

Planning Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Communities and Local Government, are published separately as Bill 11 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Secretary Hazel Blears has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Planning Bill are compatible with the Convention rights.

Planning Bill

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A
B I L L

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.

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:—

PART 1

THE INFRASTRUCTURE PLANNING COMMISSION

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”). 5
- (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.

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. 10
- (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 15
 - (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. 5
- (6) A failure to observe any provision of the code does not of itself make a Commissioner liable to any criminal or civil proceedings.
- 3 Register of Commissioners' interests**
- (1) The Commission must establish a procedure for the disclosure and registration of financial and other interests of Commissioners. 10
- (2) The Commission must arrange for the register entries to be published.
- 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. 15
- (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; 20
 (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; 25
 (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* 30
 (b) *in doing anything which is calculated to facilitate, or is conducive or incidental to, the performance of any of its functions.*

PART 2

NATIONAL POLICY STATEMENTS

- 5 National policy statements** 35
- (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. 40

-
- (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. 5
- (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 have been complied with in relation to it.
- (5) The policy set out in a national policy statement may in particular – 10
- (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; 15
 - (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. 20
- (6) A national policy statement must give reasons for the policy set out in the statement.
- (7) The Secretary of State must arrange for the publication of a national policy statement. 25
- (8) 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 30**
- (1) The Secretary of State must review each national policy statement whenever the Secretary of State thinks it appropriate to do so.
- (2) After completing a review of a national policy statement the Secretary of State must do one of the following – 35
- (a) amend the statement;
 - (b) withdraw the statement’s designation as a national policy statement;
 - (c) leave the statement as it is.
- (3) 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. 40
- (4) The Secretary of State may amend a national policy statement only if the consultation and publicity requirements set out in section 7 have been complied with in relation to the proposed amendment.

- (5) Subsections (3) and (4) 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.
- (6) If the Secretary of State amends a national policy statement, the Secretary of State must arrange for the amendment, or the statement as amended, to be published. 5

7 Consultation and publicity

- (1) This section sets out the consultation and publicity requirements referred to in sections 5(4) and 6(4).
- (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. 10
This is subject to subsections (4) and (5).
- (3) In this section “the proposal” means – 15
(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. 20
- (6) The Secretary of State must have regard to the responses to the consultation and publicity in deciding whether to proceed with the proposal. 25

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 – 30
(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 – 35
(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 – 40
(a) a district council in England,
(b) a county council for an area in England for which there are no district councils,
(c) a London borough council,

- (d) the Common Council of the City of London,
- (e) the Council of the Isles of Scilly,
- (f) a county council, or county borough council, in Wales, or
- (g) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39).

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9 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.

10 Suspension pending review

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- (1) This section applies if the Secretary of State thinks 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.
- (2) The Secretary of State may suspend the operation of all or any part of the national policy statement until a review of the statement has been completed.
- (3) 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(2) in relation to the review.

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11 Pre-commencement statements of policy, consultation etc.

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- (1) The Secretary of State may designate a statement as a national policy statement for the purposes of this Act even if –
 - (a) the statement has been issued by the Secretary of State before the commencement day, or
 - (b) the statement sets out national policy by reference to one or more statements issued by the Secretary of State before the commencement day.
- (2) If an appraisal of the sustainability of the policy set out in a statement is carried out before the commencement day, the Secretary of State may treat the appraisal as meeting the requirements of section 5(3).
- (3) 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.
- (4) “The commencement day” means the day on which section 5 comes fully into force.

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12 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 | 5 |
| | (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 review a national policy statement only if – | 10 |
| | (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 review the statement. | |
| (3) | A court may entertain proceedings for questioning a decision of the Secretary of State to review a national policy statement only if – | 15 |
| | (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(2) in relation to the review concerned. | 20 |
| (4) | A court may entertain proceedings for questioning anything done, or omitted to be done, by the Secretary of State in the course of reviewing 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(2) in relation to the review concerned. | 25 |
| (5) | A court may entertain proceedings for questioning anything done by the Secretary of State under section 6(2) after completing a review of a national policy statement only if – | 30 |
| | (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 10 only if – | 35 |
| | (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. | |

PART 3

NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECTS

General

13 Nationally significant infrastructure projects: general

- (1) In this Act “nationally significant infrastructure project” means a project which consists of any of the following – 5
- (a) the construction or extension of a generating station;
 - (b) the installation of an electric line above ground;
 - (c) development relating to underground storage of gas;
 - (d) the construction of a pipe-line; 10
 - (e) the construction of a highway;
 - (f) the construction or extension of an airport;
 - (g) the construction or extension of harbour facilities;
 - (h) the construction of a railway;
 - (i) the construction of a rail freight interchange; 15
 - (j) the construction or extension of a dam or reservoir;
 - (k) development relating to the transfer of water resources;
 - (l) the construction of a waste water treatment plant;
 - (m) the construction of a hazardous waste facility.
- (2) Subsection (1) is subject to sections 14 to 26. 20
- (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). 25
- (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 project of the new type is a project for the carrying out of works in England in the field of –
- (a) energy, 30
 - (b) transport,
 - (c) water,
 - (d) waste water, or
 - (e) waste.

Energy 35

14 Generating stations

- (1) The construction or extension of a generating station is within section 13(1)(a) only if the generating station is or (when constructed or extended) will be within subsection (2) or (3).
- (2) A generating station is within this subsection if – 40

- (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 5
 - (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 between the mean low water mark and 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. 10

15 Electric lines

- (1) The installation of an electric line above ground is within section 13(1)(b) only if (when installed) the electric line will be –
- (a) wholly in England, 15
 - (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 13(1)(b) only to the extent that (when installed) the line will be in England. 20
- (3) The installation of an electric line above ground is not within section 13(1)(b) –
- (a) if the line has a nominal voltage not exceeding 20 kilovolts and is used or intended to be used for supplying a single consumer, or
 - (b) to the extent that the line is or (when installed) will be within premises in the occupation or control of the person responsible for its installation. 25
- (4) “Premises” includes any land, building or structure.

16 Underground gas storage

- (1) Development relating to underground storage of gas is within section 13(1)(c) only if the development is within subsection (2) or (3). 30
- (2) Development is within this subsection if –
- (a) it is the carrying out of operations for the purpose of creating facilities for the underground storage of gas in England, or
 - (b) it is starting to use strata in England for the underground storage of gas. 35
- (3) Development is within this subsection if –
- (a) it is starting to use natural porous strata in Wales for the underground storage of gas, and
 - (b) the proposed developer is a gas transporter.
- (4) “Gas transporter” has the same meaning as in Part 1 of the Gas Act 1986 (c. 44) (see section 7(1) of that Act). 40

17 Pipe-lines

- (1) The construction of a pipe-line is within section 13(1)(d) only if the pipe-line is or (when constructed) will be –
 - (a) a cross-country pipe-line,
 - (b) a pipe-line the construction of which would (but for section 29(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).

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- (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.

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- (3) For the purposes of section 13(1)(d) 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.

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- (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 cross-country pipe-line, whatever the length of the diversion.

20
- (5) A “nationally significant pipe-line” is a pipe-line the construction of which has been authorised by development consent.

25
- (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.

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Transport

18 Highways

- (1) The construction of a highway is within section 13(1)(e) only if –
 - (a) the highway will (when constructed) be in England,
 - (b) the Secretary of State will be the highway authority for the highway, and
 - (c) the highway is proposed to be (or to be part of) a highway of a type within subsection (2).

40
- (2) The types of highway are –
 - (a) a trunk road;

- (b) a special road;
- (c) a highway the construction of which is a project in respect of which the Secretary of State is required to publish an environmental statement under section 105A(3) of the Highways Act 1980 (c. 66).

19 Airports

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- (1) The construction of an airport is within section 13(1)(f) only if (when constructed) the airport –
 - (a) will be in England, and
 - (b) will be capable of providing air passenger transport services for at least 10 million passengers per year. 10
- (2) “Extension”, in relation to an airport, includes –
 - (a) the construction or extension of a runway at the airport, or
 - (b) the construction or extension of a building at the airport.
- (3) An extension of an airport is within section 13(1)(f) only if –
 - (a) the airport is in England, and 15
 - (b) the effect of the extension will be to increase by at least 10 million people per year the number of passengers for whom the airport is capable of providing air passenger transport services.
- (4) “Air passenger transport services” means services for the carriage by air of passengers. 20

20 Harbour facilities

- (1) The construction or extension of harbour facilities is within section 13(1)(g) only if the harbour facilities will (when constructed or extended) be capable of handling the embarkation or disembarkation of at least the relevant quantity of material per year. 25
- (2) “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. 30
- (3) 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; 35
 - “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).

21 Railways

- (1) The construction of a railway is within section 13(1)(h) only if (when constructed) the railway will be –
 - (a) wholly in England, and 40

- (b) part of the railway network.
- (2) “Network” has the meaning given by section 83(1) of the Railways Act 1993 (c. 43).

22 Rail freight interchanges

- (1) The construction of a rail freight interchange is within section 13(1)(i) only if (when constructed) each of the conditions in subsections (2) to (6) will be met in relation to it. 5
- (2) The land on which the rail freight interchange is situated must –
 - (a) be in England, and
 - (b) be at least 60 hectares in area. 10
- (3) 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 container trains per day.
- (4) The rail freight interchange must be part of the railway network in England. 15
- (5) 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.
- (6) The rail freight interchange must not be part of a military establishment.
- (7) In this section – 20
 - “container train” means a train that (ignoring any locomotive) consists of items of rolling stock designed to carry goods in containers;
 - “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. 25
- (8) The following terms have the meanings given by section 83(1) of the Railways Act 1993 –
 - “network”;
 - “rolling stock”;
 - “train”. 30

Water

23 Dams and reservoirs

- (1) The construction of a dam or reservoir is within section 13(1)(j) 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 exceeds 10 million cubic metres. 35
- (2) The extension of a dam or reservoir is within section 13(1)(j) only if –
 - (a) the dam or reservoir is in England, 40
 - (b) the extension 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 extension exceeds 10 million cubic metres.

- (3) “Water undertaker” means a company appointed as a water undertaker under the Water Industry Act 1991 (c. 56). 5

24 Transfer of water resources

- (1) Development relating to the transfer of water resources is within section 13(1)(k) only if –

- (a) the development will be carried out in England by one or more water undertakers, 10

- (b) the volume of water to be transferred as a result of the development exceeds 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 15

- (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; 20

“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.

Waste water

25

25 Waste water treatment plants

- (1) The construction of a waste water treatment plant is within section 13(1)(l) only if the treatment plant (when constructed) –

- (a) will be in England, and

- (b) will have a capacity exceeding a population equivalent of 150,000. 30

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

- (3) 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) – 35

“domestic waste water”;

“industrial waste water”;

“population equivalent”;

“urban waste water”.

Waste

26 Hazardous waste facilities

- (1) The construction of a hazardous waste facility is within section 13(1)(m) only if –
 - (a) the facility (when constructed) will be in England, and 5
 - (b) the conditions in subsections (2) and (3) are met.
- (2) The main purpose of the facility must be the final disposal or recovery of hazardous waste.
- (3) The capacity of the facility must be –
 - (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; 10
 - (b) in any other case, more than 30,000 tonnes per year.
- (4) 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) – 15
 - “disposal”;
 - “hazardous waste”;
 - “recovery”.
- (5) “Deep storage facility” means a facility for the storage of waste underground in a deep geological cavity. 20

PART 4

REQUIREMENT FOR DEVELOPMENT CONSENT

27 When development consent is required

- (1) 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. 25
- (2) If –
 - (a) an application for an order granting development consent has been made in respect of development, and
 - (b) a question arises as to whether development consent is required for the development, 30the question must be decided by the Commission.

28 Meaning of “development”

- (1) In this Act (except in Part 10) “development” has the same meaning as it has in TCPA 1990. 35
This is subject to subsections (2) and (3).
- (2) For the purposes of this Act –
 - (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; 40

-
- (b) starting to use strata for the underground storage of gas is treated as a material change in the use of the strata.
- (3) For the purposes of this Act 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; 5
 - (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; 10
 - (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. 15
- (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); 20
 - “listed building” has the meaning given by section 1(5) of the Listed Buildings Act;
 - “petroleum products” has the meaning given by section 21 of the Energy Act 1976 (c. 76); 25
 - “scheduled monument” has the meaning given by section 1(11) of the Ancient Monuments and Archaeological Areas Act 1979;
 - “tipping operations” has the meaning given by section 61(1) of that Act.
- 29 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 8(1), (2) or (3) of the Listed Buildings Act;
 - (c) consent under section 74(1) of the Listed Buildings Act; 35
 - (d) consent under section 2(3) or 3 of the Ancient Monuments and Archaeological Areas Act 1979;
 - (e) 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); 40
 - (f) consent under section 34(1) of the Coast Protection Act 1949 (c. 74) (works detrimental to navigation);
 - (g) 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); 45
 - (h) consent under section 39(1) of the Pipe-lines Act 1962 (placing of pipe-line over or under harbour waters);

- (i) authorisation by an order under section 4(1) of the Gas Act 1965 (c. 36) (storage of gas in underground strata);
 - (j) notice under section 14(1) of the Energy Act 1976 (c. 76) (conversion of generating station from one fuel to another);
 - (k) consent under section 36 or 37 of the Electricity Act 1989 (c. 29) (construction etc. of generating stations and installation of overhead lines). 5
- (2) To the extent that development consent is required for development, none of the following may be made or given in relation to it—
 - (a) an order under section 14 or 16 of the Harbours Act 1964 (c. 40) (orders in relation to harbours, docks and wharves); 10
 - (b) an order under section 4(1) of the Gas Act 1965 (order authorising storage of gas in underground strata);
 - (c) notice under section 16(1) of the Gas Act 1965 (safety conditions);
 - (d) an order under section 1 or 3 of the Transport and Works Act 1992 (c. 42) (orders as to railways, tramways, inland waterways etc.). 15
- (3) If development consent is required for the construction of a proposed highway, none of the following may be made in relation to the highway, or confirmed, before the highway is opened for the purposes of through traffic—
 - (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; 20
 - (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); 25
 - (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); 30
 - (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). 35

30 Directions in relation to projects of national significance

- (1) This section applies if—
 - (a) an application for a consent or authorisation mentioned in section 29(1) or (2) is made to an authority (“the relevant authority”) in relation to development, 40
 - (b) the development is or forms part of a project in one of the fields mentioned in section 13(5),
 - (c) the development will (when completed) be wholly in England, and
 - (d) the Secretary of State thinks that the project is of national significance.
- (2) The Secretary of State may direct— 45
 - (a) the relevant authority to refer the application to the Commission instead of dealing with it themselves,

- (b) the Commission to treat the development as development for which development consent is required, and
 - (c) the Commission to accept the application as if it met the requirements of section 49(3).
- (3) If the Secretary of State is considering whether to give a direction under subsection (2), 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. 5
 - (4) 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 whether to give a direction under subsection (2). 10
 - (5) If the Secretary of State decides to give a direction under subsection (2), the Secretary of State must give reasons for the decision.
- 31 Amendments consequential on development consent regime**
- Schedule 2 makes amendments consequential on the development consent regime. 15

PART 5

APPLICATIONS FOR ORDERS GRANTING DEVELOPMENT CONSENT

CHAPTER 1

APPLICATIONS

- 32 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. 25
 - (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. 30
 - (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); 35
 - (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 of –
 - (a) the consultation carried out under section 42(5) in relation to a proposed application that has become the application, 5
 - (b) the results of that consultation, and
 - (c) the account taken of those results.

