



Department for  
Communities and  
Local Government

# Deemed discharge of planning conditions:

Government response to consultation



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November 2014

ISBN: 978-1-4098-4366-5

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# Introduction

1. Unnecessary delays in the discharge of planning conditions can prevent developments with planning permission from commencing and therefore the delivery of new homes and other development that is critical to the country's future prosperity. To address this, the government is seeking enabling powers to introduce the deemed discharge of certain planning conditions in the Infrastructure Bill<sup>1</sup>.
2. In July 2014 the government published the consultation paper 'Technical Consultation on Planning'<sup>2</sup>, which included a section that sought specific views on its proposals for the procedural detail of the deemed discharge measure.
3. A total of 478 responses to the consultation on the procedural detail of the deemed discharge measure were received. Local authorities represented the largest group of respondents (205), prospective applicants and those that represent other development interests accounted for 57 responses and the remainder (216) came from a broad range of groups including parish councils, businesses, voluntary organisations and members of the public.
4. This document provides a summary of the responses received to each of the substantive proposals on the procedural detail of the deemed discharge measure and the Government's response to them.

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<sup>1</sup> In parliament at the time of drafting <http://services.parliament.uk/bills/2014-15/infrastructure.html>

<sup>2</sup> <https://www.gov.uk/government/consultations/technical-consultation-on-planning>

## Deemed discharge for certain types of planning conditions where the local planning authority does not make a timely decision

5. A deemed discharge would only apply to planning conditions that are attached to planning permission when it is granted and that require the further approval of the local authority on matters of detail. Where not excluded and subject to following the correct procedure, a deemed discharge would mean that the condition would be treated as approved (deemed to be discharged) where a decision has not been made on the application by the local planning authority within a prescribed period. While the Government intends the framework of this measure to be set out in primary legislation, the consultation asked for views on the detail of how a deemed discharge would work in practice. The intention is that this detail would form part of subsequent secondary legislation.

### Summary of responses

6. A wide range of views were received in response to the Government's request for general comments on its intention to introduce the deemed discharge measure. There was widespread recognition of the need for local authorities to handle the discharge of conditions efficiently and broad acknowledgement that the discharge of conditions was often delayed, although diverse views were given about why delays occur.
7. Most prospective applicants and those that represent other development interests welcomed the introduction of deemed discharge. Many of these respondents noted the delays currently being experienced in discharging conditions and the impact of those delays on development and offered examples of where delays had resulted in increased costs that were viewed as unnecessary.
8. Many local authorities cited delays caused by third parties and resource constraints as reasons for delays in discharging planning conditions. It was also suggested by some local authorities that the measure could divert their focus from other planning priorities.
9. On the question of whether some types of conditions should be exempt, most respondents (77%) said that they agreed with the Government's proposed approach. In particular, many respondents were supportive of exempting conditions relating to flood risk management. There was additional support for exclusions for other types of conditions, including conditions relating to land contamination, highway safety and other forms of environmental mitigation and remediation (e.g. in relation to noise and air quality), archaeology investigation and other historic assets, and development that has an impact on Sites of Special Scientific Interest.
10. Of the respondents who answered the questions about how such exemptions should operate, there were mixed views among prospective applicants and those who represent development interests and within local authorities about whether the exemption should only apply to those conditions relating to the reason for the exemption or whether all the conditions attached to that planning permission should be exempt from the deemed discharge provision.

11. On procedure, a significant majority (73%) were supportive of the proposal that deemed discharge should be an applicant option activated by the serving of a notice, rather than applying automatically. On timings, a majority (59%) of respondents agreed with the proposal to allow the applicant to notify the local authority of its intention to activate a deemed discharge after a period of 6 weeks with a minimum notice period of 2 weeks.
12. There was no clear preference on the question of whether the deemed discharge should be available for other types of consents such as advertisement consent, or planning permission granted by development order with 49% in favour and 51% against.

