

## **Briefing note on Referendums of Neighbourhood Development Plans**

This briefing note seeks to set out the local planning authority's role in the process for holding residential and business referendum on whether a neighbourhood plan, neighbourhood development order or community right to build order should come into force. This briefing note takes account of:

- The Neighbourhood Planning (Referendums) Regulations 2012 (which came into force on 3 August 2012) and the subsequent amendments as made by the Neighbourhood Planning (Referendums) (Amendment) Regulations 2014 (which came into force on 6 April 2014 and copy electoral conduct provisions in the Electoral Registration and Administration Act 2013 for the purposes of residential and (in most cases) business neighbourhood planning referendums);
- The Neighbourhood Planning (Referendums) (Amendment) Regulations 2013 (which came into force on 6 April 2013 and introduced the business referendum);
- Amendments introduced by the Localism Act 2011 to the 1990 Town and Country Planning Act (as amended) and 2004 Planning and Compulsory Purchase Act.

The Localism Act 2011 places a duty on local authorities to hold referendum(s) where a neighbourhood plan or order or a Community Right to Build Order has a successful examination and the local planning authority is satisfied that it meets the basic conditions set out in the legislation.

Participants should discuss the electoral arrangements with their colleagues in electoral services in advance of the workshops and encourage the attendance of electoral services colleagues so that issues and concerns can be discussed at the workshops.

### **Residential Referendums**

The key elements of the process are as follows:

1. The Localism Act requires that the independent examiner consider whether the area for any referendum should extend beyond the neighbourhood area to which the draft plan or order relates. If a recommendation is made to extend the area the independent examiner must make a recommendation as to what the extended area should be. The local planning authority is required to make a decision on the referendum area informed by the examiner's conclusions. If the authority decides to extend the referendum/s area they must publish a map of the area.

2. The relevant Council<sup>1</sup> is responsible for making arrangements for the referendum to take place for that part of their area that falls within the referendum area and meeting the costs of a neighbourhood plan referendum. The Regulations make provision for the situation where the local planning authority is not the relevant council. Regulation 16 requires the planning authority to cooperate and sets out the nature of that cooperation.
3. The Neighbourhood Planning (Referendums) Regulations 2012 as amended cover all aspects of organising and conducting polls including the opening hours of polling stations and the content of ballot papers. These largely replicate the Local Authorities (Conduct of Referendums) (England) Regulations 2012. The plan or order should proceed to the referendum stage in a timely manner.
4. Regulation 4 of the Neighbourhood Planning (Referendums) Regulations 2012 as amended sets out the information that must be made available in relation to the referendum. Not less than 28 days before the date of the referendum the Council must publish on their website and make available an information statement and specified documents. These documents must also be made available during the referendum period for inspection at the main offices of the Council, and at least one other premise open to the public in the Councils control considered appropriate by the Council to achieve geographical distribution. The information statement and specified documents must remain available throughout the period of the referendum in the original form published as far as is reasonably practical.
5. The information statement prepared by the Council must include the following information:
  - a) that a referendum will be held
  - b) the date of the referendum
  - c) the question to be asked (the question is set out in legislation – see note below)
  - d) a map of the referendum area
  - e) where the referendum area and neighbourhood area are not identical a map of the neighbourhood area
  - f) a description of those entitled to vote in each referendum
  - g) the referendum expenses limit<sup>2</sup> applicable (to both referendums if there are to be a residential and business referendum) and the number of people identified as entitled to vote (in both referendums if there are two) on which the limit was calculated.

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<sup>1</sup> The relevant Council is defined as a district council, London borough council, metropolitan district council or a county council in relation to any area in England for which there is no district council.

<sup>2</sup> Note the Neighbourhood Planning (Referendums) (Amendment) Regulations 2014 amend the method of calculating the campaign expenditure limit at neighbourhood planning referendums so that it will no-longer be calculated with reference to the register produced after the annual canvass in the preceding year. The 'relevant register' used to calculate the referendum expenses limit will be the register of local government electors as it exists at the time when the referendum period begins (so 28 working days before a residential poll, and 56 working days before a business and a residential poll that happen together).