33 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 32) to accompany an application for an order granting development consent. 10
- (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. 15
- (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 20
 - (b) an order granting development consent.

34 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. 25
- (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 – 30
 - (a) applications received by the Commission for orders granting development consent, and
 - (b) accompanying documents and information received by the Commission under section 32(3)(d).

35 Applications by the Crown for orders granting development consent 35

- (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; 40
 - (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.

CHAPTER 2

PRE-APPLICATION PROCEDURE

- 36 Chapter applies before application is made** 5
- (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); 10
 - “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.
- 37 Duty to consult** 15
- (1) The applicant must consult the following about the proposed application –
- (a) such persons as may be prescribed,
 - (b) each local authority that is within section 38,
 - (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 39. 20
- (2) The Commission may issue guidance about how to comply with the duty under subsection (1).
- (3) The applicant must, in discharging that duty, have regard to any guidance under subsection (2). 25
- 38 Local authorities for purposes of section 37(1)(b)**
- (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. 30
- (3) In this section “local authority” means –
- (a) a district council in England,
 - (b) a county council for an area in England for which there are no district councils, 35
 - (c) a London borough council,
 - (d) the Common Council of the City of London,
 - (e) the Council of the Isles of Scilly,
 - (f) a county council, or county borough council, in Wales, or

- (g) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39).

39 Categories for purposes of section 37(1)(d)

- (1) A person is within Category 1 if the person is an owner, lessee, tenant (whatever the tenancy period) or occupier of the land. 5
- (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 10
 - (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 – 15
 - (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, 20to make a relevant claim.
- (5) 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), 25
 - (b) a claim under Part 1 of the Land Compensation Act 1973 (c. 26) (compensation for depreciation of land by emissions caused by use of public works), or
 - (c) a claim for nuisance.

40 Timetable for consultation under section 37

30

- (1) The applicant must, when consulting a person under section 37(1), 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. 35
- (3) In subsection (2) “the consultation documents” means the documents supplied to the person by the applicant for the purpose of consulting the person.

41 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 subsection (1) of section 37 if the applicant 40

were required by that subsection to consult the Commission about the proposed application.

- (2) The applicant must comply with subsection (1) on or before commencing consultation under section 37(1).

42 Duty to consult local community 5

- (1) The applicant must prepare a statement setting out how the applicant proposes to consult, about the proposed development, people living in the vicinity of the land.
- (2) Before preparing the statement, the applicant must consult each local authority that is within section 38(1) about what is to be in the statement. 10
- (3) In preparing the statement, the applicant must have regard to—
- (a) any response received by the applicant to consultation under subsection (2),
 - (b) any guidance given by the Secretary of State (including any guidance given by the Secretary of State about community involvement in planning), and 15
 - (c) any guidance given by the Commission.
- (4) 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. 20
- (5) The applicant must carry out consultation in accordance with the proposals set out in the statement.

43 Duty to publicise

- (1) The applicant must publicise the proposed application in the prescribed manner. 25
- (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.

44 Duty to take account of responses to consultation and publicity

- (1) Subsection (2) applies where the applicant— 30
- (a) has complied with sections 37(1), 42 and 43(1), 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. 35
- (3) In subsection (2) “relevant response” means—
- (a) a response from a person consulted under section 37(1) that is received by the applicant before the deadline imposed by section 40 in that person’s case, 40

- (b) a response to consultation under section 42(5) that is received by the applicant before any applicable deadline imposed in accordance with the statement prepared under section 42, or
- (c) a response to publicity under section 43 that is received by the applicant before the deadline imposed in accordance with section 43(2) in relation to that publicity.

5

CHAPTER 3

ASSISTANCE FOR APPLICANTS AND OTHERS

45 Advice for potential applicants and others

- (1) The Commission may give advice to an applicant or potential applicant, or to others, about – 10
 - (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. 15
- (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). 20
- (4) In particular, regulations under subsection (3) may make provision that has the effect that – 25
 - (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.

46 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. 30
- (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 – 35
 - (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 – 40
 - (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. 5
- (4) A notice under subsection (2) must –
- (a) be in writing,
- (b) state that the Commission has authorised the applicant to serve the notice, 10
- (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). 15
- (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. 20
- (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. 25
- (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 30
- (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. 35
- (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. 40

47 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, 5
 - (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. 10
- (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, 15
 - (b) the proposed application is likely to seek authority to compulsorily acquire the land, and
 - (c) the proposed applicant has complied with section 37(1) 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. 20
- (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, 25
 - (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. 30
- (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— 35
 - (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. 40
- (8) Any question of disputed compensation under subsection (7) must be referred to and determined by the Lands Tribunal.
- (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). 45

- (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. 5
- (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 10
 - (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.
- 48 Rights of entry: the Crown 15**
- (1) Subsections (1) to (3) of section 47 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 20
 - (b) the appropriate Crown authority.
 - (3) In section 47(3), the words “Subject to subsections (9) and (10)” must be ignored.
 - (4) Subsections (4) to (6) and (9) to (11) of section 47 do not apply to anything done by virtue of subsections (1) to (3) of this section. 25

PART 6

DECIDING APPLICATIONS FOR ORDERS GRANTING DEVELOPMENT CONSENT

CHAPTER 1

HANDLING OF APPLICATION BY COMMISSION

- 49 Acceptance of applications 30**
- (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. 35
 - (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 32(3) (form and contents of application) and with any standards set under section 32(5), 40

- (c) that it gives reasons for each respect in which any applicable guidance given under section 32(4) has not been followed in relation to it, and
 - (d) that the applicant has, in relation to a proposed application that has become the application, complied with Chapter 2 of Part 5 (pre-application procedure). 5
 - (4) The Commission, when deciding whether it may reach the conclusion in subsection (3)(d), must have regard to any adequacy-of-consultation representation received by it from a local-authority consultee.
 - (5) In subsection (4) –
 - “local-authority consultee” means – 10
 - (a) a local authority consulted under section 37(1)(b) about a proposed application that has become the application, or
 - (b) the Greater London Authority if consulted under section 37(1)(c) 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 37, 42 and 43. 15
 - (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 – 20
 - (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.
- 50 Notifying persons of accepted application 25**
- (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,
 - (b) each authority which, in relation to the application, is a relevant local authority within the meaning given by section 92(5), 30
 - (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 51. 35
 - (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. 40
 - (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 32(3)(d) to accompany the application. 5
- (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. 10
- (9) A deadline specified in accordance with subsection (8) does not apply to a person to whom notice is given under subsection (2).
- 51 Categories for purposes of section 50(2)(d)**
- (1) A person is within Category 1 if the person is an owner, lessee, tenant (whatever the tenancy period) or occupier of the land. 15
- (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 20
 - (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. 30
- (5) 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), 35
 - (b) a claim under Part 1 of the Land Compensation Act 1973 (c. 26) (compensation for depreciation of land by emissions caused by use of public works), or
 - (c) a claim for nuisance.
- (6) In this section “the land” means the land to which the application relates or any part of that land. 40
- 52 Certifying compliance with section 50**
- (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 50 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 50 in relation to the application. 5
- (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. 10
- (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. 15
- (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. 20

53 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 25
 - (b) has received a certificate under section 52(2) 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 30
 - (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. 35
- (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 40
 - (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.

- 54 Switching from single Commissioner to Panel** 5
- (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. 10
 - (4) Before making a decision under subsection (2), the person making the decision must consult – 15
 - (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. 20
 - (5) In making a decision under subsection (2), the person making the decision must have regard to any views expressed – 25
 - (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.
- 55 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). 30
 - (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. 35
 - (5) Where the chair is a member of a Panel under Chapter 2, the chair’s function under section 58(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 58(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. 40

- (7) Where the chair is the single Commissioner appointed to handle an application under Chapter 3, the chair's function under section 72(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 58(5)(a) in relation to that deputy's membership of the Panel may not be delegated under subsection (2) to that deputy. 5
- (9) Where a deputy is the lead member of a Panel under Chapter 2, the chair's function under section 58(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
- (10) Where a deputy is the single Commissioner appointed to handle an application under Chapter 3, the chair's function under section 72(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. 15

CHAPTER 2

THE PANEL PROCEDURE

Panels

56 Panel for each application to be handled under this Chapter

- (1) This Chapter applies where – 20
- (a) the Commission accepts an application for an order granting development consent, and
 - (b) under section 53(2) or 54(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. 25

57 Appointment of members, and lead member, of Panel

- (1) The person appointed to chair the Commission must appoint – 30
- (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 – 35
- (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. 40

- (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. 5

58 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 59.
- (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. 10
- (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”) – 15
- (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. 20

59 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), 25
 - (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, 30
 - (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 the Panel has decided, or (as the case may be) reported to the Secretary of State on, the application. 35
- (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 the Panel had decided, or (as the case may be) reported to the Secretary of State on, the application. 40
- (4) An election under subsection (1)(d) is effective only if made in the prescribed form.

60 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 57(1)(a).
- (2) The person appointed to chair the Commission may appoint a Commissioner to be a member of the Panel. 5
- (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. 10
- (5) A person may under subsection (2) make a self-appointment.

61 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. 15
- (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.

62 Membership of Panel where application relates to land in Wales 20

- (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 57(1)(a) or 60(2) must do so with a view to securing that, if reasonably practicable, at least one of the members of the Panel is – 25
 - (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). 30

63 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 54(2). 35
- (2) A Commissioner who has handled the application under Chapter 3 –
 - (a) may be appointed under section 57(1)(a) or 60(2) as a member of the Panel, and
 - (b) if a member of the Panel, may be appointed under section 57(1)(b) or 61(2) to chair the Panel. 40

- (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. 5

64 Panel ceasing to have any members

- (1) If the Panel ceases to have any members, a new Panel must be constituted under section 57(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. 10
- (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 63(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. 15
- (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. 20
- (5) The power under section 60(2) is not exercisable at times when the Panel has no members. 25

65 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. 30
- (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. 35
- (3) Subsection (2) does not apply where the change occurs as a result of the Panel being reconstituted as required by section 64(1).

Panel's role in relation to application

66 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 – 40

- (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.
- 67 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.
- 68 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.
- 69 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. 5
- (4) Subsection (2) –
 - (a) applies whether or not there is an allocation under section 68(2), and
 - (b) where there is such an allocation, is in addition to section 68(3)(a).
- (5) Subsection (3) does not authorise curtailment of power conferred by section 68(3)(a). 10

CHAPTER 3

THE SINGLE-COMMISSIONER PROCEDURE

The single Commissioner

70 Single Commissioner to handle application

- (1) This Chapter applies where – 15
 - (a) the Commission accepts an application for an order granting development consent, and
 - (b) under section 53(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. 20

71 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. 25
- (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 30
 - (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 35
 - (b) by the chief executive of the Commission,
 as to which Commissioner should be appointed.

- 72 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 73.
 - (2) A person may resign from being the single Commissioner by giving notice in writing to the Commission. 5
 - (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.
- 73 Single Commissioner continuing though ceasing to be Commissioner** 10
- (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, 15
 - (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. 20
 - (2) For the purpose of the application, the ex-Commissioner is to be treated as continuing to hold office until the ex-Commissioner has reported to the Commission, or (as the case may be) the Secretary of State, on the application.
 - (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 the ex-Commissioner had reported to the Commission, or (as the case may be) the Secretary of State, on the application. 25
 - (4) An election under subsection (1)(d) is effective only if made in the prescribed form.
- 74 Appointment of replacement single Commissioner** 30
- (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 71.
 - (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. 35
 - (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.

Single Commissioner’s role in relation to application

- 75 Single Commissioner to examine and report on application** 40
- (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. 5
- (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. 10
- (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). 15

Commission’s role in respect of application

76 Report from single Commissioner to be referred to Council

- (1) This section applies where, in a case within section 75(2)(a), the Commission receives the single Commissioner’s report on the application.
- (2) The Commission must – 20
 - (a) refer the application to the Council for decision, and
 - (b) supply the report to the Council.

77 Decisions made by the Council on the application

- (1) This section applies to decisions made by the Council in deciding the application. 25
- (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. 30

CHAPTER 4

EXAMINATION OF APPLICATIONS UNDER CHAPTER 2 OR 3

78 Chapter applies to examination by Panel or single Commissioner

- (1) This Chapter applies – 35
 - (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. 5
- 79 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 – 10
- (a) comply with –
- (i) the following provisions of this Chapter, and
- (ii) any rules made under section 88, 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. 15
- (3) The Examining authority may in examining the application disregard representations if the Examining authority considers that the representations – 20
- (a) are 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.
- 80 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. 25
- (2) After making that assessment, the Examining authority must hold a meeting.
- (3) The Examining authority must invite to the meeting – 30
- (a) the applicant, and
- (b) each other interested party,
- whether or not the Examining authority is required by rules under section 88, or chooses, also to invite other persons.
- (4) The purposes of the meeting are – 35
- (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 88.
- (5) Subsections (2) to (4) do not prevent the Examining authority holding other meetings. 40
- (6) Rules under section 88 –

- (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.

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81 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 80(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. 10
- (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. 15
- (5) In this section “procedural decision” means a decision about how the application is to be examined.

82 Written representations

- (1) The Examining authority’s examination of the application is to take the form of consideration of written representations about the application. 20
- (2) Subsection (1) has effect subject to –
 - (a) any requirement under section 83 or 84 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 – 25
 - (i) consideration of written representations, nor
 - (ii) consideration of oral representations made at a hearing.
- (3) Rules under section 88 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). 30

83 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 – 35
 - (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. 40

- (4) Where the Examining authority is a Panel acting under Chapter 2, any two or more hearings under subsection (2) may be held concurrently.

