

Planning Act 2008

2008 CHAPTER 29

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An Act to establish the Infrastructure Planning Commission and make provision about its functions; to make provision about, and about matters ancillary to, the authorisation of projects for the development of nationally significant infrastructure; to make provision about town and country planning; to make provision about the imposition of a Community Infrastructure Levy; and for connected purposes.

[26th November 2008]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Extent

Preamble: United Kingdom

PART 1

THE INFRASTRUCTURE PLANNING COMMISSION

✔ Law In Force

! Amendment(s) Pending

1 The Infrastructure Planning Commission

- (1) There is to be a body corporate called the Infrastructure Planning Commission (in this Act referred to as “the Commission”).
- (2) The Commission's functions are those conferred on it by or under this or any other Act.
- (3) Schedule 1 is about the Commission.

Amendments Pending

Pt 1 s. 1: words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 3(5) (date to be appointed)

Pt 1 s. 1: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 2 (date to be appointed)

Pt 1 s. 1: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Pt 1 s. 1(1)-(3): October 1, 2009 (SI 2009/2260 art. 2(a))

Extent

Pt 1 s. 1(1)-(3): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

2 Code of conduct

(1) The Commission must issue a code about the conduct expected of Commissioners in connection with the performance of the Commission's functions.

(2) The code must include—

- (a) provision requiring each Commissioner to disclose financial and other interests in accordance with the procedure established under section 3, and
- (b) such other provision as the Secretary of State may direct.

(3) The Commission must arrange for the code to be published.

(4) The Commission—

- (a) must keep the code under review, and
- (b) may from time to time revise it or replace it.

(5) References in this Act to the code of conduct issued under this section include the code as revised or replaced under this section.

(6) A failure to observe any provision of the code does not of itself make a Commissioner liable to any criminal or civil proceedings.

Amendments Pending

Pt 1 s. 2: words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 3(5) (date to be appointed)

Pt 1 s. 2: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 2 (date to be appointed)

Pt 1 s. 2: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Pt 1 s. 2(1)-(6): October 1, 2009 (SI 2009/2260 art. 2(a))

Extent

Pt 1 s. 2(1)-(6): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

3 Register of Commissioners' interests

(1) The Commission must establish a procedure for the disclosure and registration of financial and other interests of Commissioners.

(2) The Commission must arrange for the register entries to be published.

Amendments Pending

Pt 1 s. 3: words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 3(5) (date to be appointed)

Pt 1 s. 3: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 2 (date to be appointed)

Pt 1 s. 3: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Pt 1 s. 3(1)-(2): October 1, 2009 (SI 2009/2260 art. 2(a))

Extent

Pt 1 s. 3(1)-(2): England, Wales, Scotland

☑ Law In Force

⚠ Amendment(s) Pending

4 Fees

(1) The Secretary of State may make regulations providing for the charging of fees by the Commission in connection with the performance of any of its functions.

(2) Regulations under subsection (1) may in particular make provision—

- (a) about when a fee (including a supplementary fee) may, and may not, be charged;
- (b) about the amount which may be charged;
- (c) about what may, and may not, be taken into account in calculating the amount charged;
- (d) about who is liable to pay a fee charged;
- (e) about when a fee charged is payable;
- (f) about the recovery of fees charged;
- (g) about waiver, reduction or repayment of fees;
- (h) about the effect of paying or failing to pay fees charged;
- (i) for the supply of information for any purpose of the regulations.

(3) The regulations may provide for the amounts of fees to be calculated by reference to costs incurred by the Commission—

- (a) in the performance of any of its functions, and
 - (b) in doing anything which is calculated to facilitate, or is conducive or incidental to, the performance of any of its functions.
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Amendments Pending

Pt 1 s. 4: words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 3(5) (date to be appointed)

Pt 1 s. 4(1): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 3(2) (date to be appointed)

Pt 1 s. 4(3): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 3(3)(a) (date to be appointed)

Pt 1 s. 4(3): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 3(3)(b) (date to be appointed)

Pt 1 s. 4(4): added by Localism Act 2011 c. 20 Sch. 13(1) para. 3(4) (date to be appointed)

Pt 1 s. 4(5): added by Localism Act 2011 c. 20 Sch. 13(1) para. 3(4) (date to be appointed)

Commencement

Pt 1 s. 4(1)-(3)(b): November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29 s.241(2); October 1, 2009 otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(8); SI 2009/2260 art. 2(a))

Extent

Pt 1 s. 4(1)-(3)(b): England, Wales, Scotland

PART 2

NATIONAL POLICY STATEMENTS

✔ Law In Force

! Amendment(s) Pending

5 National policy statements

(1) The Secretary of State may designate a statement as a national policy statement for the purposes of this Act if the statement—

- (a) is issued by the Secretary of State, and
- (b) sets out national policy in relation to one or more specified descriptions of development.

(2) In this Act “national policy statement” means a statement designated under subsection (1) as a national policy statement for the purposes of this Act.

(3) Before designating a statement as a national policy statement for the purposes of this Act the Secretary of State must carry out an appraisal of the sustainability of the policy set out in the statement.

(4) A statement may be designated as a national policy statement for the purposes of this Act only if the consultation and publicity requirements set out in section 7, and the parliamentary requirements set out in section 9, have been complied with in relation to it.

(5) The policy set out in a national policy statement may in particular—

- (a) set out, in relation to a specified description of development, the amount, type or size of development of that description which is appropriate nationally or for a specified area;
- (b) set out criteria to be applied in deciding whether a location is suitable (or potentially suitable) for a specified description of development;
- (c) set out the relative weight to be given to specified criteria;
- (d) identify one or more locations as suitable (or potentially suitable) or unsuitable for a specified description of development;
- (e) identify one or more statutory undertakers as appropriate persons to carry out a specified description of development;
- (f) set out circumstances in which it is appropriate for a specified type of action to be taken to mitigate the impact of a specified description of development.

(6) If a national policy statement sets out policy in relation to a particular description of development, the statement must set out criteria to be taken into account in the design of that description of development.

(7) A national policy statement must give reasons for the policy set out in the statement.

(8) The reasons must (in particular) include an explanation of how the policy set out in the statement takes account of Government policy relating to the mitigation of, and adaptation to, climate change.

(9) The Secretary of State must—

- (a) arrange for the publication of a national policy statement, and
- (b) lay a national policy statement before Parliament.

(10) In this section “statutory undertakers” means persons who are, or are deemed to be, statutory undertakers for the purposes of any provision of Part 11 of TCPA 1990.

Amendments Pending

Pt 2 s. 5(4): words and paras (a) and (b) substituted for words by Localism Act 2011 c. 20 Pt 6 c. 6 s. 130(2) (date to be appointed)

Pt 2 s. 5(4A): added by Localism Act 2011 c. 20 Pt 6 c. 6 s. 130(3) (date to be appointed)

Pt 2 s. 5(9)(b): repealed by Localism Act 2011 c. 20 Pt 6 c. 6 s. 130(4) (date to be appointed)

Pt 2 s. 5(9)(b): repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Pt 2 s. 5(1)-(10): April 6, 2009 (SI 2009/400 art. 2)

Extent

Pt 2 s. 5(1)-(10): England, Wales, Scotland

Law In Force

Amendment(s) Pending

6 Review

(1) The Secretary of State must review each national policy statement whenever the Secretary of State thinks it appropriate to do so.

(2) A review may relate to all or part of a national policy statement.

(3) In deciding when to review a national policy statement the Secretary of State must consider whether—

- (a) since the time when the statement was first published or (if later) last reviewed, there has been a significant change in any circumstances on the basis of which any of the policy set out in the statement was decided,
- (b) the change was not anticipated at that time, and
- (c) if the change had been anticipated at that time, any of the policy set out in the statement would have been materially different.

(4) In deciding when to review part of a national policy statement (“the relevant part”) the Secretary of State must consider whether—

- (a) since the time when the relevant part was first published or (if later) last reviewed, there has been a significant change in any circumstances on the basis of which any of the policy set out in the relevant part was decided,
 - (b) the change was not anticipated at that time, and
 - (c) if the change had been anticipated at that time, any of the policy set out in the relevant part would have been materially different.
- (5) After completing a review of all or part of a national policy statement the Secretary of State must do one of the following—
- (a) amend the statement;
 - (b) withdraw the statement's designation as a national policy statement;
 - (c) leave the statement as it is.
- (6) Before amending a national policy statement the Secretary of State must carry out an appraisal of the sustainability of the policy set out in the proposed amendment.
- (7) The Secretary of State may amend a national policy statement only if the consultation and publicity requirements set out in section 7, and the parliamentary requirements set out in section 9, have been complied with in relation to the proposed amendment.
- (8) Subsections (6) and (7) do not apply if the Secretary of State thinks that the proposed amendment (taken with any other proposed amendments) does not materially affect the policy as set out in the national policy statement.
- (9) If the Secretary of State amends a national policy statement, the Secretary of State must—
- (a) arrange for the amendment, or the statement as amended, to be published, and
 - (b) lay the amendment, or the statement as amended, before Parliament.

Amendments Pending

Pt 2 s. 6(7)(a): added by Localism Act 2011 c. 20 Pt 6 c. 6 s. 130(5) (date to be appointed)

Pt 2 s. 6(7)(b): added by Localism Act 2011 c. 20 Pt 6 c. 6 s. 130(5) (date to be appointed)

Pt 2 s. 6(7A): added by Localism Act 2011 c. 20 Pt 6 c. 6 s. 130(6) (date to be appointed)

Pt 2 s. 6(8): words substituted by Localism Act 2011 c. 20 Pt 6 c. 6 s. 130(7) (date to be appointed)

Commencement

Pt 2 s. 6(1)-(9)(b): April 6, 2009 (SI 2009/400 art. 2)

Extent

Pt 2 s. 6(1)-(9)(b): England, Wales, Scotland

Law In Force

7 Consultation and publicity

- (1) This section sets out the consultation and publicity requirements referred to in sections 5(4) and 6(7).
- (2) The Secretary of State must carry out such consultation, and arrange for such publicity, as the Secretary of State thinks appropriate in relation to the proposal.
This is subject to subsections (4) and (5).

- (3) In this section “the proposal” means—
- (a) the statement that the Secretary of State proposes to designate as a national policy statement for the purposes of this Act, or
 - (b) (as the case may be) the proposed amendment.
- (4) The Secretary of State must consult such persons, and such descriptions of persons, as may be prescribed.
- (5) If the policy set out in the proposal identifies one or more locations as suitable (or potentially suitable) for a specified description of development, the Secretary of State must ensure that appropriate steps are taken to publicise the proposal.
- (6) The Secretary of State must have regard to the responses to the consultation and publicity in deciding whether to proceed with the proposal.

Commencement

Pt 2 s. 7(1)-(6): April 6, 2009 (SI 2009/400 art. 2)

Extent

Pt 2 s. 7(1)-(6): England, Wales, Scotland

Law In Force

Amendment(s) Pending

8 Consultation on publicity requirements

- (1) In deciding what steps are appropriate for the purposes of section 7(5), the Secretary of State must consult—
- (a) each local authority that is within subsection (2) or (3), and
 - (b) the Greater London Authority, if any of the locations concerned is in Greater London.
- (2) A local authority is within this subsection if any of the locations concerned is in the authority's area.
- (3) A local authority (“A”) is within this subsection if—
- (a) any of the locations concerned is in the area of another local authority (“B”), and
 - (b) any part of the boundary of A's area is also a part of the boundary of B's area.
- (4) In this section “local authority” means—
- (a) a county council, or district council, in England;
 - (b) a London borough council;
 - (c) the Common Council of the City of London;
 - (d) the Council of the Isles of Scilly;
 - (e) a county council, or county borough council, in Wales;
 - (f) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39);
 - (g) a National Park authority;
 - (h) the Broads Authority.

Amendments Pending

Pt 2 s. 8(1)(a): words substituted by Localism Act 2011 c. 20 Pt 6 c. 6 s. 130(9) (date to be appointed)

Pt 2 s. 8(3)(aa): added by Localism Act 2011 c. 20 Pt 6 c. 6 s. 130(10) (date to be appointed)

Pt 2 s. 8(3A): added by Localism Act 2011 c. 20 Pt 6 c. 6 s. 130(11) (date to be appointed)

Pt 2 s. 8(5): added by Localism Act 2011 c. 20 Pt 6 c. 6 s. 130(12) (date to be appointed)

Commencement

Pt 2 s. 8(1)-(4)(h): April 6, 2009 (SI 2009/400 art. 2)

Extent

Pt 2 s. 8(1)-(4)(h): England, Wales, Scotland

☑ Law In Force

⚠ Amendment(s) Pending

9 Parliamentary requirements

(1) This section sets out the parliamentary requirements referred to in sections 5(4) and 6(7).

(2) The Secretary of State must lay the proposal before Parliament.

(3) In this section “the proposal” means—

(a) the statement that the Secretary of State proposes to designate as a national policy statement for the purposes of this Act, or

(b) (as the case may be) the proposed amendment.

(4) Subsection (5) applies if, during the relevant period—

(a) either House of Parliament makes a resolution with regard to the proposal, or

(b) a committee of either House of Parliament makes recommendations with regard to the proposal.

(5) The Secretary of State must lay before Parliament a statement setting out the Secretary of State's response to the resolution or recommendations.

(6) The relevant period is the period specified by the Secretary of State in relation to the proposal.

(7) The Secretary of State must specify the relevant period in relation to the proposal on or before the day on which the proposal is laid before Parliament under subsection (2).

Amendments Pending

Pt 2 s. 9(8): added by Localism Act 2011 c. 20 Pt 6 c. 6 s. 130(13) (date to be appointed)

Pt 2 s. 9(9): added by Localism Act 2011 c. 20 Pt 6 c. 6 s. 130(13) (date to be appointed)

Pt 2 s. 9(10): added by Localism Act 2011 c. 20 Pt 6 c. 6 s. 130(13) (date to be appointed)

Commencement

Pt 2 s. 9(1)-(7): April 6, 2009 (SI 2009/400 art. 2)

Extent

Pt 2 s. 9(1)-(7): England, Wales, Scotland

Law In Force

10 Sustainable development

- (1) This section applies to the Secretary of State's functions under sections 5 and 6.
 - (2) The Secretary of State must, in exercising those functions, do so with the objective of contributing to the achievement of sustainable development.
 - (3) For the purposes of subsection (2) the Secretary of State must (in particular) have regard to the desirability of—
 - (a) mitigating, and adapting to, climate change;
 - (b) achieving good design.
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Commencement

Pt 2 s. 10(1)-(3)(b): April 6, 2009 (SI 2009/400 art. 2)

Extent

Pt 2 s. 10(1)-(3)(b): England, Wales, Scotland

Law In Force

11 Suspension pending review

- (1) This section applies if the Secretary of State thinks that the condition in subsection (2) or (3) is met.
- (2) The condition is that—
 - (a) since the time when a national policy statement was first published or (if later) last reviewed, there has been a significant change in any circumstances on the basis of which any of the policy set out in the statement was decided,
 - (b) the change was not anticipated at that time, and
 - (c) if the change had been anticipated at that time, any of the policy set out in the statement would have been materially different.
- (3) The condition is that—
 - (a) since the time when part of a national policy statement (“the relevant part”) was first published or (if later) last reviewed, there has been a significant change in any circumstances on the basis of which any of the policy set out in the relevant part was decided,
 - (b) the change was not anticipated at that time, and
 - (c) if the change had been anticipated at that time, any of the policy set out in the relevant part would have been materially different.
- (4) The Secretary of State may suspend the operation of all or any part of the national policy statement until a review of the statement or the relevant part has been completed.

(5) If the Secretary of State does so, the designation as a national policy statement of the statement or (as the case may be) the part of the statement that has been suspended is treated as having been withdrawn until the day on which the Secretary of State complies with section 6(5) in relation to the review.

Commencement

Pt 2 s. 11(1)-(5): April 6, 2009 (SI 2009/400 art. 2)

Extent

Pt 2 s. 11(1)-(5): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

12 Pre-commencement statements of policy, consultation etc.

(1) The Secretary of State may exercise the power conferred by section 5(1) to designate a statement as a national policy statement for the purposes of this Act even if—

- (a) the statement is a pre-commencement statement or
- (b) the statement sets out national policy by reference to one or more precommencement statements.

(2) But subsection (1) does not apply in relation to a pre-commencement statement if the Secretary of State thinks that—

- (a) since the time when the statement was first issued or (if later) the statement or any part of it was last reviewed, there has been a significant change in any circumstances on the basis of which any of the policy set out in the statement was decided,
- (b) the change was not anticipated at that time, and
- (c) if the change had been anticipated at that time, any of the policy set out in the statement would have been materially different.

(3) For the avoidance of doubt, section 5(3) to (9) continue to apply where the Secretary of State proposes to designate a statement as a national policy statement for the purposes of this Act in circumstances within subsection (1)(a) or (b).

(4) The Secretary of State may take account of appraisal carried out before the commencement day for the purpose of complying with section 5(3).

(5) The Secretary of State may take account of consultation carried out, and publicity arranged, before the commencement day for the purpose of complying with the requirements of section 7.

(6) In this section—

“the commencement day” means the day on which section 5 comes fully into force;

“pre-commencement statement” means a statement issued by the Secretary of State before the commencement day.

Amendments Pending

Pt 2 s. 12: repealed by Localism Act 2011 c. 20 Pt 6 c. 6 s. 130(14) (date to be appointed)

Pt 2 s. 12: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Pt 2 s. 12(1)-(6) definition of "pre commencement statement": November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29 s.241(2); April 6, 2009 otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(8); SI 2009/400 art. 2)

Extent

Pt 2 s. 12(1)-(6) definition of "pre commencement statement": England, Wales, Scotland

Law In Force

13 Legal challenges relating to national policy statements

(1) A court may entertain proceedings for questioning a national policy statement or anything done, or omitted to be done, by the Secretary of State in the course of preparing such a statement only if—

- (a) the proceedings are brought by a claim for judicial review, and
- (b) the claim form is filed during the period of 6 weeks beginning with—
 - (i) the day on which the statement is designated as a national policy statement for the purposes of this Act, or
 - (ii) (if later) the day on which the statement is published.

(2) A court may entertain proceedings for questioning a decision of the Secretary of State not to carry out a review of all or part of a national policy statement only if—

- (a) the proceedings are brought by a claim for judicial review, and
- (b) the claim form is filed during the period of 6 weeks beginning with the day of the decision not to carry out the review.

(3) A court may entertain proceedings for questioning a decision of the Secretary of State to carry out a review of all or part of a national policy statement only if—

- (a) the proceedings are brought by a claim for judicial review, and
- (b) the claim form is filed during the period of 6 weeks beginning with the day on which the Secretary of State complies with section 6(5) in relation to the review concerned.

(4) A court may entertain proceedings for questioning anything done, or omitted to be done, by the Secretary of State in the course of carrying out a review of all or part of a national policy statement only if—

- (a) the proceedings are brought by a claim for judicial review, and
- (b) the claim form is filed during the period of 6 weeks beginning with the day on which the Secretary of State complies with section 6(5) in relation to the review concerned.

(5) A court may entertain proceedings for questioning anything done by the Secretary of State under section 6(5) after completing a review of all or part of a national policy statement only if—

- (a) the proceedings are brought by a claim for judicial review, and
- (b) the claim form is filed during the period of 6 weeks beginning with the day on which the thing concerned is done.

- (6) A court may entertain proceedings for questioning a decision of the Secretary of State as to whether or not to suspend the operation of all or part of a national policy statement under section 11 only if—
- (a) the proceedings are brought by a claim for judicial review, and
 - (b) the claim form is filed during the period of 6 weeks beginning with the day of the decision.


Commencement

Pt 2 s. 13(1)-(6)(b): April 6, 2009 (SI 2009/400 art. 3(a))

Extent

Pt 2 s. 13(1)-(6)(b): England, Wales

PART 3**NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECTS***General*

 Partially In Force

14 Nationally significant infrastructure projects: general

- (1) In this Act “nationally significant infrastructure project” means a project which consists of any of the following—
- (a) the construction or extension of a generating station;
 - (b) the installation of an electric line above ground;
 - (c) development relating to underground gas storage facilities;
 - (d) the construction or alteration of an LNG facility;
 - (e) the construction or alteration of a gas reception facility;
 - (f) the construction of a pipe-line by a gas transporter;
 - (g) the construction of a pipe-line other than by a gas transporter;
 - (h) highway-related development;
 - (i) airport-related development;
 - (j) the construction or alteration of harbour facilities;
 - (k) the construction or alteration of a railway;
 - (l) the construction or alteration of a rail freight interchange;
 - (m) the construction or alteration of a dam or reservoir;
 - (n) development relating to the transfer of water resources;
 - (o) the construction or alteration of a waste water treatment plant;
 - (p) the construction or alteration of a hazardous waste facility.
- (2) Subsection (1) is subject to sections 15 to 30.
- (3) The Secretary of State may by order—
- (a) amend subsection (1) to add a new type of project or vary or remove an existing type of project;

(b) make further provision, or amend or repeal existing provision, about the types of project which are, and are not, within subsection (1).

(4) An order under subsection (3)(b) may amend this Act.

(5) The power conferred by subsection (3) may be exercised to add a new type of project to subsection (1) only if—

- (a) a project of the new type is a project for the carrying out of works in one or more of the fields specified in subsection (6), and
- (b) the works are to be carried out wholly in one or more of the areas specified in subsection (7).

(6) The fields are—

- (a) energy;
- (b) transport;
- (c) water;
- (d) waste water;
- (e) waste.

(7) The areas are—

- (a) England;
- (b) waters adjacent to England up to the seaward limits of the territorial sea;
- (c) in the case of a project for the carrying out of works in the field of energy, a Renewable Energy Zone, except any part of a Renewable Energy Zone in relation to which the Scottish Ministers have functions.

Commencement

Pt 3 s. 14(1): November 26, 2008

Pt 3 s. 14(1)(a)-(1)(l), (2)-(7)(c): November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29 s.241(2); March 1, 2010 subject to saving specified in SI 2010/101 art.6 otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(8); SI 2010/101 art. 3(a), art. 6)

Pt 3 s. 14(1)(m)-(1)(n): November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29 s.241(2); not yet in force otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(8))

Pt 3 s. 14(1)(o): November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29 s.241(2); April 6, 2011 in relation to England and Wales; not yet in force otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(8); SI 2011/705 art. 2)

Pt 3 s. 14(1)(p): November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29 s.241(2); October 1, 2011 otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(8); SI 2011/2054 art. 2(a))

Extent

Pt 3 s. 14(1)-(7)(c): England, Wales, Scotland

Energy

✔ Law In Force

15 Generating stations

- (1) The construction or extension of a generating station is within section 14(1)(a) only if the generating station is or (when constructed or extended) is expected to be within subsection (2) or (3).
- (2) A generating station is within this subsection if—
- (a) it is in England or Wales,
 - (b) it is not an offshore generating station, and
 - (c) its capacity is more than 50 megawatts.
- (3) A generating station is within this subsection if—
- (a) it is an offshore generating station, and
 - (b) its capacity is more than 100 megawatts.
- (4) An “offshore” generating station is a generating station that is—
- (a) in waters in or adjacent to England or Wales up to the seaward limits of the territorial sea, or
 - (b) in a Renewable Energy Zone, except any part of a Renewable Energy Zone in relation to which the Scottish Ministers have functions.

Commencement

Pt 3 s. 15(1)-(4)(b): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 4(a), art. 6)

Extent

Pt 3 s. 15(1)-(4)(b): England, Wales

✔ Law In Force

16 Electric lines

- (1) The installation of an electric line above ground is within section 14(1)(b) only if (when installed) the electric line will be—
- (a) wholly in England,
 - (b) wholly in Wales,
 - (c) partly in England and partly in Wales, or
 - (d) partly in England and partly in Scotland, subject to subsection (2).
- (2) In the case of an electric line falling within subsection (1)(d), the installation of the line above ground is within section 14(1)(b) only to the extent that (when installed) the line will be in England.
- (3) The installation of an electric line above ground is not within section 14(1)(b)—
- (a) if the nominal voltage of the line is expected to be less than 132 kilovolts, [...]¹
 - (b) to the extent that (when installed) the line will be within premises in the occupation or control of the person responsible for its installation [, or]²
 - [(c) if section 37(1) of the Electricity Act 1989 (consent required for overhead lines) does not apply to it by virtue of the Overhead Lines (Exemption) (England and Wales) Regulations

2009 (S.I. 2009/640), as amended by the Overhead Lines (Exempt Installations) (Consequential Provisions) Order 2010.]²

(4) “Premises” includes any land, building or structure.

Notes

¹ Word repealed by Overhead Lines (Exempt Installations) Order 2010/277 art.2(a) (March 1, 2010)

² Added by Overhead Lines (Exempt Installations) Order 2010/277 art.2(b) (March 1, 2010)

Commencement

Pt 3 s. 16(1)-(4): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 4(a), art. 6)

Extent

Pt 3 s. 16(1)-(4): England, Wales

Law In Force

17 Underground gas storage facilities

(1) Development relating to underground gas storage facilities is within section 14(1)(c) only if the development is within subsection (2), (3) or (5).

(2) Development is within this subsection if—

(a) it is the carrying out of operations for the purpose of creating underground gas storage facilities in England, or

(b) it is starting to use underground gas storage facilities in England, and the condition in subsection (4) is met in relation to the facilities.

(3) Development is within this subsection if—

(a) it is starting to use underground gas storage facilities in Wales,

(b) the facilities are facilities for the storage of gas underground in natural porous strata,

(c) the proposed developer is a gas transporter, and

(d) the condition in subsection (4) is met in relation to the facilities.

(4) The condition is that—

(a) the working capacity of the facilities is expected to be at least 43 million standard cubic metres, or

(b) the maximum flow rate of the facilities is expected to be at least 4.5 million standard cubic metres per day.

(5) Development is within this subsection if—

(a) it is the carrying out of operations for the purpose of altering underground gas storage facilities in England, and

(b) the effect of the alteration is expected to be—

(i) to increase by at least 43 million standard cubic metres the working capacity of the facilities, or

(ii) to increase by at least 4.5 million standard cubic metres per day the maximum flow rate of the facilities.

(6) “Underground gas storage facilities” means facilities for the storage of gas underground in cavities or in porous strata.

(7) In this section—

“maximum flow rate”, in relation to underground gas storage facilities, means the maximum rate at which gas is able to flow out of the facilities, on the assumption that—

- (a) the facilities are filled to maximum capacity, and
- (b) the rate is measured after any processing of gas required on its recovery from storage;

“working capacity”, in relation to underground gas storage facilities, means the capacity of the facilities for storage of gas underground, ignoring any capacity for storage of cushion gas.

(8) In subsection (7) “cushion gas” means gas which is kept in underground gas storage facilities for the purpose of enabling other gas stored there to be recovered from storage.

Commencement

Pt 3 s. 17(1)-(8): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 4(a), art. 6)

Extent

Pt 3 s. 17(1)-(8): England, Wales

Law In Force

18 LNG facilities

(1) The construction of an LNG facility is within section 14(1)(d) only if (when constructed) the facility will be in England and—

- (a) the storage capacity of the facility is expected to be at least 43 million standard cubic metres, or
- (b) the maximum flow rate of the facility is expected to be at least 4.5 million standard cubic metres per day.

(2) The alteration of an LNG facility is within section 14(1)(d) only if the facility is in England and the effect of the alteration is expected to be—

- (a) to increase by at least 43 million standard cubic metres the storage capacity of the facility, or
- (b) to increase by at least 4.5 million standard cubic metres per day the maximum flow rate of the facility.

(3) “LNG facility” means a facility for—

- (a) the reception of liquid natural gas from outside England,
- (b) the storage of liquid natural gas, and
- (c) the regasification of liquid natural gas.

(4) In this section—

“maximum flow rate”, in relation to a facility, means the maximum rate at which gas is able to flow out of the facility, on the assumption that—

- (a) the facility is filled to maximum capacity, and
- (b) the rate is measured after regasification of the liquid natural gas and any other processing required on the recovery of the gas from storage;

“storage capacity” means the capacity of the facility for storage of liquid natural gas.

(5) The storage capacity of an LNG facility is to be measured as if the gas were stored in regasified form.

Commencement

Pt 3 s. 18(1)-(5): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 4(a), art. 6)

Extent

Pt 3 s. 18(1)-(5): England, Wales

Law In Force

19 Gas reception facilities

- (1) The construction of a gas reception facility is within section 14(1)(e) only if (when constructed)—
 - (a) the facility will be in England and will be within subsection (4), and
 - (b) the maximum flow rate of the facility is expected to be at least 4.5 million standard cubic metres per day.
 - (2) The alteration of a gas reception facility is within section 14(1)(e) only if—
 - (a) the facility is in England and is within subsection (4), and
 - (b) the effect of the alteration is expected to be to increase by at least 4.5 million standard cubic metres per day the maximum flow rate of the facility.
 - (3) “Gas reception facility” means a facility for—
 - (a) the reception of natural gas in gaseous form from outside England, and
 - (b) the handling of natural gas (other than its storage).
 - (4) A gas reception facility is within this subsection if—
 - (a) the gas handled by the facility does not originate in England, Wales or Scotland,
 - (b) the gas does not arrive at the facility from Scotland or Wales, and
 - (c) the gas has not already been handled at another facility after its arrival in England.
 - (5) “Maximum flow rate” means the maximum rate at which gas is able to flow out of the facility.
-

Commencement

Pt 3 s. 19(1)-(5): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 4(a), art. 6)

Extent

Pt 3 s. 19(1)-(5): England, Wales

Law In Force

20 Gas transporter pipe-lines

- (1) The construction of a pipe-line by a gas transporter is within section 14(1)(f) only if (when constructed) each of the conditions in subsections (2) to (5) is expected to be met in relation to the pipe-line.
- (2) The pipe-line must be wholly or partly in England.

(3) Either—

- (a) the pipe-line must be more than 800 millimetres in diameter and more than 40 kilometres in length, or
- (b) the construction of the pipe-line must be likely to have a significant effect on the environment.

(4) The pipe-line must have a design operating pressure of more than 7 bar gauge.

(5) The pipe-line must convey gas for supply (directly or indirectly) to at least 50,000 customers, or potential customers, of one or more gas suppliers.

(6) In the case of a pipe-line that (when constructed) will be only partly in England, the construction of the pipe-line is within section 14(1)(f) only to the extent that the pipe-line will (when constructed) be in England.

(7) “Gas supplier” has the same meaning as in Part 1 of the Gas Act 1986 (c. 44) (see section 7A(11) of that Act).

Commencement

Pt 3 s. 20(1)-(7): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 4(a), art. 6)

Extent

Pt 3 s. 20(1)-(7): England, Wales

Law In Force

21 Other pipe-lines

(1) The construction of a pipe-line other than by a gas transporter is within section 14(1)(g) only if (when constructed) the pipe-line is expected to be—

- (a) a cross-country pipe-line,
- (b) a pipe-line the construction of which would (but for section 33(1) of this Act) require authorisation under section 1(1) of the Pipe-lines Act 1962 (c. 58) (cross-country pipe-lines not to be constructed without authorisation), and
- (c) within subsection (2).

(2) A pipe-line is within this subsection if one end of it is in England or Wales and—

- (a) the other end of it is in England or Wales, or
- (b) it is an oil or gas pipe-line and the other end of it is in Scotland.

(3) For the purposes of section 14(1)(g) and the previous provisions of this section, the construction of a diversion to a pipe-line is treated as the construction of a separate pipe-line.

(4) But if—

- (a) the pipe-line to be diverted is itself a nationally significant pipe-line, and
- (b) the length of the pipe-line which is to be diverted has not been constructed,

the construction of the diversion is treated as the construction of a crosscountry pipe-line, whatever the length of the diversion.

(5) For the purposes of subsection (4), a pipe-line is a nationally significant pipeline if—

- (a) development consent is required for its construction by virtue of section 14(1)(g), and has been granted, or

(b) its construction has been authorised by a pipe-line construction authorisation under section 1(1) of the Pipe-lines Act 1962 (c. 58).

(6) “Diversion” means a lateral diversion of a length of a pipe-line (whether or not that pipe-line has been constructed) where the diversion is beyond the permitted limits.

(7) The permitted limits are the limits of lateral diversion permitted by any of the following granted in respect of the construction of the pipe-line—

- (a) development consent;
- (b) authorisation under the Pipe-lines Act 1962;
- (c) planning permission.

Commencement

Pt 3 s. 21(1)-(7)(c): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(b), art. 6)

Extent

Pt 3 s. 21(1)-(7)(c): England, Wales, Scotland

Transport

Law In Force

22 Highways

(1) Highway-related development is within section 14(1)(h) only if the development is—

- (a) construction of a highway in a case within subsection (2),
- (b) improvement of a highway in a case within subsection (3), or
- (c) alteration of a highway in a case within subsection (4).

(2) Construction of a highway is within this subsection only if the highway will (when constructed) be wholly in England and—

- (a) the Secretary of State will be the highway authority for the highway, or
- (b) the highway is to be constructed for a purpose connected with a highway for which the Secretary of State is (or will be) the highway authority.

(3) Improvement of a highway is within this subsection only if—

- (a) the highway is wholly in England,
- (b) the Secretary of State is the highway authority for the highway, and
- (c) the improvement is likely to have a significant effect on the environment.

(4) Alteration of a highway is within this subsection only if—

- (a) the highway is wholly in England,
- (b) the alteration is to be carried out by or on behalf of the Secretary of State, and
- (c) the highway is to be altered for a purpose connected with a highway for which the Secretary of State is (or will be) the highway authority.

Commencement

Pt 3 s. 22(1)-(4)(c): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 4(b), art. 6)

Extent

Pt 3 s. 22(1)-(4)(c): England, Wales

✔ Law In Force

23 Airports

- (1) Airport-related development is within section 14(1)(i) only if the development is—
 - (a) the construction of an airport in a case within subsection (2),
 - (b) the alteration of an airport in a case within subsection (4), or
 - (c) an increase in the permitted use of an airport in a case within subsection (7).
- (2) Construction of an airport is within this subsection only if (when constructed) the airport—
 - (a) will be in England or in English waters, and
 - (b) is expected to be capable of providing services which meet the requirements of subsection (3).
- (3) Services meet the requirements of this subsection if they are—
 - (a) air passenger transport services for at least 10 million passengers per year, or
 - (b) air cargo transport services for at least 10,000 air transport movements of cargo aircraft per year.
- (4) Alteration of an airport is within this subsection only if—
 - (a) the airport is in England or in English waters, and
 - (b) the alteration is expected to have the effect specified in subsection (5).
- (5) The effect is—
 - (a) to increase by at least 10 million per year the number of passengers for whom the airport is capable of providing air passenger transport services, or
 - (b) to increase by at least 10,000 per year the number of air transport movements of cargo aircraft for which the airport is capable of providing air cargo transport services.
- (6) “Alteration”, in relation to an airport, includes the construction, extension or alteration of—
 - (a) a runway at the airport,
 - (b) a building at the airport, or
 - (c) a radar or radio mast, antenna or other apparatus at the airport.
- (7) An increase in the permitted use of an airport is within this subsection only if—
 - (a) the airport is in England or in English waters, and
 - (b) the increase is within subsection (8).
- (8) An increase is within this subsection if—
 - (a) it is an increase of at least 10 million per year in the number of passengers for whom the airport is permitted to provide air passenger transport services, or
 - (b) it is an increase of at least 10,000 per year in the number of air transport movements of cargo aircraft for which the airport is permitted to provide air cargo transport services.
- (9) In this section—

- “air cargo transport services” means services for the carriage by air of cargo;
- “air passenger transport services” means services for the carriage by air of passengers;
- “air transport movement” means a landing or take-off of an aircraft;
- “cargo” includes mail;
- “cargo aircraft” means an aircraft which is—
- (a) designed to transport cargo but not passengers, and
 - (b) engaged in the transport of cargo on commercial terms;
- “English waters” means waters adjacent to England up to the seaward limits of the territorial sea;
- “permitted” means permitted by planning permission or development consent.

Commencement

Pt 3 s. 23(1)-(9) definition of "permitted": March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 4(b))

Extent

Pt 3 s. 23(1)-(9) definition of "permitted": England, Wales

Law In Force

24 Harbour facilities

- (1) The construction of harbour facilities is within section 14(1)(j) only if (when constructed) the harbour facilities—
- (a) will be in England or Wales or in waters adjacent to England or Wales up to the seaward limits of the territorial sea, and
 - (b) are expected to be capable of handling the embarkation or disembarkation of at least the relevant quantity of material per year.
- (2) The alteration of harbour facilities is within section 14(1)(j) only if—
- (a) the harbour facilities are in England or Wales or in waters adjacent to England or Wales up to the seaward limits of the territorial sea, and
 - (b) the effect of the alteration is expected to be to increase by at least the relevant quantity per year the quantity of material the embarkation or disembarkation of which the facilities are capable of handling.
- (3) “The relevant quantity” is—
- (a) in the case of facilities for container ships, 500,000 TEU;
 - (b) in the case of facilities for ro-ro ships, 250,000 units;
 - (c) in the case of facilities for cargo ships of any other description, 5 million tonnes;
 - (d) in the case of facilities for more than one of the types of ships mentioned in paragraphs (a) to (c), an equivalent quantity of material.
- (4) For the purposes of subsection (3)(d), facilities are capable of handling an equivalent quantity of material if the sum of the relevant fractions is one or more.
- (5) The relevant fractions are—
- (a) to the extent that the facilities are for container ships—

$$\frac{x}{500,000}$$

where x is the number of TEU that the facilities are capable of handling;
 (b) to the extent that the facilities are for ro-ro ships—

$$\frac{y}{250,000}$$

where y is the number of units that the facilities are capable of handling;
 (c) to the extent that the facilities are for cargo ships of any other description—

$$\frac{z}{5,000,000}$$

where z is the number of tonnes of material that the facilities are capable of handling.

(6) In this section—

“cargo ship” means a ship which is used for carrying cargo;

“container ship” means a cargo ship which carries all or most of its cargo in containers;

“ro-ro ship” means a ship which is used for carrying wheeled cargo;

“TEU” means a twenty-foot equivalent unit;

“unit” in relation to a ro-ro ship means any item of wheeled cargo (whether or not self-propelled).

Commencement

Pt 3 s. 24(1)-(6) definition of "unit": March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 4(b), art. 6)

Extent

Pt 3 s. 24(1)-(6) definition of "unit": England, Wales

Law In Force

25 Railways

(1) Construction of a railway is within section 14(1)(k) only if—

(a) the railway will (when constructed) be wholly in England,

(b) the railway will (when constructed) be part of a network operated by an approved operator, and

(c) the construction of the railway is not permitted development.

(2) Alteration of a railway is within section 14(1)(k) only if—

(a) the part of the railway to be altered is wholly in England,

(b) the railway is part of a network operated by an approved operator, and

(c) the alteration of the railway is not permitted development.

(3) Construction or alteration of a railway is not within section 14(1)(k) to the extent that the railway forms part (or will when constructed form part) of a rail freight interchange.

(4) “Approved operator” means a person who meets the conditions in subsections (5) and (6).

(5) The condition is that the person must be—

(a) a person who is authorised to be the operator of a network by a licence granted under section 8 of the Railways Act 1993 (c. 43) (licences for operation of railway assets), or

- (b) a wholly-owned subsidiary of a company which is such a person.
- (6) The condition is that the person is designated, or is of a description designated, in an order made by the Secretary of State.
- (7) In this section—
 “network” has the meaning given by section 83(1) of the Railways Act 1993 (c. 43);
 “permitted development” means development in relation to which planning permission is granted by article 3 of the Town and Country Planning (General Permitted Development) Order 1995;
 “wholly-owned subsidiary” has the same meaning as in the Companies Act 2006 (c. 46) (see section 1159 of that Act).
- (8) The reference in subsection (7) to the Town and Country Planning (General Permitted Development) Order 1995 is to that Order as it has effect immediately before the day on which this section comes fully into force.

Commencement

Pt 3 s. 25(1)-(8): November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29 s.241(2); March 1, 2010 subject to saving specified in SI 2010/101 art.6 otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(8); SI 2010/101 art. 4(b), art. 6)

Extent

Pt 3 s. 25(1)-(8): England, Wales

Law In Force

26 Rail freight interchanges

- (1) The construction of a rail freight interchange is within section 14(1)(l) only if (when constructed) each of the conditions in subsections (3) to (7) is expected to be met in relation to it.
- (2) The alteration of a rail freight interchange is within section 14(1)(l) only if—
 (a) following the alteration, each of the conditions in subsections (3)(a) and (4) to (7) is expected to be met in relation to it, and
 (b) the alteration is expected to have the effect specified in subsection (8).
- (3) The land on which the rail freight interchange is situated must—
 (a) be in England, and
 (b) be at least 60 hectares in area.
- (4) The rail freight interchange must be capable of handling—
 (a) consignments of goods from more than one consignor and to more than one consignee, and
 (b) at least 4 goods trains per day.
- (5) The rail freight interchange must be part of the railway network in England.
- (6) The rail freight interchange must include warehouses to which goods can be delivered from the railway network in England either directly or by means of another form of transport.

- (7) The rail freight interchange must not be part of a military establishment.
- (8) The effect referred to in subsection (2)(b) is to increase by at least 60 hectares the area of the land on which the rail freight interchange is situated.
- (9) In this section—
“goods train” means a train that (ignoring any locomotive) consists of items of rolling stock designed to carry goods;
“military establishment” means an establishment intended for use for naval, military or air force purposes or for the purposes of the Department of the Secretary of State responsible for defence.
- (10) The following terms have the meanings given by section 83(1) of the Railways Act 1993—
“network”;
“rolling stock”;
“train”.

Commencement

Pt 3 s. 26(1)-(10): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 4(b), art. 6)

Extent

Pt 3 s. 26(1)-(10): England, Wales

Water

 Not Yet In Force

27 Dams and reservoirs


- (1) The construction of a dam or reservoir is within section 14(1)(m) only if—
(a) the dam or reservoir (when constructed) will be in England,
(b) the construction will be carried out by one or more water undertakers, and
(c) the volume of water to be held back by the dam or stored in the reservoir is expected to exceed 10 million cubic metres.
- (2) The alteration of a dam or reservoir is within section 14(1)(m) only if—
(a) the dam or reservoir is in England,
(b) the alteration will be carried out by one or more water undertakers, and
(c) the additional volume of water to be held back by the dam or stored in the reservoir as a result of the alteration is expected to exceed 10 million cubic metres.
- (3) “Water undertaker” means a company appointed as a water undertaker under the Water Industry Act 1991 (c. 56).

Commencement

Pt 3 s. 27(1)-(3): Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(8))

Extent

Pt 3 s. 27(1)-(3): England, Wales

 Not Yet In Force

28 Transfer of water resources

- (1) Development relating to the transfer of water resources is within section 14(1)(n) only if—
- (a) the development will be carried out in England by one or more water undertakers,
 - (b) the volume of water to be transferred as a result of the development is expected to exceed 100 million cubic metres per year,
 - (c) the development will enable the transfer of water resources—
 - (i) between river basins in England,
 - (ii) between water undertakers' areas in England, or
 - (iii) between a river basin in England and a water undertaker's area in England, and
 - (d) the development does not relate to the transfer of drinking water.

- (2) In this section—

“river basin” means an area of land drained by a river and its tributaries;

“water undertaker” means a company appointed as a water undertaker under the Water Industry Act 1991;

“water undertaker's area” means the area for which a water undertaker is appointed under that Act.


Commencement

Pt 3 s. 28(1)-(2) definition of "water undertakers area": Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(8))

Extent

Pt 3 s. 28(1)-(2) definition of "water undertakers area": England, Wales

Waste water

 Law In Force

29 Waste water treatment plants

- (1) The construction of a waste water treatment plant is within section 14(1)(o) only if the treatment plant (when constructed)—
- (a) will be in England, and
 - (b) is expected to have a capacity exceeding a population equivalent of 500,000.
- (2) The alteration of a waste water treatment plant is within section 14(1)(o) only if—
- (a) the treatment plant is in England, and

(b) the effect of the alteration is expected to be to increase by more than a population equivalent of 500,000 the capacity of the plant.

(3) “Waste water” includes domestic waste water, industrial waste water and urban waste water.

(4) The following terms have the meanings given by regulation 2(1) of the Urban Waste Water Treatment (England and Wales) Regulations 1994 (S.I. 1994/2841)—

- “domestic waste water”;
- “industrial waste water”;
- “population equivalent”;
- “urban waste water”.

Commencement

Pt 3 s. 29(1)-(4): April 6, 2011 (SI 2011/705 art. 2)

Extent

Pt 3 s. 29(1)-(4): England, Wales

Waste

Law In Force

30 Hazardous waste facilities

- (1) The construction of a hazardous waste facility is within section 14(1)(p) only if—
- (a) the facility (when constructed) will be in England,
 - (b) the main purpose of the facility is expected to be the final disposal or recovery of hazardous waste, and
 - (c) the facility is expected to have the capacity specified in subsection (2).
- (2) The capacity is—
- (a) in the case of the disposal of hazardous waste by landfill or in a deep storage facility, more than 100,000 tonnes per year;
 - (b) in any other case, more than 30,000 tonnes per year.
- (3) The alteration of a hazardous waste facility is within section 14(1)(p) only if—
- (a) the facility is in England,
 - (b) the main purpose of the facility is the final disposal or recovery of hazardous waste, and
 - (c) the alteration is expected to have the effect specified in subsection (4).
- (4) The effect is—
- (a) in the case of the disposal of hazardous waste by landfill or in a deep storage facility, to increase by more than 100,000 tonnes per year the capacity of the facility;
 - (b) in any other case, to increase by more than 30,000 tonnes per year the capacity of the facility.
- (5) The following terms have the same meanings as in the Hazardous Waste (England and Wales) Regulations 2005 (S.I. 2005/894) (see regulation 5 of those regulations)—
- “disposal”;

“hazardous waste”;
“recovery”.

(6) “Deep storage facility” means a facility for the storage of waste underground in a deep geological cavity.

Commencement

Pt 3 s. 30(1)-(6): October 1, 2011 (SI 2011/2054 art. 2(a))

Extent

Pt 3 s. 30(1)-(6): England, Wales

PART 4

REQUIREMENT FOR DEVELOPMENT CONSENT

Law In Force

31 When development consent is required

Consent under this Act (“development consent”) is required for development to the extent that the development is or forms part of a nationally significant infrastructure project.

Commencement

Pt 4 s. 31: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(c), art. 6)

Extent

Pt 4 s. 31: England, Wales, Scotland

Law In Force

32 Meaning of “development”

(1) In this Act (except in Part 11) “development” has the same meaning as it has in TCPA 1990. This is subject to subsections (2) and (3).

(2) For the purposes of this Act (except Part 11)—

- (a) the conversion of a generating station with a view to its being fuelled by crude liquid petroleum, a petroleum product or natural gas is treated as a material change in the use of the generating station;
- (b) starting to use a cavity or strata for the underground storage of gas is treated as a material change in the use of the cavity or strata;
- (c) an increase in the permitted use of an airport is treated as a material change in the use of the airport.

(3) For the purposes of this Act (except Part 11) the following works are taken to be development (to the extent that they would not be otherwise)—

- (a) works for the demolition of a listed building or its alteration or extension in a manner which would affect its character as a building of special architectural or historic interest;

- (b) demolition of a building in a conservation area;
- (c) works resulting in the demolition or destruction of or any damage to a scheduled monument;
- (d) works for the purpose of removing or repairing a scheduled monument or any part of it;
- (e) works for the purpose of making any alterations or additions to a scheduled monument;
- (f) flooding or tipping operations on land in, on or under which there is a scheduled monument.

(4) In this section—

- “conservation area” has the meaning given by section 91(1) of the Listed Buildings Act;
- “flooding operations” has the meaning given by section 61(1) of the Ancient Monuments and Archaeological Areas Act 1979 (c. 46);
- “listed building” has the meaning given by section 1(5) of the Listed Buildings Act;
- “permitted” means permitted by planning permission or development consent;
- “petroleum products” has the meaning given by section 21 of the Energy Act 1976 (c. 76);
- “scheduled monument” has the meaning given by section 1(11) of the Ancient Monuments and Archaeological Areas Act 1979 (c. 46);
- “tipping operations” has the meaning given by section 61(1) of that Act.

Commencement

Pt 4 s. 32(1)-(4) definition of "tipping operations": March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(c), art. 6)

Extent

Pt 4 s. 32(1)-(4) definition of "tipping operations": England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

33 Effect of requirement for development consent on other consent regimes

(1) To the extent that development consent is required for development, none of the following is required to be obtained for the development or given in relation to it—

- (a) planning permission;
- (b) consent under section 10(1), 11(1) or 12(1) of the Green Belt (London and Home Counties) Act 1938 (c. xciii) (erection of buildings and construction of sewer main pipes, watercourses and electric lines etc. on Green Belt land);
- (c) a pipe-line construction authorisation under section 1(1) of the Pipe-lines Act 1962 (c. 58) (authorisation for construction of cross-country pipe-lines);
- (d) authorisation by an order under section 4(1) of the Gas Act 1965 (c. 36) (storage of gas in underground strata);
- (e) notice under section 14(1) of the Energy Act 1976 (conversion of generating station from one fuel to another);
- (f) to the extent that the development relates to land in England, consent under section 2(3) or 3 of the Ancient Monuments and Archaeological Areas Act 1979;
- (g) to the extent that the development relates to land in England, notice under section 35 of the Ancient Monuments and Archaeological Areas Act 1979;

- (h) consent under section 36 or 37 of the Electricity Act 1989 (c. 29) (construction etc. of generating stations and installation of overhead lines);
- (i) to the extent that the development relates to land in England, consent under section 8(1), (2) or (3) of the Listed Buildings Act;
- (j) to the extent that the development relates to land in England, consent under section 74(1) of the Listed Buildings Act.

(2) To the extent that development consent is required for development, the development may not be authorised by any of the following—

- (a) an order under section 14 or 16 of the Harbours Act 1964 (c. 40) (orders in relation to harbours, docks and wharves);
- (b) an order under section 4(1) of the Gas Act 1965 (order authorising storage of gas in underground strata);
- (c) an order under section 1 or 3 of the Transport and Works Act 1992 (c. 42) (orders as to railways, tramways, inland waterways etc.).

(3) Subsection (2) is subject to section 34.

(4) If development consent is required for the construction, improvement or alteration of a highway, none of the following may be made or confirmed in relation to the highway or in connection with the construction, improvement or alteration of the highway—

- (a) an order under section 10 of the Highways Act 1980 (c. 66) (general provisions as to trunk roads) directing that the highway should become a trunk road;
- (b) an order under section 14 of that Act (supplementary orders relating to trunk roads and classified roads);
- (c) a scheme under section 16 of that Act (schemes authorising the provision of special roads);
- (d) an order under section 18 of that Act (supplementary orders relating to special roads);
- (e) an order or scheme under section 106 of that Act (orders and schemes providing for construction of bridges over or tunnels under navigable waters);
- (f) an order under section 108 or 110 of that Act (orders authorising the diversion of navigable and non-navigable watercourses);
- (g) an order under section 6 of the New Roads and Street Works Act 1991 (c. 22) (toll orders).

Amendments Pending

Pt 4 s. 33(5): added by Localism Act 2011 c. 20 Pt 6 c. 6 s. 131(2) (date to be appointed)

Pt 4 s. 33(10): added by Localism Act 2011 c. 20 Pt 6 c. 6 s. 131(2) (date to be appointed)

Commencement

Pt 4 s. 33(1)-(4)(g): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(c), art. 6)

Extent

Pt 4 s. 33(1)-(4)(g): England, Wales, Scotland

✔ Law In Force

34 Welsh offshore generating stations

(1) Section 33(2) does not prevent an order under section 3 of the Transport and Works Act 1992 (c. 42) from authorising the carrying out of works consisting of the construction or extension of a generating station that is or (when constructed or extended) will be a Welsh offshore generating station.

(2) A “Welsh offshore generating station” is a generating station that is in waters in or adjacent to Wales up to the seaward limits of the territorial sea.

(3) If, by virtue of subsection (1), an order under section 3 of the Transport and Works Act 1992 authorises the carrying out of any works, development consent is treated as not being required for the carrying out of those works.

Commencement

Pt 4 s. 34(1)-(3): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(c), art. 6)

Extent

Pt 4 s. 34(1)-(3): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

35 Directions in relation to projects of national significance

(1) This section applies if—

- (a) an application for a consent or authorisation mentioned in section 33(1) or (2) is made to an authority (“the relevant authority”) in relation to development,
- (b) the development is or forms part of a project in a field specified in subsection (2),
- (c) the development will (when completed) be wholly in one or more of the areas specified in subsection (3), and
- (d) the Secretary of State thinks that the project is of national significance, either by itself or when considered with one or more other projects or proposed projects in the same field.

(2) The fields are—

- (a) energy;
- (b) transport;
- (c) water;
- (d) waste water;
- (e) waste.

(3) The areas are—

- (a) England;
- (b) waters adjacent to England up to the seaward limits of the territorial sea;
- (c) in the case of a project for the carrying out of works in the field of energy, a Renewable Energy Zone, except any part of a Renewable Energy Zone in relation to which the Scottish Ministers have functions.

(4) The Secretary of State may direct—

- (a) the application to be treated as an application for an order granting development consent, and
- (b) the development to which the application relates to be treated as development for which development consent is required,
- for specified purposes or generally.
- (5) A direction under subsection (4) may provide for specified provisions of or made under this or any other Act—
- (a) to have effect in relation to the application with any specified modifications, or
- (b) to be treated as having been complied with in relation to the application.
- (6) If the Secretary of State gives a direction under subsection (4), the relevant authority must refer the application to the Commission instead of dealing with it themselves.
- (7) If the Secretary of State is considering whether to give a direction under subsection (4), the Secretary of State may direct the relevant authority to take no further action in relation to the application until the Secretary of State has decided whether to give the direction.
- (8) The Secretary of State may require the relevant authority to provide any information required by the Secretary of State for the purpose of enabling the Secretary of State to decide—
- (a) whether to give a direction under subsection (4), and
- (b) the terms in which a direction under subsection (4) should be given.
- (9) If the Secretary of State decides to give a direction under subsection (4), the Secretary of State must give reasons for the decision.

Amendments Pending

- Pt 4 s. 35(1)(a): repealed by Localism Act 2011 c. 20 Pt 6 c. 6 s. 132(2)(a) (date to be appointed)
- Pt 4 s. 35(1)(a): repealed by Localism Act 2011 c. 20 Sch. 25(21) para. 1 (date to be appointed)
- Pt 4 s. 35(1)(b): word repealed by Localism Act 2011 c. 20 Pt 6 c. 6 s. 132(2)(b)(i) (date to be appointed)
- Pt 4 s. 35(1)(b): words inserted by Localism Act 2011 c. 20 Pt 6 c. 6 s. 132(2)(b)(ii) (date to be appointed)
- Pt 4 s. 35(1)(b): word repealed by Localism Act 2011 c. 20 Sch. 25(21) para. 1 (date to be appointed)
- Pt 4 s. 35(4): s.35(4), (4A), (4B) and (4C) substituted for s.35(4) by Localism Act 2011 c. 20 Pt 6 c. 6 s. 132(3) (date to be appointed)
- Pt 4 s. 35(5): words substituted by Localism Act 2011 c. 20 Pt 6 c. 6 s. 132(4)(a) (date to be appointed)
- Pt 4 s. 35(5)(a): words inserted by Localism Act 2011 c. 20 Pt 6 c. 6 s. 132(4)(b) (date to be appointed)
- Pt 4 s. 35(5)(b): words inserted by Localism Act 2011 c. 20 Pt 6 c. 6 s. 132(4)(c) (date to be appointed)
- Pt 4 s. 35(6): words substituted by Localism Act 2011 c. 20 Pt 6 c. 6 s. 132(5)(a) (date to be appointed)
- Pt 4 s. 35(6): words inserted by Localism Act 2011 c. 20 Pt 6 c. 6 s. 132(5)(b) (date to be appointed)
- Pt 4 s. 35(6): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 4 (date to be appointed)
- Pt 4 s. 35(7): words substituted by Localism Act 2011 c. 20 Pt 6 c. 6 s. 132(6)(a) (date to be appointed)
- Pt 4 s. 35(7): words inserted by Localism Act 2011 c. 20 Pt 6 c. 6 s. 132(6)(b) (date to be appointed)
- Pt 4 s. 35(8): words substituted by Localism Act 2011 c. 20 Pt 6 c. 6 s. 132(7) (date to be appointed)
- Pt 4 s. 35(8A): added by Localism Act 2011 c. 20 Pt 6 c. 6 s. 132(8) (date to be appointed)

Pt 4 s. 35(10): added by Localism Act 2011 c. 20 Pt 6 c. 6 s. 132(9) (date to be appointed)

Commencement

Pt 4 s. 35(1)-(9): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(c), art. 6)

Extent

Pt 4 s. 35(1)-(9): England, Wales, Scotland

☑ Law In Force

36 Amendments consequential on development consent regime

Schedule 2 makes amendments consequential on the development consent regime.

Commencement

Pt 4 s. 36: March 1, 2010 (SI 2010/101 art. 2)

Extent

Pt 4 s. 36: England, Wales, Scotland

PART 5

APPLICATIONS FOR ORDERS GRANTING DEVELOPMENT CONSENT

CHAPTER 1

APPLICATIONS

☑ Law In Force

⚠ Amendment(s) Pending

37 Applications for orders granting development consent

- (1) An order granting development consent may be made only if an application is made for it.
- (2) An application for an order granting development consent must be made to the Commission.
- (3) An application for an order granting development consent must—
 - (a) specify the development to which it relates,
 - (b) be made in the prescribed form,
 - (c) be accompanied by the consultation report, and
 - (d) be accompanied by documents and information of a prescribed description.
- (4) The Commission may give guidance about how the requirements under subsection (3) are to be complied with.
- (5) The Commission may set standards for—
 - (a) the preparation of a document required by subsection (3)(d);
 - (b) the coverage in such a document of a matter falling to be dealt with in it;

(c) all or any of the collection, sources, verification, processing and presentation of information required by subsection (3)(d).

(6) The Commission must publish, in such manner as it thinks appropriate, any guidance given under subsection (4) and any standards set under subsection (5).

(7) In subsection (3)(c) “the consultation report” means a report giving details of—

- (a) what has been done in compliance with sections 42, 47 and 48 in relation to a proposed application that has become the application,
- (b) any relevant responses, and
- (c) the account taken of any relevant responses.

(8) In subsection (7) “relevant response” has the meaning given by section 49(3).

Amendments Pending

Pt 5 c. 1 s. 37: word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 5(2) (date to be appointed)

Pt 5 c. 1 s. 37(3): words inserted by Localism Act 2011 c. 20 Pt 6 c. 6 s. 137(5) (date to be appointed)

Pt 5 c. 1 s. 37(6): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 5(3) (date to be appointed)

Commencement

Pt 5 c. 1 s. 37(1)-(8): November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29 s.241(2); October 1, 2009 otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(8); SI 2009/2260 art. 2(b))

Extent

Pt 5 c. 1 s. 37(1)-(8): England, Wales, Scotland

Law In Force

Amendment(s) Pending

38 Model provisions

(1) The Secretary of State may by order prescribe model provisions for incorporation in a draft order which may be required (in accordance with regulations made under section 37(3)(d)) to accompany an application for an order granting development consent.

(2) The Commission must have regard to any model provisions prescribed by an order under subsection (1) when exercising its power to make an order granting development consent.

(3) The fact that a model provision has been prescribed by an order under subsection (1) does not make it mandatory for a provision in the terms of the model to be included in—

- (a) a draft order, or
- (b) an order granting development consent.

Amendments Pending

Pt 5 c. 1 s. 38: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 6 (date to be appointed)

Pt 5 c. 1 s. 38: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Pt 5 c. 1 s. 38(1)-(3)(b): November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29 s.241(2); October 1, 2009 otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(8); SI 2009/2260 art. 2(b))

Extent

Pt 5 c. 1 s. 38(1)-(3)(b): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

39 Register of applications

- (1) The Commission is to maintain a register of applications received by it for orders granting development consent (“the register”).
 - (2) Where the Commission receives an application for an order granting development consent, it must cause details of the application to be entered in the register.
 - (3) The Commission must publish the register or make arrangements for inspection of the register by the public.
 - (4) The Commission must make arrangements for inspection by the public of—
 - (a) applications received by the Commission for orders granting development consent,
 - (b) consultation reports received by the Commission under section 37(3)(c), and
 - (c) accompanying documents and information received by the Commission under section 37(3)(d).
-

Amendments Pending

Pt 5 c. 1 s. 39: word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 7(2) (date to be appointed)

Pt 5 c. 1 s. 39(1): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 7(3) (date to be appointed)

Pt 5 c. 1 s. 39(2): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 7(3) (date to be appointed)

Commencement

Pt 5 c. 1 s. 39(1)-(4)(c): October 1, 2009 (SI 2009/2260 art. 2(b))

Extent

Pt 5 c. 1 s. 39(1)-(4)(c): England, Wales, Scotland

✔ Law In Force

40 Applications by the Crown for orders granting development consent

- (1) This section applies to an application for an order granting development consent made by or on behalf of the Crown.

(2) The Secretary of State may by regulations modify or exclude any statutory provision relating to—

- (a) the procedure to be followed before such an application is made;
- (b) the making of such an application;
- (c) the decision-making process for such an application.

(3) A statutory provision is a provision contained in or having effect under this Act or any other enactment.

Commencement

Pt 5 c. 1 s. 40(1)-(3): November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29 s.241(2); October 1, 2009 otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(8); SI 2009/2260 art. 2(b))

Extent

Pt 5 c. 1 s. 40(1)-(3): England, Wales, Scotland

CHAPTER 2

PRE-APPLICATION PROCEDURE

Law In Force

41 Chapter applies before application is made

(1) This Chapter applies where a person (“the applicant”) proposes to make an application for an order granting development consent.

(2) In the following provisions of this Chapter—

- “the proposed application” means the proposed application mentioned in subsection (1);
- “the land” means the land to which the proposed application relates or any part of that land;
- “the proposed development” means the development for which the proposed application (if made) would seek development consent.

Commencement

Pt 5 c. 2 s. 41(1)-(2) definition of “the proposed development”: October 1, 2009 (SI 2009/2260 art. 2(b))

Extent

Pt 5 c. 2 s. 41(1)-(2) definition of “the proposed development”: England, Wales, Scotland

Law In Force

[42 Duty to consult

(1) The applicant must consult the following about the proposed application—

- (a) such persons as may be prescribed,

- (aa) the Marine Management Organisation, in any case where the proposed development would affect, or would be likely to affect, any of the areas specified in subsection (2),
- (b) each local authority that is within section 43,
- (c) the Greater London Authority if the land is in Greater London, and
- (d) each person who is within one or more of the categories set out in section 44.

(2) The areas are—

- (a) waters in or adjacent to England up to the seaward limits of the territorial sea;
- (b) an exclusive economic zone, except any part of an exclusive economic zone in relation to which the Scottish Ministers have functions;
- (c) a Renewable Energy Zone, except any part of a Renewable Energy Zone in relation to which the Scottish Ministers have functions;
- (d) an area designated under section 1(7) of the Continental Shelf Act 1964, except any part of that area which is within a part of an exclusive economic zone or Renewable Energy Zone in relation to which the Scottish Ministers have functions.

] ¹

Notes

- ¹ Existing s.42 renumbered as s.42(1) and s.42(1)(aa) and (2) inserted by Marine and Coastal Access Act 2009 c. 23 Pt 1 c.4 s.23(2) (April 1, 2010)

Commencement

Pt 5 c. 2 s. 42(a)-(d): October 1, 2009 (SI 2009/2260 art. 2(b))

Extent

Pt 5 c. 2 s. 42(a)-(2)(d): England, Wales, Scotland

Law In Force

Amendment(s) Pending

43 [Local authorities for purposes of section 42(1)(b)] ¹

- (1) A local authority is within this section if the land is in the authority's area.
- (2) A local authority (“A”) is within this section if—
- (a) the land is in the area of another local authority (“B”), and
 - (b) any part of the boundary of A's area is also a part of the boundary of B's area.
- (3) In this section “local authority” means—
- (a) a county council, or district council, in England;
 - (b) a London borough council;
 - (c) the Common Council of the City of London;
 - (d) the Council of the Isles of Scilly;
 - (e) a county council, or county borough council, in Wales;
 - (f) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39);
 - (g) a National Park authority;
 - (h) the Broads Authority.

Notes

¹ Heading substituted by Marine and Coastal Access Act 2009 c. 23 Pt 1 c.4 s.23(3)(a) (April 1, 2010)

Amendments Pending

Pt 5 c. 2 s. 43(2)(aa): added by Localism Act 2011 c. 20 Pt 6 c. 6 s. 133(2) (date to be appointed)

Pt 5 c. 2 s. 43(2A): added by Localism Act 2011 c. 20 Pt 6 c. 6 s. 133(3) (date to be appointed)

Pt 5 c. 2 s. 43(3): substituted by Localism Act 2011 c. 20 Pt 6 c. 6 s. 133(4) (date to be appointed)

Commencement

Pt 5 c. 2 s. 43(1)-(3)(h): October 1, 2009 (SI 2009/2260 art. 2(b))

Extent

Pt 5 c. 2 s. 43(1)-(3)(h): England, Wales, Scotland

Law In Force

Amendment(s) Pending

44 [Categories for purposes of section 42(1)(d)]¹

(1) A person is within Category 1 if the applicant, after making diligent inquiry, knows that the person is an owner, lessee, tenant (whatever the tenancy period) or occupier of the land.

(2) A person is within Category 2 if the applicant, after making diligent inquiry, knows that the person—

- (a) is interested in the land, or
- (b) has power—
 - (i) to sell and convey the land, or
 - (ii) to release the land.

(3) An expression, other than “the land”, that appears in subsection (2) of this section and also in section 5(1) of the Compulsory Purchase Act 1965 (c. 56) has in subsection (2) the meaning that it has in section 5(1) of that Act.

(4) A person is within Category 3 if the applicant thinks that, if the order sought by the proposed application were to be made and fully implemented, the person would or might be entitled—

- (a) as a result of the implementing of the order,
- (b) as a result of the order having been implemented, or
- (c) as a result of use of the land once the order has been implemented,

to make a relevant claim.

This is subject to subsection (5).

(5) A person is within Category 3 only if the person is known to the applicant after making diligent inquiry.

(6) In subsection (4) “relevant claim” means—

- (a) a claim under section 10 of the Compulsory Purchase Act 1965 (c. 56) (compensation where satisfaction not made for the taking, or injurious affection, of land subject to compulsory purchase);

(b) a claim under Part 1 of the Land Compensation Act 1973 (c. 26) (compensation for depreciation of land value by physical factors caused by use of public works).

Notes

¹ Heading substituted by Marine and Coastal Access Act 2009 c. 23 Pt 1 c.4 s.23(3)(b) (April 1, 2010)

Amendments Pending

Pt 5 c. 2 s. 44(6)(c): added by Localism Act 2011 c. 20 Pt 6 c. 6 s. 135(8) (date to be appointed)

Commencement

Pt 5 c. 2 s. 44(1)-(6)(b): October 1, 2009 (SI 2009/2260 art. 2(b))

Extent

Pt 5 c. 2 s. 44(1)-(6)(b): England, Wales, Scotland

Law In Force

45 Timetable for consultation under section 42

(1) The applicant must, when consulting a person under section 42, notify the person of the deadline for the receipt by the applicant of the person's response to the consultation.

(2) A deadline notified under subsection (1) must not be earlier than the end of the period of 28 days that begins with the day after the day on which the person receives the consultation documents.

(3) In subsection (2) “the consultation documents” means the documents supplied to the person by the applicant for the purpose of consulting the person.

Commencement

Pt 5 c. 2 s. 45(1)-(3): October 1, 2009 (SI 2009/2260 art. 2(b))

Extent

Pt 5 c. 2 s. 45(1)-(3): England, Wales, Scotland

Law In Force

Amendment(s) Pending

46 Duty to notify Commission of proposed application

(1) The applicant must supply the Commission with such information in relation to the proposed application as the applicant would supply to the Commission for the purpose of complying with section 42 if the applicant were required by that section to consult the Commission about the proposed application.

(2) The applicant must comply with subsection (1) on or before commencing consultation under section 42.

Amendments Pending

Pt 5 c. 2 s. 46: word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 8(3) (date to be appointed)

Pt 5 c. 2 s. 46(1): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 8(2) (date to be appointed)

Commencement

Pt 5 c. 2 s. 46(1)-(2): October 1, 2009 (SI 2009/2260 art. 2(b))

Extent

Pt 5 c. 2 s. 46(1)-(2): England, Wales, Scotland

☑ Law In Force

⚠ Amendment(s) Pending

47 Duty to consult local community

(1) The applicant must prepare a statement setting out how the applicant proposes to consult, about the proposed application, people living in the vicinity of the land.

(2) Before preparing the statement, the applicant must consult each local authority that is within section 43(1) about what is to be in the statement.

(3) The deadline for the receipt by the applicant of a local authority's response to consultation under subsection (2) is the end of the period of 28 days that begins with the day after the day on which the local authority receives the consultation documents.

(4) In subsection (3) “the consultation documents” means the documents supplied to the local authority by the applicant for the purpose of consulting the local authority under subsection (2).

(5) In preparing the statement, the applicant must have regard to any response to consultation under subsection (2) that is received by the applicant before the deadline imposed by subsection (3).

(6) Once the applicant has prepared the statement, the applicant must publish it—

(a) in a newspaper circulating in the vicinity of the land, and

(b) in such other manner as may be prescribed.

(7) The applicant must carry out consultation in accordance with the proposals set out in the statement.

Amendments Pending

Pt 5 c. 2 s. 47(6): words and para.(za) substituted for words by Localism Act 2011 c. 20 Pt 6 c. 6 s. 134(a) (date to be appointed)

Pt 5 c. 2 s. 47(6)(a): words inserted by Localism Act 2011 c. 20 Pt 6 c. 6 s. 134(b)(i) (date to be appointed)

Pt 5 c. 2 s. 47(6)(a): words inserted by Localism Act 2011 c. 20 Pt 6 c. 6 s. 134(b)(ii) (date to be appointed)

Pt 5 c. 2 s. 47(6)(b): words substituted by Localism Act 2011 c. 20 Pt 6 c. 6 s. 134(c) (date to be appointed)

Commencement

Pt 5 c. 2 s. 47(1)-(7): October 1, 2009 (SI 2009/2260 art. 2(b))

Extent

Pt 5 c. 2 s. 47(1)-(7): England, Wales, Scotland

Law In Force

48 Duty to publicise

- (1) The applicant must publicise the proposed application in the prescribed manner.
 - (2) Regulations made for the purposes of subsection (1) must, in particular, make provision for publicity under subsection (1) to include a deadline for receipt by the applicant of responses to the publicity.
-

Commencement

Pt 5 c. 2 s. 48(1)-(2): November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29 s.241(2); October 1, 2009 otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(8); SI 2009/2260 art. 2(b))

Extent

Pt 5 c. 2 s. 48(1)-(2): England, Wales, Scotland

Law In Force

49 Duty to take account of responses to consultation and publicity

- (1) Subsection (2) applies where the applicant—
 - (a) has complied with sections 42, 47 and 48, and
 - (b) proposes to go ahead with making an application for an order granting development consent (whether or not in the same terms as the proposed application).
- (2) The applicant must, when deciding whether the application that the applicant is actually to make should be in the same terms as the proposed application, have regard to any relevant responses.
- (3) In subsection (2) “relevant response” means—
 - (a) a response from a person consulted under section 42 that is received by the applicant before the deadline imposed by section 45 in that person's case,
 - (b) a response to consultation under section 47(7) that is received by the applicant before any applicable deadline imposed in accordance with the statement prepared under section 47, or
 - (c) a response to publicity under section 48 that is received by the applicant before the deadline imposed in accordance with section 48(2) in relation to that publicity.

Commencement

Pt 5 c. 2 s. 49(1)-(3)(c): October 1, 2009 (SI 2009/2260 art. 2(b))

Extent

Pt 5 c. 2 s. 49(1)-(3)(c): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

50 Guidance about pre-application procedure

- (1) Guidance may be issued about how to comply with the requirements of this Chapter.
- (2) Guidance under this section may be issued by the Commission or the Secretary of State.
- (3) The applicant must have regard to any guidance under this section.

Amendments Pending

Pt 5 c. 2 s. 50(2): words repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 9 (date to be appointed)

Pt 5 c. 2 s. 50(2): words repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Pt 5 c. 2 s. 50(1)-(3): October 1, 2009 (SI 2009/2260 art. 2(b))

Extent

Pt 5 c. 2 s. 50(1)-(3): England, Wales, Scotland

CHAPTER 3**ASSISTANCE FOR APPLICANTS AND OTHERS**

✔ Law In Force

! Amendment(s) Pending

51 Advice for potential applicants and others

- (1) The Commission may give advice to an applicant or potential applicant, or to others, about—
 - (a) applying for an order granting development consent;
 - (b) making representations about an application, or a proposed application, for such an order.
- (2) The Commission may not under subsection (1) give advice about the merits of any particular application, or proposed application, for such an order.
- (3) The Secretary of State may, if the Secretary of State thinks it appropriate to do so in connection with securing propriety in the giving of advice under subsection (1), by regulations make provision about the giving of advice under that subsection (but not about what the advice is to be).
- (4) In particular, regulations under subsection (3) may make provision that has the effect that—

(a) a person's request for advice under subsection (1), or
 (b) advice given under subsection (1) to a person,
 must be, or may be, disclosed by the Commission to persons other than that person or to the public generally.

Amendments Pending

Pt 5 c. 3 s. 51(1): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 10(2) (date to be appointed)

Pt 5 c. 3 s. 51(2): s.51(3)-(4) substituted for s.51(2)-(4) by Localism Act 2011 c. 20 Sch. 13(1) para. 10(3) (date to be appointed)

Pt 5 c. 3 s. 51(3): s.51(3)-(4) substituted for s.51(2)-(4) by Localism Act 2011 c. 20 Sch. 13(1) para. 10(3) (date to be appointed)

Pt 5 c. 3 s. 51(4): s.51(3)-(4) substituted for s.51(2)-(4) by Localism Act 2011 c. 20 Sch. 13(1) para. 10(3) (date to be appointed)

Commencement

Pt 5 c. 3 s. 51(1)-(4)(b): November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29 s.241(2); October 1, 2009 otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(8); SI 2009/2260 art. 2(b))

Extent

Pt 5 c. 3 s. 51(1)-(4)(b): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

52 Obtaining information about interests in land

(1) Where a person is applying, or proposes to apply, for an order granting development consent, subsection (2) applies for the purpose of enabling the person (“the applicant”) to comply with provisions of, or made under, Chapter 2 of this Part or Chapter 1 of Part 6.

(2) The Commission may authorise the applicant to serve a notice on a person mentioned in subsection (3) requiring the person (“the recipient”) to give to the applicant in writing the name and address of any person the recipient believes is one or more of the following—

- (a) an owner, lessee, tenant (whatever the tenancy period) or occupier of the land;
- (b) a person interested in the land;
- (c) a person having power—
 - (i) to sell and convey the land, or
 - (ii) to release the land.

(3) The persons are—

- (a) an occupier of the land;
- (b) a person who has an interest in the land as freeholder, mortgagee or lessee;
- (c) a person who directly or indirectly receives rent for the land;
- (d) a person who, in pursuance of an agreement between that person and a person interested in the land, is authorised to manage the land or to arrange for the letting of it.

- (4) A notice under subsection (2) must—
- (a) be in writing,
 - (b) state that the Commission has authorised the applicant to serve the notice,
 - (c) specify or describe the land to which the application, or proposed application, relates,
 - (d) specify the deadline by which the recipient must give the required information to the applicant, and
 - (e) draw attention to the provisions in subsections (6) to (9).
- (5) A deadline specified under subsection (4)(d) in a notice must not be earlier than the end of the 14 days beginning with the day after the day on which the notice is served on the recipient of the notice.
- (6) A person commits an offence if the person fails without reasonable excuse to comply with a notice under subsection (2) served on the person.
- (7) A person commits an offence if, in response to a notice under subsection (2) served on the person—
- (a) the person gives information which is false in a material particular, and
 - (b) when the person does so, the person knows or ought reasonably to know that the information is false.
- (8) If an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
- (a) a director, manager, secretary or other similar officer of the body,
 - (b) a person purporting to act in any such capacity, or
 - (c) in a case where the affairs of the body are managed by its members, a member of the body,
- that person, as well as the body, is guilty of that offence and liable to be proceeded against accordingly.
- (9) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (10) In subsections (2) and (3) “the land” means—
- (a) the land to which the application, or proposed application, relates, or
 - (b) any part of that land.
- (11) Any other expression that appears in either of paragraphs (b) and (c) of subsection (2) and also in section 5(1) of the Compulsory Purchase Act 1965 (c. 56) has in those paragraphs the meaning that it has in section 5(1) of that Act.

Amendments Pending

Pt 5 c. 3 s. 52(1): words substituted by Localism Act 2011 c. 20 Pt 6 c. 6 s. 135(2) (date to be appointed)

Pt 5 c. 3 s. 52(2): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 11 (date to be appointed)

Pt 5 c. 3 s. 52(2A): added by Localism Act 2011 c. 20 Pt 6 c. 6 s. 135(3) (date to be appointed)

Pt 5 c. 3 s. 52(4): words inserted by Localism Act 2011 c. 20 Pt 6 c. 6 s. 135(4) (date to be appointed)

Pt 5 c. 3 s. 52(4): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 11 (date to be appointed)

Pt 5 c. 3 s. 52(5A): added by Localism Act 2011 c. 20 Pt 6 c. 6 s. 135(5) (date to be appointed)

Pt 5 c. 3 s. 52(6): words inserted by Localism Act 2011 c. 20 Pt 6 c. 6 s. 135(4) (date to be appointed)

Pt 5 c. 3 s. 52(7): words inserted by Localism Act 2011 c. 20 Pt 6 c. 6 s. 135(4) (date to be appointed)

Pt 5 c. 3 s. 52(10): words substituted by Localism Act 2011 c. 20 Pt 6 c. 6 s. 135(6) (date to be appointed)

Pt 5 c. 3 s. 52(12): added by Localism Act 2011 c. 20 Pt 6 c. 6 s. 135(7) (date to be appointed)

Pt 5 c. 3 s. 52(14): added by Localism Act 2011 c. 20 Pt 6 c. 6 s. 135(7) (date to be appointed)

Commencement

Pt 5 c. 3 s. 52(1)-(11): October 1, 2009 (SI 2009/2260 art. 2(b))

Extent

Pt 5 c. 3 s. 52(1)-(11): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

53 Rights of entry

(1) Any person duly authorised in writing by the Commission may at any reasonable time enter any land for the purpose of surveying and taking levels of it in connection with—

- (a) an application for an order granting development consent, whether in relation to that or any other land, that has been accepted by the Commission,
- (b) a proposed application for an order granting development consent, or
- (c) an order granting development consent that includes provision authorising the compulsory acquisition of that land or of an interest in it or right over it.

