

Greenest Planning Ever Coalition

Localism Bill Briefing House of Lords, Committee Stage

Strategic Planning and the Duty to Cooperate

4 July 2011

SUMMARY

The Localism Bill will abolish regional planning. In its place we believe the Bill must introduce effective mechanisms that allow local authorities to plan strategically and develop joint solutions - especially relating to matters such as biodiversity protection and conservation, habitat creation as part of green infrastructure, delivery of low carbon energy sources and adaptation to the impacts of climate change such as coastal flooding and water management. This should be supported by clear and robust policy.

The Bill does introduce a new mechanism for strategic planning: the duty to cooperate. However, we are concerned that the duty as currently drafted will fail to encourage proactive cooperation between local authorities to facilitate effective strategic planning. Voluntary arrangements for strategic planning may not be sufficient in allowing local authorities to resolve contentious issues that impact across administrative boundaries. To ensure that the duty to cooperate is effective, the Greenest Planning Ever coalition believes that it should be amended to:

- Strengthen the application of the duty to marine planning and drive better integration with terrestrial planning.
- Ensure that the purpose of the duty and the act of cooperation furthers the achievement of sustainable development.
- Cover the implementation (as well as preparation) of the development plan documents, marine plans and other strategic activities.
- Clarify and expand the definition of 'strategic matters'.
- Strengthen the engagement required of a person beyond merely 'considering' actions.
- Provide the Secretary of State with a sanction should a local planning authority or prescribed body fail to comply with the duty.

MARINE PLANNING

AMENDMENTS 147FJ, 147FL AND 147R

During the passage of the Bill in the Commons, the Government conceded that the duty to cooperate should apply to the Marine Management Organisation (MMO) and that the MMO will be a body prescribed in regulation. Consistent governance arrangements are critical in achieving effective planning. Like local planning authorities, a marine planning authority is the

primary planning authority for its area, so we feel it should be given the same recognition on the face of the Bill, rather than in secondary legislation where the obligation could be removed by order of the Secretary of State.

We strongly support the inclusion of marine planning within the activities to which the duty applies. Like the test of soundness for local development documents, there must also be a mechanism which tests and measures if the duty has been complied with in relation to marine planning.

ACHIEVING SUSTAINABLE DEVELOPMENT

The objective of the duty must be to empower local authorities to cooperate in order to achieve sustainable development. It is at the 'larger than local level' that important links can be made between global, national and local needs and impacts which can be addressed through shared responsibility and action. Local authorities and other prescribed bodies must be able to deliver environmental priorities, such as enhancing and protecting the natural environment in line with the objectives of the Natural Environment White Paper, as well as delivering economic and social objectives. It should also push forward the transformative change needed to mitigate and adapt to climate change.

COOPERATION ON CROSS-BOUNDARY ISSUES

AMENDMENTS 147HA, 147HB, 147HC, 147HE, 147HN, 147HG, 147HJ, 147HL AND 147HM

Currently the focus of the duty to cooperate is limited to the preparation of planning documents, either within a Local Development Framework or marine plans. In terrestrial planning, local authorities will often be required to work together to address particular cross-boundary issues that fall outside the scope of the core strategies of their Local Development Framework. We believe that the duty to cooperate should allow for the integration of joint planning activities, strategic documents and processes which may not be integrated within statutory planning documents but have an impact on the development and use of land.

Moreover, the scope of the duty should extend beyond the preparation of development plan documents, marine plans and other strategic activities: it should extend to their implementation.

The duty to cooperate must enable local authorities to plan strategically across boundaries to support ecological networks, as recommended in the Natural Environment White Paper.

We are concerned that the definition of 'strategic matters' as a development or use of land that has an 'impact' may not capture all those activities that comprise strategic planning. In addition, the delivery of infrastructure is given particular importance. We have suggested that the definition is expanded to enable other developments or use of land that are strategically important to be defined by regulation or order, as well as development or use that is necessary in order to meet the needs of a planning area that cannot be accommodated within that planning area.

NATURE OF THE ENGAGEMENT

AMENDMENTS 147HP, 147HQ, 147JA and 147LA

We believe that cooperation should involve more than the considering entering into joint approaches or developing joint development plan documents. The requirement to consider the activities of prescribed persons (moved from sub-section (2)(b)) should be part of the engagement process, rather than the purpose of the duty. Amendment five would make it easier to test whether local authorities have cooperated.

SANCTIONS

AMENDMENTS 147P AND 147R

The Government have introduced a requirement for an inspector examining draft local development documents to consider whether the duty to cooperate has been complied with, which we support. However, this may not provide an appropriate sanction or enforcement mechanism in all cases where cooperation between authorities is required. There may be times where a conflict between authorities seeking to cooperate just cannot be resolved because of their competing interests, and they may not get to the point of submitting a plan for examination to trigger the inspector's powers of examination and recommendation. This could cause a problem in, for example, the context of a housing development in an environmentally sensitive area like a Special Protection Areas (SPA). Many designated SPAs cut across many local authority boundaries and are in areas of high development pressure where local authorities must adopt a common approach to mitigation. We therefore believe that the duty to cooperate should include a measure of last resort to allow for mediation of those disagreements that authorities cannot resolve themselves. This includes a reserve power of intervention and direction by the Secretary of State, to be deployed only in cases where the Secretary of State is satisfied that intervention is the only way to achieve cooperation. This power will help to secure collaborative working between authorities.

