PLANNING ACT 2008

APPLICATION BY MONA OFFSHORE WIND LIMITED FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR THE MONA OFFSHORE WIND PROJECT

LAND TO THE EAST OF THE A548

COMPRISING

PLOTS 06/102 - 06/105 (INCLUSIVE)

PLANNING INSPECTORATE REFERENCE NUMBER EN010137

MNOW-AFP079: MNOW-AFP129: MNOW-AFP130: MNOW-AFP131

FURTHER SUPPLEMENTARY WRITTEN REPRESENTATIONS

OF

GRIFFITH W. PARRY MRICS

IN RESPONSE TO

Appendix to Response to WRs: Griffith Parry, Robert Parry and Kerry James

(Document Number S_D2_3.4)

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Contents

1.0 Definition /Glossary

1.1 This document uses the same definitions as in the Written Submissions of Griffith Parry dated 7th August. These are as follows:

- Mona Offshore Wind Limited **("Promoter")**
- Planning Act 2008 (the "**Act**")
- Development Consent Order ("**Order**")
- Mona Offshore Windfarm ("**Scheme**").
- Plots 06-102 to 06-105 inclusive ("**Plots**")
- Mrs HM Parry, Mrs EW Wade, Mr RW Parry and Mr GW Parry("**Objectors**").
- The Plots and other surrounding land owned by the Objectors ("**Property**")
- Nationally Significant Project ("**NSP**").
- Preliminary Environmental Information Report ("**PEIR"**)
- The Gas and Electricity Markets Authority grants ("**GEMA**")
- Distribution Network Operators (**"DNOs"**)
- Scottish Power Electricity Networks ("**SPEN**").

1.2 New definitions used are:

- Document Reference S_D1_5.6 Document No. MOCNS-J3303-RPS-10277 entitled Appendix to Response to Hearing Action Point: Indicative onshore cable corridor crossing section and trenchless technique crossing long-section ("**Hearing Action Point Submission**")
- Written Submissions of Griffith Parry dated August 7th ("**August 7th Submissions**")
- Drawing number ED13798-GE-1015 Rev F ("**Drawing**")
- Health and Safety Executive ("**HSE**")

1.3 Further definitions used are:

1.4 Written Representations ("**WR**")
1.5 Point of Interconnection ("**POI"**)
1.6 Compulsory Purchase Act 1965 ("**CPA1965**")
1.7 Supplementary Written Submissions of Griffith Parry dated August 27th ("**August 27th Supplementary Submissions**")

2.0 Introduction

2.1 These Further Supplementary Written Submissions are submitted in Response to the Appendix to Response to WRs: Griffith Parry, Robert Parry and Kerry James (Document Number S_D2_3.4) and RR and also to the Applicant's Response to Relevant Representations (Document Number S_PD_3)

2.2 This document follows the Planning inspectorate's written submission numbering in the document library and the Promoter's numbering convention for the issues

REP1-083.2 – Whether the Promoter has considered Alternatives

The Promoters obligations to consider alternatives arise from Section 8 of the Guidance to the Planning Act 2008 [1], Regulation 14 and Schedule 4 of the Environmental Impact Assessment under the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 [2], and Department for Energy Security and Net Zero: Overarching National Policy Statement for Energy (EN-1) [3]. These are discussed in more detail in section 9.2.1 of the Written Submissions of Griff Parry dated 7 August 2024. ("**August 7th Submissions")**

The Objectors' contention is that the Promoter has not considered "*all reasonable alternatives"* and this has also been discussed in Section 10 of the **August 7th Submissions**.

Further, the Objectors would also like to point out that the minutes of EWG Steering Group No.2 dated 13/12/2021 [4] state that, at that time "*preferred routes*" had already been selected for each point landfall available for each point of connection ("POI") (Wylfa, Pentir, Bodelwyddan, Connahs Quay, Kirkby) which, at that time was still to be chosen by National Grid.

Further the minutes note that all POIs "had several landfall options, **except Bodelwyddan, which has only one landfall option**."

The PEIR report (Table 4.17 and surrounding narrative) describes how that landfall point (Llanddulas East) only had onshore corridors Llanddulas East A and almost 65% identical Llanddulas East B (identical as far as the Plots are concerned). Llanddulas East C (the latter already dismissed in favour of its "preferred route" according to EWG meeting 13/12/2021). This is described in more detail in Appendix 01.

The conclusion is that the Promoter has not considered any alternatives that it ever had any option to choose from of its own volition. This is because the POI was selected by National Grid who in March 2024 selected Bodelwyddan POI [5] which meant that Llanddulas East was the only point of landfall which in turn meant (as Llanddulas East C had already been discounted due to ecology and ancient woodland and planning issues) that Llanddulas East A and near identical (65%) Llanddulas East B were the only routes ever considered. As long with all entire route from point of landfall, the Plots are identically affected in either route and the Promoter has never considered any alternatives to utilising the Plots.

Further, the Objectors have proposed routes A, B, C and D or E in the August 7th Submissions but, in a meeting held with the Promoter on 17/9/2024, the Objectors were informed that no consideration has or will be given to these alternatives, despite the affected landowners' being prepared to support it. The reasons given are that further diligence would need to be carried out and that it is simply "*too late in the process*" rather than due to other constraints with those corridors. They also advised that they continue to prefer the Plots presumably for general convenience and to meet their timetable for seeking the DCO powers.

The Objectors have been dismayed at the response and consider that:

1) The Promoter has not complied with its legal obligation to consider ("*all reasonable"*) "*alternatives".* It has in fact, only considered some 35% of the same longstanding corridor that it had identified as the preferred route for Bodelwyddan before the EWG meeting of 13/12/2021;

[1] Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land published by the Department for Communities and Local Government September 2013
[2] Assessment under the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017
[3] Sections 4.3.29: in Overarching National Policy Statement for Energy (EN-1), Department for Energy Security & Net Zero, November 2023
[4] EWG Morgan and Mona Evidence Plan Steering Group Meeting 2 - Session 1 dated 13/12/2021
[5] EWG Morgan and Mona Evidence Plan Steering Group Meeting 3 dated 20/07/2022

2) The Promoter continues to fail to comply with this obligation despite a number of reasonable alternative routes which would not require the Plots being available;
3) Until the Promoter has properly reviewed alternatives A,B,C, D and E (as the very minimum) then it will continue to be in breach of this legal obligation;
4) The reasons given for not considering them ("*too late in the process*") hardly give rise to a compelling case, in the public interest for affecting the Plots. This is especially the case when the Objectors have been clear from the very outset / first contact that proposals were being developed for the Plots but the Promoter chose to ignore this fact;
5) The Promoter advises that it *"prefers"* a route wholly through the Plots. It says it "*believes it has selected the right route*" but without having properly reviewed and discounted options A to E then the Promoter cannot claim that the Plots are "*required*" and "*necessary for the accomplishment*" of Mona. It can merely claim that it is possibly more "*convenient*" and this does not meet the criteria for section 122(2) of the Act [6] or the criteria specified in section 6 and again in section 7 to 13 of the Guidance to the Act [1] or to the associated tests set down in the Leicester City Council case[7] and the Sharkey Case [8]
6) 100% of the public benefits of the scheme can be achieved using alternatives A to E with far less harm to the affected parties than that which Robert Parry and the Objectors will suffer by impacting on the Plots.
7) Submission of the DCO for examination without any consideration of any alternatives especially Alternatives A to E is clearly premature.

REP1-083.3 – Consultation

The Promoters legal obligations to consult arise from Section 42 – 48 of the Act [6] and Section 49 obliges them to take account of responses and is also dealt with in Sections 24 to 26 of the Guidance to the Act [1].The Promoter's lack of compliance with it is discussed more fully in section 9.2.2 of the August 7th Submissions.

Further, the Objectors wish to draw the Inspector's attention to the Lord Justice Sedley's comments in the judgement in R v Brent Borough Council, Ex p Gunning (1985) [9] which are known as the Sedley Gunning Principles:

> *"consultation must be undertaken at a time when proposals are still at a* ***formative stage****; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; and the* ***product of consultation must be conscientiously taken into account when the ultimate decision is taken****".*(emphasis added)

In contrast however, the minutes of EWG Steering Group No.2 dated 13/12/2021 [4] state that, at that time "*preferred routes*" had already been selected for each point landfall available for each POI which, at that time, was still to be chosen by National Grid. Although ultimately selected in March 2022 and confirmed in May 2022 according to the minutes of EWG Morgan and Mona Evidence Plan Steering Group Meeting No. 3 dated 20/07/2022 [5]

[6] The Planning Act 2008
[7] R V Secretary of State For the Environment, Ex p. Leicester City Council, 1987, 55 P. & C.R.
[8] Sharkey And Another V. Secretary Of State For The Environment And South Buckinghamshire District Council Court Of Appeal (L (Parker, McCowan and Scott L.n.): October 14, 1991 63P. &C.R.
[9] R v Brent Borough Council, Ex p Gunning (1985) 84 LGR 168

Further the minutes note that all POIs "had several landfall options, **except Bodelwyddan, which has only one landfall option**."

The PEIR report (Table 4.17 and surrounding narrative) describes how that landfall point (Llanddulas East) only had onshore corridors Llanddulas East A and nearly identical Llanddulas East B (certainly as far as all landowners from landfall up to Plot 06-105 including the Objectors are concerned). Llanddulas East C (the latter already dismissed in favour of its "preferred route" according to EWG meeting 13/12/2021). This is described in more detail in Appendix 02 and the timeline of events can be seen at Appendices 03 and 04.

The only conclusion that can be made is that the Promoter had already selected Llanddulas East A and (65% identical) B as the preferred onshore route in advance of the EWG meeting on 13/12/2021 and this was ultimately confirmed when National Grid confirmed the POI at Bodelwyddan shortly after as evidenced in EWG Morgan and Mona Evidence Plan Steering Group Meeting 3 dated 20/07/2022 (5).

Notwithstanding the above, and as demonstrated in Appendices 01 – 03, from the moment Bodelwyddan became the preferred POI in March 2022 and confirmed in May 2022, then the landfall point was set and Llanddulas East A and near identical Llanddulas East B became the onshore route corridor(s) by default. Notwithstanding this important development, the Promoter continued to submit the 05/05/2022 scoping report to the Planning Inspectorate based on vague "*Rochdale Envelopes*" for which it was criticised in the Scoping Opinion dated 01/06/2022.

Further, the Promoter went on to conduct its "*First Non-Statutory consultation period*" from 07/06/2022 to 3/08/2022 based on 3 points of landfall and 6 onshore cable corridors and then again to its "*second "targeted" Non-Statutory consultation period" from 28/09/2022 to 07/11/2022* still consulting on 3 landfall locations and 6 onshore routes and 7 substation sites. It was only finally in the "Statutory Consultation Period" from 19/04/2023 to 04/06/2023 that the Promoter more earnestly consulted on the Llanddulas East A and (65% near identical) Llanddulas East B routes "selected " some 12 months earlier.

From the Objectors perspective however, contact was only made after the POI decision (and thereby the route decision) and so all the Promoter's requests for comment under the guise of "consultation" were wholly insincere and disingenuous as matters had already been predetermined. It also explains the Promoter's belligerent approach to consultation whereby it treated these exchanges merely as opportunities to present its Scheme and its requirements, disregarding any affected parties' concerns and requests whilst referring to CPO powers in a thinly veiled attempt to portray the impression that matters are already finalised and inevitable and that it was pointless to resist so that those affected were best advised to "*protect themselves*" by entering into binding agreements to grant powerful overriding options in favour of the Promoter.

The Objectors consider that:

1) The time between National Grid confirming the POI and the submission of the DCO has been far too tight and has now caused the situation whereby the plans were at a finalised stage any before consultation commenced rendering purported consultation to be "*meaningless*". There is a strong presumption against this in all the legislation;
2) Consequently, the Promoter has not complied with its legal obligation to consult. The predetermination of the route has meant that a proper degree of constructive engagement or a willingness to explore options for impact mitigation has led to a failure to pursue meaningful negotiation and it has been wholly unable to "*take account"* of those responses received;

3) Given that only Llanddulas East A and (65% near identical, certainly as far as the Objectors are concerned) Llanddulas East B were only ever possibilities for the Bodelwyddan Option then the Promoter should develop, consider and review other route corridors to these including alternatives A,B,C, D and E as per the August 7th Submissions and whilst these are still at a formative stage, consult meaningfully and properly on them as required under the enabling legislation;
4) In the circumstances the submission of this DCO for examination is clearly premature.

REP1-083.4 – Whether land required / compelling case

The Objectors note that the Promoter intends to address each specific point in more detail.

REP1-083.5 – Impact of Mona on the Objectors

The Objectors note that the Promoter intends to address this with its responses to REP1-083.21 through to REP1-083.26 and also REP1-083.38.

REP1-083.6 – Instructions of Griff Parry

The Objectors note that the Promoter intends to address this with its response to REP1-083.21 through to REP1-083.26.

REP1-083.7 – Background of Griff Parry

The Objectors note the Promoters response.

REP1-083.8 – Robert Parry's Proposals

The Objectors note that the Promoter has responded on these separately at REP1 – 089.

REP1-083.9 – Whether the land is "required" under S122 of the Act

The Objectors note the Promoters response but the Objectors contention remains that the land take generally is extremely excessive merely for reasons of custom and practice and that there are better alternatives for all parties than the Plots which should be removed preferably in full, from the Limits of Deviation before the Order is confirmed.

REP1-083.10 – Robert Parry's Proposals and KJP Planning advice.

The Objectors note that the Promoter has responded on these separately at REP1 – 084 and REP1 – 089.

REP1-083.11 – Clarification of depth to invert of cable ducts and cover over

The Objectors note the Promoters response.

REP1-083.12 – Objectors Access from A548 and Land Use Proposals

The Promoter erroneously claims that there is no vehicular access from the A548 into plot 06-103. This is simply untrue. A longstanding access from the A548 into Plot 06-103 does exist and has been and will be, very well used. A photograph of the access can be seen below:

The Objectors contend that, from the very first contact with the Promoter's agents in May 2022 (coinciding with when National Grid confirmed the Bodelwyddan POI and thereby the Llanddulas point of landfall and the preferred Llanddulas East A route was selected) they have very clearly and unequivocally advised the Promoter that proposals were being developed for their Property including the Plots and that the Objectors had also received purchase enquiries from both campsites to the northern boundary (to extend their campsites onto the Plots) as well as interest for solar generation and cycling pod / hub uses. The main proposals have naturally evolved further in the interim period however the Objectors have been open and transparent about their intentions throughout.

The Promoter has *"taken no account"* of accommodating any of the uses described in consultation in the preparation of its DCO and this is now known to be because the route was predetermined before 13/12/2021 and confirmed in the Spring of 2022 at the very latest.

REP1-083.13 – Project timetable

The Objectors note the Promoters response regarding the Examination timetable and the Rule 8 letter however are more concerned with the Scheme's actual timetable for commencement, construction, commissioning, reinstatement and land handback.

The Promoter advises that it justifies its requirement for 7 year window or period in which to serve notices within its Explanatory Memorandum - Document Reference: C3/F02 specifically 1.4.1.63 to 1.4.1.65 however these carry no justification for that period at all.

Instead these sections merely iterate its perceived requirement again and advise that 7 years was the period permitted on other schemes such as Hornsea Three, Norfolk Boreas, Norfolk Vanguard East Anglia One North and East Anglia Two and article 2 of Hornsea Four.

Again the Promoter is seeking to procure for itself, very draconian and unreasonable powers and terms which are highly detrimental to landowners and affected parties on the basis of "precedents" and "custom or industry practice". This is wholly unfair and unreasonable and

unless the Promoter can provide proper engineering and procurement or other substantial reasons for this in this particular case then it needs to be severely reduced before confirmation of the Order. Three years is more than adequate for a Notice serving period – even then the Promoter can extend that to 6 years by tactical notice serving of Notice to Treat.

REP1-083.14 – Consultation –Notice Serving Period

At Article 21 of the DCO, the Promoter is seeking a "*time limit of 7 year for the authorised project to commence"*

Contrary to the Promoter's claim however, this would merely be the time limit for which it could serve a Notice to Treat under Section 5 of the Compulsory Purchase Act 1965 ("**CPA1965**")[10].

Part 2A of Section 5 of the CPA1965 states:

> *" A notice to treat shall cease to have effect at the end of the period of three years beginning with the date on which it is served unless"*

The Promoter will therefore have a period of the 7 years together with the 3 year life of the Notice to Treat before it has to actually serve a Notice to Enter under Section 11 of the CPA1965. Section 1B of Section 11 of the CPA1965 requires that a Notice to Enter has to give a period of notice of at least 3 months before entry can be taken although it can be longer.

In this way the Promoter is therefore reserving a "*time limit of"* 10 years and 3 months (or possibly longer) *"for the authorised project to commence"* not 7 years claimed by the Promoter. In addition, with say a 4 year construction period then it could be approaching 14.5 years before land is handed back to landowners. This wholly unfair and unreasonable.

For one thing Section 19 of the Guidance on Compulsory Purchase Process and The Crichel Down Rules: February 2018 Update[11] and/ or Section 67 of the Welsh Government Circular Ref: 003/2019 Compulsory Purchase in Wales and the Crichel Down Rules [12] state:

> *"Compulsory purchase proposals will inevitably lead to a period of uncertainty and anxiety for the owners and occupiers of the affected land. Acquiring authorities should therefore consider:*
>
> *…….*
>
> *keeping any delay to a minimum by completing the statutory process as quickly as possible and taking every care to ensure that the compulsory purchase order is made correctly and under the terms of the most appropriate enabling power*
>
> *……"*

Service of Notices is part of the statutory process and the Promoter has given no consideration as to trying to expedite this as it seemingly uninterested in its impact on those affected..

If this Order is confirmed without modification on this point then the Promoter will be free to leave those affected living in limbo for an extremely long period of time which both English and Welsh guidance is strongly against.

[10] The Compulsory Purchase Act 1965 -HM Government UK

[11] Guidance on Compulsory purchase process and The Crichel Down Rules (February 2018) Update Ministry of Housing Communities and Local Government

[12] Welsh Government Circular 003/2019 Compulsory Purchase in Wales and 'The Crichel Down Rules (Wales Version, 2020): October 2020

As a final word on this matter and to counter any argument that the Promoter may advance that the above is merely a matter of compensation and insofar as it goes to show the further hardship that the Promoter is likely to cause to affected parties. It is only upon service of Notice to Enter (which could be over 10 years after an unmodified Order is confirmed) that compensation under the 6 rules Section 5 of the Land Compensation Act 1961 becomes payable based on the principle of equivalence from the Promoter to the affected parties.

If a Notice to Enter is never served then the Promoter will never be liable to pay compensation. Even if a Notice to Treat is served then compensation in that eventuality is only set under part 2C(b) of section 5 of the CPA1965 which states:

> *"(2C)Where a notice to treat ceases to have effect ……, the acquiring authority—*
>
> *(a) shall immediately give notice of that fact to the person on whom the notice was served……..., and*
>
> *(b)shall be liable to pay compensation to any person entitled to such a notice for* ***any loss or expenses occasioned to him by the giving of the notice and its ceasing to have effect****."(*emphasis added)

So notwithstanding the long term harm and limbo that may have been occasioned to the beleaguered landowners then all that they can potentially claim for after potentially 10 years of impact is any losses or expenses from actually dealing with the Notice to Treat. This is entirely unreasonable and shows the hidden harm that the confirming this DCO without modification could cause to landowners and needs to be considered against the "*compelling case*" to be referred to in section 122(3) of the Act.

REP1-083.15 – Considered Alternatives

The Objectors refer the Inspector to their response in REP1-083.2 and Appendix 01 as well as Section 9.2.1 and Section 10 of the August 7th Submissions.

For the reasons therein, the Objector's contention remains that the Promoter has not considered all reasonable alternatives either adequately or indeed at all as required by its enabling legislation.

REP1-083.16 – Consultation

The Objectors refute the Promoters claims that it "*is a responsible developer committed to listening to the view of stakeholders including landowners".* The Objectors' experience is very different to that.

The Objectors refer the Inspector to their response in REP1-083.3 and Appendix 02 as well as Section 9.2.2 and Section 11 of the August 7th Submissions.

These submissions clearly and unambiguously demonstrate that the onshore corridor was, subject to National Grid confirmation of Bodelwyddan POI, predetermined in advance of the Scoping Report, landowner contact and consultation and all the subsequent statutory and non-statutory consultation periods.

Accordingly the Promoters hands were tied and a proper degree of constructive engagement or a willingness to explore options for impact mitigation could not take place and the Promoter's agents were simply unable to "*take account of responses"* received.

For the reasons therein, the Objector's contention remains that the Promoter has not fulfilled its statutory obligations under Section 42 to 48 and especially 49 of the Act.

REP1-083.17 – Land "required" – App confirms understood

The Objectors note that the Promoter *"understands the basis on which the compulsory acquisition may be authorised".*

However the Objectors regret that the Promoter continues to decline to change the Limits of Deviation to include only such land that is "required" and necessary for the "*accomplishment of*" the Scheme.

Griff Parry submitted supplementary written submissions dated 27/08/2024 ("**August 27th Supplementary Submissions**") in response to the Hearing Action Point Submission dated 07/08/2024. This supplementary submission clearly demonstrates how unnecessary and wasteful of land the proposed working and permanent cross section arrangements are.

Further, in a meeting dated 17/09/2024 representatives of the Scheme advised that they could not agree to reducing the proposed permanent easement width purely because this would form a constraint or bottleneck to their scheme. The Promoter's representatives noted that it was quite possible that the ultimate easement width could be less by, for instance, locating the haul roads, to the outside of the cable corridor where they would not require permanent sterilisation rights. They advised that thermal dissipation may require a certain width between cables however it was agreed that using higher capacity and better quality cables would give rise to less resistance and thereby less heat although other Scheme attendees argued this could not be considered due purely to cost.

REP1-083.18 – Compelling case for taking the land that outweighs harm done

The Promoter's legal obligations to demonstrate and justify a compelling case arise from Section 122(3) of the Act and sections 12 to 14 of the Guidance to the Act. These are discussed in more detail in section 9.2.4 of August 7th Submissions and the Promoter's compliance with its duties under Section 13.

The Objectors' contention is that the harm and private loss that they will suffer from compulsory acquisition of the rights sterilising the excessive amount of land does not outweigh the public benefits derived when these benefits can be equally derived if alternatives A, B, or C or even D or E as described in sections 10.3.1 and 10.3.2 of the August 7th Submissions were to be used instead.

It is necessary to draw the Inspectors attention to the fact that this is a Compulsory Purchase in Wales and as such, Welsh Government Circular 003/2019: Compulsory Purchase in Wales and 'The Crichel Down Rules (Wales Version 2020)[12] applies. This document takes the compelling case test very seriously indeed dealing with it at sections 10, 16, 30, 31, and 53 as well as other specific references for housing and highways Acts. Section 31 in particular requires "*What other options have been considered, and why are these not suitable?*" The Promoter is unable to comply with this requirement because, of course, it has not considered any options that could be implemented of its own volition in place because only the Llanddulas East A route corridor was considered in the event that National Grid selected the POI at Bodelwyddan.

REP1-083.19 – Whether Funding in place

The Promoter refers to its Funding Statement and appendices which were commented on in Section 14 of the August 7th Submissions. It claims again here that its joint venture partners or parent companies are well funded and can comfortably fund the Scheme.

The Objectors' contention here is that they themselves could submit their parent company' bank account statements as evidence of their own creditworthiness however it is unlikely that a prudent and reputable lender would be inclined to, in any way, rely on those documents without some legal commitment from the parent company which is absent here.

This is further complicated by the fact that the Final Investment Decision (FID) committing to the Scheme will not even be made until 2026/27 and this itself is in serious jeopardy now due to the new Chief Executive of one of its parent companies, Murry Auchincloss of BP, who recently pledged "*more pragmatic' approach to BP's green targets*" whilst "*reversing the move away from fossil fuels*" and "*imposing a hiring freeze*" and "*halting new offshore wind projects*." The Guardian, 27 June 2024) [13]. Given this backdrop it seems increasingly unlikely that the FID may ever even be signed, due to the fact that the entire corporation, will not favour proceeding with the Scheme.

Further, the Promoter has made no attempt to demonstrate that the Scheme actually is "viable" and in fact profitable so that there would be no question of the FID being positive when eventually determined i.e. because the investment would be a "no-brainer" with highly attractive return on investment.

The Objectors do not consider that the Promoter's platitude at 1.6.1.1 of its Funding Statement that it "*is confident that Mona Offshore Wind Project will be commercially viable based on the assessments it has undertaken."* If this is indeed the case then why has it chosen not to share its assessments to buttress it's case?

The risk and delays due to this issue alone are immense and could lead to a further extended period of life in limbo for landowners which is contrary to Section 19 of the Guidance on Compulsory Purchase Process and The Crichel Down Rules: February 2018 Update [11] and/ or Section 67 of the Welsh Government Circular Ref: 003/2019 Compulsory Purchase in Wales and the Crichel Down Rules [12].**REP1-083.20 – No impediment to scheme**

The Objectors note the Promoter's response but their contention remains that the Promoter has not adequately identified and addressed all potential impediments.

In addition to the Act and its guidance Welsh Government Circular 003/2019 [12] deals with this at sections 31, 59 and 63.

REP1-083.21 – Whether App properly considered all alternatives

The Objectors refute the Promoter's claims that it *"it has carried out robust site selection process ".*

The Objectors have dealt with this issue at REP1-083.2 above and in Appendices 01 and 02 of this document as well as in 9.2.1 and section 10 of the August 7th Submissions.

The Objectors' contention remains that only one route corridor, Llanddulas East A and (65% near identical) B were ever developed for a Llanddulas point of landfall and that Llanddulas was the only landfall in the event that the Bodelwyddan was selected as the POI. This is evidenced in the EWG Steering Group minutes of 13/12/2021 [4] which was selected by National Grid in the Spring of 2022 as evidenced in the EWG Steering Group minutes of 20/07/2022 [5]. No alternatives, over which the Promoter had any genuine choice, have

[13] BP imposes hiring freeze and halts new offshore wind projects: The Guardian: 27 June 2024

therefore ever been considered and the Promoter has therefore not complied with its duties under the legislation.

Alternatives A, B, C, D, and E have been proposed to the Promoter but it has confirmed (in a meeting of 17/09/2024) that it has not and will not consider them due solely to it being "*too late in the process".*

The Promoter discusses an online consultation meeting of 13/09/2022 and the Objector refers to its response to REP1-083.8 earlier on the same issue.

REP1-083.22 –pylons - visual aesthetics - H&S – reliable efficiency weather conditions – explosion – fire

The Objectors do not necessarily concur with the Promoter's view and comments that new pylons were discounted due mainly to long term visual impact and other seemingly unsubstantial considerations.

REP1-083.23 –sharing transmittal ac line – cannot control 2 asset owners control equipment H & Safety

These visual impacts would not however be an issue if using existing pylons was to be the solution. However there seems to be some reluctance to share infrastructure as the Promoter would be unable to control the other parties equipment.

The Objectors can envisage times when outages are required for maintenance and repair which may need careful planning however given the savings in disruption to 84.85ha/ (209.6 acres) of land that that could bring and consequent saving of disruption to landowners and the general public then surely major power businesses such as Mona's parent companies and Scottish Power could develop some mutual understanding and accommodation to synchronise outages or for one to lead on the transmittal and provide a "turnkey" style solution to the other.

REP1-083.24 –Alternative routes A to C

The Promoter claims to have addressed this issue within RR-021.24 in document PDA-008. In that response the Promoter attributes great weight to the BRAG report however the BRAG report merely dealt with the corridor differences amounting to only 35% of the route of Llanddulas East A and B corridor which was otherwise 65% identical.

The Plots that the Objectors are seeking to protect and wish to have removed from the DCO (06-102 to 06-105) are within the 65% of that corridor for which alternatives have never been identified or considered. The moment that National Grid selected Bodelwyddan for the POI also crystallised the Llanddulas East landfall and Llanddulas East A corridor with 35% tweaks to give Llanddulas East B.

There hasn't been any Promoter consideration of alternatives but there has been considerable subsequent consultation on multiple other landfalls and routes that were already eliminated from the process. The formative stage of the process does seem to have ended before December 2021.

Other minor surmountable engineering and traffic management reasons are given at RR-021.24 which the Promoter should be embarrassed to cite.

The Promoter goes on to advise that running cables between the pylons is not satisfactory yet the AC line and the 4ZW lines are 203 metres apart at their widest adjacent to plot 06-102 and 156 Metres apart at their narrowest as they leave the Property. At the meeting of 17/09/2024

the Promoter's representatives advised that cables could be laid at a distance of 25 metres from the above ground power lines – this leaves a corridor of between 150 metres and 106 metres in which to lay and retain their cables.

The Promoter goes on to further advise that it is the "***design philosophy and industry practice*** *to cross existing utilities at a perpendicular angle*". Alternatives A to C do allow for crossing the 4ZW at right angles and there may be a slightly smaller angle of say 85 degrees if crossing the AC line from plot 06-100. Alternatives D and E both permit excellent opportunities to cross the pylons perpendicularly between AC128 and AC127 and also between 4ZB144 and 4ZB145 so there are no issues there.

REP1-083.25

The Promoter advised at the meeting on 17/09/2024 that no consideration has or will be given to removing the Plots from the limits by, for example, going with alternative options A,B,C, or even D or E in the August 7th Submissions. They advised that the reason for not considering these alternatives was solely and simply because it is *"too late in the process*" rather than due to other constraints although they do prefer the Plots presumably due to convenience.

REP1-083.26 – Possibility of considering Alternative D or E

The Promoter advises that these options cannot be pursued as they only allow for 12m permanent width and refers to its already debunked Hearing Action Point Submission as evidence that 30m is necessary. The Objectors did try and engage with the Promoter towards seeing if a width wider than 12m might work at the meeting on 17/09/2024 however the Promoter was very belligerent that it had preserve 30m to avoid giving rise to a bottleneck to the scheme.

REP1-083.27 – PDA 008 as above rep1-083-21 to 26

Both Promoter and Objectors refer the Inspector to their responses in REP1-083.21 to REP1-083.26 inclusive.

REP1-083.28 – Consultation - PDA 008 as above rep1-083-21 to 26

The Objectors refer the Inspector to their response in REP1-083.3. REP1-83.16 and Appendix 02 as well as Section 9.2.2 and Section 11 of the August 7th Submissions.

These submissions clearly and unambiguously demonstrate that the onshore corridor was, subject to National Grid confirmation of Bodelwyddan POI, predetermined in advance of the Scoping Report, landowner contact and consultation and all the subsequent statutory and non-statutory consultation periods.

Accordingly the Promoters hands were tied and a proper degree of constructive engagement or a willingness to explore options for impact mitigation could not take place and the Promoter's agents were simply unable to "*take account of responses"* received as the enabling legislation requires.

As far as the North and South (Section 3N and Section 3S options after the Plots) and Bodelwyddan which are broadly the Llanddulas East B route then these had no relevance to the Objectors concerns about its Plots as the Llanddulas East A and B routes were identical from the Objectors' land right back to the point of landfall. Accordingly the Promoter has not meaningfully consulted or been in a position to "*take account of feedback*" on this section at all or indeed "*considered"* any "*alternatives"* even though alternatives are available including but not limited to Alternatives A to E in the August 7th Submissions.

For the reasons therein, the Objector's contention remains that the Promoter has failed to fulfil its statutory obligations under Section 42 to 48 and especially 49 of the Act.

REP1-083.29 – Consultation - Hard Copy of documentation in library

The Objectors refer the Inspector to their response in REP1-083.3, REP1-83.16, and REP1-083-28 and Appendix 02 as well as Section 9.2.2 and Section 11 of the August 7th Submissions.

In addition to the difficulties with only having electronic copies of the documents available, Section 5.1.9 of the Promoter's Consultation report advises that in readiness for the Statutory Consultation between 19/04/2023 and 04/06/2023 the following was done:

"Deposit locations

5.1.9.1The Applicant ***organised deposits of consultation materials, including the brochure, SoCC, PEIR NTS and feedback forms in hard copy at locations listed in Table 5.3 below, which were available for the duration of the consultation****. The hard copy materials were available in both Welsh and English…… "*

Table 5.3 includes Llandudno and Rhyl Libraries however Jeff Harrison at Rhyl Library and Marion Thorne at Llandudno library have also confirmed that no memory or record of any documentation (hard or electronic copies) having ever been deposited or contact made. In fact the first either party had was a call from Sam Stephens from the Planning Inspectorate on or around 13th May 2024 making contact to ask if they would mind making their computers available for electronic consultation purposes as documented in the August 7th Submissions.

This further evidences, if any were necessary, along with choosing not to share the onshore confirmed route Implications of the National Grid POI Bodelwyddan decision before the scoping report submission and it continuing to "*consult"* and on multiple landfall and route corridors when this was already a settled matter along with its belligerent approach to landowners, and demonstrates what low regard the Promoter has to and unimportant it considers the consultation process to be.

REP1-083.30 – whether the land is "required"

The Promoter has referred to its response to REP1-083.21 in reply to this however this addresses unrelated issues.

The Objectors refer the Inspector to their response in REP1-083.9 and would further add that the August 27th Supplementary Submissions in Response to the Promoters' Refuted Hearing Action Point Submission address this matter conclusively demonstrating the wasteful and inefficient use of land merely because this same wasteful methodology has been used before. For example a soil bund only some 60cm tall and many many (unnecessary) metres wide, selecting to use wider trench excavation area rather than use trench boards as recommended by HSE, installing a wide two lane "heavy haul road" straight down the middle of the cable corridor an including its footprint within the sterilised area, using cables of lower capacity than could be used and thereby causing more resistance in the circuit leading to more heat generation and thereby claiming that a wider distance between cables is required.

In a meeting between the parties on 17/09/2024 then engineering representatives of the Promoter confirmed that it was quite common to reduce the width in constrained areas and that in fact, the central haul roads can indeed be located to the outside of the cable corridor. It was also noted that using higher capacity cables (curtailing resistance) could greatly assist

with heat produced allowing trenches to be closer however other representatives of the Promoter advised this could not be considered due solely to "*cost"*.

The Promoter constructs in this fashion due solely to "custom and practice" and "convenience" because they have "got away with it" before but none of this excessive land take both permanently or temporarily is "*required for the accomplishment"* of Mona and does not pass the test that their lordships set down in Sharkey and related caselaw and will need to be removed if the Order is to be lawfully confirmed.

The above is without prejudice to the Objectors contention that their Plots are not required at all. Landowners to the south are supportive of hosting the cable and this land is at the far end of their holdings and not key to a scheme such as the one Robert Parry proposes. The harm suffered will be negligible in comparison to what it will be for the Objectors.

REP1-083.31 – Extent of Land in the Order area.

The Promoter discusses its intended land take in its response but the Objectors contention remains that this is far too excessive and not "*required*" or "*necessary or the accomplishment*" of the Scheme.

Constant iteration of what it believes is "*required*" will not change the fact that this excessive land does not pass the test that their lordships set down in Sharkey and related caselaw and will need to be removed if the Order is to be lawfully confirmed.

REP1-083.32 – Extent of Land in the Order area.

The Promoter cites its Refuted Hearing Action Point Submission.

This document has already been addressed by the August 27th Supplementary Submissions. The Objectors responses to REP1-083.30 and 31 also apply.

REP1-083.33 – Width Required for Construction

Regardless of the similarities or otherwise between the Scheme and these other undergrounding schemes, the matter has been superceded by the August 27th Supplementary Submissions, in response to and which also supercedes the Promoter's Hearing Action Point Submission.

The Objectors responses to REP1-083.30, 31 and 32 also apply and seeking to include land for convenience and for reasons of "custom and practice" is still not a matter that is permitted under the Act or the Guidance to the Act or under the tests set down in Sharkey.

REP1-083.34 – Permanent Easement Width

The Promoter again cites its Refuted Hearing Action Point Submission.

This document has already been addressed by the August 27th Supplementary Submissions.. The Objectors responses to REP1-083.30,31,32 and 33 also apply.

REP1-083.35 – Width Required for Electrical Separation.

The Promoter makes no observation or comment as to electrical separation in line with the Objectors' understanding that there are no electrical or magnetic issues with underground cable. The Promoters seeks to discuss heat dissipation and the merits of parallel cabling over trefoil for that purpose.

Again the Promoter again cites its refuted Hearing Action Point Submission.

This document however does not make any reference to the thermal dissipation for the cables. Neither has the Promoter submitted any calculations to demonstrate what the thermal issues might be requiring a distance of 7.5M between cable trench centres. REP1-083.30 also refers on this issue.

REP1-083.36 – Underground Heat Dissipation / Thermal Independence

The Objectors would direct the Inspector to REP1083.30 and 35 in response.

REP1-083.37 – Amount of Land that could lawfully be included in the Limits

Griff Parry revised section 12.2.5 of his August 7th Submissions upon receipt of the Promoter's Hearing Action Point Submission. This was explained in the August 27th Supplementary Submissions. The Promoter cites this document in response as well.

However this document has already been addressed by the August 27th Supplementary Submissions. The Objectors responses to REP1-083.30, 31, 32 and 33 also apply.

REP1-083.38 – Compelling Case in the Public Interest that outweighs harm to landowner.

The Objector refers the Inspector to its response in REP1-083.18 earlier.

Further, part 1 of Section 122 of the Act states that:

> ***"****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."***(emphasis added)

It is part 3 of Section 122 that makes it a condition that :

> "*there is a compelling case in the public interest for the land to be acquired compulsorily"*

The guidance deals with it in paragraphs 6 to 19 inclusive in particular:

Paragraph 7 advises that Promoters need to be prepared to "*justify their proposals"* and also "*defend them*" at examination.

The Promoter has cited 2 documents as its "*compelling case*". However, as far as the Objectors can see, Section 1.4 of the Statement of Reasons (App-029) merely lists relevant legislation and where appropriate the legislation's aims with no attempt to explain how the Scheme meets or exceeds these.

Likewise Chapter 2 of Volume 4 of the Environmental Statement is merely an essay on climate change with no conclusion or understandable means of what the impact of the Scheme would be on that climate change.

Paragraph 8 advises that Promoters need demonstrate that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) the Promoter is unable to do this because, of course, National Grid selected the proposed onshore corridor when selecting the POI in the spring of 2022 and no alternatives to this were ever considered. The Objectors refer the Inspector to their response in REP1-083.3. REP1-83.16 and Appendix 01 as well as Section 9.2.2 and Section 11 of August 7th Submissions.

Paragraph 9 requires the Promoter to have a clear idea of how they intend to use the land and to demonstrate that there is a reasonable prospect of the requisite funds for acquisition becoming available. Please see Objectors response to REP1-083.19 above.

Paragraph 10 states that the Secretary of State must ultimately be persuaded that the purposes for which an order authorises the compulsory acquisition of land are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected. However, the Promoter does not consider the impact upon, or harm done to those affected by its proposals at all in any of its documentation and their only acknowledgement of any kind of detriment being suffered to those affected is a reference to those parties being entitled to claim compensation (i.e. as a consequence of suffering detriment or loss) in section 1.12.1.12 of the Statement of Reasons within the section on human rights.

Therefore, despite landowners being forced to live in long term limbo, imposed with huge ambiguity and uncertainty and very severe excessive and unnecessary land take over extreme periods of time, up to over 10 years before i.e. a Notice to Enter is served and that those affected can therefore finally make any sort of claim, the Promoter merely waives the impact on those affected as unworthy of any consideration because compensation sometime within 10 years of confirming the Order then a compensation claim can be made.

Paragraphs 12 and 13 state the Secretary of State will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the compulsory acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired. Parliament has always taken the view that land should only be taken compulsorily where there is clear evidence that the public benefit will outweigh the private loss.

Paragraph 16 permits the Secretary of State to modify the Order and to exclude some of the land from the Order and clearly there is a strong case for doing this with the Objectors Plots in this instance (see Objectors response to REP1-083.2,9, and 30).

Neither of the documents cited by the Promoter (Section 1.4 of the Statement of Reasons (App-029) and Chapter 2 of Volume 4 of the Environmental Statement) in any way "*demonstrates"* or "*justifies*" a "*compelling case*" for the acquisition whilst the Promoter has treated the harm to be suffered by landowners to be so inconsequential as to not even merit a mention in its DCO application.

REP1-083.39 – Whether Funding is in place.

The Objectors refer the Inspector to REP1-083-19 and their contention is that showing the parent companies' balance sheet and profit and loss account and bank statements does not entitle the Special Purpose Company Mona Offshore Wind Limited to any of those funds.

The Promoter is asking the Inspector to make a huge leap of faith that the parent companies will happily stump up the investment needed at the appropriate time but this would only be the case if the scheme was viable. The Promoter is not sharing any of the viability assessments it purports to have undertaken and again expects the inspector to make a leap of faith and trust its cavalier assurance "*The Applicant is confident that Mona Offshore Wind Project will be commercially viable"* in section 1.6.1.1 of the Funding Statement. If the Promoter is so confident itself then why doesn't it make the "*Final Investment Decision*" now and commit rather than wait until 2026/2027 to do that.

Against all this we have the background that the mood music has changed against windfarms with the new BP Chief Executive, Murry Auchincloss, who has pledged "*more pragmatic' approach to BP's green targets*" whilst "*reversing the move away from fossil fuels*" and "*imposing a hiring freeze*" and "*halting new offshore wind projects*." (The Guardian, 27 June 2024) [13] the FID may never even, in fact, favour proceeding with the Scheme.

The Promoter moots Article 33 of the draft DCO preventing the Compulsory acquisition of land until such time as its funding is in place as a safeguard yet this does nothing to alleviate the long term uncertainty and detriment that those affected will suffer especially when that would make it even less likely that a Notice to Enter would be served enabling a claim to be made.

REP1-083.40 – Impediments to the Scheme

The Promoter continues to only consider impediments which may arise from consents and licences and gives no consideration of other, for instance, physical or legal impediments that could arise and require considering under the Section 15 of the :Guidance on Compulsory purchase process and The Crichel Down Rules" Department for Levelling Up, Housing and Communities July 2019 (11) or the Welsh Government Circular Ref: 003/2019 Compulsory Purchase in Wales and the Crichel Down Rules (12) (sections 31,59 and 63).

> Again instead of making the case then the Promoter seeks to persuade the Inspector to rely on verbal assurances i.e. "
>
> *"The Applicant believes that none of the other consents or licences outlined in APP-185 (Other Consents or Licences Required) represents an impediment….."*
>
> *"The Applicant has no reason to believe that the Project will not receive a Final Investment Decision at the appropriate time….."*
>
> *"The Applicant is confident that Mona Offshore Wind Project will be commercially viable based on the assessments it has undertaken"*

REP1-083.41 – Other matters of detriment to the Objectors–final layout ambiguity

The Promoter merely iterates its requirement again and advises that the information isn't available.

Again , Section 19 of the Guidance on Compulsory Purchase Process and The Crichel Down Rules: February 2018 Update(11) and/ or Section 67 of the Welsh Government Circular Ref: 003/2019 Compulsory Purchase in Wales and the Crichel Down Rules (12) state:

> "*keeping any delay to a minimum by completing the statutory process as quickly as possible and taking every care to ensure the CPO is advertised and made correctly, and under the terms of the most appropriate enabling power;"*

The Promoter's programme in no way seeks to keep the delay for landowners to a minimum throughout – this has not been given the least passing consideration by the Promoter.

REP1-083.42 – Timing of Commencement and Completion of the works

The Objectors refer the Inspector to its response in REP1-083.14 and 41. Confirming the Order without modification to Article 21 could leave landowners in limbo with potentially over 10 years to wait until receiving a Notice to Enter and even then the 4 year construction period could mean over 14 years before their land is returned – this is wholly unfair and unreasonable.

REP1-083.43 – Consultation

> **RR-021.2 –** The Objectors have clearly demonstrated the Promoter's failings in the consideration of alternatives in REP1-083.2 and 21 above and in Appendices 01 of this document as well as in 9.2.1 and section 10 of August 7th Submissions.

REP1-083.28 The Objectors have clearly demonstrated the failure in the consultation process – see REP1-083.3, REP1-83.16, REP1-83.28 and REP1-083-29 and Appendix 02 as well as Section 9.2.2 and Section 11 of the August 7th Submissions.

REP1-083.12 This deals with lack of access from the A548 which is another different and erroneous error. The Objectors have clearly debunked its cross section requirements in the Hearing Action Point Submission and its claims that excessively wide permanent and temporary affected land areas are required (August 27th Supplementary Submissions). The Objectors responses to REP1-083.30,31,32 and 33 also apply).

REP1-083.38 The Promoter has not demonstrated or justified any case in the public interest or the opposing harm done to the affected parties (REP1-083.18 and 38).

REP1-083.19 The Objector refers the Inspector to REP1-083-19 and 39 Viability and funding have not been demonstrated by the Promoter who instead seeks to meet these important criteria with platitudes and assurances requesting leaps of faith from the Secretary of State.

REP1-083.40 The Promoter has not considered or demonstrated its means of addressing other i.e. physical or legal impediments (beyond 3rd party consents) and instead it seeks to ignore them and expects the Secretary of State to act likewise.

At a meeting with the Promoters on 17/09/2024, the Promoter confirmed the following:

a) No consideration has or will be given to removing plots 06-102 to 06-105 from the limits by, for instance, going with alternative options A,B,C, or even D or E in the August 27th Supplementary Submissions.

b) The Promoter is also not prepared to restrict itself to the southern side of the Plots (i.e. as close as possible to the AC line pylons) the Promoter did however confirm that there was no reason that the cables could not commence at a distance some 25metres away from the wires on the AC Pylon line.

c) The Promoter confirmed that it is not prepared to restrict the cabling to a permanent sterilised easement corridor of less than 30 metres wide even though it did agree that it was quite possible that the ultimate easement width could be less.

d) The Promoter confirmed that it is not prepared to attempt to cross the AC line pylons between tower AC128 and AC127 as this would involve land outwith the current Limits of Deviation even though the landowners affected are prepared to support this, and the Promoter is able to rely on The Infrastructure Planning (Compulsory Acquisition) 2010 Statutory Instrument.

e) The Promoter is not prepared to consider a shorter notice serving window in respect of the Objectors land.

f) Alternative compound locations to the one proposed on the Objectors land are likewise not being considered by the Promoter although it did believe it may be possible to reduce it in size during detailed design.

The above issues are of paramount importance to the Objectors but are seemingly not for negotiation in the proffered heads of terms – given this there appears to be little point negotiating the heads of terms.

Kerry James Planning Response to Promoter On response to Written Submissions

REP1-084.11
The comments made regarding Rep1-074.11 refer to tourism generally in CCBC and are not site specific.

REP1-084.19
The WR of KJP refers to the northern section of the site which is outside of the order limits. The Promoter comments that no planning application has been submitted. This is true but a site layout plan is evident which includes this land as well as the land within the order limits as part of a larger tourism site. The proposed scheme forms part of a wider diversification project for the whole of the farm holding. The Proposals are progressing and the aim is to submit a planning application in the future.

REP1-084.20
The Promoter is correct that the DCO will not stop the Objectors seeking planning permission for the northern section, it does restrict and limit what can be done with the rest of the land and as such **WILL** affect (limit) the scale, design and layout of any proposal for the northern site.

REP1-084.24
The Promoter states that the site layout is out of scale. It also considers that the proposal would contravene various criteria of TOU1 and TO2 and TOU4. The WR of KJP Planning show that she is of the opinion that the policies would allow for a larger scheme or other built development such as new serviced holiday accommodation as well recreational/tourism facilities such as equestrian, cycling, mountain biking as part of an integrated facility.

REP1-084.34
The Objectors and its consultants strongly disagree with the Promoter's assertion that the land has limited prospects of securing planning permission though it is accepted that this would only be tested through the submission and determination of a planning application. It is accepted that the blighted land would refer to the land subject to the order and not the northern section of the land.

REP1-084.34
If the order is granted then the prospective development over land covered by the order could not go ahead. It is accepted that it would not affect the northern section of the land, however, it would affect the type and scale of development that could be undertaken.

Robert Parry Response to Promoter On response to Written Submissions

REP1-089.7 – Vehicular access off the A548

See REP1-083.12 earlier

REP1-089.8 – Article 21 Period of Time for Notices to be served

The Objectors would direct the Inspector to REP1-083.13 and 14 earlier

REP1-089.9 – Restrictive Covenants and Vehicular access off the A548

The Objectors would direct the Inspector to REP1-083.18 and 30 earlier and REP-083.12 re A548 the erroneous access issue again.

REP1-089.10

The Objectors request that the Order be modified prior to confirmation, ideally by its Plots being removed from the DCO altogether or, if that isn't considered possible, by other modifications in land take and timing that allow the Objectors proposals to be implemented as well.

CONCLUSION

The Objectors have requested that their land be excluded from the Promoters proposals throughout and initially believed that they had some input into the route and design process. However, the decision to pursue Llanddulas East A and its 65% identical twin route Llanddulas East B had already been made prior to the EWG Steering Group Meeting of 13/12/2021 and was merely pending National Grid confirming Bodelwyddan as its preferred POI which it duly did in the Spring of the following year (2022).

This meant that the Promoter did not consider any alternatives to Llanddulas East A and B as the enabling legislation requires it to do. The Promoter also didn't meaningfully consult whilst matters were at a formative stage and couldn't take any responses into account due to the preexisting predetermination of the route corridor. The Promoter did however continue to pay lip service to consultation by continuing to submit a Scoping Report to the Planning

Inspectorate and hold consultation events by including options that had already been eliminated.

Alternatives A, B, C and D and E have been put forward in place of, or to mitigate impact on the Objectors Plots. It is generally accepted that these alternatives would achieve 100% of the Scheme benefits that could be achieved by affecting the Plots. In a meeting on the 17/09/2024 the Promoter advised that it is now *"too late in the process"* to consider these alternatives. However it is clear that it would also have been "*too late in the process"* to have considered them at their first contact with the Objectors in May 2022 and even as far back as December 2021.

Through no fault of their own the Objectors now find themselves faced with alarming prospect that the Promoter will be granted powers in respect of 60.21% of the Property and that the land could be blighted for that purpose for 7 years (extendable by a further 3 years with strategic notice serving and then with a further 4 year construction period on top. This will entirely prevent the Objectors from moving forward with any of their plans until possibly 2035 and even 2039. Alternatively, in 2035, the Objectors may find that either the Promoter has abandoned the scheme altogether or may finally find what the detailed design actually is so they can pinpoint precisely where the permanently sterilised 30m wide route corridor is actually going to be located. Even then, the Objectors' scheme is unlikely to be sustainable due to the Promoter's impacts.

The Promoter has not provided "*compelling evidence that the public benefits that would be derived from the compulsory acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired."* It merely cites parts of documents and expects readers to identify the benefits for themselves. The landowners affected by Alternatives A to C are broadly supportive as this land is tertiary and remote from their holdings and the harm and loss suffered by them would be minimal when compared to the impact on Robert Parry's proposals. Even Option D or E would assist the Objectors. However the Promoter has given no consideration to the harm suffered by those affected by its Scheme other than merely describing everything as being compensatable. Compensation is not the issue here.

Further, the Promoter has no proved that the Scheme is viable or that funding is in place or that it has addressed physical and legal impediments to the Scheme. Moreover it will not even have committed to the Scheme itself until some future date when the Final Investment Decision is eventually made, apparently in 2026 or 2027. This in itself is a severe risk due to the parent company's recent and abrupt about about-turn on its windfarm policy [(13)]. Providing platitudes and assurances that it is confident that everything will be OK is not satisfactory in a matter as serious as this which has grave implications for those affected or in its way.

Clearly the position is entirely unreasonable and unfair and the Objectors will suffer an unacceptable level of unavoidable detriment in the event that the Order is confirmed without modification. Accordingly, they have had no option but to submit written representations in the strongest possible terms to point out the failings in the Promoter's case and appeal for matters to be reviewed impartially.

The August 7th Submissions and the August 27th Supplementary Submissions have demonstrated that the land take proposed is excessive and unnecessary as it is not "*required or necessary for the accomplishment of the Scheme"*. It can be accomplished equally well with much less land and indeed without the Objectors' Plots at all.

The Inspector is therefore requested to report to the Secretary of State that the Plots, namely, 06-102 to 06-105, are not required by the Promoter for the purposes of the accomplishment of the Scheme. Satisfactory and practicable alternative to them do exist which further render the Objectors' land unnecessary in the circumstances of this case and the case for the powers is not therefore compelling. Further, the Objectors and other potentially affected parties on the route alternatives have confirmed that they would be pleased to reasonably assist the Promoter with these practicable alternatives, subject to proper compensation of course.

Compulsory rights over the Plots within the Property are not therefore necessary and it would be an error in law to recommend their inclusion with the Order as Section 122 of the Act cannot be applied.

In light of the above the Inspector is respectfully invited to recommend modifying the Order to mitigate the impacts on the Objectors. This would be best achieved by removing plots 06-102 to 06-105 from the Order prior to confirmation.

Griffith Wynne Parry MRICS

Senior Consultant

The Brown Rural Partnership

Dated 30 September 2024

APPENDICES

APPENDIX 01 - DUTY CONSIDER ALTERNATIVES

APPENDIX 02 - DUTY TO CONSULT

APPENDIX 03 – TIMELINE OF EVENTS FOR MONA SCHEME TO DATE

APPENDIX 04 – TIMELINE OF EVENTS SHOWN ON A GANT STYLE CHART

APPENDIX 01

DUTY CONSIDER ALTERNATIVES

The Promoters obligations to consider alternatives arise from Section 8 of the Guidance to the Planning Act 2008 (1), Regulation 14 and Schedule 4 of the Environmental Impact Assessment under the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (2), and Department for Energy Security and Net Zero: Overarching National Policy Statement for Energy (EN-1)(3). These are discussed in more detail in section 9.2.1 of the Written Submissions of Griff Parry dated 7 August 2024. ("**August 7th Submissions")**

The extent of the duty is set down in the leading case R v North and East Devon Health Authority, ex parte Coughlan [2001] (14). The court held that those making significant decisions should:

- Identify reasonable alternative options
- Gather and analyse relevant information about alternatives
- Give genuine and substantive consideration to alternatives
- The focus is on reasonable alternatives that merit serious consideration.
- Demonstrating Compliance
- In demonstrate compliance, decision makers should:
    - Document the alternative options identified
    - Explain why certain alternatives were rejected
    - Show a clear decision-making process considering pros/cons of options/ Limitations

The courts will not substitute their own views on which alternative is preferable. The focus is on whether the proper process was followed in considering alternatives.

The Objectors' contention is that the Promoter has not considered "*all reasonable alternatives"* or indeed "any" reasonable alternatives and this has also been discussed in Section 10 of the **August 7th Submissions**.

For one thing Llanddulas East A and B are identical for at least 65% of the route the 35% of the route that was consulted on as the North and South options at the Statutory Consultation doesn't affect the Plots or any of the landowners from Plot 06-105 right back to landfall. The BRAG report only dealt with @ 35% of the single onshore corridor that the Promoter has "*preferred*" for a Bodelwyddan POI since before 13/12/2021. This is hardly "*all reasonable alternatives"* as it is legally obliged to consider.

Other routes from Llanddulas East landfall are available as well as other part variations such as the Objectors' suggested alternatives A to E but the Promoter has failed to identify them and accordingly failed to consider them and continues to refuse to consider them as in the case of the Objectors' suggested alternatives.

It is clear from the EWG steering Group minutes of 13/12/2021 that the Promoter had outlined a "**number of route corridors**… **for each POI**") but that most would be eliminated when National Grid decided on the POI. These "alternative" route corridors were therefore incapable of being chosen by the Promoter and therefore not "alternatives" at al.

[14] R v North and East Devon Health Authority, ex parte Coughlan [2001](QBCOF 1999/0110/4)

For this reason the Promoter was "***not asking for detailed feedback on the indicative routes as there are many indicative routes, most of which will fall away once there is a decision on the POIs by National Grid*****".**(emphasis added)

National Grid therefore, being the decision maker on the POI (in March 2022), was also therefore the decision maker on the route corridor rather than the Promoter. The Promoter had not therefore considered reasonable alternatives against which to the selected route was chosen because those "alternatives" were never really realistic prospects and were outwith the Promoters hands anyway.

At the same EWG meeting no.2 of 13/12/2021 the Promoter was also aware that:

> *"Each POI has several landfall options,* ***except Bodelwyddan, which has only one landfall option****." (emphasis added)*

Offshore Cable Routes West B, East A and East B had therefore all already been discounted before December 2021 for various reasons such as the Douglas gas field and clashes with Awel y Mor and Gwynt y Mor and Rhyl Flats offshore schemes. The Promoter already knew that West A offshore cable route was the only realistic proposal in December 2021. In the same way as before then National Grid therefore also selected the offshore cable route when it decided the POI in March 2022. As above, "Alternatives" that were not workable or able to be selected by the Promoter in substitution for the eventual option selected are not true alternatives at all and certainly not "*all reasonable alternatives*" that the Promoter is required to "*explore*".

Further Llanddulas East Landfall gave rise to 3 onshore route corridors with Llanddulas East C also eliminated before it was selected when National Grid selected Bodelwyddan as the POI.

West A offshore cable route also only gave rise to Llanddulas West A and B Landfalls and West A (offshore) was discontinued in the Parallel Analysis Screening referred to in PEIR and as confirmed in the EWG meeting no. 2 notes dated 13/12/2021 which stated that there was only one landfall option for Bodelwyddan, Namely Llanddulas East. Again the Promoter had already dismissed Llanddulas East C due to the high potential impact risk for ecology, and potential impacts to ancient woodland, and presence of key strategic sites identified in the Conwy replacement local plan immediately south of Abergele.

Llandudno East A and B, being identical up until the A548 crossing and Objectors land, were the only realistic routes ever considered by the Promoter and this was known by the Promoter (subject to the National Grid Decision in the spring of 2022) in advance of the EWG Steering Group Meeting no.2 held on 13/12/2021. All other "reasonable routes considered" were unrealistic and either unworkable or unattainable being outwith the decision of the Promoter. Despite this the Promoter still consulted on 3 landfall locations and up to 6 onshore corridors through the screening report and right through until after the 2nd non-statutory consultations. It wasn't until the statutory consultation process in April 2023 that they finally came clean about Llandudno East A and its 65% identical Llanddulas East B which the Promoter potentially could act on but this meant that all the comments and suggestions in the consultation up to the A548 and the Objectors plots as well were unable to be acted on at all and the process merely paid lip service to "consultation".

APPENDIX 02

DUTY TO CONSULT

In the case *MP, R (On the Application Of) v Secretary of State for Health And Social Care* [2020] EWCA Civ 1634 the Court of Appeal held that there was no carte blanch general duty on public bodies to consult before decisions are made although, alongside where there is a statutory direction to consult, circumstances do arise where there is a legitimate expectation. Lord Justice Newey confirmed that regardless of what circumstances gave rise to the consultation then it should be "*carried out properly*". He referred to Lord Justice Sedley's judgement in R v Brent Borough Council, Ex p Gunning (1985) 84 LGR 168 [(9)] which are known as the Sedley Gunning Principles:

> *"consultation must be undertaken at a time when proposals are still at a **formative stage**; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; and the **product of consultation must be conscientiously taken into account when the ultimate decision is taken".*** (emphasis added)

Unlike the above, Mona's duty to "consult" arises by virtue of Section 42 – 48 of the Act especially Section 44 of the Act and Section 49 obliges it to "**take account of responses"**

Section 24 of the Planning Act 2008: Guidance advises:

"……. *Early consultation with people who could be affected by the compulsory acquisition can help build up a good working relationship with those whose interests are affected, **by showing that the applicant is willing to be open and to treat their concerns with respect**. It may also help to save time during the examination process **by addressing and resolving issues before an application is submitted**, and reducing any potential mistrust or fear that can arise in these circumstances"*

Contrary to the Sedley Gunning requirements as well as the Planning Act 2008 and related guidance it is clear from the timeline produced at Appendix 03 and the GANT Chart at Appendix 04 that the Promoter was fully aware that there was only one possible landfall location for the Bodelwyddan Point of Interconnection in advance of the EWG Steering Group Meeting No. 2 dated 13/12/2021:

> *"There are a number of route corridors being developed for each POI, within each scoping search area. **At this time, the Applicant is not asking for detailed feedback on the indicative routes as there are many indicative routes, most of which will fall away once there is a decision on the POIs by National Grid"*** (emphasis added)

and

> *"Each POI has several landfall options, **except Bodelwyddan, which has only one landfall option**." (emphasis added)*

Alongside this, that landfall location only had 3 route options, namely Llanddulas East A, Llanddulas East B, Llanddulas East C – Llanddulas East C had also already been identified as being ecologically sensitive and impacting on ancient woodland and some key emerging development plan proposals to the south of Abergele.

National Grid announced their preferred POI as Bodelwyddan in March 2022 and confirmed it in May 2022, as confirmed in the EWG Steering Group meeting No.3 of 20/7/2022:

> *"In March 2022 National Grid indicated a strong likelihood for POI at Bodelwyddan.* ***NG confirmed grid connection at Bodelwyddan in May 2022."*** (emphasis added)

Section 4.8.3.8 of PEIR states also that at Steering Group Meeting 3 (20/07/2022) – the Attendees were advised only *"West A Landfall Point taken forward"*

and also at 4.8.3.23 of PEIR

> *"By the time the Steering Group meeting was undertaken the decision had been taken not to progress the Belgrano landfall (West B) due to existing infrastructure constraints. As such, only the Llanddulas options (i.e. Llanddulas East A &B &C) were presented*

This means that Llanddulas East A and (65% identical) B onshore cable corridors were selected by that time i.e. simultaneously with the National Grid Decision or rather that they were already made prior and subject to confirmation by the National Grid decision (see Steering Group No.2 minutes).

This decision timescale is entirely corroborated by the Promoter commencing its land referencing and first contact being made with the Objectors and other landowners as well as negotiations for non-intrusive site investigations getting underway.

Llanddulas East A and B have identical impacts on the Objector's land and so when " Section 44 (landowner consultation)" purportedly commenced in June 2022, then the Promoter was already committed to Llanddulas East A and B rendering consultation with the landowner meaningless as has been explained in the 7th August Submission.

In addition, however, the Promoter continued to consult on numerous predetermined issues including multiple landfall locations and onshore cable routes already ruled out through the first and second non statutory consultation processes later the same year and indeed to the statutory consultation process in the Spring of 2023 which equally had little flexibility for those consultations to have been meaningful and for the Promoter to have been able to "**take account of responses"** as the enabling legislation requires**.**

It is also worth pointing out to the Inspector that the screening report noted that National Grid had already indicated its preference for Bodelwyddan POI in March 2022. This event crystallised the point of landfall (see EWG minutes of 13/12/2021) which in turn crystallised Llanddulas East A and B and C.

Due to the difficulties with the Llanddulas East C route (see Table 4.17 in PEIR) it was quickly eliminated leaving only Llanddulas East A and B route for consideration which are largely identical for most of the route. Despite this information being known (and thereby committed to) by the Promoter at such an early stage and in advance of the screening report they chose instead not to share this route information in the screening report and relied on use of "*Rochdale Envelopes*" instead. This is something that the Promoter was criticised for in the screening report response in June 2022.

The Latest "consultation" with the Promoter took place at a meeting of 17/09/2024 where the Promoter confirmed the following:

- No consideration has or will be given to removing plots 06-102 to 06-105 from the limits by, for instance, going with alternative options A,B,C, or even D or E in the August 27th Supplementary Submissions.

- The Promoter is also not prepared to restrict itself to the southern side of the Plots (i.e. as close as possible to the AC line pylons).the Promoter did however confirm that there was no reason that the cables could not commence at a distance some 25metres away from the wires on the AC Pylon line.

- The Promoter confirmed that it is not prepared to restrict the cabling to a permanent sterilised easement corridor of less than 30 metres wide although it did agree that it was quite possible that the ultimate easement width could be less.

- The Promoter confirmed that it is not prepared to attempt to cross the AC line pylons between tower AC128 and AC127 as this would involve land outwith the current Limits of Deviation. Notwithstanding that the landowners affected are prepared to support this, as well as your client's ability to rely on The Infrastructure Planning (Compulsory Acquisition) 2010 Statutory Instrument.

- The Promoter is not prepared to consider a shorter notice serving window in respect of the Objectors land.

- Alternative compound locations to the one on the Objectors are likewise not being considered by The Promoter although it did believe it may be possible to reduce it in size during detailed design.

APPENDIX 03

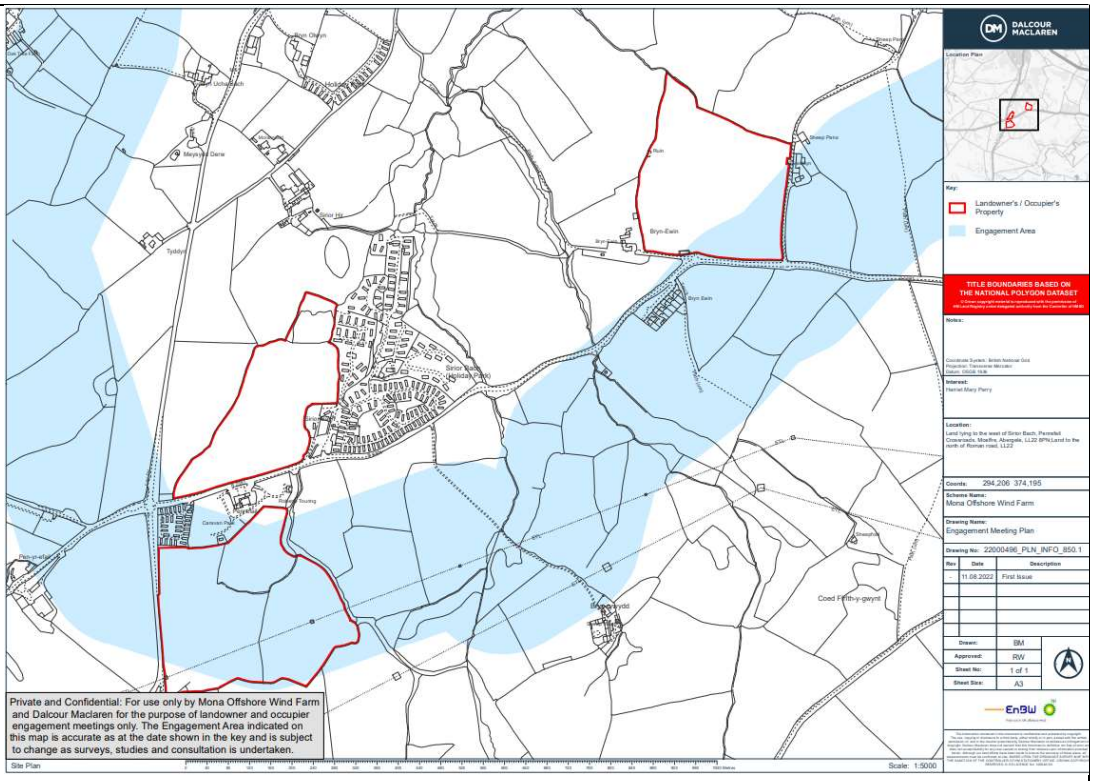
TIMELINE FOR MONA SCHEME TO DATE

Feb 2021	BP & ENBW successfully awarded UK Offshore Wind Round 4 f "Yellow South" 60 year lease area (Mona) Feb 2021
July 2021	– Early Engagement (non-statutory consultation in spring summer of 2021 with communication to stakeholders (in July 2021) (table 4.1 in Consultation report shows who stakeholders are (Councils / MPs Elected officers) - from July 2021 in pre of Scoping Report (according to 2.5.1.7 of Consultation Report)
14/7/21	– "Mona" formally named as Mona Scheme long with Sister scheme "Morgan"
14/7/21	– suppliers registration portal launched enbw-bp.com/suppliers,
10/11/21	Meeting of the Morgan and Mona OWF Maritime Navigation Engagement Forum
November 2021	Introduction briefings and Scheme updates (PowerPoint presentations by MS teams) to planning officers and lead members of local authorities across North Wales also in January 2022 – Presentations introduced ideas that Nat Grid considering POI using Holistic Network Design Process(HND) (POI locations considered were :- Wylfa, Pentir, Bodelwyddan, Connahs Quay, Kirkby.) – this influenced the landfall location and the broad location for substation 4 as per .3.1.6 to 9 of consultation report
16/11/2021	Steering Group Meeting 01 - First Meeting of Evidence Plan Process ("EPP") -Steering Group & Expert Working Group from Feb 2022 Participants – BP -RPS-NRW-Natural England -MMO JNCC – Planning Inspectorate
13/12/2021	Steering Group Meeting 02 – Same attendees plus Environment Agency "KL- *This meeting is to* ***introduce the cable route study for*** *Morgan and* ***Mona****, to procure high level feedback on the cable routing process and to identify any red flags*" *(*emphasis added) "*When the Projects reach scoping submission* (May 2022)*, the intention is that they will each have a single grid connection and therefore only one POI for Morgan and one for Mona. At the moment there are six POIs, four for Mona"* *"There are a number of route corridors being developed for each POI, within each scoping search area. At this time,* ***the Applicant is not asking for detailed feedback on the indicative routes*** *as there are many indicative routes,* ***most of which will fall away once there is a decision on the POIs by National Grid****."(*emphasis added) *"There are a number of possible landfall location options for each POI. These projects might have a large variety of landfall types due to the variation in the coastline topography in this area. Onshore cable routing will be installed to the onshore substation before the cable provides power to the national grid"* "*The Holford rules have been considered with the assumption that all cables will be buried wherever possible. This is for the whole length of cable, onshore and offshore.* ***No pylons have been considered for this project****. Trenchless technologies will be used where required e.g. HDD underneath roads*" (emphasis added) "*4.Site selection process*(presented by LG) *The Applicant started the cable route selection study with very wide search areas. Constraints were categorised as hard or soft constraints. Hard constraints*

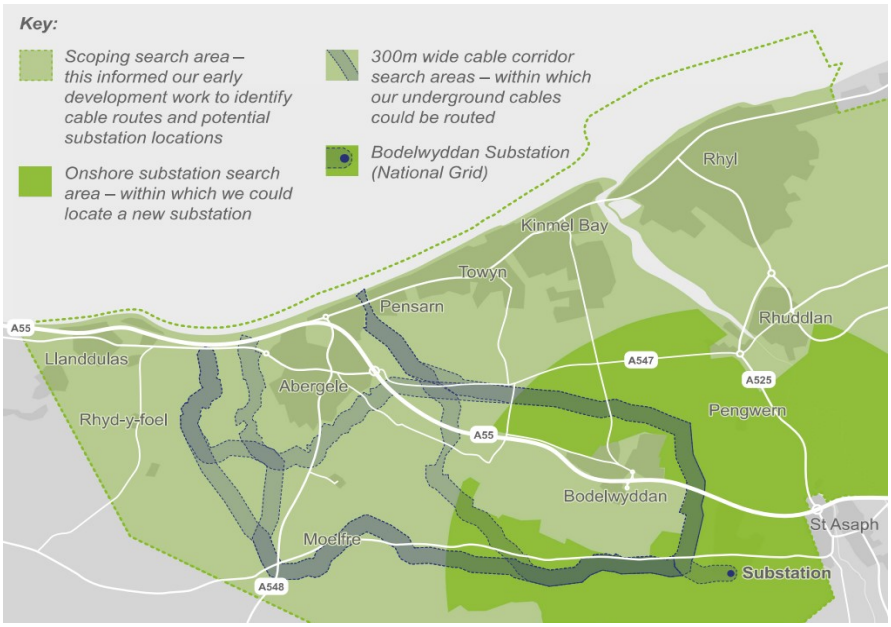
	were no-go areas e.g. offshore platforms, aggregate areas and urban areas. The constraints were all mapped to exclude hard constraints and to understand the distribution of soft constraints. This was used to find the cable routes of least constraint. ***Landfall and substation location options were investigated by sending people out to these locations and taking detailed notes*** *e.g. the state of the coastal defences, any other developments that are not visible from satellite imagery etc.* ***The constraints were weighted to give a greater weighting to the constraints that have a greater bearing on the decision making process****. Spatial* ***mapping was used*** *to interrogate the constraints e.g. to measure the length of a cable route through specific constraints.* ***This enabled one route to be compared against another and each route was scored against each constraint.*** *This gives each route option a ranking on how it compares against the other options therefore* ***allowing identification of the preferred route****. Reasonable alternatives have also been presented as we are looking for very early feedback and will be looking for more detailed feedback when the POI for each project is known. It will be possible to go back to the mapping stages of the selection study following stakeholder feedback".* (emphasis added) "Each POI has several landfall options, **except Bodelwyddan, which has only one landfall option**." (emphasis added) ***Note that at this early juncture (13/12/21) the Promoter talks about selection in a past tense and that it had already "*sent people out*" and identified its "preferred route" for each landfall option at each POI. Moreover the Promoter also knew then that there was only 1 point of landfall for a Bodelwyddan POI. We also know that there was already a "preferred route" for each POI so Llanddulas East A was merely awaiting the POI confirmation from National Grid which came in March and again in May 2022. *** ***Notwithstanding this the Promoter chose not to share this information in the Scoping Report and also continued to consult on several already dismissed landfall options and cable corridors right up until statutory consultation process in early 2023.***
14/12/21	Steering Group Meeting 02.5 – BP/ RPS/NRW this was merely a duplicate meeting as some parties were unable to attend the previous day.
March 2022	National Grid advise the Promoter that Bodelwyddan is their preferred and recommended POI location for Mona ***(See EWG Minutes dated 20/07/2022)***
March 2022	The Promoter was sufficiently reassured by Nat Grids assurance that it commenced land referencing – It put "To Whom it May Concern" notices up at the entrances to the sites along the corridor and sent out Land Interest questionnaires– this timeline lines up perfectly with when National Grid expressed a preference for Bodelwyddan thereby crystallising the Llanddulas East A and B onshore corridors.
March 2022	The Promoter was also sufficiently reassured by Nat Grids assurance that it ecological and non-invasive site surveys: Section 4.8.1.4 of the Consultation report states: "*In addition to the issuing of LOQs to identify Landowners,* ***non-intrusive survey access licences were issued to enable the project to undertake relevant ecological, engineering, topographical and geophysical surveys****.* ***This process began in March 2022*** *with further licences issued when new interests were found….. "* (emphasis added)
06/05/22	Meeting of Morgan and Mona OWF Maritime Navigation Engagement Forum
May 2022	***NG confirmed grid connection at Bodelwyddan in May 2022 (See EWG Minutes dated 20/07/2022)***
05/05/22	Scoping Report Submitted to PINS – no cable route specified merely broad "Rochdale Envelopes" Mona Offshore Wind Project Environmental Impact Assessment Scoping Report. ***"Part 3: Transmission asset*** *2.4.3 Landfall 2.4.3.1 In order to connect the Mona Offshore Wind Project to the national electricity transmission network, the onshore and offshore export cables must meet, via a landfall site. The exact location of the landfall is not yet determined,"*

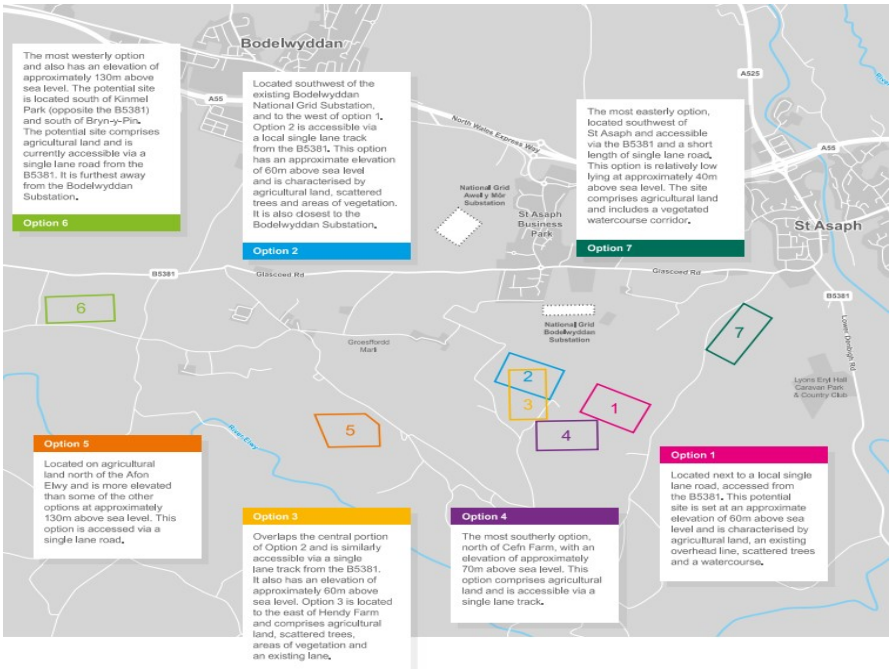
	****This is a direct contradiction of what the Promoter told the EWG Group on 13/12/21. The Promoter will also have known (since March 2022 that Bodelwyddan was National Grid's preferred POI *
25/05/24	First landowner contact with Dalcour Maclaren
26/05/24	Email from Dalcour Maclaren – with Land Interest Questionnaires & plans notice
01/06/22	Scoping Report Opinion from PINS received – Promoter criticised for using the Rochdale Envelope approach.
7/6/2022 Until 3/8/2022	– First round of Non-statutory Public Consultation – consultation kicked off postcards sent to over 27,000 addresses – emails to local stake & MPs MSs planning authorities s advert in papers & website launched Section 2.5.1.3 of Consultation report States: *" To ensure early engagement with communities , the Applicant carried out a first phase of Non statutory consultation between 07 June and 03 August 2022* ***where search areas*** *for the offshore transmission infrastructure,* ***the onshore cable routes and substations were presented****."* (emphasis added) Section 4.6.3.2 of Consultation report States: "…… *a targeted consultation was conducted, looking specifically at potential locations for the onshore substation and inviting local feedback on those options, as detailed in section 4.7.* ***That feedback was used to inform the eventual preferred location for the substation***". (emphasis added) – Summer 2022 Consultation brochure (showed outline of six routes) emanating from three landfall locations at i.e. despite information stated in the 13/12/2021 EWG Steering Group Meeting and National Grids subsequent decision. MONA OFFSHORE WIND FARM NON STATUTORY CONSULTATION -SUMMER 2022 CONSULTATION BROCHURE  Also (offshore) Engaging openly and collaboratively with fisheries and maritime stakeholders Nash Maritime Ltd appointed to maintain Maritime Navigation Engagement Forum (MNEF) for relevant maritime stakeholders in the project area. The forum will also engage relevant government, regulatory agencies and statutory consultees. Marine Space (now part of ERM has been appointed as the Company Fisheries Liaison Officer (CFLO) for Morgan, Mona, and Morven. They will work with the National Federation of Fisheries Organisations (NFFO) to liaise and work with fishermen in the Irish Sea and with the Scottish Fishermen's Federation (SFF) for the North Sea.

20/07/22	Steering Group Meeting 03 – BP/ RPS/Natural England JNCC / NRW / Planning Inspectorate/ MMO *". Mona will have a grid connection at the existing Bodelwyddan National Grid substation."* *"In March 2022 NG indicated a strong likelihood for POI at Bodelwyddan.* ***NG confirmed grid connection at Bodelwyddan in May 2022."*** (emphasis added) *"Initially the Applicant considered four offshore cable routes between the Mona Offshore Wind Project and Bodelwyddan; one route to the west of the proposed Awel Y Mor array area, and three routes passing through the gap between Gwynt y Mor east and west, but the routes going through the gap were rejected during review due to significant technical constraints associated with Gwynt-y-Mor wind farm and export cables, Milom gas pipeline, other wind farm infrastructure and congested landfall options."* *** The above exercise must have happened in advance of the 13/12/2021EWG Steering Group meeting considering its minutes. Section 4.8.3.8 of PEIR states "*The removal of* ….(offshore routes)… *East A* ….(Rhyl Landfall)… *and East B* …. (Rhyl Landfall)… *left only the West A* ….(Llanddulas Landfall)… *and B* ….(Belgrano Landfall)… *offshore export cable route options under consideration. As described in 4.8.3* ***the Belgrano landfall*** *….(West B)…* ***option was discounted from further consideration due to the presence of nearshore constraints which meant that only West A*** *…. (Llanddulas Landfall) …* ***was taken forward".*** (emphasis added) **And at section 4.8.3.23 of PEIR it states** *"The West offshore routes formed the basis of consultation undertaken with the project* ***Evidence Plan Process Steering Group in July 2022. By the time the Steering Group meeting was undertaken the decision had been taken not to progress the Belgrano landfall (West B) due to existing infrastructure constraints. As such, only the Llanddulas options (West A) were presented.*** (emphasis added) ***The decision to make landfall at Llanddulas East had therefore been taken in advance of the Steering group meeting dated 13/12/2021 and was merely pending the National Grid decision in March/ May 2022. This was in advance of the scoping report Both Llanddulas West and East onshore cable routes affect plots 06-102 to 06-105 and this decision marked the point at which Mona made first contact with the Objectors. Note also that this decision had taken place in advance of the second "targeted" non statutory consultation when the Promoter chose to still consult on 3 landfall locations and 3 onshore routes despite the decision already having been made (see Mona Offshore Wind Project newsletter (substation consultation - Autumn 2022)
6/8/2022	Mona submitted application for Electricity Generation Licence to the UK's regulator Ofgem e under section 6(1)(a) of the Electricity Act 1989
12/08/2022	**Email from Dalcour Maclaren** "Engagement Meeting Plan" sent thru - 300m corridor whole of Sirior Bach South (plan drafted on 11/08/22 o: 22000496_PLN_INFO_850.1 even though no plan sent to PINS with Scoping Report

	 The email advised: *"I've attached the plan with the **indicative cable route, with a buffer**. Obviously it looks fairly drastic, however we would like to be able to discuss how it impacts you, **where within the blue line would be suitable/wouldn't be suitable**, so we can feed that info to the engineers when **refining the route**. "*
13/9/22	Consultation Meeting between the Objectors and the Promoter's Agents took place
August & September 2022	– the Promoter advises that 71 landowners were met with during this period
16/8/22	letter from Dalcour Maclaren re landowner's agents fees from Ellie Daikin
17/8/22	letter from DM advising that consultation had commenced : "*As the Mona Consultation has now commenced, Dalcour Maclaren as appointed land agents wish to commenced landowner consultation meetings **with parties identified as owning or occupying land that may be included within the final route design**. We would like to commence these meetings as soon as possible to introduce you to the **next phase of the Project and the planning consent process (known as a Development Consent Order "*** **(**emphasis added)
28/9/2022 to 7/11/2022	Second targeted - Non-statutory targeted Public Consultation targeting especially substation locations – newsletter to 3,000 addresses – webinar & Bodelwyddan Village hall - emails groups stakeholders Section 4.7.1.5 of Consultation report States: *"Information about the consultation was published online….. covered the following key project areas:* - *……..* - *The seven possible locations being considered for the new substation ,* - *….* - *An **update** on cable routing* - *……"* Mona Offshore Wind Project newsletter (substation consultation) - Autumn 2022 – Despite being already discounted the Promoter continued to consult on 3 landfall areas, 6 onshore cable routes

and 7 substation locations



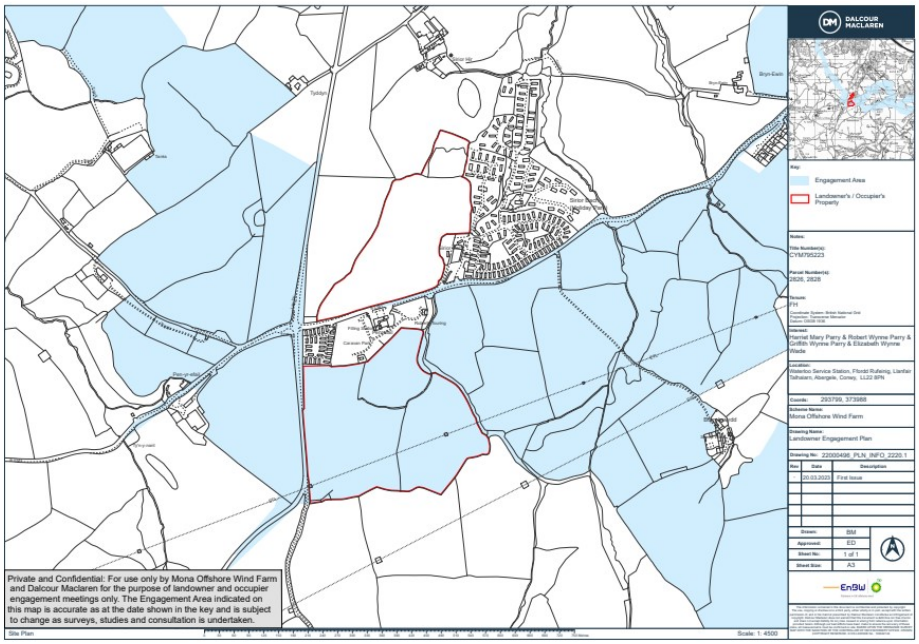
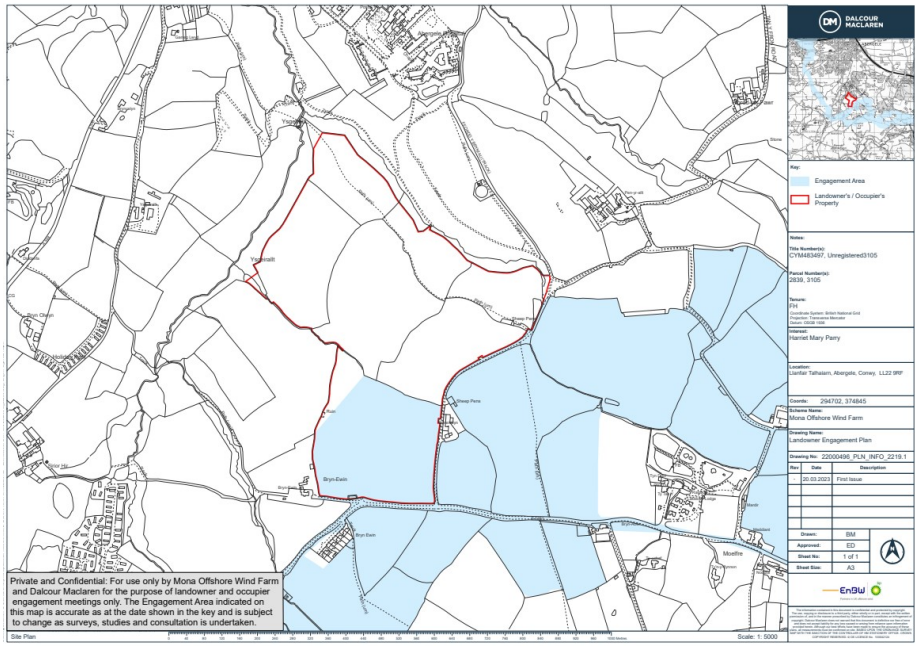


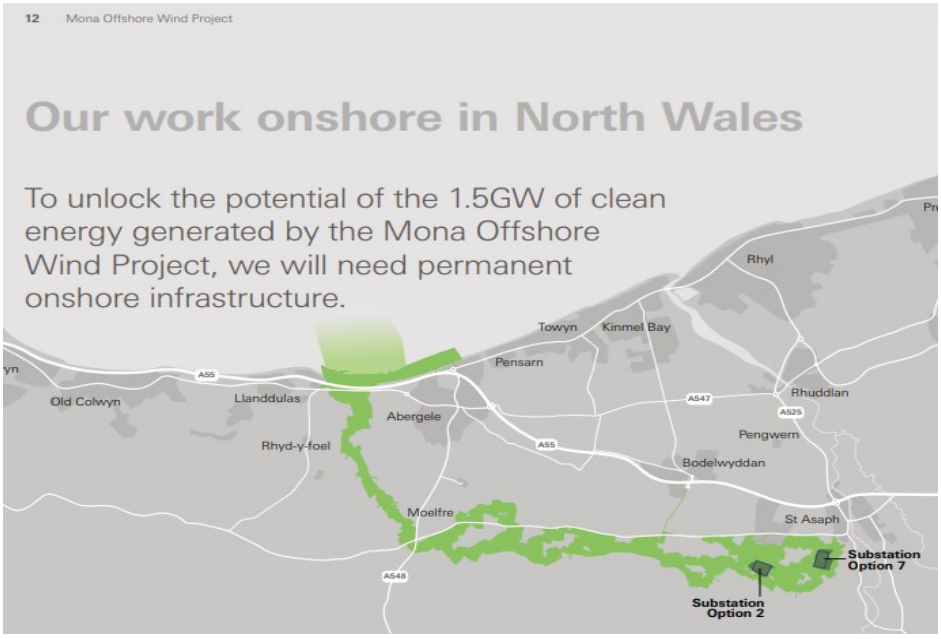
Section 4.7.3.1 of Consultation report States:
"The Applicant had regard to all feedback received, specifically:

- *…….*
- ***The Applicant noted the largely positive feedback on substation location 2,……***
- *…….*
- ***The Applicant noted the largely positive feedback on substation location 7,*** *…..*
- *……." (emphasis added)*

28/9/22	Mona – Seascape, Landscape and Visual Impact Workshop 01 ***"3.0 Offshore cable corridor to landfall (Presented by GV)*** …….

