

HIGH STREETS (DESIGNATION, REVIEW AND IMPROVEMENT PLAN) BILL

DELEGATED POWERS MEMORANDUM BY THE DEPARTMENT FOR LEVELLING UP, HOUSING AND COMMUNITIES

A. INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the High Streets (Designation, Review and Improvement Plan) Bill (“the Bill”), introduced in the House of Commons on 6 December 2023. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

B. PURPOSE AND EFFECT OF THE BILL

2. In summary, the Bill will require local authorities to:
 - a. designate at least one street or network of streets in their area as a high street;
 - b. consult before making a designation;
 - c. prepare and publish an improvement plan for the designated high street that includes information about the condition of the street or network of streets and its importance to the local economy, and proposals for its preservation and enhancement;
 - d. consult on a draft of the improvement plan before publishing a final version;
 - e. have regard to guidance issued by the Secretary of State when preparing the improvement plan;
 - f. have regard to the improvement plan when exercising a planning function that is capable of affecting a street or network of streets designated as a high street;
 - g. review designations every five years; and,
 - h. review improvement plans at least once every five years, publishing an amended version where necessary.

C. SHORT SUMMARY OF POWERS COVERED IN THIS DOCUMENT

CLAUSE	POWER CONFERRED	JUSTIFICATION	PARLIAMENTARY PROCEDURE	PROGRESS TO DATE
1(5)	Power to make regulations to specify persons who must be consulted by a local authority before making a designation.	It is a matter of procedural detail that does not change the policy requirement set out in the Bill. It would therefore be excessive for this detail to be set out in the Bill. In addition, the Secretary of State might decide to amend the list of persons who must be consulted prior to making a designation. As such, setting it out in regulations means it can be amended over time.	Negative procedure	
2(9)	Power to make regulations to specify persons who must be consulted by a local authority on a draft improvement plan, when undertaking a review of an improvement plan and when publishing a revised improvement plan following a review.	It is a matter of procedural detail that does not change the policy requirement set out in the Bill. It would therefore be excessive for this detail to be set out in the Bill. In addition, the Secretary of State might decide to amend the list of persons who must be consulted in these circumstances. As such, setting it out in regulations means it can be amended over time.	Negative procedure	
2(11)	Power to publish guidance that a local authority must have regard to when exercising functions under clause 2.	The core requirements for an improvement plan are already set out in clause 2 of the Bill. As such, it is considered appropriate that further matters to which a local authority must have regard are contained in guidance.	None	
3(3)	Power to make regulations to amend the Bill so as to add to the list of functions of a local	It is acknowledged that this is a Henry VIII provision. It is considered necessary to enable the list of ‘planning functions’ to be amended if required over time.	Affirmative	

	authority that are ‘planning functions’ for the purposes of section 3 of the Bill.	The power is limited to adding new functions and does not extend to the removal of functions.		
6(3)-(4)	Power to make regulations to commence sections 1 to 3 of the Bill, and to appoint different commencement dates for different purposes or areas.	It is considered appropriate to provide a delegated power to commence sections 1 to 3 of the Bill to provide some flexibility over the commencement of these provisions, to ensure that local authorities are prepared. The power to provide different commencement days for different purposes or areas will enable a smaller pilot scheme to be commenced initially or for a staggered commencement.	None	

D. ANALYSIS OF DELEGATED POWERS CREATED BY THE HIGH STREETS (DESIGNATION, REVIEW AND IMPROVEMENT PLAN) BILL

Designation of High Streets

Clause 1(5) makes provision for the Secretary of State to make regulations to specify persons who must be consulted by a local authority before making a designation

Powers conferred on: the Secretary of State

Powers exercised by: Regulations

Parliamentary Procedure: Negative Procedure

Context and Purpose

3. Clause 1(1) enables a local authority to designate a street or network of streets in its area as a high street. Clause 1(2) requires local authorities to designate at least one street or network of streets as a high street and ensure that at least one street or network of streets is designated as a high street at all times following the first designation,
4. Clause 1(5) requires a local authority, prior to making a designation, to consult:
 - a. persons specified or described in regulations made by the Secretary of State; and
 - b. such other persons (if any) as the local authority considers appropriate.
5. Clause 1(5)(a) therefore creates a delegated power that enables the Secretary of State to set out in regulations persons who local authorities should consult prior to making a designation.
6. Clause 4(2) requires regulations made under clause 1 to be made by statutory instrument. Clause 4(3) provides that regulations made under clause 1 are subject to the negative procedure.

Justification for delegation

7. This delegated power enables the Secretary of State to prescribe in regulations persons who a local authority must consult prior to making a designation. It is a matter of procedural detail that does not change the policy requirement to designate a street or network of streets as a high street, or to consult on that designation, both of which are set out in the Bill. Therefore, it is considered that it would be excessive for this detail to be set out in the Bill.

8. Furthermore, the Secretary of State might decide to amend the list of persons who must be consulted prior to making a designation. Therefore, it is appropriate for this detail to be set out in regulations, which can be amended over time if required.

Justification for procedure selected

9. It is considered appropriate for this delegated power to be exercised through the negative resolution procedure because it relates to a matter of procedural detail.

