

Get in on the Act

Infrastructure Act 2015

Get in on the Act

Infrastructure Act 2015

Background

The Infrastructure Bill was introduced in the House of Lords on 5 June 2014. After scrutiny in both Houses of Parliament it was granted Royal Assent on 12 February 2015, to become the Infrastructure Act 2015.

The Act covers transport, housing, regeneration, infrastructure and energy. A number of the provisions in the legislation are of importance to, and will affect, local government. These include: the creation of strategic highways companies to replace strategic highways authorities; government investment in cycling and walking; the discharge of certain types of planning conditions; the transfer of publicly held land; the local land charges service; and shale gas extraction.

The Act is in eight parts and covers the work of the Departments for Transport, Environment, Food and Rural Affairs, Communities and Local Government, Business, Innovation and Skills, and Energy and Climate Change. The parts are as follows:

- 1. Strategic Highways Companies** (extends to England and Wales only; save sections 16, 18 and 20 that apply to the UK as a whole).
- 2. Cycling and Walking Investment Strategies** (extends to England and Wales only).
- 3. Powers of British Transport Police Force** (extends to England, Wales and Scotland).
- 4. Environmental Control of Animal and Plant Species** (extends to England and Wales only).
- 5. Planning, Land and Buildings** (an amendment or repeal has the same extent as to which the provision extends. Also, part 4 of Schedule 5 and section 34 extends to England and Wales only).
- 6. Energy** (sections 38, 39, 41, 42, 51 to 53 extends to England, Wales and Scotland; section 40 and 49 extends to the United Kingdom; and sections 43 to 48 and section 50 extends to England and Wales).
- 7. Public Works Loan Commissioners** (extends to the United Kingdom).
- 8. General Provisions** (extends to the United Kingdom).

Parts 1, 2 and 4 of the Act will come into force through secondary legislation at a later date. Parts 3 and 7 of the Act came into force in April 2015. Certain provisions of parts 5 and 6 came into force on the day the Act was passed, other provisions came into force in April 2015, and the remaining provisions will come into force through secondary legislation at a later date. Part 8 came into force when the Act was passed on 12 February 2015.

Influencing the legislation

During the passage of the Act the Local Government Association (LGA) worked with our Vice-Presidents, government ministers, shadow ministers and spokespersons, backbench Members of Parliament, peers and wider stakeholders.

We successfully shaped debates in Parliament; highlighted in detail the concerns regarding, and advised parliamentarians on, the predicted impact of the proposals on local government; and influenced the Government to secure a number of key amendments to the legislation. Our successful list of work includes:

- Securing an amendment to Part 1 of the Act that will ensure local authorities work closely with a newly created strategic highways company. This should mean councils will play a role in directing investment across the roads network, and also ensure that local roads, other transport modes and demands on the network will be considered by a new strategic highways company.
- Successfully lobbying the Government to introduce a new statutory provision in the legislation to guarantee financial compensation or other community benefits for local authorities that host hydraulic fracturing (fracking). This is an important addition to the Act and ensures that benefit schemes that were previously voluntary will now be underpinned by law.
- Getting a commitment in Parliament from the Government to bring forward proposals to free up publicly owned land for local development. This resulted directly from LGA campaigning calling for the legislation to be amended to enable land held by government departments and agencies to be transferred to local authorities.
- Conducting extensive briefing sessions with parliamentarians, and working with stakeholders to raise awareness about proposals to centralise the local land charges service. This resulted in debates in both Houses of Parliament calling for the proposals to be deleted. The work eventually led to the Government pledging that all costs associated with the transfer will be paid centrally, and local authorities will continue to be reimbursed for any administrative work they carry out.

- Working with shadow ministers to draft and propose debated amendments that, if passed, would have given local government representation on the board of new strategic highways companies, and removed proposals on discharging planning conditions.

Implications of the Act for local government

Implementing the provisions in the legislation will now require further work by government and the full impact on local government will become clearer in the future. The following information provides a more detailed overview of the provisions.