(2) Authorisation may be given by the Commission under subsection (1)(b) in relation to any land only if it appears to the Commission that—

- (a) the proposed applicant is considering a distinct project of real substance genuinely requiring entry onto the land,
- (b) the proposed application is likely to seek authority to compulsorily acquire the land or an interest in it or right over it, and
- (c) the proposed applicant has complied with section 42 in relation to the proposed application.

(3) Subject to subsections (9) and (10), power conferred by subsection (1) to survey land includes power to search and bore for the purpose of ascertaining the nature of the subsoil or the presence of minerals or other matter in it.

(4) A person authorised under subsection (1) to enter any land—

- (a) must, if so required, produce evidence of the person's authority, and state the purpose of the person's entry, before so entering,
- (b) may not demand admission as of right to any land which is occupied unless 14 days' notice of the intended entry has been given to the occupier, and
- (c) must comply with any other conditions subject to which the Commission's authorisation is given.

(5) A person commits an offence if the person wilfully obstructs a person acting in the exercise of power under subsection (1).

(6) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) Where any damage is caused to land or chattels—

(a) in the exercise of a right of entry conferred under subsection (1), or

(b) in the making of any survey for the purpose of which any such right of entry has been conferred,

compensation may be recovered by any person suffering the damage from the person exercising the right of entry.

(8) Any question of disputed compensation under subsection (7) must be referred to and determined by the [Upper Tribunal]¹ .

(9) No person may carry out under subsection (1) any works authorised by virtue of subsection (3) unless notice of the person's intention to do so was included in the notice required by subsection (4)(b).

(10) The authority of the appropriate Minister is required for the carrying out under subsection (1) of works authorised by virtue of subsection (3) if—

(a) the land in question is held by statutory undertakers, and

(b) they object to the proposed works on the ground that execution of the works would be seriously detrimental to the carrying-on of their undertaking.

(11) In subsection (10)—

“the appropriate Minister” means—

(a) in the case of land in Wales held by water or sewerage undertakers, the Welsh Ministers, and

(b) in any other case, the Secretary of State;

“statutory undertakers” means persons who are, or who are deemed to be, statutory undertakers for the purposes of any provision of Part 11 of TCPA 1990.

Notes

¹ Words substituted by Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307 Sch.1 para.292 (October 1, 2009: substitution came into force on June 1, 2009 but could not take effect until the commencement of 2008 c.29 s.53(8) on October 1, 2009)

Amendments Pending

Pt 5 c. 3 s. 53(1): words inserted by Localism Act 2011 c. 20 Pt 6 c. 6 s. 136(2) (date to be appointed)

Pt 5 c. 3 s. 53(1): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 12(2) (date to be appointed)

Pt 5 c. 3 s. 53(1A): added by Localism Act 2011 c. 20 Pt 6 c. 6 s. 136(3) (date to be appointed)

Pt 5 c. 3 s. 53(2): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 12(2) (date to be appointed)

Pt 5 c. 3 s. 53(2)(b): repealed by Localism Act 2011 c. 20 Pt 6 c. 6 s. 136(4) (date to be appointed)

Pt 5 c. 3 s. 53(2)(b): repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Pt 5 c. 3 s. 53(2)(c): repealed by Localism Act 2011 c. 20 Pt 6 c. 6 s. 136(4) (date to be appointed)

Pt 5 c. 3 s. 53(2)(c): repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Pt 5 c. 3 s. 53(3A): added by Localism Act 2011 c. 20 Pt 6 c. 6 s. 136(5) (date to be appointed)

Pt 5 c. 3 s. 53(4)(c): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 12(3) (date to be appointed)

Commencement

Pt 5 c. 3 s. 53(1)-(11) definition of "statutory undertakers": October 1, 2009 (SI 2009/2260 art. 2(b))

Extent

Pt 5 c. 3 s. 53(1)-(11) definition of "statutory undertakers": England, Wales, Scotland

Law In Force

Amendment(s) Pending

54 Rights of entry: Crown land

(1) Subsections (1) to (3) of section 53 apply to Crown land subject to subsections (2) and (3) of this section.

(2) A person must not enter Crown land unless the person ("P") has the permission of—
 (a) a person appearing to P to be entitled to give it, or
 (b) the appropriate Crown authority.

(3) In section 53(3), the words "Subject to subsections (9) and (10)" must be ignored.

(4) Subsections (4) to (6) and (9) to (11) of section 53 do not apply to anything done by virtue of subsections (1) to (3) of this section.

Amendments Pending

Pt 5 c. 3 s. 54(1): words substituted by Localism Act 2011 c. 20 Pt 6 c. 6 s. 136(6) (date to be appointed)

Commencement

Pt 5 c. 3 s. 54(1)-(4): October 1, 2009 (SI 2009/2260 art. 2(b))

Extent

Pt 5 c. 3 s. 54(1)-(4): England, Wales, Scotland

PART 6**DECIDING APPLICATIONS FOR ORDERS GRANTING DEVELOPMENT CONSENT****CHAPTER 1****HANDLING OF APPLICATION BY COMMISSION**

Law In Force

Amendment(s) Pending

55 Acceptance of applications

(1) The following provisions of this section apply where the Commission receives an application that purports to be an application for an order granting development consent.

- (2) The Commission must, by the end of the period of 28 days beginning with the day after the day on which it receives the application, decide whether or not to accept the application.
- (3) The Commission may accept the application only if the Commission concludes—
- (a) that it is an application for an order granting development consent,
 - (b) that it complies with section 37(3) (form and contents of application) and with any standards set under section 37(5),
 - (c) that development consent is required for any of the development to which the application relates,
 - (d) that the application gives reasons for each respect in which any applicable guidance given under section 37(4) has not been followed in relation to it, and
 - (e) that the applicant has, in relation to a proposed application that has become the application, complied with Chapter 2 of Part 5 (preapplication procedure).
- (4) The Commission, when deciding whether it may reach the conclusion in subsection (3)(e), must have regard to—
- (a) the consultation report received under section 37(3)(c),
 - (b) any adequacy of consultation representation received by it from a local authority consultee, and
 - (c) the extent to which the applicant has had regard to any guidance issued under section 50.
- (5) In subsection (4)—
- “local authority consultee” means—
- (a) a local authority consulted under [section 42(1)(b)]¹ about a proposed application that has become the application, or
 - (b) the Greater London Authority if consulted under [section 42(1)(c)]² about that proposed application;
- “adequacy of consultation representation” means a representation about whether the applicant complied, in relation to that proposed application, with the applicant's duties under sections 42, 47 and 48.
- (6) If the Commission accepts the application, it must notify the applicant of the acceptance.
- (7) If the Commission is of the view that it cannot accept the application, it must—
- (a) notify that view to the applicant, and
 - (b) notify the applicant of its reasons for that view.
- (8) If in response the applicant modifies (or further modifies) the application, subsections (2) to (7) then apply in relation to the application as modified.

Notes

¹ Words substituted by Marine and Coastal Access Act 2009 c. 23 Pt 1 c.4 s.23(4)(a) (April 1, 2010)

² Words substituted by Marine and Coastal Access Act 2009 c. 23 Pt 1 c.4 s.23(4)(b) (April 1, 2010)

Amendments Pending

Pt 6 c. 1 s. 55: word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 13(2) (date to be appointed)

Pt 6 c. 1 s. 55(2): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 13(3) (date to be appointed)

Pt 6 c. 1 s. 55(3)(b): repealed by Localism Act 2011 c. 20 Pt 6 c. 6 s. 137(2) (date to be appointed)

Pt 6 c. 1 s. 55(3)(b): repealed by Localism Act 2011 c. 20 Sch. 25(21) para. 1 (date to be appointed)

Pt 6 c. 1 s. 55(3)(d): repealed by Localism Act 2011 c. 20 Pt 6 c. 6 s. 137(2) (date to be appointed)

Pt 6 c. 1 s. 55(3)(d): repealed by Localism Act 2011 c. 20 Sch. 25(21) para. 1 (date to be appointed)

Pt 6 c. 1 s. 55(3)(f): added by Localism Act 2011 c. 20 Pt 6 c. 6 s. 137(3) (date to be appointed)

Pt 6 c. 1 s. 55(4): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 13(3) (date to be appointed)

Pt 6 c. 1 s. 55(5A): added by Localism Act 2011 c. 20 Pt 6 c. 6 s. 137(4) (date to be appointed)

Pt 6 c. 1 s. 55(6): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 13(3) (date to be appointed)

Pt 6 c. 1 s. 55(7): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 13(4)(a) (date to be appointed)

Pt 6 c. 1 s. 55(7)(b): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 13(4)(b) (date to be appointed)

Commencement

Pt 6 c. 1 s. 55(1)-(8): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 1 s. 55(1)-(8): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

56 Notifying persons of accepted application

(1) Subsections (2), (6) and (7) apply where the Commission accepts an application for an order granting development consent.

(2) The applicant must give notice of the application to—

- (a) such persons as may be prescribed,
 - [(aa) the Marine Management Organisation, in any case where the development for which the application seeks development consent would involve the carrying on of any activity in one or more of the areas specified in subsection (2A),]¹
- (b) each authority which, in relation to the application, is a relevant local authority within the meaning given by section 102(5),
- (c) the Greater London Authority if the land to which the application relates, or any part of it, is in Greater London, and
- (d) each person who is within one or more of the categories set out in section 57.

[(2A) The areas are—

- (a) waters in or adjacent to England up to the seaward limits of the territorial sea;
- (b) an exclusive economic zone, except any part of an exclusive economic zone in relation to which the Scottish Ministers have functions;
- (c) a Renewable Energy Zone, except any part of a Renewable Energy Zone in relation to which the Scottish Ministers have functions;
- (d) an area designated under section 1(7) of the Continental Shelf Act 1964, except any part of that area which is within a part of an exclusive economic zone or Renewable Energy Zone in relation to which the Scottish Ministers have functions.

] ²

(3) Notice under subsection (2) must be in such form and contain such matter, and be given in such manner, as may be prescribed.

- (4) The applicant must, when giving notice to a person under subsection (2), notify the person of the deadline for receipt by the Commission of representations giving notice of the person's interest in, or objection to, the application.
- (5) A deadline notified under subsection (4) must not be earlier than the end of the period of 28 days that begins with the day after the day on which the person receives the notice.
- (6) The applicant must make available, to each person to whom notice is given under subsection (2), a copy of—
- (a) the application, and
 - (b) the documents and information that were required by section 37(3)(d) to accompany the application.
- (7) The applicant must publicise the application in the prescribed manner.
- (8) Regulations made for the purposes of subsection (7) must, in particular, make provision for publicity under subsection (7) to include a deadline for receipt by the Commission of representations giving notice of persons' interests in, or objections to, the application.
- (9) A deadline specified in accordance with subsection (8) does not apply to a person to whom notice is given under subsection (2).

Notes

¹ Added by Marine and Coastal Access Act 2009 c. 23 Pt 1 c.4 s.23(5)(a) (April 1, 2010)

² Added by Marine and Coastal Access Act 2009 c. 23 Pt 1 c.4 s.23(5)(b) (April 1, 2010)

Amendments Pending

Pt 6 c. 1 s. 56: word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 14 (date to be appointed)

Pt 6 c. 1 s. 56(2)(b): substituted by Localism Act 2011 c. 20 Pt 6 c. 6 s. 138(2) (date to be appointed)

Commencement

Pt 6 c. 1 s. 56(1)-(9): November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29 s.241(2); October 1, 2009 otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(8); SI 2009/2260 art. 2(c))

Extent

Pt 6 c. 1 s. 56(1)-(9): England, Wales, Scotland

Law In Force

Amendment(s) Pending

57 Categories for purposes of section 56(2)(d)

- (1) A person is within Category 1 if the applicant, after making diligent inquiry, knows that the person is an owner, lessee, tenant (whatever the tenancy period) or occupier of the land.
- (2) A person is within Category 2 if the applicant, after making diligent inquiry, knows that the person—
- (a) is interested in the land, or

- (b) has power—
- (i) to sell and convey the land, or
 - (ii) to release the land.

(3) An expression, other than “the land”, that appears in subsection (2) of this section and also in section 5(1) of the Compulsory Purchase Act 1965 (c. 56) has in subsection (2) the meaning that it has in section 5(1) of that Act.

(4) A person is within Category 3 if the applicant thinks that, if the order sought by the application were to be made and fully implemented, the person would or might be entitled—

- (a) as a result of the implementing of the order,
- (b) as a result of the order having been implemented, or
- (c) as a result of use of the land once the order has been implemented,

to make a relevant claim.

This is subject to subsection (5).

(5) A person is within Category 3 only if the person is known to the applicant after making diligent inquiry.

(6) In subsection (4) “relevant claim” means—

- (a) a claim under section 10 of the Compulsory Purchase Act 1965 (compensation where satisfaction not made for the taking, or injurious affection, of land subject to compulsory purchase);
- (b) a claim under Part 1 of the Land Compensation Act 1973 (c. 26) (compensation for depreciation of land value by physical factors caused by use of public works).

(7) In this section “the land” means the land to which the application relates or any part of that land.

Amendments Pending

Pt 6 c. 1 s. 57(6)(c): added by Localism Act 2011 c. 20 Pt 6 c. 6 s. 135(9) (date to be appointed)

Commencement

Pt 6 c. 1 s. 57(1)-(7): October 1, 2009 (SI 2009/2260 art. 2(c))

Extent

Pt 6 c. 1 s. 57(1)-(7): England, Wales, Scotland

Law In Force

Amendment(s) Pending

58 Certifying compliance with section 56

(1) Subsection (2) applies where—

- (a) the Commission has accepted an application for an order granting development consent, and
- (b) the applicant has complied with section 56 in relation to the application.

(2) The applicant must, in such form and manner as may be prescribed, certify to the Commission that the applicant has complied with section 56 in relation to the application.

- (3) A person commits an offence if the person issues a certificate which—
- (a) purports to be a certificate under subsection (2), and
 - (b) contains a statement which the person knows to be false or misleading in a material particular.
- (4) A person commits an offence if the person recklessly issues a certificate which—
- (a) purports to be a certificate under subsection (2), and
 - (b) contains a statement which is false or misleading in a material particular.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) A magistrates' court may try an information relating to an offence under this section whenever laid.
- (7) Section 127 of the Magistrates' Courts Act 1980 (c. 43) has effect subject to subsection (6) of this section.

Amendments Pending

Pt 6 c. 1 s. 58(1): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 15 (date to be appointed)

Pt 6 c. 1 s. 58(2): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 15 (date to be appointed)

Commencement

Pt 6 c. 1 s. 58(1)-(7): October 1, 2009 (SI 2009/2260 art. 2(c))

Extent

Pt 6 c. 1 s. 58(1)-(7): England, Wales, Scotland

Law In Force

Amendment(s) Pending

59 Notice of persons interested in land to which compulsory acquisition request relates

- (1) This section applies where—
- (a) the Commission has accepted an application for an order granting development consent, and
 - (b) the application includes a request for an order granting development consent to authorise compulsory acquisition of land or of an interest in or right over land (a “compulsory acquisition request”).
- (2) The applicant must give to the Commission a notice specifying the names, and such other information as may be prescribed, of each affected person.
- (3) Notice under subsection (2) must be given in such form and manner as may be prescribed.
- (4) A person is an “affected person” for the purposes of this section if the applicant, after making diligent inquiry, knows that the person is interested in the land to which the compulsory acquisition request relates or any part of that land.

Amendments Pending

Pt 6 c. 1 s. 59(1): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 16 (date to be appointed)

Pt 6 c. 1 s. 59(2): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 16 (date to be appointed)

Commencement

Pt 6 c. 1 s. 59(1)-(4): October 1, 2009 (SI 2009/2260 art. 2(c))

Extent

Pt 6 c. 1 s. 59(1)-(4): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

60 Local impact reports

(1) Subsection (2) applies where the Commission—

- (a) has accepted an application for an order granting development consent, and
- (b) has received—
 - (i) a certificate under section 58(2) in relation to the application, and
 - (ii) where section 59 applies, a notice under that section in relation to the application.

(2) The Commission must give notice in writing to each of the following, inviting them to submit a local impact report to it—

- (a) each authority which, in relation to the application, is a relevant local authority within the meaning given by section 102(5), and
- (b) the Greater London Authority if the land to which the application relates, or any part of it, is in Greater London.

(3) A “local impact report” is a report in writing giving details of the likely impact of the proposed development on the authority's area (or any part of that area).

(4) “The proposed development” is the development for which the application seeks development consent.

(5) A notice under subsection (2) must specify the deadline for receipt by the Commission of the local impact report.

Amendments Pending

Pt 6 c. 1 s. 60: word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 17(2) (date to be appointed)

Pt 6 c. 1 s. 60(2): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 17(3) (date to be appointed)

Pt 6 c. 1 s. 60(2)(a): substituted by Localism Act 2011 c. 20 Pt 6 c. 6 s. 138(4) (date to be appointed)

Commencement

Pt 6 c. 1 s. 60(1)-(5): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 1 s. 60(1)-(5): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

61 Initial choice of Panel or single Commissioner

- (1) Subsection (2) applies where the Commission—
- (a) has accepted an application for an order granting development consent, and
 - (b) has received—
 - (i) a certificate under section 58(2) in relation to the application, and
 - (ii) where section 59 applies, a notice under that section in relation to the application.
- (2) The person appointed to chair the Commission must decide whether the application—
- (a) is to be handled by a Panel under Chapter 2, or
 - (b) is to be handled by a single Commissioner under Chapter 3.
- (3) A person making a decision under subsection (2) must have regard to any guidance issued by the Secretary of State as to which applications to the Commission for orders granting development consent are to be handled by a Panel under Chapter 2 and which by a single Commissioner under Chapter 3.
- (4) Before making a decision under subsection (2), the person making the decision must consult—
- (a) the other Commissioners who, for the purpose of responding to consultation about the decision, are members of the Council,
 - (b) any Commissioner not within paragraph (a) who the person thinks it appropriate to consult, and
 - (c) the chief executive of the Commission.
- (5) In making a decision under subsection (2), the person making the decision must have regard to any views expressed—
- (a) by any of the other Commissioners, or
 - (b) by the chief executive of the Commission,
- as to whether the application concerned should be handled by a Panel under Chapter 2 or by a single Commissioner under Chapter 3.

Amendments Pending

Pt 6 c. 1 s. 61: word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 18(4) (date to be appointed)

Pt 6 c. 1 s. 61(1): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 18(2) (date to be appointed)

Pt 6 c. 1 s. 61(2): s.61(2)-(3) substituted for s.61(2)-(5) by Localism Act 2011 c. 20 Sch. 13(1) para. 18(3) (date to be appointed)

Pt 6 c. 1 s. 61(3): s.61(2)-(3) substituted for s.61(2)-(5) by Localism Act 2011 c. 20 Sch. 13(1) para. 18(3) (date to be appointed)

Pt 6 c. 1 s. 61(4): s.61(2)-(3) substituted for s.61(2)-(5) by Localism Act 2011 c. 20 Sch. 13(1) para. 18(3) (date to be appointed)

Pt 6 c. 1 s. 61(5): s.61(2)-(3) substituted for s.61(2)-(5) by Localism Act 2011 c. 20 Sch. 13(1) para. 18(3) (date to be appointed)

Commencement

Pt 6 c. 1 s. 61(1)-(5)(b): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 1 s. 61(1)-(5)(b): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

62 Switching from single Commissioner to Panel

(1) Subsection (2) applies where an application for an order granting development consent is being handled by a single Commissioner under Chapter 3.

(2) The person appointed to chair the Commission may decide that the application should instead be handled by a Panel under Chapter 2.

(3) A person making a decision under subsection (2) must have regard to any guidance issued by the Secretary of State as to which applications are to be handled by a Panel under Chapter 2 and which by a single Commissioner under Chapter 3.

(4) Before making a decision under subsection (2), the person making the decision must consult—

- (a) the other Commissioners who, for the purpose of responding to consultation about the decision, are members of the Council,
- (b) any Commissioner not within paragraph (a) who the person thinks it appropriate to consult, and
- (c) the chief executive of the Commission.

(5) In making a decision under subsection (2), the person making the decision must have regard to any views expressed—

- (a) by any of the other Commissioners, or
- (b) by the chief executive of the Commission,

as to whether the application concerned should be handled by a Panel under Chapter 2 instead of by a single Commissioner under Chapter 3.

Amendments Pending

Pt 6 c. 1 s. 62: word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 19(2) (date to be appointed)

Pt 6 c. 1 s. 62(1): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 19(2) (date to be appointed)

Pt 6 c. 1 s. 62(2): s.62(2)-(3) substituted for s.62(2)-(5) by Localism Act 2011 c. 20 Sch. 13(1) para. 19(3) (date to be appointed)

Pt 6 c. 1 s. 62(3): s.62(2)-(3) substituted for s.62(2)-(5) by Localism Act 2011 c. 20 Sch. 13(1) para. 19(3) (date to be appointed)

Pt 6 c. 1 s. 62(4): s.62(2)-(3) substituted for s.62(2)-(5) by Localism Act 2011 c. 20 Sch. 13(1) para. 19(3) (date to be appointed)

Pt 6 c. 1 s. 62(5): s.62(2)-(3) substituted for s.62(2)-(5) by Localism Act 2011 c. 20 Sch. 13(1) para. 19(3) (date to be appointed)

Commencement

Pt 6 c. 1 s. 62(1)-(5)(b): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 1 s. 62(1)-(5)(b): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

63 Delegation of functions by person appointed to chair Commission

(1) Subsections (2) and (3) apply to any function conferred or imposed by this Part on the person appointed to chair the Commission (“the chair”).

(2) The chair may delegate the function to a person appointed as a deputy to the chair (a “deputy”), subject to subsections (5) to (10).

(3) If at any time there is (apart from this subsection) no-one who is able and available to carry out the function, each deputy may carry out the function.

(4) A function delegated under subsection (2) may be delegated to such extent and on such terms as the chair determines.

(5) Where the chair is a member of a Panel under Chapter 2, the chair's function under section 66(5)(a) in relation to the chair's membership of the Panel is not exercisable by the chair but is exercisable by each deputy.

(6) Where the chair is the lead member of a Panel under Chapter 2, the chair's function under section 66(5)(b) in relation to the chair's holding of the office of lead member of that Panel is not exercisable by the chair but is exercisable by each deputy.

(7) Where the chair is the single Commissioner appointed to handle an application under Chapter 3, the chair's function under section 80(3) in relation to the chair's holding of the office of single Commissioner in relation to that application is not exercisable by the chair but is exercisable by each deputy.

(8) Where a deputy is a member of a Panel under Chapter 2, the chair's function under section 66(5)(a) in relation to that deputy's membership of the Panel may not be delegated under subsection (2) to that deputy.

(9) Where a deputy is the lead member of a Panel under Chapter 2, the chair's function under section 66(5)(b) in relation to that deputy's holding of the office of lead member of that Panel may not be delegated under subsection (2) to that deputy.

(10) Where a deputy is the single Commissioner appointed to handle an application under Chapter 3, the chair's function under section 80(3) in relation to that deputy's holding of the office of single Commissioner in relation to that application may not be delegated under subsection (2) to that deputy.

Amendments Pending

Pt 6 c. 1 s. 63: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 20 (date to be appointed)

Pt 6 c. 1 s. 63: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Pt 6 c. 1 s. 63(1)-(10): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 1 s. 63(1)-(10): England, Wales, Scotland

CHAPTER 2**THE PANEL PROCEDURE***Panels*

✔ Law In Force

! Amendment(s) Pending

64 Panel for each application to be handled under this Chapter

(1) This Chapter applies where—

- (a) the Commission accepts an application for an order granting development consent, and
- (b) under section 61(2) or 62(2), it is decided that the application is to be handled by a Panel under this Chapter.

(2) There is to be a Panel (referred to in this Chapter as “the Panel”) to handle the application.

Amendments Pending

Pt 6 c. 2 s. 64(1)(a): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 21 (date to be appointed)

Commencement

Pt 6 c. 2 s. 64(1)-(2): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 2 s. 64(1)-(2): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

65 Appointment of members, and lead member, of Panel

(1) The person appointed to chair the Commission must appoint—

- (a) three or more Commissioners to be members of the Panel, and
- (b) one of those Commissioners to chair the Panel.

(2) In this Chapter “the lead member” means the person who for the time being is appointed to chair the Panel.

(3) A person may under subsection (1) make a self-appointment.

(4) Before making an appointment under subsection (1), the person making the appointment must consult—

- (a) the other Commissioners who, for the purpose of responding to consultation about the appointment, are members of the Council,

- (b) any Commissioner not within paragraph (a) who the person thinks it appropriate to consult, and
- (c) the chief executive of the Commission.

(5) In making an appointment under subsection (1), the person making the appointment must have regard to any views expressed—

- (a) by any of the other Commissioners, or
- (b) by the chief executive of the Commission,

about how many or which Commissioners should be appointed to the Panel.

Amendments Pending

Pt 6 c. 2 s. 65(1): substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 22(2) (date to be appointed)

Pt 6 c. 2 s. 65(3): repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 22(3) (date to be appointed)

Pt 6 c. 2 s. 65(3): repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Pt 6 c. 2 s. 65(4): repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 22(3) (date to be appointed)

Pt 6 c. 2 s. 65(4): repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Pt 6 c. 2 s. 65(5): repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 22(3) (date to be appointed)

Pt 6 c. 2 s. 65(5): repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Pt 6 c. 2 s. 65(1)-(5)(b): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 2 s. 65(1)-(5)(b): England, Wales, Scotland

Law In Force

Amendment(s) Pending

66 Ceasing to be member, or lead member, of Panel

(1) A person ceases to be a member of the Panel if the person ceases to be a Commissioner, but this is subject to section 67.

(2) The person appointed to be the lead member ceases to hold that office if the person ceases to be a member of the Panel.

(3) A person may resign from membership of the Panel by giving notice in writing to the Commission.

(4) The lead member may resign that office, without also resigning from membership of the Panel, by giving notice in writing to the Commission.

(5) The person appointed to chair the Commission (“the chair”)—

- (a) may remove a person (“the Panel member”) from membership of the Panel if the chair is satisfied that the Panel member is unable, unwilling or unfit to perform the duties of Panel membership;

(b) may remove the lead member from that office, without also removing the lead member from membership of the Panel, if the chair is satisfied that the lead member is unable, unwilling or unfit to perform the duties of the office.

Amendments Pending

Pt 6 c. 2 s. 66(1): repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 23(2) (date to be appointed)

Pt 6 c. 2 s. 66(1): repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Pt 6 c. 2 s. 66(3): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 23(3) (date to be appointed)

Pt 6 c. 2 s. 66(4): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 23(3) (date to be appointed)

Pt 6 c. 2 s. 66(5): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 23(4)(a) (date to be appointed)

Pt 6 c. 2 s. 66(5)(a): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 23(4)(b) (date to be appointed)

Pt 6 c. 2 s. 66(5)(b): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 23(4)(b) (date to be appointed)

Commencement

Pt 6 c. 2 s. 66(1)-(5)(b): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 2 s. 66(1)-(5)(b): England, Wales, Scotland

Law In Force

Amendment(s) Pending

67 Panel member continuing though ceasing to be Commissioner

(1) This section applies if—

- (a) a person (“the ex-Commissioner”) ceases to hold office as a Commissioner (other than by being removed from office under paragraph 4(2) of Schedule 1),
- (b) immediately before ceasing to hold office, the ex-Commissioner is—
 - (i) a member of the Panel, or
 - (ii) a member of the Panel and the lead member,
- (c) the Panel is still handling the application at the time the ex-Commissioner ceases to hold office, and
- (d) before ceasing to hold office, the ex-Commissioner elects to continue acting as a Commissioner in relation to the application.

(2) For the purpose of the application, the ex-Commissioner is to be treated as continuing to hold office until—

- (a) the Panel has decided, or (as the case may be) reported to the Secretary of State on, the application, or
- (b) (if earlier) the ex-Commissioner ceases to be a member of the Panel.

(3) For the purpose of any proceedings arising out of the application, the ex-Commissioner is to be treated as having continued to hold office until—

- (a) the Panel had decided, or (as the case may be) reported to the Secretary of State on, the application, or
- (b) (if earlier) the ex-Commissioner ceased to be a member of the Panel.

- (4) An election under subsection (1)(d) is effective only if made in writing to each of the following—
- (a) the chief executive of the Commission;
 - (b) the person appointed to chair the Commission, where the ex-Commissioner is not the person appointed to chair the Commission;
 - (c) the lead member of the Panel, where the ex-Commissioner is not the lead member of the Panel.

Amendments Pending

Pt 6 c. 2 s. 67: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 24 (date to be appointed)

Pt 6 c. 2 s. 67: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Pt 6 c. 2 s. 67(1)-(4)(c): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 2 s. 67(1)-(4)(c): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

68 Additional appointments to Panel

- (1) Subsections (2) and (3) apply at any time after the initial members of the Panel have been appointed under section 65(1)(a).
- (2) The person appointed to chair the Commission may appoint a Commissioner to be a member of the Panel.
- (3) If at any time the Panel has only two members or a single member, it is the duty of the person appointed to chair the Commission to ensure that the power under subsection (2) is exercised so as to secure that the Panel again has at least three members.
- (4) A person appointed under subsection (2) becomes a member of the Panel in addition to any person who is otherwise a member of the Panel.
- (5) A person may under subsection (2) make a self-appointment.

Amendments Pending

Pt 6 c. 2 s. 68(2): substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 25(2) (date to be appointed)

Pt 6 c. 2 s. 68(3): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 25(3) (date to be appointed)

Pt 6 c. 2 s. 68(5): repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 25(4) (date to be appointed)

Pt 6 c. 2 s. 68(5): repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Pt 6 c. 2 s. 68(1)-(5): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 2 s. 68(1)-(5): England, Wales, Scotland

Law In Force

Amendment(s) Pending

69 Replacement of lead member of Panel

(1) Subsection (2) applies where a person ceases to hold the office of lead member.

(2) The person appointed to chair the Commission must appoint a member of the Panel to chair the Panel.

(3) A person may be appointed under subsection (2) even though that person was not a member of the Panel when the vacancy arose.

(4) A person may under subsection (2) make a self-appointment.

Amendments Pending

Pt 6 c. 2 s. 69(2): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 26(2) (date to be appointed)

Pt 6 c. 2 s. 69(4): repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 26(3) (date to be appointed)

Pt 6 c. 2 s. 69(4): repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Pt 6 c. 2 s. 69(1)-(4): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 2 s. 69(1)-(4): England, Wales, Scotland

Law In Force

Amendment(s) Pending

70 Membership of Panel where application relates to land in Wales

(1) This section applies where the application relates to land in Wales (even if it also relates to land not in Wales).

(2) A person exercising power under section 65(1)(a) or 68(2) must do so with a view to securing that, if reasonably practicable, at least one of the members of the Panel is—

- (a) a Commissioner who was nominated for appointment as a Commissioner by the Welsh Ministers, or
- (b) a Commissioner who is within subsection (3).

(3) A Commissioner is within this subsection if, when appointed to be a member of the Panel, the Commissioner is one notified to the Commission by the Welsh Ministers as being a Commissioner who should be treated for the purposes of this section as being a Commissioner within subsection (2)(a).

Amendments Pending

Pt 6 c. 2 s. 70: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 27 (date to be appointed)

Pt 6 c. 2 s. 70: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Pt 6 c. 2 s. 70(1)-(3): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 2 s. 70(1)-(3): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

71 Supplementary provision where Panel replaces single Commissioner

(1) Subsections (2) and (3) apply where this Chapter applies as the result of a decision under section 62(2).

(2) A Commissioner who has handled the application under Chapter 3—

(a) may be appointed under section 65(1)(a) or 68(2) as a member of the Panel, and

(b) if a member of the Panel, may be appointed under section 65(1)(b) or 69(2) to chair the Panel.

(3) The Panel may, so far as it thinks appropriate, decide to treat things done by or in relation to a Commissioner in proceedings under Chapter 3 on the application as done by or in relation to the Panel.

(4) Where the Panel makes a decision under subsection (3), the lead member is under a duty to ensure that the membership of the Panel has the necessary knowledge of the proceedings under Chapter 3 on the application.

Amendments Pending

Pt 6 c. 2 s. 71: word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 28(5) (date to be appointed)

Pt 6 c. 2 s. 71(2): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 28(2) (date to be appointed)

Pt 6 c. 2 s. 71(3): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 28(3) (date to be appointed)

Pt 6 c. 2 s. 71(5): added by Localism Act 2011 c. 20 Sch. 13(1) para. 28(4) (date to be appointed)

Commencement

Pt 6 c. 2 s. 71(1)-(4): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 2 s. 71(1)-(4): England, Wales, Scotland

✔ Law In Force

72 Panel ceasing to have any members

- (1) If the Panel ceases to have any members, a new Panel must be constituted under section 65(1).
- (2) At times after the new Panel has been constituted (but subject to the further application of this subsection in the event that the new Panel ceases to have any members), references in this Chapter to the Panel are to be read as references to the new Panel.
- (3) The new Panel may, so far as it thinks appropriate, decide to treat things—
 - (a) done by or in relation to a previous Panel appointed to handle the application, or
 - (b) treated under section 71(3) as done by or in relation to a previous Panel appointed to handle the application,as done by or in relation to the new Panel.
- (4) Where the Panel makes a decision under subsection (3), the lead member is under a duty to ensure that the membership of the Panel has the necessary knowledge of the proceedings on the application up until the reconstitution of the Panel.
- (5) The power under section 68(2) is not exercisable at times when the Panel has no members.

Commencement

Pt 6 c. 2 s. 72(1)-(5): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 2 s. 72(1)-(5): England, Wales, Scotland

✔ Law In Force

73 Consequences of changes in Panel

- (1) The Panel's continuing identity is to be taken not to be affected by—
 - (a) any change in the membership of the Panel;
 - (b) the Panel's coming to have only two members or a single member;
 - (c) any change in the lead member;
 - (d) a vacancy in that office.
- (2) When there is a change in the membership of the Panel, the lead member is under a duty to ensure that the membership of the Panel after the change has the necessary knowledge of the proceedings on the application up until the change.
- (3) Subsection (2) does not apply where the change occurs as a result of the Panel being reconstituted as required by section 72(1).

Commencement

Pt 6 c. 2 s. 73(1)-(3): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 2 s. 73(1)-(3): England, Wales, Scotland

Panel's role in relation to application

✔ Law In Force

! Amendment(s) Pending

74 Panel to decide, or make recommendation in respect of, application

- (1) Where a national policy statement has effect in relation to development of the description to which the application relates, the Panel has the functions of—
- (a) examining the application, and
 - (b) deciding the application.
- (2) In any other case, the Panel has the functions of—
- (a) examining the application, and
 - (b) making a report to the Secretary of State on the application setting out—
 - (i) the Panel's findings and conclusions in respect of the application, and
 - (ii) the Panel's recommendation as to the decision to be made on the application.
- (3) The Panel's functions under this section are to be carried out in accordance with Chapter 4.
- (4) The staff of the Commission have the function of providing or procuring support for members of the Panel undertaking the Panel's functions under this section.

Amendments Pending

Pt 6 c. 2 s. 74(1): repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 29(2) (date to be appointed)

Pt 6 c. 2 s. 74(1): repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Pt 6 c. 2 s. 74(2): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 29(3) (date to be appointed)

Pt 6 c. 2 s. 74(4): repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 29(4) (date to be appointed)

Pt 6 c. 2 s. 74(4): repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Pt 6 c. 2 s. 74(1)-(4): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 2 s. 74(1)-(4): England, Wales, Scotland

✔ Law In Force

75 Decision-making by the Panel

- (1) The making of a decision by the Panel requires the agreement of a majority of its members.
- (2) The lead member has a second (or casting) vote in the event that the number of members of the Panel agreeing to a proposed decision is the same as the number of members not so agreeing.

Commencement

Pt 6 c. 2 s. 75(1)-(2): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 2 s. 75(1)-(2): England, Wales, Scotland

Law In Force

76 Allocation within Panel of Panel's functions

- (1) This section applies in relation to the Panel's examination of the application.
- (2) The Panel, as an alternative to itself undertaking a part of the examination, may allocate the undertaking of that part to any one or more of the members of the Panel.
- (3) Where there is an allocation under subsection (2)—
 - (a) anything that under Chapter 4 is required or authorised to be done by or to the Panel in connection with the allocated part of the examination may be done by or to the member or members concerned (or by or to the Panel), and
 - (b) findings and conclusions of the member or members concerned in respect of the matters allocated are to be taken to be the Panel's.
- (4) Subsection (3)(b) has effect subject to any decision of the Panel, made on the occasion of making the allocation or earlier, as to the status of any such findings or conclusions.
- (5) Where there is an allocation under subsection (2) to two or more of the members of the Panel, the making of a decision by the members concerned requires the agreement of all of them.

Commencement

Pt 6 c. 2 s. 76(1)-(5): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 2 s. 76(1)-(5): England, Wales, Scotland

Law In Force

77 Exercise of Panel's powers for examining application

- (1) In this section “procedural power” means any power conferred on the Panel for the purposes of its examination of the application.
- (2) A procedural power, as well as being exercisable by the Panel itself, is also (subject to subsection (3)) exercisable by any one or more of the members of the Panel.
- (3) The Panel may decide to restrict or prohibit the exercise of a procedural power otherwise than by the Panel itself.
- (4) Subsection (2)—
 - (a) applies whether or not there is an allocation under section 76(2), and
 - (b) where there is such an allocation, is in addition to section 76(3)(a).

(5) Subsection (3) does not authorise curtailment of a power conferred by section 76(3)(a).

Commencement

Pt 6 c. 2 s. 77(1)-(5): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 2 s. 77(1)-(5): England, Wales, Scotland

CHAPTER 3**THE SINGLE-COMMISSIONER PROCEDURE***The single Commissioner*

✔ Law In Force

! Amendment(s) Pending

78 Single Commissioner to handle application

(1) This Chapter applies where—

- (a) the Commission accepts an application for an order granting development consent, and
- (b) under section 61(2), it is decided that the application is to be handled by a single Commissioner under this Chapter.

(2) In this Chapter “the single Commissioner” means the person who is appointed to handle the application under this Chapter.

Amendments Pending

Pt 6 c. 3 s. 78: words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 30(6) (date to be appointed)

Pt 6 c. 3 s. 78: word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 35(2) (date to be appointed)

Pt 6 c. 3 s. 78: word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 30(5) (date to be appointed)

Pt 6 c. 3 s. 78(1)(a): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 30(2) (date to be appointed)

Pt 6 c. 3 s. 78(1)(b): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 30(3) (date to be appointed)

Pt 6 c. 3 s. 78(2): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 30(4) (date to be appointed)

Commencement

Pt 6 c. 3 s. 78(1)-(2): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 3 s. 78(1)-(2): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

79 Appointment of single Commissioner

- (1) The person appointed to chair the Commission must appoint a Commissioner to handle the application.
- (2) A person may under subsection (1) make a self-appointment.
- (3) Before making an appointment under subsection (1), the person making the appointment must consult—
- (a) the other Commissioners who, for the purpose of responding to consultation about the appointment, are members of the Council,
 - (b) any Commissioner not within paragraph (a) who the person thinks it appropriate to consult, and
 - (c) the chief executive of the Commission.
- (4) In making an appointment under subsection (1), the person making the appointment must have regard to any views expressed—
- (a) by any of the other Commissioners, or
 - (b) by the chief executive of the Commission,
- as to which Commissioner should be appointed.

Amendments Pending

Pt 6 c. 3 s. 79: words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 30(6) (date to be appointed)

Pt 6 c. 3 s. 79: word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 35(2) (date to be appointed)

Pt 6 c. 3 s. 79: substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 31 (date to be appointed)

Commencement

Pt 6 c. 3 s. 79(1)-(4)(b): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 3 s. 79(1)-(4)(b): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

80 Ceasing to be the single Commissioner

- (1) A person ceases to be the single Commissioner if the person ceases to be a Commissioner, but this is subject to section 81.
- (2) A person may resign from being the single Commissioner by giving notice in writing to the Commission.
- (3) The person appointed to chair the Commission (“the chair”) may remove a person (“the appointee”) from being the single Commissioner if the chair is satisfied that the appointee is unable, unwilling or unfit to perform the duties of the single Commissioner.

Amendments Pending

Pt 6 c. 3 s. 80: words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 30(6) (date to be appointed)

Pt 6 c. 3 s. 80: word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 35(2) (date to be appointed)

Pt 6 c. 3 s. 80: word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 32(5) (date to be appointed)

Pt 6 c. 3 s. 80(1): repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 32(2) (date to be appointed)

Pt 6 c. 3 s. 80(1): repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Pt 6 c. 3 s. 80(2): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 32(3)(a) (date to be appointed)

Pt 6 c. 3 s. 80(2): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 32(3)(b) (date to be appointed)

Pt 6 c. 3 s. 80(3): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 32(4)(a) (date to be appointed)

Pt 6 c. 3 s. 80(3): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 32(4)(b) (date to be appointed)

Pt 6 c. 3 s. 80(3): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 32(4)(c) (date to be appointed)

Commencement

Pt 6 c. 3 s. 80(1)-(3): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 3 s. 80(1)-(3): England, Wales, Scotland

Law In Force

Amendment(s) Pending

81 Single Commissioner continuing though ceasing to be Commissioner

(1) This section applies if—

- (a) a person (“the ex-Commissioner”) ceases to hold office as a Commissioner (other than by being removed from office under paragraph 4(2) of Schedule 1),
- (b) immediately before ceasing to hold office, the ex-Commissioner is the single Commissioner,
- (c) the ex-Commissioner is still handling the application at the time the ex-Commissioner ceases to hold office, and
- (d) before ceasing to hold office, the ex-Commissioner elects to continue acting as a Commissioner in relation to the application.

(2) For the purpose of the application, the ex-Commissioner is to be treated as continuing to hold office until—

- (a) the ex-Commissioner has reported to the Commission, or (as the case may be) the Secretary of State, on the application, or
- (b) (if earlier) the ex-Commissioner ceases to be the single Commissioner.

(3) For the purpose of any proceedings arising out of the application, the ex-Commissioner is to be treated as having continued to hold office until—

- (a) the ex-Commissioner had reported to the Commission, or (as the case may be) the Secretary of State, on the application, or
- (b) (if earlier) the ex-Commissioner ceased to be the single Commissioner.

- (4) An election under subsection (1)(d) is effective only if made in writing to each of the following—
- (a) the chief executive of the Commission;
 - (b) the person appointed to chair the Commission, where the ex-Commissioner is not the person appointed to chair the Commission.

Amendments Pending

Pt 6 c. 3 s. 81: words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 30(6) (date to be appointed)

Pt 6 c. 3 s. 81: word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 35(2) (date to be appointed)

Pt 6 c. 3 s. 81: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 33 (date to be appointed)

Pt 6 c. 3 s. 81: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Pt 6 c. 3 s. 81(1)-(4)(b): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 3 s. 81(1)-(4)(b): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

82 Appointment of replacement single Commissioner

(1) Where a person ceases to be the single Commissioner, a new appointment of a person to handle the application must be made under section 79.

(2) Where that happens, the new single Commissioner may, so far as may be appropriate, decide to treat things done by or in relation to any previous single Commissioner as done by or in relation to the new single Commissioner.

(3) Where the single Commissioner makes a decision under subsection (2), the single Commissioner is under a duty to acquire the necessary knowledge of the previous proceedings on the application.

Amendments Pending

Pt 6 c. 3 s. 82: words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 30(6) (date to be appointed)

Pt 6 c. 3 s. 82: word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 35(2) (date to be appointed)

Pt 6 c. 3 s. 82: word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 34 (date to be appointed)

Commencement

Pt 6 c. 3 s. 82(1)-(3): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 3 s. 82(1)-(3): England, Wales, Scotland

Single Commissioner's role in relation to application

✔ Law In Force

! Amendment(s) Pending

83 Single Commissioner to examine and report on application

- (1) The single Commissioner has the functions of—
- (a) examining the application, and
 - (b) making a report on the application setting out—
 - (i) the single Commissioner's findings and conclusions in respect of the application, and
 - (ii) the single Commissioner's recommendation as to the decision to be made on the application.
- (2) A report under subsection (1)(b) is to be made—
- (a) to the Commission, if a national policy statement has effect in relation to development of the description to which the application relates;
 - (b) to the Secretary of State, in any other case.
- (3) The single Commissioner's functions under subsection (1) are to be carried out in accordance with Chapter 4.
- (4) The staff of the Commission have the function of providing or procuring support for the single Commissioner in connection with the single Commissioner's carrying-out of the functions under subsection (1).

Amendments Pending

Pt 6 c. 3 s. 83: words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 30(6) (date to be appointed)

Pt 6 c. 3 s. 83: word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 35(2) (date to be appointed)

Pt 6 c. 3 s. 83: in each place it occurs by Localism Act 2011 c. 20 Sch. 13(1) para. 35(2) (date to be appointed)

Pt 6 c. 3 s. 83(1): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 35(2) (date to be appointed)

Pt 6 c. 3 s. 83(1)(b): words inserted by Localism Act 2011 c. 20 Sch. 13(1) para. 35(3) (date to be appointed)

Pt 6 c. 3 s. 83(2): repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 35(4) (date to be appointed)

Pt 6 c. 3 s. 83(2): repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Pt 6 c. 3 s. 83(3): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 35(2) (date to be appointed)

Pt 6 c. 3 s. 83(4): repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 35(5) (date to be appointed)

Pt 6 c. 3 s. 83(4): repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Pt 6 c. 3 s. 83(1)-(4): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 3 s. 83(1)-(4): England, Wales, Scotland

Commission's role in respect of application

✔ Law In Force

! Amendment(s) Pending

84 Report from single Commissioner to be referred to Council

(1) This section applies where, in a case within section 83(2)(a), the Commission receives the single Commissioner's report on the application.

(2) The Commission must—

- (a) refer the application to the Council for decision, and
- (b) supply the report to the Council.

Amendments Pending

Pt 6 c. 3 s. 84: words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 30(6) (date to be appointed)

Pt 6 c. 3 s. 84: word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 35(2) (date to be appointed)

Pt 6 c. 3 s. 84: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 36 (date to be appointed)

Pt 6 c. 3 s. 84: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Pt 6 c. 3 s. 84(1)-(2)(b): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 3 s. 84(1)-(2)(b): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

85 Decisions made by the Council on the application

(1) This section applies to decisions made by the Council in deciding the application.

(2) At least five members of the Council must participate in making a decision.

(3) The making of a decision requires the agreement of a majority of the members of the Council who are participating in making it.

(4) The person chairing the Council has a second (or casting) vote in the event that the number of members of the Council agreeing to a proposed decision is the same as the number of members not so agreeing.

Amendments Pending

Pt 6 c. 3 s. 85: words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 30(6) (date to be appointed)

Pt 6 c. 3 s. 85: word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 35(2) (date to be appointed)

Pt 6 c. 3 s. 85: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 36 (date to be appointed)

Pt 6 c. 3 s. 85: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Pt 6 c. 3 s. 85(1)-(4): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 3 s. 85(1)-(4): England, Wales, Scotland

CHAPTER 4

EXAMINATION OF APPLICATIONS UNDER CHAPTER 2 OR 3

✔ Law In Force

! Amendment(s) Pending

86 Chapter applies to examination by Panel or single Commissioner

(1) This Chapter applies—

- (a) in relation to the examination of an application by a Panel under Chapter 2, and
- (b) in relation to the examination of an application by a single Commissioner under Chapter 3.

(2) In this Chapter as it applies in relation to the examination of an application by a Panel under Chapter 2, “the Examining authority” means the Panel.

(3) In this Chapter as it applies in relation to the examination of an application by a single Commissioner under Chapter 3, “the Examining authority” means the single Commissioner.

Amendments Pending

Pt 6 c. 4 s. 86: word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 37 (date to be appointed)

Commencement

Pt 6 c. 4 s. 86(1)-(3): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 4 s. 86(1)-(3): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

87 Examining authority to control examination of application

(1) It is for the Examining authority to decide how to examine the application.

(2) The Examining authority, in making any decision about how the application is to be examined, must—

- (a) comply with—
 - (i) the following provisions of this Chapter, and
 - (ii) any rules made under section 97, and

(b) have regard to any guidance given by the Secretary of State, and any guidance given by the Commission, relevant to how the application is to be examined.

(3) The Examining authority may in examining the application disregard representations if the Examining authority considers that the representations—

- (a) are vexatious or frivolous,
- (b) relate to the merits of policy set out in a national policy statement, or
- (c) relate to compensation for compulsory acquisition of land or of an interest in or right over land.

Amendments Pending

Pt 6 c. 4 s. 87(2)(b): repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 38 (date to be appointed)

Pt 6 c. 4 s. 87(2)(b): repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Pt 6 c. 4 s. 87(1)-(3)(c): November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29 s.241(2); March 1, 2010 subject to saving specified in SI 2010/101 art.6 otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(8); SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 4 s. 87(1)-(3)(c): England, Wales, Scotland

Law In Force

Amendment(s) Pending

88 Initial assessment of issues, and preliminary meeting

(1) The Examining authority must make such an initial assessment of the principal issues arising on the application as the Examining authority thinks appropriate.

(2) After making that assessment, the Examining authority must hold a meeting.

(3) The Examining authority must invite to the meeting—

- (a) the applicant, and
- (b) each other interested party,

whether or not the Examining authority is required by rules under section 97, or chooses, also to invite other persons.

(4) The purposes of the meeting are—

- (a) to enable invitees present at the meeting to make representations to the Examining authority about how the application should be examined,
- (b) to discuss any other matter that the Examining authority wishes to discuss, and
- (c) any other purpose that may be specified in rules under section 97.

(5) Subsections (2) to (4) do not prevent the Examining authority holding other meetings.

(6) Rules under section 97—

- (a) may (in particular) make provision supplementing subsections (1) to (4), and

(b) must make provision as to when the assessment under subsection (1) is to be made and as to when the meeting required by subsection (2) is to be held.

Amendments Pending

Pt 6 c. 4 s. 88(3)(a): word repealed by Localism Act 2011 c. 20 Pt 6 c. 6 s. 138(5)(a) (date to be appointed)

Pt 6 c. 4 s. 88(3)(a): word repealed by Localism Act 2011 c. 20 Sch. 25(21) para. 1 (date to be appointed)

Pt 6 c. 4 s. 88(3)(c): added by Localism Act 2011 c. 20 Pt 6 c. 6 s. 138(5)(b) (date to be appointed)

Pt 6 c. 4 s. 88(3)(d): added by Localism Act 2011 c. 20 Pt 6 c. 6 s. 138(5)(b) (date to be appointed)

Pt 6 c. 4 s. 88(3A): added by Localism Act 2011 c. 20 Pt 6 c. 6 s. 138(5)(c) (date to be appointed)

Commencement

Pt 6 c. 4 s. 88(1)-(6)(b): November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29 s.241(2); March 1, 2010 subject to saving specified in SI 2010/101 art.6 otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(8); SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 4 s. 88(1)-(6)(b): England, Wales, Scotland

Law In Force

Amendment(s) Pending

89 Examining authority's decisions about how application is to be examined

(1) The Examining authority must in the light of the discussion at the meeting held under section 88(2) make such procedural decisions as the Examining authority thinks appropriate.

(2) The decisions required by subsection (1) may be made at or after the meeting.

(3) The Examining authority may make procedural decisions otherwise than as required by subsection (1), and may do so at any time before or after the meeting.

(4) The Examining authority must inform each interested party of any procedural decision made by the Examining authority.

(5) In this section “procedural decision” means a decision about how the application is to be examined.

Amendments Pending

Pt 6 c. 4 s. 89(2A): added by Localism Act 2011 c. 20 Pt 6 c. 6 s. 138(7) (date to be appointed)

Commencement

Pt 6 c. 4 s. 89(1)-(5): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 4 s. 89(1)-(5): England, Wales, Scotland

✔ Law In Force

90 Written representations

- (1) The Examining authority's examination of the application is to take the form of consideration of written representations about the application.
- (2) Subsection (1) has effect subject to—
- (a) any requirement under section 91, 92 or 93 to cause a hearing to be held, and
 - (b) any decision by the Examining authority that any part of the examination is to take a form that is neither—
 - (i) consideration of written representations, nor
 - (ii) consideration of oral representations made at a hearing.
- (3) Rules under section 97 may (in particular) specify written representations about the application which are to be, or which may be or may not be, considered under subsection (1).

Commencement

Pt 6 c. 4 s. 90(1)-(3): November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29 s.241(2); March 1, 2010 subject to saving specified in SI 2010/101 art.6 otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(8); SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 4 s. 90(1)-(3): England, Wales, Scotland

✔ Law In Force

91 Hearings about specific issues

- (1) Subsections (2) and (3) apply where the Examining authority decides that it is necessary for the Examining authority's examination of the application to include the consideration of oral representations about a particular issue made at a hearing in order to ensure—
- (a) adequate examination of the issue, or
 - (b) that an interested party has a fair chance to put the party's case.
- (2) The Examining authority must cause a hearing to be held for the purpose of receiving oral representations about the issue.
- (3) At the hearing, each interested party is entitled (subject to the Examining authority's powers of control over the conduct of the hearing) to make oral representations about the issue.
- (4) Where the Examining authority is a Panel acting under Chapter 2, any two or more hearings under subsection (2) may be held concurrently.

Commencement

Pt 6 c. 4 s. 91(1)-(4): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 4 s. 91(1)-(4): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

92 Compulsory acquisition hearings

(1) This section applies where the application includes a request for an order granting development consent to authorise compulsory acquisition of land or of an interest in or right over land (a “compulsory acquisition request”).

(2) The Examining authority must fix, and cause each affected person to be informed of, the deadline by which an affected person must notify the Commission that the person wishes a compulsory acquisition hearing to be held.

(3) If the Commission receives notification from at least one affected person before the deadline, the Examining authority must cause a compulsory acquisition hearing to be held.

(4) At a compulsory acquisition hearing, the following are entitled (subject to the Examining authority's powers of control over the conduct of the hearing) to make oral representations about the compulsory acquisition request—

- (a) the applicant;
- (b) each affected person.

(5) A person is an “affected person” for the purposes of this section if the person's name has been given to the Commission in a notice under section 59.

Amendments Pending

Pt 6 c. 4 s. 92: word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 39 (date to be appointed)

Commencement

Pt 6 c. 4 s. 92(1)-(5): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 4 s. 92(1)-(5): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

93 Open-floor hearings

(1) The Examining authority must fix, and cause the interested parties to be informed of, the deadline by which an interested party must notify the Commission of the party's wish to be heard at an open-floor hearing.

(2) If the Commission receives notification from at least one interested party before the deadline, the Examining authority must cause an open-floor hearing to be held.

(3) At an open-floor hearing, each interested party is entitled (subject to the Examining authority's powers of control over the conduct of the hearing) to make oral representations about the application.

Amendments Pending

Pt 6 c. 4 s. 93: word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 40 (date to be appointed)

Commencement

Pt 6 c. 4 s. 93(1)-(3): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 4 s. 93(1)-(3): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

94 Hearings: general provisions

- (1) The following provisions of this section apply—
 - (a) to a hearing under section 91(2),
 - (b) to a compulsory acquisition hearing (see section 92), and
 - (c) to an open-floor hearing (see section 93).
- (2) The hearing—
 - (a) must be in public, and
 - (b) must be presided over by one or more of the members of the Panel or (as the case may be) the single Commissioner.
- (3) It is for the Examining authority to decide how the hearing is to be conducted.
- (4) In particular, it is for the Examining authority to decide—
 - (a) whether a person making oral representations at the hearing may be questioned at the hearing by another person and, if so, the matters to which the questioning may relate;
 - (b) the amount of time to be allowed at the hearing—
 - (i) for the making of a person's representations (including representations made in exercise of an entitlement under section 91(3), 92(4) or 93(3)), or
 - (ii) for any questioning by another person.
- (5) The Examining authority's powers under subsections (3) and (4) are subject to—
 - (a) subsection (2), and
 - (b) any rules made under section 97.
- (6) Although the Examining authority's powers under subsections (3) and (4) may be exercised for the purpose of controlling exercise of an entitlement under section 91(3), 92(4) or 93(3), those powers may not be exercised so as to deprive the person entitled of all benefit of the entitlement.
- (7) In making decisions under subsection (4)(a), the Examining authority must apply the principle that any oral questioning of a person making representations at a hearing (whether the applicant or any other person) should be undertaken by the Examining authority except where the Examining authority thinks that oral questioning by another person is necessary in order to ensure—
 - (a) adequate testing of any representations, or
 - (b) that a person has a fair chance to put the person's case.

(8) The Examining authority may refuse to allow representations to be made at the hearing (including representations made in exercise of an entitlement under section 91(3), 92(4) or 93(3)) if the Examining authority considers that the representations—

- (a) are irrelevant, vexatious or frivolous,
- (b) relate to the merits of policy set out in a national policy statement,
- (c) repeat other representations already made (in any form and by any person), or
- (d) relate to compensation for compulsory acquisition of land or of an interest in or right over land.

Amendments Pending

Pt 6 c. 4 s. 94(2)(b): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 41 (date to be appointed)

Commencement

Pt 6 c. 4 s. 94(1)-(8)(d): November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29 s.241(2); March 1, 2010 subject to saving specified in SI 2010/101 art.6 otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(8); SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 4 s. 94(1)-(8)(d): England, Wales, Scotland

Law In Force

95 Hearings: disruption, supervision and costs

(1) Where an interested party or any other person behaves in a disruptive manner at a hearing, the Examining authority may decide to do any one or more of the following—

- (a) exclude the person from all, or part, of the remainder of the hearing;
- (b) allow the person to continue to attend the hearing only if the person complies with conditions specified by the Examining authority;
- (c) exclude the person from other hearings;
- (d) direct that the person is allowed to attend other hearings only if the person complies with conditions specified by the Examining authority.

(2) In this section “hearing” means—

- (a) a preliminary meeting under section 88,
- (b) a hearing under section 91(2),
- (c) a compulsory acquisition hearing (see section 92),
- (d) an open-floor hearing (see section 93),
- (e) any other meeting or hearing that the Examining authority causes to be held for the purposes of the Examining authority's examination of the application, or
- (f) a site visit.

(3) The Examining authority's examination of the application is a statutory inquiry for the purposes of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007 (c. 15) (functions etc. of Administrative Justice and Tribunals Council).

(4) Subsection (5) of section 250 of the Local Government Act 1972 (c. 70) (provisions about costs applying where Minister causes a local inquiry to be held) applies in relation to the Examining authority's examination of the application as it applies in relation to an inquiry under that section, but with references to the Minister causing the inquiry to be held being read as references to the Examining authority.

This is subject to subsection (5) of this section.

(5) Subsections (6) to (8) of section 210 of the Local Government (Scotland) Act 1973 (c. 65) (provisions about expenses applying where Minister causes a local inquiry to be held) apply in relation to the Examining authority's examination of the application in so far as relating to a hearing held in Scotland as they apply in relation to an inquiry under that section, but with references to the Minister causing the inquiry to be held being read as references to the Examining authority.

Commencement

Pt 6 c. 4 s. 95(1)-(5): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 4 s. 95(1)-(5): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

96 Representations not made orally may be made in writing

(1) Subsection (2) applies where—

- (a) a person asks the Examining authority to be allowed to make oral representations about the application at a hearing,
- (b) the person does not (for whatever reason) make the representations orally at a hearing,
- (c) written representations from the person are received by the Commission before the Examining authority completes the Examining authority's examination of the application, and
- (d) the written representations state that they are ones that the person asked to be allowed to, but did not, make orally at a hearing.

(2) The Examining authority must consider the written representations as part of the Examining authority's examination of the application, subject to section 87(3).

Amendments Pending

Pt 6 c. 4 s. 96(1)(c): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 43 (date to be appointed)

Commencement

Pt 6 c. 4 s. 96(1)-(2): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 4 s. 96(1)-(2): England, Wales, Scotland

✔ Law In Force

97 Procedure rules

(1) The Lord Chancellor or (if subsection (2) applies) the Secretary of State, after consultation with the Administrative Justice and Tribunals Council, may make rules regulating the procedure to be followed in connection with the Examining authority's examination of the application.

(2) This subsection applies if the development to which the application relates (or part of the development) is the construction (other than by a gas transporter) of an oil or gas cross-country pipe-line—

- (a) one end of which is in England or Wales, and
- (b) the other end of which is in Scotland.

(3) Rules under subsection (1) may make provision for or in connection with authorising the Examining authority, alone or with others, to enter onto land, including land owned or occupied otherwise than by the applicant, for the purpose of inspecting the land as part of the Examining authority's examination of the application.

(4) Rules under subsection (1) may regulate procedure in connection with matters preparatory to the Examining authority's examination of the application, and in connection with matters subsequent to the examination, as well as in connection with the conduct of the examination.

(5) Power under this section to make rules includes power to make different provision for different purposes.

(6) Power under this section to make rules is exercisable by statutory instrument.

(7) A statutory instrument containing rules under this section is subject to annulment pursuant to a resolution of either House of Parliament.

Commencement

Pt 6 c. 4 s. 97(1)-(7): November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29 s.241(2); March 1, 2010 subject to saving specified in SI 2010/101 art.6 otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(8); SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 4 s. 97(1)-(7): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

98 Timetable for examining, and reporting on, application

(1) The Examining authority is under a duty to complete the Examining authority's examination of the application by the end of the period of 6 months beginning with the day after the start day.

(2) The start day is the day on which the meeting required by section 88 is held or, if that meeting is held on two or more days, the later or latest of those days.

(3) In a case where the Examining authority is required to make a report to the Secretary of State under section 74(2)(b) or 83(2)(b), the Examining authority is under a duty to make its report by

the end of the period of 3 months beginning with the day after the deadline for completion of its examination of the application.

(4) The person appointed to chair the Commission may set a date for a deadline under this section that is later than the date for the time being set.

(5) The power under subsection (4) may be exercised—

- (a) more than once in relation to the same deadline;
- (b) after the date for the time being set for the deadline.

(6) Where the power under subsection (4) is exercised—

- (a) the person exercising the power must notify the Secretary of State of what has been done and of the reasons for doing it, and
- (b) the Commission's report under paragraph 17 of Schedule 1 for the financial year in which the power is exercised must mention and explain what has been done.

Amendments Pending

Pt 6 c. 4 s. 98(3): words and (a) and (b) substituted for words by Localism Act 2011 c. 20 Pt 6 c. 6 s. 139(2) (date to be appointed)

Pt 6 c. 4 s. 98(3): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 44(2) (date to be appointed)

Pt 6 c. 4 s. 98(4): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 44(3) (date to be appointed)

Pt 6 c. 4 s. 98(6): s.98(6)-(9) substituted for s.98(6) by Localism Act 2011 c. 20 Sch. 13(1) para. 44(4) (date to be appointed)

Commencement

Pt 6 c. 4 s. 98(1)-(6)(b): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 4 s. 98(1)-(6)(b): England, Wales, Scotland

Law In Force

99 Completion of Examining authority's examination of application

When the Examining authority has completed its examination of the application, it must inform each of the interested parties of that fact.

Commencement

Pt 6 c. 4 s. 99: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 4 s. 99: England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

100 Assessors

(1) The person appointed to chair the Commission (“the chair”) may, at the request of the Examining authority, appoint a person to act as an assessor to assist the Examining authority in the Examining authority's examination of the application.

(2) A person may be appointed as an assessor only if it appears to the chair that the person has expertise that makes the person a suitable person to provide assistance to the Examining authority.

Amendments Pending

Pt 6 c. 4 s. 100(1): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 45(2) (date to be appointed)

Pt 6 c. 4 s. 100(2): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 45(3) (date to be appointed)

Commencement

Pt 6 c. 4 s. 100(1)-(2): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 4 s. 100(1)-(2): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

101 Legal advice and assistance

(1) The person appointed to chair the Commission may, at the request of the Examining authority, appoint a barrister, solicitor or advocate to provide legal advice and assistance to the Examining authority in connection with its examination of the application.

(2) The assistance that may be given by a person appointed under subsection (1) includes carrying out on behalf of the Examining authority any oral questioning of a person making representations at a hearing.

Amendments Pending

Pt 6 c. 4 s. 101(1): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 46 (date to be appointed)

Commencement

Pt 6 c. 4 s. 101(1)-(2): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 4 s. 101(1)-(2): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

102 Interpretation of Chapter 4: “interested party” and other expressions

(1) For the purposes of this Chapter, a person is an “interested party” if—

- (a) the person is the applicant,
- (b) the person is a statutory party,
 [(ba) the person is the Marine Management Organisation and the development for which the application seeks development consent would involve the carrying on of any activity in one or more of the areas specified in subsection (1A),]¹
- (c) the person is a relevant local authority,
- (d) the person is the Greater London Authority and the land is in Greater London, or
- (e) the person has made a relevant representation.

[(1A) The areas are—

- (a) waters in or adjacent to England up to the seaward limits of the territorial sea;
- (b) an exclusive economic zone, except any part of an exclusive economic zone in relation to which the Scottish Ministers have functions;
- (c) a Renewable Energy Zone, except any part of a Renewable Energy Zone in relation to which the Scottish Ministers have functions;
- (d) an area designated under section 1(7) of the Continental Shelf Act 1964, except any part of that area which is within a part of an exclusive economic zone or Renewable Energy Zone in relation to which the Scottish Ministers have functions.

] ²

(2) In this Chapter “representation” includes evidence, and references to the making of a representation include the giving of evidence.

(3) In subsection (1) “statutory party” means a person specified in, or of a description specified in, regulations made by the Secretary of State.

(4) A representation is a relevant representation for the purposes of subsection (1) to the extent that—

- (a) it is a representation about the application,
- (b) it is made to the Commission in the prescribed form and manner,
- (c) it is received by the Commission no later than the deadline that applies under section 56 to the person making it,
- (d) it contains material of a prescribed description, and
- (e) it does not contain—
 - (i) material about compensation for compulsory acquisition of land or of an interest in or right over land,
 - (ii) material about the merits of policy set out in a national policy statement, or
 - (iii) material that is vexatious or frivolous.

(5) In subsection (1) “relevant local authority” means a local authority within subsection (6) or (7).

(6) A local authority is within this subsection if the land is in the authority's area.

(7) A local authority (“A”) is within this subsection if—

- (a) the land is in the area of another local authority (“B”), and
- (b) any part of the boundary of A's area is also a part of the boundary of B's area.

(8) In subsections (5) to (7) “local authority” means—

- (a) a county council, or district council, in England;
- (b) a London borough council;
- (c) the Common Council of the City of London;
- (d) the Council of the Isles of Scilly;
- (e) a county council, or county borough council, in Wales;
- (f) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39);
- (g) a National Park authority;
- (h) the Broads Authority.

(9) In this section “the land” means the land to which the application relates or any part of that land.

Notes

¹ Added by Marine and Coastal Access Act 2009 c. 23 Pt 1 c.4 s.23(6)(a) (April 1, 2010)

² Added by Marine and Coastal Access Act 2009 c. 23 Pt 1 c.4 s.23(6)(b) (April 1, 2010)

Amendments Pending

Pt 6 c. 4 s. 102(1)(b): (aa) and (ab) substituted for (b) by Localism Act 2011 c. 20 Pt 6 c. 6 s. 138(8)(a) (date to be appointed)

Pt 6 c. 4 s. 102(1)(c): (c) and (ca) substituted for (c) by Localism Act 2011 c. 20 Pt 6 c. 6 s. 138(8)(b) (date to be appointed)

Pt 6 c. 4 s. 102(1ZA): added by Localism Act 2011 c. 20 Pt 6 c. 6 s. 138(8)(c) (date to be appointed)

Pt 6 c. 4 s. 102(3): repealed by Localism Act 2011 c. 20 Pt 6 c. 6 s. 138(8)(d) (date to be appointed)

Pt 6 c. 4 s. 102(3): repealed by Localism Act 2011 c. 20 Sch. 25(21) para. 1 (date to be appointed)

Pt 6 c. 4 s. 102(4): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 47 (date to be appointed)

Pt 6 c. 4 s. 102(5): repealed by Localism Act 2011 c. 20 Pt 6 c. 6 s. 138(8)(e) (date to be appointed)

Pt 6 c. 4 s. 102(5): repealed by Localism Act 2011 c. 20 Sch. 25(21) para. 1 (date to be appointed)

Pt 6 c. 4 s. 102(6): repealed by Localism Act 2011 c. 20 Pt 6 c. 6 s. 138(8)(e) (date to be appointed)

Pt 6 c. 4 s. 102(6): repealed by Localism Act 2011 c. 20 Sch. 25(21) para. 1 (date to be appointed)

Pt 6 c. 4 s. 102(7): repealed by Localism Act 2011 c. 20 Pt 6 c. 6 s. 138(8)(e) (date to be appointed)

Pt 6 c. 4 s. 102(7): repealed by Localism Act 2011 c. 20 Sch. 25(21) para. 1 (date to be appointed)

Pt 6 c. 4 s. 102(8): words substituted by Localism Act 2011 c. 20 Pt 6 c. 6 s. 138(8)(f) (date to be appointed)

Commencement

Pt 6 c. 4 s. 102(1)-(9): November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29 s.241(2); March 1, 2010 subject to saving specified in SI 2010/101 art.6 otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(8); SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 4 s. 102(1)-(9): England, Wales, Scotland

CHAPTER 5

DECISIONS ON APPLICATIONS

✔ Law In Force

! Amendment(s) Pending

103 Cases where Secretary of State is, and meaning of, decision-maker

(1) The Secretary of State has the function of deciding an application for an order granting development consent where—

- (a) in a case within section 74(2), the Secretary of State receives the Panel's report on the application, or
- (b) in a case within section 83(2)(b), the Secretary of State receives the single Commissioner's report on the application.

(2) In this Act “decision-maker” in relation to an application for an order granting development consent—

- (a) means the Panel that has the function of deciding the application, or
- (b) where the Council or the Secretary of State has the function of deciding the application, means the Council or (as the case may be) the Secretary of State.

Amendments Pending

Pt 6 c. 5 s. 103: heading substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 48(4) (date to be appointed)

Pt 6 c. 5 s. 103(1): words repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 48(2) (date to be appointed)

Pt 6 c. 5 s. 103(1)(a): repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Pt 6 c. 5 s. 103(1)(b): repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Pt 6 c. 5 s. 103(2): repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 48(3) (date to be appointed)

Pt 6 c. 5 s. 103(2): repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Pt 6 c. 5 s. 103(1)-(2)(b): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 5 s. 103(1)-(2)(b): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

104 Decisions of Panel and Council

(1) This section applies in relation to an application for an order granting development consent if the decision-maker is a Panel or the Council.

(2) In deciding the application the Panel or Council must have regard to—

- (a) any national policy statement which has effect in relation to development of the description to which the application relates (a “relevant national policy statement”),

[(aa) the appropriate marine policy documents (if any), determined in accordance with section 59 of the Marine and Coastal Access Act 2009;]¹

(b) any local impact report (within the meaning given by section 60(3)) submitted to the Commission before the deadline specified in a notice under section 60(2),

(c) any matters prescribed in relation to development of the description to which the application relates, and

(d) any other matters which the Panel or Council thinks are both important and relevant to its decision.

(3) The Panel or Council must decide the application in accordance with any relevant national policy statement, except to the extent that one or more of subsections (4) to (8) applies.

(4) This subsection applies if the Panel or Council is satisfied that deciding the application in accordance with any relevant national policy statement would lead to the United Kingdom being in breach of any of its international obligations.

(5) This subsection applies if the Panel or Council is satisfied that deciding the application in accordance with any relevant national policy statement would lead to the Panel or Council, or the Commission, being in breach of any duty imposed on it by or under any enactment.

(6) This subsection applies if the Panel or Council is satisfied that deciding the application in accordance with any relevant national policy statement would be unlawful by virtue of any enactment.

(7) This subsection applies if the Panel or Council is satisfied that the adverse impact of the proposed development would outweigh its benefits.

(8) This subsection applies if the Panel or Council is satisfied that any condition prescribed for deciding an application otherwise than in accordance with a national policy statement is met.

(9) For the avoidance of doubt, the fact that any relevant national policy statement identifies a location as suitable (or potentially suitable) for a particular description of development does not prevent one or more of subsections (4) to (8) from applying.

Notes

¹ Added by Marine and Coastal Access Act 2009 c. 23 Pt 3 c.4 s.58(5) (November 12, 2010)

Amendments Pending

Pt 6 c. 5 s. 104: heading substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 49(7) (date to be appointed)

Pt 6 c. 5 s. 104(1): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 49(2) (date to be appointed)

Pt 6 c. 5 s. 104(2): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 49(3)(a) (date to be appointed)

Pt 6 c. 5 s. 104(2)(b): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 49(3)(b) (date to be appointed)

Pt 6 c. 5 s. 104(2)(d): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 49(3)(c) (date to be appointed)

Pt 6 c. 5 s. 104(3): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 49(4) (date to be appointed)

Pt 6 c. 5 s. 104(4): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 49(4) (date to be appointed)

Pt 6 c. 5 s. 104(5): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 49(5)(a) (date to be appointed)

Pt 6 c. 5 s. 104(5): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 49(5)(b) (date to be appointed)

Pt 6 c. 5 s. 104(6): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 49(6) (date to be appointed)

Pt 6 c. 5 s. 104(7): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 49(6) (date to be appointed)

Pt 6 c. 5 s. 104(8): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 49(6) (date to be appointed)

Commencement

Pt 6 c. 5 s. 104(1)-(9): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 5 s. 104(1)-(9): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

105 Decisions of Secretary of State

(1) This section applies in relation to an application for an order granting development consent if the decision-maker is the Secretary of State.

(2) In deciding the application the Secretary of State must have regard to—

- (a) any local impact report (within the meaning given by section 60(3)) submitted to the Commission before the deadline specified in a notice under section 60(2),
 - (b) any matters prescribed in relation to development of the description to which the application relates, and
 - (c) any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State's decision.
-

Amendments Pending

Pt 6 c. 5 s. 105: heading substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 50(4) (date to be appointed)

Pt 6 c. 5 s. 105(1): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 50(2) (date to be appointed)

Pt 6 c. 5 s. 105(2)(a): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 50(3) (date to be appointed)

Commencement

Pt 6 c. 5 s. 105(1)-(2)(c): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 5 s. 105(1)-(2)(c): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

106 Matters that may be disregarded when deciding application

(1) In deciding an application for an order granting development consent, the decision-maker may disregard representations if the decision-maker considers that the representations—

- (a) are vexatious or frivolous,
- (b) relate to the merits of policy set out in a national policy statement, or
- (c) relate to compensation for compulsory acquisition of land or of an interest in or right over land.

(2) In this section “representation” includes evidence.

Amendments Pending

Pt 6 c. 5 s. 106(1): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 51 (date to be appointed)

Commencement

Pt 6 c. 5 s. 106(1)-(2): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 5 s. 106(1)-(2): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

107 Timetable for decisions

(1) The decision-maker is under a duty to decide an application for an order granting development consent by the end of the period of 3 months beginning with the day after the start day.

(2) The start day is—

- (a) in a case where a Panel is the decision-maker, the deadline for the completion of its examination of the application under section 98;
- (b) in a case where the Council is the decision-maker, the deadline for the completion of the single Commissioner's examination of the application under section 98;
- (c) in a case where the Secretary of State is the decision-maker by virtue of section 103(1), the day on which the Secretary of State receives a report on the application under section 74(2)(b) or 83(2)(b);
- (d) in a case where the Secretary of State is the decision-maker by virtue of section 113(2)(b), the deadline for the completion of the Secretary of State's examination of the application under section 113(2)(a).

(3) The appropriate authority may set a date for the deadline under subsection (1) that is later than the date for the time being set.

(4) The appropriate authority is—

- (a) in a case where a Panel or the Council is the decision-maker, the person appointed to chair the Commission;
- (b) in a case where the Secretary of State is the decision-maker, the Secretary of State.

(5) The power under subsection (3) may be exercised—

- (a) more than once in relation to the same deadline;
- (b) after the date for the time being set for the deadline.

(6) Where the power under subsection (3) is exercised other than by the Secretary of State—

- (a) the person exercising the power must notify the Secretary of State of what has been done and of the reasons for doing it, and
- (b) the Commission's report under paragraph 17 of Schedule 1 for the financial year in which the power is exercised must mention and explain what has been done.

(7) Where the power under subsection (3) is exercised by the Secretary of State, the Secretary of State must—

- (a) notify each interested party of what has been done and of the reasons for doing it, and
- (b) lay before Parliament a report explaining what has been done.

(8) A report under subsection (7)(b) must be published in such form and manner as the Secretary of State thinks appropriate.

(9) “Interested party” means a person who is an interested party in relation to the application for the purposes of Chapter 4 (see section 102).

Amendments Pending

Pt 6 c. 5 s. 107(1): existing text is modified and becomes (a) and a new (b) inserted by Localism Act 2011 c. 20 Pt 6 c. 6 s. 139(3) (date to be appointed)

Pt 6 c. 5 s. 107(1): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 52(2)(a) (date to be appointed)

Pt 6 c. 5 s. 107(1): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 52(2)(b) (date to be appointed)

Pt 6 c. 5 s. 107(2): repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 52(3) (date to be appointed)

Pt 6 c. 5 s. 107(2): repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Pt 6 c. 5 s. 107(3): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 52(4) (date to be appointed)

Pt 6 c. 5 s. 107(4): repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 52(5) (date to be appointed)

Pt 6 c. 5 s. 107(4): repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Pt 6 c. 5 s. 107(6): s.107(6)-(8A) substituted for s.107(6)-(9) by Localism Act 2011 c. 20 Sch. 13(1) para. 52(6) (date to be appointed)

Pt 6 c. 5 s. 107(7): s.107(6)-(8A) substituted for s.107(6)-(9) by Localism Act 2011 c. 20 Sch. 13(1) para. 52(6) (date to be appointed)

Pt 6 c. 5 s. 107(8): s.107(6)-(8A) substituted for s.107(6)-(9) by Localism Act 2011 c. 20 Sch. 13(1) para. 52(6) (date to be appointed)

Pt 6 c. 5 s. 107(9): s.107(6)-(8A) substituted for s.107(6)-(9) by Localism Act 2011 c. 20 Sch. 13(1) para. 52(6) (date to be appointed)

Commencement

Pt 6 c. 5 s. 107(1)-(9): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 5 s. 107(1)-(9): England, Wales, Scotland

CHAPTER 6

SUSPENSION OF DECISION-MAKING PROCESS

Law In Force

Amendment(s) Pending

108 Suspension during review of national policy statement

(1) This section applies where—

- (a) an application is made for an order granting development consent for development of a description in relation to which a national policy statement has effect, and
- (b) the Secretary of State thinks that, as a result of a change in circumstances since the national policy statement was first published or (if later) the statement or any part of it was last reviewed, all or part of the statement should be reviewed before the application is decided.