High street improvement plans

Clause 2(9) makes provision for the Secretary of State to make regulations to specify persons who should be consulted by a local authority on a draft improvement plan, when undertaking a review of an improvement plan and when publishing an amended improvement plan following a review

Powers conferred on: the Secretary of State

Powers exercised by: Regulations

Parliamentary Procedure: Negative Procedure

Context and Purpose

10. Clause 2(2) requires a local authority to prepare and publish a draft improvement plan within six months of designating a street or network of streets as a high street. Clause 2(3) requires a local authority to carry out a consultation on the draft improvement plan.
11. Clause 2(5) requires a local authority to undertake at least one review of an improvement plan within each five-year period, beginning on the day on which the final version of the improvement plan was published, and to prepare and publish a revised version if it considers that changes are necessary or desirable.
12. Clause 2(7) requires a local authority to carry out a consultation as part of its review of an improvement plan. Clause 2(8) requires a local authority to carry out a consultation on a draft of a revised improvement plan before it is published.
13. Clause 2(9) requires that, where a local authority is required to carry out a consultation under clause 2, it must consult:
 - a. persons specified or described in regulations made by the Secretary of State; and
 - b. such other persons (if any) as the local authority considers appropriate.
14. Clause 2(9)(a) therefore creates a delegated power that allows the Secretary of State to set out in regulations persons who must be consulted under clause 2.

15. Clause 4(2) requires regulations made under clause 2 to be made by statutory instrument. Clause 4(3) provides that regulations made under clause 2 are subject to the negative procedure.

Justification for delegation

16. This delegated power enables the Secretary of State to prescribe in regulations persons who a local authority must consult on a draft improvement plan, when undertaking a review of an improvement plan and prior to publishing a revised improvement plan, following a review. It is a matter of procedural detail that does not change the policy requirement to consult on an improvement plan or when reviewing a plan or publishing a revised plan, which are set out in the Bill. Therefore, it would be excessive for this detail to be set out in the Bill.
17. Furthermore, the Secretary of State might decide to amend the list of persons who must be consulted in these circumstances. Therefore, it is considered appropriate for this detail to be set out in regulations, which can be amended over time if required.

Justification for procedure selected

18. It is considered appropriate for this delegated power to be exercised through the negative resolution procedure because it relates to a matter of procedural detail.

High street improvement plans

Clause 2(11) makes provision for the Secretary of State to publish guidance that a local authority must have regard to when exercising functions under clause 2

Powers conferred on: the Secretary of State

Powers exercised by: Guidance

Parliamentary Procedure: None

Context and Purpose

19. Clause 2(11) requires a local authority to have regard to guidance issued by the Secretary of State when exercising its functions under clause 2 to prepare, publish and review an high street improvement plan.

Justification for delegation

20. The core requirements for an improvement plan are already set out in clause 2 of the Bill. This includes: the requirements for the contents of an improvement plan (clause 2(1)); the deadline for publishing a draft and final improvement plan (clauses 2(2) and

(4)); the requirement to consult on a draft improvement plan (clause 2(3)); the requirement to review an improvement plan (clause 2(5)); and the requirement to consult when undertaking a review and when publishing a revised improvement plan (clauses 2(7) and (8)). As these are set out in the Bill, it is considered appropriate that further matters to which a local authority should have regard are contained in guidance.

Justification for procedure selected

21. It is not considered necessary for the exercise of this power to require a parliamentary procedure as it only relates to guidance to which a local authority must have regard when exercising its functions. It does not affect the core requirements for an improvement plan that are set out in the Bill.

Planning functions: duty to have regard to high street improvement plans

Clause 3(3) makes provision for the Secretary of State to make regulations to amend the Bill so as to add to the functions of a local authority that are planning functions

Powers conferred on: the Secretary of State

Powers exercised by: Regulations

Parliamentary Procedure: Affirmative

Context and Purpose

22. Clause 3(1) requires a local authority, when exercising a planning function that is capable of affecting a designated high street, to have regard to the improvement plan for that high street. Clause 3(2) states that a function is a planning function if it is conferred on the local authority by or under:

- a. Part 3, 7 or 8 of the Town and Country Planning Act 1990, or
- b. Part 2 of the Planning and Compulsory Purchase Act 2004.

23. Clause 3(3) provides that the Secretary of State may make regulations to amend the Bill so as to add to the functions of a local authority that are planning functions in clause 3(2).

24. Clause 3(3) therefore creates a delegated power that allows the Secretary of State to amend the Bill by regulations to provide additional planning functions.

Justification for delegation

25. It is acknowledged that this is a Henry VIII provision. It is considered that it is necessary to enable the list of 'planning functions' to be amended, which might be required over

time. The power is limited to adding new functions to the list and does not extend to the removal of functions.

Justification for procedure selected

26. The power is subject to the affirmative procedure in accordance with the presumption for Henry VIII powers.

Extent, commencement and short title

Clause 6(3) makes provision for the Secretary of State to commence sections 1 to 3 by regulations. Clause 6(4) enables the Secretary of State to appoint different commencement dates for different purposes or areas

Powers conferred on: the Secretary of State

Powers exercised by: Regulations

Parliamentary Procedure: None

Context and Purpose

27. Clause 6(3) provides that sections 1 to 3 come into force on such day as the Secretary of State may by regulations appoint. Clause 6(4) provides that different days may be appointed for different purposes or areas. Clause 6(5) provides that regulations are to be made by statutory instrument.

Justification for delegation

28. It is considered appropriate to provide a delegated power to the Secretary of State to commence clauses 1 to 3 to provide some flexibility over the commencement of these provisions, to ensure that local authorities are prepared. The power in clause 6(4) to provide different commencement days for different purposes or areas is considered appropriate to enable a smaller pilot scheme to be commenced initially, or for a staggered commencement, prior to the policy being commenced for all local authorities.

Justification for procedure selected

29. It is not considered necessary that the exercise of such a power requires a parliamentary procedure as it only relates to commencing clauses 1-3 of the Bill.