Part 1: Strategic Highways Companies

Part 1 of the Act provides for the creation of an arms-length government owned strategic highways company that will be appointed by the Secretary of State as a highways authority for a defined area. The legislation allows for the creation of multiple companies to cover regions in England that would be responsible for maintaining, improving and managing the Strategic Road Network from 2015.

The legislation makes clear that in exercising its functions a strategic highways company must consult with local authorities on issues relating to highways and planning. Local authorities will also be expected to work with new companies to ensure that access to the road network and transport provision at the local level are considered when devising the roads investment strategy.

An important amendment to the Act, which the LGA had lobbied for throughout the passage of the Bill, requires the Secretary of State to direct a strategic highways company to prepare a route strategy for the area it is responsible for. A strategy would be required to provide evidence for operational or investment decisions for the strategic road network.

Local authorities will be able to play a key role in informing route strategies, ensuring local roads are considered in the wider work of the company.

A new company will also be given powers to maintain public highways and keep land and highways on motorways and trunk roads clear of litter; construct, maintain and improve highways for which it is responsible; acquire land; and enter into agreements with local highways authorities.

Part 5: Planning, Land and Buildings

Part 5, section 29 of the Act amends existing legislation to give the Secretary of State the power to provide that certain conditions attached to planning permission can be automatically discharged. Conditions that require the consent, agreement or approval of the local planning authority will be deemed as discharged if a decision is not made by an authority within a specified period of time.

If a condition is deemed discharged then, an applicant is treated as having received approval, consent or agreement from the local planning authority. This would mean that a local authority would not be able to take enforcement action and stop development.

LGA concerns with this proposal were raised in Parliament, highlighting that joint working between councils and developers is the most effective way to deal with concerns about planning conditions. In response, the Government stated that developers and local authorities could agree to extend timescales in specific cases where necessary.

Section 34 of the Act enables the transfer of responsibility for all local land charges searches from local authorities to Land Registry, creating a single and central electronic register. **Section 35** of the Act amends the Land Registration Act 2002 to broaden the powers of Land Registry so that it can provide information and register services relating to land and other property.

When the proposals are implemented, local authorities will still be responsible for collecting and updating information in the land charges register, and also for making CON29 searches (extended searches that largely relate to planning policy). It is also intended that the new digital register will only accept applications made in electronic form.

The LGA worked with its network of parliamentary contacts and wider stakeholders, including the Local Land Charges Institute, District Councils' Network and Council of Property Search Organisations, to demonstrate that the land charges and records system are best improved locally.

We also raised concerns about the transitional and ongoing cost implications of the proposals, and how this would affect local authorities; and the impact of splitting local land charges searches and CON29 searches. In response, the Government confirmed that all costs for the conversion and transfer of data will be met by Land Registry. It was also confirmed that local authorities would continue to receive revenue for conducting CON29 searches.

The transfer of the local land charges service to Land Registry will take place in stages, and notice will be given to councils to bring the new system into place. It is known that local authorities will be required to provide information and assistance, and also to prepare data in advance of the transfer. Land Registry will only seek to assume responsibility once this has taken place.

Further detail about the provision is subject to the introduction of secondary legislation that will be implemented at a later date. In the meantime, the LGA will be part of a stakeholder group looking at the implementation of the provisions, and lobbying on behalf of local authorities. We will continue to look at how to minimise the burden and recover any costs to councils.

Part 6: Energy

Part 6, section 43, of the Act provides a statutory right for companies to conduct deep-level drilling below 300 metres on private land for petroleum and geothermal energy without the consent of the landowner. There will however still be a need to obtain permission for surface use, such as the well site; and companies will still need to apply to the local authority for planning permission before fracking can take place.

The scope of the activity and permission for fracking is defined and enabled by **section 44**: which makes provisions for the rights of use, putting substances into the land for fracking, keeping infrastructure and leaving the land altered from its original form.

The Act also strengthens the existing voluntary commitment from the onshore oil and gas industry to notify communities of the right to use land. **Section 46** gives the Secretary of State the power to make regulations requiring energy undertakings to notify others of the right of use.

The LGA's campaigning activity on **part 6** centred on ensuring that communities hosting fracking are compensated through community benefit schemes; and also making clear that local communities should decide through their democratically-elected councils and the planning system whether or not to host fracking.