(2) The Secretary of State may direct that, until the review has been completed and the Secretary of State has complied with section 6(5) in relation to the review, the following are suspended—

- (a) examination of the application by a Panel under Chapter 2 or a single Commissioner under Chapter 3 (if not already completed), and
- (b) decision of the application by that Panel or (as the case may be) the Council.

Amendments Pending

Pt 6 c. 6 s. 108(2): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 53 (date to be appointed)

Commencement

Pt 6 c. 6 s. 108(1)-(2)(b): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 6 s. 108(1)-(2)(b): England, Wales, Scotland

CHAPTER 7

INTERVENTION BY SECRETARY OF STATE

Law In Force

Amendment(s) Pending

109 Intervention: significant change in circumstances

(1) Section 112 applies by virtue of this section if—

- (a) an application is made for an order granting development consent for development of a description in relation to which a national policy statement has effect,
- (b) the Commission has accepted the application and has received a certificate under section 58(2), and (where section 59 applies) a notice under that section, in relation to the application, and
- (c) the Secretary of State is satisfied that the condition in subsection (2) or (3) is met.

(2) The condition is that—

- (a) since the time when the national policy statement was first published or (if later) last reviewed, there has been a significant change in any circumstances on the basis of which any policy set out in the statement (“the relevant policy”) was decided,
- (b) the change was not anticipated at that time,
- (c) if the change had been anticipated at that time, the relevant policy would have been materially different,
- (d) if the relevant policy was materially different, it would be likely to have a material effect on the decision on the application, and

(e) there is an urgent need in the national interest for the application to be decided before the national policy statement is reviewed.

(3) The condition is that—

(a) since the time when part of the national policy statement (“the relevant part”) was first published or (if later) last reviewed, there has been a significant change in any circumstances on the basis of which any of the policy set out in the relevant part (“the relevant policy”) was decided,

(b) the change was not anticipated at that time,

(c) if the change had been anticipated at that time, the relevant policy would have been materially different,

(d) if the relevant policy was materially different, it would be likely to have a material effect on the decision on the application, and

(e) there is an urgent need in the national interest for the application to be decided before the relevant part is reviewed.

(4) In deciding whether the tests in subsection (2)(d) and (e), or (3)(d) and (e), are met, the Secretary of State must have regard to the views of the Commission.

Amendments Pending

Pt 6 c. 7 s. 109: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 54 (date to be appointed)

Pt 6 c. 7 s. 109: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Pt 6 c. 7 s. 109(1)-(4): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 7 s. 109(1)-(4): England, Wales, Scotland

Law In Force

Amendment(s) Pending

110 Intervention: defence and national security

Section 112 applies by virtue of this section if—

(a) an application is made for an order granting development consent,

(b) the Commission has accepted the application and has received a certificate under section 58(2) in relation to the application, and

(c) the Secretary of State is satisfied that intervention by the Secretary of State would be in the interests of defence or national security.

Amendments Pending

Pt 6 c. 7 s. 110: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 54 (date to be appointed)

Pt 6 c. 7 s. 110: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Pt 6 c. 7 s. 110(a)-(c): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 7 s. 110(a)-(c): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

111 Intervention: other circumstances

The Secretary of State may by order specify other circumstances in which section 112 is to apply in relation to an application for an order granting development consent.

Amendments Pending

Pt 6 c. 7 s. 111: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 54 (date to be appointed)

Pt 6 c. 7 s. 111: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Pt 6 c. 7 s. 111: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 7 s. 111: England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

112 Power of Secretary of State to intervene

(1) Where this section applies in relation to an application for an order granting development consent, the Secretary of State may direct that the application is to be referred to the Secretary of State.

(2) A direction under subsection (1) must be given by the end of the period of 4 weeks beginning with the day after the end of the meeting held under section 88(2).

(3) Subsection (2) does not apply if the Secretary of State thinks there are exceptional circumstances which justify a direction under subsection (1) being given at a later time.

(4) In a case where this section applies by virtue of section 109, a direction under subsection (1) must state the Secretary of State's reasons for being satisfied that the condition in section 109(2) or (3) is met.

Amendments Pending

Pt 6 c. 7 s. 112: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 54 (date to be appointed)

Pt 6 c. 7 s. 112: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Pt 6 c. 7 s. 112(1)-(4): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 7 s. 112(1)-(4): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

113 Effect of intervention

(1) This section applies if the Secretary of State gives a direction under section 112(1) in relation to an application.

(2) The Secretary of State has the functions of—

- (a) examining the application, and
- (b) deciding the application.

(3) The Secretary of State may discharge the function of examining the application by—

- (a) directing the Commission to examine such matters as may be specified by the Secretary of State;
- (b) conducting an examination of any matters in relation to which a direction under paragraph (a) is not given.

(4) Schedule 3 makes provision in relation to the Secretary of State's function of examining an application under this section.

(5) An examination under subsection (3)(a) is to be conducted in accordance with paragraph 1 of Schedule 3.

(6) An examination under subsection (3)(b) is to be conducted in accordance with paragraph 2 of Schedule 3.

(7) Rules under paragraph 3 of Schedule 3 must provide for a deadline for the completion by the Secretary of State of—

- (a) the examination of the application under subsection (2)(a);
- (b) the examination of any matters under subsection (3)(b).

(8) The Secretary of State's examination of the application is a statutory inquiry for the purposes of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007 (c. 15) (functions etc. of Administrative Justice and Tribunals Council).

(9) Subsection (5) of section 250 of the Local Government Act 1972 (c. 70) (provisions about costs applying where Minister causes a local inquiry to be held) applies in relation to the Secretary of State's examination of the application as it applies in relation to an inquiry under that section, but with references to the Minister causing the inquiry to be held being read as references to the Secretary of State.

This is subject to subsection (10).

(10) Subsections (6) to (8) of section 210 of the Local Government (Scotland) Act 1973 (c. 65) (provisions about expenses applying where Minister causes a local inquiry to be held) apply in relation to the Secretary of State's examination of the application in so far as relating to a hearing held in Scotland as they apply in relation to an inquiry under that section, but with references to the Minister causing the inquiry to be held being read as references to the Secretary of State.

(11) In subsection (10) "hearing" means—

- (a) any meeting or hearing that the Secretary of State causes to be held for the purposes of the Secretary of State's examination of the application, or
- (b) a site visit.

Amendments Pending

Pt 6 c. 7 s. 113: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 54 (date to be appointed)

Pt 6 c. 7 s. 113: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Pt 6 c. 7 s. 113(1)-(11)(b): November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29 s.241(2); March 1, 2010 subject to saving specified in SI 2010/101 art.6 otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(8); SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 7 s. 113(1)-(11)(b): England, Wales, Scotland

CHAPTER 8

GRANT OR REFUSAL

✔ Law In Force

! Amendment(s) Pending

114 Grant or refusal of development consent

(1) When it has decided an application for an order granting development consent, the decision-maker must either—

- (a) make an order granting development consent, or
- (b) refuse development consent.

(2) The Secretary of State may by regulations make provision regulating the procedure to be followed if the decision-maker proposes to make an order granting development consent on terms which are materially different from those proposed in the application.

Amendments Pending

Pt 6 c. 8 s. 114(1): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 55(2)(a) (date to be appointed)

Pt 6 c. 8 s. 114(1): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 55(2)(b) (date to be appointed)

Pt 6 c. 8 s. 114(2): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 55(3) (date to be appointed)

Commencement

Pt 6 c. 8 s. 114(1)-(2): November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29 s.241(2); March 1, 2010 subject to saving specified in SI 2010/101 art.6 otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(8); SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 8 s. 114(1)-(2): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

115 Development for which development consent may be granted

- (1) Development consent may be granted for development which is—
- (a) development for which development consent is required, or
 - (b) associated development.
- (2) “Associated development” means development which—
- (a) is associated with the development within subsection (1)(a) (or any part of it),
 - (b) is not the construction or extension of one or more dwellings, and
 - (c) is within subsection (3) or (4).
- (3) Development is within this subsection if it is to be carried out wholly in one or more of the following areas—
- (a) England;
 - (b) waters adjacent to England up to the seaward limits of the territorial sea;
 - (c) in the case of development in the field of energy, a Renewable Energy Zone, except any part of a Renewable Energy Zone in relation to which the Scottish Ministers have functions.
- (4) Development is within this subsection if—
- (a) it is to be carried out wholly in Wales,
 - (b) it is the carrying out or construction of surface works, boreholes or pipes, and
 - (c) the development within subsection (1)(a) with which it is associated is development within section 17(3).
- (5) To the extent that development consent is granted for associated development, section 33 applies to the development as it applies to development for which development consent is required.
- (6) In deciding whether development is associated development, a Panel or the Council must have regard to any guidance issued by the Secretary of State.

Amendments Pending

Pt 6 c. 8 s. 115(6): repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 56 (date to be appointed)

Pt 6 c. 8 s. 115(6): repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Pt 6 c. 8 s. 115(1)-(6): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 8 s. 115(1)-(6): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

116 Reasons for decision to grant or refuse development consent

- (1) The decision-maker must prepare a statement of its reasons for deciding to—
 - (a) make an order granting development consent, or
 - (b) refuse development consent.
- (2) The appropriate authority must provide a copy of the statement to each person who is an interested party in relation to the application for the purposes of Chapter 4 (see section 102).
- (3) The appropriate authority must publish the statement in such manner as the authority thinks appropriate.
- (4) In subsections (2) and (3) “the appropriate authority” means—
 - (a) the Commission where the decision-maker is a Panel or the Council;
 - (b) the Secretary of State where the decision-maker is the Secretary of State.

Amendments Pending

Pt 6 c. 8 s. 116(1): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 57(2)(a) (date to be appointed)

Pt 6 c. 8 s. 116(1): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 57(2)(b) (date to be appointed)

Pt 6 c. 8 s. 116(2): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 57(3) (date to be appointed)

Pt 6 c. 8 s. 116(3): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 57(4)(a) (date to be appointed)

Pt 6 c. 8 s. 116(3): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 57(4)(b) (date to be appointed)

Pt 6 c. 8 s. 116(4): repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 57(5) (date to be appointed)

Pt 6 c. 8 s. 116(4): repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Pt 6 c. 8 s. 116(1)-(4)(b): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 8 s. 116(1)-(4)(b): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

117 Orders granting development consent: formalities

- (1) This section applies in relation to an order granting development consent.
- (2) If the order is made by a Panel or the Council it must be made in the name of the Commission.
- (3) Except in a case within subsection (4), the appropriate authority must publish the order in such manner as the authority thinks appropriate.
- (4) If the order includes provision made in the exercise of any of the powers conferred by section 120(5)(a) or (b), the order must be contained in a statutory instrument.

(5) If the instrument containing the order is made by a Panel or the Council in the name of the Commission, the Statutory Instruments Act 1946 (c. 36) applies in relation to the instrument as if it had been made by a Minister of the Crown.

(6) As soon as practicable after the instrument is made, the appropriate authority must deposit in the office of the Clerk of the Parliaments a copy of—

- (a) the instrument,
- (b) the latest version of any plan supplied by the applicant in connection with the application for the order contained in the instrument, and
- (c) the statement of reasons prepared under section 116(1).

(7) In this section “the appropriate authority” means—

- (a) the Commission where the decision-maker is a Panel or the Council;
- (b) the Secretary of State where the decision-maker is the Secretary of State.

Amendments Pending

Pt 6 c. 8 s. 117(2): repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 58(2) (date to be appointed)

Pt 6 c. 8 s. 117(2): repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Pt 6 c. 8 s. 117(3): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 58(3)(a) (date to be appointed)

Pt 6 c. 8 s. 117(3): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 58(3)(b) (date to be appointed)

Pt 6 c. 8 s. 117(4): substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 58(4) (date to be appointed)

Pt 6 c. 8 s. 117(5): repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 58(2) (date to be appointed)

Pt 6 c. 8 s. 117(5): repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Pt 6 c. 8 s. 117(6): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 58(5) (date to be appointed)

Pt 6 c. 8 s. 117(7): repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 58(6) (date to be appointed)

Pt 6 c. 8 s. 117(7): repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Pt 6 c. 8 s. 117(1)-(7)(b): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 8 s. 117(1)-(7)(b): England, Wales, Scotland

CHAPTER 9

LEGAL CHALLENGES

✔ Law In Force

! Amendment(s) Pending

118 Legal challenges relating to applications for orders granting development consent

(1) A court may entertain proceedings for questioning an order granting development consent only if—

- (a) the proceedings are brought by a claim for judicial review, and
- (b) the claim form is filed during the period of 6 weeks beginning with—

- (i) the day on which the order is published, or
 - (ii) if later, the day on which the statement of reasons for making the order is published.
- (2) A court may entertain proceedings for questioning a refusal of development consent only if—
 - (a) the proceedings are brought by a claim for judicial review, and
 - (b) the claim form is filed during the period of 6 weeks beginning with the day on which the statement of reasons for the refusal is published.
- (3) A court may entertain proceedings for questioning a decision of the Commission under section 55 not to accept an application for an order granting development consent only if—
 - (a) the proceedings are brought by a claim for judicial review, and
 - (b) the claim form is filed during the period of 6 weeks beginning with the day on which the Commission notifies the applicant as required by subsection (7) of that section.
- (4) A court may entertain proceedings for questioning a decision under paragraph 1 of Schedule 4 in relation to an error or omission in a decision document only if—
 - (a) the proceedings are brought by a claim for judicial review, and
 - (b) the claim form is filed during the period of 6 weeks beginning with the day on which a correction notice in respect of the error or omission is issued under paragraph 2 of that Schedule or, if the correction is required to be made by order contained in a statutory instrument, the day on which the order is published.
- (5) A court may entertain proceedings for questioning a decision under paragraph 2(1) of Schedule 6 to make a change to an order granting development consent only if—
 - (a) the proceedings are brought by a claim for judicial review, and
 - (b) the claim form is filed during the period of 6 weeks beginning with the day on which notice of the change is given under paragraph 2(12)(b) of that Schedule or, if the change to the order is required to be made by order contained in a statutory instrument, the day on which the order making the change is published.
- (6) A court may entertain proceedings for questioning a decision under paragraph 3(1) of Schedule 6 to make a change to, or revoke, an order granting development consent only if—
 - (a) the proceedings are brought by a claim for judicial review, and
 - (b) the claim form is filed during the period of 6 weeks beginning with the day on which notice of the change or revocation is given under paragraph 4(6) of that Schedule or, if the change or revocation is required to be made by order contained in a statutory instrument, the day on which the order making the change or revocation is published.
- (7) A court may entertain proceedings for questioning anything else done, or omitted to be done, by the Secretary of State or the Commission in relation to an application for an order granting development consent only if—
 - (a) the proceedings are brought by a claim for judicial review, and
 - (b) the claim form is filed during the period of 6 weeks beginning with the relevant day.
- (8) “The relevant day”, in relation to an application for an order granting development consent, means the day on which—
 - (a) the application is withdrawn,
 - (b) the order granting development consent is published or (if later) the statement of reasons for making the order is published, or
 - (c) the statement of reasons for the refusal of development consent is published.

- (9) Subsections (7) and (8) do not apply in relation to—
- (a) a failure to decide an application for an order granting development consent, or
 - (b) anything which delays (or is likely to delay) the decision on such an application.
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Amendments Pending

Pt 6 c. 9 s. 118(3): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 59(2) (date to be appointed)

Pt 6 c. 9 s. 118(7): words repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 59(3) (date to be appointed)

Pt 6 c. 9 s. 118(7): words repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Pt 6 c. 9 s. 118(1)-(9)(b): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 9 s. 118(1)-(9)(b): England, Wales

CHAPTER 10

CORRECTION OF ERRORS

Law In Force

119 Correction of errors in development consent decisions

Schedule 4 (correction of errors in development consent decisions) has effect.

Commencement

Pt 6 c. 10 s. 119: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Pt 6 c. 10 s. 119: England, Wales, Scotland

PART 7
ORDERS GRANTING DEVELOPMENT CONSENT
CHAPTER 1
CONTENT OF ORDERS

General

✔ Law In Force

! Amendment(s) Pending

120 What may be included in order granting development consent

- (1) An order granting development consent may impose requirements in connection with the development for which consent is granted.
- (2) The requirements may in particular include requirements corresponding to conditions which could have been imposed on the grant of any permission, consent or authorisation, or the giving of any notice, which (but for section 33(1)) would have been required for the development.
- (3) An order granting development consent may make provision relating to, or to matters ancillary to, the development for which consent is granted.
- (4) The provision that may be made under subsection (3) includes in particular provision for or relating to any of the matters listed in Part 1 of Schedule 5.
- (5) An order granting development consent may—
 - (a) apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order;
 - (b) make such amendments, repeals or revocations of statutory provisions of local application as appear to the decision-maker to be necessary or expedient in consequence of a provision of the order or in connection with the order;
 - (c) include any provision that appears to the decision-maker to be necessary or expedient for giving full effect to any other provision of the order;
 - (d) include incidental, consequential, supplementary, transitional or transitory provisions and savings.
- (6) In subsection (5) “statutory provision” means a provision of an Act or of an instrument made under an Act.
- (7) Subsections (3) to (6) are subject to subsection (8) and the following provisions of this Chapter.
- (8) An order granting development consent may not include provision—
 - (a) making byelaws or conferring power to make byelaws;
 - (b) creating offences or conferring power to create offences;
 - (c) changing an existing power to make byelaws or create offences.
- (9) To the extent that provision for or relating to a matter may be included in an order granting development consent, none of the following may include any such provision—

- (a) an order under section 14 or 16 of the Harbours Act 1964 (c. 40) (orders in relation to harbours, docks and wharves);
- (b) an order under section 4(1) of the Gas Act 1965 (c. 36) (order authorising storage of gas in underground strata);
- (c) an order under section 1 or 3 of the Transport and Works Act 1992 (c. 42) (orders as to railways, tramways, inland waterways etc.).

Amendments Pending

Pt 7 c. 1 s. 120(2): existing text becomes (a) and a new (b) inserted by Localism Act 2011 c. 20 Pt 6 c. 6 s. 140 (date to be appointed)

Pt 7 c. 1 s. 120(5)(b): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 60(2) (date to be appointed)

Pt 7 c. 1 s. 120(5)(c): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 60(2) (date to be appointed)

Pt 7 c. 1 s. 120(8): substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 60(3) (date to be appointed)

Commencement

Pt 7 c. 1 s. 120(1)-(9)(c): November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power; March 1, 2010 subject to saving specified in SI 2010/101 art.6 otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(8); SI 2010/101 art. 3(e), art. 6)

Extent

Pt 7 c. 1 s. 120(1)-(9)(c): England, Wales, Scotland

Law In Force

Amendment(s) Pending

121 Proposed exercise of powers in relation to legislation

(1) This section applies if a Panel, or the Council, proposes to make an order granting development consent which includes provision made in exercise of any of the powers conferred by section 120(5)(a) and (b) (“the legislation powers”).

(2) Before making the order, the Panel or Council must send a draft of it to the Secretary of State.

(3) If the Secretary of State thinks that any provision which the Panel or Council proposes to include in the order in exercise of the legislation powers would contravene Community law or any of the Convention rights, the Secretary of State may give a direction requiring the Panel or Council to make specified changes to the draft order.

(4) The changes that may be specified in a direction under subsection (3) are limited to those that the Secretary of State thinks are required in order to prevent the contravention from arising.

(5) The power of the Secretary of State to give a direction under subsection (3) is not exercisable after the end of the period of 28 days beginning with the day on which the Secretary of State receives the draft order.

(6) In this section—

“Community law” means—

- (a) all the rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Community Treaties, and

- (b) all the remedies and procedures from time to time provided for by or under the Community Treaties;
 “the Convention rights” has the same meaning as in the Human Rights Act 1998 (c. 42).

Amendments Pending

Pt 7 c. 1 s. 121: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 61 (date to be appointed)

Pt 7 c. 1 s. 121: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Pt 7 c. 1 s. 121(1)-(6) definition of "the Convention rights": March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(e), art. 6)

Extent

Pt 7 c. 1 s. 121(1)-(6) definition of "the Convention rights": England, Wales, Scotland

Compulsory acquisition

✔ Law In Force

! Amendment(s) Pending

122 Purpose for which compulsory acquisition may be authorised

(1) An order granting development consent may include provision authorising the compulsory acquisition of land only if the decision-maker is satisfied that the conditions in subsections (2) and (3) are met.

(2) The condition is that the land—

- (a) is required for the development to which the development consent relates,
- (b) is required to facilitate or is incidental to that development, or
- (c) is replacement land which is to be given in exchange for the order land under section 131 or 132.

(3) The condition is that there is a compelling case in the public interest for the land to be acquired compulsorily.

Amendments Pending

Pt 7 c. 1 s. 122(1): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 62 (date to be appointed)

Commencement

Pt 7 c. 1 s. 122(1)-(3): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(f), art. 6)

Extent

Pt 7 c. 1 s. 122(1)-(3): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

123 Land to which authorisation of compulsory acquisition can relate

(1) An order granting development consent may include provision authorising the compulsory acquisition of land only if the decision-maker is satisfied that one of the conditions in subsections (2) to (4) is met.

(2) The condition is that the application for the order included a request for compulsory acquisition of the land to be authorised.

(3) The condition is that all persons with an interest in the land consent to the inclusion of the provision.

(4) The condition is that the prescribed procedure has been followed in relation to the land.

Amendments Pending

Pt 7 c. 1 s. 123(1): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 62 (date to be appointed)

Commencement

Pt 7 c. 1 s. 123(1)-(4): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(f), art. 6)

Extent

Pt 7 c. 1 s. 123(1)-(4): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

124 Guidance about authorisation of compulsory acquisition

(1) The Secretary of State may issue guidance about the making of an order granting development consent which includes provision authorising the compulsory acquisition of land.

(2) If a Panel or the Council proposes to make such an order, it must have regard to any guidance issued under subsection (1).

Amendments Pending

Pt 7 c. 1 s. 124: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 63 (date to be appointed)

Pt 7 c. 1 s. 124: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Pt 7 c. 1 s. 124(1)-(2): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(f), art. 6)

Extent

Pt 7 c. 1 s. 124(1)-(2): England, Wales, Scotland

✔ Law In Force

125 Application of compulsory acquisition provisions

- (1) This section applies if an order granting development consent includes provision authorising the compulsory acquisition of land.
- (2) Part 1 of the Compulsory Purchase Act 1965 (c. 56) (procedure for compulsory purchase) applies to the compulsory acquisition of land under the order—
- (a) as it applies to a compulsory purchase to which Part 2 of the Acquisition of Land Act 1981 (c. 67) applies, and
 - (b) as if the order were a compulsory purchase order under that Act.
- (3) Part 1 of the Compulsory Purchase Act 1965, as applied by subsection (2), has effect with the omission of the following provisions—
- (a) section 4 (time limit for exercise of compulsory purchase powers);
 - (b) section 10 (compensation for injurious affection);
 - (c) paragraph 3(3) of Schedule 3 (provision as to giving of bonds).
- (4) In so far as the order includes provision authorising the compulsory acquisition of land in Scotland—
- (a) subsections (2) and (3) do not apply, and
 - (b) the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42) (“the 1947 Act”) applies to the compulsory acquisition of that land under the order as if the order were a compulsory purchase order as defined in section 1(1) of that Act.
- (5) The 1947 Act, as applied by subsection (4), has effect with the omission of the following provisions—
- (a) Parts 2 and 3 of the First Schedule (compulsory purchase by Ministers and special provisions as to certain descriptions of land);
 - (b) section 116 of the Lands Clauses Consolidation (Scotland) Act 1845 (c. 19) (time limit for exercise of compulsory purchase powers) (that section being incorporated into the 1947 Act by paragraph 1 of the Second Schedule to the 1947 Act).
- (6) Subsections (2) to (5) are subject to any contrary provision made by the order granting development consent.

Commencement

Pt 7 c. 1 s. 125(1)-(6): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(f), art. 6)

Extent

Pt 7 c. 1 s. 125(1)-(6): England, Wales, Scotland

✔ Law In Force

126 Compensation for compulsory acquisition

- (1) This section applies in relation to an order granting development consent which includes provision authorising the compulsory acquisition of land.

- (2) The order may not include provision the effect of which is to modify the application of a compensation provision, except to the extent necessary to apply the provision to the compulsory acquisition of land authorised by the order.
- (3) The order may not include provision the effect of which is to exclude the application of a compensation provision.
- (4) A compensation provision is a provision of or made under an Act which relates to compensation for the compulsory acquisition of land.

Commencement

Pt 7 c. 1 s. 126(1)-(4): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(f), art. 6)

Extent

Pt 7 c. 1 s. 126(1)-(4): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

127 Statutory undertakers' land

- (1) This section applies in relation to land (“statutory undertakers' land”) if—
- (a) the land has been acquired by statutory undertakers for the purposes of their undertaking,
 - (b) a representation has been made about an application for an order granting development consent before the completion of the examination of the application, and the representation has not been withdrawn, and
 - (c) as a result of the representation the decision-maker is satisfied that—
 - (i) the land is used for the purposes of carrying on the statutory undertakers' undertaking, or
 - (ii) an interest in the land is held for those purposes.
- (2) An order granting development consent may include provision authorising the compulsory acquisition of statutory undertakers' land only to the extent that the Secretary of State—
- (a) is satisfied of the matters set out in subsection (3), and
 - (b) issues a certificate to that effect.
- (3) The matters are that the nature and situation of the land are such that—
- (a) it can be purchased and not replaced without serious detriment to the carrying on of the undertaking, or
 - (b) if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the carrying on of the undertaking.
- (4) Subsections (2) and (3) do not apply in a case within subsection (5).
- (5) An order granting development consent may include provision authorising the compulsory acquisition of a right over statutory undertakers' land by the creation of a new right over land only to the extent that the Secretary of State—
- (a) is satisfied of the matters set out in subsection (6), and
 - (b) issues a certificate to that effect.
- (6) The matters are that the nature and situation of the land are such that—

- (a) the right can be purchased without serious detriment to the carrying on of the undertaking, or
- (b) any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of other land belonging to or available for acquisition by them.

(7) If the Secretary of State issues a certificate under subsection (2) or (5), the Secretary of State must—

- (a) publish in one or more local newspapers circulating in the locality in which the statutory undertakers' land is situated a notice in the prescribed form that the certificate has been given, and
- (b) in a case where a Panel or the Council is the decision-maker, notify the Commission that the certificate has been given.

(8) In this section—

“statutory undertakers” has the meaning given by section 8 of the Acquisition of Land Act 1981 (c. 67) and also includes the undertakers—

- (a) which are deemed to be statutory undertakers for the purposes of that Act, by virtue of another enactment;
- (b) which are statutory undertakers for the purposes of section 16(1) and (2) of that Act (see section 16(3) of that Act).

(9) In the application of this section to a statutory undertaker which is a health service body (as defined in section 60(7) of the National Health Service and Community Care Act 1990 (c. 19)), references to land acquired or available for acquisition by the statutory undertakers are to be construed as references to land acquired or available for acquisition by the Secretary of State for use or occupation by the body.

Amendments Pending

Pt 7 c. 1 s. 127(1)(c): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 64(2) (date to be appointed)

Pt 7 c. 1 s. 127(7)(b): repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 64(3) (date to be appointed)


Pt 7 c. 1 s. 127(7)(b): repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Pt 7 c. 1 s. 127(1)-(9): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(f), art. 6)

Extent

Pt 7 c. 1 s. 127(1)-(9): England, Wales, Scotland

 Law In Force

 Amendment(s) Pending

128 Local authority and statutory undertakers' land: general

(1) This section applies to land which—

- (a) is the property of a local authority, or
- (b) has been acquired by statutory undertakers (other than a local authority) for the purposes of their undertaking.

(2) An order granting development consent is subject to special parliamentary procedure, to the extent that the order authorises the compulsory acquisition of land to which this section applies, if the condition in subsection (3) is met.

(3) The condition is that—

- (a) a representation has been made by the local authority or (as the case may be) the statutory undertakers about the application for the order granting development consent before the completion of the examination of the application, and
- (b) the representation has not been withdrawn.

(4) Subsection (2) is subject to section 129.

(5) In this section—

“local authority” has the meaning given by section 7(1) of the Acquisition of Land Act 1981;

“statutory undertakers” has the meaning given by section 8 of that Act and also includes the undertakers—

- (a) which are deemed to be statutory undertakers for the purposes of that Act, by virtue of another enactment;
- (b) which are statutory undertakers for the purposes of section 16(1) and (2) of that Act (see section 16(3) of that Act).

(6) In the application of this section to a statutory undertaker which is a health service body (as defined in section 60(7) of the National Health Service and Community Care Act 1990), the reference to land acquired by statutory undertakers is to be construed as a reference to land acquired by the Secretary of State for use or occupation by the body.

Amendments Pending

Pt 7 c. 1 s. 128(3)(aa): added by Localism Act 2011 c. 20 Pt 6 c. 6 s. 141(2)(a) (date to be appointed)

Pt 7 c. 1 s. 128(3)(b): word substituted by Localism Act 2011 c. 20 Pt 6 c. 6 s. 141(2)(b) (date to be appointed)

Commencement

Pt 7 c. 1 s. 128(1)-(6): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(f), art. 6)

Extent

Pt 7 c. 1 s. 128(1)-(6): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

129 Local authority and statutory undertakers' land: acquisition by public body

(1) Section 128(2) does not apply to the compulsory acquisition of land if the person acquiring the land is any of the following—

- (a) a local authority;
- (b) a National Park authority;
- (c) an urban development corporation;
- (d) a Welsh planning board;
- (e) statutory undertakers;

(f) a Minister of the Crown.

(2) In this section—

“local authority” has the meaning given by section 17(4) of the Acquisition of Land Act 1981 (c. 67);

“statutory undertakers” has the meaning given by section 8 of that Act and also includes the authorities, bodies and undertakers—

(a) which are deemed to be statutory undertakers for the purposes of that Act, by virtue of another enactment;

(b) which are statutory undertakers for the purposes of section 17(3) of that Act (see section 17(4) of that Act);

“Welsh planning board” means a board constituted under section 2(1B) of TCPA 1990.

Amendments Pending

Pt 7 c. 1 s. 129(1)(ca): added by Localism Act 2011 c. 20 Sch. 22 para. 60 (date to be appointed)

Commencement

Pt 7 c. 1 s. 129(1)-(2) definition of "Welsh planning board": March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(f), art. 6)

Extent

Pt 7 c. 1 s. 129(1)-(2) definition of "Welsh planning board": England, Wales, Scotland

Law In Force

Amendment(s) Pending

130 National Trust land

(1) This section applies to land belonging to the National Trust which is held by the Trust inalienably.

(2) An order granting development consent is subject to special parliamentary procedure, to the extent that the order authorises the compulsory acquisition of land to which this section applies, if the condition in subsection (3) is met.

(3) The condition is that—

(a) a representation has been made by the National Trust about the application for the order granting development consent before the completion of the examination of the application, and

(b) the representation has not been withdrawn.

(4) In this section “held inalienably”, in relation to land belonging to the National Trust, means that the land is inalienable under section 21 of the National Trust Act 1907 (c. cxxxvi) or section 8 of the National Trust Act 1939 (c. lxxxvi).

(5) In this section “the National Trust” means the National Trust for Places of Historic Interest or Natural Beauty incorporated by the National Trust Act 1907 (c. cxxxvi).

Amendments Pending

Pt 7 c. 1 s. 130(3)(aa): added by Localism Act 2011 c. 20 Pt 6 c. 6 s. 141(3)(a) (date to be appointed)

Pt 7 c. 1 s. 130(3)(b): word substituted by Localism Act 2011 c. 20 Pt 6 c. 6 s. 141(3)(b) (date to be appointed)

Commencement

Pt 7 c. 1 s. 130(1)-(5): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(f), art. 6)

Extent

Pt 7 c. 1 s. 130(1)-(5): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

131 Commons, open spaces etc: compulsory acquisition of land

(1) This section applies to any land forming part of a common, open space or fuel or field garden allotment.

(2) This section does not apply in a case to which section 132 applies.

(3) An order granting development consent is subject to special parliamentary procedure, to the extent that the order authorises the compulsory acquisition of land to which this section applies, unless the Secretary of State—

- (a) is satisfied that subsection (4) or (5) applies, and
- (b) issues a certificate to that effect.

(4) This subsection applies if—

- (a) replacement land has been or will be given in exchange for the order land, and
- (b) the replacement land has been or will be vested in the prospective seller and subject to the same rights, trusts and incidents as attach to the order land.

(5) This subsection applies if—

- (a) the order land does not exceed 200 square metres in extent or is required for the widening or drainage of an existing highway or partly for the widening and partly for the drainage of such a highway, and
- (b) the giving in exchange of other land is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public.

(6) If the Secretary of State proposes to issue a certificate under subsection (3), the Secretary of State must—

- (a) give notice of the proposal or direct the person who applied for the order granting development consent to do so, and
- (b) give any persons interested in the proposal an opportunity to make representations about the proposal.

(7) The Secretary of State may also cause a public local inquiry to be held in relation to the proposal.

(8) The Secretary of State may issue the certificate only after considering—

- (a) any representations made about the proposal, and
- (b) if an inquiry has been held under subsection (7), the report of the person who held the inquiry.

(9) Notice under subsection (6)(a) must be given in such form and manner as the Secretary of State may direct.

- (10) If the Secretary of State issues a certificate under subsection (3), the Secretary of State must—
- (a) publish in one or more local newspapers circulating in the locality in which the order land is situated a notice in the prescribed form that the certificate has been given, or direct the person who applied for the order granting development consent to do so, and
 - (b) in a case where a Panel or the Council is the decision-maker, notify the Commission that the certificate has been given, or direct the person who applied for the order granting development consent to do so.
- (11) If an order granting development consent authorises the compulsory acquisition of land to which this section applies, it may include provision—
- (a) for vesting replacement land given in exchange as mentioned in subsection (4)(a) in the prospective seller and subject to the rights, trusts and incidents mentioned in subsection (4)(b), and
 - (b) for discharging the order land from all rights, trusts and incidents to which it is subject.
- (12) In this section—
- “common”, “fuel or field garden allotment” and “open space” have the same meanings as in section 19 of the Acquisition of Land Act 1981 (c. 67);
- “the order land” means the land authorised to be compulsorily acquired;
- “the prospective seller” means the person or persons in whom the order land is vested;
- “replacement land” means land which is not less in area than the order land and which is no less advantageous to the persons, if any, entitled to rights of common or other rights, and to the public.

Amendments Pending

Pt 7 c. 1 s. 131(10)(b): repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 65 (date to be appointed)


Pt 7 c. 1 s. 131(10)(b): repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Pt 7 c. 1 s. 131(1)-(12) definition of "replacement land": March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(f), art. 6)

Extent

Pt 7 c. 1 s. 131(1)-(12) definition of "replacement land": England, Wales, Scotland

 Law In Force

 Amendment(s) Pending

132 Commons, open spaces etc: compulsory acquisition of rights over land

- (1) This section applies to any land forming part of a common, open space or fuel or field garden allotment.
- (2) An order granting development consent is subject to special parliamentary procedure, to the extent that the order authorises the compulsory acquisition of a right over land to which this section applies by the creation of a new right over land, unless the Secretary of State—
- (a) is satisfied that one of subsections (3) to (5) applies, and
 - (b) issues a certificate to that effect.

- (3) This subsection applies if the order land, when burdened with the order right, will be no less advantageous than it was before to the following persons—
- (a) the persons in whom it is vested,
 - (b) other persons, if any, entitled to rights of common or other rights, and
 - (c) the public.
- (4) This subsection applies if—
- (a) replacement land has been or will be given in exchange for the order right, and
 - (b) the replacement land has been or will be vested in the persons in whom the order land is vested and subject to the same rights, trusts and incidents as attach to the order land (ignoring the order granting development consent).
- (5) This subsection applies if—
- (a) the order land does not exceed 200 square metres in extent or the order right is required in connection with the widening or drainage of an existing highway or in connection partly with the widening and partly with the drainage of such a highway, and
 - (b) the giving of other land in exchange for the order right is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public.
- (6) If the Secretary of State proposes to issue a certificate under subsection (2), the Secretary of State must—
- (a) give notice of the proposal or direct the person who applied for the order granting development consent to do so, and
 - (b) give any persons interested in the proposal an opportunity to make representations about the proposal.
- (7) The Secretary of State may also cause a public local inquiry to be held in relation to the proposal.
- (8) The Secretary of State may issue the certificate only after considering—
- (a) any representations made about the proposal, and
 - (b) if an inquiry has been held under subsection (7), the report of the person who held the inquiry.
- (9) Notice under subsection (6)(a) must be given in such form and manner as the Secretary of State may direct.
- (10) If the Secretary of State issues a certificate under subsection (2), the Secretary of State must—
- (a) publish in one or more local newspapers circulating in the locality in which the order land is situated a notice in the prescribed form that the certificate has been given, or direct the person who applied for the order granting development consent to do so, and
 - (b) in a case where a Panel or the Council is the decision-maker, notify the Commission that the certificate has been given, or direct the person who applied for the order granting development consent to do so.
- (11) If an order granting development consent authorises the compulsory acquisition of a right over land to which this section applies by the creation of a new right over land, it may include provision—
- (a) for vesting replacement land given in exchange as mentioned in subsection (4)(a) in the persons in whom the order land is vested and subject to the rights, trusts and incidents mentioned in subsection (4)(b), and

(b) for discharging the order land from all rights, trusts and incidents to which it has previously been subject so far as their continuance would be inconsistent with the exercise of the order right.

(12) In this section—

“common”, “fuel or field garden allotment” and “open space” have the same meanings as in section 19 of the Acquisition of Land Act 1981 (c. 67);

“the order land” means the land to which this section applies over which the order right is to be exercisable;

“the order right” means the right authorised to be compulsorily acquired;

“replacement land” means land which will be adequate to compensate the following persons for the disadvantages which result from the compulsory acquisition of the order right—

(a) the persons in whom the order land is vested,

(b) the persons, if any, entitled to rights of common or other rights over the order land, and

(c) the public.

Amendments Pending

Pt 7 c. 1 s. 132(10): repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Pt 7 c. 1 s. 132(10)(b): repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 65 (date to be appointed)

Commencement

Pt 7 c. 1 s. 132(1)-(12) definition of "replacement land" (c): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(f), art. 6)

Extent

Pt 7 c. 1 s. 132(1)-(12) definition of "replacement land" (c): England, Wales, Scotland

Law In Force

133 Rights in connection with underground gas storage facilities

(1) This section applies if—

(a) the development to which an order granting development consent relates is development within section 14(1)(c), and

(b) the order authorises the compulsory acquisition of one or more rights within subsection (2).

(2) The rights are—

(a) a right to store gas in underground gas storage facilities;

(b) a right to stop up a well, borehole or shaft, or prevent its use by another person;

(c) a right of way over land.

(3) If the right within subsection (2) is an existing right to store gas in underground gas storage facilities, this Act has effect in relation to the compulsory acquisition of the right with the omission of section 131.

(4) If the order authorises the compulsory acquisition of the right by the creation of a new right within subsection (2), this Act has effect in relation to the compulsory acquisition of the right with the omission of sections 127 to 132.

Commencement

Pt 7 c. 1 s. 133(1)-(4): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 4(d), art. 6)

Extent

Pt 7 c. 1 s. 133(1)-(4): England, Wales

✔ Law In Force

! Amendment(s) Pending

134 Notice of authorisation of compulsory acquisition

(1) This section applies if—

- (a) an order is made granting development consent, and
- (b) the order includes provision authorising the compulsory acquisition of land.

(2) In this section—

“the order land” means—

- (a) in a case where the order granting development consent authorises the compulsory acquisition of a right over land by the creation of a new right, the land over which the right is to be exercisable;
- (b) in any other case where the order granting development consent authorises the compulsory acquisition of land, the land authorised to be compulsorily acquired;

“the prospective purchaser” means—

- (a) in a case where the order granting development consent authorises the compulsory acquisition of a right over land by the creation of a new right, the person for whose benefit the order authorises the creation of the right;
- (b) in any other case where the order granting development consent authorises the compulsory acquisition of land, the person authorised by the order to compulsorily acquire the land.

(3) After the order has been made, the prospective purchaser must—

- (a) serve a compulsory acquisition notice and a copy of the order on each person to whom subsection (4) applies, and
- (b) affix a compulsory acquisition notice to a conspicuous object or objects on or near the order land.

(4) This subsection applies to any person who, if the order granting development consent were a compulsory purchase order, would be a qualifying person for the purposes of section 12(1) of the Acquisition of Land Act 1981 (c. 67) (notice to owners, lessees and occupiers).

(5) A compulsory acquisition notice which is affixed under subsection (3)(b) must—

- (a) be addressed to persons occupying or having an interest in the order land, and
- (b) so far as practicable, be kept in place by the prospective purchaser until the end of the period of 6 weeks beginning with the date on which the order is published.

(6) The prospective purchaser must also publish a compulsory acquisition notice in one or more local newspapers circulating in the locality in which the order land is situated.

(7) A compulsory acquisition notice is a notice in the prescribed form—

- (a) describing the order land,
- (b) in a case where the order granting development consent authorises the compulsory acquisition of a right over land by the creation of a new right, describing the right,
- (c) stating that the order granting development consent includes provision authorising the compulsory acquisition of a right over the land by the creation of a right over it or (as the case may be) the compulsory acquisition of the land, and
- (d) stating that a person aggrieved by the order may challenge the order only in accordance with section 118.

(8) A compulsory acquisition notice which is affixed under subsection (3)(b) must also name a place where a copy of the order granting development consent may be inspected at all reasonable hours.

Amendments Pending

Pt 7 c. 1 s. 134(3)(za): added by Localism Act 2011 c. 20 Pt 6 c. 6 s. 142(2)(a) (date to be appointed)

Pt 7 c. 1 s. 134(3)(a): words repealed by Localism Act 2011 c. 20 Pt 6 c. 6 s. 142(2)(b) (date to be appointed)

Pt 7 c. 1 s. 134(3)(a): words repealed by Localism Act 2011 c. 20 Sch. 25(21) para. 1 (date to be appointed)

Pt 7 c. 1 s. 134(7)(ca): added by Localism Act 2011 c. 20 Pt 6 c. 6 s. 142(3) (date to be appointed)

Pt 7 c. 1 s. 134(8): repealed by Localism Act 2011 c. 20 Pt 6 c. 6 s. 142(4) (date to be appointed)

Pt 7 c. 1 s. 134(8): repealed by Localism Act 2011 c. 20 Sch. 25(21) para. 1 (date to be appointed)

Commencement

Pt 7 c. 1 s. 134(1)-(8): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(f), art. 6)

Extent

Pt 7 c. 1 s. 134(1)-(8): England, Wales, Scotland

Miscellaneous

Law In Force

135 Orders: Crown land

(1) An order granting development consent may include provision authorising the compulsory acquisition of an interest in Crown land only if—

- (a) it is an interest which is for the time being held otherwise than by or on behalf of the Crown, and
- (b) the appropriate Crown authority consents to the acquisition.

(2) An order granting development consent may include any other provision applying in relation to Crown land, or rights benefiting the Crown, only if the appropriate Crown authority consents to the inclusion of the provision.

- (3) The reference in subsection (2) to rights benefiting the Crown does not include rights which benefit the general public.
- (4) For the purposes of this section “the Crown” includes—
- (a) the Duchy of Lancaster;
 - (b) the Duchy of Cornwall;
 - (c) the Speaker of the House of Lords;
 - (d) the Speaker of the House of Commons;
 - (e) the Corporate Officer of the House of Lords;
 - (f) the Corporate Officer of the House of Commons.

Commencement

Pt 7 c. 1 s. 135(1)-(4)(f): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(g), art. 6)

Extent

Pt 7 c. 1 s. 135(1)-(4)(f): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

136 Public rights of way

- (1) An order granting development consent may extinguish a public right of way over land only if the decision-maker is satisfied that—
- (a) an alternative right of way has been or will be provided, or
 - (b) the provision of an alternative right of way is not required.
- (2) The following provisions of this section apply if—
- (a) an order granting development consent makes provision for the acquisition of land, compulsorily or by agreement,
 - (b) the order extinguishes a public right of way over the land, and
 - (c) the right of way is not a right enjoyable by vehicular traffic.
- (3) The order granting development consent may not provide for the right of way to be extinguished from a date which is earlier than the date on which the order is published.
- (4) Subsection (5) applies if—
- (a) the order granting development consent extinguishes the right of way from a date (“the extinguishment date”) which is earlier than the date on which the acquisition of the land is completed, and
 - (b) at any time after the extinguishment date it appears to the appropriate authority that the proposal to acquire the land has been abandoned.
- (5) The appropriate authority must by order direct that the right is to revive.
- (6) “The appropriate authority” is—
- (a) if the order granting development consent was made by a Panel or the Council, the Commission;
 - (b) in any other case, the Secretary of State.
- (7) Nothing in subsection (5) prevents the making of a further order extinguishing the right of way.

Amendments Pending

Pt 7 c. 1 s. 136(1): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 66(2) (date to be appointed)

Pt 7 c. 1 s. 136(4)(b): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 66(3) (date to be appointed)

Pt 7 c. 1 s. 136(5): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 66(3) (date to be appointed)

Pt 7 c. 1 s. 136(6): repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 66(4) (date to be appointed)

Pt 7 c. 1 s. 136(6): repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Pt 7 c. 1 s. 136(1)-(7): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(g), art. 6)

Extent

Pt 7 c. 1 s. 136(1)-(7): England, Wales, Scotland

Law In Force

137 Public rights of way: statutory undertakers' apparatus etc.

(1) The following provisions of this section apply if—

- (a) an order granting development consent makes provision for the acquisition of land, compulsorily or by agreement,
- (b) a public right of way exists over the land,
- (c) the right of way is not a right enjoyable by vehicular traffic, and
- (d) the right of way is over land falling within subsection (2).

(2) Land falls within this subsection if it is land on, over or under which there is—

- (a) apparatus belonging to statutory undertakers, or
- (b) electronic communications apparatus kept installed for the purposes of an electronic communications code network.

(3) The order granting development consent may include provision for the right of way to be extinguished only if the undertakers or the operator of the network (as the case may be) consent to the inclusion of the provision.

(4) The consent referred to in subsection (3)—

- (a) may be given subject to the condition that there are included in the order such provisions for the protection of the undertakers or the operator (as the case may be) as they may reasonably require, and
- (b) must not be unreasonably withheld.

(5) Any question arising under subsection (4) whether any requirement or refusal is reasonable is to be determined by the Secretary of State.

(6) The question of which Secretary of State should make a determination under subsection (5) is to be determined by the Treasury, if it arises.

(7) In this section and section 138 “statutory undertakers” means persons who are, or are deemed to be, statutory undertakers for the purposes of any provision of Part 11 of TCPA 1990.

(8) In this section and section 138 the following terms have the meanings given in paragraph 1(1) of Schedule 17 to the Communications Act 2003 (c. 21)—

- “electronic communications apparatus”;
- “electronic communications code”;
- “electronic communications code network”;
- “operator”.

Commencement

Pt 7 c. 1 s. 137(1)-(8): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(g), art. 6)

Extent

Pt 7 c. 1 s. 137(1)-(8): England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

138 Extinguishment of rights, and removal of apparatus, of statutory undertakers etc.

(1) This section applies if an order granting development consent authorises the acquisition of land (compulsorily or by agreement) and—

- (a) there subsists over the land a relevant right, or
- (b) there is on, under or over the land relevant apparatus.

(2) “Relevant right” means a right of way, or a right of laying down, erecting, continuing or maintaining apparatus on, under or over the land, which—

- (a) is vested in or belongs to statutory undertakers for the purpose of the carrying on of their undertaking, or
- (b) is conferred by or in accordance with the electronic communications code on the operator of an electronic communications code network.

(3) “Relevant apparatus” means—

- (a) apparatus vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking, or
- (b) electronic communications apparatus kept installed for the purposes of an electronic communications code network.

(4) The order may include provision for the extinguishment of the relevant right, or the removal of the relevant apparatus, only if—

- (a) the decision-maker is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the order relates, and
- (b) in a case within subsection (5), the Secretary of State has consented to the inclusion of the provision.

(5) A case is within this subsection if a representation has been made about the application for the order granting development consent before the completion of the examination of the application—

- (a) in a case falling within subsection (2)(a) or (3)(a), by the statutory undertakers;
- (b) in a case falling within subsection (2)(b) or (3)(b), by the operator of the electronic communications code network,

and the representation has not been withdrawn.

(6) The question of which Secretary of State should give consent under subsection (4)(b) is to be determined by the Treasury, if it arises.

Amendments Pending

Pt 7 c. 1 s. 138(4)(a): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 67 (date to be appointed)

Commencement

Pt 7 c. 1 s. 138(1)-(6): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(g), art. 6)

Extent

Pt 7 c. 1 s. 138(1)-(6): England, Wales, Scotland

Law In Force

139 Common land and rights of common

(1) An order granting development consent may not include provision the effect of which is to exclude or modify the application of a provision of or made under the Commons Act 2006, except in accordance with section 131 or 132.

(2) For the purposes of section 38(6)(a) of the Commons Act 2006, works carried out under a power conferred by an order granting development consent are not to be taken to be carried out under a power conferred by or under an enactment, except in a case to which section 131 or 132 applies.

(3) An order granting development consent may not authorise the suspension of, or extinguishment or interference with, registered rights of common, except in accordance with section 131 or 132.

(4) “Registered rights of common” means rights of common registered under—
(a) the Commons Act 2006, or
(b) the Commons Registration Act 1965.

Commencement

Pt 7 c. 1 s. 139(1)-(4)(b): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 4(e), art. 6)

Extent

Pt 7 c. 1 s. 139(1)-(4)(b): England, Wales

Law In Force

140 Operation of generating stations

An order granting development consent may include provision authorising the operation of a generating station only if the development to which the order relates is or includes the construction or extension of the generating station.

Commencement

Pt 7 c. 1 s. 140: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 4(e), art. 6)

Extent

Pt 7 c. 1 s. 140: England, Wales

Law In Force

141 Keeping electric lines installed above ground

An order granting development consent may include provision authorising an electric line to be kept installed above ground only if the development to which the order relates is or includes the installation of the line above ground.

Commencement

Pt 7 c. 1 s. 141: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 4(e), art. 6)

Extent

Pt 7 c. 1 s. 141: England, Wales

Law In Force

142 Use of underground gas storage facilities

An order granting development consent may include provision authorising the use of underground gas storage facilities only if the development to which the order relates is or includes development within section 17(2), (3) or (5).

Commencement

Pt 7 c. 1 s. 142: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 4(e), art. 6)

Extent

Pt 7 c. 1 s. 142: England, Wales

Law In Force

143 Diversion of watercourses

(1) An order granting development consent may include provision authorising the diversion of any part of a navigable watercourse only if the condition in subsection (2) is met.

(2) The new length of watercourse must be navigable in a reasonably convenient manner by vessels of a kind that are accustomed to using the part of the watercourse which is to be diverted.

(3) In deciding whether the condition in subsection (2) is met, the effect of any bridge or tunnel must be ignored if the construction of the bridge or tunnel is part of the development for which consent is granted by the order granting development consent.

(4) If an order granting development consent includes provision authorising the diversion of any part of a navigable watercourse, the order is also to be taken to authorise the diversion of any tow path or other way adjacent to that part.

Commencement

Pt 7 c. 1 s. 143(1)-(4): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 4(e), art. 6)

Extent

Pt 7 c. 1 s. 143(1)-(4): England, Wales

Law In Force

144 Highways

(1) An order granting development consent may include provision authorising the charging of tolls in relation to a highway only if a request to that effect has been included in the application for the order.

(2) If an order granting development consent includes provision authorising the charging of tolls in relation to a highway, the order is treated as a toll order for the purposes of sections 7 to 18 of the New Roads and Street Works Act 1991 (c. 22).

(3) An order granting development consent may include provision authorising—

- (a) the appropriation of a highway by a person, or
- (b) the transfer of a highway to a person,

only if the appropriation or transfer is connected with the construction or improvement by the person of a highway which is designated by the order as a special road.

Commencement

Pt 7 c. 1 s. 144(1)-(3)(b): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 4(e), art. 6)

Extent

Pt 7 c. 1 s. 144(1)-(3)(b): England, Wales

Law In Force

145 Harbours

(1) An order granting development consent may include provision for the creation of a harbour authority only if—

- (a) the development to which the order relates is or includes the construction or alteration of harbour facilities, and
- (b) the creation of a harbour authority is necessary or expedient for the purposes of the development.

(2) An order granting development consent may include provision changing the powers or duties of a harbour authority only if—

- (a) the development to which the order relates is or includes the construction or alteration of harbour facilities, and

(b) the authority has requested the inclusion of the provision or has consented in writing to its inclusion.

(3) An order granting development consent may include provision authorising the transfer of property, rights or liabilities from one harbour authority to another only if—

(a) the development to which the order relates is or includes the construction or alteration of harbour facilities, and

(b) the order makes provision for the payment of compensation of an amount—
 (i) determined in accordance with the order, or
 (ii) agreed between the parties to the transfer.

(4) An order granting development consent which includes provision for the creation of a harbour authority, or changing the powers or duties of a harbour authority, may also make other provision in relation to the authority.

This is subject to subsection (6).

(5) Subject to subsection (6), the provision which may be included in relation to a harbour authority includes in particular—

(a) any provision in relation to a harbour authority which could be included in a harbour revision order under section 14 of the Harbours Act 1964 (c. 40) by virtue of any provision of Schedule 2 to that Act;

(b) provision conferring power on the authority to change provision made in relation to it (by the order or by virtue of this paragraph), where the provision is about—
 (i) the procedures (including financial procedures) of the authority;
 (ii) the power of the authority to impose charges;
 (iii) the power of the authority to delegate any of its functions;
 (iv) the welfare of officers and employees of the authority and financial and other provision made for them.

(6) The order may not include provision—

(a) which, by virtue of any other provision of this Act, is not permitted to be included in an order granting development consent;

(b) conferring power on a harbour authority to delegate, or makes changes to its powers so as to permit the delegation of, any of the functions mentioned in paragraphs (a) to (f) of paragraph 9B of Schedule 2 to the Harbours Act 1964.

Commencement

Pt 7 c. 1 s. 145(1)-(6)(b): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 4(e), art. 6)

Extent

Pt 7 c. 1 s. 145(1)-(6)(b): England, Wales

Law In Force

146 Discharge of water

(1) This section applies if—

(a) an order granting development consent includes provision authorising the discharge of water into inland waters or underground strata, and

(b) but for the order, the person to whom development consent is granted would have had no power to take water, or to require discharges to be made, from the inland waters or other source from which the discharges authorised by the order are intended to be made.

(2) The order does not have the effect of conferring any such power on that person.

Commencement

Pt 7 c. 1 s. 146(1)-(2): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 4(e), art. 6)

Extent

Pt 7 c. 1 s. 146(1)-(2): England, Wales

✔ Law In Force

! Amendment(s) Pending

147 Development of Green Belt land

(1) This section applies if an order granting development consent includes provision—

- (a) authorising the acquisition of Green Belt land, compulsorily or by agreement,
- (b) authorising the sale, exchange or appropriation of Green Belt land, or
- (c) freeing land from any restriction imposed upon it by or under the Green Belt (London and Home Counties) Act 1938 (c. xciii), or by a covenant or other agreement entered into for the purposes of that Act.

(2) The decision-maker must notify the relevant local authorities of the provision made by the order.

(3) If the decision-maker is a Panel or the Council, the decision-maker must also notify the Secretary of State of the provision made by the order.

(4) The relevant local authorities are—

- (a) each local authority in whose area all or part of the land is situated,
- (b) any local authority in whom all or part of the land is vested, and
- (c) each contributing local authority.

(5) In this section “local authority” and “contributing local authority” have the same meanings as in the Green Belt (London and Home Counties) Act 1938 (c. xciii) (see section 2(1) of that Act).

Amendments Pending

Pt 7 c. 1 s. 147(2): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 68(2) (date to be appointed)

Pt 7 c. 1 s. 147(3): repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 68(3) (date to be appointed)

Pt 7 c. 1 s. 147(3): repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Pt 7 c. 1 s. 147(1)-(5): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 4(e), art. 6)

Extent

Pt 7 c. 1 s. 147(1)-(5): England, Wales

R Repealed

148 [...]¹

Notes

¹ Repealed by Marine and Coastal Access Act 2009 c. 23 Sch.22(2) para.1 (April 6, 2011)

R Repealed

149 [...]¹

Notes

¹ Repealed by Marine and Coastal Access Act 2009 c. 23 Sch.22(2) para.1 (April 6, 2011)

✓ Law In Force

[149A Deemed consent under a marine licence

(1) An order granting development consent may include provision deeming a marine licence to have been issued under Part 4 of the Marine and Coastal Access Act 2009 (marine licensing) for any activity only if the activity is to be carried out wholly in one or more of the areas specified in subsection (2).

(2) The areas are—

- (a) England,
- (b) waters adjacent to England up to the seaward limits of the territorial sea,
- (c) an exclusive economic zone, except any part of an exclusive economic zone in relation to which the Scottish Ministers have functions,
- (d) a Renewable Energy Zone, except any part of a Renewable Energy Zone in relation to which the Scottish Ministers have functions,
- (e) an area designated under section 1(7) of the Continental Shelf Act 1964, except any part of that area which is within a part of an exclusive economic zone or Renewable Energy Zone in relation to which the Scottish Ministers have functions.

(3) Subsections (4) and (5) apply if an order granting development consent includes provision—

- (a) deeming a marine licence to have been granted under Part 4 of the Marine and Coastal Access Act 2009 subject to specified conditions, and
- (b) deeming those conditions to have been attached to the marine licence by the Secretary of State under that Part.

(4) A person who fails to comply with such a condition does not commit an offence under section 161 of this Act.

(5) Sections 68 (notice of applications) and 69(3) and (5) (representations) of the Marine and Coastal Access Act 2009 do not apply in relation to the deemed marine licence.

]¹

Notes

¹ Added by Marine and Coastal Access Act 2009 c. 23 Sch.8(1) para.4(2) (April 6, 2011)

Extent

Pt 7 c. 1 s. 149A(1)-(5): England, Wales

✔ Law In Force

150 Removal of consent requirements

(1) An order granting development consent may include provision the effect of which is to remove a requirement for a prescribed consent or authorisation to be granted, only if the relevant body has consented to the inclusion of the provision.

(2) “The relevant body” is the person or body which would otherwise be required to grant the prescribed consent or authorisation.

Commencement

Pt 7 c. 1 s. 150(1)-(2): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(h), art. 6)

Extent

Pt 7 c. 1 s. 150(1)-(2): England, Wales, Scotland

✔ Law In Force

151 Liability under existing regimes

An order granting development consent may not include provision the effect of which is to exclude or modify the application of—

- (a) any provision of the Nuclear Installations Act 1965 (c. 57);
 - (b) section 28 of, and Schedule 2 to, the Reservoirs Act 1975 (c. 23) (liability for damage and injury due to escape of water from a reservoir constructed after 1930);
 - (c) section 209 of the Water Industry Act 1991 (c. 56) (civil liability of water undertakers for escapes of water from pipes);
 - (d) section 48A of the Water Resources Act 1991 (c. 57) (civil remedies for loss or damage due to water abstraction).
-

Commencement

Pt 7 c. 1 s. 151(a)-(d): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(h), art. 6)

Extent

Pt 7 c. 1 s. 151(a)-(d): England, Wales, Scotland

✔ Law In Force

152 Compensation in case where no right to claim in nuisance

(1) This section applies if, by virtue of section 158 or an order granting development consent, there is a defence of statutory authority in civil or criminal proceedings for nuisance in respect of any authorised works.

- (2) “Authorised works” are—
- (a) development for which consent is granted by an order granting development consent;
 - (b) anything else authorised by an order granting development consent.
- (3) A person by whom or on whose behalf any authorised works are carried out must pay compensation to any person whose land is injuriously affected by the carrying out of the works.
- (4) A dispute as to whether compensation under subsection (3) is payable, or as to the amount of the compensation, must be referred to the [Upper Tribunal]¹ .
- (5) Subsection (2) of section 10 of the Compulsory Purchase Act 1965 (c. 56) (limitation on compensation) applies to subsection (3) of this section as it applies to that section.
- (6) Any rule or principle applied to the construction of section 10 of that Act must be applied to the construction of subsection (3) of this section (with any necessary modifications).
- (7) Part 1 of the Land Compensation Act 1973 (c. 26) (compensation for depreciation of land value by physical factors caused by use of public works) applies in relation to authorised works as if—
- (a) references in that Part to any public works were to any authorised works;
 - (b) references in that Part to the responsible authority were to the person for whose benefit the order granting development consent has effect for the time being;
 - (c) sections 1(6) and 17 were omitted.
- (8) An order granting development consent may not include provision the effect of which is to remove or modify the application of any of subsections (1) to (7).

Notes

- ¹ Words substituted by Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307 Sch.1 para.293 (March 1, 2010: substitution came into force on June 1, 2009 but could not take effect until the commencement of 2008 c.29 s.152(4) on March 1, 2010)

Commencement

Pt 7 c. 1 s. 152(1)-(8): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(h), art. 6)

Extent

Pt 7 c. 1 s. 152(1)-(8): England, Wales, Scotland

CHAPTER 2

CHANGES TO, AND REVOCATION OF, ORDERS

Law In Force

153 Changes to, and revocation of, orders granting development consent

Schedule 6 (changes to, and revocation of, orders granting development consent) has effect.

Commencement

Pt 7 c. 2 s. 153: November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to

be done, or what is required to be done in the exercise of any such power; October 1, 2011 otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(8); SI 2011/2054 art. 2(b))

Extent

Pt 7 c. 2 s. 153: England, Wales, Scotland

CHAPTER 3

GENERAL

Law In Force

154 Duration of order granting development consent

- (1) Development for which development consent is granted must be begun before the end of—
 - (a) the prescribed period, or
 - (b) such other period (whether longer or shorter than that prescribed) as is specified in the order granting the consent.
 - (2) If the development is not begun before the end of the period applicable under subsection (1), the order granting development consent ceases to have effect at the end of that period.
 - (3) Where an order granting development consent authorises the compulsory acquisition of land, steps of a prescribed description must be taken in relation to the compulsory acquisition before the end of—
 - (a) the prescribed period, or
 - (b) such other period (whether longer or shorter than that prescribed) as is specified in the order.
 - (4) If steps of the prescribed description are not taken before the end of the period applicable under subsection (3), the authority to compulsorily acquire the land under the order ceases to have effect.
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Commencement

Pt 7 c. 3 s. 154(1)-(4): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(i), art. 6)

Extent

Pt 7 c. 3 s. 154(1)-(4): England, Wales, Scotland

Law In Force

155 When development begins

- (1) For the purposes of this Act (except Part 11) development is taken to begin on the earliest date on which any material operation comprised in, or carried out for the purposes of, the development begins to be carried out.
- (2) “Material operation” means any operation except an operation of a prescribed description.

Commencement

Pt 7 c. 3 s. 155(1)-(2): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(i), art. 6)

Extent

Pt 7 c. 3 s. 155(1)-(2): England, Wales, Scotland

Law In Force

156 Benefit of order granting development consent

(1) If an order granting development consent is made in respect of any land, the order has effect for the benefit of the land and all persons for the time being interested in the land.

(2) Subsection (1) is subject to subsection (3) and any contrary provision made in the order.

(3) To the extent that the development for which development consent is granted is development within section 17(3), the order granting the consent has effect for the benefit of a person for the time being interested in the land only if the person is a gas transporter.

Commencement

Pt 7 c. 3 s. 156(1)-(3): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(i), art. 6)

Extent

Pt 7 c. 3 s. 156(1)-(3): England, Wales, Scotland

Law In Force

157 Use of buildings in respect of which development consent granted

(1) If development consent is granted for development which includes the erection, extension, alteration or re-erection of a building, the order granting consent may specify the purposes for which the building is authorised to be used.

(2) If no purpose is so specified, the consent is taken to authorise the use of the building for the purpose for which it is designed.

Commencement

Pt 7 c. 3 s. 157(1)-(2): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(i), art. 6)

Extent

Pt 7 c. 3 s. 157(1)-(2): England, Wales, Scotland

Law In Force

158 Nuisance: statutory authority

(1) This subsection confers statutory authority for—

- (a) carrying out development for which consent is granted by an order granting development consent;
- (b) doing anything else authorised by an order granting development consent.

(2) Statutory authority under subsection (1) is conferred only for the purpose of providing a defence in civil or criminal proceedings for nuisance.

(3) Subsections (1) and (2) are subject to any contrary provision made in any particular case by an order granting development consent.

Commencement

Pt 7 c. 3 s. 158(1)-(3): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(i), art. 6)

Extent

Pt 7 c. 3 s. 158(1)-(3): England, Wales, Scotland

Law In Force

159 Interpretation: land and rights over land

(1) This section applies for the purposes of this Part.

(2) “Land” includes any interest in or right over land.

(3) Acquiring a right over land includes acquiring it by the creation of a new right as well as by the acquisition of an existing one.

Commencement

Pt 7 c. 3 s. 159(1)-(3): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(i), art. 6)

Extent

Pt 7 c. 3 s. 159(1)-(3): England, Wales, Scotland

PART 8

ENFORCEMENT

Offences

Law In Force

160 Development without development consent

(1) A person commits an offence if the person carries out, or causes to be carried out, development for which development consent is required at a time when no development consent is in force in respect of the development.

(2) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to a fine not exceeding £50,000, or

(b) on conviction on indictment, to a fine.

(3) The Secretary of State may by order amend subsection (2)(a) to increase the level of the fine for the time being specified in that provision.

Commencement

Pt 8 s. 160(1)-(3): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(j), art. 6)

Extent

Pt 8 s. 160(1)-(3): England, Wales, Scotland

Law In Force

161 Breach of terms of order granting development consent

(1) A person commits an offence if without reasonable excuse the person—

(a) carries out, or causes to be carried out, development in breach of the terms of an order granting development consent, or

(b) otherwise fails to comply with the terms of an order granting development consent.

(2) Subsection (1) is subject to [section 149A(4)]¹.

(3) It is a defence for a person charged with an offence under this section to prove that—

(a) the breach or failure to comply occurred only because of an error or omission in the order, and

(b) a correction notice specifying the correction of the error or omission has been issued under paragraph 2 of Schedule 4.

(4) A person guilty of an offence under this section is liable—

(a) on summary conviction, to a fine not exceeding £50,000, or

(b) on conviction on indictment, to a fine.

(5) The Secretary of State may by order amend subsection (4)(a) to increase the level of the fine for the time being specified in that provision.

Notes

¹ Words substituted by Marine and Coastal Access Act 2009 c. 23 Sch.8(1) para.4(3) (April 6, 2011)

Commencement

Pt 8 s. 161(1)-(5): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(j), art. 6)

Extent

Pt 8 s. 161(1)-(5): England, Wales, Scotland

Law In Force

162 Time limits

(1) A person may not be charged with an offence under section 160 or 161 after the end of—

(a) the relevant 4-year period, or

- (b) if subsection (3) applies, the extended period.
- (2) The “relevant 4-year period” means—
- (a) in the case of an offence under section 160, the period of 4 years beginning with the date on which the development was substantially completed;
 - (b) in the case of an offence under section 161, the period of 4 years beginning with the later of—
 - (i) the date on which the development was substantially completed, and
 - (ii) the date on which the breach or failure to comply occurred.
- (3) This subsection applies if during the relevant 4-year period—
- (a) an information notice has been served under section 167, or
 - (b) an injunction has been applied for under section 171.
- (4) The “extended period” means the period of 4 years beginning with—
- (a) the date of service of the information notice, if subsection (3)(a) applies;
 - (b) the date of the application for the injunction, if subsection (3)(b) applies;
 - (c) the later (or latest) of those dates, if both paragraphs (a) and (b) of subsection (3) apply.

Commencement

Pt 8 s. 162(1)-(4)(c): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(j), art. 6)

Extent

Pt 8 s. 162(1)-(4)(c): England, Wales, Scotland

Rights of entry

Law In Force

163 Right to enter without warrant

- (1) This section applies in relation to any land if the relevant local planning authority has reasonable grounds for suspecting that an offence under section 160 or 161 is being, or has been, committed on or in respect of the land.
- (2) A person authorised in writing by the relevant local planning authority may at any reasonable hour enter the land for the purpose of ascertaining whether an offence under section 160 or 161 is being, or has been, committed on the land.
- (3) A person may enter a building used as a dwelling-house under subsection (2) only if 24 hours' notice of the intended entry has been given to the occupier of the building.

Commencement

Pt 8 s. 163(1)-(3): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(j), art. 6)

Extent

Pt 8 s. 163(1)-(3): England, Wales, Scotland

✔ Law In Force

164 Right to enter under warrant

- (1) This section applies if it is shown to the satisfaction of a justice of the peace on sworn information in writing—
- (a) that there are reasonable grounds for suspecting that an offence under section 160 or 161 is being, or has been, committed on or in respect of any land, and
 - (b) that the condition in subsection (2) is met.
- (2) The condition is that—
- (a) admission to the land has been refused, or a refusal is reasonably apprehended, or
 - (b) the case is one of urgency.
- (3) The justice of the peace may issue a warrant authorising any person who is authorised in writing for the purpose by the relevant local planning authority to enter the land.
- (4) For the purposes of subsection (2)(a) admission to land is to be regarded as having been refused if no reply is received to a request for admission within a reasonable period.
- (5) A warrant authorises entry on one occasion only and that entry must be—
- (a) before the end of the period of one month beginning with the date of the issue of the warrant, and
 - (b) at a reasonable hour, unless the case is one of urgency.

Commencement

Pt 8 s. 164(1)-(5)(b): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(j), art. 6)

Extent

Pt 8 s. 164(1)-(5)(b): England, Wales, Scotland

✔ Law In Force

165 Rights of entry: supplementary provisions

- (1) A person authorised to enter land in pursuance of a right of entry conferred under or by virtue of section 163 or 164 (“a relevant right of entry”)—
- (a) must, if so required, produce evidence of the authority and state the purpose of entry before entering the land,
 - (b) may take on to the land such other persons as may be necessary, and
 - (c) must, if the person leaves the land at a time when the owner or occupier is not present, leave it as effectively secured against trespassers as it was found.
- (2) A person commits an offence if the person wilfully obstructs a person acting in the exercise of a relevant right of entry.
- (3) A person guilty of an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) If any damage is caused to land or chattels in the exercise of a relevant right of entry, compensation may be recovered by any person suffering the damage from the local planning authority that authorised the entry.

(5) Except so far as otherwise provided by regulations, any question of disputed compensation under subsection (4) is to be referred to and determined by the [Upper Tribunal]¹ .

(6) In relation to the determination of any such question, the provisions of [section 4 of the Land Compensation Act 1961 (c. 33)]² apply subject to any necessary modifications and to any other prescribed modifications.

Notes

¹ Words substituted by Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307 Sch.1 para.294(a) (March 1, 2010: substitution came into force on June 1, 2009 but could not take effect until the commencement of 2008 c.29 s.165(5) on March 1, 2010)

² Words substituted by Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307 Sch.1 para.294(b) (March 1, 2010: substitution came into force on June 1, 2009 but could not take effect until the commencement of 2008 c.29 s.165(6) on March 1, 2010)

Commencement

Pt 8 s. 165(1)-(6): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(j), art. 6)

Extent

Pt 8 s. 165(1)-(6): England, Wales, Scotland

Law In Force

166 Rights of entry: Crown land

Sections 163 and 164 do not apply to Crown land.

Commencement

Pt 8 s. 166: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(j), art. 6)

Extent

Pt 8 s. 166: England, Wales, Scotland

Information notices

Law In Force

167 Power to require information

(1) This section applies in relation to any land if it appears to the relevant local planning authority that an offence under section 160 or 161 may have been committed on or in respect of the land.

(2) The relevant local planning authority may serve an information notice.

(3) The information notice may be served on any person who—

- (a) is the owner or occupier of the land or has any other interest in it, or
- (b) is carrying out operations on the land or is using it for any purpose.

(4) The information notice may require the person on whom it is served to give such of the following information as may be specified in the notice—

- (a) information about any operations being carried out in, on, over or under the land, any use of the land and any other activities being carried out in, on, over or under the land, and
- (b) information about the provisions of any order granting development consent for development of the land.

(5) An information notice must inform the person on whom it is served of the likely consequences of a failure to respond to the notice.

(6) A requirement of an information notice is complied with by giving the required information to the relevant local planning authority in writing.

Commencement

Pt 8 s. 167(1)-(6): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(j), art. 6)

Extent

Pt 8 s. 167(1)-(6): England, Wales, Scotland

Law In Force

168 Offences relating to information notices

(1) A person commits an offence if without reasonable excuse the person fails to comply with any requirement of an information notice served under section 167 before the end of the period mentioned in subsection (2)

(2) The period referred to in subsection (1) is the period of 21 days beginning with the day on which the information notice is served.

(3) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) A person commits an offence if the person—

- (a) makes any statement purporting to comply with a requirement of an information notice which he knows to be false or misleading in a material respect, or
- (b) recklessly makes such a statement which is false or misleading in a material respect.

(5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Commencement

Pt 8 s. 168(1)-(5): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(j), art. 6)

Extent

Pt 8 s. 168(1)-(5): England, Wales, Scotland

Notices of unauthorised development

✔ Law In Force

169 Notice of unauthorised development

- (1) Subsection (2) applies if a person is found guilty of an offence under section 160 committed on or in respect of any land.
- (2) The relevant local planning authority may serve a notice of unauthorised development on the person requiring such steps as may be specified in the notice to be taken—
- (a) to remove the development, and
 - (b) to restore the land on which the development has been carried out to its condition before the development was carried out.
- (3) Subsection (4) applies if a person is found guilty of an offence under section 161 committed on or in respect of any land.
- (4) The relevant local planning authority may serve a notice of unauthorised development on the person requiring the person to remedy the breach or failure to comply.
- (5) A notice of unauthorised development—
- (a) must specify the period within which any steps are required to be taken, and
 - (b) may specify different periods for different steps.
- (6) Where different periods apply to different steps, references in this Part to the period for compliance with a notice of unauthorised development, in relation to any step, are to the period within which the step is required to be taken.
- (7) A notice of unauthorised development must specify such additional matters as may be prescribed.

Commencement

Pt 8 s. 169(1)-(7): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(j), art. 6)

Extent

Pt 8 s. 169(1)-(7): England, Wales, Scotland

✔ Law In Force

170 Execution of works required by notice of unauthorised development

- (1) If any of the steps specified in a notice of unauthorised development have not been taken before the end of the period for compliance with the notice, the relevant local planning authority may—
- (a) enter the land on which the development has been carried out and take those steps, and
 - (b) recover from the person who is then the owner of the land any expenses reasonably incurred by it in doing so.
- (2) Where a notice of unauthorised development has been served in respect of development—
- (a) any expenses incurred by the owner or occupier of the land for the purposes of complying with it, and
 - (b) any sums paid by the owner of the land under subsection (1) in respect of expenses incurred by the relevant local planning authority in taking steps required by it,

are to be deemed to be incurred or paid for the use and at the request of the person found guilty of the offence under section 160 or 161.

(3) Regulations may provide that all or any of the following sections of the Public Health Act 1936 (c. 49) are to apply, subject to such adaptations and modifications as may be specified in the regulations, in relation to any steps required to be taken by a notice of unauthorised development—

section 276 (power of local authorities to sell materials removed in executing works under that Act subject to accounting for the proceeds of sale);

section 289 (power to require the occupier of any premises to permit works to be executed by the owner of the premises);

section 294 (limit on liability of persons holding premises as agents or trustees in respect of the expenses recoverable under that Act).

(4) Regulations under subsection (3) applying all or any of section 289 of that Act may include adaptations and modifications for the purpose of giving the owner of land to which such a notice relates the right, as against all other persons interested in the land, to comply with the requirements of the notice.

(5) Regulations under subsection (3) may also provide for the charging on the land on which the development is carried out of any expenses recoverable by the relevant local planning authority under subsection (1).

(6) A person commits an offence if the person wilfully obstructs a person acting in the exercise of powers under subsection (1).

(7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Commencement

Pt 8 s. 170(1)-(7): November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29 s.241(2); March 1, 2010 subject to saving specified in SI 2010/101 art.6 otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(8); SI 2010/101 art. 3(j), art. 6)

Extent

Pt 8 s. 170(1)-(7): England, Wales, Scotland

Injunctions

Law In Force

171 Injunctions

(1) A local planning authority may apply to the court for an injunction if it considers it necessary or expedient for any actual or apprehended prohibited activity to be restrained by injunction.

(2) Prohibited activity means activity that constitutes an offence under section 160 or 161 in relation to land in the area of the local planning authority.

(3) On an application under this section the court may grant such an injunction as the court thinks fit for the purpose of restraining the prohibited activity.

(4) In this section “the court” means the High Court or a county court.

Commencement

Pt 8 s. 171(1)-(4): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(j), art. 6)

Extent

Pt 8 s. 171(1)-(4): England, Wales, Scotland

Isles of Scilly

Law In Force

172 Isles of Scilly

(1) The Secretary of State may by order provide for the exercise by the Council of the Isles of Scilly in relation to land in the Council's area of any functions exercisable by a local planning authority under any provision of this Part.

(2) Before making an order under this section the Secretary of State must consult the Council of the Isles of Scilly.

Commencement

Pt 8 s. 172(1)-(2): November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29 s.241(2); March 1, 2010 subject to saving specified in SI 2010/101 art.6 otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(8); SI 2010/101 art. 3(j), art. 6)

Extent

Pt 8 s. 172(1)-(2): England, Wales, Scotland

The relevant local planning authority

Law In Force

173 The relevant local planning authority

(1) This section applies for the purposes of this Part.

(2) The relevant local planning authority in relation to any land is the local planning authority for the area in which the land is situated. This is subject to subsections (3) to (5).

(3) Subsections (4) and (5) apply if the land is in an area for which there is both a district planning authority and a county planning authority.

(4) If any of the relevant development is the construction or alteration of a hazardous waste facility within section 14(1)(p), the relevant local planning authority is the county planning authority.

(5) In any other case, the relevant local planning authority is the district planning authority.

