



Briefing 18/29

August 2018

The New Towns Act 1981 (Local Authority Oversight) Regulations

To: England

For info: Contacts from Scotland, Wales and Northern Ireland.

Key Issues

Following a consultation in relation to the Regulations made under Section 16 of the Neighbourhood Planning Act 2017, the government has published details of their response and the proposed next steps for the Regulations.

1. Introduction

On the 4 December 2017 the Department for Communities and Local Government published a consultation document seeking views on draft Regulations made under Section 16 of the Neighbourhood Planning Act 2017. The Regulations provide the detailed provisions which enable the creation of New Town Development Corporations that are overseen by the local authority or authorities covering the area designated for the new town. The Regulations amend the New Towns Act 1981 to create a new option of local authority oversight rather than replacing the existing provisions for Secretary of State oversight.

There was a total of 92 respondents to the consultation, which were broken down into the following categories: -

Respondent Type	Number
Individuals	58
Local authorities	17
Professional bodies	6
Other representative groups	6
Developers	5

This briefing provides an overview of the consultation responses and the proposed next steps. Details of the full document can be obtained via the following link: -

[The New Towns Act 1981 \(Local Authority Oversight\) Regulations](#)

2. Background

Introducing the consultation, the government advised that across England, from Cornwall, to Kent, to Cumbria, they were supporting the delivery of twenty-four locally-led garden cities, towns and villages with the potential for at least 220,000 new homes.

In addition, it was announced in the Budget that the government would bring together public and private capital to build five more new garden towns in line with their locally-led approach, the government state that it does not wish to prescribe any particular delivery model but want to encourage local authority leadership and ambition in the creation of new garden communities at scale.

The post-war New Towns were delivered by New Town Development Corporations created under the New Towns Acts. This generation of New Town Development Corporations were answerable to central government. The powers to create New Town Development Corporations accountable to the Secretary of State still remains on the statute book. In addition, the government expressed the view that they need to create an oversight mechanism which reflects the locally-led approach to new garden towns and villages for the current programme.

The Government's Housing White Paper 'Fixing our broken housing market' published in February 2017 set out a commitment to legislate to allow locally accountable New Town Development Corporations to be set up, enabling local areas to use them as the delivery vehicle if they wish to.

Section 16 of the Neighbourhood Planning Act 2017 enables the oversight of any area designated as a new town and New Town Development Corporation established under the New Towns Act 1981 to rest with one or more of the local authorities covering the area designated for the New Town rather than the Secretary of State.

3. Summary of responses to consultation and the governments responses

The consultation sets out six questions, details of the consultation and response from government are outlined below: -

Question 1: Do you support the principle of enabling oversight of the development of an area as a new town to be transferred from the Secretary of State to the local authority or authorities covering the area in the circumstances outlined in paragraphs 2.1 to 2.4?

It was reported that local authority respondents were supportive, seeing the Regulations as offering a useful additional option for driving local ambitions for housing delivery at scale.

Concerns expressed in relation to question one were centred on additional bureaucracy, a loss of democratic accountability and the competence of local authorities to oversee development at a very large scale.

The government state that the need for adequate resourcing for local authorities overseeing a New Town Development was a theme picked up by a number of respondents.

There was a widespread view that more clarity was needed about the designation process and the evidence which the Secretary of State would expect to see and consider before agreeing to consult

on the designation of an area for a New Town and the establishment of a locally led New Town Development Corporation.

There was broad agreement amongst respondents that there should be a proper evidence base to support a designation. Views on what that should entail included evidence of deliverability and why a New Town Development Corporation could better secure development than any existing private sector led schemes; the need or support from all parish councils covering the area; a commitment to infrastructure provision; and, community support.

Government response to question 1

In response to the views expressed, the government state that they continue to take the view that in line with the locally-led approach to new garden communities and their broader commitment to devolve powers to boost local growth - the principle of enabling a local authority or local authorities to have oversight of a New Town Development Corporation remains the right one. The government also take the view that where oversight rests with the local authority or local authorities it should do so unambiguously and not be subject to ongoing interventions from central government that may cloud accountability and create uncertainty.

The government report that they recognise that creating a New Town Development Corporation and making a local authority or local authorities responsible for the oversight of this is a significant step. It is one that should only be undertaken where the Secretary of State is satisfied that this will provide a route to secure better and expedited place making at scale that is deliverable and has local support. Guidance will be published on the Regulations that set out, amongst other matters, more detail on the process for designation; the factors we would expect the Secretary of State to weigh up in considering whether to consult on a designation; and the evidence that would be expected to have to underpin that consideration.

Question 2: Do you agree that the proposed list of functions to be transferred and functions that may only be exercised with the consent of the oversight authority is the correct one? If not, please specify which other functions you think should or should not be transferred and why.