The LGA called for a new provision to be included in the Act to put community benefits on a statutory footing, and this was accepted by the Government. The Act provides, in **section 50**, that consent for hydraulic fracturing will not be issued unless the Secretary of State is satisfied of the existence of a scheme to provide financial or other benefit for the local area.

Other relevant conditions in **section 50** also require a council to take into account the environmental impact of the development when considering planning permission; to consider whether to impose a restoration

condition in relation to the development; to ensure that the relevant undertaker has been consulted; and to ensure the public have been notified of the application for planning permission.

Key features of the Act for local government

Section 1 enables the Secretary of State to create one or more strategic highways companies with the powers and functions of a highways authority.

Section 2 sets out the terms of an appointment of a strategic highways company, which include that a company must be appointed to a specific area and the highways within the area must be clarified.

Section 3 requires that each strategic highways company must have a Road Investment Strategy to specify the objectives of the company and the financial resources required to meet those objectives.

Section 4 requires the Secretary of State to direct a strategic highways company to prepare a route strategy with formal proposals for the management and development of highways.

Section 5 requires that a strategic highways company must cooperate with other bodies that exercise functions that relate to highways or planning.

Section 21 puts a duty on the Secretary of State to set a Cycling and Walking Investment Strategy for England at least once every five years. It outlines that the Secretary must consult such persons as they consider appropriate.

Section 23 amends the Wildlife and Countryside Act 1981 to introduce new provisions about species control agreements, which covers agreements between environmental authorities and owners of premises.

Section 27 amends the Planning Act 2008 in relation to the Infrastructure Planning Commission, and lowers the number of people required on a panel that would consider an application for an order granting development consent.

Section 29 will allow for the assumed agreement or approval of a planning condition, to which section 74 of the Town and Country Planning Act 1990 applies (Directions as to method of dealing with applications for planning permission to develop land), if a local authority does not respond to an applicant in a prescribed time period.

Section 31 amends the Housing and Regeneration Act 2008 to enable the Secretary of State to transfer publicly owned property, rights or liabilities to the Homes and Communities Agency and the Greater London Authority.

Section 33 amends section 31 of the Greater London Authority Act 1999 to stipulate that the Authority shall not be prevented in incurring expenditure on housing or regeneration, even when the work could be done by another functional body.

Section 34 makes provision for the transfer of responsibility for the local land charges (LLC) service from individual local authorities in England and Wales to Land Registry.

Section 35 amends the Land Registration Act 2002 to broaden and extend the Chief Land Registrar's powers to enable Land Registry to provide information and services relating to land and other property.

Section 38 gives the Secretary of State the power to set up a community electricity right, which will allow individuals to buy a stake in a local renewable electricity generation facility.

Section 43 provides a right to use deep-level land below 300m without permission to exploit petroleum or deep geothermal energy. **Section 44** provides detail on the right conferred by **section 43**.

Sections 45 and **46** give the Secretary of State powers to require companies to make payments for using land, and also provide notification of their intention to use land. **Section 47** outlines the use of **sections 45** and **46**.

Section 50 amends the Petroleum Act 1998 and provides safeguards in the form of conditions that companies must meet before the Secretary of State grants consent for hydraulic fracking.

Section 54 allows government to abolish the Public Works Loan Board and transfer its functions to another body. The use of this power will be subject to the procedure set out in the Public Bodies Act 2011.

A note of thanks

The LGA would like to thank all of its Vice-Presidents, and also all other parliamentarians who we worked with and who spoke on behalf of local government.

Useful links

For the full text of the Act, please refer to: www.legislation.gov.uk/ukpga/2015/7/pdfs/ukpga_20150007_en.pdf

For the explanatory notes, please refer to: www.legislation.gov.uk/ukpga/2015/7/pdfs/ukpgaen_20150007_en.pdf



Local Government Association

Local Government House
Smith Square
London SW1P 3HZ

Telephone 020 7664 3000
Fax 020 7664 3030
Email info@local.gov.uk
www.local.gov.uk

© Local Government Association, March 2015

For a copy in Braille, larger print or audio,
please contact us on 020 7664 3000.
We consider requests on an individual basis.