

## SCHEDULES

### SCHEDULE 10

Section 116

#### PROCESS FOR MAKING OF NEIGHBOURHOOD DEVELOPMENT ORDERS

This is the Schedule to be inserted as Schedule 4B to the Town and Country Planning Act 1990—

### “SCHEDULE 4B

Section 61E

#### PROCESS FOR MAKING OF NEIGHBOURHOOD DEVELOPMENT ORDERS

#### **Proposals for neighbourhood development orders**

- 1 (1) A qualifying body is entitled to submit a proposal to a local planning authority for the making of a neighbourhood development order by the authority in relation to a neighbourhood area within the area of the authority.
  - (2) The proposal must be accompanied by—
    - (a) a draft of the order, and
    - (b) a statement which contains a summary of the proposals and sets out the reasons why an order should be made in the proposed terms.
  - (3) The proposal must—
    - (a) be made in the prescribed form, and
    - (b) be accompanied by other documents and information of a prescribed description.
  - (4) The qualifying body must send to prescribed persons a copy of—
    - (a) the proposal,
    - (b) the draft neighbourhood development order, and
    - (c) such of the other documents and information accompanying the proposal as may be prescribed.
  - (5) The Secretary of State may publish a document setting standards for—
    - (a) the preparation of a draft neighbourhood development order and other documents accompanying the proposal,
    - (b) the coverage in any document accompanying the proposal of a matter falling to be dealt with in it, and
    - (c) all or any of the collection, sources, verification, processing and presentation of information accompanying the proposal.
  - (6) The documents and information accompanying the proposal (including the draft neighbourhood development order) must comply with those standards.
- 2 (1) A qualifying body may withdraw a proposal at any time before the local planning authority make a decision under paragraph 12.
  - (2) If—

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- (a) a proposal by a qualifying body is made by an organisation or body designated as a neighbourhood forum, and
  - (b) the designation is withdrawn at any time before the proposal is submitted for independent examination under paragraph 7,
- the proposal is to be treated as withdrawn by the qualifying body at that time.
- (3) If the withdrawal of the designation occurs after the proposal is submitted for independent examination under that paragraph, the withdrawal is not to affect the validity of the proposal.

### **Advice and assistance in connection with proposals**

- 3 (1) A local planning authority must give such advice or assistance to qualifying bodies as, in all the circumstances, they consider appropriate for the purpose of, or in connection with, facilitating the making of proposals for neighbourhood development orders in relation to neighbourhood areas within their area.
- (2) Nothing in this paragraph is to be read as requiring the giving of financial assistance.

### **Requirements to be complied with before proposals made or considered**

- 4 (1) Regulations may make provision as to requirements that must be complied with before proposals for a neighbourhood development order may be submitted to a local planning authority or fall to be considered by a local planning authority.
- (2) The regulations may in particular make provision—
- (a) as to the giving of notice and publicity,
  - (b) as to the information and documents that are to be made available to the public,
  - (c) as to the making of reasonable charges for anything provided as a result of the regulations,
  - (d) as to consultation with and participation by the public,
  - (e) as to the making and consideration of representations (including the time by which they must be made),
  - (f) requiring prescribed steps to be taken before a proposal of a prescribed description falls to be considered by a local planning authority, and
  - (g) conferring powers or imposing duties on local planning authorities, the Secretary of State or other public authorities.
- (3) The power to make regulations under this paragraph must be exercised to secure that—
- (a) prescribed requirements as to consultation with and participation by the public must be complied with before a proposal for a neighbourhood development order may be submitted to a local planning authority, and
  - (b) a statement containing the following information in relation to that consultation and participation must accompany the proposal submitted to the authority—
    - (i) details of those consulted,
    - (ii) a summary of the main issues raised, and
    - (iii) any other information of a prescribed description.