	GV explained the key offshore environmental constraints on Offshore Cable Corridor routing that were identified through the site selection process. Four (offshore) routes were initially considered for the Offshore Cable Corridor between the Mona Array Area and grid 20220928_Mona SLVIA Workshop -1 Page 3 of 8 F02 connection at Bodelwyddan. ***Three*** *(offshore)* ***routes*** *(to landfall)* ***to the east passed between the east and west components of Gwynt-y-Mor were rejected because of significant technical constraints offshore and lack of available space at the only potential landfall area at Rhyl: there was insufficient remaining width at the landfall because of Awel y Mor cables, and the Belgrano/Kinmel Bay landfall would have required crossing the Rhyl flats in shallow waters which was considered to be technically unfeasible.*** ***The remaining option routing option routes to the west of the proposed Awel y Mor project and makes landfall on the Llanddulas and Pensarn beaches****. It avoids a number of key constraints including the Lavan Sands/Conwy Bay SPA and the North Anglesey Marine SAC, but passes through the periphery of the Menai Straights and Colwyn Bay SAC and Constable Bank seabed feature and through the Liverpool Bay SPA, which is unavoidable.* *The eastern part of the landfall at Llanddulas crosses the Traeth Pensarn SSSI. GV acknowledged the sensitivity of the SSSI****, but explained that this overlap with the SSSI has to be retained at this stage to retain some optionality for the Project***" (emphasis added) *** Despite the foregone conclusion for the landfall and cable route the Promoter here continues to propose dismissed options for consultation in order to give the impression that the consultees are being engaged with.***
07/10/22 to 4/11/22	Statement of Community consultation drafted update 9/03/23 to 06/04/2023
10/10/22	Meeting of the Morgan and Mona OWF Maritime Navigation Engagement Forum
10/11/22	Returned signed Non-intrusive site investigation Licences to Dalcour Maclaren
14/11/2022	Laura Leigh Email advising about LIQs being sent despite section 5.2.6.2 of consultation report stating that this did not commence until December 2022 and the Consultation recording that It had commenced in March 2022 (Section 4.8.1.4).
13/12/22	**electricity generation licences for Mona Granted**
January 2023 –	Mona Enter into Ag for Lease for Mona with Crowne Estate.
18/1/23	Meeting of the Morgan and Mona OWF Maritime Navigation Engagement Forum
25/1/23	BP/EnBW Mona Offshore Wind Projects T– Socio-economics Stakeholder Consultation Workshop ***"3.0 Project Scope*** *The project team spoke to slide 7 providing an overview of the technicalities of constructing offshore wind farms.* ***Stakeholders noted that Landfall in Llanddulas would not interfere with wider projects in the region, such as new sea defences in Rhyl****.* *EnBW/bp explained, for the purposes of PEIR, that 2 sub-station options around the existing national grid sub-station have been chosen. Also noted that there is awareness of the Awel Y Mòr wind farm project"*
14/02/23	Steering group meeting 4 "*A landfall search area was established between Llandulas and Prestatyn on North Wales coast. The primary landfall locations assessed were Llandulas, Llandulas east, Belgrano and Rhyl. The intertidal area at Belgrano required crossing the Gwynt y Mor offshore wind farm cables in the nearshore environment. There is limited space in that area therefore this option was not considered viable. The Rhyl landfall was discounted as this landfall was selected for the Awel y Mor offshore export cable landfall. The Applicant looked at whether the same landfall could be used but it there is not enough space for both sets of cables. The Llandulas east landfall interacts with the Pensarn SSSI and other significant construction works in the area, which meant that there also is not enough space for additional cables in this location. The Llandulas landfall avoids putting cables though the SSSI and the Applicant is also looking to avoid the Sabellaria alveolata reef in the intertidal area at*

	this landfall. The export cable will go under the hard constraints that run along the whole section of that coastline e.g. the road, railway and the historical landfill site." ****The above information was known since before 13/12/2021 EWG Steering Group meeting.****
20/03/23	Date Of Issue recorded in legend of Revised PLANS 22000496_PLN_INFO_2219.1 and 2220.1 - These were sent with Dalcour Maclaren email of 25/5/23. These plans now show north and south route options (Llanddulas East B route) to the east of plots 06-102 to 06-105  
APRIL 2023	PEIR REPORT Published in readiness for Public Consultation Claims that 2 sites being considered for substations and cable route selected albeit subject to minor north and south options after plot 06-105
12/4/23	publication of section 48 notice in the Guardian, Daily post etc publicising commencement of Statutory consultation period.

14th April 2023	Commenced consultation with Section 42 consultees (landowners and occupiers) one week before stat consultation opened.
19.04.2023	STATUTORY public consultation until 4/6/23 (58 days) – stat consultation closed (onshore assets – events pop up shows – postcards Mona Offshore Wind Project Statutory consultation brochure April 2023 Page 12:  Page 20:

20 Mona Offshore Wind Project

What we are consulting on

This statutory consultation is an important opportunity for local communities, including residents, businesses, organisations and visitors, to get involved and influence our proposals. It follows two non-statutory consultations conducted during 2022 – an introductory consultation and a targeted consultation on potential substation locations.

As well as consultation with local communities, we are consulting technical stakeholders, including organisations such as the Marine Maritime Organisation and Natural Resources Wales, local elected representatives and other relevant stakeholders.

We are seeking feedback on our proposals, including on:

- The location and array for our offshore wind turbines and associated infrastructure
- Our proposed onshore cable route
- Our proposed onshore substation site
- How we can minimise our construction impacts
- All aspects covered in our Preliminary Environmental Information Report

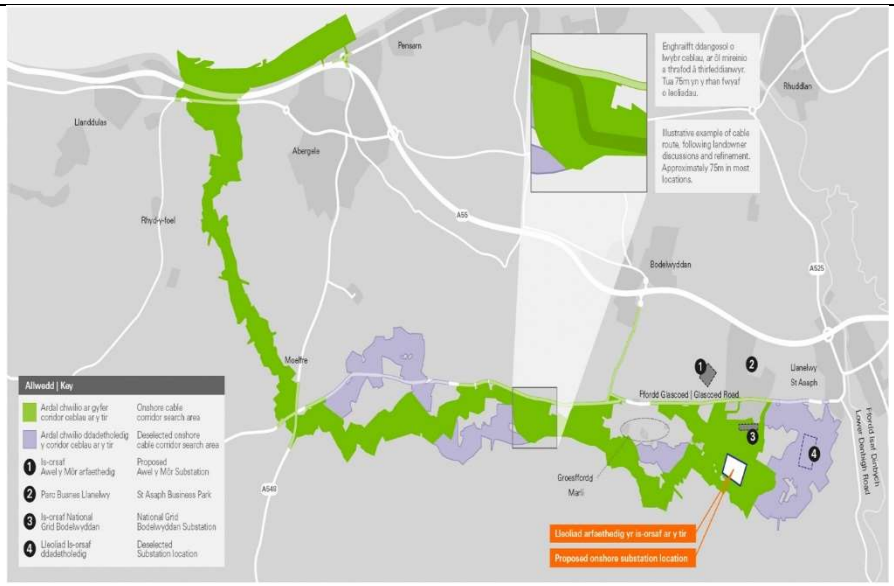
Why is the PEIR so important?

The PEIR constitutes the preliminary environmental information for the Mona Offshore Wind Project and sets out the findings of the Environmental Impact Assessment (EIA) to date to support the pre-application consultation activities required under the Planning Act 2008. The EIA will be finalised following completion of pre-application consultation and the Environmental Statement. The final EIA together with an updated Non-Technical Summary of the PEIR, will accompany the application for consent.

This is your chance to feed into this work.

Despite the onshore route having been identified and selected, subject to National Gid POI decision before 13/12/2021, the Promoter continues to consult on it as if the decision was still to be made at the Statutory Consultation some 21 months later.

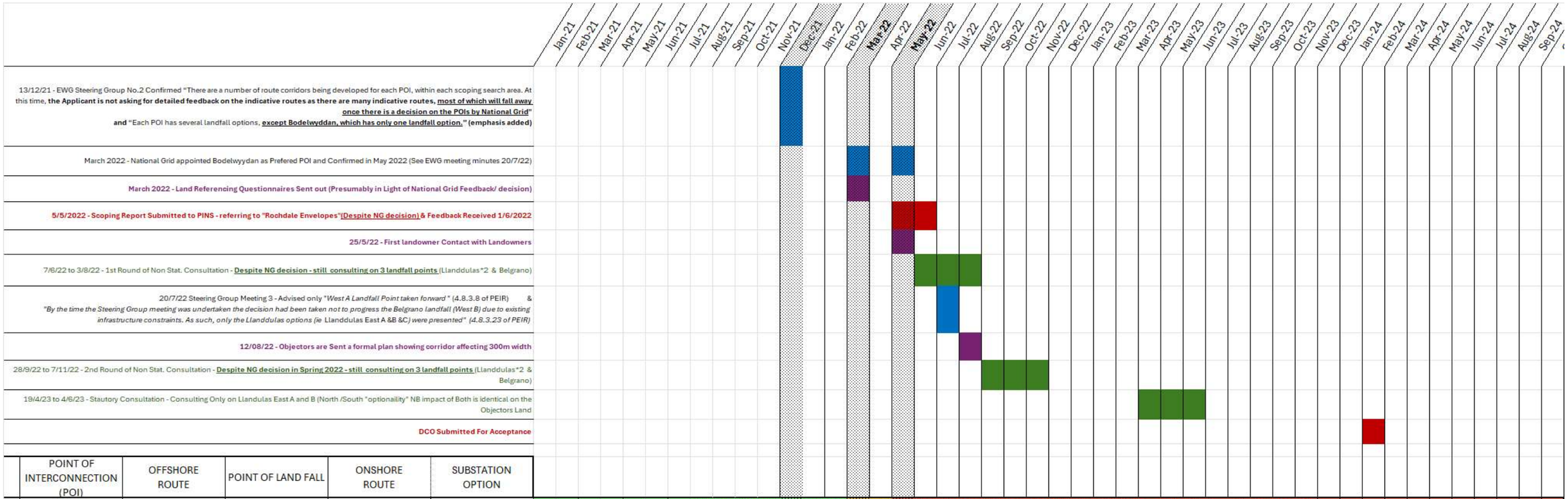
21/04/2023	Mona Statutory Consultation (Pre App)submitted to Conwy Council Planning Dept - full onshore route inc works 18 (Compound) Works 9 A and greyed out Works 9b (Bryn Ewin Option
9/5/23	live webinar with Q and A re the scheme.
20/5/23	Email from Dalcour Maclaren re land affected – works and land plans and also PLANS 22000496_PLN_INFO_2219.1 and 2220.1 sent in
30/5/23	Mona Landowner Meeting – On line with Dalcour Maclaren
4/6/23	Statutory consultation period closes. After closing of 2023 public consultation – issued this plan:

	
	Table 5.15 shows summary of key changes following stat consultation announced August / Sept 23: - Mona onshore corridor refined down to 74metres – also reduced tempo construction compounds sizes – justified due to “stat consult” & “post consult” - Also says that 7 substation sites from non-stat consultation reduced to 2 and now 1 (after stat con)
14/6/23	Mona On Conwy Council Planning Agenda
21/06/2023	Mona On Denbigh Council Planning Agenda (Substation in Denbighshire)
29/6/23	Meeting of EWG Steering group meeting 5 -
15/8/23	Formal announced all refinements post stat cons
21/9/23	Meeting of the Morgan and Mona OWF Maritime Navigation Engagement Forum
17/10/23	Meeting of EWG Steering group meeting 6
Feb 24	DCO submitted – works and landplans issues RPSE-MN-WKPL-016-03 (works 18)
5/5/24 -	Relevant Representations submitted / registration
7/8/24	written subs
27/6/24	The new Chief Executive of one of Mona Offshore’s parent companies, Murry Auchincloss of BP, recently pledged *“more pragmatic’ approach to BP’s green targets” whilst “reversing the move away from fossil fuels*” and “*imposing a hiring freeze*” and “*halting new offshore wind pro jects.”* *BP imposes hiring freeze and halts new offshore wind projects.(The Guardian: 27 June 2024)*[13]
17/9/24	A meeting was held between representatives of the Promoters and the Objectors to explore if there was common ground on which some measure of agreement could be reached. The output of the meeting was as follows: a) The Promoter acknowledged that they had been advised since the first contact that proposals were being developed for this land but advised that this was a very common thing that affected parties would claim in a CPO consultation when first approached and so they tend not to take such comments seriously. b) No consideration had been given to removing the Objectors land for the limits, by for instance going with alternative options A,B, C,D and E in August 7th Submissions. – The Promoter advised that the reason for not considering these alternatives was solely and simply because it is “too late in the process”.

	c) The Promoter is not prepared to restrict itself to the southern part of the Objectors' land because this would be a constraint to detailed design and a "bottleneck to the scheme" generally. The Promoter did however confirm that there was no reason that the cables could not commence at a distance of 25metres away from the cables on the AC Pylon line. d) For the same reasons, the Promoter is not prepared to restrict itself to a permanent sterilised easement corridor less than 30 metres wide although they did agree that it was quite possible that the ultimate width could be less than this width. It was confirmed that it was quite common to substantially reduce the width in constrained areas (provided thermal issues can be addressed) and that in fact, the central haul roads can indeed be located to the outside of the cable corridor. It was also noted that using higher capacity cables (curtailing resistance) could greatly assist with heat produced by that cable although other attendees advised that this could not be considered due to "*cost"* e) The Promoter is not prepared to attempt to cross the AC line pylons between tower AC128 and AC127 as this would involve land outwith the Limits of Deviation and would require further consideration for ecology and other diligence reasons. Notwithstanding that the landowners affected are prepared to support this, the reason for dismissing it is again due to the Promoter and DCO timetable rather than due to any physical construction or other constraint. f) The Promoter is not prepared to consider a shorter notice serving window in respect of the Objectors land due to the risk again of the matter becoming a bottleneck for the project. g) Alternative Compound locations to the one on the Objectors land are likewise not being considered by the Promoter although they did believe it may be possible to reduce it in size during detailed design – this is the most disruptive aspect to Robert Parry's scheme as the compound is likely to the set up as a preliminary matter at the commencement of the construction contract and will likely remain until the very end of the scheme and in fact until establishment of the reinstatement has been successful.
2026 / 2027	**Final Investment Decision Anticipated**

APPENDIX 04

TIMELINE OF EVENTS SHOWN ON A GANT STYLE CHART



13/12/21 - EWG Steering Group No.2 Confirmed "There are a number of route corridors being developed for each POI, within each scoping search area. At this time, **the Applicant is not asking for detailed feedback on the indicative routes as there are many indicative routes, most of which will fall away once there is a decision on the POIs by National Grid**"
and "Each POI has several landfall options, **except Bodelwyddan, which has only one landfall option.**" **(emphasis added)**

March 2022 - National Grid appointed Bodelwyydan as Prefered POI and Confirmed in May 2022 (See EWG meeting minutes 20/7/22)

March 2022 - Land Referencing Questionnaires Sent out (Presumably in Light of National Grid Feedback/ decision)

5/5/2022 - Scoping Report Submitted to PINS - referring to "Rochdale Envelopes"(Despite NG decision) & Feedback Received 1/6/2022

25/5/22 - First landowner Contact with Landowners

7/6/22 to 3/8/22 - 1st Round of Non Stat. Consultation - **Despite NG decision - still consulting on 3 landfall points** (Llanddulas*2 & Belgrano)

20/7/22 Steering Group Meeting 3 - Advised only "*West A Landfall Point taken forward* " (4.8.3.8 of PEIR) &
"By the time the Steering Group meeting was undertaken the decision had been taken not to progress the Belgrano landfall (West B) due to existing infrastructure constraints. As such, only the Llanddulas options (ie Llanddulas East A &B &C*) were presented" (4.8.3.23 of PEIR)*

12/08/22 - Objectors are Sent a formal plan showing corridor affecting 300m width

28/9/22 to 7/11/22 - 2nd Round of Non Stat. Consultation - **Despite NG decision in Spring 2022 - still consulting on 3 landfall points** (Llanddulas*2 & Belgrano)

19/4/23 to 4/6/23 - Stautory Consultation - Consulting Only on Llandulas East A and B (North /South "optionality" NB impact of Both is identical on the Objectors Land

DCO Submitted For Acceptance

POINT OF INTERCONNECTION (POI)	OFFSHORE ROUTE	POINT OF LAND FALL	ONSHORE ROUTE	SUBSTATION OPTION	
WYLFA					**OPTION ABANDONED WHEN NAT GRID SELECTED BODELWYDDAN POI IN MARCH/MAY 2022 (See EWG Minutes dated 20/07/2022)**
PENTIR					**OPTION ABANDONED WHEN NAT GRID SELECTED BODELWYDDAN POI IN MARCH/MAY 2022 (See EWG Minutes dated 20/07/2022)**
CONNAHS QUAY					**OPTION ABANDONED WHEN NAT GRID SELECTED BODELWYDDAN POI IN MARCH/MAY 2022 (See EWG Minutes dated 20/07/2022)**
KIRKBY					**OPTION ABANDONED WHEN NAT GRID SELECTED BODELWYDDAN POI IN MARCH/MAY 2022 (See EWG Minutes dated 20/07/2022)**
BODELWYDDAN	WEST A	LLANDDULAS	LLANDDULAS WEST A		**13/12/2021 MINUTES (Steering Group Meeting N0.2) Noted that *"Each POI has several landfall options, except Bodelwyddan, which has only one landfall option* " (Llanddulas East)** **Parallel Analaysis Screening of Landfall Zone Eliminated Llanddulas West Landfall and Associated Routes before 13/12/2021 (Steering Group No.2) (Presumably Retained for "Optionality" during "Consultation")**
BODELWYDDAN	WEST A	LLANDDULAS	LLANDDULAS WEST B		**13/12/2021 MINUTES (Steering Group Meeting N0.2) Noted that *"Each POI has several landfall options, except Bodelwyddan, which has only one landfall option* " (Llanddulas East)** **Parallel Analaysis Screening of Landfall Zone Eliminated Llanddulas West Landfall and Associated Routes before 13/12/2021 (Steering Group No.2) (Presumably Retained for "Optionality" during "Consultation")**
BODELWYDDAN	WEST A	LLANDDULAS	LLANDDULAS EAST A		**13/12/2021 MINUTES (Steering Group Meeting N0.2) Noted that *"Each POI has several landfall options, except Bodelwyddan, which has only one landfall option* " (Llanddulas East)** **Parallel Analaysis Screening of Landfall Zones Selected Llanddulas East Landfall and Associated Routes (LL E A&B&C) before 13/12/2021 (Steering Group No.2)**
BODELWYDDAN	WEST A	LLANDDULAS	LLANDDULAS EAST B		**13/12/2021 MINUTES (Steering Group Meeting N0.2) Noted that *"Each POI has several landfall options, except Bodelwyddan, which has only one landfall option* " (Llanddulas East)** **Taken Forward to "Shortlist" presumably fro "Optionality" reasons Likely for "Statutory Consultation" **NB**Impact on Objectors identical to LL E A**
BODELWYDDAN	WEST A	LLANDDULAS	LLANDDULAS EAST C		**13/12/2021 MINUTES (Steering Group Meeting N0.2) Noted that *"Each POI has several landfall options, except Bodelwyddan, which has only one landfall option* " (Llanddulas East)** **Not Shortlisted due toecological & ancient woodland impacts and due Key Strategic Sites identified in the Conwy**
BODELWYDDAN	WEST B / EAST A	BELGRANO	BELGRANO WEST		**13/12/2021 MINUTES (Steering Group Meeting N0.2) Noted that *"Each POI has several landfall options, except Bodelwyddan, which has only one landfall option* " (Llanddulas East)** **Offshore Route and Landfall Conflicted with Gwynt Y Mor and Awel Y Mor Schemes also Rhyl Flats Scheme**
BODELWYDDAN	WEST B / EAST B	BELGRANO	BELGRANO EAST		**13/12/2021 MINUTES (Steering Group Meeting N0.2) Noted that *"Each POI has several landfall options, except Bodelwyddan, which has only one landfall option* " (Llanddulas East)** **Offshore Route and Landfall Conflicted with Gwynt Y Mor and Awel Y Mor Schemes also Rhyl Flats Scheme**
BODELWYDDAN	EAST B	RHYL	RHYL WEST		**13/12/2021 MINUTES (Steering Group Meeting N0.2) Noted that *"Each POI has several landfall options, except Bodelwyddan, which has only one landfall option* " (Llanddulas East)** **Offshore Route and Landfall Conflicted with Gwynt Y Mor and Awel Y Mor Schemes**
BODELWYDDAN	EAST B	RHYL	RHYL EAST		**13/12/2021 MINUTES (Steering Group Meeting N0.2) Noted that *"Each POI has several landfall options, except Bodelwyddan, which has only one landfall option* " (Llanddulas East)** **Offshore Route and Landfall Conflicted with Gwynt Y Mor and Awel Y Mor Schemes**

Footnote 01

To

Further Supplementary Written Submissions

dated 30 September 2024

in Rebuttal to

Mona Offshore Wind Limited Document

Appendix to Response to WRs: Griffith Parry, Robert Parry and Kerry James

(Document Number S_D2_3.4)

Planning Act 2008

Guidance related to procedures for the compulsory acquisition of land

September 2013
Department for Communities and Local Government

This document/publication is also available on our website at www.gov.uk/dclg

If you have any enquiries regarding this document/publication, email contactus@communities.gov.uk or write to us at:

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September 2013

ISBN: 978-1-4098-3996-5

Contents

Introduction

1. The Planning Act 2008 ("the Planning Act") created a new development consent regime for major infrastructure projects[1] in the fields of energy, transport, water, waste water, and waste.

2. This guidance is designed to assist those intending to make an application for a development consent order under the Planning Act where their application seeks authorisation for the compulsory acquisition of land or rights over land[2]. Its aim is to help applicants understand the powers contained in the Planning Act, and how they can be used to best effect. This guidance also advises on the application of the correct procedures and statutory or administrative requirements, to help ensure that the process of dealing with such orders is as fair, straightforward and accurate for all parties as possible.

3. Sections 122 to 134 of the Planning Act set out the main provisions relating to the authorisation of compulsory acquisition of land. These provisions specify the conditions which must be satisfied if a development consent order is to authorise compulsory acquisition, apply the provisions of the Compulsory Purchase Act 1965 (with appropriate modifications), restrict the provision which may be made about compensation in an order, and set out additional requirements which apply in relation to certain special types of land and Crown land.

4. The Planning Act was amended by the Growth and Infrastructure Act 2013. In particular the Growth and Infrastructure Act made changes to the consent and certification requirements (sections 127, 131, 132, 137 and 138 of the Planning Act), and to the circumstances where special parliamentary procedure can be triggered (sections 128, 129, 131 and 132). These changes are reflected in the remainder of this guidance where they are relevant. References to the Planning Act in this guidance should be read as including the amendments made by the Growth and Infrastructure Act.

[1] Major infrastructure projects will be used throughout this guidance to refer to projects that are granted development consent under the Planning Act.

[2] Unless otherwise stated, in the remainder of this guidance document any reference to the compulsory acquisition of land also includes any compulsory acquisition of rights over such land.

Justification for seeking authorisation for compulsory acquisition

5. Applicants seeking authorisation for the compulsory acquisition of land should make appropriate provision for this in their draft development consent order.

6. Section 122 of the Planning Act provides that a development consent order may only authorise compulsory acquisition if the Secretary of State is satisfied that:

- the land is required for the development to which the consent relates, or is required to facilitate, or is incidental to, the development, or is replacement land given in exchange under section 131 or 132, and

- there is a compelling case in the public interest for the compulsory acquisition.

7. Applicants must therefore be prepared to justify their proposals for the compulsory acquisition of any land to the satisfaction of the Secretary of State. They will also need to be ready to defend such proposals throughout the examination of the application. Paragraphs 8-19 below set out some of the factors which the Secretary of State will have regard to in deciding whether or not to include a provision authorising the compulsory acquisition of land in a development consent order.

General considerations

8. The applicant should be able to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored. The applicant will also need to demonstrate that the proposed interference with the rights of those with an interest in the land is for a legitimate purpose, and that it is necessary and proportionate.

9. The applicant must have a clear idea of how they intend to use the land which it is proposed to acquire. They should also be able to demonstrate that there is a reasonable prospect of the requisite funds for acquisition becoming available. Otherwise, it will be difficult to show conclusively that the compulsory acquisition of land meets the two conditions in section 122 (see paragraphs 11-13 below).

10. The Secretary of State must ultimately be persuaded that the purposes for which an order authorises the compulsory acquisition of land are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected. In particular, regard must be given to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of acquisition of a dwelling, Article 8 of the Convention.

The purpose for which compulsory acquisition is sought

11. Section 122 of the Planning Act sets out two conditions which must be met to the satisfaction of the Secretary of State before compulsory acquisition can be authorised. The first of these is related to the purpose for which compulsory acquisition is sought. These three purposes are set out in section 122(2):

(i) the land is required for the development to which the development consent relates

For this to be met, the applicant should be able to demonstrate to the satisfaction of the Secretary of State that the land in question is needed for the development for which consent is sought. The Secretary of State will need to be satisfied that the land to be acquired is no more than is reasonably required for the purposes of the development.

(ii) the land is required to facilitate or is incidental to the proposed development.

An example might be the acquisition of land for the purposes of landscaping the project. In such a case the Secretary of State will need to be satisfied that the development could only be landscaped to a satisfactory standard if the land in question were to be compulsorily acquired, and that the land to be taken is no more than is reasonably necessary for that purpose, and that is proportionate.

(iii) the land is replacement land which is to be given in exchange under section 131 or 132 of the Planning Act.

This may arise, for example, where land which forms part of an open space or common is to be lost to the scheme, but the applicant does not hold other land in the area which may be suitable to offer in exchange. Again, the Secretary of State will need to be satisfied that the compulsory acquisition is needed for replacement land, that no more land is being taken than is reasonably necessary for that purpose, and that what is proposed is proportionate.

Compelling case in the public interest

12. In addition to establishing the purpose for which compulsory acquisition is sought, section 122 requires the Secretary of State to be satisfied that there is a compelling case in the public interest for the land to be acquired compulsorily.

13. For this condition to be met, the Secretary of State will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the compulsory acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired. Parliament has always taken the view that land should only be taken compulsorily where there is clear evidence that the public benefit will outweigh the private loss.

Balancing public interest against private loss

14. In determining where the balance of public interest lies, the Secretary of State will weigh up the public benefits that a scheme will bring against any private loss to those affected by compulsory acquisition.

15. In practice, there is likely to be some overlap between the factors that the Secretary of State must have regard to when considering whether to grant development consent, and the factors that must be taken into account when considering whether to authorise any proposed compulsory acquisition of land.

16. There may be circumstances where the Secretary of State could reasonably justify granting development consent for a project, but decide against including in an order the provisions authorising the compulsory acquisition of the land. For example, this could arise where the Secretary of State is not persuaded that all of the land which the applicant wishes to acquire compulsorily has been shown to be necessary for the purposes of the scheme. Alternatively, the Secretary of State may consider that the scheme itself should be modified in a way that affects the requirement for land which would otherwise be subject to compulsory acquisition. Such scenarios could lead to a decision to remove all or some of the proposed compulsory acquisition provisions from a development consent order.

Resource implications of the proposed scheme

17. Any application for a consent order authorising compulsory acquisition must be accompanied by a statement explaining how it will be funded. This statement should provide as much information as possible about the resource implications of both acquiring the land and implementing the project for which the land is required. It may be that the project is not intended to be independently financially viable, or that the details cannot be finalised until there is certainty about the assembly of the necessary land. In such instances, the applicant should provide an indication of how any potential shortfalls are intended to be met. This should include the degree to which other bodies (public or private sector) have agreed to make financial contributions or to underwrite the scheme, and on what basis such contributions or underwriting is to be made.

18. The timing of the availability of the funding is also likely to be a relevant factor. Regulation 3(2) of the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 allows for five years within which any notice to treat must be served, beginning on the date on which the order granting development consent is made, though the Secretary of State does have the discretion to make a different provision in an order granting development consent. Applicants should be able to demonstrate that adequate funding is likely to be available to enable the compulsory acquisition within the statutory period following the order being made, and that the resource implications of a possible acquisition resulting from a blight notice have been taken account of.

Other matters

19. The high profile and potentially controversial nature of major infrastructure projects means that they can potentially generate significant opposition and may be subject to legal challenge. It would be helpful for applicants to be able to demonstrate that their application is firmly rooted in any relevant national policy statement. In addition, applicants will need to be able to demonstrate that:

- any potential risks or impediments to implementation of the scheme have been properly managed;
- they have taken account of any other physical and legal matters pertaining to the application, including the programming of any necessary infrastructure accommodation works and the need to obtain any operational and other consents which may apply to the type of development for which they seek development consent.

Pre-application

20. A development consent order may only contain a provision authorising compulsory acquisition if one of the conditions set out in section 123(2)–(4) are met. These are that:

- the application for the order included a request for compulsory acquisition of land to be authorised - in which case the proposals will have been subject to pre-application consultation, and the other pre-application and application procedures set out in the Planning Act have been followed; or
- if the application did not include such a request, then the relevant procedures set out in the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 have been followed; or
- all those with an interest in the land consent to the inclusion of the provision.

Preparatory work

21. Before an application is made, applicants will need to comply with the pre-application requirements set out in Chapter 2 of Part 5 of the Planning Act. In particular, sections 42 and 44 require applicants to consult those with interests in relevant land.

22. Applicants must also ensure that they comply with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (“the Applications Regulations”). These contain specific requirements where compulsory acquisition is sought, including the following information:

- a statement of reasons (see paragraphs 31-33);

- a statement to explain how the proposals contained in an order which includes authorisation for compulsory acquisition will be funded (see paragraphs 17-18);

- a plan showing the land which would be acquired, including protected land and any proposed replacement land (see Annex C);

- a book of reference (see Annex D).

23. Applicants are expected to seek their own legal and professional advice when preparing an application under the Planning Act. However, where an applicant has concerns or questions about technical points concerning a draft order, including provisions regarding compulsory acquisition, the Planning Inspectorate may be able to provide advice or clarification. Advice is also available to those who wish to make representations in respect of applications for development consent.

Consultation

24. Applicants are required under section 37 of the Planning Act to produce a consultation report alongside their application, which sets out how they have complied with the consultation requirements set out in the Act. Early consultation with people who could be affected by the compulsory acquisition can help build up a good working relationship with those whose interests are affected, by showing that the applicant is willing to be open and to treat their concerns with respect. It may also help to save time during the examination process by addressing and resolving issues before an application is submitted, and reducing any potential mistrust or fear that can arise in these circumstances.

25. Applicants should seek to acquire land by negotiation wherever practicable. As a general rule, authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail. Where proposals would entail the compulsory acquisition of many separate plots of land (such as for long, linear schemes) it may not always be practicable to acquire by agreement each plot of land. Where this is the case it is reasonable to include provision authorising compulsory acquisition covering all the land required at the outset[3].

[3] It should be noted that in some cases it may be preferable, or necessary, to acquire compulsorily rather than by agreement. In the case of land belonging to and held inalienably by the National Trust, because the Trust has no power to dispose of land so held, the compulsory acquisition of Trust land must be authorised in an order even if the Trust is minded not to oppose the proposals.

26. Applicants should consider at what point the land they are seeking to acquire will be needed and, as a contingency measure, should plan for compulsory acquisition at the same time as conducting negotiations. Making clear during pre-application consultation that compulsory acquisition will, if necessary, be sought in an order will help to make the seriousness of the applicant's intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations.

Use of alternative dispute resolution techniques

27. In the interests of speed and fostering good will, applicants are urged to consider offering full access to alternative dispute resolution techniques for those with concerns about the compulsory acquisition of their land. These should involve a suitably qualified independent third party and should be available throughout the whole of the compulsory acquisition process, from the planning and preparation stage to agreeing the compensation payable for the acquired properties. For example, mediation might help to clarify concerns relating to the principle of compulsorily acquiring the land, while other techniques such as early neutral evaluation might help to relieve worries at an early stage about the potential level of compensation eventually payable if the order were to be confirmed.

28. The use of alternative dispute resolution techniques can save time and money for both parties, while its relative speed and informality may also help to reduce the stress which the process inevitably places on those whose properties are affected.

Other means of involving those affected

29. Other actions which applicants should consider initiating during the preparatory stage include:

- providing full information about what the compulsory acquisition process under the Planning Act involves, the rights and duties of those affected and an indicative timetable for the decision making process;

- appointing a specified case manager to whom those with concerns about the proposed acquisition can have easy and direct access.

30. The applicant may offer to alleviate concerns about future compensation entitlement by entering into agreements with those whose interests are directly affected. These can be used as a means of guaranteeing the minimum level of compensation which would be payable if the acquisition were to go ahead (but without prejudicing any future right of the claimant to refer the matter to the Upper Tribunal (Lands Chamber), including the basis on which disturbance costs would be assessed.)

Statement of Reasons

31. The Applications Regulations require applicants to submit with their application a statement of reasons relating to the compulsory acquisition.

32. The statement of reasons should seek to justify the compulsory acquisition sought, and explain in particular why in the applicant's opinion there is a compelling case in the public interest for it. This includes reasons for the creation of new rights.

33. When serving a compulsory acquisition notice under section 134 of the Planning Act, applicants should also send to each person they are notifying a copy of the statement of reasons and a plan showing how that person's land is affected by compulsory acquisition proposals.

Examination

34. Applications for a development consent order authorising compulsory acquisition will be subject to the same examination procedures as all other applications under the Planning Act. These procedures are set out in the Infrastructure Planning (Examination Procedure) Rules 2010 and in a guidance document[4].

35. Once an application has been accepted for examination, applicants must notify the people who have an interest in the application, and give them a deadline by which they can register their interest and assert their right to make representations about the application to the Planning Inspectorate (section 56 of the Planning Act) providing at least the minimum amount of time prescribed. When the application seeks an order authorising compulsory acquisition, applicants must also notify the Secretary of State of the names and other details of people who are affected (section 59 of the Planning Act).

36. Where the Secretary of State has accepted an application for an order which would authorise the compulsory acquisition of land, section 92 of the Planning Act requires the Secretary of State to hold an oral compulsory acquisition hearing if requested to by an "affected person"[5] within the set deadline. At this hearing each affected person will be able to make oral representations regarding the compulsory acquisition request, subject to the procedures governing the hearing.

[4] See guidance at: https://www.gov.uk/government/publications/planning-act-2008-examination-of-applications-for-development-consent

[5] As defined in section 59(5) of the Planning Act.

Authorisation

37. The Secretary of State will decide whether an order can be made granting development consent which authorises the compulsory acquisition of land. Once an order authorising compulsory acquisition has been made, applicants must also ensure that they comply with the notification requirements specified under section 134 of the Planning Act.

Other relevant provisions in the Planning Act

Special categories of land

38. The compulsory acquisition of certain types of land (land held inalienably by the National Trust, land forming part of a common (including a town or village green), open space, or fuel or field garden allotment and statutory undertakers' land) is subject to additional restrictions. These restrictions are described in more detail in Annex A.

Crown land

39. Unlike other land, interests in Crown land cannot generally be compulsorily acquired. Therefore, where such land is required for a major infrastructure project, the land, or an interest in it held by or on behalf of the Crown, will need to be acquired through negotiation and bilateral agreement. Discussions between applicants and the appropriate Crown authority should start as soon as it is clear that such land or interests will be required[6]. As it may be possible that the project as a whole will not get development consent if a voluntary agreement with the Crown authority is not reached, the aim should be to ensure that agreement is in place no later than the time that the application for the project is submitted to the Planning Inspectorate.

40. Section 135 of the Planning Act does allow development consent orders to contain provisions which authorise the compulsory acquisition of an interest in Crown land where that interest is held by a party other than the Crown. Consent to the acquisition of such an interest must be given by the appropriate Crown authority for the land concerned before the compulsory acquisition provision can be included in a development consent order. Early discussions should be entered into in relation to such land where it is clear that such a provision will be required in the development consent order. Further details on the provisions of section 135 and the need for early agreement on Crown authority consents are set out in Annex B.

[6] Land or interests held by the Crown or a Duchy as defined by section 227(3) and 227(4) of the Planning Act.

Other relevant provisions

41. Applicants should also note that section 125 of the Planning Act applies (with suitable modifications and omissions) the provisions of Part 1 of the Compulsory Purchase Act 1965 to all orders made under the Planning Act which authorise the compulsory acquisition of land (section 125 also makes suitable provision for land in Scotland). These provisions govern the procedures to be followed once the compulsory acquisition of land has been authorised under the Planning Act.

42. An order under the Planning Act may also provide for a general vesting declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981.

Decisions

43. Unlike the two stage process which generally operates for compulsory purchase, whereby an order is made by an acquiring authority but then has to be confirmed by a Minister, an order under the Planning Act is made in a single stage and does not have to be confirmed by another authority. Unless it is subject to special parliamentary procedure, an order for development consent under the Planning Act becomes operative when it is made, unless a different coming into force date is provided for in the order itself.

44. Unless the order is subject to legal challenge, the applicant may then implement the compulsory acquisition provisions. Implementation of compulsory acquisition provisions may be by "notice to treat" or, if the order so provides, by "general vesting declaration". A notice to treat must be served within 5 years or within any other period specified in the order.

Further guidance

45. The ODPM circular 06/2004 *Compulsory Purchase and the Crichel Down Rules* contains further general guidance on matters related to compulsory acquisition, including on serving a "notice to treat", making a general vesting declaration, and compensation and other matters[7].

[7] Circular 06/2004 is currently being revised as part of the Government review of planning practice guidance.

Annex A:
Special categories of land

1. Certain special categories of land are subject to additional provisions in the Planning Act where it is proposed that they should be compulsorily acquired. This includes the possibility of any compulsory acquisition provision in the development consent order being subject to special parliamentary procedure.

2. Special parliamentary procedure requires those elements of a development consent order covering the compulsory acquisition of special land to be subject to further scrutiny by Parliament before it can come into effect.

3. Following the amendments to the Planning Act made by the Growth and Infrastructure Act 2013 the compulsory acquisition of the following types of land may, in certain cases, be subject to special parliamentary procedure:

   - Land held by the National Trust inalienably (section 130);
   - Land forming part of a common (including a town or village green), open space, or fuel or field garden allotment (sections 131 and 132).

   For applications for development consent made after the commencement of the Growth and Infrastructure Act[8], special parliamentary procedure will no longer apply where the land being acquired is held by a local authority or a statutory undertaker. Special parliamentary procedure will still apply, however, to land held by a local authority or statutory undertaker if that land is common land, open space, or fuel or field garden allotments and protected by sections 131 and 132.

National Trust Land

4. An order granting development consent may be subject to special parliamentary procedure to the extent that the order authorises the compulsory acquisition of land held inalienably by the National Trust.

[8] The amendments made by the Growth and Infrastructure Act in respect of special parliamentary procedure will apply to all applications for development consent made on or after 25 June 2013. In addition, certain transitional and savings provisions apply to applications made on or after 19 October 2012 - see http://www.legislation.gov.uk/uksi/2013/1124/made

5. Special parliamentary procedure will be triggered where the National Trust makes a formal objection to compulsory acquisition of that land and that objection is not withdrawn.

Commons (including town or village greens), open space, or fuel or field garden allotments

6. Sections 131 and 132 of the Planning Act make provision for special parliamentary procedure to apply where a development consent order authorises the compulsory acquisition of land, or rights over land, forming part of a common, open space, or fuel or field garden allotment.

7. Special parliamentary procedure will apply in such cases unless the Secretary of State is satisfied that one of the following circumstances applies:

- replacement land has been, or will be, given in exchange for land being compulsorily acquired (sections 131(4) or 132(4));
- the land being compulsorily acquired does not exceed 200 square metres in extent or is required for specified highway works, and the provision of land in exchange is unnecessary in the interests of people entitled to certain rights or the public (sections 131(5) or 132(5));
- for open space only, that replacement land in exchange for open space land being compulsorily acquired is not available, or is available only at a prohibitive cost, and it is strongly in the public interest for the development to proceed sooner than would be likely if special parliamentary procedure were to apply (sections 131(4A) or 132(4A));
- for open space only, if the land, or right over land, is being compulsorily acquired for a temporary purpose (sections 131(4B) or 132(4B)).

The last two of these circumstances were added by the Growth and Infrastructure Act. This Act also removed the separate procedural requirements for issuing a certificate where the Secretary of State is of the view that one of the circumstances described above applies[9]. Instead, these matters will be considered and determined as part of the development consent order application process and recommendations provided to enable the Secretary of State to reach a view.

[9] Subject to the transitional and savings arrangements set out in the Commencement Order: http://www.legislation.gov.uk/uksi/2013/1124/made

Replacement land

8. Where either section 131(4) or 132(4) of the Planning Act applies, the Secretary of State will have regard to such matters as relative size and proximity of the replacement land when compared with the land it is proposed to compulsorily acquire through the development consent order.

9. Land which is already subject to rights of common or to other rights, or used by the public, even informally, for recreation, cannot usually be given as replacement land, since this would reduce the amount of such land, which would be disadvantageous to the persons concerned. There may be some cases where a current use of proposed replacement land is temporary (e.g. pending development). In such circumstances it may be reasonable to give the land in exchange, since its current use can thereby be safeguarded for the future.

Other provisions

10. Where either section 131(5) or 132(5) of the Planning Act applies, the Secretary of State will need to be satisfied that both criteria are met:

    - the order land (in total) does not exceed 200 square metres in extent or is required for the widening or drainage of an existing highway or partly for the widening and partly for the drainage of such a highway, and

    - 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.

11. In coming to a view as to whether the criteria are met, the Secretary of State will have regard to the overall extent of common land, open space land or fuel or field garden allotment land being acquired compulsorily. Where all or a large part of such land would be lost, the Secretary of State may be reluctant to be satisfied in terms of section 131(5) or 132(5).

Land held by statutory undertakers

12. The Growth and Infrastructure Act repealed sections 128 and 129 of the Planning Act. This removed the possibility of special parliamentary procedure applying to situations where a development consent order provided for the compulsory acquisition of land, or rights over land, held by a statutory undertaker for the purposes of their undertaking.

13. Section 127(2) of the Planning Act places restrictions on the compulsory acquisition of land held by statutory undertakers for the purposes of their undertaking. Where the land falls into the description set out in that section and a statutory undertaker makes a representation, the Secretary of State will need to be satisfied that:

- the land can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or
- if purchased, it can be replaced by other land belonging to, or available for acquisition by, the undertaker without serious detriment to the carrying on of the undertaking.

14. Section 127(5) places restrictions on the compulsory acquisition of rights over statutory undertakers' land where new rights over that land are created. If the circumstances in that subsection apply the Secretary of State will need to be satisfied that:

- the rights can be purchased without any serious detriment to the carrying on of the undertaking, and;
- any consequential detriment to the carrying on of the undertaking can be made good by the undertaker by the use of other land belonging to or available for acquisition by the undertaker.

Annex B:
Crown Land

Compulsory acquisition of an interest in Crown land

1. Section 135(1) of the Planning Act enables development consent orders authorise the compulsory acquisition of an interest in Crown land where that interest is held by a party other than the Crown. Such an interest could include, for example, a lease granted over Crown land to a third party that is not itself the Crown, or an easement or right of way over Crown land granted to such a third party.

2. If provisions to compulsorily acquire such interests are to be included in a development consent order, then the consent of the appropriate Crown authority[10] is needed. It is important that such consent is obtained at the earliest opportunity as the development consent order cannot be made by the Secretary of State until the consent of the Crown authority is in place. The applicant for a project should ensure that any discussions with the Crown authority are started as soon as it is clear that an interest in Crown land will need to be acquired – i.e. before their application is submitted to the Planning Inspectorate for acceptance. The aim should be to ensure that Crown consent is in place before the application for the development consent order is submitted. If consent is not granted by the time an application is submitted, then the applicant should give an indication of when they expect consent to be received. At the very latest, this should be by the time the examination phase of the project is completed. This will allow the Examining Authority's recommendations to the Secretary of State on whether to grant development consent for the project to include a reference to the outcome of the application for Crown consent.

3. Early engagement is vital to ensure that the section 135 consenting requirement does not delay the final decision by the Secretary of State on the development consent order. It is the responsibility of applicants to notify the appropriate Crown authority if a section 135(1) consent is required. Applicants and Crown authorities are expected to do all they reasonably can to ensure an early resolution of any Crown consent needed. If, following notification by the applicant, it is clear that Crown consent is not going to be given, the appropriate Crown authority will aim to notify the applicant of the project before their application is submitted to the Planning Inspectorate.

[10] See section 227 of the Planning Act.

4. Applicants should note that certain Crown authorities may be unable to give general consents for compulsory purchase of interests in Crown land, and applicants should therefore be in a position to identify the specific third party interests which are required to be compulsorily purchased. Drafting in the development consent order may be needed to reflect this and where further specific interests are then identified, further consent would then be required from the appropriate Crown authority.

Other Provisions applying to Crown Land

5. Section 135(2) of the Planning Act allows a development consent order to include any provision which applies "in relation to Crown land or rights benefiting the Crown", but only if the appropriate Crown authority consents to the inclusion of the provision. These provisions could include, for example, a power to use Crown land temporarily for construction or maintenance of a project. “Rights benefiting the Crown” do not include rights that benefit the general public.

6. If the applicant is proposing to include such provisions in a draft development consent order, they should seek early discussions with the relevant Crown authority on whether such consent is likely to be granted before they submit their application to the Planning Inspectorate for acceptance. The Crown authority should also provide an early view on any issues that will need to be resolved if their consent is to be granted. These can then be taken into account by the applicant before they submit their application to the Planning Inspectorate. Any outstanding matters should then be identified in the application so these can be covered during the examination if relevant.

7. Wherever possible, the applicant should seek, and the Crown authority should give, a consent decision before the application is submitted, even if that is only on an “in principle basis” in advance of the examination of the project. The Crown authority should give a final decision on Crown consent by the time the examination of the project is completed. This will ensure that all relevant issues are covered during the examination and that a decision by the Secretary of State on the development consent order is not delayed by the need for Crown authority consent. If, at decision stage, the Secretary of State decides to make changes to the development consent order that go beyond the scope of the earlier Crown consent, then the Crown authority will be consulted and invited to give a final consent. Again decision on that final consent should be given promptly so the final decision on the development consent for the project is not delayed.

Annex C:
Plan which must accompany an application seeking authorisation for compulsory acquisition

1. The Applications Regulations require a land plan (see regulation 5(2)(i)) to identify any land over which it is proposed to exercise powers of compulsory acquisition or any right to use land.

2. Applicants should ensure that references to the plan in the draft order and other documentation relating to the application correspond exactly with headings on the plan itself.

3. All land to be compulsorily acquired, and any replacement land, should be clearly identified on the plan by colouring or by any other method at the discretion of the applicant. Where it is decided to use colouring, the long-standing convention (without statutory basis) is that land proposed to be acquired is shown pink, land over which a new right would subsist is shown blue, and replacement land is shown green. Where black-and-white copies are used they must still provide clear identification of the land to be compulsorily acquired and, where appropriate, any replacement land (e.g. by suitable shading or hatching).

4. The use of a sufficiently large scale, Ordnance Survey based map is important. The Applications Regulations specifies that maps should be on a scale no smaller than 1/2500. However, experience has shown that for compulsory acquisition a map of this scale is only suitable for rural areas. In general, the map scale should not be smaller than 1/1250, and for land in a densely populated urban area, the scale should be at least 1/500 and preferably larger. Where the order involves the acquisition of a considerable number of small plots, the use of insets on a larger scale is often helpful. Where a plan requires three or more separate sheets, they should be bound together, and a key plan should be provided showing how the various sheets are interrelated.

5. Where it is necessary to have more than one sheet, appropriate references must be made to each of them in the text of the draft order so that there is no doubt that they are all related to the order. If it is necessary to include a key plan, then it should be purely for the purpose of enabling a speedy identification of the whereabouts of the area to which the order relates. It should be the plan itself, and not the key plan which identifies the boundaries of the land to be acquired.

6. It is also important that the plan should show such details as are necessary to relate it to the description of each parcel of land (including land affected by temporary occupation) described in the book of reference. This may involve marking on the map the names of roads and places or local landmarks not otherwise shown.

7. The boundaries between plots should be clearly delineated and each plot separately numbered to correspond with the book of reference. Land which is delineated on the map but which is not being acquired compulsorily should be clearly distinguishable from land which is being acquired compulsorily.

8. There should be no discrepancy between the description of the land in the book of reference and the plan, and no room for doubt on anyone's part as to the precise areas of land which are to be compulsorily acquired. Where uncertainty over the true extent of the land to be acquired causes or may cause difficulties, the Secretary of State may refuse to make the order until this is made clear.

9. Where an applicant seeks authorisation for compulsory acquisition of additional land not included in the original application, and has not therefore been able to comply with the Applications Regulations, they must either secure the consent of all those with an interest in the land in question or observe the relevant procedures set out in the Infrastructure Planning (Compulsory Acquisition) Regulations 2010.

Annex D:
The Book of Reference

1. The book of reference is defined in the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. It comprises a book, in five Parts, together with any relevant plan.

2. Part 1 should contain the names and addresses for service of each person within Categories 1 and 2 in respect of any land which it is proposed shall be subject to:

   (i) powers of compulsory acquisition;

   (ii) rights to use land, including the right to attach brackets or other equipment to buildings; or

   (iii) rights to carry out protective works to buildings;

   Category 1 persons are the owners, lessees, tenants, or occupiers of land. Category 2 persons are those who have an interest in the land or who have the power to sell or convey the land or release the land.

3. Part 2 should contain the names and addresses for service of each person within Category 3. These are persons who might be entitled to make a relevant claim if the development consent order were to be made and fully implemented (section 57(4) of the Planning Act).

4. Part 3 should contain the names of all those entitled to enjoy easements or other private rights over land (including private rights of navigation over water) where these would be extinguished, suspended or interfered with as a result of the provisions in the development consent order for which an application is being made.

5. Part 4 should specify the owner of any Crown interest in the land which it is proposed to use for the purposes of the development consent order for which an application is being made.

6. Part 5 should specify land the acquisition of which could be subject to special parliamentary procedure, or which is special category land or which is replacement land for land being compulsorily acquired.

7. The descriptions of each plot of land included in parts 1-5 of the book of reference where it is intended that all or part of the proposed development and works shall be carried out, should include the area in square metres of each plot.

8. Applicants will need to be aware that each part in the book of reference serves a different purpose and persons may need to be identified in one or more parts. For example, a person entitled to enjoy easements or other private rights over land which the applicant proposes to extinguish, suspend or interfere with identified in Part 3 should also be recorded in Part 1 as a person within categories 1 or 2 as set out in section 57 of the Planning Act. Part 4 should specify the owner of any Crown interest in land it is proposed to be used for the purposes of the development consent order. Some (although not necessarily all) of these Crown interests may also be identified in the descriptions of land contained in Part 1 which will be subject to powers of compulsory acquisition, rights to use land or rights to carry out protective works to buildings.

9. Applicants should not add any further (non-prescribed) parts to a book of reference, for example schedules of statutory undertakers or other like bodies having or possibly having a right to keep equipment on, in or over the land within the order limits. 'Dashes' or other ambiguous descriptions should be avoided. Diligent inquiry should enable applicants to know whether or not such persons have an interest or right in land for the purposes of section 57 and if they are known to applicants the names and addresses should be contained in the relevant part(s) of the book of reference.

10. Where it is proposed to create and acquire new rights compulsorily they should be clearly identified. The book of reference should also cross-refer to the relevant articles contained in the development consent order.

Footnote 02

To

Further Supplementary Written Submissions

dated 30 September 2024

in Rebuttal to

Mona Offshore Wind Limited Document

Appendix to Response to WRs: Griffith Parry, Robert Parry and Kerry James

(Document Number S_D2_3.4)

STATUTORY INSTRUMENTS

2017 No. 572

INFRASTRUCTURE PLANNING

The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017

Made - - - -	*18th April 2017*
Laid before Parliament	*19th April 2017*
Coming into force - -	*16th May 2017*

CONTENTS

The Secretary of State, having been designated(**a**) for the purposes of section 2(2) of the European Communities Act 1972(**b**) in relation to measures relating to the environment, in exercise of the powers conferred by section 2(2) of that Act and having taken into account the selection criteria in Annex III to Council Directive 2011/92/EU(**c**), makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 and come into force on 16th May 2017.

Review

2.—(1) The Secretary of State must from time to time—

(a) carry out a review of the regulatory provision contained in these Regulations; and

(b) publish a report setting out the conclusions of the review.

(2) The first report must be published before 16th May 2022.

(3) Subsequent reports must be published at intervals not exceeding 5 years.

(4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015(**d**) requires that a review carried out under this regulation must, so far as is reasonable, have regard to how the obligations under the Directive are implemented in other Member States.

(**a**) S.I. 2008/301.
(**b**) 1972 c.68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7).
(**c**) OJ No. L 26, 28.1.2012, p.1.
(**d**) 2015 c.26. Section 30(3) was amended by section 19 of the Enterprise Act 2016 (c.12).

(5) Section 30(4) of the Small Business, Enterprise and Employment Act 2015 requires that a report published under this regulation must in particular—

(a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a);

(b) assess the extent to which those objectives are achieved;

(c) assess whether those objectives remain appropriate; and

(d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves a less onerous regulatory provision.

(6) In this regulation "regulatory provision" has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

Interpretation

3.—(1) In these Regulations—

"the Act" means the Planning Act 2008(**a**);

"applicant" means—

(a) an applicant for an order granting development consent or a person who proposes to apply for such an order; or

(b) an applicant for subsequent consent or a person who proposes to make a subsequent application;

"associated development" means development for which development consent may be granted in accordance with section 115(**b**) (development for which development consent may be granted);

"the consultation bodies" means—

(a) a body prescribed under section 42(1)(a)(**c**) (duty to consult) and listed in column 1 of the table set out in Schedule 1 to the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(**d**) where the circumstances set out in column 2 of that table are satisfied in respect of that body;

(b) each authority that is within section 43(**e**) (local authorities for purposes of section 42(1)(b)); and

(c) if the land to which the application, or proposed application, relates or any part of that land is in Greater London, the Greater London Authority;

"the Directive" means Council Directive 2011/92/EU(**f**);

"EIA" has the meaning given by regulation 5;

"EIA development" means development which is either—

(a) Schedule 1 development; or

(b) Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location;

"environmental information" means the environmental statement (or in the case of a subsequent application, the updated environmental statement), including any further

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(**a**) 2008, c. 29.

(**b**) Section 115 was amended by sections 128 and 237 of, paragraphs 1 and 56 of Part 1 of Schedule 13 to, and Part 20 of Schedule 25 to, the Localism Act 2011 (c. 20); by section 43 of the Wales Act 2017 (c.4); and by section 160 of the Housing and Planning Act 2016 (c. 22).

(**c**) Section 42 was amended by section 23 of the Marine and Coastal Access Act 2009 (c. 23).

(**d**) S.I. 2009/2264; relevant amending instruments are S.I. 2010/439, 2012/2654, 2012/2732, 2013/522, 2013/755, 2014/469, 2015/377, 2015/1682.

(**e**) Section 43 was amended by section 23 of the Marine and Coastal Access Act 2009, and by section 133 of the Localism Act 2011.

(**f**) OJ No. L 26, 28.1.2012, p.1-21. Council Directive 2011/92/EU has been amended by Council Directive 2014/52/EU, OJ No. L 124, 25.4.2014, p. 1–18.

information and any other information, any representations made by any body required by these Regulations to be invited to make representations and any representations duly made by any other person about the environmental effects of the development;

"environmental statement" has the meaning given by regulation 14;

"Examining authority" means the Panel or single appointed person appointed under section 65 (appointment of members, and lead member, of Panel) or section 79 (appointment of single appointed person) to examine an application under section 37, and may include one or more members of the Panel allocated a function of the Panel in accordance with section 76 (allocation within Panel of Panel's functions)(**a**);

"EU environmental assessment" means an assessment carried out under—

(a) an obligation to which section 2(1) of the European Communities Act 1972(**b**) applies (other than the Directive); or

(b) the law of any part of the United Kingdom implementing an EU obligation other than an obligation arising under the Directive,

of the effect of anything on the environment;

"exempt development" means development in respect of which the Secretary of State has made a direction under regulation 33;

"further information" means additional information which, in the view of the Examining authority, the Secretary of State or the relevant authority, is directly relevant to reaching a reasoned conclusion on the significant effects of the development on the environment and which it is necessary to include in an environmental statement or updated environmental statement in order for it to satisfy the requirements of regulation 14(2);

"monitoring measure" means a provision requiring the monitoring of any significant adverse effects on the environment of proposed development, including any measures contained in a requirement imposed by an order granting development consent;

"any other information" means any other substantive information provided by the applicant in relation to the environmental statement or updated environmental statement;

"register" means a register kept pursuant to section 39(**c**) (register of applications);

"relevant authority" means the body which determines a subsequent application;

"Schedule 1 development" means development, other than exempt development, of a description mentioned in Schedule 1 to these Regulations;

"Schedule 2 development" means development, other than exempt development, of a description mentioned in Schedule 2 to these Regulations;

"scoping opinion" means a written statement—

(a) by the Secretary of State as to the information to be provided in an environmental statement as described in regulation 10(1); or

(b) by the relevant authority as to any further information to be provided in an updated environmental statement as described in regulation 10(2);

"screening direction" means a direction made by the Secretary of State as to whether or not development (including any associated development) is EIA development;

"screening opinion" means a written statement of the opinion of the Secretary of State or the Examining authority as to whether development (including any associated development) is EIA development;

(**a**) Under Part 6 of the Act the Secretary of State must decide whether an accepted application for an order granting development consent is to be handled by a Panel or by a single appointed person. The Panel or single appointed person (known as the "Examining authority") must conduct an examination of the application and make a report to the Secretary of State setting out the Examining authority's findings and conclusions in respect of the application and its recommendation as to the decision to be made by the Secretary of State on the application.

(**b**) 1972 c. 68. Section 2(1) was amended by section 3(3), and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7).

(**c**) Section 39 was amended by section 128 of, and paragraphs 7(2) and 7(3) of Schedule 13 to, the Localism Act 2011 (c. 20).

"subsequent application" means an application to the relevant authority for approval of a matter where—

(a) the application is made in pursuance of a requirement imposed by an order granting development consent; and

(b) the approval must be obtained before all or part of the development permitted by the consent may begin;

"subsequent consent" means consent granted pursuant to a subsequent application;

"subsequent screening opinion" means a written statement of a relevant authority as to whether further information is required to enable it to determine a subsequent application;

"UK environmental assessment" means an assessment carried out in accordance with an obligation under the law of any part of the United Kingdom of the effect of anything on the environment;

"updated environmental statement" means the environmental statement submitted as part of an application for an order granting development consent, updated to include any further information.

(2) Except in regulation 2, any reference in these Regulations to a section is a reference to a section of the Act.

(3) Expressions used both in these Regulations and in the Act have the same meaning for the purposes of these Regulations as they have for the purposes of the Act.

(4) Expressions used both in these Regulations and in the Directive have the same meaning for the purposes of these Regulations as they have for the purposes of the Directive.

Prohibition on granting consent without consideration of environmental information

4.—(1) This regulation applies to—

(a) applications for an order granting development consent for EIA development received by the Secretary of State; and

(b) subsequent applications for EIA development received by a relevant authority.

(2) Where this regulation applies, the Secretary of State or relevant authority (as the case may be) must not (in the case of the Secretary of State) make an order granting development consent or (in the case of the relevant authority) grant subsequent consent unless an EIA has been carried out in respect of that application.

Environmental impact assessment process

5.—(1) The environmental impact assessment ("the EIA") is a process consisting of—

(a) the preparation of an environmental statement or updated environmental statement, as appropriate, by the applicant;

(b) the carrying out of any consultation, publication and notification as required under these Regulations or, as necessary, any other enactment in respect of EIA development; and

(c) the steps that are required to be undertaken by the Secretary of State under regulation 21 or by the relevant authority under regulation 25, as appropriate.

(2) The EIA must identify, describe and assess in an appropriate manner, in light of each individual case, the direct and indirect significant effects of the proposed development on the following factors—

(a) population and human health;

(b) biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC(**a**) and Directive 2009/147/EC(**b**);

(**a**) OJ No. L 206, 22.7.1992, p. 7.
(**b**) OJ No. L 20, 26.1.2010, p. 7.

(c) land, soil, water, air and climate;

(d) material assets, cultural heritage and the landscape;

(e) the interaction between the factors referred to in sub-paragraphs (a) to (d).

(3) The effects referred to in paragraph (2) on the factors set out in that paragraph must include the operational effects of the proposed development, where the proposed development will have operational effects.

(4) The significant effects to be identified, described and assessed under paragraph (2) include, where relevant, the expected significant effects arising from the vulnerability of the proposed development to major accidents or disasters that are relevant to that development.

(5) The Secretary of State or relevant authority, as the case may be, must ensure that they have, or have access as necessary to, sufficient expertise to examine the environmental statement or updated environmental statement, as appropriate.

When development is EIA development: general cases

6.—(1) The occurrence of an event mentioned in paragraph (2) shall determine for the purpose of these Regulations that development is EIA development.

(2) The events referred to in paragraph (1) are—

(a) a person notifying the Secretary of State in writing under regulation 8(1)(b) that that person proposes to provide an environmental statement in respect of proposed development;

(b) the adoption by the Secretary of State or an Examining authority of a screening opinion to the effect that the development is EIA development; or

(c) the making of a screening direction by the Secretary of State pursuant to regulation 7 to the effect that the development is EIA development.

When development is EIA development: screening directions by the Secretary of State

7.—(1) A direction of the Secretary of State shall determine for the purpose of these Regulations whether or not development is EIA development but may only be given if—

(a) the Secretary of State has accepted an application for an order granting development consent for that development; and

(b) paragraph (3) or paragraph (4) applies.

(2) The Secretary of State may give a direction under paragraph (1)—

(a) at any time until the relevant authority grants a subsequent consent; and

(b) either—

(i) of the Secretary of State's own volition; or

(ii) if requested to do so in writing by any person.

(3) This paragraph applies if—

(a) the proposed development has not been the subject of a screening opinion; and

(b) the application was not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations.

(4) This paragraph applies if—

(a) the proposed development has been the subject of a screening opinion to the effect that it is not EIA development; and

(b) the Secretary of State considers that the screening opinion did not take into account information that is material to the decision as to whether or not the proposed development is EIA development.

(5) If the Secretary of State decides to give a screening direction following a request under paragraph (2)(b)(ii), the Secretary of State must—

(a) request from the applicant the information set out in regulation 8(3);

(b) if the Secretary of State considers that sufficient information to make a screening direction has not been provided, notify the applicant of the points on which additional information is required; and

(c) give the screening direction within 90 days of the date on which the applicant provides sufficient information for the Secretary of State to make a direction.

(6) Where the Secretary of State considers that, due to exceptional circumstances relating to the circumstances of the proposed development, it is not practicable to give a screening direction within the period specified in paragraph (5)(c), the Secretary of State may—

(a) in the case of a screening direction being prepared under paragraph (2)(b)(i), extend that period by notice in writing given to the person bringing forward the development which is the subject of the proposed screening direction; or

(b) in the case of a screening direction being prepared under paragraph (2)(b)(ii), extend that period by notice in writing given to the person who made the request for a screening direction.

(7) The Secretary of State must state in any notice given under paragraph (6) the reasons justifying the extension and the date when the direction is expected to be given.

(8) The Secretary of State must send a copy of any screening direction to the relevant authority, or, if the Examining authority has been dealing with the application, to the Examining authority.

Procedure for establishing whether environmental impact assessment is required

8.—(1) A person who proposes to make an application for an order granting development consent must, before carrying out consultation under section 42(**a**) (duty to consult) either—

(a) ask the Secretary of State to adopt a screening opinion in respect of the development to which the application relates; or

(b) notify the Secretary of State in writing that the person proposes to provide an environmental statement in respect of that development.

(2) A person who proposes to make a subsequent application may, before submitting that application—

(a) ask the relevant authority to adopt a subsequent screening opinion in respect of the proposed development; or

(b) notify the relevant authority in writing that the person proposes to provide an updated environmental statement in respect of the proposed development.

(3) A person making a request under paragraph (1)(a) must provide the following information—

(a) a plan sufficient to identify the land;

(b) a description of the development, including in particular—

(i) a description of the physical characteristics of the whole development and, where relevant, of demolition works;

(ii) a description of the location of the development, with particular regard to the environmental sensitivity of geographical areas likely to be affected;

(c) a description of the aspects of the environment likely to be significantly affected by the development; and

(d) to the extent the information is available, a description of any likely significant effects of the development on the environment resulting from—

(i) the expected residues and emissions and the production of waste, where relevant; and

(ii) the use of natural resources, in particular soil, land, water and biodiversity.

(**a**) Section 42 was amended by section 3 of the Marine and Coastal Access Act 2009.

(4) A person making a request under paragraph (2)(a) must provide the following information—

(a) the reference number applied by the Secretary of State to the application for an order granting development consent in respect of which the applicant proposes to make a subsequent application;

(b) a description of any aspects of the environment likely to be significantly affected by the development which were not identified at the time the order granting development consent was made; and

(c) to the extent the information is available, a description of any likely significant effects on the environment not identified at the time the order granting development consent was made resulting from—

(i) the expected residues and emissions and the production of waste, where relevant; and

(ii) the use of natural resources, in particular soil, land, water and biodiversity.

(5) A person requesting a screening opinion or subsequent screening opinion may also provide details of any features of the proposed development and any measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.

(6) A person compiling the information set out in paragraphs (3), (4) and (5) must, where relevant, take into account—

(a) the criteria set out in Schedule 3 to these Regulations; and

(b) the results of any relevant EU environmental assessment which is reasonably available to them.

(7) Where—

(a) the Secretary of State has received a request under paragraph (1)(a); or

(b) the relevant authority has received a request under paragraph (2)(a),

the Secretary of State, or, as the case may be, the relevant authority, must, if they consider that they have not been provided with sufficient information to adopt an opinion, notify in writing the person making the request of the points on which they require additional information.

(8) The Secretary of State or the relevant authority must adopt a screening opinion or a subsequent screening opinion within 21 days beginning with the date of receipt of a request made pursuant to paragraph (1)(a) or (2)(a), or where the Secretary of State or, as the case may be, the relevant authority, has notified the person making the request that it requires additional information, within 21 days of receiving that information.

(9) Where the Secretary of State or the Examining authority adopts a screening opinion, or the Secretary of State makes a screening direction under regulation 7, the Secretary of State or the Examining authority, must—

(a) state the main reasons for the conclusion of the Examining authority or the Secretary of State, as appropriate, with reference to the relevant criteria listed in Schedule 3 to these Regulations;

(b) if it is determined that the proposed development is not EIA development, state in that opinion or direction any features of the proposed development and measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment;

(c) send a copy of that opinion or direction and a copy of the written statement required by sub-paragraph (a) to the applicant; and

(d) where the Examining authority adopts the opinion, send a copy of the opinion and a copy of the written statement to the Secretary of State.

(10) Where the relevant authority adopts a subsequent screening opinion to the effect that an updated environmental statement is required to enable it to determine a subsequent application it must—

(a) issue with the opinion a written statement stating the main reasons for the conclusion of the relevant authority, with reference to the relevant criteria listed in Schedule 3 to these Regulations; and

(b) send a copy of the opinion and a copy of the written statement required by sub-paragraph (a) to the applicant and to the Secretary of State.

Considerations for screening decisions

9.—(1) Where the Secretary of State or the Examining authority has to decide under these Regulations whether Schedule 2 development is EIA development(**a**) the Secretary of State or the Examining authority must take into account in making that decision—

(a) any information provided to the Secretary of State or the Examining authority in accordance with regulation 8;

(b) the results of any relevant EU environmental assessment which are reasonably available to the Secretary of State or the Examining authority; and

(c) such of the selection criteria set out in Schedule 3 as are relevant to the proposed development.

(2) Where a relevant authority has to decide under these Regulations whether further information is required to enable it to determine a subsequent application it must take into account in making that decision—

(a) any information provided to it in accordance with regulation 8;

(b) the results of any relevant EU environmental assessment which are reasonably available to the relevant authority;

(c) such of the selection criteria set out in Schedule 3 to these Regulations as are relevant to the development;

(d) whether information that was available to the decision-maker when it decided to grant development consent for the development has changed since it made that decision;

(e) whether new information on the likely environmental effects of the development has become available since the decision-maker decided to grant development consent; and

(f) whether the new information referred to in sub-paragraphs (d) and (e) is material to the decision as to whether the proposed development is likely to have significant effects on the environment, or as to the particular nature or extent of those effects.

Application for a scoping opinion

10.—(1) A person who proposes to make an application for an order granting development consent may ask the Secretary of State to state in writing their opinion as to the scope, and level of detail, of the information to be provided in the environmental statement.

(2) A person who proposes to make a subsequent application may ask the relevant authority to state in writing its opinion as to the scope, and level of detail, of the further information to be provided in the updated environmental statement.

(3) A request under paragraph (1) must include—

(a) a plan sufficient to identify the land;

(b) a description of the proposed development, including its location and technical capacity;

(c) an explanation of the likely significant effects of the development on the environment; and

(d) such other information or representations as the person making the request may wish to provide or make.

(**a**) See regulations 7 and 8 for the Secretary of State's role, and regulation 19 for the Examining authority's role.

(4) A request under paragraph (2) must include—

(a) the reference number of the order granting development consent in respect of which the applicant proposes to make a subsequent application;

(b) a description of the proposed development, including its location and technical capacity;

(c) an explanation of the likely significant effects of the development on the environment which were not identified at the time the order granting development consent was made; and

(d) such other information or representations as the person making the request may wish to provide or make.

(5) When the Secretary of State or the relevant authority, as the case may be, has received a request for a scoping opinion under paragraph (1) or (2), they must, if they consider that they have not been provided with sufficient information to adopt an opinion, notify in writing the person making the request of the points on which they require additional information.

(6) The Secretary of State or the relevant authority must not adopt a scoping opinion in response to a request under paragraph (1) or (2) until they have consulted the consultation bodies, but must, subject to paragraph (7), within 42 days beginning with the date of receipt of that request, or where they have notified the person making the request that they require additional information in order to adopt an opinion, within 42 days of receiving that information, adopt a scoping opinion and send a copy to the person who made the request.

(7) Where a person has, at the same time as making a request for a screening opinion under regulation 8(1), asked the Secretary of State for a scoping opinion under paragraph (1), and the Secretary of State has adopted a screening opinion to the effect that the development is EIA development, the Secretary of State must, within 42 days beginning with the date on which that screening opinion was adopted or, where the Secretary of State has notified the person making the request that they require additional information in order to adopt an opinion, within 42 days of receiving that information, adopt a scoping opinion and send a copy to the person who made the request.

(8) Where a person has, at the same time as making a request for a subsequent screening opinion under regulation 8(2), asked the relevant authority for a scoping opinion under paragraph (2), and the relevant authority has adopted a subsequent screening opinion to the effect that an updated environmental statement is required to enable it to determine a subsequent application, the relevant authority must, within 42 days beginning with the date on which the subsequent screening opinion was adopted or, where it has notified the person making the request that it requires additional information in order to adopt an opinion, within 42 days of receiving that information, adopt a scoping opinion and send a copy to the person who made the request.

(9) Before adopting a scoping opinion the Secretary of State or the relevant authority must take into account—

(a) any information provided about the proposed development;

(b) the specific characteristics of the development;

(c) the likely significant effects of the development on the environment; and

(d) in the case of a subsequent application, the environmental statement submitted with the original application.

(10) When the Secretary of State or the relevant authority has adopted a scoping opinion in response to a request under paragraph (1) or (2), neither the Secretary of State nor the relevant authority shall be precluded from requiring of the person who made the request additional information in connection with any statement that may be submitted by that person as an environmental statement or an updated environmental statement in connection with an application for an order granting development consent or a subsequent application for the same development as was referred to in the request.

(11) If a consultation body does not within 28 days of being consulted under paragraph (6) respond stating—

(a) the information it considers should be provided in the environmental statement or the updated environmental statement; or

(b) that it does not have any comments,

the Secretary of State or the relevant authority is entitled to assume that the consultation body in question does not have any comments on the information to be provided in the environmental statement or the updated environmental statement.

Procedure to facilitate preparation of environmental statements

11.—(1) Where paragraph (2) applies, the Secretary of State or the relevant authority must—

(a) notify the consultation bodies in writing of the name and address of the applicant and of the duty imposed on the consultation bodies by paragraph (3) to make information available to that person;

(b) inform the applicant in writing of the names and addresses of the bodies so notified; and

(c) notify the applicant in writing of any particular person whom it considers—

(i) to be, or to be likely to be, affected by, or to have an interest in the proposed development; and

(ii) to be unlikely to become aware of the proposed development by means of the measures taken in compliance with Part 5 (applications for orders granting development consent) of the Act.

(2) This paragraph applies if—

(a) a person has notified the Secretary of State or the relevant authority under regulation 8(1)(b) or 8(2)(b); or

(b) either—

(i) in the case of an application for an order granting development consent, the Secretary of State has given a screening opinion to the effect that the proposed development is EIA development; or

(ii) in the case of a subsequent application, the relevant authority has given a subsequent screening opinion to the effect that further information is required to enable it to determine the application.

(3) Subject to paragraph (4), the Secretary of State, the relevant authority and any body notified in accordance with paragraph (1), other than a person notified in accordance with paragraph (1)(c), must, if so requested by the applicant, enter into consultation with that person to determine whether the Secretary of State, the relevant authority or body, as the case may be, has in its possession any information which is considered relevant to the preparation of the environmental statement or the updated environmental statement; and, if that is the case, the Secretary of State, or the relevant authority or body must make that information available to the applicant.

(4) Paragraph (3) does not require the disclosure of information which is exempted from the duty to disclose environmental information under the Environmental Information Regulations 2004(**a**) or regulation 10(5) (as read with regulation 10(6)) of the Environmental Information (Scotland) Regulations 2004(**b**).

(5) The Secretary of State, relevant authority or body making information available in accordance with paragraph (3) may make a reasonable charge reflecting the cost of making the relevant information available to the applicant.

(6) In this regulation, "any particular person" includes any non-governmental organisation promoting environmental protection.

(**a**) S.I. 2004/3391, to which there are amendments not relevant to these Regulations.
(**b**) S.I. 2004/520, to which there are amendments not relevant to these Regulations.

Consultation statement requirements

12.—(1) The consultation statement prepared under section 47(**a**) (duty to consult local community) must set out—

(a) whether the development for which the applicant proposes to make an application for an order granting development consent is EIA development; and

(b) if that development is EIA development, how the applicant intends to publicise and consult on the preliminary environmental information.

(2) In this regulation, "preliminary environmental information" means information referred to in regulation 14(2) which—

(a) has been compiled by the applicant; and

(b) is reasonably required for the consultation bodies to develop an informed view of the likely significant environmental effects of the development (and of any associated development).

Pre-application publicity under section 48 (duty to publicise)

13. Where the proposed application for an order granting development consent is an application for EIA development, the applicant must, at the same time as publishing notice of the proposed application under section 48(1), send a copy of that notice to the consultation bodies and to any person notified to the applicant in accordance with regulation 11(1)(c).

Environmental statements

14.—(1) An application for an order granting development consent for EIA development must be accompanied by an environmental statement.

(2) An environmental statement is a statement which includes at least—

(a) a description of the proposed development comprising information on the site, design, size and other relevant features of the development;

(b) a description of the likely significant effects of the proposed development on the environment;

(c) a description of any features of the proposed development, or measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;

(d) a description of the reasonable alternatives studied by the applicant, which are relevant to the proposed development and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the development on the environment;

(e) a non-technical summary of the information referred to in sub-paragraphs (a) to (d); and

(f) any additional information specified in Schedule 4 relevant to the specific characteristics of the particular development or type of development and to the environmental features likely to be significantly affected.

(3) The environmental statement referred to in paragraph (1) must—

(a) where a scoping opinion has been adopted, be based on the most recent scoping opinion adopted (so far as the proposed development remains materially the same as the proposed development which was subject to that opinion);

(b) include the information reasonably required for reaching a reasoned conclusion on the significant effects of the development on the environment, taking into account current knowledge and methods of assessment; and

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(**a**) Section 47 was amended by section 134 of the Localism Act.

(c) be prepared, taking into account the results of any relevant UK environmental assessment, which is reasonably available to the applicant with a view to avoiding duplication of assessment.

(4) In order to ensure the completeness and quality of the environmental statement—

(a) the applicant must ensure that the environmental statement is prepared by competent experts; and

(b) the environmental statement must be accompanied by a statement from the applicant outlining the relevant expertise or qualifications of such experts.

Obligations of Secretary of State on receipt of application

15.—(1) Where—

(a) an application has been made for an order granting development consent that includes Schedule 1 or Schedule 2 development but is not accompanied by an environmental statement; and

(b) either paragraph (5) or (6) applies,

paragraphs (7), (8) and (9) of regulation 8 shall apply as if the receipt of the application were a request made under regulation 8(1)(a).

(2) Where paragraph (1) applies the Secretary of State must, without prejudice to the generality of regulation 8(7), make a request for additional information under that regulation to ensure that the applicant has provided at least the information referred to in regulation 8(3) before giving or adopting a screening direction or opinion.

(3) Where paragraph (2) applies the applicant must prepare the information referred to in regulation 8(3) by reference to the requirements of regulation 8(6).

(4) Where pursuant to paragraph (1), the Secretary of State has adopted a screening opinion to the effect that proposed development is EIA development and complies with regulation 8(9), the Secretary of State must suspend consideration of the application until the applicant has provided an environmental statement.

(5) This paragraph applies if—

(a) the proposed development has not been the subject of a screening opinion; and

(b) the application is not accompanied by a statement referred to by the applicant as an environmental statement for the purpose of these Regulations.

(6) This paragraph applies if—

(a) the proposed development has been the subject of a screening opinion to the effect that it is not EIA development; and

(b) the Secretary of State is of the view that the screening opinion did not take into account information that is material to the decision as to whether the proposed development is EIA development.

(7) Where paragraph (8) applies, the Secretary of State must—

(a) issue a written statement giving clearly and precisely the reasons for the conclusion;

(b) send a copy of that written statement to the applicant; and

(c) suspend consideration of the application until the applicant has provided the further information required.

(8) This paragraph applies if—

(a) the applicant has submitted a statement that the applicant refers to as an environmental statement; and

(b) the Secretary of State is of the view that it is necessary for the statement to contain further information.

(9) Regulations 10 (application for scoping opinion) and 11 (procedure to facilitate preparation of environmental statements) apply to an application for an order granting development consent

for EIA development which has been suspended under paragraph (4) as if, in regulation 10(1), for "A person who proposes to make an application" there were substituted "An applicant".

Accepted application—publicity and consultation for EIA development

16.—(1) This regulation applies where an application for an order for development consent for EIA development is accepted by the Secretary of State.

(2) Where this regulation applies, the applicant must at the same time as it gives the notice required to be given under section 56(**a**) (notifying persons of accepted application)—

(a) send a copy of that notice to any person notified to the applicant under regulation 11(1)(c); and

(b) send to the consultation bodies—

(i) a copy of the accepted application and a map showing where the proposed development is to be sited; and

(ii) a copy of the environmental statement.

Certifying compliance with regulation 16

17. Where regulation 16 applies, the applicant must send to the Secretary of State a certificate of compliance with that regulation—

(a) in the form set out in certificate 1 in Schedule 5 to these Regulations;

(b) at the same time as complying with regulation 10 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(**b**).

Effect of failure to comply with regulation 16

18. Where—

(a) an Examining authority is examining an application for an order granting development consent; and

(b) the applicant has not complied with regulation 16,

the Examining authority must suspend consideration of the application until the applicant has certified to the Examining authority that the requirements of regulation 16 have been complied with, in the form set out in certificate 1 in Schedule 5 to these Regulations.

Accepted application—effect of screening opinion not taking account of all relevant information

19.—(1) Where—

(a) an Examining authority is examining an application for an order granting development consent; and

(b) paragraph (2) applies,

the Examining authority must comply with the requirements in paragraph (3).

(2) This paragraph applies if—

(a) the proposed development has been the subject of a screening opinion to the effect that it is not EIA development; and

(**a**) Section 56 was amended by sections 128 and 138(2) of, and paragraphs 1 and 14 of Schedule 13 to, the Localism Act 2011, and by section 23(5) of the Marine and Coastal Access Act 2009 (c. 23).

(**b**) S.I. 2009/2264, amended by S.I. 2012/635; there are other amending instruments but none is relevant.

(b) the Examining authority is of the view that the screening opinion did not take into account information that is material to the decision as to whether the proposed development is EIA development.

(3) The requirements mentioned in paragraph (1) are that—

(a) the Examining authority must suspend consideration of the application until it has adopted a further screening opinion;

(b) if the Examining authority considers that there is insufficient information with which to adopt such an opinion, the Examining authority must request the applicant to provide additional information;

(c) the Examining authority must adopt a further screening opinion provided there is sufficient information with which to do so; and

(d) the Examining authority must adopt a further screening opinion within 21 days of a suspension of an application as described in sub-paragraph (a), or where the Examining authority has requested additional information in accordance with sub-paragraph (b), within 21 days of receiving that information.

(4) Where the Examining authority requests that the applicant provide additional information pursuant to sub-paragraph (3)(b), the applicant must prepare such additional information as falls within regulation 8(3) by reference to the requirements of regulation 8(6).

(5) Where, pursuant to paragraph (3), the Examining authority adopts a screening opinion to the effect that the proposed development is EIA development, the Examining authority must—

(a) issue with the opinion a written statement stating the main reasons for the conclusion, with reference to the relevant criteria listed in Schedule 3 to these Regulations;

(b) send to the applicant a copy of the opinion and a copy of the written statement mentioned in sub-paragraph (a); and

(c) suspend consideration of the application until the requirements of paragraph (6) and, where appropriate, paragraph (7), are satisfied.

(6) The requirements mentioned in paragraph (5)(c) are that the applicant must—

(a) provide the Examining authority with a copy of the environmental statement;

(b) publish a notice (in accordance with sub-paragraph (c)) which sets out the following information—

(i) the name and address of the applicant;

(ii) that the applicant has made an application to the Secretary of State for an order granting development consent for EIA development;

(iii) that the Secretary of State has accepted the application and the reference number of the application;

(iv) that consideration of the application by the Examining authority has been suspended until an environmental statement has been provided and publicised;

(v) a summary of the main proposals, specifying the location or route of the proposed development;

(vi) that the environmental statement is available for inspection free of charge—

(aa) at the places (including at least one address in the vicinity of the proposed development) and times set out in the notice; and

(bb) on a website maintained by or on behalf of the Secretary of State;

(vii) the latest date on which those documents will be available for inspection (being a date not earlier that the deadline referred to in sub-paragraph (b)(x));

(viii) whether a charge will be made for copies of any of those documents and the amount of any charge;

(ix) details of how to respond to the publicity; and

(x) a deadline for receipt of responses being not less than 30 days following the date on which the notice is last published;

(c) publish the notice—

(i) for at least 2 successive weeks in one or more local newspapers circulating in the vicinity of the land in which the proposed development is situated;

(ii) once in a national newspaper;

(iii) once in the London Gazette and if land in Scotland is affected, the Edinburgh Gazette; and

(iv) in the case of offshore development, once in Lloyds List and once in an appropriate fishing trade journal.

(d) display the notice at, or as close as reasonably practicable to, the site of the proposed development at a place accessible to the public;

(e) serve on any person of whom the applicant has been notified under regulation 11(1)(c) a notice containing the information specified in sub-paragraph (b);

(f) arrange for the notice to be published on a website maintained by or on behalf of the Secretary of State;

(g) send to the consultation bodies a copy of the environmental statement and a notice setting out the information specified in sub-paragraph (b)(i) to (v);

(h) inform those bodies—

(i) how and to whom they may make representations; and

(ii) of the deadline for making representations which must be not less than 30 days later than the last date on which the additional information was sent in accordance with sub-paragraph (e); and

(i) certify to the Examining authority in the form set out in certificate 2 in Schedule 5 that the applicant has complied with the requirements of sub-paragraphs (b) to (h).

(7) Where the proposed development consists of, or includes, works with a route or alignment exceeding 5 kilometres in length—

(a) the requirements set out in paragraph (6)(c)(i) shall be taken to include a requirement to publish the notice referred to in paragraph (6)(b) for at least 2 successive weeks in one or more local newspapers circulating in the vicinity of the land along the route or alignment of the works described in the application; and

(b) the requirements set out in paragraph (6)(d) to display the notice referred to in paragraph (6)(b) shall be taken to include a requirement to display the notice at intervals of not more than 5 kilometres along the whole proposed route or alignment of the works described in the application, except where this is impracticable due to the land in question being covered in water.

(8) Regulation 11 (procedure to facilitate preparation of environmental statements) applies to an application for an order granting development consent for EIA development that has been suspended under sub-paragraph (3)(a), subject to the following modifications—

(a) in paragraphs (1), (3) and (5) of regulation 11, for "the Secretary of State", in each place, substitute "the Examining authority"; and

(b) in regulation 11(2)—

(i) sub-paragraph (a) shall not apply; and

(ii) in sub-paragraph (b)(i) for "the Secretary of State" substitute "the Examining authority".

Accepted application—effect of environmental statement being inadequate

20.—(1) Where an Examining authority is examining an application for an order granting development consent and paragraph (2) applies, the Examining authority must—

(a) issue a written statement giving clearly and precisely the reasons for its conclusion;

(b) send a copy of that written statement to the applicant; and

(c) suspend consideration of the application until the requirements of paragraph (3) and, where appropriate, paragraph (4) are satisfied.

(2) This paragraph applies if—

(a) the applicant has submitted a statement that the applicant refers to as an environmental statement; and

(b) the Examining authority is of the view that it is necessary for the statement to contain further information.

(3) The requirements mentioned in paragraph (1) are that the applicant must—

(a) provide the Examining authority with the further information;

(b) publish a notice (in accordance with sub-paragraph (c)) which sets out the following information—

(i) the name and address of the applicant;

(ii) that the applicant has made an application to the Secretary of State for an order granting development consent for EIA development;

(iii) that the Secretary of State has accepted the application and the reference number of the application;

(iv) that consideration of the application by the Examining authority has been suspended until further information and any other information required for the environmental statement has been provided and publicised;

(v) a summary of the main proposals, specifying the location or route of the proposed development;

(vi) that the environmental statement and the further information and any other information are available for inspection free of charge—

(aa) at the places (including at least one address in the vicinity of the proposed development) and times set out in the notice; and

(bb) on a website maintained by or on behalf of the Secretary of State;

(vii) the latest date on which those documents will be available for inspection (being a date not earlier that the deadline referred to in sub-paragraph (b)(x));

(viii) whether a charge will be made for copies of any of those documents and the amount of any charge;

(ix) details of how to respond to the publicity; and

(x) a deadline for receipt of responses being not less than 30 days following the date on which the notice is last published;

(c) publish the notice—

(i) for at least 2 successive weeks in one or more local newspapers circulating in the vicinity in which the proposed development is situated;

(ii) once in a national newspaper;

(iii) once in the London Gazette and if land in Scotland is affected, the Edinburgh Gazette; and

(iv) in the case of offshore development, once in Lloyds List and once in an appropriate fishing trade journal;

(d) display the notice at, or as close as reasonably practicable to, the site of the proposed development at a place accessible to the public;

(e) serve on any person of whom the applicant has been notified under regulation 11(1)(c) a notice containing the information specified in sub-paragraph (b), except that the date

specified as the latest date on which the documents will be available for inspection must not be less than 30 days later than the date on which the notice is first served;

(f) arrange for the notice to be published on a website maintained by or on behalf of the Secretary of State;

(g) send to the consultation bodies the further information and a notice setting out the information specified in sub-paragraph (b)(i) to (v); and

(h) inform those bodies—

(i) how and to whom they may make representations;

(ii) of the deadline for making representations which must be not less than 30 days later than the last date on which the additional information was sent in accordance with sub-paragraph (e); and

(iii) certify to the Examining authority in the form set out in certificate 3 in Schedule 5 that the applicant has complied with the requirements of sub-paragraphs (b) to (g).

