

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 added to the Bill by amendments tabled by the government on the 13th October 2025. It explains both 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. In addition to the new delegated powers detailed below, in response to the Twenty-Eighth Report of the Delegated Powers and Regulatory Reform Committee¹ an amendment was tabled to clause 26 so that uses of the power to make regulations to establish a benefits scheme will be subject to the affirmative procedure. The government’s response to this report, which includes an additional information of clause 26’s dehybridisation provision, will be published on the Committee’s page².

Deemed grant of listed buildings consent (new sections 17 and 17A into the Transport and Works Act 1992)

Power conferred on: Secretary of State and Welsh Ministers

Power exercised by: Direction

Parliamentary Procedure: None

¹ [Planning and Infrastructure Bill](#)

² [Delegated Powers and Regulatory Reform Committee - Summary - Committees - UK Parliament](#)

Context and Purpose

4. This amendment will enable a direction to provide that listed building consent is deemed to be given in relation to works included in an order (a “TWAO”) under ss.1 or 3 Transport and Works Act 1992. In considering whether to make a direction, the Secretary of State / Welsh Ministers must have special regard to the desirability of preserving the building concerned or its setting or any features of special architectural or historic interest.
5. This amendment will also enable the Welsh Ministers to provide that conservation area consent is deemed to be given in relation to works included in a transport and works order in Wales. (Conservation area consent is no longer a feature of the legal regime in England but continues in Wales.) In considering whether to make a direction, the Welsh Ministers must have special regard to the desirability of preserving or enhancing the character or appearance of that area.
6. The provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 and Historic Environment (Wales) Act 2023 apply in relation to any listed building consent deemed to be granted by virtue of a direction.

Justification for taking the power

7. The purpose of these amendments is to enable listed building consent and conservation area consent to be considered and given for development pursuant to a TWAO, without the need to make a separate application under the listed buildings regime. This will increase certainty and efficiency for promoters and consent granting bodies, reducing timescales and costs while ensuring that appropriate regard is paid to heritage protection.

Justification for the procedure

8. The government considers that it is appropriate for this power to be exercised by way of a direction since listed buildings consent and conservation area consent are otherwise granted by decision of a local planning authority (not by delegated legislation).

9. This approach is modelled on the powers of the Secretary of State, in England, and the Welsh Ministers, in Wales, to direct that planning permission for works required in respect of a TWAO be deemed to be granted, pursuant to s.90 TCPA 1990.

Clause 28: Use of forestry estate for renewable electricity

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Affirmative procedure

Context and Purpose

10. Clause 28 (use of forestry estate for renewable electricity) amends the Forestry Act 1967 to give powers to the Forestry Commissioners to undertake various activities across the Public Forest Estate in England in connection with renewable electricity projects. Section 3A(5) restricted the exercise of these powers by giving the Secretary of State the power to create regulations requiring the Commissioners to first obtain their consent (which may be subject to conditions). This power was described and justified in a previous delegated powers memorandum³.
11. This amendment will amend clause 28 to remove section 3A(5) to (7) and inserts new sections 3B and 3C which contains a more restrictive power to make regulations so that the Secretary of State's consent can only be required in relation to the construction or extension of generating stations where the relevant capacity threshold is met or exceeded.
12. The relevant capacity threshold is:
- a. in the case of electricity generated from wind, 5MW;
 - b. in the case of electricity generated from any other source, 50MW.

³ [6678](#)

13. Section 3B(8) gives a power to the Secretary of State to make regulations to amend section 3B to change the relevant wattage of the capacity thresholds.

Justification for taking the power

14. The amendments to clause 28 amount to a narrowing of the existing power to make regulations about when Secretary of State consent is needed, and a new power to amend primary legislation to adjust the wattage thresholds.

15. The new power allows for secondary legislation to be used to make very limited amendments to primary legislation. As set out above, the power could only be exercised to make changes to the relevant wattage levels in section 3B(7). The government envisages this power being used to reflect changes in the renewable energy sector and electricity generation technologies.