Question 3: Where the draft Regulations provide for the transfer of functions has this been done correctly? If not please specify the change you think are required and why.

The responses to these two questions reflected the views received in response to question one about the principle of enabling a local authority or local authorities to oversee a New Town Development Corporation.

There was significant support for enabling plan making, some or all development management functions and Community Infrastructure Levy (CIL) raising powers to be transferred where this was agreed prior to designation or thereafter by the Oversight Authority or the local authorities which would become the Oversight Authority. Some respondents argued for the confirmation of compulsory purchase orders to rest with the Oversight Authority rather than the Secretary of State; others were clear that this should not change.

A significant number of respondents felt that the relationship between the plans of the New Town Development Corporation and local plan documents was unclear and there was a strong call for greater clarity.

Government response to question 2 and 3

In response to the comments received the government have advised that guidance will be published on the Regulations which will seek to emphasise the flexibility which the legislation provides around the drafting and approval of plans and the granting of planning permission. The government state that they recognise that the right approach will depend on specific local circumstances and confirm they share the wish of consultees to avoid duplication or the production of contradictory documents. It will be for the Oversight Authority to grant permission for development. This can be achieved either through the usual mechanisms or through use of a local development order. Government have advised that they will encourage consideration been given to the use of local development orders where appropriate as a means of securing high quality development at pace and strengthening the planning certainty of new town projects.

The planning authority with plan-making functions is the CIL charging authority for an area. The government do not consider it appropriate to make the locally led New Town Development Corporations into charging authorities and in line with the principle that functions which would ordinarily rest with the Secretary of State should not be transferred to the Oversight Authority, as it is considered that the Secretary of State should continue to confirm any compulsory purchase orders.

As a result of the consultation the government also state that the changes proposed by respondents to the consultation in respect of the compulsory purchase provisions in the New Towns Act 1981 fall outside the scope of the Regulations. However, it is recognised that the government's current compulsory purchase guidance does not cover the powers of New Town Development Corporations, whether overseen by the Secretary of State or local authorities. This reflects that these powers have not been used in recent years. To address this, it is proposed that the government will prepare new guidance on the use of New Town Development Corporations' compulsory purchase powers.

Question 4: Do you agree that the draft Regulations appropriately support the delivery of high quality, sustainable communities and their long-term stewardship? If not, how should they go further or include less prescription?

The government report that out of all the respondents who addressed this question the majority emphasised the need for high quality place making and long-term stewardship to be central to these Regulations. Also, many argued that the Regulations should go further. Some respondents felt that the aims of the Oversight Authority in overseeing the development of the New Town should be extended to include for example climate change mitigation, carbon negative development and support for community participation. There was general concern that there should be an effective mechanism for high aspirations to be realised in practice, particularly around long-term community stewardship.

Government response to question 4.

The government report that they have been clear that they expect New Towns that are delivered by locally-led New Town Development Corporations to stand out from the ordinary as exemplars of high quality and good design and be sustainable for the long term. In the light of consultation responses, they are intending to make changes to the draft Regulations to broaden the aims of the Oversight Authority with regard to long-term stewardship of New Towns. Planning for the participation of the community and legacy arrangements are included as additional aims for the

Oversight Authority. Prior to designation of an area for a new town, the Secretary of State will want to be satisfied that the proposals before him are consistent with the statutory aims of the oversight authority. The government state that it is not considered necessary to make provision for a stewardship body to be a relevant transferee for the purposes of the allocation of assets to a stewardship body on the dissolution of the locally led New Town Development Corporation. This is because paragraph 2 of Schedule 10 to the New Towns Act 1981 already allows for part of the development corporation's property to be transferred to a person other than a relevant transferee, e.g. a stewardship body. It is proposed that the guidance on the Regulations will set out the expectation that the Secretary of State will wish to be satisfied that appropriate legacy arrangements have been made for the long-term community stewardship of the New Town, both prior to making the Order establishing, and dissolving, the locally led New Town Development Corporation.

Question 5: Do you agree with the proposals for Board membership set out in Paragraph 22 of Schedule 1 of the draft Regulations? If not, how should these be changed?

A significant proportion of respondents agreed with the proposals for Board membership, subject to minor changes or points of clarification. Some local authority respondents suggested that the chairman and deputy chairman of the Board should be independent members and whether there was an independent majority on the Board should be a matter for the Oversight Authority to determine. A number of other respondents expressed concern that independent members appointed by the Oversight Authority would be genuinely independent of the local authorities and more generally there was a concern to ensure that conflicts of interest were avoided, that the appointment process should be a transparent one, and that those appointed had the requisite skills.