(4) Where the proposed development consists of, or includes, works with a route or alignment exceeding 5 kilometres in length—

(a) the requirement set out in paragraph (3)(c)(i) shall be taken to include a requirement to publish the notice referred to in paragraph (3)(b) for at least 2 successive weeks in one or more local newspapers circulating in the vicinity of the land along the route or alignment of the works described in the application; and

(b) the requirements set out in paragraph (3)(d) to display the notice referred to in paragraph (3)(b) shall be taken to include a requirement to display the notice at intervals of not more than 5 kilometres along the whole proposed route or alignment of the works described in the application, except where this is impracticable due to the land in question being covered in water.

Consideration of whether development consent should be granted

21.—(1) When deciding whether to make an order granting development consent for EIA development the Secretary of State must—

(a) examine the environmental information;

(b) reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account the examination referred to in sub-paragraph (a) and, where appropriate, any supplementary examination considered necessary;

(c) integrate that conclusion into the decision as to whether an order is to be granted; and

(d) if an order is to be made, consider whether it is appropriate to impose monitoring measures.

(2) The reasoned conclusion referred to in paragraph (1)(b) must be up to date at the time that the decision as to whether the order is to be granted is taken, and that conclusion shall be taken to be up to date if in the opinion of the Secretary of State it addresses the significant effects of the proposed development on the environment that are likely to arise as a result of the development described in the application.

(3) When considering whether to impose a monitoring measure under paragraph (1)(d), the Secretary of State must—

(a) if monitoring is considered to be appropriate, consider whether to make provision for potential remedial action;

(b) take steps to ensure that the type of parameters to be monitored and the duration of the monitoring are proportionate to the nature, location and size of the proposed development and the significance of its effects on the environment; and

(c) consider, in order to avoid duplication of monitoring, whether any existing monitoring arrangements carried out in accordance with an obligation under the law of any part of the

United Kingdom, other than under the Directive, are more appropriate than imposing a monitoring measure.

Subsequent application for EIA development

22.—(1) This regulation applies in relation to a subsequent application if either—

(a) the applicant has notified the relevant authority under regulation 8(2)(b); or

(b) the relevant authority has given a screening opinion to the effect that further information is required to enable it to determine the subsequent application.

(2) Where this regulation applies, the applicant must—

(a) submit an updated environmental statement with the subsequent application;

(b) comply with the requirements of paragraph (3); and

(c) certify to the relevant authority in the form set out in certificate 4 in Schedule 5 to these Regulations that the applicant has complied with the requirements of paragraph (3).

(3) The requirements mentioned in paragraph (2)(b) are that the applicant must—

(a) publish a notice of the subsequent application (in accordance with sub-paragraph (b)) which sets out the following information—

(i) the name and address of the applicant;

(ii) that the applicant is making an application for approval of a matter in pursuance of a requirement imposed by an order granting development consent;

(iii) the reference number of the order granting development consent;

(iv) that the order granting development consent is for EIA development;

(v) a summary of the main proposals, specifying the location or route of the proposed development;

(vi) that the updated environmental statement and supporting documents are available for inspection free of charge—

(aa) at the places (including at least one address in the vicinity of the proposed development) and times set out in the notice; and

(bb) on a website maintained by or on behalf of the relevant authority;

(vii) the latest date on which those documents will be available for inspection (being a date not earlier than the deadline referred to in paragraph (x));

(viii) whether a charge will be made for copies of any of those documents and the amount of any charge;

(ix) details of how to respond to the publicity; and

(x) a deadline for receipt of responses being not less than 30 days following the date when the notice is last published;

(b) publish the notice—

(i) for at least 2 successive weeks in one or more local newspapers circulating in the vicinity in which the proposed development is situated;

(ii) once in a national newspaper;

(iii) once in the London Gazette and, if land in Scotland is affected, the Edinburgh Gazette; and

(iv) in the case of offshore development, once in Lloyds List; and once in an appropriate fishing trade journal;

(c) display the notice at, or as close as reasonably practicable to, the site of the proposed development at a place accessible to the public;

(d) where a person has been notified to the applicant under regulation 11(1)(c), serve on that person a copy of that notice, as the same time as the notice is published;

(e) arrange for the notice to be published on a website maintained by or on behalf of the relevant authority; and

(f) send to the consultation bodies—

(i) a notice setting out the details listed at sub-paragraph (a)(i) to (v);

(ii) details of how to respond to the consultation;

(iii) a deadline for receipt of responses being not less than 30 days following the date when the body receives the notice;

(iv) a map showing where the proposed development is to be sited; and

(v) a copy of the updated environmental statement and of any supporting documents.

(4) Where the proposed development consists of, or includes, works with a route or alignment exceeding 5 kilometres in length—

(a) the requirement set out in paragraph (3)(b)(i) shall be taken to include a requirement to publish the notice referred to in paragraph (3)(a) for at least 2 successive weeks in one or more local newspapers circulating in the vicinity of the land along the route or alignment of the works described in the application; and

(b) the requirements set out in paragraph (3)(c) to display the notice referred to in paragraph (3)(a) shall be taken to include a requirement to display the notice at intervals of not more than 5 kilometres along the whole proposed route or alignment of the works described in the application, except where this is impracticable due to the land in question being covered in water.

Subsequent application where environmental information previously provided

23.—(1) This regulation applies where—

(a) a relevant authority is dealing with a subsequent application;

(b) the applicant has not notified the relevant authority in accordance with regulation 8(2)(b); and

(c) the application is not accompanied by a statement referred to by the applicant as an updated environmental statement for the purposes of these Regulations.

(2) Where it appears to the relevant authority that the environmental information already before it is adequate to assess the environmental effects of the development in accordance with regulation 25, it must take that information into consideration in its decision as to subsequent consent.

(3) Where it appears to the relevant authority that the environmental information already before it is not adequate to assess the environmental effects of the development—

(a) the relevant authority must issue a written statement giving clearly and precisely the reasons for that conclusion;

(b) the applicant must comply with the requirements of regulation 22(2); and

(c) the relevant authority must suspend consideration of the application until the requirements of regulation 22(2) are complied with.

Subsequent application not complying with EIA requirements

24.—(1) This regulation applies where—

(a) the relevant authority is dealing with a subsequent application;

(b) the applicant has submitted a statement referred to by the applicant as an updated environmental statement for the purposes of these Regulations; and

(c) the relevant authority is of the opinion that the statement should contain further information.

(2) Where paragraph (1) applies, the relevant authority must—

(a) issue a written statement giving clearly and precisely the reasons for that conclusion; and

(b) suspend consideration of the application until the requirements of paragraph (3) and, where appropriate, paragraph (4) are met.

(3) Where paragraph (1) applies, the applicant must—

(a) provide the relevant authority with the further information;

(b) publish (in accordance with sub-paragraph (c)) a notice which sets out the following information—

(i) the name and address of the applicant;

(ii) that the applicant is making an application for approval of a matter in pursuance of a requirement imposed by an order granting development consent for EIA development;

(iii) the reference number of the order granting development consent;

(iv) a summary of the main proposals, specifying the location or route of the proposed development;

(v) that consideration of the application has been suspended until additional information required for the updated environmental statement has been provided and publicised;

(vi) that the further information, the updated environmental statement and supporting documents are available for inspection free of charge—

(aa) at the places (including at least one address in the vicinity of the proposed development) and times set out in the notice; and

(bb) on a website maintained by or on behalf of the relevant authority;

(vii) the latest date on which those documents will be available for inspection (being a date not earlier than the deadline referred to in paragraph (x) below);

(viii) whether a charge will be made for copies of any of those documents and the amount of any charge;

(ix) details of how to respond to the publicity; and

(x) a deadline for receipt of responses being not less than 30 days following the date when the notice is last published;

(c) publish and post the notice referred to in paragraph (3)(b) in the same manner as prescribed in regulation 20(3)(c) and (d) and, where appropriate, in regulation 20(4);

(d) serve on any person of whom the applicant has been notified under regulation 11(1)(c) a notice containing the information specified in sub-paragraph (b);

(e) arrange for the notice to be published on a website maintained by or on behalf of the relevant authority;

(f) send to the consultation bodies the further information and a notice setting out the information specified in sub-paragraph (b)(i) to (v);

(g) inform those bodies—

(i) how and to whom they may make representations; and

(ii) of the deadline for making representations which must be not less than 30 days later than the last date on which the further information was sent in accordance with sub-paragraph (f); and

(h) certify to the relevant authority in the form set out in certificate 5 in Schedule 5 that the applicant has complied with the requirements of sub-paragraphs (b) to (g).

Decision-making on subsequent applications

25.—(1) When deciding whether to grant subsequent consent for EIA development the relevant authority must—

(a) examine the environmental information;

(b) reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account the examination referred to in sub-paragraph (a) and, where appropriate, any supplementary examination considered necessary;

(c) integrate that conclusion into the decision as to whether subsequent consent is to be granted; and

(d) if subsequent consent is to be granted, consider whether it is appropriate to impose monitoring measures.

(2) The reasoned conclusion referred to in paragraph (1)(b) must be up to date at the time that the decision as to whether subsequent consent is to be granted is taken, and that conclusion shall be taken to be up to date if in the opinion of the relevant authority it addresses the significant effects of the proposed development on the environment that are likely to arise as a result of the development described in the application.

(3) When considering whether to impose a monitoring measure under paragraph (1)(d), the relevant authority must—

(a) if monitoring is considered to be appropriate, consider whether to make provision for potential remedial action;

(b) take steps to ensure that the type of parameters to be monitored and the duration of the monitoring are proportionate to the nature, location and size of the proposed development and the significance of its effects on the environment; and

(c) consider, in order to avoid duplication of monitoring, whether any existing monitoring arrangements carried out in accordance with an obligation under the law of any part of the United Kingdom, other than under the Directive, are more appropriate than imposing a monitoring measure.

Co-ordination

26.—(1) Where in relation to EIA development there is, in addition to the requirement for an EIA to be carried out in accordance with these Regulations, also a requirement to carry out a Habitats Regulation Assessment, the Secretary of State or the relevant authority, as the case may be, must where appropriate ensure that the Habitats Regulation Assessment and EIA are co-ordinated.

(2) In this regulation, a "Habitats Regulation Assessment" means an assessment under regulation 61 of the Conservation of Habitats and Species Regulations 2010(**a**).

Availability of copies of environmental statements

27.—(1) An applicant who submits in connection with an application a statement which the applicant refers to as an environmental statement or an updated environmental statement, must ensure that a reasonable number of copies of the statement are available at the address set out in the notices published or posted pursuant to these Regulations as the address at which copies may be obtained.

(2) The Secretary of State, or relevant authority, responsible for determining an application for EIA development under these Regulations must ensure that the environmental statement submitted in respect of that application is available on the website referred to in the notices published or posted pursuant to these Regulations and regulation 9 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(**b**).

(**a**) S.I. 2010/490. Regulation 61 was amended by S.I. 2012/1927.
(**b**) S.I. 2009/2264, amended by S.I. 2012/635; there are other amending instruments but none is relevant.

Charges for copies of environmental statements

28. A reasonable charge reflecting printing and distribution costs may be made to a member of the public for a copy of an environmental statement made available in accordance with regulation 27.

Availability of directions etc and notification of decisions

29.—(1) Where particulars of an application for an order granting development consent are placed on the register, the Secretary of State must take steps to secure that there is also placed on the register a copy of any relevant—

(a) screening opinion;

(b) scoping opinion;

(c) statement given under regulation 15(7), 19(5)(a) or 20(1)(a);

(d) direction under regulation 33;

(e) environmental statement, including any further information and any other information; and

(f) statement of reasons accompanying any of the above.

(2) Where a relevant authority receives an application for subsequent consent, it must take steps to secure that details of the application are entered in the register and to secure that there is also placed on the register a copy of any relevant—

(a) subsequent screening opinion;

(b) screening direction;

(c) scoping opinion that it has adopted;

(d) statement given under regulation 19(5)(a) or 20(1)(a);

(e) updated environmental statement, including any further information and any other information; and

(f) statement of reasons accompanying any of the above.

(3) Where the Secretary of State or an Examining authority, as the case may be—

(a) adopts a screening opinion or scoping opinion;

(b) receives a request under regulation 8(1)(a); or

(c) receives a copy of a direction under regulation 33,

the Secretary of State must take steps to secure that a copy of the opinion, request, or direction and any accompanying statement of reasons is made available for public inspection at all reasonable hours at the place where the register is kept.

(4) Where the relevant authority—

(a) adopts a subsequent screening opinion or scoping opinion; or

(b) receives a request under regulation 8(2)(a);

it must take steps to secure that a copy of the opinion or request and any accompanying statement of reasons is made available for public inspection at all reasonable hours at the place where the register is kept.

Decision notices

30.—(1) Where—

(a) the Secretary of State has determined an application for an order granting development consent for EIA development; or

(b) the relevant authority has determined a subsequent application,

a notification of the decision must be given to the applicant ("the decision notice") which must include the information specified in paragraph (2).

(2) The information is—

(a) information regarding the right to challenge the validity of the decision and the procedures for doing so; and

(b) if the decision is —

(i) to approve the application—

(aa) the reasoned conclusion of the Secretary of State or the relevant authority, as the case may be, on the significant effects of the development on the environment, taking into account the results of the examination referred to, in the case of an application for an order granting development consent in regulation 21, and in the case of a subsequent application, in regulation 25;

(bb) where relevant, any requirements to which the decision is subject which relate to the likely significant environmental effects of the development on the environment;

(cc) a description of any features of the development and any measures envisaged in order to avoid, prevent or reduce and, if possible, offset, likely significant adverse effects on the environment; and

(dd) any monitoring measures considered appropriate by the Secretary of State or relevant authority, as the case may be; or

(ii) to refuse the application, the main reasons for the refusal.

Duties to inform consultees, public and the Secretary of State of final decisions

31.—(1) Paragraph (2) applies where—

(a) the Secretary of State determines an application for an order granting development consent for EIA development; or

(b) the relevant authority determines a subsequent application to which regulation 22 applies.

(2) Where this paragraph applies, the Secretary of State or, as the case may be, the relevant authority must—

(a) inform the consultation bodies of the decision in writing;

(b) where the decision has been made by a relevant authority which is not the Secretary of State, inform the Secretary of State of the decision in writing;

(c) inform the public of the decision by publication of a notice of the decision in the manner prescribed in paragraph (3) and—

(i) where the decision has been made by the Secretary of State, by publication of a notice of the decision on the website of the Secretary of State; or

(ii) where the decision has been made by a relevant authority which is not the Secretary of State and where that authority maintains a website for the purpose of advertisement of applications, by publication of a notice of the decision on the website of that authority; and

(d) make available for public inspection, at the place where the register is kept, a statement containing—

(i) the main reasons and considerations on which the decision is based, including information about the arrangements taken to ensure the public had the opportunity to participate in the decision-making procedures;

(ii) a summary of the results of the consultations undertaken, and information gathered, in respect of the application and how those results, in particular the comments received from an EEA State pursuant to consultation under regulation 32, have been incorporated or otherwise addressed; and

(iii) details of the matters referred to in regulation 30(2).

(3) Notice of the decision must be published—

(a) for at least two successive weeks in one or more local newspapers circulating in the vicinity in which the proposed development is situated;

(b) once in a national newspaper;

(c) once in the London Gazette and, if land in Scotland is affected, the Edinburgh Gazette; and

(d) in the case of offshore development, once in Lloyd's List; and once in an appropriate fishing trade journal.

Development with significant transboundary effects

32.—(1) This regulation applies where—

(a) an event mentioned in regulation 6(2) occurs and the Secretary of State is of the view that the development is likely to have significant effects on the environment in another EEA State;

(b) it otherwise comes to the attention of the Secretary of State that development proposed to be carried out in England, Wales or Scotland is the subject of an application for EIA development made under these Regulations and the Secretary of State is of the view that such development is likely to have significant effects on the environment in another EEA State; or

(c) another EEA State likely to be significantly affected by such development so requests.

(2) Where this regulation applies, the Secretary of State must—

(a) send to the EEA State as soon as possible and no later than the date of publication in The London Gazette referred to in sub-paragraph (b), the particulars required by paragraph (3) and, if the Secretary of State thinks fit, the information referred to in paragraph (4);

(b) publish the information mentioned in sub-paragraph (a) in a notice placed in—

(i) the London Gazette, in relation to all proposed development; and

(ii) the Edinburgh Gazette, in relation to development proposed to be carried out in Scotland,

indicating the address where additional information is available; and

(c) give the EEA State a reasonable time in which to indicate whether it wishes to participate in the procedure for which these Regulations provide.

(3) The particulars mentioned in paragraph (2)(a) are—

(a) a description of the development, together with any available information on its possible significant effect on the environment in another EEA State; and

(b) information on the nature of the decision which may be taken.

(4) Where an EEA State indicates, in accordance with paragraph (2)(c), that it wishes to participate in the procedure for which these Regulations provide, the Secretary of State must as soon as possible send to that EEA State the following information—

(a) a copy of the application concerned;

(b) details of the authority responsible for deciding the application;

(c) a copy of any environmental statement in respect of the development to which that application relates; and

(d) relevant information regarding the procedure under these Regulations,

but only to the extent that such information has not been provided to the EEA State earlier in accordance with paragraph (2)(a).

(5) The Secretary of State must also ensure that the EEA State concerned is given an opportunity, before development consent for the development is granted, to forward to the

Secretary of State, within a reasonable time, the opinions of its public and of the authorities referred to in Article 6(1) of the Directive on the information supplied.

(6) The Secretary of State must in accordance with Article 7(4) of the Directive—

(a) enter into consultation with the EEA State concerned regarding, inter alia, the potential significant effects of the development on the environment of that EEA State and the measures envisaged to reduce or eliminate such effects; and

(b) determine in agreement with the other EEA State a reasonable period of time for the duration of the consultation period.

(7) Where an EEA State has been consulted in accordance with paragraph (6), on the determination of the application concerned the Secretary of State must inform the EEA State of the decision and must forward to it a copy of the decision notice referred to in regulation 30.

Exemptions

33.—(1) The Secretary of State may direct that a proposed development is exempt from the requirements of these Regulations where—

(a) the circumstances are exceptional and the Secretary of State considers that—

(i) compliance with these Regulations in respect of the development would have an adverse effect on the fulfilment of the development's purpose; and

(ii) (despite an EIA not being carried out) the objectives of the Directive will be met; or

(b) the development comprises or forms part of a development having national defence as its sole purpose, or comprises a development having the response to civil emergencies as its sole purpose, and in the opinion of the Secretary of State compliance with these Regulations would have an adverse effect on those purposes.

(2) Where a direction is given under paragraph (1) the Secretary of State must send a copy of that direction to the relevant authority or, if the Examining authority has been dealing with the application, to the Examining authority.

(3) The Secretary of State must not make a direction under paragraph (1)(a) that a project is exempt unless—

(a) the Secretary of State has considered whether another form of assessment is appropriate; and

(b) where the Secretary of State considers that the development is likely to have significant effects on the environment in another EEA State, or where another EEA State likely to be significantly affected so requests, the Secretary of State carries out a form of consultation with that EEA State broadly equivalent to the form described in regulation 32, or is satisfied that such an equivalent consultation has been carried out, before an order granting development consent or subsequent consent is made in respect of the development.

(4) After the Secretary of State directs that a development is exempt under paragraph (1)(a), the Secretary of State must as soon as practicable make available to the public—

(a) the direction including an explanation of the reasons for it; and

(b) the information obtained under any other assessment considered appropriate by the Secretary of State under paragraph (3)(a).

(5) Before an order granting development consent or subsequent consent is made in respect of a development which is exempt under paragraph (1)(a), the Secretary of State, the Examining Authority or the relevant authority, as appropriate, must take into account the results of —

(a) any other assessment considered appropriate by the Secretary of State under paragraph (3)(a); and

(b) any consultation with another EEA State carried out under paragraph (3)(b) about the development.

(6) Before an order granting development consent or subsequent consent is made in respect of a development which is exempt under paragraph (1)(a), the Secretary of State must inform the European Commission of the matters referred to in paragraph (4).

(7) The effect of a direction under paragraph (1) is that these Regulations do not apply to it save to the extent set out in this regulation.

Service of notices etc

34. Any notice or other document to be sent, served or given under these Regulations may be served or given in a manner specified in sections 229 to 231 (service of notices).

Objectivity and bias

35.—(1) Where the Secretary of State, Examining authority or a relevant authority has a duty under these Regulations, they must perform that duty in an objective manner and so as not to find themselves in a situation giving rise to a conflict of interest.

(2) Where a relevant authority, or the Secretary of State, is bringing forward a proposal for development and that relevant authority or the Secretary of State, as appropriate, will also be responsible for determining its own proposal, the relevant authority or the Secretary of State must make appropriate administrative arrangements to ensure that there is a functional separation, when performing any duty under these Regulations, between the persons bringing forward a proposal for development and the persons responsible for determining that proposal.

Amendment of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

36.—(1) The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(**a**) are amended in accordance with paragraphs (2) to (4).

(2) In regulation 2(1) in the definition of "EIA development" and "environmental statement" for "2009" substitute "2017".

(3) In regulation 5(2)(a) for "Regulation 2009" substitute "Regulations 2017".

(4) In regulation 9 (publicising an accepted application)—

(a) in paragraph (1), after "where applicable" insert ", (2A), and";

(b) after paragraph (2), insert—

"(2A) In the case of EIA development, the notice must be made available on a website maintained by or on behalf of the Secretary of State."; and

(c) in paragraph (4)—

(i) for sub-paragraph (f) substitute—

"(f) a statement that a copy of the application form and its accompanying documents, plans and maps are available for inspection—

(i) free of charge at the places (including at least one address in the vicinity of the proposed development) and times set out in the notice; and

(ii) in the case of EIA development on a website maintained by or on behalf of the Secretary of State;"; and

(ii) for sub-paragraph (j) substitute—

"(j) a deadline for the receipt by the Secretary of State of those representations being not less than—

(i) in the case of development which is not EIA development, 28 days; and

(ii) in the case of EIA development, 30 days,

(**a**) S.I. 2009/2264; relevant amending instruments are S.I. 2010/602, 2012/635, 2012/2732, 2013/522 and 2014/2381.

following the date that the notice is last published."

Revocation and transitional provision

37.—(1) Subject to paragraphs (2) and (3), the following instruments are revoked to the extent specified—

(a) the 2009 Regulations(**a**);

(b) the Infrastructure Planning (Environmental Impact Assessment) (Amendment) Regulations 2011(**b**);

(c) the Infrastructure Planning (Environmental Impact Assessment) (Amendment) Regulations 2012(**c**); and

(d) regulation 2 of the Localism Act (Infrastructure Planning) (Consequential Amendments) Regulations 2012(**d**).

(2) Notwithstanding the revocations in paragraph (1), the 2009 Regulations continue to apply to any application for an order granting development consent or subsequent consent where before the commencement of these Regulations—

(a) the applicant has—

(i) submitted an environmental statement or updated environmental statement (as defined in the 2009 Regulations), as the case may be, in connection with that application;

(ii) requested the Secretary of State or the relevant authority to adopt a scoping opinion (as defined in the 2009 Regulations) in respect of the development to which the application relates; or

(iii) made a request for—

(aa) a screening opinion under regulation 6(1)(a) of the 2009 Regulations (including a deemed request under regulation 12(1)); or

(bb) a subsequent screening opinion under regulation 6(2)(a) of the 2009 Regulations; or

(b) the Secretary of State has initiated the making of a screening direction under regulation 5(2)(b)(i) of the 2009 Regulations.

(3) In this regulation "the 2009 Regulations" means the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009(**e**).

Signed by authority of the Secretary of State for Communities and Local Government

Gavin Barwell
Minister of State
18th April 2017 Department for Communities and Local Government

(**a**) S.I. 2009/2263, amended by S.I. 2011/988, 2011/1043, 2011/2741, 2012/635, 2012/787.
(**b**) S.I. 2011/2741.
(**c**) S.I. 2012/787.
(**d**) S.I. 2012/635.
(**e**) S.I. 2009/2263, amended by S.I. 2011/988, 2011/1043, 2011/2741, 2012/635, 2012/787.

SCHEDULE 1

Regulation 3(1)

DESCRIPTIONS OF DEVELOPMENT FOR THE PURPOSES OF THE DEFINITION OF "SCHEDULE 1 DEVELOPMENT"

Interpretation

In this Schedule—

"airport" means an airport which complies with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organisation (Annex 14)(**a**);

"express road" means a road which complies with the definition in the European Agreement on Main International Traffic Arteries of 15th November 1975(**b**); and

"nuclear power station" and "other nuclear reactor" do not include an installation from the site of which all nuclear fuel and other radioactive contaminated materials have been permanently removed; and development for the purpose of dismantling or decommissioning a nuclear power station or other nuclear reactor is to be treated as development of the description mentioned in paragraph 2(2) of this Schedule.

Descriptions of development

The carrying out of development to provide any of the following:—

1. Crude-oil refineries (excluding undertakings manufacturing only lubricants from crude-oil) and installations for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day.

2.—(1) Thermal power stations and other combustion installations with a heat output of 300 megawatts or more.

(2) Nuclear power stations and other nuclear reactors (except research installations for the production and conversion of fissionable and fertile material, whose maximum power does not exceed 1 kilowatt continuous thermal load).

3.—(1) Installations for the reprocessing of irradiated nuclear fuel.

(2) Installations designed—

(a) for the production or enrichment of nuclear fuel;

(b) for the processing of irradiated nuclear fuel or high-level radioactive waste;

(c) for the final disposal of irradiated nuclear fuel;

(d) solely for the final disposal of radioactive waste;

(e) solely for the storage (planned for more than ten years) of irradiated nuclear fuels or radioactive waste in a different site than the production site.

4.—(1) Integrated works for the initial smelting of cast-iron and steel.

(2) Installations for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes.

5. Installations for the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos—

(a) for asbestos-cement products, with an annual production of more than 20,000 tonnes of finished products;

(**a**) Command Paper 6614.
(**b**) Command Paper 6993.

(b) for friction material, with an annual production of more than 50 tonnes of finished products; and

(c) for other uses of asbestos, utilisation of more than 200 tonnes per year.

6. Integrated chemical installations, that is to say, installations for the manufacture on an industrial scale of substances using chemical conversion processes, in which several units are juxtaposed and are functionally linked to one another and which are—

(a) for the production of basic organic chemicals;

(b) for the production of basic inorganic chemicals;

(c) for the production of phosphorous–, nitrogen– or potassium-based fertilisers (simple or compound fertilisers);

(d) for the production of basic plant health products and of biocides;

(e) for the production of basic pharmaceutical products using a chemical or biological process;

(f) for the production of explosives.

7.—(1) Construction of lines for long-distance railway traffic and of airports with a basic runway length of 2,100 metres or more.

(2) Construction of motorways and express roads.

(3) Construction of a new road of four or more lanes, or realignment and/or widening of an existing road of two lanes or less so as to provide four or more lanes, where such new road, or realigned and/or widened section of road, would be 10 kilometres or more in a continuous length.

8.—(1) Inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1,350 tonnes.

(2) Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1,350 tonnes.

9. Waste disposal installations for the incineration, chemical treatment (as defined in Annex I to Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste(**a**) under heading D9), or landfill of hazardous waste as defined in point 2 of Article 3 of that Directive).

10. Waste disposal installations for the incineration or chemical treatment (as defined in Annex I to Directive 2008/98/EC under heading D9) of non-hazardous waste with a capacity exceeding 100 tonnes per day.

11. Groundwater abstraction or artificial groundwater recharge schemes where the annual volume of water abstracted or recharged is equivalent to or exceeds 10 million cubic metres.

12.—(1) Works for the transfer of water resources, other than piped drinking water, between river basins where the transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres per year.

(2) In all other cases, works for the transfer of water resources, other than piped drinking water, between river basins where the multi-annual average flow of the basin of abstraction exceeds 2,000 million cubic metres per year and where the amount of water transferred exceeds 5% of this flow.

13. Waste water treatment plants with a capacity exceeding 150,000 population equivalent as defined in Article 2(6) of Council Directive 91/271/EEC concerning urban waste-water treatment(**b**).

(**a**) OJ No. L 312, 22.11.2008, p.3.
(**b**) OJ No. L 135, 30.5.1991, p.40, last amended by Regulation (EC) No. 1137/2008 (OJ No. L 311, 21.11.2008, p.1).

14. Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes per day in the case of petroleum and 500,000 cubic metres per day in the case of gas.

15. Dams and other installations designed for the holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres.

16. Pipelines with a diameter of more than 800 millimetres and a length of more than 40 kilometres for the transport of—

(a) gas, oil or chemicals;

(b) carbon dioxide streams for the purposes of geological storage, including associated booster stations.

17. Installations for the intensive rearing of poultry or pigs with more than—

(a) 85,000 places for broilers or 60,000 places for hens;

(b) 3,000 places for production pigs (over 30 kg); or

(c) 900 places for sows.

18. Industrial plants for—

(a) the production of pulp from timber or similar fibrous materials;

(b) the production of paper and board with a production capacity exceeding 200 tonnes per day.

19. Quarries and open-cast mining where the surface of the site exceeds 25 hectares, or peat extraction where the surface of the site exceeds 150 hectares.

20. Construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km.

21. Installations for storage of petroleum, petrochemical or chemical products with a capacity of 200,000 tonnes or more.

22. Storage sites pursuant to Directive 2009/31/EC(**a**) of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide.

23. Installations for the capture of carbon dioxide streams for the purposes of geological storage pursuant to Directive 2009/31/EC from installations referred to in this Schedule, or where the total yearly capture of carbon dioxide is 1.5 megatonnes or more.

24. Any change to or extension of development listed in this Schedule where such a change or extension in itself meets the thresholds, if any, or description of development set out in this Schedule.

SCHEDULE 2

Regulation 3(1)

DESCRIPTIONS OF DEVELOPMENT FOR THE PURPOSES OF THE DEFINITION OF "SCHEDULE 2 DEVELOPMENT"

1. Agriculture, silviculture and aquaculture

(a) projects for the restructuring of rural land holdings;

(b) projects for the use of uncultivated land or semi-natural areas for intensive agricultural purposes;

(**a**) OJ No L 140, 5.6.2009, p.114

(c) water management projects for agriculture, including irrigation and land drainage projects;

(d) initial afforestation and deforestation for the purposes of conversion to another type of land use;

(e) intensive livestock installation (where not included in Schedule 1 to these Regulations);

(f) intensive fish farming;

(g) reclamation of land from the sea.

2. Extractive industry

(a) quarries, open-cast mining and peat extraction (where not included in Schedule 1 to these Regulations);

(b) underground mining;

(c) extraction of minerals by marine or fluvial dredging;

(d) deep drillings, in particular—

(i) geothermal drilling;

(ii) drilling for the storage of nuclear waste material;

(iii) drilling for water supplies,

with the exception of drillings for investigating the stability of the soil,

(e) surface industrial installations for the extraction of coal, petroleum, natural gas and ores, as well as bituminous shale.

3. Energy industry

(a) industrial installations for the production of electricity, steam and hot water (projects not included in Schedule 1 to these Regulations);

(b) industrial installations for carrying gas, steam and hot water; transmission of electrical energy by overhead cables (projects not included in Schedule 1 to these Regulations);

(c) surface storage of natural gas;

(d) underground storage of combustible gases;

(e) surface storage of fossil fuels;

(f) industrial briquetting of coal and lignite;

(g) installations for the processing and storage of radioactive waste (unless included in Schedule 1 to these Regulations);

(h) installations for hydroelectric energy production;

(i) installations for the harnessing of wind power for energy production (wind farms);

(j) installations for the capture of CO2 streams for the purposes of geological storage pursuant to Directive 2009/31/EC from installations not included in Schedule 1 to these Regulations.

4. Production and processing of metals

(a) installations for the production of pig iron or steel (primary or secondary fusion) including continuous casting;

(b) installations for the processing of ferrous metals:

(i) hot-rolling mills;

(ii) smitheries with hammers;

(iii) application of protective fused metal coats;

(c) ferrous metal foundries;

(d) installations for the smelting, including the alloyage, of non-ferrous metals, excluding precious metals, including recovered products (refining, foundry casting etc.);

(e) installations for surface treatment of metals and plastic materials using an electrolytic or chemical process;

(f) manufacture and assembly of motor vehicles and manufacture of motor-vehicle engines;

(g) shipyards;

(h) installations for the construction and repair of aircraft;

(i) manufacture of railway equipment;

(j) swaging by explosives;

(k) installations for the roasting and sintering of metallic ores.

5. Mineral industry

(a) coke ovens (dry coal distillation);

(b) installations for the manufacture of cement;

(c) installations for the production of asbestos and the manufacture of asbestos products (projects not included in Schedule 1 to these Regulations);

(d) installations for the manufacture of glass including glass fibre;

(e) installations for smelting mineral substances including the production of mineral fibres;

(f) manufacture of ceramic products by burning, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain.

6. Chemical industry (Projects not included in Schedule 1 to these Regulations)

(a) treatment of intermediate products and production of chemicals;

(b) production of pesticides and pharmaceutical products, paint and varnishes, elastomers and peroxides;

(c) storage facilities for petroleum, petrochemical and chemical products.

7. Food industry

(a) manufacture of vegetable and animal oils and fats;

(b) packing and canning of animal and vegetable products;

(c) manufacture of dairy products;

(d) brewing and malting;

(e) confectionery and syrup manufacture;

(f) installations for the slaughter of animals;

(g) industrial starch manufacturing installations;

(h) fish-meal and fish-oil factories;

(i) sugar factories.

8. Textile, leather, wood and paper industries

(a) industrial plants for the production of paper and board (unless included in Schedule 1 to these Regulations);

(b) plants for the pre-treatment (operations such as washing, bleaching, mercerisation) or dyeing of fibres or textiles;

(c) plants for the tanning of hides and skins;

(d) cellulose-processing and production installations.

9. Rubber industry - Manufacture and treatment of elastomer-based products.

10. Infrastructure projects

(a) industrial estate development projects;

(b) urban development projects, including the construction of shopping centres and car parks, sports stadiums, leisure centres and multiplex cinemas;

(c) construction of intermodal transshipment facilities and of intermodal terminals (unless included in Schedule 1to these Regulations);

(d) construction of railways (unless included in Schedule 1 to these Regulations);

(e) construction of airfields (unless included in Schedule 1 to these Regulations);

(f) construction of roads (unless included in Schedule 1 to these Regulations);

(g) construction of harbours and port installations including fishing harbours (unless included in Schedule 1 to these Regulations);

(h) inland-waterway construction not included in Schedule 1 to these Regulations, canalisation and flood-relief works;

(i) dams and other installations designed to hold water or store it on a long-term basis (unless included in Schedule 1 to these Regulations);

(j) tramways, elevated and underground railways, suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport;

(k) oil and gas pipeline installations (unless included in Schedule 1 to these Regulations);

(l) installations of long-distance aqueducts;

(m) coastal work to combat erosion and maritime works capable of altering the coast through the construction, for example, of dykes, moles, jetties and other sea defence works, excluding the maintenance and reconstruction of such works;

(n) groundwater abstraction and artificial groundwater recharge schemes not included in Schedule 1 to these Regulations;

(o) works for the transfer of water resources between river basins not included in Schedule 1 to these Regulations;

(p) motorway service areas.

11. Other projects

(a) permanent racing and test tracks for motorised vehicles;

(b) installations for the disposal of waste (unless included in Schedule 1 to these Regulations);

(c) waste-water treatment plants (unless included in Schedule 1 to these Regulations);

(d) sludge-deposition sites;

(e) storage of scrap iron, including scrap vehicles;

(f) test benches for engines, turbines or reactors;

(g) installations for the manufacture of artificial mineral fibres;

(h) installations for the recovery or destruction of explosive substances;

(i) knackers' yards.

12. Tourism and leisure

(a) ski-runs, ski-lifts and cable-cars and associated developments;

(b) marinas;

(c) holiday villages and hotel complexes outside urban areas and associated developments;

(d) theme parks;

(e) permanent camp sites and caravan sites;

(f) golf courses and associated developments.

13.—(1) Any change to or extension of development of a description listed in Schedule 1 to these Regulations (other than a change or extension falling within paragraph 21 of that Schedule) or in paragraphs 1 to 12 of this Schedule, where that development is already authorised, executed

or in the process of being executed, and the change or extension may have significant adverse effects on the environment;

(2) development of a description mentioned in Schedule 1 to these Regulations undertaken exclusively or mainly for the development and testing of new methods or products and not used for more than two years.

SCHEDULE 3

Regulation 9(1)

SELECTION CRITERIA FOR SCREENING SCHEDULE 2 DEVELOPMENT

Characteristics of development

1. The characteristics of development must be considered with particular regard to—

(a) the size and design of the whole development;

(b) cumulation with other existing development and/or approved development;

(c) the use of natural resources, in particular land, soil, water and biodiversity;

(d) the production of waste;

(e) pollution and nuisances;

(f) the risk of major accidents and/or disasters relevant to the development concerned, including those caused by climate change, in accordance with scientific knowledge;

(g) the risks to human health (for example due to water contamination or air pollution).

Location of development

2.—(1) The environmental sensitivity of geographical areas likely to be affected by development must be considered with particular regard to—

(a) the existing and approved land use;

(b) the relative abundance, availability, quality and regenerative capacity of natural resources (including soil, land, water and biodiversity) in the area and its underground;

(c) the absorption capacity of the natural environment, paying particular attention to the following areas—

(i) wetlands, riparian areas, river mouths;

(ii) coastal zones and the marine environment;

(iii) mountain and forest areas;

(iv) nature reserves and parks;

(v) European sites and other areas classified or protected under national legislation

(vi) areas in which there has already been a failure to meet the environmental quality standards, laid down in Union legislation and relevant to the project, or in which it is considered that there is such a failure;

(vii) densely populated areas;

(viii) landscapes and sites of historical, cultural or archaeological significance.

(2) In this Schedule "European site" means a site within the meaning of the Conservation of Habitats and Species Regulations 2010(**a**).

(**a**) S.I. 2010/490, amended by S.I. 2012/1927; there are other amending instruments but none is relevant.

Types and characteristics of the potential impact

3. The likely significant effects of the development on the environment must be considered in relation to criteria set out in paragraphs 1 and 2, with regard to the impact of the development on the factors specified in regulation 5(2), taking into account—

(a) the magnitude and spatial extent of the impact (for example geographical area and size of the population likely to be affected);

(b) the nature of the impact;

(c) the transboundary nature of the impact;

(d) the intensity and complexity of the impact;

(e) the probability of the impact;

(f) the expected onset, duration, frequency and reversibility of the impact;

(g) the cumulation of the impact with the impact of other existing and/or approved development;

(h) the possibility of effectively reducing the impact.

SCHEDULE 4

Regulation 14(2)

INFORMATION FOR INCLUSION IN ENVIRONMENTAL STATEMENTS

1. A description of the development, including in particular—

(a) a description of the location of the development;

(b) a description of the physical characteristics of the whole development, including, where relevant, requisite demolition works, and the land-use requirements during the construction and operational phases;

(c) a description of the main characteristics of the operational phase of the development (in particular any production process), for instance, energy demand and energy used, nature and quantity of the materials and natural resources (including water, land, soil and biodiversity) used;

(d) an estimate, by type and quantity, of expected residues and emissions (such as water, air, soil and subsoil pollution, noise, vibration, light, heat, radiation and quantities and types of waste produced during the construction and operation phases.

2. A description of the reasonable alternatives (for example in terms of development design, technology, location, size and scale) studied by the developer, which are relevant to the proposed project and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.

3. A description of the relevant aspects of the current state of the environment (baseline scenario) and an outline of the likely evolution thereof without implementation of the development as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of environmental information and scientific knowledge.

4. A description of the factors specified in regulation 5(2) likely to be significantly affected by the development: population, human health, biodiversity (for example fauna and flora), land (for example land take), soil (for example organic matter, erosion, compaction, sealing), water (for example hydromorphological changes, quantity and quality), air, climate (for example greenhouse gas emissions, impacts relevant to adaptation), material assets, cultural heritage, including architectural and archaeological aspects, and landscape.

5. A description of the likely significant effects of the development on the environment resulting from, inter alia—

(a) the construction and existence of the development, including, where relevant, demolition works;

(b) the use of natural resources, in particular land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources;

(c) the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances, and the disposal and recovery of waste;

(d) the risks to human health, cultural heritage or the environment (for example due to accidents or disasters);

(e) the cumulation of effects with other existing and/or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;

(f) the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change;

(g) the technologies and the substances used.

The description of the likely significant effects on the factors specified in regulation 5(2) should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the development. This description should take into account the environmental protection objectives established at Union or Member State level which are relevant to the project, including in particular those established under Council Directive 92/43/EEC(**a**) and Directive 2009/147/EC(**b**).

6. A description of the forecasting methods or evidence, used to identify and assess the significant effects on the environment, including details of difficulties (for example technical deficiencies or lack of knowledge) encountered compiling the required information and the main uncertainties involved.

7. A description of the measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects on the environment and, where appropriate, of any proposed monitoring arrangements (for example the preparation of a post-project analysis). That description should explain the extent, to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and should cover both the construction and operational phases.

8. A description of the expected significant adverse effects of the development on the environment deriving from the vulnerability of the development to risks of major accidents and/or disasters which are relevant to the project concerned. Relevant information available and obtained through risk assessments pursuant to EU legislation such as Directive 2012/18/EU of the European Parliament and of the Council(**c**) or Council Directive 2009/71/Euratom(**d**) or UK environmental assessments may be used for this purpose provided that the requirements of this Directive are met. Where appropriate, this description should include measures envisaged to prevent or mitigate the significant adverse effects of such events on the environment and details of the preparedness for and proposed response to such emergencies.

9. A non-technical summary of the information provided under paragraphs 1 to 8.

10. A reference list detailing the sources used for the descriptions and assessments included in the environmental statement.

(**a**) OJ No. L 206, 22.7.1992, p.7.
(**b**) OJ No. L 20, 26.1.2010, p.7.
(**c**) OJ No. L 197, 24.7.2012, p. 1.
(**d**) OJ No. L 172, 2.7.2009, p. 18.

SCHEDULE 5 Regulations 17 to 20, 22 and 24

Certificate 1

Planning Act 2008

The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017

Certificate of compliance with regulation 16

I hereby certify that, in compliance with the requirements under regulation 17 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 –

(a) notice of the application was given to the persons identified under regulation 11; and
(b) a copy of the accepted application, including the environmental statement and a map was given to the consultation bodies in accordance with regulation 16.

- in relation to the application for an order to grant development consent
for……
……
……at the location of (or along the route of) ……
……

(Completed certificate to be received by the Secretary of State no later than 10 working days after the deadline date stating the applicant has fulfilled all the requirements at (a) and (b))

Case Reference No.: ……

Applicant: ……

Signed: ……

Name in capitals: ……

Date: ……

Certificate 2

Planning Act 2008

The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017

Certificate of compliance with regulation 19

I hereby certify that, in compliance with the requirements under regulation 19 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 –

(a) the notice required under regulation 19(6) was published, displayed and served in the manner required by regulation 19(6)(c) to (e) or, as appropriate, 19(7);
(b) the notice was served on the persons identified under regulation 11; and
(c) the information required under regulation 19(6)(g) was given to the consultation bodies

- in relation to the application for an order to grant development consent for……
……
……at the location of (or along the route of) ……
……

(Completed certificate to be received by the Secretary of State no later than 10 working days after the deadline date stating the applicant has fulfilled all the requirements at (a) and (b))

Case Reference No.: ……

Applicant: ……

Signed: ……

Name in capitals: ……

Date: ……

Certificate 3

Planning Act 2008

The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017

Certificate of compliance with regulation 20(3)(a) to (h) and, where appropriate, 20(4)

I hereby certify that, in compliance with the requirements under regulation 20(3)(a) to (h) and, where appropriate, regulation 20(4) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 –

(a) the notice required under regulation 20(3) was published, displayed and served in the manner required by regulation 20(3)(c) to (e) and, where appropriate, regulation 20(4);
(b) the notice was served on the persons identified under regulation 11; and
(c) the information required under regulations 20(3)(g) was given to the consultation bodies

- in relation to the application for an order to grant development consent for……
……
……at the location of (or along the route of) ……
……
The deadline date for all representations to be received by the Secretary of State under regulation 20(3) was ……

(Completed certificate to be received by the Secretary of State no later than 10 working days after the deadline date stating the applicant has fulfilled all the requirements at (a) to (c))

Case Reference No.: ……

Applicant: ……

Signed: ……

Name in capitals: ……

Date: ……

Certificate 4

Planning Act 2008

The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017

Certificate of compliance with regulation 22

I hereby certify that, in compliance with the requirements under regulation 22(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017–

(a) notice of the subsequent application was published in the manner required under regulation 22(3) and where appropriate, under regulation 22(4); and
(b) the notice was displayed in accordance with regulation 22(3) and, where appropriate, regulation 22(4); and
(c) the notice was served on the persons identified under regulation 11; and
(d) the information required under regulation 22(3) was given to the consultation bodies

- in relation to the application for an order to grant development consent
for……
……
……at the location of (or along the route of) ……
……
The deadline date for all representations to be received by the Secretary of State under regulation 19 was ……

(Completed certificate to be received by the Secretary of State no later than 10 working days after the deadline date stating the applicant has fulfilled all the requirements at (a), (b), (c) and (d))

Case Reference No.: ……

Applicant: ……

Signed: ……

Name in capitals: ……

Date: ……

Certificate 5

Planning Act 2008

The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017

Certificate of compliance with regulation 24

I hereby certify that, in compliance with the requirements under regulation 24 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017–

(a) the notice was published in accordance with regulation 24(3)(b) and (c); and
(b) the notice was served on the persons identified under regulation 11; and
(c) the information required under regulation 24(3)(f) and (g) was given to the consultation bodies

- in relation to the application for an order to grant development consent for……
……
……at the location of (or along the route of) ……
……
The deadline date for all representations to be received by the Secretary of State under regulation 24 was ……

(Completed certificate to be received by the Secretary of State no later than 10 working days after the deadline date stating the applicant has fulfilled all the requirements at (a) to (c))

Case Reference No.: ……

Applicant: ……

Signed: ……

Name in capitals: ……

Date: ……

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations consolidate with amendments the provisions of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009(**a**) ("the 2009 Regulations") and subsequent amending instruments.

These Regulations also implement amendments to Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment(**b**) ("the Directive") which were made by Directive 2014/52/EU(**c**).

(**a**) S.I. 2009/2263, amended by S.I. 2011/988, 2011/1043, 2011/2741, 2012/635, 2012/787.
(**b**) OJ No. L 26, 28.1.2012, p. 1-21.
(**c**) OJ No. L 124, 25.4.2014, p. 1-18.

These Regulations implement the requirements of the Directive for environmental impact assessment ('EIA') procedures in the context of the nationally significant infrastructure regime which extends to England and Wales and for limited purposes to Scotland. To the extent that these Regulations implement the Directive in relation to this regime, they extend to Wales and Scotland.

The main changes from the 2009 Regulations are:

—to the circumstances in which a project may be exempt from the EIA process;

—the introduction of co-ordinated procedures for projects which are also subject to assessment under Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora(**a**) or Directive 2009/147/EC of the European Parliament and of the Council on the conservation of Wild Birds(**b**);

—to the list of environmental factors to be considered as part of the EIA process;

—to the information to be provided to inform a screening decision and the criteria to be applied when making a screening decision;

—to the way in which an environmental statement is to be prepared, including an amendment to the information to be included in it, the introduction of a requirement that it be based upon a scoping opinion (where one has been obtained) and a requirement that it be prepared by a competent expert;

—to the means by which the public is to be informed of projects which are subject to the EIA process; and

—a requirement for decision-makers to avoid conflicts of interest.

These Regulations were notified to the European Commission in accordance with Article 2 of Directive 2014/52/EU(**c**).

It is normal practice to make available to Parliament, alongside primary or secondary legislation giving effect to European Directives, a Transposition Note that sets out how the Government will transpose the main elements of those Directives into UK law. The Transposition Note accompanying the Explanatory Memorandum to these Regulations is available from legislation.gov.uk.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

(**a**) OJ No. L 206, 22.7.1992, p.7.
(**b**) OJ No. L 20, 26.1.2010, p. 7.
(**c**) OJ No. L 124, 25.4.2014, p. 1-18.

UK2017041813 04/2017 19585

http://www.legislation.gov.uk/id/uksi/2017/572

Footnote 03

To

Further Supplementary Written Submissions

dated 30 September 2024

in Rebuttal to

Mona Offshore Wind Limited Document

Appendix to Response to WRs: Griffith Parry, Robert Parry and Kerry James

(Document Number S_D2_3.4)

Department for
Energy Security
& Net Zero

Department for Energy Security & Net Zero

Overarching National Policy Statement for Energy (EN-1)

Presented to the Houses of Parliament pursuant to section 9(8) of the Planning Act 2008

November 2023

This publication is available at www.gov.uk/official-documents.

Any enquiries regarding this publication should be sent to us at energynps@energysecurity.gov.uk

ISBN 978-1-5286-4582-9

E03028327 11/23

Printed on paper containing 40% recycled fibre content minimum

Printed in the UK by HH Associates Ltd. on behalf of the Controller of His Majesty's Stationery Office

Contents

1 Introduction

1.1 Background

1.1.1 This National Policy Statement (NPS) sets out national policy for the energy infrastructure described in Section 1.3 below. Part 1 of this NPS sets out the background context to the NPSs, including the scope of EN-1 and geographical coverage. Part 2 outlines the policy context for the development of nationally significant energy infrastructure. Part 3 explains the urgent need for significant amounts of large-scale energy infrastructure in meeting government's energy objectives. Part 4 sets out the general policies for the submission and assessment of energy infrastructure applications. Part 5 outlines generic impacts which arise from the development of all types of energy infrastructure covered by the energy NPSs.

1.1.2 It has effect for the decisions by the Secretary of State[1] on applications for energy developments that are nationally significant under the Planning Act 2008. For such applications this NPS, combined with any technology specific energy NPS where relevant, provides the primary policy for decisions by the Secretary of State.

1.1.3 Under the Planning Act 2008, where an NPS has effect, the Secretary of State must also have regard to any local impact report[2] submitted by a relevant local authority, any relevant matters prescribed in regulations, the Marine Policy Statement (MPS) and any applicable Marine Plan[3], and any other matters which the Secretary of State thinks are both important and relevant to the planning decision.

1.1.4 The Planning Act 2008 also requires that, where an NPS has effect, the Secretary of State must decide an application for energy infrastructure in accordance with the relevant NPSs except to the extent the Secretary of State is satisfied that to do so would:

- lead to the UK being in breach of its international obligations
- be in breach of any statutory duty that applies to the Secretary of State

[1] The reviewed NPSs EN-1 to EN-5 use the term "Secretary of State" to refer to the Secretary of State as decision maker under the Planning Act 2008. Where appropriate these references should also be taken as references to the Examining Authority appointed by the Secretary of State under section 65 or 79 of the Planning Act 2008 (or any replacement appointed under section 68 or 82), and to any decision making delegated by the Secretary of State to the Planning Inspectorate. EN-6 continues to refer to the Infrastructure Planning Commission (IPC) and should be interpreted as set out in section 1.4 of EN-6.
[2] A report prepared under section 60 of the Planning Act 2008.
[3] See https://www.gov.uk/government/collections/marine-planning-in-england and https://www.gov.wales/marine-planning

- be unlawful
- result in adverse impacts from the development outweighing the benefits
- be contrary to regulations about how its decisions are to be taken

1.1.5 Applicants should therefore ensure that their applications, and any accompanying supporting documents, are consistent with the instructions and guidance in this NPS, any relevant technology specific NPS and any other NPSs that are relevant to the application in question.

1.1.6 This NPS, in particular the policy and guidance on generic impacts in Part 5, may also be helpful to local planning authorities (LPAs) in preparing their local impact reports.

1.1.7 Part 5 of the Planning Act 2008[4] sets out the requirements for consultation and publicity before any application for a Development Consent Order is made, including a duty to consult the local community[5].

1.2 Role of this NPS in the wider planning system

1.2.1 In England, this NPS, in combination with any relevant technology specific NPSs, may be a material consideration in decision making on applications that fall under the Town and Country Planning Act 1990 (as amended).

1.2.2 Whether the policies in this NPS are material and to what extent, will be judged on a case-by-case basis and will depend upon the extent to which the matters are already covered by applicable planning policy. For the purposes of applications made under the Planning Act 2008, this NPS in conjunction with any of the relevant technology specific NPSs are the primary policy for Secretary of State decision making.

1.2.3 The Secretary of State may also receive applications for variations to existing consents for energy infrastructure under section 36C of the Electricity Act 1989 for which this NPS, in combination with any relevant technology specific NPSs, may be a relevant consideration.

1.2.4 Under the Marine and Coastal Access Act 2009, the Marine Management Organisation (MMO) will determine applications under section 36 and section 36A of the Electricity Act 1989 where they relate to a generating station in English waters provided that the application does not exceed the capacity threshold set out in the Planning Act 2008.

[4] See https://www.gov.uk/government/publications/guidance-on-the-pre-application-process-for-major-infrastructure-projects
[5] See https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/

1.2.5 The MMO will determine applications in accordance with the MPS and any applicable marine plans, unless relevant considerations indicate otherwise.

1.2.6 This NPS, in combination with any relevant technology specific NPS, should be a relevant consideration for the MMO when it is determining such applications.

1.2.7 The MMO may also receive applications for a marine licence for other energy infrastructure that falls outside the scope of the Planning Act 2008 or the Electricity Act 1989 for which the NPSs may be a relevant consideration. The MMO will determine applications in accordance with the MPS and any applicable marine plans, unless relevant considerations indicate otherwise.

1.2.8 The NPSs may also be a relevant consideration in the preparation of relevant marine plans.

1.2.9 The role of the MPS and marine plans in relation to Secretary of State decisions is set out in Section 4.5.[6]

1.3 Scope of the Overarching National Policy Statement for Energy

1.3.1 This Overarching National Policy Statement for Energy (EN-1) is part of a suite of NPSs issued by the Secretary of State for Energy Security and Net Zero. It sets out the government's policy for delivery of major energy infrastructure.

1.3.2 A further five technology specific NPSs for the energy sector cover:

- natural gas electricity generation (**EN-2**)
- renewable electricity generation (both onshore and offshore) (**EN-3**)
- gas supply infrastructure and gas and oil pipelines (**EN-4**)
- the electricity transmission and distribution network (**EN-5**)
- and nuclear electricity generation (**EN-6**)

1.3.3 Further technology specific NPS may be designated and added to the suite if it becomes appropriate to do so. These should be read in conjunction with this NPS where they are relevant to an application.

[6] Welsh Ministers are responsible for marine licences for operations carried out in both inshore and offshore Welsh waters, under the Marine and Coastal Access Act (2009). With the exception of the enforcement function this power has been delegated to Natural Resources Wales. Welsh Ministers are also responsible for determining applications under section 36 and section 36A of the Electricity Act 1989 where they relate to a generating station that does not exceed the capacity threshold set out in the Planning Act 2008

1.3.4 The Planning Act 2008[7] sets out the thresholds for nationally significant infrastructure projects (NSIPs) in the energy sector. The Act defines the following forms of energy infrastructure as being an NSIP[8]:

- **electricity generating stations (meeting the thresholds set out in the Planning Act 2008).** This includes onshore generating stations (but not onshore wind or electricity storage, except hydroelectric storage) generating more than 50 megawatts (MW) in England and 350MW in Wales. It also includes offshore generating stations generating more than 100MW offshore in territorial waters adjacent to England and within the English part of the Renewable Energy Zone, and those generating more than 350MW in territorial waters adjacent to Wales and the Welsh part of the Renewable Energy Zone (the Welsh Zone as defined by section 158 of the Government of Wales Act 2006). For these types of infrastructure, this Overarching NPS (EN-1) in conjunction with any of the relevant technology specific NPSs will be the primary policy for Secretary of State decision making
- **large gas reception and liquefied natural gas (LNG) facilities and underground gas storage facilities (meeting the thresholds set out in the Planning Act 2008).** For this infrastructure EN-1 in conjunction with EN-4 (for natural gas only) will be the primary policy for Secretary of State decision making
- **cross-country gas and oil pipe-lines and Gas Transporter pipe-lines (meeting the thresholds and conditions set out in the Planning Act 2008).** For this infrastructure EN-1 in conjunction with EN-4 (for natural gas only) will be the primary policy for Secretary of State decision making
- **above ground electric lines at or above 132kV (meeting the thresholds set out in the Planning Act 2008).** For this infrastructure, EN-1 in conjunction with the Electricity Networks NPS (EN-5) will be the primary basis for Secretary of State decision making

1.3.5 Where the need for a particular type of energy infrastructure set out above is established by this NPS, but that type of infrastructure is outside the scope of one of the technology specific NPSs, this NPS alone will have effect and will be the primary basis for Secretary of State decision making. This will be the case for, but is not limited to, unconventional hydrocarbon extraction sites, hydrogen

7 Part 3 Planning Act 2008.

8 Since the Energy NPSs were first designated, there have been four relevant amendments to the Planning Act 2008 which affect the application of the Act to electric lines and energy generating stations: i) the Planning Act 2008 (Nationally Significant Infrastructure Projects) (Electric Lines) Order 2013 removed lines of less than 2km and certain replacement lines from the definition of nationally significant electricity lines; ii) the Infrastructure Planning (Onshore Wind Generating Stations) Order 2016 removed all onshore wind generating stations in England and Wales from the definition of nationally significant energy generating stations; iii) the Wales Act 2017 devolved responsibility for development consent decisions in relation to all electricity generating stations with 350MW capacity or less in Wales (and made amendments to remove electricity lines associated with such stations from the definition of nationally significant electricity lines); and iv) the Infrastructure Planning (Electricity Storage Facilities) Order 2020 removed all forms of electricity storage, other than pumped hydroelectric storage, from the definition of nationally significant energy generating stations.

pipeline and storage infrastructure, Carbon Capture Storage (CCS) pipeline infrastructure and other infrastructure not included in EN-2 or EN-3.

1.3.6 As set out in the written ministerial statement of 7 December 2017[9], EN-6 only has effect in relation to nuclear electricity generation deployable by the end of 2025, but also continues to provide information that may be important and relevant for projects which will deploy after 2025. This NPS (EN-1) will have effect[10] in relation to any new applications for nuclear electricity generation deployable after 2025, particularly in so far as it continues to establish the need for energy generation, including nuclear. A new technology specific NPS for nuclear electricity generation deployable after 2025 is proposed and will be developed to sit alongside this NPS.

1.3.7 In addition to the above specific categories of NSIP, section 35 of the Planning Act 2008 allows the Secretary of State to give a direction that a particular development, that does not meet one of the statutory NSIP categories (either because it involves novel technology or due to capacity size), should nonetheless be treated as development for which development consent is required.

1.3.8 The Secretary of State may give a direction, on receipt of a qualifying request, in relation to a proposed development in England, English waters, or a Renewable Energy Zone, except any part of a Renewable Energy Zone in relation to which the Scottish Ministers have functions.

1.3.9 The Secretary of State must be satisfied that the proposed development is or forms part of a project in the field of energy, or a business or commercial project of a prescribed description; and that it is nationally significant either by itself or in combination with one or more other developments in the field of energy.

1.3.10 EN-1, in conjunction with any relevant technology specific NPS, will be the primary policy for Secretary of State decision making on projects in the field of energy for which a direction has been given under section 35.

1.3.11 The Planning Act 2008 enables the Secretary of State to issue a Development Consent Order including consent for development which is associated with the energy infrastructure NSIP (subject to certain restrictions set out in section 115 of the Act). Government has issued guidance to which the Secretary of State must have regard in deciding whether development is associated development[11].

1.3.12 EN-1, in conjunction with any relevant technology specific NPS, will be the primary policy for Secretary of State decision making on associated development. EN-1 and any relevant technology specific NPS should be

9 See https://questions-statements.parliament.uk/written-statements/detail/2017-12-07/HCWS321
10 Subject to the transitional arrangements set out at Section 1.6 below.
11 See https://www.gov.uk/government/publications/planning-act-2008-associated-development-applications-for-major-infrastructure-projects

considered in applications and Secretary of State decision making, noting the cross-references between these and that text is often not duplicated in full between them.

1.3.13 The Planning Act 2008 enables the Secretary of State to issue a Development Consent Order that can make provision relating to, or to matters ancillary to, the development of the energy infrastructure NSIP. This may include, for example, the authorisation of tree lopping and the compulsory acquisition of land or rights over land.

1.4 Geographical coverage

1.4.1 The Secretary of State will decide all applications for NSIPs in England and Wales, adjacent territorial waters or in the UK Renewable Energy Zone (REZ) (defined in section 84(4) of the Energy Act 2004) except any part in relation to which Scottish Ministers have functions.

1.4.2 In Scotland and in those areas of the REZ where Scottish Ministers have functions, the Secretary of State will have no functions under the Planning Act 2008 in relation to consenting energy infrastructure projects except as set out in this section. However, energy policy is generally a matter reserved to UK Ministers and this NPS may therefore be a relevant consideration in planning decisions in Wales and Scotland.

1.4.3 The Secretary of State has no functions in relation to planning applications in Wales that do not relate to nationally significant infrastructure. In Wales, the Secretary of State will not examine applications for LNG facilities, gas reception facilities or gas transporter pipelines. The Secretary of State will only examine applications for underground gas storage facilities in Wales, where the applicant is a licensed gas transporter, and the storage is in natural porous strata (rather than in cavities); precise details are set out in EN-4 and section 17 of the Planning Act 2008.

1.4.4 The Secretary of State will only examine electricity generating stations in Wales, in territorial waters adjacent to Wales or in the Welsh Zone if their capacity is greater than 350MW.

1.4.5 The Secretary of State will examine applications for cross country oil and gas pipe-lines (meeting the conditions set out in section 21 of the Planning Act 2008) that are in more than one of these territories.

1.4.6 In Northern Ireland, planning consents for all NSIPs, as well as most energy policy, are devolved to the Northern Ireland Executive, so the Secretary of State will not examine applications for energy infrastructure in Northern Ireland and the NPSs will not apply there.

1.5 Period of validity and review

1.5.1 This NPS will remain in force in its entirety unless withdrawn or suspended in whole or in part by the Secretary of State. It will be subject to review by the Secretary of State in order to ensure that it remains appropriate.

1.5.2 The exact timing of a review will depend how specific circumstances apply to each NPS, but it is expected that a public announcement on the consideration as to whether a review is required should be made at least every 5 years.

1.5.3 Information on the review process is set out in paragraphs 10 to 12 of the Annex to CLG's letter of 9 November 2009[12] and the DLUHC guidance on Review of NPSs.[13]

1.6 Transitional provisions following review

1.6.1 The suite of energy NPSs was first designated in 2011. In the 2020 Energy White Paper[14] a review of the NPSs, pursuant to section 6 of the Planning Act 2008, was announced. That review resulted in a number of amendments to the NPSs.

1.6.2 The Secretary of State has decided that for any application accepted for examination before designation of the 2023 amendments, the 2011 suite of NPSs should have effect in accordance with the terms of those NPS.

1.6.3 The 2023 amendments will therefore have effect only in relation to those applications for development consent accepted for examination, after the designation of those amendments. However, any emerging draft NPSs (or those designated but not yet having effect) are potentially capable of being important and relevant considerations in the decision-making process. The extent to which they are relevant is a matter for the relevant Secretary of State to consider within the framework of the Planning Act 2008 and with regard to the specific circumstances of each Development Consent Order application.

1.7 The Appraisal of Sustainability and Habitats Regulations Assessment

1.7.1 All the NPSs have been subject to an Appraisal of Sustainability (AoS) required by the Planning Act 2008 and the Environmental Assessment of Plans and Programmes Regulations 2004. A Habitats Regulations Assessment (HRA) has

12 See https://www.gov.uk/guidance/planning-guidance-letters-to-chief-planning-officers
13 See https://www.gov.uk/guidance/planning-act-2008-guidance-on-the-process-for-carrying-out-a-review-of-existing-national-policy-statements
14 See https://www.gov.uk/government/publications/energy-white-paper-powering-our-net-zero-future

also been prepared in accordance with the Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Marine Habitats and Species Regulations 2017. These are published alongside this NPS and available at https://www.gov.uk/government/consultations/planning-for-new-energy-infrastructure-revisions-to-national-policy-statements.

2 Government policy on energy and energy infrastructure development

2.1 Introduction

2.1.1 This Part outlines the policy context for the development of nationally significant energy infrastructure. The Energy White Paper, published in December 2020[15], outlined a strategy to transform the energy system, tackling emissions while continuing to ensure secure and reliable supply, and affordable bills for households and businesses. This was built on by the Net Zero Strategy[16], published in October 2021, which set out a long-term plan for the economy-wide transition to net zero that will take place over the next three decades. The British Energy Security Strategy[17], published in April 2022, and the Growth Plan of 23 September 2022[18] further reinforced ambitions and the importance of addressing our underlying vulnerability to international oil and gas prices and reducing our dependence on imported oil and gas. Powering Up Britain[19], published in March 2023, set out how government will enhance our country's energy security, seize the economic opportunities of the transition, and deliver on our net zero commitments.

2.1.2 The government has committed to producing a Strategic Spatial Energy Plan (SSEP), to bridge the gap between government policy and infrastructure development plans. This will be a high-level plan which will inform, and be informed by, more detailed individual plans (for example, the Centralised Strategic Network Plan for electricity networks). A more strategic approach to spatial planning is intended to make clearer the overall geographic requirements for the energy system and increase efficiency in the system, resulting in cheaper transmission costs for generators and consumers of electricity.

2.1.3 To produce the energy required for the UK and ensure it can be transported to where it is needed, a significant amount of infrastructure is needed at both local and national scale. High quality infrastructure is crucial for economic growth, boosting productivity and competitiveness. Part 3 of this NPS provides further details on the need for, and importance of, energy to economic prosperity and social well-being.

[15] See https://www.gov.uk/government/publications/energy-white-paper-powering-our-net-zero-future
[16] See https://www.gov.uk/government/publications/net-zero-strategy
[17] See https://www.gov.uk/government/publications/british-energy-security-strategy/british-energy-security-strategy
[18] See https://www.gov.uk/government/publications/the-growth-plan-2022-documents
[19] See https://www.gov.uk/government/publications/powering-up-britain

2.1.4 The National Infrastructure Strategy (NIS)[20] committed to boosting growth and productivity across the whole of the UK, levelling up and strengthening the Union through investment in rural areas, towns, and cities, from major national projects to local priorities. It also committed to government putting the UK on the path to meeting its net zero emissions target by 2050 by taking steps to decarbonise the UK's power networks, and take steps to adapt to the risks posed by climate change.

2.1.5 The second National Infrastructure Assessment[21] published by the National Infrastructure Commission (NIC) recognised the significant progress the UK has made in boosting renewable electricity generation. It also highlighted the key challenges ahead in decarbonising energy and achieving net zero emissions.

2.1.6 This energy NPS considers the large-scale infrastructure which will be required to ensure the UK can provide a secure, reliable, and affordable supply of energy, while also meeting our decarbonisation targets.

2.2 Net zero by 2050

2.2.1 In June 2019, the UK became the first major economy to legislate for a 2050 net zero Greenhouse Gases ('GHG') emissions target through the Climate Change Act 2008 (2050 Target Amendment) Order 2019.[22] In December 2020, the UK communicated its Nationally Determined Contributions to reduce GHG emissions by at least 68 per cent from 1990 levels by 2030.[23] In April 2021, the government legislated for the sixth carbon budget (CB6), which requires the UK to reduce GHG emissions by 78 per cent by 2035 compared to 1990 levels.[24]

2.2.2 The Government will continue to update its decarbonisation plan in coming years and the following should be read in conjunction with such updates as may be published from time to time.

2.3 Meeting net zero

2.3.1 Energy underpins almost every aspect of our way of life. It enables us to heat and light our homes; to manufacture goods; to produce and transport food; and to travel to work and for leisure. Our businesses and jobs rely on the use of energy. Energy is essential for the critical services we rely on – from hospitals to traffic

[20] See https://www.gov.uk/government/publications/national-infrastructure-strategy
[21] See https://nic.org.uk/studies-reports/national-infrastructure-assessment/
[22] See legislation.gov.uk/ukdsi/2019/9780111187654
[23] See https://www.gov.uk/government/publications/the-uks-nationally-determined-contribution-communication-to-the-unfccc
[24] See https://www.gov.uk/government/news/uk-enshrines-new-target-in-law-to-slash-emissions-by-78-by-2035

lights and mobile devices. It is difficult to overestimate the extent to which our quality of life is dependent on adequate energy supplies.

2.3.2 In October 2021 the government published the Net Zero Strategy.[25] This set out our vision for transitioning to a net zero economy and the policies and proposals for decarbonising all sectors of the UK economy to meet our net zero target by 2050, making the most of new growth and employment opportunities across the UK.

2.3.3 Our objectives for the energy system are to ensure our supply of energy always remains secure, reliable, affordable, and consistent with meeting our target to cut GHG emissions to net zero by 2050, including through delivery of our carbon budgets and Nationally Determined Contribution. This will require a step change in the decarbonisation of our energy system.

2.3.4 Meeting these objectives necessitates a significant amount of new energy infrastructure, both large nationally significant developments and small-scale developments determined at a local level. This includes the infrastructure needed to convert primary sources of energy (e.g. wind) into energy carriers (e.g. electricity or hydrogen), and to store and transport primary fuels and energy carriers into and around the country. It also includes the infrastructure needed to capture, transport and store carbon dioxide. The requirement for new energy infrastructure will present opportunities for the UK and contributes towards our ambition to support jobs in the UK's clean energy industry and local supply chains.

2.3.5 The sources of energy we use are changing. Since the industrial revolution, our energy system has been dominated by fossil fuels. That remains the case today. Although representing a record low, fossil fuels still accounted for just over 76 per cent of energy supply in 2020.[26] We need to dramatically increase the volume of energy supplied from low carbon sources.

2.3.6 We need to transform the energy system, tackling emissions while continuing to ensure secure and reliable supply, and affordable bills for households and businesses. This includes increasing our supply of clean energy from renewables, nuclear and hydrogen manufactured using low carbon processes[27] (low carbon hydrogen), and, where we still emit carbon, developing the industry and infrastructure to capture, transport and store it.

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[25] See https://www.gov.uk/government/publications/net-zero-strategy

26 From table 1.1.1 of Digest of United Kingdom Energy Statistics (DUKES) 2021: inland consumption of primary fuels and equivalents for energy use, 1970 to 2020, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1094291/DUKES_1.1.1.xlsx

27 This includes production of both green hydrogen (through water electrolysis with low carbon power) and blue hydrogen (through methane reformation with Carbon Capture and Storage)

2.3.7 Decarbonisation means we are likely to become more dependent on some forms of energy compared to others. Using electrification to reduce emissions in large parts of transport, heating and industry could lead to more than half of final energy demand being met by electricity in 2050, up from 17 per cent in 2019, representing a doubling in demand for electricity.[28] Low carbon hydrogen is also likely to play an increasingly significant role.

2.3.8 This switch will break down the siloes which have traditionally existed between separate heat, transport, and electricity networks. We will need to adapt existing networks or build new ones to integrate low carbon hydrogen into the system and enable the transport and storage of carbon dioxide.

2.3.9 To ensure that supplies remain reliable and to keep our energy affordable we will also need to reduce the amount of energy we waste, using new and innovative low carbon technologies and more energy efficiency measures.

2.3.10 This transformational approach tackles long-term problems to deliver growth that creates high-quality jobs across the UK and makes the most of the strengths of the Union. However, this transformation cannot be instantaneous. The use of unabated natural gas and crude oil fuels for heating, cooking, electricity and transport, and the production of many everyday essentials like medicines, plastics, cosmetics and household appliances, will still be needed during the transition to a net zero economy. This will enable secure, reliable, and affordable supplies of energy as we develop the means to address the carbon dioxide and other greenhouse gases associated with their use, including the development and deployment of low carbon alternatives.

2.3.11 The UK's oil and gas sector recognises the demand for oil and gas will be much reduced in the future, but also recognises the key role that it can play in helping the UK meet its net zero commitment. Clear action will need to be taken to build on the proven capabilities within the sector to lead in new and emerging energy technologies.

2.3.12 Some limited residual use of unabated natural gas and crude oil may even be needed beyond 2050 to meet our energy objectives. Due to policy uncertainties for the post 2050 period, a detailed assessment for this period has not been conducted at this stage. However, this can be consistent with our net zero target if any emissions are balanced by negative emissions from Greenhouse Gas Removal (GGR) technologies.

28 The Impact Assessment for CB6 shows an illustrative range of 610-800TWh in 2050

2.4 Decarbonising the power sector

2.4.1 Since the designation of the original EN-1, overall GHG emissions from the power sector have more than halved, from ~145MtCO2e in 2011 to ~60MtCO2e in 2019 (see figure 1). This can be mainly attributed to the proportion of renewable generation more than quadrupling from 10 per cent to 43 per cent between 2011 and 2020 whilst the share of electricity generation from coal reduced from 29 per cent to 2 per cent over the same period.[29]

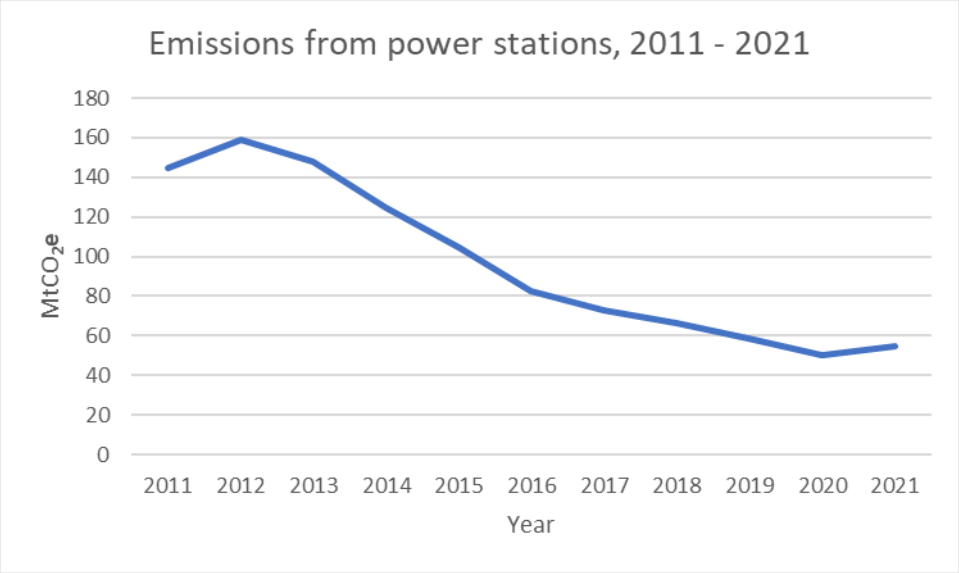

Figure 1: GHG emissions from power stations 2011-2021[30]

2.4.2 A key mechanism for increasing deployment of low carbon generation has been the implementation of Contracts for Difference (CfD).

2.4.3 The CfD scheme opened in 2014, with CfDs being awarded to developers of eligible projects through a competitive bidding process administered by National Grid Electricity Systems Operator (ESO). The scheme has been hugely successful in driving substantial deployment of renewable electricity capacity at scale while rapidly reducing costs. The competitive nature of the scheme has been a crucial factor in minimising the costs of decarbonisation for consumers, contributing to large decreases in the price per unit of renewable technologies, including offshore wind, since the first allocation round in 2015. CfD auctions (including bespoke CfD contracts signed in the early days of the scheme) have so far awarded contracts totalling over 30GW of new renewable capacity across all technologies, including around 20GW of offshore wind. As of March 2023, allocation rounds run on an annual basis.

29 BEIS (2022), Energy Trends, Table 5.1, see https://www.gov.uk/government/statistics/electricity-section-5-energy-trends.
30 BEIS (2020), Final UK greenhouse gas emissions national statistics, Table 1, See https://www.gov.uk/government/statistics/final-uk-greenhouse-gas-emissions-national-statistics-1990-to-2021

2.4.4 Government is developing business models to incentivise the deployment of carbon capture, utilisation and storage (CCUS) facilities and low carbon hydrogen production in the UK. The British Energy Security Strategy[31] also committed to designing, by 2025, new business models for hydrogen transport and storage infrastructure.

2.4.5 We will put in place a commercial framework which will enable developers to finance the construction and operation of power CCUS and Industrial Carbon Capture (ICC) facilities and CO_2 transport and storage networks, stimulating a pipeline of projects and building a UK supply chain.

2.4.6 For power CCUS, we will introduce the Dispatchable Power Agreement Business Model, to incentivise power CCUS to play a role in the electricity system which complements renewables and nuclear.

2.4.7 In addition, for ICC, we will incentivise the deployment of carbon capture technology through the Industrial Carbon Capture Business Model for industrial users who often have no viable alternatives available to achieve deep decarbonisation. This will include energy from waste facilities, which are covered by EN-3.

2.4.8 We are also developing the Transportation and Storage regulatory investment ('TRI Model') which is based on an economic regulation funding model consisting of three elements: revenue model, economic regulatory regime and a government support package (GSP).

2.4.9 Since 2019, government has periodically consulted and provided updates on all CCUS business models.[32]

2.4.10 In addition, the government has other levers to encourage further decarbonisation within the power sector:

- UK Emissions Trading Scheme (UK ETS)
- Carbon Price Support (CPS)
- Emissions Performance Standard (EPS)

2.5 Security of energy supplies

2.5.1 Given the vital role of energy to economic prosperity and social well-being, it is important that our supplies of energy remain secure, reliable and affordable.

[32] Further detail on CCUS Business Models can be found on the www.gov.uk website: see https://www.gov.uk/government/publications/carbon-capture-usage-and-storage-ccus-business-models

2.5.2 We have highly diverse and flexible sources of gas supply and a diverse electricity mix, which ensures that households, businesses and heavy industry get the energy they need.

2.5.3 Great Britain's (GB) gas system has delivered securely to date and is expected to continue to function well, with a diverse range of supply sources and sufficient delivery capacity to more than meet demand.

2.5.4 This diversity in gas supply includes pipelines from the UK and Norway continental shelf (UKCS & NCS), interconnection with the Continent through the Interconnector Ltd and BBL pipelines, and three LNG terminals, providing GB with one of the largest LNG import infrastructures in Europe.

2.5.5 However as global energy costs rise due to demand soaring as the economy reopened after COVID-19 and the Russian invasion of Ukraine, security of supply requires a greater focus on domestic energy production.

2.5.6 The British Energy Security Strategy[33] emphasises the importance of addressing our underlying vulnerability to international energy prices by reducing our dependence on imported oil and gas, improving energy efficiency, remaining open minded about our onshore reserves including shale gas, and accelerating deployment of renewables, nuclear, hydrogen, CCUS, and related network infrastructure, so as to ensure a domestic supply of clean, affordable, and secure power as we transition to net zero.

2.5.7 The Capacity Market (CM)[34] is at the heart of the government's plans for a secure and reliable electricity system. The CM provides all forms of capacity capable of contributing to security of supply with the right incentives to be on the system and to deliver during periods of electricity system stress, for example during cold, still periods where demand is high and wind generation is low.

2.5.8 The CM is technology neutral, meaning it does not seek to procure specific volumes of capacity from particular types of technology. All types of capacity are able to participate – except for Capacity Providers in receipt of other specific categories of government support – but they must demonstrate sufficient technical performance to contribute to security of supply.

2.5.9 The CM operates alongside the GB wholesale electricity market and the services contracted by the National Electricity Transmission System Operator (NETSO) to provide ancillary services to ensure second-by-second balancing of the electricity system.

[33] See https://www.gov.uk/government/publications/british-energy-security-strategy/british-energy-security-strategy

[34] The Capacity Market is a competitive auction which ensures security of electricity supply by providing a payment for reliable sources of capacity. See https://www.gov.uk/government/collections/electricity-market-reform-capacity-market

2.5.10 In July 2019 the government introduced CO_2 emissions limits to the CM.

2.5.11 Plants burning fossil fuels that began generating after July 2019 must demonstrate that they emit below 550gCO_2/kWh electricity generated in order to be able to hold CM agreements.

2.5.12 Plants burning fossil fuels that began generating before July 2019 must either demonstrate that they emit below 550gCO_2/kWh electricity generated or must not emit more than 350kgCO_2 per year on average.

2.5.13 Plants unable to comply with these requirements are excluded from holding CM agreements from the Delivery Year 2024 onwards. This ensures that the CM is aligned with broader decarbonisation objectives by preventing the most polluting plants from participating.

2.6 Sustainable development

2.6.1 The government's wider objectives for energy infrastructure include contributing to sustainable development[35] and ensuring that our energy infrastructure is safe.

2.6.2 Sustainable development is relevant not just in terms of addressing climate change, but because the way energy infrastructure is deployed affects the well-being of the environment, society and the economy, for both current and future generations. For example, the availability of appropriate infrastructure supports the efficient working of the market so as to ensure competitive prices for consumers. The regulatory framework also encourages the energy industry to protect the more vulnerable.

2.6.3 The planning framework set out in this NPS and the suite of energy NPSs takes full account of the objective of contributing to the achievement of sustainable development and this has been tested through the Appraisal of Sustainability (AoS).

2.6.4 The AoS has examined whether the NPS framework for the development of new energy infrastructure projects is consistent with the objectives for sustainable development, including consideration of other government policies such as those for the environment, economic development, health and transport.

2.6.5 Whatever incentives, rules or other signals developers are responding to, the government believes that the NPSs set out planning policies which both respect the principles of sustainable development and can facilitate, for the foreseeable future, the consenting of energy infrastructure on the scale and of the kinds

[35] As defined in 1987 by the World Commission on Environment and Development report Our Common Future - See https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf

necessary to help us maintain safe, secure, affordable and low carbon supplies of energy.

3 The need for new nationally significant energy infrastructure projects

3.1 Introduction

3.1.1 This Part of the NPS explains why the government sees a need for significant amounts of new large-scale energy infrastructure to meet its energy objectives and why the government considers that the need for such infrastructure is urgent.

3.1.2 However, it will not be possible to develop the necessary amounts of such infrastructure without some significant residual adverse impacts. These effects will be minimised by the application of policy set out in Parts 4 and 5 of this NPS. See also Part 2 of each technology specific NPS.

3.2 Secretary of State decision making

3.2.1 The government's objectives for the energy system are to ensure our supply of energy always remains secure, reliable, affordable, and consistent with net zero emissions in 2050 for a wide range of future scenarios, including through delivery of our carbon budgets and Nationally Determined Contributions.

3.2.2 We need a range of different types of energy infrastructure to deliver these objectives. This includes the infrastructure described within this NPS but also more nascent technologies, data, and innovative infrastructure projects consistent with these objectives.

3.2.3 It is not the role of the planning system to deliver specific amounts or limit any form of infrastructure covered by this NPS. It is for industry to propose new energy infrastructure projects that they assess to be viable within the strategic framework set by government. This is the nature of a market-based energy system. With the exception of new coal or large-scale oil-fired electricity generation[36], the government does not consider it appropriate for planning policy to set limits on different technologies but planning policy can be used to support the government's ambitions in energy policy and other policy areas.

3.2.4 It is not the government's intention in presenting any of the figures or targets in this NPS to propose limits on any new infrastructure that can be consented in accordance with the energy NPSs. A large number of consented projects can

[36] A further exception to this is EfW plants where the primary function is to treat waste and planning decision will be made on the demand for waste infrastructure. See EN-3 for further detail.

help deliver an affordable electricity system, by driving competition and reducing costs within and amongst different technology and infrastructure types. Consenting new projects also enables projects utilising more advanced technology and greater efficiency to come forward.[37] The delivery of an affordable energy system does not always mean picking the least cost technologies. A diversity of supply can aid in ensuring affordability for the system overall and relative costs can change over time, particularly for new and emerging technologies. It is not the role of the planning system to compare the costs of individual developments or technology types.

3.2.5 The government has other mechanisms to influence the delivery of its energy objectives and imposing limits on the consenting of different types of energy infrastructure would reduce competition, increase costs, and disincentivise newer, more efficient solutions coming forward. This does not reduce the need for individual projects to demonstrate compliance with planning and environmental requirements or mean that everything that obtains development consent will get built.

3.2.6 **The Secretary of State should assess all applications for development consent for the types of infrastructure covered by this NPS on the basis that the government has demonstrated that there is a need for those types of infrastructure which is urgent, as described for each of them in this Part.**

3.2.7 **In addition, the Secretary of State has determined that substantial weight should be given to this need when considering applications for development consent under the Planning Act 2008.**

3.2.8 **The Secretary of State is not required to consider separately the specific contribution of any individual project to satisfying the need established in this NPS.**

3.2.9 This NPS, along with any technology specific energy NPSs, sets out policy for nationally significant energy infrastructure covered by sections 15-21 of the Planning Act 2008.

3.2.10 Other novel technologies or processes may emerge during the life of this NPS, and can help deliver our energy objectives. Where these contribute towards the objectives set out in paragraph 3.2.1, the Secretary of State should determine that there is a need for such technologies and that substantial weight should be given to this need.

3.2.11 Where an energy infrastructure project is not covered by sections 15-21 of the Planning Act 2008 but is considered to be nationally significant, there is a power under section 35 of the Planning Act 2008 (which applies in England, English

[37] An exception to this is EfW plants where the primary function is to treat waste and planning decisions will be made based on the demand for waste infrastructure. See EN-3 for further detail.

waters, and the Renewable Energy Zone, except any part of the Renewable Energy Zone in relation to which the Scottish Ministers have functions) for the Secretary of State, on request, to give a direction that a development should be treated as a nationally significant infrastructure project for which development consent is required. This could include novel technologies or processes which may emerge during the life of this NPS.

3.2.12 In these circumstances any application for development consent would need to be considered in accordance with this NPS. In particular:

- where the application is for electricity generation infrastructure not covered by sections 15-21 of the Planning Act, the Secretary of State should give substantial weight to the need established at paragraphs 3.3.4 to 3.3.7 of this NPS
- where the application is for electricity network infrastructure not covered by sections 15-21 of the Planning Act, including underground or offshore infrastructure, the Secretary of State should give substantial weight to the need established at paragraphs 3.3.65 to 3.3.83 of this NPS
- where the application is for hydrogen infrastructure not covered by sections 15-21 of the Planning Act, the Secretary of State should give substantial weight to the need established at paragraphs 3.4.12 to 3.4.22 of this NPS
- where the application is for CCS infrastructure not covered by sections 15-21 of the Planning Act, the Secretary of State should give substantial weight to the need established at paragraphs 3.5.1 to 3.5.8 of this NPS
- where the application is for natural gas production infrastructure, conventional or unconventional[38], not covered by sections 15-21 of the Planning Act, the Secretary of State should give substantial weight to the need established at paragraphs 3.4.1 – 3.4.9 of this NPS

3.3 The need for new nationally significant electricity infrastructure

3.3.1 Electricity meets a significant proportion of our overall energy needs and our reliance on it will increase as we transition our energy system to deliver our net zero target. We need to ensure that there is sufficient electricity to always meet demand; with a margin to accommodate unexpectedly high demand and to mitigate risks such as unexpected plant closures and extreme weather events.

3.3.2 The larger the margin, the more resilient the system will be in dealing with unexpected events, and consequently the lower the risk of a supply interruption.

[38] This includes, but is not limited to, novel technologies or processes may emerge during the life of this NPS,

This helps to protect businesses and consumers, including vulnerable households, from volatile prices and, eventually, from physical interruptions to supply that might impact on essential services. But a balance must be struck between a margin which ensures a reliable supply of electricity and building unnecessary additional capacity which increases the overall costs of the system.

3.3.3 To ensure that there is sufficient electricity to meet demand, new electricity infrastructure will have to be built to replace output from retiring plants and to ensure we can meet increased demand. Our analysis suggests that even with major improvements in overall energy efficiency, and increased flexibility in the energy system, demand for electricity is likely to increase significantly over the coming years and could more than double by 2050 as large parts of transport, heating and industry decarbonise by switching from fossil fuels to low carbon electricity. The Impact Assessment for CB6 shows an illustrative range of 465-515TWh in 2035 and 610-800TWh in 2050.

The need for different types of electricity infrastructure

3.3.4 There are several different types of electricity infrastructure that are needed to deliver our energy objectives. Additional generating plants, electricity storage, interconnectors and electricity networks[39] all have a role, but none of them will enable us to meet these objectives in isolation.

3.3.5 New generating plants can deliver a low carbon and reliable system, but we need the increased flexibility provided by new storage and interconnectors (as well as demand side response, discussed below) to reduce costs in support of an affordable supply.

3.3.6 Storage and interconnection can provide flexibility, meaning that less of the output of plant is wasted as it can either be stored or exported when there is excess production. They can also supply electricity when domestic demand is higher than generation, supporting security of supply. This means that the total amount of generating plant capacity required to meet peak demand is reduced, bringing significant system savings alongside demand side response (up to £12bn per year by 2050).[40] Storage can also reduce the need for new network infrastructure. However, neither of these technologies, as with demand side response, are sufficient to meet the anticipated increase in total demand, and so cannot fully replace the need for new generating capacity.

