

PLANNING AND INFRASTRUCTURE BILL

Supplementary Memorandum from the Ministry of Housing, Communities and Local Government to the Delegated Powers and Regulatory Reform Committee

INTRODUCTION

1. This memorandum has been prepared by the Ministry of Housing, Communities and Local Government to assist with its scrutiny of the Planning and Infrastructure Bill (“the Bill”).
2. This memorandum describes the delegated powers which would be amended or added to the Bill by amendments tabled by the government on the 15th and 17th July 2025. It explains their purpose and why the matter is to be left to delegated legislation rather than included in the Bill, and specifies what parliamentary procedure (if any) is provided for each power.
3. Some of the tabled amendments move existing delegated powers in the Bill which were covered in the memorandum published on 13th June 2025. These are:
 - a. the power to make regulations in relation to the preparation of EDPs in clause 58(5) which is replaced by new clause 87A(9) (see below); and
 - b. the power to issue statutory guidance at clause 57(8), which will be moved to clause 76(5).

New Clause 93A: Relationship between different types of development corporation

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Affirmative resolution for inserted s.1(3ZA) and(3ZC) of the New Towns Act 1981 (see s.77(2A)), s.197(2B) and (2C) of the Localism Act 2011 (see s.235(7)) and s.134 (1D) and (1F) of the Local Government, Planning and Land Act 1980 (see s.134(4)).

Context and Purpose

4. New clause 93A makes provision to address the potential for overlapping areas designated for different development corporations. This sets out the process to align the boundaries between different types of development corporation that may exist in an area. The amendments made by clause 93A provide:
 - a) that when the Secretary of State designates an area under the power to establish a centrally-led corporation, this may include any area already designated as a Mayoral development area or a locally-led development area;
 - b) that when a Mayor designates a Mayoral development area, this may include an area already designated as a locally-led development area but not an area that has been designated by the Secretary of State for a centrally-led corporation;
 - c) that a local authority may not propose as an area for a locally-led development any area that has been designated as a Mayoral development area or as a centrally-led development area;
 - d) if the Secretary of State designates an area that is already designated by an authority in a lower tier, then the overlap area no longer forms part of the previously designated area.
 - e) if a Mayor designates an area that is already designated by an authority in a lower tier, the Secretary of State must make regulations to provide that the overlap area is removed from the previously designated area (unlike where the Secretary of State designates a New Town or Urban development area, the Mayor designates a Mayoral development area without an order – therefore, this power for regulations providing the overlap area no longer forms part of the previously designated area is required where the overlap arises due to the designation of a Mayoral development area);
 - f) that the regulations can:
 - a. amend any existing orders relating to the previously designated area (including other consequential changes to the boundary),

- b. provide for the transfer of functions in relation to the overlap area, and
- c. in the case of an overlap area that completely covered a previously designated area, provide for the dissolution of the development corporation.

Justification for taking the power

- 5. Different types of development corporation have been created in law to respond to the circumstances of that time. This has created ambiguity within the legislation so that competing development corporations could be created within the same locality. This will create uncertainty and delay, and undermine the appetite for private sector investment.
- 6. The amendments made by this new clause will provide clarity to the sector, supporting the delivery of priorities. The amendments made to primary legislation provide for the policy aims in sub-paragraphs (a) to (c), including which type of development corporation should remain in the event that there is an area overlapping with another. The powers to make secondary legislation are intended to further administer those policies, by making provision of the type set out in sub-paragraphs (d) to (f).
- 7. The government consider that these matters are appropriate for delegated powers as they deal with secondary policy detail to give effect to the primary legislation. This includes the transfer of functions from one development corporation to another, including transitional or saving provision.

Justification for the procedure

- 8. The government considers that it is appropriate for these powers which remove the overlapping area and to make subsequent administrative amendments to be subject to the affirmative procedure to ensure that the regulations receive sufficient parliamentary scrutiny.

9. Regulations under new s.197(2B) of the Localism Act 2011 are subject to the affirmative procedure. An amendment to s.235(14) of that Act disapplies the standing orders on hybrid instruments of either House of Parliament. It is considered that, without this provision, the hybrid procedures could apply to such instruments insofar as they re-draw the boundaries of locally-led development corporations. Where the area to be designated as a Mayoral development area includes an area already designated for another development corporation, the government would expect the Mayor to consider it appropriate to consult that development corporation in accordance with s.197 of the Localism Act 2011.
10. Affirmative instruments for development corporations under the New Towns Act 1981 and Local Government, Planning and Land Act 1980 are already subject to de-hybridisation provisions – see s.77(3C) of the New Towns Act 1981 and s.134(4A) of the Local Government, Planning and Land Act 1980. These provisions are amended to capture the new powers to make the regulations described at paragraph 6(f) above.