Government response to question 5

Following consideration of the responses, the government advise that the proposals for Board membership in the draft Regulations remain the right ones. The guidance will provide further detail on the government's expectations on the appointment of independent Board members; the experience and skills that should be represented on the Board; and the appointment of a representative of the local community. In addition, the government state that it is not considered necessary to prescribe a minimum size for the Board or its composition more closely as they are satisfied that the existing legislation allows for Board membership to be changed to reflect any changes to the area of the New Town. However, provision has been made for the size of the Board to be increased, to a greater number than the eleven members currently prescribed in section 3(2) (c) of the New Towns Act 1981, where the number of local authorities covering the area of the New Town is greater than five and an independent majority could not therefore be maintained otherwise.

Question 6: Are there any issues with the draft Regulations not picked up in the questions above you would like to raise? If so, please set these out.

Almost all local authority respondents and a number of others expressed significant concern about the requirement in the draft Regulations for the New Town Development Corporation to seek HM Treasury consent for borrowing in excess of £100 million. Consultees argued strongly that this was arbitrary, ran counter to the localist principles of the Regulation; would create unacceptable risk to delivery and for investors; and would act as a deterrent to locally led New Town Development Corporations being established. Some respondents also suggested that the existing aggregate borrowing cap of £4.6 billion for all New Town Development Corporations should also be removed. A number of consultees emphasised the importance of making proper provision for infrastructure from

the outset and adequate resourcing from government to enable local authorities to undertake the significant work and analysis required not only after designation but also before it.

A few respondents sought more clarity on the relationship between the Oversight Authority and the New Town Development Corporation, on issues of scrutiny and how the legislation could accommodate changes to the area of the New Town and composition of the Oversight Authority over time.

Government response to question 6

In the light of consultation responses, the government have removed from the final Regulations any requirement for a locally led New Town Development Corporation to seek HM Treasury consent for borrowing. Instead, as consultees suggested, borrowing levels for the locally led New Town Development Corporation will be agreed between HM Treasury and the local authorities which will form the Oversight Authority as part of agreeing the financial parameters within which the New Town Development Corporation will operate. This will be agreed on a case-by-case basis in advance of the Secretary of State consulting on the designation of an area for a New Town and details will be set out in the guidance. There is acknowledgement from the government that for very long-term projects like the delivery of a New Town there needs to be flexibility to accommodate changes in boundaries, for example where the designated area is comprised of a number of non-continuous sites that may be completed at different times, and to the composition of the Oversight Authority and the government consider that existing provisions enable this to happen.

There is recognition in the government's response that where local authorities play a leadership role in the delivery of a new garden city, town and village and take the decision that a locally led New Town Development Corporation is the right delivery vehicle, this has resource implications and they state that through the garden cities, towns and villages programme £22 million of capacity funding has been provided as well as direct expertise and advice. The advice and support to local authorities will continue to be provided where it is considered that their proposals for a locally led New Town Development Corporation provide a robust route to delivering a new garden community.

4. The proposed next step.

The government reported that alongside the publication of the analysis of consultation responses they will be laying down the final Regulations in Parliament. These will be amended to reflect views expressed in the consultation process as set out in the government response to the consultation.

In summary the changes that have been made between the draft and final Regulations are as follows:

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- Broaden the aims of the Oversight Authority with regard to long-term stewardship of New Towns by including planning for the participation of the community and legacy arrangements as additional aims for the Oversight Authority.
- Remove the requirement for HM Treasury consent for borrowing by the locally led New Town Development in excess of £100 million.

Subject to Parliamentary approval of the Regulations, local authorities may wish to hold preliminary discussion with the Ministry of Housing, Communities and Local Government and subsequently seek the designation of an area for a New Town and creation of a locally led New Town Development

Corporation. Guidance on the Regulations will be published to assist local authorities in understanding the government's expectations around that process.

APSE Comment

Investment in social rented housing is a key part of securing mixed and thriving communities, as part of providing a wide spectrum of tenures to meet a variety of needs across the country. Decent homes in a well-planned environment provides a foundation for helping people to maximise their contribution to society and create areas that are economically prosperous. The new generation of New Towns provide an opportunity to delivery better outcomes for people and the wider environment and APSE welcomes the change to the Regulations that promotes long-term stewardship.

Local authorities are ideally placed to provide strong local leadership in the identification of suitable sites, and development of a New Town that will meet the needs of the local community and will be sustainable for the future. However, this can only be achieved by government playing a central role by providing financial support to ensure there is effective resource to deliver the development, funding is made available for associated infrastructure and that there are robust expectations on high standard developments.

APSE would call for the proposed guidance to set out clear standards to ensure that New Town developments are high quality, affordable, meet high environmental standards and provide for the long-term stewardship of assets for the local community

On a final note, APSE would ask for the guidance to provide further clarification regarding the long-term stewardship arrangements post dissolution of the New Town Development Corporation to ensure the legacy arrangements are appropriate.

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