3.3.7 Electricity networks are needed to connect the output of other types of electricity infrastructure with consumers and each other. However, they are a means of transporting electricity rather than generating or storing it, so cannot replace

[39] Throughout the suite of energy-NPS documents, electricity network(s) and grid are used interchangeably.

those other types of electricity infrastructure in meeting the substantial increase in demand expected over the coming decades.

Alternatives to new electricity infrastructure

3.3.8 The government has considered alternatives to the need for new large-scale electricity infrastructure and concluded that these would be limited to reducing total demand for electricity through efficiency measures or through greater use of low carbon hydrogen in decarbonising the economy; reducing maximum demand through demand side response; and increasing the contribution of decentralised and smaller-scale electricity infrastructure. In addition, there are alternative ways of decarbonising heating and transportation, which are being developed alongside electrification of these sectors.

3.3.9 Reducing total demand for energy is a key element of the government's strategy for meeting its energy objectives and we expect that increased energy efficiency measures could lead to a reduction in final energy demand from around 1550 TWh in 2019 to around 1000 TWh in 2050. However even with a reduction in final energy demand the share of electricity in the system is likely to increase, potentially more than doubling by 2050 (see paragraph 3.3.3).

3.3.10 The precise level of electricity demand during the transition to net zero is uncertain and could be affected by alternative means of decarbonising these sectors, such as the use of low carbon hydrogen, and the pace of that decarbonisation. However, it is prudent to plan on a conservative basis to ensure that there is sufficient supply of electricity to meet demand across a wide range of future scenarios, including where the use of hydrogen is limited.

3.3.11 Demand side response, such as the use of thermal stores and smart charging of electric vehicles, can shift electricity demand, reducing the maximum amount of electricity required and therefore reduce the need for additional infrastructure. However, it cannot increase the total amount of electricity generated in the UK, or reduce the total amount of electricity consumed, and so cannot fully replace the need for new generating capacity to deliver our energy objectives.

3.3.12 Decentralised and community energy systems such as micro-generation contribute to our targets on reducing carbon emissions and increasing energy security. These technologies could also lead to some reduction in demand on the main generation and transmission system. However, the government does not believe they will replace the need for new large-scale electricity infrastructure to meet our energy objectives. This is because connection of large-scale, centralised electricity generating facilities via a high voltage transmission system enables the pooling of both generation and demand, which in turn offers a number of economic and other benefits, such as more efficient bulk transfer of power and enabling surplus generation capacity in one area to be used to cover shortfalls elsewhere.

Delivering affordable decarbonisation

3.3.13 The Net Zero Strategy[41] sets out the government's ambition for increasing the deployment of low carbon energy infrastructure consistent with delivering our carbon budgets and the 2050 net zero target. This made clear the commitment that the cost of the transition to net zero should be fair and affordable.

3.3.14 Value for money assessments are not required on applications for development consent for energy infrastructure projects. However, government will work to ensure there are market frameworks which promote effective competition and deliver an affordable, secure and reliable energy system and government support for specific technologies and projects will be dependent on clear value for money for consumers and taxpayers.

3.3.15 Based on our whole-system modelling, by 2050, emissions associated with power could need to drop by 95-98 per cent compared to 2019, down to 1-3 MtCO2e. In the interim, to meet our NDC and CB6 targets, we expect emissions could fall by 70-75 per cent by 2030 and 80-85 per cent by 2035, compared to 2019 levels. These figures are based on an indicative power sector pathway contributing to the whole-economy net zero and interim targets.[42]

3.3.16 If demand for electricity doubles by 2050, we will need a fourfold increase in low carbon generation and significant expansion of the networks that transport power to where it is needed. In addition, we committed in the Net Zero Strategy[43] to take action so that by 2035, all our electricity will come from low carbon sources, subject to security of supply, whilst meeting a 40-60 per cent increase in electricity demand. This means that the majority of new generating capacity needs to be low carbon.

3.3.17 As Combined Cycle Gas Turbines (CCGTs) using natural gas and equipped with CCS are unable to provide the quick start peaking capacity which is required in a low carbon system, new unabated natural gas generating capacity will also be needed as it currently plays a critical role in keeping the electricity system secure and stable. It will continue to be needed during the transition to net zero while we develop and deploy the low carbon alternatives that can replicate its role in the electricity system.

3.3.18 Our understanding of what the electricity system will need to deliver during the transition to 2050 and the best way of delivering it will evolve over time. For example, the level of demand it will need to meet will depend on the approach and pace of decarbonisation in other sectors, and the mix of infrastructure and

[41] See https://www.gov.uk/government/publications/net-zero-strategy
[42] 3i. Power of the Net Zero Strategy: Charts and Tables See https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1066450/nzs-charts-tables-v1.1.xlsx .
[43] See https://www.gov.uk/government/publications/net-zero-strategy

technology that can deliver this in line with our energy and climate objectives will be affected by the different characteristics of existing and new technologies, their relative costs and deliverability. It will also be informed by the costs and availability of GGR technologies, such as Bioenergy with Carbon Capture and Storage (BECCS) and Direct Air Carbon Capture and Storage (DACCS).

3.3.19 Given the changing nature of the energy landscape, we need a diverse mix of electricity infrastructure to come forward, so that we can deliver a secure, reliable, affordable, and net zero consistent system during the transition to 2050 for a wide range of demand, decarbonisation, and technology scenarios.

The role of wind and solar

3.3.20 Wind and solar are the lowest cost ways of generating electricity, helping reduce costs and providing a clean and secure source of electricity supply (as they are not reliant on fuel for generation). Our analysis shows that a secure, reliable, affordable, net zero consistent system in 2050 is likely to be composed predominantly of wind and solar.[44]

3.3.21 As part of delivering this, UK government announced in the British Energy Security Strategy[45] an ambition to deliver up to 50 gigawatts (GW) of offshore wind by 2030, including up to 5GW of floating wind, and the requirement in the Energy White Paper[46] for sustained growth in the capacity of onshore wind[47] and solar in the next decade. [48]

3.3.22 However, it is recognised that ensuring affordable system reliability, today and in the future, means wind and solar need to be complemented with technologies which supply electricity, or reduce demand, when the wind is not blowing, or the sun does not shine.

3.3.23 Applications for onshore wind of all sizes should be consented outside of the Planning Act 2008 process, unless the Secretary of State directs otherwise under section 35 of the Planning Act 2008.

3.3.24 Applications for offshore wind above 100MW or solar above 50MW in England, or 350MW for either in Wales, will continue to be defined as NSIPs, requiring consent from the Secretary of State (see EN-3).

[44] See https://www.gov.uk/government/publications/modelling-2050-electricity-system-analysis
[45] See https://www.gov.uk/government/publications/british-energy-security-strategy/british-energy-security-strategy
[46] See https://www.gov.uk/government/publications/energy-white-paper-powering-our-net-zero-future
[47] Applications for onshore wind should be considered by the relevant local planning authority.
[48] This is a UK government ambition with the Welsh and Scottish Government's having set their own internal ambitions. See https://gov.wales/sites/default/files/publications/2019-07/future-potential-for-offshore-wind.pdf and See https://www.gov.scot/publications/offshore-wind-policy-statement/

The role of electricity storage

3.3.25 Storage has a key role to play in achieving net zero and providing flexibility to the energy system, so that high volumes of low carbon power, heat and transport can be integrated.

3.3.26 Storage is needed to reduce the costs of the electricity system and increase reliability by storing surplus electricity in times of low demand to provide electricity when demand is higher. There is currently around 4GW of electricity storage operational in GB, around 3GW of which is pumped hydro storage and around 1GW is battery storage.

3.3.27 Storage can provide various services, locally and at the national level. These include maximising the usable output from intermittent low carbon generation (e.g. solar and wind), reducing the total amount of generation capacity needed on the system; providing a range of balancing services to the NETSO and Distribution Network Operators (DNOs) to help operate the system; and reducing constraints on the networks, helping to defer or avoid the need for costly network upgrades as demand increases.

3.3.28 Whilst important in providing balancing services, many of the storage facilities currently being deployed provide storage over a period of hours but cannot cost effectively cover prolonged periods of low output from wind and solar. There are a range of storage technologies that may be able to provide storage over longer periods of low wind and solar output (e.g. days, weeks or months) but many of these technologies are not yet available at scale or have an upper limit on deployment due to geographical constraints.

3.3.29 The Infrastructure Planning (Electricity Storage Facilities) Order 2020 removed all forms of electricity storage, other than pumped hydroelectric storage, from the definition of nationally significant energy generating stations under the Planning Act 2008.

3.3.30 Applications for adding electricity storage to an existing generation station which has consent under the NSIP regime or under section 36 of the Electricity Act 1989 may also be consented outside of the Planning Act 2008 process, unless the Secretary of State directs otherwise under section 35 of the Planning Act 2008.

3.3.31 Applications for pumped hydro storage facilities below 50MW in England, or 350MW in Wales, will continue to be consented outside of the Planning Act 2008 process, unless the Secretary of State directs otherwise under section 35 of the Planning Act 2008. Those above 50MW in England, or 350MW in Wales, will continue to be defined as NSIPs, requiring consent from the Secretary of State.

The role of interconnectors

3.3.32 Interconnection across national borders has an essential role in delivering a secure, low carbon electricity system at low cost. The UK recognises the importance and benefits of increasing levels of interconnection and has an ambition to realise at least 18 GW of operational interconnector capacity by 2030.

3.3.33 At present, there is 8.4 GW of GB interconnection: 4 GW with France, 1 GW to the Netherlands, 1 GW to the island of Ireland (0.5 GW to Northern Ireland and 0.5 GW to the Republic of Ireland), 1 GW to Belgium and 1.4 GW to Norway. Further interconnectors are under construction to Denmark, the Republic of Ireland and Germany, with a number of additional projects in the early stages of development. We also foresee the potential for future multi-purpose projects to combine offshore wind with market-to-market interconnection, which are considered paragraphs 3.3.76 and 3.3.77 below.

3.3.34 Interconnection provides access to a diverse pool of generation, enabling the import of cheaper electricity, while also providing a route for electricity export. Interconnectors provide the system with additional flexibility, reducing the curtailment of renewable energy[49], and can also provide a range of ancillary services, such as voltage and black start services[50].

3.3.35 In considering applications, applicants are expected to consider foreseeable future demand when considering the location and route of their investments. This may involve consenting offshore platforms, converter stations or substations which facilitate future coordination.

The role of combustion power stations

3.3.36 Combustion power stations use fuel for generation. This means that it is possible for them to provide dispatchable generation when the output from intermittent renewables is low, but they are dependent on the supply of fuel for generation. Most forms of combustion power also produce residual emissions of greenhouse gases, and where this is the case, their use will need to be limited over time unless they can decarbonise. All commercial scale (at or over 300 MW) combustion power stations fuelled by gas, coal, oil or biomass have to be constructed Carbon Capture Ready (CCR). More information on government policy on CCR requirements and plans to transition to a new regime, Decarbonisation Readiness, is set out in Section 4.9.

Energy from Waste

[49] BEIS (2020), Impact of interconnectors on decarbonisation https://www.gov.uk/government/publications/impact-of-interconnectors-on-decarbonisation
[50] https://www.nationalgrideso.com/document/92386/download

3.3.37 Energy from Waste (EfW) plants operate at over 90 per cent availability but also produce residual carbon emissions, due to the presence of fossil-based carbon which exists alongside the biodegradable materials in the waste.

3.3.38 The principal purpose of the combustion of waste, or similar processes (for example Advanced Conversion Technologies (ACTs) such as pyrolysis or gasification) is to reduce the amount of waste going to landfill in accordance with the Waste Hierarchy[51] and to recover energy from that waste as electricity, heat or fuel. Only waste that cannot be re-used or recycled with less environmental impact and would otherwise go to landfill should be used for energy recovery. This is to ensure that environmental impacts are minimised, and that the resource value extracted is maximised.[52]

3.3.39 As the primary function of EfW plants, or similar processes, is to treat waste, applicants must demonstrate that proposed facilities are in line with the government's policy position on the role of energy from waste in treating residual waste[53].

3.3.40 The proposed plant must not compete with greater waste prevention, re-use, or recycling, or result in over-capacity of EfW waste treatment at a national or local level.

3.3.41 Energy recovery from residual waste has a lower GHG impact than landfill[54] with the possibility for reducing emissions if plants are equipped with CCS. The amount of electricity that can be generated from EfW is constrained by the availability of its feedstock, which is set to reduce further by 2035 because of government policy.[55]

3.3.42 EfW is only partially renewable due to the presence of fossil-based carbon in the waste. Only the energy contribution from the biogenic portion is eligible for renewable financial incentives. If the waste is pre-treated to separate out the biogenic fraction, then this can be considered wholly renewable.

Bioenergy

[51] Waste Hierarchy as set out in regulation 12 of the Waste (England and Wales) Regulations 2011.
[52] Our waste, our resources: a strategy for England See https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/765914/resources-waste-strategy-dec-2018.pdf
[53] 2021 Waste Management Plan for England p.45: https://www.gov.uk/government/publications/waste-management-plan-for-england-2021
[54] See https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/284612/pb14130-energy-waste-201402.pdf
[55] See https://www.gov.uk/government/publications/circular-economy-package-policy-statement

3.3.43 Bioenergy could provide either baseload or dispatchable low carbon generation.[56] The need for negative emissions to offset residual emissions through BECCS, might provide a case for baseload deployment. In addition, the amount of bioenergy for generating electricity will be constrained by the availability of sustainable biomass and the extent to which it may be more cost effective in decarbonising other sectors (such as heat and transport) over the long-term.

Natural gas-fired plants

3.3.44 Combined Cycle Gas Turbines (CCGTs) using natural gas can be equipped with CCS which is intended to reduce emissions compared to unabated gas-fired plants by 90 per cent or more. Although they can provide flexible generation that is able to ramp up or down to meet demand, they are unable to provide the quick start peaking capacity which is required in a low carbon system.

3.3.45 Power CCUS has not been deployed in the UK to date and although the barriers to deployment are commercial rather than technical, it is reliant on the availability of infrastructure for the transportation and storage of CO_2. To realise the potential of power CCUS government will implement the Dispatchable Power Agreement and seek to bring forward at least one power CCUS plant in the mid 2020s through the CCUS Cluster Sequencing Process, subject to the outcome of that process including value for money and affordability considerations.

3.3.46 CCS may be able to be applied to technologies such as Open Cycle Gas Turbines (OCGTs), or reciprocating engines using natural gas but would reduce their ability to provide quick start peaking capacity. Whilst this is currently the way we secure domestic quick start peaking capacity at scale, the emissions they produce means that their role will need to be reduced over time as they transition or are replaced by low-carbon options, such as turbines fuelled with low carbon hydrogen or long-duration storage.

3.3.47 Quick start peaking capacity is only used infrequently, i.e. when it is necessary for security of supply, but may need to produce large amounts of electricity for short periods. Therefore, whilst the annual output (and therefore any associated emissions) is expected to be small, there may be a requirement for significant amounts of capacity to ensure a secure, reliable, and affordable electricity system.

3.3.48 Although the expectation is that low carbon alternatives will be able to replicate the role of natural gas in the electricity system over time, some natural gas-fired generation without CCS, running very infrequently, may still be needed for

[56] See Biomass Policy Statement available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1031057/biomass-policy-statement.pdf

affordable reliability even in 2050. This can still be net zero consistent if the emissions from their use are balanced by negative emissions from GGR technologies.

Hydrogen

3.3.49 Low carbon hydrogen could be capable of replicating the role of natural gas in the electricity system, including providing both firm, flexible capacity in the future and a decarbonisation route for unabated combustion power plants. The British Energy Security Strategy[57] sets out our ambition for up to 10GW of low carbon hydrogen production capacity by 2030, subject to affordability and value for money, at least half of which will come from electrolytic hydrogen, working with industry to develop a strong and enduring UK hydrogen economy. The Impact Assessment for CB6 shows an illustrative range for low carbon hydrogen of 85-125TWh in 2035 and 250-460TWh in 2050.

3.3.50 Government is committed to provide more information on hydrogen to power, relevant to planning, including through guidance documents where appropriate. There is ongoing work from the government to address concerns about the planning processes for nationally significant hydrogen infrastructure and we will continue to monitor and assess the value of a hydrogen NPS as policy develops over time.

The role of nuclear power

3.3.51 Nuclear fission already provides the UK with continuous, reliable, safe low-carbon power. Nuclear plants produce no direct emissions during operation and have indirect life cycle GHG emissions comparable to offshore wind. Power stations with an estimated lifetime of 60 years provide large amounts of low carbon electrical power, using a relatively small amount of land.[58] Nuclear, alongside other technologies could also offer broader system benefits, such as low carbon hydrogen production through electrolysis, or low carbon heat. In addition, nuclear generation provides security of supply benefits by utilising an alternative fuel source to other thermal plants, with a supply chain independent from gas supplies.

3.3.52 Our analysis suggests additional nuclear beyond Hinkley Point C will be needed to meet our energy objectives.[59] Nuclear technology is developing and opportunities for flexible use may grow as the energy landscape evolves. The role of nuclear power could be fulfilled by large-scale nuclear fission, Small Modular Reactors, Advanced Modular Reactors, and fusion power plants.

[57] See https://www.gov.uk/government/publications/british-energy-security-strategy/british-energy-security-strategy
[58] Missing Link to a Liveable Climate, Lucid Catalyst, 2020 See https://www.lucidcatalyst.com/hydrogen-report
[59] Development Consent Order for Sizewell C was granted on 20 July 2022. See https://infrastructure.planninginspectorate.gov.uk/projects/eastern/the-sizewell-c-project/

3.3.53 As outlined in the British Energy Security Strategy[60], the government is increasing our plans for deployment of civil nuclear power by 2050s. To facilitate this, government has set out a number of nuclear ambitions, including developing an overall siting strategy for the long term, which could include both GW-scale and advanced fission technologies. This will inform the development of a new Nuclear NPS for the deployment of nuclear power stations after 2025.

The role of hydropower and marine technologies

3.3.54 Hydropower can provide relatively predictable and, in some cases, flexible low carbon generation but total capacity is limited by the topography of the UK. Wave and tidal can also provide relatively predictable low carbon power and could play a role in future if their costs can be reduced. However, total capacity is limited for tidal power and wave power is very closely correlated with wind.

3.3.55 These technologies, as with most other renewables, help provide security of supply as they are not reliant on fuel for generation and can improve reliability where they are not correlated with wind and solar.

3.3.56 However, due to limitations on the total capacity that could be installed, as they may not always be able to provide electricity when there is low output from wind and solar and their current costs, further additional forms of generating capacity will be required to meet our energy objectives.

The need for electricity generating capacity

3.3.57 Government has committed to reduce GHG emissions by 78 per cent by 2035 under carbon budget 6.[61] According to the Net Zero Strategy[62] this means that by 2035, all our electricity will need to come from low carbon sources, subject to security of supply, whilst meeting a 40-60 per cent increase in demand.

3.3.58 Given the urgent need for new electricity infrastructure and the time it takes for electricity NSIPs to move from design conception to operation, there is an urgent need for new (and particularly low carbon) electricity NSIPs to be brought forward as soon as possible, given the crucial role of electricity as the UK decarbonises its economy.

3.3.59 All the generating technologies mentioned above are urgently needed to meet the government's energy objectives by:

- providing security of supply (by reducing reliance on imported oil and gas, avoiding concentration risk and not relying on one fuel or generation type)

[60] See https://www.gov.uk/government/publications/british-energy-security-strategy/british-energy-security-strategy
[61] https://www.gov.uk/guidance/carbon-budgets#setting-of-the-sixth-carbon-budget-2033-2037
[62] See https://www.gov.uk/government/publications/net-zero-strategy

- providing an affordable, reliable system (through the deployment of technologies with complementary characteristics)
- ensuring the system is net zero consistent (by remaining in line with our carbon budgets and maintaining the options required to deliver for a wide range of demand, decarbonisation and technology scenarios, including where there are difficulties with delivering any technology)

3.3.60 Known generation technologies that are included within the scope of this NPS (and would be classed as an NSIP if above the relevant capacity thresholds set out under the Planning Act 2008) include:

- Offshore Wind (including floating wind)
- Solar PV
- Wave
- Tidal Range
- Tidal Stream
- Pumped Hydro
- Energy from Waste (including ACTs) with or without CCS
- Biomass with or without CCS
- Natural Gas with or without CCS
- Low carbon hydrogen
- Large-scale nuclear, Small Modular Reactors, Advanced Modular Reactors, and fusion power plants
- Geothermal

3.3.61 The need for all these types of infrastructure is established by this NPS and a combination of many or all of them is urgently required for both energy security and Net Zero, as set out above.

3.3.62 Government has concluded that there is a critical national priority (CNP) for the provision of nationally significant low carbon infrastructure. Section 4.2 states which energy generating technologies are low carbon and are therefore CNP infrastructure.

3.3.63 Subject to any legal requirements, the urgent need for CNP Infrastructure to achieving our energy objectives, together with the national security, economic, commercial, and net zero benefits, will in general outweigh any other residual impacts not capable of being addressed by application of the mitigation

hierarchy. Government strongly supports the delivery of CNP Infrastructure and it should be progressed as quickly as possible.

3.3.64 Other novel technologies or processes may emerge during the life of this NPS, which are nationally significant and can help deliver our energy objectives. Where these deliver on our objectives, then such technologies or processes can be regarded as needed, and as such should be given substantial weight. See section 3.2 above.

The need for new electricity networks

3.3.65 There is an urgent need for new electricity network infrastructure to be brought forward at pace to meet our energy objectives.

3.3.66 The security and reliability of the UK's current and future energy supply is highly dependent on having an electricity network which will enable new renewable electricity generation, storage, and interconnection infrastructure that our country needs to meet the rapid increase in electricity demand required to transition to net zero while maintaining energy security. The delivery of this important infrastructure also needs to balance cost to consumers, accelerated timelines for delivery and the minimisation of community and environmental impacts.

3.3.67 The need to connect to new sources of electricity generation and new sources of demand is not the only driver for new electricity network infrastructure. As the electricity system grows in scale, dispersion, variety, and complexity, work will be needed to protect against the risk of large-scale supply interruptions in the absence of sufficiently robust electricity networks. While existing transmission and distribution networks must adapt and evolve to cope with this reality, development of new lines of 132kV (and over 2km) and above will also be necessary to preserve and guarantee the robust and reliable operation of the whole electricity system.

3.3.68 The volume of onshore reinforcement works needed to meet decarbonisation targets is substantial. National Grid ESO forecasts that over the next decade the onshore and offshore transmission network, some of which is located offshore will require a doubling of north-south power transfer capacity due to increased wind generation in Scotland; substantial reinforcement in the Midlands to accommodate increased power flows from Scotland and the North of England; substantial reinforcement in London and the South of England to allow for Europe-bound export of excess wind generation from Scotland and the North of England, as well as the importation of energy from Europe to increase resilience during any periods which may be affected by intermittent energy generation mix and as part of the country's transition to increased energy security; and substantial reinforcement in East Anglia to handle increased power flows from

offshore wind generation[63] (this may also require additional offshore connections coming to land in England).

3.3.69 It is important to note that the crucial national benefits of increased system robustness through new electricity network infrastructure projects are shared by all users of the system.

3.3.70 As all new grid projects have a role in efficiently constructing, operating and connecting low carbon infrastructure to the National Electricity Grid, the scope of networks CNP infrastructure is not limited to those associated specifically with a particular project.

3.3.71 The historical approach to connecting offshore wind resulted in individual radial connections developed project-by-project. This may continue to be the most appropriate approach for some areas with single offshore wind projects that are not located in the vicinity of other offshore wind and / or offshore infrastructure that is planned or foreseen in the near future. For regions with multiple windfarms or offshore transmission projects it is expected that a more coordinated approach will be delivered. For these areas, this approach is likely to reduce the network infrastructure costs as well as the cumulative environmental impacts and impacts on coastal communities by installing a smaller number of larger connections, each taking power from multiple windfarms instead of individual point-to-point connections for each windfarm.

3.3.72 Connecting the volume of offshore wind capacity targeted by the government will require not only new offshore transmission infrastructure but also reinforcement to the onshore transmission network, to accommodate the increased power flows to regional demand centres.

3.3.73 Due to the time required to plan, approve and construct the required new onshore transmission infrastructure, to date the completion of these onshore reinforcements has often taken longer than the completion of the offshore wind farms for which they are being built. This could present a material barrier to the delivery of UK Government ambition to deliver up to 50GW of offshore wind by 2030.

3.3.74 The strategic approach to network planning, including the Holistic Network Design (HND) for onshore-offshore transmission, planned HND follow-on exercises and the proposed move to Centralised Strategic Network Planning for the onshore-offshore network, allows for clearer identification of needs and includes upfront consideration of environmental and community impacts. Government recognises the work undertaken in these strategic network planning exercises and these should be an important and relevant consideration in the consenting process. This recognition of the network designs seeks to directly

[63] National Grid ESO, Electricity Ten Year Statement (October 2020)

support progress of projects identified within the designs as they are brought forward for consent. Further details are provided in Section 2.8 and 2.13 of EN-5.

3.3.75 The final Phase 1 report for National Grid ESO's Offshore Coordination Project (published December 2020)[64] found that a more integrated approach to offshore transmission, which included efficient planning of the onshore network, could deliver consumer benefits of up to £6 billion by 2050, depending on how quickly it could be implemented. It also found that the number of new electricity infrastructure assets, including cables and onshore landing points could be reduced by up to 50 per cent over the same period, significantly reducing environmental impacts and impacts on coastal communities.

3.3.76 Multi-purpose interconnector projects also have the potential to deliver benefits by combining offshore transmission with market-to-market interconnectors – enabling reduced curtailment of offshore wind, and reduced landing points and capital expenditure. These benefits can be maximised if the planning of this infrastructure and the associated offshore wind farms are aligned, both domestically and with the connecting country's planning process.

3.3.77 Offshore wind and multi-purpose interconnector projects may have several consenting links: offshore wind and multi-purpose interconnector projects may be consented separately, and it is likely that development consent applications for offshore wind or multi-purpose interconnector projects may not include an application for consent for the full chain of consents (including connection to the grid). However, development consent applications should include details of how connected infrastructure will be consented, how cumulative impacts will be assessed and whether any necessary consents, permits and licences have been obtained.

3.3.78 Further to the needs case above, it is recognised that the case for a new connection or network reinforcement is demonstrated if the proposed development represents an efficient and economical means of:

- connecting a new generating station or storage facility to the network
- reinforcing the network to accommodate such connections, or
- reinforcing the network to ensure that it is sufficiently resilient and capacious (per any performance standards set by Ofgem) to reliably supply present and/or anticipated future levels of demand.

In considering the 'economic and efficient' approach the network project needs to follow good design, avoidance and mitigation principles (and / or biodiversity compensation where needed for transmission in the marine environment), as referenced in EN-5.

[64] See https://www.nationalgrideso.com/document/183031/download

3.3.79 Moreover, given the crucial role of networks in connecting all of the other kinds of electricity infrastructure described above, it is especially important that the Secretary of State considers network projects as elements of a coherent and strategically necessary system, whether or not they are linked together in specific NSIPs. For instance, when evaluating applications for new electricity networks infrastructure the Secretary of State should have regard to the fact that given,

i) the government's strategic commitment to ambitious levels of interconnection capacity and offshore wind generation, and

ii) the tightly interdependent infrastructure chain linking interconnection and offshore generation with onshore demand centres,

delays in the approval of associated new network developments could cause significant economic waste and set back the strategically vital goals of decarbonisation and energy security.

3.3.80 Related to the above and considering the potential for unwarranted and avoidable disruption, inefficiency, and visual impacts along the onshore - offshore boundary, coordination of onshore transmission, offshore transmission, and offshore generation and interconnector developments should be considered at both the strategic and more detailed project design levels. This coordinated approach is likely to provide the highest degree of consumer, environmental, and community benefits.

3.3.81 The importance of accelerating coordination does not, however, militate against the need for standalone electricity networks projects, and these projects are supported by this NPS and should continue to be assessed on their own merits.

3.3.82 Government has committed to reduce GHG emissions by 78 per cent by 2035 under CB6.[65] According to the Net Zero Strategy[66] this means that by 2035, all our electricity will need to come from low carbon sources, subject to security of supply, whilst meeting a 40-60 per cent increase in demand.

3.3.83 Given the urgent need for new electricity infrastructure and the time it takes for electricity NSIPs to move from design conception to operation, there is an urgent need for new (and particularly low carbon) electricity NSIPs to be brought forward as soon as possible, given the crucial role of electricity as the UK decarbonises its economy.

[65] https://www.gov.uk/guidance/carbon-budgets#setting-of-the-sixth-carbon-budget-2033-2037
[66] See https://www.gov.uk/government/publications/net-zero-strategy

3.4 The need for new nationally significant gas infrastructure

3.4.1 Gaseous fuels have a key role in the UK energy landscape, accounting for around 30 per cent of UK energy production in 2020, and 40 per cent of demand.[67] [68]

3.4.2 They are used in the domestic sector for heating and cooking, in the industrial sector, as a source of energy and as a feedstock, and in the power generation sector, as a reliable source of flexible generating capacity.

3.4.3 In this section gas, unless otherwise specified, includes natural gas, biomethane and hydrogen.

3.4.4 We need a diverse mix of gas supply infrastructure including pipelines, storage and reception facilities in order to meet our energy objectives. Our gas infrastructure must, amongst other things, be sufficient to:

- meet 'peak' demand for gas. Gas market participants may aim to have some 'redundancy' in their supply arrangements, above the minimum amount to meet peaks, to manage the risk that other capacity may not be available (for example, where undergoing maintenance)
- allow for a sustained delivery of large volumes of gas, for example, demand over a particularly cold winter
- provide access to the most competitive gas supplies, because the price of gas sources will vary over time, this leads to some redundancy in gas supply infrastructure. Market participants may therefore see distinct value in having access to gas from different sources.)

Meeting ongoing demand for natural gas

3.4.5 The Energy White Paper[69] signals a decisive shift away from unabated natural gas to clean energy. This transformation, as reiterated in the British Energy Security Strategy[70], cannot be instantaneous without jeopardising a secure, reliable, and affordable energy system.

3.4.6 Security of supply is a top priority as the UK moves to decarbonise gas supply. The gas system is expected to continue to function well, as it has done to date,

[67] UK gas demand decreased 6 per cent in 2020 compared to 2019, following several years of stable demand and was largely a result of restrictions in place to curb the Covid-19 pandemic.
[68] Digest of UK Energy Statistic: Chapter 4 – Natural Gas See https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1060151/DUKES_2021_Chapters_1_to_7.pdf
[69] See https://www.gov.uk/government/publications/energy-white-paper-powering-our-net-zero-future
[70] See https://www.gov.uk/government/publications/british-energy-security-strategy/british-energy-security-strategy

with a highly diverse range of supply sources and sufficient delivery capacity to more than meet demand. As we decarbonise gas, the UK will consider all options to help us achieve the most climate impact at least cost, while maintaining a secure system.

3.4.7 Building on commitments in the North Sea Transition Deal[71], we will significantly reduce emissions from traditional oil and gas fuel supplies, whilst scaling-up the production of low carbon alternatives such as hydrogen and biofuels. Current gas prices spikes underline the need to move away from hydrocarbons as quickly as possible, but we will manage the transition in a way that protects jobs and investment, uses existing infrastructure, maintains security of supply, and minimises environmental impacts.

3.4.8 Assumed energy demand in our pathway is based on government's central assumptions about required technology uptake, with a variation to reflect the outstanding strategic decision on the potential role of hydrogen to heat buildings. We expect demand for oil and natural gas to decline while overall, energy demand reduces significantly through increased efficiency and fossil fuels are replaced by new sources of energy.

3.4.9 We continue to work with the gas industry to seek views which will inform future policies (supported by a call for evidence), on the future of the gas system, with a focus on infrastructure and markets. This will enable us to determine how the gas market will need to evolve to ensure the right market and regulatory signals are in place to offer the necessary level of investment and maintenance throughout the transition. Gathering evidence on the amount of natural gas, biomethane, and hydrogen available and the ongoing role for gas will inform what action we must take.

Delivering affordable decarbonisation

3.4.10 Where low carbon alternatives can replace unabated natural gas, we will still need new gas infrastructure. Given the changing nature of the energy landscape, we cannot be certain on the precise role of natural gas, or gas infrastructure, in the future.

3.4.11 This means retaining the capability for using natural gas for low carbon dispatchable output in power stations equipped with CCS and as a feedstock for low carbon hydrogen production. Natural gas infrastructure might also be repurposed in the future for use by other gases required to deliver a net zero economy, such as low carbon hydrogen or for transportation of carbon dioxide to storage. Therefore, there is an ongoing need for retaining and developing the infrastructure for importing, storing and transporting gas.

[71] See https://www.gov.uk/government/publications/north-sea-transition-deal

The need for low carbon hydrogen infrastructure

3.4.12 There is an urgent need for all types of low carbon hydrogen infrastructure to allow hydrogen to play its role in the transition to net zero.

3.4.13 As set out in the UK Hydrogen Strategy[72], the government is committed to developing low carbon hydrogen, which will be critical for meeting the UK's legally binding commitment to achieve net zero by 2050, with the potential to help decarbonise vital UK industry sectors and provide flexible deployment across heat, power and transport.

3.4.14 The British Energy Security Strategy[73] doubles the ambition set out by the Hydrogen Strategy for up to 10GW of low carbon hydrogen production capacity by 2030, subject to affordability and value for money, at least half of which will come from electrolytic hydrogen, working with industry to develop a strong and enduring UK hydrogen economy. The Impact Assessment for CB6 shows an illustrative range for low carbon hydrogen of 85-125TWh in 2035 and 250-460TWh in 2050. This demand for hydrogen will need the infrastructure that supports it, including pipelines and storage.

3.4.15 Hydrogen can be produced through water electrolysis with low carbon power ('green' hydrogen) or through methane reformation with CCS ('blue' hydrogen). The government's view is that a twin track approach of developing both green and blue hydrogen production will be needed to achieve the scale of low carbon hydrogen production required for net zero.

3.4.16 The Government is exploring whether to enable blending of up to 20% hydrogen by volume into the current natural gas distribution networks and is targeting a policy decision in 2023, subject to the outcomes from the ongoing economic and safety assessments and wider strategic considerations. If the decision to proceed with blending is positive, the Government will then look to start the legislative and regulatory process for enabling blending, as well as the process to make any physical changes to the distribution networks that are required. Given the timelines for this work, government does not anticipate blending at a commercial scale to commence before 2025, at the earliest.

3.4.17 The Government recognises the potential market building role of blending to help manage volume risk to hydrogen producers facing volatile or temporarily unavailable demand, as well as to bridge any potential gap whilst hydrogen transport and storage infrastructure develops. However as set out in our Hydrogen Strategy[74], use of hydrogen is most valuable where other routes to decarbonisation do not exist or are limited, particularly where direct electrification

[72] See https://www.gov.uk/government/publications/uk-hydrogen-strategy
[73] See https://www.gov.uk/government/publications/british-energy-security-strategy/british-energy-security-strategy
[74] See https://www.gov.uk/government/publications/uk-hydrogen-strategy

is not an option. Therefore, we will be looking to ensure that blending does not displace the supply of hydrogen to those end users who require it to decarbonise. This is likely to be reflected in the design of any potential financial support that is available for hydrogen producers for blended volumes. More work is also required to prove the safety and feasibility case, and to better understand the costs and benefits, of repurposing the gas grid to 100 per cent low carbon hydrogen. The Department for Energy Security and Net Zero (DESNZ) is currently working with industry stakeholders to ensure that all necessary research and development, testing and trialling work required is carried out. The Hydrogen Strategy[75] also provides further information on our approach.

3.4.18 In the future, low carbon hydrogen may also become an internationally traded energy vector, piped or shipped from areas of low-cost production to areas of demand. While the development of this market is uncertain, the UK could become both an exporter and importer of low carbon hydrogen, potentially necessitating current gas infrastructure to be reconfigured or for new infrastructure to be put in place. As set out in the British Energy Security Strategy[76], there is a commitment to develop a certification scheme to support the international trade in low carbon hydrogen, by 2025.

3.4.19 The Hydrogen Strategy[77] recognises the critical enabling role that hydrogen transportation and storage (T&S) infrastructure will need to play in connecting hydrogen producers with consumers and balance misalignment in supply and demand. It committed government to undertaking a review of T&S requirements to support its ambitions, including the need for financial and regulatory support. Following feedback sought at the start of this review, the British Energy Security Strategy[78] sets out a commitment to design new business models for hydrogen T&S infrastructure by 2025, which will be essential to grow the hydrogen economy.

3.4.20 New hydrogen pipelines and underground storage for hydrogen (in both cases whether or not blended with natural gas) will require consent from the Secretary of State where they meet the definitions in sections 15-21 of the Planning Act 2008.

3.4.21 In considering applications, the Secretary of State will expect applicants to consider foreseeable future demand when considering the size and route of their investments. Applicants may therefore propose pipelines with a greater capacity than demand might suggest at the time of consenting. Existing legislation (The Offshore Petroleum Production and Pipe-lines (Assessment of Environmental

[75] See https://www.gov.uk/government/publications/uk-hydrogen-strategy
[76] See https://www.gov.uk/government/publications/british-energy-security-strategy/british-energy-security-strategy
[77] See https://www.gov.uk/government/publications/uk-hydrogen-strategy
[78] See https://www.gov.uk/government/publications/british-energy-security-strategy/british-energy-security-strategy

Effects) Regulations 1999) already provides powers to require modification of pipelines where this would reduce the need for additional pipelines to be constructed in the future.

3.4.22 To support the urgent need for low carbon hydrogen infrastructure, hydrogen distribution, pipelines and storage, are considered to be CNP Infrastructure.

The role of biomethane

3.4.23 As of January 2021, biomethane is the only green gas commercially produced in the UK, and can be injected into the gas grid, following suitable upgrading processes, for use as a lower carbon substitute for natural gas. As of April 2022, the Renewable Heat Incentive (RHI) had supported the deployment of 163 biomethane plants (143 Full applications and 20 Tariff Guarantee ones, with another 11 Tariff Guarantee applications outstanding) and had supported (paid for) 18,490 GWh of biomethane since the scheme launched in 2011[79]. The reasons for this small uptake include the high capital required for biomethane plants, access to gas injection points and lack of feedstock availability.

3.4.24 The government's soon to be launched Green Gas Support Scheme (GGSS)[80] will also help decarbonise our gas supplies by increasing the proportion of green gas in the grid, through support for biomethane injection. We expect the GGSS will contribute 3.7MtCO_{2e} of carbon savings over Carbon Budgets 4 and 5, and 8.2MtCO_{2e} of carbon savings over its lifetime.

3.4.25 Some models are being trialled to overcome these barriers, such as a number of smaller anaerobic digestion (AD) facilities in rural areas feeding their biomethane into a single injection point on the gas grid. However, it is currently not seen as a stand-alone solution for gas decarbonisation.

Alternatives to new gas infrastructure

Heat networks

3.4.26 Heat networks are systems of insulated pipes that take heat from a central source and supply it, as hot water, to residential, commercial and public sector buildings to provide hot water, space heating and/or cooling.

3.4.27 Heat networks are a crucial technology for decarbonising the UK's heating, particularly in dense urban areas. They are uniquely able to unlock otherwise inaccessible sources of larger scale renewable and recovered heat such as waste heat and heat from waterways and mines. By using recovered heat from industry, geothermal energy and power generation, and accessing sources of

[79] Non-Domestic and Domestic Renewable Heat Incentive (RHI) monthly deployment data (Great Britain): April 2022, table 1.1, 1.5 and 1.6. See https://www.gov.uk/government/statistics/rhi-monthly-deployment-data-april-2022

[80] See https://www.gov.uk/government/consultations/future-support-for-low-carbon-heat

ambient heat, heat networks can reduce overall production requirements for gas, as well as offering a way of storing and balancing energy needs overall. In parts of the UK, heat networks will represent a lower cost route to decarbonisation than alternatives such as repurposing the gas network for low carbon hydrogen.

3.4.28 However, although heat networks can play a key role in decarbonising heating, they cannot fully replace the need for new gas infrastructure to supply areas without heat networks or to transport gas for the other purposes set out in this section. Heat networks currently supply around 2 per cent of the UK's heat supply.

Electrification and Energy Efficiency Measures

3.4.29 As discussed in paragraph 3.3.3, increased electrification of heat, combined with energy efficiency measures, could reduce the need for gas infrastructure but such infrastructure will still be required during the transition to net zero to ensure security of our energy supplies. It is prudent to plan on a conservative basis to ensure that there is sufficient supply of energy to meet demand across a wide range of future scenarios.

Demand Side Response

3.4.30 Demand side response allows large gas consumers to reduce the amount of gas they use during times of system stress in exchange for a payment. However, it cannot increase the total amount of gas available in the UK, or significantly reduce the total amount of gas consumed, and so cannot fully replace the need for new gas infrastructure to deliver our energy objectives.

3.5 The need for new nationally significant carbon capture and storage infrastructure

3.5.1 There is an urgent need for new carbon capture and storage (CCS) infrastructure to support the transition to a net zero economy.

3.5.2 The Climate Change Committee states that CCS is a necessity not an option.[81] As well as its role in reducing emissions associated with generating electricity from natural gas (see paragraph 3.3.44), CCS infrastructure will also be needed to capture and store carbon dioxide from hydrogen production from natural gas, industrial processes, the use of BECCS and DACCS. CCS infrastructure could be new or repurposed infrastructure.

[81] *Net Zero: The UK's contribution to stopping global warming*, p.23. See https://www.theccc.org.uk/wp-content/uploads/2019/05/Net-Zero-The-UKs-contribution-to-stopping-global-warming.pdf

3.5.3 The UK's Net Zero Strategy[82] and Industrial Decarbonisation Strategy[83] reaffirm the importance of CCS in decarbonising energy intensive sectors such as chemicals, oil refining, and cement. The International Energy Agency[84] further reinforce the need for CCS in the clean energy transition.

3.5.4 As set out in the Net Zero Strategy[85], our aim is to use CCUS technology to capture and store 20-30MtCO_2 per year by 2030, which will require the timely development and deployment of CCS infrastructure.

3.5.5 The UK has one of the largest potential carbon dioxide (CO_2) storage capacities in Europe, with an estimated 78 billion tonnes of CO_2 storage capacity under the seabed of the UKCS.

3.5.6 The deployment of new onshore CO_2 pipelines over 16.093 kilometres in length can expand CCS networks and are within scope of this NPS.

3.5.7 The CCUS investor roadmap[86] and CCUS supply chains roadmap[87] sets out how government and industry can work together to harness the power of a strong, industrialised UK CCUS supply chain, while ensuring that the CCUS sector as a whole remains investible, cost effective and focused on delivery.

3.5.8 To support the urgent need for new CCS infrastructure, CCS technologies, pipelines and storage infrastructure are considered to be CNP infrastructure.

Alternatives to new CCS infrastructure

3.5.9 The alternatives to new CCS infrastructure for delivering net zero by 2050 are limited. Producing hydrogen through water electrolysis with low carbon power ('green' hydrogen) does not rely on CCS but the government's view is that this method alone will not achieve the scale of low carbon hydrogen production required for net zero. Alternative methods of decarbonising industry include improving energy efficiency, electrification of heat, and fuel switching to hydrogen or biomass as fuel or feedstock. However, these alternatives are limited as many emissions are process emissions. CCS therefore has an essential role to play, either on its own or in combination with measures such as electrification and fuel switching.

[82] See https://www.gov.uk/government/publications/net-zero-strategy
[83] See https://www.gov.uk/government/publications/industrial-decarbonisation-strategy
[84] See https://www.iea.org/reports/ccus-in-clean-energy-transitions/a-new-era-for-ccus
[85] See https://www.gov.uk/government/publications/net-zero-strategy
[86] See https://www.gov.uk/government/publications/carbon-capture-usage-and-storage-ccus-investor-roadmap
[87] See https://www.gov.uk/government/publications/carbon-capture-usage-and-storage-ccus-supply-chains-a-roadmap-to-maximise-the-uks-potential

3.6 The need for new nationally significant oil infrastructure

3.6.1 Oil products play an important role in the UK economy, providing around one third of the primary energy used. We currently rely on oil for over 95 per cent of our motorised transport needs.[88] Transport accounted for more than 70 per cent of final consumption of oil products in the UK in 2021, amounting to 37.7 million tonnes of oil[89], although the figures for both 2020 and 2021 were depressed by the impacts of Covid-19 and preliminary figures for early 2022 show that demand continues to rebound somewhat.

3.6.2 We need to reduce our dependence on oil by improving vehicle efficiency and using new alternative fuelled vehicles. From 2030 we will end the sale of new petrol and diesel cars and vans, 10 years earlier than previously proposed. However, until 2035 we will allow the sale of hybrid cars and vans that can drive a significant distance with no carbon coming out of the tailpipe. However, between 2030 and 2035, we will only allow the sale of new cars and vans if they have significant zero emission capability.

3.6.3 Transport is the largest share of demand for fuel but there are other uses which are important to the UK economy and life, including non-energy uses and the use of oils and liquefied petroleum gas for heating.

3.6.4 Over time technology changes, including electric vehicles and the generation of more heat from low carbon sources, together with energy efficiency policies such as seeking to encourage greater use of public transport will reduce demand for oil.

3.6.5 The technology to decarbonise light road transport is now being rolled out but the way forward for heavier road transport, shipping and aviation is not yet clear with several options, including electricity, low carbon hydrogen and low carbon fuels, still being developed.

3.6.6 Although analysis from the CCC suggests that demand for petroleum could reduce by 50 per cent by 2035, there will be an ongoing demand for oil-based fuels over the transition to net zero as the changes in demand will be slower than the changes in sales of new vehicles and until low carbon alternatives for heavier transport, shipping and aviation are developed.

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[88] From table 1.1 of Digest of United Kingdom Energy Statistics (DUKES) 2022: aggregate energy balances: gross calorific values, available at: https://www.gov.uk/government/publications/digest-of-uk-energy-statistics-dukes-table-of-tables

[89] From table 3.2 of Digest of United Kingdom Energy Statistics (DUKES) 2022: petroleum products: commodity balances, available at: https://www.gov.uk/government/publications/digest-of-uk-energy-statistics-dukes-table-of-tables

3.6.7 The UK needs to ensure it has safe and secure supplies of the oil products it requires. Sufficient fuel and infrastructure capacity are necessary to avoid socially unacceptable levels of interruption to physical supply and excessive costs to the economy from unexpectedly high or volatile prices. These requirements can be met by sufficient, diverse and reliable supplies of fuel, with adequate capacity to import, produce, store and distribute these supplies to customers. This in turn highlights the need for reliable infrastructure including refineries, pipelines and import terminals and the need for flexibility in the supply chain to accommodate the inevitable risk of physical outages.

3.6.8 The UK has been a net importer of petroleum products since 2013, driven by continued rationalisation of the UK's refining capacity. However, the balance of import and export varies by product and region and this will continue to evolve as demand and supply adjust during the transition to a net zero carbon economy over forthcoming decades.

Petroleum product distribution

The Secretary of State should expect to receive a small number of significant applications for oil pipelines. The drivers for new downstream oil infrastructure such as pipelines and associated facilities include:

- meeting demand by end users, particularly for aviation fuel
- compliance with International Energy Agency obligations for compulsory oil stocking, which are set to increase as North Sea resources decline
- meeting requirements for lower emission fuels blended with biofuels (including ethanol), which are set to increase
- increasing imports of refined products (due to changing demand and supply patterns)
- replacing end of life assets and adjusting their design to meet new, safety, environmental or efficiency objectives
- emerging planning, safety and environmental protection requirements
- market requirements to improve supply resilience in order to meet demand in full, in a timely fashion, under credible emergency scenarios

3.6.9 New pipeline infrastructure could require associated works including oil processing plant to pump or filter blend products, storage tanks for bulk storage and product settling, road handling facilities for discharge into road tankers and jetties for loading and offloading sea tankers.

4 Assessment Principles

4.1 General Policies and Considerations

4.1.1 This part of EN-1, Assessment Principles, sets out the general policies for the submission and assessment of applications relating to energy infrastructure.

4.1.2 The Energy White Paper[90] and British Energy Security Strategy[91] emphasises the importance of the government's net zero commitment and efforts to fight climate change, as well as the need to maintain a secure and reliable energy system. The Levelling Up White Paper[92] calls on the Government to ensure investment in the transition to Net Zero benefits less well-performing parts of the UK, reducing emissions, facilitating economic development and the creation of jobs[93].

4.1.3 Given the level and urgency of need for infrastructure of the types covered by the energy NPSs set out in Part 3 of this NPS, the Secretary of State will start with a presumption in favour of granting consent to applications for energy NSIPs. That presumption applies unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused.

4.1.4 The presumption is also subject to the provisions of the Planning Act 2008 referred to at paragraph 1.1.4 of this NPS.

Weighing impacts and benefits

4.1.5 In considering any proposed development, in particular when weighing its adverse impacts against its benefits, the Secretary of State should take into account:

- its potential benefits including its contribution to meeting the need for energy infrastructure, job creation, reduction of geographical disparities, environmental enhancements, and any long-term or wider benefits
- its potential adverse impacts, including on the environment, and including any long-term and cumulative adverse impacts, as well as any measures to avoid, reduce, mitigate or compensate for any adverse impacts, following the mitigation hierarchy

[90]See https://www.gov.uk/government/publications/energy-white-paper-powering-our-net-zero-future
[91] See https://www.gov.uk/government/publications/british-energy-security-strategy/british-energy-security-strategy
[92] See https://www.gov.uk/government/publications/levelling-up-the-united-kingdom
[93] For infrastructure in Wales, see https://www.gov.wales/future-wales-national-plan-2040-0
https://www.gov.wales/net-zero-wales
https://www.gov.wales/prosperity-all-climate-conscious-wales

4.1.6 In this context, the Secretary of State should take into account environmental, social and economic benefits and adverse impacts, at national, regional and local levels. These may be identified in this NPS, the relevant technology specific NPS, in the application or elsewhere (including in local impact reports, marine plans[94], and other material considerations as outlined in Section 1.1).

4.1.7 Where this NPS or the relevant technology specific NPSs require an applicant to mitigate a particular impact as far as possible, but the Secretary of State considers that there would still be residual adverse effects after the implementation of such mitigation measures, the Secretary of State should weigh those residual effects against the benefits of the proposed development. For projects which qualify as CNP Infrastructure, it is likely that the need case will outweigh the residual effects in all but the most exceptional cases. This presumption, however, does not apply to residual impacts which present an unacceptable risk to, or interference with, human health and public safety, defence, irreplaceable habitats or unacceptable risk to the achievement of net zero. Further, the same exception applies to this presumption for residual impacts which present an unacceptable risk to, or unacceptable interference offshore to navigation, or onshore to flood and coastal erosion risk.

Land rights

4.1.8 Where the use of land at a specific location is required to facilitate the development by providing for mitigation and landscape enhancement, an applicant may, as part of its application to the Secretary of State, seek the compulsory acquisition of that land, or rights over that land.

4.1.9 The Secretary of State will consider any such application under the usual compulsory acquisition principles, taking into account the content of the NPSs.

Other documents

4.1.10 The policy set out in this NPS and the technology specific energy NPSs is intended to provide greater clarity around existing policy and practice of the Secretary of State in considering applications for nationally significant energy infrastructure, (or therefore the “benchmark” for what is, or is not, an acceptable nationally significant energy development).

[94] In Wales, the Welsh National Marine Plan sets out Welsh Ministers’ expectations that nationally significant infrastructure projects contribute to the well-being of Welsh communities and the sustainable management of natural resources and should seek to deliver lasting legacy benefits for the local community, the economy and the environment.

4.1.11 The energy NPSs have taken account of the National Planning Policy Framework (NPPF), the Planning Practice Guidance for England, and Planning Policy Wales and Technical Advice Notes (TANs) for Wales, where appropriate.[95]

4.1.12 Other matters that the Secretary of State may consider both important and relevant to their decision-making may include Development Plan documents or other documents in the Local Development Framework.

4.1.13 Where the project conflicts with a proposal in a draft Development Plan, the Secretary of State should take account of the stage which the Development Plan document in England or Local Development Plan in Wales has reached in deciding what weight to give to the plan for the purposes of determining the planning significance of what is replaced, prevented, or precluded.

4.1.14 The closer the Development Plan document in England or Local Development Plan in Wales is to being adopted by the LPA, the greater weight which can be attached to it.

4.1.15 In the event of a conflict between these documents and an NPS, the NPS prevails for the purpose of Secretary of State decision making given the national significance of the infrastructure.

Development consent

4.1.16 The Secretary of State should only impose requirements[96] in relation to a development consent that are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects.

4.1.17 The Secretary of State should consider the guidance in the NPPF, the Planning Practice Guidance: Use of Planning Conditions, and TANs, or any successor documents, where appropriate.

4.1.18 The Secretary of State may consider any development consent obligations[97] that an applicant agrees with local authorities. These must be relevant to planning, necessary to make the proposed development acceptable in planning terms, directly related to the proposed development, fairly and reasonably related in scale and kind to the proposed development, and reasonable in all other respects.

[95] NPPF: See https://www.gov.uk/government/collections/planning-practice-guidance; PPG: Use of Planning Conditions: See https://www.gov.uk/guidance/use-of-planning-conditions; TANs: See https://gov.wales/technical-advice-notes

[96] As defined in section 120 of the Planning Act 2008.

[97] Where the words “planning obligations” are used in this NPS they refer to “development consent obligations” under section 106 of the Town & Country Planning Act 1990 as amended by section 174 of the Planning Act 2008.

Early engagement

4.1.19 Early engagement both before and at the formal pre-application stage between the applicant and key stakeholders, including public regulators, Statutory Consultees (including Statutory Nature Conservation Bodies (SNCBs)), and those likely to have an interest in a proposed energy infrastructure application, is strongly encouraged in line with the Government's pre-application guidance.[98] This means that only applications which are fully prepared and comprehensive can be accepted for examination, enabling them to be properly assessed by the Examining Authority and leading to a clear recommendation report to the Secretary of State.

4.1.20 This is particularly so in the case of HRA matters covered in paragraphs 5.4.25 to 5.4.31 below, which explain the onus is on the applicant to submit sufficient information to enable the Secretary of State to conduct an Appropriate Assessment if required.

Financial and technical viability

4.1.21 In deciding to bring forward a proposal for infrastructure development, the applicant will have made a judgement on the financial and technical viability of the proposed development, within the market framework and taking account of government interventions.

4.1.22 Where the Secretary of State considers that the financial viability and technical feasibility of the proposal has been properly assessed by the applicant, it is unlikely to be of relevance in Secretary of State decision making (any exceptions to this principle are dealt with where they arise in this, or other energy NPSs, and the reasons why financial viability or technical feasibility is likely to be of relevance explained).

4.2 The critical national priority for low carbon infrastructure

4.2.1 Government has committed to fully decarbonising the power system by 2035, subject to security of supply, to underpin its 2050 net zero ambitions. More than half of final energy demand in 2050 could be met by electricity, as transport and heating in particular shift from fossil fuel to electrical technology.

4.2.2 Ensuring the UK is more energy independent, resilient and secure requires the smooth transition to abundant, low-carbon energy. The UK's strategy to increase

[98]Planning Act 2008: guidance on the Pre-application process available at: See https://www.gov.uk/government/publications/guidance-on-the-pre-application-process-for-major-infrastructure-projects

supply of low carbon energy is dependent on deployment of renewable and nuclear power generation, alongside hydrogen and CCUS. Our energy security and net zero ambitions will only be delivered if we can enable the development of new low carbon sources of energy at speed and scale.

4.2.3 With smart and strategic planning, the UK can maintain high environmental standards and minimise impacts while increasing the levels of deployment at the scale and pace needed to meet our energy security and net zero ambitions.

4.2.4 Government has therefore concluded that there is a critical national priority (CNP) for the provision of nationally significant low carbon infrastructure.

4.2.5 This does not extend the definition of what counts as nationally significant infrastructure: the scope remains as set out in the Planning Act 2008. Low carbon infrastructure for the purposes of this policy means:

- for electricity generation, all onshore and offshore generation that does not involve fossil fuel combustion (that is, renewable generation, including anaerobic digestion and other plants that convert residual waste into energy, including combustion, provided they meet existing definitions of low carbon; and nuclear generation), as well as natural gas fired generation which is carbon capture ready

- for electricity grid infrastructure, all power lines in scope of EN-5 including network reinforcement and upgrade works, and associated infrastructure such as substations. This is not limited to those associated specifically with a particular generation technology, as all new grid projects will contribute towards greater efficiency in constructing, operating and connecting low carbon infrastructure to the National Electricity Transmission System

- for other energy infrastructure, fuels, pipelines and storage infrastructure, which fits within the normal definition of “low carbon”, such as hydrogen distribution, and carbon dioxide distribution

- for energy infrastructure which is directed into the NSIP regime under section 35 of the Planning Act 2008, and fit within the normal definition of “low carbon”, such as interconnectors, Multi-Purpose Interconnectors, or ‘bootstraps’ to support the onshore network which are routed offshore

- Lifetime extensions of nationally significant low carbon infrastructure, and repowering of projects

4.2.6 The overarching need case for each type of energy infrastructure and the substantial weight which should be given to this need in assessing applications, as set out in paragraphs 3.2.6 to 3.2.8 of EN-1, is the starting point for all assessments of energy infrastructure applications.

4.2.7 The CNP policy **does not** create an additional or cumulative need case or weighting to that which is already outlined for each type of energy infrastructure. The policy applies following the normal consideration of the need case, the impacts of the project, and the application of the mitigation hierarchy. As such, it is relevant during Secretary of State decision making and specifically in reference to any residual impacts that have been identified. It should therefore also be given consideration by the Examining Authority when it is making its recommendation to the Secretary of State.

4.2.8 During decision making, the CNP policy will influence how non-HRA and non-MCZ residual impacts are considered in the planning balance. The policy will therefore also influence how the Secretary of State considers whether tests requiring clear outweighing of harm, exceptionality, or very special circumstances have been met by a CNP Infrastructure application. Further detail is provided in paragraphs 4.2.15 to 4.2.17, and Figure 2.

4.2.9 During decision making, the CNP policy also explains the Secretary of State's approach to HRA derogations and MCZ assessments. Specifically, the policy explains how the alternative solutions and IROPI tests are considered by the Secretary of State. Further detail is provided in paragraphs 4.2.18 to 4.2.22, and Figure 3.

Applicant's assessment

4.2.10 Applicants for CNP infrastructure must continue to show how their application meets the requirements in this NPS and the relevant technology specific NPS, applying the mitigation hierarchy, as well as any other legal[99] and regulatory requirements.

4.2.11 Applicants must apply the mitigation hierarchy and demonstrate that it has been applied. They should also seek the advice of the appropriate SNCB or other relevant statutory body when undertaking this process. Applicants should demonstrate that all residual impacts are those that cannot be avoided, reduced or mitigated.

4.2.12 Applicants should set out how residual impacts will be compensated for as far as possible. Applicants should also set out how any mitigation or compensation measures will be monitored and reporting agreed to ensure success and that action is taken. Changes to measures may be needed e.g. adaptive management. The cumulative impacts of multiple developments with residual impacts should also be considered.

[99] The Secretary of State will continue to comply with any legislative requirements, such as those contained in regulations 3 and 7 of the Infrastructure Planning (Decisions) Regulations 2010, section 40 of the Natural Environment and Rural Communities Act 2006 and section 6 of the Environment (Wales) Act 2016 and section 126 of the Marine and Coastal Access Act 2009.

4.2.13 Where residual impacts relate to HRA or MCZ sites then the Applicant must provide a derogation case, if required, in the normal way in compliance with the relevant legislation and guidance.

Secretary of State decision making

4.2.14 The Secretary of State will continue to consider the impacts and benefits of all CNP Infrastructure applications on a case-by-case basis. The Secretary of State must be satisfied that the applicant's assessment demonstrates that the requirements set out above have been met. Where the Secretary of State is satisfied that they have been met, the CNP presumptions set out below apply.

Non-HRA and non-MCZ residual impacts of CNP Infrastructure

4.2.15 Where residual non-HRA or non-MCZ impacts remain after the mitigation hierarchy has been applied, these residual impacts are unlikely to outweigh the urgent need for this type of infrastructure. Therefore, in all but the most exceptional circumstances, it is unlikely that consent will be refused on the basis of these residual impacts. The exception to this presumption of consent are residual impacts onshore and offshore which present an unacceptable risk to, or unacceptable interference with, human health and public safety, defence, irreplaceable habitats or unacceptable risk to the achievement of net zero. Further, the same exception applies to this presumption for residual impacts which present an unacceptable risk to, or unacceptable interference offshore to navigation, or onshore to flood and coastal erosion risk.

4.2.16 As a result, the Secretary of State will take as the starting point for decision-making that such infrastructure is to be treated as if it has met any tests which are set out within the NPSs, or any other planning policy, which requires a clear outweighing of harm, exceptionality or very special circumstances.

4.2.17 This means that the Secretary of State will take as a starting point that CNP Infrastructure will meet the following, non-exhaustive, list of tests:

- where development within a Green Belt requires very special circumstances to justify development;
- where development within or outside a Site of Special Scientific Interest (SSSI) requires the benefits (including need) of the development in the location proposed to clearly outweigh both the likely impact on features of the site that make it a SSSI, and any broader impacts on the national network of SSSIs.
- where development in nationally designated landscapes requires exceptional circumstances to be demonstrated; and
- where substantial harm to or loss of significance to heritage assets should be exceptional or wholly exceptional.

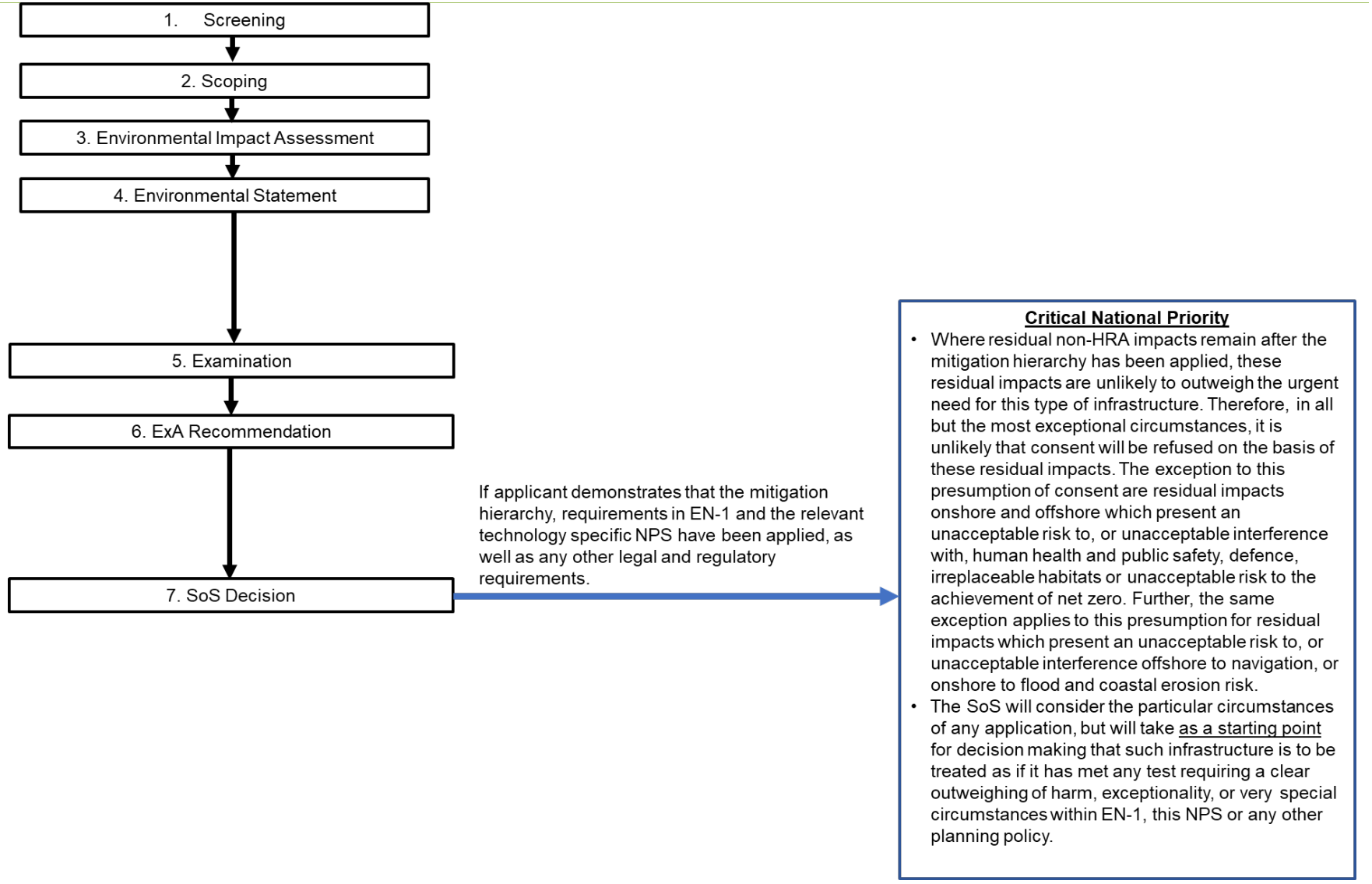

Figure 2: Application of CNP in decisions relating to Environmental Impact Assessments

HRA derogations and MCZ assessments for CNP Infrastructure

4.2.18 Any HRA or MCZ residual impacts will continue to be considered under the framework set out in the Habitats Regulations and the Marine and Coastal Access Act 2009 respectively.

4.2.19 Where, following Appropriate Assessment, CNP Infrastructure has residual adverse impacts on the integrity of sites forming part of the UK national site network, either alone or in combination with other plans or projects, the Secretary of State will consider making a derogation under the Habitats Regulations.[100]

4.2.20 Similarly, if during an MCZ assessment, CNP Infrastructure has residual impacts which significantly risk hindering the achievement of the stated conservation objectives for the MCZ, the Secretary of State will consider making a derogation under section 126(7) of the Marine and Coastal Access Act 2009.

4.2.21 For both derogations, the Secretary of State will consider the particular circumstances of any plan or project, but starting from the position that energy security and decarbonising the power sector to combat climate change:

- requires a significant number of deliverable locations for CNP Infrastructure and for each location to maximise its capacity. This NPS imposes no limit on the number of CNP infrastructure projects that may be consented. Therefore, the fact that there are other potential plans or projects deliverable in different locations to meet the need for CNP Infrastructure is unlikely to be treated as an alternative solution. Further, the existence of another way of developing the proposed plan or project which results in a significantly lower generation capacity is unlikely to meet the objectives and therefore be treated as an alternative solution; and
- are capable of amounting to imperative reasons of overriding public interest (IROPI) for HRAs, and, for MCZ assessments, the benefit to the public is capable of outweighing the risk of environmental damage, for CNP Infrastructure.

4.2.22 For HRAs, where an applicant has shown there are no deliverable alternative solutions, and that there are IROPI, compensatory measures must be secured[101] by the Secretary of State as the competent authority, to offset the adverse effects to site integrity as part of a derogation. For MCZs, where an applicant has shown there are no other means of proceeding which would create a substantially lower risk, and the benefit to the public outweighs the risk of damage to the environment, the Secretary of State must be satisfied that measures of equivalent environmental benefit will be undertaken.

[100] A derogation under Regulations 64 and 68 of The Conservation of Habitats and Species Regulations 2017 or Regulations 29 and 36 of The Conservation of Offshore Marine Habitats and Species Regulations 2017

[101] Further guidance on the principles of carrying out a Habitats Regulations Assessment, including what constitutes a suitable alternative solution: https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site#derogation

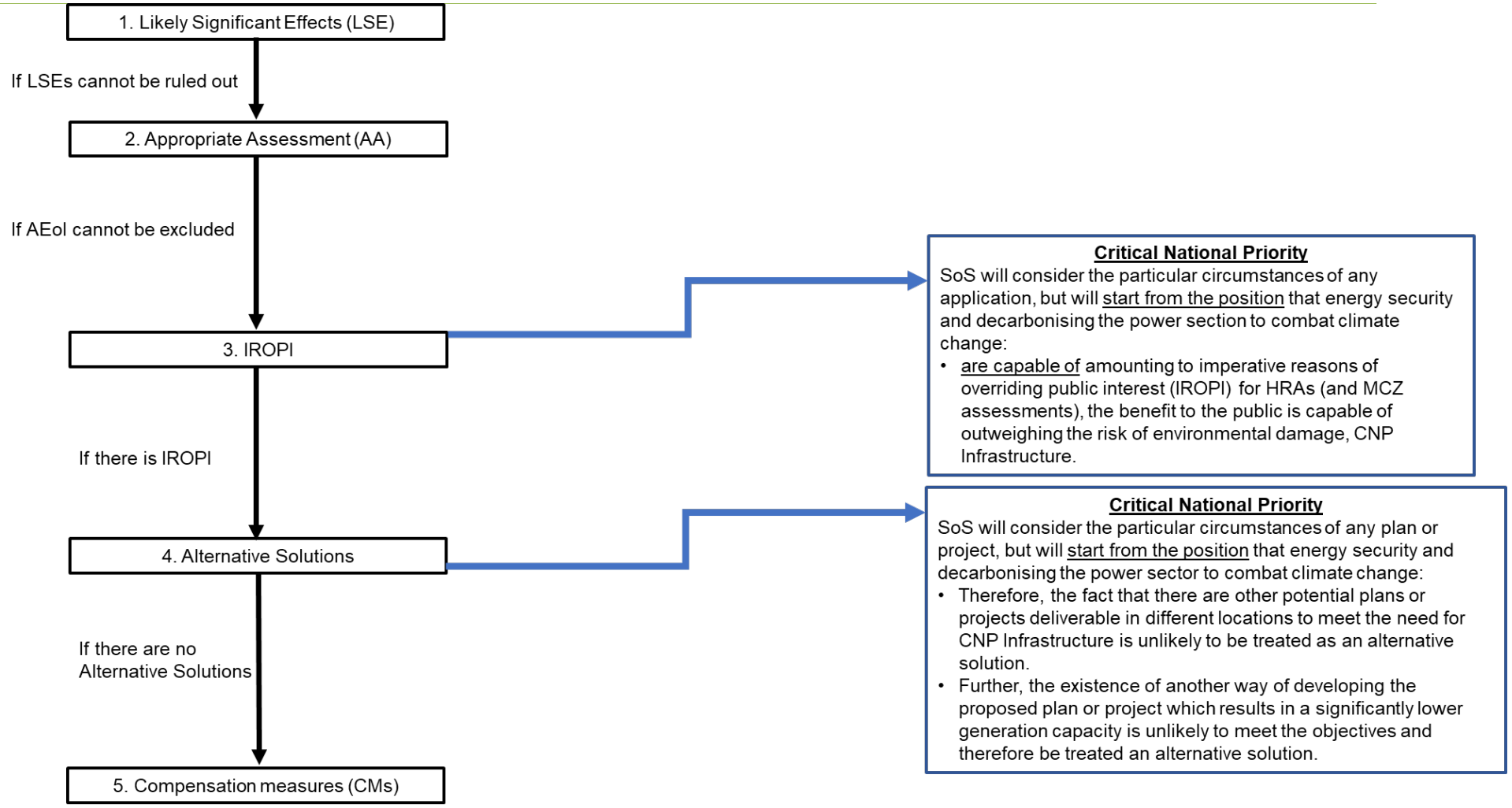

Figure 3: Application of CNP in decisions relating to Habitats Regulations Assessments

4.3 Environmental Effects/Considerations

4.3.1 All proposals for projects that are subject to the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations)[102] must be accompanied by an Environmental Statement (ES) describing the aspects of the environment likely to be significantly affected by the project.[103]

4.3.2 The Regulations specifically refer to effects on population, human health, biodiversity, land, soil, water, air, climate, the landscape, material assets and cultural heritage, and the interaction between them.

4.3.3 The Regulations require an assessment of the likely significant effects of the proposed project on the environment, covering the direct effects and any indirect, secondary, cumulative, transboundary, short, medium, and long-term, permanent and temporary, positive and negative effects at all stages of the project, and also of the measures envisaged for avoiding or mitigating significant adverse effects.[104]

4.3.4 To consider the potential effects, including benefits, of a proposal for a project, the applicant must set out information on the likely significant environmental, social and economic effects of the development, and show how any likely significant negative effects would be avoided, reduced, mitigated or compensated for, following the mitigation hierarchy. This information could include matters such as employment, equality, biodiversity net gain, community cohesion, health and well-being.

4.3.5 For the purposes of this NPS and the technology specific NPSs the ES should cover the environmental, social and economic effects arising from pre-construction, construction, operation and decommissioning of the project.

4.3.6 Where the NPSs use the term ‘environment’ they are referring to both the natural and historic environments.

4.3.7 In the absence of any additional information on additional assessments, the principles set out in this Section will apply to all assessments.

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[102] The government has announced plans to bring forward legislation to replace the existing EU-generated systems of Environmental Impact Assessment and Strategic Environmental Assessment with a new system of Environmental Outcomes Reports. The new system will be brought forward through subsequent regulations following further consultation. Environmental assessment will still be required and, when introduced, relevant plans and projects will have to comply with such regulations. Until the new system is implemented, current legislation on environmental assessment continues to apply.

[103] The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017

[104] For guidance on the assessment of cumulative effects, see, for example, PINS Advice Note 17 regarding Cumulative Effects Assessment (August 2019) see https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2015/12/Advice-note-17V4.pdf

4.3.8 In this NPS and the technology specific NPSs, when used in relation to environmental matters the terms 'effects', 'impacts' or 'benefits' should be understood to mean likely significant effects, likely significant impacts, or likely significant benefits.

4.3.9 As in any planning case, the relevance or otherwise to the decision making process of the existence (or alleged existence) of alternatives to the proposed development is, in the first instance, a matter of law. This NPS does not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option from a policy perspective. Although there are specific requirements in relation to compulsory acquisition and habitats sites, the NPS does not change requirements in relation to compulsory acquisition and habitats sites.

Applicant assessment

4.3.10 The applicant must provide information proportionate to the scale of the project, ensuring the information is sufficient to meet the requirements of the EIA Regulations.[105]

4.3.11 In some instances, it may not be possible at the time of the application for development consent for all aspects of the proposal to have been settled in precise detail. Where this is the case, the applicant should explain in its application which elements of the proposal have yet to be finalised, and the reasons why this is the case.

4.3.12 Where some details are still to be finalised, the ES should, to the best of the applicant's knowledge, assess the likely worst-case environmental, social and economic effects of the proposed development to ensure that the impacts of the project as it may be constructed have been properly assessed.[106]

4.3.13 To help the Secretary of State consider thoroughly the potential effects of a proposed project in cases where the EIA Regulations do not apply and an ES is not therefore required, the applicant should instead provide information proportionate to the scale of the project on the likely significant environmental, social, and economic effects.

4.3.14 References to an ES in this NPS and the technology specific NPSs should be taken as including a statement which provides this information, even if the EIA Regulations do not apply. Where the NPSs require specific information to be provided in the ES, such information should still be provided in this statement.

[105] See https://www.gov.uk/guidance/environmental-impact-assessment

[106] Case law, beginning with R v Rochdale MBC Ex p. Tew [2000] Env.L.R.1 establishes that while it is not necessary or possible in every case to specify the precise details of development, the information contained in the ES should be sufficient to fully assess the project's impact on the environment and establish clearly defined worst case parameters for the assessment. This is sometimes known as 'the Rochdale Envelope'.

4.3.15 Applicants are obliged to include in their ES, information about the reasonable alternatives they have studied. This should include an indication of the main reasons for the applicant's choice, taking into account the environmental, social and economic effects and including, where relevant, technical and commercial feasibility.

4.3.16 In some circumstances, the NPSs may impose a policy requirement to consider alternatives.

4.3.17 Where there is a policy or legal requirement to consider alternatives, the applicant should describe the alternatives considered in compliance with these requirements.

Secretary of State decision making

4.3.18 The Secretary of State should consider the worst-case impacts in its consideration of the application and consent, providing some flexibility in the consent to account for uncertainties in specific project details.

4.3.19 The Secretary of State should consider how the accumulation of, and interrelationship between, effects might affect the environment, economy, or community as a whole, even though they may be acceptable when considered on an individual basis with mitigation measures in place.

4.3.20 The Government has set 13 legally binding targets for England under the Environment Act 2021, covering the areas of: biodiversity; air quality; water; resource efficiency and waste reduction; tree and woodland cover; and Marine Protected Areas. Meeting the legally binding targets will be a shared endeavour that will require a whole of government approach to delivery. The Secretary of State have regard to the ambitions, goals and targets set out in the Government's Environmental Improvement Plan 2023 for improving the natural environment and heritage. This includes having regard to the achievement of statutory targets set under the Environment Act.

4.3.21 In addition, in exercising functions in relation to Wales, the Secretary of State should consider Section 6 of the Environment (Wales) Act 2016 and seek to maintain and enhance biodiversity, and in so doing promote the resilience of ecosystems, so far as consistent with the proper exercise of the Secretary of State's functions.

4.3.22 Given the level and urgency of need for new energy infrastructure, the Secretary of State should, subject to any relevant legal requirements (e.g. under the Habitats Regulations) which indicate otherwise, be guided by the following principles when deciding what weight should be given to alternatives:

- the consideration of alternatives in order to comply with policy requirements should be carried out in a proportionate manner; and

- only alternatives that can meet the objectives of the proposed development need to be considered.

4.3.23 The Secretary of State should be guided in considering alternative proposals by whether there is a realistic prospect of the alternative delivering the same infrastructure capacity (including energy security, climate change, and other environmental benefits) in the same timescale as the proposed development.

4.3.24 The Secretary of State should not refuse an application for development on one site simply because fewer adverse impacts would result from developing similar infrastructure on another suitable site, and should have regard as appropriate to the possibility that all suitable sites for energy infrastructure of the type proposed may be needed for future proposals.

4.3.25 Alternatives not among the main alternatives studied by the applicant (as reflected in the ES) should only be considered to the extent that the Secretary of State thinks they are both important and relevant to the decision.

4.3.26 As the Secretary of State must assess an application in accordance with the relevant NPS (subject to the exceptions set out in section 104 of the Planning Act 2008), if the Secretary of State concludes that a decision to grant consent to a hypothetical alternative proposal would not be in accordance with the policies set out in the relevant NPS, the existence of that alternative is unlikely to be important and relevant to the Secretary of State's decision.

4.3.27 Alternative proposals which mean the necessary development could not proceed, for example because the alternative proposals are not commercially viable or alternative proposals for sites would not be physically suitable, can be excluded on the grounds that they are not important and relevant to the Secretary of State's decision.

4.3.28 Alternative proposals which are vague or immature can be excluded on the grounds that they are not important and relevant to the Secretary of State's decision.

4.3.29 It is intended that potential alternatives to a proposed development should, wherever possible, be identified before an application is made to the Secretary of State (so as to allow appropriate consultation and the development of a suitable evidence base in relation to any alternatives which are particularly relevant). Therefore, where an alternative is first put forward by a third party after an application has been made, the Secretary of State may place the onus on the person proposing the alternative to provide the evidence for its suitability as such and the Secretary of State should not necessarily expect the applicant to have assessed it.

4.4 Health

4.4.1 Energy infrastructure has the potential to impact on the health and well-being ("health") of the population. Access to energy is clearly beneficial to society and to our health as a whole. However, the construction of energy infrastructure and the production, distribution and use of energy may have negative impacts on some people's health.

4.4.2 The direct impacts on health may include

- increased traffic
- air or water pollution
- dust, odour
- hazardous waste and substances
- noise
- exposure to radiation, and
- increases in pests

4.4.3 New energy infrastructure may also affect the composition and size of the local population, and in doing so have indirect health impacts, for example if it in some way affects access to key public services, transport, or the use of open space for recreation and physical activity.

Applicant assessment

4.4.4 As described in the relevant sections of this NPS and in the technology specific NPSs, where the proposed project has an effect on humans, the ES should assess these effects for each element of the project, identifying any potential adverse health impacts, and identifying measures to avoid, reduce or compensate for these impacts as appropriate.

4.4.5 The impacts of more than one development may affect people simultaneously, so the applicant should consider the cumulative impact on health in the ES where appropriate.

4.4.6 Opportunities should be taken to mitigate indirect impacts, by promoting local improvements to encourage health and wellbeing[107], this includes potential impacts on vulnerable groups within society and impacts on those with protected

[107] For infrastructure in Wales, please see The Well-being of Future Generations (Wales) Acts 2015.

characteristics under the Equality Act 2010, i.e. those groups which may be differentially impacted by a development compared to wider society as a whole.

Secretary of State decision making

4.4.7 Generally, those aspects of energy infrastructure which are most likely to have a significantly detrimental impact on health are subject to separate regulation (for example for air pollution) which will constitute effective mitigation of them, so that it is unlikely that health concerns will either by themselves constitute a reason to refuse consent or require specific mitigation under the Planning Act 2008.

4.4.8 However, not all potential sources of health impacts will be mitigated in this way and the Secretary of State may want to take account of health concerns when setting requirements relating to a range of impacts such as noise.

4.5 Marine Considerations

4.5.1 The Marine Policy Statement is the framework for preparing Marine Plans and taking decisions affecting the marine environment, as per section 44 of the Marine and Coastal Access Act 2009. Marine plans apply in the 'marine area', which is the area from mean high water springs to the seaward limit of the Exclusive Economic Zone (EEZ). The 'marine area' also includes the waters of any estuary, river or channel, so far as the tide flows at mean high water spring tide.

4.5.2 Marine plans set out marine specific aspects of many of the assessment principles in Part 4 and 5 of this NPS.[108] Individual Marine Plans[109] must be consulted to understand marine relevant specific considerations.

4.5.3 The cross-government Marine Spatial Prioritisation Programme will review how marine plans and the wider planning regime, legislation and guidance may need to evolve to ensure a more holistic approach to the use of the seas is taken and to maximise co-location possibilities.

4.5.4 In Wales, the Welsh National Marine Plan[110] sets out Welsh Ministers' expectations that nationally significant infrastructure projects contribute to the well-being of Welsh communities and the sustainable management of natural resources and should seek to deliver lasting legacy benefits for the local community, the economy and the environment.

[108] For example, criteria for good design for energy infrastructure (Section 4.7) and climate change adaptation (Section 4.10). Plan policies cover a wide range of topics in Part 5 of this NPS, including landscape and visual (Section 5.10), noise and vibration (Section 5.12) and water quality (Section 5.16).
[109] The Welsh National Marine Plan and/or any applicable English regional marine plans
[110] See https://gov.wales/marine-planning

4.5.5 The Government is producing guidance to help applicants and regulators understand how to consider environmental impacts on Marine Protected Areas (MPAs), including applying the mitigation hierarchy and using strategic approaches.[111] The guidance will not extend to waters where the devolved administrations have competence for managing MPAs.

4.5.6 A deemed marine licence can be granted as part of the Development Consent Order and is developed in consultation with regulators and statutory advisors. A Marine Licence is primarily concerned with the need to protect the environment and human health and to prevent interference with other legitimate uses of the sea. Marine Licences may be required for the marine elements of proposed developments (up to Mean High Water Springs), including associated development and activity such as cabling, dredging and offshore substations. Applicants should consult Part 4 Section 66 of the Marine and Coastal Access Act 2009 when considering what activities will require a Marine Licence. A Marine Licence cannot be deemed under the Planning Act 2008 in Waters adjacent to Wales up to the 12nm seaward limits of the territorial sea. Further information on marine licencing is provided in section 1.2 of this NPS and paragraphs 2.3.16 to 2.3.24 of EN-3.

4.5.7 Applicants are encouraged to approach the marine licensing regulator (MMO in England and Natural Resources Wales in Wales) in pre-application, to ensure that they are aware of any needs for additional marine licenses alongside their Development Consent Order application.

Applicant assessment

4.5.8 Applicants for a Development Consent Order must take account of any relevant Marine Plans and are expected to complete a Marine Plan assessment as part of their project development, using this information to support an application for development consent.

4.5.9 Applicants are encouraged to refer to Marine Plans at an early stage, such as in pre-application, to inform project planning, for example to avoid less favourable locations as a result of other uses or environmental constraints.

Secretary of State decision making

4.5.10 Section 104(2)(aa) of the Planning Act 2008 requires the Secretary of State to have regard to any appropriate marine policy documents when making a decision on an application for a Development Consent Order where an NPS has effect.[112]

[111] See glossary for mitigation hierarchy definition

[112] Where a decision is made under s105 of the Planning Act, section 58(3) of the Marine and Coastal Access Act 2009 will similarly require the Secretary of State to have regard to the marine plan.

This will include any Marine Plan which is in effect for the relevant area, or areas where the project crosses the boundary between plan areas.

4.5.11 In making a decision, the Secretary of State is responsible for determining how the Marine Plan informs the decision-making process. For example, the Secretary of State will determine if and how proposals meet the high-level marine objectives, plan vision, and all relevant policies.

4.5.12 In the event of a conflict between an NPS and any marine planning documents, the NPS prevails for purposes of decision making.

4.6 Environmental and Biodiversity Net Gain

4.6.1 Environmental net gain is an approach to development that aims to leave the natural environment in a measurably better state than beforehand. Projects should therefore not only avoid, mitigate and compensate harms, following the mitigation hierarchy, but also consider whether there are opportunities for enhancements.

4.6.2 Biodiversity net gain is an essential component of environmental net gain. Projects in England should consider and seek to incorporate improvements in natural capital, ecosystem services and the benefits they deliver when planning how to deliver biodiversity net gain.

4.6.3 Currently biodiversity net gain policy in England only applies to terrestrial and intertidal components of projects. Principles for Marine Net Gain are currently being rolled out by the Government, who will provide guidance in due course. There are provisions in the Environment Act 2021 to allow Marine Net Gain to be made mandatory for NSIPs in the future.

4.6.4 In Wales, Net Benefit for Biodiversity is based on the concept that development should leave biodiversity and the resilience of ecosystems in a better state than before, through securing long-term, measurable and demonstrable benefit, primarily on or immediately adjacent to the site[113].

4.6.5 The Welsh National Marine Plan includes policy to ensure that biological and geological components of ecosystems are maintained, restored where needed and enhanced where possible, to increase the resilience of marine ecosystems and the benefits they provide. It encourages consideration of the inclusion of restoration and enhancement in a development project at sea and at the coast. However, there is currently no obligation upon proposers of projects in the marine environment to provide enhancement within their proposals[114].

[113] See https://www.gov.wales/planning-policy-wales
[114] See https://www.gov.wales/welsh-national-marine-plan

Applicant assessment

4.6.6 Energy NSIP proposals, whether onshore or offshore, should seek opportunities to contribute to and enhance the natural environment by providing net gains for biodiversity, and the wider environment where possible.

4.6.7 In England applicants for onshore elements of any development are encouraged to use the latest version of the biodiversity metric[115] to calculate their biodiversity baseline and present planned biodiversity net gain outcomes. This calculation data should be presented in full as part of their application[116].

4.6.8 Where possible, this data should be shared, alongside a completed biodiversity metric calculation, with the Local Authority and Natural England for discussion at the pre-application stage as it can help to highlight biodiversity and wider environmental issues which may later cause delays if not addressed.

4.6.9 In Wales, applicants should consider the guidance set out in Section 6.4 of Planning Policy Wales and the relevant policies in the Wales National Marine Plan[117].

4.6.10 Biodiversity net gain should be applied after compliance with the mitigation hierarchy and does not change or replace existing environmental obligations, although compliance with those obligations will be relevant to the question of the baseline for assessing net gain and if they deliver an additional enhancement beyond meeting the existing obligation, that enhancement will count towards net gain.

4.6.11 Biodiversity net gain can be delivered onsite or wholly or partially off-site. We encourage details of any off-site delivery of biodiversity net gain to be set out within the application for development consent.

4.6.12 When delivering biodiversity net gain off-site, developments should do this in a manner that best contributes to the achievement of relevant wider strategic outcomes, for example by increasing habitat connectivity, enhancing other ecosystem service outcomes, or considering use of green infrastructure strategies. Reference should be made to relevant national or local plans and strategies, to inform off-site biodiversity net gain delivery. If published, the relevant strategy is the Local Nature Recovery Strategy (LNRS). If an LNRS has not been published, the relevant consenting body or planning authority may specify alternative plans, policies or strategies to use.

[115] See Biodiversity metric: calculate the biodiversity net gain of a project or development - GOV.UK (www.gov.uk)
[116] See http://publications.naturalengland.org.uk/publication/5850908674228822
[117] See https://gov.wales/welsh-national-marine-plan

4.6.13 In addition to delivering biodiversity net gain, developments may also deliver wider environmental gains and benefits to communities relevant to the local area, and to national policy priorities, such as:

- reductions in GHG emissions
- reduced flood risk
- improvements to air or water quality,
- climate adaptation,
- landscape enhancement
- increased access to natural greenspace, or
- the enhancement, expansion or provision of trees and woodlands

The scope of potential gains will be dependent on the type, scale, and location of specific projects. Applicants should look for a holistic approach to delivering wider environmental gains and benefits through the use of nature-based solutions and Green Infrastructure.

