

## PART 2

### NATIONAL POLICY STATEMENTS

#### 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.

## 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.

## **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.

## **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.

**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).

**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.

**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.

## 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 pre-commencement 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.

**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.

- (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.

## CHAPTER 5

### DECISIONS ON APPLICATIONS

#### 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.

#### 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”),
  - (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.

#### 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.

#### **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.

#### **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).

## CHAPTER 6

### SUSPENSION OF DECISION-MAKING PROCESS

#### 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.

## CHAPTER 7

### INTERVENTION BY SECRETARY OF STATE

#### 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