed changes to national planning policy the Government proposed to expect local planning authorities, in both plan-making and in taking planning decisions, "to require higher density development around commuter hubs wherever feasible." The consolation sets out that Government does not envisage introducing a minimum density requirement in national policy. This would be decided locally to be aimed at local needs.

A commuter hub would be defined as follows:

> a) a public transport interchange (rail, tube or tram) where people can board or alight to continue their journey by other public transport (including buses), walking or cycling; and
>
> b) a place that has, or could have in the future, a frequent service to that stop. We envisage defining a frequent service as running at least every 15 minutes during normal commuting hours.[31]

The consultation closes on 22 February 2016.

4.7 Mobile connectivity

In July 2015 the Government published a Review of How the Planning System in England Can Support the Delivery of Mobile Connectivity. This consultation document calls for views on the effectiveness of the existing system of permitted development rights for telecommunications infrastructure, whether this should be streamlined and seeks views on whether it should be changed to include taller masts. A response to this consultation has not yet been published.

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29 HM Treasury, Fixing the foundations: Creating a more prosperous nation, July 2015, para 9.11

30 HM Treasury, Fixing the foundations: Creating a more prosperous nation, July 2015, para 9.12

31 HM Government, Consultation on proposed changes to national planning policy December 2015

4.8 Permitted development rights

Shale gas and oil

A March 2015 Consultation, Amendment to permitted development rights for drilling boreholes for groundwater monitoring for petroleum exploration: technical consultation, proposed to grant permitted development rights for the drilling of boreholes for groundwater monitoring for petroleum exploration (including for shale gas exploration), enabling limited works to be carried out to establish baseline information on the groundwater environment. The *Infrastructure Act 2015* requires that, as one of a number of conditions that need to be met before certain high volume hydraulic fracturing can occur, methane in groundwater is monitored over a twelve months period. The change to permitted developments is being made so that this condition can be met more easily. The proposals include increasing the structure height of the rig that can be used for drilling.

The Government responded to this consultation in August 2015.[32] It confirmed that it will amend legislation so that development which consists of the drilling of boreholes for groundwater monitoring for petroleum exploration can take place as permitted development. It also confirmed that the structure height of rigs that can be used will be increased from 12 to 15 metres.

The Government's response also contained an invitation for further changes to permitted development rights in this area. The proposed change is for further rights to enable, as permitted development, the drilling of boreholes for seismic investigation and to locate and appraise shallow mine workings. The Government's view is that this would "speed up the delivery of essential monitoring information for safety and environmental protection and free local resources for where the express attention of the local planning authority is required."[33]

A response to the consultation on further amendments was published in December 2015, Further amendments to permitted development rights for petroleum exploration site investigation and monitoring: Government response to the consultation. The Government set out that permitted development rights would be amended as follows:

> 41. In summary, the amendments are to enable the drilling of boreholes for monitoring and investigative purposes in respect of petroleum exploration to be carried out as permitted development for the purposes of:
>
> - groundwater monitoring – with the duration of the longer term right extended from 6 to 24 months for the longer use of land
> - seismic investigation and monitoring;
> - location and appraisal of mine workings.

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32 Amendment to permitted development rights for drilling boreholes for groundwater monitoring for petroleum exploration Government response to the consultation and Invitation for views on further amendments to permitted development rights for petroleum exploration site investigation and monitoring, 13 August 2015

33 Shale gas and oil policy statement by DECC and DCLG, 13 August 2015

> 42. In all cases the permitted development rights will apply to both the temporary use of land (no more than 28 days) and the longer use of land (no more than 6 months – except in the case of groundwater monitoring, where the period will be extended to 24 months). Relevant existing conditions and restrictions attached to the current permitted development rights for mineral exploration will apply, together with those previously announced in August.
>
> 43. As proposed in this document, in the case of boreholes drilled for monitoring for petroleum exploration, a requirement will be included for operators to notify the Environment Agency and drinking water supply undertaker of all boreholes; and to notify the Coal Authority of boreholes drilled for the purposes of the location and appraisal of mine workings.
>
> 44. The detailed wording of the amendments to the Town and Country Planning (General Permitted Development) (England) Order 2015 will be set out in a statutory instrument, to be laid before Parliament in 2016.[34]

State-funded schools

In the February 2016 Implementation of planning changes: technical consultation, the Government proposed to:

- Extend from one to two academic years the existing temporary right to use any property within the use classes for a state-funded school;
- Increase from 100 m^2 to 250 m^2 the threshold for extensions to existing school buildings (but not exceeding 25% of the gross floorspace of the original building); and,
- Allow temporary buildings to be erected for up to three years on cleared sites where, had a building not been demolished, the existing permitted development right for permanent change of use of a building to a state funded school would have applied.