New Clause 93A: Power for the Secretary of State to make transfer schemes

Power conferred on: Secretary of State

Power exercised by: Scheme

Parliamentary Procedure: None

Context and Purpose

11. Amendments made by this clause allows the Secretary of State to make a transfer scheme to transfer the property, rights and liabilities from one development corporation to another in connection with regulations made under section 1(3ZC) of the New Towns Act 1981, section 197 of the Localism Act 2011, or section 134(1F) of the Local government, Planning and Land Act 1981.

Justification for taking the power

12. The most appropriate vehicle for effecting these transfers will be a statutory transfer scheme, as is commonly used in similar situations involving transfers of assets following transfers of functions between public bodies. It would not be feasible to deal with the details of all of the necessary transfers of property, rights and liabilities on the face of the Bill.

Justification for the procedure

13. As is generally the case with statutory transfer schemes, there is no parliamentary procedure for the schemes. Parliament will have the opportunity to consider the general principle behind the transfer when regulations are laid under section 1(3ZC) of the New Towns Act 1981, section 197 of the Localism Act 2011 or section 134(1F) of the Local government, Planning and Land Act 1981.

New Clause 64A: Remedial action by Secretary of State where an EDP ends

Power conferred on: Secretary of State

Power exercised by: Direction

Parliamentary Procedure: None

Context and Purpose

14. New clause 64A requires the Secretary of State to take remedial action in any case where an Environmental Delivery Plan (“EDP”) ends and its conservation measures have been assessed not to have been effective.

15. Remedial action is defined in subsection (4) as including the taking of conservation measures or other measures to improve the conservation status of the identified environmental features. Remedial action also includes directing another public authority to take such measures.

Justification for taking the power

16. The government considers the power to direct public authorities to take remedial action to be key to delivering Part 3 of the Bill. New clause 64A acts as a safeguard

to ensure that the core purpose of Part 3 - improving nature while allowing for development - is met through the overall improvement test even where an EDP has not achieved this.

17. The power set out in new clause 64A(4) is an essential part of that safeguard, in that it enables the Secretary of State to ensure that any necessary remedial action is taken by public authorities. If this power was unavailable, the Secretary of State would have to deliver all remedial action. This would present practical difficulties and prevent the best possible outcome; for example, there will be situations where other public authorities with specialist and regional knowledge are better placed to deliver such actions.

Justification for the procedure

18. It would not be practicable for Parliament to consider whether a public authority should be required to take remedial action in the event that an EDP comes to an end. This process, if in place, would prevent action from being taken in an efficient and cost-effective way.

New Clause 87A(9): Power for the Secretary of State to make regulations relating to NE functions (preparation, amendment, or revocation of EDP)

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Negative procedure

Context and purpose

19. This new clause enables the Secretary of State to make provision via regulations about other things that Natural England ("NE") must do when exercising functions in relation to the preparation, amendment or revocation of an EDP. It moves the previous power to make regulations in relation to the preparation of an EDP in clause 58(5), and extends that to the exercise of other functions relating to an EDP (i.e. amendment and revocation). This is in the context of a new clause that is designed

to simplify and bring together the general duties of NE and the Secretary of State when exercising functions in relation to EDPs.

Justification for taking the power

20. The power to make further provision about the exercise of NE's functions in preparing, amending or revoking an EDP is an important tool to ensure that the regime in Part 3 functions effectively and flexibly. As we said in relation to the previous version of this power, as this new system for nature recovery becomes established, there may be a need for further information to be included, or matters addressed, in an EDP. Therefore, it is not considered feasible to have all possible requirements set through primary legislation. This justification is equally, if not more, relevant to the ancillary functions relating to amendment or revocation of an EDP, since those scenarios are even more likely to reveal novel situations which would not be covered by the general principles set out in the Bill.

Justification for the procedure

21. It would be impractical for Parliament to debate regulations relating to the practical details of how NE carries out its EDP functions. This could prevent NE from being able to carry out its functions in specific cases in a way that is beneficial for development and the environment. The government considers that the negative procedure would give Parliament the right level of scrutiny for these regulations.

Ministry of Housing, Communities and Local Government

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