84 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. 5
- (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. 10

85 Hearings: general provisions

- (1) The following provisions of this section apply – 15
- (a) to a hearing under section 83(2), and
- (b) to an open-floor hearing (see section 84).
- (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. 20
- (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 an interested party and, if so, the matters to which the questioning may relate; 25
- (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 83(3) or 84(3)), or
- (ii) for any questioning by an interested party. 30
- (5) The Examining authority's powers under subsections (3) and (4) are subject to –
- (a) subsection (2), and
- (b) any rules made under section 88.
- (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 83(3) or 84(3), those powers may not be exercised so as to deprive the person entitled of all benefit of the entitlement. 35
- (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, exceptionally, oral questioning by an interested party is necessary in order to ensure – 40

- (a) adequate testing of any representations, or
 (b) that an interested party has a fair chance to put the party’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 83(3) or 84(3)) if the Examining authority considers that the representations – 5
- (a) are irrelevant 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 10
 (d) relate to compensation for compulsory acquisition of land.
- 86 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 – 15
- (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. 20
- (2) In subsection (1) “hearing” means –
- (a) a preliminary meeting under section 80,
 (b) a hearing under section 83(2),
 (c) an open-floor hearing (see section 84), 25
 (d) 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
 (e) 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). 30
- (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. 35
- 87 Representations not made orally may be made in writing** 40
- (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, 45

- (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. 5
- (2) The Examining authority must consider the written representations as part of the Examining authority's examination of the application, subject to section 79(3).

88 Procedure rules

- (1) The Lord Chancellor, 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. 10
- (2) 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. 15
- (3) 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. 20
- (4) Power under this section to make rules includes power to make different provision for different purposes.
- (5) Power under this section to make rules is exercisable by statutory instrument.
- (6) A statutory instrument containing rules under this section is subject to annulment pursuant to a resolution of either House of Parliament. 25

89 Timetable for examining, and deciding or 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. 30
- (2) The Examining authority is under a duty to decide the application, or (as the case may be) make its report under section 66(2)(b) or 75(1)(b), by the end of the period of 9 months beginning with the day after the start day.
- (3) The start day is the day on which the meeting required by section 80 is held or, if that meeting is held on two or more days, the later or latest of those days. 35
- (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. 40
- (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 16 of Schedule 1 for the financial year in which the power is exercised must mention and explain what has been done.

90 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. 5

91 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. 10
- (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.

92 Interpretation of Chapter 4: “interested party” and other expressions 15

- (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,
 - (c) the person is a relevant local authority,
 - (d) the person is the Greater London Authority and the land is in Greater London, or 20
 - (e) the person has made a relevant representation.
- (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. 25
- (4) In subsection (1) “relevant representation” means a representation about the application that –
- (a) is made in writing to the Commission and is received by the Commission no later than the deadline that applies under section 50 to the person making the representation, and 30
 - (b) contains material other than –
 - (i) material about compensation for compulsory acquisition of land,
 - (ii) material about the merits of policy set out in a national policy statement, and 35
 - (iii) material that is 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. 40
- (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 district council in England,
 - (b) a county council for an area in England for which there are no district councils, 5
 - (c) a London borough council,
 - (d) the Common Council of the City of London,
 - (e) the Council of the Isles of Scilly,
 - (f) a county council, or county borough council, in Wales, or 10
 - (g) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39).
- (9) In this section “the land” means the land to which the application relates or any part of that land.

CHAPTER 5

15

DECISIONS ON APPLICATIONS

93 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 66(2), the Secretary of State receives the Panel’s report on the application, or 20
 - (b) in a case within section 75(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. 25

94 Decisions of Panel and Council

30

- (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”), 35
 - (b) any matters prescribed in relation to development of that description, and
 - (c) any other matters which the Panel or Council thinks are both important and relevant to its decision. 40
- (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 the following subsections 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. 5
- (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. 10
- (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. 15
- 95 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— 20
- (a) any matters prescribed in relation to development of the description to which the application relates, and
 - (b) any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State’s decision.
- 96 Matters that may be disregarded when deciding application** 25
- (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 frivolous,
 - (b) relate to the merits of policy set out in a national policy statement, or 30
 - (c) relate to compensation for compulsory acquisition of land.
- (2) In this section “representation” includes evidence.
- CHAPTER 6**
- SUSPENSION OF DECISION-MAKING PROCESS
- 97 Suspension during review of national policy statement** 35
- (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 40 circumstances since the national policy statement was first published or

(if later) last reviewed, the statement should be reviewed before the application is decided.

- (2) The Secretary of State may direct that, until the review of the national policy statement has been completed and the Secretary of State has complied with section 6(2) in relation to the review, the following are suspended – 5
- (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 10

INTERVENTION BY SECRETARY OF STATE

98 When power to intervene arises

- (1) Section 99 applies 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, and 15
 - (b) the Secretary of State is satisfied that either the condition in subsection (2) or the condition in subsection (3) is met.
- (2) The condition is that intervention by the Secretary of State would be in the interests of defence or national security. 20
- (3) 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, 25
 - (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 30
 - (e) there is an urgent need in the national interest for the application to be decided before the national policy statement is reviewed.
- (4) In deciding whether the tests in subsection (3)(d) and (e) are met, the Secretary of State must have regard to the views of the Commission.

99 Power of Secretary of State to intervene 35

- (1) Where this section applies, 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 80(2). 40
- (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) A direction under subsection (1) must state the Secretary of State’s reasons for being satisfied that the condition in section 98(2) or (3) is met.

100 Effect of intervention by Secretary of State

- (1) This section applies if the Secretary of State gives a direction under section 99(1) in relation to an application. 5
- (2) The application must be referred to the Secretary of State.
- (3) The Commission must secure that –
- (a) an examination of the matters specified by the Secretary of State 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. 10
- (4) The Panel or single Commissioner must –
- (a) complete the examination under subsection (3)(a) by the end of the period specified by the Secretary of State, and 15
 - (b) report under subsection (3)(b) by the end of the period specified by the Secretary of State.
- (5) The Secretary of State must decide the application by the end of the period of 3 months beginning with the day after the day on which the Secretary of State receives the report of the Panel or single Commissioner under subsection (3)(b). 20
- (6) The Secretary of State may direct that things done in connection with the examination of the application under Chapter 2 or 3 of this Part are to be treated as done in connection with the examination under subsection (3)(a).
- (7) The following provisions of this Part apply (with any necessary modifications) where an application for an order granting development consent is referred to the Secretary of State under this section as they apply where an application is not so referred – 25
- (a) in Chapter 1, sections 53(2) to (5), 54 and 55;
 - (b) in Chapter 2, sections 56 (except subsection (1)(a)), 57 to 65, 66(2) to (4) and 67 to 69; 30
 - (c) in Chapter 3, sections 70 (except subsection (1)(a)), 71 to 74, and 75 (except subsection (2)(a));
 - (d) in Chapter 4, sections 78 to 88 and 90 to 92.

CHAPTER 8

35

GRANT OR REFUSAL

101 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 40
 - (b) refuse development consent.

- (2) Development consent may be granted for development specified in the application which is –
 - (a) development for which development consent is required, or
 - (b) other development in England which –
 - (i) is associated with that development (or any part of it), and 5
 - (ii) is not the construction or extension of one or more dwellings.
- (3) To the extent that development consent is granted for development falling within subsection (2)(b), section 29 applies to the development as it applies to development for which development consent is required.
- (4) In deciding whether development falls within subsection (2)(b), a Panel or the Council must have regard to any guidance issued by the Secretary of State. 10

102 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. 15
- (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 92).
- (3) The appropriate authority must publish the statement in such manner as the authority thinks appropriate. 20
- (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.

103 Orders granting development consent: formalities

- (1) This section applies in relation to an order granting development consent. 25
- (2) If the order is made by a Panel or the Council it must be made in the name, and under the seal, of the Commission.
- (2) If the order is made by the Secretary of State it must be made under the seal of the Secretary of State.
- (3) The appropriate authority must provide a copy of the order to each person who is an interested party in relation to the application for the purposes of Chapter 4 (see section 92). 30
- (4) The appropriate authority must publish the order in such manner as the authority thinks appropriate.
- (5) In subsections (3) and (4) “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. 35

CHAPTER 9

LEGAL CHALLENGES

- 104 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. 10

 - (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. 15

 - (3) A court may entertain proceedings for questioning a decision of the Commission under section 49 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 20
 - (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 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. 25

 - (5) “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. 30

 - (6) Subsections (4) and (5) 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. 35

PART 7

DEVELOPMENT CONSENT ORDERS

CHAPTER 1

CONTENT OF DEVELOPMENT CONSENT ORDERS

General

5

105 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 29(1)) would have been required for the development. 10
- (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 order may in particular include provision – 15
 - (a) authorising the acquisition of land, compulsorily or by agreement;
 - (b) authorising the creation, suspension, overriding or extinguishment of rights over land (including rights of navigation over water), compulsorily or by agreement;
 - (c) authorising the abrogation or modification of agreements relating to land; 20
 - (d) authorising the carrying out of specified excavation, mining, quarrying or boring operations in a specified area;
 - (e) authorising the operation of a generating station;
 - (f) authorising electric lines to be kept installed above ground; 25
 - (g) authorising the sale, exchange or appropriation of Green Belt land;
 - (h) for the freeing of 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;
 - (i) protecting the property or interests of any person; 30
 - (j) imposing or excluding obligations or liability in respect of acts or omissions;
 - (k) authorising the carrying out of surveys or the taking of soil samples;
 - (l) authorising the cutting down, uprooting, topping or lopping of trees or shrubs or cutting back their roots; 35
 - (m) authorising the removal, disposal or re-siting of apparatus;
 - (n) authorising the diversion of navigable or non-navigable watercourses;
 - (o) authorising the stopping up or diversion of highways;
 - (p) authorising the charging of tolls in relation to a proposed highway;
 - (q) designating a proposed highway as a trunk road or special road; 40
 - (r) specifying the classes of traffic authorised to use a proposed highway;
 - (s) authorising the appropriation of a highway for which the person proposing to construct a highway is the highway authority;

<ul style="list-style-type: none"> (t) authorising the transfer to the person proposing to construct a highway of a highway for which that person is not the highway authority; (u) specifying the highway authority for a proposed highway; (v) authorising the discharge of water into inland waters or underground strata; (w) for the payment of contributions; (x) for the payment of compensation; (y) for the submission of disputes to arbitration; (z) for the alteration of borrowing limits. 	5
(5) Subsections (3) and (4) are subject to the following provisions of this Chapter.	10
(6) An order granting development consent may –	
<ul style="list-style-type: none"> (a) apply, modify or exclude a provision of or made under an Act which relates to any matter for which provision may be made in the order; (b) make such amendments, repeals or revocations of provisions of or made under a local Act 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. 	15
(7) Subsection (6) is subject to sections 106 and 109.	
(8) The reference in subsection (4)(b) to rights over land includes a reference to rights to do, or to place and maintain, anything in, on or under land or in the air-space above its surface.	25
106 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 105(6)(a) and (b) (“the legislation powers”).	30
(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.	35
(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.	40
(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 –	45

“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;

5

“the Convention rights” has the same meaning as in the Human Rights Act 1998 (c. 42).

Compulsory acquisition

107 Purpose for which compulsory acquisition may be authorised 10

- (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, 15
 - (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 114 or 115.
- (3) The condition is that there is a compelling need in the public interest for the land to be acquired compulsorily. 20

108 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. 25
- (2) If a Panel or the Council proposes to make such an order, it must have regard to any guidance issued under subsection (1).

109 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. 30
- (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. 35
- (4) A compensation provision is a provision of or made under an Act which relates to compensation for the compulsory acquisition of land.

110 Statutory undertakers’ land

- (1) This section applies in relation to land (“statutory undertakers’ land”) if – 40

-
- (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 5
- (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. 10
- (2) An order granting development consent may include provision authorising the compulsory acquisition of statutory undertakers' land only to the extent that –
- (a) in a case where the Secretary of State is the decision-maker, the Secretary of State is satisfied of the matters set out in subsection (3); 15
- (b) in a case where a Panel or the Council is the decision-maker, the Secretary of State has notified the Commission that the Secretary of State is so satisfied.
- (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 20
- (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) An order granting development consent may include provision authorising the compulsory acquisition of a relevant right over statutory undertakers' land by the creation of a new right over land only to the extent that – 25
- (a) in a case where the Secretary of State is the decision-maker, the Secretary of State is satisfied of the matters set out in subsection (5);
- (b) in a case where a Panel or the Council is the decision-maker, the Secretary of State has notified the Commission that the Secretary of State is so satisfied. 30
- (5) 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 35
- (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.
- (6) In this section –
- “relevant right” means a right to which Schedule 3 to the Acquisition of Land Act 1981 (c. 67) applies; 40
- “statutory undertakers” has the meaning given by section 8 of that Act and also includes the undertakers which are statutory undertakers for the purposes of section 16(1) and (2) of that Act (see section 16(3) of that Act). 45
- (7) 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.

111 Local authority land and statutory undertakers' land: general

- (1) This section applies to land which—
 - (a) is the property of a local authority, or 5
 - (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—
 - (a) the compulsory acquisition of land to which this section applies, or 10
 - (b) the compulsory acquisition of a relevant right over 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 an application for an order granting development consent before the completion of the examination of the application, and 15
 - (b) the representation has not been withdrawn.
- (4) Subsection (2) is subject to section 112. 20
- (5) In this section—
 - “local authority” has the meaning given by section 7(1) of the Acquisition of Land Act 1981 (c. 67);
 - “relevant right” means a right to which Schedule 3 to that Act applies;
 - “statutory undertakers” has the meaning given by section 8 of that Act and also includes the undertakers which are statutory undertakers for the purposes of section 16(1) and (2) of that Act (see section 16(3) of that Act). 25
- (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 (c. 19)), 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. 30

112 Local authority and statutory undertakers' land: acquisition by public body

- (1) Section 111(2) does not apply to the compulsory acquisition of an interest in land if the person acquiring the interest is any of the following—
 - (a) a local authority;
 - (b) a National Park authority;
 - (c) an urban development corporation;
 - (d) a Welsh planning board; 40
 - (e) a statutory undertaker;
 - (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 undertaker” has the meaning given by section 8 of that Act and also includes the authorities, bodies and undertakers 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.

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113 National Trust land

(1) This section applies to land belonging to the National Trust which is held by the Trust inalienably. 10

(2) An order granting development consent is subject to special parliamentary procedure, to the extent that the order authorises—

(a) the compulsory acquisition of land to which this section applies, or

(b) the compulsory acquisition of a relevant right over land to which this section applies,

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if the condition in subsection (3) is met.

(3) The condition is that—

(a) a representation has been made by the National Trust about an application for an order granting development consent before the completion of the examination of the application, and

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(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).

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(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);

“relevant right” means a right to which Schedule 3 to the Acquisition of Land Act 1981 applies.

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114 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) 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—

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(a) in a case where the Secretary of State is the decision-maker, the Secretary of State is satisfied that one of subsections (3) to (5) applies;

(b) in a case where a Panel or the Council is the decision-maker, the Secretary of State has notified the Commission that the Secretary of State is so satisfied.

