

<b>Title:</b> Improving the use and discharge of planning conditions : deemed discharge for planning conditions  <b>IA No:</b> RPC13-FT-CLG-1942(2)  <b>Lead department or agency:</b> Department for Communities and Local Government  <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 11/02/2015		
	<b>Stage:</b> Validation		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Secondary Legislation		
<b>Contact for enquiries:</b> Robert Griffith robert.griffith@communities.gsi.gov.uk			
<b>Summary: Intervention and Options</b>		<b>RPC Opinion:</b> Validated	

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
-£0.2m	-£0.2m	<£0.1m	Yes   Out

**What is the problem under consideration? Why is government intervention necessary?**  
 Planning conditions play an important role in making the planning approval process more flexible. However, delays in local authorities discharging some planning conditions (those normally requiring agreement between the applicant and local authority on matters of detail before works can begin) can have a detrimental impact on the delivery of much needed development and lead to avoidable costs for business. Government intervention in this area is necessary to provide a more satisfactory option for an applicant in the circumstance where a condition needs to be agreed (discharged) with a local authority, but confirmation of that agreement has been subject to unreasonable delay.

**What are the policy objectives and the intended effects?**  
 The objectives of the policy are to improve the end to end planning approval process for applicants and others affected by development by reducing unnecessary delay to the start of construction after planning permission is granted, to reduce costs to businesses, and to provide greater certainty around when development can be carried out.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**  
 The measure stems from commitments made in the Red Tape Challenge and Autumn Statement 2013 and forms part of a broader package of policy initiatives taken forward to improve the use and discharge of planning conditions. This has included non regulatory improvements such as issuing clearer and strengthened national planning guidance.  
  
 This impact assessment considers the element of the package that was identified as potentially having low cost regulatory impacts - introducing a deemed discharge for planning conditions. This policy would give an applicant a further option in the circumstance where a local planning authority has delayed in agreeing (discharging) a planning condition by allowing the applicant to regard the agreement as having been given if no response is received within a prescribed timeframe, and provided a set procedure is followed.

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> April 2020						
Does implementation go beyond minimum EU requirements?			N/A			
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		<b>Micro</b> YES	<b>&lt; 20</b> YES	<b>Small</b> YES	<b>Medium</b> YES	<b>Large</b> YES
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b>		<b>Non-traded:</b>	

***I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.***

Signed by the responsible SELECT SIGNATORY: Brandon Lewis MP Date: 28/02/2014

## FULL ECONOMIC ASSESSMENT

Price Base Year 2015	PV Base Year 2015	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: -£0.2m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A		N/A
High	N/A		N/A
Best Estimate	£0.2m	0	£0.2m

### Description and scale of key monetised costs by 'main affected groups'

The main affected group is professional developers that implement planning permissions for development. It is estimated that the deemed discharge measure will have a one-off familiarisation cost to 13,000 professional developers.

### Other key non-monetised costs by 'main affected groups'

None.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate			

### Description and scale of key monetised benefits by 'main affected groups'

None.

### Other key non-monetised benefits by 'main affected groups'

The policy will reduce costs associated with obtaining the approvals required to implement planning permissions, including employing staff and consultants with specialist knowledge to prepare applications to discharge conditions.

### Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

The key assumptions are:

- (i) the number of professional developers likely to use the deemed discharge option each .year
- (ii) the number of people required by a professional developer to familiarise themselves with the deemed discharge option
- (ii) time taken for that person to familiarise themselves with the deemed discharge measure

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) (£m, 2009 prices, 2013 base year):	In scope of OIOO?	Measure qualifies as
Costs:< £0.1m		
Benefits:0		
Net: <-£0.1m		

## Evidence Base (for summary sheets)

### Planning Conditions

1. A local authority (or an inspector at appeal) may grant planning permission subject to conditions as an alternative to outright refusal. Section 70(1)(a) of the Town and Country Planning Act 1990 enables the local planning authority in granting planning permission to impose “such conditions as they think fit”. This power is broad but must be interpreted in light of material factors such as the National Planning Policy Framework, supporting guidance on the use of planning conditions and relevant case law.
2. Planning conditions can be a useful tool for both developers and local planning authorities. They offer flexibility that allows developers to carry out detailed work after a decision on the principle of development has been taken and can enhance development. They can also ensure development can go ahead which might otherwise have been refused.
3. The National Planning Policy Framework provides that planning conditions must comply with six tests (derived from long established case law and policy). Conditions should be:
  - necessary
  - relevant to planning
  - relevant to the development to be permitted
  - enforceable
  - precise
  - reasonable in all other respects.
4. Conditions are often freestanding controls over how the development is carried out or its onward operation e.g. controlling hours of operation in the interests of preserving local amenity. Some conditions, however, specify that further approval from the local authority on an aspect of the development is required before the development can proceed (mostly known as pre-commencement conditions). Some examples of pre-commencement conditions used in a small sample of recent planning permissions granted on appeal are set out in Table 1 below.