- h) that the referendum(s) will be conducted in accordance with procedures similar to those for local government elections, and
  - i) the address and times at which a copy of the specified documents can be inspected.
6. Schedule 1 of the Regulations sets out the referendum questions. The question for a NDP is: Do you want (insert name of LPA) to use the neighbourhood plan for (insert name of neighbourhood area) to help it decide planning applications in the neighbourhood area? The Neighbourhood Planning (Referendums) (Amendment) Regulations 2014 includes template forms for residential neighbourhood planning referendums when held alone or combined with other polls.
7. The specified documents to be published by the Council on the website (made available for inspection) are:
- a) Draft NDP
  - b) Examiners report
  - c) Summary of representations submitted to examiner
  - d) For a draft NDP a statement that the Council is satisfied that it meets the basic conditions and provisions as they apply
  - e) A statement that sets out general information as to town and country planning (and neighbourhood planning) and the referendum (prepared having regard to any guidance issued by SoS)
8. Anyone on the prescribed date can vote in a residential referendum if they:
- a) are entitled to vote in an election of any ward councillor of the relevant council whose ward is in the referendum area and whose qualifying address for the election is in the referendum area.
  - b) In the case of the City of London the person can vote if they are entitled to vote in an Authority election and the persons qualifying address is in the City of London.
9. When a relevant Council is not the LPA the relevant Council and LPA must co-operate in the holding of referendum as follows:
- a) The proper officer of the LPA must inform the proper officer of the Council as soon as they know a referendum is required, provide summary of written representations and information and copies of documents held by the LPA which the proper officer of the relevant Council requires to comply with 'what the Council has to do' namely the 'information statement' and the 'specified documents'.
  - b) Both must respond to each other as soon as possible in relation to requests for information relating to the holding of the referendum.
  - c) The proper officer of the relevant Council must as soon as possible inform the proper officer of the LPA of the results of the referendum.
10. Where a referendum results in a majority Yes vote (i.e. over 50% plus 1) the Council must make the neighbourhood plan or order as soon as reasonably practicable. The plan then becomes part of the statutory development plan for

the area. There are limited exceptions to this, the local planning authority can decline to make the Plan or Order if they consider that making the order would breach any EU obligations or any Convention rights. If there is a majority No vote or a tied vote then the Neighbourhood Plan will not come into legal force. If, in the case of a business area, one referendum returns a majority Yes vote but the other does not, the Council may, but is not obliged to, make the NDP.

11. As soon as possible the LPA should publish the plan, details of when and where it can be inspected and notify any person who has asked to be notified that it has been made and where and when it may be inspected. It should also publish the environmental report in cases where the plan has been subject to the SEA Directive, inform the consultation bodies of relevant matters including how significant effects will be monitored. Monitoring results should be published in the Councils monitoring report.
12. If the LPA decides to modify or revoke a plan after it has been made then it must undertake an appropriate assessment of the implications for any European site likely to be significantly affected in view of that sites conservation objectives.
13. The Council can be challenged on the making of the plan by way of judicial review (e.g. conduct of the referendum or result of the referendum).

### **Business Referendums**

1. Neighbourhood Planning (Referendums) (Amendment) Regulations 2013 make provision for the conduct of additional “business referendums”. These additional referendums are required for a neighbourhood area which has been designated as a Business Area and are in addition to the residential referendum for the area.
2. The rules for these are contained in the Neighbourhood Planning (Referendums) Regulations 2012 (as amended by the Neighbourhood Planning (Referendums) (Amendment) Regulations 2013 and 2014, and the Neighbourhood Planning (Prescribed Dates) Regulations 2012. The Neighbourhood Planning (Referendums) (Amendment) Regulations 2014 includes template forms for business neighbourhood planning referendums and invitations to register to vote at business referendums.
3. In Business Areas two separate referendums will be held in parallel. The first will be for residents and a second referendum will be held for businesses (or more specifically non-domestic rate payers). The two referendums must be held on the same day.
4. Anyone who is a non domestic ratepayer in the referendum area recorded on the business voting register compiled by the Council using the business rate billing information it holds is entitled to vote.

5. Schedule 6 of the Neighbourhood Planning (Referendums)(Amendment) Regulations 2013 sets out the rules for the business voting register. In particular the Schedule makes provision for obtaining data from the business rates records held by local authorities, sending out invitations to register, compilation, publication and supply of the business voting register, alteration of the business voting register and appeals.
6. The rules for the business referendum are set out in Schedule 7 of the Neighbourhood Planning (Referendums) (Amendment) Regulations 2013 and are based closely on the rules for conduct of residential referendums as described above.
7. In this instance the outcome of the business and residents' referendums will be considered separately. If both are in favour of the Neighbourhood Plan it will be adopted. If both reject the Neighbourhood Plan it won't be adopted. Where the two outcomes conflict with each other the decision about whether or not to adopt the Neighbourhood Plan will rest with the local planning authority.

PAS has produced a checklist to help Local Planning Authorities ensure that they have undertaken all the necessary processes to comply with the different legislation and regulations. The checklist is available at the following link:

[http://www.pas.gov.uk/neighbourhood-planning/-/journal\\_content/56/332612/4113731/ARTICLE](http://www.pas.gov.uk/neighbourhood-planning/-/journal_content/56/332612/4113731/ARTICLE)