### Consideration of proposals by authority

- 5
- (1) A local planning authority may decline to consider a proposal submitted to them if they consider that it is a repeat proposal.
  - (2) A proposal (“the proposal in question”) is a “repeat” proposal for the purposes of this paragraph if it meets conditions A and B.
  - (3) Condition A is that in the period of two years ending with the date on which the proposal in question is received—
    - (a) the authority have refused a proposal under paragraph 12 or section 61E(8) that is the same as or similar to the proposal in question, or
    - (b) a referendum on an order relating to a proposal under this Schedule that is the same as or similar to the proposal in question has been held under this Schedule and half or less than half of those voting voted in favour of the order.
  - (4) Condition B is that the local planning authority consider that there has been no significant change in relevant considerations since the refusal of the proposal or the holding of the referendum.
  - (5) For the purposes of this paragraph “relevant considerations” means—
    - (a) national policies and advice contained in guidance issued by the Secretary of State that are relevant to the draft neighbourhood development order to which the proposal in question relates, and
    - (b) the strategic policies contained in the development plan for the area of the authority (or any part of that area).
  - (6) If the authority decline to consider the proposal, they must notify the qualifying body of that fact and of their reasons for declining to consider it.
- 6
- (1) This paragraph applies if—
    - (a) a proposal has been made to a local planning authority, and
    - (b) the authority have not exercised their powers under paragraph 5 to decline to consider it.
  - (2) The authority must consider—
    - (a) whether the qualifying body is authorised for the purposes of a neighbourhood development order to act in relation to the neighbourhood area concerned as a result of section 61F,
    - (b) whether the proposal by the body complies with provision made by or under that section,
    - (c) whether the proposal and the documents and information accompanying it (including the draft neighbourhood development order) comply with provision made by or under paragraph 1, and
    - (d) whether the body has complied with the requirements of regulations made under paragraph 4 imposed on it in relation to the proposal.
  - (3) The authority must also consider whether the draft neighbourhood development order complies with the provision made by or under sections 61E(2), 61J and 61L.
  - (4) The authority must—
    - (a) notify the qualifying body as to whether or not they are satisfied that the matters mentioned in sub-paragraphs (2) and (3) have been met or complied with, and

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- (b) in any case where they are not so satisfied, refuse the proposal and notify the body of their reasons for refusing it.

### **Independent examination**

- 7 (1) This paragraph applies if—
  - (a) a local planning authority have considered the matters mentioned in paragraph 6(2) and (3), and
  - (b) they are satisfied that the matters mentioned there have been met or complied with.
- (2) The authority must submit for independent examination—
  - (a) the draft neighbourhood development order, and
  - (b) such other documents as may be prescribed.
- (3) The authority must make such arrangements as they consider appropriate in connection with the holding of the examination.
- (4) The authority may appoint a person to carry out the examination, but only if the qualifying body consents to the appointment.
- (5) If—
  - (a) it appears to the Secretary of State that no person may be appointed under sub-paragraph (4), and
  - (b) the Secretary of State considers that it is expedient for an appointment to be made under this sub-paragraph,
 the Secretary of State may appoint a person to carry out the examination.
- (6) The person appointed must be someone who, in the opinion of the person making the appointment—
  - (a) is independent of the qualifying body and the authority,
  - (b) does not have an interest in any land that may be affected by the draft order, and
  - (c) has appropriate qualifications and experience.
- (7) The Secretary of State or another local planning authority may enter into arrangements with the authority for the provision of the services of any of their employees as examiners.
- (8) Those arrangements may include—
  - (a) provision requiring payments to be made by the authority to the Secretary of State or other local planning authority, and
  - (b) other provision in relation to those payments and other financial matters.
- 8 (1) The examiner must consider the following—
  - (a) whether the draft neighbourhood development order meets the basic conditions (see sub-paragraph (2)),
  - (b) whether the draft order complies with the provision made by or under sections 61E(2), 61J and 61L,
  - (c) whether any period specified under section 61L(2)(b) or (5) is appropriate,
  - (d) whether the area for any referendum should extend beyond the neighbourhood area to which the draft order relates, and
  - (e) such other matters as may be prescribed.