**Table 1**

Example no.	Aspect of development	Condition wording
1	Architectural details	Prior to the commencement of development architectural details, at a scale of 1:20, of window sections, eaves and verges, and balconies, shall be submitted to the Local Planning Authority and approved in writing. Development should thereafter be carried out in accordance with the approved details.
2	Building materials	Prior to the commencement of development samples of the external facing and roofing materials including window heads, sills and surrounds, balconies, and balustrading, to be used in the construction of the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
3	Phasing	Prior to the commencement of the development a phasing plan for the residential development shall be submitted to and approved in writing by the Local Planning Authority.
4	Arboricultural implication assessment	Notwithstanding any information submitted with the application no development shall commence until a full arboricultural implication assessment has been submitted to and approved in writing by the Local Planning Authority.
5	Lighting	No development shall commence until details of a scheme to light the access drive and car parking areas hereby permitted has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be self-certified to accord with BS 5489 – 1:2003.

5. To receive this approval, the applicant is required to submit a formal application to the authority and receive written approval. This process is described as *discharging a planning condition* and the local authority has a statutory determination period of 8 weeks to decide the application.
6. An application to discharge one or more conditions costs £85 for commercial development and £25 for householder developments. This is a fixed charge set nationally in the Fees Regulations. A developer can reduce the costs of discharging conditions by grouping a number of conditions in one application, as the charge is per application, not condition. Local planning authorities have 8 weeks from receiving the application to issue a decision. If no decision has been issued after 8 weeks, the developer may appeal to the Planning Inspectorate. If after 12 weeks, a decision has not been

issued, the developer will receive a full refund of the fee. The feedback we have received from developers is that these options are rarely used due to time, cost, and the fact that they do not guarantee that a decision will be issued. Data from the Planning Inspectorate supports this and suggests that appeals against applications attached to a permission (such as applications for approval of details reserved by condition) only amount to 3% of all appeal cases.

## **Current Position**

7. If used inappropriately, conditions can add unnecessary burdens and delays to the development process. There are two issues of particular concern:
  - i. A tendency for local planning authorities to impose too many conditions at the decision making stage, particularly pre-commencement conditions that can delay development.
  - ii. Delays in discharging these conditions. Some local authorities are failing to make a decision on applications to discharge conditions within the statutory 8 week determination period. A key concern is that local authorities are not prioritising them leading to additional costs and delays.
8. In effect a planning permission is not implementable until all pre-commencement conditions have been discharged by the authority; a process which can take months in some cases. Research undertaken in 2009 by White Young Green<sup>1</sup> (WYG) for the previous government showed that 36% of decisions on conditions had not been taken within the statutory determination period of 8 weeks, and that nearly a quarter took longer than 10 weeks.
9. A survey run by the National House Building Council Federation in 2014 of small house-builder and developer companies suggests the situation has not improved. It found that 74% of respondents said that the time to clear planning conditions was a serious impediment or somewhat of a challenge to their businesses. Small house builders in particular do not have the sort of financial resilience or development pipeline that allows them to withstand excessive and unnecessary delays to their development plans.
10. The cost impacts on the applicant in terms of the delays incurred due to slow discharge of conditions cannot be monetised because, as Table 1 demonstrates, conditions vary greatly in their scope. Taking example no. 1 from the table, the applicant is likely to require the services of an architect and perhaps even a heritage specialist to prepare the information necessary to discharge the condition. He or she may also need to employ someone to liaise with the architect and the local planning authority for the duration of the determination period. Retaining the services of an architect and an employee for a longer period than is necessary will inevitably lead to additional costs in the form of architects fees and employee wages.
11. Example no. 5, on the other hand, may require the services of a lighting specialist. The specialist will charge different rates to an architect and will be required at different points of the discharge process. Similarly, however, the developer may need to retain the expert for a longer period if there is a delay in discharging the condition. Therefore, such variation means quantifying the potential delay costs is extremely problematic and it would be disproportionate to attempt to research further given the scale of this measure.

## **Policy objectives and intended effects**

12. The objectives of the policy are to:
  - i. improve the end to end planning approval process for applicants and others affected by development by reducing unnecessary delay to the start of construction after planning permission is granted
  - ii. reduce costs to businesses; and
  - iii. provide greater certainty around when development can be carried out.