(6) “The relevant development” is—

- (a) if the relevant offence is an offence under section 160 or 161(1)(a), the development referred to in section 160(1) or 161(1)(a);
- (b) if the relevant offence is an offence under section 161(1)(b), the development to which the order granting development consent mentioned in section 161(1)(b) relates.

(7) “The relevant offence” is the offence by reference to which a provision of this Part confers a function on a local planning authority.

Commencement

Pt 8 s. 173(1)-(7): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(j), art. 6)

Extent

Pt 8 s. 173(1)-(7): England, Wales, Scotland

PART 9

CHANGES TO EXISTING PLANNING REGIMES

CHAPTER 1

CHANGES RELATED TO DEVELOPMENT CONSENT REGIME

Planning obligations

✔ Law In Force

174 Planning obligations

(1) TCPA 1990 is amended as follows.

(2) In section 106 (planning obligations)

(a) after subsection (1) insert—

“(1A) In the case of a development consent obligation, the reference to development in subsection (1)(a) includes anything that constitutes development for the purposes of the Planning Act 2008.”;

(b) in subsection (9) after paragraph (a) insert—

“(aa) if the obligation is a development consent obligation, contains a statement to that effect;”;

(c) after subsection (13) insert—

“(14) In this section and section 106A “development consent obligation” means a planning obligation entered into in connection with an application (or a proposed application) for an order granting development consent.”

(3) In section 106A(11) (modification and discharge of planning obligations: meaning of “the appropriate authority”) after paragraph (a) insert—

“(aa) the Secretary of State, in the case of any development consent obligation where the application in connection with which the obligation was entered into was (or is to be) decided by the Secretary of State;
(ab) the Infrastructure Planning Commission, in the case of any other development consent obligation;”.

(4) In section 106B(1) (appeals) after “an authority” insert “(other than the Secretary of State or the Infrastructure Planning Commission)”.

(5) After section 106B insert—

“106C Legal challenges relating to development consent obligations

(1) A court may entertain proceedings for questioning a failure by the Secretary of State or the Infrastructure Planning Commission to give notice as mentioned in section 106A(7) only if—

- (a) the proceedings are brought by a claim for judicial review, and
- (b) the claim form is filed during the period of 6 weeks beginning with the day on which the period prescribed under section 106A(7) ends.

(2) A court may entertain proceedings for questioning a determination by the Secretary of State or the Infrastructure Planning Commission that a planning obligation shall continue to have effect without modification only if—

- (a) the proceedings are brought by a claim for judicial review, and
- (b) the claim form is filed during the period of 6 weeks beginning with the day on which notice of the determination is given under section 106A(7).”

Commencement

Pt 9 c. 1 s. 174(1)-(5): March 1, 2010 (SI 2010/101 art. 3(k))

Extent

Pt 9 c. 1 s. 174(1)-(5): United Kingdom

Blighted land

Law In Force

175 Blighted land: England and Wales

(1) TCPA 1990 is amended as follows.

(2) In Schedule 13 (blighted land) after paragraph 23 insert—

“24

Land falls within this paragraph if—

- (a) the compulsory acquisition of the land is authorised by an order granting development consent, or
- (b) the land falls within the limits of deviation within which powers of compulsory acquisition conferred by an order granting development consent are exercisable, or
- (c) an application for an order granting development consent seeks authority to compulsorily acquire the land.

25 Land identified in national policy statements

Land falls within this paragraph if the land is in a location identified in a national policy statement as suitable (or potentially suitable) for a specified description of development.

Note

Land ceases to fall within this paragraph when the national policy statement—

- (a) ceases to have effect, or
- (b) ceases to identify the land as suitable or potentially suitable for that description of development.”

(3) In section 150(1)(b) (notices requiring purchase of blighted land)—

- (a) for “21 or” insert “21,”,
- (b) after “notes)” insert “or paragraph 24”, and
- (c) after “Schedule 13 and” insert “(except in the case of land falling within paragraph 24(c) of that Schedule)”.

(4) In section 151 (counter-notices objecting to blight notices) after subsection (7) insert—

“(7A) The grounds on which objection may be made in a counter-notice to a blight notice served by virtue of paragraph 25 of Schedule 13 do not include those mentioned in subsection (4)(b).”

(5) After section 165 (power of Secretary of State to acquire land affected by orders relating to new towns etc. where blight notice served) insert—

“165A Power of Secretary of State to acquire land identified in national policy statements where blight notice served

Where a blight notice has been served in respect of land falling within paragraph 25 of Schedule 13, the Secretary of State has power to acquire compulsorily any interest in the land in pursuance of the blight notice served by virtue of that paragraph.”

(6) In section 169 (meaning of “the appropriate authority” for purposes of Chapter 2 of Part 6) after subsection (5) insert—

“(6) In relation to land falling within paragraph 25 of Schedule 13, “the appropriate authority” is—

- (a) if the national policy statement identifies a statutory undertaker as an appropriate person to carry out the specified description of development in the location, the statutory undertaker;
- (b) in any other case, the Secretary of State.

(7) If any question arises by virtue of subsection (6)—
 (a) whether the appropriate authority in relation to any land for the purposes of this Chapter is the Secretary of State or a statutory undertaker; or
 (b) which of two or more statutory undertakers is the appropriate authority in relation to any land for those purposes,
 that question shall be referred to the Secretary of State, whose decision shall be final.

(8) In subsections (6) and (7) “statutory undertaker” means a person who is, or is deemed to be, a statutory undertaker for the purposes of any provision of Part 11.”

(7) In section 170 (“appropriate enactment” for purposes of Chapter 2) after subsection (8) insert—

“(8A) In relation to land falling within paragraph 24(a) or (b) of that Schedule, “the appropriate enactment” is the order granting development consent.

(8B) In relation to land falling within paragraph 24(c) of that Schedule, “the appropriate enactment” is an order in the terms of the order applied for.

(8C) In relation to land falling within paragraph 25 of that Schedule, “the appropriate enactment” is section 165A.”

(8) In section 171(1) (general interpretation of Chapter 2 of Part 6) at the appropriate place insert—

““national policy statement” has the meaning given by section 5(2) of the Planning Act 2008;”.

Commencement

Pt 9 c. 1 s. 175(1)-(2), (4)-(8): April 6, 2009 in relation to England and Wales for the purpose specified in SI 2009/400 art.3(b); March 1, 2010 subject to saving specified in SI 2010/101 art.6 otherwise (SI 2009/400 art. 3(b); SI 2010/101 art. 4(f), art. 6)

Pt 9 c. 1 s. 175(3)-(3)(c): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 4(f), art. 6)

Extent

Pt 9 c. 1 s. 175(1)-(8): United Kingdom

Law In Force

176 Blighted land: Scotland

(1) The Town and Country Planning (Scotland) Act 1997 (c. 8) is amended as follows.

(2) In Schedule 14 (blighted land) after paragraph 16 insert—

“17

(1) This paragraph applies to land which relates to the construction (other than by a gas transporter) of an oil or gas cross-country pipeline—

- (a) one end of which is in England or Wales, and
- (b) the other end of which is in Scotland,

where one of the following conditions is met.

(2) The conditions are—

- (a) the compulsory acquisition of the land is authorised by an order granting development consent under the Planning Act 2008,
- (b) the land falls within the limits of deviation within which powers of compulsory acquisition conferred by such an order are exercisable,
- (c) an application for such an order seeks authority to compulsorily acquire the land.

18 Land identified in national policy statements so far as relating to certain pipe-lines

This paragraph applies to land which is in a location identified in a national policy statement as suitable (or potentially suitable) for the construction (other than by a gas transporter) of an oil or gas crosscountry pipe-line—

- (a) one end of which is in England or Wales, and
- (b) the other end of which is in Scotland.

Note

Land ceases to be within this paragraph when the national policy statement—

- (a) ceases to have effect, or
- (b) ceases to identify the land as suitable or potentially suitable for the construction of such a pipe-line.”

(3) In section 100 (scope of Chapter 2 of Part 5) after subsection (5) insert—

“(5A) In the application of subsections (3)(a) and (4) in relation to land to which paragraph 17 or 18 of Schedule 14 applies, references to the Scottish Ministers are to be read as references to the Secretary of State.”

(4) In section 101(1)(b) (notices requiring purchase of blighted land)—

- (a) for “or 15” substitute “, 15 or 17”, and
- (b) after “Schedule 14 and” insert “(except in the case of land falling within paragraph 17 by virtue of paragraph 17(2)(c))”.

(5) In section 102 (counter-notices objecting to blight notices) after subsection (7) insert—

“(7A) An objection may not be made on the ground mentioned in paragraph (b) of subsection (4) in a counter-notice to a blight notice served by virtue of paragraph 18 of Schedule 14.”

(6) After section 116 insert—

“116A Power of Secretary of State to acquire land identified in national policy statements where blight notice served

Where a blight notice has been served in respect of land falling within paragraph 18 of Schedule 14, the Secretary of State has power to acquire compulsorily any interest in the land in pursuance of the blight notice served by virtue of that paragraph.”

(7) In section 120 (meaning of “the appropriate authority” for purposes of Chapter 2 of Part 5) after subsection (4) insert—

“(5) In relation to land falling within paragraph 18 of Schedule 14, “the appropriate authority” is—

- (a) if the national policy statement identifies a statutory undertaker as an appropriate person to carry out the specified description of development in the location, the statutory undertaker;
- (b) in any other case, the Secretary of State.
- (6) If any question arises by virtue of subsection (5)—
- (a) whether the appropriate authority in relation to any land for the purposes of this Chapter is the Secretary of State or a statutory undertaker; or
- (b) which of two or more statutory undertakers is the appropriate authority in relation to any land for those purposes,
- that question shall be referred to the Secretary of State, whose decision shall be final.
- (7) In subsections (5) and (6) “statutory undertaker” means a person who is, or is deemed to be, a statutory undertaker for the purposes of any provision of Part 10.”
- (8) In section 121 (“appropriate enactment” for purposes of Chapter 2) after subsection (7) insert—
- “(7A) In relation to land falling within paragraph 17 of that Schedule by virtue of paragraph 17(2)(a) or (b), “the appropriate enactment” means the order granting development consent.
- (7B) In relation to land falling within paragraph 17 of that Schedule by virtue of paragraph 17(2)(c), “the appropriate enactment” means an order in the terms of the order applied for.
- (7C) In relation to land falling within paragraph 18 of that Schedule, “the appropriate enactment” means section 116A.”
- (9) In section 122 (general interpretation of Chapter 2 of Part 5)—
- (a) after the definition of “crofter” insert—
- ““cross-country pipe-line” has the meaning given by section 66 of the Pipe-lines Act 1962 (c. 58);
- “gas transporter” has the same meaning as in Part 1 of the Gas Act 1986 (see section 7(1) of that Act);”
- , and
- (b) after the definition of “hereditament” insert—
- ““national policy statement” has the meaning given by section 5(2) of the Planning Act 2008;”.

Commencement

Pt 9 c. 1 s. 176(1)-(3), (5)-(9)(b): April 6, 2009 in relation to land identified in national policy statements; March 1, 2010 subject to saving specified in SI 2010/101 art.6 otherwise (SI 2009/400 art. 4(a); SI 2010/101 art. 5, art. 6)

Pt 9 c. 1 s. 176(4)-(4)(b): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 5, art. 6)

Extent

Pt 9 c. 1 s. 176(1)-(9)(b): United Kingdom

Grants

Law In Force

177 Grants for advice and assistance: England and Wales

In section 304A(1) of TCPA 1990 (grants for assisting the provision of advice and assistance in connection with planning matters), after paragraph (b) insert—

“(ba) the Planning Act 2008;”.

Commencement

Pt 9 c. 1 s. 177: April 6, 2009 in relation to England and Wales (SI 2009/400 art. 3(c))

Extent

Pt 9 c. 1 s. 177: United Kingdom

Law In Force

178 Grants for advice and assistance: Scotland

(1) The Secretary of State may make grants for the purpose of assisting any person to provide advice and assistance in connection with any matter which is related to the application of this Act to Scotland.

(2) The Secretary of State may, as respects any such grant, provide that it is to be subject to such terms and conditions as the Secretary of State thinks appropriate.

Commencement

Pt 9 c. 1 s. 178(1)-(2): April 6, 2009 (SI 2009/400 art. 4(b))

Extent

Pt 9 c. 1 s. 178(1)-(2): Scotland

CHAPTER 2

OTHER CHANGES TO EXISTING PLANNING REGIMES

Regional functions

Repealed

179 [...] ¹

Notes

¹ Repealed by Local Democracy, Economic Development and Construction Act 2009 c. 20 Sch.7(4) para.1 (April 1, 2010 as SI 2009/3318)

Local development

☑ Law In Force

180 Local development documents

(1) PCPA 2004 is amended as follows.

(2) In section 15(2) (matters which must be specified in local development scheme)—

- (a) omit paragraph (a);
- (b) before paragraph (b) insert—

“(aa) the local development documents which are to be development plan documents;”;

- (c) in paragraph (b) for “document” substitute “development plan document”;
- (d) omit paragraph (c);
- (e) in paragraphs (d) and (f) for “documents” substitute “development plan documents”.

(3) In section 17 (local development documents)—

- (a) omit subsections (1) and (2);
- (b) in subsection (3) for “The local development documents” substitute “The local planning authority's local development documents”;
- (c) in subsection (4) for the words before “in relation to development which is a county matter” substitute “Where a county council is required to prepare a minerals and waste development scheme in respect of an area, the council's local development documents must (taken as a whole) set out the council's policies (however expressed) for that area”;
- (d) in subsection (7), before paragraph (a) insert—

“(za) which descriptions of documents are, or if prepared are, to be prepared as local development documents;”.

(4) In section 18 (statements of community involvement)—

- (a) for subsection (3) substitute—

“(3) For the purposes of this Part (except sections 19(2) and 24) the statement of community involvement is a local development document.

This is subject to section 17(8).”;

- (b) after subsection (3) insert—

“(3A) The statement of community involvement must not be specified as a development plan document in the local development scheme.”;

- (c) omit subsections (4) to (6).

(5) In section 19 (preparation of local development documents)—

- (a) in subsection (1) for “Local development documents” substitute “Development plan documents”;
- (b) in subsection (2) after “In preparing a” insert “development plan document or any other”;
- (c) in subsection (3) for “other local development documents” substitute “local development documents (other than their statement of community involvement)”;
- (d) in subsection (5) for “document” substitute “development plan document”.

(6) In section 37 (interpretation of Part 2)—

- (a) in subsection (2) for “section 17” substitute “sections 17 and 18(3)”;
- (b) for subsection (3) substitute—

“(3) A development plan document is a local development document which is specified as a development plan document in the local development scheme.”

(7) In section 38 (development plan) after subsection (8) insert—

“(9) Development plan document must be construed in accordance with section 37(3).”

Commencement

Pt 9 c. 2 s. 180(1)-(7): April 6, 2009 in relation to England and Wales (SI 2009/400 art. 3(e))

Extent

Pt 9 c. 2 s. 180(1)-(7): United Kingdom

Climate change

■ Repealed

181 [...]¹

Notes

- ¹ Repealed by Local Democracy, Economic Development and Construction Act 2009 c. 20 Sch.7(4) para.1 (April 1, 2010 as SI 2009/3318)
-

■ Law In Force

182 Development plan documents: climate change policies

In section 19 of PCPA 2004 (preparation of local development documents) after subsection (1) insert—

“(1A) Development plan documents must (taken as a whole) include policies designed to secure that the development and use of land in the local planning authority's area contribute to the mitigation of, and adaptation to, climate change.”


Commencement

Pt 9 c. 2 s. 182: April 6, 2009 in relation to England and Wales (SI 2009/400 art. 3(e))

Extent

Pt 9 c. 2 s. 182: United Kingdom

Good design

 Partially In Force

183 Good design

In section 39 of PCPA 2004 (sustainable development) after subsection (2) insert—

“(2A) For the purposes of subsection (2) the person or body must (in particular) have regard to the desirability of achieving good design.”


Commencement

Pt 9 c. 2 s. 183: April 6, 2009 in relation to England; not yet in force otherwise (2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(a); SI 2009/400 art. 5(a))

Extent

Pt 9 c. 2 s. 183: United Kingdom

Correction of errors

 Law In Force

184 Correction of errors in decisions

In section 56(3)(c) of PCPA 2004 (appropriate consent required for correction of errors) at the beginning insert “in a case where the decision document relates to the exercise of a function in relation to Wales,”.


Commencement

Pt 9 c. 2 s. 184: April 6, 2009 (SI 2009/400 art. 3(f))

Extent

Pt 9 c. 2 s. 184: United Kingdom

Validity of strategies, plans and documents

 Partially In Force

185 Power of High Court to remit strategies, plans and documents

In section 113 of PCPA 2004 (validity of strategies, plans and documents) for subsection (7) substitute—

“(7) The High Court may—

- (a) quash the relevant document;
- (b) remit the relevant document to a person or body with a function relating to its preparation, publication, adoption or approval.

(7A) If the High Court remits the relevant document under subsection (7)(b) it may give directions as to the action to be taken in relation to the document.

(7B) Directions under subsection (7A) may in particular—

- (a) require the relevant document to be treated (generally or for specified purposes) as not having been approved or adopted;
- (b) require specified steps in the process that has resulted in the approval or adoption of the relevant document to be treated (generally or for specified purposes) as having been taken or as not having been taken;
- (c) require action to be taken by a person or body with a function relating to the preparation, publication, adoption or approval of the document (whether or not the person or body to which the document is remitted);
- (d) require action to be taken by one person or body to depend on what action has been taken by another person or body.

(7C) The High Court's powers under subsections (7) and (7A) are exercisable in relation to the relevant document—


- (a) wholly or in part;
- (b) generally or as it affects the property of the applicant.”

Commencement

Pt 9 c. 2 s. 185: April 6, 2009 in relation to England; not yet in force otherwise (2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(a); SI 2009/400 art. 5(a))

Extent

Pt 9 c. 2 s. 185: United Kingdom

 Not Yet In Force

186 Power of High Court to remit unitary development plans in Wales

(1) Subsection (2) applies in relation to section 287 of TCPA 1990 (proceedings for questioning validity of development plans etc.), as that section continues to have effect by virtue of paragraph (3) of article 3 of the Planning and Compulsory Purchase Act 2004 (Commencement No. 6, Transitional Provisions and Savings) Order 2005 (S.I. 2005/2847) for the purposes of the transitional arrangements mentioned in that paragraph.

(2) In that section, after subsection (3) insert—

“(3A) Subsections (3B) to (3E) apply if—

- (a) an application is made under this section in relation to a unitary development plan, and
- (b) on the application the High Court is satisfied as mentioned in subsection (2)(b).

(3B) The High Court may remit the plan to a person or body with a function relating to its preparation, publication, adoption or approval.

(3C) If the High Court remits the plan under subsection (3B) it may give directions as to the action to be taken in relation to the plan.

(3D) Directions under subsection (3B) may in particular—

- (a) require the plan to be treated (generally or for specified purposes) as not having been approved or adopted;
- (b) require specified steps in the process that has resulted in the approval or adoption of the plan to be treated (generally or for specified purposes) as having been taken or as not having been taken;
- (c) require action to be taken by a person or body with a function relating to the preparation, publication, adoption or approval of the plan (whether or not the person or body to which it is remitted);
- (d) require action to be taken by one person or body to depend on what action has been taken by another person or body.

(3E) The High Court's powers under subsections (3B) and (3C) are exercisable in relation to the plan—

- (a) wholly or in part;
- (b) generally or as it affects the property of the applicant.”


Commencement

Pt 9 c. 2 s. 186(1)-(2): Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(5))

Extent

Pt 9 c. 2 s. 186(1)-(2): United Kingdom

Determination of applications

 Partially In Force

187 Power to decline to determine applications: amendments

Schedule 7 (power to decline to determine applications: amendments) has effect.

Commencement

Pt 9 c. 2 s. 187: April 6, 2009 in relation to England and Wales for provisions specified in SI 2009/400 art.3(j); April 6, 2009 in relation to England for provisions specified in SI 2009/400 art.5(b); not yet in force otherwise (2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(a); SI 2009/400 art. 3(n), art. 5(b))

Extent

Pt 9 c. 2 s. 187: United Kingdom

Planning permission

 Partially In Force

188 Local development orders: removal of requirement to implement policies

- (1) Section 61A of TCPA 1990 (local development orders) is amended as set out in subsections (2) and (3).

- (2) Omit subsection (1) (requirement to implement policies).
- (3) In subsection (2) for “A local development order may” substitute “A local planning authority may by order (a local development order)”.
- (4) In paragraph 2 of Schedule 4A to TCPA 1990 (revision of local development orders) omit sub-paragraphs (4) and (5).

Commencement

Pt 9 c. 2 s. 188(1)-(4): June 23, 2009 in relation to England; not yet in force otherwise (2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(a); SI 2009/1303 art. 2(a))

Extent

Pt 9 c. 2 s. 188(1)-(4): United Kingdom

Law In Force

189 Compensation where development order or local development order withdrawn

(1) Section 108 of TCPA 1990 (compensation for refusal or conditional grant of planning permission formerly granted by development order or local development order) is amended as follows.

(2) After subsection (2) insert—

“(2A) Where—

- (a) planning permission granted by a development order for development in England of a prescribed description is withdrawn by the issue of directions under powers conferred by the order, or
 - (b) planning permission granted by a local development order for development in England is withdrawn by the issue of directions under powers conferred by the order,
- this section applies only if the application referred to in subsection (1)(b) is made before the end of the period of 12 months beginning with the date on which the directions took effect.”

(3) After subsection (3A) insert—

“(3B) This section does not apply if—

- (a) in the case of planning permission granted by a development order, the condition in subsection (3C) is met;
- (b) in the case of planning permission granted by a local development order, the condition in subsection (3D) is met.

(3C) The condition referred to in subsection (3B)(a) is that—

- (a) the planning permission is granted for development in England of a prescribed description,
- (b) the planning permission is withdrawn in the prescribed manner,
- (c) notice of the withdrawal was published in the prescribed manner not less than 12 months or more than the prescribed period before the withdrawal took effect,
- and
- (d) either—

- (i) the development authorised by the development order had not started before the notice was published, or
- (ii) the development order includes provision in pursuance of section 61D permitting the development to be completed after the permission is withdrawn.

(3D) The condition referred to in subsection (3B)(b) is that—

- (a) the planning permission is granted for development in England,
- (b) the planning permission is withdrawn by the revocation or amendment of the local development order, or by the issue of directions under powers conferred by the local development order,
- (c) notice of the revocation, amendment or directions was published in the prescribed manner not less than 12 months or more than the prescribed period before the revocation, amendment or directions (as the case may be) took effect, and
- (d) either—
 - (i) the development authorised by the local development order had not started before the notice was published, or
 - (ii) the local development order includes provision in pursuance of section 61D permitting the development to be completed after the permission is withdrawn.”

(4) After subsection (4) insert—

“(5) Regulations under this section prescribing a description of development may (in particular) do so by reference to one or more classes or descriptions of development specified in a development order.

(6) In this section “prescribed” means prescribed by regulations made by the Secretary of State.”

Commencement

Pt 9 c. 2 s. 189(1)-(4): April 6, 2010 in relation to England and Wales (SI 2010/566 art. 3(a), art. 4)

Extent

Pt 9 c. 2 s. 189(1)-(4): United Kingdom

Law In Force

190 Power to make non-material changes to planning permission

(1) TCPA 1990 is amended as follows.

(2) After section 96 insert—

“Non-material changes to planning permission

96A Power to make non-material changes to planning permission

(1) A local planning authority in England may make a change to any planning permission relating to land in their area if they are satisfied that the change is not material.

(2) In deciding whether a change is material, a local planning authority must have regard to the effect of the change, together with any previous changes made under this section, on the planning permission as originally granted.

(3) The power conferred by subsection (1) includes power—

- (a) to impose new conditions;
- (b) to remove or alter existing conditions.

(4) The power conferred by subsection (1) may be exercised only on an application made by or on behalf of a person with an interest in the land to which the planning permission relates.

(5) An application under subsection (4) must be made in the form and manner prescribed by development order.

(6) Subsection (7) applies in relation to an application under subsection (4) made by or on behalf of a person with an interest in some, but not all, of the land to which the planning permission relates.

(7) The application may be made only in respect of so much of the planning permission as affects the land in which the person has an interest.

(8) A local planning authority must comply with such requirements as may be prescribed by development order as to consultation and publicity in relation to the exercise of the power conferred by subsection (1).”

(3) In section 5(3) (purposes for which Broads Authority is the sole local district planning authority) for “97” substitute “96A”.

(4) In section 69(1) (register of applications etc)—

(a) after paragraph (a) insert—

“(aa) applications for non-material changes to planning permission under section 96A;”,

(b) in subsection (2)(a) after “(1)(a)” insert “and (aa)”, and

(c) in subsection (4) after “(1)(a)” insert “, (aa)”.

(5) In section 286(1) (challenges to validity on ground of authority's powers) after paragraph (a) insert—

“(aa) an application for non-material changes to planning permission under section 96A;”.

(6) In Schedule 1 (local planning authorities: distribution of functions), in paragraph 3(1), after paragraph (a) insert—

“(aa) applications for non-material changes to planning permission under section 96A;”.

Commencement

Pt 9 c. 2 s. 190(1)-(3), (5)-(6): October 1, 2009 (SI 2009/2260 art. 3)

Pt 9 c. 2 s. 190(4)-(4)(c): April 6, 2010 in relation to England and Wales (SI 2010/566 art. 3(b))

Extent

Pt 9 c. 2 s. 190(1)-(6): United Kingdom

Validity of planning decisions

 Partially In Force

191 Validity of orders, decisions and directions

(1) Section 284(3) of TCPA 1990 (validity of certain actions on the part of the Secretary of State) is amended as follows.

(2) Before paragraph (a) insert—

“(za) any decision on an application referred to the Secretary of State under section 76A;”.

(3) In paragraph (a) omit “for planning permission”.

Commencement


Pt 9 c. 2 s. 191(1), (3): April 6, 2009 in relation to England subject to savings provision specified in SI 2009/400 art.6(1); not yet in force otherwise (2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(a); SI 2009/400 art. 5(c), art. 6(1))

Pt 9 c. 2 s. 191(2): April 6, 2009 subject to savings provision specified in SI 2009/400 art.6(1) (2008 c. 29 Pt 12 s. 241(8); SI 2009/400 art. 3(g), art. 6(1))

Extent

Pt 9 c. 2 s. 191(1)-(3): United Kingdom

Trees

 Partially In Force

192 Tree preservation orders

(1) Chapter 1 of Part 8 of TCPA 1990 (special controls: trees) is amended as follows.

(2) In section 198 (power to make tree preservation orders) omit—

- (a) subsections (3) and (4) (provision that may be made by tree preservation orders),
- (b) subsection (6) (matters to which tree preservation orders do not apply), and

- (c) subsections (8) and (9) (power to make provision about application for consent under tree preservation order).
- (3) Omit section 199 (form of and procedure applicable to tree preservation orders).
- (4) Omit section 201 (provisional tree preservation orders).
- (5) In section 202 (power for Secretary of State or Welsh Ministers to make tree preservation orders), omit subsection (3) (procedure applicable to orders made by Secretary of State or Welsh Ministers).
- (6) Omit sections 203 to 205 (compensation in connection with tree preservation orders).
- (7) After section 202 insert—

“202A Tree preservation regulations: general

- (1) The appropriate national authority may by regulations make provision in connection with tree preservation orders.
- (2) Sections 202B to 202G make further provision about what may, in particular, be contained in regulations under subsection (1).
- (3) In this section and those sections “tree preservation order” includes an order under section 202(1).
- (4) In this Act “tree preservation regulations” means regulations under subsection (1).
- (5) In subsection (1) “the appropriate national authority”—
 - (a) in relation to England means the Secretary of State, and
 - (b) in relation to Wales means the Welsh Ministers.
- (6) Section 333(3) does not apply in relation to tree preservation regulations made by the Welsh Ministers.
- (7) Tree preservation regulations made by the Welsh Ministers are subject to annulment in pursuance of a resolution of the National Assembly for Wales.

202B Tree preservation regulations: making of tree preservation orders

- (1) Tree preservation regulations may make provision about—
 - (a) the form of tree preservation orders;
 - (b) the procedure to be followed in connection with the making of tree preservation orders;
 - (c) when a tree preservation order takes effect.
- (2) If tree preservation regulations make provision for tree preservation orders not to take effect until confirmed, tree preservation regulations may—
 - (a) make provision for tree preservation orders to take effect provisionally until confirmed;
 - (b) make provision about who is to confirm a tree preservation order;
 - (c) make provision about the procedure to be followed in connection with confirmation of tree preservation orders.

202C Tree preservation regulations: prohibited activities

- (1) Tree preservation regulations may make provision for prohibiting all or any of the following—
 - (a) cutting down of trees;
 - (b) topping of trees;
 - (c) lopping of trees;
 - (d) uprooting of trees;
 - (e) wilful damage of trees;
 - (f) wilful destruction of trees.
- (2) A prohibition imposed on a person may (in particular) relate to things whose doing the person causes or permits (as well as to things the person does).
- (3) A prohibition may be imposed subject to exceptions.
- (4) In particular, provision may be made for a prohibition not to apply to things done with consent.
- (5) In this section “tree” means a tree in respect of which a tree preservation order is in force.

202D Tree preservation regulations: consent for prohibited activities

- (1) This section applies if tree preservation regulations make provision under section 202C(4).
- (2) Tree preservation regulations may make provision—
 - (a) about who may give consent;
 - (b) for the giving of consent subject to conditions;
 - (c) about the procedure to be followed in connection with obtaining consent.
- (3) The conditions for which provision may be made under subsection (2)(b) include—
 - (a) conditions as to planting of trees;
 - (b) conditions requiring approvals to be obtained from the person giving the consent;
 - (c) conditions limiting the duration of the consent.
- (4) The conditions mentioned in subsection (3)(a) include—
 - (a) conditions requiring trees to be planted;
 - (b) conditions about the planting of any trees required to be planted by conditions within paragraph (a), including conditions about how, where or when planting is to be done;
 - (c) conditions requiring things to be done, or installed, for the protection of any trees planted in pursuance of conditions within paragraph (a).
- (5) In relation to any tree planted in pursuance of a condition within subsection (4)(a), tree preservation regulations may make provision—
 - (a) for the tree preservation order concerned to apply to the tree;
 - (b) authorising the person imposing the condition to specify that the tree preservation order concerned is not to apply to the tree.
- (6) “The tree preservation order concerned” is the order in force in relation to the tree in respect of which consent is given under tree preservation regulations.

- (7) The provision that may be made under subsection (2)(c) includes provision about applications for consent, including provision as to—
- (a) the form or manner in which an application is to be made;
 - (b) what is to be in, or is to accompany, an application.
- (8) Tree preservation regulations may make provision for appeals—
- (a) against refusal of consent;
 - (b) where there is a failure to decide an application for consent;
 - (c) against conditions subject to which consent is given;
 - (d) against refusal of an approval required by a condition;
 - (e) where there is a failure to decide an application for such an approval.
- (9) Tree preservation regulations may make provision in connection with appeals under provision made under subsection (8), including—
- (a) provision imposing time limits;
 - (b) provision for further appeals;
 - (c) provision in connection with the procedure to be followed on an appeal (or further appeal);
 - (d) provision about who is to decide an appeal (or further appeal);
 - (e) provision imposing duties, or conferring powers, on a person deciding an appeal (or further appeal).

202E Tree preservation regulations: compensation

- (1) Tree preservation regulations may make provision for the payment of compensation—
- (a) where any consent required under tree preservation regulations is refused;
 - (b) where any such consent is given subject to conditions;
 - (c) where any approval required under such a condition is refused.
- (2) Tree preservation regulations may provide for entitlement conferred under subsection (1) to apply only in, or to apply except in, cases specified in tree preservation regulations.
- (3) Tree preservation regulations may provide for entitlement conferred by provision under subsection (1) to be subject to conditions, including conditions as to time limits.
- (4) Tree preservation regulations may, in relation to compensation under provision under subsection (1), make provision about—
- (a) who is to pay the compensation;
 - (b) who is entitled to the compensation;
 - (c) what the compensation is to be paid in respect of;
 - (d) the amount, or calculation of, the compensation.
- (5) Tree preservation regulations may make provision about the procedure to be followed in connection with claiming any entitlement conferred by provision under subsection (1).
- (6) Tree preservation regulations may make provision for the determination of disputes about entitlement conferred by provision under subsection (1), including provision for and in connection with the referral of any such disputes to, and their determination by, [...] the First-tier Tribunal or the Upper Tribunal.

202F Tree preservation regulations: registers

Tree preservation regulations may make provision for the keeping of, and public access to, registers containing information related to tree preservation orders.

202G Tree preservation regulations: supplementary

(1) Tree preservation regulations may provide for the application (with or without modifications) of, or make provision comparable to, any provision of this Act mentioned in subsection (2).

(2) The provisions are any provision of Part 3 relating to planning permission or applications for planning permission, except sections 56, 62, 65, 69(3) and (4), 71, 91 to 96, 100 and 101 and Schedule 8.

(3) Tree preservation regulations may make provision comparable to—

(a) any provision made by the Town and Country Planning (Tree Preservation Order) Regulations 1969 or the Town and Country Planning (Trees) Regulations 1999;

(b) any provision that could have been made under section 199(2) and (3).

(4) Tree preservation regulations may contain incidental, supplementary, consequential, transitional and transitory provision and savings.”

(8) Schedule 8 makes further amendments in connection with tree preservation orders.

Notes

¹ Words repealed by Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307 Sch.1 para.295 (June 1, 2009)


Commencement

Pt 9 c. 2 s. 192(1), (7)-(8): November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29 s.241(2); not yet in force otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(a))

Pt 9 c. 2 s. 192(2)-(6): Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(a))

Extent

Pt 9 c. 2 s. 192(1)-(8): United Kingdom

 Partially In Force

193 Existing tree preservation orders: transitional provision

(1) This section applies to a tree preservation order made before the appointed day.

(2) With effect from the beginning of the appointed day, a tree preservation order to which this section applies shall have effect with the omission of all of its provisions other than any that have effect for the purpose of identifying the order or for the purpose of identifying the trees, groups of trees or woodlands in respect of which the order—

(a) is in force, or

(b) may at any later time be in force.

(3) In this section—

“the appointed day”—

(a) in relation to England means the day on which subsection (1) comes fully into force in relation to England, and

(b) in relation to Wales means the day on which subsection (1) comes fully into force in relation to Wales;

“tree preservation order” means an order made under, or an order having effect as if made under, section 198(1) of TCPA 1990.


Commencement

Pt 9 c. 2 s. 193(1)-(3) definition of "tree preservation order": November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29 s.241(2); not yet in force otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(a); 2008 c. 29 Pt 12 s. 241(8))

Extent

Pt 9 c. 2 s. 193(1)-(3) definition of "tree preservation order": England, Wales

Use of land

 Partially In Force

194 Use of land: power to override easements and other rights

(1) Schedule 9 (use of land: power to override easements and other rights when use is in accordance with planning permission) has effect.

(2) The Welsh Ministers may by order amend Schedule 4 to the Welsh Development Agency Act 1975 (c. 70) for the purpose of authorising the use in accordance with planning permission of land acquired under section 21A of that Act, even if the use involves—

- (a) interference with an interest or right to which paragraph 6 of that Schedule applies, or
- (b) a breach of a restriction as to the user of land arising by virtue of a contract.

(3) The power to make an order under subsection (2) is exercisable by statutory instrument.

(4) The power includes—

- (a) power to make different provision for different purposes (including different areas);
- (b) power to make incidental, consequential, supplementary, transitional or transitory provision or savings.

(5) No order may be made under subsection (2) unless a draft of the instrument containing the order has been laid before, and approved by resolution of, the National Assembly for Wales.

Commencement


Pt 9 c. 2 s. 194(1): April 6, 2009 for provisions specified in SI 2009/400 art.3(h); not yet in force otherwise (2008 c. 29 Pt 12 s. 241(8); SI 2009/400 art. 3(h))

Pt 9 c. 2 s. 194(2)-(5): November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29 s.241(2); January 26, 2009 otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(6))

Extent

Pt 9 c. 2 s. 194(1)-(5): England, Wales

Statutory undertakers

 Law In Force

195 Applications and appeals by statutory undertakers

In section 266 of TCPA 1990 (applications for planning permission by statutory undertakers), after subsection (1) insert—

“(1A) Subsection (1) has effect in relation to an application or appeal relating to land in England only if the Secretary of State or the appropriate Minister has given a direction for it to have effect in relation to the application or appeal (and the direction has not been revoked).”


Commencement

Pt 9 c. 2 s. 195: April 6, 2009 in relation to England and Wales (SI 2009/400 art. 3(i))

Extent

Pt 9 c. 2 s. 195: United Kingdom

Determination of procedure

 Partially In Force

196 Determination of procedure for certain proceedings

(1) After section 319 of TCPA 1990 insert—

“Determination of procedure

319A Determination of procedure for certain proceedings

(1) The Secretary of State must make a determination as to the procedure by which proceedings to which this section applies are to be considered.

- (2) A determination under subsection (1) must provide for the proceedings to be considered in whichever of the following ways appears to the Secretary of State to be most appropriate—
- (a) at a local inquiry;
 - (b) at a hearing;
 - (c) on the basis of representations in writing.
- (3) The Secretary of State must make a determination under subsection (1) in respect of proceedings to which this section applies before the end of the prescribed period.
- (4) A determination under subsection (1) may be varied by a subsequent determination under that subsection at any time before the proceedings are determined.
- (5) The Secretary of State must notify the appellant or applicant (as the case may be) and the local planning authority of any determination made under subsection (1).
- (6) The Secretary of State must publish the criteria that are to be applied in making determinations under subsection (1).
- (7) This section applies to—
- (a) an application referred to the Secretary of State under section 77 instead of being dealt with by a local planning authority in England;
 - (b) an appeal under section 78 against a decision of a local planning authority in England;
 - (c) an appeal under section 174 against an enforcement notice issued by a local planning authority in England;
 - (d) an appeal under section 195 against a decision of a local planning authority in England; and
 - (e) an appeal under section 208 against a notice under section 207(1) issued by a local planning authority in England.
- (8) But this section does not apply to proceedings if they are referred to a Planning Inquiry Commission under section 101; and on proceedings being so referred, any determination made in relation to the proceedings under subsection (1) of this section ceases to have effect.
- (9) The Secretary of State may by order amend subsection (7) to—
- (a) add proceedings to, or remove proceedings from, the list of proceedings to which this section applies, or
 - (b) otherwise modify the descriptions of proceedings to which this section applies.
- (10) An order under subsection (9) may—
- (a) contain incidental, supplementary, consequential, transitional and transitory provision and savings;
 - (b) amend, repeal or revoke any provision made by or under this Act or by or under any other Act.”

(2) After section 88C of the Listed Buildings Act insert—

“88D Determination of procedure for certain proceedings

- (1) The Secretary of State must make a determination as to the procedure by which proceedings to which this section applies are to be considered.

- (2) A determination under subsection (1) must provide for the proceedings to be considered in whichever of the following ways appears to the Secretary of State to be most appropriate—
- (a) at a local inquiry;
 - (b) at a hearing;
 - (c) on the basis of representations in writing.
- (3) The Secretary of State must make a determination under subsection (1) in respect of proceedings to which this section applies before the end of the prescribed period.
- (4) A determination under subsection (1) may be varied by a subsequent determination under that subsection at any time before the proceedings are determined.
- (5) The Secretary of State must notify the appellant or applicant (as the case may be) and the local planning authority of any determination made under subsection (1).
- (6) The Secretary of State must publish the criteria that are to be applied in making determinations under subsection (1).
- (7) This section applies to—
- (a) an application referred to the Secretary of State under section 12 instead of being dealt with by a local planning authority in England;
 - (b) an appeal under section 20 against a decision of a local planning authority in England; and
 - (c) an appeal under section 39 against a listed building enforcement notice issued by a local planning authority in England.
- (8) The Secretary of State may by order amend subsection (7) to—
- (a) add proceedings under this Act to, or remove proceedings under this Act from, the list of proceedings to which this section applies, or
 - (b) otherwise modify the descriptions of proceedings under this Act to which this section applies.
- (9) An order under subsection (8) may—
- (a) contain incidental, supplementary, consequential, transitional and transitory provision and savings;
 - (b) amend, repeal or revoke any provision made by or under this Act or by or under any other Act.”
- (3) After section 21 of the Hazardous Substances Act insert—

“21A Determination by Secretary of State of procedure for certain proceedings

- (1) The Secretary of State must make a determination as to the procedure by which proceedings to which this section applies are to be considered.
- (2) A determination under subsection (1) must provide for the proceedings to be considered in whichever of the following ways appears to the Secretary of State to be most appropriate—
- (a) at a local inquiry;
 - (b) at a hearing;
 - (c) on the basis of representations in writing.
- (3) The Secretary of State must make a determination under subsection (1) in respect of proceedings to which this section applies before the end of the prescribed period.

- (4) A determination under subsection (1) may be varied by a subsequent determination under that subsection at any time before the proceedings are determined.
- (5) The Secretary of State must notify the appellant or applicant (as the case may be) and the hazardous substances authority of any determination made under subsection (1).
- (6) The Secretary of State must publish the criteria that are to be applied in making determinations under subsection (1).
- (7) This section applies to—
- (a) an application referred to the Secretary of State under section 20 instead of being dealt with by a hazardous substances authority in England;
 - (b) an appeal under section 21 against a decision of a hazardous substances authority in England.
- (8) The Secretary of State may by order amend subsection (7) to—
- (a) add proceedings under this Act to, or remove proceedings under this Act from, the list of proceedings to which this section applies, or
 - (b) otherwise modify the descriptions of proceedings under this Act to which this section applies.
- (9) An order under subsection (8) may—
- (a) contain incidental, supplementary, consequential, transitional and transitory provision and savings;
 - (b) amend, repeal or revoke any provision made by or under this Act or by or under any other Act.
- (10) The power to make an order under subsection (8) is exercisable by statutory instrument.
- (11) No order may be made under subsection (8) unless a draft of the instrument containing the order has been laid before, and approved by resolution of, each House of Parliament.”

(4) Schedule 10 (further provisions as to the procedure for certain proceedings) has effect.

Commencement

Pt 9 c. 2 s. 196(1)-(4): November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29 s.241(2); April 6, 2009 in relation to England and Wales for purposes specified in SI 2009/400 art.3(j) subject to savings provision specified in SI 2009/400 art.6(2); not yet in force otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(8); SI 2009/400 art. 3(j), art. 6(2))

Extent

Pt 9 c. 2 s. 196(1)-(4): United Kingdom

Appeals

 Partially In Force

197 Appeals: miscellaneous amendments


Schedule 11 (appeals: miscellaneous amendments) has effect.

Commencement

Pt 9 c. 2 s. 197: November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power; April 6, 2009 in relation to England; not yet in force otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(3); 2008 c. 29 Pt 12 s. 241(4)(a); SI 2009/400 art. 5(d))

Extent

Pt 9 c. 2 s. 197: United Kingdom

 Partially In Force

198 Appeals relating to old mining permissions

(1) Schedule 6 to TCPA 1990 (determination of certain appeals by person appointed by Secretary of State) is amended as set out in subsections (2) and (3).

(2) In paragraph 1—

- (a) in sub-paragraph (1) after “208” insert “of this Act, paragraph 5 of Schedule 2 to the Planning and Compensation Act 1991”, and
- (b) in sub-paragraph (4) for “any instrument made under it” substitute “any other Act or any instrument made under this Act or any other Act”.

(3) In paragraph 2—

(a) after sub-paragraph (1)(d) insert—

“(e) in relation to an appeal under paragraph 5 of Schedule 2 to the Planning and Compensation Act 1991, as the Secretary of State has under paragraph 6(1) and (3) of that Schedule.”

, and

(b) in sub-paragraph (2) after “208(5)” insert “of this Act and paragraph 6(2) of Schedule 2 to the Planning and Compensation Act 1991”.

(4) In paragraph 5 of Schedule 2 to the Planning and Compensation Act 1991 (c. 34) (registration of old mining permissions: right of appeal) after sub-paragraph (8) insert—

“(9) Schedule 6 to the principal Act (determination of appeals by persons appointed by Secretary of State) applies to appeals under this paragraph.”


Commencement

Pt 9 c. 2 s. 198(1)-(4): April 6, 2009 in relation to England; not yet in force otherwise (2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(a); SI 2009/400 art. 5(e))

Extent

Pt 9 c. 2 s. 198(1)-(4): United Kingdom

Fees

 Partially In Force

199 Fees for planning applications

For section 303 of TCPA 1990 substitute—

“303 Fees for planning applications etc.

(1) The appropriate authority may by regulations make provision for the payment of a fee or charge to a local planning authority in respect of—

- (a) the performance by the local planning authority of any function they have;
- (b) anything done by them which is calculated to facilitate or is conducive or incidental to the performance of any such function.

(2) The appropriate authority may by regulations make provision for the payment of a fee to the appropriate authority or the local planning authority (or of fees to both the appropriate authority and the local planning authority) in respect of any application for planning permission deemed to be made under section 177(5).

(3) The appropriate authority may by regulations make provision for the payment of a fee to the appropriate authority in respect of any application for planning permission which is deemed to be made to the appropriate authority under—

- (a) any provision of this Act other than section 177(5), or
- (b) any order or regulations made under this Act.

(4) The appropriate authority may by regulations make provision for the payment of a fee to the appropriate authority in respect of an application for planning permission made under section 293A (urgent Crown development).

(5) Regulations under this section may in particular—

- (a) make provision as to when a fee or charge payable under the regulations is to be paid;
- (b) make provision as to who is to pay a fee or charge payable under the regulations;
- (c) make provision as to how a fee or charge payable under the regulations is to be calculated (including who is to make the calculation);
- (d) prescribe circumstances in which a fee or charge payable under the regulations is to be remitted or refunded (wholly or in part);
- (e) prescribe circumstances in which no fee or charge is to be paid;
- (f) make provision as to the effect of paying or failing to pay a fee or charge in accordance with the regulations;
- (g) prescribe circumstances in which a fee or charge payable under the regulations to one local planning authority is to be transferred to another local planning authority.

(6) Regulations under this section may—

- (a) contain incidental, supplementary, consequential, transitional and transitory provision and savings;
- (b) in the case of regulations made by virtue of subsection (5)(f) or paragraph (a) of this subsection, amend, repeal or revoke any provision made by or under this Act or by or under any other Act.


- (7) In this section “the appropriate authority” means—
- (a) the Secretary of State in relation to England;
 - (b) the Welsh Ministers in relation to Wales.
- (8) No regulations shall be made under this section unless a draft of the regulations has been laid before and approved by resolution of—
- (a) each House of Parliament, in the case of regulations made by the Secretary of State;
 - (b) the National Assembly for Wales, in the case of regulations made by the Welsh Ministers.
- (9) Section 333(3) does not apply in relation to regulations made under this section by the Welsh Ministers.
- (10) If a local planning authority calculate the amount of fees or charges in pursuance of provision made by regulations under subsection (1) the authority must secure that, taking one financial year with another, the income from the fees or charges does not exceed the cost of performing the function or doing the thing (as the case may be).
- (11) A financial year is the period of 12 months beginning with 1 April.”

Commencement

Pt 9 c. 2 s. 199: November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29 s.241(2); April 6, 2009 in relation to England; not yet in force otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(a); SI 2009/400 art. 5(f))

Extent

Pt 9 c. 2 s. 199: United Kingdom

 Partially In Force

200 Fees for appeals

In TCPA 1990 after section 303 insert—

“303ZA Fees for appeals

- (1) The appropriate authority may by regulations make provision for the payment of a fee to the appropriate authority in respect of an appeal to the appropriate authority under any provision made by or under—
- (a) this Act;
 - (b) the Planning (Listed Buildings and Conservation Areas) Act 1990.
- (2) The regulations may in particular—
- (a) make provision as to when a fee payable under the regulations is to be paid;
 - (b) make provision as to how such a fee is to be calculated (including who is to make the calculation);
 - (c) prescribe circumstances in which such a fee is to be remitted or refunded (wholly or in part);

- (d) prescribe circumstances in which no fee is to be paid;
 - (e) make provision as to the effect of paying or failing to pay a fee in accordance with the regulations.
- (3) A fee payable to the appropriate authority under regulations made under this section is payable—
- (a) by the appellant;
 - (b) in addition to any fee payable to the appropriate authority under regulations made under section 303.
- (4) Regulations under this section may—
- (a) contain incidental, supplementary, consequential, transitional and transitory provision and savings;
 - (b) in the case of regulations made by virtue of subsection (2)(e) or paragraph (a) of this subsection, amend, repeal or revoke any provision made by or under this Act or by or under any other Act.
- (5) In this section “the appropriate authority” means—
- (a) the Secretary of State in relation to England;
 - (b) the Welsh Ministers in relation to Wales.
- (6) No regulations shall be made under this section unless a draft of the regulations has been laid before and approved by resolution of—
- (a) each House of Parliament, in the case of regulations made by the Secretary of State;
 - (b) the National Assembly for Wales, in the case of regulations made by the Welsh Ministers.
- (7) Section 333(3) does not apply in relation to regulations made under this section by the Welsh Ministers.”

Commencement

Pt 9 c. 2 s. 200: November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29 s.241(2); October 1, 2009 in relation to England; not yet in force otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(a); SI 2009/2260 art. 4)

Extent

Pt 9 c. 2 s. 200: United Kingdom

Meaning of “local authority”

Law In Force

201 Meaning of “local authority” in planning Acts

In section 336(1) of TCPA 1990 (interpretation) in the definition of “local authority” after paragraph (aa) insert—

“(ab) the London Fire and Emergency Planning Authority;”.

Commencement

Pt 9 c. 2 s. 201: January 26, 2009 (2008 c. 29 Pt 12 s. 241(6))

Extent

Pt 9 c. 2 s. 201: United Kingdom

PART 10**WALES**

✔ Law In Force

202 Powers of National Assembly for Wales

In Part 1 of Schedule 5 to the Government of Wales Act 2006 (c. 32) (Assembly measures: matters within Assembly's legislative competence), after the heading “*Field 18: town and country planning*” insert—

Matter 18.1

Provision for and in connection with—

- (a) plans of the Welsh Ministers in relation to the development and use of land in Wales, and
- (b) removing requirements for any such plans.

This does not include provision about the status to be given to any such plans in connection with the decision on an application for an order granting development consent under the Planning Act 2008.

Matter 18.2

Provision for and in connection with the review by local planning authorities of matters which may be expected to affect—

- (a) the development of the authorities' areas, or
- (b) the planning of the development of the authorities' areas.

Matter 18.3

Provision for and in connection with—

- (a) plans of local planning authorities in relation to the development and use of land in their areas, and
- (b) removing requirements for any such plans.

This does not include provision about the status to be given to any such plans in connection with the decision on an application for an order granting development consent under the Planning Act 2008.

Interpretation of this field

In this field—

“local planning authority” in relation to an area means—

- (a) a National Park authority, in relation to a National Park in Wales;
- (b) a county council in Wales or a county borough council, in any other case;

“Wales” has the meaning given by Schedule 1 to the Interpretation Act 1978.”

Commencement

Pt 10 s. 202: January 26, 2009 (2008 c. 29 Pt 12 s. 241(6))

Extent

Pt 10 s. 202: United Kingdom

Law In Force

203 Power to make provision in relation to Wales

- (1) The Welsh Ministers may by order make provision—
- (a) which has an effect in relation to Wales that corresponds to the effect an England-only provision has in relation to England;
 - (b) conferring power on the Welsh Ministers to do anything in relation to Wales that corresponds to anything the Secretary of State has power to do by virtue of an England-only provision.
- (2) The England-only provisions are—
- section 184 (correction of errors in decisions);
 - section 189 (compensation where development order or local development order withdrawn);
 - section 190 (power to make non-material changes to planning permission);
 - section 194(1) and Schedule 9 (use of land: power to override easements and other rights);
 - section 195 (applications and appeals by statutory undertakers);
 - section 196 and Schedule 10 (determination of procedure for certain proceedings);
 - paragraphs 2(3) and (4) and 3(3) of Schedule 7.
- (3) Before an England-only provision is brought into force—
- (a) the reference in subsection (1)(a) to the effect an England-only provision has is to be read as a reference to the effect the provision would have, if it were in force;
 - (b) the reference in subsection (1)(b) to anything the Secretary of State has power to do by virtue of an England-only provision is to be read as a reference to anything the Secretary of State would have power to do by virtue of the provision, if it were in force.
- (4) The Welsh Ministers may by order make provision for the purpose of reversing the effect of any provision made in exercise of the power conferred by subsection (1).
- (5) The Secretary of State may make an order in consequence of an order under subsection (1) for the purpose of ensuring that an England-only provision continues to have (or will when brought into force have) the effect in relation to England that it would have had if the order under subsection (1) had not been made.
- (6) An order under this section may amend, repeal, revoke or otherwise modify a provision of—
- (a) an Act, or
 - (b) an instrument made under an Act.
- (7) The powers of the Welsh Ministers to make orders under this section are exercisable by statutory instrument.
- (8) Those powers include—

- (a) power to make different provision for different purposes (including different areas);
- (b) power to make incidental, consequential, supplementary, transitional or transitory provision or savings.

(9) No order may be made by the Welsh Ministers under this section unless a draft of the instrument containing the order has been laid before, and approved by resolution of, the National Assembly for Wales.

Commencement

Pt 10 s. 203(1)-(9): January 26, 2009 (2008 c. 29 Pt 12 s. 241(6))

Extent

Pt 10 s. 203(1)-(9): England, Wales

Law In Force

204 Wales: transitional provision in relation to blighted land

(1) During the transitional period the repeal by PCPA 2004 of paragraphs 1 to 4 of Schedule 13 to TCPA 1990 in relation to Wales is subject to subsection (2).

(2) That repeal does not affect anything which is required or permitted to be done for the purposes of Chapter 2 of Part 6 of TCPA 1990 (interests affected by planning proposals: blight) in relation to land falling within any of paragraphs 1, 2, 3 and 4 of Schedule 13 to TCPA 1990.

(3) The transitional period is the period during which—

(a) in the case of land falling within paragraph 1 of Schedule 13 to TCPA 1990, a structure plan continues to be or to be comprised in the development plan for an area in Wales by virtue of Part 3 of Schedule 5 to the Local Government (Wales) Act 1994 (c. 19) and Part 1A of Schedule 2 to TCPA 1990;

(b) in the case of land falling within paragraph 2 of Schedule 13 to TCPA 1990, a local plan continues to be or to be comprised in the development plan for an area in Wales by virtue of Part 3 of Schedule 5 to the Local Government (Wales) Act 1994 and Part 1A of Schedule 2 to TCPA 1990;

(c) in the case of land falling within paragraphs 3 or 4 of Schedule 13 to TCPA 1990, a unitary development plan continues to form part of the development plan for an area in Wales by virtue of article 3(1) and (2) of the PCPA No.6 Order 2005.

(4) In this section “PCPA No.6 Order 2005” means the Planning and Compulsory Purchase Act 2004 (Commencement No.6, Transitional Provisions and Savings) Order 2005 (S.I. 2005/2847).

(5) This section is deemed to have come into force on the same day as the repeal of paragraphs 1 to 4 of Schedule 13 to TCPA 1990 came into force in relation to Wales (see Article 2(e) and (g) of the PCPA No.6 Order 2005).

Commencement

Pt 10 s. 204(1)-(5): October 15, 2005 (2008 c. 29 Pt 12 s. 241(7))

Extent

Pt 10 s. 204(1)-(5): England, Wales

PART 11**COMMUNITY INFRASTRUCTURE LEVY**

✔ Law In Force

! Amendment(s) Pending

205 The levy

(1) The Secretary of State may with the consent of the Treasury make regulations providing for the imposition of a charge to be known as Community Infrastructure Levy (CIL).

(2) In making the regulations the Secretary of State shall aim to ensure that the overall purpose of CIL is to ensure that costs incurred in providing infrastructure to support the development of an area can be funded (wholly or partly) by owners or developers of land.

(3) The Table describes the provisions of this Part.

<i>Section</i>	<i>Topic</i>
Section 206	The charge
Section 207	Joint committees
Sections 208 and 209	Liability
Section 210	Charities
Section 211	Amount
Sections 212 to 214	Charging schedule
Section 215	Appeals
Section 216	Application
Section 217	Collection
Section 218	Enforcement
Section 219	Compensation
Section 220	Procedure
Section 221	Secretary of State
Section 222	CIL regulations and orders: general
Section 223	Relationship with other powers
Section 224	Amendments
Section 225	Repeals

(4) In those sections regulations under this section are referred to as “CIL regulations”.

Amendments Pending

Pt 11 s. 205(2): words substituted by Localism Act 2011 c. 20 Pt 6 c. 2 s. 115(2)(a) (date to be appointed)

Pt 11 s. 205(2): words inserted by Localism Act 2011 c. 20 Pt 6 c. 2 s. 115(2)(b) (date to be appointed)


Pt 11 s. 205(3): words substituted by Localism Act 2011 c. 20 Pt 6 c. 2 s. 115(3) (date to be appointed)

Commencement

Pt 11 s. 205(1)-(4): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(b))

Extent

Pt 11 s. 205(1)-(4): England, Wales

 Partially In Force

 Amendment(s) Pending

206 The charge

(1) A charging authority may charge CIL in respect of development of land in its area.

(2) A local planning authority is the charging authority for its area.

(3) But—

(a) the Mayor of London is a charging authority for Greater London (in addition to the local planning authorities),

(b) the Broads Authority is the only charging authority for the Broads (within the meaning given by section 2(3) of the Norfolk and Suffolk Broads Act 1988 (c. 4)), and

(c) the Council of the Isles of Scilly is the only charging authority for the Isles of Scilly.

(4) CIL regulations may provide for any of the following to be the charging authority for an area, or in the case of Greater London one of the charging authorities, in place of the charging authority under subsection (2), (3)(b) or (c)—

(a) a county council,

(b) a county borough council,

(c) a district council,

(d) a metropolitan district council, and

(e) a London borough council (within the meaning of TCPA 1990).

(5) In this section, “local planning authority” has the meaning given by—

(a) section 37 of PCPA 2004 in relation to England, and

(b) section 78 of PCPA 2004 in relation to Wales.

Amendments Pending

Pt 11 s. 206(5)(a): words inserted by Localism Act 2011 c. 20 Sch. 22 para. 61(2) (date to be appointed)

Pt 11 s. 206(6): added by Localism Act 2011 c. 20 Sch. 22 para. 61(3) (date to be appointed)

Commencement

Pt 11 s. 206(1)-(5)(b): April 6, 2009 for purposes specified in SI 2009/400 art.3(k); April 6, 2010 in relation to England and Wales; not yet in force otherwise (2008 c. 29 Pt 12 s. 241(8); SI 2009/400 art. 3(k); SI 2010/566 art. 3(c))

Extent

Pt 11 s. 206(1)-(5)(b): England, Wales

✔ Law In Force

207 Joint committees

(1) This section applies if a joint committee that includes a charging authority is established under section 29 of PCPA 2004.

(2) CIL regulations may provide that the joint committee is to exercise specified functions, in respect of the area specified in the agreement under section 29(1) of PCPA 2004, on behalf of the charging authority.

(3) The regulations may make provision corresponding to provisions relating to joint committees in Part 6 of the Local Government Act 1972 (c. 70) in respect of the discharge of the specified functions.

Commencement

Pt 11 s. 207(1)-(3): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(b))

Extent

Pt 11 s. 207(1)-(3): England, Wales

✔ Law In Force

208 Liability

(1) Where liability to CIL would arise in respect of proposed development (in accordance with provision made by a charging authority under and by virtue of section 206 and CIL regulations) a person may assume liability to pay the levy.

(2) An assumption of liability—

(a) may be made before development commences, and

(b) must be made in accordance with any provision of CIL regulations about the procedure for assuming liability.

(3) A person who assumes liability for CIL before the commencement of development becomes liable when development is commenced in reliance on planning permission.

(4) CIL regulations must make provision for an owner or developer of land to be liable for CIL where development is commenced in reliance on planning permission if—

(a) nobody has assumed liability in accordance with the regulations, or

(b) other specified circumstances arise (such as the insolvency or withdrawal of a person who has assumed liability).

(5) CIL regulations may make provision about—

(a) joint liability (with or without several liability);

(b) liability of partnerships;

- (c) assumption of partial liability (and subsection (4)(a) applies where liability has not been wholly assumed);
- (d) apportionment of liability (which may—
 - (i) include provision for referral to a specified person or body for determination, and
 - (ii) include provision for appeals);
- (e) withdrawal of assumption of liability;
- (f) cancellation of assumption of liability by a charging authority (in which case subsection (4)(a) applies);
- (g) transfer of liability (whether before or after development commences and whether or not liability has been assumed).

(6) The amount of any liability for CIL is to be calculated by reference to the time when planning permission first permits the development as a result of which the levy becomes payable.

(7) CIL regulations may make provision for liability for CIL to arise where development which requires planning permission is commenced without it (and subsection (6) is subject to this subsection).

- (8) CIL regulations may provide for liability to CIL to arise in respect of a development where—
- (a) the development was exempt from CIL, or subject to a reduced rate of CIL charge, and
 - (b) the description or purpose of the development changes.

Commencement

Pt 11 s. 208(1)-(8)(b): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(b))

Extent

Pt 11 s. 208(1)-(8)(b): England, Wales

Law In Force

209 Liability: interpretation of key terms

- (1) In section 208 “development” means—
- (a) anything done by way of or for the purpose of the creation of a new building, or
 - (b) anything done to or in respect of an existing building.
- (2) CIL regulations may provide for—
- (a) works or changes in use of a specified kind not to be treated as development;
 - (b) the creation of, or anything done to or in respect of, a structure of a specified kind to be treated as development.
- (3) CIL regulations must include provision for determining when development is treated as commencing.
- (4) Regulations under subsection (3) may, in particular, provide for development to be treated as commencing when some specified activity or event is undertaken or occurs, where the activity or event—
- (a) is not development within the meaning of subsection (1), but

- (b) has a specified kind of connection with a development within the meaning of that subsection.
- (5) CIL regulations must define planning permission (which may include planning permission within the meaning of TCPA 1990 and any other kind of permission or consent (however called, and whether general or specific)).
- (6) CIL regulations must include provision for determining the time at which planning permission is treated as first permitting development; and the regulations may, in particular, make provision—
- (a) about outline planning permission;
 - (b) for permission to be treated as having been given at a particular time in the case of general consents.
- (7) For the purposes of section 208—
- (a) “owner” of land means a person who owns an interest in the land, and
 - (b) “developer” means a person who is wholly or partly responsible for carrying out a development.
- (8) CIL regulations may make provision for a person to be or not to be treated as an owner or developer of land in specified circumstances.

Commencement

Pt 11 s. 209(1)-(8): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(b))

Extent

Pt 11 s. 209(1)-(8): England, Wales

Law In Force

210 Charities

- (1) CIL regulations must provide for an exemption from liability to pay CIL in respect of a development where—
- (a) the person who would otherwise be liable to pay CIL in respect of the development is a relevant charity in England and Wales, and
 - (b) the building or structure in respect of which CIL liability would otherwise arise is to be used wholly or mainly for a charitable purpose of the charity within the meaning of section 2 of the Charities Act 2006 (c. 50).
- (2) CIL regulations may—
- (a) provide for an exemption from liability to pay CIL where the person who would otherwise be liable to pay CIL in respect of the development is an institution established for a charitable purpose;
 - (b) require charging authorities to make arrangements for an exemption from, or reduction in, liability to pay CIL where the person who would otherwise be liable to pay CIL in respect of the development is an institution established for a charitable purpose.
- (3) Regulations under subsection (1) or (2) may provide that an exemption or reduction does not apply if specified conditions are satisfied.

(4) For the purposes of subsection (1), a relevant charity in England and Wales is an institution which—

- (a) is registered in the register of charities kept by the Charity Commission under section 3 of the Charities Act 1993 (c. 10), or
- (b) is a charity within the meaning of section 1(1) of the Charities Act 2006 but is not required to be registered in the register kept under section 3 of the Charities Act 1993.

(5) In subsection (2), a charitable purpose is a purpose falling within section 2(2) of the Charities Act 2006; but CIL regulations may provide for an institution of a specified kind to be, or not to be, treated as an institution established for a charitable purpose.

Commencement

Pt 11 s. 210(1)-(5): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(b))

Extent

Pt 11 s. 210(1)-(5): England, Wales

✔ Law In Force

! Amendment(s) Pending

211 Amount

(1) A charging authority which proposes to charge CIL must issue a document (a “charging schedule”) setting rates, or other criteria, by reference to which the amount of CIL chargeable in respect of development in its area is to be determined.

(2) A charging authority, in setting rates or other criteria, must have regard, to the extent and in the manner specified by CIL regulations, to—

- (a) actual and expected costs of infrastructure (whether by reference to lists prepared by virtue of section 216(5)(a) or otherwise);
- (b) matters specified by CIL regulations relating to the economic viability of development (which may include, in particular, actual or potential economic effects of planning permission or of the imposition of CIL);
- (c) other actual and expected sources of funding for infrastructure.

(3) CIL regulations may make other provision about setting rates or other criteria.

(4) The regulations may, in particular, permit or require charging authorities in setting rates or other criteria—

- (a) to have regard, to the extent and in the manner specified by the regulations, to actual or expected administrative expenses in connection with CIL;
- (b) to have regard, to the extent and in the manner specified by the regulations, to values used or documents produced for other statutory purposes;
- (c) to integrate the process, to the extent and in the manner specified by the regulations, with processes undertaken for other statutory purposes;
- (d) to produce charging schedules having effect in relation to specified periods (subject to revision).

(5) The regulations may permit or require charging schedules to adopt specified methods of calculation.

(6) In particular, the regulations may—

- (a) permit or require charging schedules to operate by reference to descriptions or purposes of development;
- (b) permit or require charging schedules to operate by reference to any measurement of the amount or nature of development (whether by reference to measurements of floor space, to numbers or intended uses of buildings, to numbers or intended uses of units within buildings, to allocation of space within buildings or units, to values or expected values or in any other way);
- (c) permit or require charging schedules to operate by reference to the nature or existing use of the place where development is undertaken;
- (d) permit or require charging schedules to operate by reference to an index used for determining a rate of inflation;
- (e) permit or require charging schedules to operate by reference to values used or documents produced for other statutory purposes;
- (f) provide, or permit or require provision, for differential rates, which may include provision for supplementary charges, a nil rate, increased rates or reductions.

(7) A charging authority may consult, or take other steps, in connection with the preparation of a charging schedule (subject to CIL regulations).

(8) The regulations may require a charging authority to provide in specified circumstances an estimate of the amount of CIL chargeable in respect of development of land.

(9) A charging authority may revise a charging schedule.

(10) This section and sections 212, 213 and 214(1) and (2) apply to the revision of a charging schedule as they apply to the preparation of a charging schedule.

Amendments Pending

Pt 11 s. 211(4)(aa): added by Localism Act 2011 c. 20 Pt 6 c. 2 s. 115(4) (date to be appointed)

Pt 11 s. 211(4)(ab): added by Localism Act 2011 c. 20 Pt 6 c. 2 s. 115(4) (date to be appointed)

Pt 11 s. 211(7A): added by Localism Act 2011 c. 20 Pt 6 c. 2 s. 114(2) (November 16, 2011: insertion does not apply in relation to cases where an examiner submits recommendations to a charging authority before the coming into force of 2011 c.20 s.114, but subject to that the cases in relation to which this amendment applies include a case in which steps in relation to the charging schedule have been taken before then)

Pt 11 s. 211(7B): added by Localism Act 2011 c. 20 Pt 6 c. 2 s. 114(2) (November 16, 2011: insertion does not apply in relation to cases where an examiner submits recommendations to a charging authority before the coming into force of 2011 c.20 s.114, but subject to that the cases in relation to which this amendment applies include a case in which steps in relation to the charging schedule have been taken before then)

Commencement

Pt 11 s. 211(1)-(6)(f), (8)-(10): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(b))

Pt 11 s. 211(7): April 6, 2009 (2008 c. 29 Pt 12 s. 241(8); SI 2009/400 art. 3(1))

Extent

Pt 11 s. 211(1)-(10): England, Wales

✔ Law In Force

! Amendment(s) Pending

212 Charging schedule: examination

- (1) Before approving a charging schedule a charging authority must appoint a person (“the examiner”) to examine a draft.
- (2) The charging authority must appoint someone who, in the opinion of the authority—
 - (a) is independent of the charging authority, and
 - (b) has appropriate qualifications and experience.
- (3) The charging authority may, with the agreement of the examiner, appoint persons to assist the examiner.
- (4) The draft submitted to the examiner must be accompanied by a declaration (approved under subsection (5) or (6))—
 - (a) that the charging authority has complied with the requirements of this Part and CIL regulations (including the requirements to have regard to the matters listed in section 211(2) and (4)),
 - (b) that the charging authority has used appropriate available evidence to inform the draft charging schedule, and
 - (c) dealing with any other matter prescribed by CIL regulations.
- (5) A charging authority (other than the Mayor of London) must approve the declaration—
 - (a) at a meeting of the authority, and
 - (b) by a majority of votes of members present.
- (6) The Mayor of London must approve the declaration personally.
- (7) The examiner must consider the matters listed in subsection (4) and—
 - (a) recommend that the draft charging schedule be approved, rejected or approved with specified modifications, and
 - (b) give reasons for the recommendations.
- (8) The charging authority must publish the recommendations and reasons.
- (9) CIL regulations must require a charging authority to allow anyone who makes representations about a draft charging schedule to be heard by the examiner; and the regulations may make provision about timing and procedure.
- (10) CIL regulations may make provision for examiners to reconsider their decisions with a view to correcting errors (before or after the approval of a charging schedule).
- (11) The charging authority may withdraw a draft.

Amendments Pending

Pt 11 s. 212(4): s.212(4) and (7) substituted for s.212(4)-(7) by Localism Act 2011 c. 20 Pt 6 c. 2 s. 114(3) (November 16, 2011: substitution does not apply in relation to cases where an examiner submits recommendations to a charging authority before the coming into force of 2011 c.20 s.114, but subject to that the cases in relation to which this amendment applies include a case in which steps in relation to the charging schedule have been taken before then)

Pt 11 s. 212(5): s.212(4) and (7) substituted for s.212(4)-(7) by Localism Act 2011 c. 20 Pt 6 c. 2 s. 114(3) (November 16, 2011: substitution does not apply in relation to cases where an examiner submits recommendations to a charging authority before the coming into force of 2011 c.20 s.114, but subject to that the cases in relation to which this amendment applies include a case in which steps in relation to the charging schedule have been taken before then)

Pt 11 s. 212(6): s.212(4) and (7) substituted for s.212(4)-(7) by Localism Act 2011 c. 20 Pt 6 c. 2 s. 114(3) (November 16, 2011: substitution does not apply in relation to cases where an examiner submits recommendations to a charging authority before the coming into force of 2011 c.20 s.114, but subject to that the cases in relation to which this amendment applies include a case in which steps in relation to the charging schedule have been taken before then)

Pt 11 s. 212(7): s.212(4) and (7) substituted for s.212(4)-(7) by Localism Act 2011 c. 20 Pt 6 c. 2 s. 114(3) (November 16, 2011: substitution does not apply in relation to cases where an examiner submits recommendations to a charging authority before the coming into force of 2011 c.20 s.114, but subject to that the cases in relation to which this amendment applies include a case in which steps in relation to the charging schedule have been taken before then)

Commencement

Pt 11 s. 212(1)-(11): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(b))

Extent

Pt 11 s. 212(1)-(11): England, Wales

✔ Law In Force

! Amendment(s) Pending

213 Charging schedule: approval

- (1) A charging authority may approve a charging schedule only—
 - (a) if the examiner under section 212 has recommended approval, and
 - (b) subject to any modifications recommended by the examiner.
- (2) A charging authority (other than the Mayor of London) must approve a charging schedule—
 - (a) at a meeting of the authority, and
 - (b) by a majority of votes of members present.
- (3) The Mayor of London must approve a charging schedule personally.
- (4) CIL regulations may make provision for the correction of errors in a charging schedule after approval.

Amendments Pending

Pt 11 s. 213(1): s.213(1)-(1D) substituted for s.213(1) by Localism Act 2011 c. 20 Pt 6 c. 2 s. 114(5) (November 16, 2011: substitution does not apply in relation to cases where an examiner submits recommendations to a charging authority before the coming into force of 2011 c.20 s.114, but subject to that the cases in relation to which this amendment applies include a case in which steps in relation to the charging schedule have been taken before then)

Pt 11 s. 213(3A): added by Localism Act 2011 c. 20 Pt 6 c. 2 s. 114(6) (November 16, 2011: insertion does not apply in relation to cases where an examiner submits recommendations to a charging authority before the coming into force of 2011 c.20 s.114, but subject to that the cases in relation to which this amendment applies include a case in which steps in relation to the charging schedule have been taken before then)

Pt 11 s. 213(3C): added by Localism Act 2011 c. 20 Pt 6 c. 2 s. 114(6) (November 16, 2011: insertion does not apply in relation to cases where an examiner submits recommendations to a charging authority before the coming into force of 2011 c.20 s.114, but subject to that the cases in relation to which this amendment applies include a case in which steps in relation to the charging schedule have been taken before then)

Pt 11 s. 213(4): added by Localism Act 2011 c. 20 Pt 6 c. 2 s. 114(7) (November 16, 2011: insertion does not apply in relation to cases where an examiner submits recommendations to a charging authority before the coming into force

of 2011 c.20 s.114, but subject to that the cases in relation to which this amendment applies include a case in which steps in relation to the charging schedule have been taken before then)

Commencement

Pt 11 s. 213(1)-(4): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(b))

Extent

Pt 11 s. 213(1)-(4): England, Wales

Law In Force

214 Charging schedule: effect

- (1) A charging schedule approved under section 213 may not take effect before it is published by the charging authority.
 - (2) CIL regulations may make provision about publication of a charging schedule after approval.
 - (3) A charging authority may determine that a charging schedule is to cease to have effect.
 - (4) CIL regulations may provide that a charging authority may only make a determination under subsection (3) in circumstances specified by the regulations.
 - (5) A charging authority (other than the Mayor of London) must make a determination under subsection (3)—
 - (a) at a meeting of the authority, and
 - (b) by a majority of votes of members present.
 - (6) The Mayor of London must make a determination under subsection (3) personally.
-

Commencement

Pt 11 s. 214(1)-(6): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(b))

Extent

Pt 11 s. 214(1)-(6): England, Wales

Law In Force

215 Appeals

- (1) CIL regulations must provide for a right of appeal on a question of fact in relation to the application of methods for calculating CIL to a person appointed by the Commissioners for Her Majesty's Revenue and Customs.
- (2) The regulations must require that the person appointed under subsection (1) is—
 - (a) a valuation officer appointed under section 61 of the Local Government Finance Act 1988 (c. 41), or
 - (b) a district valuer within the meaning of section 622 of the Housing Act 1985 (c. 68).
- (3) Regulations under this section or section 208(5)(d)(ii) may, in particular, make provision about—
 - (a) the period within which the right of appeal may be exercised,

- (b) the procedure on an appeal, and
- (c) the payment of fees, and award of costs, in relation to an appeal.

(4) In any proceedings for judicial review of a decision on an appeal, the defendant shall be the Commissioners for Her Majesty's Revenue and Customs and not the person appointed under subsection (1).

Commencement

Pt 11 s. 215(1)-(4): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(b))

Extent

Pt 11 s. 215(1)-(4): England, Wales

✔ Law In Force

! Amendment(s) Pending

216 Application

(1) Subject to section 219(5), CIL regulations must require the authority that charges CIL to apply it, or cause it to be applied, to funding infrastructure.

(2) In subsection (1) “infrastructure” includes—

- (a) roads and other transport facilities,
- (b) flood defences,
- (c) schools and other educational facilities,
- (d) medical facilities,
- (e) sporting and recreational facilities, [and]¹
- (f) open spaces [.]²
- (g) [...] ³

(3) The regulations may amend subsection (2) so as to—

- (a) add, remove or vary an entry in the list of matters included within the meaning of “infrastructure”;
- (b) list matters excluded from the meaning of “infrastructure”.

(4) The regulations may specify—

- (a) works, installations and other facilities that are to be, or not to be, funded by CIL,
- (b) criteria for determining the areas in relation to which infrastructure may be funded by CIL in respect of land, and
- (c) what is to be, or not to be, treated as funding.

(5) The regulations may—

- (a) require charging authorities to prepare and publish a list of projects that are to be, or may be, wholly or partly funded by CIL;
- (b) include provision about the procedure to be followed in preparing a list (which may include provision for consultation, for the appointment of an independent person or a combination);
- (c) include provision about the circumstances in which a charging authority may and may not apply CIL to projects not included on the list.

- (6) In making provision about funding the regulations may, in particular—
- (a) permit CIL to be used to reimburse expenditure already incurred;
 - (b) permit CIL to be reserved for expenditure that may be incurred on future projects;
 - (c) permit CIL to be applied (either generally or subject to limits set by or determined in accordance with the regulations) to administrative expenses in connection with infrastructure or in connection with CIL;
 - (d) include provision for the giving of loans, guarantees or indemnities;
 - (e) make provision about the application of CIL where the projects to which it was to be applied no longer require funding.
- (7) The regulations may—
- (a) require a charging authority to account separately, and in accordance with the regulations, for CIL received or due;
 - (b) require a charging authority to monitor the use made and to be made of CIL in its area;
 - (c) require a charging authority to report on actual or expected charging, collection and application of CIL;
 - (d) permit a charging authority to cause money to be applied in respect of things done outside its area;
 - (e) permit a charging authority or other body to spend money;
 - (f) permit a charging authority to pass money to another body (and in paragraphs (a) to (e) a reference to a charging authority includes a reference to a body to which a charging authority passes money in reliance on this paragraph).