4.6.14 The Environment Act 2021 mandated the preparation of Local Nature Recovery Strategies (LNRSs) across England. They are a new system of spatial strategies for nature recovery and will play a major role in providing detail on the best locations to create, enhance and restore nature and deliver wider environmental benefits. LNRSs will also agree priorities for nature recovery and map the most valuable existing areas for nature. They will be critical in delivering new government targets for species abundance and habitat creation commitments, as well as other pressing environmental outcomes for water and flood risk, carbon and tree planting and woodland creations. LNRSs will also drive the creation of a Nature Recovery Network (NRN), a major commitment in the government's 25 Year Environment Plan.

4.6.15 Applications for development consent should be accompanied by a statement demonstrating how opportunities for delivering wider environmental net gains have been considered, and where appropriate, incorporated into proposals as part of good design (including any relevant operational aspects) of the project.

4.6.16 Applicants should make use of available guidance and tools for measuring natural capital assets and ecosystem services, such as the Natural Capital Committee's 'How to Do it: natural capital workbook'[118], the government's

[118] See https://www.gov.uk/government/publications/natural-capital-committee-natural-capital-workbook

guidance on Enabling a Natural Capital Approach (ENCA)[119], and other tools that aim to enable wider benefits for people and nature.[120]

4.6.17 Where environmental net gain considerations have featured as part of the strategic options appraisal process to select a project, applicants should reference that information to supplement the site-specific details.

4.6.18 Opportunities for environmental, social, and economic enhancements, protection and mitigation measures are identified in a number of sections in Part 5 of this NPS, which provides guidance on the impacts of new energy infrastructure.

Secretary of State decision making

4.6.1 Although achieving biodiversity net gain is not currently an obligation on applicants, Schedule 15 of the Environment Act 2021 contains provisions which, when commenced, mean the Secretary of State may not grant an application for a Development Consent Order unless satisfied that a biodiversity gain objective is met in relation to the onshore[121] development in England to which the application relates.

4.6.2 The biodiversity gain objective will be set out in a biodiversity gain statement (as defined under the Environment Act 2021). Normally these statements would be included within an NPS, but the Act allows for the statement to be published separately where a review of an NPS has begun before the provisions are commenced, as is the case with these energy NPSs. Under the provision of the Environment Act 2021, any such separate biodiversity gain statement will be regarded as being contained within these NPSs.

4.6.3 The Secretary of State should give appropriate weight to environmental and biodiversity net gain, although any weight given to gains provided to meet a legal requirement (for example under the Environment Act 2021) is likely to be limited.

4.7 Criteria for good design for Energy Infrastructure

4.7.1 The visual appearance of a building, structure, or piece of infrastructure, and how it relates to the landscape it sits within, is sometimes considered to be the most important factor in good design. But high quality and inclusive design goes far beyond aesthetic considerations. The functionality of an object – be it a building

[119] See https://www.gov.uk/guidance/enabling-a-natural-capital-approach-enca
[120] For instance, Natural England has developed the Environmental Benefits from Nature tool, which is designed to work alongside Biodiversity metric 3.0 to provide developers, planners and other interested parties with a means of enabling wider benefits for people and nature from biodiversity net gain. This tool can be applied to locations in England and Wales, but some datasets may have limited coverage outside of England.
[121] The Environment Act 2021 also allows for an extension to offshore development in the future.

or other type of infrastructure – including fitness for purpose and sustainability, is equally important.

4.7.2 Applying good design to energy projects should produce sustainable infrastructure sensitive to place, including impacts on heritage, efficient in the use of natural resources, including land-use, and energy used in their construction and operation, matched by an appearance that demonstrates good aesthetic as far as possible. It is acknowledged, however that the nature of energy infrastructure development will often limit the extent to which it can contribute to the enhancement of the quality of the area.

4.7.3 Good design is also a means by which many policy objectives in the NPSs can be met, for example the impact sections show how good design, in terms of siting and use of appropriate technologies, can help mitigate adverse impacts such as noise. Projects should look to use modern methods of construction and sustainable design practices such as use of sustainable timber and low carbon concrete. Where possible, projects should include the reuse of material.

4.7.4 Given the benefits of good design in mitigating the adverse impacts of a project, applicants should consider how good design can be applied to a project during the early stages of the project lifecycle.

Applicant assessment

4.7.5 To ensure good design is embedded within the project development, a project board level design champion could be appointed, and a representative design panel used to maximise the value provided by the infrastructure. Design principles[122] should be established from the outset of the project to guide the development from conception to operation. Applicants should consider how their design principles can be applied post-consent.

4.7.6 Whilst the applicant may not have any or very limited choice in the physical appearance of some energy infrastructure, there may be opportunities for the applicant to demonstrate good design in terms of siting relative to existing landscape character, land form and vegetation. Furthermore, the design and sensitive use of materials in any associated development such as electricity substations will assist in ensuring that such development contributes to the

[122] Design principles should take into account any national guidance on infrastructure design, this could include for example the Design Principles for National Infrastructure published by the National Infrastructure Commission, the National Design Guide and National Model Design Code, as well as any local design policies and standards. See https://nic.org.uk/studies-reports/design-principles-for-national-infrastructure; See https://www.gov.uk/government/publications/national-design-guide; and See https://www.gov.uk/government/publications/national-model-design-code
In Wales, Future Wales, Planning Policy Wales and Technical Advice Notes set out the national planning policy to achieve good design in Wales; See https://www.gov.wales/future-wales-national-plan-2040 https://www.gov.wales/planning-policy-wales https://www.gov.wales/technical-advice-notes

quality of the area. Applicants should also, so far as is possible, seek to embed opportunities for nature inclusive design within the design process.

4.7.7 Applicants must demonstrate in their application documents how the design process was conducted and how the proposed design evolved. Where a number of different designs were considered, applicants should set out the reasons why the favoured choice has been selected.

4.7.8 Applicants should consider taking independent professional advice on the design aspects of a proposal. In particular, the Design Council[123] can be asked to provide design review for nationally significant infrastructure projects and applicants are encouraged to use this service.[124] Applicants should also consider any design guidance developed by the local planning authority.

4.7.9 Further advice on what applicants should demonstrate by way of good design is provided in the technology specific NPSs where relevant.

Secretary of State decision making

4.7.10 In the light of the above and given the importance which the Planning Act 2008 places on good design and sustainability, the Secretary of State needs to be satisfied that energy infrastructure developments are sustainable and, having regard to regulatory and other constraints, are as attractive, durable, and adaptable (including taking account of natural hazards such as flooding) as they can be.

4.7.11 In doing so, the Secretary of State should be satisfied that the applicant has considered both functionality (including fitness for purpose and sustainability) and aesthetics (including its contribution to the quality of the area in which it would be located, any potential amenity benefits, and visual impacts on the landscape or seascape) as far as possible.

4.7.12 In considering applications, the Secretary of State should take into account the ultimate purpose of the infrastructure and bear in mind the operational, safety and security requirements which the design has to satisfy. Many of the wider impacts of a development, such as landscape and environmental impacts, will be important factors in the design process.

4.7.13 The Secretary of State should consider such impacts under the relevant policies in this NPS. Assessment of impacts must be for the stated design life of the scheme rather than a shorter time period.

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[123] For infrastructure in Wales, this is the Design Commission for Wales.
[124] The Chief Planner's 2011 Letter about design and planning can be found here: See https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/8009/110520-Letter_to_Chief_Planning_Officers-_Design_and_Planning.pdf Further information on the Design Council can be found here: See https://www.designcouncil.org.uk/

4.7.14 The Secretary of State should consider taking independent professional advice on the design aspects of a proposal. In particular, the Design Council can be asked to provide design review for nationally significant infrastructure projects.[125]

4.7.15 Further advice on what the Secretary of State should expect applicants to demonstrate by way of good design is provided in the technology specific NPSs where relevant.

4.8 Consideration of Combined Heat and Power (CHP)

4.8.1 Combined Heat and Power (CHP) is the generation of usable heat and electricity in a single process. A CHP station may either supply steam direct to customers or capture waste heat for low-pressure steam, hot water, or space heating purposes after it has been used to drive electricity generating turbines. The heat can also be used to drive absorption chillers, thereby providing cooling.

4.8.2 In conventional thermal generating stations, the heat that is raised to drive electricity generation is subsequently emitted to the environment as waste. Supplying steam direct to industrial customers or using lower grade heat, such as in district heating networks, can reduce the amount of fuel otherwise needed to generate the same amount of heat and power separately.

4.8.3 CHP is technically feasible for many types of thermal generating stations, including nuclear, EfW, BECCS and hydrogen, although the majority of CHP plants in the UK are fuelled by gas.

4.8.4 Using less fuel to generate the same amount of heat and power, reduces emissions, particularly CO_2. The government has therefore committed to promoting Good Quality CHP, which denotes CHP that has been certified as highly efficient under the CHP Quality Assurance programme.[126] Schemes need to achieve a specified quality index and power efficiency in order to qualify for government support associated with the programme.

4.8.5 In 2020, there was 6.1GW of Good Quality CHP[127] in the UK, providing 7.7 per cent of electricity[128] and saving an estimated 9.66 Megatonnes CO_2 per

[125] The Chief Planner's 2011 Letter about design and planning can be found here: See https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/8009/110520-Letter_to_Chief_Planning_Officers-_Design_and_Planning.pdf Further information on the Design Council can be found here: See https://www.designcouncil.org.uk/

[126] See https://www.gov.uk/guidance/combined-heat-power-quality-assurance-programme

[127] Such ratings are achieved by examining data for fuel used, power generated, heat supplied, and hours run. To be confirmed as Good Quality CHP: Existing systems must achieve a QI of 100, and a power efficiency of 20%. New systems must achieve a QI of 105.

[128] Good quality CHP capacity and total generation from CHP: from table 5.15 of Digest of United Kingdom Energy Statistics (DUKES) 2021: Combined Heat and Power (CHP) generation and capacity overview, available at. Total electricity generated: from table 5.6 of Digest of United Kingdom Energy Statistics (DUKES) 2021: Electricity fuel use, generation and supply, available at.

annum[129]. There is a recognised cost-effective potential for Good Quality CHP to continue to provide benefits due to efficiencies inherent in cogeneration.

4.8.6 To be economically viable as a CHP plant, a generating station needs to be located sufficiently close to industrial, non-domestic or domestic customers with heat demands. The distance will vary according to the size and type of the generating station and the nature of the heat demand.

4.8.7 For industrial purposes, customers are likely to be intensive heat users such as chemical plants, refineries, or paper mills. CHP can also be used to provide lower grade heat for light industrial users such as commercial greenhouses, or more commonly for hot water and space heating, including supply through district heating networks.

Applicant assessment

4.8.8 Guidance issued by the then Department for Trade and Industry (DTI) in 2006,[130] will apply to any application to develop a thermal generating station under the Planning Act 2008. Applications for thermal stations must either include CHP proposals or contain evidence demonstrating that the possibilities for CHP have been fully explored to inform the Secretary of State's consideration of the application.

4.8.9 In developing proposals for new thermal generating stations, applicants should consider both the current and future opportunities for CHP from the start, and it should be adopted as a criterion when considering locations for a project.

4.8.10 Given how important liaison with potential customers for heat is, applicants should not only consult those potential customers they have identified themselves but also Local Authorities, obtaining their advice on opportunities. Further advice is contained in the 2006 DTI guidance[131] and applicants should also consider relevant information in regional and local energy planning and heat demand mapping.

4.8.11 Where the applicant is not be able to reach an agreement with a potential customer, they should provide evidence demonstrating the reasons for this, and why it will not be reasonably possible to reach an agreement during the lifetime of the thermal station.

4.8.12 Utilisation of useful heat that displaces conventional heat generation from fossil fuel sources is to be encouraged and substantial weight will be given to

[129] From table 7.11 of Digest of United Kingdom Energy Statistics (DUKES) 2021: CHP - savings of carbon dioxide emissions, available at.
[130] Guidance on background information to accompany notifications under Section 14(1) of the Energy Act 1976 and applications under Section 36 of the Electricity Act 1989.
[131] Guidance on background information to accompany notifications under Section 14(1) of the Energy Act 1976 and applications under Section 36 of the Electricity Act 1989.

applications incorporating CHP. If an applicant is putting forward a proposal for thermal generation without CHP they should:

- Explain why CHP is not economically or practically feasible
- provide details of any potential future heat requirements in the area that have been considered and the reasons the station could not meet them
- detail the provisions in the proposed scheme for ensuring any potential heat demand in the future can be exploited, and
- provide an audit trail of dialogue between the applicant, prospective customers, the local area energy teams in local government and district heating energy supply companies

4.8.13 CHP may require additional space than for a non-CHP generating station. It is possible that this might conflict with space required for a generating station to be CCR, as set out in Section 4.9. The material provided by applicants should therefore explain how the development can both be ready to provide CHP in the future, and also be CCR, or set out any constraints (for example space restrictions) which would prevent this.

Secretary of State decision making

4.8.14 Secretary of State should have regard to the DTI 2006 guidance, or any successor to it, when considering the CHP aspects of applications for thermal generating stations.

4.8.15 Given the importance which government attaches to CHP, if an application does not demonstrate that CHP has been adequately considered, the Examining Authority should seek further information from the applicant.

4.8.16 The Secretary of State should not give development consent unless satisfied that the applicant has provided appropriate evidence that CHP is included or that the opportunities for CHP have been fully explored.

4.8.17 If the Secretary of State (or the Examining Authority during the examination stage) is not satisfied with the evidence that has been provided, the Secretary of State (or the Examining Authority during the examination stage) may wish to investigate this with one or more of the bodies such as Local Authorities.

4.8.18 Furthermore, if the Secretary of State (or the Examining Authority during the examination stage), when considering an application for a thermal generating station, identifies a potential heat customer that is not explored in the application (for instance, on the advice of the Local Authorities), the Secretary of State (or the Examining Authority during the examination stage) should request that the applicant pursues this.

4.8.19 The Secretary of State may also be aware of potential developments (for example from the applicant or a third party) which could utilise heat from the plant in the future, for example planned housing, and which is due to be built within a timeframe that would make the supply of heat cost-effective. Where it may be reasonably possible for the applicant to reach agreement with a potential heat customer during the lifetime of the station, the Secretary of State may wish to impose requirements to ensure that the generating station is CHP-ready and designed in order to allow heat supply at a later date.

4.8.20 If satisfied that the applicant has demonstrated that the need to comply with the requirement to be CCR will preclude any provision for CHP, the Secretary of State will not impose requirements to ensure that the generating station is CHP-ready.

4.9 Carbon Capture and Storage (CCS)

CCS

4.9.1 CCS is a technology that enables carbon dioxide that would otherwise be released to the atmosphere to be captured and permanently stored. It can be applied to any large point source of carbon dioxide, such as thermal generating power stations or other industrial processes that are high emitters.

4.9.2 Examples of three types of capture technology are:

- Pre-combustion capture: this method involves reacting fuel with oxygen or air, and in some cases steam, to produce a gas consisting mainly of carbon monoxide and hydrogen. The carbon monoxide is reacted with more steam in a catalytic shift converter to produce more hydrogen and CO_2. The CO_2 is then separated, and the hydrogen is used as fuel in a combined cycle gas turbine generating station.
- Post-combustion capture: this uses solvents or other methods to scrub CO_2 out of flue gases. The CO_2 is then released as a concentrated gas stream by a regeneration process.
- Oxy-fuel combustion: in this process, fuel is burnt in an oxygen/CO_2 mixture rather than air to produce a flue gas that is predominantly CO_2. For gas-fired plants the technology could be used with a combined cycle system. Other oxy-fuel combustion power CCS plants are being developed using novel non-combined cycle systems.

4.9.3 Carbon capture rates achieved will depend on the application and a minimum capture rate may be required.

4.9.4 Carbon capture technologies offer the opportunity to decarbonise the electricity system whilst maintaining security of supply, providing reliable low carbon generation capacity.

4.9.5 The government has made its ambitions for CCS clear – committing to providing funding to support the establishment of CCS in at least four industrial clusters by 2030 and supporting, using consumer subsidies, at least one privately financed gas CCS power station in the mid-2020s. [132] In October 2021, the government published its Net Zero Strategy[133] which reaffirmed the importance of deploying CCUS to reaching our 2050 net zero target and also outlines our ambition to capture 20-30Mt of CO_2 per year by 2030.

4.9.6 The barriers to CCS deployment to date have been commercial rather than technical, and the business models, which may evolve over time, aim to support the deployment of the technology.

4.9.7 Part 3 of this NPS sets out the need for CCS and the role power CCS could play in our electricity system in more detail.

4.9.8 CO_2 can be permanently stored in deep geological formations, such as depleted oil and gas fields and saline aquifers. In the UK, the majority of locations thought to be best suited to storage of CO_2 are located offshore. The UK has an estimated offshore CO_2 storage capacity of 78Gt/CO_2, enough to store the equivalent of current total UK annual emissions for over 200 years.

4.9.9 The development of an offshore CO_2 storage industry will play a key role in helping to ensure the transition to a net zero economy. Establishing an offshore storage industry could also make the UK a global leader in storage services as countries eager to meet emissions targets pursue carbon capture. Efficiently maximising our offshore CO_2 storage capacity offers the best opportunity to realise our ambitions for CO_2 storage as set out in the Ten Point Plan. Government do not currently envisage an onshore CO_2 storage industry developing against this backdrop.

4.9.10 Offshore CO_2 transport and storage infrastructure is not covered by this NPS, is subject to a separate permitting and licensing regime, and will require an applicant to secure a Carbon Dioxide Appraisal and Storage Licence and a Storage Permit; a Carbon Storage Lease and a Seabed Lease; offshore pipelines require a Pipeline Works Authorisation and notification in accordance with Pipelines Safety Regulations. Offshore CO_2 transport and storage proposals will need to be supported by an EIA. A suite of environmental approvals will also be required for the construction, development, and the operational phase.

[132] See https://www.gov.uk/government/publications/the-ten-point-plan-for-a-green-industrial-revolution
[133] See https://www.gov.uk/government/publications/net-zero-strategy

Applicant assessment

4.9.11 The carbon capture plant required for a new build power CCS plant can be included as associated development[134] in the application for development consent for the relevant thermal generating station and will then be considered as part of that application.

4.9.12 The environmental impacts of a gas-fired power CCS station should be similar to an unabated gas-fired power station, and so the assessment principles for the generating station covered in EN-2 should be similarly applied.

4.9.13 Carbon capture facilities could be significant in size – they may require additional space to the generating facility which will need to be included within the design and EIA. For example, the main direct contact cooler, CO_2 absorber column and regenerator towers in post-combustion plants can be tall, but the overall size will be dependent on the technology and design.

4.9.14 The carbon capture plant will have noise and vibration impacts. Applications for development consent for generating stations with CCS should provide evidence that shows:

- technically feasible plans for the CO_2 capture plant, and
- an ES that addresses impacts arising from the project and documentation to ensure compliance with all other existing policy, including that any of the plant's capacity which is not to be fitted with carbon capture at the outset meets the requirements for Carbon Capture Readiness (CCR)

4.9.15 An Environmental Permit will also be required from the Environment Agency (EA) or Natural Resources Wales (NRW) which incorporates conditions for operation of the carbon capture and storage installation, including limits on pollutant emissions. Section 4.12 provides guidance on the Environmental Permitting regime.

4.9.16 There are several different capture techniques which might have slightly different environmental impacts and considerations, which should be set out in the application. For example, some capture technologies may require hazardous substances consent for solvents required during the capture process, such as nitrosamines, and fall under Control of Major Accident Hazards (COMAH) [135] solvents such as nitrosamines. For example, the use of amine-based solvents in some types of post-combustion carbon capture can create degradation products such as nitrosamines which may have impacts on human health and the

[134] It is for the Secretary of State to decide on a case-by-case basis whether or not development should be treated as associated development.
[135] See https://www.hse.gov.uk/comah/

environment. Best Available Techniques (BAT) guidance,[136] assessment tool Horizontal 1[137] and Environmental Assessment Levels[138] should be used when understanding impacts from capture solvents. The ES should also reflect the latest research in areas such as amine degradation where understanding is still developing.

4.9.17 For example, some capture technologies may require hazardous substances consent for solvents required during the capture process, such as nitrosamines, and fall under Control of Major Accident Hazards (COMAH) [139] solvents such as nitrosamines.

4.9.18 The chain of CCS has three links: capture of carbon, transport, and storage. Due to the approach of deploying CCS in clusters in the UK with shared transport and storage infrastructure, it is likely that development consent applications for power CCS projects may not include an application for consent for the full CCS chain (including the onward transportation and storage of CO_2).

4.9.19 However, development consent applications for power CCS projects should include details of how the captured CO_2 is intended to be transported and stored, how cumulative impacts will be assessed and whether any necessary consents, permits and licences have been obtained.

4.9.20 Applicants gaining consent for CCS infrastructure will need a range of consents from different bodies. One method for transporting captured carbon dioxide is through pipelines located both onshore and offshore. Onshore pipelines over 16.093 kilometres in length classify as NSIPs and require a Development Consent Order.

4.9.21 Applicants are expected to take into account foreseeable future demand when considering the size and route of their investments. Applicants may therefore propose pipelines with a greater capacity than demand, at the time of consenting, might suggest.

4.9.22 Another method for transporting carbon dioxide is by ship. Ports would enable the transfer of carbon dioxide from onshore infrastructure onto ships. Ports and associated infrastructure that process at least 5Mt of material (including CO_2) per year would qualify as NSIP Projects and require a Development Consent Order from the Department for Transport. Such applications would be considered under the National Policy Statement for Ports[140], but the need for CCS infrastructure set out in this NPS is likely to be a relevant consideration. Port development falling

[136]Post-combustion carbon dioxide capture: best available techniques (BAT), 2021. See https://www.gov.uk/guidance/post-combustion-carbon-dioxide-capture-best-available-techniques-bat
[137] See https://www.gov.uk/government/collections/risk-assessments-for-specific-activities-environmental-permits
[138] See https://www.gov.uk/guidance/air-emissions-risk-assessment-for-your-environmental-permit#environmental-standards-for-air-emissions
[139] See https://www.hse.gov.uk/comah/
[140] See https://www.gov.uk/government/publications/national-policy-statement-for-ports

outside of NSIP Projects would likely require a marine licence (see paragraph 4.5.6) and local planning consent.

Secretary of State decision making

4.9.23 CCS infrastructure will need a range of consents from different bodies. The Secretary of State should have regard to advice from these bodies and consider specifically advice from the EA or NRW as to the technical feasibility of the proposed carbon capture technology.

4.9.24 A number of considerations relevant for gas-fired power CCS stations should be similar to an unabated gas-fired power station. The Secretary of State should apply the assessment principles for the generating station covered in EN-2.

Carbon Capture Readiness

4.9.25 To ensure that no foreseeable barriers exist to retrofitting CCS equipment on combustion generating stations, all applications for new combustion plants which are of generating capacity at or over 300MW and of a type covered by The Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013[141] should demonstrate that the plant is "Carbon Capture Ready" (CCR) before consent may be given.

4.9.26 In the Energy White Paper[142], published in December 2020, government committed to consult on an expansion to CCR requirements. As part of this expansion, we intend to rename Carbon Capture Readiness to Decarbonisation Readiness.

4.9.27 A call for evidence[143] was held in Summer 2021 to gather initial views and evidence. A consultation was held early in 2023.

4.9.28 If, as expected, that consultation leads to changes in the relevant legal or policy framework then those new requirements will apply and supersede the existing CCR requirements. In the meantime, CCR policy remains as set out in this section.

Applicant assessment

4.9.29 In order to assure the Secretary of State that a proposed development is CCR, applicants must demonstrate that their proposal complies with guidance issued

[141] For infrastructure in Wales, the Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013 have been amended by the Carbon Capture Readiness (Electricity Generating Stations) (Amendment) (Wales) Regulations 2019.
[142] See https://www.gov.uk/government/publications/energy-white-paper-powering-our-net-zero-future
[143] See https://www.gov.uk/government/consultations/decarbonisation-readiness-call-for-evidence-on-the-expansion-of-the-2009-carbon-capture-readiness-requirements

by the Secretary of State in November 2009[144] or any successor to it. The guidance requires:

- that sufficient space is available on or near the site to accommodate carbon capture equipment in the future;
- the technical feasibility of retrofitting their chosen carbon capture technology;
- that a suitable area of deep geological storage offshore exists for the storage of captured CO_2 from the proposed combustion station;
- the technical feasibility of transporting the captured CO_2 to the proposed storage area; and
- the economic feasibility within the combustion station's lifetime of the full CCS chain, covering retrofitting, transport and storage.

4.9.30 Government envisages that the technical feasibility study for retrofitting CCS equipment will take the form of a written report and accompanying plant designs which:

- make clear which capture technology is currently considered most appropriate for retrofit in the future to the power station
- provide sufficient detail to enable the EA or NRW to advise the Secretary of State on whether the applicant has sufficiently demonstrated there are no currently known technical barriers to subsequent retrofit of the declared capture technology.

4.9.31 The assessment of technological feasibility could be against either:

- an appropriate reference document; or
- by the provision of sufficient technical detail by the applicant in their submitted plans and discussions with the advisory body.

4.9.32 Applicants should conduct a single economic assessment which encompasses retrofitting of capture equipment, CO_2 transport and the storage of CO_2. Applicants should provide evidence of reasonable scenarios, taking into account the cost of the capture technology and transport option chosen for the technical CCR assessments and the estimated costs of CO_2 storage, which make operational CCS economically feasible for the proposed development.

4.9.33 The preparation of an economic assessment will involve a wide range of assumptions on each of a number of factors, and government recognises the inherent uncertainties about each of these factors. There can be no guarantee that an assessment which is carried out now will predict with complete accuracy either in what circumstances it will be feasible to fit CCS to a proposed power station or when those circumstances will arise, but it can indicate the

[144] Carbon Capture Readiness. A guidance note for Section 36 Applications: See https://www.gov.uk/government/publications/carbon-capture-readiness-ccr-a-guide-on-consent-applications

circumstances which would need to be the case to allow operational CCS to be economically feasible during the lifetime of the proposed new station.

4.9.34 A model assessment structure is suggested in CCR guidance[145], although this is not the only way which the assessment could be addressed. Applicants must justify the capture, transport and storage options chosen for their proposed development.

4.9.35 If granted consent, operators of the power station will be required to:

- retain control over sufficient additional space on or near the site on which to install the carbon capture equipment and the ability to use it for that purpose.
- submit update reports on the technical aspects of its CCR status to the Secretary of State for DESNZ. These reports will be required within three months of the commercial operation date of the power station (so avoiding any burden on the operator with an unimplemented consent) and every two years thereafter. Should CCS equipment be retrofitted to the full capacity of the plant, the obligation to provide such reports will lapse.

Secretary of State decision making

4.9.36 In considering CCR, the Secretary of State should consult the EA or NRW on the applicants technical and economic feasibility assessments.

4.9.37 The Secretary of State should also have regard to advice from the EA or NRW as to the suitability of the space set aside on or near the site for CCS equipment.

4.9.38 If the Secretary of State, having considered these assessments and other available information including comments by EA or NRW, concludes that it will not be technically and economically feasible to retrofit CCS to a proposed plant during its expected lifetime, then the proposed development cannot be judged to be CCR and therefore cannot receive consent.

4.10 Climate Change Adaptation and Resilience

4.10.1 Whilst we must continue to accelerate efforts to end our contribution to climate change by reaching Net Zero greenhouse gas emissions, adaptation is also necessary to manage the impacts of current and future climate change. If new energy infrastructure is not sufficiently resilient against the possible impacts of

[145] Carbon Capture Readiness. A guidance note for Section 36 Applications: See https://www.gov.uk/government/publications/carbon-capture-readiness-ccr-a-guide-on-consent-applications

climate change, it will not be able to satisfy the energy needs as outlined in Part 3 of this NPS.

4.10.2 Climate change is already altering the UK's weather patterns and this will continue to accelerate depending on global carbon emissions. This means it is likely there will be more extreme weather events. As well as climatic and seasonal changes such as hotter, drier summers and warmer, wetter winters, there is also a likelihood of increased flooding, drought, heatwaves, and intense rainfall events, as well as rising sea levels, increased storms and coastal change. Adaptation is therefore necessary to deal with the potential impacts of these changes that are already happening.

4.10.3 To support planning decisions, the government produces a set of UK Climate Projections[146] as well as hazard-specific tools and guidance like the Environment Agency's climate change allowances for flood risk assessments. In addition, the government's National Adaptation Programme and Adaptation Reporting Power[147] will ensure that reporting authorities (a defined list of public bodies and statutory undertakers, including energy utilities) assess the risks to their organisation presented by climate change.

4.10.4 The generic impacts advice in this NPS and the technology specific advice on impacts in the other energy NPSs provide additional information on climate change adaptation and should be read alongside this section (Section 5.3 on greenhouse gas emissions, Section 5.6 on coastal change and Section 5.8 on flood risk in particular provide relevant guidance for consideration).

Applicant assessment

4.10.5 In certain circumstances, measures implemented to ensure a scheme can adapt to climate change may give rise to additional impacts, for example as a result of protecting against flood risk, there may be consequential impacts on coastal change. In preparing measures to support climate change adaptation applicants should take reasonable steps to maximise the use of nature-based solutions alongside other conventional techniques.

4.10.6 Integrated approaches, such as looking across the water cycle, considering coordinated management of water storage, supply, demand, wastewater, and flood risk can provide further benefits to address multiple infrastructure needs, as well as carbon sequestration benefits.

4.10.7 In addition to avoiding further GHG emissions when compared with more traditional adaptation approaches, nature-based solutions can also result in

[146] The UKCP18 key results can be found here: See https://www.metoffice.gov.uk/research/approach/collaboration/ukcp/key-results
[147] s.62 of the Climate Change Act 2008; See https://www.gov.uk/government/publications/climate-change-second-national-adaptation-programme-2018-to-2023

biodiversity benefits and net gain, as well as increasing absorption of carbon dioxide from the atmosphere.

4.10.8 New energy infrastructure will typically need to remain operational over many decades, in the face of a changing climate. Consequently, applicants must consider the direct (e.g. site flooding, limited water availability, storms, heatwave and wildfire threats to infrastructure and operations) and indirect (e.g. access roads or other critical dependencies impacted by flooding, storms, heatwaves or wildfires) impacts of climate change when planning the location, design, build, operation and, where appropriate, decommissioning of new energy infrastructure.

4.10.9 The ES should set out how the proposal will take account of the projected impacts of climate change, using government guidance and industry standard benchmarks such as the Climate Change Allowances for Flood Risk Assessments,[148] Climate Impacts Tool,[149] and British Standards for climate change adaptation,[150] in accordance with the EIA Regulations.

4.10.10 Applicants should assess the impacts on and from their proposed energy project across a range of climate change scenarios, in line with appropriate expert advice and guidance available at the time.

4.10.11 Applicants should demonstrate that proposals have a high level of climate resilience built-in from the outset and should also demonstrate how proposals can be adapted over their predicted lifetimes to remain resilient to a credible maximum climate change scenario. These results should be considered alongside relevant research which is based on the climate change projections.

4.10.12 Where energy infrastructure has safety critical elements, the applicant should apply a credible maximum climate change scenario. It is appropriate to take a risk-averse approach with elements of infrastructure which are critical to the safety of its operation.

Secretary of State decision making

4.10.13 The Secretary of State should be satisfied that applicants for new energy infrastructure have taken into account the potential impacts of climate change using the latest UK Climate Projections[151] and associated research and expert guidance (such as the EA's Climate Change Allowances for Flood Risk Assessments[152] or the Welsh Government's Climate change allowances and

[148] See https://www.gov.uk/guidance/flood-risk-assessments-climate-change-allowances or See https://gov.wales/climate-change-allowances-and-flood-consequence-assessments-cl-03-16
[149] See https://www.gov.uk/government/publications/climate-impacts-tool
[150] See https://www.iso.org/standard/68507.html
[151] See https://www.metoffice.gov.uk/research/approach/collaboration/ukcp
[152] See https://www.gov.uk/guidance/flood-risk-assessments-climate-change-allowances

flood consequence assessments[153]) available at the time the ES was prepared to ensure they have identified appropriate mitigation or adaptation measures. This should cover the estimated lifetime of the new infrastructure, including any decommissioning period.

4.10.14 Should a new set of UK Climate Projections or associated research become available after the preparation of the ES, the Secretary of State (or the Examining Authority during the examination stage) should consider whether they need to request further information from the applicant.

4.10.15 The Secretary of State should be satisfied that there are not features of the design of new energy infrastructure critical to its operation which may be seriously affected by more radical changes to the climate beyond that projected in the latest set of UK climate projections, taking account of the latest credible scientific evidence on, for example, sea level rise (for example by referring to additional maximum credible scenarios – i.e. from the Intergovernmental Panel on Climate Change or EA) and that necessary action can be taken to ensure the operation of the infrastructure over its estimated lifetime.

4.10.16 If any adaptation measures give rise to consequential impacts (for example on flooding, water resources or coastal change) the Secretary of State should consider the impact of the latter in relation to the application as a whole and the impacts guidance set out in Part 5 of this NPS.

4.10.17 Any adaptation measures should be based on the latest set of UK Climate Projections[154], the government's latest UK Climate Change Risk Assessment[155], when available[156], and in consultation with the EA's Climate Change Allowances for Flood Risk Assessments[157] or the Welsh Government's Climate change allowances and flood consequence assessments[158].

4.10.18 The Secretary of State may take into account reporting authorities' reports (see paragraph 4.10.3 above) to the Secretary of State when considering adaptation measures proposed by an applicant for new energy infrastructure.

4.10.19 Adaptation measures should be required to be implemented at the time of construction where necessary and appropriate to do so. However, where they are necessary to deal with the impact of climate change, and that measure would have an adverse effect on other aspects of the project and/or surrounding environment (for example coastal processes), the Secretary of State may consider requiring the applicant to keep the need for the adaptation measure

[153] See https://gov.wales/climate-change-allowances-and-flood-consequence-assessments
[154] See https://www.metoffice.gov.uk/research/approach/collaboration/ukcp
[155] See https://www.gov.uk/government/publications/uk-climate-change-risk-assessment-2022
[156] s.56 of the Climate Change Act 2008.
[157] See https://www.gov.uk/guidance/flood-risk-assessments-climate-change-allowances
[158] See https://gov.wales/climate-change-allowances-and-flood-consequence-assessments

under review, and ensure that the measure could be implemented should the need arise, rather than at the outset of the development (for example increasing height of existing, or requiring new, sea walls).

4.11 Network Connection

4.11.1 The connection of a proposed electricity generation plant to the electricity network is an important consideration for applicants wanting to construct or extend a generation plant.

4.11.2 In the market system and in the past, it has been for the applicant to ensure that there will be necessary infrastructure and capacity within an existing or planned transmission or distribution network to accommodate the electricity generated.

4.11.3 To support the achievement of the transition to net zero, government is accelerating the co-ordination of the development of the grid network to facilitate the UK's net zero energy generation development and transmission.

4.11.4 Transmission network infrastructure, and related network reinforcement and upgrade works, associated with nationally significant low carbon infrastructure is considered as CNP Infrastructure. Further guidance can be found in Section 4.2 of this NPS and EN-5.

Applicant assessment

4.11.5 The applicant must liaise with National Grid who own and manage the transmission network in England and Wales or the relevant regional DNO or TSO to secure a grid connection.

4.11.6 Applicants may wish to take a commercial risk where they have not received or accepted a formal offer of a grid connection from the relevant network operator at the time of the application.[159] In this situation applicants should provide information as part of their application confirming that there is no obvious reason why a network connection would not be possible.

4.11.7 The Planning Act 2008 aims to create a holistic planning regime so that the cumulative effect of different elements of the same project can be considered together. Co-ordinated applications typically bring economic efficiencies and reduced environmental impact. The government therefore envisages that wherever reasonably possible, applications for new generating stations and related infrastructure should be contained in a single application to the Secretary of State or in separate applications submitted in tandem which have been

[159] Although it is likely to have applied for one and discussed it with them.

prepared in an integrated way, as outlined in EN-5. This is particularly encouraged to ensure development of more co-ordinated transmission overall.

4.11.8 On some occasions it may not be possible to coordinate applications. For example, different elements of a project may have different lead-in times and be undertaken by different legal entities subject to different commercial and regulatory frameworks (for example grid companies operate within OFGEM controls) making it inefficient from a delivery perspective to submit one application. Applicants may therefore decide to submit separate applications for each element. Where this is the case, the applicant should include information on the other elements[160] and explain the reasons for the separate application confirming that there are no obvious reasons for why other elements are likely to be refused.

4.11.9 If this option is pursued, the applicant accepts the implicit risks involved in doing so and must ensure they provide sufficient information to comply with the EIA Regulations including the indirect, secondary, and cumulative effects, which will encompass information on grid connections.

4.11.10 It is recognised that this may be the situation for some new offshore transmission projects, where applications for consent may be brought forward separate to (though planned with) the applications for associated wind farms[161] as outlined in EN-5.

Secretary of State decision making

4.11.11 The Secretary of State should consider guidance contained within EN-5.

4.11.12 The Secretary of State should be satisfied that appropriate network connection arrangements are/will be in place for a given project regardless of whether one or multiple (linked) applications are submitted.

4.11.13 Where the Secretary of State has decided to grant consent for one project this should not in any way fetter the Secretary of State's ability to take subsequent decisions on any related projects.

[160] It is acknowledged that different levels of information may be available at different times and as such applicants should take a proportionate approach to what information should be included.
[161] The transition to more co-ordinated transmission is led by two temporal workstreams under the Offshore Transmission Network Review (OTNR). Co-ordinated transmission projects were brought forward as pathfinders as part of the Late Stage projects workstream (formerly known as Early Opportunities). For other offshore wind projects, their connection to a transmission network forms part of the Holistic Network Design under the 'Pathway to 2030' workstream.

4.12 Pollution Control and Other Environmental Regulatory Regimes

4.12.1 Issues relating to discharges or emissions from a proposed project, and which lead to other direct or indirect impacts on terrestrial, freshwater, marine, onshore, and offshore environments, or which include noise and vibration may be subject to separate regulation under the pollution control framework or other consenting and licensing regimes, for example local planning consent or marine licences (see paragraph 4.5.6 for more information).

4.12.2 The planning and pollution control systems are separate but complementary. The planning system controls the development and use of land in the public interest. It plays a key role in protecting and improving the natural environment, public health and safety, and amenity, for example by attaching conditions to allow developments which would otherwise not be environmentally acceptable to proceed and preventing harmful development which cannot be made acceptable even through conditions. Pollution control is concerned with preventing pollution through the use of measures to prohibit or limit the releases of substances to the environment from different sources to the lowest practicable level. It also ensures that ambient air, water, and land quality meet standards that guard against impacts to the environment or human health.

4.12.3 Pollution from industrial sources in England and Wales is controlled through the Environmental Permitting (England and Wales) Regulations 2016. The Environmental Permitting Regulations require industrial facilities to have an Environmental Permit and meet limits on allowable emissions to operate.

4.12.4 Larger industrial facilities undertaking specific types of activity are required to use Best Available Techniques (BAT) to reduce emissions to air, water, and land. Agreement on what sector specific BAT standards are, will now be determined through a new UK-specific BAT process.[162]

Applicant assessment

4.12.5 Applicants should consult the MMO (or NRW in Wales) on energy NSIP projects which would affect, or would be likely to affect, any relevant marine areas as defined in the Planning Act 2008 (as amended by section 23 of the Marine and Coastal Access Act 2009). Applicants are encouraged to consider the relevant marine plans in advance of consulting the MMO for England or the relevant policy teams at the Welsh government.

4.12.6 Many projects covered by this NPS will be subject to the Environmental Permitting Regulations, which also incorporates operational waste management

[162] See https://www.gov.uk/government/publications/integrated-pollution-prevention-and-control-developing-and-setting-of-best-available-techniques-bat-provisional-common-framework

requirements for certain activities. When an applicant applies for an Environmental Permit, the relevant regulator (usually the EA or NRW but sometimes the local authority) requires that the application demonstrates that processes are in place to meet all relevant Environmental Permitting Regulations requirements.[163]

4.12.7 Applicants should make early contact with relevant regulators, including EA or NRW and the MMO, to discuss their requirements for Environmental Permits and other consents, such as marine licences.

4.12.8 Wherever possible, applicants should submit applications for Environmental Permits and other necessary consents at the same time as applying to the Secretary of State for development consent.

Secretary of State decision making

4.12.9 In considering an application for development consent the Secretary of State should focus on whether the development itself is an acceptable use of the land or sea, and the impact of that use, rather than the control of processes, emissions or discharges themselves.[164]

4.12.10 The Secretary of State should work on the assumption that the relevant pollution control regime and other environmental regulatory regimes, including those on land drainage, water abstraction and biodiversity, will be properly applied and enforced by the relevant regulator. The Secretary of State should act to complement but not seek to duplicate them.

4.12.11 The Secretary of State's consent may include a deemed marine licence and the MMO, or NRW, will advise on what conditions should apply to the deemed marine licence.

4.12.12 The Secretary of State and the MMO, or NRW, should cooperate closely to ensure that energy NSIPs are licensed in accordance with environmental legislation.

4.12.13 In considering the impacts of the project, the Secretary of State may wish to consult the regulator on any management plans that would be included in an Environmental Permit application.

4.12.14 The Secretary of State should be satisfied that development consent can be granted taking full account of environmental impacts.

4.12.15 Working in close cooperation with the EA or NRW and/or the pollution control authority, and other relevant bodies, such as the MMO, the SNCB, Drainage

[163] See https://www.gov.uk/government/publications/environmental-permitting-guidance-core-guidance--2
[164] See paragraph 188 of section 15 of the NPPF

Boards, and water and sewerage undertakers, the Secretary of State should be satisfied, before consenting any potentially polluting developments, that:

- the relevant pollution control authority is satisfied that potential releases can be adequately regulated under the pollution control framework
- the effects of existing sources of pollution in and around the site are not such that the cumulative effects of pollution when the proposed development is added would make that development unacceptable, particularly in relation to statutory environmental quality limits

4.12.16 The Secretary of State should not refuse consent on the basis of pollution impacts unless there is good reason to believe that any relevant necessary operational pollution control permits or licences or other consents will not subsequently be granted. On this basis, it is reasonable for the Secretary of State to consider residual amenity issues only when considering whether the development itself is an acceptable use of the land or sea, and on the impacts of that use.

4.13 Safety

4.13.1 In addition to its role in the planning system, the HSE is the independent regulator for workplace health and safety and is responsible for enforcing a range of health and safety legislation, some of which is relevant to the construction, operation and decommissioning of energy infrastructure.

4.13.2 Some technologies, for example major accident hazard pipelines, will be regulated by specific health and safety legislation. The application of these regulations is set out in the technology specific NPSs where relevant.

4.13.3 Some energy infrastructure will be subject to the Control of Major Accident Hazards (COMAH) Regulations 2015.[165] These Regulations aim to prevent major accidents involving dangerous substances and limit the consequences to people and the environment of any that do occur. COMAH regulations apply throughout the life cycle of the facility, i.e. from the design and build stage through to decommissioning. They are enforced by the Competent Authority comprising HSE or ONR (Office for Nuclear Regulation, for nuclear) and the EA acting jointly in England and by the HSE and NRW acting jointly in Wales, and the HSE and Scottish Environment Protection Agency (SEPA) acting jointly in Scotland.

4.13.4 The same principles apply here as for those set out in the previous section on pollution control and other environmental permitting regimes.

[165] See https://www.hse.gov.uk/comah/background/comah15.htm#main

Applicant assessment

4.13.5 Applicants should consult with the HSE on matters relating to safety.

4.13.6 Applicants seeking to develop infrastructure subject to the COMAH regulations should make early contact with the Competent Authority.

4.13.7 If a safety report is required it is important to discuss with the Competent Authority the type of information that should be provided at the design and development stage, and what form this should take. This will enable the Competent Authority to review as much information as possible before construction begins, in order to assess whether the inherent features of the design are sufficient to prevent, control and mitigate major accidents.

Secretary of State decision making

4.13.8 The Secretary of State should be satisfied that a safety assessment has been prepared, where required, and that the Competent Authority has raised no safety objections.

4.14 Hazardous Substances

4.14.1 All establishments wishing to hold stocks of certain hazardous substances above a threshold need 'Hazardous Substances Consent.'[166]

4.14.2 The Hazardous Substances Authority (HSA) has responsibility for deciding whether the risk of storing hazardous substances is tolerable for the community. The HSA will usually be the local planning authority. In some circumstances, the county council are the HSA.

4.14.3 HSE is a statutory consultee on applications for hazardous substances consent. HSE is required to undertake detailed assessment work before producing its public safety statutory advice and the supporting consultation distances. This involves HSE considering the compatibility of the proposal outlined in the application (e.g. to store defined quantities of each hazardous substance in specific locations on site) against the risks to the offsite population. HSE advice takes into account existing and potential developments in the area. The aim of HSE's advice is to mitigate the effects of a major accident on the populations around a major hazard site or pipeline.

[166] Further information is available at the HSE's website: HSE: Land use planning - Hazardous substances consent

4.14.4 Where HSE does not advise against the Secretary of State granting the consent, it will also recommend whether the consent should be granted subject to any requirements.

Applicant assessment

4.14.5 Applicants must consult the HSA and HSE at pre-application stage if the project is likely to need hazardous substances consent. Hazardous substances consents are a part of the planning regime which contributes to public safety.

4.14.6 HSE sets a consultation distance around every site with hazardous substances consent and notifies the relevant local planning authorities. The applicant should therefore consult the local planning authority at pre-application stage to identify whether its proposed site is within the consultation distance of any site with hazardous substances consent and, if so, should consult the HSE for its advice on locating the particular development on that site. Where a hazardous substance consent has been deemed to be granted, the developer is required to send the relevant HSA any information required by them for the purposes of a register.

Secretary of State decision making

4.14.7 Where hazardous substances consent is applied for, the Secretary of State will consider whether to make an order directing that hazardous substances consent shall be deemed to be granted alongside making an order granting development consent.[167] The Secretary of State should consult HSE about this.

4.15 Common Law Nuisance and Statutory Nuisance

4.15.1 Section 158 of the Planning Act 2008 confers statutory authority for carrying out development consented to by, or doing anything else authorised by, a Development Consent Order.

4.15.2 Such authority is conferred only for the purpose of providing a defence in any civil or criminal proceedings for nuisance. This would include a defence for proceedings for nuisance under Part III of the Environmental Protection Act 1990 (EPA) (statutory nuisance) but only to the extent that the nuisance is the inevitable consequence of what has been authorised.

4.15.3 The defence does not extinguish the local authority's duties under Part III of the EPA 1990 to inspect its area and take reasonable steps to investigate complaints

[167] Hazardous substances consent can also be applied for subsequent to a Development Consent Order application. However, the guidance in 4.13.1 still applies i.e. the applicant should consult with HSE at the pre-application stage and include details in their Development Consent Order

of statutory nuisance and to serve an abatement notice where satisfied of its existence, likely occurrence or recurrence.

4.15.4 The defence is not intended to extend to proceedings where the matter is "prejudicial to health" and not a nuisance.

Applicant Assessment

4.15.5 At the application stage of an energy NSIP, possible sources of nuisance under section 79(1) of the EPA 1990 and how they may be mitigated or limited should be identified by the applicant so that appropriate requirements can be included in any subsequent order granting development consent (see Section 5.7 on dust, odour, artificial light etc. and Section 5.12 on noise and vibration).

Secretary of State decision making

4.15.6 At the application stage of an energy NSIP, possible sources of nuisance under section 79(1) of the EPA 1990 and how they may be mitigated or limited should be considered by the Secretary of State so that appropriate requirements can be included in any subsequent order granting development consent (see Section 5.7 on dust, odour, artificial light etc. and Section 5.12 on noise and vibration).

4.15.7 The Secretary of State should note that the defence of statutory authority is subject to any contrary provision made by the Secretary of State in any particular case in a Development Consent Order (section 158(3) of the Planning Act 2008). Therefore, subject to Section 5.7 and Section 5.12, the Secretary of State can disapply the defence of statutory authority, in whole or in part, in any particular case, but in so doing should have regard to whether any particular nuisance is an inevitable consequence of the development.

4.16 Security Considerations

4.16.1 National security considerations apply across all national infrastructure sectors.

4.16.2 DESNZ works closely with government security agencies including the National Protective Security Authority (NPSA) and the National Cyber Security Centre (NCSC) to provide advice to the most critical infrastructure assets on terrorism and other national security threats, as well as on risk mitigation.

4.16.3 In the UK's civil nuclear industry, security is also independently regulated by the Office for Nuclear Regulation (ONR).

4.16.4 Government policy is to ensure that, where possible, proportionate protective security measures are designed into new infrastructure projects at an early stage in the project development. Where applications for development consent for

infrastructure covered by this NPS relate to potentially 'critical' infrastructure, there may be national security considerations.

4.16.5 DESNZ will be notified at pre-application stage about every likely future application for energy NSIPs, so that any national security implications can be identified.

Applicant assessment

4.16.6 Where national security implications have been identified, the applicant should consult with relevant security experts from NPSA, ONR (for civil nuclear) and/or DESNZ to ensure security measures have been adequately considered in the design process and that adequate consideration has been given to the management of security risks.

4.16.7 The applicant should only include sufficient information in the application as is necessary to enable the Secretary of State to examine the development consent issues and make a properly informed decision on the application.

Secretary of State decision making

4.16.8 If NPSA, ONR (for civil nuclear) and/or DESNZ are satisfied that security issues have been adequately addressed in the project when the application is submitted to the Secretary of State, it will provide confirmation of this to the Secretary of State. The Secretary of State should not need to give any further consideration to the details of the security measures in its examination.

4.16.9 In exceptional cases, where examination of an application would involve public disclosure of information about defence or national security which would not be in the national interest, the examination of that evidence may take place in a closed session as set out under Examination Procedure Rules.

4.16.10 The Secretary of State must also consider duties under other legislation including duties under the Environment Act 2021 in relation to environmental targets and the Government's Environmental Improvement Plan 2023.

5 Generic Impacts

5.1 Introduction

5.1.1 This Part considers generic impacts that arise from the development of all of the types of energy infrastructure covered by the energy NPSs (such as landscape and visual impacts) or arise in similar ways from the development of energy infrastructure covered in at least two of the energy NPSs. In some cases, the technology specific NPSs provide detail on the way these impacts arise, or are to be considered, in the context of applications specific to the technology in question. Impacts which are limited to one particular technology are only covered in the relevant technology specific NPS.

5.1.2 The list of impacts (generic and technology specific) and the relevant policy in this Part and in the impact section of the technology specific NPSs is not exhaustive. The NPSs address those impacts and means of mitigation that are anticipated to arise most frequently. They are not intended to provide a list of all possible effects or ways to mitigate such effects. The Secretary of State should therefore consider other impacts and means of mitigation where it determines that the impact is relevant and important to its decision.

5.1.3 The technology specific NPSs may state that certain impacts should be given a particular weight. Where they do not, the Secretary of State should follow any policy on the level of weight to be given to such impact set out in this NPS. Applicants should identify the impacts of their proposals in the ES in terms of those covered in this NPS and any others that may be relevant to their application.

5.1.4 Some of the impact sections in this NPS and the technology specific NPSs refer to development consent requirements or obligations, or conditions of a deemed marine licence, as means of securing appropriate mitigation. The fact that the possible use of requirements, obligations or conditions are not mentioned in relation to other impacts does not mean that they may not be relevant.

5.1.5 Some of the impact sections in this NPS and the technology specific NPSs also refer to bodies whom the applicant or the Secretary of State should consult. The references to specific bodies are not intended to be exhaustive. The fact that in other impact sections no mention is made of such consultation does not mean that the applicant or the Secretary of State should not, where appropriate, engage in it.[168] Applicants must also ensure they consult the relevant bodies about their proposed applications in accordance with section 42 to 44 of the

[168] The Secretary of State may choose to consult in certain circumstances following the close of the examination but in most cases will be under no obligation to do so.

Planning Act 2008 and the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.

5.1.6 Sufficient relevant information is crucial to good decision making, particularly where formal assessments are required. To avoid delay, if in any doubt applicants should discuss what information is needed with the Planning Inspectorate, statutory bodies, and other relevant organisations as early as possible. Any assessment should be based on the most up to date data and guidance.

5.2 Air Quality and Emissions

5.2.1 Energy infrastructure development can have adverse effects on air quality. The construction, operation and decommissioning phases can involve emissions to air which could lead to adverse impacts on health, on protected species and habitats,[169] or on the wider countryside and species. Air emissions include particulate matter (for example dust) up to a diameter of ten microns (PM10) and up to a diameter of 2.5 microns (PM2.5) as well as gases such as sulphur dioxide, carbon monoxide and nitrogen oxides (NOx).

5.2.2 Legal limits for pollutants in ambient air are set out in the Air Quality Standards Regulations 2010 and for England, national objectives set out in the Air Quality (England) Regulations 2000 reiterated in the Air Quality Strategy[170], or for Wales, the Air Quality (Wales) Regulations 2000 and the Clean Air Plan for Wales.[171] In addition, two fine particulate matter (PM2.5) targets were set under the Environment Act 2021 for England – an annual mean concentration target and a population exposure target. Internationally agreed emissions commitments are set in the National Emission Ceilings Regulations 2018 and establish limits for total UK emissions of key pollutants.

5.2.3 For many air pollutants there is not a threshold below which there is no health impact so it is important that energy infrastructure schemes consider not just how a scheme may impact statutory air quality limits, objectives or targets but also measures to mitigate all emissions in order to minimise human exposure to air pollution, especially for those who are more susceptible to the impacts of poor air quality.

5.2.4 In addition, a particular effect of air emissions from some energy infrastructure may be eutrophication, which is the excessive enrichment of nutrients in the environment. Eutrophication from air pollution results mainly from emissions of NOx and ammonia. The main emissions from energy infrastructure are from

[169] Impacts on protected species and habitats are covered in Section 5.4.
[170] See https://www.gov.uk/government/publications/the-air-quality-strategy-for-england
[171] See https://www.gov.wales/clean-air-plan-wales-healthy-air-healthy-wales

generating stations. Eutrophication can affect plant growth and functioning, altering the competitive balance of species and thereby damaging biodiversity. In aquatic ecosystems it can cause changes to algal composition and lead to algal blooms, which remove oxygen from the water, adversely affecting plants and fish. The effects on ecosystems can be short term or irreversible and can have a large impact on ecosystem services such as pollination, aesthetic services and water supply.

5.2.5 Operational emissions from combustion plant are controlled through Environmental Permits. The relationship between environmental permitting and planning systems is set out in Section 4.12. Emissions from combustion plants are generally released through exhaust stacks. Design of exhaust stacks, particularly height, is the primary driver for the delivery of optimal dispersion of emissions and is often determined by statutory requirements. The optimal stack height is dependent upon the local terrain and meteorological conditions, in combination with the emission characteristics of the plant. The EA or NRW will require the exhaust stack height of a thermal combustion generating plant, including fossil fuel generating stations and waste or biomass plant, to be optimised in relation to impact on air quality. The Secretary of State need not, therefore, be concerned with the exhaust stack height optimisation process in relation to air emissions, though the impact of stack heights on landscape and visual amenity will be a consideration (see Section 5.10).

5.2.6 Impacts of thermal combustion generating stations with respect to air emissions are set out in the technology specific NPSs.

5.2.7 Proximity to emission sources can have significant impacts on sensitive receptor sites for air quality, such as education or healthcare sites, residential use or sensitive or protected ecosystems. Projects near a sensitive receptor site for air quality should only be proposed in exceptional circumstances if no viable alternative site is available. In these instances, substantial mitigation of any expected emissions will be required (see paragraph 5.2.12 below).

Applicant assessment

5.2.8 Where the project is likely to have adverse effects on air quality the applicant should undertake an assessment of the impacts of the proposed project as part of the ES.

5.2.9 The ES should describe:

- existing air quality concentrations and the relative change in air quality from existing levels;
- any significant air quality effects, mitigation action taken and any residual effects, distinguishing between the project stages and taking account of any significant emissions from any road traffic generated by the project;

- the predicted absolute emissions, concentration change and absolute concentrations as a result of the proposed project, after mitigation methods have been applied; and
- any potential eutrophication impacts.

5.2.10 In addition, applicants should consider the Environment Targets (Fine Particulate Matter) (England) Regulations 2022 and associated Defra guidance.

5.2.11 Defra publishes future national projections of air quality based on estimates of future levels of emissions, traffic, and vehicle fleet. Projections are updated as the evidence base changes and the applicant should ensure these are current at the point of an application. The applicant's assessment should be consistent with this but may include more detailed modelling and evaluation to demonstrate local and national impacts. If an applicant believes they have robust additional supporting evidence, to the extent they could affect the conclusions of the assessment, they should include this in their representations to the Examining Authority along with the source.

5.2.12 Where a proposed development is likely to lead to a breach of any relevant statutory air quality limits, objectives or targets, or affect the ability of a non-compliant area to achieve compliance within the timescales set out in the most recent relevant air quality plan/strategy at the time of the decision, the applicant should work with the relevant authorities to secure appropriate mitigation measures to ensure that those statutory limits, objectives or targets are not breached.

5.2.13 The Secretary of State should consider whether mitigation measures are needed both for operational and construction emissions over and above any which may form part of the project application. A construction management plan may help codify mitigation at this stage. In doing so the Secretary of State should have regard to the Air Quality Strategy[172] in England, or the Clean Air Plan for Wales in Wales[173], or any successors to these and should consider relevant advice within Local Air Quality Management guidance and PM2.5 targets guidance.[174]

5.2.14 The mitigations identified in Section 5.14 on traffic and transport impacts will help mitigate the effects of air emissions from transport.

Secretary of State decision making

5.2.15 Many activities involving air emissions are subject to pollution control. The considerations set out in Section 4.12 on the interface between planning and pollution control therefore apply. The Secretary of State must also consider

[172] See https://www.gov.uk/government/publications/the-air-quality-strategy-for-england
[173] See https://www.gov.wales/clean-air-plan-wales-healthy-air-healthy-wales
[174] See https://laqm.defra.gov.uk/supporting-guidance.html and https://www.gov.uk/government/publications/fine-particulate-air-pollution-pm25-setting-targets

duties under other legislation including duties under the Environment Act 2021 in relation to environmental targets and have regard to policies set out in the Government's Environmental Improvement Plan 2023.

5.2.16 The Secretary of State should give air quality considerations substantial weight where a project would lead to a deterioration in air quality. This could for example include where an area breaches any national air quality limits or statutory air quality objectives. However, air quality considerations will also be important where substantial changes in air quality levels are expected, even if this does not lead to any breaches of statutory limits, objectives or targets.

5.2.17 The Secretary of State should give air quality considerations substantial weight where a project is proposed near a sensitive receptor site, such as an education or healthcare facility, residential use or a sensitive or protected habitat.

5.2.18 Where a project is proposed near to a sensitive receptor site for air quality, if the applicant cannot provide justification for this location, and a suitable mitigation plan, the Secretary of State should refuse consent.

5.2.19 In all cases, the Secretary of State must take account of any relevant statutory air quality limits, objectives and targets. If a project will lead to non-compliance with a statutory limit, objective or target the Secretary of State should refuse consent.

5.3 Greenhouse Gas Emissions

5.3.1 Significant levels of energy infrastructure development are vital to ensure the decarbonisation of the UK economy. The construction, operation and decommissioning of that energy infrastructure will in itself, lead to GHG emissions.

5.3.2 In considering this section, applicants should also have regard to Part 2 of this NPS, which explains the current policy on climate change and how this NPS interacts with that policy, and Section 4.10 of this NPS, which deals with climate change adaptation.

5.3.3 As discussed in Part 2, energy infrastructure plays a vital role in decarbonisation. While all steps should be taken to reduce and mitigate climate change impacts, it is accepted that there will be residual emissions from energy infrastructure, particularly during the economy wide transition to net zero, and potentially beyond.

Applicant assessment

5.3.4 All proposals for energy infrastructure projects should include a GHG assessment as part of their ES (See Section 4.3). This should include:

- A whole life GHG assessment showing construction, operational and decommissioning GHG impacts, including impacts from change of land use.
- An explanation of the steps that have been taken to drive down the climate change impacts at each of those stages.
- Measurement of embodied GHG impact from the construction stage.
- How reduction in energy demand and consumption during operation has been prioritised in comparison with other measures.
- How operational emissions have been reduced as much as possible through the application of best available techniques for that type of technology.
- Calculation of operational energy consumption and associated carbon emissions.
- Whether and how any residual GHG emissions will be (voluntarily) offset or removed using a recognised framework.
- Where there are residual emissions, the level of emissions and the impact of those on national and international efforts to limit climate change, both alone and where relevant in combination with other developments at a regional or national level, or sector level, if sectoral targets are developed.

Mitigation

5.3.5 A GHG assessment should be used to drive down GHG emissions at every stage of the proposed development and ensure that emissions are minimised as far as possible for the type of technology, taking into account the overall objectives of ensuring our supply of energy always remains secure, reliable and affordable, as we transition to net zero.

5.3.6 Applicants should look for opportunities within the proposed development to embed nature-based or technological solutions to mitigate or offset the emissions of construction and decommissioning.

5.3.7 Steps taken to minimise and offset emissions should be set out in a GHG Reduction Strategy, secured under the Development Consent Order. The GHG Reduction Strategy should consider the creation and preservation of carbon stores and sinks including through woodland creation, hedgerow creation and restoration, peatland restoration and through other natural habitats.

Secretary of State decision making

5.3.8 The Secretary of State must be satisfied that the applicant has as far as possible assessed the GHG emissions of all stages of the development.

5.3.9 The Secretary of State should be content that the applicant has taken all reasonable steps to reduce the GHG emissions of the construction and decommissioning stage of the development.

5.3.10 The Secretary of State should give appropriate weight to projects that embed nature-based or technological processes to mitigate or offset the emissions of construction and decommissioning within the proposed development. However, in light of the vital role energy infrastructure plays in the process of economy wide decarbonisation, the Secretary of State must accept that there are likely to be some residual emissions from construction and decommissioning of energy infrastructure.

5.3.11 Operational GHG emissions are a significant adverse impact from some types of energy infrastructure which cannot be totally avoided (even with full deployment of CCS technology). Given the characteristics of these and other technologies, as noted in Part 3 of this NPS, and the range of non-planning policies that can be used to decarbonise electricity generation, such as the UK ETS (see Section 2.4), government has determined that operational GHG emissions are not reasons to prohibit the consenting of energy projects or to impose more restrictions on them in the planning policy framework than are set out in the energy NPSs (e.g. the CCR requirements). Any carbon assessment will include an assessment of operational GHG emissions, but the policies set out in Part 2, including the UK ETS, can be applied to these emissions.

5.3.12 Operational emissions will be addressed in a managed, economy-wide manner, to ensure consistency with carbon budgets, net zero and our international climate commitments. The Secretary of State does not, therefore need to assess individual applications for planning consent against operational carbon emissions and their contribution to carbon budgets, net zero and our international climate commitments.

5.4 Biodiversity and Geological Conservation

5.4.1 Biodiversity is the variety of life in all its forms and encompasses all species of plants, animals and fungi, the genetic diversity they contain and the complex ecosystems of which they are a part. Geological conservation relates to the sites that are designated for their geology and/or their geomorphological importance.[175]

5.4.2 In the 25 Year Environment Plan, the government set out its vision for a quarter-of-a-century action to help the natural world regain and retain good health. A commitment to review the plan every 5 years was set into law in the Environment Act 2021. The Environmental Improvement Plan was published in 2023, which reinforces the intent of the 25 Year Environment Plan and sets out a plan to deliver on its framework and vision. The government's policy for biodiversity in

[175] A list of designated sites (including marine sites) is included in the Geological Conservation Review held by the Joint Nature Conservation Committee (JNCC)

England is set out in the Environmental Improvement Plan 2023[176], the National Pollinator Strategy[177] and the UK Marine Strategy[178]. The aim is to halt overall biodiversity loss in England by 2030 and then reverse loss by 2042, support healthy well-functioning ecosystems and establish coherent ecological networks, with more and better places for nature for the benefit of wildlife and people. This aim needs to be viewed in the context of the challenge presented by climate change. Healthy, naturally functioning ecosystems and coherent ecological networks will be more resilient and adaptable to climate change effects. Failure to address this challenge will result in significant adverse impact on biodiversity and the ecosystem services it provides.

5.4.3 The wide range of legislative provisions at the international and national level that can impact on planning decisions affecting biodiversity and geological conservation issues are set out in a Government Circular.[179] The National Planning Policy Framework and Natural Environment Planning Practice Guidance document sets out good practice in England in relation to planning for biodiversity and geological conservation.[180] In Wales, TAN 5: Nature Conservation and Planning sets out how the land use planning system should contribute to biodiversity and geological conservation[181].

Habitats Regulations

5.4.4 The highest level of biodiversity protection is afforded to sites identified through international conventions. The Habitats Regulations set out sites for which an HRA will assess the implications of a plan or project, including Special Areas of Conservation and Special Protection Areas.

5.4.5 As a matter of policy, the following should be given the same protection as sites covered by the Habitats Regulations and an HRA will also be required:

(a) potential Special Protection Areas and possible Special Areas of Conservation;

(b) listed or proposed Ramsar sites; and

(c) sites identified, or required, as compensatory measures for adverse effects on any of the other sites covered by this paragraph.

[176] See https://www.gov.uk/government/publications/environmental-improvement-plan
[177] See https://www.gov.uk/government/publications/national-pollinator-strategy-for-bees-and-other-pollinators-in-england
[178] See https://www.gov.uk/government/publications/marine-strategy-part-one-uk-updated-assessment-and-good-environmental-status
[179] Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System (ODPM 06/2005, Defra 01/2005) available via TSO website www.tso.co.uk/bookshop. It should be noted that this document does not cover more recent legislative requirements, such as the Marine Strategy Regulations 2010.
[180] See https://www.gov.uk/guidance/natural-environment
[181] See https://www.gov.wales/technical-advice-note-tan-5-nature-conservation-and-planning

5.4.6 The British Energy Security Strategy[182] committed to establishing strategic compensation for offshore renewables NSIPs, to offset environmental effects but also to reduce delays for individual projects. See paragraphs 2.8.276 – 2.8.283 of EN-3 for further information.

Sites of Special Scientific Interest (SSSIs)

5.4.7 Many SSSIs are also designated as sites of international importance and will be protected accordingly. Those that are not, or those features of SSSIs not covered by an international designation, should be given a high degree of protection. Most National Nature Reserves are notified as SSSIs.

5.4.8 Development on land within or outside a SSSI, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits (including need) of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of SSSIs.

Marine Conservation Zones

5.4.9 Marine Conservation Zones (MCZs) (Marine Protected Areas in Scotland), introduced under the Marine and Coastal Access Act 2009, are areas that have been designated for the purpose of conserving marine flora or fauna, marine habitats or types of marine habitat or features of geological or geomorphological interest. The protected feature or features and the conservation objectives for the MCZ are stated in the designation order for the MCZ. If a proposal is likely to have significant impacts on an MCZ, an MCZ Assessment should be undertaken as per the requirements under section 126 of the Marine and Coastal Access Act 2009. Government has recently designated the first three Highly Protected Marine Areas in England. These are designated as MCZs but with a higher conservation objective and with a single feature of the whole ecosystem within the site boundaries.

Marine Protected Areas

5.4.10 Marine Protected Area (MPA) is a term used to describe the network of habitat sites, SSSIs, MCZs, and Highly Protected Marine Areas (HPMAs) in the English and Welsh marine environment.

5.4.11 It is important that relevant guidance on managing environmental impacts of infrastructure in marine protected areas is followed, and that equal consideration of the effect of proposals should be given to all MPAs regardless of the legislation they were designated under. This is because all sites contribute to the network of

[182] See https://www.gov.uk/government/publications/british-energy-security-strategy/british-energy-security-strategy

MPAs and therefore to overall network integrity. In England, government have established a MPA condition target under the Environment Act.

Regional and Local Sites

5.4.12 Sites of regional and local biodiversity and geological interest, which include Regionally Important Geological Sites, Local Nature Reserves and Local Wildlife Sites, are areas of substantive nature conservation value and make an important contribution to ecological networks and nature's recovery. They can also provide wider benefits including public access (where agreed), climate mitigation and helping to tackle air pollution.

5.4.13 National planning policy expects plans to identify and map Local Wildlife Sites, and to include policies that not only secure their protection from harm or loss but also help to enhance them and their connection to wider ecological networks.

Ancient woodland, ancient trees, veteran trees and other irreplaceable habitats

5.4.14 Irreplaceable habitats are habitats which would be technically very difficult (or take a very significant time) to restore, recreate or replace once destroyed, taking into account their age, uniqueness, species diversity or rarity.

5.4.15 Ancient woodland is a valuable biodiversity resource both for its diversity of species and for its longevity as woodland[183]. Keepers of Time, the government's policy for ancient and native trees and woodlands in England sets out the government's commitment to maintain and enhance the existing area of ancient woodland, maintain and enhance the existing resource of known ancient and veteran trees, excluding natural losses from disease and death, and to increase the percentage of ancient woodland in active management. Ancient and veteran trees found outside ancient woodland are also particularly valuable. Other types of irreplaceable habitats include blanket bog, limestone pavement, coastal sand dunes, spartina salt marsh swards, mediterranean saltmarsh scrub, and lowland fen.

Protection and enhancement of habitats and species

5.4.16 Many individual species receive statutory protection under a range of legislative provisions.[184] Other species and habitats have been identified as being of principal importance for the conservation of biodiversity in England and Wales, as

[184] Certain plant and animal species, including all wild birds, are protected under the Wildlife and Countryside Act 1981. Certain plant and animal species are also protected under the Conservation of Habitats and Species Regulations 2017. Some other animals are protected under their own legislation, for example Protection of Badgers Act 1992.

well as for their continued benefit for climate mitigation and adaptation and thereby requiring conservation action.[185]

Applicant assessment

5.4.17 Where the development is subject to EIA, the applicant should ensure that the ES clearly sets out any effects on internationally, nationally, and locally designated sites of ecological or geological conservation importance (including those outside England), on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity, including irreplaceable habitats.

5.4.18 The applicant should provide environmental information proportionate to the infrastructure where EIA is not required to help the Secretary of State consider thoroughly the potential effects of a proposed project.

5.4.19 The applicant should show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests.[186]

5.4.20 Applicants should consider wider ecosystem services and benefits of natural capital when designing enhancement measures.

5.4.21 As set out in Section 4.7, the design process should embed opportunities for nature inclusive design. Energy infrastructure projects have the potential to deliver significant benefits and enhancements beyond Biodiversity Net Gain, which result in wider environmental gains (see Section 4.6 on Environmental and Biodiversity Net Gain). The scope of potential gains will be dependent on the type, scale, and location of each project.

5.4.22 The design of energy NSIP proposals will need to consider the movement of mobile/migratory species such as birds, fish and marine and terrestrial mammals and their potential to interact with infrastructure. As energy infrastructure could occur anywhere within England and Wales, both inland and onshore and offshore, the potential to affect mobile and migratory species across the UK and more widely across Europe (transboundary effects) requires consideration, depending on the location of development.

5.4.23 Energy projects will need to ensure vessels used by the project follow existing regulations and guidelines to manage ballast water.[187]

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[185] Lists of habitats and species of principal importance for the conservation of biological diversity in England published in response to Section 41 of the Natural Environment and Rural Communities Act 2006 are available from the Biodiversity Action Reporting System website. See section 7 of the Environment (Wales) Act 2016 for a list of habitats and species of principle importance in Wales.
[186] See, for example, the biodiversity planning toolkit created by the Association of Local Government Ecologists in partnership with NGOs, Defra, SNCB and the Environment Agency.
[187] The UK regulations on Ballast Water Management can be found here. Guidance has been published in MSN 1908 and MGN 675

5.4.24 In Wales, applicants should consider the guidance set out in Section 6.4 of Planning Policy Wales and the relevant policies in the Wales National Marine Plan.[188]

Applicant assessment – Habitats Regulations

5.4.25 The applicant should seek the advice of the appropriate SNCB and provide the Secretary of State with such information as the Secretary of State may reasonably require, to determine whether an HRA Appropriate Assessment (AA) is required. Applicants can request and agree 'Evidence Plans' with SNCBs, which is a way to record upfront the information the applicant needs to supply with its application, so that the HRA can be efficiently carried out. If an AA is required, the applicant must provide the Secretary of State with such information as may reasonably be required to enable the Secretary of State to conduct the AA. This should include information on any mitigation measures that are proposed to minimise or avoid likely significant effects.

5.4.26 If, during the pre-application stage, the SNCB indicate that the proposed development is likely to adversely impact the integrity of habitat sites, the applicant must include with their application such information as may reasonably be required to assess a potential derogation under the Habitats Regulations.

5.4.27 If the SNCB gives such an indication at a later stage in the development consent process, the applicant must provide this information as soon as is reasonably possible and before the close of the examination. This information must include assessment of alternative solutions, a case for Imperative Reasons of Overriding Public Interest (IROPI) and appropriate environmental compensation.

5.4.28 Provision of such information will not be taken as an acceptance of adverse impacts and if an applicant disputes the likelihood of adverse impacts, it can provide this information as part of its application 'without prejudice' to the Secretary of State's final decision on the impacts of the potential development. If, in these circumstances, an applicant does not supply information required for the assessment of a potential derogation, there will be no expectation that the Secretary of State will allow the applicant the opportunity to provide such information following the examination.

5.4.29 It is vital that applicants consider the need for compensation as early as possible in the design process as 'retrofitting' compensatory measures will introduce delays and uncertainty to the consenting process.

5.4.30 Applicants should work closely at an early stage in the pre-application process with SNCB and Defra/Welsh Government to develop a compensation plan for all protected sites adversely affected by the development. Applicants should engage with the relevant Local Planning Authority at an early stage regarding the

[188] See https://gov.wales/marine-planning

proposed location of compensatory measures. Applicants should also take account of any strategic plan level compensation plans in developing project level compensation plans.

5.4.31 Before submitting an application, applicants should seek the views of the SNCB and Defra/Welsh Government as to the suitability, securability and effectiveness of the compensation plan to ensure the development will not hinder the achievement of the conservation objectives for the protected site. In cases where such views are provided, the applicant should include a copy of this information with the compensation plan in their application for further consideration by the Examining Authority.

Applicant assessment – Ancient woodland, ancient trees, veteran trees and other irreplaceable habitats

5.4.32 Applicants should include measures to mitigate fully the direct and indirect effects of development on ancient woodland, ancient and veteran trees or other irreplaceable habitats during both construction and operational phases.[189]

Applicant assessment – Protection and enhancement of habitats and species

5.4.33 Applicants should consider any reasonable opportunities to maximise the restoration, creation, and enhancement of wider biodiversity, and the protection and restoration of the ability of habitats to store or sequester carbon as set out under Section 4.6.

5.4.34 Consideration should be given to improvements to, and impacts on, habitats and species in, around and beyond developments, for wider ecosystem services and natural capital benefits, beyond those under protection and identified as being of principal importance. This may include considerations and opportunities identified through Local Nature Recovery Strategies, and national goals and targets set through the Environment Act 2021 and the Environmental Improvement Plan 2023.

Mitigation

5.4.35 Applicants should include appropriate avoidance, mitigation, compensation and enhancement measures as an integral part of the proposed development. In particular, the applicant should demonstrate that:

- during construction, they will seek to ensure that activities will be confined to the minimum areas required for the works
- the timing of construction has been planned to avoid or limit disturbance

[189] Applicants in Wales should consult PPW 6.4.26.

- during construction and operation best practice will be followed to ensure that risk of disturbance or damage to species or habitats is minimised, including as a consequence of transport access arrangements
- habitats will, where practicable, be restored after construction works have finished
- opportunities will be taken to enhance existing habitats rather than replace them, and where practicable, create new habitats of value within the site landscaping proposals. Where habitat creation is required as mitigation, compensation, or enhancement, the location and quality will be of key importance. In this regard habitat creation should be focused on areas where the most ecological and ecosystems benefits can be realised.
- mitigations required as a result of legal protection of habitats or species will be complied with.

5.4.36 Applicants should produce and implement a Biodiversity Management Strategy as part of their development proposals. This could include provision for biodiversity awareness training to employees and contractors so as to avoid unnecessary adverse impacts on biodiversity during the construction and operation stages.

5.4.37 In the design of any direct cooling system the locations of the intake and outfall should be sited to avoid or minimise adverse impacts on the receiving waters, including their ecology. There should also be specific measures to minimise impact to fish and aquatic biota by entrainment and impingement or by excessive heat or biocidal chemicals from discharges to receiving waters.

5.4.38 To further minimise any adverse impacts on geodiversity, where appropriate applicants are encouraged to produce and implement a Geodiversity Management Strategy to preserve and enhance access to geological interest features, as part of relevant development proposals.

Secretary of State decision making

5.4.39 The government's 25 Year Environment Plan[190] and the Environment Act 2021 mark a step change in ambition for wildlife and the natural environment. The Secretary of State should have regard to the aims and goals of the government's Environmental Improvement Plan 2023, and in Wales the objectives of the Nature Recovery Plan, and any relevant measures and targets, including statutory targets set under the Environment Act or elsewhere.

5.4.40 In addition, in exercising functions in relation to Wales, the Secretary of State should consider Section 6 of the Environment (Wales) Act 2016 and seek to maintain and enhance biodiversity, and in so doing promote the resilience of

[190] See https://www.gov.uk/government/publications/25-year-environment-plan. An updated Environmental Improvement Plan 2023 has also been published in February 2023: https://www.gov.uk/government/publications/environmental-improvement-plan

ecosystems, so far as consistent with the proper exercise of the Secretary of State's functions.

5.4.41 The benefits of nationally significant low carbon energy infrastructure development may include benefits for biodiversity and geological conservation interests and these benefits may outweigh harm to these interests. The Secretary of State may take account of any such net benefit in cases where it can be demonstrated.

5.4.42 As a general principle, and subject to the specific policies below, development should, in line with the mitigation hierarchy, aim to avoid significant harm to biodiversity and geological conservation interests, including through consideration of reasonable alternatives (as set out in Section 4.3 above). Where significant harm cannot be avoided, impacts should be mitigated and as a last resort, appropriate compensation measures should be sought.

5.4.43 If significant harm to biodiversity resulting from a development cannot be avoided (for example through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then the Secretary of State will give significant weight to any residual harm.

5.4.44 The Secretary of State should consider what appropriate requirements should be attached to any consent and/or in any planning obligations entered into, in order to ensure that any mitigation or biodiversity net gain measures, if offered, are delivered and maintained. Any habitat creation or enhancement delivered including linkages with existing habitats for compensation or biodiversity net gain should generally be maintained for a minimum period of 30 years, or for the lifetime of the project, if longer.

5.4.45 The Secretary of State will need to take account of what mitigation measures may have been agreed between the applicant and the SNCB and the MMO/NRW (where appropriate). The Secretary of State will also need to consider whether the SNCB or the MMO/NRW has granted or refused, or intends to grant or refuse, any relevant licences, including protected species mitigation licences.

5.4.46 Development proposals provide many opportunities for building-in beneficial biodiversity or geological features as part of good design. The Secretary of State should give appropriate weight to environmental and biodiversity enhancements, although any weight given to gains provided to meet a legal requirement (for example under the Environment Act 2021) is likely to be limited.

5.4.47 When considering proposals, the Secretary of State should maximise such reasonable opportunities in and around developments, using requirements or planning obligations where appropriate. This can help towards delivering biodiversity net gain as part of or in addition to the approach set out at Section 4.6.

5.4.48 In taking decisions, the Secretary of State should ensure that appropriate weight is attached to designated sites of international, national, and local importance; protected species; habitats and other species of principal importance for the conservation of biodiversity; and to biodiversity and geological interests within the wider environment.

Secretary of State decision making – Habitats Regulations

5.4.49 The Secretary of State must consider whether the project is likely to have a significant effect on a protected site which is part of the National Site Network (a habitat site), a protected marine site, or on any site to which the same protection is applied as a matter of policy, either alone or in combination with other plans or projects.

Secretary of State decision making – Sites of Special Scientific Interest (SSSIs)

5.4.50 The Secretary of State should use requirements and/or planning obligations to mitigate the harmful[191] aspects of the development and, where possible, to ensure the conservation and enhancement of the site's biodiversity or geological interest.

Secretary of State decision making – Marine Conservation Zones

5.4.51 The Secretary of State is bound by the duties on public authorities in relation to MCZs imposed by sections 125 and 126 of the Marine and Coastal Access Act 2009.

Secretary of State decision making – Regional and Local Sites

5.4.52 The Secretary of State should give due consideration to regional or local designations. However, given the need for new nationally significant infrastructure, these designations should not be used in themselves to refuse development consent.

Secretary of State decision making – Ancient woodland, ancient trees, veteran trees and other irreplaceable habitats

5.4.53 The Secretary of State should not grant development consent for any development that would result in the loss or deterioration of any irreplaceable habitats, including ancient woodland, and ancient and veteran trees unless there are wholly exceptional reasons[192] and a suitable compensation strategy exists.

[191] In line with the principle in paragraph 4.3.8, the term 'harm' should be understood to mean 'significant harm'.
[192] For example where the public benefits (including need) of the nationally significant energy infrastructure would clearly outweigh the loss or deterioration of the habitat.

Secretary of State decision making – Protection and enhancement of habitats and species

5.4.54 The Secretary of State should ensure that species and habitats identified as being of importance for the conservation of biodiversity are protected from the adverse effects of development by using requirements, planning obligations, or licence conditions where appropriate.

5.4.55 The Secretary of State should refuse consent where harm to a protected species and relevant habitat would result, unless there is an overriding public interest and the other relevant legal tests are met. In this context the Secretary of State should give substantial weight to any such harm to the detriment of biodiversity features of national or regional importance or the climate resilience and the capacity of habitats to store carbon, which they consider may result from a proposed development.

5.5 Civil and Military Aviation and Defence Interests

5.5.1 All aerodromes, covering civil and military activities, as well as aviation technical sites, meteorological radars and other types of defence interests (both onshore and offshore) can be affected by new energy development.

5.5.2 Collaboration and co-existence between aviation, defence and energy industry stakeholders should be strived for to ensure scenarios such that neither is unduly compromised.

5.5.3 Alongside defence and other infrastructure, energy infrastructure, such as wind turbines, are an established part of the current and expected built energy environment. However, issues such as the cumulative impact, location and increasing geographical spread and height of windfarms, can all potentially have a bearing on aviation safety, defence capabilities and weather warnings and forecasts.

5.5.4 Windfarms are an integral part of our plan to achieve Net Zero, as well as delivering affordable clean energy to consumers. The government has an ambition to deliver up to 50GW of offshore wind by 2030 and the Committee on Climate Change's 6th Carbon Budget (CB6) views offshore wind as the backbone of electricity generation across all its scenarios. The Offshore Wind Sector Deal confirmed that government will work collaboratively with the energy sector and wider stakeholders to address strategic deployment issues including aviation and surveillance systems including radar.

Aviation

5.5.5 UK airspace is important for both civilian and military aviation interests. It is essential that new energy infrastructure is developed collaboratively alongside aerodromes, aircraft, air systems and airspace so that safety, operations and

capabilities are not adversely affected by new energy infrastructure. Likewise, it is essential that aerodromes, aircraft, air systems and airspace operators work collaboratively with energy infrastructure developers essential for net zero. Aerodromes can have important economic and social benefits, particularly at the regional and local level, but their needs must be balanced with the urgent need for new energy developments, which bring about a wide range of social, economic and environmental benefits.

5.5.6 Commercial civil aviation is largely confined to designated corridors of controlled airspace and set approaches to airports. However, other aircraft often fly outside of 'controlled air space'.

5.5.7 The approaches and flight patterns to aerodromes can be irregular owing to a variety of factors including the performance characteristics of the aircraft concerned and the prevailing meteorological conditions. It may be possible to adapt flight patterns to work alongside new energy infrastructure without impacting on aviation safety.

Safeguarding

5.5.8 Certain civil aerodromes, and aviation technical sites, selected on the basis of their importance to the national air transport system, are officially safeguarded in order to ensure that their safety and operation are not compromised by new development.

5.5.9 A similar official safeguarding system applies to all military aerodromes, defence surveillance sites, and other defence assets.

5.5.10 Areas of airspace around aerodromes used by aircraft, including taking off or on approach and landing are described as "obstacle limitation surfaces" (OLS). All civil aerodromes licensed by the Civil Aviation Authority (CAA) and all military aerodromes must comply with the OLS. These are defined according to criteria set out in relevant CAA guidance[193] for licensed civil aerodromes and according to Ministry of Defence (MOD) criteria, as set by the Military Aviation Authority, which is part of the Defence Safety Authority (DSA), for military aerodromes.

5.5.11 Aerodromes that are officially safeguarded will have officially produced plans that show the OLS. Care must be taken to ensure that new developments do not infringe these protected OLS except where an aerodrome operator has considered the development and either determined there to be no adverse impact or agreed an acceptable mitigation can be put in place, as these encompass the critical airspace within which key air traffic associated with the aerodrome operates.

[193] CAA CAP 168: Licensing of Aerodromes: See https://publicapps.caa.co.uk/modalapplication.aspx?appid=11&mode=detail&id=6114

5.5.12 The CAA's CAP 738[194] sets out that all licensed aerodromes are required to ensure they have a system in place to safeguard their aerodrome against the growth of obstacles or activities that may present a hazard to aircraft operations.

5.5.13 It is considered best practice for the LPA to include the safeguarded area and explanatory notes on its planning 'constraints' plan so that potential applicants can be aware of the presence of the aerodrome and the extent and nature of the safeguarding relevant to a particular aerodrome. DfT/ODPM Circular 01/2003[195] provides advice to planning authorities on the official safeguarding of aerodromes and includes a list of the civil aerodromes which are officially safeguarded.

5.5.14 The DfT/ODPM Circular 01/2003[196] and CAA guidance also recommends that the operators of aerodromes which are not officially safeguarded should take steps to protect their aerodrome from the possible effects of development by establishing an agreed consultation procedure between themselves and the LPAs.

5.5.15 The certified Safeguarding maps for all aerodromes (both licensed and unlicensed) depicting the OLS and other criteria (for example to minimise "birdstrike" hazards) are deposited with the relevant LPAs.

5.5.16 The CAA makes clear that the responsibility for the safeguarding of General Aviation aerodromes lies with the aerodrome operator.

5.5.17 There are also "Public Safety Zones" (PSZs) at the end of runways of the busiest airports in the UK, within which development is restricted to minimise risks to people on the ground in the event of an aircraft accident on take-off or landing. Maps showing the PSZs are deposited with the relevant LPAs. DfT Circular 01/2010 provides advice to LPAs on Public Safety Zones.[197]

5.5.18 The military Low Flying system covers the whole of the UK and enables low flying activities as low as 75m (mean separation distance). A considerable amount of military flying for training purposes is conducted at as low as 30m in designated Tactical Training Areas (TTAs) in mid Wales, Cumbria, the Scottish Border region and in the Electronic Warfare Range in the Scottish Border area. In addition, military helicopters may operate down to ground level.

5.5.19 New energy infrastructure may cause obstructions in MOD low flying areas. A balance must be struck between defence and energy needs in these areas.

[194] See https://publicapps.caa.co.uk/modalapplication.aspx?appid=11&mode=detail&id=576
[195] DfT/ODPM Circular 01/2003: Safeguarding, Aerodromes, Technical Sites and Military Explosives Storage Areas.
[196] DfT/ODPM Circular 01/2003: Safeguarding, Aerodromes, Technical Sites and Military Explosives Storage Areas.
[197] DfT circular 01/2010: Control of Development in Airport Public Safety Zones: See https://www.gov.uk/government/publications/control-of-development-in-airport-public-safety-zones

5.5.20 Sufficient air training space and space for civil operations will be required and operation around structures such as wind turbines will become increasingly important as the number of these structures increase.

Communications, navigation and surveillance (CNS) infrastructure

5.5.21 Safe and efficient operations within UK airspace and defence operations are dependent upon CNS infrastructure, including radar (often referred to as 'technical sites').

5.5.22 Energy infrastructure development may interfere with the operation of CNS systems such as radar. This is a particular problem for wind turbines as they can act as a reflector or diffractor of radio signals upon which Air Traffic Control Services and Air Defence Operations rely (an effect which is particularly likely to arise when large structures, such as wind turbines, are near Communications and Navigation Aids and technical sites). Wind turbines may also cause false returns and other technical issues when built in line of sight to radar installations.