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<sup>1</sup> White Young Green (2009) Improving the process of discharging planning conditions  
<http://webarchive.nationalarchives.gov.uk/20120919132719/http://www.communities.gov.uk/documents/planningandbuilding/pdf/1419487.pdf>

13. Reducing delays to the start of construction after planning permission is granted will reduce costs for businesses and provide greater certainty for developers.

### **Policy options considered, including alternatives to regulation**

14. The measures stem from commitments made in the Red Tape Challenge and Autumn Statement 2013. The preferred option is to introduce a targeted set of measures designed to improve the use and discharge of planning conditions. This work will complement the non-regulatory work that has already been completed, which was to issue improved national planning guidance to local authorities. The package focuses on changes to how local government administers planning conditions (how they justify their use of conditions on decision notices, how they share conditions with applicants, and when they are required to return the fee to the applicant where there has been a delay). The package also gives a further option that the applicant can exercise in the circumstance where a local authority has delayed in agreeing (discharging) a planning condition by providing a new deemed discharge. This measure allows the applicant to regard the condition as having the local authority's agreement if they have not responded within a prescribed period. This assessment considers any regulatory costs that might be linked to the deemed discharge.

15. There are a number of other policy options which we previously considered and discarded because none of them would provide equivalent benefits. All of these discarded options would involve new regulations. These are:

- shortening the time period for determination of applications to discharge conditions
- giving statutory weight to the six tests in National Planning Policy Framework policy
- limiting the use of conditions to only those that are nationally approved
- introducing a new fast track appeal option
- allowing third parties to sign off conditions
- dis-incentivising local planning authority use of breach of conditions notices

### ***Deemed discharge of planning conditions***

16. The deemed discharge enables the applicant to treat conditions attached to planning permission as being discharged when the authority has failed to make a decision within the determination period (8 weeks or another time agreed between the local authority and the applicant). Developers have actively called for this measure as it would provide applicants with the certainty to proceed with development if a local planning authority fails to discharge conditions on time. Deemed discharge would also provide a strong incentive for local planning authorities to discharge conditions within the determination period.

17. We propose that the new deemed discharge option will open to all development that is given planning permission as we consider the benefits of this intervention to be applicable to all types of development. However, we have concluded that to protect sensitive environments and prevent any unintended risk to human health and safety, that a small number of targeted exemptions (i.e. types of conditions or development that where the deemed discharge would not apply) are required for some types of conditions attached to planning permissions.

18. Due to the lack of available data, it is not possible to fully estimate how many planning permissions might be affected by the exemptions. Our best estimate is that the exemptions would affect less than 2% of all planning permissions, which in the year to September 2014 numbered 351,500. We do not, therefore, anticipate that the exemptions will undermine the effectiveness of the deemed discharge measure. The basis on which this estimate is made is set out in Table 2. Where there is available data, figures have been provided for the number of planning permissions that might be affected by each exemption. Table shows the total quantifiable number of permissions affected by the exemptions is around 10,450. However, this is considered to be an overestimate because multiple exemptions will apply to the same planning permission. With this high degree of overlap the actual figure for the number of planning permissions affected is likely to be considerably smaller i.e. under 7030 (2% of all planning permissions).

**Table 2**

Exemption no.	Exemption	Estimated no. of planning permissions affected by the exemption per year
1	Environmental impact assessment (EIA) development	Up to around 450 – based on no. of applications made in year to March 2014 that required an EIA
2	Development on or likely to have a significant impact on sites protected by European law for their nature conservation value	No reliable data. These permissions are rare because these sites tend to be in rural locations where there is little development activity
3	Conditions intended to manage flood risk	No reliable data, but we estimate around 1000
4	Conditions that have the effect of requiring certain legal agreements to be entered into	No reliable data. These conditions are rare because legal agreements are normally entered into before permission is granted
5	Conditions requiring the approval of details for outline planning permission required by reserved matters	Around 5500 – based on the no. of outline planning permission made in the year to September 2014
6	Conditions relating to the investigation and remediation of contaminated land	No reliable data, but we estimate that this exemption will only affect a small number of permissions because development on contaminated land represents a small proportion of overall development
7	Conditions relating to highway safety	No reliable data, but we estimate that this exemption will only affect a small number of permissions because these matters are often dealt with before planning permission is granted
8	Development on or likely to have a significant impact on Sites of Special Scientific Interest (SSSIs)	No reliable data. These permissions are rare because these sites tend to be in rural locations where there is little development activity
9	Conditions relating to investigation of archaeological potential	Around 3500 – research undertaken by the Association of Local Government Archaeological Officers in 2010 found that around 3% of all development schemes have any archaeological interest worthy of more detailed consideration. We consider that 3% is an overestimate for the number of permissions affected by the exemption as in many cases the investigation will have taken place before planning permission is granted. 1% of all planning permissions is therefore a more realistic estimate.
<b>Total estimated no. of permissions (quantified)</b>		<b>~10,450 (does not factor in a large degree of overlap where multiple exemptions will apply to the same permission)</b>