The consultation sets out what will need to happen before these permitted development rights can be used:

> Before changing use of a building or land to a state-funded school for a single year, approval must be sought from the relevant Minister to use the site as a school, who must notify the local authority of the approval. When permanently changing use of a building to a state-funded school, prior approval must be sought from the local planning authority as to highways, noise, and contamination impacts.[35]

Upward extensions in London

In the HM Treasury's July 2015 Productivity Plan, Fixing the foundations: Creating a more prosperous nation, the Government confirmed its intention to provide a number of new planning powers for the Mayor of London. This included proposals to remove the need for planning permission for upwards extensions for a limited number of stories up to the height of an adjoining building, where neighbouring residents do

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34 HM Government, Further amendments to permitted development rights for petroleum exploration site investigation and monitoring: Government response to the consultation, 17 December 2015

35 HM Government, Implementation of planning changes: technical consultation February 2016, p61

not object. In cases where objections are received, the application would be considered in the normal way, focussed on the impact on the amenity to neighbours.[36]

On 18 February 2016 the Government published a consultation on Upward extensions in London. In it the Government identified three proposals which could incentivise the use of upwards extensions. These are: a new permitted development right; local development orders; and new London Plan policies. These would not be mutually exclusive proposals and Government has indicated they could work together.

On the permitted development right, the consultation proposed:

> 2.8 In order to ensure that this new right delivers much-needed new homes, we propose that the right should be conditional on the additional space being used to provide self-contained additional housing units. It could help to deliver new housing opportunities in the capital, increasing density and using brownfield land and existing buildings
>
> 2.9 We are proposing a new permitted development right in London to allow additional storeys to be built on an existing building, up to the height of an adjoining roofline. We propose that the new right could provide for up to two additional storeys to be added to an existing building, where the roofline of the adjoining premises is a minimum of two storeys taller (see paragraph 3.6 - 3.8 below). A single storey could be added where the roofline of the adjoining premises is one storey taller. This will help to manage the impact of the development on the area.
>
> 2.10 We are proposing that a permitted development right could apply where the development would be above a range of uses, such as existing residential use, both flats and houses, retail and other high street uses, and offices.
>
> 2.11 We are proposing that a permitted development right could provide for a neighbour consultation scheme, similar to that introduced in May 2013 for the permitted development right for larger single storey rear extensions to dwelling houses. This could provide an opportunity for neighbours to comment on the development proposals, including on the impact on the amenity of their property. Amenity is a long-established concept in planning, and may include matters such as light, privacy and overlooking. Only where neighbours raise objections would the local planning authority have to consider the impact of the proposed development on their amenity.
>
> 2.12 Prior approval could also allow for consideration of other impacts of a permitted development at a local level. As well as the standard matters associated with permitted development rights for change of use to residential use, it may include matters such as space standards to ensure the quality of the development, and method and hours of construction.

The Government suggested that the new permitted development right would not apply in the following areas:

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[36] HM Treasury, Fixing the foundations: Creating a more prosperous nation, July 2015, paras 9.20 and 9.21

- listed buildings, land within the curtilage and the setting of listed buildings
- scheduled monuments and land within the curtilage
- Sites of Special Scientific Interest
- safety hazard areas
- military explosives storage areas
- World Heritage Sites and their settings

In relation to local development orders for additional storeys in specific areas the consultation proposed that London boroughs could use existing powers to bring forward local development orders which would grant planning permission for upward extensions in specific areas.