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(3) This subsection applies if—

(a) replacement land has been or will be given in exchange for the order land, and

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- (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.
- (4) This subsection applies if the order land is being purchased in order to secure its preservation or improve its management. 5
- (5) This subsection applies if –
 - (a) the order land does not exceed 209.03 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. 10
- (6) 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 (3)(a) in the prospective seller and subject to the rights, trusts and incidents mentioned in subsection (3)(b), and
 - (b) for discharging the order land from all rights, trusts and incidents to which it is subject. 15
- (7) Subsection (6)(b) does not apply in a case where subsection (4) applies. 20
- (8) In this section –
 - “common” includes any land subject to be enclosed under the Inclosure Acts 1845 to 1882, and any town or village green;
 - “fuel or field garden allotment” means any allotment set out as a fuel allotment, or a field garden allotment, under an Inclosure Act; 25
 - “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;
 - “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; 30
 - “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.

115 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. 35
- (2) An order granting development consent is subject to special parliamentary procedure, to the extent that the order authorises the compulsory acquisition of a relevant right over land to which this section applies, unless –
 - (a) in a case where the Secretary of State is the decision-maker, the Secretary of State is satisfied that one of subsections (3) to (6) applies; 40
 - (b) in a case where a Panel or the Council is the decision-maker, the Secretary of State has notified the Commission that the Secretary of State is so satisfied.
- (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 – 45

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- (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 5
 - (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). 10
- (5) This subsection applies if the order right is being acquired in order to secure the preservation or improve the management of the order land.
- (6) This subsection applies if –
- (a) the order land does not exceed 209.03 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 15
 - (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. 20
- (7) If an order granting development consent authorises the compulsory acquisition of a relevant right over 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 persons in whom the order land is vested and subject to the rights, trusts and incidents mentioned in subsection (4)(b), and 25
 - (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. 30
- (8) Subsection (7)(b) does not apply in a case where subsection (5) applies.
- (9) In this section –
- “common”, “fuel or field garden allotment” and “open space” have the same meanings as in section 114;
 - “the order land” means the land to which this section applies over which the order right is to be exercisable; 35
 - “the order right” means the relevant right authorised to be compulsorily acquired;
 - “relevant right” means a right to which Schedule 3 to the Acquisition of Land Act 1981 (c. 67) applies; 40
 - “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 45
 - (c) the public.

116 Crown land

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 5
- (b) the appropriate Crown authority consents to the acquisition.

117 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. 10
- (2) In this section –
 - “the order land” means the land authorised to be compulsorily acquired;
 - “the prospective purchaser” means the person authorised to compulsorily acquire land by the order granting development consent. 15
- (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. 20
- (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. 30
- (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) stating that the order granting development consent includes provision authorising the compulsory acquisition of the land, and
 - (c) stating that a person aggrieved by the order may challenge the order only in accordance with section 104. 35
- (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. 40

Miscellaneous

118 Public rights of way

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 5
- (b) the provision of an alternative right of way is not required.

119 Excavation, mining, quarrying and boring operations

An order granting development consent may include provision authorising the activities mentioned in section 105(4)(d) only if the development to which the order relates is or includes the underground storage of gas. 10

120 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. 15

121 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.

122 Diversion of watercourses

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- (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. 25
- (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. 30
- (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.

123 Highways

- (1) An order granting development consent may include provision authorising the charging of tolls in relation to a proposed highway only if a request to that effect has been included in the application for the order. 35
- (2) 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 by the person of a highway which is designated by the order as a special road.

124 Discharge of water

- (1) This section applies if – 5
 - (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. 10
- (2) The order does not have the effect of conferring any such power on that person.

125 Development of Green Belt land

- (1) This section applies if an order granting development consent includes provision – 15
 - (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. 20
- (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. 25
- (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). 30

CHAPTER 2

GENERAL

126 Duration of development consent order 35

- (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. 40

- (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.

127 When development begins

- (1) For the purposes of this Act development is taken to begin on the earliest date on which any material operation comprised in the development begins to be carried out. 5
- (2) “Material operation” means –
- (a) a work of construction in the course of the erection, extension, alteration or re-erection of a building; 10
 - (b) a work of demolition of a building;
 - (c) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;
 - (d) the laying of an underground main or pipe –
 - (i) to the foundations, or part of the foundations, of a building, or 15
 - (ii) to a trench such as is mentioned in paragraph (c);
 - (e) an operation in the course of laying out or constructing a road or part of a road;
 - (f) a change in the use of land which constitutes material development.
- (3) “Material development” has the meaning given by section 56(5) of TCPA 1990. 20

128 Benefit of development consent order

- (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 any contrary provision made in the order. 25

129 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. 30
- (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.

PART 8

ENFORCEMENT

Offences

35

130 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. 5

131 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. 10
- (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. 15

132 Time limits

- (1) A person may not be charged with an offence under section 130 after the end of the period of 4 years beginning with the date on which the development was substantially completed. 20
- (2) A person may not be charged with an offence under section 131 after the end of the period of 4 years beginning with the later of –
 - (a) the date on which the development was substantially completed, and
 - (b) the date on which the breach or failure to comply occurred.
- (3) This section does not prevent a person being charged with an offence under section 130 or 131 if, during the period of 4 years ending with the person being charged –
 - (a) an information notice has been served under section 137, or
 - (b) an injunction has been applied for under section 141. 25

Rights of entry 30

133 Right to enter without warrant

- (1) This section applies if a local planning authority has reasonable grounds for suspecting that an offence under section 130 or 131 is being, or has been, committed on or in respect of any land.
- (2) A person authorised in writing by the local planning authority may at any reasonable hour enter the land for the purpose of ascertaining whether an offence under section 130 or 131 is being, or has been, committed on the land. 35
- (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. 40

134 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 130 or 131 is being, or has been, committed on or in respect of any land, and 5
 - (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 10
 - (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 a 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. 15
- (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 20
 - (b) at a reasonable hour, unless the case is one of urgency.

135 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 133 or 134 (“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, 25
 - (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. 30
- (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. 35
- (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 Lands Tribunal. 40
- (6) In relation to the determination of any such question, the provisions of sections 2 and 4 of the Land Compensation Act 1961 (c. 33) apply subject to any necessary modifications and to any other prescribed modifications.

136 Rights of entry: the Crown

Sections 133 and 134 do not apply to Crown land.

Information notices

137 Power to require information

- (1) If it appears to a local planning authority that an offence under section 130 or 131 may have been committed on or in respect of any land, it may serve an information notice. 5
- (2) 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. 10
- (3) 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 15
 - (b) information about the provisions of any order granting development consent for development of the land.
- (4) An information notice must inform the person on whom it is served of the likely consequences of a failure to respond to the notice.
- (5) A requirement of an information notice is complied with by giving the required information to the local planning authority in writing. 20

138 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 137 before the end of the period mentioned in subsection (2). 25
- (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. 30
- (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. 35

*Notices of unauthorised development***139 Notice of unauthorised development**

- (1) Subsection (2) applies if a person is found guilty of an offence under section 130.
- (2) The 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 131.
- (4) The 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.

140 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 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 a 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 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 130 or 131.
- (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); 5
- 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. 10
- (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 a 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). 15
- (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.

Injunctions

- 141 Injunctions** 20
- (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 130 or 131. 25
- (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.

Isles of Scilly

- 142 Isles of Scilly** 30
- (1) The Secretary of State may by order provide for the exercise by the Council of the Isles of Scilly 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. 35

PART 9

CHANGES TO EXISTING PLANNING REGIMES

CHAPTER 1

CHANGES RELATED TO DEVELOPMENT CONSENT REGIME

Planning obligations

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143 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).”

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Blighted land

144 Blighted land: England and Wales

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- (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.

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Land identified in national policy statements

25 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

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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.”

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- (3) 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 the Secretary of State.”

- (4) In section 171(1) (general interpretation of Chapter 2 of Part 6) at the appropriate place insert –

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““national policy statement” has the meaning given by section 5(2) of the Planning Act 2008;”.

145 Blighted land: Scotland

- (1) The Town and Country Planning (Scotland) Act 1997 (c. 8) is amended as follows.

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- (2) In Schedule 14 (blighted land) after paragraph 16 insert –
- “17 (1) This paragraph applies to land which relates to the construction 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,
- 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.
- Land identified in national policy statements so far as relating to certain pipe-lines*
- 18 This paragraph applies to land which is in a location identified in a national policy statement as suitable (or potentially suitable) for the construction 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.
- 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 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 the Secretary of State.”
- (5) 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);”, and
 - (b) after the definition of “hereditament” insert –
 - ““national policy statement” has the meaning given by section 5(2) of the Planning Act 2008;”.

CHAPTER 2

OTHER CHANGES TO EXISTING PLANNING REGIMES

Local development

146 Local development documents

- (1) PCPA 2004 is amended as follows. 5
- (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;” 10
 - (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”. 15
- (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”; 20
 - (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”; 25
 - (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) – 30
 - (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).”;35
 - (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). 40
- (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).”

Climate change

147 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 contributes to the mitigation of, and adaptation to, climate change.”

Validity of strategies, plans and documents 25

148 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); 5
 - (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 – 10
- (a) wholly or in part;
 - (b) generally or as it affects the property of the applicant.”

149 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. 15
- (2) In that section, after subsection (3) insert – 20
 - “(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). 25
 - (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 – 30
 - (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; 35
 - (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); 40
 - (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 – 45
 - (a) wholly or in part;
 - (b) generally or as it affects the property of the applicant.”

Determination of applications

150 Determination of planning applications by officers

- (1) TCPA 1990 is amended as follows.
- (2) After section 75 insert –

“75A Determination of planning applications by officers	5
<ol style="list-style-type: none"> (1) A local planning authority in England must – <ol style="list-style-type: none"> (a) specify the descriptions of planning applications which, following determination by an officer of the authority, are to be reviewable by the authority under section 75C, and (b) make arrangements under section 101 of the Local Government Act 1972 for planning applications of the descriptions so specified to be determined by officers of the authority. 	10
<ol style="list-style-type: none"> (2) A local planning authority in England must comply with subsection (1) before the end of the prescribed period. 	
<ol style="list-style-type: none"> (3) A local planning authority may at any time vary the descriptions of planning applications specified under subsection (1)(a). 	15
<ol style="list-style-type: none"> (4) The Secretary of State may by regulations make provision about – <ol style="list-style-type: none"> (a) the specification of descriptions of planning applications under subsection (1)(a), and (b) the making of arrangements pursuant to subsection (1)(b) and the content of such arrangements. 	20
<ol style="list-style-type: none"> (5) The regulations may in particular include provision – <ol style="list-style-type: none"> (a) prescribing descriptions of planning application which must, and descriptions of planning application which must not, be specified under subsection (1)(a); (b) prescribing descriptions of officers who are permitted, and descriptions of officers who are not permitted, to be authorised to determine planning applications by arrangements made pursuant to subsection (1)(b); (c) prohibiting prescribed descriptions of officers from being authorised by such arrangements to determine planning applications of a prescribed description; (d) imposing consultation and publication requirements. 	25
<ol style="list-style-type: none"> (6) Section 101(4) of the Local Government Act 1972 does not apply in relation to arrangements made by a local planning authority pursuant to subsection (1)(b) of this section; but such arrangements do not prevent the authority, or a committee or sub-committee of the authority, from determining a planning application in relation to which the arrangements have effect. 	35
<ol style="list-style-type: none"> (7) This section does not affect the power of a local planning authority in England to make arrangements under section 101 of the Local Government Act 1972 for the determination of planning applications which are not of a description specified by the authority under subsection (1)(a) of this section. 	40

- (8) For the purposes of this section, sections 75B to 75D and section 78ZA a “planning application” is –
 - (a) an application for planning permission to which section 73 does not apply;
 - (b) an application for planning permission to which section 73 applies, but only if the previous planning permission referred to in that section is one to which subsection (9) of this section applies; 5
 - (c) an application for the consent, agreement or approval of a local planning authority required by a condition imposed on a planning permission to which subsection (9) applies; 10
 - (d) an application for the approval of a local planning authority required under a development order.
 - (9) This subsection applies to a planning permission granted –
 - (a) by an officer of a local planning authority acting under arrangements made pursuant to subsection (1)(b), or 15
 - (b) by a local planning authority acting under section 75C or 75D.
- 75B Determination of applications: supplementary provision**
- (1) The Secretary of State may by regulations make provision about the determination of a planning application by an officer of a local planning authority acting under arrangements made pursuant to section 75A(1)(b). 20
 - (2) The regulations may in particular apply prescribed provisions of or made under this Part, with such modifications as may be prescribed, in relation to such an application. 25
 - (3) The Secretary of State may also by regulations make provision imposing requirements which apply where a local planning authority, or a committee or sub-committee of a local planning authority, decide to determine a planning application themselves by virtue of section 75A(6). 30
- 75C Review of officer’s decision**
- (1) This section applies in relation to a planning application if an officer of a local planning authority acting under arrangements made pursuant to section 75A(1)(b) –
 - (a) refuses the application, or 35
 - (b) grants the permission, consent, agreement or approval to which the application relates subject to conditions.
 - (2) The local planning authority must review the case if –
 - (a) the applicant asks them to do so, and
 - (b) the applicant’s request is made in the prescribed form and before the end of the prescribed period. 40
 - (3) The Secretary of State may by regulations make provision about reviews under this section.
 - (4) The regulations may in particular include provision –
 - (a) about the procedure to be followed on a review; 45

-
- (b) about the circumstances in which oral representations may be made on a review;
 - (c) about the documents to be submitted as part of a review;
 - (d) about the matters that may be raised on a review;
 - (e) requiring a local planning authority conducting a review to have regard to the development plan; 5
 - (f) prescribing a period within which the local planning authority is to complete the review;
 - (g) requiring notice in the prescribed form to be given of the decision on a review. 10
- (5) On a review under this section a local planning authority may –
- (a) uphold the decision under review, or
 - (b) reverse or vary any part of that decision.
- (6) A local planning authority must not arrange for the discharge of their functions under this section by an officer of the authority. 15
- 75D Determination following failure to give notice of decision**
- (1) This section applies in relation to a planning application if –
- (a) arrangements made pursuant to section 75A(1)(b) provide for the application to be determined by an officer of a local planning authority, and 20
 - (b) there has been no decision by the authority, or by a committee or sub-committee of the authority, to determine the application themselves (by virtue of section 75A(6)).
- (2) It applies if the local planning authority have not complied with subsection (3) – 25
- (a) within such period as may be prescribed by a development order, or
 - (b) within such extended period as may at any time be agreed upon in writing between the applicant and the authority.
- (3) The local planning authority complies with this subsection by giving notice to the applicant – 30
- (a) of their decision on the application,
 - (b) that the authority have exercised their power under section 70A or 70B to decline to determine the application, or
 - (c) that the application has been referred to the Secretary of State in accordance with directions given under section 77. 35
- (4) The local planning authority must determine the application if –
- (a) the applicant asks them to do so, and
 - (b) the applicant’s request is made in the prescribed form and before the end of the prescribed period. 40
- (5) The Secretary of State may by regulations make provision about the determination of a planning application by a local planning authority acting under this section.
- (6) The regulations may in particular apply prescribed provisions of or made under this Part, with such modifications as may be prescribed, in relation to such an application. 45