Notes:

This briefing is supported by the following 11 organisations:

- Buglife – The Invertebrate Conservation Trust
- Butterfly Conservation
- Campaign for Better Transport
- Campaign for National Parks
- Friends of the Earth England
- Open Spaces Society
- Royal Society for the Protection of Birds
- The Badger Trust
- The Wildlife Trusts
- Woodland Trust
- WWF-UK

These organisations are all members of the Greenest Planning Ever coalition, which is a campaign of the Wildlife and Countryside Link¹ and partners. The Greenest Planning Ever coalition has come together to ensure that the natural environment is at the heart of planning reform.

Contact details:

Contact	Laura MacKenzie
Email/Tel	laura.mackenzie@rspb.org.uk or 07525 992 162
Date	4 July 2011

¹ Wildlife and Countryside Link (Link) is a coalition of the UK's major environmental organisations working together for the conservation and protection of wildlife and the countryside. Link is a registered charity number (No. 1107460) and a company limited by guarantee in England and Wales (No.3889519).

The Amendments

AMENDMENTS 147FJ and 147FL

Aim: To make the duty applicable to marine plan authorities. Like local planning authorities, the marine plan authority is the primary planning authority for its area so should be given the same recognition on the face of the Bill, rather than in secondary legislation where the obligation could be removed by order of the Secretary of State.

147FJ In Clause 95, page 72, line 14, after “authority,” insert—

“(ba) a marine plan authority, or”

147FL In Clause 95, page 72, line 18, after “(b)” insert “, (ba)”

AMENDMENTS 147HA, 147HB, 147HC, 147HE and 147HN

Aim: To ensure that the scope of the duty to cooperate extends to the implementation of development plan documents, marine plans and other strategic activities that may not be incorporated within such plans but may effect the use or development of land.

147HA In Clause 95, page 72, line 28 after “preparation” insert “and implementation”.

147HB In Clause 95, page 72, line 29 after “preparation” insert “and implementation”.

147HC In Clause 95, page 72, line 30 after “preparation” insert “and implementation”.

147HE In Clause 95, page 72, line 37 at end insert “and

(f) the preparation and implementation of documents that are not planning documents but that affect the development or use of land, and associated activities,”

147HN In Clause 95, Page 73, line 21, after “region,” insert—

““planning documents” means documents that set out policies (however expressed) relating to the development and use of land, the English inshore region or the English offshore region under the following enactments—

- (a) the Localism Act 2011;
- (b) the Marine and Coastal Access Act 2009;
- (c) the Planning and Compulsory Purchase Act 2004;
- (d) the Town and Country Planning Act 1990, and”

AMENDMENTS 147HG, 147HJ, 147HL and 147HM

Aim: To clarify the definition of “strategic matters” and link to the listing of strategic priorities within guidance.

147HG In Clause 95, page 72, line 41 leave out “sustainable”

147HJ In Clause 95, page 72, line 42 leave out from “areas” to end of line 46

147HL In Clause 95, page 73, line 1 leave out “sustainable”.

147HM In Clause 95, Page 73, line 5, at end insert—

“(c) development or use of land that is of potential strategic importance, and
(d) development or use of land that is necessary in order to meet the needs of a planning area but cannot be accommodated within that planning area.”

AMENDMENTS 147HP, 147HQ, 147JA and 147LA

Aim: To strengthen the engagement required of a person beyond merely considering action to taking action. To make the requirement to consider the activities of prescribed persons (moved from subsection (2)(b)) part of the engagement process, rather than the purpose of the duty.

147HP In Clause 95, page 73, line 26 leave out “(a)”.

147HQ In Clause 95, Page 73, line 28, leave out “considering whether to consult on and prepare, and” and insert “to consult on and prepare, and, where appropriate,”

147JA In Clause 95, page 73, line 31 leave out “considering whether” and insert “where appropriate,”

147LA In Clause 95, page 73, line 33 at end insert “, and

“(c) to have regard to activities of a person within subsection (9) so far as they are relevant to activities within subsection (3).”

AMENDMENT 147P

Aim: To provide a sanction for non-compliance with the duty that allows the Secretary of State, upon application, to intervene and give directions to the persons.

147P In Clause 95, page 73, line 36 at end insert -

“(7A) A person may make representations to the Secretary of State with regard to compliance with this section in any particular case.

(7B) If the Secretary of State, upon application, is satisfied that a person is failing properly to comply with the duty under subsection (1), the Secretary of State may intervene and give directions.

- (7C) A direction under this section may specify actions to be taken by a person in order to meet the engagement requirements under subsections (2) and (6).
- (7D) A person subject to a direction under subsection (7B) must comply with that direction.
- (7E) In exercising the power under this subsection, the Secretary of State may appoint an independent person to review the application and make recommendations on the nature of any directions to be made.
- (7F) A direction under this subsection may be withdrawn, varied or revoked by a subsequent direction.”

AMENDMENT 147R

Aim: To provide further sanctions for the implementation of the duty, including similar tests in relation to the preparation and examination of marine plans.

147R In Clause 95, Page 74, line 10, at end insert—

“(4) In paragraph 9(2) of Schedule 6 to the Marine and Coastal Access Act 2009 (matters to which a marine plan authority is to have regard in preparing a marine plan) after paragraph (b) insert—

“(ba) the duty imposed by section 33A of the Planning and Compulsory Purchase Act 2004 with respect to co-operating in relation to planning of sustainable development,”.

(5) In paragraph 13 of Schedule 6 to the Marine and Coastal Access Act 2009 (independent investigation) after sub-paragraph (2) insert—

“(2A) In undertaking the independent investigation, the person so appointed is to determine in respect of the consultation draft whether the marine plan authority complied with any duty imposed on the authority by section 33A of the Planning and Compulsory Purchase Act 2004 in relation to its preparation.””