Notes

- ¹ Word inserted by Community Infrastructure Levy Regulations 2010/948 Pt 7 reg.63(2) (April 6, 2010)
- ² Word substituted by Community Infrastructure Levy Regulations 2010/948 Pt 7 reg.63(3) (April 6, 2010)
- ³ Repealed by Community Infrastructure Levy Regulations 2010/948 Pt 7 reg.63(4) (April 6, 2010)

Amendments Pending

- Pt 11 s. 216(1): word substituted by Localism Act 2011 c. 20 Pt 6 c. 2 s. 115(5)(a)(i) (date to be appointed)
- Pt 11 s. 216(1): words substituted by Localism Act 2011 c. 20 Pt 6 c. 2 s. 115(5)(a)(ii) (date to be appointed)
- Pt 11 s. 216(2): words substituted by Localism Act 2011 c. 20 Pt 6 c. 2 s. 115(5)(b) (date to be appointed)
- Pt 11 s. 216(4)(a): words substituted by Localism Act 2011 c. 20 Pt 6 c. 2 s. 115(5)(c) (date to be appointed)
- Pt 11 s. 216(4)(aa): added by Localism Act 2011 c. 20 Pt 6 c. 2 s. 115(5)(d) (date to be appointed)
- Pt 11 s. 216(4)(ac): added by Localism Act 2011 c. 20 Pt 6 c. 2 s. 115(5)(d) (date to be appointed)
- Pt 11 s. 216(4)(b): words substituted by Localism Act 2011 c. 20 Pt 6 c. 2 s. 115(5)(e) (date to be appointed)
- Pt 11 s. 216(5)(a): words substituted by Localism Act 2011 c. 20 Pt 6 c. 2 s. 115(5)(f) (date to be appointed)
- Pt 11 s. 216(5)(c): word substituted by Localism Act 2011 c. 20 Pt 6 c. 2 s. 115(5)(g) (date to be appointed)
- Pt 11 s. 216(6)(b): words substituted by Localism Act 2011 c. 20 Pt 6 c. 2 s. 115(5)(h) (date to be appointed)
- Pt 11 s. 216(6)(c): words inserted by Localism Act 2011 c. 20 Pt 6 c. 2 s. 115(5)(i) (date to be appointed)
- Pt 11 s. 216(6)(e): words substituted by Localism Act 2011 c. 20 Pt 6 c. 2 s. 115(5)(j)(i) (date to be appointed)
- Pt 11 s. 216(6)(e): word substituted by Localism Act 2011 c. 20 Pt 6 c. 2 s. 115(5)(j)(ii) (date to be appointed)

Commencement

- Pt 11 s. 216(1)-(7)(f): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(b))

Extent

Pt 11 s. 216(1)-(7)(f): England, Wales

Law In Force

217 Collection

- (1) CIL regulations must include provision about the collection of CIL.
 - (2) The regulations may make provision for payment—
 - (a) on account;
 - (b) by instalments.
 - (3) The regulations may make provision about repayment (with or without interest) in cases of overpayment.
 - (4) The regulations may make provision about payment in forms other than money (such as making land available, carrying out works or providing services).
 - (5) The regulations may permit or require a charging authority or other public authority to collect CIL charged by another authority; and section 216(7)(a) and (c) apply to a collecting authority in respect of collection as to a charging authority.
 - (6) Regulations under this section may replicate or apply (with or without modifications) any enactment relating to the collection of a tax.
 - (7) Regulations under this section may make provision about the source of payments in respect of Crown interests.
-

Commencement

Pt 11 s. 217(1)-(7): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(b))

Extent

Pt 11 s. 217(1)-(7): England, Wales

Law In Force

218 Enforcement

- (1) CIL regulations must include provision about enforcement of CIL.
- (2) The regulations must make provision about the consequences of late payment and failure to pay.
- (3) The regulations may make provision about the consequences of failure to assume liability, to give a notice or to comply with another procedure under CIL regulations in connection with CIL.
- (4) The regulations may, in particular, include provision—
 - (a) for the payment of interest;
 - (b) for the imposition of a penalty or surcharge;
 - (c) for the suspension or cancellation of a decision relating to planning permission;

- (d) enabling an authority to prohibit development pending assumption of liability for CIL or pending payment of CIL;
 - (e) conferring a power of entry onto land;
 - (f) requiring the provision of information;
 - (g) creating a criminal offence (including, in particular, offences relating to evasion or attempted evasion or to the provision of false or misleading information or failure to provide information, and offences relating to the prevention or investigation of other offences created by the regulations);
 - (h) conferring power to prosecute an offence;
 - (i) for enforcement of sums owed (whether by action on a debt, by distraint against goods or in any other way);
 - (j) conferring jurisdiction on a court to grant injunctive or other relief to enforce a provision of the regulations (including a provision included in reliance on this section);
 - (k) for enforcement in the case of death or insolvency of a person liable for CIL.
- (5) CIL regulations may include provision (whether or not in the context of late payment or failure to pay) about registration or notification of actual or potential liability to CIL; and the regulations may include provision—
- (a) for the creation of local land charges;
 - (b) for the registration of local land charges;
 - (c) for enforcement of local land charges (including, in particular, for enforcement—
 - (i) against successive owners, and
 - (ii) by way of sale or other disposal with consent of a court);
 - (d) for making entries in statutory registers;
 - (e) for the cancellation of charges and entries.
- (6) Regulations under this section may—
- (a) replicate or apply (with or without modifications) any enactment relating to the enforcement of a tax;
 - (b) provide for appeals.
- (7) Regulations under this section may provide that any interest, penalty or surcharge payable by virtue of the regulations is to be treated for the purposes of sections 216 to 220 as if it were CIL.
- (8) The regulations providing for a surcharge or penalty must ensure that no surcharge or penalty in respect of an amount of CIL exceeds the higher of—
- (a) 30% of that amount, and
 - (b) £20,000.
- (9) But the regulations may provide for more than one surcharge or penalty to be imposed in relation to a CIL charge.
- (10) The regulations may not authorise entry to a private dwelling without a warrant issued by a justice of the peace.
- (11) Regulations under this section creating a criminal offence may not provide for—
- (a) a maximum fine exceeding £20,000 on summary conviction,
 - (b) a maximum term of imprisonment exceeding 6 months on summary conviction, or
 - (c) a maximum term of imprisonment exceeding 2 years on conviction on indictment.
- (12) The Secretary of State may by order amend subsection (11) to reflect commencement of section 283 of the Criminal Justice Act 2003 (c. 44).

(13) In this Part a reference to administrative expenses in connection with CIL includes a reference to enforcement expenses.

Commencement

Pt 11 s. 218(1)-(13): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(b))

Extent

Pt 11 s. 218(1)-(13): England, Wales

Law In Force

219 Compensation

(1) CIL regulations may require a charging authority or other public authority to pay compensation in respect of loss or damage suffered as a result of enforcement action.

(2) In this section, “enforcement action” means action taken under regulations under section 218, including—

- (a) the suspension or cancellation of a decision relating to planning permission, and
- (b) the prohibition of development pending assumption of liability for CIL or pending payment of CIL.

(3) The regulations shall not require payment of compensation—

- (a) to a person who has failed to satisfy a liability to pay CIL, or
- (b) in other circumstances specified by the regulations.

(4) Regulations under this section may make provision about—

- (a) the time and manner in which a claim for compensation is to be made, and
- (b) the sums, or the method of determining the sums, payable by way of compensation.

(5) CIL regulations may permit or require a charging authority to apply CIL (either generally or subject to limits set by or determined in accordance with the regulations) for expenditure incurred under this section.

(6) A dispute about compensation may be referred to and determined by the [Upper Tribunal]¹

(7) In relation to the determination of any such question, the provisions of [section 4 of the Land Compensation Act 1961 (c. 33)]² apply subject to any necessary modifications and to the provisions of CIL regulations.

Notes

¹ Words substituted by Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307 Sch.1 para.296(a) (June 1, 2009)

² Words substituted by Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307 Sch.1 para.296(b) (June 1, 2009)

Commencement

Pt 11 s. 219(1)-(7): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(b))

Extent

Pt 11 s. 219(1)-(7): England, Wales

Law In Force

220 Community Infrastructure Levy: procedure

- (1) CIL regulations may include provision about procedures to be followed in connection with CIL.
- (2) In particular, the regulations may make provision about—
- (a) procedures to be followed by a charging authority proposing to begin charging CIL;
 - (b) procedures to be followed by a charging authority in relation to charging CIL;
 - (c) procedures to be followed by a charging authority proposing to stop charging CIL;
 - (d) consultation;
 - (e) the publication or other treatment of reports;
 - (f) timing and methods of publication;
 - (g) making documents available for inspection;
 - (h) providing copies of documents (with or without charge);
 - (i) the form and content of documents;
 - (j) giving notice;
 - (k) serving notices or other documents;
 - (l) examinations to be held in public in the course of setting or revising rates or other criteria or of preparing lists;
 - (m) the terms and conditions of appointment of independent persons;
 - (n) remuneration and expenses of independent persons (which may be required to be paid by the Secretary of State or by a charging authority);
 - (o) other costs in connection with examinations;
 - (p) reimbursement of expenditure incurred by the Secretary of State (including provision for enforcement);
 - (q) apportionment of costs;
 - (r) combining procedures in connection with CIL with procedures for another purpose of a charging authority (including a purpose of that authority in another capacity);
 - (s) procedures to be followed in connection with actual or potential liability for CIL.
- (3) CIL regulations may make provision about the procedure to be followed in respect of an exemption from CIL or a reduction of CIL; in particular, the regulations may include provision—
- (a) about the procedure for determining whether any conditions are satisfied;
 - (b) requiring a charging authority or other person to notify specified persons of any exemption or reduction;
 - (c) requiring a charging authority or other person to keep a record of any exemption or reduction.
- (4) A provision of this Part conferring express power to make procedural provision in a specified context includes, in particular, power to make provision about the matters specified in subsection (2).
- (5) A power in this Part to make provision about publishing something includes a power to make provision about making it available for inspection.
- (6) Sections 229 to 231 do not apply to this Part (but CIL regulations may make similar provision).

Commencement

Pt 11 s. 220(1)-(6): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(b))

Extent

Pt 11 s. 220(1)-(6): England, Wales

✔ Law In Force

221 Secretary of State

The Secretary of State may give guidance to a charging authority or other public authority (including an examiner appointed under section 212) about any matter connected with CIL; and the authority must have regard to the guidance.

Commencement

Pt 11 s. 221: November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(b))

Extent

Pt 11 s. 221: England, Wales

✔ Law In Force

222 Regulations and orders: general**(1) CIL regulations—**

- (a) may make provision that applies generally or only to specified cases, circumstances or areas,
- (b) may make different provision for different cases, circumstances or areas,
- (c) may provide, or allow a charging schedule to provide, for exceptions,
- (d) may confer, or allow a charging schedule to confer, a discretionary power on the Secretary of State, a local authority or another specified person,
- (e) may apply an enactment, with or without modifications, and
- (f) may include provision of a kind permitted by section 232(3)(b) (and incidental, supplemental or consequential provision may include provision disapplying, modifying the effect of or amending an enactment).

(2) CIL regulations—

- (a) shall be made by statutory instrument, and
- (b) shall not be made unless a draft has been laid before and approved by resolution of the House of Commons.

(3) An order under section 218(12) or 225(2)—

- (a) shall be made by statutory instrument, and
- (b) may include provision of a kind permitted by subsection (1)(a), (b) or (f) above, but may not amend an Act of Parliament in reliance on subsection (1)(f).

(4) An order under section 218(12) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(5) An order under section 225(2) shall be subject to annulment in pursuance of a resolution of the House of Commons.

Commencement

Pt 11 s. 222(1)-(5): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(b))

Extent

Pt 11 s. 222(1)-(5): England, Wales

Law In Force

223 Relationship with other powers

(1) CIL regulations may include provision about how the following powers are to be used, or are not to be used—

- (a) section 106 of TCPA 1990 (planning obligations), and
- (b) section 278 of the Highways Act 1980 (c. 66) (execution of works).

(2) CIL regulations may include provision about the exercise of any other power relating to planning or development.

(3) The Secretary of State may give guidance to a charging or other authority about how a power relating to planning or development is to be exercised; and authorities must have regard to the guidance.

(4) Provision may be made under subsection (1) or (2), and guidance may be given under subsection (3), only if the Secretary of State thinks it necessary or expedient for—

- (a) complementing the main purpose of CIL regulations,
- (b) enhancing the effectiveness, or increasing the use, of CIL regulations,
- (c) preventing agreements, undertakings or other transactions from being used to undermine or circumvent CIL regulations,
- (d) preventing agreements, undertakings or other transactions from being used to achieve a purpose that the Secretary of State thinks would better be achieved through the application of CIL regulations, or
- (e) preventing or restricting the imposition of burdens, the making of agreements or the giving of undertakings, in addition to CIL.

(5) CIL regulations may provide that a power to give guidance or directions may not be exercised—


- (a) in relation to matters specified in the regulations,
- (b) in cases or circumstances specified in the regulations,
- (c) for a purpose specified in the regulations, or
- (d) to an extent specified in the regulations.

Commencement

Pt 11 s. 223(1)-(5)(d): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(b))

Extent

Pt 11 s. 223(1)-(5)(d): England, Wales

 Partially In Force

224 Community Infrastructure Levy: amendments

(1) In section 101 of the Local Government Act 1972 (c. 70) (arrangements for discharge of functions by local authorities) after subsection (6) insert—

“(6A) Community Infrastructure Levy under Part 11 of the Planning Act 2008 is not a rate for the purposes of subsection (6).”

(2) In section 9 of the Norfolk and Suffolk Broads Act 1988 (c. 4) (the Navigation Committee)—

- (a) in subsection (8), after “Subject” insert “to subsection (8A) and”;
- (b) after subsection (8) insert—

“(8A) Subsection (8) does not apply in relation to functions under Part 11 of the Planning Act 2008 (Community Infrastructure Levy).”

(3) In section 71(3) of the Deregulation and Contracting Out Act 1994 (c. 40) (contracting out: functions of local authorities) omit the word “and” at the end of paragraph (g) and after paragraph (h) insert

“; and

- (i) sections 217 and 218 of the Planning Act 2008 (Community Infrastructure Levy: collection and enforcement).”

(4) In section 38 of the Greater London Authority Act 1999 (c. 29) (delegation), after subsection (2) insert—

“(2A) In relation to functions exercisable by the Mayor under Part 11 of the Planning Act 2008 (Community Infrastructure Levy) subsection (2) has effect with the omission of paragraphs (c) to (f).”

Commencement


Pt 11 s. 224(1), (4): April 6, 2009 (2008 c. 29 Pt 12 s. 241(8); SI 2009/400 art. 3(m))

Pt 11 s. 224(2)-(2)(b): Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(8))

Pt 11 s. 224(3): April 6, 2010 (2008 c. 29 Pt 12 s. 241(8); SI 2010/566 art. 2)

Extent

Pt 11 s. 224(1)-(4): England, Wales

 Law In Force

225 Community Infrastructure Levy: repeals

(1) The following provisions of PCPA 2004 shall cease to have effect—

- (a) sections 46 to 48 (planning contribution), and
- (b) paragraph 5 of Schedule 6 (repeal of sections 106 to 106B of TCPA 1990 (planning obligations)).

(2) The Treasury may by order repeal the Planning-gain Supplement (Preparations) Act 2007 (c. 2).

Commencement

Pt 11 s. 225(1)-(2): January 26, 2009 (2008 c. 29 Pt 12 s. 241(6))

Extent

Pt 11 s. 225(1)-(2): England, Wales

PART 12**FINAL PROVISIONS***The Crown and Parliament*

Law In Force

226 The Crown

- (1) This Act binds the Crown, subject to subsections (2) and (3).
- (2) Sections 40, 54, 135, 166, 228 and 231 make special provision in relation to the application of some provisions of this Act to the Crown.
- (3) The amendments made by this Act bind the Crown only to the extent that the provisions amended bind the Crown.

Commencement

Pt 12 s. 226(1)-(3): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Pt 12 s. 226(1)-(3): England, Wales, Scotland

Law In Force

227 “Crown land” and “the appropriate Crown authority”

- (1) In this Act, “Crown land” and “the appropriate Crown authority” must be read in accordance with this section.
- (2) “Crown land” is land in which there is a Crown interest or a Duchy interest.
- (3) For the purposes of this section, a Crown interest is any of the following—
 - (a) an interest belonging to Her Majesty in right of the Crown or in right of Her private estates;
 - (b) an interest belonging to a government department or held in trust for Her Majesty for the purposes of a government department;
 - (c) an interest belonging to an office-holder in the Scottish Administration or held in trust for Her Majesty for the purposes of the Scottish Administration by such an office-holder;

- (d) the interest of the Speaker of the House of Lords in those parts of the Palace of Westminster and its precincts occupied on 23 March 1965 by or on behalf of the House of Lords;
 - (e) the interest of the Speaker of the House of Commons in those parts of the Palace of Westminster and its precincts occupied on 23 March 1965 by or on behalf of the House of Commons;
 - (f) the interest in any land of—
 - (i) the Corporate Officer of the House of Lords;
 - (ii) the Corporate Officer of the House of Commons;
 - (iii) those two Corporate Officers acting jointly;
 - (g) such other interest as the Secretary of State specifies by order.
- (4) For the purposes of this section, a Duchy interest is—
- (a) an interest belonging to Her Majesty in right of the Duchy of Lancaster, or
 - (b) an interest belonging to the Duchy of Cornwall.
- (5) “The appropriate Crown authority” in relation to any land is—
- (a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, the Crown Estate Commissioners;
 - (b) in relation to any other land belonging to Her Majesty in right of the Crown, the government department or, as the case may be, officeholder in the Scottish Administration, having the management of the land;
 - (c) in relation to land belonging to Her Majesty in right of Her private estates, a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Secretary of State;
 - (d) in relation to land belonging to Her Majesty in right of the Duchy of Lancaster, the Chancellor of the Duchy;
 - (e) in relation to land belonging to the Duchy of Cornwall, such person as the Duke of Cornwall, or the possessor for the time being of the Duchy, appoints;
 - (f) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, the department;
 - (g) in the case of land belonging to an office-holder in the Scottish Administration or held in trust for Her Majesty for the purposes of such an office-holder, the office-holder;
 - (h) in relation to Westminster Hall and the Chapel of St Mary Undercroft, the Lord Great Chamberlain and the Speakers of the House of Lords and the House of Commons acting jointly;
 - (i) in relation to Her Majesty's Robing Room in the Palace of Westminster, the adjoining staircase and ante-room and the Royal Gallery, the Lord Great Chamberlain.
 - (j) in relation to land in which there is a Crown interest by virtue of subsection (3)(d) or (f)(i), the Corporate Officer of the House of Lords;
 - (k) in relation to land in which there is a Crown interest by virtue of subsection (3)(e) or (f)(ii), the Corporate Officer of the House of Commons;
 - (l) in relation to land in which there is a Crown interest by virtue of subsection (3)(f)(iii), those two Corporate Officers acting jointly.
- (6) If any question arises as to what authority is the appropriate Crown authority in relation to any land it must be referred to the Treasury, whose decision is final.

(7) References to Her Majesty's private estates must be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c. 37).

(8) References to an office-holder in the Scottish Administration are to be construed in accordance with section 126(7) of the Scotland Act 1998 (c. 46).

Commencement

Pt 12 s. 227(1)-(8): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Pt 12 s. 227(1)-(8): England, Wales, Scotland

Law In Force

228 Enforcement in relation to the Crown and Parliament

(1) No act or omission done or suffered by or on behalf of the Crown constitutes an offence under this Act.

- (2) For the purposes of this section “the Crown” includes—
- (a) the Duchy of Lancaster;
 - (b) the Duchy of Cornwall;
 - (c) the Speaker of the House of Lords;
 - (d) the Speaker of the House of Commons;
 - (e) the Corporate Officer of the House of Lords;
 - (f) the Corporate Officer of the House of Commons.

Commencement

Pt 12 s. 228(1)-(2)(f): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Pt 12 s. 228(1)-(2)(f): England, Wales, Scotland

Service of notices and other documents

Law In Force

229 Service of notices: general

(1) A notice or other document required or authorised to be served, given or supplied under this Act may be served, given or supplied in any of these ways—

- (a) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied,
- (b) by leaving it at the usual or last known place of abode of that person or, in a case where an address for service has been given by that person, at that address,

- (c) by sending it by post, addressed to that person at that person's usual or last known place of abode or, in a case where an address for service has been given by that person, at that address,
 - (d) by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to that person at that person's usual or last known place of abode or, in a case where an address for service has been given by that person, at that address,
 - (e) in a case where an address for service using electronic communications has been given by that person, by sending it using electronic communications, in accordance with the condition set out in subsection (2), to that person at that address,
 - (f) in the case of an incorporated company or body—
 - (i) by delivering it to the secretary or clerk of the company or body at their registered or principal office,
 - (ii) by sending it by post, addressed to the secretary or clerk of the company or body at that office,
 - (iii) by sending it in a prepaid registered letter or, or by the recorded delivery service, addressed to the secretary or clerk of the company or body at that office.
- (2) The condition mentioned in subsection (1)(e) is that the notice or other document must be—
- (a) capable of being accessed by the person mentioned in that provision,
 - (b) legible in all material respects, and
 - (c) in a form sufficiently permanent to be used for subsequent reference.
- (3) For the purposes of subsection (2), “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.
- (4) Subsection (1)(c), (e) and (f)(ii) do not apply to the service, giving or supply of any of the following—
- (a) notice under section 53(4)(b);
 - (b) a compulsory acquisition notice under section 134;
 - (c) notice under section 163(3);
 - (d) an information notice under section 167;
 - (e) a notice of unauthorised development under section 169.
- (5) This section is without prejudice to section 233 of the Local Government Act 1972 (c. 70) (general provisions as to service of notices by local authorities).
- (6) This section is subject to any contrary provision made by or under this Act.

Commencement

Pt 12 s. 229(1)-(6): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Pt 12 s. 229(1)-(6): England, Wales, Scotland

Law In Force

230 Service of documents to persons interested in or occupying premises

- (1) Subsection (2) applies if—

- (a) a notice or document is required or authorised to be served on or given or supplied to any person as having an interest in premises, and the name of that person cannot be ascertained after reasonable inquiry, or
 - (b) a notice or document is required or authorised to be served on or given or supplied to any person as an occupier of premises.
- (2) The notice or document is to be taken to be duly served, given or supplied if either the condition in subsection (3) or the condition in subsection (4) is met.
- (3) The condition is that the notice or document—
- (a) is addressed to the person either by name or by the description of “the owner” or, as the case may be, “the occupier” of the premises (describing them), and
 - (b) is delivered or sent—
 - (i) in the case of a notice mentioned in section 229(4), in the manner specified in section 229(1)(a), (b) or (d), and
 - (ii) in any other case, in the manner specified in section 229(1)(a), (b), (c) or (d).
- (4) The condition is that the notice or document is so addressed and is marked in such a manner as may be prescribed for securing that it is plainly identifiable as an important communication and—
- (a) it is sent to the premises in a prepaid registered letter or by the recorded delivery service and is not returned to the authority sending it, or
 - (b) it is delivered to a person on those premises, or is affixed conspicuously to an object on those premises.
- (5) Subsection (6) applies if—
- (a) a notice or other document is required to be served on or given or supplied to all persons who have interests in or are occupiers of premises comprised in any land, and
 - (b) it appears to the authority required or authorised to serve, give or supply the notice or other document that any part of that land is unoccupied.
- (6) The notice or other document is to be taken to be duly served on or given or supplied to all persons having interests in, and on any occupiers of, premises comprised in that part of the land (other than a person who has given to that authority an address for the service of the notice or document on him) if—
- (a) it is addressed to “the owners and any occupiers” of that part of the land (describing it), and
 - (b) it is affixed conspicuously to an object on the land.
- (7) This section is subject to any contrary provision made by or under this Act.

Commencement

Pt 12 s. 230(1)-(7): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Pt 12 s. 230(1)-(7): England, Wales, Scotland

✔ Law In Force

231 Service of notices on the Crown and Parliament

- (1) Any notice or other document required under this Act to be served on or given or supplied to the Crown must be served on or given or supplied to the appropriate Crown authority.
- (2) Sections 229 and 230 do not apply for the purposes of the service, giving or supply of such a notice or document.
- (3) For the purposes of this section “the Crown” includes—
- (a) the Duchy of Lancaster;
 - (b) the Duchy of Cornwall;
 - (c) the Speaker of the House of Lords;
 - (d) the Speaker of the House of Commons;
 - (e) the Corporate Officer of the House of Lords;
 - (f) the Corporate Officer of the House of Commons.

Commencement

Pt 12 s. 231(1)-(3)(f): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Pt 12 s. 231(1)-(3)(f): England, Wales, Scotland

General

✔ Law In Force

! Amendment(s) Pending

232 Orders and regulations

- (1) Subsections (2) and (3) apply to a power to make an order or regulations conferred on the Secretary of State by this Act, except—
- (a) power to make an order granting development consent;
 - (b) a power conferred by paragraph 1(4) of Schedule 4;
 - (c) a power to make changes to, or revoke, an order granting development consent;
 - (d) a power conferred by Part 11 or section 237 or 241.
- (2) The power is exercisable by statutory instrument.
- (3) The power includes—
- (a) power to make different provision for different purposes (including different areas);
 - (b) power to make incidental, consequential, supplementary, transitional or transitory provision or savings.
- (4) A statutory instrument containing an order or regulations under this Act is subject to annulment pursuant to a resolution of either House of Parliament.
This is subject to subsection (5) (and section 222(5)).
- (5) Subsection (4) does not apply to a statutory instrument containing—
- (a) an order granting development consent;

- (b) an order made by virtue of paragraph 1(8) of Schedule 4;
- (c) an order changing or revoking an order granting development consent;
- (d) an order under section 14(3), 111, 160(3), 161(5), 172(1), 203(5) or 227(3)(g);
- (e) regulations under section 104(2)(c) or 105(2)(b).

(6) No order may be made under section 14(3), 111, 160(3), 161(5), 203(5) or 227(3)(g) unless a draft of the instrument containing the order has been laid before, and approved by resolution of, each House of Parliament.

(7) No regulations may be made under section 104(2)(c) or 105(2)(b) unless a draft of the instrument containing the regulations has been laid before, and approved by resolution of, each House of Parliament.

Amendments Pending

Pt 12 s. 232(5)(d): word inserted by Localism Act 2011 c. 20 Pt 6 c. 6 s. 131(3)(a) (date to be appointed)

Pt 12 s. 232(6): word inserted by Localism Act 2011 c. 20 Pt 6 c. 6 s. 131(3)(b) (date to be appointed)

Commencement

Pt 12 s. 232(1)-(7): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Pt 12 s. 232(1)-(7): England, Wales, Scotland

Law In Force

233 Directions

(1) A direction given under this Act must be in writing.

(2) A power conferred by this Act to give a direction includes power to vary or revoke the direction.

Commencement

Pt 12 s. 233(1)-(2): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Pt 12 s. 233(1)-(2): England, Wales, Scotland

Law In Force

234 Abbreviated references to Acts

In this Act—

“the Hazardous Substances Act” means the Planning (Hazardous Substances) Act 1990 (c. 10);

“the Listed Buildings Act” means the Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9);

“PCPA 2004” means the Planning and Compulsory Purchase Act 2004 (c. 5);

“TCPA 1990” means the Town and Country Planning Act 1990 (c. 8).

Commencement

Pt 12 s. 234 definition of "the Hazardous Substances Act"- definition of "TCPA 1990": November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Pt 12 s. 234 definition of "the Hazardous Substances Act"- definition of "TCPA 1990": England, Wales, Scotland

✔ Law In Force

! Amendment(s) Pending

235 Interpretation

(1) In this Act (except in Part 11)—

- “airport” has the meaning given by section 82(1) of the Airports Act 1986 (c. 31);
- “alteration”, in relation to an airport, must be read in accordance with section 23(6);
- “alteration”, in relation to a highway, includes stopping up the highway or diverting, improving, raising or lowering it;
- “appropriate Crown authority” has the meaning given by section 227;
- “building” has the meaning given by section 336(1) of TCPA 1990;
- “the Commission” means the Infrastructure Planning Commission;
- “Commissioner” means a member of the Commission;
- “construction”, in relation to so much of a generating station as comprises or is to comprise renewable energy installations, has the same meaning as in Chapter 2 of Part 2 of the Energy Act 2004 (c. 20) (see section 104 of that Act) (and related expressions must be read accordingly);
- “construction”, in relation to a pipe-line, includes placing (and related expressions must be read accordingly);
- “the Council” means the Commission's Council;
- “cross-country pipe-line” has the same meaning as in the Pipe-lines Act 1962 (c. 58) (see section 66 of that Act);
- “Crown land” has the meaning given by section 227;
- “decision-maker” has the meaning given by section 103(2);
- “development” has the meaning given by section 32;
- “development consent” has the meaning given by section 31;
- “electric line” has the same meaning as in Part 1 of the Electricity Act 1989 (c. 29) (see section 64(1) of that Act);
- “extension”, in relation to a generating station, has the meaning given by section 36(9) of the Electricity Act 1989 (and “extend” must be read accordingly);
- “gas” includes natural gas;
- “gas reception facility” must be read in accordance with section 19(3);
- “gas transporter” has the same meaning as in Part 1 of the Gas Act 1986 (c. 44) (see section 7(1) of that Act);
- “generating station” has the same meaning as in Part 1 of the Electricity Act 1989 (see section 64(1) of that Act);
- “goods” has the meaning given by section 83(1) of the Railways Act 1993 (c. 43);

“Green Belt land” has the meaning given by section 2(1) of the Green Belt (London and Home Counties) Act 1938 (c. xciii);

“harbour” and “harbour authority” have the meanings given by section 57(1) of the Harbours Act 1964 (c. 40);

“highway” has the meaning given by section 328 of the Highways Act 1980 (c. 66);

“highway authority” has the same meaning as in the Highways Act 1980 (c. 66) (see sections 1 to 3 of that Act);

“improvement”, in relation to a highway, has the meaning given by section 329(1) of the Highways Act 1980;

“inland waters” has the same meaning as in the Water Resources Act 1991 (c. 57) (see section 221(1) of that Act);

“land” includes buildings and monuments, and land covered with water, and in relation to Part 7 must be read in accordance with section 159;

“LNG facility” must be read in accordance with section 18(3);

“local planning authority” has the same meaning as in TCPA 1990 (see section 336(1) of that Act);

“monument” has the same meaning as in the Ancient Monuments and Archaeological Areas Act 1979 (c. 46) (see section 61 of that Act);

“nationally significant infrastructure project” has the meaning given by Part 3;

“national policy statement” has the meaning given by section 5(2);

“natural gas” means any gas derived from natural strata (including gas originating outside the United Kingdom);

“navigable watercourse” has the same meaning as in Part 6 of the Highways Act 1980 (see section 111(1) of that Act);

“non-navigable watercourse” means a watercourse that is not a navigable watercourse;

“pipe-line” has the meaning given by section 65 of the Pipe-lines Act 1962 (c. 58);

“planning permission” means permission under Part 3 of TCPA 1990;

“prescribed” means prescribed by regulations made by the Secretary of State (except in relation to matters authorised or required by this Act to be prescribed in another way);

“rail freight interchange” means a facility for the transfer of goods between railway and road, or between railway and another form of transport;

“railway” has the meaning given by section 67(1) of the Transport and Works Act 1992 (c. 42);

“renewable energy installation” has the same meaning as in Chapter 2 of Part 2 of the Energy Act 2004 (c. 20) (see section 104 of that Act);

“Renewable Energy Zone” has the meaning given by section 84(4) of the Energy Act 2004;

“special road” means a highway which is a special road in accordance with section 16 of the Highways Act 1980 or by virtue of an order granting development consent;

“standard”, in relation to a volume of gas, means the volume of gas at a pressure of 101.325 kiloPascals and a temperature of 273 Kelvin;

“trunk road” means a highway which is a trunk road by virtue of—

- (a) section 10(1) or 19 of the Highways Act 1980,
- (b) an order or direction under section 10 of that Act, or
- (c) an order granting development consent,

or under any other enactment;

“underground gas storage facilities” must be read in accordance with section 17(6);

“use” has the meaning given by section 336(1) of TCPA 1990.

- (2) A reference in this Act to a right over land includes a reference to a right to do, or to place and maintain, anything in, on or under land or in the air-space above its surface.
- (3) Subsection (4) applies to the question of which parts of waters up to the seaward limits of the territorial sea—
- (a) are adjacent to Wales (and, in consequence, are not adjacent to England), or
 - (b) are not adjacent to Wales (and, in consequence, are adjacent to England).
- (4) The question is to be determined by reference to an order or Order in Council made under or by virtue of section 158(3) or (4) of the Government of Wales Act 2006 (c. 32) (apportionment of sea areas) if, or to the extent that, the order or Order in Council is expressed to apply—
- (a) by virtue of this subsection, for the purposes of this Act, or
 - (b) if no provision has been made by virtue of paragraph (a), for the general or residual purposes of that Act.
- (5) Subsection (6) applies to the question of which parts of waters up to the seaward limits of the territorial sea—
- (a) are adjacent to Scotland (and, in consequence, are not adjacent to England), or
 - (b) are not adjacent to Scotland (and, in consequence, are adjacent to England).
- (6) The question is to be determined by reference to an Order in Council made under section 126(2) of the Scotland Act 1998 (c. 46) if, or to the extent that, the Order in Council is expressed to apply—
- (a) by virtue of this subsection, for the purposes of this Act, or
 - (b) if no provision has been made by virtue of paragraph (a), for the general or residual purposes of that Act.

Amendments Pending

Pt 12 s. 235(1) definition of "the Commission": definitions repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 69 (date to be appointed)

Pt 12 s. 235(1) definition of "the Commission": definitions repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Pt 12 s. 235(1) definition of "Commissioner": definitions repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 69 (date to be appointed)

Pt 12 s. 235(1) definition of "Commissioner": definitions repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Pt 12 s. 235(1) definition of "the Council": definition repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 69 (date to be appointed)

Pt 12 s. 235(1) definition of "the Council": definition repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Pt 12 s. 235(1) definition of "decision maker": definition repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 69 (date to be appointed)

Pt 12 s. 235(1) definition of "decision maker": definition repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Pt 12 s. 235(1)-(6)(b): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Pt 12 s. 235(1)-(6)(b): England, Wales, Scotland

Law In Force

236 Application of Act to Scotland: modifications

The modifications set out in Schedule 12 have effect in the application of this Act to Scotland for the purpose mentioned in section 240(4).

Commencement

Pt 12 s. 236: November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Pt 12 s. 236: England, Wales, Scotland

Law In Force

237 Supplementary and consequential provision


- (1) The Secretary of State may by order made by statutory instrument make—
- (a) such supplementary, incidental or consequential provision, or
 - (b) such transitory, transitional or saving provision,
- as the Secretary of State thinks appropriate for the general purposes, or any particular purpose, of this Act or in consequence of, or for giving full effect to, any provision made by this Act.
- (2) The power conferred by subsection (1) includes power to make different provision for different purposes (including different areas).
- (3) An order under subsection (1) may amend, repeal, revoke or otherwise modify—
- (a) an Act passed on or before the last day of the Session in which this Act is passed, or
 - (b) an instrument made under an Act before the passing of this Act.
- (4) An order under this section which amends or repeals any provision of an Act may not be made unless a draft of the instrument containing the order has been laid before, and approved by resolution of, each House of Parliament.
- (5) A statutory instrument containing an order under this section which does not amend or repeal any provision of an Act is subject to annulment pursuant to a resolution of either House of Parliament.
- (6) In this section any reference to an Act (other than this Act) includes a reference to an Act of the Scottish Parliament.
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Commencement

Pt 12 s. 237(1)-(6): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Pt 12 s. 237(1)-(6): England, Wales, Scotland

 Partially In Force

238 Repeals


Schedule 13 contains repeals (including repeals of spent provisions).

Commencement

Pt 12 s. 238: April 6, 2009 in relation to England and Wales for repeals specified in SI 2009/400 Sch.1 Part 1; April 6, 2009 in relation to England for repeals specified in SI 2009/400 Sch.1 Part 2; June 23, 2009 in relation to England for repeals specified in SI 2009/1303 Sch.1; April 6, 2010 in relation to England and Wales for repeals specified in SI 2010/566 Sch.1; not yet in force otherwise (2008 c. 29 Pt 12 s. 241(8); SI 2009/400 art. 3(o), art. 5(g); SI 2009/400 Sch. 1(1), Sch. 1(2); SI 2009/1303 art. 2(b), Sch. 1 para. 1; SI 2010/566 art. 3(d), Sch. 1 para. 1)

Extent

Pt 12 s. 238: England, Wales, Scotland

 Law In Force

239 Financial provisions

There is to be paid out of money provided by Parliament—


- (a) any expenditure incurred under or by virtue of this Act by the Secretary of State, and
- (b) any increase attributable to this Act in the sums payable under or by virtue of any other Act out of money so provided.

Commencement

Pt 12 s. 239(a)-(b): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Pt 12 s. 239(a)-(b): England, Wales, Scotland

 Law In Force

240 Extent

(1) The following provisions of this Act extend to England and Wales only—

- (a) in Part 2, section 13;
- (b) in Part 3, sections 15 to 20 and 22 to 30;
- (c) in Part 6, section 118;
- (d) in Part 7, sections 133 and 139 to 149;
- (e) in Part 9, sections 193 and 194;
- (f) in Part 10, sections 203 and 204;
- (g) Part 11.

(2) Section 178 extends to Scotland only.

(3) The following provisions of this Act extend to England and Wales and (subject to subsection (4)) to Scotland—

- (a) Parts 1 to 8 (except the sections listed in paragraphs (a) to (d) of subsection (1));
- (b) this Part.

- (4) Those provisions extend to Scotland only so far as required for the purpose of the construction (other than by a gas transporter) of an oil or gas cross-country pipe-line—
- (a) one end of which is in England or Wales, and
 - (b) the other end of which is in Scotland.
- (5) Subsections (3) and (4) are subject to subsection (6).
- (6) So far as it amends or repeals an enactment, this Act has the same extent as the enactment amended or repealed.
- (7) An order under section 225(2) extends to each part of the United Kingdom.

Commencement

Pt 12 s. 240(1)-(7): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Pt 12 s. 240(1)-(7): England, Wales, Scotland

Law In Force

241 Commencement

- (1) The following provisions of this Act come into force on the day on which this Act is passed—
- (a) the provisions of Parts 1 to 9 (except section 194(2) to (5) and paragraph 7 of Schedule 7) which—
 - (i) confer power to make orders (other than orders granting, or making changes to orders granting, development consent), regulations or rules, or
 - (ii) make provision about what is (or is not) permitted to be done, or what is required to be done, in the exercise of any such power;
 - (b) Part 11, except sections 206, 211(7), 224 and 225;
 - (c) this Part, except section 238.
- (2) Nothing in subsection (1)(a) affects the operation of section 13 of the Interpretation Act 1978 (c. 30) in relation to this Act.
- (3) Except as provided by subsection (1)(a), the provisions listed in subsection (4) come into force on such day as may be appointed by order made by—
- (a) the Welsh Ministers, in relation to Wales;
 - (b) the Secretary of State, in relation to England.
- (4) The provisions are—
- (a) sections 183, 185, 187, 188, 191(1) and (3), 192, 193 and 197 to 200;
 - (b) paragraphs 1, 2(1) and (2), 3(1), (2) and (4) and 4 to 6 of Schedule 7;
 - (c) Schedules 8 and 11;
 - (d) the repeals in—
 - (i) TCPA 1990 (except those in Schedules 1 and 1A to that Act);
 - (ii) the Environmental Protection Act 1990 (c. 43);
 - (iii) the Planning and Compensation Act 1991 (c. 34);
 - (iv) sections 42(3) and 53 of PCPA 2004.

(5) Section 186 and the repeal in Schedule 1A to TCPA 1990 come into force on such day as the Welsh Ministers may by order appoint.

(6) Sections 194(2) to (5), 201, 202, 203 and 225 (together with related entries in Schedule 13), and paragraph 7 of Schedule 7, come into force at the end of two months beginning with the day on which this Act is passed.

(7) Section 204 comes into force in accordance with subsection (5) of that section.

(8) The other provisions of this Act come into force on such day as the Secretary of State may by order appoint.

(9) The powers conferred by this section are exercisable by statutory instrument.

(10) An order under this section may—

(a) appoint different days for different purposes (including different areas);

(b) contain transitional, transitory or saving provision in connection with the coming into force of this Act.

Commencement

Pt 12 s. 241(1)-(10)(b): November 26, 2008

Extent

Pt 12 s. 241(1)-(10)(b): England, Wales, Scotland

Law In Force

242 Short title

This Act may be cited as the Planning Act 2008.

Commencement

Pt 12 s. 242: November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Pt 12 s. 242: England, Wales, Scotland

SCHEDULE 1**THE INFRASTRUCTURE PLANNING COMMISSION****Section 1***Membership, chair and deputies*

Law In Force

Amendment(s) Pending

1

(1) The members of the Commission (“Commissioners”) are to be—

- (a) a person appointed by the Secretary of State to chair the Commission (“the chair”),
- (b) at least two persons appointed by the Secretary of State as deputies to the chair (“deputies”), and
- (c) other Commissioners appointed by the Secretary of State.

(2) In appointing Commissioners, the Secretary of State must have regard to the desirability of securing that the Commission is able to perform its functions effectively and efficiently.

Amendments Pending

Sch. 1 para. 1: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 2 (date to be appointed)

Sch. 1 para. 1: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Sch. 1 para. 1(1)-(2): October 1, 2009 (SI 2009/2260 art. 2(a); SI 2009/2573 art. 2)

Extent

Sch. 1 para. 1(1)-(2): United Kingdom

Terms of appointment

Law In Force

Amendment(s) Pending

2

Subject to the other provisions of this Schedule, the chair, deputies and other Commissioners hold and vacate office as such in accordance with the terms of their appointments.

Amendments Pending

Sch. 1 para. 2: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 2 (date to be appointed)

Sch. 1 para. 2: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Sch. 1 para. 2: October 1, 2009 (SI 2009/2260 art. 2(a); SI 2009/2573 art. 2)

Extent

Sch. 1 para. 2: United Kingdom

Tenure

Law In Force

Amendment(s) Pending

3

- (1) The chair, or a deputy or other Commissioner, must be appointed for a fixed period.
 - (2) The fixed period must not be less than 5 years or more than 8 years.
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Amendments Pending

Sch. 1 para. 3: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 2 (date to be appointed)

Sch. 1 para. 3: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Sch. 1 para. 3(1)-(2): October 1, 2009 (SI 2009/2260 art. 2(a); SI 2009/2573 art. 2)

Extent

Sch. 1 para. 3(1)-(2): United Kingdom

Law In Force

Amendment(s) Pending

4

- (1) A person may resign as the chair, or as a deputy or other Commissioner, by giving at least 3 months' notice in writing to the Secretary of State.
- (2) The Secretary of State may remove a person from office as the chair, or as a deputy or other Commissioner, if the Secretary of State is satisfied that—
 - (a) the person is unable or unwilling to perform the duties of the office,
 - (b) the person has been convicted of a criminal offence, or
 - (c) the person is otherwise unfit to perform the duties of the office.
- (3) In deciding whether a Commissioner is unfit to perform the duties of the Commissioner's office, the Secretary of State must have regard to the provisions of the code of conduct issued under section 2.

(4) A person who holds or has held an office of one of the descriptions set out in sub-paragraph (6) may be re-appointed as a Commissioner, whether or not to an office of the same description.

(5) If a person who holds an office of one of those descriptions (“the first office”) becomes the holder of an office of another of those descriptions, the person ceases to hold the first office.

(6) The descriptions are—

- (a) office as the chair;
- (b) office as a deputy;
- (c) office as one of the other Commissioners.

Amendments Pending

Sch. 1 para. 4: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 2 (date to be appointed)

Sch. 1 para. 4: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Sch. 1 para. 4(1)-(6)(c): October 1, 2009 (SI 2009/2260 art. 2(a); SI 2009/2573 art. 2)

Extent

Sch. 1 para. 4(1)-(6)(c): United Kingdom

Remuneration etc. of Commissioners

✔ Law In Force

! Amendment(s) Pending

5

(1) The Commission must pay the Commissioners such remuneration and allowances as the Secretary of State may determine.

(2) The Commission must—

- (a) pay to or in respect of the Commissioners such pensions as the Secretary of State may determine, and
- (b) pay such sums as the Secretary of State may determine in respect of the provision of pensions to or in respect of the Commissioners.

(3) The Commission may pay sums to the Commissioners in respect of expenses.

(4) Sub-paragraph (5) applies if—

- (a) a person ceases to hold office as a Commissioner, and
- (b) the Secretary of State thinks that there are special circumstances that make it right for the person to receive compensation.

(5) The Commission must pay the person such compensation as the Secretary of State may determine.

Amendments Pending

Sch. 1 para. 5: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 2 (date to be appointed)

Sch. 1 para. 5: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Sch. 1 para. 5(1)-(5): October 1, 2009 (SI 2009/2260 art. 2(a); SI 2009/2573 art. 2)

Extent

Sch. 1 para. 5(1)-(5): United Kingdom

Council

☑ Law In Force

⚠ Amendment(s) Pending

6

(1) There is to be a body of Commissioners to be known as the Commission's Council (“the Council”).

(2) The members of the Council may be different for different purposes.

(3) Those purposes include (in particular)—

- (a) the purpose of deciding a particular application referred under section 84;
- (b) the purpose of responding to consultation about a matter.

(4) The members of the Council for any particular purpose are—

- (a) the chair,
- (b) each deputy, and
- (c) the Commissioners appointed under paragraph 7 to be ordinary members of the Council for that purpose.

(5) The chair has the function of chairing the Council.

(6) The staff of the Commission have the function of providing or procuring support for members of the Council undertaking functions of the Council.

Amendments Pending

Sch. 1 para. 6: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 2 (date to be appointed)

Sch. 1 para. 6: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Sch. 1 para. 6(1)-(6): October 1, 2009 (SI 2009/2260 art. 2(a); SI 2009/2573 art. 2)

Extent

Sch. 1 para. 6(1)-(6): United Kingdom

✔ Law In Force

! Amendment(s) Pending

7

- (1) The chair may appoint a Commissioner not within paragraph 6(4)(a) or (b) to be an ordinary member of the Council—
- (a) for a particular purpose or for particular purposes,
 - (b) for all purposes, or
 - (c) for all purposes other than any specified on making the appointment.
- (2) The chair may at any time end a person's appointment as an ordinary member of the Council.
- (3) A person may resign from being an ordinary member of the Council by giving notice in writing to the Commission.
- (4) The power under sub-paragraph (2) may be exercised, and a person may under sub-paragraph (3) resign, in relation to all, or some one or more, of the purposes for which the person is an ordinary member of the Council.
- (5) A person ceases to be an ordinary member of the Council if the person ceases to be a Commissioner.
- (6) The power under sub-paragraph (1) is to be exercised so as to secure that the Council has for any particular purpose at least 5, but no more than 9, members in total.
- (7) The Council's continuing identity for any particular purpose is to be taken not to be affected by—
- (a) a person ceasing to be a member of the Council for that purpose, so long as there continue to be at least 5 people who are members of the Council for that purpose;
 - (b) any change in the person chairing the Council.

Amendments Pending

Sch. 1 para. 7: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 2 (date to be appointed)

Sch. 1 para. 7: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Sch. 1 para. 7(1)-(7)(b): October 1, 2009 (SI 2009/2260 art. 2(a); SI 2009/2573 art. 2)

Extent

Sch. 1 para. 7(1)-(7)(b): United Kingdom

✔ Law In Force

! Amendment(s) Pending

8

- (1) Sub-paragraphs (2) and (3) apply to any function conferred or imposed on the chair by paragraph 6(5) or 7.
- (2) The chair may delegate the function to a deputy.

(3) If at any time there is (apart from this sub-paragraph) no-one who is able and available to carry the function, each deputy may carry out the function.

(4) A function delegated under sub-paragraph (2) may be delegated to such extent and on such terms as the chair determines.

Amendments Pending

Sch. 1 para. 8: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 2 (date to be appointed)

Sch. 1 para. 8: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Sch. 1 para. 8(1)-(4): October 1, 2009 (SI 2009/2260 art. 2(a); SI 2009/2573 art. 2)

Extent

Sch. 1 para. 8(1)-(4): United Kingdom

Law In Force

Amendment(s) Pending

9

(1) Before making or ending an appointment under paragraph 7, the person doing so must consult—

- (a) the other Commissioners who, for the purpose of responding to consultation about the matter, are members of the Council,
- (b) any Commissioner not within paragraph (a) who the person thinks it appropriate to consult, and
- (c) the chief executive of the Commission.

(2) In making or ending an appointment under paragraph 7, the person doing so must have regard to any views expressed about the matter—

- (a) by any of the other Commissioners, or
- (b) by the chief executive of the Commission.

Amendments Pending

Sch. 1 para. 9: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 2 (date to be appointed)

Sch. 1 para. 9: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Sch. 1 para. 9(1)-(2)(b): October 1, 2009 (SI 2009/2260 art. 2(a); SI 2009/2573 art. 2)

Extent

Sch. 1 para. 9(1)-(2)(b): United Kingdom

✔ Law In Force

! Amendment(s) Pending

10

(1) This paragraph applies where an application referred to the Council under section 84 relates to land in Wales (even if the application also relates to land not in Wales).

(2) A person appointing Commissioners under paragraph 7(1) as ordinary members of the Council for the purpose of deciding the application must do so with a view to securing that, if reasonably practicable, at least one of the members of the Council for that purpose is—

- (a) a Commissioner who was nominated for appointment as a Commissioner by the Welsh Ministers, or
- (b) a Commissioner who is within sub-paragraph (3).

(3) A Commissioner is within this sub-paragraph if, when appointed to be a member of the Council, the Commissioner is one notified to the Commission by the Welsh Ministers as being a Commissioner who should be treated for the purposes of this paragraph as being a Commissioner within sub-paragraph (2)(a).

Amendments Pending

Sch. 1 para. 10: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 2 (date to be appointed)

Sch. 1 para. 10: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Sch. 1 para. 10(1)-(3): October 1, 2009 (SI 2009/2260 art. 2(a); SI 2009/2573 art. 2)

Extent

Sch. 1 para. 10(1)-(3): United Kingdom

Chief executive and staff

✔ Law In Force

! Amendment(s) Pending

11

(1) The Secretary of State must appoint a person as the chief executive of the Commission.

(2) The chief executive—

- (a) is not to be a Commissioner, and
- (b) is to be a member of the Commission's staff.

(3) The chief executive's terms and conditions of service are to be determined by the Secretary of State.

Amendments Pending

Sch. 1 para. 11: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 2 (date to be appointed)

Sch. 1 para. 11: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Sch. 1 para. 11(1)-(3): October 1, 2009 (SI 2009/2260 art. 2(a); SI 2009/2573 art. 2)

Extent

Sch. 1 para. 11(1)-(3): United Kingdom

✔ Law In Force

! Amendment(s) Pending

12

(1) The Commission may appoint such other staff as it thinks appropriate.

(2) A member of the Commission's staff is not to be a Commissioner.

(3) Before the Commission appoints any staff, it must obtain the approval of the Secretary of State to the overall number of staff it proposes to appoint.

(4) The Commission must also obtain the approval of the Secretary of State to the terms and conditions of service of any staff it proposes to appoint.

Amendments Pending

Sch. 1 para. 12: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 2 (date to be appointed)

Sch. 1 para. 12: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Sch. 1 para. 12(1)-(4): October 1, 2009 (SI 2009/2260 art. 2(a); SI 2009/2573 art. 2)

Extent

Sch. 1 para. 12(1)-(4): United Kingdom

✔ Law In Force

! Amendment(s) Pending

13

The terms and conditions of service of the chief executive and any other member of staff may include provision—

- (a) for the payment of remuneration, allowances and sums in respect of expenses,
 - (b) for the payment to or in respect of the person of pensions or sums in respect of the provision of pensions, and
 - (c) for the payment to or in respect of the person of compensation for loss of employment or reduction of remuneration.
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Amendments Pending

Sch. 1 para. 13: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 2 (date to be appointed)

Sch. 1 para. 13: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Sch. 1 para. 13(a)-(c): October 1, 2009 (SI 2009/2260 art. 2(a); SI 2009/2573 art. 2)

Extent

Sch. 1 para. 13(a)-(c): United Kingdom

Arrangements for assistance

☑ Law In Force

⚠ Amendment(s) Pending

14

(1) The Commission may make arrangements with such persons as it thinks appropriate for assistance to be provided to it.

(2) The arrangements may include provision for the payment of fees.

Amendments Pending

Sch. 1 para. 14: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 2 (date to be appointed)

Sch. 1 para. 14: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Sch. 1 para. 14(1)-(2): October 1, 2009 (SI 2009/2260 art. 2(a); SI 2009/2573 art. 2)

Extent

Sch. 1 para. 14(1)-(2): United Kingdom

Delegation

☑ Law In Force

⚠ Amendment(s) Pending

15

(1) The Commission may delegate, to any one or more of the Commissioners, any of its functions under any of the following provisions—

section 37(4) or (5);

section 50;

section 52;

section 53;

section 55;

section 109(4);

section 136(5);

in Schedule 3, paragraph 1(2);
in Schedule 4, paragraphs 1 and 2(1);
in Schedule 6, paragraphs 2, 3 and 4.

(2) The Commission may delegate any of its other functions to—

- (a) any one or more of the Commissioners,
- (b) the chief executive, or
- (c) any other member of its staff.

(3) Functions delegated under sub-paragraph (1) or (2) may be delegated to such extent and on such terms as the Commission determines.

(4) References in this Act or any other enactment to the Commission, in connection with the exercise of any function of the Commission, are to be read, so far as necessary, as references to a person or body to whom the Commission has delegated the function under sub-paragraph (1) or (2).

Amendments Pending

Sch. 1 para. 15: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 2 (date to be appointed)

Sch. 1 para. 15: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Sch. 1 para. 15(1)-(4): October 1, 2009 (SI 2009/2260 art. 2(a); SI 2009/2573 art. 2)

Extent

Sch. 1 para. 15(1)-(4): United Kingdom

Law In Force

Amendment(s) Pending

16

(1) The chief executive may authorise (generally or specifically) any other member of the Commission's staff to do anything authorised or required to be done by the chief executive.

(2) But sub-paragraph (1) does not apply to anything authorised or required to be done by the chief executive in relation to the certification of the annual accounts of the Commission.

Amendments Pending

Sch. 1 para. 16: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 2 (date to be appointed)

Sch. 1 para. 16: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Sch. 1 para. 16(1)-(2): October 1, 2009 (SI 2009/2260 art. 2(a); SI 2009/2573 art. 2)

Extent

Sch. 1 para. 16(1)-(2): United Kingdom

Reports

☑ Law In Force

⚠ Amendment(s) Pending

17

(1) In respect of each financial year the Commission must prepare a report relating to its performance of its functions during the year.

(2) The report must—

- (a) give details of any orders granting development consent made by the Commission during the year which have included provision authorising the compulsory acquisition of land or of an interest in or right over land, and
- (b) deal with such matters as the Secretary of State may direct.

(3) The Commission must send the Secretary of State copies of the report as soon as practicable after the end of the financial year.

(4) The Commission must arrange for the report to be published in the manner it thinks appropriate.

(5) The Secretary of State must lay before Parliament a copy of every report sent under sub-paragraph (3).

(6) “Financial year” means—

- (a) the period beginning with the day on which the Commission is established and ending with the following 31 March, and
- (b) each successive period of 12 months.

Amendments Pending

Sch. 1 para. 17: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 2 (date to be appointed)

Sch. 1 para. 17: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Sch. 1 para. 17(1)-(6)(b): October 1, 2009 (SI 2009/2260 art. 2(a); SI 2009/2573 art. 2)

Extent

Sch. 1 para. 17(1)-(6)(b): United Kingdom

☑ Law In Force

⚠ Amendment(s) Pending

18

(1) Sub-paragraph (2) applies if the Secretary of State asks the Commission to provide a report or information relating to an aspect of the Commission's performance of its functions.

(2) The Commission must provide the Secretary of State with the report or information.

Amendments Pending

Sch. 1 para. 18: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 2 (date to be appointed)

Sch. 1 para. 18: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Sch. 1 para. 18(1)-(2): October 1, 2009 (SI 2009/2260 art. 2(a); SI 2009/2573 art. 2)

Extent

Sch. 1 para. 18(1)-(2): United Kingdom

Funding

Law In Force

Amendment(s) Pending

19

(1) The Secretary of State may make such payments to the Commission as the Secretary of State thinks appropriate for the purpose of enabling the Commission to meet its expenses.

(2) Payments under sub-paragraph (1) are to be made out of money provided by Parliament.

(3) Payments under sub-paragraph (1) are to be made at such times and subject to such conditions (if any) as the Secretary of State thinks appropriate.

Amendments Pending

Sch. 1 para. 19: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 2 (date to be appointed)

Sch. 1 para. 19: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Sch. 1 para. 19(1)-(3): October 1, 2009 (SI 2009/2260 art. 2(a); SI 2009/2573 art. 2)

Extent

Sch. 1 para. 19(1)-(3): United Kingdom

Accounts

Law In Force

Amendment(s) Pending

20

(1) The Commission must keep accounts in such form as the Secretary of State directs.

(2) The Commission must prepare annual accounts in respect of each financial year in such form as the Secretary of State directs.

(3) Before the end of such period following each financial year as the Secretary of State directs, the Commission must send a copy of the annual accounts for the year—

(a) to the Secretary of State, and

- (b) to the Comptroller and Auditor General.
- (4) The Comptroller and Auditor General must—
- (a) examine, certify and report on the annual accounts, and
 - (b) give a copy of the Comptroller and Auditor General's report to the Secretary of State.
- (5) In respect of each financial year, the Secretary of State must lay before Parliament a document consisting of—
- (a) a copy of the annual accounts for the year, and
 - (b) a copy of the Comptroller and Auditor General's report on the annual accounts.
- (6) “Financial year” means—
- (a) the period beginning with the day on which the Commission is established and ending with the following 31 March, and
 - (b) each successive period of 12 months.

Amendments Pending

Sch. 1 para. 20: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 2 (date to be appointed)

Sch. 1 para. 20: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Sch. 1 para. 20(1)-(6)(b): October 1, 2009 (SI 2009/2260 art. 2(a); SI 2009/2573 art. 2)

Extent

Sch. 1 para. 20(1)-(6)(b): United Kingdom

Status

Law In Force

Amendment(s) Pending

21

- (1) The Commission is not to be regarded—
- (a) as the servant or agent of the Crown, or
 - (b) as enjoying any status, immunity or privilege of the Crown.
- (2) The Commission's property is not to be regarded as property of or held on behalf of the Crown.
- (3) The Commission's staff are not to be regarded as servants or agents of the Crown or as enjoying any status, immunity or privilege of the Crown.

Amendments Pending

Sch. 1 para. 21: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 2 (date to be appointed)

Sch. 1 para. 21: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Sch. 1 para. 21(1)-(3): October 1, 2009 (SI 2009/2260 art. 2(a); SI 2009/2573 art. 2)

Extent

Sch. 1 para. 21(1)-(3): United Kingdom

Validity of proceedings

Law In Force

Amendment(s) Pending

22

The validity of proceedings of the Commission or the Council is not affected by—

- (a) a defect in the appointment of the chair, or a deputy, or any other Commissioner, or
 - (b) a vacancy in the office of the chair or a deputy or amongst the other Commissioners.
-

Amendments Pending

Sch. 1 para. 22: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 2 (date to be appointed)

Sch. 1 para. 22: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Sch. 1 para. 22(a)-(b): October 1, 2009 (SI 2009/2260 art. 2(a); SI 2009/2573 art. 2)

Extent

Sch. 1 para. 22(a)-(b): United Kingdom

Application of seal and proof of instruments

Law In Force

Amendment(s) Pending

23

(1) The application of the Commission's seal is authenticated by the signature of a Commissioner, or a member of the Commission's staff, who has been authorised (generally or specifically) by the Commission for the purpose.

(2) A document purporting to be duly executed under the seal of the Commission or to be signed on its behalf—

- (a) is to be received in evidence, and
 - (b) is to be taken to be executed or signed in that way, unless the contrary is proved.
-

Amendments Pending

Sch. 1 para. 23: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 2 (date to be appointed)

Sch. 1 para. 23: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Sch. 1 para. 23(1)-(2)(b): October 1, 2009 (SI 2009/2260 art. 2(a); SI 2009/2573 art. 2)

Extent

Sch. 1 para. 23(1)-(2)(b): United Kingdom

Parliamentary Commissioner

Law In Force

Amendment(s) Pending

24

In Schedule 2 to the Parliamentary Commissioner Act 1967 (c. 13) (departments etc. subject to investigation) at the appropriate place insert—

“Infrastructure Planning Commission.”

Amendments Pending

Sch. 1 para. 24: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 2 (date to be appointed)

Sch. 1 para. 24: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Sch. 1 para. 24: October 1, 2009 (SI 2009/2260 art. 2(a); SI 2009/2573 art. 2)

Extent

Sch. 1 para. 24: United Kingdom

Disqualification

Law In Force

Amendment(s) Pending

25

(1) In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (bodies of which all members are disqualified) at the appropriate place insert—

“The Infrastructure Planning Commission.”

(2) In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c. 25) (bodies of which all members are disqualified) at the appropriate place insert—

“The Infrastructure Planning Commission.”

Amendments Pending

Sch. 1 para. 25: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 2 (date to be appointed)

Sch. 1 para. 25: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Sch. 1 para. 25(1)-(2): October 1, 2009 (SI 2009/2260 art. 2(a); SI 2009/2573 art. 2)

Extent

Sch. 1 para. 25(1)-(2): United Kingdom

Public records

Law In Force

Amendment(s) Pending

26

In Schedule 1 to the Public Records Act 1958 (c. 51) (definition of public records) in Part 2 of the Table at the end of paragraph 3 at the appropriate place insert—

“Infrastructure Planning Commission.”

Amendments Pending

Sch. 1 para. 26: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 2 (date to be appointed)

Sch. 1 para. 26: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Sch. 1 para. 26: October 1, 2009 (SI 2009/2260 art. 2(a); SI 2009/2573 art. 2)

Extent

Sch. 1 para. 26: United Kingdom

Freedom of information

Law In Force

Amendment(s) Pending

27

In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (c. 36) (other public bodies and offices: general) at the appropriate place insert—

“The Infrastructure Planning Commission.”

Amendments Pending

Sch. 1 para. 27: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 2 (date to be appointed)

Sch. 1 para. 27: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Sch. 1 para. 27: October 1, 2009 (SI 2009/2260 art. 2(a); SI 2009/2573 art. 2)

Extent

Sch. 1 para. 27: United Kingdom

SCHEDULE 2**AMENDMENTS CONSEQUENTIAL ON DEVELOPMENT CONSENT REGIME****Section 36***Green Belt (London and Home Counties) Act 1938 (c. xciii)*

Law In Force

1

The Green Belt (London and Home Counties) Act 1938 is amended as follows.

Commencement

Sch. 2 para. 1: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 1: United Kingdom

Law In Force

2

In section 10 (restriction on erection of buildings) after subsection (1) insert—

“(1A) Subsection (1) of this section is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required).”

Commencement

Sch. 2 para. 2: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 2: United Kingdom

Law In Force

3

In section 11 (saving for lines, pipes, sewers etc.) after subsection (1) insert—

“(1A) The proviso to subsection (1) of this section is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required).”

Commencement

Sch. 2 para. 3: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 3: United Kingdom

Law In Force

4

In section 12 (erection of buildings for certain statutory purposes) after subsection (1) insert—

“(1A) Subsection (1) of this section is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required).”

Commencement

Sch. 2 para. 4: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 4: United Kingdom

Pipe-lines Act 1962 (c. 58)

Law In Force

5

The Pipe-lines Act 1962 is amended as follows.

Commencement

Sch. 2 para. 5: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 5: United Kingdom

✔ Law In Force

6

(1) Section 1 (cross-country pipe-lines not to be constructed without authorisation) is amended as follows.

(2) After subsection (1) insert—

“(1ZA) Subsection (1) is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required).”

(3) In subsection (1A)(b) for “pipe-line which is the subject of a pipe-line construction authorisation” substitute “nationally significant pipe-line”.

(4) After subsection (1A) insert—

“(1B) For the purposes of subsection (1A), a pipe-line is a nationally significant pipe-line if—

- (a) its construction has been authorised by a pipe-line construction authorisation, or
- (b) development consent under the Planning Act 2008 is required for its construction by virtue of section 14(1)(g) of that Act, and has been granted.”

Commencement

Sch. 2 para. 6(1)-(4): March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 6(1)-(4): United Kingdom

✔ Law In Force

7

In section 66(1) (general interpretation provisions) in the definition of “diversion”—

(a) after paragraph (a) insert—

“(aa) if no such authorisation is required, beyond the limits of lateral diversion permitted by development consent under the Planning Act 2008 relating to that pipe-line, or”;

(b) in paragraph (b) after “no such authorisation” insert “or consent”.

Commencement

Sch. 2 para. 7(a)-(b): March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 7(a)-(b): United Kingdom

Harbours Act 1964 (c. 40)

Law In Force

8

The Harbours Act 1964 is amended as follows.

Commencement

Sch. 2 para. 8: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 8: United Kingdom

Law In Force

9

In section 14 (harbour revision orders) after subsection (1) insert—

“(1A) Subsection (1) is subject to—

- (a) section 33(2) of the Planning Act 2008 (exclusion of powers to authorise development);
 - (b) section 120(9) of that Act (exclusion of power to include ancillary provision in orders).”
-

Commencement

Sch. 2 para. 9: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 9: United Kingdom

Law In Force

10

In section 16 (harbour empowerment orders) after subsection (3) insert—

“(3A) Subsections (1) to (3) are subject to—

- (a) section 33(2) of the Planning Act 2008 (exclusion of powers to authorise development);
- (b) section 120(9) of that Act (exclusion of power to include ancillary provision in orders).”

Commencement

Sch. 2 para. 10: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 10: United Kingdom

Gas Act 1965 (c. 36)

Law In Force

11

The Gas Act 1965 is amended as follows.

Commencement

Sch. 2 para. 11: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 11: United Kingdom

Law In Force

12

In section 4 (storage authorisation orders) after subsection (2) insert—

“(2A) So far as relating to development within section 17(2), (3) or (5) of the Planning Act 2008—

- (a) subsection (1) is subject to section 33(2) of that Act (exclusion of powers to authorise development for which development consent required), and
- (b) subsection (2) is subject to section 33(1) of that Act (exclusion of requirement for other consents for development for which development consent required).

(2B) So far as relating to the use of strata for the storage of gas, subsections (1) and (2) are subject to section 120(9) of the Planning Act 2008 (exclusion of power to include ancillary provision in orders).”

Commencement

Sch. 2 para. 12: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 12: United Kingdom

✔ Law In Force

13

In section 5 (control of mining and other operations in gas storage area and protective area) after subsection (2) insert—

“(2A) Subsection (2) does not apply so far as the controlled operations are authorised by an order granting development consent under the Planning Act 2008.”

Commencement

Sch. 2 para. 13: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 13: United Kingdom

✔ Law In Force

14

(1) Section 6 (controlled operations: carrying out of works to remedy a default) is amended as follows.

(2) In subsection (1)—

(a) for “without the consent of the Minister” substitute “in breach of section 5(2)”,

(b) for “failure to comply with any conditions subject to which the Minister's consent to the carrying out of any controlled operations has been granted” substitute “relevant failure to comply”, and

(c) after “foregoing section” insert “or in circumstances involving a relevant failure to comply”.

(3) In subsection (5) for the words from “failed” to the end substitute “was responsible for the relevant failure to comply.”

(4) After subsection (8) insert—

“(9) In this section “relevant failure to comply” means—

(a) in a case where the Minister's consent to the carrying out of controlled operations has been obtained under section 5, a failure to comply with any conditions subject to which the Minister's consent was granted;

(b) in a case where the carrying out of controlled operations has been authorised by an order granting development consent under the Planning Act 2008, a breach of the terms of the order or other failure to comply with the terms of the order.”

Commencement

Sch. 2 para. 14(1)-(4): March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 14(1)-(4): United Kingdom

Energy Act 1976 (c. 76)

Law In Force

15

In section 14 of the Energy Act 1976 (fuelling of new and converted power stations) after subsection (1) insert—

“(1A) Subsection (1) is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for notice to be given of development for which development consent required).”

Commencement

Sch. 2 para. 15: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 15: United Kingdom

Ancient Monuments and Archaeological Areas Act 1979 (c. 46)

Law In Force

16

The Ancient Monuments and Archaeological Areas Act 1979 is amended as follows.

Commencement

Sch. 2 para. 16: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 16: United Kingdom

Law In Force

17

In section 2(1) (offence of executing works affecting scheduled monuments without authorisation) after “authorised under this Part of this Act” insert “or by development consent”.

Commencement

Sch. 2 para. 17: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 17: United Kingdom

Law In Force

18

In section 28(2) (offence of damaging ancient monuments: exception for authorised works) after “order under section 3)” insert “or for which development consent has been granted”.

Commencement

Sch. 2 para. 18: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 18: United Kingdom

Law In Force

19

In section 37 (exemptions from offence under section 35) after subsection (1) insert—

“(1A) Section 35 does not apply to the carrying out of any operations for which development consent has been granted.”

Commencement

Sch. 2 para. 19: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 19: United Kingdom

Law In Force

20

In section 61(1) (interpretation of Act) at the appropriate place insert—

““development consent” means development consent under the Planning Act 2008;”.

Commencement

Sch. 2 para. 20: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 20: United Kingdom

Highways Act 1980 (c. 66)

Law In Force

21

The Highways Act 1980 is amended as follows.

Commencement

Sch. 2 para. 21: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 21: United Kingdom

Law In Force

22

In section 10 (general provision as to trunk roads) after subsection (2) insert—

“(2A) Subsection (2) is subject to section 33(4) of the Planning Act 2008 (exclusion of powers to make or confirm orders in relation to highways for which development consent required).”

Commencement

Sch. 2 para. 22: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 22: United Kingdom

Law In Force

23

In section 14 (powers as respects roads that cross or join trunk roads etc.) after subsection (1) insert—

“(1A) Subsection (1) is subject to section 33(4) of the Planning Act 2008 (exclusion of powers to make or confirm orders in relation to highways for which development consent required).”

Commencement

Sch. 2 para. 23: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 23: United Kingdom

Law In Force

24

In section 16 (general provision as to special roads) after subsection (3) insert—

“(3A) Subsection (3) is subject to section 33(4) of the Planning Act 2008 (exclusion of powers to make or confirm schemes in relation to highways for which development consent required).”

Commencement

Sch. 2 para. 24: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 24: United Kingdom

Law In Force

25

In section 18 (supplementary orders relating to special roads) after subsection (1) insert—

“(1A) Subsection (1) is subject to section 33(4) of the Planning Act 2008 (exclusion of powers to make or confirm orders in relation to highways for which development consent required).”

Commencement

Sch. 2 para. 25: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 25: United Kingdom

Law In Force

26

In section 106 (orders and schemes providing for construction of bridges over or tunnels under navigable waters) after subsection (4) insert—

“(4A) Subsections (1) and (3) are subject to section 33(4) of the Planning Act 2008 (exclusion of powers to make or confirm orders or schemes in relation to highways for which development consent required).”

Commencement

Sch. 2 para. 26: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 26: United Kingdom

Law In Force

27

In section 108 (power to divert navigable watercourses) after subsection (1) insert—

“(1A) Subsection (1) is subject to section 33(4) of the Planning Act 2008 (exclusion of powers to make or confirm orders in relation to highways for which development consent required).”

Commencement

Sch. 2 para. 27: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 27: United Kingdom

Law In Force

28

In section 110 (power to divert non-navigable watercourses and to carry out other works) after subsection (1) insert—

“(1A) Subsection (1) is subject to section 33(4) of the Planning Act 2008 (exclusion of powers to make or confirm orders in relation to highways for which development consent required).”

Commencement

Sch. 2 para. 28: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 28: United Kingdom

Law In Force

29

(1) Section 329(1) (further provision as to interpretation of Act) is amended as follows.

(2) In the definition of “special road” after “section 16 above” insert “or by virtue of an order granting development consent under the Planning Act 2008”.

(3) In the definition of “trunk road” after “section 10 above” insert “or an order granting development consent under the Planning Act 2008”.

Commencement

Sch. 2 para. 29(1)-(3): March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 29(1)-(3): United Kingdom

✔ Law In Force

30

For section 337 (saving for obligation to obtain planning permission) substitute—

“337 Saving for obligation to obtain planning permission or development consent

Nothing in this Act authorises—

- (a) the carrying out of any development of land for which permission is required by virtue of section 57 of the Town and Country Planning Act 1990 and which is not authorised by permission granted or deemed to be granted under or for the purposes of Part 3 of that Act; or
- (b) the carrying out of any development for which development consent is required under the Planning Act 2008 and for which development consent has not been granted under that Act.”

Commencement

Sch. 2 para. 30: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 30: United Kingdom

Electricity Act 1989 (c. 29)

✔ Law In Force

31

The Electricity Act 1989 is amended as follows.

Commencement

Sch. 2 para. 31: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 31: United Kingdom

✔ Law In Force

32

- (1) Section 36 (consent for construction etc. of generating stations) is amended as follows.
- (2) In subsection (1) after “subsections” insert “(1A) to”.
- (3) After subsection (1) insert—

“(1A) So far as relating to the construction or extension of a generating station, subsection (1) is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required).”

(1B) So far as relating to the operation of a generating station, subsection (1) does not apply if the operation is authorised by an order granting development consent under the Planning Act 2008.”

Commencement

Sch. 2 para. 32(1)-(3): March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 32(1)-(3): United Kingdom

Law In Force

33

(1) Section 37 (consent for overhead lines) is amended as follows.

(2) In subsection (1) for “subsection (2)” substitute “subsections (1A) to (2)”.

(3) After subsection (1) insert—

“(1A) So far as relating to the installation of an electric line, subsection (1) is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required).

(1B) So far as relating to keeping an electric line installed, subsection (1) does not apply if keeping the line installed is authorised by an order granting development consent under the Planning Act 2008.”

Commencement

Sch. 2 para. 33(1)-(3): March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 33(1)-(3): United Kingdom

Town and Country Planning Act 1990 (c. 8)

Law In Force

34

TCPA 1990 is amended as follows.

Commencement

Sch. 2 para. 34: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 34: United Kingdom

✔ Law In Force

35

In section 57 (planning permission required for development) after subsection (1) insert—

“(1A) Subsection (1) is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for planning permission etc. for development for which development consent required).”

Commencement

Sch. 2 para. 35: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 35: United Kingdom

✔ Law In Force

36

(1) Section 211 (preservation of trees in conservation areas) is amended as follows.

(2) After subsection (1) insert—

“(1A) Subsection (1) does not apply so far as the act in question is authorised by an order granting development consent.”

(3) After subsection (5) insert—

“(5A) Subsection (5) does not apply so far as the act in question is authorised by an order granting development consent.”

Commencement

Sch. 2 para. 36(1)-(3): March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 36(1)-(3): United Kingdom

✔ Law In Force

37

In section 336(1) (interpretation) at the appropriate place insert—

““development consent” means development consent under the Planning Act 2008;”.

Commencement

Sch. 2 para. 37: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 37: United Kingdom

Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9)

Law In Force

38

The Listed Buildings Act is amended as follows.

Commencement

Sch. 2 para. 38: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 38: United Kingdom

Law In Force

39

(1) Section 7 (restriction on works affecting listed buildings) is amended as follows.

(2) At the beginning insert “(1)”.

(3) After “authorised” insert “under section 8”.

(4) At the end insert—

“(2) Subsection (1) is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required).”

Commencement

Sch. 2 para. 39(1)-(4): March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 39(1)-(4): United Kingdom

Law In Force

40

In section 59(3) (offence relating to acts causing or likely to result in damage to listed building: exceptions) after paragraph (b) insert

“; or

(c) of works for which development consent has been granted under the Planning Act 2008.”

Commencement

Sch. 2 para. 40: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 40: United Kingdom

Law In Force

41

In section 74 (control of demolition in conservation areas) after subsection (1) insert—

“(1A) Subsection (1) is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required).”

Commencement

Sch. 2 para. 41: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 41: United Kingdom

Planning (Hazardous Substances) Act 1990 (c. 10)

Law In Force

42

The Hazardous Substances Act is amended as follows.

Commencement

Sch. 2 para. 42: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 42: United Kingdom

Law In Force

43

In section 9(2)(c) (determination of applications for hazardous substances consent: material considerations) after “planning permission” insert “or development consent”.

Commencement

Sch. 2 para. 43: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 43: United Kingdom

Law In Force

44

In section 10(1) (conditions on grant of hazardous substances consent) after “planning permission” insert “or development consent”.

Commencement

Sch. 2 para. 44: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 44: United Kingdom

Law In Force

45

(1) Section 12 (deemed hazardous substances consent: government authorisation) is amended as follows.

(2) After subsection (2A) insert—

“(2B) On making an order granting development consent in respect of development that would involve the presence of a hazardous substance in circumstances requiring hazardous substances consent, the person making the order may direct that hazardous substances consent shall be deemed to be granted, subject to such conditions (if any) as may be specified in the direction.”

(3) For subsection (3) substitute—

“(3) Before giving a direction under any of subsections (1) to (2B), the person having power to give the direction must consult the Health and Safety Commission.”

(4) In subsection (6)—

- (a) for “government department or the Secretary of State” substitute “person”, and
- (b) after “directions” insert “given by the person”.

Commencement

Sch. 2 para. 45(1)-(4)(b): March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 45(1)-(4)(b): United Kingdom

Law In Force

46

In section 14(2)(b) (power to revoke or modify hazardous substances consent)—

- (a) after “planning permission” insert “or development consent”;
 - (b) after “the permission” insert “or development consent”.
-

Commencement

Sch. 2 para. 46(a)-(b): March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 46(a)-(b): United Kingdom

Law In Force

47

In section 39(1) (interpretation) at the appropriate place insert—

““development consent” means development consent under the Planning Act 2008;”.

Commencement

Sch. 2 para. 47: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 47: United Kingdom

New Roads and Street Works Act 1991 (c. 22)

Law In Force

48

The New Roads and Street Works Act 1991 is amended as follows.

Commencement

Sch. 2 para. 48: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 48: United Kingdom

Law In Force

49

In section 6 (toll orders) after subsection (1) insert—

“(1A) Subsection (1) is subject to section 33(4) of the Planning Act 2008 (exclusion of powers to make or confirm orders in relation to highways for which development consent required).”

Commencement

Sch. 2 para. 49: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 49: United Kingdom

Water Industry Act 1991 (c. 56)

Law In Force

50

In section 167(1) of the Water Industry Act 1991 (compulsory works orders)—

- (a) after “water undertaker” insert “whose area is wholly or partly in Wales”, and
 - (b) after “functions” insert “in relation to an area in Wales”.
-

Commencement

Sch. 2 para. 50(a)-(b): March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 50(a)-(b): United Kingdom

Transport and Works Act 1992 (c. 42)

Law In Force

51

The Transport and Works Act 1992 is amended as follows.