- (7) A local planning authority must not arrange for the discharge of their functions under this section by an officer of the authority.”
- (3) In section 78 (appeals to the Secretary of State against planning decisions and failure to take such decisions) after subsection (5) insert –
- “(6) This section is subject to section 78ZA.” 5
- (4) After section 78 insert –
- “78ZA Restrictions on right of appeal under section 78**
- (1) This section applies in relation to a planning application if arrangements made pursuant to section 75A(1)(b) provide for the application to be determined by an officer of a local planning authority. 10
- (2) An appeal may be brought under section 78(1) against the refusal, or grant subject to conditions, of the planning application only if the local planning authority –
- (a) have been required under section 75C to review the case, and
- (b) have failed to complete their review by the end of the period prescribed by regulations made by virtue of section 75C(4)(f). 15
- (3) The time prescribed by a development order for the service of notice of such an appeal must not be less than 21 days from the end of the period prescribed by regulations made by virtue of section 75C(4)(f).
- (4) An appeal may be brought under section 78(2) in relation to the planning application only if – 20
- (a) the local planning authority, or a committee or sub-committee of the authority, have decided to determine the application themselves (by virtue of section 75A(6)), or
- (b) the authority have been required under section 75D to determine the application.” 25
- 151 Determination of applications for certificates of lawful use or development by officers**
- (1) TCPA 1990 is amended as follows.
- (2) After section 193 insert – 30
- “193A Determination of applications for certificates under sections 191 and 192 by officers**
- (1) A local planning authority in England must –
- (a) specify the descriptions of applications for certificates under sections 191 and 192 which, following determination by an officer of the authority, are to be reviewable by the authority under section 193C, and 35
- (b) make arrangements under section 101 of the Local Government Act 1972 for applications of the descriptions so specified to be determined by officers of the authority. 40
- (2) A local planning authority in England must comply with subsection (1) before the end of the prescribed period.

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- (3) A local planning authority may at any time vary the descriptions of planning applications specified under subsection (1)(a).
- (4) The Secretary of State may by regulations make provision about—
- (a) the specification of descriptions of applications under subsection (1)(a), and 5
 - (b) the making of arrangements pursuant to subsection (1)(b) and the content of such arrangements.
- (5) The regulations may in particular include provision—
- (a) prescribing descriptions of applications which must, and descriptions of applications which must not, be specified under subsection (1)(a); 10
 - (b) prescribing descriptions of officers who are permitted, and descriptions of officers who are not permitted, to be authorised to determine applications by arrangements made pursuant to subsection (1)(b); 15
 - (c) prohibiting prescribed descriptions of officers from being authorised by such arrangements to determine applications of a prescribed description;
 - (d) imposing consultation and publication requirements.
- (6) Section 101(4) of the Local Government Act 1972 does not apply in relation to arrangements made by a local planning authority pursuant to subsection (1)(b) of this section; but such arrangements do not prevent the authority, or a committee or sub-committee of the authority, from determining an application in relation to which the arrangements have effect. 20
- (7) This section does not affect the power of a local planning authority in England to make arrangements under section 101 of the Local Government Act 1972 for the determination of applications for certificates under sections 191 and 192 of this Act which are not of a description specified by the authority under subsection (1)(a) of this section. 30
- 193B Determination of applications: supplementary provision**
- (1) The Secretary of State may by regulations make provision about the determination of an application for a certificate under section 191 or 192 by an officer of a local planning authority acting under arrangements made pursuant to section 193A(1)(b). 35
- (2) The regulations may in particular apply prescribed provisions of or made under sections 191 to 193, with such modifications as may be prescribed, in relation to such an application.
- (3) The Secretary of State may also by regulations make provision imposing requirements which apply where a local planning authority, or a committee or sub-committee of a local planning authority, decide to determine an application for a certificate under section 191 or 192 themselves by virtue of section 193A(6). 40
- 193C Review of officer's decision** 45
- (1) This section applies in relation to an application for a certificate under section 191 or 192 if an officer of a local planning authority acting under

arrangements made pursuant to section 193A(1)(b) refuses the application, or refuses it in part.

- (2) The local planning authority must review the case if –
 - (a) the applicant asks them to do so, and
 - (b) the applicant’s request is made in the prescribed form and before the end of the prescribed period. 5
- (3) The Secretary of State may by regulations make provision about reviews under this section.
- (4) The regulations may in particular include provision –
 - (a) about the procedure to be followed on a review; 10
 - (b) about the circumstances in which oral representations may be made on a review;
 - (c) about the documents to be submitted as part of a review;
 - (d) about the matters that may be raised on a review;
 - (e) prescribing a period within which the local planning authority is to complete the review; 15
 - (f) requiring notice in the prescribed form to be given of the decision on a review.
- (5) On a review under this section a local planning authority may –
 - (a) uphold the decision under review, 20
 - (b) modify the certificate granted by the officer, or
 - (c) grant the applicant a certificate under section 191 or, as the case may be, 192.
- (6) A local planning authority must not arrange for the discharge of their functions under this section by an officer of the authority. 25
- (7) Section 195(4) applies for the purposes of this section as it applies for the purposes of that section.

193D Determination following failure to give notice of decision

- (1) This section applies in relation to an application for a certificate under section 191 or 192 if –
 - (a) arrangements made pursuant to section 193A(1)(b) provide for the application to be determined by an officer of a local planning authority, and
 - (b) there has been no decision by the authority, or by a committee or sub-committee of the authority, to determine the application themselves (by virtue of section 193A(6)). 35
- (2) It applies if the local planning authority have not given notice to the applicant of their decision on the application –
 - (a) within such period as may be prescribed by a development order, or 40
 - (b) within such extended period as may at any time be agreed upon in writing between the applicant and the authority.
- (3) The local planning authority must determine the application if –
 - (a) the applicant asks them to do so, and
 - (b) the applicant’s request is made in the prescribed form and before the end of the prescribed period. 45

-
- (4) The Secretary of State may by regulations make provision about the determination of an application by a local planning authority acting under this section.
- (5) The regulations may in particular apply prescribed provisions of or made under sections 191 to 193, with such modifications as may be prescribed, in relation to such an application. 5
- (6) A local planning authority must not arrange for the discharge of their functions under this section by an officer of the authority.”
- (3) In section 195 (appeals to the Secretary of State against decisions under sections 191 and 192 and failure to take such decisions) – 10
- (a) after subsection (1) insert –
- “(1A) Subsection (1) is subject to section 195A.”,
- (b) in subsection (2) for “such appeal” substitute “appeal under subsection (1)”, and
- (c) in subsection (4) after “this section” insert “and section 195A”. 15
- (4) After section 195 insert –
- “195A Restrictions on right of appeal under section 195**
- (1) This section applies in relation to an application for a certificate under section 191 or 192 if arrangements made pursuant to section 193A(1)(b) provide for the application to be determined by an officer of a local planning authority. 20
- (2) An appeal may be brought under section 195(1)(a) against the refusal, or refusal in part, of the application only if the local planning authority –
- (a) have been required under section 193C to review the case, and 25
- (b) have failed to complete their review by the end of the period prescribed by regulations made by virtue of section 193C(4)(e).
- (3) An appeal may be brought under section 195(1)(b) in relation to the application only if –
- (a) the local planning authority, or a committee or sub-committee of the authority, have decided to determine the application themselves (by virtue of section 193A(6)), or 30
- (b) the authority have been required under section 193D to determine the application.”
- 152 Validity of decisions made on reviews** 35
- (1) TCPA 1990 is amended as follows.
- (2) In section 284(1) (validity of certain plans, orders, decisions and directions) before paragraph (b) insert –
- “(aa) a decision on a review under section 75C or 193C; or”

- (3) After section 286 insert –

“286A Proceedings for questioning validity of decisions made on reviews under ss 75C and 193C

- (1) A person aggrieved by a decision on a review under section 75C or 193C may make an application to the High Court on the ground – 5
- (a) that the decision is not within the power conferred by the section under which the review was carried out, or
 - (b) that any requirements of this Act, or of any order, regulations or rules made under this Act, which are applicable to the decision have not been complied with. 10
- (2) An application under this section must be made to the High Court within 6 weeks from the date on which the decision on the review is taken.
- (3) The High Court may make an interim order suspending the operation of the decision until the final determination of the proceedings. 15
- (4) The High Court may quash the decision on the review if satisfied –
- (a) that the decision is not within the power conferred by the section under which the review was carried out, or
 - (b) that the interests of the applicant have been substantially prejudiced by a failure to comply in relation to the decision with any of the requirements mentioned in subsection (1)(b) of this section.” 20

153 Determination of listed building applications by officers

- (1) The Listed Buildings Act is amended as follows.
- (2) After section 19 insert – 25

“Determination of applications by officers

19A Determination of listed building applications by officers

- (1) A local planning authority in England must –
- (a) specify the descriptions of listed building applications which, following determination by an officer of the authority, are to be reviewable by the authority under section 19C, and 30
 - (b) make arrangements under section 101 of the Local Government Act 1972 for listed building applications of the descriptions so specified to be determined by officers of the authority.
- (2) A local planning authority in England must comply with subsection (1) before the end of the prescribed period. 35
- (3) A local planning authority may at any time vary the descriptions of listed building applications specified under subsection (1)(a).
- (4) The Secretary of State may by regulations make provision about –
- (a) the specification of descriptions of listed building applications under subsection (1)(a), and 40
 - (b) the making of arrangements pursuant to subsection (1)(b) and the content of such arrangements.

- (5) The regulations may in particular include provision –
- (a) prescribing descriptions of listed building application which must, and descriptions of listed building application which must not, be specified under subsection (1)(a);
 - (b) prescribing descriptions of officers who are permitted, and descriptions of officers who are not permitted, to be authorised to determine listed building applications by arrangements made pursuant to subsection (1)(b);
 - (c) prohibiting prescribed descriptions of officers from being authorised by such arrangements to determine listed building applications of a prescribed description;
 - (d) imposing consultation and publication requirements.
- (6) Section 101(4) of the Local Government Act 1972 does not apply in relation to arrangements made by a local planning authority pursuant to subsection (1)(b) of this section; but such arrangements do not prevent the authority, or a committee or sub-committee of the authority, from determining a listed building application in relation to which the arrangements have effect.
- (7) This section does not affect the power of a local planning authority in England to make arrangements under section 101 of the Local Government Act 1972 for the determination of listed building applications which are not of a description specified by the authority under subsection (1)(a) of this section.
- (8) For the purposes of this section, sections 19B to 19D and section 20ZA a “listed building application” is –
- (a) an application for listed building consent;
 - (b) an application for the variation or discharge of conditions subject to which listed building consent to which subsection (9) applies has been granted;
 - (c) an application for the approval of a local planning authority required by a condition imposed on the granting of listed building consent to which subsection (9) applies.
- (9) This subsection applies to listed building consent granted –
- (a) by an officer of a local planning authority acting under arrangements made pursuant to subsection (1)(b), or
 - (b) by a local planning authority acting under section 19C or 19D.

19B Determination of applications: supplementary provision

- (1) The Secretary of State may by regulations make provision about the determination of a listed building application by an officer of a local planning authority acting under arrangements made pursuant to section 19A(1)(b).
- (2) The regulations may in particular apply prescribed provisions of or made under this Chapter, with such modifications as may be prescribed, in relation to such an application.
- (3) The Secretary of State may also by regulations make provision imposing requirements which apply where a local planning authority, or a committee or sub-committee of a local planning authority, decide

to determine a listed building application themselves by virtue of section 19A(6).

19C Review of officer's decision

- (1) This section applies in relation to a listed building application if an officer of a local planning authority acting under arrangements made pursuant to section 19A(1)(b) – 5
 - (a) refuses the application or grants the consent or approval to which the application relates subject to conditions, or
 - (b) in the case of an application for the variation or discharge of conditions subject to which listed building consent has been granted, grants the application and adds new conditions. 10
- (2) The local planning authority must review the case if –
 - (a) the applicant asks them to do so, and
 - (b) the applicant's request is made in the prescribed form and before the end of the prescribed period. 15
- (3) The Secretary of State may by regulations make provision about reviews under this section.
- (4) The regulations may in particular include provision –
 - (a) about the procedure to be followed on a review;
 - (b) about the circumstances in which oral representations may be made on a review; 20
 - (c) about the documents to be submitted as part of a review;
 - (d) about the matters that may be raised on a review;
 - (e) prescribing a period within which the local planning authority is to complete the review; 25
 - (f) requiring notice in the prescribed form to be given of the decision on a review.
- (5) On a review under this section a local planning authority may –
 - (a) uphold the decision under review, or
 - (b) reverse or vary any part of the officer's decision. 30
- (6) A local planning authority must not arrange for the discharge of their functions under this section by an officer of the authority.

19D Determination following failure to give notice of decision

- (1) This section applies in relation to a listed building application if –
 - (a) arrangements made pursuant to section 19A(1)(b) provide for the application to be determined by an officer of a local planning authority, and 35
 - (b) there has been no decision by the authority, or by a committee or sub-committee of the authority, to determine the application themselves (by virtue of section 19A(6)). 40
- (2) It applies if the local planning authority have not complied with subsection (3) –
 - (a) within the relevant period (within the meaning of section 20) from the date of the receipt of the application, or
 - (b) within such extended period as may at any time be agreed upon in writing between the applicant and the authority. 45

-
- (3) The local planning authority complies with this subsection by giving notice to the applicant –
- (a) of their decision on the application,
 - (b) that the authority have exercised their power under section 81A or 81B to decline to determine the application, or 5
 - (c) in the case of such an application as is mentioned in section 19A(8)(a) or (b), that the application has been referred to the Secretary of State in accordance with directions given under section 12.
- (4) The local planning authority must determine the application if – 10
- (a) the applicant asks them to do so, and
 - (b) the applicant’s request is made in the prescribed form and before the end of the prescribed period.
- (5) The Secretary of State may by regulations make provision about the determination of an application by a local planning authority acting under this section. 15
- (6) The regulations may in particular apply prescribed provisions of or made under this Chapter, with such modifications as may be prescribed, in relation to such an application.
- (7) A local planning authority must not arrange for the discharge of their functions under this section by an officer of the authority.” 20
- (3) In section 20 (right to appeal to Secretary of State against decision or failure to take decision) after subsection (4) insert –
- “(5) This section is subject to section 20ZA.”,
- (4) After section 20 insert – 25
- “20ZA Restrictions on right of appeal under section 20**
- (1) This section applies in relation to a listed building application if arrangements made pursuant to section 19A(1)(b) provide for the application to be determined by an officer of a local planning authority.
- (2) An appeal may be brought under section 20(1) against the refusal, grant subject to conditions or grant with the addition of new conditions, of the listed building application only if the local planning authority – 30
- (a) have been required under section 19C to review the case, and
 - (b) have failed to complete their review by the end of the period prescribed by regulations made by virtue of section 19C(4)(f). 35
- (3) An appeal may be brought under section 20(2) in relation to the listed building application only if –
- (a) the local planning authority, or a committee or sub-committee of the authority, have decided to determine the application themselves (by virtue of section 19A(6)), or 40
 - (b) the authority have been required under section 19D to determine the application.”
- (5) In section 62(1) (validity of certain orders and decisions) before paragraph (a) insert –
- “(za) a decision on a review under section 19C; or”.
- 45

- (6) In section 63(2) (power of authority directly concerned with order or decision to apply to High Court) after “or decision” insert “(other than a decision on a review under section 19C)”.