5.5.23 Windfarms are an integral part of the plan to achieve Net Zero, as well as delivering affordable clean energy to consumers. The government has an official ambition to deliver up to 50GW of offshore wind by 2030 and the Committee on Climate Change's 6th Carbon Budget (CB6) views offshore wind as the backbone of electricity generation across all its scenarios. The Offshore Wind Sector Deal confirmed that government will work collaboratively with the energy sector and wider stakeholders to address strategic deployment issues including aviation and surveillance systems including radar.

5.5.24 Whilst it is hoped that future surveillance technologies will enable civil and military aviation, defence and meteorological surveillance providers and windfarms to meet coexistence challenges, it should not be assumed, however, that there will be sufficient advancement in surveillance technologies to meet all future requirements. A "system of systems" approach may help address the impacts on air surveillance and routine air traffic control operations for those windfarms that exist when radar or other surveillance systems are procured, however this can add complexity to aviation safety assurance and operating practices.

5.5.25 Surveillance methods that rely on cooperation alone, such as Automatic Dependent Surveillance – Broadcast (ADS-B) or Secondary Surveillance Radar transponders, are not sufficient to meet the UK's security and national defence requirements nor would they assure the flight safety of air traffic from non-cooperative threats.

5.5.26 MOD recognises that the environmental baseline includes existing windfarms and any mitigation solutions that have been established to support them when procuring future radar systems.

5.5.27 As existing CNS infrastructure reaches the end of its operational life, replacement options that are more tolerant of wind turbines, if available, should be installed by CNS owners/operators to futureproof, so far as is practicable, aerodromes against possible future turbine installations in order to maintain or enhance aviation safety. This should be considered on a case-by-case basis, so that the correct solution(s) are identified which strike the balance between surveillance quality/needs and reasonableness of costs being achieved, whilst maintaining safety.

5.5.28 Applicants should provide relevant information on proposed developments to enable CNS owners/operators to consider upgrades appropriately.

Weather warnings and forecasts

5.5.29 The UK weather radar network is composed of 15 weather radars that are operated and maintained by the Met Office. Each radar provides data out to 255km that underpin the Public Weather Service and the provision of critical meteorological information to a range of stakeholders including aviation, defence, civil contingencies, and the wider UK population, and in the case of severe weather, through the National Severe Weather Warning Service (NSWWS).

5.5.30 Weather radars are currently the only means of detecting the presence and location of precipitation in real time. The main hazard from precipitation is flooding and assessment of the potential flood impacts are carried out in consultation with the UK's authoritative flood agencies.

5.5.31 Some energy structures, such as wind turbines, have the potential to adversely impact weather radar signals, even beyond 100km from the radar. This can lead to downstream impacts in meteorological and hydrological warning systems that use radar data, which in turn decreases the credibility of warning systems. For example, when the size of the affected area exceeds the typical size of storms, warning systems may miss the initial stages of a significant rainfall event, which can cause delays in issuing warnings.

5.5.32 The Met Office protects its weather radars by engaging in the formal planning consultation process. Met Office weather radars are officially safeguarded[198] and as per Secretary of State direction will be consulted directly on all relevant applicable planning applications within safeguarded zones by LPA.[199]

[198] Town & Country Planning (Safeguarded Meteorological Sites) (England) Direction 2014, The Town and Country Planning (Safeguarded Aerodromes, Technical Sites, Meteorological Technical Sites and Military Explosives Storage Areas) (Scotland) Direction 2016), Town and Country Planning (Crug-yGorllwyn) Technical Site Direction (2016), Town and Country Planning (Safeguarded Meteorological Sites) Order 2014, Meteorological (Castor Bay) Technical Sites Direction

[199] See https://www.gov.uk/guidance/consultation-and-pre-decision-matters#safeguarding-directions

Other defence interests

5.5.33 The MOD operates military training areas, military danger zones (offshore Danger and Exercise areas), military explosives storage areas and TTAs. There are extensive Danger and Exercise Areas across the UKCS for military firing and highly surveyed routes to support government shipping that are essential for national defence. In addition, the MOD retains defence maritime navigational capabilities throughout the UKCS to maintain national defence.

5.5.34 Other operational defence assets may be affected by new development, for example non-aviation technical equipment such as: the Seismological Monitoring Station at Eskdalemuir; maritime acoustic facilities; communications installations including satellite ground stations; and range control radars.

5.5.35 It is important that new energy infrastructure does not unacceptably impede or compromise the safe and effective use of any defence assets or operations.

5.5.36 The joint industry and government Air Defence and Offshore Wind Mitigation Task Force was set up to enable the co-existence of UK Air Defence and offshore wind. The Strategy and Implementation Plan[200] sets the direction for that collaboration. The recommendations generated from this Task Force should be referred to by both defence and energy stakeholders.

Applicant assessment

5.5.37 Where the proposed development may affect the performance of civil or military aviation CNS, meteorological radars and/or other defence assets an assessment of potential effects should be set out in the ES (see Section 4.3).

5.5.38 The requirement for ATC and non-cooperative surveillance – i.e. radar/tracking technologies – forms part of the environmental baseline for proposed developments.

5.5.39 The applicant should consult the MOD, Met Office, Civil Aviation Authority (CAA), NATS and any aerodrome – licensed or otherwise – likely to be affected by the proposed development in preparing an assessment of the proposal on aviation, meteorological or other defence interests.

5.5.40 Any assessment of effects on aviation, meteorological or other defence interests should include potential impacts of the project upon the operation of CNS infrastructure, flight patterns (both civil and military), generation of weather warnings and forecasts, other defence assets (including radar) and aerodrome operational procedures. It should also assess the demonstratable cumulative

[200] See https://www.gov.uk/government/publications/air-defence-and-offshore-wind-working-together-towards-net-zero/air-defence-and-offshore-wind-working-together-towards-net-zero

effects[201] of the project with other relevant projects in relation to aviation, meteorological and defence.

5.5.41 In addition, consideration of developments near aerodromes should take into account the following factors:

- Bird Strike Risk – Aircraft are vulnerable to wildlife strike, in particular bird strike. Birds and other wildlife may be attracted to the vicinity of an aerodrome by various types of development, for example, large buildings with perching/roosting opportunities for birds. It is therefore important that infrastructure, buildings and other elements from energy installations, as well as environmental mitigation are designed in such a way so as not to increase the bird strike risk to the airport for developments within 13km (this can vary)[202].
- Building Induced Turbulence – If a significant building or structure is proposed close to the airport/runways, there is potential for building induced turbulence/wind shear to be created which has the potential to impact on aircraft on take-off and landing. Studies may be required to identify the extent of any turbulence resulting from the energy infrastructure.
- Thermal Plume Turbulence – This is caused under certain conditions by the release of hot air from a power plant equipped with a dry cooling system. The plumes generated by these facilities have the potential to create invisible turbulence that can affect the manoeuvrability of aircraft.

5.5.42 If any relevant changes are made to proposals during the pre-application and determination period, it is the responsibility of the applicant to ensure that the relevant aviation, meteorological and defence consultees are informed as soon as reasonably possible.

Mitigation

5.5.43 The applicant should include appropriate mitigation measures as an integral part of the proposed development.

5.5.44 Mitigation for infringement of OLS may include[203]:

- agreed changes to operational procedures of the aerodromes in accordance with relevant guidance, provided that safety assurances can be provided by the operator that are acceptable to the CAA where the changes are proposed to a civilian aerodrome. Applicants should engage airport operators at an

[201] It may not always be appropriate to share the detailed bases of defence asset assessments on security grounds, to avoid exposing vulnerabilities that could be exploited by potential adversaries.
[202] CAP 772 Wildlife Hazard Management at Aerodromes
[203] Where mitigation is required using a condition or planning obligation, the tests set out at paragraphs 4.1.5 – 4.1.7 in EN-1 should be applied.

early stage of the planning process to understand the potential impacts of development on aviation operations and develop mitigations if appropriate; or

- installation of obstacle lighting and/or by notification in Aeronautical Information Service publications

5.5.45 For CNS infrastructure, the UK military Low Flying system (including TTAs) and designated air traffic routes, mitigation may also include:

- operational airspace changes
- agreement to upgrade CNS infrastructure, the cost of which the applicant will be required to fund until the end of the life of the surveillance equipment if subsequently replaced by a fully windfarm tolerant system. If an appropriate system upgrade cannot be identified at the point of application, the applicant will be required to fund any future upgrade for the lifetime of the wind farm. MOD will engage early with developers to ensure that costs are reflective of their need and impacts of the energy installation on the monitoring equipment.
- introducing commercially viable radar mitigation technology to the development, e.g. by using non-radar reflecting materials to manufacture wind turbine blades

5.5.46 Mitigation for effects on meteorological radar and CNS systems may include reducing the scale of a project, although it is likely to be unreasonable for the Secretary of State to require mitigation by way of a reduction or alteration in the scale of development.

5.5.47 There may be exceptional circumstances where a small reduction in the scale of a development and any associated reduction in generating capacity, will result in proportionately greater mitigation for radar and CNS systems. In these cases, the Secretary of State may consider that the benefits to CNS and radar mitigation outweighs this loss of capacity.

5.5.48 Consideration from energy stakeholders should also be given to the possibility of introducing commercially viable radar mitigation technology as windfarm assets are renewed and replaced e.g., by using non-radar reflecting materials to manufacture turbine blades.

Secretary of State decision making

5.5.49 The Secretary of State should be satisfied that the effects on meteorological radars, civil and military aerodromes, aviation technical sites and other defence assets or operations have been addressed by the applicant and that any necessary assessment of the proposal on aviation, NSWWS or defence interests has been carried out.

5.5.50 In particular, the Secretary of State should be satisfied that the proposal has been designed, where possible, to minimise adverse impacts on the operation and safety of aerodromes and that realistically achievable mitigation is carried out on existing surveillance systems such as radar/tracking technologies. It is incumbent on Operators of aerodromes to regularly review the possibility of agreeing to make reasonable changes to operational procedures.

5.5.51 When assessing the necessity, acceptability, and reasonableness of operational changes to aerodromes, the Secretary of State should be satisfied that they have the necessary information regarding the operational procedures along with any demonstrable risks or harm of such changes, taking into account the cases put forward by all parties. When making such a judgement in the case of military aerodromes, the Secretary of State should have regard to interests of defence and national security.

5.5.52 In the case of meteorological radars, the Secretary of State should consider the extent to which the provision of weather and flood warnings is compromised.

5.5.53 If there are conflicts between the government's energy and transport policies and military interests in relation to the application, the Secretary of State should expect the relevant parties to have made appropriate efforts to work together to identify realistic and pragmatic solutions to the conflicts. In so doing, the parties should seek to protect the aims and interests of the other parties as far as possible, recognising simultaneously the evolving landscape in terms of the UK's energy security and the need to tackle climate change, which necessitates the installation of wind turbines and the need to maintain air safety and national defence and the national weather warning service.

5.5.54 There are statutory requirements concerning lighting to tall structures.[204] Where lighting is requested on structures that goes beyond statutory requirements by any of the relevant aviation and defence consultees, the Secretary of State should be satisfied of the necessity of such lighting taking into account the case put forward by the consultees. The effect of such lighting on the landscape and ecology may be a relevant consideration.

5.5.55 Lighting must also be designed in such a way as to ensure that there is no glare or dazzle to pilots and/or ATC, aerodrome ground lighting is not obscured and that any lighting does not diminish the effectiveness of aeronautical ground lighting and cannot be confused with aeronautical lighting. Lighting may also need to be compatible with night vision devices for military low flying purposes.

5.5.56 Where new technologies to mitigate the adverse effects of wind farms on surveillance systems, such as radar, are concerned, the Secretary of State should have regard to any Civil Aviation Authority Guidelines and/or government

[204] Articles 222 and 223. Air Navigation Order 2016.

guidance which emerges from existing and future including the joint government/Industry Aviation Management Board and the Joint Air Defence and Offshore Wind Task Force.

5.5.57 Where suitable technological solutions have not yet been developed or proven, the Secretary of State will need to consider the likelihood of a solution becoming available within the time limit for implementation of the Development Consent Order.

5.5.58 Where a proposed energy infrastructure development would significantly impede or compromise the safe and effective use of civil or military aviation, meteorological radars, defence assets and/or significantly limit military training, the Secretary of State may consider the use of 'Grampian conditions'[205], or other forms of requirement which relate to the use of current or future technological solutions, to mitigate impacts on legacy CNS equipment.

5.5.59 Where, after reasonable mitigation, operational changes, obligations and requirements have been proposed, the Secretary of State should consider whether:

- a development would prevent a licensed aerodrome from maintaining its licence and the operational loss of the said aerodrome would have impacts on national security and defence, or result in substantial local/national economic loss, or emergency service needs
- it would cause harm to aerodromes' training or emergency service needs
- the development would impede or compromise the safe and effective use of defence assets or unacceptably limit military training
- the development would have a negative impact on the safe and efficient provision of en-route air traffic control services for civil aviation, in particular through an adverse effect on CNS infrastructure
- the development would compromise the effective provision of weather warnings by the NSWWS, or flood warnings by the UK's flood agencies

5.5.60 Provided that the Secretary of State is satisfied that the impacts of proposed energy developments do not present risks to national security and physical safety, and where they do, provided that the Secretary of State is satisfied that appropriate mitigation can be achieved, or appropriate requirements can be attached to any Development Consent Order to secure those mitigations, consent may be granted.

[205] As set out on See https://www.gov.uk/guidance/use-of-planning-conditions, a Grampian condition refers to a condition worded in a negative form, i.e. prohibiting development authorised by the planning permission or other aspects linked to the planning permission (e.g. occupation of premises) until a specific action has been taken (such as the provision of supporting infrastructure).

5.6 Coastal Change

5.6.1 The government's Flood and Coastal Erosion Risk Management Policy Statement[206] sets out our ambition to create a nation more resilient to future flood and coastal erosion risk. It outlines policies and actions which will accelerate progress to better protect and better prepare the country against flooding and coastal erosion.

5.6.2 The government's aim is to ensure that our coastal communities continue to prosper and adapt to coastal change. This means planning should:

- ensure that policies and decisions in coastal areas are based on an understanding of coastal change over time
- prevent new development from being put at risk from coastal change by:
    i. avoiding inappropriate development in areas that are vulnerable to coastal change or any development that adds to the impacts of physical changes to the coast
    ii. directing development away from areas vulnerable to coastal change
- ensure that the risk to development which is, exceptionally, necessary in coastal change areas because it requires a coastal location and provides substantial economic and social benefits to communities, is managed over its planned lifetime
- ensure that plans are in place to secure the long-term sustainability of coastal areas

5.6.3 For the purpose of this section, coastal change means physical change to the shoreline, i.e. erosion, coastal landslip, permanent inundation and coastal accretion.

5.6.4 Where onshore infrastructure projects are proposed on the coast, coastal change is a key consideration as well as a vital element of climate change adaptation (see Section 4.10).

5.6.5 Some kinds of coastal change happen very gradually, others over shorter timescales. Some are the result of purely natural processes others, including potentially significant modifications of the coastline or coastal environment resulting from climate change, are wholly or partly man-made. This section concerns both the impacts which energy infrastructure can have as a driver of coastal change, and how to ensure that developments are resilient to ongoing and potential future coastal change.

5.6.6 The construction of an onshore energy project on the coast may involve, for example, dredging, dredge spoil deposition, cooling water, culvert construction,

[206] See https://www.gov.uk/government/publications/flood-and-coastal-erosion-risk-management-policy-statement

marine landing facility construction and flood and coastal protection measures which could result in direct effects on the coastline, seabed and marine ecology and biodiversity.

5.6.7 Additionally, indirect changes to the coastline and seabed might arise as a result of a hydrodynamic response to some of these direct changes. This could lead to localised or more widespread coastal erosion or accretion and changes to offshore features such as submerged banks and ridges, marine biodiversity and heritage assets.

5.6.8 This section only applies to onshore energy infrastructure projects situated on the coast. The impacts of offshore renewable energy projects on marine life and coastal geomorphology are considered in EN-3.

5.6.9 Section 5.4 on biodiversity and geological conservation, Section 5.8 on flood risk and Section 4.10 on adaptation to climate change, including the increased risk of coastal erosion, are also relevant, as is advice on access to coastal recreation sites and features in Section 5.11 on land use. Advice on the historic environment in Section 5.9 may also be relevant.

Applicant assessment

5.6.10 Where relevant, applicants should undertake coastal geomorphological and sediment transfer modelling to predict and understand impacts and help identify relevant mitigating or compensatory measures.

5.6.11 The ES (see Section 4.3) should include an assessment of the effects on the coast, tidal rivers and estuaries. In particular, applicants should assess:

- the impact of the proposed project on coastal processes and geomorphology, including by taking account of potential impacts from climate change. If the development will have an impact on coastal processes the applicant must demonstrate how the impacts will be managed to minimise adverse impacts on other parts of the coast
- the implications of the proposed project on strategies for managing the coast as set out in Shoreline Management Plans (SMPs)[207](which are designed to identify the most sustainable approach to managing flood and coastal erosion risks from short to long term and are long term non-statutory plans which set out the agreed high-level objective for coastal flooding and erosion management for each SMP area), any relevant Marine Plans, River Basin Management Plans, and capital programmes for maintaining flood and coastal defences and Coastal Change Management Areas

[207] See https://www.gov.uk/government/publications/shoreline-management-plans-smps

- the effects of the proposed project on marine ecology, biodiversity, protected sites and heritage assets
- how coastal change could affect flood risk management infrastructure, drainage and flood risk
- the effects of the proposed project on maintaining coastal recreation sites and features
- the vulnerability of the proposed development to coastal change, taking account of climate change, during the project's operational life and any decommissioning period

5.6.12 For any projects involving dredging or deposit of any substance or object into the sea, the applicant should consult the MMO and Historic England[208], or the NRW in Wales. Where a project has the potential to have a major impact in this respect, this is covered in the technology specific NPSs. For example, EN-4 looks further at the environmental impacts of dredging in connection with Liquified Natural Gas (LNG) tanker deliveries to LNG import facilities.

5.6.13 The applicant should be particularly careful to identify any effects of physical changes on the integrity and special features of Marine Protected Areas (MPAs). These could include MCZs, habitat sites including Special Areas of Conservation and Special Protection Areas with marine features, Ramsar Sites, Sites of Community Importance, and SSSIs with marine features. Applicants should also identify any effects on the special character of Heritage Coasts[209].

5.6.14 Applicants must demonstrate that full account has been taken of the policy on assessment and mitigation in paragraphs 4.3.1 to 4.3.9 of this NPS, taking account of the potential effects of climate change on these risks.

Mitigation

5.6.15 Applicants should propose appropriate mitigation measures to address adverse physical changes to the coast, in consultation with the MMO, the EA or NRW, LPAs, other statutory consultees, Coastal Partnerships and other coastal groups, as it considers appropriate. Where this is not the case, the Secretary of State should consider what appropriate mitigation requirements might be attached to any grant of development consent.

Secretary of State decision making

5.6.16 The Secretary of State should be satisfied that the proposed development will be resilient to coastal erosion and deposition, taking account of climate change, during the project's operational life and any decommissioning period. Proposals

[209] See https://www.gov.uk/government/publications/heritage-coasts-protecting-undeveloped-coast/heritage-coasts-definition-purpose-and-natural-englands-role

that aim to facilitate the relocation of existing energy infrastructure from unsustainable locations which are at risk from coastal change, should be supported where it would result in climate resilient infrastructure.

5.6.17 The Secretary of State should not normally consent new development in areas of dynamic shorelines where the proposal could inhibit sediment flow or have an adverse impact on coastal processes at other locations. Impacts on coastal processes must be managed to minimise adverse impacts on other parts of the coast. Where such proposals are brought forward, consent should only be granted where the Secretary of State is satisfied that the benefits (including need) of the development outweigh the adverse impacts.

5.6.18 The Secretary of State should ensure that applicants have restoration plans for areas of foreshore disturbed by direct works and will undertake pre- and post-construction coastal monitoring arrangements with defined triggers for intervention and restoration.

5.6.19 The Secretary of State should examine the broader context of coastal protection around the proposed site, and the influence in both directions, i.e. coast on site, and site on coast.

5.6.20 The Secretary of State should consult the MMO on projects which could impact on coastal change in England, or NRW for projects in Wales, since the MMO or NRW may also be involved in considering other projects which may have related coastal impacts.

5.6.21 In addition to this NPS, the Secretary of State must have regard to the appropriate marine policy documents in taking any decision which relates to the exercise of any function capable of affecting any part of the UK marine area.

5.6.22 The Secretary of State should also have regard to any relevant Shoreline Management Plans[210].

5.6.23 Substantial weight should be attached to the risks of flooding and coastal erosion and the Secretary of State should be satisfied that the applicant has taken full account of the policy on assessment and mitigation in paragraphs 4.3.1 to 4.3.9 of this NPS, taking account of the potential effects of climate change on these risks.

[210] Shoreline management plans are developed by Coastal Groups with members mainly from local councils and the Environment Agency. They identify the most sustainable approach to managing the flood and coastal erosion risks to the coastline in the short term (0 to 20 years), medium term (20 to 50 years) and the long term (50 to 100 years). The Shoreline Management Plan is available online at: https://www.gov.uk/government/publications/shoreline-management-plans-smps

5.7 Dust, Odour, Artificial Light, Smoke, Steam, and Insect Infestation

5.7.1 During the construction, operation and decommissioning of energy infrastructure there is potential for the release of a range of emissions such as odour, dust, steam, smoke, artificial light and infestation of insects. All have the potential to have a detrimental impact on amenity or cause a common law nuisance or statutory nuisance under Part III, Environmental Protection Act 1990. However, they are not regulated by the environmental permitting regime, so mitigation of these impacts will need to be included in the Development Consent Order.

5.7.2 Note that pollution impacts from some of these emissions (for example dust, smoke) are covered in the Section 5.2 on air emissions.

5.7.3 Because of the potential effects of these emissions and infestation, and in view of the availability of the defence of statutory authority against nuisance claims described in Section 4.15, it is important that the potential for these impacts is considered by the applicant and Secretary of State.

5.7.4 For energy NSIPs of the type covered by this NPS, some impact on amenity for local communities is likely to be unavoidable. The aim should be to keep impacts to a minimum, and at a level that is acceptable.

Applicant assessment

5.7.5 The applicant should assess the potential for insect infestation and emissions of odour, dust, steam, smoke, and artificial light to have a detrimental impact on amenity, as part of the ES.

5.7.6 In particular, the assessment provided by the applicant should describe:

- the type, quantity and timing of emissions
- aspects of the development which may give rise to emissions
- premises or locations that may be affected by the emissions
- effects of the emission on identified premises or locations
- measures to be employed in preventing or mitigating the emissions

5.7.7 The applicant is advised to consult the relevant local planning authority and, where appropriate, the EA about the scope and methodology of the assessment.

Mitigation

5.7.8 Mitigation measures may include one or more of the following:

- engineering: prevention of a specific emission at the point of generation; control, containment and abatement of emissions if generated

- lay-out: adequate distance between source and sensitive receptors; reduced transport or handling of material
- administrative: limiting operating times; restricting activities allowed on the site; implementing management plans

5.7.9 Construction should be undertaken in a way that reduces emissions, for example the use of low emission mobile plant during the construction, and demolition phases as appropriate, and consideration should be given to making these mandatory in Development Consent Order requirements.

5.7.10 Demolition considerations should be embedded into designs at the outset to enable demolition techniques to be adopted that remove the need for explosive demolition.

5.7.11 A construction management plan may help clarify and secure mitigation.

Secretary of State decision making

5.7.12 The Secretary of State should satisfy itself that:

- an assessment of the potential for artificial light, dust, odour, smoke, steam and insect infestation to have a detrimental impact on amenity has been carried out
- that all reasonable steps have been taken, and will be taken, to minimise any such detrimental impacts

5.7.13 If development consent is granted for a project, the Secretary of State should consider whether there is a justification for all of the authorised project (including any associated development) to be covered by a defence of statutory authority against nuisance claims. If the Secretary of State cannot conclude that this is justified, the Secretary of State should disapply in whole or in part the defence through a provision in the Development Consent Order.

5.7.14 Where the Secretary of State believes it appropriate, the Secretary of State may consider attaching requirements to the development consent, to secure certain mitigation measures.

5.7.15 In particular, the Secretary of State should consider whether to require the applicant to abide by a scheme of management and mitigation concerning insect infestation and emissions of odour, dust, steam, smoke, and artificial light from the development. The Secretary of State should consider the need for such a scheme to reduce any loss to amenity which might arise during the construction, operation and decommissioning of the development. A construction management plan may help codify mitigation at that stage.

5.8 Flood Risk

5.8.1 Flooding is a natural process that plays an important role in shaping the natural environment. However, flooding threatens life and causes substantial disruption and damage to property.

5.8.2 The effects of weather events on the natural environment, life and property can be increased in severity both as a consequence of decisions about the location, design and nature of settlement and land use, and as a potential consequence of future climate change. Having resilient energy infrastructure not only reduces the risk of flood damages to the infrastructure, it also reduces the disruptive impacts of flooding on those homes and businesses that rely on that infrastructure. Although flooding cannot be wholly prevented, its adverse impacts can be avoided or reduced through good planning and management.

5.8.3 The government's Flood and Coastal Erosion Risk Management Policy Statement[211] sets out our ambition to create a nation more resilient to future flood and coastal erosion risk. It outlines policies and actions which will accelerate progress to better protect and better prepare the country against flooding and coastal erosion. The industry should consider any updates to government policy and apply updated approaches as a matter of priority.

5.8.4 All buildings in flood risk areas can improve their preparedness to reduce costs and disruption to key public services when a flood happens. Where infrastructure is not better protected as part of a wider community scale flood defence scheme, those who own and run infrastructure sites – whether in public or private hands – are expected to take action to keep water out, minimise the damage if water gets in through flood-resilient materials, and reduce the disruption caused. This includes effective contingency planning to mitigate the impacts of flooding on the delivery of important services.

5.8.5 Climate change is already having an impact and is expected to have an increasing impact on the UK throughout this century. The UK Climate Projections 2018[212] show an increased chance of milder, wetter winters and hotter, drier summers in the UK, with more intensive rainfall causing flooding. Sea levels will continue to rise beyond the end of the century, increasing risks to vulnerable coastal communities. Within the lifetime of energy projects, these factors will lead to increased flood risks in areas susceptible to flooding, and to an increased risk of the occurrence of floods in some areas which are not currently thought of as being at risk. A robust approach to flood risk management is a vital element of

[211] See https://www.gov.uk/government/publications/flood-and-coastal-erosion-risk-management-policy-statement-progress-updates/flood-and-coastal-erosion-risk-management-policy-statement-progress-update-2021
[212] See https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69257/pb13274-uk-climate-projections-090617.pdf

climate change adaptation; the applicant and the Secretary of State should take account of the policy on climate change adaptation in Section 4.10.

5.8.6 The aims of planning policy on development and flood risk are to ensure that flood risk from all sources of flooding is taken into account at all stages in the planning process to avoid inappropriate development in areas at risk of flooding, and to steer new development to areas with the lowest risk of flooding.

5.8.7 Where new energy infrastructure is, exceptionally, necessary in flood risk areas (for example where there are no reasonably available sites in areas at lower risk), policy aims to make it safe for its lifetime without increasing flood risk elsewhere and, where possible, by reducing flood risk overall. It should also be designed and constructed to remain operational in times of flood.

5.8.8 Proposals that aim to facilitate the relocation of existing energy infrastructure from unsustainable locations which are or will be at unacceptable risk of flooding, should be supported where it would result in climate-resilient infrastructure.

5.8.9 If, following application of the Sequential Test[213], it is not possible, (taking into account wider sustainable development objectives), for the project to be located in areas of lower flood risk the Exception Test can be applied as defined in *https://www.gov.uk/guidance/flood-risk-and-coastal-change#table2*.[214] The test provides a method of allowing necessary development to go ahead in situations where suitable sites at lower risk of flooding are not available.

5.8.10 The Exception Test[215] is only appropriate for use where the Sequential Test alone cannot deliver an acceptable site. It would only be appropriate to move onto the Exception Test when the Sequential Test has identified reasonably available, lower risk sites appropriate for the proposed development where, accounting for wider sustainable development objectives, application of relevant policies would provide a clear reason for refusing development in any alternative locations identified. Examples could include alternative site(s) that are subject to national designations such as landscape, heritage and nature conservation designations, for example Areas of Outstanding Natural Beauty (AONBs), SSSIs and World Heritage Sites (WHS) which would not usually be considered appropriate.

5.8.11 Both elements of the Exception Test will have to be satisfied for development to be consented. To pass the Exception Test it should be demonstrated that:

[213] See https://www.gov.uk/guidance/flood-risk-and-coastal-change#the-sequential-approach-to-the-location-of-development
[214] See https://www.gov.uk/guidance/flood-risk-and-coastal-change#Table-3-Flood-risk-vulnerability
[215] See https://www.gov.uk/guidance/flood-risk-and-coastal-change#the-exception-test

- the project would provide wider sustainability benefits to the community[216] that outweigh flood risk; and
- the project will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible will reduce flood risk overall.

5.8.12 Development should be designed to ensure there is no increase in flood risk elsewhere, accounting for the predicted impacts of climate change throughout the lifetime of the development. There should be no net loss of floodplain storage and any deflection or constriction of flood flow routes should be safely managed within the site. Mitigation measures should make as much use as possible of natural flood management techniques.

Applicant assessment

5.8.13 A site-specific flood risk assessment should be provided for all energy projects in Flood Zones 2 and 3 in England or Zones B and C in Wales. In Flood Zone 1 in England or Zone A in Wales, an assessment should accompany all proposals involving:

- sites of 1 hectare or more
- land which has been identified by the EA or NRW as having critical drainage problems
- land identified (for example in a local authority strategic flood risk assessment) as being at increased flood risk in future
- land that may be subject to other sources of flooding (for example surface water)
- where the EA or NRW, Lead Local Flood Authority, Internal Drainage Board or other body have indicated that there may be drainage problems.

5.8.14 This assessment should identify and assess the risks of all forms of flooding to and from the project and demonstrate how these flood risks will be managed, taking climate change into account.

5.8.15 The minimum requirements for Flood Risk Assessments (FRA) are that they should:

- be proportionate to the risk and appropriate to the scale, nature and location of the project;
- consider the risk of flooding arising from the project in addition to the risk of flooding to the project;

[216] These would include the benefits (including need), for the infrastructure set out in Part 3.

- take the impacts of climate change into account, across a range of climate scenarios, clearly stating the development lifetime over which the assessment has been made[217];
- be undertaken by competent people, as early as possible in the process of preparing the proposal;
- consider both the potential adverse and beneficial effects of flood risk management infrastructure, including raised defences, flow channels, flood storage areas and other artificial features, together with the consequences of their failure and exceedance;
- consider the vulnerability of those using the site, including arrangements for safe access and escape;
- consider and quantify the different types of flooding (whether from natural and human sources and including joint and cumulative effects) and include information on flood likelihood, speed-of-onset, depth, velocity, hazard and duration;
- identify and secure opportunities to reduce the causes and impacts of flooding overall, making as much use as possible of natural flood management techniques as part of an integrated approach to flood risk management;
- consider the effects of a range of flooding events including extreme events on people, property, the natural and historic environment and river and coastal processes;
- include the assessment of the remaining (known as 'residual') risk after risk reduction measures have been taken into account and demonstrate that these risks can be safely managed, ensuring people will not be exposed to hazardous flooding;
- consider how the ability of water to soak into the ground may change with development, along with how the proposed layout of the project may affect drainage systems. Information should include:
    i. Describe the existing surface water drainage arrangements for the site
    ii. Set out (approximately) the existing rates and volumes of surface water run-off generated by the site. Detail the proposals for restricting discharge rates
    iii. Set out proposals for managing and discharging surface water from the site using sustainable drainage systems and accounting for the predicted impacts of climate change. If sustainable drainage systems have been rejected, present clear evidence of why their inclusion would be inappropriate

[217] Refer to Flood risk assessments: climate change allowances -

iv. Demonstrate how the hierarchy of drainage options has been followed.[218]

v. Explain and justify why the types of SuDS[219] and method of discharge have been selected and why they are considered appropriate.

vi. Explain how sustainable drainage systems have been integrated with other aspects of the development such as open space or green infrastructure, so as to ensure an efficient use of the site

vii. Describe the multifunctional benefits the sustainable drainage system will provide

viii. Set out which opportunities to reduce the causes and impacts of flooding have been identified and included as part of the proposed sustainable drainage system

ix. Explain how run-off from the completed development will be prevented from causing an impact elsewhere

x. Explain how the sustainable drainage system been designed to facilitate maintenance and, where relevant, adoption. Set out plans for ensuring an acceptable standard of operation and maintenance throughout the lifetime of the development

- detail those measures that will be included to ensure the development will be safe and remain operational during a flooding event throughout the development's lifetime without increasing flood risk elsewhere;
- identify and secure opportunities to reduce the causes and impacts of flooding overall during the period of construction; and
- be supported by appropriate data and information, including historical information on previous events.

5.8.16 Further guidance can be found in the Planning Practice Guidance Flood Risk and Coastal Change section[220] which accompanies the NPPF[221], TAN15 for Wales[222] or successor documents.

5.8.17 Development (including construction works) will need to account for any existing watercourses and flood and coastal erosion risk management structures or features, or any land likely to be needed for future structures or features so as to ensure:

[218] Refer to Planning Practice Guidance Sustainable Drainage Systems section – See https://www.gov.uk/guidance/flood-risk-and-coastal-change#sustainable-drainage-systems
[219] See https://www.gov.uk/government/publications/sustainable-drainage-systems-non-statutory-technical-standards
[220] See https://www.gov.uk/guidance/flood-risk-assessments-climate-change-allowances
[221] See https://www.gov.uk/government/publications/national-planning-policy-framework--2
[222] See https://gov.wales/technical-advice-note-tan-15-development-and-flood-risk-2004

- Access, clearances and sufficient land are retained to enable their maintenance, repair, operation, and replacement, as necessary
- Their standard of protection is not reduced
- Their condition or structural integrity is not reduced

5.8.18 Applicants for projects which may be affected by, or may add to, flood risk should arrange pre-application discussions before the official pre-application stage of the NSIP process with the EA or NRW, and, where relevant, other bodies such as Lead Local Flood Authorities, Internal Drainage Boards, sewerage undertakers, navigation authorities, highways authorities and reservoir owners[223] and operators.

5.8.19 Such discussions should identify the likelihood and possible extent and nature of the flood risk, help scope the FRA, and identify the information that will be required by the Secretary of State to reach a decision on the application when it is submitted. The Secretary of State should advise applicants to undertake these steps where they appear necessary but have not yet been addressed.

5.8.20 If the EA, NRW or another flood risk management authority[224] has reasonable concerns about the proposal on flood risk grounds, the applicant should discuss these concerns with the EA or NRW and take all reasonable steps to agree ways in which the proposal might be amended, or additional information provided, which would satisfy the authority's concerns.

5.8.21 The Sequential Test[225] ensures that a sequential, risk-based approach is followed to steer new development to areas with the lowest risk of flooding, taking all sources of flood risk and climate change into account. Where it is not possible to locate development in low-risk areas, the Sequential Test should go on to compare reasonably available sites with medium risk areas and then, only where there are no reasonably available sites in low and medium risk areas, within high-risk areas.

5.8.22 The technology specific NPSs set out some exceptions to the application of the Sequential Test. However, when seeking development consent on a site allocated in a development plan through the application of the Sequential Test, informed by a strategic flood risk assessment, applicants need not apply the Sequential Test, provided the proposed development is consistent with the use for which the site was allocated and there is no new flood risk information that would have affected the outcome of the test.

[223] Note that developers should be expected to mitigate impacts on reservoir owners where energy development increases risks and requires reservoir owners to increase their standard of protection. FRAs will need to demonstrate how residual risks from reservoirs will be safely managed.
[224] See https://www.gov.uk/government/collections/flood-and-coastal-erosion-risk-management-authorities
[225] See https://www.gov.uk/guidance/flood-risk-and-coastal-change#the-sequential-approach-to-the-location-of-development

5.8.23 Consideration of alternative sites should take account of the policy on alternatives set out in Section 4.3 above. All projects should apply the Sequential Test to locating development within the site.

Mitigation

5.8.24 To satisfactorily manage flood risk, arrangements are required to manage surface water and the impact of the natural water cycle on people and property.

5.8.25 In this NPS, the term SuDS refers to the whole range of sustainable approaches to surface water drainage management including, where appropriate:

- source control measures including rainwater recycling and drainage
- infiltration devices to allow water to soak into the ground, that can include individual soakaways and communal facilities
- filter strips and swales, which are vegetated features that hold and drain water downhill mimicking natural drainage patterns
- filter drains and porous pavements to allow rainwater and run-off to infiltrate into permeable material below ground and provide storage if needed
- basins, ponds and tanks to hold excess water after rain and allow controlled discharge that avoids flooding
- flood routes to carry and direct excess water through developments to minimise the impact of severe rainfall flooding

5.8.26 Site layout and surface water drainage systems should cope with events that exceed the design capacity of the system, so that excess water can be safely stored on or conveyed from the site without adverse impacts.

5.8.27 The surface water drainage arrangements for any project should, accounting for the predicted impacts of climate change throughout the development's lifetime, be such that the volumes and peak flow rates of surface water leaving the site are no greater than the rates prior to the proposed project, unless specific off-site arrangements are made and result in the same net effect.

5.8.28 It may be necessary to provide surface water storage and infiltration to limit and reduce both the peak rate of discharge from the site and the total volume discharged from the site. There may be circumstances where it is appropriate for infiltration facilities or attenuation storage to be provided outside the project site, if necessary through the use of a planning obligation.

5.8.29 The sequential approach should be applied to the layout and design of the project. Vulnerable aspects of the development should be located on parts of the site at lower risk and residual risk of flooding. Applicants should seek opportunities to use open space for multiple purposes such as amenity, wildlife

habitat and flood storage uses. Opportunities should be taken to lower flood risk by reducing the built footprint of previously developed sites and using SuDS.

5.8.30 Where a development may result in an increase in flood risk elsewhere through the loss of flood storage, on-site level-for-level compensatory storage, accounting for the predicted impacts of climate change over the lifetime of the development, should be provided.

5.8.31 Where it is not possible to provide compensatory storage on site, it may be acceptable to provide it off-site if it is hydraulically and hydrologically linked. Where development may cause the deflection or constriction of flood flow routes, these will need to be safely managed within the site.

5.8.32 Where development may contribute to a cumulative increase in flood risk elsewhere, the provision of multifunctional sustainable drainage systems, natural flood management and green infrastructure can also make a valuable contribution to mitigating this risk whilst providing wider benefits.

5.8.33 The receipt of and response to warnings of floods is an essential element in the management of the residual risk of flooding. Flood Warning and evacuation plans should be in place for those areas at an identified risk of flooding.

5.8.34 The applicant should take advice from the local authority emergency planning team, emergency services and, where appropriate, from the local resilience forum when producing an evacuation plan for a manned energy project as part of the FRA. Any emergency planning documents, flood warning and evacuation procedures that are required should be identified in the FRA.

5.8.35 Flood resistant and resilient materials and design should be adopted to minimise damage and speed recovery in the event of a flood.

Secretary of State decision making

5.8.36 In determining an application for development consent, the Secretary of State should be satisfied that where relevant:

- the application is supported by an appropriate FRA
- the Sequential Test has been applied and satisfied as part of site selection
- a sequential approach has been applied at the site level to minimise risk by directing the most vulnerable uses to areas of lowest flood risk
- the proposal is in line with any relevant national and local flood risk management strategy[226]

[226] As provided for in section 9(1) of the Flood and Water Management Act 2010.

- SuDS (as required in the next paragraph on National Standards) have been used unless there is clear evidence that their use would be inappropriate
- in flood risk areas the project is designed and constructed to remain safe and operational during its lifetime, without increasing flood risk elsewhere (subject to the exceptions set out in paragraph 5.8.42)
- the project includes safe access and escape routes where required, as part of an agreed emergency plan, and that any residual risk can be safely managed over the lifetime of the development
- land that is likely to be needed for present or future flood risk management infrastructure has been appropriately safeguarded from development to the extent that development would not prevent or hinder its construction, operation or maintenance

5.8.37 For energy projects which have drainage implications, approval for the project's drainage system, including during the construction period, will form part of the development consent issued by the Secretary of State. The Secretary of State will therefore need to be satisfied that the proposed drainage system complies with any National Standards published by Ministers under paragraph 5(1) of Schedule 3 to the Flood and Water Management Act 2010.

5.8.38 In addition, the Development Consent Order, or any associated planning obligations, will need to make provision for appropriate operation and maintenance of any SuDS throughout the project's lifetime. Where this is secured through the adoption of any SuDS features, any necessary access rights to property will need to be granted.

5.8.39 Where relevant, the Secretary of State should be satisfied that the most appropriate body is being given the responsibility for maintaining any SuDS, taking into account the nature and security of the infrastructure on the proposed site. Responsible bodies could include, for example the landowner, the relevant lead local flood authority or water and sewerage company (through the Ofwat-approved Sewerage Sector Guidance[227]), or another body, such as an Internal Drainage Board.

5.8.40 If the EA, NRW or another flood risk management authority continues to have concerns and objects to the grant of development consent on the grounds of flood risk, the Secretary of State can grant consent, but would need to be satisfied before deciding whether or not to do so that all reasonable steps have been taken by the applicant and the authority to try to resolve the concerns.

5.8.41 Energy projects should not normally be consented within Flood Zone 3b[228] , or Zone C2 in Wales, or on land expected to fall within these zones within its

[227] Sewerage Sector Guidance: See https://www.water.org.uk/sewerage-sector-guidance-approved-documents/
[228] The Functional Floodplain where water has to flow or be stored in times of flood.

predicted lifetime. This may also apply where land is subject to other sources of flooding (for example surface water). However, where essential energy infrastructure has to be located in such areas, for operational reasons, they should only be consented if the development will not result in a net loss of floodplain storage, and will not impede water flows.

5.8.42 Exceptionally, where an increase in flood risk elsewhere cannot be avoided or wholly mitigated, the Secretary of State may grant consent if they are satisfied that the increase in present and future flood risk can be mitigated to an acceptable and safe level and taking account of the benefits of, including the need for, nationally significant energy infrastructure as set out in Part 3 above. In any such case the Secretary of State should make clear how, in reaching their decision, they have weighed up the increased flood risk against the benefits of the project, taking account of the nature and degree of the risk, the future impacts on climate change, and advice provided by the EA or NRW and other relevant bodies.

5.9 Historic Environment

5.9.1 The construction, operation and decommissioning of energy infrastructure has the potential to result in adverse impacts on the historic environment above, at and below the surface of the ground.

5.9.2 The historic environment includes all aspects of the environment resulting from the interaction between people and places through time, including all surviving physical remains of past human activity, whether visible, buried or submerged, landscaped and planted or managed flora.

5.9.3 Those elements of the historic environment that hold value to this and future generations because of their historic, archaeological, architectural or artistic interest are called ‘heritage assets’[229]. Heritage assets may be buildings, monuments, sites, places, areas or landscapes, or any combination of these. The sum of the heritage interests that a heritage asset holds is referred to as its significance.[230] Significance derives not only from a heritage asset’s physical presence, but also from its setting.[231]

[229] Where the terms “heritage assets” or “designated heritage assets” are referred to, this also refers to “historic assets” or “designated historic assets” which is the terminology used in Welsh planning policy.
[230] Terms used in this section, including the term “Designated Heritage Asset” are defined in Annex 2 of the National Planning Policy Framework.
[231] The setting of a heritage asset is the surroundings in which it is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset and may affect the ability to appreciate that significance or may be neutral. In Wales, the definition of the setting of a heritage asset is similar, but slightly different. The Welsh definition can be found in TAN 24. See https://www.gov.wales/technical-advice-note-tan-24-historic-environment

5.9.4 Some heritage assets have a level of significance that justifies official designation. Categories of designated heritage assets are:

- World Heritage Sites[232]
- Scheduled Monuments
- Protected Wreck Sites
- Protected Military Remains
- Listed Buildings
- Registered Parks and Gardens
- Registered Battlefields
- Conservation Areas[233]
- Registered Historic Landscapes (Wales only).

5.9.5 There are heritage assets that are not currently designated, but which have been demonstrated to be of equivalent significance to designated heritage assets of the highest significance. These are:

- those that the Secretary of State has recognised as being capable of being designated as a Scheduled Monument or Protected Wreck Site but has decided not to designate
- those that the Secretary of State has recognised as being of equivalent significance to Scheduled Monuments or Protected Wreck Sites but are incapable of being designated by virtue of being outside the scope of the related legislation.
- those that have yet to be formally assessed by the Secretary of State, but which have potential to demonstrate equivalent significance to Scheduled Monuments or Protected Wreck Sites.

5.9.6 Non-designated heritage assets of archaeological interest that are demonstrably of equivalent significance to Scheduled Monuments or Protected Wreck Sites should be considered subject to the policies for designated heritage assets[234].

[232] The Department of Digital Culture, Media and Sport is responsible for consultation with UNESCO but Historic England generally deal with the issues at a project level. In Wales, Cadw generally deals with World Heritage Site issues at a project level.
[233] The issuing of licences to undertake works on Protected Wreck Sites in English waters is the responsibility of the Secretary of State for Digital, Culture, Media and Sport and does not form part of development consents issued by the Secretary of State for DESNZ. In Wales it is the responsibility of Welsh Ministers. The issuing of licences for Protected Military Remains is the responsibility of the Secretary of State for Defence.
[234] There will be archaeological interest in a heritage asset if it holds, or may potentially hold, evidence of past human activity worthy of expert investigation at some point.

The absence of designation for such heritage assets does not indicate lower significance or necessarily imply that it is not of national importance.

5.9.7 The Secretary of State should also consider the impacts on other non-designated heritage assets (as identified either through the development plan making process by plan-making bodies, including 'local listing', or through the application, examination and decision making process). This is on the basis of clear evidence that such heritage assets have a significance that merits consideration in that process, even though those assets are of lesser significance than designated heritage assets.

5.9.8 Impacts on heritage assets specific to types of infrastructure are included in the technology specific NPSs.

Applicant assessment

5.9.9 The applicant should undertake an assessment of any likely significant heritage impacts of the proposed development as part of the EIA, and describe these along with how the mitigation hierarchy has been applied in the ES (see Section 4.3). This should include consideration of heritage assets above, at, and below the surface of the ground. Consideration will also need to be given to the possible impacts, including cumulative, on the wider historic environment. The assessment should include reference to any historic landscape or seascape character assessment and associated studies as a means of assessing impacts relevant to the proposed project.

5.9.10 As part of the ES the applicant should provide a description of the significance of the heritage assets affected by the proposed development, including any contribution made by their setting. The level of detail should be proportionate to the importance of the heritage assets and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum, the applicant should have consulted the relevant Historic Environment Record[235] (or, where the development is in English or Welsh waters, Historic England or Cadw) and assessed the heritage assets themselves using expertise where necessary according to the proposed development's impact.

5.9.11 Where a site on which development is proposed includes, or the available evidence suggests it has the potential to include, heritage assets with an archaeological interest, the applicant should carry out appropriate desk-based

[235] Historic Environment Records (HERs) are information services that seek to provide access to comprehensive and dynamic resources relating to the historic environment of a defined geographic area for public benefit and use. HERs are maintained by local authorities and National Park Authorities with a view to providing access to comprehensive and dynamic resources relating to the historic environment of an area for public benefit and use. Details of Historic Environment Records in England are available from the Heritage Gateway website. For Wales, HERs can be obtained through requesting data through the relevant archaeological trust who hold the copyright. Historic England and Cadw hold additional information about heritage assets in English or Welsh waters. Historic England or Cadw should also be consulted, where relevant.

assessment and, where such desk-based research is insufficient to properly assess the interest, a field evaluation. Where proposed development will affect the setting of a heritage asset, accurate representative visualisations may be necessary to explain the impact.[236]

5.9.12 The applicant should ensure that the extent of the impact of the proposed development on the significance of any heritage assets affected can be adequately understood from the application and supporting documents. Studies will be required on those heritage assets affected by noise, vibration, light and indirect impacts, the extent and detail of these studies will be proportionate to the significance of the heritage asset affected.

5.9.13 The applicant is encouraged, where opportunities exist, to prepare proposals which can make a positive contribution to the historic environment, and to consider how their scheme takes account of the significance of heritage assets affected. This can include, where possible:

- enhancing, through a range of measures such a sensitive design, the significance of heritage assets or setting affected
- considering where required the development of archive capacity which could deliver significant public benefits
- considering how visual or noise impacts can affect heritage assets, and whether there may be opportunities to enhance access to, or interpretation, understanding and appreciation of, the heritage assets affected by the scheme

5.9.14 Careful consideration in preparing the scheme will be required on whether the impacts on the historic environment will be direct or indirect, temporary, or permanent.

5.9.15 Applicants should look for opportunities for new development within Conservation Areas and World Heritage Sites, and within the setting of heritage assets, to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably.

Mitigation

5.9.16 A documentary record of our past is not as valuable as retaining the heritage asset, and therefore the ability to record evidence of the asset should not be a factor in deciding whether such loss should be permitted, and whether or not consent should be given.

[236] Relevant guidance is given in the Historic England publication, The Setting of Heritage Assets See https://historicengland.org.uk/images-books/publications/gpa3-setting-of-heritage-assets/ For projects in Wales, relevant guidance is given in The Setting of Historic Assets in Wales. See https://cadw.gov.wales/advice-support/placemaking/heritage-impact-assessment/setting-historic-assets

5.9.17 Where the loss of the whole or part of a heritage asset's significance is justified, the Secretary of State will require the applicant to record and advance understanding of the significance of the heritage asset before it is lost (wholly or in part). The extent of the requirement should be proportionate to the asset's importance and significance and the impact. The applicant should be required to publish this evidence and to deposit copies of the reports with the relevant Historic Environmental Record. They should also be required to deposit the archive generated in a local museum or other public repository willing to receive it.

5.9.18 Where appropriate, the Secretary of State will impose requirements on the Development Consent Order to ensure that the work is undertaken in a timely manner, in accordance with a written scheme of investigation that complies with the policy in this NPS and which has been agreed in writing with the relevant local authority, and to ensure that the completion of the exercise is properly secured.

5.9.19 Where the loss of significance of any heritage asset has been justified by the applicant on the merits of the new development and the significance of the asset in question, the Secretary of State should consider:

- imposing a requirement in the Development Consent Order
- requiring the applicant to enter into an obligation

5.9.20 That will prevent the loss occurring until the relevant part of the development has commenced, or it is reasonably certain that the relevant part of the development is to proceed.

5.9.21 Where there is a high probability (based on an adequate assessment) that a development site may include, as yet undiscovered heritage assets with archaeological interest, the Secretary of State will consider requirements to ensure appropriate procedures are in place for the identification and treatment of such assets discovered during construction.

Secretary of State decision making

5.9.22 In determining applications, the Secretary of State should seek to identify and assess the particular significance of any heritage asset that may be affected by the proposed development, including by development affecting the setting of a heritage asset (including assets whose setting may be affected by the proposed development), taking account of:

- relevant information provided with the application and, where applicable, relevant information submitted during the examination of the application

- any designation records, including those on the National Heritage List for England[237], or included on Cof Cymru[238] for Wales.
- historic landscape character records
- the relevant Historic Environment Record(s), and similar sources of information
- representations made by interested parties during the examination process
- expert advice, where appropriate, and when the need to understand the significance of the heritage asset demands it

5.9.23 The Secretary of State must also comply with the requirements on listed buildings, conservation areas and scheduled monuments, set out in Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010.

5.9.24 In considering the impact of a proposed development on any heritage assets, the Secretary of State should consider the particular nature of the significance of the heritage assets and the value that they hold for this and future generations. This understanding should be used to avoid or minimise conflict between their conservation and any aspect of the proposal.

5.9.25 The Secretary of State should consider the desirability of sustaining and, where appropriate, enhancing the significance of heritage assets, the contribution of their settings and the positive contribution that their conservation can make to sustainable communities, including to their quality of life, their economic vitality, and to the public's enjoyment of these assets.[239]

5.9.26 The Secretary of State should also consider the desirability of the new development making a positive contribution to the character and local distinctiveness of the historic environment. The consideration of design should include scale, height, massing, alignment, materials, use and landscaping (for example, screen planting).

5.9.27 When considering the impact of a proposed development on the significance of a designated heritage asset, the Secretary of State should give great weight to the asset's conservation. The more important the asset, the greater the weight should be. This is irrespective of whether any potential harm amounts to substantial harm, total loss, or less than substantial harm to its significance.

5.9.28 The Secretary of State should give considerable importance and weight to the desirability of preserving all heritage assets. Any harm or loss of significance of a

[237] See https://historicengland.org.uk/listing/the-list/
[238] See https://cadw.gov.wales/advice-support/cof-cymru
[239] This can be by virtue of: heritage assets having an influence on the character of the environment and an area's sense of place; heritage assets having a potential to be a catalyst for regeneration in an area, particularly through leisure, tourism and economic development; heritage assets being a stimulus to inspire new development of imaginative and high quality design; and the mixed and flexible patterns of land use in historic areas that are likely to be, and remain, sustainable.

designated heritage asset (from its alteration or destruction, or from development within its setting) should require clear and convincing justification.

5.9.29 Substantial harm to or loss of significance of a grade II Listed Building or a grade II Registered Park or Garden should be exceptional.

5.9.30 Substantial harm to or loss of significance of assets of the highest significance, including Scheduled Monuments; Protected Wreck Sites; Registered Battlefields; grade I and II* Listed Buildings; grade I and II* Registered Parks and Gardens; and World Heritage Sites, should be wholly exceptional.

5.9.31 Where the proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset the Secretary of State should refuse consent unless it can be demonstrated that the substantial harm to, or loss of, significance is necessary to achieve substantial public benefits that outweigh that harm or loss, or all the following apply:

- the nature of the heritage asset prevents all reasonable uses of the site
- no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation
- conservation by grant-funding or some form of not for profit, charitable or public ownership is demonstrably not possible
- the harm or loss is outweighed by the benefit of bringing the site back into use

5.9.32 Where the proposed development will lead to less than substantial harm to the significance of the designated heritage asset, this harm should be weighed against the public benefits of the proposal, including, where appropriate securing its optimum viable use.

5.9.33 In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

5.9.34 Not all elements of a Conservation Area or World Heritage Site will necessarily contribute to its significance. Loss of a building (or other element) which makes a positive contribution to the significance of the Conservation Area or World Heritage Site should be treated either as substantial harm under paragraph 5.9.30 or less than substantial harm under paragraph 5.9.32, as appropriate, considering the relative significance of the element affected and its contribution to the significance of the Conservation Area or World Heritage Site as a whole.

5.9.35 Where there is evidence of deliberate neglect of, or damage to, a heritage asset, the Secretary of State should not take its deteriorated state into account in any decision.[240]

5.9.36 When considering applications for development affecting the setting of a designated heritage asset, the Secretary of State should give appropriate weight to the desirability of preserving the setting such assets and treat favourably applications that preserve those elements of the setting that make a positive contribution to, or better reveal the significance of, the asset. When considering applications that do not do this, the Secretary of State should give great weight to any negative effects, when weighing them against the wider benefits of the application. The greater the negative impact on the significance of the designated heritage asset, the greater the benefits that will be needed to justify approval.[241]

5.10 Landscape and Visual

5.10.1 The landscape and visual effects of energy projects will vary on a case by case basis according to the type of development, its location and the landscape setting of the proposed development. In this context, references to landscape should be taken as covering seascape and townscape where appropriate.

5.10.2 Among the features which are common to a number of different thermal combustion technologies, cooling towers and exhaust stacks and their plumes have the most obvious impact on landscape and visual amenity. Visual impacts may be not just the physical structures but also visible steam plumes from cooling towers.[242]

5.10.3 Other types of cooling system, for example direct throughput where water is abstracted, used for cooling then returned to source, or air-cooled condensers, will have less visible impacts as the structures are considerably lower than natural draught cooling towers and exhibit no visible steam plumes. Further, modern hybrid cooling systems – for example mechanical draught – do not generally exhibit visible steam plumes except in exceptional adverse weather conditions. These systems are normally considered as the “Best Available Techniques” (BAT). However there may be losses of electricity output owing to the need for energy to operate hybrid cooling or air-cooled condenser systems.

[240] Historic Environment Good Practice Advice in Planning 2 provides further advice on managing significance in decision-taking in the historic environment, available online at: See https://historicengland.org.uk/images-books/publications/gpa2-managing-significance-in-decision-taking/
[241] See the Infrastructure Planning (Decisions) Regulations 2010
[242] Cooling towers and exhaust stacks can form part of projects covered by EN-2, EN-3 and EN-6. Other features of energy infrastructure which can be similarly prominent are associated with particular technologies and so are considered in the technology-specific NPSs (see e.g. Section 2.9 of EN-5).

5.10.4 Landscape effects arise not only from the sensitivity of the landscape but also the nature and magnitude of change proposed by the development, whose specific siting and design make the assessment a case-by-case judgement.

5.10.5 Virtually all nationally significant energy infrastructure projects will have adverse effects on the landscape, but there may also be beneficial landscape character impacts arising from mitigation.

5.10.6 Projects need to be designed carefully, taking account of the potential impact on the landscape. Having regard to siting, operational and other relevant constraints the aim should be to minimise harm to the landscape, providing reasonable mitigation where possible and appropriate.

5.10.7 National Parks, the Broads and AONBs have been confirmed by the government as having the highest status of protection in relation to landscape and natural beauty. Each of these designated areas has specific statutory purposes. Projects should be designed sensitively given the various siting, operational, and other relevant constraints. For development proposals located within designated landscapes the Secretary of State should be satisfied that measures which seek to further purposes of the designation are sufficient, appropriate and proportionate to the type and scale of the development.

5.10.8 The duty to seek to further the purposes of nationally designated landscapes also applies when considering applications for projects outside the boundaries of these areas which may have impacts within them. In these locations, projects should be designed sensitively given the various siting, operational, and other relevant constraints. The Secretary of State should be satisfied that measures which seek to further the purposes of the designation are sufficient, appropriate and proportionate to the type and scale of the development.

5.10.9 The Secretary of State has a duty of to have regard to the statutory purposes of National Parks and AONBs in Wales when making decisions about development schemes within England which affect designated landscapes in Wales. Similar regard should also be had in relation to schemes in England which have impacts on National Parks and National Scenic Areas in Scotland.

5.10.10 Heritage Coasts are defined areas of undeveloped coastline which are managed to conserve their natural beauty and, where appropriate, to improve accessibility for visitors.

5.10.11 Development within a Heritage Coast (that is not also a National Park, The Broads or an AONB) is unlikely to be appropriate, unless it is compatible with the natural beauty and special character of the area.

5.10.12 Outside nationally designated areas, there are local landscapes that may be highly valued locally. Where a local development document in England or a local development plan in Wales has policies based on landscape or waterscape

character assessment, these should be paid particular attention. However, locally valued landscapes should not be used in themselves to refuse consent, as this may unduly restrict acceptable development.

5.10.13 All proposed energy infrastructure is likely to have visual effects for many receptors around proposed sites.

5.10.14 The Secretary of State will have to judge whether the visual effects on sensitive receptors, such as local residents, and other receptors, such as visitors to the local area, outweigh the benefits of the project.

5.10.15 Coastal areas are particularly vulnerable to visual intrusion because of the potential high visibility of development on the foreshore, on the skyline and affecting views along stretches of undeveloped coast.

Applicant assessment

5.10.16 The applicant should carry out a landscape and visual impact assessment and report it in the ES, including cumulative effects (see Section 4.3). Several guides have been produced to assist in addressing landscape issues.[243]

5.10.17 The landscape and visual assessment should include reference to any landscape character assessment and associated studies as a means of assessing landscape impacts relevant to the proposed project. The applicant's assessment should also take account of any relevant policies based on these assessments in local development documents in England and local development plans in Wales.

5.10.18 For seascapes, applicants should consult the Seascape Character Assessment and the Marine Plan Seascape Character Assessments, and any successors to them.[244]

5.10.19 The applicant should consider landscape and visual matters in the early stages of siting and design, where site choices and design principles are being established. This will allow the applicant to demonstrate in the ES how negative effects have been minimised and opportunities for creating positive benefits or enhancement

[243] The Landscape Institute and Institute of Environmental Management and Assessment: Guidelines for Landscape and Visual Impact Assessment (2013, 3rd edition); Landscape and Seascape Character Assessments – see https://www.gov.uk/guidance/landscape-and-seascape-character-assessments; Countryside Council for Wales/Cadw (2007) Guide to Good Practice on Using the Register of Landscapes of Historic Interest in Wales in the Planning and Development Process; or any successor documents.

[244] The Seascape Character Assessments Guidance: See https://www.gov.uk/government/publications/seascape-character-assessments-identify-and-describe-seascape-types; Marine plan seascape character assessments: see https://www.gov.uk/government/publications/seascape-assessments-for-north-east-north-west-south-east-south-west-marine-plan-areas-mmo1134, See https://www.gov.uk/government/publications/seascape-assessment-for-the-south-marine-plan-areas-mmo-1037 and see https://www.gov.uk/government/publications/east-marine-plan-areas-seascape-character-assessment for England and See https://naturalresources.wales/evidence-and-data/maps/marine-character-areas/?lang=en for Wales

have been recognised and incorporated into the design, delivery and operation of the scheme.

5.10.20 The assessment should include the effects on landscape components and character during construction and operation. For projects which may affect a National Park, The Broads or an AONBs the assessment should include effects on the natural beauty and special qualities of these areas'.

5.10.21 The assessment should include the visibility and conspicuousness of the project during construction and of the presence and operation of the project and potential impacts on views and visual amenity. This should include light pollution effects, including on dark skies, local amenity, and nature conservation.

5.10.22 The assessment should also address the landscape and visual effects of noise and light pollution, and other emissions (see Section 5.2 and Section 5.7), from construction and operational activities on residential amenity and on sensitive locations, receptors and views, how these will be minimised.

5.10.23 Applicants are expected to justify BAT for the use of a cooling system that involves visible steam plumes or has a high visible structure, such as a natural draught cooling tower explaining why the application of modern hybrid cooling technology or other technologies is not reasonably practicable.

5.10.24 Applicants should consider how landscapes can be enhanced using landscape management plans, as this will help to enhance environmental assets where they contribute to landscape and townscape quality.

5.10.25 In considering visual effects it may be helpful for applicants to draw attention, in the supporting evidence to their applications, to any examples of existing permitted infrastructure they are aware of with a similar magnitude of impact on equally sensitive receptors. This may assist the Secretary of State in judging the weight they should give to the assessed visual impacts of the proposed development.

Mitigation

5.10.26 Reducing the scale of a project can help to mitigate the visual and landscape effects of a proposed project. However, reducing the scale or otherwise amending the design of a proposed energy infrastructure project may result in a significant operational constraint and reduction in function – for example, electricity generation output. There may, however, be exceptional circumstances, where mitigation could have a very significant benefit and warrant a small reduction in function. In these circumstances, the Secretary of State may decide that the benefits of the mitigation to reduce the landscape and/or visual effects outweigh the marginal loss of function.

5.10.27 Adverse landscape and visual effects may be minimised through appropriate siting of infrastructure within its development site and wider setting. The careful consideration of colours and materials will support the delivery of a well-designed scheme, as will sympathetic landscaping and management of its immediate surroundings.

5.10.28 Depending on the topography of the surrounding terrain and areas of population it may be appropriate to undertake landscaping off site. For example, filling in gaps in existing tree and hedge lines may mitigate the impact when viewed from a more distant vista.

Secretary of State decision making

5.10.29 The Secretary of State should take into consideration the level of detailed design which the applicant has provided and is secured in the Development Consent Order, and the extent to which design details are subject to future approvals.

5.10.30 The Secretary of State should be satisfied that local authorities will have sufficient design content secured to ensure future consenting will meet landscape, visual and good design objectives.

5.10.31 When considering visual impacts of thermal combustion generating stations, the Secretary of State should presume that the adverse impacts would be less if a hybrid or direct cooling system is used. The Secretary of State should therefore expect information in the application justifying BAT for the use of a cooling system that involves visible steam plumes or has a high visible structure, such as a natural draught cooling tower, and be satisfied that the application of modern hybrid cooling technology or other technologies is not reasonably practicable before giving consent to a development with natural draught cooling towers.

5.10.32 When considering applications for development within National Parks, the Broads and AONBs the conservation and enhancement of the natural beauty should be given substantial weight by the Secretary of State in deciding on applications for development consent in these areas. The Secretary of State may grant development consent in these areas in exceptional circumstances. Such development should be demonstrated to be in the public interest and consideration of such applications should include an assessment of:

- the need for the development, including in terms of national considerations[245], and the impact of consenting or not consenting it upon the local economy;
- the cost of, and scope for, developing all or part of the development elsewhere outside the designated area or meeting the need for it in some

[245] National considerations should be understood to include the national need for the infrastructure as set out in Part 3 of this NPS and the contribution of the infrastructure to the national economy.

other way, taking account of the policy on alternatives set out in Section 4.3; and

- any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

5.10.33 For development proposals located within designated landscapes the Secretary of State should be satisfied that measures which seek to further purposes of the designation are sufficient, appropriate and proportionate to the type and scale of the development. The Secretary of State should ensure that any projects consented in these designated areas should be carried out to high environmental standards, including through the application of appropriate requirements where necessary.

5.10.34 The duty to seek to further the purposes of nationally designated landscapes also applies when considering applications for projects outside the boundaries of these areas, which may have impacts within them. The aim should be to avoid harming the purposes of designation or to minimise adverse effects on designated landscapes, and such projects should be designed sensitively given the various siting, operational, and other relevant constraints. The fact that a proposed project will be visible from within a designated area should not in itself be a reason for the Secretary of State to refuse consent.

5.10.35 The scale of energy projects means that they will often be visible across a very wide area. The Secretary of State should judge whether any adverse impact on the landscape would be so damaging that it is not offset by the benefits (including need) of the project.

5.10.36 In reaching a judgement, the Secretary of State should consider whether any adverse impact is temporary, such as during construction, and/or whether any adverse impact on the landscape will be capable of being reversed in a timescale that the Secretary of State considers reasonable.

5.10.37 The Secretary of State should consider whether the project has been designed carefully, taking account of environmental effects on the landscape and siting, operational and other relevant constraints, to minimise harm to the landscape, including by appropriate mitigation.

5.10.38 The Secretary of State should consider whether requirements to the consent are needed requiring the incorporation of particular design details that are in keeping with the statutory and technical requirements for landscape and visual impacts.

5.11 Land Use, Including Open Space, Green Infrastructure, and Green Belt

5.11.1 An energy infrastructure project will have a direct effect on the existing use of the proposed site and may have indirect effects on the use, or planned use, of land in the vicinity for other types of development. Given the likely locations of energy infrastructure projects there may be particular effects on open space[246] including green and blue infrastructure.[247]

5.11.2 Green Belts, defined in a local authority's development plan[248] in England or regional strategic development plans in Wales**,** are situated around certain cities and large built-up areas. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and permanence. For further information on the purposes of Green Belt policy see chapter 13 of the NPPF, or any successor to it.[249]

5.11.3 Although the re-use of previously developed land for new development can make a major contribution to sustainable development by reducing the amount of countryside and undeveloped greenfield land that needs to be used, it may not be possible for many forms of energy infrastructure.

5.11.4 Development of land will affect soil resources, including physical loss of and damage to soil resources, through land contamination and structural damage. Indirect impacts may also arise from changes in the local water regime, organic matter content, soil biodiversity and soil process.

5.11.5 Where pre-existing land contamination is being considered within a development, the objective is to ensure that the site is suitable for its intended use. Risks would require consideration in accordance with the contaminated land statutory guidance as a minimum.[250]

5.11.6 The government's policy is to ensure there is adequate provision of high quality open space and sports and recreation facilities to meet the needs of local communities. Connecting people with open spaces, sports and recreational

[246] Open space is defined in the Town and Country Planning Act 1990 as land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground. However, in applying the policies in this section, open space should be taken to mean all open space of public value, including not just land, but also areas of water such as rivers, canals, lakes and reservoirs which offer important opportunities for sport and recreation and can also act as a visual amenity.
[247] Green infrastructure is a network of multi-functional green and blue spaces and other natural features, both rural and urban, which is capable of delivering a wide range of environmental, economic, health and wellbeing benefits for nature, climate, local and wider communities and prosperity
[248] Or else so designated under The Green Belt (London and Home Counties) Act 1938.
[249] Further information on Wales can be found in PPW 3.64-3.78.
[250] https://www.gov.uk/government/publications/contaminated-land-statutory-guidance

facilities all help to underpin people's quality of life and have a vital role to play in promoting healthy living.

5.11.7 Green and blue infrastructure[251] can also enable developments to provide positive environmental, social, health and economic benefits. Green infrastructure includes green space such as parks and woodlands but also other environmental features such as street trees, hedgerows and green walls and roofs. It also includes blue infrastructure such as canals, rivers, streams, ponds, lakes and their borders. Well designed and managed green and blue infrastructure provides multiple benefits at a range of scales. It can contribute to biodiversity recovery, sequester carbon, absorb surface water, cleanse pollutants, absorb noise and reduce high temperatures. The Green Infrastructure Framework – Principles and Standards for England can be used to consider green infrastructure in development and plan for good quality and targeted creation or improvement.

Applicant assessment

5.11.8 The ES (see Section 4.3) should identify existing and proposed[252] land uses near the project, any effects of replacing an existing development or use of the site with the proposed project or preventing a development or use on a neighbouring site from continuing. Applicants should also assess any effects of precluding a new development or use proposed in the development plan. The assessment should be proportionate to the scale of the preferred scheme and its likely impacts on such receptors. For developments on previously developed land, the applicant should ensure that they have considered the risk posed by land contamination and how it is proposed to address this.

5.11.9 Applicants will need to consult the local community on their proposals to build on existing open space, sports or recreational buildings and land. Taking account of the consultations, applicants should consider providing new or additional open space including green and blue infrastructure, sport or recreation facilities, to substitute for any losses as a result of their proposal. When considering proposals for green infrastructure, Applicant's should refer to the Green Infrastructure Framework[253].

[251] Green infrastructure is a network of multi-functional green spaces, both new and existing, both rural and urban, which supports the natural and ecological processes and is integral to the health and quality of life of sustainable communities. Blue infrastructure relates to features which incorporate the water environment. For infrastructure in Wales, see https://www.gov.wales/development-plans https://naturalresources.wales/guidance-and-advice/business-sectors/planning-and-development/evidence-to-inform-development-planning/green-infrastructure-assessments-a-guide-to-key-natural-resources-wales-datasets-and-how-to-use-them-as-part-of-a-green-infrastructure-assessment/?lang=en

[252] For example, where a planning application has been submitted.

[253] https://designatedsites.naturalengland.org.uk/GreenInfrastructure/Home.aspx

5.11.10 Applicants should use any up-to-date local authority assessment or, if there is none, provide an independent assessment to show whether the existing open space, sports and recreational buildings and land is surplus to requirements.

5.11.11 During any pre-application discussions with the applicant the LPA should identify any concerns it has about the impacts of the application on land use, having regard to the development plan and relevant applications and including, where relevant, whether it agrees with any independent assessment that the land is surplus to requirements.

5.11.12 Applicants should seek to minimise impacts on the best and most versatile agricultural land (defined as land in grades 1, 2 and 3a of the Agricultural Land Classification) and preferably use land in areas of poorer quality (grades 3b, 4 and 5).

5.11.13 Applicants should also identify any effects and seek to minimise impacts on soil health and protect and improve soil quality taking into account any mitigation measures proposed.

5.11.14 Applicants are encouraged to develop and implement a Soil Management Plan which could help minimise potential land contamination. The sustainable reuse of soils needs to be carefully considered in line with good practice guidance where large quantities of soils are surplus to requirements or are affected by contamination.[254]

5.11.15 Developments should contribute to and enhance the natural and local environment by preventing new and existing developments from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability.

5.11.16 Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans.

5.11.17 Applicants should ensure that a site is suitable for its proposed use, taking account of ground conditions and any risks arising from land instability and contamination.

5.11.18 For developments on previously developed land, applicants should ensure that they have considered the risk posed by land contamination, and where contamination is present, applicants should consider opportunities for remediation where possible. It is important to do this as early as possible as part

[254] For guidance, see the Defra Code of practice for the sustainable use of soils on construction sites

of engagement with the relevant bodies before the official pre-application stage.[255]

5.11.19 Applicants should safeguard any mineral resources on the proposed site as far as possible, taking into account the long-term potential of the land use after any future decommissioning has taken place.

5.11.20 The general policies controlling development in the countryside apply with equal force in Green Belts but there is, in addition, a general presumption against inappropriate development within them. Such development should not be approved except in very special circumstances. Applicants should therefore determine whether their proposal, or any part of it, is within an established Green Belt and if it is, whether their proposal may be inappropriate development within the meaning of Green Belt policy (see paragraph 5.11.36 below).

5.11.21 However, infilling or redevelopment of major developed sites in the Green Belt, if identified as such by the local planning authority, may be suitable for energy infrastructure. It may help to secure jobs and prosperity without further prejudicing the Green Belt or offer the opportunity for environmental improvement. Applicants should refer to relevant criteria[256] on such developments in Green Belts.

5.11.22 Moreover an applicant may be able to demonstrate that particular energy infrastructure, such as an underground pipeline, may be considered an "engineering operation" and regarded as not inappropriate in Green Belt. This is provided it preserves the openness of the Green Belt and does not conflict with the purposes of Green Belt designation. It may also be possible for an applicant to show that the physical characteristics of a proposed overhead line in a particular location would not have so harmful an impact as to conflict with the purposes of Green Belt designation, or with other protections of rural landscape.

Mitigation

5.11.23 Although in the case of most energy infrastructure there may be little that can be done to mitigate the direct effects of an energy project on the existing use of the proposed site (assuming that some of that use can still be retained post project construction) applicants should nevertheless seek to minimise these effects and the effects on existing or planned uses near the site by the application of good design principles, including the layout of the project and the protection of soils during construction.

5.11.24 Where green infrastructure is affected, the Secretary of State should consider imposing requirements to ensure the functionality and connectivity of the green infrastructure network is maintained in the vicinity of the development and that

[255] See https://www.gov.uk/government/publications/land-contamination-risk-management-lcrm
[256] See Section 13 of the NPPF, or any successor to it.

any necessary works are undertaken, where possible, to mitigate any adverse impact and, where appropriate, to improve that network and other areas of open space including appropriate access to National Trails and other public rights of way and new coastal access routes.

5.11.25 The Secretary of State should also consider whether any adverse effect on green infrastructure and other forms of open space is adequately mitigated or compensated by means of any planning obligations, for example exchange land and provide for appropriate management and maintenance agreements. Any exchange land should be at least as good in terms of size, usefulness, attractiveness and quality, and accessibility.

5.11.26 Alternatively, where sections 131 and 132 of the Planning Act 2008 apply, replacement land provided under those sections will need to conform to the requirements of those sections.

5.11.27 Existing trees and woodlands should be retained wherever possible. In the EIP, the Government committed to increase the tree canopy and woodland cover to 16.5% of total land area of England by 2050. The applicant should assess the impacts on, and loss of, all trees and woodlands within the project boundary and develop mitigation measures to minimise adverse impacts and any risk of net deforestation as a result of the scheme. Mitigation may include, but is not limited to, the use of buffers to enhance resilience, improvements to connectivity, and improved woodland management. Where woodland loss is unavoidable, compensation schemes will be required, and the long-term management and maintenance of newly planted trees should be secured

5.11.28 Where a proposed development has an impact upon a Mineral Safeguarding Area (MSA), the Secretary of State should ensure that appropriate mitigation measures have been put in place to safeguard mineral resources.

5.11.29 Where a project has a sterilising effect on land use (for example in some cases under transmission lines) there may be scope for this to be mitigated through, for example, using or incorporating the land for nature conservation or wildlife corridors or for parking and storage in employment areas.

5.11.30 Public Rights of way, National Trails, and other rights of access to land are important recreational facilities for example for walkers, cyclists and horse riders. The Secretary of State should expect applicants to take appropriate mitigation measures to address adverse effects on coastal access, National Trails, other rights of way and open access land and, where appropriate, to consider what opportunities there may be to improve or create new access. In considering revisions to an existing right of way, consideration should be given to the use, character, attractiveness, and convenience of the right of way.

5.11.31 The Secretary of State should consider whether the mitigation measures put forward by an applicant are acceptable and whether requirements or other

provisions in respect of these measures should be included in any grant of development consent.

Secretary of State decision making

5.11.32 The Secretary of State should not grant consent for development on existing open space, sports and recreational buildings and land unless an assessment has been undertaken either by the local authority or independently, which has shown the open space or the buildings and land to be surplus to requirements or the Secretary of State determines that the benefits of the project (including need), outweigh the potential loss of such facilities, taking into account any positive proposals made by the applicant to provide new, improved or compensatory land or facilities.

5.11.33 The loss of playing fields should only be allowed where applicants can demonstrate that they will be replaced with facilities of equivalent or better quantity or quality in a suitable location.

5.11.34 The Secretary of State should ensure that applicants do not site their scheme on the best and most versatile agricultural land without justification. Where schemes are to be sited on best and most versatile agricultural land the Secretary of State should take into account the economic and other benefits of that land. Where development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality.

5.11.35 In considering the impact on maintaining coastal recreation sites and features, the Secretary of State should expect applicants to have taken advantage of opportunities to maintain and enhance access to the coast. In doing so the Secretary of State should consider the implications for development of the creation of a continuous signed and managed route around the coast, as provided for in the Marine and Coastal Access Act 2009.

5.11.36 When located in the Green Belt, energy infrastructure projects may comprise 'inappropriate development'.[257] Inappropriate development is by definition harmful to the Green Belt. The NPPF makes clear that most new building is inappropriate in Green Belt and should be refused permission unless in very special circumstances.

5.11.37 Very special circumstances are not defined in national planning policy as it is for the individual decision maker to assess each case on its merits and give relevant circumstances their due weight. However, when considering any planning application affecting Green Belt land, the Secretary of State should ensure that substantial weight is given to any harm to the Green Belt when considering any

[257] Referred to in paragraphs 147-151 of section 13 of the NPPF – https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1005759/NPPF_July_2021.pdf

application for such development, while taking account, in relation to renewable and linear infrastructure, of the extent to which its physical characteristics are such that it has limited or no impact on the fundamental purposes of Green Belt designation. Very special circumstances may include the wider environmental benefits associated with increased production of energy from renewables and other low carbon sources.

5.11.38 In England, Local Green Spaces may be designated locally in Local Plans and Neighbourhood Plans. These enjoy the same protection as Green Belt in England and the Secretary of State should adopt a similar approach.

5.11.39 In Wales, 'green wedges' may be designated locally.[258] These enjoy the same protection as Green Belt in Wales and the Secretary of State should adopt a similar approach.

5.11.40 Green wedges do not convey the same level of permanence of a Green Belt and should be reviewed by the local authority as part of the development plan review process.

5.12 Noise and Vibration

5.12.1 Excessive noise can have wide-ranging impacts on the quality of human life and health such as annoyance, sleep disturbance, cardiovascular disease and mental ill-health. It can also have an impact on the environment and the use and enjoyment of areas of value such as quiet places and areas with high landscape quality.

5.12.2 The Government's policy on noise is set out in the Noise Policy Statement for England.[259] It promotes good health and good quality of life through effective noise management. Similar considerations apply to vibration, which can also cause damage to buildings. In this section, in line with current legislation, references to "noise" below apply equally to the assessment of impacts of vibration.

5.12.3 The Welsh Government's overarching policy is set out in its Noise and Soundscape Action Plan 2018 to 2023.[260] Its focus is on creating appropriate soundscapes for communities. This includes not only managing noise but also considering what sounds are appropriate in each time and place.

[258] See Managing Settlement Form - Green Belts and Green Wedges, in Planning Policy Wales (Edition 11, February 2021), or any successor to it See https://gov.wales/sites/default/files/publications/2021-02/planning-policy-wales-edition-11_0.pdf
[259] See https://www.gov.uk/government/publications/noise-policy-statement-for-england
[260] See https://gov.wales/noise-and-soundscape-action-plan-2018-2023-0

5.12.4 Noise resulting from a proposed development can also have adverse impacts on wildlife and biodiversity. Noise effects of the proposed development on ecological receptors should be assessed by the Secretary of State in accordance with the Biodiversity and Geological Conservation section of this NPS at Section 5.4. This should consider underwater noise and vibration especially for marine developments. Underwater noise can be a significant issue in the marine environment, particularly in regard to energy production.

5.12.5 Factors that will determine the likely noise impact of a proposed development include:

- the inherent operational noise from the proposed development, and its characteristics
- the proximity of the proposed development to noise sensitive premises (including residential properties, schools and hospitals) and noise sensitive areas (including certain parks and open spaces)
- the proximity of the proposed development to quiet places and other areas that are particularly valued for their soundscape or landscape quality
- the proximity of the proposed development to sites where noise may have an adverse impact on protected species or other wildlife, including migratory species
- the potential presence of unexploded ordnance on the seabed

Applicant assessment

5.12.6 Where noise impacts are likely to arise from the proposed development, the applicant should include the following in the noise assessment:

- a description of the noise generating aspects of the development proposal leading to noise impacts, including the identification of any distinctive tonal characteristics, if the noise is impulsive, whether the noise contains particular high or low frequency content or any temporal characteristics of the noise
- identification of noise sensitive receptors and noise sensitive areas that may be affected
- the characteristics of the existing noise environment
- a prediction of how the noise environment will change with the proposed development
    - in the shorter term, such as during the construction period
    - in the longer term, during the operating life of the infrastructure
    - at particular times of the day, evening and night (and weekends) as appropriate, and at different times of year

- an assessment of the effect of predicted changes in the noise environment on any noise-sensitive receptors, including an assessment of any likely impact on health and quality of life / well-being where appropriate, particularly among those disadvantaged by other factors who are often disproportionately affected by noise-sensitive areas
- if likely to cause disturbance, an assessment of the effect of underwater or subterranean noise[261]
- all reasonable steps taken to mitigate and minimise potential adverse effects on health and quality of life

5.12.7 The nature and extent of the noise assessment should be proportionate to the likely noise impact.

5.12.8 Applicants should consider the noise impact of ancillary activities associated with the development, such as increased road and rail traffic movements, or other forms of transportation.

5.12.9 Operational noise, with respect to human receptors, should be assessed using the principles of the relevant British Standards[262] and other guidance. Further information on assessment of particular noise sources may be contained in the technology specific NPSs. In particular, for renewables (EN-3) and electricity networks (EN-5) there is assessment guidance for specific features of those technologies. For the prediction, assessment and management of construction noise, reference should be made to any relevant British Standards[263] and other guidance which also give examples of mitigation strategies.

5.12.10 Some noise impacts will be controlled through environmental permits and parallel tracking is encouraged where noise impacts determined by an environmental permit interface with planning issues (i.e. physical design and location of development). The applicant should consult the EA and/or the SNCB, and other relevant bodies, such the MMO or NRW, as necessary, and in particular regarding assessment of noise on protected species or other wildlife. The results of any noise surveys and predictions may inform the ecological assessment. The seasonality of potentially affected species in nearby sites may also need to be considered.

5.12.11 In the marine environment, applicants should consider noise impacts on protected species, as well as other noise sensitive receptors, both at the individual project level and in-combination with other marine activities.

[261] Noise below ground level.
[262] For example BS 4142, BS 6472 and BS 8233.
[263] For example BS 5228.

5.12.12 Applicants should submit a detailed impact assessment and mitigation plan as part of any development plan, including the use of noise mitigation and noise abatement technologies during construction and operation.

Mitigation

5.12.13 The Secretary of State should consider whether mitigation measures are needed both for operational and construction noise over and above any which may form part of the project application. In doing so the Secretary of State may wish to impose mitigation measures. Any such mitigation measures should take account of the NPPF or any successor to it and the Planning Practice Guidance on Noise.

5.12.14 Mitigation measures may include one or more of the following**:**

- engineering: reducing the noise generated at source and/or containing the noise generated
- lay-out: where possible, optimising the distance between the source and noise-sensitive receptors and/or incorporating good design to minimise noise transmission through the use of screening by natural or purpose-built barriers, or other buildings
- administrative: using planning conditions/obligations to restrict activities allowed on the site at certain times and/or specifying permissible noise limits/noise levels, differentiating as appropriate between different times of day, such as evenings and late at night, and taking into account seasonality of wildlife in nearby designated sites
- insulation: mitigating the impact on areas likely to be affected by noise including through noise insulation when the impact is on a building.

5.12.15 The project should demonstrate good design through selection of the quietest or most acceptable cost-effective plant available; containment of noise within buildings wherever possible, taking into account any other adverse impacts that such containment might cause (e.g. on landscape and visual impacts; optimisation of plant layout to minimise noise emissions; and, where possible, the use of landscaping, bunds or noise barriers to reduce noise transmission).

5.12.16 A development must be undertaken in accordance with statutory requirements for noise. Due regard must be given to the relevant sections of the Noise Policy Statement for England[264], the NPPF, and the government's associated planning guidance on noise. In Wales the relevant policy will be PPW and the TANs, as well as the Welsh Government's Noise and Soundscape Action Plan.

[264] See https://www.gov.uk/government/publications/noise-policy-statement-for-england

Secretary of State decision making

5.12.17 The Secretary of State should not grant development consent unless they are satisfied that the proposals will meet the following aims, through the effective management and control of noise:

- avoid significant adverse impacts on health and quality of life from noise
- mitigate and minimise other adverse impacts on health and quality of life from noise
- where possible, contribute to improvements to health and quality of life through the effective management and control of noise

5.12.18 When preparing the Development Consent Order, the Secretary of State should consider including measurable requirements or specifying the mitigation measures to be put in place to ensure that noise levels do not exceed any limits specified in the development consent. These requirements or mitigation measures may apply to the construction, operation, and decommissioning of the energy infrastructure development.

5.13 Socio-Economic Impacts

5.13.1 The construction, operation and decommissioning of energy infrastructure may have socio-economic impacts at local and regional levels. Parts 2 and 3 of this NPS set out some of the national level socio-economic impacts.[265]

Applicant assessment

5.13.2 Where the project is likely to have socio-economic impacts at local or regional levels, the applicant should undertake and include in their application an assessment of these impacts as part of the ES (see Section 4.3).

5.13.3 The applicant is strongly encouraged to engage with relevant local authorities during early stages of project development so that the applicant can gain a better understanding of local or regional issues and opportunities.

5.13.4 The applicant's assessment should consider all relevant socio-economic impacts, which may include:

- the creation of jobs and training opportunities**.** Applicants may wish to provide information on the sustainability of the jobs created, including where they will help to develop the skills needed for the UK's transition to Net Zero

[265] For infrastructure in Wales see Wales' Socio-Economic Duty (referenced in the Wales Policy Considerations).

- the contribution to the development of low-carbon industries at the local and regional level as well as nationally
- the provision of additional local services and improvements to local infrastructure, including the provision of educational and visitor facilities
- any indirect beneficial impacts for the region hosting the infrastructure, in particular in relation to use of local support services and supply chains
- effects (positive and negative) on tourism and other users of the area impacted
- the impact of a changing influx of workers during the different construction, operation and decommissioning phases of the energy infrastructure. This could change the local population dynamics and could alter the demand for services and facilities in the settlements nearest to the construction work (including community facilities and physical infrastructure such as energy, water, transport and waste). There could also be effects on social cohesion depending on how populations and service provision change as a result of the development
- cumulative effects - if development consent were to be granted for a number of projects within a region and these were developed in a similar timeframe, there could be some short-term negative effects, for example a potential shortage of construction workers to meet the needs of other industries and major projects within the region

5.13.5 Applicants should describe the existing socio-economic conditions in the areas surrounding the proposed development and should also refer to how the development's socio-economic impacts correlate with local planning policies.

5.13.6 Socio-economic impacts may be linked to other impacts, for example visual impacts considered in Section 5.10 but may also have an impact on tourism and local businesses. Applicants are encouraged, where possible, to demonstrate that local suppliers have been considered in any supply chain.

5.13.7 Applicants should consider developing accommodation strategies where appropriate, especially during construction and decommissioning phases, that would include the need to provide temporary accommodation for construction workers if required.

Mitigation

5.13.8 The Secretary of State should consider whether mitigation measures are necessary to mitigate any adverse socio-economic impacts of the development. For example, high quality design can improve the visual and environmental experience for visitors and the local community alike.

Secretary of State decision making

5.13.9 The Secretary of State should have regard to the potential socio-economic impacts of new energy infrastructure identified by the applicant and from any other sources that the Secretary of State considers to be both relevant and important to its decision.

5.13.10 The Secretary of State may conclude that limited weight is to be given to assertions of socio-economic impacts that are not supported by evidence (particularly in view of the need for energy infrastructure as set out in this NPS).

5.13.11 The Secretary of State should consider any relevant positive provisions the applicant has made or is proposing to make to mitigate impacts (for example through planning obligations) and any legacy benefits that may arise as well as any options for phasing development in relation to the socio-economic impacts.