Justification for the procedure

16. The general rule is that Henry VIII powers should be subject to the affirmative procedure, and the government considers that to be appropriate in this case.

New clause after clause 29: Wind generating stations: planning applications affecting certain seismic array systems

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Affirmative procedure for instruments that amend or repeal primary legislation. All other uses of the power will be subject to the negative procedure.

Context and Purpose

17. This new clause will introduce a power for the Secretary of State to make regulations about planning permissions and consents relating to wind generating stations that may affect the functioning of a relevant seismic array system (defined at subsection (2) to only include those that are in use on the day the Act is passed).

18. Onshore wind turbines cause seismic ground vibrations that have the potential to interfere with the detection capabilities of an array. This can reduce the array's

capability to pick up potential nuclear tests and risks compliance with UK defence requirements.

19. At one such array (the Eskdalemuir Seismic Recording Station), a technical site direction⁴ was issued to safeguard the functionality of the array by allowing the Ministry of Defence to object to any planning applications for onshore wind development within a 50km radius.

20. The government wishes to strike a balance between the expansion of onshore wind development and the protection of seismic array systems that are relied upon for defence purposes. The intention of this new clause is to introduce a new system whereby wind turbines can be constructed in the area surrounding seismic arrays without posing a risk to the capability of the arrays.

21. Subsection (3)(a) and (b) will allow provision to be made for an exclusion zone (where wind generating station development is prohibited) and a restricted zone (where wind generating station development is limited depending on its seismic impact level) around a relevant seismic array system. Subsection (6) provides that the powers apply to relevant development orders as well as applications for planning permission.

Exclusion Zone

22. Subsection (4) enables regulations to be made which would prevent any development of wind generating stations within the exclusion zone.

Restricted Zone

23. Subsection (5) enables regulations to be made that would enable certain steps to be taken in relation to planning proposals for wind generating stations in the restricted zone. The regulations can make provisions requiring:

- a. the applicant to provide specified information about the seismic impact of their proposals to which the application relates;

⁴ The Ministry of Defence (Eskdalemuir Seismic Recording Station) Technical Site Direction 2005.

- b. the planning decision-maker to use the seismic impact information in a specified way when deciding an application
- c. the planning decision-maker to refuse an application in specified circumstances;
- d. the planning decision-maker to consult the Secretary of State about the application;
- e. the planning decision-maker to refuse the application if the Secretary of State objects to it on grounds relating to the seismic impact of the proposals.

24. Subsection (7) contains powers to include provisions about the procedure for determining applications impacted by seismic array limits.

25. Subsection (9)(a) includes the power to amend or repeal primary legislation, which is aimed at ensuring the seismic array limit procedure is appropriately integrated into the current planning regime. Regulations that amend or repeal primary legislation are subject to the affirmative procedure.

Justification for taking the power

26. The powers concern matters of process and procedure, in respect of how the application of a seismic impact limit will affect the planning process. These are secondary policy details to give effect to the changes made by the Act, which the government considers is appropriate to make by way of secondary legislation. This is because it will enable greater flexibility in terms of implementation of the process within the existing planning framework and enables thresholds and zones to be made that are specific to relevant array systems.

27. Subsection (9)(a) contains a power to amend provisions of primary legislation is limited so as to integrate the seismic array framework within existing legislation. Given the complexity of the planning regimes, it is appropriate to take this power to amend primary legislation to ensure that the legislation is workable and achieves its objectives. This power is considered essential to maintain the proper functioning of the provisions and ensure that they work as intended. The

affirmative procedure applies to regulations containing amendments to primary legislation, otherwise the negative procedure applies.

28. Subsection (13) disapplies the standing orders on hybrid instruments of either House of Parliament. It is considered that, without this provision, the hybrid procedure could apply to regulations made under this power where they were used to make provision in relation to a specific seismic array system where such regulations rely on the affirmative procedure. The regulations will only be concerned with what applications for planning permission or development consent might be entertained.