Commencement

Sch. 2 para. 51: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 51: United Kingdom

Law In Force

52

In section 1 (orders as to railways, tramways etc.) after subsection (1) insert—

“(1A) Subsection (1) is subject to—

- (a) section 33(2) of the Planning Act 2008 (exclusion of powers to authorise development);
 - (b) section 120(9) of that Act (exclusion of power to include ancillary provision in orders).”
-

Commencement

Sch. 2 para. 52: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 52: United Kingdom

Law In Force

53

In section 3 (orders as to inland waterways etc.) after subsection (1) insert—

“(1A) Subsection (1) is subject to—

- (a) section 33(2) of the Planning Act 2008 (exclusion of powers to authorise development);
 - (b) section 120(9) of that Act (exclusion of power to include ancillary provision in orders).”
-

Commencement

Sch. 2 para. 53: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 53: United Kingdom

Town and Country Planning (Scotland) Act 1997 (c. 8)

Law In Force

54

The Town and Country Planning (Scotland) Act 1997 is amended as follows.

Commencement

Sch. 2 para. 54: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 54: United Kingdom

Law In Force

55

In section 28 (planning permission required for development) after subsection (1) insert—

“(1A) Subsection (1) is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for planning permission etc. for development for which development consent required).”

Commencement

Sch. 2 para. 55: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 55: United Kingdom

Law In Force

56

In section 160(6) (tree preservation orders: exemptions) after paragraph (b) insert—

“(ba) it is authorised by an order granting development consent.”

Commencement

Sch. 2 para. 56: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 56: United Kingdom

Law In Force

57

(1) Section 172 (preservation of trees in conservation areas) is amended as follows.

(2) After subsection (1) insert—

“(1A) Subsection (1) does not apply so far as the act in question is authorised by an order granting development consent.”

(3) After subsection (5) insert—

“(5A) Subsection (5) does not apply so far as the act in question is authorised by an order granting development consent.”

Commencement

Sch. 2 para. 57(1)-(3): March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 57(1)-(3): United Kingdom

Law In Force

58

In section 277(1) (interpretation) at the appropriate place insert—

““development consent” means development consent under the Planning Act 2008;”.

Commencement

Sch. 2 para. 58: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 58: United Kingdom

Planning (Hazardous Substances) (Scotland) Act 1997 (c. 10)

Law In Force

59

The Planning (Hazardous Substances) (Scotland) Act 1997 is amended as follows.

Commencement

Sch. 2 para. 59: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 59: United Kingdom

✔ Law In Force

60

In section 7(2)(c) (determination of applications for hazardous substances consent: material considerations) after “planning permission” insert “or development consent”.

Commencement

Sch. 2 para. 60: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 60: United Kingdom

✔ Law In Force

61

In section 8(1) (conditions on grant of hazardous substances consent) after “planning permission” insert “or development consent”.

Commencement

Sch. 2 para. 61: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 61: United Kingdom

✔ Law In Force

62

(1) Section 10 (deemed hazardous substances consent: government authorisation) is amended as follows.

(2) After subsection (2A) insert—

“(2B) On making an order granting development consent in respect of development that would involve the presence of a hazardous substance in circumstances requiring hazardous substances consent, the person making the order may direct that hazardous substances consent shall be deemed to be granted, subject to such conditions (if any) as may be specified in the direction.”

(3) For subsection (3) substitute—

“(3) Before giving a direction under any of subsections (1) to (2B), the person having power to give the direction must consult the Health and Safety Commission.”

(4) In subsection (6)—

- (a) for the words from “government” to “Ministers” substitute “person”, and
- (b) after “directions” insert “given by the person”.

Commencement

Sch. 2 para. 62(1)-(4)(b): March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 62(1)-(4)(b): United Kingdom

Law In Force

63

In section 12(2)(b) (power to revoke or modify hazardous substances consent)—

- (a) after “planning permission” insert “or development consent”, and
 - (b) after “the permission” insert “or development consent”.
-

Commencement

Sch. 2 para. 63(a)-(b): March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 63(a)-(b): United Kingdom

Law In Force

64

In section 38(1) (interpretation) at the appropriate place insert—

““development consent” means development consent under the Planning Act 2008.”.

Commencement

Sch. 2 para. 64: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 64: United Kingdom

Housing and Regeneration Act 2008 (c. 17)

Law In Force

65

In section 13(5) of the Housing and Regeneration Act 2008 (power of Secretary of State to make designation orders) in the definition of “permitted purposes” at the end insert

- “, and
- (d) Part 8 of the Planning Act 2008.”.

Commencement

Sch. 2 para. 65: March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 65: United Kingdom

Crossrail Act 2008 (c. 18)

Law In Force

66

(1) Section 48 of the Crossrail Act 2008 (application of Act to extensions) is amended as follows.

(2) Before subsection (1) insert—

“(A1) Development consent under the Planning Act 2008 is not required for—

(a) an extension of Crossrail, or

(b) the provision, otherwise than as part of an extension of Crossrail, of a railway facility for use for the purposes of or in connection with Crossrail.”

(3) In subsection (1) for paragraphs (a) and (b) substitute “a matter mentioned in subsection (A1)(a) or (b).”

(4) In subsection (2) for “(1)” substitute “(A1)”.

(5) In subsection (5) for “(1)” substitute “(A1)”.

Commencement

Sch. 2 para. 66(1)-(5): March 1, 2010 (SI 2010/101 art. 2)

Extent

Sch. 2 para. 66(1)-(5): United Kingdom

SCHEDULE 3**EXAMINATION OF APPLICATIONS BY SECRETARY OF STATE****Section 113**

Law In Force

Amendment(s) Pending

1 Examination of matters by Commission: procedure

(1) This paragraph applies if—

- (a) the Secretary of State gives a direction under section 112(1) in relation to an application, and
 - (b) for the purpose of the examination of the application under section 113(2)(a), the Secretary of State gives a direction under section 113(3)(a) for specified matters to be examined by the Commission.
- (2) The Commission must secure that—
- (a) an examination of the specified matters is conducted by a Panel or a single Commissioner, and
 - (b) a report is made by the Panel or Commissioner to the Secretary of State setting out the Panel or Commissioner's findings and conclusions on those matters.
- (3) The Panel or single Commissioner must—
- (a) complete the examination under sub-paragraph (2)(a) by the end of the period specified by the Secretary of State, and
 - (b) report under sub-paragraph (2)(b) by the end of the period specified by the Secretary of State.
- (4) The Secretary of State may direct that things done in connection with the examination of the application under Chapter 2 or 3 of Part 6 are to be treated as done in connection with the examination under sub-paragraph (2)(a).
- (5) The following provisions of Part 6 apply in relation to the specified matters as if for references to an application for an order granting development consent there were substituted references to the specified matters—
- (a) in Chapter 1, sections 61(2) to (5), 62 and 63;
 - (b) in Chapter 2, sections 64 (except subsection (1)(a)), 65 to 73, 74(2) to (4) and 75 to 77;
 - (c) in Chapter 3, sections 78 (except subsection (1)(a)), 79 to 82 and 83 (except subsection (2)(a));
 - (d) in Chapter 4, sections 86 to 97 and 99 to 102.
- (6) As applied by sub-paragraph (5), those provisions apply—
- (a) with any necessary modifications, and
 - (b) with such other modifications as may be prescribed.

Amendments Pending

Sch. 3 para. 1: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 54 (date to be appointed)

Sch. 3 para. 1: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Sch. 3 para. 1(1)-(6)(b): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Sch. 3 para. 1(1)-(6)(b): United Kingdom

✔ Law In Force

! Amendment(s) Pending

2 Examination of matters by Secretary of State: procedure

- (1) This paragraph applies if—
- (a) the Secretary of State gives a direction under section 112(1) in relation to an application, and
 - (b) for the purpose of the examination of the application under section 113(2)(a), the Secretary of State is to conduct an examination of any matters under section 113(3)(b).
- (2) It is for the Secretary of State to decide how to conduct the examination under section 113(3)(b).
- (3) The Secretary of State may in particular decide that all or part of the examination is to take the form of—
- (a) consideration of written representations;
 - (b) consideration of oral representations at a hearing.
- (4) The Secretary of State may treat things done in connection with the examination of the application under Chapter 2 or 3 of Part 6 as done in connection with the examination under section 113(3)(b).
- (5) Sub-paragraph (6) applies if—
- (a) the direction under section 112(1) is given by virtue of section 110,
 - (b) the Secretary of State has decided that all or part of the examination is to take the form of consideration of oral representations at a hearing, and
 - (c) the Secretary of State is satisfied that—
 - (i) the making of particular representations at the hearing would be likely to result in the disclosure of information as to defence or national security, and
 - (ii) the public disclosure of that information would be contrary to the national interest.
- (6) The Secretary of State may direct that representations of a specified description may be made only to persons of a specified description (instead of being made in public).
- (7) “Specified” means specified in the direction.
- (8) The Secretary of State's powers under sub-paragraphs (2) to (4) are subject to—
- (a) sub-paragraphs (5) to (7), and
 - (b) any rules made under paragraph 3.
- (9) In this paragraph “representation” includes evidence.

Amendments Pending

Sch. 3 para. 2: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 54 (date to be appointed)

Sch. 3 para. 2: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Sch. 3 para. 2(1)-(9): November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29 s.241(2); March 1, 2010 subject to saving specified in SI 2010/101 art.6 otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(8); SI 2010/101 art. 3(d), art. 6)

Extent

Sch. 3 para. 2(1)-(9): United Kingdom

✔ Law In Force

! Amendment(s) Pending

3 Rules

(1) The Lord Chancellor or (if sub-paragraph (2) applies) the Secretary of State, after consultation with the Administrative Justice and Tribunals Council, may make rules regulating the procedure to be followed in connection with the Secretary of State's examination of an application under section 113.

(2) This sub-paragraph applies if the development to which the application relates (or part of the development) is the construction (other than by a gas transporter) of an oil or gas cross-country pipe-line—

- (a) one end of which is in England or Wales, and
- (b) the other end of which is in Scotland.

(3) Rules under sub-paragraph (1) may make provision for or in connection with authorising the Secretary of State, alone or with others, to enter onto land, including land owned or occupied otherwise than by the applicant, for the purpose of inspecting the land as part of the Secretary of State's examination.

(4) Rules under sub-paragraph (1) may regulate procedure in connection with matters preparatory to the Secretary of State's examination, and in connection with matters subsequent to the examination, as well as in connection with the conduct of the examination.

(5) Power under this paragraph to make rules includes power to make different provision for different purposes.

(6) Power under this paragraph to make rules is exercisable by statutory instrument.

(7) A statutory instrument containing rules under this paragraph is subject to annulment pursuant to a resolution of either House of Parliament.

Amendments Pending

Sch. 3 para. 3: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 54 (date to be appointed)

Sch. 3 para. 3: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Sch. 3 para. 3(1)-(7): November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29 s.241(2); March 1, 2010 subject to saving specified in SI 2010/101 art.6 otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(8); SI 2010/101 art. 3(d), art. 6)

Extent

Sch. 3 para. 3(1)-(7): United Kingdom

✔ Law In Force

! Amendment(s) Pending

4 Appointed representatives

(1) Sub-paragraph (2) applies if the Secretary of State gives a direction under paragraph 2(6) for representations of a specified description to be made only to persons of a specified description (instead of being made in public).

(2) The Attorney General or (where the representations are to be made in Scotland) the Advocate General for Scotland may appoint a person (an “appointed representative”) to represent the interests of an interested party who (by virtue of the direction) is prevented from being present when the representations are made.

(3) “Interested party” means a person who is an interested party in relation to the application for the purposes of Chapter 4 of Part 6 (see section 102).

(4) Rules under paragraph 3 may make provision as to the functions of an appointed representative.

(5) The Secretary of State may direct a person (a “responsible person”) to pay the fees and expenses of an appointed representative, if the Secretary of State thinks that the responsible person is interested in the hearing in relation to any representations that are the subject of the direction under paragraph 2(6).

(6) If the Secretary of State gives a direction under sub-paragraph (5) and the appointed representative and the responsible person are unable to agree the amount of the fees and expenses, the amount must be determined by the Secretary of State.

(7) The Secretary of State must cause the amount agreed between the appointed representative and the responsible person, or determined by the Secretary of State, to be certified.

(8) An amount so certified is recoverable from the responsible person as a civil debt.

Amendments Pending

Sch. 3 para. 4: repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 54 (date to be appointed)

Sch. 3 para. 4: repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Sch. 3 para. 4(1)-(8): November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29 s.241(2); March 1, 2010 subject to saving specified in SI 2010/101 art.6 otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(8); SI 2010/101 art. 3(d), art. 6)

Extent

Sch. 3 para. 4(1)-(8): United Kingdom

SCHEDULE 4**CORRECTION OF ERRORS IN DEVELOPMENT CONSENT DECISIONS****Section 119**

✔ Law In Force

! Amendment(s) Pending

1 Correction of errors

- (1) This paragraph applies if—
- (a) the decision-maker makes an order granting development consent, or refuses development consent, and
 - (b) the decision document contains a correctable error.
- (2) The decision document is—
- (a) in the case of an order granting development consent, the order;
 - (b) in the case of a refusal of development consent, the document recording the refusal.
- (3) A correctable error is an error or omission which—
- (a) is in a part of the decision document which records the decision, and
 - (b) is not part of the statement of reasons for the decision.
- (4) The appropriate authority may correct the error or omission if (but only if) the conditions in sub-paragraphs (5) and (7) are met.
This is subject to sub-paragraph (11).
- (5) The condition is that, before the end of the relevant period—
- (a) the appropriate authority receives a written request to correct the error or omission from any person, or
 - (b) the appropriate authority sends a statement in writing to the applicant which explains the error or omission and states that the appropriate authority is considering making the correction.
- (6) The relevant period is—
- (a) if the decision document is an order granting development consent, the period specified in section 118(1)(b);
 - (b) if the decision document is the document recording a refusal of development consent, the period specified in section 118(2)(b).
- (7) The condition is that the appropriate authority informs each relevant local planning authority that the request mentioned in sub-paragraph (5)(a) has been received or the statement mentioned in sub-paragraph (5)(b) has been sent (as the case may be).
- (8) If—
- (a) the decision document is an order granting development consent, and
 - (b) the order was required to be contained in a statutory instrument,
- the power conferred by sub-paragraph (4) may be exercised only by order contained in a statutory instrument.

(9) If the instrument containing the order is made by the Commission, the Statutory Instruments Act 1946 (c. 36) applies in relation to the instrument as if it had been made by a Minister of the Crown.

(10) As soon as practicable after the instrument is made, the appropriate authority must deposit a copy of it in the office of the Clerk of the Parliaments.

(11) The power conferred by sub-paragraph (4) may not be exercised in relation to provision included in an order granting development consent by virtue of [paragraph 30A or 30B of Schedule 5 (deemed marine licence under Marine and Coastal Access Act 2009)]¹ .

Notes

¹ Words substituted by Marine and Coastal Access Act 2009 c. 23 Sch.8(1) para.4(4) (April 6, 2011)

Amendments Pending

Sch. 4 para. 1(1)(a): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 70(2) (date to be appointed)

Sch. 4 para. 1(4): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 70(3) (date to be appointed)

Sch. 4 para. 1(5): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 70(3) (date to be appointed)

Sch. 4 para. 1(7): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 70(3) (date to be appointed)

Sch. 4 para. 1(9): repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 70(4) (date to be appointed)

Sch. 4 para. 1(9): repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Sch. 4 para. 1(10): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 70(5) (date to be appointed)

Commencement

Sch. 4 para. 1(1)-(11): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Sch. 4 para. 1(1)-(11): United Kingdom

Law In Force

Amendment(s) Pending

2 Correction notice

(1) If paragraph 1(5)(a) or (b) applies the appropriate authority must issue a notice in writing (a “correction notice”) which—

- (a) specifies the correction of the error or omission, or
- (b) gives notice of the decision not to correct the error or omission.

(2) The appropriate authority must issue the correction notice as soon as practicable after making the correction or deciding not to make the correction.

(3) The appropriate authority must give the correction notice to—

- (a) the applicant,
- (b) each relevant local planning authority, and
- (c) if the correction was requested by any other person, that person.

(4) The Secretary of State may by order specify any other person or description of person to whom a correction notice must be given.

Amendments Pending

Sch. 4 para. 2: words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 70(6) (date to be appointed)

Sch. 4 para. 2(4): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 70(7) (date to be appointed)

Commencement

Sch. 4 para. 2(1)-(4): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Sch. 4 para. 2(1)-(4): United Kingdom

Law In Force

3 Effect of a correction

(1) If a correction is made in pursuance of paragraph 1—

- (a) the original decision and the decision document containing it continue in force, and
- (b) the decision document is treated as corrected as specified in the correction notice issued under paragraph 2 with effect from the date the correction notice is issued, or, if the correction is required to be made by order contained in a statutory instrument, the date specified in the order.

(2) If a correction is not made—

- (a) the original decision continues to have full force and effect, and
- (b) nothing in this Schedule affects anything done in pursuance of or in respect of the original decision.

(3) “The original decision” means the decision to—

- (a) make an order granting development consent, or
 - (b) refuse development consent.
-

Commencement

Sch. 4 para. 3(1)-(3)(b): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Sch. 4 para. 3(1)-(3)(b): United Kingdom

Law In Force

Amendment(s) Pending

4 Interpretation

In this Schedule—

“the applicant” means the person who made the application to which the decision relates;

“the appropriate authority” means—

- (a) the Commission where the decision-maker is a Panel or the Council;

(b) the Secretary of State where the decision-maker is the Secretary of State;
 “a relevant local planning authority” means a local planning authority for all or any part of the area in which the land to which the decision relates is situated.

Amendments Pending

Sch. 4 para. 4 definition of "the appropriate authority": definition repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 70(8) (date to be appointed)

Sch. 4 para. 4 definition of "the appropriate authority": definition repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Sch. 4 para. 4 definition of "the applicant"- definition of "a relevant local planning authority": March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(d), art. 6)

Extent

Sch. 4 para. 4 definition of "the applicant"- definition of "a relevant local planning authority": United Kingdom

SCHEDULE 5

PROVISION RELATING TO, OR TO MATTERS ANCILLARY TO, DEVELOPMENT

Section 120

PART 1

THE MATTERS

Law In Force

1

The acquisition of land, compulsorily or by agreement.

Commencement

Sch. 5(1) para. 1: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(e), art. 6)

Extent

Sch. 5(1) para. 1: United Kingdom

Law In Force

2

The creation, suspension or extinguishment of, or interference with, interests in or rights over land (including rights of navigation over water), compulsorily or by agreement.

Commencement

Sch. 5(1) para. 2: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(e), art. 6)

Extent

Sch. 5(1) para. 2: United Kingdom

Law In Force

3

The abrogation or modification of agreements relating to land.

Commencement

Sch. 5(1) para. 3: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(e), art. 6)

Extent

Sch. 5(1) para. 3: United Kingdom

Law In Force

4

Carrying out specified excavation, mining, quarrying or boring operations in a specified area.

Commencement

Sch. 5(1) para. 4: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(e), art. 6)

Extent

Sch. 5(1) para. 4: United Kingdom

Law In Force

5

The operation of a generating station.

Commencement

Sch. 5(1) para. 5: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(e), art. 6)

Extent

Sch. 5(1) para. 5: United Kingdom

Law In Force

6

Keeping electric lines installed above ground.

Commencement

Sch. 5(1) para. 6: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(e), art. 6)

Extent

Sch. 5(1) para. 6: United Kingdom

Law In Force

7

The use of underground gas storage facilities.

Commencement

Sch. 5(1) para. 7: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(e), art. 6)

Extent

Sch. 5(1) para. 7: United Kingdom

Law In Force

8

The sale, exchange or appropriation of Green Belt land.

Commencement

Sch. 5(1) para. 8: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(e), art. 6)

Extent

Sch. 5(1) para. 8: United Kingdom

Law In Force

9

Freeing land from any restriction imposed on it by or under the Green Belt (London and Home Counties) Act 1938 (c. xciii), or by a covenant or other agreement entered into for the purposes of that Act.

Commencement

Sch. 5(1) para. 9: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(e), art. 6)

Extent

Sch. 5(1) para. 9: United Kingdom

Law In Force

10

The protection of the property or interests of any person.

Commencement

Sch. 5(1) para. 10: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(e), art. 6)

Extent

Sch. 5(1) para. 10: United Kingdom

Law In Force

11

The imposition or exclusion of obligations or liability in respect of acts or omissions.

Commencement

Sch. 5(1) para. 11: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(e), art. 6)

Extent

Sch. 5(1) para. 11: United Kingdom

Law In Force

12

Carrying out surveys or taking soil samples.

Commencement

Sch. 5(1) para. 12: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(e), art. 6)

Extent

Sch. 5(1) para. 12: United Kingdom

Law In Force

13

Cutting down, uprooting, topping or lopping trees or shrubs or cutting back their roots.

Commencement

Sch. 5(1) para. 13: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(e), art. 6)

Extent

Sch. 5(1) para. 13: United Kingdom

Law In Force

14

The removal, disposal or re-siting of apparatus.

Commencement

Sch. 5(1) para. 14: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(e), art. 6)

Extent

Sch. 5(1) para. 14: United Kingdom

Law In Force

15

Carrying out civil engineering or other works.

Commencement

Sch. 5(1) para. 15: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(e), art. 6)

Extent

Sch. 5(1) para. 15: United Kingdom

Law In Force

16

The diversion of navigable or non-navigable watercourses.

Commencement

Sch. 5(1) para. 16: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(e), art. 6)

Extent

Sch. 5(1) para. 16: United Kingdom

Law In Force

17

The stopping up or diversion of highways.

Commencement

Sch. 5(1) para. 17: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(e), art. 6)

Extent

Sch. 5(1) para. 17: United Kingdom

Law In Force

Amendment(s) Pending

18

Charging tolls, fares and other charges.

Amendments Pending

Sch. 5(1) para. 18: words inserted by Localism Act 2011 c. 20 Sch. 13(1) para. 71(2) (date to be appointed)

Commencement

Sch. 5(1) para. 18: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(e), art. 6)

Extent

Sch. 5(1) para. 18: United Kingdom

Law In Force

19

The designation of a highway as a trunk road or special road.

Commencement

Sch. 5(1) para. 19: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(e), art. 6)

Extent

Sch. 5(1) para. 19: United Kingdom

Law In Force

20

The specification of the classes of traffic authorised to use a highway.

Commencement

Sch. 5(1) para. 20: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(e), art. 6)

Extent

Sch. 5(1) para. 20: United Kingdom

Law In Force

21

The appropriation of a highway for which the person proposing to construct or improve a highway is the highway authority.

Commencement

Sch. 5(1) para. 21: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(e), art. 6)

Extent

Sch. 5(1) para. 21: United Kingdom

Law In Force

22

The transfer to the person proposing to construct or improve a highway of a highway for which that person is not the highway authority.

Commencement

Sch. 5(1) para. 22: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(e), art. 6)

Extent

Sch. 5(1) para. 22: United Kingdom

Law In Force

23

The specification of the highway authority for a highway.

Commencement

Sch. 5(1) para. 23: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(e), art. 6)

Extent

Sch. 5(1) para. 23: United Kingdom

Law In Force

24

The operation and maintenance of a transport system.

Commencement

Sch. 5(1) para. 24: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(e), art. 6)

Extent

Sch. 5(1) para. 24: United Kingdom

✔ Law In Force

25

Entering into an agreement for the provision of police services.

Commencement

Sch. 5(1) para. 25: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(e), art. 6)

Extent

Sch. 5(1) para. 25: United Kingdom

✔ Law In Force

26

The discharge of water into inland waters or underground strata.

Commencement

Sch. 5(1) para. 26: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(e), art. 6)

Extent

Sch. 5(1) para. 26: United Kingdom

✘ Repealed

27 [...]¹

Notes

¹ Repealed by Marine and Coastal Access Act 2009 c. 23 Sch.22(2) para.1 (April 6, 2011)

✘ Repealed

28 [...]¹

Notes

¹ Repealed, never in force, by Marine and Coastal Access Act 2009 c. 23 Sch.22(2) para.1 (April 6, 2011)

✘ Repealed

29 [...]¹

Notes

¹ Repealed by Marine and Coastal Access Act 2009 c. 23 Sch.22(2) para.1 (April 6, 2011)

✘ Repealed

30 [...]¹

Notes

¹ Repealed by Marine and Coastal Access Act 2009 c. 23 Sch.22(2) para.1 (April 6, 2011)

Law In Force

[30A

Deeming a marine licence under Part 4 of the Marine and Coastal Access Act 2009 to have been given by the Secretary of State for activities specified in the order and subject to such conditions as may be specified in the order.

]¹

Notes

¹ Added by Marine and Coastal Access Act 2009 c. 23 Sch.8(1) para.4(5) (April 6, 2011)

Extent

Sch. 5(1) para. 30A: England, Wales

Law In Force

[30B

Deeming any such conditions to have been attached to the marine licence by the Secretary of State under that Part.

]¹

Notes

¹ Added by Marine and Coastal Access Act 2009 c. 23 Sch.8(1) para.4(5) (April 6, 2011)

Extent

Sch. 5(1) para. 30B: England, Wales

Law In Force

31

The creation of a harbour authority.

Commencement

Sch. 5(1) para. 31: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(e), art. 6)

Extent

Sch. 5(1) para. 31: United Kingdom

Law In Force

32

Changing the powers and duties of a harbour authority.

Commencement

Sch. 5(1) para. 32: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(e), art. 6)

Extent

Sch. 5(1) para. 32: United Kingdom

Law In Force

33

The transfer of property, rights, liabilities, or functions.

Commencement

Sch. 5(1) para. 33: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(e), art. 6)

Extent

Sch. 5(1) para. 33: United Kingdom

Law In Force

34

The transfer, leasing, suspension, discontinuance and revival of undertakings.

Commencement

Sch. 5(1) para. 34: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(e), art. 6)

Extent

Sch. 5(1) para. 34: United Kingdom

Law In Force

35

The payment of contributions.

Commencement

Sch. 5(1) para. 35: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(e), art. 6)

Extent

Sch. 5(1) para. 35: United Kingdom

Law In Force

36

The payment of compensation.

Commencement

Sch. 5(1) para. 36: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(e), art. 6)

Extent

Sch. 5(1) para. 36: United Kingdom

Law In Force

37

The submission of disputes to arbitration.

Commencement

Sch. 5(1) para. 37: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(e), art. 6)

Extent

Sch. 5(1) para. 37: United Kingdom

Law In Force

38

The alteration of borrowing limits.

Commencement

Sch. 5(1) para. 38: March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(e), art. 6)

Extent

Sch. 5(1) para. 38: United Kingdom

PART 2

INTERPRETATION

Law In Force

39

- (1) This paragraph applies for the purposes of this Schedule.
- (2) “Transport system” means any of the following—
 - (a) a railway,
 - (b) a tramway,
 - (c) a trolley vehicle system,

(d) a system using a mode of guided transport prescribed by order under section 2 of the Transport and Works Act 1992 (c. 42).

(3) “Maintenance”, in relation to a transport system, includes the inspection, repair, adjustment, alteration, removal, reconstruction or replacement of the system.

(4) The following terms have the meanings given by section 67(1) (interpretation) of the Transport and Works Act 1992 (c. 42)—

“guided transport”,

“tramway”,

“trolley vehicle system”.

Commencement

Sch. 5(2) para. 39(1)-(4): March 1, 2010 subject to saving specified in SI 2010/101 art.6 (SI 2010/101 art. 3(e), art. 6)

Extent

Sch. 5(2) para. 39(1)-(4): United Kingdom

SCHEDULE 6

CHANGES TO, AND REVOCATION OF, ORDERS GRANTING DEVELOPMENT CONSENT

Section 153

Preliminary

Law In Force

Amendment(s) Pending

1

(1) This paragraph applies for the purposes of this Schedule.

(2) “The applicant”, in relation to a development consent order, means the person who applied for the order.

(3) “A successor in title of the applicant” means a person who—

- (a) derives title to the land from the applicant (whether directly or indirectly), and
- (b) has an interest in the land.

(4) “The appropriate authority” means—

- (a) in a case where a Panel or the Council made the order granting development consent, the Commission;
- (b) in a case where the Secretary of State made the order, the Secretary of State.

(5) “Development consent order” means an order granting development consent.

(6) “The land”, in relation to a development consent order, means the land to which the order relates or any part of that land.

Amendments Pending

Sch. 6 para. 1(4): repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 72(2) (date to be appointed)

Sch. 6 para. 1(4): repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Commencement

Sch. 6 para. 1(1)-(6): October 1, 2011 (SI 2011/2054 art. 2(b))

Extent

Sch. 6 para. 1(1)-(6): United Kingdom

Non-material changes

☑ Law In Force

! Amendment(s) Pending

2

(1) The appropriate authority may make a change to a development consent order if it is satisfied that the change is not material.

This is subject to sub-paragraph (13).

(2) In deciding whether a change is material, the appropriate authority must have regard to the effect of the change, together with any previous changes made under this paragraph, on the development consent order as originally made.

(3) The power conferred by sub-paragraph (1) includes power—

- (a) to impose new requirements in connection with the development for which consent is granted by the development consent order;
- (b) to remove or alter existing requirements.

(4) The power conferred by sub-paragraph (1) may be exercised only on an application made to the Commission by or on behalf of—

- (a) the applicant or a successor in title of the applicant,
- (b) a person with an interest in the land, or
- (c) any other person for whose benefit the development consent order has effect.

(5) An application under sub-paragraph (4) must be made in the prescribed form and manner.

(6) Sub-paragraph (7) applies in relation to an application under sub-paragraph (4) made by or on behalf of a person with an interest in some, but not all, of the land to which the development consent order relates.

(7) The application may be made only in respect of so much of the order as affects the land in which the person has an interest.

(8) The appropriate authority must comply with such requirements as may be prescribed as to consultation and publicity in relation to the exercise of the power conferred by sub-paragraph (1). This is subject to sub-paragraphs (9) to (11).

(9) If the development consent order was required to be contained in a statutory instrument, the power conferred by sub-paragraph (1) may be exercised only by order contained in a statutory instrument.

(10) If the instrument containing the order is made by the Commission, the Statutory Instruments Act 1946 (c. 36) applies in relation to the instrument as if it had been made by a Minister of the Crown.

(11) As soon as practicable after the instrument is made, the appropriate authority must deposit a copy of it in the office of the Clerk of the Parliaments.

(12) If a change is made to a development consent order under the power conferred by sub-paragraph (1)—

(a) the order continues in force,

(b) the appropriate authority must give notice of the change to the order to such persons as may be prescribed, and

(c) the change to the order takes effect from the date on which the notice is issued, or, if the change to the order is required to be made by order contained in a statutory instrument, the date specified in the order making the change.

(13) The power conferred by sub-paragraph (1) may not be exercised in relation to provision included in an order granting development consent by virtue of [paragraph 30A or 30B of Schedule 5 (deemed marine licence under Marine and Coastal Access Act 2009)]¹ .

Notes

¹ Words substituted by Marine and Coastal Access Act 2009 c. 23 Sch.8(1) para.4(6)(a) (October 1, 2011: substitution came into force on April 6, 2011 but cannot take effect until the commencement of 2008 c.29 Sch.6 para.2 on October 1, 2011)

Amendments Pending

Sch. 6 para. 2(1): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 72(4) (date to be appointed)

Sch. 6 para. 2(4): word substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 72(5) (date to be appointed)

Sch. 6 para. 2(10): repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 72(6) (date to be appointed)

Sch. 6 para. 2(10): repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Sch. 6 para. 2(11): words inserted by Localism Act 2011 c. 20 Sch. 13(1) para. 72(7) (date to be appointed)

Commencement

Sch. 6 para. 2(1)-(13): October 1, 2011 (SI 2011/2054 art. 2(b))

Extent

Sch. 6 para. 2(1)-(13): United Kingdom

Changes to, and revocation of, orders granting development consent

✔ Law In Force

! Amendment(s) Pending

3

- (1) The appropriate authority may by order make a change to, or revoke, a development consent order.
- (2) The power conferred by sub-paragraph (1) may be exercised only in accordance with—
 - (a) the following provisions of this paragraph, and
 - (b) paragraphs 4 and 5.
- (3) The power may be exercised without an application being made if the appropriate authority is satisfied that—
 - (a) the development consent order contains a significant error, and
 - (b) it would not be appropriate for the error to be corrected by means of the power conferred by paragraph 1 of Schedule 4 or paragraph 2 of this Schedule.
- (4) The power may be exercised on an application made by or on behalf of—
 - (a) the applicant or a successor in title of the applicant,
 - (b) a person with an interest in the land, or
 - (c) any other person for whose benefit the development consent order has effect.
- (5) The power may be exercised on an application made by a local planning authority if the appropriate authority is satisfied that—
 - (a) the development consent order grants development consent for development on land all or part of which is in the local planning authority's area,
 - (b) the development has begun but has been abandoned, and
 - (c) the amenity of other land in the local planning authority's area or an adjoining area is adversely affected by the condition of the land.
- (6) Where the appropriate authority is the Commission, the power may be exercised on an application made by the Secretary of State if the Commission is satisfied that—
 - (a) if the development were carried out in accordance with the development consent order, there would be a contravention of Community law or any of the Convention rights, or
 - (b) there are other exceptional circumstances that make it appropriate to exercise the power.
- (7) Where the appropriate authority is the Secretary of State, the power may be exercised without an application being made if the Secretary of State is satisfied that—
 - (a) if the development were carried out in accordance with the development consent order, there would be a contravention of Community law or any of the Convention rights, or
 - (b) there are other exceptional circumstances that make it appropriate to exercise the power.
- (8) In this paragraph—

“Community law” means—

 - (a) all the rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Community Treaties, and
 - (b) all the remedies and procedures from time to time provided for by or under the Community Treaties;

“the Convention rights” has the same meaning as in the Human Rights Act 1998 (c. 42).

Amendments Pending

Sch. 6 para. 3(6): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 72(3) (date to be appointed)

Sch. 6 para. 3(6): repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 72(8) (date to be appointed)

Sch. 6 para. 3(6): repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Sch. 6 para. 3(7): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 72(3) (date to be appointed)

Sch. 6 para. 3(7): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 72(9) (date to be appointed)

Commencement

Sch. 6 para. 3(1)-(8) definition of "the Convention rights": October 1, 2011 (SI 2011/2054 art. 2(b))

Extent

Sch. 6 para. 3(1)-(8) definition of "the Convention rights": United Kingdom

Changes to, and revocation of, orders: supplementary

☑ Law In Force

! Amendment(s) Pending

4

(1) An application under paragraph 3 must be—

- (a) made in the prescribed form and manner, and
- (b) accompanied by information of a prescribed description.

(2) Sub-paragraph (3) applies in relation to an application under paragraph 3(4) made by or on behalf of a person with an interest in some, but not all, of the land to which the development consent order relates.

(3) The application may be made only in respect of so much of the order as affects the land in which the person has an interest.

(4) The Secretary of State may by regulations make provision about—

- (a) the procedure to be followed before an application under paragraph 3 is made;
- (b) the making of such an application;
- (c) the decision-making process in relation to the exercise of the power conferred by paragraph 3(1);
- (d) the making of the decision as to whether to exercise that power;
- (e) the effect of a decision to exercise that power.

(5) Paragraphs (c) to (e) of sub-paragraph (4) apply in relation to the exercise of the power conferred by paragraph 3(1)—

- (a) on an application under paragraph 3, or
- (b) on the initiative of the appropriate authority under paragraph 3(3) or (7).

(6) If a development consent order is changed or revoked in the exercise of the power conferred by paragraph 3(1), the appropriate authority must give notice of the change or revocation to such persons as may be prescribed.

(7) If a development consent order was required to be contained in a statutory instrument, an order changing or revoking the development consent order made in the exercise of the power conferred by paragraph 3(1) must also be contained in a statutory instrument.

(8) If the instrument containing the order is made by the Commission, the Statutory Instruments Act 1946 (c. 36) applies in relation to the instrument as if it had been made by a Minister of the Crown.

(9) As soon as practicable after the instrument is made, the appropriate authority must deposit a copy of it in the office of the Clerk of the Parliaments.

Amendments Pending

Sch. 6 para. 4(8): repealed by Localism Act 2011 c. 20 Sch. 13(1) para. 72(10) (date to be appointed)

Sch. 6 para. 4(8): repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Sch. 6 para. 4(9): words inserted by Localism Act 2011 c. 20 Sch. 13(1) para. 72(11) (date to be appointed)

Commencement

Sch. 6 para. 4(1)-(9): November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29 s.241(2); October 1, 2011 otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(8); SI 2011/2054 art. 2(b))

Extent

Sch. 6 para. 4(1)-(9): United Kingdom

Law In Force

5

(1) This paragraph applies in relation to the power conferred by paragraph 3(1) to make a change to, or revoke, a development consent order.

(2) The power may not be exercised after the end of the period of 4 years beginning with the date on which the relevant development was substantially completed.

(3) Sub-paragraph (2) does not prevent the exercise of the power—

- (a) in relation to requirements imposed by the development consent order in connection with the relevant development, or
- (b) to revoke the development consent order.

(4) The power includes power—

- (a) to require the removal or alteration of buildings or works;
- (b) to require the discontinuance of a use of land;
- (c) to impose specified requirements in connection with the continuance of a use of land;
- (d) to impose new requirements in connection with the relevant development;
- (e) to remove or alter existing requirements.

(5) Subject to sub-paragraph (4)(a), the exercise of the power does not affect any building or other operations carried out in pursuance of the development consent order before the power is exercised.

(6) The power may not be exercised in relation to provision included in an order granting development consent by virtue of [paragraph 30A or 30B of Schedule 5 (deemed marine licence under Marine and Coastal Access Act 2009)]¹ .

(7) “The relevant development” is the development for which consent is granted by the development consent order.

Notes

¹ Words substituted by Marine and Coastal Access Act 2009 c. 23 Sch.8(1) para.4(6)(b) (October 1, 2011: substitution came into force on April 6, 2011 but cannot take effect until the commencement of 2008 c.29 Sch.6 para.5 on October 1, 2011)

Commencement

Sch. 6 para. 5(1)-(7): October 1, 2011 (SI 2011/2054 art. 2(b))

Extent

Sch. 6 para. 5(1)-(7): United Kingdom

Compensation

Law In Force

Amendment(s) Pending

6

(1) This paragraph applies if—

- (a) in exercise of the power conferred by paragraph 3, the appropriate authority makes a change to, or revokes, a development consent order,
- (b) the case in which the power is exercised is one falling within sub-paragraph (3), (6) or (7) of that paragraph,
- (c) on a claim for compensation under this paragraph it is shown that a person with an interest in the land, or for whose benefit the development consent order has effect—
 - (i) has incurred expenditure in carrying out work which is rendered abortive by the change or revocation, or
 - (ii) has otherwise sustained loss or damage which is directly attributable to the change or revocation, and
- (d) the claim is made to the appropriate authority in the prescribed manner and before the end of the prescribed period.

(2) Compensation in respect of the expenditure, loss or damage is payable to the person by—

- (a) the appropriate authority, if the change or revocation is made in a case falling within paragraph 3(3);
- (b) the Secretary of State, if the change or revocation is made in a case falling within paragraph 3(6) or (7).

(3) The reference in sub-paragraph (1)(c)(i) to expenditure incurred in carrying out any work includes a reference to expenditure incurred—

- (a) in the preparation of plans for the purposes of the work, or

- (b) on other similar matters preparatory to carrying out the work.
- (4) Subject to sub-paragraph (3), no compensation is to be paid under this paragraph—
- (a) in respect of any work carried out before the development consent order was made, or
 - (b) in respect of any other loss or damage arising out of anything done or omitted to be done before the development consent order was made (other than loss or damage consisting of depreciation of the value of an interest in land).
- (5) The Secretary of State may by regulations make provision about the assessment of compensation payable under this paragraph.
- (6) The regulations may in particular include provision—
- (a) for the reference of disputes about compensation for depreciation to, and the determination of such disputes by, [...] ¹ the Lands Tribunal for Scotland, the First-tier Tribunal or the Upper Tribunal;
 - (b) applying, with or without modifications, a provision of or made under an Act.

Notes

- ¹ Words repealed by Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307 Sch.1 para.297 (June 1, 2009)

Amendments Pending

Sch. 6 para. 6(1)(b): word repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Sch. 6 para. 6(2): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 72(3) (date to be appointed)

Sch. 6 para. 6(2): words substituted by Localism Act 2011 c. 20 Sch. 13(1) para. 72(12) (date to be appointed)

Commencement

Sch. 6 para. 6(1)-(6)(b): November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29 s.241(2); October 1, 2011 otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(8); SI 2011/2054 art. 2(b))

Extent

Sch. 6 para. 6(1)-(6)(b): United Kingdom

Law In Force

7

- (1) In this paragraph “compensation for depreciation” means compensation payable under paragraph 6 in respect of loss or damage consisting of depreciation of the value of an interest in land.
- (2) The Secretary of State may by regulations make provision about the apportionment of compensation for depreciation between different parts of the land to which the claim for the compensation relates.
- (3) The regulations may in particular include provision about—
- (a) who is to make an apportionment;
 - (b) the persons to whom notice of an apportionment is to be given;

- (c) how an apportionment is to be made;
 - (d) the reference of disputes about an apportionment to, and the determination of such disputes by, [...] ¹ the Lands Tribunal for Scotland, the First-tier Tribunal or the Upper Tribunal.
- (4) The Secretary of State may by regulations make provision for, and in connection with, the giving of notice of compensation for depreciation.
- (5) The regulations may in particular include provision about—
- (a) the persons to whom notice of compensation for depreciation is to be given;
 - (b) the status of such a notice;
 - (c) the registration of such a notice.

Notes

- ¹ Words repealed by Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307 Sch.1 para.297 (June 1, 2009)

Commencement

Sch. 6 para. 7(1)-(5)(c): November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29 s.241(2); October 1, 2011 otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(8); SI 2011/2054 art. 2(b))

Extent


Sch. 6 para. 7(1)-(5)(c): United Kingdom

SCHEDULE 7

POWER TO DECLINE TO DETERMINE APPLICATIONS: AMENDMENTS

Section 187

Town and Country Planning Act 1990 (c. 8)

 Partially In Force

1


TCPA 1990 is amended as follows.

Commencement

Sch. 7 para. 1: April 6, 2009 in relation to England; not yet in force otherwise (2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(b); SI 2009/400 art. 5(b))

Extent

Sch. 7 para. 1: United Kingdom

 Partially In Force

2

(1) Section 70A (power of local planning authority to decline to determine subsequent application) is amended as follows.

(2) At the end of subsection (4)(b) insert “or, if there has been such an appeal, it has been withdrawn”.

(3) After subsection (4) insert—

“(4A) A local planning authority in England may also decline to determine a relevant application if—

- (a) the condition in subsection (4B) is satisfied, and
- (b) the authority think there has been no significant change in the relevant considerations since the relevant event.

(4B) The condition is that—

- (a) in the period of two years ending with the date on which the application mentioned in subsection (4A) is received the Secretary of State has refused a similar application,
- (b) the similar application was an application deemed to have been made by section 177(5), and
- (c) the land to which the application mentioned in subsection (4A) and the similar application relate is in England.”

(4) In subsection (7)(a) for “and (4)” substitute “, (4) and (4B)”.


Commencement

Sch. 7 para. 2(1)-(2): April 6, 2009 in relation to England; not yet in force otherwise (2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(b); SI 2009/400 art. 5(b))

Sch. 7 para. 2(3)-(4): April 6, 2009 in relation to England and Wales (2008 c. 29 Pt 12 s. 241(8); SI 2009/400 art. 3(n))

Extent

Sch. 7 para. 2(1)-(4): United Kingdom

 Partially In Force

3

(1) Section 70B (power of local planning authority to decline to determine overlapping application) is amended as follows.

(2) In subsection (1) after “which is” insert

“—

- (a) made on the same day as a similar application, or
- (b) ”.

(3) After subsection (4) insert—

“(4A) A local planning authority in England may also decline to determine an application for planning permission for the development of any land in England which is made at a time when the condition in subsection (4B) applies in relation to a similar application.

(4B) The condition is that—

- (a) a similar application is under consideration by the Secretary of State,
- (b) the similar application is an application deemed to have been made by section 177(5), and
- (c) the Secretary of State has not issued his decision.”

(4) After subsection (6) insert—

“(7) If a local planning authority exercise their power under subsection (1)(a) to decline to determine an application made on the same day as a similar application, they may not also exercise that power to decline to determine the similar application.”

Commencement


Sch. 7 para. 3(1)-(2), (4): April 6, 2009 in relation to England; not yet in force otherwise (2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(b); SI 2009/400 art. 5(b))

Sch. 7 para. 3(3): April 6, 2009 in relation to England and Wales (2008 c. 29 Pt 12 s. 241(8); SI 2009/400 art. 3(n))

Extent

Sch. 7 para. 3(1)-(4): United Kingdom

Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9)

 Partially In Force

4

The Listed Buildings Act is amended as follows.

Commencement

Sch. 7 para. 4: April 6, 2009 in relation to England; not yet in force otherwise (2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(b); SI 2009/400 art. 5(b))

Extent

Sch. 7 para. 4: United Kingdom

 Partially In Force

5


In section 81A (power of local planning authority to decline to determine subsequent application) at the end of subsection (4)(b) insert “or, if there has been such an appeal, it has been withdrawn”.

Commencement

Sch. 7 para. 5: April 6, 2009 in relation to England; not yet in force otherwise (2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(b); SI 2009/400 art. 5(b))

Extent

Sch. 7 para. 5: United Kingdom

 Partially In Force

6

(1) Section 81B (power of local planning authority to decline to determine overlapping application) is amended as follows.

(2) In subsection (1) after “which is” insert

“—

(a) made on the same day as a similar application, or

(b) ”.

(3) After subsection (4) insert—

“(4A) If a local planning authority exercise their power under subsection (1)(a) to decline to determine an application made on the same day as a similar application, they may not also exercise that power to decline to determine the similar application.”


Commencement

Sch. 7 para. 6(1)-(3): April 6, 2009 in relation to England; not yet in force otherwise (2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(b); SI 2009/400 art. 5(b))

Extent

Sch. 7 para. 6(1)-(3): United Kingdom

Planning and Compulsory Purchase Act 2004 (c. 5)

 Law In Force

7

In section 121 of PCPA 2004 (commencement) after subsection (3) insert—

“(3A) Subsections (1) and (2) are subject to subsection (3B).

(3B) Section 43 (power to decline to determine applications) (so far as not in force on the day on which paragraph 7 of Schedule 7 of the Planning Act 2008 comes into force) comes into force on such day as may be appointed by order made by—

(a) the Secretary of State in relation to England;

(b) the Welsh Ministers in relation to Wales.”

Commencement

Sch. 7 para. 7: January 26, 2009 (2008 c. 29 Pt 12 s. 241(6))

Extent

Sch. 7 para. 7: United Kingdom

SCHEDULE 8**TREE PRESERVATION ORDERS: FURTHER AMENDMENTS****Section 192***Forestry Act 1967 (c. 10)*

N Not Yet In Force

1

The Forestry Act 1967 is amended as follows.

Commencement

Sch. 8 para. 1: Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(c))

Extent

Sch. 8 para. 1: United Kingdom

N Not Yet In Force

2

(1) Section 15 (trees subject to preservation orders under Planning Acts) is amended as follows.

(2) In subsection (1) for “consent under the order” substitute “relevant consent”.

(3) After subsection (1) insert—

“(1A) In subsection (1) “relevant consent” means—

(a) in the case of trees in England and Wales, consent under tree preservation regulations;

(b) in the case of trees in Scotland, consent under the tree preservation order.”

(4) In subsection (5) for the words from “application” to “thereunder” substitute “relevant application shall be entertained”.

(5) After subsection (5) insert—

“(5A) In subsection (5) “relevant application” means—

- (a) in the case of trees in England and Wales, an application under tree preservation regulations for consent under the regulations;
 - (b) in the case of trees in Scotland, an application under a tree preservation order for consent under the order.”
-

Commencement

Sch. 8 para. 2(1)-(5): Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(c))

Extent

Sch. 8 para. 2(1)-(5): United Kingdom

N Not Yet In Force

3

In section 18 (felling directions), in subsection (5) for the words from “shall” to the end substitute

- “shall be sufficient authority for the felling, notwithstanding anything in—
- (a) tree preservation regulations, in the case of trees in England or Wales;
 - (b) the tree preservation order, in the case of trees in Scotland.
-

Commencement

Sch. 8 para. 3: Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(c))

Extent

Sch. 8 para. 3: United Kingdom

N Not Yet In Force

4

In section 21 (courses open to person adversely affected by felling direction), in subsection (7), after “a tree preservation order” insert “, or under tree preservation regulations,”.

Commencement

Sch. 8 para. 4: Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(c))

Extent

Sch. 8 para. 4: United Kingdom

N Not Yet In Force

5

In section 35 (interpretation of Part 2) at the appropriate place insert—

““tree preservation regulations” means regulations made under section 202A(1) of the Town and Country Planning Act 1990;”.

Commencement

Sch. 8 para. 5: Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(c))

Extent

Sch. 8 para. 5: United Kingdom

N Not Yet In Force

6

(1) Schedule 3 (proceedings under Town and Country Planning Acts in relation to tree preservation orders) is amended as follows.

(2) In paragraph 2—

- (a) for “under the said Acts” substitute “under the Town and Country Planning (Scotland) Act 1997”,
- (b) omit the words from “section 77” to “(for Scotland)”,
- (c) for “provisions of the said Acts” substitute “provisions of that Act”, and
- (d) omit “the said section 77 or (for Scotland)”.

(3) After paragraph 2 insert—

“2A

(1) Where under section 15(2)(a) an application, on being referred to the appropriate national authority, falls to be dealt with under the Town and Country Planning Act 1990, the appropriate national authority must decide the application as if it were an application for consent for the felling of trees made under tree preservation regulations.

(2) In this paragraph, “the appropriate national authority” means—

- (a) the Secretary of State in relation to England;
- (b) the Welsh Ministers in relation to Wales.”.

(4) In paragraph 3—

- (a) for “the Town and Country Planning Acts” substitute “the Town and Country Planning (Scotland) Act 1997”, and
- (b) for “the Town and Country Planning Act 1990 or (for Scotland) the Town and Country Planning (Scotland) Act 1997” substitute “that Act”.

(5) After paragraph 3 insert—

“3A

Where under section 15(3)(a) an application, on being referred to an authority who have made a tree preservation order, falls to be dealt with under the Town and Country Planning Act 1990, the authority must decide the application as if it were an application for consent for the felling of trees made under tree preservation regulations.”.

Commencement

Sch. 8 para. 6(1)-(5): Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(c))

Extent

Sch. 8 para. 6(1)-(5): United Kingdom

Town and Country Planning Act 1990 (c. 8)

N Not Yet In Force

7

TCPA 1990 is amended as follows.

Commencement

Sch. 8 para. 7: Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(c))

Extent

Sch. 8 para. 7: United Kingdom

N Not Yet In Force

8

In section 198(7) (provisions subject to which section has effect), for “This section” substitute “Tree preservation regulations”.

Commencement

Sch. 8 para. 8: Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(c))

Extent

Sch. 8 para. 8: United Kingdom

N Not Yet In Force

9

In section 200(1) (tree preservation orders do not affect things done or approved by Forestry Commissioners), for “A tree preservation order does not” substitute “Tree preservation regulations do not”.

Commencement

Sch. 8 para. 9: Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(c))

Extent

Sch. 8 para. 9: United Kingdom

N Not Yet In Force

10

In section 202(2) (effect of order made by Secretary of State or Welsh Ministers), for the words from “have the same effect” to the end substitute “, once it has taken effect in accordance with tree preservation regulations, have the same effect as if it had been made by the local planning authority under section 198(1).”

Commencement

Sch. 8 para. 10: Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(c))

Extent

Sch. 8 para. 10: United Kingdom

N Not Yet In Force

11

In section 206(1) (duty to plant replacement tree)—

- (a) in paragraph (a), for “the order” substitute “tree preservation regulations”, and
 - (b) in paragraph (b), for the words from “at a time” to the end of the paragraph substitute “at a prescribed time,”.
-

Commencement

Sch. 8 para. 11(a)-(b): Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(c))

Extent

Sch. 8 para. 11(a)-(b): United Kingdom

N Not Yet In Force

12

In section 207(1) (enforcement of duties to replace trees), in paragraph (b), for “a tree preservation order” substitute “tree preservation regulations”.

Commencement

Sch. 8 para. 12: Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(c))

Extent

Sch. 8 para. 12: United Kingdom

N Not Yet In Force

13

(1) Section 210 (penalties for non-compliance with tree preservation order) is amended as follows.

(2) In subsection (1)—

- (a) for “a tree preservation order” substitute “tree preservation regulations”,
- (b) in paragraph (a) omit the “or” at the end, and
- (c) after paragraph (b) insert—

“or

- (c) causes or permits the carrying out of any of the activities in paragraph (a) or (b),”.

(3) In subsection (4), for “a tree preservation order” substitute “tree preservation regulations”.

(4) In the side-note, for “order” substitute “regulations”.

Commencement

Sch. 8 para. 13(1)-(4): Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(c))

Extent

Sch. 8 para. 13(1)-(4): United Kingdom

N Not Yet In Force

14

In section 211 (preservation of trees in conservation areas)—

- (a) in subsection (1), for “which might by virtue of section 198(3)(a) be prohibited by a tree preservation order” substitute “which might by virtue of section 202C be prohibited by tree preservation regulations”, and
 - (b) in subsection (4), for “a tree preservation order” substitute “tree preservation regulations”.
-

Commencement

Sch. 8 para. 14(a)-(b): Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(c))

Extent

Sch. 8 para. 14(a)-(b): United Kingdom

N Not Yet In Force

15

In section 212 (power to disapply section 211) omit subsection (4).

Commencement

Sch. 8 para. 15: Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(c))

Extent

Sch. 8 para. 15: United Kingdom

N Not Yet In Force

16

In section 213(1)(b) (duty to plant replacement tree in conservation area), for the words from “at a time” to the end of the paragraph substitute “at a prescribed time.”

Commencement

Sch. 8 para. 16: Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(c))

Extent

Sch. 8 para. 16: United Kingdom

N Not Yet In Force

17

In section 284(3)(h)(i) (decision relating to an application for consent under a tree preservation order is an action to which the section applies), for “a tree preservation order” substitute “tree preservation regulations”.

Commencement

Sch. 8 para. 17: Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(c))

Extent

Sch. 8 para. 17: United Kingdom

N Not Yet In Force

18

In section 329(3B)(i) (section 329(1)(cc) does not apply to things done in connection with tree preservation orders), for “regulations under section 199” substitute “tree preservation regulations”.

Commencement

Sch. 8 para. 18: Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(c))

Extent

Sch. 8 para. 18: United Kingdom

N Not Yet In Force

19

In section 336(1) (interpretation) at the appropriate place insert—

““tree preservation regulations” means regulations under section 202A(1);”.

Commencement

Sch. 8 para. 19: Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(c))

Extent

Sch. 8 para. 19: United Kingdom

Planning and Compensation Act 1991 (c. 34)

N Not Yet In Force

20

(1) Part 1 of Schedule 18 to the Planning and Compensation Act 1991 (compensation provisions that do not provide for interest) is amended as follows.

(2) After the entry for section 186 of the Town and Country Planning Act 1990 (c. 8) insert—

<p>“Section 202E of that Act</p>	<p>Date—</p> <ul style="list-style-type: none"> (a) any consent required by tree preservation regulations is refused, (b) any such consent is granted subject to conditions, or (c) any approval required under such a condition is refused.”
----------------------------------	--

(3) Omit the entries for sections 203 and 204 of the Town and Country Planning Act 1990.

Commencement

Sch. 8 para. 20(1)-(3): Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(c))

Extent

Sch. 8 para. 20(1)-(3): United Kingdom

SCHEDULE 9**USE OF LAND: POWER TO OVERRIDE EASEMENTS AND OTHER RIGHTS****Section 194**

✔ Law In Force

1 Local Government, Planning and Land Act 1980 (c. 65)

(1) Paragraph 6 of Schedule 28 to the Local Government, Planning and Land Act 1980 (urban development corporations: power to override easements) is amended as follows.

(2) After sub-paragraph (1) insert—

“(1A) The use of any land in England which has been vested in or acquired by an urban development corporation or local highway authority for the purposes of this Part of this Act, whether the use is by the corporation or authority or by any other person, is authorised by virtue of this paragraph if it is in accordance with planning permission even if the use involves—

(a) interference with an interest or right to which this paragraph applies, or

(b) a breach of a restriction as to the user of land arising by virtue of a contract.”

(3) In sub-paragraph (2) after “sub-paragraph (1)” insert “or (1A)”.

(4) In sub-paragraph (4)—

(a) after “sub-paragraph (1)” insert “or (1A)”, and

(b) after “works on” insert “, or use of”.

(5) In sub-paragraph (7) after “sub-paragraph (1)” insert “or (1A)”.

Commencement

Sch. 9 para. 1(1)-(5): April 6, 2009 (SI 2009/400 art. 3(h))

Extent

Sch. 9 para. 1(1)-(5): England, Wales

✔ Law In Force

2 New Towns Act 1981 (c. 64)

(1) Section 19 of the New Towns Act 1981 (power to override easements and other rights) is amended as follows.

(2) After subsection (1) insert—

“(1A) Subject to subsection (3), the use of any land in England which has been acquired by a development corporation or local highway authority for the purposes of this Act, whether the use is by the corporation or authority or by any other person, is authorised by virtue of this section if it is in accordance with planning permission even if the use involves—

- (a) interference with an interest or right to which this section applies, or
- (b) a breach of a restriction as to the user of land arising by virtue of a contract.”

(3) In subsection (2) after “subsection (1)” insert “or (1A)”.

(4) In subsection (4)—

- (a) after “subsection (1)” insert “or (1A)”, and
- (b) in paragraph (b) after “works on” insert “, or use of,”.

(5) In subsection (7) after “subsection (1)” insert “or (1A)”.

Commencement

Sch. 9 para. 2(1)-(5): April 6, 2009 (SI 2009/400 art. 3(h))

Extent

Sch. 9 para. 2(1)-(5): England, Wales

✔ Law In Force

3 Housing Act 1988 (c. 50)

(1) Paragraph 5 of Schedule 10 to the Housing Act 1988 (power to override easements) is amended as follows.

(2) After sub-paragraph (1) insert—

“(1A) The use of any land in England which has been vested in or acquired by a housing action trust for the purposes of Part 3 of this Act, whether the use is by the trust or by any other person, is authorised by virtue of this paragraph if it is in accordance with planning permission even if the use involves—

- (a) interference with an interest or right to which this paragraph applies, or
- (b) a breach of a restriction as to the user of land arising by virtue of a contract.”

(3) In sub-paragraph (2) after “sub-paragraph (1)” insert “or (1A)”.

(4) In sub-paragraph (4)—

- (a) after “sub-paragraph (1)” insert “or (1A)”, and
- (b) after “works on” insert “, or use of,”.

(5) In sub-paragraph (7) after “sub-paragraph (1)” insert “or (1A)”.

Commencement

Sch. 9 para. 3(1)-(5): April 6, 2009 (SI 2009/400 art. 3(h))

Extent

Sch. 9 para. 3(1)-(5): England, Wales

✔ Law In Force

4 Town and Country Planning Act 1990 (c. 8)

(1) Section 237 of TCPA 1990 (power to override easements and other rights) is amended as follows.

(2) After subsection (1) insert—

“(1A) Subject to subsection (3), the use of any land in England which has been acquired or appropriated by a local authority for planning purposes (whether the use is by the local authority or by a person deriving title under them) is authorised by virtue of this section if it is in accordance with planning permission even if the use involves—

(a) interference with an interest or right to which this section applies, or

(b) a breach of a restriction as to the user of land arising by virtue of a contract.”

(3) In subsection (4)—

(a) after “subsection (1)” insert “or (1A)”, and

(b) in paragraph (b)(ii) after “works on” insert “, or use of,”.

(4) In subsection (7) after “subsection (1)” insert “or (1A)”.

Commencement

Sch. 9 para. 4(1)-(4): April 6, 2009 (SI 2009/400 art. 3(h))

Extent

Sch. 9 para. 4(1)-(4): England, Wales

✘ Not Yet In Force

5 Leasehold Reform, Housing and Urban Development Act 1993 (c. 28)

(1) Paragraph 5 of Schedule 20 to the Leasehold Reform, Housing and Urban Development Act 1993 (the Agency: power to override easements) is amended as follows.

(2) After sub-paragraph (1) insert—

“(1A) The use of any land in England which has been vested in or acquired by the Agency under this Part of this Act, whether the use is by the Agency or by any other person, is authorised by virtue of this paragraph if it is in accordance with planning permission even if the use involves—

(a) interference with an interest or right to which this paragraph applies, or

(b) a breach of a restriction as to the user of land arising by virtue of a contract.”

- (3) In sub-paragraph (2) after “sub-paragraph (1)” insert “or (1A)”.
- (4) In sub-paragraph (4)—
- (a) after “sub-paragraph (1)” insert “or (1A)”, and
 - (b) after “works on” insert “, or use of,”.
- (5) In sub-paragraph (7) after “sub-paragraph (1)” insert “or (1A)”.

Commencement

Sch. 9 para. 5(1)-(5): Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(8))

Extent

Sch. 9 para. 5(1)-(5): England, Wales

Law In Force

6 Regional Development Agencies Act 1998 (c. 45)

(1) Paragraph 2 of Schedule 6 to the Regional Development Agencies Act 1998 (vesting and acquisition of land: power to override easements) is amended as follows.

(2) After sub-paragraph (1) insert—

“(1A) The use of any land in England which has been vested in or acquired by a regional development agency under this Act, whether the use is by the agency or by any other person, is authorised by virtue of this paragraph if it is in accordance with planning permission even if the use involves—

- (a) interference with an interest or right to which this paragraph applies, or
- (b) a breach of a restriction as to the user of land arising by virtue of a contract.”

(3) In sub-paragraph (2) after “sub-paragraph (1)” insert “or (1A)”.

(4) In sub-paragraph (4)—

- (a) after “sub-paragraph (1)” insert “or (1A)”, and
- (b) after “works on” insert “, or use of,”.

(5) In sub-paragraph (7) after “sub-paragraph (1)” insert “or (1A)”.

Commencement

Sch. 9 para. 6(1)-(5): April 6, 2009 (SI 2009/400 art. 3(h))

Extent

Sch. 9 para. 6(1)-(5): England, Wales

SCHEDULE 10**FURTHER PROVISIONS AS TO THE PROCEDURE FOR CERTAIN PROCEEDINGS****Section 196***Town and Country Planning Act 1990 (c. 8)***P** Partially In Force**1**

TCPA 1990 is amended as follows.

Commencement

Sch. 10 para. 1: April 6, 2009 in relation to England and Wales for purposes specified in SI 2009/400 art.3(j); not yet in force otherwise (SI 2009/400 art. 3(j))

Extent

Sch. 10 para. 1: United Kingdom

N Not Yet In Force**2**

In section 77 (reference of applications to Secretary of State) for subsection (6) substitute—

“(6) Subsection (5) does not apply to—

- (a) an application for planning permission referred to a Planning Inquiry Commission under section 101; or
- (b) an application referred to the Secretary of State under this section instead of being dealt with by a local planning authority in England.”

Commencement

Sch. 10 para. 2: Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(8))

Extent

Sch. 10 para. 2: United Kingdom

P Partially In Force**3**

In section 78(5) (appeals against failure to take planning decisions)—


- (a) for “79(1)” substitute “79(1) and (3)”, and
- (b) for “and 288(10)(b)” substitute “, 288(10)(b) and 319A(7)(b)”.

Commencement

Sch. 10 para. 3(a)-(b): April 6, 2009 in relation to England and Wales for purposes specified in SI 2009/400 art.3(j); not yet in force otherwise (SI 2009/400 art. 3(j))

Extent

Sch. 10 para. 3(a)-(b): United Kingdom

 Partially In Force

4

In section 79 (determination of appeals under section 78) for subsection (3) substitute—

“(3) Subsection (2) does not apply to—


- (a) an appeal referred to a Planning Inquiry Commission under section 101; or
 - (b) an appeal against a decision of a local planning authority in England.”
-

Commencement

Sch. 10 para. 4: April 6, 2009 in relation to England and Wales for purposes specified in SI 2009/400 art.3(j); not yet in force otherwise (SI 2009/400 art. 3(j))

Extent

Sch. 10 para. 4: United Kingdom

 Partially In Force

5

In section 175 (supplementary provisions about appeals against enforcement notices) after subsection (3) insert—


“(3A) Subsection (3) does not apply to an appeal against an enforcement notice issued by a local planning authority in England.”

Commencement

Sch. 10 para. 5: April 6, 2009 in relation to England and Wales for purposes specified in SI 2009/400 art.3(j); not yet in force otherwise (SI 2009/400 art. 3(j))

Extent

Sch. 10 para. 5: United Kingdom

 Partially In Force

6

In section 176(4) (determination of appeals: disapplication of section 175(3))—

- (a) after “If” insert “section 175(3) would otherwise apply and”, and
- (b) after “subsection (3)” insert “of this section”.

Commencement

Sch. 10 para. 6(a)-(b): April 6, 2009 in relation to England and Wales for purposes specified in SI 2009/400 art.3(j); not yet in force otherwise (SI 2009/400 art. 3(j))

Extent

Sch. 10 para. 6(a)-(b): United Kingdom

N Not Yet In Force

7

In section 195(5) (appeals against failure to give decision on application under section 191 or 192) for “section 288(10)(b)” substitute “sections 196(1A), 288(10)(b) and 319A(7)(d)”.

Commencement

Sch. 10 para. 7: Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(8))

Extent

Sch. 10 para. 7: United Kingdom

N Not Yet In Force

8

(1) Amend section 196 (further provision as to appeals to Secretary of State under section 195) as follows.

(2) After subsection (1) insert—

“(1A) Subsection (1) does not apply to an appeal against a decision of a local planning authority in England.”

(3) In subsection (2) for “such an appeal” substitute “an appeal under section 195(1)”.

Commencement

Sch. 10 para. 8(1)-(3): Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(8))

Extent

Sch. 10 para. 8(1)-(3): United Kingdom

N Not Yet In Force

9

(1) Amend section 208 (appeals against notices under section 207) as follows.

(2) After subsection (5) insert—

“(5A) Subsection (5) does not apply to an appeal against a notice issued by a local planning authority in England.”


(3) In subsection (6) for “such an appeal is brought” substitute “an appeal is brought under subsection (1)”.

Commencement

Sch. 10 para. 9(1)-(3): Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(8))

Extent

Sch. 10 para. 9(1)-(3): United Kingdom

 Partially In Force

10

In section 322 (orders as to costs of parties where no local inquiry held) after subsection (1) insert—


“(1A) This section also applies to proceedings under this Act to which section 319A applies.”

Commencement

Sch. 10 para. 10: April 6, 2009 in relation to England and Wales for purposes specified in SI 2009/400 art.3(j); not yet in force otherwise (SI 2009/400 art. 3(j))

Extent

Sch. 10 para. 10: United Kingdom

 Partially In Force

11

In section 322A (orders as to costs: supplementary) after subsection (1) insert—

“(1A) This section also applies where—


- (a) arrangements are made for a local inquiry or a hearing to be held pursuant to a determination under section 319A;
- (b) the inquiry or hearing does not take place; and
- (c) if it had taken place, the Secretary of State or a person appointed by the Secretary of State would have had power to make an order under section 250(5) of the Local Government Act 1972 requiring any party to pay any costs of any other party.”

Commencement

Sch. 10 para. 11: April 6, 2009 in relation to England and Wales for purposes specified in SI 2009/400 art.3(j); not yet in force otherwise (SI 2009/400 art. 3(j))

Extent

Sch. 10 para. 11: United Kingdom

 Partially In Force

12

(1) Amend section 323 (procedure on certain appeals and applications) as follows.

(2) After subsection (1) insert—

“(1A) The Secretary of State may by regulations prescribe the procedure to be followed in connection with proceedings under this Act which, pursuant to a determination under section 319A, are to be considered on the basis of representations in writing.”

(3) In subsections (2) and (3) for “The regulations may” substitute “Regulations under this section may”.


(4) In subsection (2)(a) for “such an inquiry or hearing” substitute “an inquiry or hearing to which rules under section 9 of the Tribunals and Inquiries Act 1992 would apply”.

Commencement

Sch. 10 para. 12(1)-(4): November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29 s.241(2); April 6, 2009 in relation to England and Wales for purposes specified in SI 2009/400 art.3(j); not yet in force otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(8); SI 2009/400 art. 3(j))

Extent

Sch. 10 para. 12(1)-(4): United Kingdom

 Partially In Force

13

(1) Amend section 333 (regulations and orders) as follows.

(2) In subsection (4) for “and 319” substitute “, 319 and 319A(9)”.

(3) After subsection (5) insert—


“(5A) No order may be made under section 319A(9) unless a draft of the instrument containing the order has been laid before, and approved by resolution of, each House of Parliament.”

Commencement

Sch. 10 para. 13(1)-(3): April 6, 2009 in relation to England and Wales for purposes specified in SI 2009/400 art.3(j); not yet in force otherwise (SI 2009/400 art. 3(j))

Extent

Sch. 10 para. 13(1)-(3): United Kingdom

 Partially In Force

14

(1) Amend Schedule 6 (determination of certain appeals by person appointed by Secretary of State) as follows.

(2) In paragraph 2 for sub-paragraph (5) substitute—

“(5) Sub-paragraph (2) does not apply—

(a) in the case of an appeal to which section 319A applies; or

(b) in the case of an appeal under section 78 if the appeal is referred to a Planning Inquiry Commission under section 101.”

(3) After sub-paragraph (9) of that paragraph insert—

“(10) Sub-paragraph (9) does not apply to references to the Secretary of State in section 319A (powers and duties of the Secretary of State in relation to the determination of procedure for certain proceedings).”

(4) In paragraph 3 for sub-paragraph (5) substitute—

“(5) Sub-paragraph (4) does not apply—

(a) in the case of an appeal to which section 319A applies; or

(b) in the case of an appeal under section 78 if the appeal is referred to a Planning Inquiry Commission under section 101.

(5A) In the case of an appeal to which section 319A applies, the Secretary of State must give the appellant, the local planning authority and any person who has made any representations mentioned in sub-paragraph (2) an opportunity to make further representations if the reasons for the direction raise matters with respect to which any of those persons have not made representations.”

(5) In sub-paragraph (6) of that paragraph after “(4)” insert “or (5A)”.

(6) In paragraph 6 after sub-paragraph (1) insert—

“(1A) Sub-paragraph (1) does not apply in the case of an appeal to which section 319A applies; but an appointed person may hold a hearing or local inquiry in connection with such an appeal pursuant to a determination under that section.”

(7) In sub-paragraph (2)(a) of that paragraph after “2(4)” insert “or this paragraph”.

Commencement

Sch. 10 para. 14(1)-(7): April 6, 2009 in relation to England and Wales for purposes specified in SI 2009/400 art.3(j); not yet in force otherwise (SI 2009/400 art. 3(j))

Extent

Sch. 10 para. 14(1)-(7): United Kingdom

Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9)

N Not Yet In Force

15

The Listed Buildings Act is amended as follows.

Commencement

Sch. 10 para. 15: Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(8))

Extent

Sch. 10 para. 15: United Kingdom

N Not Yet In Force

16

In section 12 (reference of applications to Secretary of State) after subsection (4) insert—

“(4A) Subsection (4) does not apply to an application referred to the Secretary of State under this section instead of being dealt with by a local planning authority in England.”

Commencement

Sch. 10 para. 16: Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(8))

Extent

Sch. 10 para. 16: United Kingdom

N Not Yet In Force

17

In section 20(4) (right of appeal in case of failure to give notice of decision) for “22(1) and 63(7)(b)” substitute “22(1) and (2A), 63(7)(b) and 88D(7)(b)”.

Commencement

Sch. 10 para. 17: Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(8))

Extent

Sch. 10 para. 17: United Kingdom

N Not Yet In Force

18

(1) Amend section 22 (determination of appeals under section 20) as follows.

(2) After subsection (2) insert—

“(2A) Subsection (2) does not apply to an appeal against a decision of a local planning authority in England.”

(3) In subsection (3) for “the appeal” substitute “an appeal under section 20”.

Commencement

Sch. 10 para. 18(1)-(3): Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(8))

Extent

Sch. 10 para. 18(1)-(3): United Kingdom

N Not Yet In Force

19

In section 40 (supplementary provisions about appeals against listed building enforcement notices) after subsection (2) insert—

“(2A) Subsection (2) does not apply to an appeal against a listed building enforcement notice issued by a local planning authority in England.”

Commencement

Sch. 10 para. 19: Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(8))

Extent

Sch. 10 para. 19: United Kingdom

N Not Yet In Force

20

In section 41(4) (determination of appeals: disapplication of section 40(2))—

- (a) after “If” insert “section 40(2) would otherwise apply and”, and
- (b) after “subsection (3)” insert “of this section”.

Commencement

Sch. 10 para. 20(a)-(b): Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(8))

Extent

Sch. 10 para. 20(a)-(b): United Kingdom

N Not Yet In Force

21

In section 74(3) (application of certain provisions in relation to buildings in conservation areas) after “82D” insert “, 88D”.

Commencement

Sch. 10 para. 21: Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(8))

Extent

Sch. 10 para. 21: United Kingdom

N Not Yet In Force

22

In section 89 (application of certain general provisions of TCPA 1990) after subsection (1) insert—

“(1ZA) In the application of sections 322, 322A and 323 of that Act by virtue of this section, references to section 319A of that Act shall have effect as references to section 88D of this Act.”

Commencement

Sch. 10 para. 22: Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(8))

Extent

Sch. 10 para. 22: United Kingdom

N Not Yet In Force

23

(1) Amend section 93 (regulations and orders) as follows.

(2) In subsection (4) after “75(7)” insert “, 88D(8)”.

(3) After subsection (5) insert—

“(5A) No order may be made under section 88D(8) unless a draft of the instrument containing the order has been laid before, and approved by resolution of, each House of Parliament.”

Commencement

Sch. 10 para. 23(1)-(3): Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(8))

Extent

Sch. 10 para. 23(1)-(3): United Kingdom

N Not Yet In Force

24

(1) Amend Schedule 3 (determination of certain appeals by person appointed by Secretary of State) as follows.

(2) In paragraph 2 after sub-paragraph (4) insert—

“(4A) Sub-paragraph (2) does not apply in the case of an appeal to which section 88D applies.”

(3) After sub-paragraph (8) of that paragraph insert—

“(9) Sub-paragraph (8) does not apply to references to the Secretary of State in section 88D (powers and duties of the Secretary of State in relation to the determination of procedure for certain proceedings).”

(4) In paragraph 3 after sub-paragraph (4) insert—

“(4A) Sub-paragraph (4) does not apply in the case of an appeal to which section 88D applies.

(4B) In the case of an appeal to which section 88D applies, the Secretary of State must give the appellant, the local planning authority and any person who has made any representations mentioned in sub-paragraph (2) an opportunity to make further representations if the reasons for the direction raise matters with respect to which any of those persons have not made representations.”

(5) In sub-paragraph (5) of that paragraph after “(4)” insert “or (4B)”.

(6) In paragraph 6 after sub-paragraph (1) insert—

“(1A) Sub-paragraph (1) does not apply in the case of an appeal to which section 88D applies; but an appointed person may hold a hearing or local inquiry in connection with such an appeal pursuant to a determination under that section.”

(7) In sub-paragraph (2)(a) of that paragraph after “2(4)” insert “or this paragraph”.

Commencement

Sch. 10 para. 24(1)-(7): Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(8))

Extent

Sch. 10 para. 24(1)-(7): United Kingdom

Planning (Hazardous Substances) Act 1990 (c. 10)

 Not Yet In Force

25

The Hazardous Substances Act is amended as follows.

Commencement

Sch. 10 para. 25: Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(8))

Extent

Sch. 10 para. 25: United Kingdom

N Not Yet In Force

26

In section 20 (reference of applications to Secretary of State) after subsection (4) insert—

“(4A) Subsection (4) does not apply to an application referred to the Secretary of State under this section instead of being dealt with by a hazardous substances authority in England.”

Commencement

Sch. 10 para. 26: Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(8))

Extent

Sch. 10 para. 26: United Kingdom

N Not Yet In Force

27

In section 21 (appeals against decisions or failure to take decisions relating to hazardous substances) after subsection (5) insert—

“(5A) Subsection (5) does not apply to an appeal against a decision of a hazardous substances authority in England.”

Commencement

Sch. 10 para. 27: Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(8))

Extent

Sch. 10 para. 27: United Kingdom

N Not Yet In Force

28

In section 25(1) (appeals against hazardous substances contravention notices)—

- (a) in paragraph (b)(v) after “principal Act” insert “and section 21A of this Act”, and
- (b) in paragraph (c) for “that Act” substitute “the principal Act”.

Commencement

Sch. 10 para. 28(a)-(b): Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(8))

Extent

Sch. 10 para. 28(a)-(b): United Kingdom

N Not Yet In Force

29

In section 37 (application of certain general provisions of TCPA 1990) after subsection (2) insert—

“(3) In the application of sections 322, 322A and 323 of that Act by virtue of this section, references to section 319A of that Act shall have effect as references to section 21A of this Act.”

Commencement

Sch. 10 para. 29: Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(8))

Extent

Sch. 10 para. 29: United Kingdom

N Not Yet In Force

30

(1) Amend the Schedule (determination of appeals by person appointed by Secretary of State) as follows.

(2) In paragraph 2 after sub-paragraph (4) insert—

“(4A) Sub-paragraph (2) does not apply to an appeal against a decision of a hazardous substances authority in England.”

(3) After sub-paragraph (8) of that paragraph insert—

“(9) Sub-paragraph (8) does not apply to references to the Secretary of State in section 21A (powers and duties of the Secretary of State in relation to the determination of procedure for certain proceedings).”

(4) In paragraph 3 after sub-paragraph (4) insert—

“(4A) Sub-paragraph (4) does not apply in the case of an appeal against a decision of a hazardous substances authority in England.

(4B) In the case of an appeal to which section 21A applies, the Secretary of State must give the appellant, the hazardous substances authority and any person who has made any representations mentioned in sub-paragraph (2) an opportunity to make further representations

if the reasons for the direction raise matters with respect to which any of those persons have not made representations.”

(5) In sub-paragraph (5) of that paragraph after “(4)” insert “or (4B)”.

(6) In paragraph 6 after sub-paragraph (1) insert—

“(1A) Sub-paragraph (1) does not apply in the case of an appeal against a decision of a hazardous substances authority in England; but an appointed person may hold a hearing or a local inquiry in connection with such an appeal pursuant to a determination under section 21A.”

(7) In sub-paragraphs (2)(a) and (3)(a) of that paragraph after “2(4)” insert “or this paragraph”.

Commencement

Sch. 10 para. 30(1)-(7): Date to be appointed (not yet in force) (2008 c. 29 Pt 12 s. 241(8))

Extent

Sch. 10 para. 30(1)-(7): United Kingdom

SCHEDULE 11

APPEALS: MISCELLANEOUS AMENDMENTS

Section 197

Town and Country Planning Act 1990 (c. 8)

 Partially In Force

1

TCPA 1990 is amended as follows.