5.13.12 The Secretary of State may wish to include a requirement that specifies the approval by the local authority of an employment and skills plan detailing arrangements to promote local employment and skills development opportunities, including apprenticeships, education, engagement with local schools and colleges and training programmes to be enacted.

5.14 Traffic and Transport

5.14.1 The transport of materials, goods and personnel to and from a development during all project phases can have a variety of impacts on the surrounding transport infrastructure and potentially on connecting transport networks, for example through increased congestion. Impacts may include economic, social and environmental effects.

5.14.2 Environmental impacts may result particularly from trips generated on roads which may increase noise and air pollution as well as greenhouse gas emissions.

5.14.3 Disturbance caused by traffic and abnormal loads generated during the construction phase will depend on the scale and type of the proposal.

5.14.4 The consideration and mitigation of transport impacts is an essential part of Government's wider policy objectives for sustainable development as set out in Section 2.6 of this NPS.

Applicant assessment

5.14.5 If a project is likely to have significant transport implications, the applicant's ES (see Section 4.3) should include a transport appraisal. The DfT's Transport

Analysis Guidance (TAG)[266] and Welsh Governments WelTAG[267] provides guidance on modelling and assessing the impacts of transport schemes.

5.14.6 National Highways and Highways Authorities are statutory consultees on NSIP applications including energy infrastructure where it is expected to affect the strategic road network and / or have an impact on the local road network. Applicants should consult with National Highways and Highways Authorities as appropriate on the assessment and mitigation to inform the application to be submitted.

5.14.7 The applicant should prepare a travel plan including demand management and monitoring measures to mitigate transport impacts. The applicant should also provide details of proposed measures to improve access by active, public and shared transport to:

- reduce the need for parking associated with the proposal
- contribute to decarbonisation of the transport network
- improve user travel options by offering genuine modal choice

5.14.8 The assessment should also consider any possible disruption to services and infrastructure (such as road, rail and airports).

5.14.9 If additional transport infrastructure is needed or proposed, it should always include good quality walking, wheeling and cycle routes, and associated facilities (changing/storage etc.) needed to enhance active transport provision.

5.14.10 Applicants should discuss with network providers the possibility of co-funding by government for any third-party benefits. Guidance has been issued[268] which explains the circumstances where this may be possible, although the government cannot guarantee in advance that funding will be available for any given uncommitted scheme at any specified time.

Mitigation

5.14.11 Where mitigation is needed, possible demand management measures must be considered. This could include identifying opportunities to:

- reduce the need to travel by consolidating trips

[266] Guidance on transport assessments is at see https://www.gov.uk/guidance/transport-analysis-guidance-tag#full-publication-update-history
[267] See https://gov.wales/welsh-transport-appraisal-guidance-weltag
[268] See https://www.gov.uk/government/publications/transport-investment-strategy, For Wales, refer to the guidance note regarding Transport Grants or any successor to it: see https://gov.wales/sites/default/files/publications/2020-01/local-transport-grants-guidance-2020-to-2021.pdf

- locate development in areas already accessible by active travel and public transport
- provide opportunities for shared mobility
- re-mode by shifting travel to a sustainable mode that is more beneficial to the network
- retime travel outside of the known peak times
- reroute to use parts of the network that are less busy

5.14.12 If feasible and operationally reasonable, such mitigation should be required, before considering requirements for the provision of new inland transport infrastructure to deal with remaining transport impacts. All stages of the project should support and encourage a modal shift of freight from road to more environmentally sustainable alternatives, such as rail, cargo bike, maritime and inland waterways, as well as making appropriate provision for and infrastructure needed to support the use of alternative fuels including charging for electric vehicles.

5.14.13 Regard should always be given to the needs of freight at all stages in the construction and operation of the development including the need to provide appropriate facilities for HGV drivers as appropriate.[269]

5.14.14 The Secretary of State may attach requirements to a consent where there is likely to be substantial HGV traffic that:

- control numbers of HGV movements to and from the site in a specified period during its construction and possibly on the routing of such movements
- make sufficient provision for HGV parking,[270] and associated high quality drive facilities either on the site or at dedicated facilities elsewhere, to support driver welfare, avoid 'overspill' parking on public roads, prolonged queuing on approach roads and uncontrolled on-street HGV parking in normal operating conditions
- ensure satisfactory arrangements for reasonably foreseeable abnormal disruption, in consultation with network providers and the responsible police force.

[269] See Future of Freight, DfT, June 2022 at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1085917/future-of-freight-plan.pdf
[270] See DfT WMS on planning reforms for lorry parking at: See https://www.gov.uk/government/speeches/planning-reforms-for-lorry-parking

5.14.15 The Secretary of State should have regard to the cost-effectiveness of demand management measures compared to new transport infrastructure, as well as the aim to secure more sustainable patterns of transport development when considering mitigation measures.

5.14.16 Applicants should consider the DfT policy guidance "Water Preferred Policy Guidelines for the movement of abnormal indivisible loads" when preparing their application.[271]

5.14.17 If an applicant suggests that the costs of meeting any obligations or requirements would make the proposal economically unviable this should not in itself justify the relaxation by the Secretary of State of any obligations or requirements needed to secure the mitigation.

Secretary of State decision making

5.14.18 A new energy NSIP may give rise to substantial impacts on the surrounding transport infrastructure and the Secretary of State should therefore ensure that the applicant has sought to mitigate these impacts, including during the construction phase of the development and by enhancing active, public and shared transport provision and accessibility.

5.14.19 Where the proposed mitigation measures are insufficient to reduce the impact on the transport infrastructure to acceptable levels, the Secretary of State should consider requirements to mitigate adverse impacts on transport networks arising from the development, as set out below.

5.14.20 Development consent should not be withheld provided that the applicant is willing to enter into planning obligations for funding new infrastructure or requirements can be imposed to mitigate transport impacts.[272] In this situation the Secretary of State should apply appropriately limited weight to residual effects on the surrounding transport infrastructure.

5.14.21 The Secretary of State should only consider refusing development on highways grounds if there would be an unacceptable impact on highway safety, residual cumulative impacts on the road network would be severe, or it does not show how consideration has been given to the provision of adequate active public or shared transport access and provision.

5.15 Resource and Waste Management

5.15.1 Government policy on hazardous and non-hazardous waste is intended to protect human health and the environment by producing less waste and by using it as a

[271] See https://www.gov.uk/government/publications/movement-of-abnormal-loads-by-water
[272] With attribution of costs calculated in accordance with the DfT's guidance.

resource wherever possible. Where this is not possible and disposal is required as a last resort, waste management regulation ensures that waste is disposed of in a way that is least damaging to the environment and to human health.

5.15.2 Sustainable waste management is implemented through the waste hierarchy[273], which sets out the priorities that must be applied when managing waste. These are (in order):

- prevention
- preparing for reuse
- recycling
- other recovery, including energy recovery
- disposal

5.15.3 Disposal of waste should only be considered where other waste management options are not available or where it is the best overall environmental outcome.

5.15.4 All large infrastructure projects are likely to generate some hazardous and non-hazardous waste. The EA's Environmental Permit regime incorporates operational waste management requirements for certain activities. When an applicant applies to the EA for an Environmental Permit, the EA will require the application to demonstrate that processes are in place to meet all relevant Environmental Permit requirements.

5.15.5 Specific considerations regarding radioactive waste are set out in Section 2.11 and Annex B of EN-6.[274] The present section will apply to non-radioactive waste for nuclear infrastructure as for other energy infrastructure.

Applicant assessment

5.15.6 Applicants must demonstrate that development proposals are in line with Defra's policy position on the role of energy from waste in treating residual waste.

5.15.7 The proposed plant must not compete with greater waste prevention, re-use, or recycling, or result in over-capacity of EfW or similar processes for the treatment of residual waste at a national or local level.

5.15.8 The applicant should set out the arrangements that are proposed for managing any waste produced and prepare a report that sets out the sustainable

[273] The Waste Hierarchy is set out in The Waste (England and Wales) Regulations 2011.
[274] see https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/47859/2009-nps-for-nuclear-volumeI.pdf

management of waste and use of resources throughout any relevant demolition, excavation and construction activities.

5.15.9 The arrangements described and a report setting out the sustainable management of waste and use of resources should include information on how re-use and recycling will be maximised in addition to the proposed waste recovery and disposal system for all waste generated by the development. They should also include an assessment of the impact of the waste arising from development on the capacity of waste management facilities to deal with other waste arising in the area for at least five years of operation.

5.15.10 The applicant is encouraged to refer to the Waste Prevention Programme for England: Maximising Resources Minimising Waste[275] and 'Towards Zero Waste: Our Waste Strategy for Wales'[276] and should seek to minimise the volume of waste produced and the volume of waste sent for disposal unless it can be demonstrated that this is the best overall environmental outcome.

5.15.11 If the applicant's assessment includes dredged material, the assessment should also include other uses of such material before disposal to sea, for example through re-use in the construction process.

5.15.12 The UK is committed to moving towards a more 'circular economy'. Where possible, applicants are encouraged to source materials from recycled or reused sources and use low carbon materials, sustainable sources and local suppliers. Construction best practices should be used to ensure that material is reused or recycled onsite where possible.

5.15.13 Applicants are also encouraged to use construction best practices in relation to storing materials in an adequate and protected place on site to prevent waste, for example, from damage or vandalism. The use of Building Information Management tools (or similar) to record the materials used in construction can help to reduce waste in future decommissioning of facilities, by identifying materials that can be recycled or reused.

Secretary of State decision making

5.15.14 The Secretary of State should consider the extent to which the applicant has proposed an effective system for managing hazardous and non-hazardous waste arising from the construction, operation and decommissioning of the proposed development.

5.15.15 The Secretary of State should be satisfied that:

[275] See https://www.gov.uk/government/publications/waste-prevention-programme-for-england-maximising-resources-minimising-waste
[276] See https://gov.wales/towards-zero-waste-our-waste-strategy

- any such waste will be properly managed, both on-site and off-site.
- the waste from the proposed facility can be dealt with appropriately by the waste infrastructure which is, or is likely to be, available. Such waste arisings should not have an adverse effect on the capacity of existing waste management facilities to deal with other waste arisings in the area.
- adequate steps have been taken to minimise the volume of waste arisings, and of the volume of waste arisings sent for recovery or disposal, except where that is the best overall environmental outcome.

5.15.16 Where necessary, the Secretary of State should use requirements or obligations to ensure that appropriate measures for waste management are applied.

5.15.17 The Secretary of State may wish to include a condition on revision of waste management plans at reasonable intervals when giving consent.

5.15.18 Where the project will be subject to the Environmental Permitting regime, waste management arrangements during operations will be covered by the permit and the considerations set out in Section 4.12 will apply.

5.15.19 The Secretary of State should have regard to any potential impacts on the achievement of resource efficiency and waste reduction targets set under the Environment Act 2021 or wider goals set out in the government's Environmental Improvement Plan 2023.

5.16 Water Quality and Resources

5.16.1 Infrastructure development can have adverse effects on the water environment, including groundwater, inland surface water, transitional waters[277], coastal and marine waters.

5.16.2 During the construction, operation, and decommissioning phases, development can lead to increased demand for water, involve discharges to water, and cause adverse ecological effects resulting from physical modifications to the water environment. There may also be an increased risk of spills and leaks of pollutants to the water environment. These effects could lead to adverse impacts on health or on protected species and habitats (see Section 4.3) and could result in surface

[277] As defined in the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017, transitional waters are bodies of surface water in the vicinity of river mouths which are partly saline in character as a result of their proximity to coastal waters but which are substantially influenced by freshwater flows.

waters, groundwaters or protected areas[278] failing to meet environmental objectives established under the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 and the Marine Strategy Regulations 2010.[279]

Applicant assessment

5.16.3 Where the project is likely to have effects on the water environment, the applicant should undertake an assessment of the existing status of, and impacts of the proposed project on, water quality, water resources and physical characteristics of the water environment, and how this might change due to the impact of climate change on rainfall patterns and consequently water availability across the water environment, as part of the ES or equivalent (see Section 4.3 and 4.10).

5.16.4 The applicant should make early contact with the relevant regulators, including the local authority, the Environment Agency and Marine Management Organisation, where appropriate, for relevant licensing and environmental permitting requirements.

5.16.5 Where possible, applicants are encouraged to manage surface water during construction by treating surface water runoff from exposed topsoil prior to discharging and to limit the discharge of suspended solids e.g. from car parks or other areas of hard standing, during operation.

5.16.6 Applicants are encouraged to consider protective measures to control the risk of pollution to groundwater beyond those outlined in River Basin Management Plans and Groundwater Protection Zones – this could include, for example, the use of protective barriers.

5.16.7 The ES should in particular describe:

- the existing quality of waters affected by the proposed project and the impacts of the proposed project on water quality, noting any relevant existing discharges, proposed new discharges and proposed changes to discharges
- existing water resources[280] affected by the proposed project and the impacts of the proposed project on water resources, noting any relevant existing abstraction rates, proposed new abstraction rates and proposed changes to

[278] Protected areas are areas which have been designated as requiring special protection under specific legislation for the protection of their surface water and groundwater or for the conservation of habitats and species directly depending on water.
[279] See https://www.gov.uk/government/publications/marine-strategy-part-one-uk-updated-assessment-and-good-environmental-status; See https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/522426/LIT_10445.pdf; see PINS advice: See https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2017/06/advice_note_18.pdf
[280] See the Water Resources planning guideline: See https://www.gov.uk/government/publications/water-resources-planning-guideline/water-resources-planning-guideline

abstraction rates (including any impact on or use of mains supplies and reference to Abstraction Licensing Strategies) and also demonstrate how proposals minimise the use of water resources and water consumption in the first instance

- existing physical characteristics of the water environment (including quantity and dynamics of flow) affected by the proposed project and any impact of physical modifications to these characteristics
- any impacts of the proposed project on water bodies or protected areas (including shellfish protected areas) under the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 and source protection zones (SPZs) around potable groundwater abstractions
- how climate change could impact any of the above in the future
- any cumulative effects

Mitigation

5.16.8 The Secretary of State should consider whether mitigation measures are needed over and above any which may form part of the project application. A construction management plan may help codify mitigation at that stage.

5.16.9 The risk of impacts on the water environment can be reduced through careful design to facilitate adherence to good pollution control practice. For example, designated areas for storage and unloading, with appropriate drainage facilities, should be clearly marked.

5.16.10 The impact on local water resources can be minimised through planning and design for the efficient use of water, including water recycling. If a development needs new water infrastructure, significant supplies or impacts other water supplies, the applicant should consult with the local water company and the EA or NRW.

Secretary of State decision making

5.16.11 Activities that discharge to the water environment are subject to pollution control. The considerations set out in Section 4.12 on the interface between planning and pollution control therefore apply. These considerations will also apply in an analogous way to the abstraction licensing regime regulating activities that take water from the water environment, and to the control regimes relating to works to, and structures in, on, or under controlled waters.[281]

5.16.12 The Secretary of State will need to give impacts on the water environment more weight where a project would have an adverse effect on the achievement of the

[281] Controlled waters include all watercourses, lakes, lochs, coastal waters, and water contained in underground strata.

environmental objectives established under the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017.

5.16.13 The Secretary of State must also consider duties under other legislation including duties under the Environment Act 2021 in relation to environmental targets and have regard to the policies set out in the Government's Environmental Improvement Plan 2023.

5.16.14 The Secretary of State should be satisfied that a proposal has regard to current River Basin Management Plans and meets the requirements of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (including regulation 19). The specific objectives for particular river basins are set out in River Basin Management Plans. The Secretary of State must refuse development consent where a project is likely to cause deterioration of a water body or its failure to achieve good status or good potential, unless the requirements set out in Regulation 19 are met. A project may be approved in the absence of a qualifying Overriding Public Interest test only if there is sufficient certainty that it will not cause deterioration or compromise the achievement of good status or good potential.

5.16.15 The Secretary of State should also consider the interactions of the proposed project with other plans such as Water Resources Management Plans and Shoreline Management Plans.

5.16.16 The Secretary of State should consider proposals to mitigate adverse effects on the water environment and any enhancement measures put forward by the applicant and whether appropriate requirements should be attached to any development consent and/or planning obligations are necessary.

6 Glossary

This glossary sets out the most frequently used terms in this NPS. There is a glossary in each of the energy NPSs. The glossary set out in each of the technology specific NPS may also be useful when reading this NPS.

AA	Appropriate Assessment
ACTs	Advanced Conversion Technologies
AD	Anaerobic Digestion
AoS	Appraisal of Sustainability
Associated development	Associated development as defined in Section 115 of the Planning Act 2008
BAT	Best Available Technique
BECCS	Bioenergy with Carbon Capture and Storage
BEIS	Department for Business, Energy and Industrial Strategy
Biomass	Material of recent biological origin derived from plant or animal matter
CAA	Civil Aviation Authority
CCA	Climate Change Act 2008
CCC	Climate Change Committee
CCGT	Combined Cycle Gas Turbine
CCS	Carbon Capture and Storage
CCR	Carbon Capture Readiness
CCUS	Carbon, Capture, Utilisation and Storage
CfD	Contracts for Difference
CHP	Combined Heat and Power
CM	Capacity Market
CNS	Communications, navigation and surveillance infrastructure
Co-firing	Use of two fuel types (e.g. coal and biomass) in a thermal generating station
CO_2	Carbon dioxide
COMAH	Control of Major Accident Hazards

Critical national priority/CNP	A policy set out at Section 4.2 of EN-1 which applies a policy presumption that, subject to any legal requirements (including under section 104 of the Planning Act 2008), the urgent need for CNP Infrastructure to achieving our energy objectives, together with the national security, economic, commercial, and net zero benefits, will in general outweigh any other residual impacts not capable of being addressed by application of the mitigation hierarchy. CNP Infrastructure is defined as nationally significant low carbon. Low carbon infrastructure means: • for electricity generation, and all onshore and offshore enabling electricity generation that does not involve fossil fuel combustion (that is, renewable generation, including anaerobic digestion and other plants that convert residual waste into energy, including combustion, provided they meet existing definitions of low carbon; and nuclear generation), as well as natural gas fired generation which is carbon capture ready. • for electricity grid infrastructure, all power lines in scope of EN-5 including network reinforcement and upgrade works, and associated infrastructure such as substations. This is not limited to those associated specifically with a particular project, because all new grid projects have a role in, that are required to efficiently constructing, operating and connecting low carbon infrastructure to the National Electricity Transmission System. • for other energy infrastructure technologies, fuels, pipelines and storage infrastructure which fits within the normal definition of “low carbon”, such as hydrogen production and distribution, and carbon dioxide distribution. • for energy infrastructure which are directed into the NSIP regime under section 35 of the Planning Act 2008, and fit within the normal definition of “low carbon”, such as interconnectors, Multi-Purpose Interconnectors, or ‘bootstraps’ to support the onshore network which are routed offshore. • Lifetime extensions of nationally significant low carbon infrastructure, and repowering of projects.
CPS	Carbon Price Support
DACCS	Direct Air Carbon Capture and Storage

DESNZ	Department for Energy Security and Net Zero (established in February 2023) focussing on the energy portfolio from the former Department for Business, Energy and Industrial Strategy (BEIS).
DECC	Department of Energy and Climate Change, replaced by BEIS in 2016
Defra	Department of Environment, Food and Rural Affairs
DfT	Department for Transport
“Dispatchable” power	Sources of electricity that can be supplied (turned on or off) by operators at the request of power grid operators, in contrast to intermittent power sources that cannot be similarly controlled.
DLUHC	Department for Levelling Up, Housing & Communities
DNO	Distribution Network Operator
EA	Environment Agency
EEZ	Exclusive Economic Zone
EfW	Energy from Waste – combustion of waste material to provide electricity and/or heat
EIA	Environmental Impact Assessment
Electricity networks infrastructure	Electricity transmission systems (long distance transfer through 400kV and 275kV lines) and distribution systems (lower voltage lines from 132kV to 230V from transmission substations to the end-user). This may be overhead, underground or offshore though offshore transmission is only subject to the Planning Act 2008 in circumstances identified in EN-5 at 1.6.4; and Associated infrastructure e.g. substations.
English Waters	Waters adjacent to England up to the 12nm seaward limits of the territorial sea and in a REZ, except the Welsh zone or any part of a REZ in relation to which the Scottish Ministers have functions
EPS	Emissions Performance Standards
ES	Environmental Statement
ESO	National Grid Electricity Systems Operator
FRA	Flood Risk Assessment

GB	Great Britain
Generic Impacts	Potential impacts of any energy infrastructure projects, the general policy for consideration of which is set out in Part 5 of EN-1
GGSS	Green Gas Support Scheme
GHG	Greenhouse Gas
Grid	Electricity networks infrastructure, see above
Gt	Gigatonne = one billion tonnes
GVA	Gross Value Added
GW	Gigawatt = one billion watts
Habitats Regulations	The Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Marine Habitats and Species Regulations 2017
Habitats site	Any site which would be included within the definition at regulation 8 of the Conservation of Habitats and Species Regulations 2017 for the purpose of those regulations, including candidate Special Areas of Conservation, Sites of Community Importance, Special Areas of Conservation, Special Protection Areas and any relevant marine sites.
HRA	Habitats Regulations Assessment
HSE	Health and Safety Executive
LNG	Liquefied Natural Gas
LPAs	Local Planning Authorities
MCZs	Marine Conservation Zone: areas that protect a range of nationally important, rare or threatened habitats and species. MCZs are established under section 116(1) of the Marine and Coastal Access Act 2009
Mitigation hierarchy	A term to incorporate the avoid, reduce, mitigate, compensate process that applicants need to go through to protect the environment and biodiversity
MMO	Marine Management Organisation established under the Marine and Coastal Access Act 2009
MoD	Ministry of Defence

MPA	Marine Protected Area (MPA) is a term used to describe the network of habitat sites, SSSIs and MCZs in the English and Welsh marine environment.
MPS	Marine Policy Statement
MW	Megawatt = one million watts
Nameplate capacity	The rated output of the unit/station at the generator, and therefore includes station own use (parasitic power), and any other consumption/loss prior to despatch to the grid, local network, industrial site or similar transmission system
NDC	Nationally Determined Contribution
NETSO	National Electricity Transmission System Operator
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NRW	Natural Resources Wales
NSIP	Nationally Significant Infrastructure Project
OCGT	Open Cycle Gas Turbine
Offshore transmission	Offshore transmission is used in the NPS to cover the following types of infrastructure: • interconnectors – an electricity interconnector is a subsea high voltage transmission cable capable of conveying electricity between two markets, often countries; • multi-purpose interconnectors (MPIs) which combine offshore wind with market-to-market interconnection; • subsea ‘onshore’ transmission which reinforces the onshore transmission network though is located offshore. An example of this is a ‘bootstrap’ which is an offshore transmission cable between two points on the onshore network though located subsea/ offshore.
OHL	Overhead electricity line carried on poles or pylons
OLS	Obstacle Limitation Surfaces
PSZs	Public Safety Zones
REZ	The Renewable Energy Zone

RHI	Renewable Heat Incentive
SEA	Strategic Environmental Assessment (under the Environmental Assessment of Plans and Programmes Regulations 2004)
SMPs	Shoreline Management Plans
SNCBs	Statutory Nature Conservation Bodies: bodies responsible for advising the government on, and the administration of, nature conservation. Bodies include Natural England (NE, England), Natural Resources Wales (NRW, Wales), NatureScot (NS, Scotland) and the Joint Nature Conservation Committee (JNCC, UK wide).
Substation	An assembly of equipment in an electric power system through which electric energy is passed for transmission, transformation, distribution, or switching
TAN	Technical Advice Notes regarding planning in Wales
Technical feasibility	Whether it is possible to build and operate a proposed development according to its design parameters
Thermal Generating Station	Electricity generating station that uses a heat source (combustion of fuel or nuclear) to create steam that drives a generating turbine or which uses gas directly to drive a generating turbine
TSO	Transmission System Operator
TTAs	Tactical Training Areas
UKCS	United Kingdom Continental Shelf
UK ETS	UK Emissions Trading Scheme
Weight	Within this NPS the hierarchy of weight is 1) limited 2) moderate 3) great 4) significant 5) substantial
Welsh Waters	Waters adjacent to Wales up to the 12nm seaward limits of the territorial sea and the Welsh Zone of the REZ as defined by section 158 of the Government of Wales Act 2006

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Footnote 04

To

Further Supplementary Written Submissions

dated 30 September 2024

in Rebuttal to

Mona Offshore Wind Limited Document

Appendix to Response to WRs: Griffith Parry, Robert Parry and Kerry James

(Document Number S_D2_3.4)

MINUTES OF MEETING

Security Classification: Project Internal

Partners in UK offshore wind

MOM Number	:	20211213_Morgan and Mona EP_EP Steering Group	**REV. No.** :	F01
MOM Subject	:	Morgan and Mona Evidence Plan Steering Group Meeting 2 - Session 1		

MINUTES OF MEETING

MEETING DATE	:	13/12/2021
MEETING LOCATION	:	Microsoft Teams
RECORDED BY	:	[redacted] (RPS)
ISSUED BY	:	[redacted] (RPS) / [redacted] (RPS)

PERSONS PRESENT:

- [redacted] – bp (LH)
- [redacted] – bp (MP)
- [redacted] – bp (WD)
- [redacted] – Wood (LG)
- [redacted] - RPS (CR)
- [redacted] – RPS (NS)
- [redacted] – RPS (KL)
- [redacted] - RPS (ST)
- [redacted] – Natural England (MK)
- [redacted] – Natural England (AuB)
- [redacted] – Natural England (EH)
- [redacted] – MMO (JS)
- [redacted] – MMO (SJ)
- [redacted] – JNCC (JW)
- [redacted] - Planning Inspectorate (GB)
- [redacted] – Planning Inspectorate (HT)
- [redacted] – Environment Agency (LL)

ITEM NO:	DISCUSSION ITEM:	Responsible party	Date
1.	**Introduction** KL- This meeting is to introduce the cable route study for Morgan and Mona, to procure high level feedback on the cable routing process and to identify any red flags. It is not the Applicant's intention to provide the full slides following the meeting, as per the email from KL on 10-Dec-21. Further information will be provided, and more detailed consultation will take place next year when the projects have their grid connections. We will also be holding this meeting tomorrow with NRW, who were unable to attend today.		

	GB - On behalf of the Planning Inspectorate I will take high level notes for the meeting and record any section 51 advice.		
2.	**Overview of the Projects** (Presented by MP) bp are working with EnBW to develop the Morgan and Mona offshore wind farms as two separate projects. These sites were awarded as part of the The Crown Estate's Round 4 offshore wind leasing round. Currently they are at preferred bidder status. The intention is for both projects to be developed as fixed bottom offshore wind farms. They will be developed on similar but slightly staggered timescales and will be under separate consent applications. The Mona project is aiming to be operational in 2028 and the Morgan project is aiming to be operational a year after. At the moment the applicant is awaiting a decision from the Offshore Transmission Network Review (OTNR) which will inform the grid connection for both projects. **Key Dates** Both projects are currently at pre-scoping stage. The scoping reports for both projects are planned to be submitted at the end of March 2022. The intent is to have each project submission offset by a week as per the Planning Inspectorate's preference. The applicant is currently undertaking pre-scoping engagement including local authority engagement. Throughout 2022 the applicant will progress with consenting and both offshore and onshore surveys. Local authority engagement and fisheries engagement have begun. The applicant has also kicked off a maritime navigation engagement forum. The applicant aims to publish the Preliminary Environmental Information Report (PEIR) towards the end of 2022 with formal consultation scheduled for early 2023. The Mona Development Consent Order (DCO) application is currently planned to be submitted in October 2023 and the Morgan DCO planned for January 2024. **Evidence Plan process** (presented by KL) The Evidence Plan (EP) process has been developed following the Planning Inspectorate and Defra guidance. The applicant has also considered draft guidelines provided by Natural England [1]. The EP has historically been HRA focused however in line with recent best practice, the applicant proposes to extend this to include the EIA process for ecology topics, including designated sites such as SSSIs and MCZs.		

[1] Natural England (2021) Expectations for pre-application engagement and best practice guidance for the evidence plan process.

	The applicant is proposing to carry out a single EP process for both projects. The applicant has received some comments on use of a single EP for both projects. The projects will have separate agreement logs to account for the differences between the projects ahead of the DCO applications. Meeting minutes will also note any differences between the projects. **Roles and responsibilities** (presented by KL) The EP process is led by the applicant. The responsibility for updating the EP is with the applicant, with feedback from the relevant consultees. **Evidence Plan Steering Group** (presented by KL) The purpose of the Evidence Plan Steering Group is to monitor progress of the EP. Meetings will provide key project updates and will include an update on timescales to ensure resourcing during these periods are managed. The EP Steering Group will guide and inform the EP process. The group will meet at key milestones during the project programme for Mona and Morgan. A meeting is planned for February/March 2022 when the Point of Interconnection (POI) for the projects are known, to provide detailed information on the cable route selection study. An additional meeting is planned for April/May 2022 to coincide with the provision of the Scoping Opinion. The Environmental Agency (EA) has been included in this Steering Group meeting and the next steering group meeting as a key onshore stakeholder with an interest in the cable routing study. Otherwise, they will be included in the onshore ecology EWG. **EWG** (presented by KL) Remits will be tweaked for each EWG to make it specific for each topic e.g. approach to underwater noise modelling for marine mammals. The EP will be updated and circulated prior to the first EWG. Broad approach to EWGs: • Information circulated to EWG minimum 2 weeks ahead of meeting. • Meeting is held with attendees prepared to comment on materials provided. • Full meeting minutes will be taken, and agreement logs will be compiled where matters are agreed, and after each meeting the minutes and agreement log will be circulated and then agreed. The agreement log will be updated and appended to the DCO application. Consultation on the WFD will be taken outside of the EPWG process through the pre-application phase as part of scoping and section 42 consultation. If required, it can be discussed in the EWGs, with MHWS being the limit between offshore and onshore EWGs, however at the moment the Applicant considers that it should be adequately addressed through consultation.		

	LL- What are the limits between the onshore and offshore EWG topics remits? KL-Habitats and species that can be found from MHWS landwards will be taken forward in the onshore EWGs, while those found from MHWS seawards will be discussed in the offshore EWGs. For example, sand dune habitats are considered under onshore EWGs while saltmarsh habitats are considered under offshore EWGs. Benthic habitats can occur in the intertidal area up to MHWS, therefore would fall under the BE, MP and FSE EWG. There will be some double counting between onshore and marine planning limits as onshore planning limits go down to MLWS. LL- The EA would be interested in migratory fish and WFD receptors, these are offshore considerations not onshore. The EA would like to be included in the BE, PP, FSE EWG. The EA interest extends beyond the mean high water mark for some receptors. KL- Yes, the EA can be included in that EWG. The Applicant hopes to set up the EWGs to start in February 2022. KL- The Applicant wanted to ask the MMO if they would provide a contact for Cefas to invite them to the EWG when they are set up. SJ- Generally developers do not talk directly to Cefas, the MMO will be their point of contact. The MMO will open consultation with Cefas in the new year when the projects have a grid connection. For the EWG, the Applicant should invite the MMO and let them know that they would like Cefas to be invited and which topics the meeting is for. The MMO will then forward the invite to the relevant member of Cefas. The MMO will manage this interface. GB- Is there any intention of including non-ecological topics in the EP process e.g. archaeology? KL- The remit of the EP was discussed in the first steering group meeting when NRW queried whether it should include SLVIA. The Applicant is of the view that keeping the EP limited to ecological receptors is more appropriate. The Applicant has discussed internally and decided that a line needs to be drawn around the remit of the Evidence Plan. By including non-ecology topics, the remit could become too large. These topics will be covered as part of the wider EIA assessment, scoping and PEIR consultation. The Applicant is carrying out a similar process for other topics outside the EP process e.g. shipping and navigation, aviation, and onshore topics. The Applicant plans to retain the original remit of the EP and for other topics use road maps where applicable. **Cable Routing Study Introduction** (Presented by KL) When the Projects reach scoping submission, the intention is that they will each have a single grid connection and therefore only one POI for Morgan and one for Mona. At the moment there are six POIs,four for Mona and two for Morgan. There are a number of route corridors being developed for each POI, within each scoping search area. At this time, the Applicant is not asking for detailed feedback on the indicative routes as there are many indicative routes, most of which	RPS to include the EA in the BE, PP, FSF EWG. RPS to request Cefas involvement in EWGs.	Complete When EWGs are being set up

	will fall away once there is a decision on the POIs by National Grid. The purpose of this meeting is to introduce the cable routing study, to illustrate the search areas and indicative routes and request high level feedback on any particularly sensitive receptors and the approach to the cable route study. We are not requesting detailed feedback on the routes at this time.		
3.	**Cable Routing Study** (presented by LG) The cable routing study is a technical GIS data driven study. The study looked at the six POIs and considered a number of options for each POI. The aim was to find technically feasible and the least environmentally constrained routes. It was not possible to avoid all constraints, but the study used a number of guiding principles. The site selection for the array was undertaken previously for the round 4 application processes. There will always be a substation within the array, and this is where the cable route selection process started from. There are a number of possible landfall location options for each POI. These projects might have a large variety of landfall types due to the variation in the coastline topography in this area. Onshore cable routing will be installed to the onshore substation before the cable provides power to the national grid. The study did not compare POI against POI as the choice of POI will be driven by the National Grid. **Guiding principals** The project has taken several guiding principals into account during the cable route selection process: • The Crown Estate Cable Route Protocol (2019). • Holford Rules. • Natural England and JNCC advice for offshore cabling for Round 4 projects. • Natural Resources Wales advice for offshore cabling for Round 4 projects. • Design for community. The Holford rules have been considered with the assumption that all cables will be buried wherever possible. This is for the whole length of cable, onshore and offshore. No pylons have been considered for this project. Trenchless technologies will be used where required e.g. HDD underneath roads. The NE/JNCC advice on the mitigation hierarchy has been considered by minimising interaction with nature conservation designations. Where sites cannot be avoided, the study has tried to find the shortest overlap possible between the cable route and the designated sites. However, in some cases there have been other constraints which have meant that the shortest route across the designated site was not feasible. The Project design principals are designed for communities, they are technical design considerations to allow the project to cause as little disruption as possible. Urban areas have been excluded for the cable route selection study. Proximity to residences and other developments has also been considered for the substations.		

	Substations will be as close to the POI as possible however they may need to be a few km away due to other constraints e.g. roads.		
4.	**Site selection process** (presented by LG) The Applicant started the cable route selection study with very wide search areas. Constraints were categorised as hard or soft constraints. Hard constraints were no-go areas e.g. offshore platforms, aggregate areas and urban areas. The constraints were all mapped to exclude hard constraints and to understand the distribution of soft constraints. This was used to find the cable routes of least constraint. Landfall and substation location options were investigated by sending people out to these locations and taking detailed notes e.g. the state of the coastal defences, any other developments that are not visible from satellite imagery etc. The constraints were weighted to give a greater weighting to the constraints that have a greater bearing on the decision making process. Spatial mapping was used to interrogate the constraints e.g. to measure the length of a cable route through specific constraints. This enabled one route to be compared against another and each route was scored against each constraint. This gives each route option a ranking on how it compares against the other options therefore allowing identification of the preferred route. Reasonable alternatives have also been presented as we are looking for very early feedback and will be looking for more detailed feedback when the POI for each project is known. It will be possible to go back to the mapping stages of the selection study following stakeholder feedback.		
5.	**Identified constraints** (presented by LG) Each POI has several landfall options, except Bodelwyddan, which has only one landfall option. There are SPAs around the entire North Wales and English coast in this area therefore it has been impossible to completely avoid them. The Flyde MCZ blocks the coast in front of the Penwortham POI therefore the shortest route through the MCZ has been used. However, a detailed look at the distribution of the designated benthic habitats within the MCZ will be done of the POI chosen by NG and this may identify a different route as being the one least constrained. The Connah's Quay route goes through the narrowest point of the Dee Estuary SAC. In some places, there are multiple designations for the same habitats, however these have been considered separately. The northern indicative route for Kirkby goes through a nature reserve, this is designated for its dune system. This coastline is very constrained with large urban areas and Ministry of Defence (MOD) areas. The only open space is designated. This landfall is not the only option for this POI and it is understood that going through this designation is not ideal; the Applicant is open to consultation and consideration for this location if it becomes the POI for Morgan. The routes have also avoided other operational and round 4 projects e.g. the Cobra project. Consultation will be undertaken with those		

	developers. There is also a large amount of oil and gas activity to the north of the Cobra project. The Wylfa POI is adjacent to the Wylfa power station. The coastline in this area is designated as an AONB. The AONB has a gap where the power station is, therefore the indicative route at this location does not interact with the AONB. However, it has been given due consideration as any development would be visible from the AONB.		
6.	**Questions** MK- All of these routes have some potential environmental impacts and/or have significant constraints. Thinking about the mitigation hierarchy, is there any consideration of reducing impacts by taking a joint cable to shore for the two projects? LH- This is something we have considered, however it has not been taken forward due to grid constraints. The Applicant looked at the grid network and could not find a scenario where the 3GW from both project could be integrated into the grid at a single POI. The Applicant has been looking at collaboration with other developers as an option to minimise cable routes into shore, in particular with another round 4 developer. There has not been any conclusions to these discussions, but it is being considered. LG- In addition, the scale of the infrastructure that would be required for a 3GW option e.g., number of cables, size of cable trench, size of substation would be significantly larger than for one project. Provides a different set of environmental problems. MK- Any options that reduce the overall level of cable are worth exploring further. We are expecting something from the holistic network design (HND) in the new year. Is there a risk that the result of that takes the project in a different direction with different cable options? Is this being considered? LH- Yes there is a risk that this will affect the cable route options. This is the same for all the round 4 projects, given the process and Government targets for 2030. The Applicant has had to make some assumptions around the outcomes of the HND. Rather than wait for the HND results, constraints work has started to mitigation the effect of the HND on project timelines. It is possible that the project will not end up with one of the grid connections currently being studied. EH- Why have the Welsh landfall/POIs not been considered for Morgan e.g. Wylfa? LG- We did look at this early on however a strategic decision was made by bp/EnBW to split the options, so Morgan went to England and Mona went to Wales. The routes to the POI options not presented here did not scope as well on the environment constraints scoping process. LH- As we do not have clarity from National Grid, in order to manage workload and number of options, the Applicant focused the export		

	cable routes towards the POIs for the country within which water they are located in. MK- Liverpool Bay SPA is difficult to avoid however the Applicant could look at areas of greater sensitivity with the SPA for future refinement work. In addition, Natural England would need to see better maps of the onshore SPAs to provide advice. KL- We would look at providing more detailed maps and requesting detailed feedback prior to the next meeting in February/March when we know what the POIs are. EH- Highlighted that there is a tidal lagoon power station being considered near the Connah's Quay option. LH- We are aware of this. MK- Is the Applicant anticipating that the Morgan project will get a POI in England and Mona will get a POI in Wales? Has this been confirmed by grid? LH- It could be that they both end up with POIs in Wales or England however, the POIs for each project that we have been studying are what the Applicant has assumed to be the most viable, based on the little information proivded by NG to date.		
7.	**Next steps** (presented by KL) Could all consultees give some thought to the broad process presented today, to confirm that the process is acceptable and/or to identify any red flags in the process. When the Applicant knows the POIs for both projects, the Applicant will produce a paper on the POI options and circulate to the EP Steering Group. This will be with the aim of getting written feedback on the indicative routes. This will be followed by another steering group meeting in late February/early March 2022 to discuss this feedback. This feedback will then inform the final cable route for the projects. Scoping will present the broader scoping search area as these indicative routes are still a work in progress. Refinement of the route will be subject to further consultation post-scoping. MK- Does the Applicant want something in writing following this meeting? KL- We will circulate meeting minutes within a week. It would be useful if the attendees could provide initial feedback on the following, during or after the meeting: • Broad approach to the Cable Routing Study, including advice/guidance and principles. • High level feedback on any particularly sensitive receptors/red flags within the Search Areas.	Attendees to provide initial feedback.	21/01/2022

	SJ- The MMO would want to discuss the paper on the selection POIs with Cefas. The MMO would need to give Cefas 4 weeks to for them to provide comments. KL- This aligns with the ways of working document and timescales that were presented in the first Steering Group meeting. LL- The EA would be interested in seeing the slides with the timescales on. Happy for the Applicant to cut out the sensitive information and just provide the slides with the project timescales on. K- Yes that can be done. MP- We can also share the slides for the first SG meeting. GB- What is the rationale behind the scoping reports being submitted only a week apart and not submitted at the same time? It might make it easier on consultees or it might not. LH- This request came from previous consultation with the Planning Inspectorate. GB- If there is a large cross over between the spatial extent of project then it may cause problems for the Plannning Inspectorate to know which project comments relate to. However, these presented scoping search areas look spatial separate therefore this may be less of a concern for the Planning Inspectorate. A stagger may help the resourcing of consultees commenting on the project as well. LH- We will consider it further.	RPS to provide slides from 1st SG meeting and timelines slides form 2nd SG meeting to the EA. Bp/EnBW to consider 1 week stagger on Scoping submission.	22/12/2021 22/03/2021
8.	**Close of meeting**		

Footnote 05

To

Further Supplementary Written Submissions

dated 30 September 2024

in Rebuttal to

Mona Offshore Wind Limited Document

Appendix to Response to WRs: Griffith Parry, Robert Parry and Kerry James

(Document Number S_D2_3.4)

MINUTES OF MEETING

Security Classification: Project Internal

Partners in UK offshore wind

MOM Number	:	20220720_Morgan and Mona SG	**REV. No.**	: F02
MOM Subject	:	Morgan and Mona Evidence Plan Steering Group meeting 3.		

MINUTES OF MEETING

MEETING DATE	:	20/07/2022
MEETING LOCATION	:	Microsoft Teams
RECORDED BY	:	[redacted] (RPS)
ISSUED BY	:	[redacted] (RPS)

PERSONS PRESENT:

- [redacted] – bp (GV)
- [redacted] – bp (MP)
- [redacted] – bp (WD)
- [redacted] – RPS (KL)
- [redacted]
- [redacted] – Natural England (AuB)
- [redacted] - Natural England (LB)
- [redacted] - Natural England (MK)
- [redacted] – JNCC (JW)
- [redacted] – NRW (LR)
- [redacted] - Planning Inspectorate (GB)
- [redacted] - Planning Inspectorate (HT)
- [redacted] - MMO (JS)
- [redacted] - MMO (DN)

APOLOGIES:

ITEM NO:	DISCUSSION ITEM:	Responsible party	Date
1.	**Project update (presented by WD)** bp are working with EnBW in a 50/50 partnership (the Applicants) to develop the Morgan and Mona Offshore Wind Projects. Morgan is the northern project located in in English waters, and Mona is the southern project located mostly in Welsh waters. Together, they will have a combined capacity of 3GW. Subject to consent, Morgan and Mona will be delivered on similar but slightly staggered timescales and will be under separate consent applications. The Mona project is aiming to be operational in 2028 and the Morgan project is aiming to be operational in 2029. The Morgan and Mona Offshore Wind Projects are being developed as separate DCOs with separate landfalls.		

	The Applicant is looking to sign The Crown Estate (TCE) Agreement for Lease this year. We now have final clarity from the National Grid regarding the results of the Pathway to 2030 Holistic network Design which has provided the onshore grid connection points for the Morgan and Mona Offshore Wind Projects. Mona will have a grid connection at the existing Bodelwyddan National Grid substation. Morgan will have a shared grid connection at the existing Penwortham National Grid substation with the Morecambe Offshore Wind Project which is bring progressed jointly by Cobra and Floatation Energy. The two projects will share an onshore and offshore cable corridor however the projects will remain electrically separate. This means we have had to separate the Morgan generation and transmission assets. The Morgan (generation assets only) scoping report has been submitted to the Planning Inspectorate and the Applicant is working with Morecambe to deliver a joint scoping report, PEIR and DCO application for the transmission assets. The Morgan (generation assets only) and Mona (generation and transmission assets) PEIR submission will be at the end of Q1 2023. The Morgan (generation assets only) PEIR has been aligned with the Mona PEIR to allow the Applicant to properly consider the cumulative effects between the projects. This alignment is expected to continue to application. GV – Given the information just provided and with reference to the agenda item to present slides on the site selection process for the Morgan offshore cable corridor, the Applicant is in the process of setting up the collaboration with Cobra and Flotation Energy. As a result, the Applicant will not be presenting information for this standalone application for the Morgan/Morecambe transmission assets. Furthermore, it is believed that a separate Evidence Plan process is required for the Morgan/Morecambe transmission asset application. Details will be sent out for this as soon as is practicable. The Applicant will look to make meetings as efficient as possible between the three development applications, by, for example, scheduling meetings to occur on the same day. MK- What is the intention regarding the programme for the Morgan/Morecambe transmission assets application submission. Will there be an Environmental Statement that covers the Morgan Offshore Wind Project in its entirety? GV- The Applicant is currently discussing this internally. For the Morgan/Morecambe transmission assets application, firstly a section 35 direction request will need to be submitted to the Secretary of State to determine whether the Morgan/Morecambe transmission assets can be granted consent under the Planning Act 2008. The Applicant has looked to align the Mona and Morgan generation assets applications so that the cumulative effects can be fully considered. However, this has been become more challenging with the requirement for collaborative transmission assets. The Applicant will update the steering group on the programme once finalised. MK- The Applicant needs to consider the accidental “salami slicing” of the project that two applications for Morgan may create. In addition,		

	there are issues surrounding having different timescales for potential consent and construction of the generation and transmission assets. GV- The Morgan Scoping document (introductory section) gives a good explanation regarding why the Applicants has proceeded with submission of the Morgan (generation assets only) scoping report, one of the reasons being, for example, to maximise the time available to engage with stakeholders on resolving potential effects.		
2.	**Offshore Cable Corridor route selection (presented by GV)** This is a high-level overview. Detailed information on the site selection process will be presented within the site selection and consideration of alternatives chapter of the PEIR. Due to the Offshore Transmission Network Review (OTNR), National Grid (NG) could not initially provide a grid connection offer against the originally agreed programme. In order to mitigation the potential impacts of this on programme and the ability for Mona to potentially contribute to the 2030 Government targets for offshore wind energy, scoping reports were prepared against four potential points of interconnection (POI) to the grid. In March 2022 NG indicated a strong likelihood for POI at Bodelwyddan. NG confirmed grid connection at Bodelwyddan in May 2022. Wood were commissioned to undertake the site selection work and carried out a phased approach to the export cable route identification. 'Show stopper' constraints were identified early and then a process of constraints mapping and refinements where undertaken. Key technical constraints for the export cable route included: • Sufficient corridor width (1.5km) for up to 4 export cables with sufficient separation distance to avoid the risk of damage to neighbouring cables during installation and repair • Minimise cable and pipeline crossings • The total route length (beyond 100km an HVDC connection would likely be required rather than HVAC, and would require more onerous infrastructure) and technically feasible landfall location and onshore route options • The ability to install using most common installation techniques. Key environmental constraints include: • SPAs (Liverpool Bay, Anglesey Terns, Lavan Sands / Conway Bay, Dee Estuary) • SACs (Menai Strait and Conwy Bay, Dee Estuary, North Anglesey Marine) • Annex 1 type Sandbanks and reefs • Existing wind farms, export cables and proposed Awel-y-Mor project • Oil & Gas; Milom Gas Field and gas pipelines • Shipping & Navigation: Anglesey/Liverpool TSS, east of Anglesey anchorages, Irish Sea ferry routes.		

	Initially the Applicant considered four offshore cable routes between the Mona Offshore Wind Project and Bodelyddan; one route to the west of the proposed Awel Y Mor array area,and three routes passing through the gap between Gwynt y Mor east and west, but the routes going through the gap were rejected during review due to significant technical constraints associated with Gywnt-y-Mor wind farm and export cables, Milom gas pipeline, other wind farm infrastructure and congested landfall options. The selected export cable route to the west of Awel-y-Mor has a perpendicular crossing of the vessel Traffic Separation Scheme, it passes through the Liverpool Bay SPA. Due to the proximity of the Constable Bank to the Menai Straights and Conwy Bay SAC, the cable route unavoidably crosses the edge of Constable bank at its western periphery and Menai Straightts and Conwy Bay SAC at its eastern periphery. It avoids Awel-y-Mor, other windfarms and associated export cables, avoids the unofficial anchorage to the east of Anglesey, it avoids Lavan Sands/Conway Bay SPA and the North Anglesey Marine SAC. Benthic and geophysical surveys for the proposed Offshore Cable Corridor are currently underway. These surveys will also include drop down video surveys to identify any sensitive or Annex I benthic habitats. KL- Data for the Mona Offshore Cable Corridor won't be included in the PEIR, only in the final application. The Applicant will present the initial findings of the surveys though the expert working groups at the earliest opportunity next year. LR- The Mona Offshore Cable Corridor crosses the Constable Bank which is an Annex I sandbank feature. NRW would advise that the Constable Bank is avoided. NRW would also advise that sandwave clearance should not occur on the bank and rock protection for cables should not be placed on the banks or in close vicinity. Sandbanks are an important feature of the sediment budget to protect the coast from waves. Also noting that there are important species associated with sandbanks which may also be affected by cable installation. NRW will provide formal comments after the meeting.		
	LR- The Mona Offshore Cable Corridor also goes through the Menai Strait and Conwy Bay SAC. It may be in close proximity with the reef features of that SAC. NRW would advise that all reef features of the SAC are avoided by micrositing the cables. No rock protection should be placed within the SAC. The Pensarn Beach SSSI should be listed as a key environmental constraint. The vegetative shingle bank feature should be considered as an Annex I feature. Cables within the intertidal area could need protection and this could impede the sediment transport regime which is key to the SSSI feature. GV- The Mona Offshore Cable Corridor is approximately 90km long therefore there isn't any scope for increasing this length to avoid the Constable Bank and SAC and due to their proximity to one another, there is little space to allow this practically. The geophysical and	**NRW to provide comments on the Mona export cable route, including concerns**	**Completed**

	benthic data currently being collected will inform the need for cable micrositing and mitigation if required. Kl- The ongoing surveys will identify any reef features and pre-construction surveys will be carried out which will inform the final micrositing of cables around reef features if they are recorded. HT- If the benthic data won't be presented in the PEIR, how will the Applicants ensure stakeholders have enough time to consider the data before application to ensure matters aren't brought into the examination. KL- There is extensive desk top data for the area and a lot of the assessment will be included in the PEIR. The PEIR will cover any comments raised during the EWGs or in the Scoping Opinion. The intention is to add in the site-specific data and refined the assessment presented in PEIR. The Applicant would look to engage with the EWG while the PEIR is being updated to ensure they understand the results of the site-specific surveys and what the implications are for the assessment presented in PEIR. HT- How long will it be between when the results of the site-specific survey are presented and the application. GV- Until the data collection is complete, we cannot provide a timescale for compilation of the analysis and presentation of the results. However, the Applicant understand the need for there to be sufficient time to consult on this. GB- This has been brought up in other examinations and the Applicant needs to carefully consider the timescales for this. GV- The Applicant will consult on the results of the site-specific surveys as soon as they are available for external distribution.	**regarding Constable Bank.**	
3.	**LSE screening methodology (presented by KL)** These slides will present the approach to identifying site and species where there is potential for likely significant effect. The slides are presenting the same information as was sent to the steering group in a technical note a few weeks ago. For ornithology, the approach is only broadly described, and this will be looked at again in greater detail once more work has been carried out on the baseline characterisation, Collision Risk Modelling (CRM) and displacement modelling. So the first step we use considers three criteria to identify relevant European sites. This is a general approach for all receptor groups. 1. that the project boundary overlaps with Site 2. that qualifying interest features (particularly mobile species) have ranges which overlap the Project boundaries 3. that sites/features occur in the Zone of Impact (ZoI) of impacts associated with the Projects. <u>Annex I habitats</u>		

	Criterion 1- It is anticipated that one site will be screened in on the bases of Criterion 1 for the Morgan/Mona Offshore Wind Projects. Criterion 2-There are no European sites which meet this criterion for Annex I benthic habitats. Criterion 3-ZOI for indirect effects will be based on one mean spring tidal excursion in the vicinity of the Morgan/Mona Offshore Wind Project prior to Physical Processes modelling. One mean tidal excursion equates to approximately 9km in the northeast and southwest direction and 3km in the northwest/southeast direction from the Mona Array Area and 7km in a northeast/southwest direction and 2km in a northwest/southeast direction in relation to the Mona Cable Corridor. For the purposes of LSE screening, a precautionary approach will be adopted, and this buffer has been increased to 15km. <u>Sites designated for Annex II diadromous fish</u> Criterion 1- There are no European sites which meet this criterion for Annex II diadromous fish. Criterion 2- The approach will consider the potential for disruption to migration (i.e. barriers to migration) of diadromous fish, including Atlantic salmon, to/from natal rivers. For the purposes of LSE screening, a precautionary approach will be adopted using a buffer of 100km in line with guidance from the Plan Level HRA (The Crown Estate, 2021). Sites located just outside the 100km buffer will be included. E.g. sites flow into the eastern Irish Sea and 100km buffer and therefore may have potential connectivity with the Morgan/Mona Offshore Wind Project. Criterion 3- Given the large buffer proposed for criterion 2 it is not anticipated that any additional European sites with Annex II diadromous fish as qualifying features, beyond those already identified for criterion 2 will be screened in. LR- NRW noted that with reference to the Crown Estate Round 4 HRA principles, a 100km buffer is used for most diadromous fish except Atlantic Salmon and Fresh Water Pearl Mussel which use a Regional Areas Approach. KL- Can NRW provide this advice in their response to the meeting minutes, RPS will look at this to ensure all relevant sites where there is a credible impact pathway are considered. *Post meeting note: NRW (A) advise that The Crown Estate Round 4 HRA principles are adopted in their original form. This comment was querying the presented interpretation of the principles with regards to Atlantic Salmon and Fresh Water Pearl Mussel. Section 3.6.17 – 3.6.23 Migratory Fish and Freshwater pearl mussel and Figure 3.1 Proposed regional boundaries for Atlantic salmon of the principles, outline a 'Regional Areas Approach' for Atlantic salmon and Fresh Water Pearl Mussel.*	**NRW to provide more detail on the recommended approach for Atlantic Salmon and pearl mussel.**	**Completed**

	Marine mammals Annex II marine mammal species likely to occur in the vicinity of the Morgan/Mona Offshore Wind Project and therefore considered in the LSE screening (based on Digital Aerial surveys): • Harbour porpoise *Phocoena phocoena* • Bottlenose dolphin *Tursiops truncatus* • Grey seal *Halichoerus grypus* • Harbour seal *Phoca vitulina*. Criterion 1-There are no sites with Annex II marine mammal species as qualifying features which overlap with the Morgan/Mona Offshore Wind Project. Criterion 2-Screening distances considers NRW advice on use of marine mammal management units in HRA. Criterion 3- Given the large buffers proposed above for both cetaceans and pinnipeds in criterion 2, the ZOI for key impacts are anticipated to be well within this area. Therefore no additional sites will be screened in for further consideration on the basis of this criterion. The Applicant has an action from the marine mammal EWG to look at the foraging ranges and marine mammal management units used for grey seals, with particular reference to the Carter et al. study for seals, including tracking data. Sites will be considered within the marine mammal management units but only screened it if the sites closer to the Morgan/Mona Offshore Wind Project are screened in. *Post meeting note: As outlined in NRWs Position Statement, where there is evidence of a credible risk, all sites within the management unit should be screened in for LSE, but the Appropriate Assessment should concentrate on the closest sites first. If AEOSI can be ruled out for the closest/most relevant sites then it can (more than likely) be ruled out for more distant sites. Please refer to the more detailed minutes following the 2nd Marine Mammal EWG*. Sites designated for Annex I habitats (onshore) Criterion 1- There are no European sites with relevant qualifying Annex I habitats (onshore) which overlap with the Morgan/Mona Offshore Wind Projects and so no sites will be screened in for further consideration on this basis. Criterion 2- There are no European sites which meet this criterion for Annex I habitats and so no sites will be screened in for further consideration on this basis. Criterion 3- The ZOI for such indirect effects associated with the onshore elements of the Morgan/Mona Offshore Wind Project is defined as 350m based on guidance from the Institute of Air Quality Management (IAQM) and The Highways Agency 2007. 350m is		

	considered an adequate buffer to capture all indirect effects associated with the Morgan/Mona Offshore Wind Project. Initial identification for Annex II species (onshore) It is considered that any European sites located more than 30 km from the Morgan/Mona Offshore Wind Projects are sufficiently far for there to be no risk to an Annex II terrestrial species. A buffer of 10km is considered for lesser horseshoe bats based on a home range (between summer and winter roosts) of 5-10 km (Collins et al 2016 cited: Bat Conservation Trust / BMT Cordah Ltd, 2005). The nearest SAC is located well outside of this buffer and therefore not considered further. A buffer of 2km is considered for great crested newt (e.g. English Nature 2001). The nearest SACs are located well outside of this buffer (e.g. >20 km) and therefore not considered further. European Otter Criterion 1- There are no European sites with relevant qualifying Annex I habitats which overlap with the Morgan/Mona Offshore Wind Project. Criterion 2- Otters can have relatively large home ranges and can travel considerable distances in one night, particularly during dispersal (e.g. more than 20 km, cited in Chanin 2003; or an estimated average home range of 27 km, Harris et al. 1995, cited in Chanin 2003). Therefore sites within 27 km will be considered for LSE. Criterion 3- No additional European sites with Annex II otter as qualifying features, beyond those already identified for criterion 2, are therefore screened in for further consideration on the basis of criterion 3. Initial Identification for Onshore Ornithological Features SPAs (and Ramsar sites) with onshore waterbird qualifying features will be identified using expert knowledge and evidence from the literature on migratory routes and foraging range of waterbirds. This will be based on judgement of the sites location and surrounding SPAs designated for wintering waterbirds. A precautionary approach will be taken with sites within 50km of the cable landfall being considered as a starting point.		
	Offshore ornithology SPAs (and Ramsar sites) which have the potential to be affected by the Morgan/Mona Offshore Wind Project are those which: • Overlap with the location of the Morgan/Mona Offshore Wind Project, or with the area in which potential effects could extend	**RPS to provide clarification on the tool used for considering sites with offshore**	**Completed**

	• Include seabird qualifying features that use the waters in and around the Morgan/Mona Offshore Wind Project (e.g. for foraging) • Include qualifying features which may fly through the area of the Morgan/Mona Offshore Wind Project during migration. The SPAs (and Ramsar sites) will be considered under the following categories: • Marine SPAs • Breeding seabird colony SPAs (and Ramsar sites) • SPAs (and Ramsar sites) with migratory waterbird qualifying features • Other SPAs (and Ramsar sites) which are located within the ZOI of the Morgan/Mona Offshore Wind Project. MK- What tool is the Applicant using for assessing potential impacts on migratory seabirds and waterbirds? Is it the BTO SoSS tool. KL- We will need to check this with the RPS ornithologists. To provide confirmation in the meeting minutes. *Post meeting clarification – the SoSS tool is being used for migratory species*. LR- NRW would advise that until the data analysis on the survey's results is completed that all Welsh SPAs and SSSIs should be included in the scope. KL- Would this be regardless of the criterion e.g. foraging ranges and location of the waterbird features. LR- We agree with the approach in general and the criteria, but we advise that all relevant SPAs and SSSIs are kept in scope. NRW to provide further detail and clarification on this. KL- The applicant would like to be sure that what is provided at PEIR focuses on the key sites and is proportionate. Further refinement of the sites considered will be discussed with the EWGs. GB-The pre-screening is very far reaching, and the Planning Inspectorate is confident that this can be captured. The Planning Inspectorate would encourage to keep the screening and assessment to credible pathways that have the potential to give rise to significant effects rather than theoretical pathways. If all pathways are included, then this gives rise to a very long list. The aim of this process is to get to likely significant effects. GB - The screening process is iterative, but the Inspectorate has experienced screening reports submitted at application that aren't completely up to date with the rest of the project. Please ensure that all documents submitted with the application are up to date and consistent with each other. The structure of the screening report is led by receptor type however the appropriate assessment needs to make a conclusion for the entire site which may have a number of qualifying features from the different receptor groups.	**ornithology features** **NRW to provide further detail and clarification on SPAs and SSSIs to be included in the LSE screening**	**Completed**

	KL noted the comments by the Inspectorate and confirmed that the Information to Support Appropriate Assessment will include consideration of the effects of the project on the site as a whole. MK noted that the application should also give consideration to identification of a wider set of designated seabird sites, including SSSIs and MCZs. KL noted that MCZs would be fully considered in the MCZ Assessment and would look to screen sites on a similar basis. SSSIs will be treated similarly as part of the EIA.		
4.	**Scoping opinion (presented by KL)** The Applicant wanted to give the steering group an opportunity to raise anything from the scoping opinion for Mona and Morgan. The Applicant has been working through the response to Mona and will be providing a response where required in addition to including comments in the PEIR. MK- Please ensure that the regulator has all the information needed to consider all elements of the project, across transmission and generation assets. Particularly important for Morgan – this is noted in NE's scoping response where we draw on 'lessons learnt' from the Triton Knoll OWF case.		
5.	**NEXT STEPS** The next steering group meeting will focus on the Morgan cable route selection and how the Applicant is going to engage on the process with the Morgan/Morecambe project.		
6.	**Close of meeting**		

Footnote 06

To

Further Supplementary Written Submissions

dated 30 September 2024

in Rebuttal to

Mona Offshore Wind Limited Document

Appendix to Response to WRs: Griffith Parry, Robert Parry and Kerry James

(Document Number S_D2_3.4)

Planning Act 2008

CHAPTER 29

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Planning Act 2008

2008 CHAPTER 29

An Act to establish the Infrastructure Planning Commission and make provision about its functions; to make provision about, and about matters ancillary to, the authorisation of projects for the development of nationally significant infrastructure; to make provision about town and country planning; to make provision about the imposition of a Community Infrastructure Levy; and for connected purposes. [26th November 2008]

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

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").

(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.

(2) The code must include—

(a) provision requiring each Commissioner to disclose financial and other interests in accordance with the procedure established under section 3, and

(b) such other provision as the Secretary of State may direct.

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

(4) The Commission—

(a) must keep the code under review, and

(b) may from time to time revise it or replace it.

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

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

3 Register of Commissioners' interests

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

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

4 Fees

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

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

(a) about when a fee (including a supplementary fee) may, and may not, be charged;

(b) about the amount which may be charged;

(c) about what may, and may not, be taken into account in calculating the amount charged;

(d) about who is liable to pay a fee charged;

(e) about when a fee charged is payable;

(f) about the recovery of fees charged;

(g) about waiver, reduction or repayment of fees;

(h) about the effect of paying or failing to pay fees charged;

(i) for the supply of information for any purpose of the regulations.

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

(a) in the performance of any of its functions, and

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

PART 2

NATIONAL POLICY STATEMENTS

5 National policy statements

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

(a) is issued by the Secretary of State, and

(b) sets out national policy in relation to one or more specified descriptions of development.

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

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

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

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

(a) set out, in relation to a specified description of development, the amount, type or size of development of that description which is appropriate nationally or for a specified area;

(b) set out criteria to be applied in deciding whether a location is suitable (or potentially suitable) for a specified description of development;

(c) set out the relative weight to be given to specified criteria;

(d) identify one or more locations as suitable (or potentially suitable) or unsuitable for a specified description of development;

(e) identify one or more statutory undertakers as appropriate persons to carry out a specified description of development;

(f) set out circumstances in which it is appropriate for a specified type of action to be taken to mitigate the impact of a specified description of development.

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

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

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

(9) The Secretary of State must—

(a) arrange for the publication of a national policy statement, and

(b) lay a national policy statement before Parliament.

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

6 Review

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

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

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

(a) since the time when the statement was first published or (if later) last reviewed, there has been a significant change in any circumstances on the basis of which any of the policy set out in the statement was decided,

(b) the change was not anticipated at that time, and

(c) if the change had been anticipated at that time, any of the policy set out in the statement would have been materially different.

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

(a) since the time when the relevant part was first published or (if later) last reviewed, there has been a significant change in any circumstances on the basis of which any of the policy set out in the relevant part was decided,

(b) the change was not anticipated at that time, and

(c) if the change had been anticipated at that time, any of the policy set out in the relevant part would have been materially different.

(5) After completing a review of all or part of a national policy statement the Secretary of State must do one of the following—

(a) amend the statement;

(b) withdraw the statement's designation as a national policy statement;

(c) leave the statement as it is.

(6) Before amending a national policy statement the Secretary of State must carry out an appraisal of the sustainability of the policy set out in the proposed amendment.

(7) The Secretary of State may amend a national policy statement only if the consultation and publicity requirements set out in section 7, and the parliamentary requirements set out in section 9, have been complied with in relation to the proposed amendment.

(8) Subsections (6) and (7) do not apply if the Secretary of State thinks that the proposed amendment (taken with any other proposed amendments) does not materially affect the policy as set out in the national policy statement.

(9) If the Secretary of State amends a national policy statement, the Secretary of State must—

(a) arrange for the amendment, or the statement as amended, to be published, and

(b) lay the amendment, or the statement as amended, before Parliament.

7 Consultation and publicity

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

(2) The Secretary of State must carry out such consultation, and arrange for such publicity, as the Secretary of State thinks appropriate in relation to the proposal.
This is subject to subsections (4) and (5).

(3) In this section "the proposal" means—
(a) the statement that the Secretary of State proposes to designate as a national policy statement for the purposes of this Act, or
(b) (as the case may be) the proposed amendment.

(4) The Secretary of State must consult such persons, and such descriptions of persons, as may be prescribed.

(5) If the policy set out in the proposal identifies one or more locations as suitable (or potentially suitable) for a specified description of development, the Secretary of State must ensure that appropriate steps are taken to publicise the proposal.

(6) The Secretary of State must have regard to the responses to the consultation and publicity in deciding whether to proceed with the proposal.

8 Consultation on publicity requirements

(1) In deciding what steps are appropriate for the purposes of section 7(5), the Secretary of State must consult—
(a) each local authority that is within subsection (2) or (3), and
(b) the Greater London Authority, if any of the locations concerned is in Greater London.

(2) A local authority is within this subsection if any of the locations concerned is in the authority's area.

(3) A local authority ("A") is within this subsection if—
(a) any of the locations concerned is in the area of another local authority ("B"), and
(b) any part of the boundary of A's area is also a part of the boundary of B's area.

(4) In this section "local authority" means—
(a) a county council, or district council, in England;
(b) a London borough council;
(c) the Common Council of the City of London;
(d) the Council of the Isles of Scilly;
(e) a county council, or county borough council, in Wales;
(f) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39);
(g) a National Park authority;
(h) the Broads Authority.

9 Parliamentary requirements

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

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

(3) In this section "the proposal" means—
(a) the statement that the Secretary of State proposes to designate as a national policy statement for the purposes of this Act, or
(b) (as the case may be) the proposed amendment.

(4) Subsection (5) applies if, during the relevant period—
(a) either House of Parliament makes a resolution with regard to the proposal, or
(b) a committee of either House of Parliament makes recommendations with regard to the proposal.

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

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

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

10 Sustainable development

(1) This section applies to the Secretary of State's functions under sections 5 and 6.

(2) The Secretary of State must, in exercising those functions, do so with the objective of contributing to the achievement of sustainable development.

(3) For the purposes of subsection (2) the Secretary of State must (in particular) have regard to the desirability of—
(a) mitigating, and adapting to, climate change;
(b) achieving good design.

11 Suspension pending review

(1) This section applies if the Secretary of State thinks that the condition in subsection (2) or (3) is met.

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

(3) The condition is that—
(a) since the time when part of a national policy statement ("the relevant part") was first published or (if later) last reviewed, there has been a

significant change in any circumstances on the basis of which any of the policy set out in the relevant part was decided,

(b) the change was not anticipated at that time, and

(c) if the change had been anticipated at that time, any of the policy set out in the relevant part would have been materially different.

(4) The Secretary of State may suspend the operation of all or any part of the national policy statement until a review of the statement or the relevant part has been completed.

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

12 Pre-commencement statements of policy, consultation etc.

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

(a) the statement is a pre-commencement statement or

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

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

(a) since the time when the statement was first issued or (if later) the statement or any part of it was last reviewed, there has been a significant change in any circumstances on the basis of which any of the policy set out in the statement was decided,

(b) the change was not anticipated at that time, and

(c) if the change had been anticipated at that time, any of the policy set out in the statement would have been materially different.

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

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

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

(6) In this section—

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

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

13 Legal challenges relating to national policy statements

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

(a) the proceedings are brought by a claim for judicial review, and

(b) the claim form is filed during the period of 6 weeks beginning with—

(i) the day on which the statement is designated as a national policy statement for the purposes of this Act, or

(ii) (if later) the day on which the statement is published.

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

(a) the proceedings are brought by a claim for judicial review, and

(b) the claim form is filed during the period of 6 weeks beginning with the day of the decision not to carry out the review.

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

(a) the proceedings are brought by a claim for judicial review, and

(b) the claim form is filed during the period of 6 weeks beginning with the day on which the Secretary of State complies with section 6(5) in relation to the review concerned.

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

(a) the proceedings are brought by a claim for judicial review, and

(b) the claim form is filed during the period of 6 weeks beginning with the day on which the Secretary of State complies with section 6(5) in relation to the review concerned.

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

(a) the proceedings are brought by a claim for judicial review, and

(b) the claim form is filed during the period of 6 weeks beginning with the day on which the thing concerned is done.

(6) A court may entertain proceedings for questioning a decision of the Secretary of State as to whether or not to suspend the operation of all or part of a national policy statement under section 11 only if—

(a) the proceedings are brought by a claim for judicial review, and

(b) the claim form is filed during the period of 6 weeks beginning with the day of the decision.

PART 3

NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECTS

General

14 Nationally significant infrastructure projects: general

(1) In this Act "nationally significant infrastructure project" means a project which consists of any of the following—

(a) the construction or extension of a generating station;
(b) the installation of an electric line above ground;
(c) development relating to underground gas storage facilities;
(d) the construction or alteration of an LNG facility;
(e) the construction or alteration of a gas reception facility;
(f) the construction of a pipe-line by a gas transporter;
(g) the construction of a pipe-line other than by a gas transporter;
(h) highway-related development;
(i) airport-related development;
(j) the construction or alteration of harbour facilities;
(k) the construction or alteration of a railway;
(l) the construction or alteration of a rail freight interchange;
(m) the construction or alteration of a dam or reservoir;
(n) development relating to the transfer of water resources;
(o) the construction or alteration of a waste water treatment plant;
(p) the construction or alteration of a hazardous waste facility.

(2) Subsection (1) is subject to sections 15 to 30.

(3) The Secretary of State may by order—

(a) amend subsection (1) to add a new type of project or vary or remove an existing type of project;
(b) make further provision, or amend or repeal existing provision, about the types of project which are, and are not, within subsection (1).

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

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

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

(6) The fields are—

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

(7) The areas are—

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

Energy

15 Generating stations

(1) The construction or extension of a generating station is within section 14(1)(a) only if the generating station is or (when constructed or extended) is expected to be within subsection (2) or (3).

(2) A generating station is within this subsection if—
(a) it is in England or Wales,
(b) it is not an offshore generating station, and
(c) its capacity is more than 50 megawatts.

(3) A generating station is within this subsection if—
(a) it is an offshore generating station, and
(b) its capacity is more than 100 megawatts.

(4) An "offshore" generating station is a generating station that is—
(a) in waters in or adjacent to England or Wales up to the seaward limits of the territorial sea, or
(b) in a Renewable Energy Zone, except any part of a Renewable Energy Zone in relation to which the Scottish Ministers have functions.

16 Electric lines

(1) The installation of an electric line above ground is within section 14(1)(b) only if (when installed) the electric line will be—
(a) wholly in England,
(b) wholly in Wales,
(c) partly in England and partly in Wales, or
(d) partly in England and partly in Scotland, subject to subsection (2).

(2) In the case of an electric line falling within subsection (1)(d), the installation of the line above ground is within section 14(1)(b) only to the extent that (when installed) the line will be in England.

(3) The installation of an electric line above ground is not within section 14(1)(b)—
(a) if the nominal voltage of the line is expected to be less than 132 kilovolts, or
(b) to the extent that (when installed) the line will be within premises in the occupation or control of the person responsible for its installation.

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

17 Underground gas storage facilities

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

(2) Development is within this subsection if—

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

(b) it is starting to use underground gas storage facilities in England,

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

(3) Development is within this subsection if—

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

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

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

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

(4) The condition is that—

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

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

(5) Development is within this subsection if—

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

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

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

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

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

(7) In this section—

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

(a) the facilities are filled to maximum capacity, and

(b) the rate is measured after any processing of gas required on its recovery from storage;

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

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

18 LNG facilities

(1) The construction of an LNG facility is within section 14(1)(d) only if (when

constructed) the facility will be in England and—

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

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

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

(a) to increase by at least 43 million standard cubic metres the storage capacity of the facility, or

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

(3) "LNG facility" means a facility for—

(a) the reception of liquid natural gas from outside England,

(b) the storage of liquid natural gas, and

(c) the regasification of liquid natural gas.

(4) In this section—

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

(a) the facility is filled to maximum capacity, and

(b) the rate is measured after regasification of the liquid natural gas and any other processing required on the recovery of the gas from storage;

"storage capacity" means the capacity of the facility for storage of liquid natural gas.

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

19 Gas reception facilities

(1) The construction of a gas reception facility is within section 14(1)(e) only if (when constructed)—

(a) the facility will be in England and will be within subsection (4), and

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

(2) The alteration of a gas reception facility is within section 14(1)(e) only if—

(a) the facility is in England and is within subsection (4), and

(b) the effect of the alteration is expected to be to increase by at least 4.5 million standard cubic metres per day the maximum flow rate of the facility.

(3) "Gas reception facility" means a facility for—

(a) the reception of natural gas in gaseous form from outside England, and

(b) the handling of natural gas (other than its storage).

(4) A gas reception facility is within this subsection if—

(a) the gas handled by the facility does not originate in England, Wales or Scotland,

(b) the gas does not arrive at the facility from Scotland or Wales, and

(c) the gas has not already been handled at another facility after its arrival in England.

(5) "Maximum flow rate" means the maximum rate at which gas is able to flow out of the facility.

20 Gas transporter pipe-lines

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

(2) The pipe-line must be wholly or partly in England.

(3) Either—

(a) the pipe-line must be more than 800 millimetres in diameter and more than 40 kilometres in length, or

(b) the construction of the pipe-line must be likely to have a significant effect on the environment.

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

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

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

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

21 Other pipe-lines

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

(a) a cross-country pipe-line,

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

(c) within subsection (2).

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

(a) the other end of it is in England or Wales, or

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

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

(4) But if—

(a) the pipe-line to be diverted is itself a nationally significant pipe-line, and

(b) the length of the pipe-line which is to be diverted has not been constructed,

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

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

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

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

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

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

(a) development consent;

(b) authorisation under the Pipe-lines Act 1962;

(c) planning permission.

Transport

22 Highways

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

(a) construction of a highway in a case within subsection (2),

(b) improvement of a highway in a case within subsection (3), or

(c) alteration of a highway in a case within subsection (4).

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

(a) the Secretary of State will be the highway authority for the highway, or

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

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

(a) the highway is wholly in England,

(b) the Secretary of State is the highway authority for the highway, and

(c) the improvement is likely to have a significant effect on the environment.

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

(a) the highway is wholly in England,

(b) the alteration is to be carried out by or on behalf of the Secretary of State, and

(c) the highway is to be altered for a purpose connected with a highway for which the Secretary of State is (or will be) the highway authority.

23 Airports

(1) Airport-related development is within section 14(1)(i) only if the development is—

(a) the construction of an airport in a case within subsection (2),

(b) the alteration of an airport in a case within subsection (4), or

(c) an increase in the permitted use of an airport in a case within subsection (7).

(2) Construction of an airport is within this subsection only if (when constructed) the airport—

(a) will be in England or in English waters, and

(b) is expected to be capable of providing services which meet the requirements of subsection (3).

(3) Services meet the requirements of this subsection if they are—

(a) air passenger transport services for at least 10 million passengers per year, or

(b) air cargo transport services for at least 10,000 air transport movements of cargo aircraft per year.

(4) Alteration of an airport is within this subsection only if—

(a) the airport is in England or in English waters, and

(b) the alteration is expected to have the effect specified in subsection (5).

(5) The effect is—

(a) to increase by at least 10 million per year the number of passengers for whom the airport is capable of providing air passenger transport services, or

(b) to increase by at least 10,000 per year the number of air transport movements of cargo aircraft for which the airport is capable of providing air cargo transport services.

(6) "Alteration", in relation to an airport, includes the construction, extension or alteration of—

(a) a runway at the airport,

(b) a building at the airport, or

(c) a radar or radio mast, antenna or other apparatus at the airport.

(7) An increase in the permitted use of an airport is within this subsection only if—

(a) the airport is in England or in English waters, and

(b) the increase is within subsection (8).

(8) An increase is within this subsection if—

(a) it is an increase of at least 10 million per year in the number of passengers for whom the airport is permitted to provide air passenger transport services, or

(b) it is an increase of at least 10,000 per year in the number of air transport movements of cargo aircraft for which the airport is permitted to provide air cargo transport services.

(9) In this section—

"air cargo transport services" means services for the carriage by air of cargo;

"air passenger transport services" means services for the carriage by air of passengers;

"air transport movement" means a landing or take-off of an aircraft;

"cargo" includes mail;

"cargo aircraft" means an aircraft which is—

(a) designed to transport cargo but not passengers, and

(b) engaged in the transport of cargo on commercial terms;

"English waters" means waters adjacent to England up to the seaward limits of the territorial sea;

"permitted" means permitted by planning permission or development consent.

24 Harbour facilities

(1) The construction of harbour facilities is within section 14(1)(j) only if (when constructed) the harbour facilities—

(a) will be in England or Wales or in waters adjacent to England or Wales up to the seaward limits of the territorial sea, and

(b) are expected to be capable of handling the embarkation or disembarkation of at least the relevant quantity of material per year.

(2) The alteration of harbour facilities is within section 14(1)(j) only if—

(a) the harbour facilities are in England or Wales or in waters adjacent to England or Wales up to the seaward limits of the territorial sea, and

(b) the effect of the alteration is expected to be to increase by at least the relevant quantity per year the quantity of material the embarkation or disembarkation of which the facilities are capable of handling.

(3) "The relevant quantity" is—

(a) in the case of facilities for container ships, 500,000 TEU;

(b) in the case of facilities for ro-ro ships, 250,000 units;

(c) in the case of facilities for cargo ships of any other description, 5 million tonnes;

(d) in the case of facilities for more than one of the types of ships mentioned in paragraphs (a) to (c), an equivalent quantity of material.

(4) For the purposes of subsection (3)(d), facilities are capable of handling an equivalent quantity of material if the sum of the relevant fractions is one or more.

(5) The relevant fractions are—

(a) to the extent that the facilities are for container ships—

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

where x is the number of TEU that the facilities are capable of handling;

(b) to the extent that the facilities are for ro-ro ships—

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

where y is the number of units that the facilities are capable of handling;

(c) to the extent that the facilities are for cargo ships of any other description—

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

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

(6) In this section—

"cargo ship" means a ship which is used for carrying cargo;

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

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

"TEU" means a twenty-foot equivalent unit;

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

25 Railways

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

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

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

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

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

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

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

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

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

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

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

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

(b) a wholly-owned subsidiary of a company which is such a person.

(6) The condition is that the person is designated, or is of a description designated, in an order made by the Secretary of State.

(7) In this section—

"network" has the meaning given by section 83(1) of the Railways Act 1993 (c. 43);

"permitted development" means development in relation to which planning permission is granted by article 3 of the Town and Country Planning (General Permitted Development) Order 1995;

"wholly-owned subsidiary" has the same meaning as in the Companies Act 2006 (c. 46) (see section 1159 of that Act).

(8) The reference in subsection (7) to the Town and Country Planning (General Permitted Development) Order 1995 is to that Order as it has effect immediately before the day on which this section comes fully into force.

26 Rail freight interchanges

(1) The construction of a rail freight interchange is within section 14(1)(l) only if (when constructed) each of the conditions in subsections (3) to (7) is expected to be met in relation to it.

(2) The alteration of a rail freight interchange is within section 14(1)(l) only if—

(a) following the alteration, each of the conditions in subsections (3)(a) and (4) to (7) is expected to be met in relation to it, and

(b) the alteration is expected to have the effect specified in subsection (8).

(3) The land on which the rail freight interchange is situated must—

(a) be in England, and

(b) be at least 60 hectares in area.

(4) The rail freight interchange must be capable of handling—

(a) consignments of goods from more than one consignor and to more than one consignee, and

(b) at least 4 goods trains per day.

(5) The rail freight interchange must be part of the railway network in England.

(6) The rail freight interchange must include warehouses to which goods can be delivered from the railway network in England either directly or by means of another form of transport.

(7) The rail freight interchange must not be part of a military establishment.

(8) The effect referred to in subsection (2)(b) is to increase by at least 60 hectares the area of the land on which the rail freight interchange is situated.

(9) In this section—

"goods train" means a train that (ignoring any locomotive) consists of items of rolling stock designed to carry goods;

"military establishment" means an establishment intended for use for naval, military or air force purposes or for the purposes of the Department of the Secretary of State responsible for defence.

(10) The following terms have the meanings given by section 83(1) of the Railways Act 1993—

"network";

"rolling stock";
"train".

Water

27 Dams and reservoirs

(1) The construction of a dam or reservoir is within section 14(1)(m) only if—
  (a) the dam or reservoir (when constructed) will be in England,
  (b) the construction will be carried out by one or more water undertakers, and
  (c) the volume of water to be held back by the dam or stored in the reservoir is expected to exceed 10 million cubic metres.

(2) The alteration of a dam or reservoir is within section 14(1)(m) only if—
  (a) the dam or reservoir is in England,
  (b) the alteration will be carried out by one or more water undertakers, and
  (c) the additional volume of water to be held back by the dam or stored in the reservoir as a result of the alteration is expected to exceed 10 million cubic metres.

(3) "Water undertaker" means a company appointed as a water undertaker under the Water Industry Act 1991 (c. 56).

28 Transfer of water resources

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

(2) In this section—
  "river basin" means an area of land drained by a river and its tributaries;
  "water undertaker" means a company appointed as a water undertaker under the Water Industry Act 1991;
  "water undertaker's area" means the area for which a water undertaker is appointed under that Act.

Waste water

29 Waste water treatment plants

(1) The construction of a waste water treatment plant is within section 14(1)(o) only if the treatment plant (when constructed)—

(a) will be in England, and
(b) is expected to have a capacity exceeding a population equivalent of 500,000.

(2) The alteration of a waste water treatment plant is within section 14(1)(o) only if—
(a) the treatment plant is in England, and
(b) the effect of the alteration is expected to be to increase by more than a population equivalent of 500,000 the capacity of the plant.

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

(4) The following terms have the meanings given by regulation 2(1) of the Urban Waste Water Treatment (England and Wales) Regulations 1994 (S.I. 1994/2841)—
"domestic waste water";
"industrial waste water";
"population equivalent";
"urban waste water".

Waste

30 Hazardous waste facilities

(1) The construction of a hazardous waste facility is within section 14(1)(p) only if—
(a) the facility (when constructed) will be in England,
(b) the main purpose of the facility is expected to be the final disposal or recovery of hazardous waste, and
(c) the facility is expected to have the capacity specified in subsection (2).

(2) The capacity is—
(a) in the case of the disposal of hazardous waste by landfill or in a deep storage facility, more than 100,000 tonnes per year;
(b) in any other case, more than 30,000 tonnes per year.

(3) The alteration of a hazardous waste facility is within section 14(1)(p) only if—
(a) the facility is in England,
(b) the main purpose of the facility is the final disposal or recovery of hazardous waste, and
(c) the alteration is expected to have the effect specified in subsection (4).

(4) The effect is—
(a) in the case of the disposal of hazardous waste by landfill or in a deep storage facility, to increase by more than 100,000 tonnes per year the capacity of the facility;
(b) in any other case, to increase by more than 30,000 tonnes per year the capacity of the facility.

(5) The following terms have the same meanings as in the Hazardous Waste (England and Wales) Regulations 2005 (S.I. 2005/894) (see regulation 5 of those regulations)—
"disposal";

"hazardous waste";
"recovery".

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

PART 4

REQUIREMENT FOR DEVELOPMENT CONSENT

31 When development consent is required

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

32 Meaning of "development"

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

(2) For the purposes of this Act (except Part 11)—
(a) the conversion of a generating station with a view to its being fuelled by crude liquid petroleum, a petroleum product or natural gas is treated as a material change in the use of the generating station;
(b) starting to use a cavity or strata for the underground storage of gas is treated as a material change in the use of the cavity or strata;
(c) an increase in the permitted use of an airport is treated as a material change in the use of the airport.

(3) For the purposes of this Act (except Part 11) the following works are taken to be development (to the extent that they would not be otherwise)—
(a) works for the demolition of a listed building or its alteration or extension in a manner which would affect its character as a building of special architectural or historic interest;
(b) demolition of a building in a conservation area;
(c) works resulting in the demolition or destruction of or any damage to a scheduled monument;
(d) works for the purpose of removing or repairing a scheduled monument or any part of it;
(e) works for the purpose of making any alterations or additions to a scheduled monument;
(f) flooding or tipping operations on land in, on or under which there is a scheduled monument.

(4) In this section—
"conservation area" has the meaning given by section 91(1) of the Listed Buildings Act;
"flooding operations" has the meaning given by section 61(1) of the Ancient Monuments and Archaeological Areas Act 1979 (c. 46);
"listed building" has the meaning given by section 1(5) of the Listed Buildings Act;

"permitted" means permitted by planning permission or development consent;

"petroleum products" has the meaning given by section 21 of the Energy Act 1976 (c. 76);

"scheduled monument" has the meaning given by section 1(11) of the Ancient Monuments and Archaeological Areas Act 1979 (c. 46);

"tipping operations" has the meaning given by section 61(1) of that Act.

33 Effect of requirement for development consent on other consent regimes

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

(a) planning permission;

(b) consent under section 10(1), 11(1) or 12(1) of the Green Belt (London and Home Counties) Act 1938 (c. xciii) (erection of buildings and construction of sewer main pipes, watercourses and electric lines etc. on Green Belt land);

(c) a pipe-line construction authorisation under section 1(1) of the Pipe-lines Act 1962 (c. 58) (authorisation for construction of cross-country pipe-lines);

(d) authorisation by an order under section 4(1) of the Gas Act 1965 (c. 36) (storage of gas in underground strata);

(e) notice under section 14(1) of the Energy Act 1976 (conversion of generating station from one fuel to another);

(f) to the extent that the development relates to land in England, consent under section 2(3) or 3 of the Ancient Monuments and Archaeological Areas Act 1979;

(g) to the extent that the development relates to land in England, notice under section 35 of the Ancient Monuments and Archaeological Areas Act 1979;

(h) consent under section 36 or 37 of the Electricity Act 1989 (c. 29) (construction etc. of generating stations and installation of overhead lines);

(i) to the extent that the development relates to land in England, consent under section 8(1), (2) or (3) of the Listed Buildings Act;

(j) to the extent that the development relates to land in England, consent under section 74(1) of the Listed Buildings Act.

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

(a) an order under section 14 or 16 of the Harbours Act 1964 (c. 40) (orders in relation to harbours, docks and wharves);

(b) an order under section 4(1) of the Gas Act 1965 (order authorising storage of gas in underground strata);

(c) an order under section 1 or 3 of the Transport and Works Act 1992 (c. 42) (orders as to railways, tramways, inland waterways etc.).

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

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

relation to the highway or in connection with the construction, improvement or alteration of the highway—

(a) an order under section 10 of the Highways Act 1980 (c. 66) (general provisions as to trunk roads) directing that the highway should become a trunk road;

(b) an order under section 14 of that Act (supplementary orders relating to trunk roads and classified roads);

(c) a scheme under section 16 of that Act (schemes authorising the provision of special roads);

(d) an order under section 18 of that Act (supplementary orders relating to special roads);

(e) an order or scheme under section 106 of that Act (orders and schemes providing for construction of bridges over or tunnels under navigable waters);

(f) an order under section 108 or 110 of that Act (orders authorising the diversion of navigable and non-navigable watercourses);

(g) an order under section 6 of the New Roads and Street Works Act 1991 (c. 22) (toll orders).

34 Welsh offshore generating stations

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

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

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

35 Directions in relation to projects of national significance

(1) This section applies if—

(a) an application for a consent or authorisation mentioned in section 33(1) or (2) is made to an authority ("the relevant authority") in relation to development,

(b) the development is or forms part of a project in a field specified in subsection (2),

(c) the development will (when completed) be wholly in one or more of the areas specified in subsection (3), and

(d) the Secretary of State thinks that the project is of national significance, either by itself or when considered with one or more other projects or proposed projects in the same field.