154 Power to decline to determine subsequent application

- (1) In section 70A of TCPA 1990 (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 or abandoned”. 5
- (2) In section 81A of the Listed Buildings Act (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 or abandoned”. 10

Planning permission

155 Removal of right to compensation where notice given of withdrawal of planning permission

In section 108 of TCPA 1990 (compensation for refusal or conditional grant of planning permission formerly granted by development order or local development order) after subsection (3A) insert – 15

- “(3B) This section does not apply if –
- (a) planning permission granted by a development order or a local development order for development in England is withdrawn – 20
 - (i) by the revocation or amendment of the order, or
 - (ii) by the issue of directions under powers conferred by the order, and
 - (b) notice of the proposal to revoke or amend the order, or to issue the directions, was published in the prescribed manner not less than 12 months before the revocation, amendment or directions took effect.” 25

156 Power to make non-material changes to planning permission

After section 96 of TCPA 1990 insert – 30

“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. 35
- (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 – 40
- (a) to impose new conditions;

(b) to remove or alter existing conditions.”

Trees

157 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 – 5
 - (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). 10
- (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). 15
- (6) Omit sections 203 to 205 (compensation in connection with tree preservation orders).
- (7) After section 202 insert – 20

“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). 25
 - (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” – 30
 - (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. 35

202B Tree preservation regulations: making of tree preservation orders

- (1) Tree preservation regulations may make provision about – 40
 - (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 – 5
 - (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; 10
 - (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 – 15
 - (a) cutting down of trees;
 - (b) topping of trees;
 - (c) lopping of trees;
 - (d) uprooting of trees;
 - (e) wilful damage of trees; 20
 - (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. 25
- (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 30

- (1) This section applies if tree preservation regulations make provision under section 202C(4).
- (2) Tree preservation regulations may make provision – 35
 - (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 – 40
 - (a) conditions as to planting of trees;
 - (b) conditions requiring approvals to be obtained from the person giving 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
- (5) 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. 10
- (6) 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; 15
 - (e) where there is a failure to decide an application for such an approval.
- (7) Tree preservation regulations may make provision in connection with appeals under provision made under subsection (6), including –
 - (a) provision imposing time limits; 20
 - (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). 25

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; 30
 - (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. 35
- (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. 45

- (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 Lands Tribunal, the First-tier Tribunal or the Upper Tribunal. 5

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. 10

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 contained in the planning Acts. 15
- (2) 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; 20
 - (b) any provision that could have been made under section 199(2) and (3).
- (3) Tree preservation regulations may contain incidental, supplementary, consequential, transitional and transitory provision and savings.”
- (8) Schedule 3 makes further amendments in connection with tree preservation orders. 25

158 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 35
 - (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 40
 - (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.

Use of land

159 Use of land: power to override easements and other rights

Schedule 4 (use of land: power to override easements and other rights when use is in accordance with planning permission) has effect.

Appeal procedure

5

160 Determination of procedure for certain appeals

- (1) After section 319 of TCPA 1990 insert –

“Determination of appeal procedure

319A Determination of procedure for certain appeals

- | | |
|--|----|
| (1) The Secretary of State must make a determination as to the procedure by which an appeal to which this section applies is to be considered. | 10 |
| (2) A determination under subsection (1) must provide for the appeal to be considered in whichever of the following ways appears to the Secretary of State to be most appropriate – | |
| (a) at a local inquiry; | 15 |
| (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 an appeal to which this section applies before the end of the prescribed period beginning with the day on which the Secretary of State receives notice of the appeal. | 20 |
| (4) A determination under subsection (1) may be varied by a subsequent determination under that subsection at any time before the appeal is determined. | |
| (5) The Secretary of State must notify the appellant and the local planning authority of any determination made under subsection (1). | 25 |
| (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 appeal under section 78 against a decision of a local planning authority in England; | 30 |
| (b) an appeal under section 174 against an enforcement notice issued by a local planning authority in England; | |
| (c) an appeal under section 195 against a decision of a local planning authority in England; and | 35 |
| (d) 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 an appeal if it is referred to a Planning Inquiry Commission under section 101; and on an appeal being so referred, any determination made in relation to it under subsection (1) of this section ceases to have effect.” | 40 |

- (2) After section 88C of the Listed Buildings Act insert –

“88D Determination of procedure for certain appeals

- (1) The Secretary of State must make a determination as to the procedure by which an appeal to which this section applies is to be considered.
- (2) A determination under subsection (1) must provide for the appeal to be considered in whichever of the following ways appears to the Secretary of State to be most appropriate – 5
- (a) at a local inquiry;
 - (b) at a hearing;
 - (c) on the basis of representations in writing. 10
- (3) The Secretary of State must make a determination under subsection (1) in respect of an appeal to which this section applies before the end of the prescribed period beginning with the day on which the Secretary of State receives notice of the appeal.
- (4) A determination under subsection (1) may be varied by a subsequent determination under that subsection at any time before the appeal is determined. 15
- (5) The Secretary of State must notify the appellant 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). 20
- (7) This section applies to –
- (a) an appeal under section 20 against a decision of a local planning authority in England; and
 - (b) an appeal under section 39 against a listed building enforcement notice issued by a local planning authority in England.” 25

- (3) After section 21 of the Hazardous Substances Act insert –

“21A Determination by Secretary of State of procedure for appeal

- (1) The Secretary of State must make a determination as to the procedure by which an appeal under section 21 against a decision of a hazardous substances authority in England is to be considered. 30
- (2) A determination under subsection (1) must provide for the appeal to be considered in whichever of the following ways appears to the Secretary of State to be most appropriate – 35
- (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 an appeal to which this section applies before the end of the prescribed period beginning with the day on which the Secretary of State receives notice of the appeal. 40

- (4) A determination under subsection (1) may be varied by a subsequent determination under that subsection at any time before the appeal is determined.
- (5) The Secretary of State must notify the appellant and the hazardous substances authority of any determination made under subsection (1). 5
- (6) The Secretary of State must publish the criteria that are to be applied in making determinations under subsection (1).”
- (4) Schedule 5 (further provisions as to the procedure for certain appeals) has effect.

Fees 10

161 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 – 15
 - (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. 20
- (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). 25
- (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 – 30
 - (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). 35
- (5) Regulations under this section may in particular – 40
 - (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; 5
 - (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 – 10
- (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.
- (7) In this section “the appropriate authority” means – 15
- (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 – 20
- (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). 25
- (11) A financial year is the period of 12 months beginning with 1 April.” 30

162 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 – 35
- (a) this Act;
 - (b) the Planning (Listed Buildings and Conservation Areas) Act 1990.
- (2) The regulations may in particular – 40
- (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. 5
- (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. 10
- (4) Regulations under this section 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. 15
- (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 – 20
- (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.” 25

PART 10

COMMUNITY INFRASTRUCTURE LEVY

163 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).* 30
- (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 of land the value of which increases due to permission for development. 35
- (3) The following sections make provision about other aspects of the regulations.

<i>Section</i>	<i>Topic</i>
Section 164	Charging authorities
Section 165	Liability

<i>Section</i>	<i>Topic</i>
Section 166	Amount
Section 167	Application
Section 168	Collection
Section 169	Enforcement
Section 170	Secretary of State
Section 171	CIL regulations: general
Section 172	Relationship with other powers

- (4) In those sections regulations under this section are referred to as “CIL regulations”. 5

164 Charging authorities

- (1) CIL regulations must specify which authority is empowered to charge CIL.
- (2) In particular, the regulations may empower –
- (a) a local planning authority (within the meaning of Part 1 of TCPA 1990),
 - (b) the Secretary of State,
 - (c) the Welsh Ministers,
 - (d) the Mayor of London, and
 - (e) any other authority with responsibility for town and country planning.
- (3) The regulations may –
- (a) specify different authorities for different cases or circumstances;
 - (b) permit or require authorities to act jointly.
- (4) An authority empowered by CIL regulations to charge CIL is referred to in this Part as a “charging authority”. 10

165 Liability

- (1) CIL regulations must make provision about liability to pay CIL. 25
- (2) The regulations must ensure that –
- (a) CIL is payable in respect of land when development is commenced in reliance on planning permission,
 - (b) liability attaches to the owner of land at the time when CIL becomes payable in respect of it, and
 - (c) the amount of CIL is determined at, or by reference to, the time when planning permission first permits the development as a result of which CIL becomes payable.
- (3) The regulations must define –
- (a) development (and commencement of development),
 - (b) planning permission (which may include planning permission within the meaning of TCPA 1990 and any other kind of permission or consent (however called)), and
- 30
- 35

-
- (c) owner (and the regulations may provide for joint and several liability in specified classes of case).
- (4) The regulations may require CIL to be paid in respect of land developed in reliance on planning permission whether or not its value has increased as a result of the grant of the permission. 5
- (5) The regulations may provide for cases when development which requires planning permission is commenced without it (and subsection (2) is subject to this subsection).
- 166 Amount**
- (1) CIL regulations must include provision for determining the amount of CIL. 10
- (2) The regulations –
- (a) may require charging authorities to set, revise and publish rates, or other criteria, by reference to which the amount of CIL chargeable in respect of development is to be determined;
- (b) may include provision about the procedure to be followed in setting or revising rates or other criteria. 15
- (3) The regulations may permit or require charging authorities to adopt specified methods of calculation.
- (4) In particular, the regulations may –
- (a) permit or require calculation by reference to descriptions or purposes of development; 20
- (b) permit or require calculation by reference to increase in value arising from permission for development (calculated in accordance with the regulations);
- (c) refer to, or permit reference to, an index used for determining a rate of inflation; 25
- (d) refer to, or permit reference to, values used for other statutory purposes;
- (e) provide, or permit provision, for reductions.
- (5) The regulations must provide for appeals on questions of fact in relation to the application of methods for calculating CIL. 30
- 167 Application**
- (1) CIL regulations must require the authority that collects CIL to apply it, or cause it to be applied, to funding infrastructure.
- (2) The regulations may specify – 35
- (a) works, installations and other facilities that are to be, or not to be, treated as infrastructure,
- (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. 40
- (3) 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).
- (4) In making provision about funding the regulations may, in particular –
 - (a) permit CIL to be used to reimburse expenditure already incurred; 5
 - (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; 10
 - (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.
- (5) The regulations may –
 - (a) require a charging authority to account separately, and in accordance with the regulations, for CIL received or due; 15
 - (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 the charging, collection and application of CIL; 20
 - (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). 25

168 Collection

- (1) CIL regulations must include provision about the collection of CIL.
- (2) The regulations may make provision for payment – 30
 - (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). 35
- (5) The regulations may permit or require one authority to collect CIL charged by another.
- (6) Regulations under this section may replicate or apply (with or without modifications) any enactment relating to the collection of a tax. 40

169 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; and the regulations may, in particular, include provision –
- (a) for the payment of interest;
 - (b) for the imposition of a penalty;
 - (c) for the registration of local land charges; 5
 - (d) for the suspension or cancellation of a decision relating to planning permission;
 - (e) enabling an authority to prohibit development pending payment of CIL;
 - (f) creating a criminal offence. 10
- (3) 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.
- 170 Secretary of State** 15
- (1) CIL regulations may confer powers on the Secretary of State to control the imposition, collection and application of CIL.
- (2) In particular, the regulations may permit the Secretary of State –
- (a) to set maximum amounts of CIL to be raised by a charging authority (whether in respect of a period or in respect of one or more developments); 20
 - (b) to direct a charging authority as to the application of money received by way of CIL.
- (3) The regulations may make provision about the procedure to be followed by the Secretary of State in exercising, or considering whether to exercise, a power by virtue of this section. 25
- (4) The regulations may permit the Secretary of State to exercise a power by virtue of this section –
- (a) generally or in relation to specified cases, circumstances, areas or authorities; 30
 - (b) differently for different cases, circumstances, areas or authorities.
- (5) The Secretary of State may give guidance to a charging authority about any matter connected with CIL; and a charging authority must have regard to the guidance.
- 171 CIL regulations: general** 35
- (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, 40
 - (c) may provide for exceptions,
 - (d) may 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 incidental, transitional or consequential provision (which may include provision 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. 5

172 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 10
 - (b) section 278 of the Highways Act 1980 (c. 66) (execution of works).
- (2) The Secretary of State may give guidance to a charging authority about how those powers are to be exercised in cases involving an actual or potential liability to CIL; and charging authorities must have regard to the guidance.

PART 11

15

FINAL PROVISIONS

The Crown

173 Application to the Crown

- (1) This Act binds the Crown, subject to subsections (2) and (3).
- (2) Sections 35, 48, 116, 136, 175 and 178 make special provision in relation to the application of some provisions of this Act to the Crown. 20
- (3) The amendments made by this Act bind the Crown only to the extent that the provisions amended bind the Crown.

174 Expressions relating to the Crown

- (1) In this Act, expressions relating to the Crown must be read in accordance with this section. 25
- (2) Crown land is land in which there is a Crown interest or a Duchy interest.
- (3) 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; 30
 - (b) an interest belonging to a government department or held in trust for Her Majesty for the purposes of a government department;
 - (c) such other interest as the Secretary of State specifies by order.
- (4) A Duchy interest is –
 - (a) an interest belonging to Her Majesty in right of the Duchy of Lancaster, or 35
 - (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 having the management of the land; 5
 - (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; 10
 - (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; 15
 - (g) 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;
 - (h) 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. 20
- (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. 25
- (7) For the purposes of an application for an order granting development consent made by or on behalf of the Crown in respect of land which does not belong to the Crown or in respect of which it has no interest a reference to the appropriate Crown authority must be read as a reference to the person who makes the application. 30
- (8) For the purposes of subsection (7) the Crown includes –
- (a) the Duchy of Lancaster;
 - (b) the Duchy of Cornwall;
 - (c) a person who is an appropriate Crown authority by virtue of subsection (5)(g) or (h). 35
- (9) The reference to Her Majesty’s private estates must be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c. 37).