Commencement

Sch. 11 para. 1: April 6, 2009 in relation to England; not yet in force otherwise (SI 2009/400 art. 5(d))

Extent

Sch. 11 para. 1: United Kingdom

 Partially In Force

2

In section 78 (appeals against planning decisions and failure to take planning decisions) after subsection (4) insert—

“(4A) A notice of appeal under this section must be accompanied by such information as may be prescribed by a development order.

(4B) The power to make a development order under subsection (4A) is exercisable by—
 (a) the Secretary of State, in relation to England;
 (b) the Welsh Ministers, in relation to Wales.

(4C) Section 333(5) does not apply in relation to a development order under subsection (4A) made by the Welsh Ministers.


(4D) A development order under subsection (4A) made by the Welsh Ministers is subject to annulment in pursuance of a resolution of the National Assembly for Wales.”

Commencement

Sch. 11 para. 2: November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29 s.241(2); April 6, 2009 in relation to England; not yet in force otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(c))

Extent

Sch. 11 para. 2: United Kingdom

 Partially In Force

3

In section 195 (appeals against refusal or failure to give decision on application under section 191 or 192) before subsection (2) insert—

“(1B) A notice of appeal under this section must be—

- (a) served within such time and in such manner as may be prescribed by a development order;
- (b) accompanied by such information as may be prescribed by such an order.

(1C) The time prescribed for the service of a notice of appeal under this section must not be less than—

- (a) 28 days from the date of notification of the decision on the application; or
- (b) in the case of an appeal under subsection (1)(b), 28 days from—
 - (i) the end of the period prescribed as mentioned in subsection (1)(b), or
 - (ii) as the case may be, the extended period mentioned in subsection (1)(b).

(1D) The power to make a development order under subsection (1B) is exercisable by—

- (a) the Secretary of State, in relation to England;
- (b) the Welsh Ministers, in relation to Wales.

(1E) Section 333(5) does not apply in relation to a development order under subsection (1B) made by the Welsh Ministers.

(1F) A development order under subsection (1B) made by the Welsh Ministers is subject to annulment in pursuance of a resolution of the National Assembly for Wales.”


Commencement

Sch. 11 para. 3: November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to

be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29 s.241(2); April 6, 2009 in relation to England; not yet in force otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(c); SI 2009/400 art. 5(d))

Extent

Sch. 11 para. 3: United Kingdom

 Partially In Force

4

(1) Section 208 (appeals against notices under section 207) is amended as follows.

(2) For subsection (4) substitute—

“(4) The notice shall—

- (a) indicate the grounds of the appeal,
- (b) state the facts on which the appeal is based, and
- (c) be accompanied by such information as may be prescribed.

(4A) The power to make regulations under subsection (4)(c) is exercisable by—

- (a) the Secretary of State, in relation to England;
- (b) the Welsh Ministers, in relation to Wales.

(4B) Section 333(3) does not apply in relation to regulations under subsection (4)(c) made by the Welsh Ministers.

(4C) Regulations under subsection (4)(c) made by the Welsh Ministers are subject to annulment in pursuance of a resolution of the National Assembly for Wales.”

(3) In subsection (5) for “any such appeal” substitute “an appeal under subsection (1)”.


Commencement

Sch. 11 para. 4(1)-(3): November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29 s.241(2); April 6, 2009 in relation to England; not yet in force otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(c); SI 2009/400 art. 5(d))

Extent

Sch. 11 para. 4(1)-(3): United Kingdom

Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9)

 Partially In Force

5

In section 21 of the Listed Buildings Act (appeals: supplementary provisions) after subsection (7) insert—

“(8) Regulations under this Act may provide for an appeal under section 20 to be accompanied by such other information as may be prescribed.

(9) The power to make regulations under subsection (8) is exercisable by—

- (a) the Secretary of State, in relation to England;
- (b) the Welsh Ministers, in relation to Wales.

(10) Section 93(3) does not apply in relation to regulations under subsection (8) made by the Welsh Ministers.

(11) Regulations under subsection (8) made by the Welsh Ministers are subject to annulment in pursuance of a resolution of the National Assembly for Wales.”


Commencement

Sch. 11 para. 5: November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29 s.241(2); April 6, 2009 in relation to England; not yet in force otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(c); SI 2009/400 art. 5(d))

Extent

Sch. 11 para. 5: United Kingdom

Planning (Hazardous Substances) Act 1990 (c. 10)

 Partially In Force

6

In section 21 of the Hazardous Substances Act (appeals against decisions and failure to take decisions relating to hazardous substances) after subsection (3) insert—

“(3A) A notice of appeal under this section must be accompanied by such information as may be prescribed.

(3B) The power to make regulations under subsection (3A) is exercisable by—

- (a) the Secretary of State, in relation to England;
- (b) the Welsh Ministers, in relation to Wales.

(3C) Section 40(3) does not apply in relation to regulations under subsection (3A) made by the Welsh Ministers.

(3D) Regulations under subsection (3A) made by the Welsh Ministers are subject to annulment in pursuance of a resolution of the National Assembly for Wales.”

Commencement

Sch. 11 para. 6: November 26, 2008 for purposes of making orders (other than orders granting, or making changes to orders granting, development consent) regulations or rules, or making provision about what is (or is not) permitted to be done, or what is required to be done in the exercise of any such power subject to savings specified in 2008 c.29

s.241(2); April 6, 2009 in relation to England; not yet in force otherwise (2008 c. 29 Pt 12 s. 241(1)(a), Pt 12 s. 241(2); 2008 c. 29 Pt 12 s. 241(3), Pt 12 s. 241(4)(c); SI 2009/400 art. 5(d))

Extent

Sch. 11 para. 6: United Kingdom

SCHEDULE 12**APPLICATION OF ACT TO SCOTLAND: MODIFICATIONS****Section 236**

Law In Force

1

Section 5(10) applies as if the reference to Part 11 of TCPA 1990 were a reference to Part 10 of the Town and Country Planning (Scotland) Act 1997 (c. 8).

Commencement

Sch. 12 para. 1: November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Sch. 12 para. 1: United Kingdom

Law In Force

2

Section 14 applies as if—

- (a) in subsection (1)—
 - (i) the words “any of the following” were omitted, and
 - (ii) paragraphs (a) to (f) and (h) to (p) were omitted, and
 - (b) in subsection (2) for “sections 15 to 30” there were substituted “section 21”.
-

Commencement

Sch. 12 para. 2(a)-(b): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Sch. 12 para. 2(a)-(b): United Kingdom

Law In Force

3

Section 32 applies as if—

- (a) in subsection (1)—

- (i) the reference to TCPA 1990 were a reference to section 26 of the Town and Country Planning (Scotland) Act 1997, and
 - (ii) the words “This is subject to subsections (2) and (3).” were omitted, and
- (b) subsections (2) to (4) were omitted.

Commencement

Sch. 12 para. 3(a)-(b): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Sch. 12 para. 3(a)-(b): United Kingdom

Law In Force

Amendment(s) Pending

4

Section 33 applies as if—

- (a) in subsection (1)—
 - (i) for “none” there were substituted “neither”, and
 - (ii) paragraphs (b) and (d) to (j) were omitted, and
- (b) subsections (2) to (4) were omitted.

Amendments Pending

Sch. 12 para. 4(a): word repealed by Localism Act 2011 c. 20 Pt 6 c. 6 s. 131(4)(b) (date to be appointed)

Sch. 12 para. 4(a): word repealed by Localism Act 2011 c. 20 Sch. 25(21) para. 1 (date to be appointed)

Sch. 12 para. 4(a)(i): substituted by Localism Act 2011 c. 20 Pt 6 c. 6 s. 131(4)(a) (date to be appointed)

Sch. 12 para. 4(b): words substituted by Localism Act 2011 c. 20 Pt 6 c. 6 s. 131(4)(c) (date to be appointed)

Sch. 12 para. 4(c): added by Localism Act 2011 c. 20 Pt 6 c. 6 s. 131(4)(d) (date to be appointed)

Commencement

Sch. 12 para. 4(a)-(b): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Sch. 12 para. 4(a)-(b): United Kingdom

Law In Force

5

Section 44 applies as if—

- (a) in subsection (2)(b), the words from “or” to the end were omitted,
- (b) in subsection (3), references to section 5(1) of the Compulsory Purchase Act 1965 (c. 56) were references to section 17 of the Lands Clauses Consolidation (Scotland) Act 1845 (c. 19), and
- (c) in subsection (6)—
 - (i) for paragraph (a) there were substituted—

“(a) a claim arising by virtue of paragraph 1 of the Second Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42)”

, and

(ii) in paragraph (b), the reference to Part 1 of the Land Compensation Act 1973 (c. 26) were a reference to Part 1 of the Land Compensation (Scotland) Act 1973 (c. 56).

Commencement

Sch. 12 para. 5(a)-(c)(ii): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Sch. 12 para. 5(a)-(c)(ii): United Kingdom

Law In Force

Amendment(s) Pending

6

Section 52 applies as if—

- (a) in subsection (2)(c), the words from “or” to the end were omitted,
- (b) in subsection (3)(b)—
 - (i) the reference to a freeholder were a reference to an owner, and
 - (ii) the reference to a mortgagee were a reference to a heritable creditor, and
- (c) in subsection (11), references to section 5(1) of the Compulsory Purchase Act 1965 (c. 56) were references to section 17 of the Lands Clauses Consolidation (Scotland) Act 1845 (c. 19).

Amendments Pending

Sch. 12 para. 6(b): word repealed by Localism Act 2011 c. 20 Sch. 25(20) para. 1 (date to be appointed)

Sch. 12 para. 6(d): added by Localism Act 2011 c. 20 Pt 6 c. 6 s. 135(10) (date to be appointed)

Sch. 12 para. 6(e): added by Localism Act 2011 c. 20 Pt 6 c. 6 s. 135(10) (date to be appointed)

Commencement

Sch. 12 para. 6(a)-(c): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Sch. 12 para. 6(a)-(c): United Kingdom

Law In Force

Amendment(s) Pending

7

Section 53 applies as if—

- (a) in subsection (7), the reference to chattels were a reference to moveable property,

- (b) in subsection (8) , the reference to the [Upper Tribunal were]¹ a reference to the Lands Tribunal for Scotland, and
- (c) in subsection (11), in the definition of “statutory undertakers”, the reference to Part 11 of TCPA 1990 were a reference to Part 10 of the Town and Country Planning (Scotland) Act 1997 (c. 8).

Notes

- ¹ Words substituted by Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307 Sch.1 para.298(a) (June 1, 2009)

Amendments Pending

Sch. 12 para. 7(za): added by Localism Act 2011 c. 20 Pt 6 c. 6 s. 136(7) (date to be appointed)

Commencement

Sch. 12 para. 7(a)-(c): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Sch. 12 para. 7(a)-(c): United Kingdom

Law In Force

8

Section 57 applies as if—

- (a) in subsection (2)(b), the words from “or” to the end were omitted,
- (b) in subsection (3), references to section 5(1) of the Compulsory Purchase Act 1965 were references to section 17 of the Lands Clauses Consolidation (Scotland) Act 1845, and
- (c) in subsection (6)—

- (i) for paragraph (a) there were substituted—

“(a) a claim arising by virtue of paragraph 1 of the Second Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42)”

, and

- (ii) in paragraph (b), the reference to Part 1 of the Land Compensation Act 1973 (c. 26) were a reference to Part 1 of the Land Compensation (Scotland) Act 1973 (c. 56).

Commencement

Sch. 12 para. 8(a)-(c)(ii): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Sch. 12 para. 8(a)-(c)(ii): United Kingdom

Law In Force

9

Section 58 applies as if—

(a) for subsection (6) there were substituted—

“(6) Summary proceedings relating to an offence under this section may be commenced regardless of when the contravention occurred.”

, and

(b) in subsection (7), the reference to section 127 of the Magistrates' Courts Act 1980 (c. 43) were a reference to section 136 of the Criminal Procedure (Scotland) Act 1995 (c. 46).

Commencement

Sch. 12 para. 9(a)-(b): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Sch. 12 para. 9(a)-(b): United Kingdom

Law In Force

10

Section 120(6) applies as if the references to an Act included references to an Act of the Scottish Parliament.

Commencement

Sch. 12 para. 10: November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Sch. 12 para. 10: United Kingdom

Law In Force

11

Section 127(8) applies as if, for the definition of “statutory undertakers” there were substituted—

““statutory undertakers” has the meaning given by section 214 of the Town and Country Planning (Scotland) Act 1997 and also includes the undertakers—

(a) which are deemed to be statutory undertakers for the purposes of that Act, by virtue of another enactment;

(b) which are statutory undertakers for the purposes of paragraphs 9 and 10 of the First Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42) (see paragraph 10A of that Schedule).”

Commencement

Sch. 12 para. 11: November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Sch. 12 para. 11: United Kingdom

Law In Force

12

Section 128(5) applies as if—

- (a) in the definition of “local authority”, the reference to section 7(1) of the Acquisition of Land Act 1981 (c. 67) were a reference to section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39), and
- (b) for the definition of “statutory undertakers” there were substituted—

““statutory undertakers” has the meaning given by section 214 of the Town and Country Planning (Scotland) Act 1997 (c. 8) and also includes the undertakers—

- (a) which are deemed to be statutory undertakers for the purposes of that Act, by virtue of another enactment;
- (b) which are statutory undertakers for the purposes of paragraphs 9 and 10 of the First Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (see paragraph 10A of that Schedule);”.

Commencement

Sch. 12 para. 12(a)-(b): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Sch. 12 para. 12(a)-(b): United Kingdom

Law In Force

13

Section 129(2) applies as if—

- (a) in the definition of “local authority”, the reference to section 17(4) of the Acquisition of Land Act 1981 were a reference to section 2 of the Local Government etc. (Scotland) Act 1994, and
- (b) for the definition of “statutory undertakers” there were substituted—

““statutory undertakers” has the meaning given by section 214 of the Town and Country Planning (Scotland) Act 1997 and also includes the undertakers which are deemed to be statutory undertakers for the purposes of that Act, by virtue of another enactment;”.

Commencement

Sch. 12 para. 13(a)-(b): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Sch. 12 para. 13(a)-(b): United Kingdom

Law In Force

14

Section 130 applies as if—

- (a) in subsection (4), the references to section 21 of the National Trust Act 1907 (c. cxxxvi) and section 8 of the National Trust Act 1939 (c. lxxxvi) were references to section 22 of the Order confirmed by the National Trust for Scotland Order Confirmation Act 1935 (c. ii), and
- (b) in subsection (5), for the definition of “the National Trust” there were substituted—

““the National Trust” means the National Trust for Scotland for Places of Historic Interest or Natural Beauty incorporated by the Order confirmed by the National Trust for Scotland Order Confirmation Act 1935 (c. ii)”.

Commencement

Sch. 12 para. 14(a)-(b): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Sch. 12 para. 14(a)-(b): United Kingdom

Law In Force

15

Section 131 applies as if—

- (a) in subsection (1), for “, open space or fuel or field garden allotment” there were substituted “or open space”, and
- (b) in subsection (12), for the words from “common” to “1981” there were substituted—

“common” includes any town or village green;
“open space” means any land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground;”.

Commencement

Sch. 12 para. 15(a)-(b): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Sch. 12 para. 15(a)-(b): United Kingdom

✔ Law In Force

16

Section 132 applies as if—

- (a) in subsection (1), for “, open space or fuel or field garden allotment” there were substituted “or open space”, and
- (b) in subsection (12), for the words from “common” to “1981” there were substituted—

“common” and “open space” have the same meanings as in section 131 (as modified by paragraph 15 of Schedule 12);”.

Commencement

Sch. 12 para. 16(a)-(b): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Sch. 12 para. 16(a)-(b): United Kingdom

✔ Law In Force

17

Section 134 applies as if—

- (a) for subsection (4) there were substituted—

“(4) This subsection applies to—

- (a) an owner, lessee, tenant (whatever the tenancy period) or occupier of the order land,
- (b) a person known by the prospective purchaser (after diligent inquiry)—
 - (i) to be interested in the order land, or
 - (ii) to have power to sell and convey the order land,
- (c) a person who, if the order were fully implemented, the prospective purchaser thinks would or might be entitled—
 - (i) as a result of the implementing of the order,
 - (ii) as a result of the order's having been implemented, or
 - (iii) as a result of use of the order land once the order has been implemented,
 to make a relevant claim.

(4A) In subsection (4)(c) “relevant claim” means a claim arising by virtue of paragraph 1 of the Second Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42).

(4B) An expression that appears in subsection (4)(b) of this section and also in section 17 of the Lands Clauses Consolidation (Scotland) Act 1845 (c. 19) has in subsection (4)(b) the meaning that it has in section 17 of that Act.”

, and

- (b) in subsection (7)(d) the words “only in accordance with section 118” were omitted.

Commencement

Sch. 12 para. 17(a)-(b): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Sch. 12 para. 17(a)-(b): United Kingdom

Law In Force

18

Section 137(7) applies as if the reference to Part 11 of TCPA 1990 were a reference to Part 10 of the Town and Country Planning (Scotland) Act 1997 (c. 8).

Commencement

Sch. 12 para. 18: November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Sch. 12 para. 18: United Kingdom

Law In Force

19

Section 151 applies as if—

(a) for paragraph (c), there were substituted—

“(c) section 10 of the Water (Scotland) Act 1980 (compensation for damage resulting from exercise of statutory powers)”

, and

(b) paragraph (d) were omitted.

Commencement

Sch. 12 para. 19(a)-(b): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Sch. 12 para. 19(a)-(b): United Kingdom

Law In Force

20

Section 152 applies as if—

(a) in subsection (4), the reference to the [Upper Tribunal were]¹ a reference to the Lands Tribunal for Scotland,

(b) for subsections (5) and (6) there were substituted—

“(5) Section 6 of the Railway Clauses Consolidation (Scotland) Act 1845 (which makes the construction of the railway subject to that Act and the Lands Clauses Consolidation (Scotland) Act 1845) applies in relation to authorised works as it applies in relation to the construction of a railway.

(6) Any rule or principle applied to the construction of section 6 of the Railway Clauses Consolidation (Scotland) Act 1845 must be applied to the construction of subsection (3) of this section (with any necessary modifications).”

, and

(c) in subsection (7)—

(i) the reference to Part 1 of the Land Compensation Act 1973 were a reference to Part 1 of the Land Compensation (Scotland) Act 1973, and

(ii) in paragraph (c), for “17” there were substituted “15”.

Notes

- ¹ Words substituted by Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307 Sch.1 para.298(a) (June 1, 2009)

Commencement

Sch. 12 para. 20(a)-(c)(ii): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Sch. 12 para. 20(a)-(c)(ii): United Kingdom

Law In Force

21

Section 164 applies as if the references to a justice of the peace were references to a sheriff.

Commencement

Sch. 12 para. 21: November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Sch. 12 para. 21: United Kingdom

Law In Force

22

Section 165 applies as if—

(a) in subsection (4), the reference to chattels were a reference to moveable property,

(b) in subsection (5), the reference to the [Upper Tribunal were]¹ a reference to the Lands Tribunal for Scotland, and

(c) in subsection (6), the reference to [section 4 of the Land Compensation Act 1961 (c. 33)]² were a reference to sections 9 and 11 of the Land Compensation (Scotland) Act 1963 (c. 51).

Notes

- ¹ Words substituted by Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307 Sch.1 para.298(a) (June 1, 2009)
- ² Words substituted by Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307 Sch.1 para.298(b) (June 1, 2009)

Commencement

Sch. 12 para. 22(a)-(c): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Sch. 12 para. 22(a)-(c): United Kingdom

Law In Force

23

Section 170 applies as if—

(a) in subsection (3)—

(i) for the words from “the”, where it first occurs, to “(c.49)” there were substituted “subsections (5) to (9) of section 135 of the Town and Country Planning (Scotland) Act 1997 (c. 8) (which relate to the execution and cost of certain works)”, and

(ii) the words from “section 276” to the end were omitted,

(b) in subsection (4), for “section 289” there were substituted “subsection (5) of section 135”, and

(c) subsection (5) were omitted.

Commencement

Sch. 12 para. 23(a)-(c): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Sch. 12 para. 23(a)-(c): United Kingdom

Law In Force

24

Section 171 applies as if—

(a) the references to an injunction were references to an interdict, and

(b) in subsection (4), the references to the High Court and a county court were references to the Court of Session and the sheriff.

Commencement

Sch. 12 para. 24(a)-(b): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Sch. 12 para. 24(a)-(b): United Kingdom

✔ Law In Force

25

Section 229(5) applies as if the reference to section 233 of the Local Government Act 1972 (c. 70) were a reference to section 192 of the Local Government (Scotland) Act 1973 (c. 65).

Commencement

Sch. 12 para. 25: November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Sch. 12 para. 25: United Kingdom

✔ Law In Force

26

Section 235 applies as if—

(a) for the definition of “building” there were substituted—

““building” has the meaning given by section 277(1) of the Town and Country Planning (Scotland) Act 1997 (c. 8);”,

(b) for the definition of “land” there were substituted—

““land” includes land covered with water and any building (as defined in section 277(1) of the Town and Country Planning (Scotland) Act 1997) and in relation to Part 7 must be read in accordance with section 159;”,

(c) for the definition of “local planning authority” there were substituted—

““local planning authority” means a planning authority within the meaning of section 1 of the Town and Country Planning (Scotland) Act 1997;”,

(d) in the definition of “planning permission”, the reference to Part 3 of TCPA 1990 were a reference to Part 3 of the Town and Country Planning (Scotland) Act 1997, and

(e) in the definition of “use”, the reference to section 336(1) of TCPA 1990 were a reference to section 277(1) of the Town and Country Planning (Scotland) Act 1997.

Commencement

Sch. 12 para. 26(a)-(e): November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))

Extent

Sch. 12 para. 26(a)-(e): United Kingdom

✔ Law In Force

! Amendment(s) Pending

27

Part 1 of Schedule 5 applies as if paragraphs 4 to 6, 8, 9, 16 to 32 and 38 were omitted.

Amendments Pending

Sch. 12 para. 27: words inserted by Localism Act 2011 c. 20 Sch. 13(1) para. 73 (date to be appointed)

Commencement

Sch. 12 para. 27: November 26, 2008 (2008 c. 29 Pt 12 s. 241(1)(c))


Extent

Sch. 12 para. 27: United Kingdom

SCHEDULE 13

REPEALS

Section 238

 Partially In Force

<i>Reference</i>	<i>Extent of repeal</i>
Forestry Act 1967 (c. 10)	In paragraph 2 of Schedule 3— (a) the words from “section 77” to “(for Scotland)”, and (b) “the said section 77 or (for Scotland)”.
Town and Country Planning Act 1990 (c. 8)	Section 61A(1). Section 198(3), (4), (6), (8) and (9). Section 199. Section 201. Section 202(3). Sections 203 to 205. Section 212(4). In section 284(3)(a), “for planning permission”. In Schedule 1, paragraph 17. In Schedule 1A, paragraph 9. In Schedule 4A, paragraph 2(4) and (5).
Environmental Protection Act 1990 (c. 43)	In Schedule 13, paragraph 10.
Planning and Compensation Act 1991 (c. 34)	Section 6(6). In Schedule 18, in Part 1, the entries for sections 203 and 204 of the Town and Country Planning Act 1990.
Planning and Compulsory Purchase Act 2004 (c. 5)	Section 15(2)(a) and (c). Section 17(1) and (2). Section 18(4) to (6). Section 42(3). Sections 46 to 48. Section 53. Section 122(5)(a). In section 122(6), “(a)”, In Schedule 6, paragraph 5.
Greater London Authority Act 2007 (c. 24)	Section 36.

Commencement

Sch. 13 para. 1(a)-(b): January 26, 2009 for repeals specified in 2008 c.29 s.225; April 6, 2009 in relation to England and Wales for repeals specified in SI 2009/400 Sch.1 Part 1; April 6, 2009 in relation to England for repeals specified in SI 2009/400 Sch.1 Part 2; June 23, 2009 in relation to England for repeals specified in SI 2009/1303; April 6, 2010 in relation to England and Wales for repeals specified in SI 2010/566 Sch.1; not yet in force otherwise (2008 c. 29 Pt 11 s. 225, Pt 12 s. 241(3); 2008 c. 29 Pt 12 s. 241(4)(d), Pt 12 s. 241(5); 2008 c. 29 Pt 12 s. 241(6), Pt 12 s. 241(8); SI 2009/400 Sch. 1(1), Sch. 1(2) para. 1; SI 2009/1303 art. 2(b), Sch. 1 para. 1; SI 2010/566 art. 3(d), Sch. 1 para. 1)

Extent

Sch. 13 para. 1(a)-(b): United Kingdom

EXPLANATORY NOTES**INTRODUCTION**

1. These explanatory notes relate to the Planning Act 2008 which received Royal Assent on 26 November 2008. They have been prepared by the Department for Communities and Local Government in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY

3. Parts 1 to 8 of the Act create a new system of development consent for nationally significant infrastructure projects. The new system covers certain types of energy, transport, water, waste water and waste projects. The number of applications and permits required for such projects is being reduced, compared with the position under current legislation.

4. A major role in the new system is to be played by a new independent body to be called the Infrastructure Planning Commission ('the Commission'). The Commission will be responsible for examining applications for development consent for nationally significant infrastructure projects. The Commission will also be responsible for deciding any such application when there is in force a relevant national policy statement. Development consent will be given in the form of an order which may also confer upon developers certain rights for the purpose of facilitating the project. These rights may include the compulsory acquisition of land where there is a compelling case in the public interest.

5. National policy statements will set the framework for decisions by the Commission. The Secretary of State will have a wide discretion as to how prescriptive the policy should be. However, the Secretary of State may designate a statement for the purposes of the Act only if there has been public consultation, an appraisal of sustainability has been carried out and parliamentary requirements

have been met. Provision is made for addressing any blight caused by the publication of a national policy statement.

6. The Secretary of State (in these notes referred to as being female) will be responsible for determining an application for development consent herself where she has chosen not to designate (or keep in place) a national policy statement covering the relevant type of infrastructure. The Secretary of State will receive recommendations from the Commission and will have order making powers to facilitate developments which are similar to the powers of the Commission where it is the decision maker.

7. The Chair of the Commission will have to appoint Panels comprising three or more Commissioners, or a single Commissioner, to examine the applications submitted. The Act sets out the procedures for examination of an application. It is intended that in examining applications greater use is made of written representations with less reliance on oral representations; and restrictions are being placed on the use of cross examination by interested parties at a hearing.

8. The Act sets a timetable for examination of applications and decisions. A deadline of six months is stipulated for carrying out the examination procedure and a further three months is allowed for a Council (consisting of between five and nine Commissioners), a Panel or the Secretary of State to take a decision.

9. Part 9 of the Act makes various alterations to the existing town and country planning regime (which will continue to apply to other types of development). Changes are being made in relation to the development plan. Changes are being made to the power of local planning authorities to decline to determine subsequent applications. The right to compensation is being removed in certain circumstances where at least twelve months' notice is given of withdrawal of planning permission by a development order. Authorities are being given express power to make non-material changes to planning permissions. The Secretary of State is to be required to determine the appropriate procedure for certain proceedings (that is, local inquiry, hearing or written representations). Provisions are included concerning fees for planning applications and a power is created to enable fees to be imposed in connection with planning appeals.

10. Part 10 adds certain matters within the field of town and country planning to the legislative competence of the National Assembly for Wales and confers upon Welsh Ministers additional powers to make orders on planning matters. This Part also makes provision relating to protection from blight.

11. Part 11 empowers the Secretary of State to establish a Community Infrastructure Levy by regulations ("CIL regulations"). This is subject to the approval of a draft of the regulations by the House of Commons and the consent of the Treasury.

Part 1

12. Part 1 establishes the Infrastructure Planning Commission. The Commission must issue a code of conduct and maintain a register of Commissioners' interests and may charge a fee for carrying out any of its functions. Schedule 1 (which is introduced by section 1) gives details of how Commissioners are to be appointed and their terms and conditions of appointment.

Part 2

13. Part 2 defines a national policy statement for the purposes of the new development consent system, and sets out the requirements for consultation and parliamentary scrutiny before a national

policy statement can be designated as such. This Part identifies the opportunities for bringing any legal challenges connected with a national policy statement.

Part 3

14. Part 3 defines a nationally significant infrastructure project. The categories of project specified are within one of the following fields: energy, transport, water, waste water and waste. The Secretary of State has a limited order making power to amend the categories of project specified (she also has a power of direction under Part 4 which can be used to bring individual developments within the development consent regime).

Part 4

15. Part 4 imposes a requirement for development consent in respect of development which is or forms part of a nationally significant infrastructure project. Where development consent is required there is no need to obtain consents under a variety of existing statutory regimes.

Part 5

16. Part 5 sets out the requirements for an application to the Commission for an order granting development consent. The Secretary of State may issue model provisions for incorporation in a draft order to accompany an application. This Part specifies that the Commission must keep a register of applications.

17. This Part also contains provisions in respect of the pre-application consultation process which an applicant must undertake, and the giving of advice to the applicant or others by the Commission. It also contains powers for the Commission to authorise the serving of a notice requesting information about interests in land and to authorise entry on land in specified circumstances.

Part 6

18. Part 6 describes the process by which an application for an order granting development consent will be handled by the Commission. This Part is divided into chapters that specify the processes which will apply when an application is to be examined and decided by a Panel comprising several Commissioners (Chapter 2) or examined by a single Commissioner (Chapter 3). The examination of an application will be conducted primarily through written representations, but there will be an open floor stage and where necessary other oral hearings. A timetable is set for examining, and reporting on or deciding, an application.

19. Chapter 5 describes the matters to which the Commission must have regard in deciding an application for an order granting development consent. Other than in specified exceptional circumstances decisions by the Commission must be taken in accordance with the relevant national policy statement. The matters to which the Secretary of State must have regard when she decides applications are also specified.

20. Chapter 6 provides that the Secretary of State may direct the Commission to suspend consideration of an application while she reviews the relevant national policy statement. Chapter 7 gives the Secretary of State a power to intervene and direct that an application for an order granting development consent be referred to her in specified circumstances.

21. Chapter 8 contains provisions relating to the grant or refusal of development consent and Chapter 9 identifies the opportunities for bringing any legal challenges in connection with applications for development consent. Chapter 10 sets out the mechanisms by which the decision-maker can make corrections to a decision, where this contains a minor clerical error.

Part 7

22. Part 7 describes what provision may be included in an order granting development consent. This includes requirements corresponding to conditions under the current legislation, matters ancillary to the development, the authorisation of the compulsory acquisition of land and the application, exclusion or modification of legislation. In respect of the authorisation of compulsory acquisition this Part sets out additional provisions which apply, for example, regarding certain types of land.

23. Part 7 sets out the mechanisms for the subsequent modification or revocation of development consent orders, including setting out who can apply for this and in what circumstances. It also sets out circumstances in which compensation might be due for loss caused by a modification or revocation of a development consent order.

Part 8

24. Part 8 sets out the enforcement provisions for the new development consent regime. There is a new offence of carrying out development for which development consent is required at a time when no development consent is in force in respect of the development, as well as an offence of breaching the terms of an order granting development consent. There are provisions enabling local planning authorities to enter land, require information and seek injunctions.

Part 9

25. Part 9 provides for compensation where land is blighted by a national policy statement or in connection with an application for development consent. It makes a number of other changes to the existing town and country planning regime.

Part 10

26. Part 10 adds certain matters within the field of town and country planning to the legislative competence of the National Assembly for Wales. The Welsh Ministers are given order making powers to give effect in Wales to provisions in Part 9 which would otherwise have effect only in England. Part 10 also makes transitional provision relating to any blight caused by structure plans, local plans and unitary development plans.

Part 11

27. Part 11 empowers the Secretary of State to establish a Community Infrastructure Levy by subordinate legislation.

Part 12

28. This sets out how the provisions of the Act apply to the Crown. It contains provision in respect of the service of documents, the procedure for making orders and regulations, interpretation, extent and commencement.

BACKGROUND

29. At present development consent for nationally significant infrastructure projects is provided for in various pieces of legislation. Decisions on airports are taken under the town and country planning system, but there are special statutory regimes for particular types of infrastructure, such as power stations and electricity lines, some gas supply infrastructure, pipe-lines, ports (where development extends beyond the shoreline), roads and railways. Except in the case of airports

(where applications are made to the local planning authority), applications for the necessary permissions and powers must be made to the relevant Minister.

30. The procedures for determining applications vary, but a local public inquiry is generally conducted by a planning inspector who examines the project in detail and considers objections. Evidence is typically tested by the cross-examination of witnesses. The inspector then writes a report including recommendations which he submits to the Minister. She considers the report and decides whether the project should be granted the consents and powers needed to allow it to proceed. In doing this the Minister must have regard to relevant Government policies. It is Government policy that powers to compulsorily acquire land should be granted only where there is a compelling need in the public interest. The legislation provides very little scope for Parliament to be involved in examining applications.

31. In 2006 the Government commissioned Kate Barker to consider how planning policy and procedures could better deliver economic growth and prosperity in a way that is integrated with other sustainable development goals. The Government also asked Sir Rod Eddington, who had been commissioned to advise on the long-term links between transport and the UK's economic productivity, growth and stability, to examine how delivery mechanisms for transport infrastructure might be improved within the context of the Government's commitment to sustainable development.

32. Sir Rod Eddington and Kate Barker published their findings in December 2006 (see *The Eddington Transport Study and Review of Land Use Planning*, HMSO). On 21 May 2007 the Government published its response; the White Paper, *Planning for a Sustainable Future*, Cm 7120, and consulted on the proposals for 12 weeks. The White Paper set out proposals to reform the regime for development consent for nationally significant infrastructure, and other measures to change the town and country planning system.

33. Following assessment of consultation responses, the Planning Act will implement proposals in the Planning White Paper to amend the planning regime, including introducing a single consent regime for major infrastructure projects, establishing an independent Infrastructure Planning Commission and making changes to the town and country planning system.

STRUCTURE OF THE ACT

34. The Act consists of twelve parts, set out as follows:

- Part 1 — The Infrastructure Planning Commission
- Part 2 — National policy statements
- Part 3 — Nationally significant infrastructure projects
- Part 4 — Requirement for development consent
- Part 5 — Applications for orders granting development consent
 - Chapter 1 — Applications
 - Chapter 2 — Pre-application procedure
 - Chapter 3 — Assistance for applicants and others
- Part 6 — Deciding applications for orders granting development consent
 - Chapter 1 — Handling of application by the Commission
 - Chapter 2 — The Panel procedure
 - Chapter 3 — The single Commissioner procedure
 - Chapter 4 — Examination of applications under Chapter 2 or 3
 - Chapter 5 — Decisions on applications
 - Chapter 6 — Suspension of decision-making process
 - Chapter 7 — Intervention by Secretary of State

- Chapter 8 — Grant or refusal of development consent
- Chapter 9 — Legal challenges
- Chapter 10 — Correction of errors
- Part 7 — Development consent orders
 - Chapter 1 — Content of development consent orders
 - Chapter 2 — Changes to, and revocation of, development consent orders
 - Chapter 3 — General
- Part 8 — Enforcement
- Part 9 — Changes to existing planning regimes
 - Chapter 1 — Changes related to development consent regime
 - Chapter 2 — Other changes to existing planning regimes
- Part 10 — Wales
- Part 11 — Community Infrastructure Levy
- Part 12 — Final provisions

35. The Act also contains thirteen Schedules. These are:

- Schedule 1 — The Infrastructure Planning Commission
- Schedule 2 — Amendments consequential on development consent regime
- Schedule 3 — Examination of applications by the Secretary of State
- Schedule 4 — Correction of errors in development consent decisions
- Schedule 5 — Provision relating to, or to matters ancillary to, development
- Schedule 6 — Changes to, and revocation of, orders granting development consent
- Schedule 7 — Power to decline to determine applications: amendments
- Schedule 8 — Tree preservation orders: further amendments
- Schedule 9 — Use of land: power to override easements and other rights
- Schedule 10 — Further provisions as to the procedure for certain proceedings
- Schedule 11 — Appeals: miscellaneous amendments
- Schedule 12 — Application of Act to Scotland: modifications
- Schedule 13 — Repeals

TERRITORIAL EXTENT

36. This Act extends to England and Wales. Parts 1 to 8 (with some exceptions which include sections relating to legal challenges) and Part 12 also extend to Scotland, but only in the case of the construction of an oil or gas pipe-line, one end of which is in England or Wales and the other end of which is in Scotland. To take account of the different legal system in Scotland certain provisions of the Act are modified in their application to Scotland.

COMMENTARY

PART 1: THE INFRASTRUCTURE PLANNING COMMISSION

Section 1 and Schedule 1: The Infrastructure Planning Commission

37. Section 1 provides that there will be a body called the Infrastructure Planning Commission (“the Commission”).

38. Section 1 introduces Schedule 1, which describes the structure of the Commission, the process by which Commissioners are appointed, and their terms and conditions of employment.

SCHEDULE 1

Schedule 1, Paragraph 1: Membership, chair and deputies

39. The Secretary of State will be responsible for appointing all Commissioners. As explained on page 92 of the White Paper, it is intended that appointments will be made according to the Code of Practice of the Commissioner for Public Appointments.

40. The Secretary of State must appoint one of the Commissioners to chair the Commission and at least two deputies to the chair.

Schedule 1, Paragraph 2: **Terms of Appointment**

41. The chair, deputies and other Commissioners will hold and vacate office in accordance with the terms of their appointment.

Schedule 1, Paragraphs 3 and 4: **Tenure**

42. This paragraph describes the tenure of Commissioners. Commissioners must be appointed for a fixed term of between five and eight years. A Commissioner can resign on giving at least three months' written notice to the Secretary of State.

43. The Secretary of State can remove a Commissioner from office, but only if the Secretary of State is satisfied that the Commissioner:

- a) is unable or unwilling to perform his duties;
- b) has been convicted of a criminal offence; or
- c) is otherwise unfit to perform his duties.

44. Commissioners may be reappointed at the end of their term of office. The Act does not state a limit on the number of terms an individual may serve as a Commissioner, but the Code of Practice set out by the Committee on Standards in Public Life recommends ten years as an upper limit on the number of years a person should remain in one post.

Schedule 1, Paragraph 5: **Remuneration of Commissioners**

45. This paragraph states that the Commission must pay Commissioners such remuneration, allowances and pension as the Secretary of State determines. The Commission may also pay sums in respect of expenses to Commissioners.

Schedule 1, Paragraphs 6 to 10: **Council**

46. These paragraphs contain provisions relating to a body of Commissioners to be known as the Council. The Council's functions will include deciding applications referred under section 84 (following the report of a single Commissioner) and responding to consultations. Special provision is made regarding the appointment of Commissioners as ordinary members of the Council in the case of applications which relate to land in Wales.

Schedule 1, Paragraphs 11 to 13: **Chief executive and staff**

47. Paragraph 11 provides that the Secretary of State is responsible for appointing the chief executive, who must not be a Commissioner. The chief executive will be a member of the Commission's staff. The Secretary of State will determine the chief executive's terms and conditions.

48. By virtue of paragraph 12 the Commission may appoint such other staff as it thinks appropriate, but must obtain the approval of the Secretary of State as to the overall number of staff it proposes to appoint and their terms and conditions. A member of the Commission's staff cannot be a Commissioner.

49. Paragraph 13 provides that the terms and conditions of service of the chief executive and other members of staff may include payment of remuneration, allowances, sums in respect of expenses and pensions.

Schedule 1, Paragraph 14: Arrangements for assistance

50. This paragraph allows the Commission to make arrangements for others to assist it and to pay fees for their assistance.

Schedule 1, Paragraphs 15 and 16: Delegation

51. Paragraph 15 sets out that the Commission may delegate to any one or more Commissioners certain functions relating to the handling of applications for orders granting development consent. Any of the Commission's other functions may be delegated to—

- a) any one or more of the Commissioners;
- b) the chief executive; or
- c) any other member of its staff.

52. Paragraph 16 confers upon the chief executive the power to authorise (generally or specifically) any other member of the Commission's staff to do anything which the chief executive is authorised or required to do. An exception is made for the chief executive's role in relation to the certification of the Commission's annual accounts.

Schedule 1, Paragraphs 17 and 18: Reports

53. The Commission will be accountable to Ministers and Parliament for its overall performance as a public body. The Commission will have to submit a report to the Secretary of State at the end of each financial year relating to the performance of its functions during the year. This annual report on the activities of the Commission should give details of the exercise of its powers to authorise the compulsory acquisition of land and such matters as the Secretary of State directs the Commission to include. This report must be published by the Commission and be laid before Parliament by the Secretary of State. The Secretary of State can also require the Commission to provide him with a report or information about any aspect of the Commission's work.

Schedule 1, Paragraph 19: Funding

54. The Secretary of State can make payments to the Commission out of money provided by Parliament as and when she considers it appropriate and subject to such conditions as the Secretary of State considers appropriate.

Schedule 1, Paragraph 20: Accounts

55. The Commission, in accordance with the normal accounting practice for public sector bodies, is required to keep accounts in such form as the Secretary of State directs. The Commission must prepare annual accounts for each financial year and send a copy to the Secretary of State and the Comptroller and Auditor General. The Secretary of State will lay a copy of the annual accounts and the Comptroller and Auditor General's report before Parliament each year.

Schedule 1, Paragraph 21: Status

56. The Commission and its staff are not to be regarded as servants or agents of the Crown.

Schedule 1, Paragraph 22: validity of proceedings

57. The validity of the Commission's work is not affected by a defect in the appointment of a Commissioner (including the chair or deputy chair), nor if there is a vacancy amongst any of the Commissioners.

Schedule 1, Paragraph 23: Application of seal and proof of instruments

58. The Commission's seal may be authenticated by the signature of a Commissioner or an authorised member of the Commission's staff.

Schedule 1, Paragraph 24: Parliamentary Commissioner

59. The Commission is to be added to the list of bodies which are subject to investigation by the Parliamentary Commissioner for Administration in the event of maladministration.

Schedule 1, Paragraphs 25 and 26: Disqualification/Public records

60. Paragraph 25 provides that Commissioners are disqualified from membership of the House of Commons and the Northern Ireland Assembly. The effect of paragraph 26 is to make the administrative records of the Commission public records for the purposes of the Public Records Act 1958.

Schedule 1, Paragraph 27:

61. By virtue of paragraph 27 the Commission is added to the list of bodies which are subject to the requirements of the Freedom of Information Act 2000 (and therefore also the requirements of the Environmental Information Regulations 2004, SI 2004/3391).

Section 2, Code of conduct

62. This section provides that the Commission must issue a code of conduct for its Commissioners, which should include a requirement for Commissioners to disclose all relevant interests, including financial information. The code of conduct and the register of interests must be published. The code of conduct should be reviewed regularly, and may from time to time be amended. A failure by a Commissioner to observe the Code will not in itself make a Commissioner liable to criminal or civil proceedings.

Section 3: Register of Commissioners' interests

63. The Commission must establish a procedure for the disclosure and registration of financial and other interests of Commissioners and arrange for a register of entries to be published.

Section 4: Fees

64. This section provides that the Secretary of State may make regulations to allow the Commission to charge fees for the performance of any of its functions. The section contains a non-exhaustive list of the matters that may be covered by any regulations, for example, the amount which may be charged, who is liable to pay a fee to be charged and when the fee is payable.

PART 2: NATIONAL POLICY STATEMENTS

Section 5: National Policy Statements

65. Subsections (1) & (2) of this section define what is meant by the term "national policy statement".

66. Subsections (3) and (4) provide that a national policy statement can be designated only if the Secretary of State has first carried out a sustainability appraisal, has complied with the consultation requirements mentioned in section 7 and with the parliamentary requirements set out in section 9.

67. Subsection (5) gives examples of what types of policy may be contained in a national policy statement. These examples include setting out criteria to be applied in deciding whether a location is suitable for a particular description of development, and identifying a location as suitable (or potentially suitable) for development. Subsection (6) requires a national policy statement to set out criteria to be taken into account in the design of the relevant description of development.

68. Subsection (7) provides that a national policy statement must include reasons for the policy in the statement. Subsection (8) provides that the reasons must include an explanation of how the policy takes account of Government policy relating to the mitigation of, and adaptation to, climate change.

69. Subsection (9) requires the Secretary of State to arrange for a national policy statement to be published and to be laid before Parliament.

Section 6: Review

70. This section requires the Secretary of State to review all or part of a national policy statement when she considers it appropriate and specifies considerations which must be taken into account when deciding when to carry out a review. Provision is made for an appraisal of sustainability to be carried out when carrying out a review. Consultation on, and parliamentary scrutiny of, proposed amendments is required and if the statement is amended publication requirements apply.

Sections 7, 8 and 9: Consultation and publicity/Consultation on publicity requirements/Parliamentary requirements

71. Where the Secretary of State proposes to designate a statement to be a national policy statement, or amend a national policy statement, the Secretary of State must carry out such consultation and arrange for associated publicity as she thinks appropriate, and a Parliamentary scrutiny process must be completed. The Secretary of State must also consult such persons as are prescribed.

72. If the new or amended proposals refer to a particular location as being suitable (or potentially suitable) for a specified type of development, the Secretary of State must ensure that there is suitable publicity for the proposal in that location. Section 8 sets out that in deciding what publicity is appropriate for this purpose the Secretary of State must consult the local authority in which the land is located and adjoining local authorities. If the location concerned is in Greater London, the Secretary of State must also consult the GLA.

Section 10: Sustainable development

73. This section provides that where the Secretary of State is either designating or reviewing a national policy statement, she must do so with the objective of contributing to sustainable development. This objective includes a duty to have regard to the desirability of mitigating, and adapting to, climate change, and achieving good design.

Section 11: Suspension pending review

74. This section provides that the Secretary of State may suspend the operation of part or all of a national policy statement if she decides that since the relevant part of the statement was issued or reviewed there has been a significant change in circumstances which was not anticipated. Suspension by the Secretary of State is possible only where she thinks that if the change had been anticipated any of the policy included in the relevant part of the statement would have been materially different.

Section 12 Pre-commencement statements of policy, consultation etc

75. Subsection (1) of this section provides that the Secretary of State may exercise her powers under section 5 to designate a statement as a national policy statement even if the statement was issued by the Secretary of State before section 5 comes into force, or if the statement refers to another statement so issued.

76. Subsection (2) prevents the Secretary of State from designating a pre-commencement statement where she thinks that there has been a significant and unanticipated change of circumstances, which if it had been anticipated, would have led to policy being materially different.

77. By virtue of subsection (4) of section 12 the Secretary of State may take account of appraisal carried out before section 5(2) comes into force for the purpose of complying with the requirements of section 5(2).

78. Subsection (5) of section 12 enables the Secretary of State to take account of any consultation or publicity arranged before section 5 comes into force for the purpose of complying with the consultation and publicity requirements of section 7.

Section 13: Legal challenges relating to national policy statements

79. This section provides that legal challenges in connection with national policy statements can be brought only by judicial review and only during specified six-week periods.

PART 3: NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECTS

Section 14: Nationally Significant Infrastructure Projects: General

80. Subsection (1) lists the categories of project which are “nationally significant infrastructure projects” for the purposes of the Act. Further details of these categories are given in subsequent sections in Part 3.

81. Subsection (3) of section 14 enables the Secretary of State to make an order which amends the categories of nationally significant infrastructure project. This power is subject to the limitation in subsection (5) that new types of project may be added only if they are projects for the carrying out of works in the fields of energy, transport, water, waste water or waste, and if the works are to be carried out in the areas specified in subsection (7).

Section 15: Generating Stations

82. This section states the circumstances in which the construction or extension of a generating station will be a nationally significant infrastructure project. The expression “generating station” has the same meaning as in section 36 of the Electricity Act 1989.

Section 16: Electric lines

83. This section describes the circumstances in which the installation of an electric line above ground will be a nationally significant infrastructure project. The expression “electric line” has the same meaning as in section 37 of the Electricity Act 1989.

Section 17: Underground gas storage

84. This section describes situations where development relating to the underground storage of gas will be a nationally significant infrastructure project.

85. To avoid disturbing the devolution settlement, section 17 provides for decisions on developments in Wales by persons other than gas transporters to continue to be taken by Welsh Ministers under the Town and Country Planning Act 1990 (which is referred to in these notes as “TCPA 1990”).

However, projects in Wales which would previously have been considered by the UK Government Minister under section 4 of the Gas Act 1965 are included in this category of nationally significant infrastructure project.

Sections 18 and 19: LNG facilities/Gas reception facilities

86. These sections provide that the construction or alteration of a facility for the import of liquid natural gas or other natural gas is a nationally significant infrastructure project if specified requirements are met as to the storage capacity or flow rate of the facility.

Section 20: Gas transporter pipe-lines

87. This section describes circumstances in which the construction of a pipe-line by a gas transporter licensed under the Gas Act 1986 is a nationally significant infrastructure project.

Section 21: Other pipe-lines

88. This section sets out the circumstances in which the construction of a pipe-line other than by a gas transporter is a nationally significant infrastructure project. The section avoids disturbing the devolution settlement under which pipe-lines wholly situated within Scotland require consent from Scottish Ministers under section 1 of the Pipe-lines Act 1962.

Section 22: Highways

89. This section sets out the circumstances in which highway-related development is a nationally significant infrastructure project. The following are relevant highway-related development—:

- construction of a highway which is to form part of the Strategic Road Network (that is, a highway in England for which the Secretary of State will be the highway authority)
- improvement of a highway which forms part of the Strategic Road Network (but only where the improvement is likely to have a significant impact on the environment)
- construction or alteration by the Secretary of State of a highway in England for a purpose connected with the Strategic Road Network

Section 23: Airports

90. This section sets out the circumstances in which airport-related development is a nationally significant infrastructure project. Construction and alteration of an airport is included within this category if a specified minimum passenger or cargo capacity is expected to be reached. Increases in permitted use of an airport are also covered by this category if a minimum capacity increase would be reached.

91. Currently, planning permission under TCPA 1990 is needed for airport developments. To avoid disturbing the devolution settlement, Welsh Ministers will retain their existing powers to determine applications for new airports or extensions in their territory, while applications relating to nationally significant airport projects in England will be determined under the new regime.

Section 24: Harbour facilities

92. This section sets out the circumstances in which the construction or alteration of harbour facilities is a nationally significant infrastructure project. Thresholds consisting of expected capacity thresholds apply.

Sections 25 and 26: Railways and Rail Freight interchanges

93. These sections set out the circumstances in which the construction or alteration of a railway or a rail freight interchange is a nationally significant infrastructure project. Only railways and rail freight interchanges which would be situated wholly in England are included.

Sections 27 and 28: Dams and reservoirs and transfers of water resources

94. These sections set out the circumstances in which the construction or alteration of a dam or reservoir or development relating to the transfer of water resources is a nationally significant infrastructure project. Only projects in England are included.

Section 29: Waste water treatment plants

95. This section sets out the circumstances in which the construction or alteration of a waste water treatment plant is a nationally significant infrastructure project. Only projects in England are included.

Section 30: Hazardous waste facility

96. This section sets out the circumstances in which the construction or alteration of a hazardous waste facility is a nationally significant infrastructure project. Only projects in England are included.

PART 4: REQUIREMENT FOR DEVELOPMENT CONSENT

Section 31: When development consent is required

97. This section imposes a requirement of development consent for development which is, or forms part of, a nationally significant infrastructure project.

Section 32: Meaning of “development”

98. This section describes what constitutes “development” in the context of a nationally significant infrastructure project. It provides that “development” has the same meaning as “development” in TCPA 1990 subject to subsections (2) and (3).

99. The effect of subsection (2) is that the conversion of a generating station to enable it to use gas or petroleum as a fuel source, starting to use a cavity or strata underground for the purposes of gas storage and an increase in the permitted use of an airport count as “development” for the purposes of the development consent regime. The provision relating to generating stations replicates the position under section 14 of the Energy Act 1976, which gives the Secretary of State the power to direct that conversions should not take place. Likewise, starting to use natural porous strata underground for the purposes of gas storage currently requires the consent of the Secretary of State under section 4 of the Gas Act 1965. Similarly, a material increase in the permitted use of an airport requires a change to a planning permission or a condition of a planning permission under TCPA 1990.

100. Subsection (3) is consistent with provisions in the Planning (Listed Buildings and Conservation Areas) Act 1990 (referred to in these notes as “the Listed Buildings Act”) and the Ancient Monuments and Archaeological Areas Act 1979. The subsection makes it clear that the types of works to heritage assets listed are to be treated as development for the purposes of the development consent regime.

Section 33: Effect of requirement for development consent on other consent regimes

101. Subsection (1) provides that where a project requires development consent under this Act, it will no longer require certain other consents under existing consent regimes. These consent regimes are listed in subsection (1), and include:

- planning permission under Part 3 of TCPA 1990 (or, in relation to the Scottish part of a cross-border oil or gas pipe-line, planning permission under Part 3 of the Town and Country Planning (Scotland) Act 1997);
- listed building consent under section 8 of the Listed Buildings Act;
- conservation area consent under section 74 of the Listed Buildings Act;
- scheduled monument consent in England and Wales under section 2 of the Ancient Monuments and Archaeological Areas Act 1979.

102. Subsection (2) of section 33 provides that where development consent is required, development may not be authorised by an order under section 14 or 16 of the Harbours Act 1964 or section 1 or 3 of the Transport and Works Act 1992.

103. Section 4(1) of the Gas Act 1965 is mentioned in both subsections (1) and (2) of section 33. It appears in subsection (1) because (by virtue of section 4(2) of the Gas Act) there is a requirement to obtain an authorisation under section 4(1). It also appears in subsection 31(2), because section 4(1) can be read as conferring a separate power on the Secretary of State to make a storage authorisation order.

104. The Highways Act 1980 gives the Secretary of State the ability to make or confirm orders about a variety of matters to do with highways, including the construction of new highways. Subsection (4) of section 33 provides that where construction, improvement or alteration of the highway requires development consent, the Secretary of State may not make or confirm such orders in relation to the highway or in connection with the construction, improvement or alteration of the highway.

Section 34: Welsh offshore generating stations

105. This section relates to section 33(2)(c) and preserves the powers of Welsh Ministers to make orders under section 3 of the Transport and Works Act 1992 in relation to the construction or extension of Welsh offshore generating stations.

Section 35: Directions in relation to projects of national significance

106. This section provides that the Secretary of State may direct that an application made to the relevant authority for a consent or authorisation mentioned in section 33(1) or (2) should be referred to the Commission, which will then treat it as an application for development consent. The Secretary of State can make such a direction only if the development is, or forms part of, a project in one of the fields mentioned in subsection (2) of section 35, the development would be wholly in England (or adjacent waters) and she considers that the project is of national significance. The Secretary of State may also make a direction in relation to more than one project in the same field if she believes that collectively they are of national significance. The Secretary of State must give reasons for making a direction under this section.

107. If the Secretary of State is considering making such a direction, she may direct the relevant authority to take no further action until she has reached her decision.

Section 36 and Schedule 2: Amendments consequential on development consent regime

108. This section and the Schedule which it introduces make consequential amendments to existing consent regimes. For the most part, these consequential amendments clarify that where development consent is required for a project under this Act, requirements for other consents no longer apply. In particular:

- a) Green Belt (London and Home Counties) Act 1938: restrictions on the erection of buildings no longer apply where the project requires development consent under the Planning Act.
- b) Pipe-lines Act 1962: authorisation is no longer required from the Secretary of State in order to construct a cross-country pipe-line where the project requires development consent under the Planning Act.
- c) Harbours Act 1964: it will no longer be possible to make harbour revision orders or harbour empowerment orders to permit development for a project that requires development consent under the Planning Act.
- d) Gas Act 1965: it will no longer be possible to make storage authorisation orders to permit development for a project that requires development consent under the Planning Act. Where an underground gas storage is covered by an order granting development consent, the Secretary of State will no longer be able to prevent mining and other operations in the vicinity of the underground gas storage, set safety conditions or order works to remedy a breach of a protective area.
- e) Energy Act 1976: it will no longer be necessary to seek permission for a conversion of a power station to gas or petroleum fuel from the Secretary of State under the 1976 Act, where the project requires development consent under the Planning Act.
- f) Ancient Monuments and Archaeological Areas Act 1979: scheduled monument authorisation is no longer required from the Secretary of State for works affecting scheduled monuments where the project requires development consent under the Planning Act.
- g) Highways Act 1980: it will no longer be possible for the Secretary of State to make orders or construct highways under the provisions of the Highways Act 1980, where the project requires development consent under the Planning Act.
- h) Electricity Act 1989: consent is no longer required from the Secretary of State to construct a generating station (see section 36 of the 1989 Act) or overhead electricity lines (see section 37 of the 1989 Act), where the project requires development consent under the Planning Act.
- i) TCPA 1990: planning permission under section 57 is no longer required for a project that constitutes a nationally significant infrastructure project. Projects which require development consent will be exempted from the provisions in respect of tree preservation orders and the preservation of trees in conservation areas.
- j) The Listed Buildings Act: listed building consent is no longer required from the Secretary of State for works affecting listed buildings where the project requires development consent under the Planning Act, and in the case of such a project, conservation area consent is no longer required for works involving demolition of buildings in a conservation area.
- k) Planning (Hazardous Substances) Act 1990 (referred to in these notes as “the Hazardous Substances Act”): as part of an order granting development consent, the authority determining an application for consent may deem that the project has received hazardous substances consent. A hazardous substances authority may subsequently revoke or modify a hazardous substances consent so deemed.
- l) New Roads and Street Works Act 1991: it will no longer be possible for the Secretary of State to make a toll order where the project requires development consent under the Planning Act.
- m) Water Industry Act 1991: it will no longer be possible for the Secretary of State to make a compulsory works order in England where the project requires development consent under the Planning Act.

n)Transport and Works Act 1992: it will no longer be possible for the Secretary of State to make an order under section 1 or 3 of the 1992 Act that permits development for a project that requires development consent under the Planning Act.

PART 5: APPLICATIONS FOR ORDERS GRANTING DEVELOPMENT CONSENT

Part 5, Chapter 1— Applications

Section 37: Applications for order granting development consent

109. This section sets out that where development consent is required under the new single consent regime, promoters of nationally significant infrastructure projects will need to submit an application to the Commission. The application must be in the prescribed form, and be accompanied by the consultation report and such other documents and information as are prescribed. The Commission has the power to give guidance in connection with applications.

Sections 38: Model provisions

110. This section allows the Secretary of State to prescribe model provisions that developers may use if required to prepare a draft order to accompany an application for an order granting development consent. The Commission must have regard to any model provisions when making an order granting development consent. A similar power to issue model clauses already exists in section 8 of the Transport and Works Act 1992 (see the Transport and Works (Model Clauses for Railways and Tramways) Regulations 2006, SI 2006/1954), and model clauses are used extensively by promoters.

Section 39: Register of applications

111. The section requires the Commission to maintain a register of applications for orders granting development consent and to publish this register or make arrangements for its inspection by the public.

Section 40: Applications by Crown for orders granting development consent

112. This section allows the Secretary of State by regulations to modify or exclude certain statutory provisions in relation to applications made by the Crown for an order granting development consent. Regulations may relate to:

- a) the procedure to be followed before such applications are made;
- b) the making of such applications;
- c) the decision-making process.

Part 5, Chapter 2— Pre-application procedure

Section 41: Chapter applies before application is made

113. This section provides that Chapter 2 applies to a proposed application for an order granting development consent and defines some of the terms used in the Chapter.

Sections 42 to 44: Duty to consult etc.

114. These sections require the applicant to consult certain people and categories of people about the proposed application. The consultees are certain local authorities and persons with rights over land and other prescribed persons.

Section 45: Timetable for consultation under section 42

115. This section provides that the applicant must give each consultee a deadline for responding to the consultation, but this must not be earlier than 28 days after receipt of the consultation documents.

Section 46: Duty to notify Commission of proposed application

116. This section provides that the applicant must give the Commission a copy of the consultation documents on or before commencing consultation under section 42.

Section 47: Duty to consult local community

117. This section requires the applicant to prepare and publish a statement setting out how he proposes to consult local people about the proposed application. The applicant must consult with the relevant local authority before publishing such a statement, and the local authority must reply within 28 days. The consultation must be carried out in the manner set out in the statement.

Section 48: Duty to publicise

118. This section provides that the applicant must publicise the proposed application in the prescribed manner. Regulations must require publicity to specify a deadline for responses.

Section 49: Duty to take account of responses to consultation and publicity

119. This section provides that the applicant must consider any relevant responses he has received to the consultation and publicity, and take these into account before submitting an actual application to the Commission.

Section 50: Guidance about pre-application procedure

120. This section gives the Commission and the Secretary of State the power to give guidance on how to comply with the requirements of the pre-application procedures of Chapter 2 of Part 5.

Part 5, Chapter 3— Assistance for applicants and others

Section 51: Advice for potential applicants and others

121. The section provides that the Commission may give advice to an applicant, a potential applicant or others about applying for an order granting development consent or making representations about an application or proposed application. Any such advice cannot relate to the merits of any particular application or proposed application. The Secretary of State may make regulations about giving advice for the purpose of securing propriety. In particular, these regulations may provide for the disclosure of requests for advice and any advice by the Commission.

Section 52: Obtaining information about interests in land

122. This section provides that the Commission may authorise an applicant or proposed applicant to serve a notice on a person falling within one of the categories specified in subsection (3), requiring the person to give to the applicant the names and addresses of people who have an interest in the land to which the application relates. If the person fails to comply with such a notice, or wilfully gives misleading information, the person will commit an offence, and be liable to pay a fine up to level 5 on the standard scale (currently £5,000).

Sections 53 and 54: Rights of entry and Crown land

123. Section 53 provides that the Commission may authorise a person to enter a particular piece of land, in order to survey or take levels in connection with:

- an application for an order granting development consent, which has been accepted by the Commission; or
- an order granting development consent that includes authorisation for the compulsory purchase of land, or an interest in or right over land.

124. The Commission may also authorise a person to enter a particular piece of land in connection with a proposed application for an order granting development consent, but only if the proposed applicant:

- a) is considering a distinct project of real substance requiring entry onto the land;
- b) is likely to seek authority to compulsorily acquire the land, or an interest in or right over land; and
- c) has complied with the consultation requirements in section 42.

125. Subsection (5) of section 53 makes it an offence wilfully to obstruct an authorised person who is exercising a right of entry.

126. Subsection (7) of section 53 provides that the person entering land under this section is liable to pay compensation for any damage caused.

127. Section 54 modifies the rights of entry in relation to Crown land.

PART 6: DECIDING APPLICATIONS FOR ORDERS GRANTING DEVELOPMENT CONSENT

Part 6, Chapter 1—Handling of application by the Commission

Section 55—Acceptance of applications

128. This section provides that when the Commission receives an application for an order granting development consent, the Commission must decide whether or not to accept it. The Commission can accept the application only if it complies with the requirements set out in the Act at section 37 and the Commission is satisfied as to the other matters set out in subsection (3) of section 55. The Commission must notify the applicant of its decision.

Sections 56 and 57—Notifying persons of accepted application/Categories for purposes of section 56(2)(d)

129. These sections describe the persons who must be notified of an application for an order granting development consent which the Commission has accepted. The persons to be notified are certain local authorities, any persons prescribed by regulations and certain people with interests in land.

130. The form and content of the notice, and the manner in which it is to be given, may be prescribed in regulations by the Secretary of State. The applicant must inform the person of any deadline by which they should respond to the Commission; this deadline should not be less than 28 days.

131. Subsections (7) and (8) of section 56 require the applicant to publicise the application in the manner set out by the Secretary of State. Any publicity must include a deadline by which people should notify the Commission of their interest or objection to the application.

Section 58—Certifying compliance with section 56

132. This section provides that the applicant must certify to the Commission that he has complied with section 56. If the applicant issues a certificate containing false or misleading information, he may be guilty of an offence and be liable to a fine.

Section 59: Notice of persons interested in land to which compulsory acquisition relates

133. This section provides that where the Commission has accepted an application for an order granting development consent that includes a request for authorisation of the compulsory acquisition of land or an interest in or right over land, the applicant must give the Commission names and other prescribed information in relation to persons with an interest in the land. The applicant is required to make diligent inquiry to ascertain the names of affected persons.

Section 60: Local impact report

134. This section requires the Commission to notify relevant local authorities of the acceptance of an application for development consent and to invite such authorities to submit (by a specified deadline) a report to it giving details of the likely impact of the proposed development on the authority's area.

Section 61: Initial choice of Panel or single Commissioner

135. This section provides that when the Commissioner accepts an application for an order granting development consent, the chair must decide whether the application should be handled by a Panel or by a single Commissioner. In making this decision, the chair must have regard to guidance issued by the Secretary of State and to the views of any of the other Commissioners and the chief executive of the Commission.

Section 62: Switching from single Commissioner to Panel

136. This section provides that where an application for an order granting development consent is being handled by a single Commissioner, the chair can decide that it should instead be handled by a Panel. In making this decision, the chair must have regard to guidance issued by the Secretary of State and to the views of other Commissioners and the chief executive of the Commission.

Section 63: Delegation of functions by person appointed to chair Commission

137. This section gives the chair the power to delegate any of his or her functions under Part 6 of the Act to one of the deputy chairs, subject to the limitations in subsections (5) to (10).

Part 6, Chapter 2: The Panel Procedure

Section 64: Panel for each application to be handled under this Chapter

138. This section provides that when the Commission has accepted an application and the chair has decided that it should be handled by a Panel, the provisions in Chapter 2 will apply.

Section 65: Appointment of members, and lead member, of Panel

139. This section concerns the appointment of the Panel. Subsection (1) provides that the chair of the Commission will be responsible for appointing to the Panel three or more Commissioners and appointing one of these Commissioners to chair the Panel. Before doing this the chair of the Commission must consult the other Commissioners and the chief executive of the Commission and have regard to their views.

140. Subsection (3) provides that the chair (or deputy chair) of the Commission may appoint himself to be a member of a Panel.

Section 66: Ceasing to be member, or lead member, of Panel

141. This section describes the circumstances in which a person ceases to be a member of the Panel. Subsection (1) provides that the person will cease to be a member of the Panel if he ceases to be a Commissioner, subject to section 67.

142. Subsection (3) provides that a person may resign from membership of the Panel by giving notice in writing to the Commission.

143. Subsection (5) sets out the circumstances in which the chair may remove a person from membership of the Panel or remove the lead member from that office. The chair must be satisfied that the member or lead member is unable, unwilling or unfit to perform his duties.

Section 67: Panel member continuing though ceasing to be Commissioner

144. This section provides that if, immediately before ceasing to be a Commissioner, a Commissioner was serving on a Panel which has not yet concluded its business, the Commissioner may decide to continue as a Panel member until the Panel completes its work, unless the reason that he is no longer a Commissioner is because the Secretary of State has removed him from office because he was unable, unwilling or unfit to perform the duties of his office.

Section 68: Additional appointments to Panel

145. This requires the chair to the Commission to appoint another Commissioner to membership of the Panel if at any time the Panel has fewer than three members. The chair (or a deputy chair) may appoint himself.

Section 69: Replacement of lead member of Panel

146. This section provides that if the lead member of the Panel ceases to hold that office, the chair to the Commission must appoint another member of the Panel to chair the Panel. This person need not have been a member of the Panel before the vacancy arose. The chair (or a deputy chair) to the Commission can appoint himself.

Section 70: Membership of Panel where application relates to land in Wales

147. This section concerns applications for orders granting development consent, which relate to land in Wales. The section requires a Panel that considers an application relating to land in Wales to include, if reasonably practicable, a Commissioner who was nominated for appointment as a Commissioner by the Welsh Ministers or any other Commissioner notified to the Commission by the Welsh Ministers as being a Commissioner who should be treated as a Welsh Commissioner nominated by them.

Section 71: Supplementary provision where Panel replaces single Commissioner

148. This section provides that if the chair of the Commission decides that an application which was being considered by a single Commissioner should instead be considered by a Panel, the single Commissioner who has considered the case may become a member of the Panel. Subsection (3) provides that the Panel may decide to treat anything done by a single Commissioner as done by the Panel. If the Panel decides to do this, the lead member of the Panel must ensure that the Panel acquires the necessary knowledge of the previous work undertaken.

Section 72: Panel ceasing to have any members

149. This section provides that if the Panel ceases to have any members, a new Panel must be constituted. If this happens, the new Panel may decide to treat anything done by a former Panel as done by the new Panel. If it is decided to do this, the lead member of the Panel must ensure that the Panel acquires the necessary knowledge of the previous work undertaken.

Section 73: Consequences of changes in Panel

150. This section provides that the identity of the Panel will not be affected by changes to the membership of the Panel or the lead member, or any vacancies.

Section 74: Panel to decide, or make recommendation in respect of, application

151. This section sets out the Panel's role in relation to applications. Where there is an effective national policy statement in respect of the type of development to which an application relates, the Commission is responsible for examining and deciding the application. In any other case, the Panel will examine the application, and then make a report to the Secretary of State which sets out its findings and conclusions and makes a recommendation about the decision to be made by the Secretary of State. The Secretary of State will then be responsible for deciding the application,

Section 75: Decision-making by the Panel

152. This section provides that a decision of the Panel will require the agreement of a majority of its members and that the lead member has a second (or casting) vote.

Section 76: Allocation within Panel of Panel's functions

153. This section provides that during the examination of an application the Panel may allocate part of the examination to any one or more of its members. Where this is done the member/s may do anything the Panel as a whole could have done and their findings and conclusions will, in respect of the matters allocated, be taken to be the Panel's.

Section 77: Exercise of Panel's powers for examining application

154. This section concerns the exercise of the Panel's procedural powers for examining an application. Any such procedural power may, unless the Panel decides otherwise, be exercised by any one or more of the Panel's members.

Part 6, Chapter 3: The single Commissioner Procedure

Section 78: Single Commissioner to handle application

155. This section states that the provisions of this Chapter apply where it has been decided that an application should be handled by a single Commissioner.

Section 79: Appointment of single Commissioner

156. This section states that the chair (or a deputy chair) to the Commission must appoint a Commissioner to handle the application and that he may make a self-appointment. The chair is required to consult, and take account of the views expressed by any other Commissioner or the chief executive.

Section 80: Ceasing to be the single Commissioner

157. This section describes how a person can cease to be a single Commissioner. For example if a Commissioner stops being a Commissioner, he will cease to be a single Commissioner, subject to the provisions of section 81.

Section 81: Single Commissioner continuing though ceasing to be Commissioner

158. This section provides that in certain circumstances a person can continue to act as a single Commissioner although he is no longer a Commissioner. The section makes provision corresponding to that made for Panel membership by section 67.

Section 82: Appointment of replacement single Commissioner

159. This section provides that when a person ceases to be a single Commissioner a replacement Commissioner must be appointed. When this happens the replacement single Commissioner may decide to treat any work carried out by his predecessor as his own work. If this happens the replacement single Commissioner must ensure he acquires the necessary knowledge of the previous work undertaken.

Sections 83 and 84: single Commissioner to examine and report on application/report from single Commissioner to be referred to Council

160. These sections provide that the single Commissioner is responsible for examining the application and then making a report to the authority responsible for determining the application. In the report the single Commissioner should set out his findings and conclusions and make a recommendation as to how the application should be determined. When the Commission is responsible for determining the application, the report is made to the Commission, who should refer it to the Council (see paragraphs 6 to 9 of Schedule 1 to the Act). In any other case it is made to the Secretary of State.

Section 85: Decisions made by the Council on the application

161. This section provides that at least five members of the Council must participate in any decision which requires majority agreement. The chair of the Council has a second (casting) vote.

Part 6, Chapter 4: Examination of applications under Chapter 2 or 3

Section 86: Chapter applies to examination by Panel or single Commissioner

162. This section provides for this Chapter to apply to the examination of an application by a Panel or by a single Commissioner. Where an application is to be examined by a Panel, the Panel is the Examining authority. Where an application is to be examined by a single Commissioner, the single Commissioner is the Examining authority.

Section 87: Examining authority to control examination of application

163. This section provides that it is for the Examining authority to decide how to examine an application. When doing this the examining authority must comply with the provisions of this Chapter and any procedural rules made by the Lord Chancellor and must have regard to any guidance given by the Secretary of State and the Commission.

164. Subsection (3) provides that the examining authority may disregard representations which it considers are vexatious or frivolous, relate to the merits of a policy set out in a national policy statement or to compensation for the compulsory acquisition of land or of an interest in or right over land.

Section 88: Initial assessment of issues and preliminary meeting

165. This section requires the Examining authority to make an initial assessment of the principal issues arising on an application. When it has done this it should hold a preliminary meeting with the applicant and each other interested party. The purpose of this meeting is to enable those present to make representations as to how the application should be examined and to discuss any other matter the Examining authority wishes.

Section 89: Examining authority's decisions about how application is to be examined

166. This section requires the Examining authority, in the light of the discussion at the preliminary meeting, to make procedural decisions in respect of the examination of the application. These

decisions can be made at or after the meeting. The Examining authority must inform every interested party of its decisions.

Section 90: Written representations

167. This section provides that the Examining authority's examination of the application should take the form of the consideration of written representations subject to any requirements in section 91, 92 and 93 and to any decision of the Examining authority that it should take a different form (e.g. a site visit). The Lord Chancellor may make procedural rules about which written representations are to be considered.

Section 91: Hearings about specific issues

168. This section provides that the Examining authority must arrange a hearing when it decides that it is necessary for its examination of a specific issue to receive oral representations, either to ensure the adequate examination of the issue, or so that an interested party has a fair chance to put their case. Each interested party will be entitled to make oral representations about the specific issue. Concurrent hearings may be held where a Panel of Commissioners is the examining authority.

Section 92: Compulsory acquisition hearings

169. This section provides that where an application for a development consent order includes a request for authorisation of compulsory acquisition of land or an interest in or right over land the Examining authority must inform affected parties of a deadline by which they must notify the Commission that they require a compulsory acquisition hearing to take place. If such a request is received by the Commission before the deadline the Examining authority must cause a hearing to be held.

Section 93: Open-floor hearings

170. This section provides that the Examining authority must arrange an open floor hearing if at least one interested party informs the Examining authority of a wish to be heard within the specified deadline. Each interested party is entitled to make oral representations at an open-floor hearing.

Section 94: Hearings: general provisions

171. This section contains general provisions in respect of specific issue, compulsory acquisition and open floor hearings. It provides that these should be in public and presided over by at least one member of the Panel or the single Commissioner. The Examining authority will decide how a hearing is to be conducted.

172. In particular, the Examining authority can decide whether a person making an oral representation can be questioned by an interested party, and the duration of an oral representation and/or questioning. When making decisions about these matters, the Examining authority must apply the principle that it should undertake any oral questioning itself unless it is necessary to allow an interested party to do this in order to ensure adequate testing of any representations or that an interested party has a fair chance to put its case.

173. An Examining authority may refuse to allow a representation if it considers it:

- a) is irrelevant or frivolous;
- b) relates to the merits of policy set out in a national policy statement;
- c) repeats other representations already made; or
- d) relates to the compensation payable on the compulsory acquisition of land or of an interest in or right over land.

Section 95: Hearings: disruption, supervision and costs

174. This section provides that the Examining authority may exclude a person from a hearing if he behaves in a disruptive manner.

175. Subsection (2) defines what is meant by a “hearing” for these purposes.

176. Subsection (3) provides that the Examining authority's examination of an application is a statutory inquiry for the purposes of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007 and therefore is subject to supervision by the Administrative Justice and Tribunals Council.

Section 96: Representations not made orally may be made in writing

177. This section states that where a person has asked to make an oral representation at a hearing, but has not done so, he can make a written representation. The Examining authority must consider this as part of its examination of an application, if the written representation is received before it completes its examination of the application.

Section 97: Procedure rules

178. This section enables the Lord Chancellor, and, in the case of certain oil or gas cross-country pipe-lines, the Secretary of State, to make procedural rules for the examination of applications. Subsections (1) and (4) are based on the general rule-making powers conferred by section 9 of the Tribunals and Inquiries Act 1992. Subsection (3) is included to enable rules to make provision about site visits, including site visits where the applicant is neither the owner nor occupier of the land concerned. Subsection (7) follows the 1992 Act by providing for the rules to be subject to the negative resolution procedure in Parliament.

Section 98: Timetable for examining, and reporting on, application

179. This section imposes a duty on the Examining authority to complete its examination of an application within six months of the last day of the preliminary meeting held pursuant to section 88. The Examining authority must decide the application or (where the Secretary of State or the Commission's Council is responsible for taking the decision) report to the Secretary of State or the Council within nine months of this date.

180. Subsection (4) gives the chair (or a deputy chair) of the Commission the power to extend these deadlines at any time. If the deadlines are extended, he must inform the Secretary of State of this decision, along with his justification for doing so. Any such change of date must be included in the Commission's annual report with an explanation of why the decision was taken.

Section 99: Completion of Examining authority's examination of application

181. This section provides that the Examining authority must tell each interested party once it has completed its examination of the application.

Section 100: Assessors

182. This gives the chair (or a deputy chair) of the Commission, at the Examining authority's request, the power to appoint an assessor to help it examine an application, providing the assessor is considered to have the relevant expertise.

Section 101: Legal advice and assistance

183. This section allows the chair of the Commission to appoint a barrister, solicitor or advocate to provide legal advice and assistance to the Examining authority. The advice and assistance which

may be provided includes oral questioning at a hearing. The Examining authority must request an appointment before one can be made.

Section 102: Interpretation of Chapter 4: “interested party” and other expressions

184. This section defines “interested party” and “representation” for the purposes of Chapter 4 of Part 6 of the Act.

Part 6, Chapter 5: Decisions on applications

Section 103: Cases where Secretary of State is, and meaning of, decision-maker

185. Subsection (1) of this section provides that the Secretary of State has the function of deciding an application for an order granting development consent where he receives a report from the Panel or a single Commissioner. Subsection (2) defines the expression “decision-maker” in relation to an application for the purposes of the Act as meaning the Panel, the Council or the Secretary of State when it or she is responsible for deciding the application.

Section 104: Decisions of Panel and Council

186. This section provides that where a Panel or the Council is responsible for deciding an application for an order granting development consent, it must have regard to:

- a) any relevant national policy statement;
- b) any local impact report submitted by a relevant local authority
- c) any matters prescribed in relation to development of that description; and
- d) any other matters which the Panel or Council considers are both important and relevant to its decision.

187. Subsection (3) provides that the Panel or Council must decide the application in accordance with any relevant national policy statement, except to the extent that one of the exceptions in sub-sections (4) to (8) applies.

Section 105: Decisions of Secretary of State

188. This section provides that where it is the Secretary of State who decides an application for an order granting development consent, she must have regard to any local impact report submitted by a relevant local authority; any matters prescribed and any other matters which the Secretary of State thinks are both important and relevant to her decision.