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- (2) A draft order meets the basic conditions if—
    - (a) having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the order,
    - (b) having special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest that it possesses, it is appropriate to make the order,
    - (c) having special regard to the desirability of preserving or enhancing the character or appearance of any conservation area, it is appropriate to make the order,
    - (d) the making of the order contributes to the achievement of sustainable development,
    - (e) the making of the order is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area),
    - (f) the making of the order does not breach, and is otherwise compatible with, EU obligations, and
    - (g) prescribed conditions are met in relation to the order and prescribed matters have been complied with in connection with the proposal for the order.
  - (3) Sub-paragraph (2)(b) applies in relation to a listed building only in so far as the order grants planning permission for development that affects the building or its setting.
  - (4) Sub-paragraph (2)(c) applies in relation to a conservation area only in so far as the order grants planning permission for development in relation to buildings or other land in the area.
  - (5) In this paragraph “listed building” has the same meaning as in the Planning (Listed Buildings and Conservation Areas) Act 1990.
  - (6) The examiner is not to consider any matter that does not fall within sub-paragraph (1) (apart from considering whether the draft order is compatible with the Convention rights).
- 9
- (1) The general rule is that the examination of the issues by the examiner is to take the form of the consideration of written representations.
  - (2) But the examiner must cause a hearing to be held for the purpose of receiving oral representations about a particular issue at the hearing—
    - (a) in any case where the examiner considers that the consideration of oral representations is necessary to ensure adequate examination of the issue or a person has a fair chance to put a case, or
    - (b) in such other cases as may be prescribed.
  - (3) The following persons are entitled to make oral representations about the issue at the hearing—
    - (a) the qualifying body,
    - (b) the local planning authority,
    - (c) where the hearing is held to give a person a fair chance to put a case, that person, and
    - (d) such other persons as may be prescribed.
  - (4) The hearing must be in public.

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- (5) It is for the examiner to decide how the hearing is to be conducted, including—
- (a) whether a person making oral representations may be questioned by another person and, if so, the matters to which the questioning may relate, and
  - (b) the amount of time for the making of a person’s oral representations or for any questioning by another person.
- (6) In making decisions about the questioning of a person’s oral representations by another, the examiner must apply the principle that the questioning should be done by the examiner except where the examiner considers that questioning by another is necessary to ensure—
- (a) adequate examination of a particular issue, or
  - (b) a person has a fair chance to put a case.
- (7) Sub-paragraph (5) is subject to regulations under paragraph 11.
- 10 (1) The examiner must make a report on the draft order containing recommendations in accordance with this paragraph (and no other recommendations).
- (2) The report must recommend either—
- (a) that the draft order is submitted to a referendum, or
  - (b) that modifications specified in the report are made to the draft order and that the draft order as modified is submitted to a referendum, or
  - (c) that the proposal for the order is refused.
- (3) The only modifications that may be recommended are—
- (a) modifications that the examiner considers need to be made to secure that the draft order meets the basic conditions mentioned in paragraph 8(2),
  - (b) modifications that the examiner considers need to be made to secure that the draft order is compatible with the Convention rights,
  - (c) modifications that the examiner considers need to be made to secure that the draft order complies with the provision made by or under sections 61E(2), 61J and 61L,
  - (d) modifications specifying a period under section 61L(2)(b) or (5), and
  - (e) modifications for the purpose of correcting errors.
- (4) The report may not recommend that an order (with or without modifications) is submitted to a referendum if the examiner considers that the order does not—
- (a) meet the basic conditions mentioned in paragraph 8(2), or
  - (b) comply with the provision made by or under sections 61E(2), 61J and 61L.
- (5) If the report recommends that an order (with or without modifications) is submitted to a referendum, the report must also make—
- (a) a recommendation as to whether the area for the referendum should extend beyond the neighbourhood area to which the order relates, and
  - (b) if a recommendation is made for an extended area, a recommendation as to what the extended area should be.
- (6) The report must—
- (a) give reasons for each of its recommendations, and
  - (b) contain a summary of its main findings.