In relation to support in the London Plan for upward extensions the consultation proposed that the Mayor of London could bring forward new planning policies to support additional storeys for new dwellings when reviewing the London Plan. "This could be linked to existing policies for areas of intensification, including town centres, already set out in the London Plan."[37]

The consultation closes on 15 April 2016.

4.9 Rural areas

In the Government's August 2015 rural productivity plan, Towards a one nation economy: A 10-point plan for boosting productivity in rural areas, as well as some changes which are now part of the Housing and Planning Bill 2015-16, the Government also announced that it would:

- Review the planning and regulatory constraints facing rural businesses and measures that can be taken to address them, including how improved permitted development rights in rural areas can support new homes, jobs and innovation. The government will publish a Call for Evidence in the autumn with decisions to be made by 2016. (…) and
- Review the current threshold for agricultural buildings to convert to residential buildings.

On 11 February 2016 the Government published a Rural planning review: call for evidence. The review asks for views about the following areas:

> We would be interested in hearing about experiences of the planning system in rural areas, both from those who have applied for planning permission and those who make use of permitted development rights. We are also interested in how the permitted development rights in Part 6 of the Town and Country Planning (General Permitted Development) (England) Order 2015 are being used. We would also like to hear about experiences of the planning system in developing farm shops, polytunnels and on-farm reservoirs.

And:

[37] HM Government, Upward extensions in London, 18 February 2016, para 2.19

> 25. We are seeking evidence on the effectiveness of the current planning system for businesses in the rural context and asking what improvements could be made to the planning system to support rural businesses to flourish.
>
> 26. We want to hear from anyone involved, either directly or indirectly, in development in rural areas. In particular, we are interested in hearing from rural businesses about their experiences of:
>
> - the planning application process
> - using permitted development rights, such as agricultural, business extensions and change of use.
>
> 27. We are also reviewing the current thresholds for agricultural buildings to convert to residential buildings and would like to hear views on how these could better support the delivery of new homes.
>
> 28. We would welcome evidence of where the planning system is working well and where it could be improved. Where issues are identified by organisations, respondents should indicate whether these are one-off cases or whether they are widespread problems. We are particularly interested in hearing about issues which specifically relate to planning in the rural context and which would not be of concern to users of the planning system in urban areas, such as development which has a different impact in a rural setting.[38]

4.10 Office to residential change of use

The *Town and Country Planning (Use Classes) Order 1987* puts uses of land and buildings into various categories known as "Use Classes". The categories give an indication of the types of use which may fall within each use class. It is only a general guide and it is for local planning authorities to determine, in the first instance, depending on the individual circumstances of each case, which class a particular use falls into. Permitted development rights allow for change of use between certain classes without the need for full planning permission.

The former Government's Technical Consultation on Planning, which closed on 29 September 2014, proposed putting the current temporary change of use permitted development right, which allows change of use from office to residential (subject to certain restrictions), on a more permanent basis. The current Government announced in a press release, *Thousands more homes to be developed in planning shake up*, 13 October 2015, that this temporary permitted development right would be made permanent. It made clear that in future the permitted development right would allow the demolition of office buildings and new building for residential use. In addition, new permitted development rights will enable the change of use of light industrial buildings and launderettes to new homes. Regulations to bring this change into force have not yet been made.

For more information about the background to this temporary right see Library Standard Note Planning: Change of Use System, SN/SC/01301.

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[38] HM Government, Rural planning review: call for evidence, 11 February 2016

4.11 Community Infrastructure Levy

In November 2015 the Government announced that Liz Peace, former chief executive at British Property Federation, would chair an independent group to conduct a review of the Community Infrastructure Levy (CIL). The purpose of this group is to assess the extent to which CIL does or can provide an effective mechanism for funding infrastructure, and to recommend changes that would improve its operation in support of the Government's wider housing and growth objectives.[39] The group has been asked to specifically take into account the Government's pre-election manifesto commitment that "when new homes are granted planning permission, we will make sure local communities know up-front that necessary infrastructure such as schools and roads will be provided". The group is expected to also cover the following issues:

- an assessment of whether CIL is meeting its objectives and any recommendations for future change;
- an assessment of the relationship between CIL and Section 106, and how this is working in practice;
- an analysis of the operation of the CIL system and specific recommendations of how it could be improved;
- an assessment of how CIL is deployed by local authorities both to deliver infrastructure and to support community engagement.[40]

On 19 November 2015 the Government published a Community Infrastructure Levy Review: Questionnaire, which asks for written submissions to inform the work of the review group. It sets out the review's timetable as follows:

- Written responses to the Questionnaire (November 2015 to 15 January 2016)
- Oral evidence sessions and meetings (January and February 2016)
- Preparation of report to Ministers (March and April 2016).