175 Enforcement in relation to the Crown

No act or omission done or suffered by or on behalf of the Crown constitutes an offence under this Act. 40

Service of notices and other documents

176 Service of notices: general

- (1) A notice or other document required or authorised to be served or given under this Act may be served or given either –

- (a) by delivering it to the person on whom it is to be served or to whom it is to be given,
 - (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, 5
 - (c) 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,
 - (d) 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 (subject to subsection (4)), 10
 - (e) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at their registered or principal office or sending it in a prepaid registered letter, or by the recorded delivery service, addressed to the secretary or clerk of the company or body at that office. 15
- (2) The condition mentioned in subsection (1)(d) is that the notice or other document must be – 20
- (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 or given by means of a notice or document in printed form. 25
- (4) Subsection (1)(d) does not apply to service of an information notice under section 137.
- (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). 30

177 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 any person as having an interest in premises, and the name of that person cannot be ascertained after reasonable inquiry, or 35
 - (b) a notice or document is required or authorised to be served on any person as an occupier of premises.
- (2) The notice or document is to be taken to be duly served if either the condition in subsection (3) or the condition in subsection (4) is met. 40
- (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 in the manner specified in section 176(1)(a), (b) or (c). 45

- (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 5
 - (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 to all persons who have interests in or are occupiers of premises comprised in any land, and 10
 - (b) it appears to the authority required or authorised to serve or give 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 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 – 15
- (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. 20

178 Service of notices on the Crown

- (1) Any notice or other document required under this Act to be served on the Crown must be served on the appropriate Crown authority.
- (2) Sections 176 and 177 do not apply for the purposes of the service of such a notice or document. 25

General

179 Orders and regulations

- (1) This section applies to a power to make an order or regulations conferred on the Secretary of State by this Act, except – 30
 - (a) power to make an order granting development consent;
 - (b) a power conferred by section 163, 184 or 188.
- (2) The power is exercisable by statutory instrument.
- (3) The power includes – 35
 - (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). 40
- (5) Subsection (4) does not apply to a statutory instrument containing an order under section 13(3), 130(3), 131(3), 142(1) or 174(3)(c).

- (6) No order may be made under section 13(3), 130(3), 131(3) or 174(3)(c) unless a draft of the instrument containing the order has been laid before, and approved by resolution of, each House of Parliament.

180 Directions

- (1) A direction given under this Act must be in writing. 5
- (2) A power conferred by this Act to give a direction includes power to vary or revoke the direction.

181 Abbreviated references to Acts

In this Act –

- “the Hazardous Substances Act” means the Planning (Hazardous Substances) Act 1990 (c. 10); 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); 15
- “TCPA 1990” means the Town and Country Planning Act 1990 (c. 8).

182 Interpretation

In this Act (except in Part 10) –

- “airport” has the meaning given by section 82(1) of the Airports Act 1986 (c. 31); 20
- “appropriate Crown authority” has the meaning given by section 174;
- “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); 25
- “construction”, in relation to a pipe-line, includes placing (and related expressions must be read accordingly); 30
- “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 174;
- “decision-maker” has the meaning given by section 93(2); 35
- “development” has the meaning given by section 28;
- “development consent” has the meaning given by section 27(1);
- “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); 40
- “extension”, in relation to an airport, must be read in accordance with section 19(2);

“gas” includes natural gas;	
“generating station” has the same meaning as in Part 1 of the Electricity Act 1989 (c. 29) (see section 64(1) of that Act);	
“goods” has the meaning given by section 83(1) of the Railways Act 1993 (c. 43);	5
“Green Belt land” has the meaning given by section 2(1) of the Green Belt (London and Home Counties) Act 1938 (c. xciii);	
“harbour” has the same meaning as in 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);	10
“highway authority” has the same meaning as in the Highways Act 1980 (see sections 1 to 3 of that Act);	
“inland waters” has the same meaning as in the Water Resources Act 1991 (c. 57) (see section 221(1) of that Act);	15
“land” means any corporeal hereditament (including a building or monument) and in relation to section 105 and any provision of this Act relating to the acquisition of land includes any interest in or right over land;	
“local planning authority” has the same meaning as in TCPA 1990 (see section 336(1) of that Act);	20
“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;	25
“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);	30
“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;	35
“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;	40
“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);	45
“Renewable Energy Zone” has the meaning given by section 84(4) of the Energy Act 2004;	
“special road” means a highway, or proposed 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;	50

“trunk road” means a highway, or proposed highway, which is a trunk road by virtue of—

- (a) section 10(1) or 19 of the Highways Act 1980 (c. 66),
 - (b) an order or direction under section 10 of that Act, or
 - (c) an order granting development consent,
- or under any other enactment;

5

“use” has the meaning given by section 336(1) of TCPA 1990.

183 Application of Act to Scotland: modifications

- (1) The following modifications have effect in the application of this Act to Scotland for the purpose mentioned in section 187(3). 10
- (2) In section 28—
 - (a) in subsection (1)—
 - (i) the reference to TCPA 1990 is to be read as a reference to section 26 of the Town and Country Planning (Scotland) Act 1997 (c. 8), and 15
 - (ii) the words “This is subject to subsections (2) and (3).” are omitted, and
 - (b) subsections (2) and (3) are omitted.
- (3) In section 29—
 - (a) in subsection (1)— 20
 - (i) “none” is to be read as “neither”, and
 - (ii) paragraphs (b) to (f) and (h) to (k) are omitted, and
 - (b) subsections (2) and (3) are omitted.
- (4) In section 47(7), the reference to chattels is to be read as a reference to moveable property. 25
- (5) In section 52—
 - (a) for subsection (6) substitute—
 - “(6) Summary proceedings relating to an offence under this section may be commenced regardless of when the contravention occurred.”, and 30
 - (b) in subsection (7) the reference to section 127 of the Magistrates’ Courts Act 1980 (c. 43) is to be read as a reference to section 136 of the Criminal Procedure (Scotland) Act 1995 (c. 46).
- (6) In section 105—
 - (a) in subsection (4), paragraphs (d) to (h), (n) to (v) and (z) are omitted, and 35
 - (b) in subsection (6), the reference to an Act is to be read as including an Act of the Scottish Parliament.
- (7) In section 113—
 - (a) in subsection (4), the reference to section 21 of the National Trust Act 1907 (c. cxxxvi) or section 8 of the National Trust Act 1939 (c. lxxxvi) is to be read as a reference to section 22 of the Order confirmed by the National Trust for Scotland Order Confirmation Act 1935 (c. ii), and 40

- (b) in subsection (5), for the definition of “the National Trust” substitute –
 ““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);”.
- (8) In section 114(8), in the definition of “common” the words “any land subject to be enclosed under the Inclosure Acts 1845 to 1882, and” are omitted.
- (9) In section 127(3), the reference to section 56(5) of TCPA 1990 is to be read as a reference to section 27(5) of the Town and Country Planning (Scotland) Act 1997 (c. 8).
- (10) In section 134, the references to a justice of the peace are to be read as references to a sheriff.
- (11) In section 135(4), the reference to chattels is to be read as a reference to moveable property.
- (12) In section 141 –
 (a) the references to an injunction are to be read as references to an interdict, and
 (b) in subsection (4), the reference to the High Court or a county court is to be read as a reference to the Court of Session or the sheriff.
- (13) In section 182 –
 (a) for the definition of “local planning authority” substitute –
 ““local planning authority” means a planning authority within the meaning of section 1 of the Town and Country Planning (Scotland) Act 1997;”, and
 (b) in the definition of “planning permission”, the reference to Part 3 of TCPA 1990 is to be read as a reference to Part 3 of the Town and Country Planning (Scotland) Act 1997.

184 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.

185 Repeals

Schedule 6 contains repeals (including repeals of spent provisions). 5

186 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.* 10

187 Extent

- (1) The following provisions of this Act extend to England and Wales only –
(a) in Part 2, section 12;
(b) in Part 3, sections 14 to 16 and 18 to 26; 15
(c) in Part 6, section 104;
(d) in Part 7, sections 119 to 125;
(e) in Part 9, section 158;
(f) Part 10.
- (2) The following provisions of this Act extend to England and Wales and (subject to subsection (3)) to Scotland – 20
(a) Parts 1 to 8 (except the sections listed in paragraphs (a) to (d) of subsection (1));
(b) this Part.
- (3) Those provisions extend to Scotland only so far as required for the purpose of the construction of an oil or gas cross-country pipe-line – 25
(a) one end of which is in England or Wales, and
(b) the other end of which is in Scotland.
- (4) Subsections (2) and (3) are subject to subsection (5).
- (5) So far as it amends or repeals an enactment, this Act has the same extent as the enactment amended or repealed. 30

188 Commencement

- (1) The following provisions of this Act come into force on the day on which this Act is passed –
(a) Part 10; 35
(b) this Part, except section 185.
- (2) The provisions listed in subsection (3) 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. 40

-
- (3) The provisions are –
- (a) sections 148, 154, 157, 158, 161 and 162 and Schedule 3;
 - (b) 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;
 - (v) this Act.
- (4) Section 149 and the repeal in Schedule 1A to TCPA 1990 come into force on such day as the Welsh Ministers may by order appoint.
- (5) The other provisions of this Act come into force on such day as the Secretary of State may by order appoint.
- (6) The powers conferred by this section are exercisable by statutory instrument.
- (7) 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.

189 Short title

This Act may be cited as the Planning Act 2008.

SCHEDULES

SCHEDULE 1

Section 1

THE INFRASTRUCTURE PLANNING COMMISSION

Membership, chair and deputies

- | | | |
|---|--|----|
| 1 | (1) The members of the Commission (“Commissioners”) are to be – | 5 |
| | (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. | 10 |
| | (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. | |

Terms of appointment

- | | | |
|---|--|----|
| 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. | 15 |
|---|--|----|

Tenure

- | | | |
|---|--|----|
| 3 | (1) The chair, or a deputy or other Commissioner, must be appointed for a fixed period. | 20 |
| | (2) The fixed period must not be less than 5 years or more than 8 years. | |
| 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 – | 25 |
| | (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. | 30 |
| | (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; 5
 - (b) office as a deputy;
 - (c) office as one of the other Commissioners.

Remuneration etc. of Commissioners

- 5 (1) The Commission must pay the Commissioners such remuneration and allowances as the Secretary of State may determine. 10
- (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. 15
- (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. 20
- (5) The Commission must pay the person such compensation as the Secretary of State may determine.

Council

- 6 (1) There is to be a body of Commissioners to be known as the Commission’s Council (“the Council”). 25
- (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 76; 30
 - (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. 35
- (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.
- 7 (1) The chair may appoint a Commissioner not within paragraph 6(4)(a) or (b) to be an ordinary member of the Council – 40
- (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 ordinary member of the Council. 5
- (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. 10
- (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. 15
- (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; 20
 - (b) any change in the person chairing the Council.
- 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. 25
 - (4) A function delegated under sub-paragraph (2) may be delegated to such extent and on such terms as the chair determines.
- 9 (1) Before making an appointment under paragraph 7(1), the person making the appointment must consult – 30
 - (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. 35
- (2) In making an appointment under paragraph 7(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 which Commissioners should be appointed as ordinary members of the Council. 40

Chief executive and staff

- 10 (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. 5
- 11 (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. 10
- 12 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, 15
 - (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.
- Arrangements for assistance* 20
- 13 (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.
- Delegation*
- 14 (1) The Commission may delegate, to any one or more of the Commissioners, any of its functions under section 27(2), 32(4) or (5), 37(2), 46, 47, 49 or 98(4). 25
- (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. 30
 - (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). 35
- 15 (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. 40

Reports

- 16 (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, 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. 10
- (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 – 15
- (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.
- 17 (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. 20
- (2) The Commission must provide the Secretary of State with the report or information.

Funding

- 18 (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.* 25
- (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.* 30

Accounts

- 19 (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. 35
- (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. 40

- (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 – 5
- (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 – 10
- (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.

Status

- 20 (1) The Commission is not to be regarded – 15
- (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. 20

Validity of proceedings

- 21 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 25
 - (b) a vacancy in the office of the chair or a deputy or amongst the other Commissioners.

Application of seal and proof of instruments

- 22 (1) The application of the Commission’s seal must be 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. 30
- (2) A contract or instrument which, if entered into or executed by an individual, would not need to be under seal may be entered into or executed on behalf of the Commission by any person who has been authorised (generally or specifically) by the Commission for the purpose. 35
- (3) A document purporting to be duly executed under the seal of the Commission or to be signed on its behalf – 40
- (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.

Parliamentary Commissioner

- 23 In Schedule 2 to the Parliamentary Commissioner Act 1967 (c. 13) (departments etc. subject to investigation) insert at the appropriate place –
“Infrastructure Planning Commission.”

Disqualification

- 24 (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.”

Public records

- 25 In Schedule 1 to the Public Records Act 1958 (definition of public records) in Part 2 of the Table at the end of paragraph 3 at the appropriate place insert –
“Infrastructure Planning Commission.”

Freedom of information

- 26 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.”

SCHEDULE 2

Section 31

AMENDMENTS CONSEQUENTIAL ON DEVELOPMENT CONSENT REGIME

Green Belt (London and Home Counties) Act 1938 (c. xciii)

- 1 The Green Belt (London and Home Counties) Act 1938 is amended as follows. 25
- 2 In section 10 (restriction on erection of buildings) after subsection (1) insert –
- “(1A) Subsection (1) of this section is subject to section 29(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required).” 30
- 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 29(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required).” 35
- 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 29(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required).”

Coast Protection Act 1949 (c. 74)

5

5 (1) Section 34 of the Coast Protection Act 1949 (requirement for consent for works detrimental to navigation) is amended as follows.

(2) In subsection (1) after “Subject to” insert “subsection (2A) of this section and”.

(3) After subsection (2) insert –

10

“(2A) Subsection (1) is subject to section 29(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required).”

Pipe-lines Act 1962 (c. 58)

6 The Pipe-lines Act 1962 is amended as follows.

15

7 In section 1 (cross-country pipe-lines not to be constructed without authorisation) after subsection (1) insert –

“(1ZA) Subsection (1) is subject to section 29(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required).”

20

8 In section 39 (placing of pipe-line above or under harbour waters) after subsection (1) insert –

“(1A) Subsection (1) is subject to section 29(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required).”

25

9 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”;

30

(b) in paragraph (b) after “no such authorisation” insert “or consent”.