Section 106: Matters that may be disregarded when deciding application

189. This section provides that a person deciding an application for an order granting development consent may disregard a representation that he considers is vexatious or frivolous. Representations may also be disregarded if it is considered that they relate to the merits of policy set out in a national policy statement or to compensation payable on the compulsory acquisition of land or of an interest in or right over land.

Section 107: Timetable for decisions

190. This section specifies that the decision-maker is under a duty to decide an application for a development consent order within a period of three months. This period starts from the end of the examination (if the decision-maker is the Panel or Council), from the day the Secretary of State receives the Commission's report (if the decision-maker is the Secretary of State by virtue of section 103(1)) or from the deadline for completion of the Secretary of State's examination of the application

under section 113(2)(a) (if the decision-maker is the Secretary of State by virtue of section 113(2)(b)). Subsection (3) allows the appropriate authority to extend this deadline.

Part 6, Chapter 6: Suspension of decision-making process

Section 108: Suspension during review of national policy statement

191. This section states that if the Secretary of State considers it necessary to review all or part of a relevant national policy statement before an application for an order granting development consent is decided, she may direct that the examination and decision of the application is suspended by the Panel or Council until the review of the national policy statement has been completed.

Part 6, Chapter 7: Intervention by Secretary of State

Sections 109, 110, 111 and 112: Intervention: significant change in circumstances/Intervention: defence and national security/ Intervention: other circumstances/ Power of Secretary of State to intervene

192. These sections provide that the Secretary of State may intervene and decide an application in place of the Commission in certain circumstances.

193. The Secretary of State may intervene if she is satisfied that the condition set out in subsection (2) or (3) of section 109 is met. When deciding whether the tests in paragraphs (d) and (e) of subsections (2) and (3) are met, the Secretary of State must have regard to the views of the Commission.

194. The Secretary of State may also intervene if she is satisfied that the requirements of section 110 are met. She must be satisfied that intervention would be in the interests of defence or national security.

195. Section 111 confers on the Secretary of State the power to make an order specifying other circumstances in which she may intervene in an application.

196. If the Secretary of State decides to exercise any of her powers of intervention she must make a direction, setting out her reasons for intervention, within four weeks of the end of the meeting held under section 88(2). If the Secretary of State considers there to be exceptional circumstances, the direction may be given later.

Section 113: Effect of intervention

197. This section provides that where the Secretary of State intervenes under section 112, she has the functions of examining the application and deciding it. The Secretary of State may direct the Commission to examine such matters as may be specified by her. Schedule 3 makes provision in relation to the Secretary of State's function of examining an application under this section.

Part 6, Chapter 8: Grant or refusal

Sections 114 and 115: Grant or refusal of development consent/development for which development consent may be granted/ reasons for decision/ formalities for orders

198. Section 114 provides that at the conclusion of consideration of an application for an order granting development consent, the decision-maker (the Panel, the Council or the Secretary of State) must either make an order granting development consent or refuse development consent. Subsection (2) provides that the Secretary of State may make regulations about the procedures to be followed if the decision-maker proposes to make an order on terms which are materially different from those which were applied for.

199. Section 115 provides that an order may grant development consent not only for development for which consent is required but also for associated development. The section defines the expression “associated development”. This definition specifically excludes the construction of a dwelling and sets out other requirements which must be satisfied. In determining what is associated development, the Panel or Council must have regard to any statutory guidance given to it by the Secretary of State.

200. A statement of reasons for deciding to make an order granting development consent or to refuse development consent must be given to interested parties and published (section 116).

201. Certain formalities must be observed in relation to the order (section 117). The formalities differ depending on whether the order includes provisions made in exercise of the decision-maker's powers in relation to legislation.

Part 6, Chapter 9: **Legal challenges**

Section 118: **Legal challenges relating to applications for orders granting development consent**

202. This section provides that–

- an order granting development consent;
- a refusal of development consent;
- a decision not to accept (for examination) an application for an order granting development consent;
- a decision in relation to an error or omission;
- a decision to change or revoke a development consent order; or
- anything else done by the Commission or the Secretary of State in respect of an application for an order granting development consent

can be challenged only by means of a claim for judicial review made in accordance with the provisions of this section. These require that any challenge to an order granting development consent must be made within 6 weeks of the order and statement of reasons being published and that a challenge to a decision to refuse development consent must be made within 6 weeks of publication of the statement of reasons for the refusal. A challenge to a decision of the Commission not to accept an application must be made within 6 weeks of the day on which the Commission notifies the applicant of its decision. A challenge to a decision in relation to an error or omission or in relation to a change to or revocation of an order should be filed within 6 weeks of the correction notice or notice of the change/revocation being given or the statutory instrument being published.

Part 6, Chapter 10: **Correction of errors**

Section 119 and Schedule 4: **Correction of errors in development consent decisions**

203. Section 119 introduces Schedule 4, which describes the mechanisms by which the decision-maker can correct errors in decision documents relating to an application for an order granting development consent. A decision document is an order granting development consent, or a document recording a refusal of development consent.

SCHEDULE 4

Schedule 4, Paragraph 1: **Correction of errors**

204. This paragraph gives the Commission and the Secretary of State the power to correct an error or omission in a decision document which it or she has issued. A correction may be made under this paragraph only if two conditions are satisfied. The first condition is that before the end of the

relevant period the appropriate authority has been asked to make the correction or has sent a written statement to the applicant for the order proposing to make the correction. The 'relevant period' is defined as the period during which a challenge can be made to a decision to grant or refuse the application for an order granting development consent. The second condition is that the appropriate authority has notified each relevant local planning authority. Errors which may be corrected under this paragraph do not include errors in the statement of reasons for the decision.

Schedule 4, Paragraph 2: **Correction notice**

205. If the appropriate authority is asked to correct an error or omission in a decision document or proposes to make such a correction, it must issue a correction notice once it has finished considering the matter. Paragraph 2 contains this requirement and specifies the categories of person who must be given a copy of the notice by the appropriate authority.

Schedule 4, Paragraph 3: **Effect of a correction**

206. This paragraph states that where a correction is made, the original decision and decision document continue in force, but are treated as corrected with effect from the date the correction notice is issued.

PART 7: ORDERS GRANTING DEVELOPMENT CONSENT

Part 7, Chapter 1: Content of development consent orders

Section 120: What may be included in order granting development consent

207. This section specifies what may be included in an order granting development consent.

208. Subsections (1) and (2) provide that an order granting development consent may impose requirements in connection with the development for which consent is granted. The types of requirements which may be imposed include those corresponding to conditions that can be imposed under the regulatory regimes which currently apply to nationally significant infrastructure projects (see section 33(1)).

209. Subsection (3) provides that an order granting development consent may also make provision for ancillary matters.

210. Subsection (4) specifies that provision that may be made under subsection (3) include provisions relating to any of the matters specified in Part 1 of Schedule 5.

211. Subsection (5) provides that an order granting development consent may apply, modify or exclude statutory provisions and may amend, repeal or revoke the provisions of a local Act, in the circumstances described. An order may also include such provisions as are necessary or expedient in order to give full effect to its other provisions.

212. Subsection (7) provides that any provisions made under subsections (3) to (6) of this section are subject to the restrictions in the rest of Chapter 1 of Part 7 of this Act. In particular, subsection (8) states that orders granting development consent may not make byelaws or create criminal offences.

Schedule 5: Provision relating to, or to matters ancillary to, development

213. Part 1 of this Schedule contains a (non-exhaustive) list of ancillary matters which may be included in an order granting development consent. These include provisions authorising the compulsory acquisition of land, the creation, suspension and extinguishment of rights over land,

the stopping up of highways, the charging of tolls and the payment of contributions and compensation. Part 2 contains definitions of some of the terms used in Part 1.

Section 121: Proposed exercise of powers in relation to legislation

214. This section provides that before the Panel or Council can exercise its legislation powers under section 120(5)(a) and (b) it must send a draft of the proposed order granting development consent to the Secretary of State. If the Secretary of State considers that the provisions in the draft order would contravene European Community law or Convention rights under the Human Rights Act 1998, she may direct the Panel or Council to make specified changes to the order for the purpose of preventing the contravention arising. The Secretary of State must make any such direction within 28 days of receiving the draft order.

Section 122: Purpose for which compulsory acquisition may be authorised

215. This section specifies the purposes for which an order granting development consent can authorise the compulsory acquisition of land. The Panel, the Council or the Secretary of State, as the case may be, must be satisfied that the land:

- a) is required for the development to which the development consent relates;
- b) is required to facilitate or is incidental to that development; or
- c) is replacement land (see sections 131 and 132),

and that there is a compelling case in the public interest for the land to be acquired compulsorily.

Section 123: Land to which authorisation of compulsory acquisition can relate

216. This section provides that the decision-maker can authorise the compulsory acquisition of land only if the decision-maker is satisfied that one of the following conditions is met. The first condition is that the application included a request for compulsory acquisition of that land. The second condition is that all persons with an interest in that land consent to the inclusion of this provision. The third condition is that the prescribed procedure has been followed in relation to that land. This provision is based on an equivalent provision in the Acquisition of Land Act 1981.

Section 124: Guidance about authorisation of compulsory acquisition

217. This section allows the Secretary of State to issue guidance about the authorisation of the compulsory acquisition of land in an order granting development consent. Where the Panel or Council wishes to include in an order authorisation to purchase land compulsorily, it must have regard to this guidance.

Section 125: Application of compulsory acquisition provisions

218. This section provides that Part 1 of the Compulsory Purchase Act 1965 applies (with specified modifications) to any order granting development consent that contains provisions on compulsory acquisition of land. However, the order itself may specify otherwise. The Compulsory Purchase Act 1965 sets out the procedure whereby ownership of the land is transferred to the acquiring authority. The section makes corresponding provision in relation to Scotland.

219. This section also has the effect that the 1965 Act will apply to any acquisition of land following the service of a blight notice on the grounds that the land is blighted because its compulsory purchase is proposed in an application for an order granting development consent.

Section 126: Compensation for compulsory acquisition

220. This section places restrictions on the provision which may be made about compensation in an order granting development consent which authorises the compulsory acquisition of land.

Section 127: Statutory undertakers' land

221. This section specifies the conditions which must be satisfied for an order granting development consent to authorise the compulsory purchase of land which a statutory undertaker has acquired for the purpose of its undertaking in circumstances where a representation has been made about the application for the order and that representation is not withdrawn. For such an order to be made the Secretary of State must certify that she is satisfied that:

- a) the land can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or
- b) it can be purchased and replaced with other land without any such detriment.

222. Similarly, in the circumstances mentioned above, an order granting development consent can include a provision authorising the compulsory acquisition of a new right over land belonging to a statutory undertaker only if the Secretary of State certifies that she is satisfied that:

- a) the right can be purchased without serious detriment to the carrying on of the undertaking; or
- b) any such detriment can be remedied by the statutory undertaker's using other land.

223. If the Secretary of State is satisfied of these matters, and issues a certificate to that effect, notice that the certificate has been given must be published in local newspapers and notified to the Commission where a Panel or the Council is the decision-maker.

Sections 128 and 129: Local authority and statutory undertakers' land: general/Local authority and statutory undertakers' land: acquisition by public body

224. Section 128 specifies the circumstances in which an order granting development consent that authorises the compulsory purchase of land belonging to a local authority or statutory undertakers is to be subject to special Parliamentary procedure. If a representation has been made by the local authority or statutory undertakers about an application for such an order and this has not been withdrawn, any order allowing compulsory acquisition would be subject to special Parliamentary procedure. The special Parliamentary procedure, and the system which governs it, is contained in the Statutory Orders (Special Procedure) Acts 1945 and 1965. Section 129 provides that the procedure does not apply where the person who would acquire the land is one of the public bodies listed in subsection (1).

Section 130: National Trust land

225. This section relates to land which is held inalienably by the National Trust. It provides that in certain circumstances an order granting development consent which authorises the compulsory purchase of such land or certain rights over such land, will be subject to special Parliamentary procedure. This is the case if the National Trust has made a representation about an application for such an order and this has not been withdrawn.

Section 131: Commons, open spaces etc: compulsory acquisition of land

226. This section applies to an order granting development consent which authorises the compulsory purchase of land forming part of a common, open space or fuel or field garden allotment, where this acquisition does not involve the acquisition of a new right over that land. This section specifies that such an order will be subject to special Parliamentary procedure unless the Secretary of State is satisfied either that:

- a. replacement land has been or will be given in exchange and that it will be subject to the same rights, trusts and incidents; or
- b. the land being acquired does not exceed 200 square metres, or is required for the widening or drainage of an existing highway, or partly for the widening and partly for the drainage of such a highway, and the giving of land in exchange for it is unnecessary.

Any replacement land must be no less in area than the land being compulsorily acquired and must be no less advantageous.

227. If the Secretary of State proposes to issue a certificate confirming she is satisfied of the matters outlined above, she must follow the procedures set out in subsection (6). If the Secretary of State issues a certificate, she must follow the procedures set out in subsection (10).

Section 132: Commons, open spaces etc: compulsory acquisition of rights over land

228. This section applies to an order granting development consent which authorises the compulsory acquisition of a new right over land forming part of a common, open space or fuel or field garden allotment. It provides that such an order granting development consent will be subject to special Parliamentary procedure unless the Secretary of State is satisfied either that:

- a. the land will be no less advantageous when burdened with the right to the persons mentioned in subsection (3);
- b. replacement land will be given in exchange and will be subject to the same rights, trusts and incidents; or
- c. the land over which the right is being acquired does not exceed 200 square metres, or the right is required in connection with the widening or drainage of an existing highway or in connection partly with the widening and partly with the drainage of such a highway, and the giving of land in exchange for it is unnecessary.

229. If the Secretary of State proposes to issue a certificate confirming she is satisfied of the matters outlined above, she must follow the procedures set out in subsection (6). If the Secretary of State issues a certificate she must follow the procedures set out in subsection (10).

Section 133: Rights in connection with underground gas storage facilities

230. This section modifies some of the usual procedures where an order granting development consent authorises the development of underground gas storage facilities within the meaning of section 14(1)(c), and authorises the compulsory acquisition of rights to store gas underground or certain other rights over land.

Section 134: Notice of authorisation of compulsory acquisition

231. This section requires a person (the prospective purchaser) who has been authorised to acquire land compulsorily by an order granting development consent to serve a notice about this on persons with certain interests in that land. This notice is referred to as a compulsory acquisition notice, must be in the prescribed form and must contain certain information. The prospective purchaser must also affix such a notice to a conspicuous object near the land to be acquired for 6 weeks, publish it in one or more local newspapers and make it available for inspection.

Section 135: Orders: Crown land

232. This section provides that an order granting development consent can authorise the compulsory purchase of an interest in Crown land only if the interest is for the time being held otherwise than by or on behalf of the Crown, and the appropriate Crown authority consents to the acquisition. An

order granting development consent can include any other provision in relation to Crown land, or rights benefiting the Crown only if the appropriate Crown authority consents.

Section 136: Public rights of way

233. This section specifies that no order granting development consent can be made that extinguishes any public right of way over land unless the authority making it is satisfied that an alternative right of way has been or will be provided, or that such an alternative right of way is not required. Where an order granting development consent authorises the purchase of land and also extinguishes a non-vehicular public right of way over the land, the latter cannot take effect earlier than the date on which the order is published. Additionally, the appropriate authority must direct that the right revives, if the right is extinguished before the acquisition of the land is completed and the proposal to acquire the land is abandoned.

Section 137: Public rights of way: statutory undertakers' apparatus etc.

234. This section applies to any order granting development consent which provides for the acquisition of land and authorises the extinguishment or diversion of a public right of way for non-vehicular traffic over land on which a statutory undertaker has erected apparatus or where electronic communications apparatus is kept installed. It provides that an order may include such a provision only where the relevant undertaker or operator of the network has given its consent. This consent can be subject to conditions. Any questions on the reasonableness of proposed conditions, or any refusal, are to be determined by the Secretary of State.

Section 138: Extinguishment of rights, and removal of apparatus, of statutory undertakers etc.

235. This section relates to orders granting development consent which authorise the acquisition of land falling into one or more of two categories. One category is land on, under or over which a statutory undertaker has erected apparatus or where electronic communications apparatus is kept installed. The other category is land in respect of which a statutory undertaker or electronic communications code network operator has a specified right. Orders may include a provision requiring the removal of such apparatus or the extinguishment of such rights only if the decision-maker is satisfied that it is necessary for carrying out the development. The consent of the Secretary of State to the inclusion of the provision is required even where she is not the decision-maker if the undertaker or operator makes a representation about the application for the order and that representation is not withdrawn.

Section 139: Common land and rights of common

236. This section states that an order granting development consent cannot include provisions that exclude or modify the application of a provision of, or made under, the Commons Act 2006, or authorise the suspension of, or extinguishment or interference with, registered rights of common. The exception to this is when an order granting development consent authorises the compulsory acquisition of common land or a right over it and the provisions of clause 131 or 132 apply.

Section 140: Operation of generating stations

237. This section provides that an order granting development consent which authorises the operation of a generating station can be made only if the development to which the order relates is or includes the construction or extension of the generating station.

Section 141: Keeping electric lines installed above ground

238. This section provides that an order granting development consent may authorise overhead electric lines to be kept installed only if the development to which the order relates is or includes the installation of such lines.

Section 142: Use of underground gas storage facilities

239. By virtue of this section an order granting development consent which authorises the use of underground gas storage facilities can be made only if the order authorises the development of such facilities.

Section 143: Diversion of watercourses

240. This section states that an order granting development consent which authorises the diversion of a navigable watercourse can be made only if the new length of watercourse is conveniently navigable by vessels of a kind accustomed to using that part of the watercourse. Such an order is also taken to authorise the diversion of any adjacent tow path.

Section 144: Highways

241. This section states that an order granting development consent may authorise the charging of tolls in relation to a highway only if a request for such provision was included in the application for the order. An order granting development consent may authorise the appropriation of a highway by a person or the transfer of a highway to a person only if the appropriation or transfer is connected with the construction or improvement by the person of a highway which is designated by the order as a special road.

Section 145: Harbours

242. This section sets out the circumstances in which an order granting development consent may provide for the creation of a harbour authority, the modification of the powers or duties of an existing harbour authority or the transfer of property, rights or liabilities from one harbour authority to another.

Section 146: Discharge of water

243. This section relates to an order granting development consent which authorises the discharge of water into inland waters or underground strata. The person to whom the order is granted does not acquire the power to take water or require discharges to be made from the source of water mentioned in the order.

Section 147: Development of Green Belt land

244. Where an order granting development consent includes the provisions specified in this section in relation to Green Belt land, the Panel, the Council or the Secretary of State (as the case may be) must notify the relevant local authorities of the provision made by the order and if it is the Panel or Council that decides the application, they must also notify the Secretary of State. This matches existing provisions in the Green Belt Act 1938.

Section 148: Deemed consent under section 34 of the Coast Protection Act 1949

245. This section specifies that an order granting development consent may deem a consent under section 34 of the Coast Protection Act 1949 to have been given in relation to operations in specified areas. A person who fails to comply with any conditions attached to the deemed consent does not commit an offence under Part 8 of this Act, but instead commits an offence under the 1949 Act.

Section 149: Deemed licences under Part 2 of the Food and Environment Protection Act 1985

246. This section specifies that an order granting development consent may deem a licence under Part 2 of the Food and Environment Protection Act 1985 to have been issued for operations in specified areas. A person who fails to comply with any conditions attached to the deemed licence does not commit an offence under Part 8 of this Act, but instead commits an offence under that Act.

Section 150: Removal of consent requirements

247. This section provides that an order granting development consent may include provision removing a requirement for a prescribed consent or authorisation to be granted only if the relevant body consents.

Section 151: Liability under existing regimes

248. This section prevents an order granting development consent from excluding or modifying liability under any of the statutory regimes specified.

Section 152: Compensation in case where no right to claim in nuisance

249. This section confers a right to compensation in cases where, as a result of section 158 or the terms of a development consent order, a person would not be able to succeed in a claim for nuisance in respect of works authorised by a development consent order. Compensation is available in relation to injurious affection to a person's land or depreciation in its value.

Chapter 2: Changes to, and revocation of, orders granting development consent

Section 153 & Schedule 6: Changes to, and revocations of, orders granting development consent

250. Section 153 introduces Schedule 6, which describes the mechanisms by which subsequent modifications, or revocations, can be made to orders granting development consent.

SCHEDULE 6

Schedule 6, Paragraph 1: Preliminary

251. This paragraph sets out definitions for the purposes of this Schedule.

Schedule 6, Paragraph 2: Non-material changes

252. This paragraph gives the appropriate authority (the Commission or the Secretary of State) a power to make a change to a development consent order. This particular power applies only where the appropriate authority is satisfied the change is not material. In deciding whether a change is material regard should be had to the effect of the change, together with the effect of previous changes, on the order as originally made. The power to make a non-material change includes the power to remove or alter existing requirements and also to impose new ones. This power may be exercised only on application by the people specified, and if made in the prescribed form and manner. Where the appropriate authority proposes to make a non-material change, it will have to comply with the prescribed requirements for consultation and publicity. Where a non-material change is made, the original order continues in force, but is treated as corrected with effect from the date the correction notice is issued.

Schedule 6, Paragraph 3: Changes to, and revocation of, orders granting development consent

253. This paragraph provides the appropriate authority with further powers to make a change to a development consent order. These powers are wide enough to make changes which the appropriate authority considers material and to allow a development consent order to be revoked. The powers

may be exercised on application by the people specified. These include the applicant or a successor in title of the applicant, a person with an interest in the land, and in some circumstances, the local planning authority and the Secretary of State. However, no application is needed if the development consent order contains a significant error which it would not be appropriate to correct under Schedule 4. In addition, no application is needed where the appropriate authority is the Secretary of State and she is satisfied that either if the development were carried out, there would be breach of European Community or Convention rights under the Human Rights Act 1998, or that there are other exceptional circumstances.

Schedule 6, Paragraphs 4 and 5: Changes to, and revocation of, orders: supplementary

254. Paragraph 4 provides that an application for a change to, or revocation of, a development consent order under paragraph 3 must be made in the prescribed form and manner and be accompanied by information of a prescribed description. The Secretary of State may prescribe procedures about how such an application must be made, the decision-making process for such an application, and the effect of a decision to exercise that power. If an order granting development consent is changed or revoked, the appropriate authority must give notice of this to prescribed persons.

255. Paragraph 5 specifies that with the exception of changes to the requirements imposed by an order granting development consent, amendment under paragraph 3 of an order (short of revocation) may not be made more than 4 years after the relevant development was substantially completed. This is the same time limit that applies in respect of enforcement proceedings (see section 162). Paragraph 5(4) lists some of the things that the power under paragraph 3 to change or revoke orders can be used to do, for example, require the removal or alteration of buildings or existing requirements. Paragraph 5(5) makes clear that existing building or other operations, which have already been carried out are not affected, unless they are the subject of the change or revocation.

Schedule 5, Paragraphs 6 and 7: Compensation

256. Paragraph 6 gives to those with an interest in land, or who benefit from an order, a right to compensation in respect of certain losses. Compensation may be payable if expenditure has been incurred in carrying out work (including preparatory work or planning) which is rendered abortive by a change to, or revocation of, the order. A right to compensation may also arise in relation other loss or damage which is directly attributable to the change or revocation. Paragraph 6 also specifies to whom and by whom the compensation must be paid. The Secretary of State may make regulations about the assessment of compensation. Paragraph 7 deals specifically with 'compensation for depreciation'. This term is defined as meaning compensation payable in respect of loss or damage consisting of depreciation of the value of an interest in land. The Secretary of State is given the power to make regulations about this and the apportionment of compensation under this head.

Part 7, Chapter 3: General

Section 154: Duration of order granting development consent

257. This section provides that after a development consent order is granted, the development must be begun before the end of the period prescribed by the Secretary of State or such other (shorter or longer) period as is specified in the order. Failure to begin development within this timescale leads to the order ceasing to have effect. The section also sets time limits for taking prescribed steps where the order authorises the compulsory acquisition of land. If the steps are not taken within the time limits the authority to compulsorily acquire the land ceases to have effect.

Section 155: When development begins

258. This section states that development is taken to begin as soon as any material operation comprised in, or carried out for the purposes of, the development begins to be carried out. There is a power for the Secretary of State to prescribe operations which do not constitute a “material operation”.

Section 156: Benefit of order granting development consent

259. This section explains that the development consent order will generally have effect for the benefit of the land mentioned in the order and all those for the time being interested in the land. It is possible for the order to make provision to the contrary. Subsection (3) has the effect of restricting the benefit of a development consent order authorising underground gas storage facilities to a (licensed) gas transporter.

Section 157: Use of buildings in respect of which development consent granted

260. This section clarifies that where an order granting development consent grants consent for the erection, extension, alteration or re-erection of a building, the order may specify the purposes for which the building may be used. If it does not do so, the consent is presumed to authorise the use of the building for the purpose for which it is designed.

Section 158: Nuisance: statutory authority

261. This section provides a defence of statutory authority in proceedings for nuisance if a person carries out development for which consent is granted by an order granting development consent. Such a defence is available in respect of anything else authorised by an order granting development consent.

Section 159: Interpretation: rights over land

262. This section clarifies that in Part 7 of this Act, the word “land” includes any interest in or right over land, and that acquiring a right over land includes creating a new right and not just acquiring an existing right.

PART 8: ENFORCEMENT**Section 160: Offence: development without development consent**

263. This section provides that a person commits an offence if he carries out development for which development consent is required without development consent. A person who is found guilty of this offence is liable to a fine. The maximum fine which may be imposed varies depending on whether the case is tried in the Magistrates' court or the Crown Court.

Section 161: Offence: breach of terms of order granting development consent

264. This section provides that a person commits an offence if without reasonable excuse he carries out development in breach of the terms of an order granting development consent or if he does not comply with the terms of such a consent. There are two exceptions to this offence: a person does not commit an offence under this section for failing to comply with the terms of any consent under the Coast Protection Act 1949 (CPA) or licence under the Food and Environmental Protection Act 1972 (FEPA) that is deemed to be granted or issued by a development consent order. This is because the CPA and FEPA have separate enforcement regimes. A person has a defence if the breach or failure occurred because of an error or omission in the order, which was subsequently corrected

through the mechanism in Schedule 4. A person who is found guilty of this offence is liable to a fine. The provisions regarding the level of the fine match those under section 160.

Section 162: Time limits

265. This provision sets out time limits for bringing charges in relation to the offences created by sections 160 and 161.

Section 163: Right to enter without warrant

266. This section gives the relevant local planning authority the power to authorise a person to enter land, if it has reasonable grounds to suspect an offence is being, or has been, committed under sections 160 or 161. Entry may take place only at a reasonable hour and where the property to be entered is a building used as a dwelling house 24 hours' notice of entry must be given to the occupier.

Section 164: Right to enter under warrant

267. This section provides that a justice of the peace may issue a warrant authorising a person, authorised by the relevant local planning authority, to enter land. The conditions of this are:

- a) there are reasonable grounds for suspecting that an offence is being, or has been, committed under section 160 or 161; and
- b) either entry has been, or is likely to be, refused or this is an urgent case.

268. The warrant will authorise entry on one occasion only. The entry must take place within one month of the date of issue of the warrant. Generally entry is permitted only at a reasonable hour, but an exception may be made in urgent cases.

Section 165: Rights of entry: supplementary provisions

269. This section requires an authorised person entering land under section 163 or 164 to produce evidence, if requested, of the authority and state the purpose for entry before entering the land. It also allows an authorised person to take other persons as necessary and, if when the authorised person leaves, the owner or occupier is not present, the section requires the authorised person to take steps to ensure the land is left as effectively secured against trespassers as it was found.

270. This section provides that an offence is committed if someone wilfully obstructs a person authorised to enter land under section 163 or 164. Compensation for any damage caused by an authorised person on the land may be recovered from the authority that authorised the right of entry.

Section 166: Rights of entry: Crown land

271. This section provides that the rights of entry powers at sections 163 and 164 do not apply to Crown land.

Section 167: Power to require information

272. This section enables the relevant local planning authority to serve an information notice on the owner or occupier of land or anyone carrying out work on land or using it for any purpose. The power may be exercised where the authority suspects an offence under section 160 or 161 has been committed in respect of the land. The information notice may require the recipient to provide information about operations being carried out, the use of the land and any other activities. The notice may also require details about any development consent order applying to the land. The notice must set out the likely consequences of failing to respond. The recipient must send the information required in writing to the local planning authority.

Section 168: Offences relating to information notices

273. This section provides that a person commits an offence if, without reasonable excuse, he fails to comply with any requirement of an information notice, within a period of 21 days beginning on the day the notice is served. The offence is punishable with a fine. In addition, a person commits an offence if he makes a statement in response to the notice that he knows to be false or misleading in a material respect or is reckless as to whether it is true or false. This offence is also punishable by a fine.

Section 169: Notice of unauthorised development

274. This section provides that where a person has been found guilty of an offence under section 160, the relevant local planning authority may serve a notice requiring the person to remove the unauthorised development and return the land to its previous condition. Where a person has been found guilty of an offence under section 161 the local planning authority may serve a notice requiring the person to remedy the breach or failure to comply. Both types of notice of unauthorised development must specify the period within which any steps must be taken, and different periods may be specified for different steps.

Section 170: Execution of works required by unauthorised development notice

275. This section applies where steps have not been taken to comply with a notice of unauthorised development within the stipulated period for compliance. In such a case, the relevant local planning authority may enter the relevant land and carry out the works required in the notice and recover any expenses reasonably incurred in doing so from the owner of the land. This section provides for such expenses and other amounts to be deemed to be incurred or paid for the use and at the request of the person found guilty of the offence under section 160 or 161. The section contains a power to apply certain provisions of the Public Health Act 1936. It also provides that a person commits an offence if the person wilfully obstructs a person acting under powers conferred by the section.

Section 171: Injunctions

276. This provision enables the relevant local planning authority to apply to the County Court or to the High Court for an injunction when it considers it necessary or expedient to prevent an actual or anticipated offence under section 160 or 161.

Section 172: Isles of Scilly

277. This section allows the Secretary of State to make an Order enabling the Council of the Isles of Scilly to carry out any functions set out in Part 8 that are exercisable by a local planning authority. The Secretary of State must consult the Council of the Isles of Scilly before making such an Order.

Section 173: The relevant local planning authority

278. This section explains what is meant by the expression “relevant local planning authority” when it is used in Part 8.

PART 9: CHANGES TO EXISTING PLANNING REGIMES

Part 9, Chapter 1: Changes related to development consent regime

Sections 174: Planning obligations

279. This section allows the promoter of a nationally significant infrastructure project to enter into agreements with local authorities, in the same way as a developer seeking planning permission under TCPA 1990.

280. Only the Commission or (as the case may be) the Secretary of State will be able subsequently to modify or discharge a planning obligation entered into in connection with an application (or proposed application) for an order granting development consent. It will be for the local planning authority to enforce the obligation. Provision is made concerning legal challenges in connection with planning obligations.

Sections 175 and 176: Blighted land: England and Wales/Blighted land: Scotland

281. A national policy statement identifying a location as a suitable (or potentially suitable) location for a nationally significant infrastructure project may create blight at that location, reducing land values and making it hard to sell the land. Blight may also result from an application being made for an order granting development consent authorising the compulsory acquisition of land or from such authorisation being given.

282. Section 175 amends TCPA 1990 (which extends to England and Wales), so as to allow owner occupiers adversely affected in this way to have the benefit of the existing statutory provisions relating to blight. The effect of subsection (6) is that the “appropriate authority” (who should receive the blight notice) in the case of blight caused by a national policy statement is the statutory undertaker named as an appropriate person to carry out the development in the national policy statement, or the Secretary of State where there is no such named undertaker. The Secretary of State is to determine any disputes as to who should be the appropriate authority. Subsection (4) prevents the appropriate authority from serving a counter-notice to a blight notice on grounds of having no intention of conducting the development. Subsection (7) makes it clear that the “appropriate enactment” for a blight notice is the development consent order, or the draft order in the terms applied for.

283. Section 176 makes equivalent provision for blight caused in Scotland by an order granting development consent which authorises the compulsory acquisition of land, or an application for such an order, or by a national policy statement identifying a location as a suitable (or potentially suitable) location for an oil or gas cross-country pipe-line.

Section 177: Grants for advice and assistance: England and Wales

284. Section 177 amends section 304A(1) of TCPA 1990, so as to ensure that the Secretary of State may make grants for advice and assistance, in connection with applications for development consent under this Act.

Section 178: Grants for advice and assistance: Scotland

285. This section gives the Secretary of State the power to make grants for the purpose of assisting with the provision of advice and assistance in connection with any matter related to the application of the Planning Act to Scotland.

Part 9, Chapter 2: Other changes to existing planning regimes

Section 179: Delegation of functions of regional planning bodies

286. This section allows a regional planning body to enter into an agreement with the regional development agency for its region regarding the delegation of any of the body's functions. In addition where the Secretary of State has the power to exercise any functions of the regional planning body these powers may be delegated to the relevant regional development agency by agreement.

Section 180: Local development documents

287. Section 180 amends the Planning and Compulsory Purchase Act 2004 (referred to in these notes as “PCPA 2004”) with regard to supplementary planning documents and statements of

community involvement. In these notes on this section, “supplementary planning document” means a document that for the purposes of PCPA 2004 is a local development document but is not a development plan document.

288. Subsection (2) provides for amendments such that local planning authorities will no longer need to list supplementary planning documents in their local development schemes. Subsection (5)(a) removes the requirement for supplementary planning documents to be produced in accordance with the local development scheme. The result will be that supplementary planning documents can be produced by local planning authorities without the agreement of the Secretary of State although they will continue to have the status of local development documents (and the Secretary of State will still be able to require pre-adoption modification of supplementary planning documents that the Secretary of State considers unsatisfactory). Subsection (5)(d) removes the requirement to carry out and report on a sustainability appraisal of the proposals in a supplementary planning document.

289. Subsection (3)(a) removes the requirement for the statement of community involvement to be specified in the local development scheme and subsection (4)(c) removes the requirement for an independent examination of the statement of community involvement.

Section 181: Regional spatial strategies: climate change policies

290. Section 181 amends PCPA 2004 to require regional spatial strategies to include policies on climate change. These policies must be designed to secure that the development and use of land in the region to which a regional spatial strategy relates contribute to the mitigation of, and adaptation to, climate change.

Section 182: Development plan documents: climate change policies

291. Section 182 places a duty on local planning authorities when preparing their development plan documents to include policies on climate change. These policies must be designed to secure that the development and use of land contributes to the mitigation of, and adaptation to, climate change.

292. The duty is set within the context of section 19(2) of PCPA 2004 which states that in preparing a local development document local planning authorities must have regard to national policies and advice contained in guidance issued by the Secretary of State. In practice this will be the Planning Policy Statement on Climate Change.

Section 183: Good design

293. Section 39 of PCPA 2004 imposes a duty on persons or bodies exercising functions in relation to development plans in England and Wales to do so with the objective of contributing to the achievement of sustainable development. Section 183 amends section 39 of PCPA 2004 requiring those persons and bodies, in complying with this duty, to have regard (in particular) to the desirability of achieving good design.

Section 184: Correction of errors in decisions

294. This section amends section 56(3)(c) of PCPA 2004 so as to remove the requirement in England for the Secretary of State or an inspector to obtain the consent in writing of the applicant and, if different, the owner of the land before she may correct an error in a decision document.

Section 185: Power of High Court to remit strategies, plans and documents

295. Section 185 amends section 113 of PCPA 2004. Section 113 provides that certain development-related strategies, plans and documents may be challenged only by way of High Court proceedings under section 113. At present, if the Court upholds a challenge, its only power is to quash the whole or part of the document concerned. Preparation of the document has then to begin again. The amendments mean that the Court may instead: direct that a strategy, plan or document be treated as still being an unapproved/unadopted draft; send a strategy, plan or document back to any stage in its production process by specifying which steps in the process can be considered as having been taken satisfactorily; and give directions as to the action to be taken relating to its preparation, publication, adoption or approval. Section 113 as amended applies to all strategies, plans and documents in England and Wales listed in section 113(1).

Section 186: Power of High Court to remit unitary development plans in Wales

296. Section 186 makes the same provision in relation to unitary development plans in Wales that are the subject of current transitional provisions. The intention of these arrangements is to enable certain local planning authorities in Wales to complete unitary development plans under TCPA 1990 before embarking on the local development plans required by PCPA 2004.

Section 187 and Schedule 7: Power to decline to determine applications: amendments

297. Section 187 introduces Schedule 7 which amends sections 70A and 70B of TCPA 1990, sections 81A and 81B of the Listed Buildings Act and section 121 of PCPA 2004. Section 70A of TCPA 1990 and section 81A of the Listed Buildings Act provide powers for local planning authorities to decline to determine an application for planning permission, listed building consent or conservation area consent: if it is the same or substantially the same as an application which, within the previous two years, the Secretary of State has called in and refused or dismissed on appeal; or if the local planning authority has refused two similar applications in that period and there has been no appeal. The Schedule provides that these sections will also apply where the earlier application is a deemed application arising from an enforcement appeal. The Schedule also amends these sections to ensure that a local planning authority is not prevented from exercising its powers to decline to determine an application by the fact that an appeal has been made but has been withdrawn before being determined.

298. Sections 70B of TCPA 1990 and 81B of the Listed Buildings Act provide powers for local planning authorities to exercise similar powers to those described in relation to sections 70A and 81A where they receive an application that is similar to one already under consideration. Schedule 7 amends sections 70B and 81B so that the powers also relate to applications received on the same day and section 70B is further amended so as to apply these provisions to deemed applications arising from an enforcement appeal.

Section 188: Local development orders: removal of requirement to implement policies

299. Section 188 amends section 61A of TCPA 1990 so as to omit subsection (1) and thereby remove the requirement that a local development order can only be made to implement a policy in a development plan document or a local development plan. Subsections (3) and (4) of section 188 make consequential amendments to subsection (2) of section 61(A) and sub-paragraphs (4) and (5) of paragraph 2 of Schedule 4A of TCPA 1990.

Section 189: Compensation where development order or local development order withdrawn

300. Section 189 inserts new subsections (2A)(3B), (3C), (3D), (5) and (6) into section 108 of TCPA 1990. Section 107 of TCPA 1990 sets out the entitlement to compensation where planning

permission is revoked or modified. Section 108 extends this entitlement to compensation to circumstances where planning permission granted by a development order or a local development order is withdrawn. New subsection (2A) provides that where planning permission of a prescribed description granted by a development order or local development order is withdrawn by the issue of directions under powers conferred by that order, compensation would be payable only if an application for planning permission for development formerly permitted by that order is made within 12 months of the directions taking effect.

301. The effect of new subsections (3B) and (3C) is that, where planning permission granted by a development order is withdrawn, there will be no entitlement to compensation where the permission was granted for development of a prescribed description and is withdrawn in the prescribed manner, and notice of the withdrawal is published not less than 12 months or more than the prescribed period before the withdrawal takes effect. If development is started before the notice is published, compensation will be available unless the order in question contains provision permitting the completion of development.

302. Where planning permission granted by local development order is withdrawn, subsections (3B) and (3D) provide that there will be no entitlement to compensation where notice of the withdrawal is published not less than 12 months or more than the prescribed period before the withdrawal takes effect. If development is started before the notice is published, compensation will be available unless the order in question contains provision permitting the completion of development.

Section 190: Power to make non-material changes to planning permission

303. Section 190 inserts a new section 96A into TCPA 1990. Its purpose is to introduce express power for a local planning authority to make a change to a planning permission if it is satisfied that that change is not material. In determining whether a change is material, a local planning authority must have regard to the effect of the change and any previous changes made under section 96A to the original planning permission: see new section 96A(2).

Section 191: Validity of orders, decisions and directions

304. Section 284 of TCPA 1990 provides that the validity of certain orders, directions and decisions (including certain decisions on planning applications) may not be questioned in any legal proceedings except in so far as may be provided in Part 12 of that Act. In particular, that Part of TCPA 1990 provides that any application to the High Court must be brought within a period of six weeks. Section 191 amends section 284 of TCPA 1990 so that the six week deadline for commencing any proceedings applies also to decisions on applications referred to the Secretary of State under her powers under section 76A of that Act (that is, applications for major infrastructure projects).

Section 192 and Schedule 8: Tree preservation orders

305. This section, and Schedule 8 which is introduced by this section, make amendments to provisions in TCPA 1990 concerning tree preservation orders. In short, they provide for the transfer of provisions from tree preservation orders into regulations.

306. Subsections (2) to (6) of section 192 repeal various provisions of TCPA 1990 which set out provision that may be included in tree preservation orders, including: (1) provision prohibiting works to trees without the consent of the local planning authority; (2) exemptions which allow works to protected trees without consent; (3) provision regulating applications for consent to carry

out works to trees, and appeals; (4) provision for the payment of compensation for loss or damage caused by tree preservation orders.

307. Subsection (7) of section 192 enables these deleted provisions of TCPA 1990 to be replaced by provision included in regulations. For this purpose it inserts seven new sections into the Act. New section 202A makes general provision about the regulations, which would be subject to the negative resolution procedure. New sections 202B to 202G contain additional details about the sort of provision that may be contained in the regulations. In particular, the regulations may include provision about: the form of tree preservation orders; the procedures to be followed where tree preservation orders are to be confirmed; the prohibited activities in relation to trees; applications for consent to carry out works to trees; powers to give consent to works subject to conditions; applying the tree preservation order to trees planted under a condition; appeals against decisions to refuse consent; entitlement to compensation following decisions on applications for consent; and the keeping of public registers containing information on tree preservation orders.

308. Schedule 8 makes further amendments needed to give effect to the transfer of provisions from tree preservation orders to regulations.

Section 193: Existing tree preservation orders: transitional provision

309. Section 193 makes transitional provisions about tree preservation orders. The regime set out in tree preservation regulations will apply to trees identified in an existing order in place of the existing provisions.

Section 194 and Schedule 9: Use of land: power to override easements and other rights

310. Subsection (1) of section 194 introduces Schedule 9 which amends section 237 of TCPA 1990 so as to authorise a local authority to override easements and other rights restricting the use of land, which it has acquired or appropriated for planning purposes. The local authority can do this only if the use is in accordance with planning permission. Under section 237 it is already possible for a local authority, in these circumstances, to override easements and other rights restricting the execution of works on land.

311. Compensation will be payable for an interference with or a breach of an easement or other rights under this provision.

312. Schedule 9 also makes corresponding amendments to equivalent provisions in other legislation and subsections (2) to (5) of section 194 confer on the Welsh Ministers the power to make corresponding amendments to the Welsh Development Agency Act 1975.

Section 195: Applications and appeals by statutory undertakers

313. Section 266(1) of TCPA 1990 provides for the Secretary of State and the appropriate Minister to decide jointly certain planning applications and appeals where the application has been made by a statutory undertaker and the case has been referred to the Secretary of State under Part 3 of TCPA 1990. Section 195 disapplies this provision in England except where the Secretary of State or the appropriate Minister gives a direction for section 266(1) to have effect in relation to the relevant application or appeal.

Section 196 and Schedule 10: Determination of procedure for certain proceedings

314. The purpose of section 196 is to require the Secretary of State to determine the procedure by which certain proceedings under TCPA 1990, the Listed Buildings Act and the Hazardous Substances Act should be considered. The procedure could be a local inquiry, a hearing or written

representations, as the Secretary of State considers appropriate. The Secretary of State must make the determination within the prescribed period, notify the appellant/applicant and local planning authority of which procedure has been selected, and publish the criteria that are to be applied in determining the appeal method.

315. Schedule 10 contains amendments to TCPA 1990, the Listed Buildings Act and the Hazardous Substances Act that are consequential on the new provisions inserted by section 196.

Section 197 and Schedule 11: Appeals: miscellaneous amendments

316. This section introduces Schedule 11 which makes various amendments of provisions of the Planning Acts to provide for notices of appeal to be accompanied by prescribed information. The Schedule also provides for a time limit for making an appeal against a local planning authority's refusal to issue a lawful development certificate to be prescribed by development order.

Section 198: Appeals relating to old mining permissions

317. This section amends Schedule 6 to TCPA 1990 to enable regulations to be made for the transfer to inspectors of appeals under Schedule 2 to the Planning and Compensation Act 1991 in respect of old mining permissions for development authorised under interim development orders made between 1943 and 1948.

Section 199: Fees for planning applications etc.

318. Section 199 substitutes section 303 of TCPA 1990. The new elements are in subsections (2) and (4) of the substituted section. There are also new supplementary provisions in subsections (5)(a) and (f) and (6) of the substituted section.

319. Subsection (2) enables the appropriate authority (being the Secretary of State in England or the Welsh Ministers in Wales) to make provision in regulations for the whole of the fee which is payable when an applicant appeals under section 177(5) of TCPA 1990 against an enforcement notice to be paid to either the local planning authority, the appropriate authority, or both the local planning authority and the appropriate authority. The previous section 303(3)(a) had only allowed the Secretary of State to prescribe that the fee should be paid to her and the local planning authority.

320. Section 293A of TCPA 1990 (Urgent Crown development: application) provides for the appropriate authority (that is, the "appropriate authority" as defined in section 293 of TCPA 1990) to make a planning application direct to the Secretary of State (in England) or the Welsh Ministers (in Wales) instead of to the local planning authority. Subsection (4) of the substituted section 303 enables the Secretary of State (in England) and the Welsh Ministers (in Wales) to make provision in regulations for an application under section 293A to be accompanied by a fee payable to the Minister or Ministers to whom the application is made.

321. Subsection (8) provides that regulations made under section 303 of TCPA 1990 should continue to be subject to the affirmative resolution procedure.

Section 200: Fees for appeals

322. Section 200 inserts a new section 303ZA into TCPA 1990 which allows the Secretary of State to make provision, by way of regulations, for the payment of a fee for appeals made under TCPA 1990 and the Listed Buildings Act. The fee is to be payable by the appellant and the regulations may set out, in particular, when the fee should be paid, how the fee should be calculated and by whom, the circumstances under which an appeal fee may be refunded, and the effect of either paying or not paying the fee.

323. Regulations made under the new section 303ZA are subject to the affirmative resolution procedure.

Section 201: Meaning of “local authority” in planning Acts

324. Section 201 amends the definition of “local authority” in TCPA 1990 to include the London Fire and Emergency Planning Authority.

PART 10: WALES

Section 202: Powers of National Assembly for Wales

325. Section 202 amends Schedule 5 to the Government of Wales Act 2006. The 2006 Act gives the National Assembly for Wales the power to pass legislation known as Assembly Measures in relation to the matters listed in fields in Part 1 of Schedule 5 to the 2006 Act. Legislative competence to pass Measures is conferred by adding matters to those Fields. Assembly Measures may make any provision that could be made by an Act of Parliament in relation to those matters, subject to the restrictions contained in the 2006 Act.

326. Section 202 adds three new matters to Field 18 on town and country planning. This will enable the Assembly to pass Measures relating to plans of the Welsh Ministers and local planning authorities concerning the development and use of land, subject to an exception regarding the status of such plans. Measures may also be passed which relate to the review by local planning authorities of matters affecting their area's development.

Section 203: Power to make provision in relation to Wales

327. Section 203(1) confers on the Welsh Ministers the power to make an order giving effect in Wales to certain reforms to the land use planning system provided for in Part 9 which would otherwise have effect only in England. Subsection (2) lists the relevant reforms. Subsection (4) allows the Welsh Ministers to make an order reversing the effect of an order made under subsection (1). Subsections (7) and (9) require orders under section 203 to be made by statutory instrument and to be subject to the affirmative resolution procedure of the National Assembly for Wales.

Section 204: Wales: transitional provision in relation to blighted land

328. This is a Wales-only provision relating to blighted land to ensure that blight notice procedures apply to land identified in all existing development plans in Wales. The blight notice procedure currently applies to land identified in local development plans. Section 204 will enable the blight notice procedure to apply to land identified in structure plans, local plans and unitary development plans in Wales until such time as those plans are superseded by a local development plan.

PART 11: COMMUNITY INFRASTRUCTURE LEVY

Section 205: The levy

329. This section provides the regulation-making power to the Secretary of State to establish a Community Infrastructure Levy (“CIL”) and sets out the overall purpose of the levy. The overall aim of the charge is to ensure that costs incurred in providing infrastructure to support the development of an area can be funded wholly or mainly by owners or developers of land (subsection (2)).

Section 206: The charge

330. This section (subsection (1)) provides a power to charging authorities to charge CIL in respect of development within their respective areas and then goes onto define which authorities are charging

authorities. The position under subsections (2) and (3) is that charging authorities will be (a) the local planning authorities responsible for the production of local development plans in England and Wales (see subsection (5)); (b) the Council of the Isles of Scilly (which is treated as a local planning authority for the purpose of Part 2 of the PCPA 2004 for the Isles of Scilly by an order under section 116 of that Act) and (c) the Mayor of London for Greater London (in addition to local planning authorities there).

331. However, subsection (4) permits CIL regulations to depart from the position under subsections (2) and (3) (except in the case of the Mayor). A regulation-making power is given to provide that certain local authorities are instead to be charging authorities for any area. For example, it is possible for National Park authorities to have two areas, one very large, and one very small and in the area of another local planning authority. National Park authorities are local planning authorities for the purposes of Part 2 of the PCPA 2004, but for reasons of scale and efficiency it might not be thought appropriate for them to be charging authorities for a small separate area.

Section 207: Joint committees

332. This section allows CIL regulations to provide that a joint committee established under section 29 of the PCPA 2004, where it includes a charging authority, is to exercise specified functions in relation to the area of the committee on behalf of the charging authority. These joint committees are established under section 29 of the PCPA 2004 to act as the local planning authority for the purposes of Part 2 of that Act.

333. Subsection (3) provides supplementary powers to make provision corresponding to that which exists in Part 6 of the Local Government Act 1972 relating to joint committees of local authorities. For example, these supplementary powers might be used to permit the delegation of CIL functions exercisable by a joint committee to members of staff of the constituent authorities.

Section 208: Liability and Section 209: Liability: interpretation of key terms

334. Section 208 makes provision about how liability to pay CIL is incurred (with section 209 providing some definitions of the terms in section 208 together with regulation-making powers to define others).

335. Section 208(1) expressly provides for an opportunity for any person to assume liability for CIL before the commencement of development (subsection (2)(a)), though this must be done in accordance with regulations (see subsection (2)(b)) CIL liable “development” is defined in section 209(1) as “anything done by way of or for the purpose of the creation of a new building, or anything done to or in respect of an existing building”. Section 209(2) provides a regulation making power to exclude works or changes of use from this definition of development and to provide for the creation of, or for anything done to or in respect of, a structure to fall within it. Section 209(3) provides that CIL regulations must include provision for determining when development is to be treated as commencing. Section 209(4) relates to how “development” has been defined in section 209(1) and the operation of section 209(3) there. The obligation in subsection (3) may be interpreted as requiring any definition of commencement of development to relate only to development of the sort defined by subsection (1) — something done specifically in relation to a building (or structure). Subsection (4) is intended to allow for the commencement of development to be defined by reference to other works which may be authorised by a planning permission that also authorises the building works for which there is CIL liability.

336. In default of liability not being assumed before development is commenced, or in other circumstances specified by the regulations (for example insolvency), subsection 208(4) provides

that the CIL regulations must provide for an owner or developer of land to be liable for CIL. Section 209(7) defines “owner” as a person who owns an interest in the land and “developer” as a person who is wholly or partly responsible for carrying out a development. Section 209 also provides a power in subsection (8) to provide for a person to be treated or not to be treated as an “owner” or “developer”. The intention here is to allow for CIL regulations to be able to provide that certain types of interests are to be included or excluded from default liability — for example, easements and profits.

337. Under section 208(6), the extent of liability is to be determined by reference to the time when planning permission first permits the development (which is CIL liable). Section 209(6) provides connected powers. For example, in the case of those planning permissions where development is only permitted in phases, the powers allow for CIL regulations to specify that liability arises as each phase is commenced.

338. Since much of section 208 is premised on liability being incurred in connection with a planning permission, subsection (7) provides a power to deal with cases where development which requires planning permission is commenced without it. This is to close a potential loop-hole where development might be unlawfully commenced to avoid CIL.

339. Finally, section 208(8) provides powers for CIL regulations to make provision for, in effect, the claw back of an exemption or reduction in CIL. This is where the description or purpose of the development in respect of which the exemption or reduction was granted subsequently changes.

Section 210: Charities

340. This section relates to exemptions to or reductions in CIL for charities. The first subsection provides a duty that CIL regulations must provide for an exemption from liability to pay CIL to certain classes of charity (which are defined in subsection (4)). This duty applies where the building or structure in respect of which CIL liability arises is to be wholly or mainly used for a charitable purpose of the charity concerned. Subsection (2) expressly provides two powers. First, a power in CIL regulations to provide an exemption in CIL to institutions established for charitable purposes. Secondly, a power to require charging authorities to make arrangements for an exemption or reduction in CIL to institutions established for charitable purposes. Subsection (5) defines for the purposes of subsection (2) that a charitable purpose is one falling within section 2(2) of the Charities Act 2006. Subsection (3) contains a power to prescribe conditions which must be met in order for a charity not to qualify for an exemption or reduction under subsection (2).

Section 211: Amount

341. This section requires a charging authority which proposes to charge CIL to issue a document known as a charging schedule. This schedule would set out for the authority's area the CIL rates, or other criteria, by reference to which the amount of CIL payable is to be calculated. Subsection (2) requires charging authorities in setting these CIL rates (or criteria) to have regard (in the manner and to the extent specified by regulations) to (a) the actual and expected costs of infrastructure; (b) matters specified by CIL regulations relating to the economic viability of development (such as the economic effects of planning permission or of the imposition of CIL); and (c) the actual and expected sources of funding for infrastructure.

342. Subsections (3) and (4) mean that CIL regulations may make further provision about how CIL rates or other criteria are to be set. Subsection (4) provides examples in this connection such as requiring authorities to take account of the potential administrative expenses connected with CIL. Subsection (5) provides powers for CIL regulations to permit or require charging schedules to adopt

specified methods of calculation. For instance, charging schedules could operate on the basis of descriptions of the type of development or according to the location of the development (subsection (6)).

343. Subsection (7) provides an express power for charging authorities to undertake preparatory work, including consultation. Regulations might set out limits on the use of the power. Subsection (10) makes it clear that the requirements for the examination, approval and bringing into effect of charging schedules apply to revisions of a schedule (as they do to the preparation of the original charging schedule).

Section 212: Charging schedule: examination

344. This section contains a number of provisions relating to the independent examination of a draft charging schedule. Before a charging schedule is approved under section 213, a draft of it must have been examined by a person appointed for that purpose by the charging authority. Moreover, the charging authority must satisfy itself that this person is independent of it and has appropriate qualifications and experience (subsection (2)). Subsection (9) means that those persons who have made representations about the draft of the schedule have a right to be heard before the examiner (subject to any requirements in regulations about when and how this right is acquired).

345. Subsection (4) requires the draft charging schedule submitted to the examiner to be accompanied by a declaration that the charging authority has complied with a number of requirements. These include procedural requirements relating to the preparation of the draft, requirements under section 211 as to how the contents of the schedule are to be determined and that the charging authority has used appropriate evidence to inform the draft. The purpose here is to ensure that the charging authority have satisfied themselves that the draft schedule is ready and in an appropriate form to be examined.

346. The examiner is required to make recommendations (having considered the matters in subsection (4)) relating to whether the schedule should be approved (with or without modification) or rejected and to give reasons for those recommendations. The charging authority must publish both the recommendations and the reasons (subsections (7) and (8)).

Section 213 Charging schedule: approval

347. Section 213(1) to (3) prescribes the circumstances in which a charging authority may approve a charging schedule and how it is to approve one. A schedule may only be approved if the examiner appointed under section 212 recommends approval and with any modifications the examiner recommends. A charging authority (other than the Mayor) must approve a charging schedule at a meeting of the authority and by a majority of votes of the members present. The Mayor must approve a charging schedule personally.

348. In addition, subsection (4) provides a regulation-making power to permit charging authorities to be able to correct errors in a charging schedule after it is approved (without having to formally review it).

Section 214: Charging schedule: effect

349. This section provides that a charging schedule which has been approved may not take effect until it has been published. It also permits charging authorities to determine that a schedule (which has been brought into effect) is to cease to have effect with a regulation-making power to prescribe the circumstances in which a charging authority may exercise this power (subsections (3) and (4)).

350. Subsection (5) requires that a decision to cease charging CIL must be taken by a majority of members of a charging authority (other than the Mayor of London) at a meeting of that authority. In the case of the Mayor, such a decision would have to be taken personally (subsection (6)).

Section 215: Appeals

351. Subsection (1) requires CIL regulations to provide for a right of appeal on a question of fact relating to the calculation of the amount of CIL due in respect of a particular development. Such appeals must be heard by a person appointed by the Commissioners for Her Majesty's Revenue and Customs. The person so appointed must be a valuation officer (appointed under section 61 of the Local Government Finance Act 1988 (c.41) or a district valuer (within the meaning of section 622 of the Housing Act 1985).

352. Subsection (3) provides particular regulation-making powers in connection with these appeals (and appeals about apportionment of liability under section 208(5)(d)(ii)). Specifically provision may be made about the period within which a right of appeal must be exercised, appeal procedures and the award of costs and the payment of fees for an appeal.

Section 216: Application

353. Section 216(1) provides that, subject to section 219(5) (which permits CIL regulations to permit or require CIL to be spent on expenditure relating to compensation under section 219), CIL regulations must require authorities charging CIL to apply it to funding infrastructure. Subsection (2) defines what constitutes "infrastructure", which ranges from roads and transport facilities and open spaces to affordable housing (which includes social housing within the meaning of Part 2 of the Housing and Regeneration Act 2008). Subsection (3) provides powers for CIL regulations to amend this definition and therefore, powers to control at a macro-level what CIL is spent on. Subsection (4) allows for finer controls here by providing powers, for example, to specify what works, installations and other facilities may be funded through CIL or to specify what is or is not to be treated as funding. Examples of how this latter power may be used are set out in subsection (6). It includes powers to permit CIL to be used for the reimbursement of expenditure already incurred and for the giving of loans, guarantees and indemnities.

354. For the purposes of providing for accountability and public scrutiny, powers are provided in subsection (5) to require charging authorities to prepare lists of projects which they propose will be funded by CIL and to circumscribe the circumstances in which CIL can be spent on projects which are not listed. The procedures to be followed in preparing such lists may be prescribed in CIL regulations. Similarly, under subsection (7), regulations may require the separate accounting of revenue from CIL and require its use to be monitored and reported on by any body which holds CIL revenue (for example, an authority collecting it under section 217(5) or a body to which it is passed under regulations made under subsection (7)(f)).

Section 217: Collection

355. Section 217(1) provides that CIL regulations shall include provision about the collection of CIL. The rest of the subsections here provide instances of how that power may be exercised. For example, CIL regulations may require the repayment of CIL, with or without interest, in cases of overpayment (subsection (3)). In addition, regulations may make provision for payments to varying timescales and payments in forms other than money (subsections (2) and (4)). The regulations may also permit or require one authority to collect CIL charged by another (subsection (5)). In addition regulations may replicate or apply enactments relating to the collection of tax (subsection (6)).

356. Finally, subsection (7) allows for CIL regulations to make provision about the sources of payments in respect of Crown interests. For example, under section 8 of the Duchy of Cornwall Management Act 1863 certain capital receipts received by the Duchy of Cornwall may only be spent for the purposes specified there. Subsection (7) allows CIL regulations to provide that CIL which is payable by the Duchy where development takes place on its land, may be paid out of these monies.

Section 218: Enforcement

357. This section provides that CIL regulations must include provision on the enforcement of CIL, including about the consequences of late payment or failure to pay (subsections (1) and (2)). Subsection (3) provides further powers covering, for example, providing for consequences (which might include a penalty or interest becoming payable) where liability is not assumed in accordance with section 208(2).

358. The type of provision which might be made on enforcement is exemplified in subsections (4) to (6) and includes, injunctions and powers to require information and provision to cover cases of death or insolvency. Specifically, subsection (5) relates to the registration or notification of actual or potential liability to CIL and to local land charges. It provides, for example, powers for such liability to be registered by way of a local land charge or in a statutory register (such as the register of planning applications which is maintained by local planning authorities under article 25 of the Town and Country Planning (General development Procedure) Order 1995) (see subsection (5)(b) and (d)). In addition, local land charges may be a device for charging liability to land and for ensuring that successive owners are liable for that charge. Subsection (5)(a) and (c) permit regulations to provide for CIL liability to be a local land charge in this respect or for its enforcement, such as by way of sale with the consent of a court.

359. Also, a power is provided to make regulations creating criminal offences (subsection (4)(g)). However, subsection (11) provides for limits on the exercise of these powers. These relate to the maximum level of fines (£20,000 on summary conviction) and terms of imprisonment (six months on summary conviction and 2 years on conviction on indictment) that can be imposed in connection with an offence created under CIL regulations. These limits may be adjusted by means of an order under subsection (12) (which because of section 222(4) will be subject to the negative resolution procedure) to reflect the commencement of section 283 of the Criminal Justice Act 2003. Section 283 of the 2003 Act allows for amendments to be made by order to pre-existing enactments so that the maximum levels of imprisonment for criminal offences in them can be made 51 weeks in the case of purely summary offences and 12 months, on summary conviction, in the case of indictable offences. The order-making power in subsection (12), therefore, allows for subsection (11) to be amended so that the restrictions in it are raised to a maximum of 51 weeks imprisonment in the case of purely summary offences and a maximum of 12 months imprisonment in the case of indictable offences, after summary conviction.

360. In addition, powers are provided to make provision in regulations for the imposition of penalties and surcharge (subsection (4)(b)) and conferring powers to enter land (subsection (4)(e)). Like in the case of the power to create criminal offences, the extent of these powers is circumscribed. Under subsection (8) a penalty or surcharge will not be able to exceed the higher of 30% of any outstanding CIL or £20,000. Subsection (9) in effect provides that these limitations do not apply cumulatively but only in respect of each surcharge or penalty provided for under CIL regulations. Subsection (10) ensures that CIL regulations cannot authorise entry to a private dwelling without a warrant from a justice of the peace.

361. Finally, subsection (7) provides regulation-making powers to ensure that regulations on application, collection and enforcement (under sections 216 to 220) can make provision in relation to interest, penalties and surcharges.

Section 219: Compensation

362. Section 219 allows CIL regulations to require a charging or other public authority to pay compensation for loss and damage caused by enforcement action that has been improperly taken by them (see subsection (1)). “Enforcement action” is defined in subsection (2) to be action taken under regulations made under section 218. It includes the suspension or cancellation of a decision relating to planning permission and the prohibition of development pending assumption of CIL liability or the payment of CIL.

363. Regulations under this section cannot require the payment of compensation to a person who has failed to satisfy their liability for paying CIL (see subsection (3)). In the event of dispute, the quantum of compensation which is payable in accordance with the regulations may be determined by the Lands Tribunal (see subsection (6)). Regulation-making powers are also provided in subsection (4) to deal with the time and manner in which a claim for compensation must be made and how compensation is to be calculated. Powers are provided in subsection (5) to permit or require charging authorities to use CIL receipts to pay for any compensation and other expenditure under this section.

364. Finally, subsection (7) applies sections 2 and 4 of the Land Compensation Act 1961 to determinations by the Lands Tribunal under subsection (6) subject to any necessary modifications and to the provisions of CIL regulations. Sections 2 and 4 of the 1961 Act cover procedures on a reference to the Lands Tribunal and the award of costs by the Tribunal.

Section 220: Community Infrastructure Levy: procedure

365. Section 220(1) provides power for CIL regulations to make provision about the procedures to be followed in connection with CIL, with examples of what might be done using this power set out in subsections (2) and (6).

366. For instance, subsection (2)(r) provides power to combine procedures in connection with CIL with procedures for another purpose of a charging authority. An example of the use of this power might be to combine the procedures for producing a draft charging schedule with the procedures for preparing development plan documents under Part 2 of the PCPA 2004. Alternatively, it might be used to require reports on the use of CIL under section 216(7)(c) to be combined with the annual monitoring reports required under section 35 of the PCPA 2004. Subsection (2)(l) to (o) might be used to require in CIL regulations that an examination in public to be held into a list (produced under section 216(5)(a)) of the items of infrastructure on which CIL may be spent. This might be combined with an examination in public into a charging schedule with connected provision being made on how the costs of the examinations are to be met. Finally, by way of example, subsection (2)(s) provides a power to make provision about procedures to be followed in connection with actual or potential liability for CIL. Under this provision regulations could prescribe the form and contents of any notice which must be served on a charging authority or another party and the form which service of such a notice may or must take in order for liability to be assumed or transferred under section 208(2) or (5)(g).

367. Subsection (3) provides power to make regulations regarding procedures to be followed in connection with exemptions or reductions of CIL. For example, if a charging authority were to grant any exemption it could be required to keep a record of that and to notify the Secretary of State

that it has been granted. Or instead, the power could be used to require potential recipients to provide certain information before they can be granted an exemption.

Section 221: Secretary of State

368. This section provides the Secretary of State with a power to give guidance on any matter connected with CIL to, for example, a charging authority, an authority (other than a charging authority) collecting CIL pursuant to regulations under section 217(5) or to a person appointed to carry out an independent examination under section 212(1). Any person to whom guidance is given under this section would need to have regard to it.

Section 222: Regulations and orders: general

369. Section 222(1) provides a number of supplementary powers in relation to the making of CIL regulations. For example, there are powers in paragraphs (c) and (d) to provide for exceptions and to confer discretionary powers. In combining these powers, it would be possible to give charging authorities a degree of discretion in deciding whether to give exemptions to CIL. Paragraph (d) might be used in combination with section 217(2)(b) to allow charging authorities to decide when payment by instalments can be accepted.

370. Subsection (2) provides that CIL regulations shall be made by statutory instrument and shall not be made unless a draft has been laid before and approved by resolution of the House of Commons.

371. Subsection (3) similarly provides that an order under section 218(12) (changing the maximum level of criminal penalties prescribed by section 218(11)) or under section 225(2) (repeal of the Planning-gain Supplement (Preparations) Act 2007) is to be made by statutory instrument. However, either type of order is subject to the negative resolution procedure, in the former case it could be subject to annulment pursuant to a resolution of either House and in the latter case, pursuant to a resolution of the House of Commons only (see subsections (4) and (5), respectively).

Section 223: Relationship with other powers

372. Subsection (1) provides that CIL regulations may include provision about controlling the use of section 106 of the TCPA 1990 (which relates to planning obligations) and section 278 of the Highways Act 1980 (which relates to agreements with highways authorities for highways works). It also provides power to make CIL regulations about the exercise of any other power relating to planning and development (subsection (2)) and for the Secretary of State to give guidance to charging and other authorities on the exercise of such powers (subsection (3)). The purposes to which any of these regulation-making or guidance giving powers may be put are circumscribed by subsection (4). For example, they may be used to enhance the effectiveness or use of CIL regulations (for example, to encourage charging authorities to charge CIL) or to prevent or restrict the entering into of agreements (or the giving of undertakings) under section 106 of the TCPA 1990 or section 278 of the Highways Act 1980 in addition to CIL. Finally, subsection (5) provides powers for CIL regulations to control the exercise of powers to give directions or guidance.

Section 224: Community Infrastructure Levy: amendments

373. Section 224 makes amendments to a number of Acts (which are to be brought into force by an order under section 241(8)). In broad terms the amendments are concerned with the delegation of functions under Part 11 of the Act. In particular, subsection (1) amends section 101 of the Local Government Act 1972 by inserting a new subsection which specifies that Community Infrastructure Levy is not a rate for the purposes of subsection (6) of section 101. Subsection (6) prevents the

application of section 101 (which permits, for example, local authorities to delegate their functions to their officers, committee and sub-committees) with respect to functions relating to levying a rate.

374. Subsection (2) amends section 9 of the Norfolk and Suffolk Broads Act 1988. Section 9(8) of the 1988 Act provides, in broad terms, that the Broads Authority may delegate its functions relating to its navigation area only to its Navigation Committee. The effect of the amendment is that this restriction does not apply to functions of the Broads Authority under Part 11.

375. Subsection (3) amends section 71(3) of the Deregulation and Contracting Out Act 1994. Section 71(1)(c) of the 1994 Act prevents orders under section 70 of that Act from being made which would permit a local authority from contracting out “a power or right of entry, search or seizure into or of any property”. Subsection (3) amends section 71(3) of the 1994 Act so that this restriction does not apply in relation to collection and enforcement powers under Part 11 (much like the existing provision in section 71(3) of the 1994 Act relating to, for example, the business improvement district levy and council tax).

376. Finally, subsection (4) amends section 38 of the Greater London Authority Act 1999. Section 38 permits the Mayor of London to delegate his functions to certain persons who include Transport for London, the London Development Agency, the Common Council of the City of London and a local authority. Subsection (4) prevents the Mayor from delegating his functions under Part 11 to these persons (though he would be able to delegate these functions to the Deputy Mayor or any member of staff of the Greater London Authority, the remaining persons in section 38(4)).

Section 225: Community Infrastructure Levy: repeals

377. Subsection (1) makes a number of repeals which will be commenced two months after Royal Assent (see section 241(6)). In particular, sections 46 to 48 of the PCPA 2004 will be repealed (which provide powers to establish, by regulations, a system of planning contributions in England or Wales) and paragraph 5 of the Schedule 6 to the same Act will be repealed (which provides for the repeal of sections 106 to 106B of the TCPA 1990). The system of planning contributions under sections 46 to 48 of the 2004 Act was intended to replace the regime for planning obligations under sections 106 to 106B of the TCPA 1990.

378. In addition, subsection (2) provides a power to the Treasury to repeal by order the Planning-gain Supplement (Preparations) Act 2007. Section 222 deals with the procedure for such an order and in particular subsection (5) there, provides that such an order may be annulled pursuant to a resolution of the House of Commons.

PART 12: FINAL PROVISIONS

Section 226: The Crown

379. This section applies the Act to the Crown, subject to the exceptions set out in subsections (2) and (3).

Section 227: “Crown land” and “the appropriate Crown authority”

380. This section defines the expressions “Crown land” and “the appropriate authority” which are used in the Act.

Section 228: Enforcement in relation to the Crown and Parliament

381. This section provides that the offences in the Act do not apply to the Crown. Subsection (2) contains an extended definition of the Crown for the purposes of this section, including, for example, the Speakers of the House of Commons and the House of Lords.

Section 229: Service of notices: general

382. This section contains provision in respect of how notices and other documents should be served.

Section 230: Service of documents to persons interested in or occupying premises

383. This section sets out the conditions which must be satisfied in order to show that a notice, served under the provisions of the Act to a person interested in or occupying premises, has been properly served.

Section 231: Service of notices on the Crown and Parliament

384. This section specifies that any notice required under the Act to be served on the Crown must be served on the appropriate Crown authority. For these purposes the expression “the Crown” has an extended meaning.

Sections 232–242: Additional provisions, including commencement

385. The remainder of Part 12 contains supplementary provisions. Sections 232 and 233 contain general provision for orders, regulations and directions under the Act. Section 232 sets out the procedure which is to apply in respect of certain powers to make regulations and orders conferred by the Act, and states that these powers include the power to make different provision for different cases and to make incidental, consequential, supplementary, transitional or transitory provision or savings. Sections 234 and 235 deal with abbreviations and interpretation. Section 236 introduces Schedule 12 which contains modifications of certain provisions of the Act in their application to Scotland. Section 237 confers upon the Secretary of State an order making power which may be used to make supplementary and consequential provision. Sections 238 to 240 make provision as to repeals, financial provisions and extent.

386. Section 241 makes provision about commencement. In general the provisions of the Act will be brought into force by order made by the Secretary of State. Certain provisions of the Act will come into force on the day on which the Act is passed; these are set out in subsection (1) of section 241. Certain provisions will be brought into force in relation to Wales by order made by the Welsh Ministers; these are set out in subsections (3) and (4) of section 241. Certain provisions will be brought into force by order made by the Welsh Ministers, these are set out in subsection (5). Provisions which will come into force at the end of two months beginning with the day on which the Act is passed are set out in subsection (6).

HANSARD REFERENCES

387. The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
House of Commons		
Introduction	27 November 2007	Vol 468 Col. 144
Second Reading	10 December 2007	Vol 469 Cols. 25–135

Stage	Date	Hansard Reference
Committee	8 January 2008 to 5 February 2008	<u>Public Bill Committee</u>
Report and Third Reading	2 June 2008	Vol 476 Cols. <u>512–611</u>
	25 June 2008	Vol 478 Cols. <u>330–465</u>
Commons Consideration of Lords Amendments	24 November 2008	Vol 483 Cols. <u>528–573</u>
House of Lords		
Introduction	26 June 2008	Vol 702 Col. <u>1542</u>
Second Reading	15 July 2008	Vol 703 Cols. <u>1157–1238</u>
Committee	6 October 2008	Vol 704 Cols. <u>14–22</u> , <u>35–70</u> and <u>84–110</u>
	8 October 2008	Vol 704 Cols. <u>249–296</u> and <u>315–328</u>
	14 October 2008	Vol 704 Cols. <u>609–668</u> and <u>680–730</u>
	16 October 2008	Vol 704 Cols. <u>825–838</u> and <u>864–933</u>
	20 October 2008	Vol 704 Cols. <u>945–955</u> , <u>967–1019</u> and <u>1025–1038</u>
	23 October 2008	Vol 704 Cols. <u>1236–1262</u> and <u>1275–1346</u>
	Report	6 November 2008
	10 November 2008	Vol 705 Cols. <u>439–503</u> and <u>523–542</u>
	12 November 2008	Vol 705 Cols. <u>660–717</u> and <u>728–780</u>
	18 November 2008	Vol 705 Cols. <u>1014–1072</u>
Lords consideration of Commons amendments and reasons	25 November 2008	Vol 705 Col <u>1350–1368</u>
Royal Assent	26 November 2008	House of Commons Hansard Vol 453 Col <u>855</u> House of Lords Hansard Vol 705 Col <u>1477</u>

Modifications

Pt 2 s. 5(10)	Planning Act 2008 c. 29, Sch. 12 para. 1
Pt 3 s. 14(1)	Planning Act 2008 c. 29, Sch. 12 para. 2
Pt 3 s. 14(2)	Planning Act 2008 c. 29, Sch. 12 para. 2
Pt 4 s. 32	Planning Act 2008 c. 29, Sch. 12 para. 3
Pt 4 s. 33	Planning Act 2008 c. 29, Sch. 12 para. 4
Pt 5 c. 2 s. 44	Planning Act 2008 c. 29, Sch. 12 para. 5
Pt 5 c. 3 s. 52	Planning Act 2008 c. 29, Sch. 12 para. 6
Pt 5 c. 3 s. 53	Planning Act 2008 c. 29, Sch. 12 para. 7
Pt 6 c. 1 s. 57	Planning Act 2008 c. 29, Sch. 12 para. 8
Pt 6 c. 1 s. 58(6)	Planning Act 2008 c. 29, Sch. 12 para. 9
Pt 6 c. 1 s. 58(7)	Planning Act 2008 c. 29, Sch. 12 para. 9
Pt 7 c. 1 s. 120(6)	Planning Act 2008 c. 29, Sch. 12 para. 10
Pt 7 c. 1 s. 127	Planning Act 2008 c. 29, Pt 7 c. 1 s. 133(4)
Pt 7 c. 1 s. 127(8) definition of "statutory undertakers"	Planning Act 2008 c. 29, Sch. 12 para. 11
Pt 7 c. 1 s. 128	Planning Act 2008 c. 29, Pt 7 c. 1 s. 133(4)
Pt 7 c. 1 s. 128(5)	Planning Act 2008 c. 29, Sch. 12 para. 12
Pt 7 c. 1 s. 129	Planning Act 2008 c. 29, Pt 7 c. 1 s. 133(4)
Pt 7 c. 1 s. 129(2) definition of "local authority"	Planning Act 2008 c. 29, Sch. 12 para. 13
Pt 7 c. 1 s. 129(2) definition of "statutory undertakers"	Planning Act 2008 c. 29, Sch. 12 para. 13
Pt 7 c. 1 s. 130	Planning Act 2008 c. 29, Pt 7 c. 1 s. 133(4)
Pt 7 c. 1 s. 130(4)	Planning Act 2008 c. 29, Sch. 12 para. 14
Pt 7 c. 1 s. 130(5)	Planning Act 2008 c. 29, Sch. 12 para. 14
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Pt 7 c. 1 s. 134	Planning Act 2008 c. 29, Sch. 12 para. 17
Pt 7 c. 1 s. 137(7)	Planning Act 2008 c. 29, Sch. 12 para. 18
Pt 7 c. 1 s. 151(c)	Planning Act 2008 c. 29, Sch. 12 para. 19
Pt 7 c. 1 s. 151(d)	Planning Act 2008 c. 29, Sch. 12 para. 19
Pt 7 c. 1 s. 152(4)	Planning Act 2008 c. 29, Sch. 12 para. 20
Pt 7 c. 1 s. 152(5)	Planning Act 2008 c. 29, Sch. 12 para. 20
Pt 7 c. 1 s. 152(6)	Planning Act 2008 c. 29, Sch. 12 para. 20
Pt 7 c. 1 s. 152(7)	Planning Act 2008 c. 29, Sch. 12 para. 20
Pt 8 s. 164	Planning Act 2008 c. 29, Sch. 12 para. 21
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Pt 8 s. 165(6)	Planning Act 2008 c. 29, Sch. 12 para. 22
Pt 8 s. 170(3)	Planning Act 2008 c. 29, Sch. 12 para. 23
Pt 8 s. 170(4)	Planning Act 2008 c. 29, Sch. 12 para. 23
Pt 8 s. 170(5)	Planning Act 2008 c. 29, Sch. 12 para. 23
Pt 8 s. 171	Planning Act 2008 c. 29, Sch. 12 para. 24
Pt 12 s. 229(5)	Planning Act 2008 c. 29, Sch. 12 para. 25
Pt 12 s. 235(1)	Planning Act 2008 c. 29, Sch. 12 para. 26
Sch. 5(1) para. 4	Planning Act 2008 c. 29, Sch. 12 para. 27
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Sch. 5(1) para. 29	Planning Act 2008 c. 29, Sch. 12 para. 27
Sch. 5(1) para. 30	Planning Act 2008 c. 29, Sch. 12 para. 27
Sch. 5(1) para. 30A	Planning Act 2008 c. 29, Sch. 12 para. 27
Sch. 5(1) para. 30B	Planning Act 2008 c. 29, Sch. 12 para. 27
Sch. 5(1) para. 31	Planning Act 2008 c. 29, Sch. 12 para. 27
Sch. 5(1) para. 32	Planning Act 2008 c. 29, Sch. 12 para. 27
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