29. This policy intends to support the delivery of new onshore wind through the planning system (by enabling a balance to be struck with seismic array detection capabilities). Currently the MoD objects to all onshore wind development close to the seismic array systems because of the potential for interference. Although the new regime will exclude development within a small zone around the array, it will also enable development within a wider restricted zone. Therefore, the new procedure will enable applications to come forward and the engagement of planning policies that allow for individuals or groups affected by proposed developments to register their views on a development. The impacts of projects will still be assessed on a case-by-case basis, including those impacts as raised by affected groups, according with the application of those policies, with decisions made according to the individual merits of the case. These changes will enable developments to go through the planning process rather than automatically being barred.

Justification for the procedure

30. Where the regulation making power is to be used to amend, repeal or revoke primary legislation, the affirmative procedure is considered appropriate. For all other uses of the power, the negative procedure will apply. The government considers this approach to give Parliament the appropriate level of scrutiny depending on the contents of the regulations.

New clause after clause 51: Directions restricting refusal of planning permission

Power conferred on: Secretary of State

Power exercised by: Development order made by statutory instrument

Parliamentary Procedure: Negative

Context and Purpose

31. Section 74(1)(a) of the Town and Country Planning Act 1990 permits a development order to make provision enabling the Secretary of State to give a direction restricting the grant of planning permission (or permission in principle) by a local planning authority, either indefinitely or for a period specified in the direction, in respect of any development (or any class of development) specified in the direction.

32. Such provision is made by article 31(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 ("DMPO"): "*The Secretary of State may give directions restricting the grant of permission by a local planning authority, either indefinitely or during such a period as may be specified in the directions, in respect of any development or in respect of development of any class so specified*". In practice article 31 directions have been used as 'holding directions' to prevent a local planning authority from approving a particular application of planning permission pending consideration by the Secretary of State whether to call in the application.

33. This new clause amends section 74(1)(a) of the Town and Country Planning Act 1990 to provide that provision can be made by a development order enabling the Secretary of State to give directions restricting the refusal of planning permission by an LPA. This would allow the Secretary of State to amend the DMPO to enable holding directions to prevent the refusal of an application for planning permission.

Justification for taking the power

34. The Secretary of State cannot call in a planning application that has been determined, so holding directions are currently used to allow time for there to be some consideration as to whether the application should be called in. It is important that local planning authorities are not able to frustrate the purpose of

call-in by granting planning permission before the Secretary of State has had the opportunity to consider whether to call the application in.

35. It is also important to ensure that LPAs cannot frustrate the intervention by simply refusing in-scope planning applications before the Secretary of State has had the opportunity to consider whether to call the application in. This amendment to the power to make development orders will enable holding directions to be given in circumstances where a local planning authority is minded to refuse an application.

Justification for the procedure

36. This amendment amends the existing power in section 74(1) to make development orders. The existing power is subject to the negative procedure, and the government does not intend to change this as it considers the procedure to be appropriate.

New clause after clause 51: Provision of advice by Natural England to public authorities

Power conferred on: Secretary of State

Power exercised by: Direction

Parliamentary Procedure: None

Context and Purpose

37. This new clause amends the Natural Environment and Rural Communities Act 2006 to permit Natural England not to respond to requests for advice under section 4(1) of the Natural Environment and Rural Communities Act 2006 relating to specific development that requires planning permission. The intention of this amendment is to allow Natural England the flexibility to focus on higher-risk higher-opportunity developments and to input more to standing advice and strategic level plans so that greatest environmental benefit can be obtained.

38. The clause also inserts new section 4A into the Natural Environment and Rural Communities Act 2006 which requires Natural England to prepare and publish a statement setting out how it intends to deal with requests for advice that they are

not required to respond to. Before publishing this statement, Natural England must consult the Secretary of State and make any changes to the statement that the Secretary of State may require.

Justification for taking the power

39. The power for the Secretary of State to require changes be made to Natural England's statement is required to ensure that government has sufficient control over the advice that Natural England is required to deliver.

Justification for the procedure

40. It would not be appropriate for parliament to consider changes that the Secretary of State would like Natural England to make in relation to a statement of intent. It is appropriate that this is a matter for the Secretary of State.

Ministry of Housing, Communities and Local Government

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