Harbours Act 1964 (c. 40)

10 The Harbours Act 1964 is amended as follows.

35

11 In section 14 (harbour revision orders) after subsection (1) insert –

“(1A) Subsection (1) is subject to section 29(2) of the Planning Act 2008 (exclusion of powers to make orders in relation to development for which development consent required).”

- 12 In section 16 (harbour empowerment orders) after subsection (3) insert –
“(3A) Subsections (1) to (3) are subject to section 29(2) of the Planning Act 2008 (exclusion of powers to make orders in relation to development for which development consent required).”

Gas Act 1965 (c. 36)

5

- 13 The Gas Act 1965 is amended as follows.

- 14 (1) Section 4 (storage authorisation orders) is amended as follows.

- (2) After subsection (1) insert –

“(1A) Subsection (1) is subject to section 29(2) of the Planning Act 2008 (exclusion of powers to make orders in relation to development for which development consent required).”

10

- (3) After subsection (2) insert –

“(2A) Subsection (2) is subject to section 29(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required).”

15

- 15 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.”

20

- 16 (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)”,

25

(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”.

30

- (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;

35

(b) in a case where the carrying out of controlled operations has been authorised by an order granting development consent, a breach of the terms of the order or other failure to comply with the terms of the order.”

40

17	In section 16 (safety conditions) after subsection (1) insert— “(1A) Subsection (1) is subject to section 29(2) of the Planning Act 2008 (exclusion of powers to give notice in relation to development for which development consent required).”	
<i>Energy Act 1976 (c. 76)</i>		5
18	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 29(1) of the Planning Act 2008 (exclusion of requirement for notice to be given of development for which development consent required).”	10
<i>Ancient Monuments and Archaeological Areas Act 1979 (c. 46)</i>		
19	The Ancient Monuments and Archaeological Areas Act 1979 is amended as follows.	
20	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 under the Planning Act 2008”.	15
21	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 under the Planning Act 2008”.	
<i>Highways Act 1980 (c. 66)</i>		20
22	The Highways Act 1980 is amended as follows.	
23	In section 10 (general provision as to trunk roads) after subsection (2) insert— “(2A) Subsection (2) is subject to section 29(3) of the Planning Act 2008 (exclusion of powers to make or confirm orders in relation to highways for which development consent required).”	25
24	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 29(3) of the Planning Act 2008 (exclusion of powers to make or confirm orders in relation to highways for which development consent required).”	30
25	In section 16 (general provision as to special roads) after subsection (3) insert— “(3A) Subsection (3) is subject to section 29(3) of the Planning Act 2008 (exclusion of powers to make or confirm schemes in relation to highways for which development consent required).”	35
26	In section 18 (supplementary orders relating to special roads) after subsection (1) insert— “(1A) Subsection (1) is subject to section 29(3) of the Planning Act 2008 (exclusion of powers to make or confirm orders in relation to highways for which development consent required).”	40

- 27 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 29(3) of the Planning Act 2008 (exclusion of powers to make or confirm orders or schemes in relation to highways for which development consent required).” 5
- 28 In section 108 (power to divert navigable watercourses) after subsection (1) insert –
“(1A) Subsection (1) is subject to section 29(3) of the Planning Act 2008 (exclusion of powers to make or confirm orders in relation to highways for which development consent required).” 10
- 29 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 29(3) of the Planning Act 2008 (exclusion of powers to make or confirm orders in relation to highways for which development consent required).” 15
- 30 (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,”. 20
- 31 For section 337 (saving for obligation to obtain planning permission) substitute –
“337 Saving for obligation to obtain planning permission or development consent” 25
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 30
(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.” 35

Electricity Act 1989 (c. 29)

- 32 The Electricity Act 1989 is amended as follows.
- 33 (1) Section 36 (consent for construction etc. of generating stations) is amended as follows.
(2) In subsection (1) after “subsections” insert “(1A) to”. 40
(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 29(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.”	5
34	(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 29(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required).	10
	(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.”	15
<i>Town and Country Planning Act 1990 (c. 8)</i>		
35	TCPA 1990 is amended as follows.	
36	In section 57 (planning permission required for development) after subsection (1) insert –	
	“(1A) Subsection (1) is subject to section 29(1) of the Planning Act 2008 (exclusion of requirement for planning permission etc. for development for which development consent required).”	20
37	In section 198(6) (tree preservation orders: exemptions) after paragraph (b) insert “, or	
	(c) to the cutting down, uprooting, topping or lopping of any trees so far as authorised by an order granting development consent.”	25
38	(1) Section 211 (preservation of trees in conservation areas) is amended as follows.	
	(2) After subsection (1) insert –	30
	“(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.”	35
39	In section 336(1) (interpretation) at the appropriate place insert –	
	““development consent” means development consent under the Planning Act 2008;”.	
<i>Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9)</i>		
40	The Listed Buildings Act is amended as follows.	40

- 41 (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 – 5
- “(2) Subsection (1) is subject to section 29(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required).”
- 42 In section 59(3) (offence relating to acts causing or likely to result in damage to listed building: exceptions) after paragraph (b) insert “; or 10
- (c) of works for which development consent has been granted under the Planning Act 2008.”
- 43 In section 74 (control of demolition in conservation areas) after subsection (1) insert –
- “(1A) Subsection (1) is subject to section 29(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required).” 15

Planning (Hazardous Substances) Act 1990 (c. 10)

- 44 The Hazardous Substances Act 1990 is amended as follows.
- 45 In section 9(2)(c) (determination of applications for hazardous substances consent: material considerations) after “planning permission” insert “or development consent” 20
- 46 In section 10(1) (conditions on grant of hazardous substances consent) after “planning permission” insert “or development consent”.
- 47 (1) Section 12 (deemed hazardous substances consent: government authorisation) is amended as follows. 25
- (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.” 30
- (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.” 35
- (4) In subsection (6) –
- (a) for “government department or the Secretary of State” substitute “person”, and 40
- (b) after “directions” insert “given by the person”.

48	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”.	
49	In section 39(1) (interpretation) at the appropriate place insert – ““development consent” means development consent under the Planning Act 2008;”.	5
<i>New Roads and Street Works Act 1991 (c. 22)</i>		
50	The New Roads and Street Works Act 1991 is amended as follows.	
51	In section 6 (toll orders) after subsection (1) insert – “(1A) Subsection (1) is subject to section 29(3) of the Planning Act 2008 (exclusion of powers to make or confirm orders in relation to highways for which development consent required).”	10
<i>Water Industry Act 1991 (c. 56)</i>		
52	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”.	15
<i>Transport and Works Act 1992 (c. 42)</i>		
53	The Transport and Works Act 1992 is amended as follows.	20
54	In section 1 (orders as to railways, tramways etc.) after subsection (1) insert – “(1A) Subsection (1) is subject to section 29(2) of the Planning Act 2008 (exclusion of powers to make orders in relation to development for which development consent required).”	25
55	In section 3 (orders as to inland waterways etc.) after subsection (1) insert – “(1A) Subsection (1) is subject to section 29(2) of the Planning Act 2008 (exclusion of powers to make orders in relation to development for which development consent required).”	30

SCHEDULE 3

Section 157

TREE PRESERVATION ORDERS: FURTHER AMENDMENTS

1	TCPA 1990 is amended as follows.	
2	In section 198(7) (provisions subject to which section has effect), for “This section” substitute “Tree preservation regulations”.	35

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- | | | |
|----|---|----------|
| 3 | 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”. | |
| 4 | 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).” | 5 |
| 5 | 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,”. | 10 |
| 6 | In section 207(1) (enforcement of duties to replace trees), in paragraph (b), for “a tree preservation order” substitute “tree preservation regulations”. | 15 |
| 7 | In section 210 (penalties for non-compliance with tree preservation order) –
(a) in subsections (1) and (4), for “a tree preservation order” substitute “tree preservation regulations”, and
(b) in the side-note, for “order” substitute “regulations”. | |
| 8 | 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”. | 20
25 |
| 9 | In section 212(4) (power to exempt from section 211 cases exempted from section 198 by section 198(6)) –
(a) before “exempted from section 198” insert “which were”, and
(b) after “by subsection (6) of that section” insert “until that subsection was repealed”. | 30 |
| 10 | 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,”. | |
| 11 | 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”. | 35 |
| 12 | 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”. | 40 |
| 13 | In section 336(1) (interpretation) at the appropriate place insert –
““tree preservation regulations” means regulations under section 202A(1);”. | |

SCHEDULE 4

Section 159

USE OF LAND: POWER TO OVERRIDE EASEMENTS AND OTHER RIGHTS

Local Government, Planning and Land Act 1980 (c. 65)

- 1 (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. 5
- (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 – 10
- (a) interference with an interest or right to which this paragraph applies, or 15
- (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) – 20
- (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)”.

New Towns Act 1981 (c. 64)

- 2 (1) Section 19 of the New Towns Act 1981 (power to override easements and other rights) is amended as follows. 25
- (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 – 30
- (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.” 35
- (3) In subsection (2) after “subsection (1)” insert “or (1A)”.
- (4) In subsection (4) – 40
- (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)”.

Housing Act 1988 (c. 50)

- 3 (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)”.

Town and Country Planning Act 1990 (c. 8)

- 4 (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)”.

Leasehold Reform, Housing and Urban Development Act 1993 (c. 28)

- 5 (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)”.

Regional Development Agencies Act 1998 (c. 45)

- 6 (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)”.

SCHEDULE 5

Section 160

35

FURTHER PROVISIONS AS TO THE PROCEDURE FOR CERTAIN APPEALS

Town and Country Planning Act 1990 (c. 8)

- 1 TCPA 1990 is amended as follows.
- 2 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)(a)”.
- 3 In section 79 (determination of appeals under section 78) for subsection (3) substitute –
- “(3) Subsection (2) does not apply to – 5
(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.”
- 4 In section 175 (supplementary provisions about appeals against enforcement notices) after subsection (3) insert – 10
- “(3A) Subsection (3) does not apply to an appeal against an enforcement notice issued by a local planning authority in England.”
- 5 In section 176(4) (determination of appeals: disapplication of section 175(3)) – 15
- (a) after “If” insert “section 175(3) would otherwise apply and”, and
(b) after “subsection (3)” insert “of this section”.
- 6 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)(c)”. 20
- 7 (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.” 25
- (3) In subsection (2) for “such an appeal” substitute “an appeal under section 195(1)”.
- 8 (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.” 30
- (3) In subsection (6) for “such an appeal is brought” substitute “an appeal is brought under subsection (1)”.
- 9 In section 322 (orders as to costs of parties where no local inquiry held) after subsection (1) insert – 35
- “(1A) This section also applies to proceedings under this Act involving an appeal to which section 319A applies.”
- 10 In section 322A (orders as to costs: supplementary) after subsection (1) insert –
- “(1A) This section also applies where – 40
(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.” 5
- 11 (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 involving an appeal which, pursuant to a determination under section 319A, is to be considered on the basis of representations in writing.” 10
- (3) In subsections (2) and (3) for “The regulations may” substitute “Regulations under this section may”. 15
- (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”.
- 12 (1) Amend Schedule 6 (determination of certain appeals by person appointed by Secretary of State) as follows. 20
- (2) In paragraph 2 after sub-paragraph (1) insert –
- “(1A) In the case of an appeal to which section 319A applies, an appointed person shall also have the same powers and duties in relation to the appeal as the Secretary of State has under that section.” 25
- (3) For sub-paragraph (5) of that paragraph 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.” 30
- (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.” 35
- (5) 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.” 40
- (6) In sub-paragraph (2)(a) of that paragraph after “2(4)” insert “or this paragraph”.

Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9)

- 13 The Listed Buildings Act is amended as follows.
- 14 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)(a)”.
- 15 (1) Amend section 22 (determination of appeals under section 20) as follows. 5
(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”.
- 16 In section 40 (supplementary provisions about appeals against listed building enforcement notices) after subsection (2) insert – 10
“(2A) Subsection (2) does not apply to an appeal against a listed building enforcement notice issued by a local planning authority in England.”
- 17 In section 41(4) (determination of appeals: disapplication of section 40(2)) – 15
(a) after “If” insert “section 40(2) would otherwise apply and”, and
(b) after “subsection (3)” insert “of this section”.
- 18 In section 74(3) (application of certain provisions in relation to buildings in conservation areas) after “82D” insert “, 88D”.
- 19 In section 89 (application of certain general provisions of TCPA 1990) after subsection (1) insert – 20
“(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.”
- 20 (1) Amend Schedule 3 (determination of certain appeals by person appointed by Secretary of State) as follows. 25
(2) In paragraph 2 after sub-paragraph (1) insert –
“(1A) In the case of an appeal to which section 88D applies, an appointed person shall also have the same powers and duties in relation to the appeal as the Secretary of State has under that section.”
(3) After sub-paragraph (5) of that paragraph insert – 30
“(5A) Sub-paragraph (2) does not apply in the case of an appeal to which section 88D applies.”
(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.” 35
(5) 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.” 40

- (6) In sub-paragraph (2)(a) of that paragraph after “2(4)” insert “or this paragraph”.

Planning (Hazardous Substances) Act 1990 (c. 10)

- 21 The Hazardous Substances Act is amended as follows.
- 22 In section 21 (appeals against decisions or failure to take decisions relating to hazardous substances) after subsection (5) insert – 5
- “(5A) Subsection (5) does not apply to an appeal against a decision of a hazardous substances authority in England.”
- 23 In section 25(1) (appeals against hazardous substances contravention notices) – 10
- (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”.
- 24 In section 37 (application of certain general provisions of TCPA 1990) after subsection (2) insert – 15
- “(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.”
- 25 (1) Amend the Schedule (determination of appeals by person appointed by Secretary of State) as follows. 20
- (2) In paragraph 2 in sub-paragraph (1) at the end insert “and under section 21A”.
- (3) In sub-paragraph (2) of that paragraph for “that section” substitute “section 21”.
- (4) After sub-paragraph (4) of that paragraph insert – 25
- “(4A) Sub-paragraph (2) does not apply to an appeal against a decision of a hazardous substances authority in England.”
- (5) 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.” 30
- (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.” 35
- (7) In sub-paragraphs (2)(a) and (3)(a) of that paragraph after “2(4)” insert “or this paragraph”.

Planning Bill

A

B I L L

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.

*Presented by Secretary Hazel Blears
supported by
The Prime Minister,
Mr Chancellor of the Exchequer,
Secretary Hilary Benn, Mr Secretary Hutton,
Secretary Ruth Kelly, Yvette Cooper
and John Healey.*

*Ordered, by The House of Commons,
to be Printed, 27th November 2007.*

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PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS
LONDON – THE STATIONERY OFFICE LIMITED
Printed in the United Kingdom by
The Stationery Office Limited
£x.xx