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- (7) The examiner must send a copy of the report to the qualifying body and the local planning authority.
  - (8) The local planning authority must then arrange for the publication of the report in such manner as may be prescribed.
- 11
- (1) Regulations may make provision in connection with examinations under paragraph 7.
  - (2) The regulations may in particular make provision as to—
    - (a) the giving of notice and publicity in connection with an examination,
    - (b) the information and documents relating to an examination that are to be made available to the public,
    - (c) the making of reasonable charges for anything provided as a result of the regulations,
    - (d) the making of written or oral representations in relation to draft neighbourhood development orders (including the time by which written representations must be made),
    - (e) the written representations which are to be, or which may be or may not be, considered at an examination,
    - (f) the refusal to allow oral representations of a prescribed description to be made at a hearing,
    - (g) the procedure to be followed at an examination (including the procedure to be followed at a hearing),
    - (h) the payment by a local planning authority of remuneration and expenses of the examiner, and
    - (i) the award of costs by the examiner.

#### **Consideration by authority of recommendations made by examiner etc**

- 12
- (1) This paragraph applies if an examiner has made a report under paragraph 10.
  - (2) The local planning authority must—
    - (a) consider each of the recommendations made by the report (and the reasons for them), and
    - (b) decide what action to take in response to each recommendation.
  - (3) The authority must also consider such other matters as may be prescribed.
  - (4) If the authority are satisfied—
    - (a) that the draft order meets the basic conditions mentioned in paragraph 8(2), is compatible with the Convention rights and complies with the provision made by or under sections 61E(2), 61J and 61L, or
    - (b) that the draft order would meet those conditions, be compatible with those rights and comply with that provision if modifications were made to the draft order (whether or not recommended by the examiner),a referendum in accordance with paragraph 14, and (if applicable) an additional referendum in accordance with paragraph 15, must be held on the making by the authority of a neighbourhood development order.
  - (5) The order on which the referendum is (or referendums are) to be held is the draft order subject to such modifications (if any) as the authority consider appropriate.

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- (6) The only modifications that the authority may make are—
    - (a) modifications that the authority consider need to be made to secure that the draft order meets the basic conditions mentioned in paragraph 8(2),
    - (b) modifications that the authority consider need to be made to secure that the draft order is compatible with the Convention rights,
    - (c) modifications that the authority consider need to be made to secure that the draft order complies with the provision made by or under sections 61E(2), 61J and 61L,
    - (d) modifications specifying a period under section 61L(2)(b) or (5), and
    - (e) modifications for the purpose of correcting errors.
  - (7) The area in which the referendum is (or referendums are) to take place must, as a minimum, be the neighbourhood area to which the proposed order relates.
  - (8) If the authority consider it appropriate to do so, they may extend the area in which the referendum is (or referendums are) to take place to include other areas (whether or not those areas fall wholly or partly outside the authority’s area).
  - (9) If the authority decide to extend the area in which the referendum is (or referendums are) to take place, they must publish a map of that area.
  - (10) In any case where the authority are not satisfied as mentioned in sub-paragraph (4), they must refuse the proposal.
  - (11) The authority must publish in such manner as may be prescribed—
    - (a) the decisions they make under this paragraph,
    - (b) their reasons for making those decisions, and
    - (c) such other matters relating to those decisions as may be prescribed.
  - (12) The authority must send a copy of the matters required to be published to—
    - (a) the qualifying body, and
    - (b) such other persons as may be prescribed.
- 13 (1) If—
- (a) the local planning authority propose to make a decision which differs from that recommended by the examiner, and
  - (b) the reason for the difference is (wholly or partly) as a result of new evidence or a new fact or a different view taken by the authority as to a particular fact,
- the authority must notify prescribed persons of their proposed decision (and the reason for it) and invite representations.
- (2) If the authority consider it appropriate to do so, they may refer the issue to independent examination.
  - (3) Regulations may make provision about examinations under this paragraph (and the regulations may include any provision of a kind mentioned in paragraph 11(2)).
  - (4) This paragraph does not apply in relation to recommendations in relation to the area in which a referendum is to take place.