4.12 Planning conditions

In the November 2015 Autumn Statement the Government said it will review the operation of the deemed discharge of planning conditions.[41] Deemed discharge of planning conditions was a measure introduced by the Infrastructure Act 2015 where if a local planning authority had failed to approve an application to discharge a planning condition on time, it would be treated as approved.

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39 HM Government, Review of the Community Infrastructure Levy: Terms of Reference, November 2015

40 Ibid

41 HM Government, Spending review and autumn statement 2015, 27 November 2015, section 12

4.13 Release of land for starter homes

The *Housing and Planning Bill 2015-16* (see section 3 above) makes provision for the development of starter homes, setting out what they are and a local authorities' duties in respect of them. In addition to this, in the November 2015 Autumn Statement the Government said that it will amend planning policy:

> to ensure the release of unused and previously undeveloped commercial, retail and industrial land for Starter Homes, and support regeneration of previously developed, brownfield sites in the greenbelt, by allowing them to be developed in the same way as brownfield sites elsewhere, providing it delivers Starter Homes.[42]

This will apparently be subject to local consultation, such as through neighbourhood plans.

In its December 2015 Consultation on proposed changes to national planning policy the Government sought views on changing planning policy to make clear that unviable or underused employment land should be released unless there is significant and compelling evidence to justify why such land should be retained for employment use. It also asked whether this should be extended to include unviable or underused retail, leisure and non-residential institutional brownfield land.

The consultation also proposed to amend national planning policy so that neighbourhood plans could allocate "appropriate small-scale sites" in the Green Belt specifically for starter homes, with neighbourhood areas having the discretion to determine the scope of a small-scale site.[43]

The consultation also proposed to change policy to support the regeneration of previously developed brownfield sites in the Green Belt by allowing them to be developed in the same way as other brownfield land, providing this contributes to the delivery of starter homes, and subject to local consultation. The Government would:

> …amend the current policy test in paragraph 89 of the National Planning Policy Framework that prevents development of brownfield land where there is any additional impact on the openness of the Green Belt to give more flexibility and enable suitable, sensitively designed redevelopment to come forward. We would make it clear that development on such land may be considered not inappropriate development where any harm to openness is not substantial.[44]

The consultation estimated that based on data from the 2010 National Land Use Database, across England there were 500 to 600 hectares of brownfield land in the Green Belt viable for starter homes development and not on open land.

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42 HM Government, Spending review and autumn statement 2015, 27 November 2015, section 12

43 HM Government, Consultation on proposed changes to national planning policy, December 2015, p19-20

44 HM Government, Consultation on proposed changes to national planning policy, December 2015, p20

The consultation closes on 22 February 2016.

4.14 Affordable housing: change of definition

In its December 2015 Consultation on proposed changes to national planning policy the Government proposed to amend the definition of "affordable housing" in the National Planning Policy Framework (NPPF). The current definition reads as follows:

> **Affordable housing:** Social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market. Eligibility is determined with regard to local incomes and local house prices. Affordable housing should include provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision.
>
> Social rented housing is owned by local authorities and private registered providers (as defined in section 80 of the Housing and Regeneration Act 2008), for which guideline target rents are determined through the national rent regime. It may also be owned by other persons and provided under equivalent rental arrangements to the above, as agreed with the local authority or with the Homes and Communities Agency.
>
> Affordable rented housing is let by local authorities or private registered providers of social housing to households who are eligible for social rented housing.
>
> Affordable Rent is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable).
>
> Intermediate housing is homes for sale and rent provided at a cost above social rent, but below market levels subject to the criteria in the Affordable Housing definition above. These can include shared equity (shared ownership and equity loans), other low cost homes for sale and intermediate rent, but not affordable rented housing.
>
> Homes that do not meet the above definition of affordable housing, such as "low cost market" housing, may not be considered as affordable housing for planning purposes.