## **Government response**

13. The Government has carefully considered the detailed comments received from respondents on how a deemed discharge could operate in practice. It notes and welcomes the broad support for the detailed procedural measures it proposes. Having regard to the responses, it is the Government's intention to introduce supporting secondary legislation on the procedural detail of a deemed discharge once the primary power is confirmed.
14. The Government recognises the views expressed by prospective applicants and those that represent other development interests about the difficulties that delays in discharging planning conditions can cause at a stage in the development process where such delays can have a heavy impact on both those carrying out development and communities who have a legitimate expectation that development will be completed swiftly.
15. The Government considers that the proposed deemed discharge measure would make an important contribution and give much needed certainty for all parties around when decisions can be expected. The measure would retain robust safeguards (appropriate exemptions for the most sensitive types of condition, a notice procedure to ensure that a deemed discharge will never be a surprise to a local planning authority) and flexibility to promote discussion between the local planning authority and the applicant (a deemed discharge would need to be activated and would not be automatic and timings can be changed if there is agreement).
16. The responses to the consultation showed strong support across respondent groups for the detailed process proposals put forward for the deemed discharge, in particular, as to exemptions and notification.
17. On exemptions, the Government made clear that it will not be appropriate for a deemed discharge to be available for all types of conditions. It is therefore the intention to put in place the following exemptions that were detailed in the consultation paper and received strong support from respondents:
  - All conditions attached to development that is subject to an Environmental Impact Assessment;
  - All conditions attached to development that is likely to have a significant effect on a qualifying European site;
  - Conditions designed to manage flood risk;

- Conditions that have the effect of requiring that an agreement under Section 106 of the Town and Country Planning Act 1990 (as amended), Section 278 of the Highways Act 1980 to be entered into; and
- Conditions requiring the approval of details for outline planning permissions required by reserved matters.

18. The Government has carefully considered the responses calling for additional exemptions, particularly where the matter relates to the protection of public health and safety. Following this consideration it is also proposed to exempt:

- Conditions relating to the investigation and remediation of contaminated land;
- Conditions relating to highway safety;
- Sites of Special Scientific Interest; and
- Conditions relating to investigation of archaeological potential.

19. With regard to other exemptions suggested by respondents, the Government does not consider it necessary to have exemptions for areas that are managed under other regimes e.g. species protection, noise and some heritage assets (such as listed buildings) as these offer a separate and effective means of protection.

20. The Government considers that the exemptions proposed will ensure that important protections for the areas of greatest sensitivity are maintained.

21. With the exception of the Environmental Impact Assessment, the European sites and the Sites of Special Scientific Interest exemption, the Government intends to apply the exemptions to those conditions that relate to the reason for the exemption, rather than to all the relevant conditions attached to the planning permission.

22. It is noted that there was significant support for the proposal that a deemed discharge could only be activated by the applicant serving a notice. There was also support for the proposed timings for the serving of notices. The Government considers that this procedure would ensure that local authorities receive notice of an applicant's intention to rely on a deemed discharge, and allow the applicant to proceed where no decision has been made within a reasonable time. The Government therefore intends to take forward these procedural elements in the form proposed in the consultation paper.

23. To further support the measure and ensure that it operates effectively, the Government intends to publish planning guidance on its expectations of third parties in cases where their advice is sought. In addition, the Government has already provided an added flexibility that will enable the applicant and the local authority to agree a longer time period to consider the application where the authority needs more time to seek advice from a third party.

24. The consultation did not show that there was significant appetite to extend the deemed discharge option to other consents at this stage.

25. As the Government has stated on previous occasions, deemed discharge is not about penalising local authorities. It is about ensuring that they hit the deadlines they are already working towards, and providing the applicant with greater certainty as to when a decision can be expected. This proposal will not undermine the ability of the local authority to consider the matter properly within a reasonable timescale, or to refuse

approval where it is not satisfied with the proposal or to enforce where a developer has not complied with the substantive condition.

26. The Government considers that the deemed discharge measures represent an effective and proportionate response to the issue of delays in discharging planning conditions that will make a significant contribution to unblocking much needed development, including new homes, that the country badly needs. The deemed discharge would be subject to important safeguards and a procedure that is supported by respondents to the consultation.