## Referendum

- 14 (1) This paragraph makes provision in relation to a referendum that, as a result of paragraph 12(4), must be held on the making of a neighbourhood development order.
- (2) A relevant council must make arrangements for the referendum to take place in so much of their area as falls within the area (“the referendum area”) in which the referendum is to take place (as determined under paragraph 12(7) and (8)).
- (3) A “relevant council” means—
- (a) a district council,
  - (b) a London borough council,
  - (c) a metropolitan district council, or
  - (d) a county council in relation to any area in England for which there is no district council.
- (4) A person is entitled to vote in the referendum if on the prescribed date—
- (a) the person is entitled to vote in an election of any councillors of a relevant council any of whose area is in the referendum area, and
  - (b) the person’s qualifying address for the election is in the referendum area.
- (5) Sub-paragraph (4) does not apply in relation to so much of the referendum area as falls within the City of London.
- (6) In that case a person is entitled to vote in the referendum if on the prescribed date—
- (a) the person is entitled to vote in an Authority election, and
  - (b) the person’s qualifying address for the election is in the City of London.
- (7) For the purposes of this paragraph—
- (a) “Authority election” has the same meaning as in the Representation of the People Act 1983 (see section 203(1)),
  - (b) the Inner Temple and the Middle Temple are to be treated as forming part of the City of London, and
  - (c) “qualifying address” has the same meaning as in the Representation of the People Act 1983 (see section 9).
- 15 (1) The additional referendum mentioned in paragraph 12(4) must be held on the making of a neighbourhood development order if the draft order relates to a neighbourhood area that has been designated as a business area under section 61H.
- (2) Sub-paragraph (2) of paragraph 14 is to apply in relation to the additional referendum as it applies in relation to a referendum under that paragraph.
- (3) A person is entitled to vote in the additional referendum if on the prescribed date—
- (a) the person is a non-domestic ratepayer in the referendum area, or
  - (b) the person meets such other conditions as may be prescribed.
- (4) “Non-domestic ratepayer” has the same meaning as in Part 4 of the Local Government Act 2003 (see section 59(1)).
- (5) Regulations may make provision for excluding a person’s entitlement to vote in the additional referendum.
- 16 (1) Regulations may make provision about referendums held under paragraph 14 or 15.

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- (2) The regulations may in particular make provision—
- (a) dealing with any case where there are two or more relevant councils any of whose areas fall within the referendum area,
  - (b) for only one relevant council to be subject to the duty to make arrangements for the referendum in a case within paragraph (a),
  - (c) prescribing a date by which the referendum must be held or before which it cannot be held,
  - (d) as to the question to be asked in the referendum and any explanatory material in relation to that question (including provision conferring power on a local planning authority to set the question and provide that material),
  - (e) as to the publicity to be given in connection with the referendum,
  - (f) about the limitation of expenditure in connection with the referendum,
  - (g) as to the conduct of the referendum,
  - (h) as to when, where and how voting in the referendum is to take place,
  - (i) as to how the votes cast are to be counted,
  - (j) about certification as to the number of persons voting in the referendum and as to the number of those persons voting in favour of a neighbourhood development order, and
  - (k) about the combination of polls at a referendum held under paragraph 14 or 15 with polls at another referendum or at any election.
- (3) The regulations may apply or incorporate, with or without modifications, any provision made by or under any enactment relating to elections or referendums.
- (4) But where the regulations apply or incorporate (with or without modifications) any provision that creates an offence, the regulations may not impose a penalty greater than is provided for in respect of that provision.
- (5) Before making the regulations, the Secretary of State must consult the Electoral Commission.
- (6) In this paragraph “enactment” means an enactment, whenever passed or made.

### **Interpretation**

17 In this Schedule—

“the Convention rights” has the same meaning as in the Human Rights Act 1998, and

“development plan”—

- (a) includes a development plan for the purposes of paragraph 1 of Schedule 8 to the Planning and Compulsory Purchase Act 2004 (transitional provisions), but
- (b) does not include so much of a development plan as consists of a neighbourhood development plan under section 38A of that Act.”