The proposed amendment is intended to broaden the range of housing types which come under the definition, as follows:

> 9. We propose to amend the national planning policy definition of affordable housing so that it encompasses a fuller range of products that can support people to access home ownership. We propose that the definition will continue to include a range of affordable products for rent and for ownership for households whose needs are not met by the market, but without being unnecessarily constrained by the parameters of products that have been used in the past which risk stifling innovation. This would include products that are analogous to low cost market housing or intermediate rent, such as discount market sales or innovative rent to buy housing. Some of these products may not be subject to 'in perpetuity' restrictions or have recycled subsidy. We also propose to make clearer in policy the requirement to plan for the housing needs of those who aspire to home ownership alongside

those whose needs are best met through rented homes, subject as now to the overall viability of individual sites.

10. By adopting the approach proposed, we are broadening the range of housing types that are taken into account by local authorities in addressing local housing needs to increase affordable home ownership opportunities. This includes allowing local planning authorities to secure starter homes as part of their negotiations on sites.[45]

4.15 Change to national planning policy for land for homes

In its December 2015 Consultation on proposed changes to national planning policy the Government proposed several changes to the National Planning Policy Framework with the aim of making it easier to build certain housing in certain circumstances. These proposals included:

- Strengthening national planning policy to provide a more supportive approach for new settlements;
- To make clearer in national policy that "substantial weight" should be given to the benefits of using brownfield land for housing (in effect, a form of 'presumption' in favour of brownfield land). The Government intends to make it clear that development proposals for housing on brownfield sites should be supported, unless overriding conflicts with the Local Plan or the National Planning Policy Framework can be demonstrated and cannot be mitigated.
- To make clear that proposals for development on small sites (fewer than 10 units) immediately adjacent to settlement boundaries should be carefully considered and supported if they are sustainable.
- To amend national planning policy to ensure action is taken where there is a "significant shortfall" between the homes provided for in Local Plans and the houses being built. The proposal is to introduce a "housing delivery test." This would work by comparing the number of homes that local planning authorities set out to deliver in their Local Plan against the net additions in housing supply in a local planning authority area over a two-year period.

The consultation closes on 22 February 2016.

4.16 Cutting red tape review

In December 2015 the Government launched a Cutting Red Tape Review with the aim of examining the way that laws are enforced which relate to house building. The focus of this review is on:

- roads and infrastructure rules for new housing developments
- environmental requirements, particularly EU rules such as the Habitats Directive and wider EU environmental permit requirements

[45] HM Government Consultation on proposed changes to national planning policy December 2015

- rules that affect utilities (such as electricity, gas and water – as well as broadband infrastructure).[46]

The deadline for responding to the review has now passed.

4.17 Self build and custom housebuilding

The *Self-build and Custom Housebuilding Act 2015* along with the *Self-build and Custom Housebuilding (Register) Regulations 2016* (SI 2016/105) require local authorities to keep a register of people seeking to acquire land to build or commission their own home. From 1 April 2016 the provisions in this legislation come into force and local authorities will be required to keep a register and to have regard to it. In view of these forthcoming obligations the Government has published Draft Planning Practice Guidance on Self-build and Custom Housebuilding, February 2016.

Once in force, the Housing and Planning Bill 2015-16 will add to and amends these duties. For further information about these changes see Library briefing paper, Housing and Planning Bill and Housing and Planning Bill: Report on Committee Stage.

4.18 Power to increase planning fees

In a statement on 8 February 2016 on the Local Government Finance Settlement, Secretary of State for Communities and Local Government said that the department would "consult on allowing well-performing planning departments the possibility to increase their fees in line with inflation at the most, provided that the revenue reduces the cross-subsidy the planning function currently gets from other council tax payers."[47]

4.19 Incentive to put in place a local plan

In the Government's December 2015 New Homes Bonus: Sharpening the Incentive: Technical Consultation three options were out forward to limit the circumstances in when the New Homes Bonus would be paid. The aim of this is to "incentivise the impact of the Bonus".[48] The options on which views are sought were: withholding the Bonus from areas where an authority does not have a Local Plan in place; abating the Bonus in circumstances where planning permission for a new development has only been granted on appeal; and adjusting the Bonus to reflect estimates of deadweight (i.e. relating to whether or not the homes would have been built without financial incentive).