19. We have also considered the time limit for when a deemed consent can be activated. The current determination period is 8 weeks, after which an applicant can appeal against non-determination, and it makes sense to use the current time limits which are in place and well understood. Applicants and local planning authorities that responded to the consultation on the procedural detail of the measure were in agreement that the current statutory determination period should be retained.

20. In terms of how the deemed discharge would be activated, the proposal is that this should be a choice for the applicant. There may be reasons why an applicant does not wish to activate a deemed discharge, but instead agree a longer time limit with the local authority. Therefore, we propose that primary legislation will not make deemed discharge an automatic outcome after a period of time, but will only apply when the applicant serves notice on the local planning authority. We have concluded that at least a 2 week period of notice must be provided and that this can only happen 6 weeks after the application is received by the local planning authority. There was also broad support for this among respondents to the consultation<sup>2</sup>.

## Summary of benefits and costs to business

21. The main affected group is businesses that are implementing planning permissions where there are conditions attached that require the further approval of the local planning authority on matters of detail e.g. a landscaping scheme or a sample of a building material. Therefore, businesses of all sizes will benefit from the proposed measures. It is not possible to calculate how many applications will be decided within the 8 week target i.e. either because an applicant has activated the deemed discharge or through a decision issued by the local planning authority because it has given the application more priority after the measure is introduced. This is because:

- there is no available data on the number of applications for approval of details reserved by condition in England on an annual basis (the reasoning is set out in paragraph 25);

<sup>2</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/370423/Deemed\\_discharge\\_gov\\_response.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/370423/Deemed_discharge_gov_response.pdf)

- it will be a voluntary measure and it is not possible at this stage to determine how many applicants will opt to activate the deemed discharge at this stage;
- there will also be an option for the applicant to agree an extension of the time limit and, again, at this stage it is not possible to determine how many applicants will choose this route

22. It is, however, reasonable to predict that the majority of applications will be determined in the 8 week determination period because most applicants will choose the deemed discharge option over a delay, or local planning authorities will give these applications greater priority in order to prevent a deemed discharge from being activated.

### ***Benefits to business***

23. The proposals to allow applicants to activate a deemed discharge on an application to discharge conditions attached to a permission, will benefit businesses in primarily two ways.

- i. It will help ensure that local planning departments effectively allocate resources for the post-permission phase of development management.
- ii. It provides certainty for the applicant that the conditions will be discharged, even where the local planning authority fails to determine the application within the determination period.

24. These benefits should reduce the costs to applicants associated with delays in discharging conditions, particularly for those that control the start of a certain phase of development, such as demolition or above ground construction. Currently, where delays occur, applicants often need to spend time and resources (e.g. on staff and consultants) on chasing the local planning authority for a decision - this cost will be eradicated with this measure in place. The applicant will also know that by law a decision will be made within the determination period, and therefore will be able to plan their post-decision phasing including the date of start on site with certainty.

25. Taking example no. 1 from Table 1, a shorter determination period will mean that the applicant will not need to retain the services of the architect and the person he or she employs to liaise with the architect for as long as may have been the case with a longer determination period. This will result in reduced cost relating to architect's fees and employee wages.

26. When applicants can commence their developments sooner than would have been the case without these measures, they will be able to respond to increasing market demand more quickly, which should help improve the performance of their businesses. These benefits will be available to applicants on an ongoing basis.

### *Number of conditions being discharged*

27. It is not possible to monetise the cost savings because:

- there is no available data on how many conditions requiring discharge by the local planning authority are imposed on permissions;
- there is no available data on how many applications to discharge conditions are submitted each year; and
- of the variable nature of pre-commencement conditions and the expertise and resources required to discharge them.

28. This is because the Government only collects high level data in this area e.g. the number of applications received by local planning authorities. Authorities are required to publish copies of planning permissions they issue, but they do not routinely compile statistics about these permissions i.e. the number of pre-commencement conditions, that would make this calculation possible.

29. It is also not possible to calculate how many applications to discharge conditions are submitted each year. Applications for approval of details reserved by condition are made under and recorded by the Government as Section 73 (of the Town and Country Planning Act 1990) applications. Other types of application, which use the Section 73 powers, are also included in this figure. Therefore, it is not possible to separate applications for approval of details reserved by condition from other applications that constitute the total figure.

30. To calculate accurate figures, this data would need to be compiled from scratch by analysing thousands of planning permissions issued by local planning authorities and logging applications made for approval of details reserved by condition for a 12 month period. This would be a costly exercise and out of proportion to the benefits of having this data.

### ***Costs to business***

31. It is expected that organisations intending on implementing planning permissions will incur a negligible familiarisation costs associated with the deemed discharge measure. However, it should be pointed out that the deemed discharge would provide an additional option for applicants and that the status quo would not otherwise change. The applicant would not be forced to familiarise themselves with the deemed discharge and could instead opt to pursue existing routes that would not change as a result of this measure.
32. It is possible to stress test the assumption that any cost would be negligible using the familiarisation cost methodology set out in the Changes to Town and Country Planning (Development Management Procedure) (England) Order 2010 for onshore oil and gas extraction Triage form (previously confirmed by the RPC; reference number RPC13-FT-DECC-1864).
33. To calculate the negligible cost of familiarisation, we assume that one person employed by each professional developer in England is required to familiarise themselves with the deemed discharge option. This equates to 13,000 businesses in the first year. This assumption is consistent with the National Planning Policy Framework (NPPF) Impact Assessment, which used the number of major decisions per annum, which is currently around 13,000, as a proxy for the number of professional developers required to familiarise themselves with the new regulations
34. The average hourly wage of those individuals required to familiarise themselves with the updated policy is assumed to be £23.36: this wage is up-scaled from the median wages of 'construction project managers and related professionals' to reflect non-wage labour costs in line with HM Treasury guidance.
35. We estimate that familiarisation takes half an hour based on the fact that familiarisation with an entirely new national planning policy was assumed to take three to four hours. This is consistent with previous Impact Assessments e.g. RPC14-FT-CLG-2147(2). As a result, annual costs are likely to be just £152,000 in the first year. Even if this quadrupled to two hours the gross familiarisation cost would remain well below the £1m threshold. This is likely to be an extremely cautious estimate, since the extent of the documentation involved in this case is far lower than that for the NPPF, and as such the number of hours required for familiarisation is likely to be negligible as set out above, but the figure helps to reassure that the familiarisation costs for business applicants is likely to be minimal.
36. The proposal is to allow applicants flexibility in terms of taking up a 'deemed discharge' option; it will not be compulsory. Where an applicant does nothing, the costs will remain as under the current system. Where an applicant chooses to take 'deemed discharge' there will only be benefits to the applicant. There are not anticipated to be any ongoing costs associated with the deemed discharge as the majority of the process will remain unchanged.
37. We did not calculate a high and low scenario for familiarisation costs as the cost are very small. Varying the amount of time spent on familiarisation would not add dramatically alter the total costs to businesses. As explained even if familiarisation time quadrupled to two hours, familiarisation cost would remain below the £1m per year. At 2 hours, familiarisation cost will be about £600,000 – in comparison, the Impact Assessment for the NPPF assumed it would take 2 to 4 hours for developers to become familiar with a new planning framework.

### ***Impacts on other parties***

38. The impacts on the local planning authority itself is minimal, though an inefficient application of conditions can point to systemic failures of the authority's planning department and some savings would be possible with a more rigorous approach. A report by Arup in 2007 suggests that LPAs spent 1.2 per cent of their time, and 1.4 per cent of the cost of the planning system on approval and

discharge of conditions. This is despite that fact that many conditions will involve the submission of a multitude of detailed and technical material which sometimes requires further consultation with third parties and statutory consultees. The estimated labour costs including overheads related to planning conditions for the whole planning service was in 2007 £16.2m. It is not thought that these figures will have changed much in the intervening time since no changes have been made to the process of using and discharging of conditions in the planning system.

39. The impacts on third parties are minimal, though as construction and occupation of developments can be held up artificially through non-discharged conditions, this can lead to a slower or later than planned delivery of housing or other commercial premises and more uncertainty and potentially a longer period of disruption for local communities.

### ***Implementation***

40. Primary powers contained in the Infrastructure Act 2015 will be used to set out the procedure (described in paragraphs 17-20) that the applicant must follow in order to activate a deemed discharge. This will form part of a consolidated Development Management Procedure Order, which is due to be laid before Parliament in March 2015. The measure is expected to come into force in May 2015.