Specifically it was proposed that the New Homes Bonus allocations could be withheld from areas where no Local Plan has been produced in accordance with the *Planning and Compulsory Purchase Act 2004*:

> 3.14. The Government's preferred option is that from 2017-18 onwards, local authorities who have not submitted a Local Plan

46 HM Government, Cutting Red Tape review will give construction industry the foundations to get Britain building, 2 December 2015
47 HC Deb 8 Feb 2016 c1335
48 HM Government, New Homes Bonus: Sharpening the Incentive: Technical Consultation, 17 December 2015, p11

> prepared under the 2004 Act should not receive new New Homes Bonus allocations for the years for which that remains the case. Their legacy payments relating to allocations in previous years would be unaffected. An alternative would be for local authorities to receive a set percentage (50%) of the Bonus allocation where they have published a Local Plan but not yet submitted it to the Secretary of State for examination. This approach would recognise progress against the different stages in the plan-making process.[49]

The consultation closes on 10 March 2015.

4.20 Statutory consultees

In certain circumstances, consultation must take place between a local planning authority and certain organisations (known as statutory consultees), prior to a decision being made on a planning application. Statutory consultees must respond within 21 days or they can request an extension of time. Further information about the role of statutory consultees and who they are is set out in the Government's online Planning Practice Guidance.

The Government's February 2016 Implementation of planning changes: technical consultation, set out concern about the extension of time requests delaying the planning process. It asks for views on the "benefits and risks of setting a maximum period that a statutory consultee can request when seeking an extension of time." It states that:

> The performance data indicates that the average extension period is between 7 and 14 days and therefore a period of 14 days may be an appropriate maximum period to set for any extension sought.[50]

4.21 Changes to planning application fees

Planning fees in England are set nationally by the *Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012* (S.I. 2012/2920), as amended.

The Government's February 2016 Implementation of planning changes: technical consultation proposes a system whereby planning fees could be increased for local planning authorities which are "performing well":

> 1.3. We are proposing that national fees are increased by a proportionate amount, in a way which is linked to both inflation and performance. The national fee schedule would be revised in line with the rate of inflation since the last adjustment in 2012, with the exact level of increase reflecting when the change comes into effect2. We also propose to make future adjustments on an annual basis, if required, to maintain fee levels relative to inflation.
>
> 1.4. We are clear that any changes in fees should go hand-in-hand with the provision of an effective service. Consequently, we are proposing that any increase in national fees would apply only to those authorities that are performing well. One approach

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49 HM Government, New Homes Bonus: Sharpening the Incentive: Technical Consultation, 17 December 2015

50 HM Government, Implementation of planning changes: technical consultation, February 2016, p62

> would be to not apply an increase where an authority is designated as under-performing in its handling of applications for major development (or, in future, applications for non-major development). However we are interested in views on other approaches that could be employed, such as limiting increases to those authorities that are in the top 75% of performance for both the speed and quality of their decisions. Whatever approach is taken, we also wish to consider whether this change should be implemented as quickly as possible – so that under-performing authorities do not receive the next available increase – or whether authorities should be given a period of grace before the policy applies, so that there is further time to improve before any fee increases are withheld.
>
> 1.5. Where an authority is not eligible for a particular national increase, the pre-existing fee would continue to apply until the authority's performance improves to the point at which it becomes eligible for increases again, and the fees regulations are next revised (we expect that this would be on an annual basis, to implement any inflation-related adjustments in national fees). At that time the most recently-revised national fee would apply in that area.[51]

The consultation also asks for views on how fees should be set in relation to the Government's *Housing and Planning Bill* provision to introduce pilot schemes for competition in the processing of applications for planning permission.

[51] HM Government, Implementation of planning changes: technical consultation, February 2016, p7-8

BRIEFING PAPER
Number 06418, 22 February 2016

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