(2) The fields are—

(a) energy;

(b) transport;

(c) water;

(d) waste water;

(e) waste.

(3) The areas are—

(a) England;

(b) waters adjacent to England up to the seaward limits of the territorial sea;

(c) in the case of a project for the carrying out of works in the field of energy, a Renewable Energy Zone, except any part of a Renewable Energy Zone in relation to which the Scottish Ministers have functions.

(4) The Secretary of State may direct—

(a) the application to be treated as an application for an order granting development consent, and

(b) the development to which the application relates to be treated as development for which development consent is required,

for specified purposes or generally.

(5) A direction under subsection (4) may provide for specified provisions of or made under this or any other Act—

(a) to have effect in relation to the application with any specified modifications, or

(b) to be treated as having been complied with in relation to the application.

(6) If the Secretary of State gives a direction under subsection (4), the relevant authority must refer the application to the Commission instead of dealing with it themselves.

(7) If the Secretary of State is considering whether to give a direction under subsection (4), the Secretary of State may direct the relevant authority to take no further action in relation to the application until the Secretary of State has decided whether to give the direction.

(8) The Secretary of State may require the relevant authority to provide any information required by the Secretary of State for the purpose of enabling the Secretary of State to decide—

(a) whether to give a direction under subsection (4), and

(b) the terms in which a direction under subsection (4) should be given.

(9) If the Secretary of State decides to give a direction under subsection (4), the Secretary of State must give reasons for the decision.

36 Amendments consequential on development consent regime

Schedule 2 makes amendments consequential on the development consent regime.

PART 5

APPLICATIONS FOR ORDERS GRANTING DEVELOPMENT CONSENT

CHAPTER 1

APPLICATIONS

37 Applications for orders granting development consent

(1) An order granting development consent may be made only if an application is made for it.

(2) An application for an order granting development consent must be made to the Commission.

(3) An application for an order granting development consent must—
  (a) specify the development to which it relates,
  (b) be made in the prescribed form,
  (c) be accompanied by the consultation report, and
  (d) be accompanied by documents and information of a prescribed description.

(4) The Commission may give guidance about how the requirements under subsection (3) are to be complied with.

(5) The Commission may set standards for—
  (a) the preparation of a document required by subsection (3)(d);
  (b) the coverage in such a document of a matter falling to be dealt with in it;
  (c) all or any of the collection, sources, verification, processing and presentation of information required by subsection (3)(d).

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

(7) In subsection (3)(c) "the consultation report" means a report giving details of—
  (a) what has been done in compliance with sections 42, 47 and 48 in relation to a proposed application that has become the application,
  (b) any relevant responses, and
  (c) the account taken of any relevant responses.

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

38 Model provisions

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

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

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

(a) a draft order, or

(b) an order granting development consent.

39 Register of applications

(1) The Commission is to maintain a register of applications received by it for orders granting development consent ("the register").

(2) Where the Commission receives an application for an order granting development consent, it must cause details of the application to be entered in the register.

(3) The Commission must publish the register or make arrangements for inspection of the register by the public.

(4) The Commission must make arrangements for inspection by the public of—

(a) applications received by the Commission for orders granting development consent,

(b) consultation reports received by the Commission under section 37(3)(c), and

(c) accompanying documents and information received by the Commission under section 37(3)(d).

40 Applications by the Crown for orders granting development consent

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

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

(a) the procedure to be followed before such an application is made;

(b) the making of such an application;

(c) the decision-making process for such an application.

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

CHAPTER 2

PRE-APPLICATION PROCEDURE

41 Chapter applies before application is made

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

(2) In the following provisions of this Chapter—

"the proposed application" means the proposed application mentioned in subsection (1);

"the land" means the land to which the proposed application relates or any part of that land;

"the proposed development" means the development for which the proposed application (if made) would seek development consent.

42 Duty to consult

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 43,

(c) the Greater London Authority if the land is in Greater London, and

(d) each person who is within one or more of the categories set out in section 44.

43 Local authorities for purposes of section 42(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.

(3) In this section "local authority" means—

(a) a county council, or district council, in England;

(b) a London borough council;

(c) the Common Council of the City of London;

(d) the Council of the Isles of Scilly;

(e) a county council, or county borough council, in Wales;

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

(g) a National Park authority;

(h) the Broads Authority.

44 Categories for purposes of section 42(d)

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

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

(a) is interested in the land, or

(b) has power—

(i) to sell and convey the land, or

(ii) to release the land.

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

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

(a) as a result of the implementing of the order,

(b) as a result of the order having been implemented, or

(c) as a result of use of the land once the order has been implemented,

to make a relevant claim.

This is subject to subsection (5).

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

(6) In subsection (4) "relevant claim" means—

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

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

45 Timetable for consultation under section 42

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

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

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

46 Duty to notify Commission of proposed application

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

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

47 Duty to consult local community

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

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

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

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

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

(6) Once the applicant has prepared the statement, the applicant must publish it—
  (a) in a newspaper circulating in the vicinity of the land, and
  (b) in such other manner as may be prescribed.

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

48 Duty to publicise

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

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

49 Duty to take account of responses to consultation and publicity

(1) Subsection (2) applies where the applicant—
  (a) has complied with sections 42, 47 and 48, and
  (b) proposes to go ahead with making an application for an order granting development consent (whether or not in the same terms as the proposed application).

(2) The applicant must, when deciding whether the application that the applicant is actually to make should be in the same terms as the proposed application, have regard to any relevant responses.

(3) In subsection (2) "relevant response" means—
  (a) a response from a person consulted under section 42 that is received by the applicant before the deadline imposed by section 45 in that person's case,
  (b) a response to consultation under section 47(7) that is received by the applicant before any applicable deadline imposed in accordance with the statement prepared under section 47, or
  (c) a response to publicity under section 48 that is received by the applicant before the deadline imposed in accordance with section 48(2) in relation to that publicity.

50 Guidance about pre-application procedure

(1) Guidance may be issued about how to comply with the requirements of this Chapter.

(2) Guidance under this section may be issued by the Commission or the Secretary of State.

(3) The applicant must have regard to any guidance under this section.

CHAPTER 3

ASSISTANCE FOR APPLICANTS AND OTHERS

51 Advice for potential applicants and others

(1) The Commission may give advice to an applicant or potential applicant, or to others, about—

(a) applying for an order granting development consent;

(b) making representations about an application, or a proposed application, for such an order.

(2) The Commission may not under subsection (1) give advice about the merits of any particular application, or proposed application, for such an order.

(3) The Secretary of State may, if the Secretary of State thinks it appropriate to do so in connection with securing propriety in the giving of advice under subsection (1), by regulations make provision about the giving of advice under that subsection (but not about what the advice is to be).

(4) In particular, regulations under subsection (3) may make provision that has the effect that—

(a) a person's request for advice under subsection (1), or

(b) advice given under subsection (1) to a person,

must be, or may be, disclosed by the Commission to persons other than that person or to the public generally.

52 Obtaining information about interests in land

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

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

(a) an owner, lessee, tenant (whatever the tenancy period) or occupier of the land;

(b) a person interested in the land;

(c) a person having power—

(i) to sell and convey the land, or

(ii) to release the land.

(3) The persons are—

(a) an occupier of the land;

(b) a person who has an interest in the land as freeholder, mortgagee or lessee;

(c) a person who directly or indirectly receives rent for the land;

(d) a person who, in pursuance of an agreement between that person and a person interested in the land, is authorised to manage the land or to arrange for the letting of it.

(4) A notice under subsection (2) must—

(a) be in writing,

(b) state that the Commission has authorised the applicant to serve the notice,

(c) specify or describe the land to which the application, or proposed application, relates,

(d) specify the deadline by which the recipient must give the required information to the applicant, and

(e) draw attention to the provisions in subsections (6) to (9).

(5) A deadline specified under subsection (4)(d) in a notice must not be earlier than the end of the 14 days beginning with the day after the day on which the notice is served on the recipient of the notice.

(6) A person commits an offence if the person fails without reasonable excuse to comply with a notice under subsection (2) served on the person.

(7) A person commits an offence if, in response to a notice under subsection (2) served on the person—

(a) the person gives information which is false in a material particular, and

(b) when the person does so, the person knows or ought reasonably to know that the information is false.

(8) If an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

(a) a director, manager, secretary or other similar officer of the body,

(b) a person purporting to act in any such capacity, or

(c) in a case where the affairs of the body are managed by its members, a member of the body,

that person, as well as the body, is guilty of that offence and liable to be proceeded against accordingly.

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

(10) In subsections (2) and (3) "the land" means—

(a) the land to which the application, or proposed application, relates, or

(b) any part of that land.

(11) Any other expression that appears in either of paragraphs (b) and (c) of subsection (2) and also in section 5(1) of the Compulsory Purchase Act 1965 (c. 56) has in those paragraphs the meaning that it has in section 5(1) of that Act.

53 Rights of entry

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

(a) an application for an order granting development consent, whether in relation to that or any other land, that has been accepted by the Commission,

(b) a proposed application for an order granting development consent, or

(c) an order granting development consent that includes provision authorising the compulsory acquisition of that land or of an interest in it or right over it.

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

(a) the proposed applicant is considering a distinct project of real substance genuinely requiring entry onto the land,

(b) the proposed application is likely to seek authority to compulsorily acquire the land or an interest in it or right over it, and

(c) the proposed applicant has complied with section 42 in relation to the proposed application.

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

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

(a) must, if so required, produce evidence of the person's authority, and state the purpose of the person's entry, before so entering,

(b) may not demand admission as of right to any land which is occupied unless 14 days' notice of the intended entry has been given to the occupier, and

(c) must comply with any other conditions subject to which the Commission's authorisation is given.

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

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

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

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

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

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

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

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

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

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

(11) In subsection (10)—

"the appropriate Minister" means—

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

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

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

54 Rights of entry: Crown land

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

(2) A person must not enter Crown land unless the person ("P") has the permission of—

(a) a person appearing to P to be entitled to give it, or

(b) the appropriate Crown authority.

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

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

PART 6

DECIDING APPLICATIONS FOR ORDERS GRANTING DEVELOPMENT CONSENT

CHAPTER 1

HANDLING OF APPLICATION BY COMMISSION

55 Acceptance of applications

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

(2) The Commission must, by the end of the period of 28 days beginning with the day after the day on which it receives the application, decide whether or not to accept the application.

(3) The Commission may accept the application only if the Commission concludes—

(a) that it is an application for an order granting development consent,

(b) that it complies with section 37(3) (form and contents of application) and with any standards set under section 37(5),

(c) that development consent is required for any of the development to which the application relates,

(d) that the application gives reasons for each respect in which any applicable guidance given under section 37(4) has not been followed in relation to it, and

(e) that the applicant has, in relation to a proposed application that has become the application, complied with Chapter 2 of Part 5 (pre-application procedure).

(4) The Commission, when deciding whether it may reach the conclusion in subsection (3)(e), must have regard to—

(a) the consultation report received under section 37(3)(c),

(b) any adequacy of consultation representation received by it from a local authority consultee, and

(c) the extent to which the applicant has had regard to any guidance issued under section 50.

(5) In subsection (4)—

"local authority consultee" means—

(a) a local authority consulted under section 42(b) about a proposed application that has become the application, or

(b) the Greater London Authority if consulted under section 42(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 42, 47 and 48.

(6) If the Commission accepts the application, it must notify the applicant of the acceptance.

(7) If the Commission is of the view that it cannot accept the application, it must—

(a) notify that view to the applicant, and

(b) notify the applicant of its reasons for that view.

(8) If in response the applicant modifies (or further modifies) the application, subsections (2) to (7) then apply in relation to the application as modified.

56 Notifying persons of accepted application

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

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

(a) such persons as may be prescribed,

(b) each authority which, in relation to the application, is a relevant local authority within the meaning given by section 102(5),

(c) the Greater London Authority if the land to which the application relates, or any part of it, is in Greater London, and

(d) each person who is within one or more of the categories set out in section 57.

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

(4) The applicant must, when giving notice to a person under subsection (2), notify the person of the deadline for receipt by the Commission of representations giving notice of the person's interest in, or objection to, the application.

(5) A deadline notified under subsection (4) must not be earlier than the end of the period of 28 days that begins with the day after the day on which the person receives the notice.

(6) The applicant must make available, to each person to whom notice is given under subsection (2), a copy of—

(a) the application, and

(b) the documents and information that were required by section 37(3)(d) to accompany the application.

(7) The applicant must publicise the application in the prescribed manner.

(8) Regulations made for the purposes of subsection (7) must, in particular, make provision for publicity under subsection (7) to include a deadline for receipt by the Commission of representations giving notice of persons' interests in, or objections to, the application.

(9) A deadline specified in accordance with subsection (8) does not apply to a person to whom notice is given under subsection (2).

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

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

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

(a) is interested in the land, or

(b) has power—

(i) to sell and convey the land, or

(ii) to release the land.

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

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

(a) as a result of the implementing of the order,

(b) as a result of the order having been implemented, or

(c) as a result of use of the land once the order has been implemented,

to make a relevant claim.

This is subject to subsection (5).

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

(6) In subsection (4) "relevant claim" means—

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

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

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

58 Certifying compliance with section 56

(1) Subsection (2) applies where—

(a) the Commission has accepted an application for an order granting development consent, and

(b) the applicant has complied with section 56 in relation to the application.

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

(3) A person commits an offence if the person issues a certificate which—

(a) purports to be a certificate under subsection (2), and

(b) contains a statement which the person knows to be false or misleading in a material particular.

(4) A person commits an offence if the person recklessly issues a certificate which—

(a) purports to be a certificate under subsection (2), and

(b) contains a statement which is false or misleading in a material particular.

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

(6) A magistrates' court may try an information relating to an offence under this section whenever laid.

(7) Section 127 of the Magistrates' Courts Act 1980 (c. 43) has effect subject to subsection (6) of this section.

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

(1) This section applies where—

(a) the Commission has accepted an application for an order granting development consent, and

(b) the application includes a request for an order granting development consent to authorise compulsory acquisition of land or of an interest in or right over land (a "compulsory acquisition request").

(2) The applicant must give to the Commission a notice specifying the names, and such other information as may be prescribed, of each affected person.

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

(4) A person is an "affected person" for the purposes of this section if the applicant, after making diligent inquiry, knows that the person is interested in the land to which the compulsory acquisition request relates or any part of that land.

60 Local impact reports

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

(a) has accepted an application for an order granting development consent, and

(b) has received—

(i) a certificate under section 58(2) in relation to the application, and

(ii) where section 59 applies, a notice under that section in relation to the application.

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

(a) each authority which, in relation to the application, is a relevant local authority within the meaning given by section 102(5), and

(b) the Greater London Authority if the land to which the application relates, or any part of it, is in Greater London.

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

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

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

61 Initial choice of Panel or single Commissioner

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

(a) has accepted an application for an order granting development consent, and

(b) has received—

(i) a certificate under section 58(2) in relation to the application, and

(ii) where section 59 applies, a notice under that section in relation to the application.

(2) The person appointed to chair the Commission must decide whether the application—

(a) is to be handled by a Panel under Chapter 2, or

(b) is to be handled by a single Commissioner under Chapter 3.

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

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

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

(b) any Commissioner not within paragraph (a) who the person thinks it appropriate to consult, and

(c) the chief executive of the Commission.

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

(a) by any of the other Commissioners, or

(b) by the chief executive of the Commission,

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

62 Switching from single Commissioner to Panel

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

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

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

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

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

(b) any Commissioner not within paragraph (a) who the person thinks it appropriate to consult, and

(c) the chief executive of the Commission.

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

(a) by any of the other Commissioners, or

(b) by the chief executive of the Commission,

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

63 Delegation of functions by person appointed to chair Commission

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

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

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

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

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

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

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

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

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

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

CHAPTER 2

THE PANEL PROCEDURE

Panels

64 Panel for each application to be handled under this Chapter

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

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

65 Appointment of members, and lead member, of Panel

(1) The person appointed to chair the Commission must appoint—
  (a) three or more Commissioners to be members of the Panel, and
  (b) one of those Commissioners to chair the Panel.

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

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

(4) Before making an appointment under subsection (1), the person making the appointment must consult—
  (a) the other Commissioners who, for the purpose of responding to consultation about the appointment, are members of the Council,
  (b) any Commissioner not within paragraph (a) who the person thinks it appropriate to consult, and
  (c) the chief executive of the Commission.

(5) In making an appointment under subsection (1), the person making the appointment must have regard to any views expressed—
  (a) by any of the other Commissioners, or
  (b) by the chief executive of the Commission,

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

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

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

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

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

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

(5) The person appointed to chair the Commission ("the chair") —

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

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

67 Panel member continuing though ceasing to be Commissioner

(1) This section applies if —

(a) a person ("the ex-Commissioner") ceases to hold office as a Commissioner (other than by being removed from office under paragraph 4(2) of Schedule 1),

(b) immediately before ceasing to hold office, the ex-Commissioner is —

(i) a member of the Panel, or

(ii) a member of the Panel and the lead member,

(c) the Panel is still handling the application at the time the ex-Commissioner ceases to hold office, and

(d) before ceasing to hold office, the ex-Commissioner elects to continue acting as a Commissioner in relation to the application.

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

(a) the Panel has decided, or (as the case may be) reported to the Secretary of State on, the application, or

(b) (if earlier) the ex-Commissioner ceases to be a member of the Panel.

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

(a) the Panel had decided, or (as the case may be) reported to the Secretary of State on, the application, or

(b) (if earlier) the ex-Commissioner ceased to be a member of the Panel.

(4) An election under subsection (1)(d) is effective only if made in writing to each of the following —

(a) the chief executive of the Commission;

(b) the person appointed to chair the Commission, where the ex-Commissioner is not the person appointed to chair the Commission;

(c) the lead member of the Panel, where the ex-Commissioner is not the lead member of the Panel.

68 Additional appointments to Panel

(1) Subsections (2) and (3) apply at any time after the initial members of the Panel have been appointed under section 65(1)(a).

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

(3) If at any time the Panel has only two members or a single member, it is the duty of the person appointed to chair the Commission to ensure that the power under subsection (2) is exercised so as to secure that the Panel again has at least three members.

(4) A person appointed under subsection (2) becomes a member of the Panel in addition to any person who is otherwise a member of the Panel.

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

69 Replacement of lead member of Panel

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

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

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

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

70 Membership of Panel where application relates to land in Wales

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

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

(a) a Commissioner who was nominated for appointment as a Commissioner by the Welsh Ministers, or

(b) a Commissioner who is within subsection (3).

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

71 Supplementary provision where Panel replaces single Commissioner

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

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

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

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

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

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

72 Panel ceasing to have any members

(1) If the Panel ceases to have any members, a new Panel must be constituted under section 65(1).

(2) At times after the new Panel has been constituted (but subject to the further application of this subsection in the event that the new Panel ceases to have any members), references in this Chapter to the Panel are to be read as references to the new Panel.

(3) The new Panel may, so far as it thinks appropriate, decide to treat things—

(a) done by or in relation to a previous Panel appointed to handle the application, or

(b) treated under section 71(3) as done by or in relation to a previous Panel appointed to handle the application,

as done by or in relation to the new Panel.

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

(5) The power under section 68(2) is not exercisable at times when the Panel has no members.

73 Consequences of changes in Panel

(1) The Panel's continuing identity is to be taken not to be affected by—

(a) any change in the membership of the Panel;

(b) the Panel's coming to have only two members or a single member;

(c) any change in the lead member;

(d) a vacancy in that office.

(2) When there is a change in the membership of the Panel, the lead member is under a duty to ensure that the membership of the Panel after the change has the necessary knowledge of the proceedings on the application up until the change.

(3) Subsection (2) does not apply where the change occurs as a result of the Panel being reconstituted as required by section 72(1).

Panel's role in relation to application

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

(1) Where a national policy statement has effect in relation to development of the description to which the application relates, the Panel has the functions of—

(a) examining the application, and

(b) deciding the application.

(2) In any other case, the Panel has the functions of—

(a) examining the application, and

(b) making a report to the Secretary of State on the application setting out—

(i) the Panel's findings and conclusions in respect of the application, and

(ii) the Panel's recommendation as to the decision to be made on the application.

(3) The Panel's functions under this section are to be carried out in accordance with Chapter 4.

(4) The staff of the Commission have the function of providing or procuring support for members of the Panel undertaking the Panel's functions under this section.

75 Decision-making by the Panel

(1) The making of a decision by the Panel requires the agreement of a majority of its members.

(2) The lead member has a second (or casting) vote in the event that the number of members of the Panel agreeing to a proposed decision is the same as the number of members not so agreeing.

76 Allocation within Panel of Panel's functions

(1) This section applies in relation to the Panel's examination of the application.

(2) The Panel, as an alternative to itself undertaking a part of the examination, may allocate the undertaking of that part to any one or more of the members of the Panel.

(3) Where there is an allocation under subsection (2)—

(a) anything that under Chapter 4 is required or authorised to be done by or to the Panel in connection with the allocated part of the examination may be done by or to the member or members concerned (or by or to the Panel), and

(b) findings and conclusions of the member or members concerned in respect of the matters allocated are to be taken to be the Panel's.

(4) Subsection (3)(b) has effect subject to any decision of the Panel, made on the occasion of making the allocation or earlier, as to the status of any such findings or conclusions.

(5) Where there is an allocation under subsection (2) to two or more of the members of the Panel, the making of a decision by the members concerned requires the agreement of all of them.

77 Exercise of Panel's powers for examining application

(1) In this section "procedural power" means any power conferred on the Panel for the purposes of its examination of the application.

(2) A procedural power, as well as being exercisable by the Panel itself, is also (subject to subsection (3)) exercisable by any one or more of the members of the Panel.

(3) The Panel may decide to restrict or prohibit the exercise of a procedural power otherwise than by the Panel itself.

(4) Subsection (2)—
(a) applies whether or not there is an allocation under section 76(2), and
(b) where there is such an allocation, is in addition to section 76(3)(a).

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

CHAPTER 3

THE SINGLE-COMMISSIONER PROCEDURE

The single Commissioner

78 Single Commissioner to handle application

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

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

79 Appointment of single Commissioner

(1) The person appointed to chair the Commission must appoint a Commissioner to handle the application.

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

(3) Before making an appointment under subsection (1), the person making the appointment must consult—
(a) the other Commissioners who, for the purpose of responding to consultation about the appointment, are members of the Council,
(b) any Commissioner not within paragraph (a) who the person thinks it appropriate to consult, and
(c) the chief executive of the Commission.

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

(a) by any of the other Commissioners, or

(b) by the chief executive of the Commission,

as to which Commissioner should be appointed.

80 Ceasing to be the single Commissioner

(1) A person ceases to be the single Commissioner if the person ceases to be a Commissioner, but this is subject to section 81.

(2) A person may resign from being the single Commissioner by giving notice in writing to the Commission.

(3) The person appointed to chair the Commission ("the chair") may remove a person ("the appointee") from being the single Commissioner if the chair is satisfied that the appointee is unable, unwilling or unfit to perform the duties of the single Commissioner.

81 Single Commissioner continuing though ceasing to be Commissioner

(1) This section applies if—

(a) a person ("the ex-Commissioner") ceases to hold office as a Commissioner (other than by being removed from office under paragraph 4(2) of Schedule 1),

(b) immediately before ceasing to hold office, the ex-Commissioner is the single Commissioner,

(c) the ex-Commissioner is still handling the application at the time the ex-Commissioner ceases to hold office, and

(d) before ceasing to hold office, the ex-Commissioner elects to continue acting as a Commissioner in relation to the application.

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

(a) the ex-Commissioner has reported to the Commission, or (as the case may be) the Secretary of State, on the application, or

(b) (if earlier) the ex-Commissioner ceases to be the single Commissioner.

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

(a) the ex-Commissioner had reported to the Commission, or (as the case may be) the Secretary of State, on the application, or

(b) (if earlier) the ex-Commissioner ceased to be the single Commissioner.

(4) An election under subsection (1)(d) is effective only if made in writing to each of the following—

(a) the chief executive of the Commission;

(b) the person appointed to chair the Commission, where the ex-Commissioner is not the person appointed to chair the Commission.

82 Appointment of replacement single Commissioner

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

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

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

Single Commissioner's role in relation to application

83 Single Commissioner to examine and report on application

(1) The single Commissioner has the functions of—
  (a) examining the application, and
  (b) making a report on the application setting out—
    (i) the single Commissioner's findings and conclusions in respect of the application, and
    (ii) the single Commissioner's recommendation as to the decision to be made on the application.

(2) A report under subsection (1)(b) is to be made—
  (a) to the Commission, if a national policy statement has effect in relation to development of the description to which the application relates;
  (b) to the Secretary of State, in any other case.

(3) The single Commissioner's functions under subsection (1) are to be carried out in accordance with Chapter 4.

(4) The staff of the Commission have the function of providing or procuring support for the single Commissioner in connection with the single Commissioner's carrying-out of the functions under subsection (1).

Commission's role in respect of application

84 Report from single Commissioner to be referred to Council

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

(2) The Commission must—
  (a) refer the application to the Council for decision, and
  (b) supply the report to the Council.

85 Decisions made by the Council on the application

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

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

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

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

CHAPTER 4

EXAMINATION OF APPLICATIONS UNDER CHAPTER 2 OR 3

86 Chapter applies to examination by Panel or single Commissioner

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

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

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

87 Examining authority to control examination of application

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

(2) The Examining authority, in making any decision about how the application is to be examined, must—
  (a) comply with—
    (i) the following provisions of this Chapter, and
    (ii) any rules made under section 97, and
  (b) have regard to any guidance given by the Secretary of State, and any guidance given by the Commission, relevant to how the application is to be examined.

(3) The Examining authority may in examining the application disregard representations if the Examining authority considers that the representations—
  (a) are vexatious or frivolous,
  (b) relate to the merits of policy set out in a national policy statement, or
  (c) relate to compensation for compulsory acquisition of land or of an interest in or right over land.

88 Initial assessment of issues, and preliminary meeting

(1) The Examining authority must make such an initial assessment of the principal issues arising on the application as the Examining authority thinks appropriate.

(2) After making that assessment, the Examining authority must hold a meeting.

(3) The Examining authority must invite to the meeting—
  (a) the applicant, and

(b) each other interested party,

whether or not the Examining authority is required by rules under section 97, or chooses, also to invite other persons.

(4) The purposes of the meeting are—

(a) to enable invitees present at the meeting to make representations to the Examining authority about how the application should be examined,

(b) to discuss any other matter that the Examining authority wishes to discuss, and

(c) any other purpose that may be specified in rules under section 97.

(5) Subsections (2) to (4) do not prevent the Examining authority holding other meetings.

(6) Rules under section 97—

(a) may (in particular) make provision supplementing subsections (1) to (4), and

(b) must make provision as to when the assessment under subsection (1) is to be made and as to when the meeting required by subsection (2) is to be held.

89 Examining authority's decisions about how application is to be examined

(1) The Examining authority must in the light of the discussion at the meeting held under section 88(2) make such procedural decisions as the Examining authority thinks appropriate.

(2) The decisions required by subsection (1) may be made at or after the meeting.

(3) The Examining authority may make procedural decisions otherwise than as required by subsection (1), and may do so at any time before or after the meeting.

(4) The Examining authority must inform each interested party of any procedural decision made by the Examining authority.

(5) In this section "procedural decision" means a decision about how the application is to be examined.

90 Written representations

(1) The Examining authority's examination of the application is to take the form of consideration of written representations about the application.

(2) Subsection (1) has effect subject to—

(a) any requirement under section 91, 92 or 93 to cause a hearing to be held, and

(b) any decision by the Examining authority that any part of the examination is to take a form that is neither—

(i) consideration of written representations, nor

(ii) consideration of oral representations made at a hearing.

(3) Rules under section 97 may (in particular) specify written representations about the application which are to be, or which may be or may not be, considered under subsection (1).

91 Hearings about specific issues

(1) Subsections (2) and (3) apply where the Examining authority decides that it is necessary for the Examining authority's examination of the application to include the consideration of oral representations about a particular issue made at a hearing in order to ensure—

(a) adequate examination of the issue, or

(b) that an interested party has a fair chance to put the party's case.

(2) The Examining authority must cause a hearing to be held for the purpose of receiving oral representations about the issue.

(3) At the hearing, each interested party is entitled (subject to the Examining authority's powers of control over the conduct of the hearing) to make oral representations about the issue.

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

92 Compulsory acquisition hearings

(1) This section applies where the application includes a request for an order granting development consent to authorise compulsory acquisition of land or of an interest in or right over land (a "compulsory acquisition request").

(2) The Examining authority must fix, and cause each affected person to be informed of, the deadline by which an affected person must notify the Commission that the person wishes a compulsory acquisition hearing to be held.

(3) If the Commission receives notification from at least one affected person before the deadline, the Examining authority must cause a compulsory acquisition hearing to be held.

(4) At a compulsory acquisition hearing, the following are entitled (subject to the Examining authority's powers of control over the conduct of the hearing) to make oral representations about the compulsory acquisition request—

(a) the applicant;

(b) each affected person.

(5) A person is an "affected person" for the purposes of this section if the person's name has been given to the Commission in a notice under section 59.

93 Open-floor hearings

(1) The Examining authority must fix, and cause the interested parties to be informed of, the deadline by which an interested party must notify the Commission of the party's wish to be heard at an open-floor hearing.

(2) If the Commission receives notification from at least one interested party before the deadline, the Examining authority must cause an open-floor hearing to be held.

(3) At an open-floor hearing, each interested party is entitled (subject to the Examining authority's powers of control over the conduct of the hearing) to make oral representations about the application.

94 Hearings: general provisions

(1) The following provisions of this section apply—
  (a) to a hearing under section 91(2),
  (b) to a compulsory acquisition hearing (see section 92), and
  (c) to an open-floor hearing (see section 93).

(2) The hearing—
  (a) must be in public, and
  (b) must be presided over by one or more of the members of the Panel or (as the case may be) the single Commissioner.

(3) It is for the Examining authority to decide how the hearing is to be conducted.

(4) In particular, it is for the Examining authority to decide—
  (a) whether a person making oral representations at the hearing may be questioned at the hearing by another person and, if so, the matters to which the questioning may relate;
  (b) the amount of time to be allowed at the hearing—
    (i) for the making of a person's representations (including representations made in exercise of an entitlement under section 91(3), 92(4) or 93(3)), or
    (ii) for any questioning by another person.

(5) The Examining authority's powers under subsections (3) and (4) are subject to—
  (a) subsection (2), and
  (b) any rules made under section 97.

(6) Although the Examining authority's powers under subsections (3) and (4) may be exercised for the purpose of controlling exercise of an entitlement under section 91(3), 92(4) or 93(3), those powers may not be exercised so as to deprive the person entitled of all benefit of the entitlement.

(7) In making decisions under subsection (4)(a), the Examining authority must apply the principle that any oral questioning of a person making representations at a hearing (whether the applicant or any other person) should be undertaken by the Examining authority except where the Examining authority thinks that oral questioning by another person is necessary in order to ensure—
  (a) adequate testing of any representations, or
  (b) that a person has a fair chance to put the person's case.

(8) The Examining authority may refuse to allow representations to be made at the hearing (including representations made in exercise of an entitlement under section 91(3), 92(4) or 93(3)) if the Examining authority considers that the representations—
  (a) are irrelevant, vexatious or frivolous,
  (b) relate to the merits of policy set out in a national policy statement,
  (c) repeat other representations already made (in any form and by any person), or
  (d) relate to compensation for compulsory acquisition of land or of an interest in or right over land.

95 Hearings: disruption, supervision and costs

(1) Where an interested party or any other person behaves in a disruptive manner at a hearing, the Examining authority may decide to do any one or more of the following—

(a) exclude the person from all, or part, of the remainder of the hearing;

(b) allow the person to continue to attend the hearing only if the person complies with conditions specified by the Examining authority;

(c) exclude the person from other hearings;

(d) direct that the person is allowed to attend other hearings only if the person complies with conditions specified by the Examining authority.

(2) In this section "hearing" means—

(a) a preliminary meeting under section 88,

(b) a hearing under section 91(2),

(c) a compulsory acquisition hearing (see section 92),

(d) an open-floor hearing (see section 93),

(e) any other meeting or hearing that the Examining authority causes to be held for the purposes of the Examining authority's examination of the application, or

(f) a site visit.

(3) The Examining authority's examination of the application is a statutory inquiry for the purposes of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007 (c. 15) (functions etc. of Administrative Justice and Tribunals Council).

(4) Subsection (5) of section 250 of the Local Government Act 1972 (c. 70) (provisions about costs applying where Minister causes a local inquiry to be held) applies in relation to the Examining authority's examination of the application as it applies in relation to an inquiry under that section, but with references to the Minister causing the inquiry to be held being read as references to the Examining authority.

This is subject to subsection (5) of this section.

(5) Subsections (6) to (8) of section 210 of the Local Government (Scotland) Act 1973 (c. 65) (provisions about expenses applying where Minister causes a local inquiry to be held) apply in relation to the Examining authority's examination of the application in so far as relating to a hearing held in Scotland as they apply in relation to an inquiry under that section, but with references to the Minister causing the inquiry to be held being read as references to the Examining authority.

96 Representations not made orally may be made in writing

(1) Subsection (2) applies where—

(a) a person asks the Examining authority to be allowed to make oral representations about the application at a hearing,

(b) the person does not (for whatever reason) make the representations orally at a hearing,

(c) written representations from the person are received by the Commission before the Examining authority completes the Examining authority's examination of the application, and

(d) the written representations state that they are ones that the person asked to be allowed to, but did not, make orally at a hearing.

(2) The Examining authority must consider the written representations as part of the Examining authority's examination of the application, subject to section 87(3).

97 Procedure rules

(1) The Lord Chancellor or (if subsection (2) applies) the Secretary of State, after consultation with the Administrative Justice and Tribunals Council, may make rules regulating the procedure to be followed in connection with the Examining authority's examination of the application.

(2) This subsection applies if the development to which the application relates (or part of the development) is the construction (other than by a gas transporter) of an oil or gas cross-country pipe-line—

(a) one end of which is in England or Wales, and

(b) the other end of which is in Scotland.

(3) Rules under subsection (1) may make provision for or in connection with authorising the Examining authority, alone or with others, to enter onto land, including land owned or occupied otherwise than by the applicant, for the purpose of inspecting the land as part of the Examining authority's examination of the application.

(4) Rules under subsection (1) may regulate procedure in connection with matters preparatory to the Examining authority's examination of the application, and in connection with matters subsequent to the examination, as well as in connection with the conduct of the examination.

(5) Power under this section to make rules includes power to make different provision for different purposes.

(6) Power under this section to make rules is exercisable by statutory instrument.

(7) A statutory instrument containing rules under this section is subject to annulment pursuant to a resolution of either House of Parliament.

98 Timetable for examining, and reporting on, application

(1) The Examining authority is under a duty to complete the Examining authority's examination of the application by the end of the period of 6 months beginning with the day after the start day.

(2) The start day is the day on which the meeting required by section 88 is held or, if that meeting is held on two or more days, the later or latest of those days.

(3) In a case where the Examining authority is required to make a report to the Secretary of State under section 74(2)(b) or 83(2)(b), the Examining authority is under a duty to make its report by the end of the period of 3 months beginning with the day after the deadline for completion of its examination of the application.

(4) The person appointed to chair the Commission may set a date for a deadline under this section that is later than the date for the time being set.

(5) The power under subsection (4) may be exercised—

(a) more than once in relation to the same deadline;
(b) after the date for the time being set for the deadline.

(6) Where the power under subsection (4) is exercised—
(a) the person exercising the power must notify the Secretary of State of what has been done and of the reasons for doing it, and
(b) the Commission's report under paragraph 17 of Schedule 1 for the financial year in which the power is exercised must mention and explain what has been done.

99 Completion of Examining authority's examination of application

When the Examining authority has completed its examination of the application, it must inform each of the interested parties of that fact.

100 Assessors

(1) The person appointed to chair the Commission ("the chair") may, at the request of the Examining authority, appoint a person to act as an assessor to assist the Examining authority in the Examining authority's examination of the application.

(2) A person may be appointed as an assessor only if it appears to the chair that the person has expertise that makes the person a suitable person to provide assistance to the Examining authority.

101 Legal advice and assistance

(1) The person appointed to chair the Commission may, at the request of the Examining authority, appoint a barrister, solicitor or advocate to provide legal advice and assistance to the Examining authority in connection with its examination of the application.

(2) The assistance that may be given by a person appointed under subsection (1) includes carrying out on behalf of the Examining authority any oral questioning of a person making representations at a hearing.

102 Interpretation of Chapter 4: "interested party" and other expressions

(1) For the purposes of this Chapter, a person is an "interested party" if—
(a) the person is the applicant,
(b) the person is a statutory party,
(c) the person is a relevant local authority,
(d) the person is the Greater London Authority and the land is in Greater London, or
(e) the person has made a relevant representation.

(2) In this Chapter "representation" includes evidence, and references to the making of a representation include the giving of evidence.

(3) In subsection (1) "statutory party" means a person specified in, or of a description specified in, regulations made by the Secretary of State.

(4) A representation is a relevant representation for the purposes of subsection (1) to the extent that—

(a) it is a representation about the application,
(b) it is made to the Commission in the prescribed form and manner,
(c) it is received by the Commission no later than the deadline that applies under section 56 to the person making it,
(d) it contains material of a prescribed description, and
(e) it does not contain—
(i) material about compensation for compulsory acquisition of land or of an interest in or right over land,
(ii) material about the merits of policy set out in a national policy statement, or
(iii) material that is vexatious or frivolous.

(5) In subsection (1) "relevant local authority" means a local authority within subsection (6) or (7).

(6) A local authority is within this subsection if the land is in the authority's area.

(7) A local authority ("A") is within this subsection if—
(a) the land is in the area of another local authority ("B"), and
(b) any part of the boundary of A's area is also a part of the boundary of B's area.

(8) In subsections (5) to (7) "local authority" means—
(a) a county council, or district council, in England;
(b) a London borough council;
(c) the Common Council of the City of London;
(d) the Council of the Isles of Scilly;
(e) a county council, or county borough council, in Wales;
(f) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39);
(g) a National Park authority;
(h) the Broads Authority.

(9) In this section "the land" means the land to which the application relates or any part of that land.

CHAPTER 5

DECISIONS ON APPLICATIONS

103 Cases where Secretary of State is, and meaning of, decision-maker

(1) The Secretary of State has the function of deciding an application for an order granting development consent where—
(a) in a case within section 74(2), the Secretary of State receives the Panel's report on the application, or
(b) in a case within section 83(2)(b), the Secretary of State receives the single Commissioner's report on the application.

(2) In this Act "decision-maker" in relation to an application for an order granting development consent—
(a) means the Panel that has the function of deciding the application, or

(b) where the Council or the Secretary of State has the function of deciding the application, means the Council or (as the case may be) the Secretary of State.

104 Decisions of Panel and Council

(1) This section applies in relation to an application for an order granting development consent if the decision-maker is a Panel or the Council.

(2) In deciding the application the Panel or Council must have regard to—

(a) any national policy statement which has effect in relation to development of the description to which the application relates (a "relevant national policy statement"),

(b) any local impact report (within the meaning given by section 60(3)) submitted to the Commission before the deadline specified in a notice under section 60(2),

(c) any matters prescribed in relation to development of the description to which the application relates, and

(d) any other matters which the Panel or Council thinks are both important and relevant to its decision.

(3) The Panel or Council must decide the application in accordance with any relevant national policy statement, except to the extent that one or more of subsections (4) to (8) applies.

(4) This subsection applies if the Panel or Council is satisfied that deciding the application in accordance with any relevant national policy statement would lead to the United Kingdom being in breach of any of its international obligations.

(5) This subsection applies if the Panel or Council is satisfied that deciding the application in accordance with any relevant national policy statement would lead to the Panel or Council, or the Commission, being in breach of any duty imposed on it by or under any enactment.

(6) This subsection applies if the Panel or Council is satisfied that deciding the application in accordance with any relevant national policy statement would be unlawful by virtue of any enactment.

(7) This subsection applies if the Panel or Council is satisfied that the adverse impact of the proposed development would outweigh its benefits.

(8) This subsection applies if the Panel or Council is satisfied that any condition prescribed for deciding an application otherwise than in accordance with a national policy statement is met.

(9) For the avoidance of doubt, the fact that any relevant national policy statement identifies a location as suitable (or potentially suitable) for a particular description of development does not prevent one or more of subsections (4) to (8) from applying.

105 Decisions of Secretary of State

(1) This section applies in relation to an application for an order granting development consent if the decision-maker is the Secretary of State.

(2) In deciding the application the Secretary of State must have regard to—

(a) any local impact report (within the meaning given by section 60(3)) submitted to the Commission before the deadline specified in a notice under section 60(2),

(b) any matters prescribed in relation to development of the description to which the application relates, and

(c) any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State's decision.

106 Matters that may be disregarded when deciding application

(1) In deciding an application for an order granting development consent, the decision-maker may disregard representations if the decision-maker considers that the representations—

(a) are vexatious or frivolous,

(b) relate to the merits of policy set out in a national policy statement, or

(c) relate to compensation for compulsory acquisition of land or of an interest in or right over land.

(2) In this section "representation" includes evidence.

107 Timetable for decisions

(1) The decision-maker is under a duty to decide an application for an order granting development consent by the end of the period of 3 months beginning with the day after the start day.

(2) The start day is—

(a) in a case where a Panel is the decision-maker, the deadline for the completion of its examination of the application under section 98;

(b) in a case where the Council is the decision-maker, the deadline for the completion of the single Commissioner's examination of the application under section 98;

(c) in a case where the Secretary of State is the decision-maker by virtue of section 103(1), the day on which the Secretary of State receives a report on the application under section 74(2)(b) or 83(2)(b);

(d) in a case where the Secretary of State is the decision-maker by virtue of section 113(2)(b), the deadline for the completion of the Secretary of State's examination of the application under section 113(2)(a).

(3) The appropriate authority may set a date for the deadline under subsection (1) that is later than the date for the time being set.

(4) The appropriate authority is—

(a) in a case where a Panel or the Council is the decision-maker, the person appointed to chair the Commission;

(b) in a case where the Secretary of State is the decision-maker, the Secretary of State.

(5) The power under subsection (3) may be exercised—

(a) more than once in relation to the same deadline;

(b) after the date for the time being set for the deadline.

(6) Where the power under subsection (3) is exercised other than by the Secretary of State—

(a) the person exercising the power must notify the Secretary of State of what has been done and of the reasons for doing it, and

(b) the Commission's report under paragraph 17 of Schedule 1 for the financial year in which the power is exercised must mention and explain what has been done.

(7) Where the power under subsection (3) is exercised by the Secretary of State, the Secretary of State must—

(a) notify each interested party of what has been done and of the reasons for doing it, and

(b) lay before Parliament a report explaining what has been done.

(8) A report under subsection (7)(b) must be published in such form and manner as the Secretary of State thinks appropriate.

(9) "Interested party" means a person who is an interested party in relation to the application for the purposes of Chapter 4 (see section 102).

CHAPTER 6

SUSPENSION OF DECISION-MAKING PROCESS

108 Suspension during review of national policy statement

(1) This section applies where—

(a) an application is made for an order granting development consent for development of a description in relation to which a national policy statement has effect, and

(b) the Secretary of State thinks that, as a result of a change in circumstances since the national policy statement was first published or (if later) the statement or any part of it was last reviewed, all or part of the statement should be reviewed before the application is decided.

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

(a) examination of the application by a Panel under Chapter 2 or a single Commissioner under Chapter 3 (if not already completed), and

(b) decision of the application by that Panel or (as the case may be) the Council.

CHAPTER 7

INTERVENTION BY SECRETARY OF STATE

109 Intervention: significant change in circumstances

(1) Section 112 applies by virtue of this section if—

(a) an application is made for an order granting development consent for development of a description in relation to which a national policy statement has effect,

(b) the Commission has accepted the application and has received a certificate under section 58(2), and (where section 59 applies) a notice under that section, in relation to the application, and

(c) the Secretary of State is satisfied that the condition in subsection (2) or (3) is met.

(2) The condition is that—

(a) since the time when the national policy statement was first published or (if later) last reviewed, there has been a significant change in any circumstances on the basis of which any policy set out in the statement ("the relevant policy") was decided,

(b) the change was not anticipated at that time,

(c) if the change had been anticipated at that time, the relevant policy would have been materially different,

(d) if the relevant policy was materially different, it would be likely to have a material effect on the decision on the application, and

(e) there is an urgent need in the national interest for the application to be decided before the national policy statement is reviewed.

(3) The condition is that—

(a) since the time when part of the national policy statement ("the relevant part") was first published or (if later) last reviewed, there has been a significant change in any circumstances on the basis of which any of the policy set out in the relevant part ("the relevant policy") was decided,

(b) the change was not anticipated at that time,

(c) if the change had been anticipated at that time, the relevant policy would have been materially different,

(d) if the relevant policy was materially different, it would be likely to have a material effect on the decision on the application, and

(e) there is an urgent need in the national interest for the application to be decided before the relevant part is reviewed.

(4) In deciding whether the tests in subsection (2)(d) and (e), or (3)(d) and (e), are met, the Secretary of State must have regard to the views of the Commission.

110 Intervention: defence and national security

Section 112 applies by virtue of this section if—

(a) an application is made for an order granting development consent,

(b) the Commission has accepted the application and has received a certificate under section 58(2) in relation to the application, and

(c) the Secretary of State is satisfied that intervention by the Secretary of State would be in the interests of defence or national security.

111 Intervention: other circumstances

The Secretary of State may by order specify other circumstances in which section 112 is to apply in relation to an application for an order granting development consent.

112 Power of Secretary of State to intervene

(1) Where this section applies in relation to an application for an order granting development consent, the Secretary of State may direct that the application is to be referred to the Secretary of State.

(2) A direction under subsection (1) must be given by the end of the period of 4 weeks beginning with the day after the end of the meeting held under section 88(2).

(3) Subsection (2) does not apply if the Secretary of State thinks there are exceptional circumstances which justify a direction under subsection (1) being given at a later time.

(4) In a case where this section applies by virtue of section 109, a direction under subsection (1) must state the Secretary of State's reasons for being satisfied that the condition in section 109(2) or (3) is met.

113 Effect of intervention

(1) This section applies if the Secretary of State gives a direction under section 112(1) in relation to an application.

(2) The Secretary of State has the functions of—
  (a) examining the application, and
  (b) deciding the application.

(3) The Secretary of State may discharge the function of examining the application by—
  (a) directing the Commission to examine such matters as may be specified by the Secretary of State;
  (b) conducting an examination of any matters in relation to which a direction under paragraph (a) is not given.

(4) Schedule 3 makes provision in relation to the Secretary of State's function of examining an application under this section.

(5) An examination under subsection (3)(a) is to be conducted in accordance with paragraph 1 of Schedule 3.

(6) An examination under subsection (3)(b) is to be conducted in accordance with paragraph 2 of Schedule 3.

(7) Rules under paragraph 3 of Schedule 3 must provide for a deadline for the completion by the Secretary of State of—
  (a) the examination of the application under subsection (2)(a);
  (b) the examination of any matters under subsection (3)(b).

(8) The Secretary of State's examination of the application is a statutory inquiry for the purposes of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007 (c. 15) (functions etc. of Administrative Justice and Tribunals Council).

(9) Subsection (5) of section 250 of the Local Government Act 1972 (c. 70) (provisions about costs applying where Minister causes a local inquiry to be held) applies in relation to the Secretary of State's examination of the application as it applies in relation to an inquiry under that section, but with references to the Minister causing the inquiry to be held being read as references to the Secretary of State.

This is subject to subsection (10).

(10) Subsections (6) to (8) of section 210 of the Local Government (Scotland) Act 1973 (c. 65) (provisions about expenses applying where Minister causes a local inquiry to be held) apply in relation to the Secretary of State's examination of

the application in so far as relating to a hearing held in Scotland as they apply in relation to an inquiry under that section, but with references to the Minister causing the inquiry to be held being read as references to the Secretary of State.

(11) In subsection (10) "hearing" means—

(a) any meeting or hearing that the Secretary of State causes to be held for the purposes of the Secretary of State's examination of the application, or

(b) a site visit.

CHAPTER 8

GRANT OR REFUSAL

114 Grant or refusal of development consent

(1) When it has decided an application for an order granting development consent, the decision-maker must either—

(a) make an order granting development consent, or

(b) refuse development consent.

(2) The Secretary of State may by regulations make provision regulating the procedure to be followed if the decision-maker proposes to make an order granting development consent on terms which are materially different from those proposed in the application.

115 Development for which development consent may be granted

(1) Development consent may be granted for development which is—

(a) development for which development consent is required, or

(b) associated development.

(2) "Associated development" means development which—

(a) is associated with the development within subsection (1)(a) (or any part of it),

(b) is not the construction or extension of one or more dwellings, and

(c) is within subsection (3) or (4).

(3) Development is within this subsection if it is to be carried out wholly in one or more of the following areas—

(a) England;

(b) waters adjacent to England up to the seaward limits of the territorial sea;

(c) in the case of development in the field of energy, a Renewable Energy Zone, except any part of a Renewable Energy Zone in relation to which the Scottish Ministers have functions.

(4) Development is within this subsection if—

(a) it is to be carried out wholly in Wales,

(b) it is the carrying out or construction of surface works, boreholes or pipes, and

(c) the development within subsection (1)(a) with which it is associated is development within section 17(3).

(5) To the extent that development consent is granted for associated development, section 33 applies to the development as it applies to development for which development consent is required.

(6) In deciding whether development is associated development, a Panel or the Council must have regard to any guidance issued by the Secretary of State.

116 Reasons for decision to grant or refuse development consent

(1) The decision-maker must prepare a statement of its reasons for deciding to—
  (a) make an order granting development consent, or
  (b) refuse development consent.

(2) The appropriate authority must provide a copy of the statement to each person who is an interested party in relation to the application for the purposes of Chapter 4 (see section 102).

(3) The appropriate authority must publish the statement in such manner as the authority thinks appropriate.

(4) In subsections (2) and (3) "the appropriate authority" means—
  (a) the Commission where the decision-maker is a Panel or the Council;
  (b) the Secretary of State where the decision-maker is the Secretary of State.

117 Orders granting development consent: formalities

(1) This section applies in relation to an order granting development consent.

(2) If the order is made by a Panel or the Council it must be made in the name of the Commission.

(3) Except in a case within subsection (4), the appropriate authority must publish the order in such manner as the authority thinks appropriate.

(4) If the order includes provision made in the exercise of any of the powers conferred by section 120(5)(a) or (b), the order must be contained in a statutory instrument.

(5) If the instrument containing the order is made by a Panel or the Council in the name of the Commission, the Statutory Instruments Act 1946 (c. 36) applies in relation to the instrument as if it had been made by a Minister of the Crown.

(6) As soon as practicable after the instrument is made, the appropriate authority must deposit in the office of the Clerk of the Parliaments a copy of—
  (a) the instrument,
  (b) the latest version of any plan supplied by the applicant in connection with the application for the order contained in the instrument, and
  (c) the statement of reasons prepared under section 116(1).

(7) In this section "the appropriate authority" means—
  (a) the Commission where the decision-maker is a Panel or the Council;
  (b) the Secretary of State where the decision-maker is the Secretary of State.

CHAPTER 9

LEGAL CHALLENGES

118 Legal challenges relating to applications for orders granting development consent

(1) A court may entertain proceedings for questioning an order granting development consent only if—

(a) the proceedings are brought by a claim for judicial review, and

(b) the claim form is filed during the period of 6 weeks beginning with—

(i) the day on which the order is published, or

(ii) if later, the day on which the statement of reasons for making the order is published.

(2) A court may entertain proceedings for questioning a refusal of development consent only if—

(a) the proceedings are brought by a claim for judicial review, and

(b) the claim form is filed during the period of 6 weeks beginning with the day on which the statement of reasons for the refusal is published.

(3) A court may entertain proceedings for questioning a decision of the Commission under section 55 not to accept an application for an order granting development consent only if—

(a) the proceedings are brought by a claim for judicial review, and

(b) the claim form is filed during the period of 6 weeks beginning with the day on which the Commission notifies the applicant as required by subsection (7) of that section.

(4) A court may entertain proceedings for questioning a decision under paragraph 1 of Schedule 4 in relation to an error or omission in a decision document only if—

(a) the proceedings are brought by a claim for judicial review, and

(b) the claim form is filed during the period of 6 weeks beginning with the day on which a correction notice in respect of the error or omission is issued under paragraph 2 of that Schedule or, if the correction is required to be made by order contained in a statutory instrument, the day on which the order is published.

(5) A court may entertain proceedings for questioning a decision under paragraph 2(1) of Schedule 6 to make a change to an order granting development consent only if—

(a) the proceedings are brought by a claim for judicial review, and

(b) the claim form is filed during the period of 6 weeks beginning with the day on which notice of the change is given under paragraph 2(12)(b) of that Schedule or, if the change to the order is required to be made by order contained in a statutory instrument, the day on which the order making the change is published.

(6) A court may entertain proceedings for questioning a decision under paragraph 3(1) of Schedule 6 to make a change to, or revoke, an order granting development consent only if—

(a) the proceedings are brought by a claim for judicial review, and

(b) the claim form is filed during the period of 6 weeks beginning with the day on which notice of the change or revocation is given under paragraph 4(6) of that Schedule or, if the change or revocation is required to be made by order contained in a statutory instrument, the day on which the order making the change or revocation is published.

(7) A court may entertain proceedings for questioning anything else done, or omitted to be done, by the Secretary of State or the Commission in relation to an application for an order granting development consent only if—

(a) the proceedings are brought by a claim for judicial review, and

(b) the claim form is filed during the period of 6 weeks beginning with the relevant day.

(8) "The relevant day", in relation to an application for an order granting development consent, means the day on which—

(a) the application is withdrawn,

(b) the order granting development consent is published or (if later) the statement of reasons for making the order is published, or

(c) the statement of reasons for the refusal of development consent is published.

(9) Subsections (7) and (8) do not apply in relation to—

(a) a failure to decide an application for an order granting development consent, or

(b) anything which delays (or is likely to delay) the decision on such an application.

CHAPTER 10

CORRECTION OF ERRORS

119 Correction of errors in development consent decisions

Schedule 4 (correction of errors in development consent decisions) has effect.

PART 7

ORDERS GRANTING DEVELOPMENT CONSENT

CHAPTER 1

CONTENT OF ORDERS

General

120 What may be included in order granting development consent

(1) An order granting development consent may impose requirements in connection with the development for which consent is granted.

(2) The requirements may in particular include requirements corresponding to conditions which could have been imposed on the grant of any permission, consent or authorisation, or the giving of any notice, which (but for section 33(1)) would have been required for the development.

(3) An order granting development consent may make provision relating to, or to matters ancillary to, the development for which consent is granted.

(4) The provision that may be made under subsection (3) includes in particular provision for or relating to any of the matters listed in Part 1 of Schedule 5.

(5) An order granting development consent may—

(a) apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order;

(b) make such amendments, repeals or revocations of statutory provisions of local application as appear to the decision-maker to be necessary or expedient in consequence of a provision of the order or in connection with the order;

(c) include any provision that appears to the decision-maker to be necessary or expedient for giving full effect to any other provision of the order;

(d) include incidental, consequential, supplementary, transitional or transitory provisions and savings.

(6) In subsection (5) "statutory provision" means a provision of an Act or of an instrument made under an Act.

(7) Subsections (3) to (6) are subject to subsection (8) and the following provisions of this Chapter.

(8) An order granting development consent may not include provision—

(a) making byelaws or conferring power to make byelaws;

(b) creating offences or conferring power to create offences;

(c) changing an existing power to make byelaws or create offences.

(9) To the extent that provision for or relating to a matter may be included in an order granting development consent, none of the following may include any such provision—

(a) an order under section 14 or 16 of the Harbours Act 1964 (c. 40) (orders in relation to harbours, docks and wharves);

(b) an order under section 4(1) of the Gas Act 1965 (c. 36) (order authorising storage of gas in underground strata);

(c) an order under section 1 or 3 of the Transport and Works Act 1992 (c. 42) (orders as to railways, tramways, inland waterways etc.).

121 Proposed exercise of powers in relation to legislation

(1) This section applies if a Panel, or the Council, proposes to make an order granting development consent which includes provision made in exercise of any of the powers conferred by section 120(5)(a) and (b) ("the legislation powers").

(2) Before making the order, the Panel or Council must send a draft of it to the Secretary of State.

(3) If the Secretary of State thinks that any provision which the Panel or Council proposes to include in the order in exercise of the legislation powers would contravene Community law or any of the Convention rights, the Secretary of State may give a direction requiring the Panel or Council to make specified changes to the draft order.

(4) The changes that may be specified in a direction under subsection (3) are limited to those that the Secretary of State thinks are required in order to prevent the contravention from arising.

(5) The power of the Secretary of State to give a direction under subsection (3) is not exercisable after the end of the period of 28 days beginning with the day on which the Secretary of State receives the draft order.

(6) In this section—

"Community law" means—

(a) all the rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Community Treaties, and

(b) all the remedies and procedures from time to time provided for by or under the Community Treaties;

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

Compulsory acquisition

122 Purpose for which compulsory acquisition may be authorised

(1) An order granting development consent may include provision authorising the compulsory acquisition of land only if the decision-maker is satisfied that the conditions in subsections (2) and (3) are met.

(2) The condition is that the land—

(a) is required for the development to which the development consent relates,

(b) is required to facilitate or is incidental to that development, or

(c) is replacement land which is to be given in exchange for the order land under section 131 or 132.

(3) The condition is that there is a compelling case in the public interest for the land to be acquired compulsorily.

123 Land to which authorisation of compulsory acquisition can relate

(1) An order granting development consent may include provision authorising the compulsory acquisition of land only if the decision-maker is satisfied that one of the conditions in subsections (2) to (4) is met.

(2) The condition is that the application for the order included a request for compulsory acquisition of the land to be authorised.

(3) The condition is that all persons with an interest in the land consent to the inclusion of the provision.

(4) The condition is that the prescribed procedure has been followed in relation to the land.

124 Guidance about authorisation of compulsory acquisition

(1) The Secretary of State may issue guidance about the making of an order granting development consent which includes provision authorising the compulsory acquisition of land.

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

125 Application of compulsory acquisition provisions

(1) This section applies if an order granting development consent includes provision authorising the compulsory acquisition of land.

(2) Part 1 of the Compulsory Purchase Act 1965 (c. 56) (procedure for compulsory purchase) applies to the compulsory acquisition of land under the order—

(a) as it applies to a compulsory purchase to which Part 2 of the Acquisition of Land Act 1981 (c. 67) applies, and

(b) as if the order were a compulsory purchase order under that Act.

(3) Part 1 of the Compulsory Purchase Act 1965, as applied by subsection (2), has effect with the omission of the following provisions—

(a) section 4 (time limit for exercise of compulsory purchase powers);

(b) section 10 (compensation for injurious affection);

(c) paragraph 3(3) of Schedule 3 (provision as to giving of bonds).

(4) In so far as the order includes provision authorising the compulsory acquisition of land in Scotland—

(a) subsections (2) and (3) do not apply, and

(b) the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42) ("the 1947 Act") applies to the compulsory acquisition of that land under the order as if the order were a compulsory purchase order as defined in section 1(1) of that Act.

(5) The 1947 Act, as applied by subsection (4), has effect with the omission of the following provisions—

(a) Parts 2 and 3 of the First Schedule (compulsory purchase by Ministers and special provisions as to certain descriptions of land);

(b) section 116 of the Lands Clauses Consolidation (Scotland) Act 1845 (c. 19) (time limit for exercise of compulsory purchase powers) (that section being incorporated into the 1947 Act by paragraph 1 of the Second Schedule to the 1947 Act).

(6) Subsections (2) to (5) are subject to any contrary provision made by the order granting development consent.

126 Compensation for compulsory acquisition

(1) This section applies in relation to an order granting development consent which includes provision authorising the compulsory acquisition of land.

(2) The order may not include provision the effect of which is to modify the application of a compensation provision, except to the extent necessary to apply the provision to the compulsory acquisition of land authorised by the order.

(3) The order may not include provision the effect of which is to exclude the application of a compensation provision.

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

127 Statutory undertakers' land

(1) This section applies in relation to land ("statutory undertakers' land") if—

(a) the land has been acquired by statutory undertakers for the purposes of their undertaking,

(b) a representation has been made about an application for an order granting development consent before the completion of the examination of the application, and the representation has not been withdrawn, and

(c) as a result of the representation the decision-maker is satisfied that—

(i) the land is used for the purposes of carrying on the statutory undertakers' undertaking, or

(ii) an interest in the land is held for those purposes.

(2) An order granting development consent may include provision authorising the compulsory acquisition of statutory undertakers' land only to the extent that the Secretary of State—

(a) is satisfied of the matters set out in subsection (3), and

(b) issues a certificate to that effect.

(3) The matters are that the nature and situation of the land are such that—

(a) it can be purchased and not replaced without serious detriment to the carrying on of the undertaking, or

(b) if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the carrying on of the undertaking.

(4) Subsections (2) and (3) do not apply in a case within subsection (5).

(5) An order granting development consent may include provision authorising the compulsory acquisition of a right over statutory undertakers' land by the creation of a new right over land only to the extent that the Secretary of State—

(a) is satisfied of the matters set out in subsection (6), and

(b) issues a certificate to that effect.

(6) The matters are that the nature and situation of the land are such that—

(a) the right can be purchased without serious detriment to the carrying on of the undertaking, or

(b) any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of other land belonging to or available for acquisition by them.

(7) If the Secretary of State issues a certificate under subsection (2) or (5), the Secretary of State must—

(a) publish in one or more local newspapers circulating in the locality in which the statutory undertakers' land is situated a notice in the prescribed form that the certificate has been given, and

(b) in a case where a Panel or the Council is the decision-maker, notify the Commission that the certificate has been given.

(8) In this section—

"statutory undertakers" has the meaning given by section 8 of the Acquisition of Land Act 1981 (c. 67) and also includes the undertakers—

(a) which are deemed to be statutory undertakers for the purposes of that Act, by virtue of another enactment;

(b) which are statutory undertakers for the purposes of section 16(1) and (2) of that Act (see section 16(3) of that Act).

(9) In the application of this section to a statutory undertaker which is a health service body (as defined in section 60(7) of the National Health Service and Community Care Act 1990 (c. 19)), references to land acquired or available for acquisition by the statutory undertakers are to be construed as references to land acquired or available for acquisition by the Secretary of State for use or occupation by the body.

128 Local authority and statutory undertakers' land: general

(1) This section applies to land which—

(a) is the property of a local authority, or

(b) has been acquired by statutory undertakers (other than a local authority) for the purposes of their undertaking.

(2) An order granting development consent is subject to special parliamentary procedure, to the extent that the order authorises the compulsory acquisition of land to which this section applies, if the condition in subsection (3) is met.

(3) The condition is that—

(a) a representation has been made by the local authority or (as the case may be) the statutory undertakers about the application for the order granting development consent before the completion of the examination of the application, and

(b) the representation has not been withdrawn.

(4) Subsection (2) is subject to section 129.

(5) In this section—

"local authority" has the meaning given by section 7(1) of the Acquisition of Land Act 1981;

"statutory undertakers" has the meaning given by section 8 of that Act and also includes the undertakers—

(a) which are deemed to be statutory undertakers for the purposes of that Act, by virtue of another enactment;

(b) which are statutory undertakers for the purposes of section 16(1) and (2) of that Act (see section 16(3) of that Act).

(6) In the application of this section to a statutory undertaker which is a health service body (as defined in section 60(7) of the National Health Service and Community Care Act 1990), the reference to land acquired by statutory undertakers is to be construed as a reference to land acquired by the Secretary of State for use or occupation by the body.

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

(1) Section 128(2) does not apply to the compulsory acquisition of land if the person acquiring the land is any of the following—

(a) a local authority;
(b) a National Park authority;
(c) an urban development corporation;
(d) a Welsh planning board;
(e) statutory undertakers;
(f) a Minister of the Crown.

(2) In this section—

"local authority" has the meaning given by section 17(4) of the Acquisition of Land Act 1981 (c. 67);

"statutory undertakers" has the meaning given by section 8 of that Act and also includes the authorities, bodies and undertakers—

(a) which are deemed to be statutory undertakers for the purposes of that Act, by virtue of another enactment;
(b) which are statutory undertakers for the purposes of section 17(3) of that Act (see section 17(4) of that Act);

"Welsh planning board" means a board constituted under section 2(1B) of TCPA 1990.

130 National Trust land

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

(2) An order granting development consent is subject to special parliamentary procedure, to the extent that the order authorises the compulsory acquisition of land to which this section applies, if the condition in subsection (3) is met.

(3) The condition is that—

(a) a representation has been made by the National Trust about the application for the order granting development consent before the completion of the examination of the application, and
(b) the representation has not been withdrawn.

(4) In this section "held inalienably", in relation to land belonging to the National Trust, means that the land is inalienable under section 21 of the National Trust Act 1907 (c. cxxxvi) or section 8 of the National Trust Act 1939 (c. lxxxvi).

(5) In this section "the National Trust" means the National Trust for Places of Historic Interest or Natural Beauty incorporated by the National Trust Act 1907 (c. cxxxvi).

131 Commons, open spaces etc: compulsory acquisition of land

(1) This section applies to any land forming part of a common, open space or fuel or field garden allotment.

(2) This section does not apply in a case to which section 132 applies.

(3) An order granting development consent is subject to special parliamentary procedure, to the extent that the order authorises the compulsory acquisition of land to which this section applies, unless the Secretary of State—

(a) is satisfied that subsection (4) or (5) applies, and

(b) issues a certificate to that effect.

(4) This subsection applies if—

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

(b) the replacement land has been or will be vested in the prospective seller and subject to the same rights, trusts and incidents as attach to the order land.

(5) This subsection applies if—

(a) the order land does not exceed 200 square metres in extent or is required for the widening or drainage of an existing highway or partly for the widening and partly for the drainage of such a highway, and

(b) the giving in exchange of other land is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public.

(6) If the Secretary of State proposes to issue a certificate under subsection (3), the Secretary of State must—

(a) give notice of the proposal or direct the person who applied for the order granting development consent to do so, and

(b) give any persons interested in the proposal an opportunity to make representations about the proposal.

(7) The Secretary of State may also cause a public local inquiry to be held in relation to the proposal.

(8) The Secretary of State may issue the certificate only after considering—

(a) any representations made about the proposal, and

(b) if an inquiry has been held under subsection (7), the report of the person who held the inquiry.

(9) Notice under subsection (6)(a) must be given in such form and manner as the Secretary of State may direct.

(10) If the Secretary of State issues a certificate under subsection (3), the Secretary of State must—

(a) publish in one or more local newspapers circulating in the locality in which the order land is situated a notice in the prescribed form that the certificate has been given, or direct the person who applied for the order granting development consent to do so, and

(b) in a case where a Panel or the Council is the decision-maker, notify the Commission that the certificate has been given, or direct the person who applied for the order granting development consent to do so.

(11) If an order granting development consent authorises the compulsory acquisition of land to which this section applies, it may include provision—

(a) for vesting replacement land given in exchange as mentioned in subsection (4)(a) in the prospective seller and subject to the rights, trusts and incidents mentioned in subsection (4)(b), and

(b) for discharging the order land from all rights, trusts and incidents to which it is subject.

(12) In this section —

"common", "fuel or field garden allotment" and "open space" have the same meanings as in section 19 of the Acquisition of Land Act 1981 (c. 67);

"the order land" means the land authorised to be compulsorily acquired;

"the prospective seller" means the person or persons in whom the order land is vested;

"replacement land" means land which is not less in area than the order land and which is no less advantageous to the persons, if any, entitled to rights of common or other rights, and to the public.

132 Commons, open spaces etc: compulsory acquisition of rights over land

(1) This section applies to any land forming part of a common, open space or fuel or field garden allotment.

(2) An order granting development consent is subject to special parliamentary procedure, to the extent that the order authorises the compulsory acquisition of a right over land to which this section applies by the creation of a new right over land, unless the Secretary of State—

(a) is satisfied that one of subsections (3) to (5) applies, and

(b) issues a certificate to that effect.

(3) This subsection applies if the order land, when burdened with the order right, will be no less advantageous than it was before to the following persons—

(a) the persons in whom it is vested,

(b) other persons, if any, entitled to rights of common or other rights, and

(c) the public.

(4) This subsection applies if—

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

(b) the replacement land has been or will be vested in the persons in whom the order land is vested and subject to the same rights, trusts and incidents as attach to the order land (ignoring the order granting development consent).

(5) This subsection applies if—

(a) the order land does not exceed 200 square metres in extent or the order right is required in connection with the widening or drainage of an existing highway or in connection partly with the widening and partly with the drainage of such a highway, and

(b) the giving of other land in exchange for the order right is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public.

(6) If the Secretary of State proposes to issue a certificate under subsection (2), the Secretary of State must—

(a) give notice of the proposal or direct the person who applied for the order granting development consent to do so, and

(b) give any persons interested in the proposal an opportunity to make representations about the proposal.

(7) The Secretary of State may also cause a public local inquiry to be held in relation to the proposal.

(8) The Secretary of State may issue the certificate only after considering—

(a) any representations made about the proposal, and

(b) if an inquiry has been held under subsection (7), the report of the person who held the inquiry.

(9) Notice under subsection (6)(a) must be given in such form and manner as the Secretary of State may direct.

(10) If the Secretary of State issues a certificate under subsection (2), the Secretary of State must—

(a) publish in one or more local newspapers circulating in the locality in which the order land is situated a notice in the prescribed form that the certificate has been given, or direct the person who applied for the order granting development consent to do so, and

(b) in a case where a Panel or the Council is the decision-maker, notify the Commission that the certificate has been given, or direct the person who applied for the order granting development consent to do so.

(11) If an order granting development consent authorises the compulsory acquisition of a right over land to which this section applies by the creation of a new right over land, it may include provision—

(a) for vesting replacement land given in exchange as mentioned in subsection (4)(a) in the persons in whom the order land is vested and subject to the rights, trusts and incidents mentioned in subsection (4)(b), and

(b) for discharging the order land from all rights, trusts and incidents to which it has previously been subject so far as their continuance would be inconsistent with the exercise of the order right.

(12) In this section —

"common", "fuel or field garden allotment" and "open space" have the same meanings as in section 19 of the Acquisition of Land Act 1981 (c. 67);

"the order land" means the land to which this section applies over which the order right is to be exercisable;

"the order right" means the right authorised to be compulsorily acquired;

"replacement land" means land which will be adequate to compensate the following persons for the disadvantages which result from the compulsory acquisition of the order right—

(a) the persons in whom the order land is vested,

(b) the persons, if any, entitled to rights of common or other rights over the order land, and

(c) the public.

133 Rights in connection with underground gas storage facilities

(1) This section applies if—

(a) the development to which an order granting development consent relates is development within section 14(1)(c), and

(b) the order authorises the compulsory acquisition of one or more rights within subsection (2).

(2) The rights are—

(a) a right to store gas in underground gas storage facilities;

(b) a right to stop up a well, borehole or shaft, or prevent its use by another person;

(c) a right of way over land.

(3) If the right within subsection (2) is an existing right to store gas in underground gas storage facilities, this Act has effect in relation to the compulsory acquisition of the right with the omission of section 131.

(4) If the order authorises the compulsory acquisition of the right by the creation of a new right within subsection (2), this Act has effect in relation to the compulsory acquisition of the right with the omission of sections 127 to 132.

134 Notice of authorisation of compulsory acquisition

(1) This section applies if—

(a) an order is made granting development consent, and

(b) the order includes provision authorising the compulsory acquisition of land.

(2) In this section —

"the order land" means—

(a) in a case where the order granting development consent authorises the compulsory acquisition of a right over land by the creation of a new right, the land over which the right is to be exercisable;

(b) in any other case where the order granting development consent authorises the compulsory acquisition of land, the land authorised to be compulsorily acquired;

"the prospective purchaser" means—

(a) in a case where the order granting development consent authorises the compulsory acquisition of a right over land by the creation of a new right, the person for whose benefit the order authorises the creation of the right;

(b) in any other case where the order granting development consent authorises the compulsory acquisition of land, the person authorised by the order to compulsorily acquire the land.

(3) After the order has been made, the prospective purchaser must—

(a) serve a compulsory acquisition notice and a copy of the order on each person to whom subsection (4) applies, and

(b) affix a compulsory acquisition notice to a conspicuous object or objects on or near the order land.

(4) This subsection applies to any person who, if the order granting development consent were a compulsory purchase order, would be a qualifying person for the purposes of section 12(1) of the Acquisition of Land Act 1981 (c. 67) (notice to owners, lessees and occupiers).

(5) A compulsory acquisition notice which is affixed under subsection (3)(b) must—

(a) be addressed to persons occupying or having an interest in the order land, and

(b) so far as practicable, be kept in place by the prospective purchaser until the end of the period of 6 weeks beginning with the date on which the order is published.

(6) The prospective purchaser must also publish a compulsory acquisition notice in one or more local newspapers circulating in the locality in which the order land is situated.

(7) A compulsory acquisition notice is a notice in the prescribed form—

(a) describing the order land,

(b) in a case where the order granting development consent authorises the compulsory acquisition of a right over land by the creation of a new right, describing the right,

(c) stating that the order granting development consent includes provision authorising the compulsory acquisition of a right over the land by the creation of a right over it or (as the case may be) the compulsory acquisition of the land, and

(d) stating that a person aggrieved by the order may challenge the order only in accordance with section 118.

(8) A compulsory acquisition notice which is affixed under subsection (3)(b) must also name a place where a copy of the order granting development consent may be inspected at all reasonable hours.

Miscellaneous

135 Orders: Crown land

(1) An order granting development consent may include provision authorising the compulsory acquisition of an interest in Crown land only if—

(a) it is an interest which is for the time being held otherwise than by or on behalf of the Crown, and

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

(2) An order granting development consent may include any other provision applying in relation to Crown land, or rights benefiting the Crown, only if the appropriate Crown authority consents to the inclusion of the provision.

(3) The reference in subsection (2) to rights benefiting the Crown does not include rights which benefit the general public.

(4) For the purposes of this section "the Crown" includes—

(a) the Duchy of Lancaster;

(b) the Duchy of Cornwall;

(c) the Speaker of the House of Lords;

(d) the Speaker of the House of Commons;

(e) the Corporate Officer of the House of Lords;

(f) the Corporate Officer of the House of Commons.

136 Public rights of way

(1) An order granting development consent may extinguish a public right of way over land only if the decision-maker is satisfied that—

(a) an alternative right of way has been or will be provided, or

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

(2) The following provisions of this section apply if—

(a) an order granting development consent makes provision for the acquisition of land, compulsorily or by agreement,

(b) the order extinguishes a public right of way over the land, and

(c) the right of way is not a right enjoyable by vehicular traffic.

(3) The order granting development consent may not provide for the right of way to be extinguished from a date which is earlier than the date on which the order is published.

(4) Subsection (5) applies if—

(a) the order granting development consent extinguishes the right of way from a date ("the extinguishment date") which is earlier than the date on which the acquisition of the land is completed, and

(b) at any time after the extinguishment date it appears to the appropriate authority that the proposal to acquire the land has been abandoned.

(5) The appropriate authority must by order direct that the right is to revive.

(6) "The appropriate authority" is—

(a) if the order granting development consent was made by a Panel or the Council, the Commission;

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

(7) Nothing in subsection (5) prevents the making of a further order extinguishing the right of way.

137 Public rights of way: statutory undertakers' apparatus etc.

(1) The following provisions of this section apply if—

(a) an order granting development consent makes provision for the acquisition of land, compulsorily or by agreement,

(b) a public right of way exists over the land,

(c) the right of way is not a right enjoyable by vehicular traffic, and

(d) the right of way is over land falling within subsection (2).

(2) Land falls within this subsection if it is land on, over or under which there is—

(a) apparatus belonging to statutory undertakers, or

(b) electronic communications apparatus kept installed for the purposes of an electronic communications code network.

(3) The order granting development consent may include provision for the right of way to be extinguished only if the undertakers or the operator of the network (as the case may be) consent to the inclusion of the provision.

(4) The consent referred to in subsection (3)—

(a) may be given subject to the condition that there are included in the order such provisions for the protection of the undertakers or the operator (as the case may be) as they may reasonably require, and

(b) must not be unreasonably withheld.

(5) Any question arising under subsection (4) whether any requirement or refusal is reasonable is to be determined by the Secretary of State.

(6) The question of which Secretary of State should make a determination under subsection (5) is to be determined by the Treasury, if it arises.

(7) In this section and section 138 "statutory undertakers" means persons who are, or are deemed to be, statutory undertakers for the purposes of any provision of Part 11 of TCPA 1990.

(8) In this section and section 138 the following terms have the meanings given in paragraph 1(1) of Schedule 17 to the Communications Act 2003 (c. 21)—

"electronic communications apparatus";

"electronic communications code";

"electronic communications code network";

"operator".

138 Extinguishment of rights, and removal of apparatus, of statutory undertakers etc.

(1) This section applies if an order granting development consent authorises the acquisition of land (compulsorily or by agreement) and—

(a) there subsists over the land a relevant right, or

(b) there is on, under or over the land relevant apparatus.

(2) "Relevant right" means a right of way, or a right of laying down, erecting, continuing or maintaining apparatus on, under or over the land, which—

(a) is vested in or belongs to statutory undertakers for the purpose of the carrying on of their undertaking, or

(b) is conferred by or in accordance with the electronic communications code on the operator of an electronic communications code network.

(3) "Relevant apparatus" means—

(a) apparatus vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking, or

(b) electronic communications apparatus kept installed for the purposes of an electronic communications code network.

(4) The order may include provision for the extinguishment of the relevant right, or the removal of the relevant apparatus, only if—

(a) the decision-maker is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the order relates, and

(b) in a case within subsection (5), the Secretary of State has consented to the inclusion of the provision.

(5) A case is within this subsection if a representation has been made about the application for the order granting development consent before the completion of the examination of the application—

(a) in a case falling within subsection (2)(a) or (3)(a), by the statutory undertakers;

(b) in a case falling within subsection (2)(b) or (3)(b), by the operator of the electronic communications code network,

and the representation has not been withdrawn.

(6) The question of which Secretary of State should give consent under subsection (4)(b) is to be determined by the Treasury, if it arises.

139 Common land and rights of common

(1) An order granting development consent may not include provision the effect of which is to exclude or modify the application of a provision of or made under the Commons Act 2006, except in accordance with section 131 or 132.

(2) For the purposes of section 38(6)(a) of the Commons Act 2006, works carried out under a power conferred by an order granting development consent are not to be taken to be carried out under a power conferred by or under an enactment, except in a case to which section 131 or 132 applies.

(3) An order granting development consent may not authorise the suspension of, or extinguishment or interference with, registered rights of common, except in accordance with section 131 or 132.

(4) "Registered rights of common" means rights of common registered under—
(a) the Commons Act 2006, or
(b) the Commons Registration Act 1965.

140 Operation of generating stations

An order granting development consent may include provision authorising the operation of a generating station only if the development to which the order relates is or includes the construction or extension of the generating station.

141 Keeping electric lines installed above ground

An order granting development consent may include provision authorising an electric line to be kept installed above ground only if the development to which the order relates is or includes the installation of the line above ground.

142 Use of underground gas storage facilities

An order granting development consent may include provision authorising the use of underground gas storage facilities only if the development to which the order relates is or includes development within section 17(2), (3) or (5).

143 Diversion of watercourses

(1) An order granting development consent may include provision authorising the diversion of any part of a navigable watercourse only if the condition in subsection (2) is met.

(2) The new length of watercourse must be navigable in a reasonably convenient manner by vessels of a kind that are accustomed to using the part of the watercourse which is to be diverted.

(3) In deciding whether the condition in subsection (2) is met, the effect of any bridge or tunnel must be ignored if the construction of the bridge or tunnel is

part of the development for which consent is granted by the order granting development consent.

(4) If an order granting development consent includes provision authorising the diversion of any part of a navigable watercourse, the order is also to be taken to authorise the diversion of any tow path or other way adjacent to that part.

144 Highways

(1) An order granting development consent may include provision authorising the charging of tolls in relation to a highway only if a request to that effect has been included in the application for the order.

(2) If an order granting development consent includes provision authorising the charging of tolls in relation to a highway, the order is treated as a toll order for the purposes of sections 7 to 18 of the New Roads and Street Works Act 1991 (c. 22).

(3) An order granting development consent may include provision authorising—

(a) the appropriation of a highway by a person, or

(b) the transfer of a highway to a person,

only if the appropriation or transfer is connected with the construction or improvement by the person of a highway which is designated by the order as a special road.

145 Harbours

(1) An order granting development consent may include provision for the creation of a harbour authority only if—

(a) the development to which the order relates is or includes the construction or alteration of harbour facilities, and

(b) the creation of a harbour authority is necessary or expedient for the purposes of the development.

(2) An order granting development consent may include provision changing the powers or duties of a harbour authority only if—

(a) the development to which the order relates is or includes the construction or alteration of harbour facilities, and

(b) the authority has requested the inclusion of the provision or has consented in writing to its inclusion.

(3) An order granting development consent may include provision authorising the transfer of property, rights or liabilities from one harbour authority to another only if—

(a) the development to which the order relates is or includes the construction or alteration of harbour facilities, and

(b) the order makes provision for the payment of compensation of an amount—

(i) determined in accordance with the order, or

(ii) agreed between the parties to the transfer.

(4) An order granting development consent which includes provision for the creation of a harbour authority, or changing the powers or duties of a harbour authority, may also make other provision in relation to the authority.

This is subject to subsection (6).

(5) Subject to subsection (6), the provision which may be included in relation to a harbour authority includes in particular—

(a) any provision in relation to a harbour authority which could be included in a harbour revision order under section 14 of the Harbours Act 1964 (c. 40) by virtue of any provision of Schedule 2 to that Act;

(b) provision conferring power on the authority to change provision made in relation to it (by the order or by virtue of this paragraph), where the provision is about—

(i) the procedures (including financial procedures) of the authority;

(ii) the power of the authority to impose charges;

(iii) the power of the authority to delegate any of its functions;

(iv) the welfare of officers and employees of the authority and financial and other provision made for them.

(6) The order may not include provision—

(a) which, by virtue of any other provision of this Act, is not permitted to be included in an order granting development consent;

(b) conferring power on a harbour authority to delegate, or makes changes to its powers so as to permit the delegation of, any of the functions mentioned in paragraphs (a) to (f) of paragraph 9B of Schedule 2 to the Harbours Act 1964.

146 Discharge of water

(1) This section applies if—

(a) an order granting development consent includes provision authorising the discharge of water into inland waters or underground strata, and

(b) but for the order, the person to whom development consent is granted would have had no power to take water, or to require discharges to be made, from the inland waters or other source from which the discharges authorised by the order are intended to be made.

(2) The order does not have the effect of conferring any such power on that person.

147 Development of Green Belt land

(1) This section applies if an order granting development consent includes provision—

(a) authorising the acquisition of Green Belt land, compulsorily or by agreement,

(b) authorising the sale, exchange or appropriation of Green Belt land, or

(c) freeing land from any restriction imposed upon it by or under the Green Belt (London and Home Counties) Act 1938 (c. xciii), or by a covenant or other agreement entered into for the purposes of that Act.

(2) The decision-maker must notify the relevant local authorities of the provision made by the order.

(3) If the decision-maker is a Panel or the Council, the decision-maker must also notify the Secretary of State of the provision made by the order.

(4) The relevant local authorities are—

(a) each local authority in whose area all or part of the land is situated,

(b) any local authority in whom all or part of the land is vested, and

(c) each contributing local authority.

(5) In this section "local authority" and "contributing local authority" have the same meanings as in the Green Belt (London and Home Counties) Act 1938 (c. xciii) (see section 2(1) of that Act).

148 Deemed consent under section 34 of the Coast Protection Act 1949

(1) An order granting development consent may include provision deeming consent under section 34 of the Coast Protection Act 1949 (c. 74) to have been given for any operations only if the operations are to be carried out wholly in one or more of the areas specified in subsection (2).

(2) The areas are—

(a) England;

(b) Wales;

(c) waters adjacent to England or Wales up to the seaward limits of the territorial sea;

(d) an area designated under section 1(7) of the Continental Shelf Act 1964 (c. 29).

(3) Subsection (4) applies if an order granting development consent includes provision—

(a) deeming consent under section 34 of the Coast Protection Act 1949 to have been given subject to specified conditions, and

(b) deeming those conditions to have been imposed by the Secretary of State under that section.

(4) A person who fails to comply with such a condition does not commit an offence under section 161 of this Act.

149 Deemed licences under Part 2 of the Food and Environment Protection Act 1985

(1) An order granting development consent may include provision deeming a licence to have been issued under Part 2 of the Food and Environment Protection Act 1985 (c. 48) for any operations only if the operations are to be carried out wholly in one or more of the areas specified in subsection (2).

(2) The areas are—

(a) England;

(b) waters adjacent to England up to the seaward limits of the territorial sea;

(c) a Renewable Energy Zone, except any part of a Renewable Energy Zone in relation to which the Scottish Ministers have functions;

(d) an area designated under section 1(7) of the Continental Shelf Act 1964, except any part of that area which is within a part of a Renewable Energy Zone in relation to which the Scottish Ministers have functions.

(3) Subsections (4) and (5) apply if an order granting development consent includes provision—

(a) deeming a licence to have been issued under Part 2 of the Food and Environment Protection Act 1985 subject to specified provisions, and

(b) deeming those provisions to have been included in the licence by virtue of that Act.

(4) A person who fails to comply with such a provision does not commit an offence under section 161 of this Act.

(5) Paragraphs 1 and 2 of Schedule 3 to the Food and Environment Protection Act 1985 (c. 48) (licences: right to make representations etc.) do not apply in relation to the deemed licence.

150 Removal of consent requirements

(1) An order granting development consent may include provision the effect of which is to remove a requirement for a prescribed consent or authorisation to be granted, only if the relevant body has consented to the inclusion of the provision.

(2) "The relevant body" is the person or body which would otherwise be required to grant the prescribed consent or authorisation.

151 Liability under existing regimes

An order granting development consent may not include provision the effect of which is to exclude or modify the application of—

(a) any provision of the Nuclear Installations Act 1965 (c. 57);

(b) section 28 of, and Schedule 2 to, the Reservoirs Act 1975 (c. 23) (liability for damage and injury due to escape of water from a reservoir constructed after 1930);

(c) section 209 of the Water Industry Act 1991 (c. 56) (civil liability of water undertakers for escapes of water from pipes);

(d) section 48A of the Water Resources Act 1991 (c. 57) (civil remedies for loss or damage due to water abstraction).

152 Compensation in case where no right to claim in nuisance

(1) This section applies if, by virtue of section 158 or an order granting development consent, there is a defence of statutory authority in civil or criminal proceedings for nuisance in respect of any authorised works.

(2) "Authorised works" are—

(a) development for which consent is granted by an order granting development consent;

(b) anything else authorised by an order granting development consent.

(3) A person by whom or on whose behalf any authorised works are carried out must pay compensation to any person whose land is injuriously affected by the carrying out of the works.

(4) A dispute as to whether compensation under subsection (3) is payable, or as to the amount of the compensation, must be referred to the Lands Tribunal.

(5) Subsection (2) of section 10 of the Compulsory Purchase Act 1965 (c. 56) (limitation on compensation) applies to subsection (3) of this section as it applies to that section.

(6) Any rule or principle applied to the construction of section 10 of that Act must be applied to the construction of subsection (3) of this section (with any necessary modifications).

(7) Part 1 of the Land Compensation Act 1973 (c. 26) (compensation for depreciation of land value by physical factors caused by use of public works) applies in relation to authorised works as if—

(a) references in that Part to any public works were to any authorised works;

(b) references in that Part to the responsible authority were to the person for whose benefit the order granting development consent has effect for the time being;

(c) sections 1(6) and 17 were omitted.

(8) An order granting development consent may not include provision the effect of which is to remove or modify the application of any of subsections (1) to (7).

CHAPTER 2

CHANGES TO, AND REVOCATION OF, ORDERS

153 Changes to, and revocation of, orders granting development consent

Schedule 6 (changes to, and revocation of, orders granting development consent) has effect.

CHAPTER 3

GENERAL

154 Duration of order granting development consent

(1) Development for which development consent is granted must be begun before the end of—

(a) the prescribed period, or

(b) such other period (whether longer or shorter than that prescribed) as is specified in the order granting the consent.

(2) If the development is not begun before the end of the period applicable under subsection (1), the order granting development consent ceases to have effect at the end of that period.

(3) Where an order granting development consent authorises the compulsory acquisition of land, steps of a prescribed description must be taken in relation to the compulsory acquisition before the end of—

(a) the prescribed period, or

(b) such other period (whether longer or shorter than that prescribed) as is specified in the order.

(4) If steps of the prescribed description are not taken before the end of the period applicable under subsection (3), the authority to compulsorily acquire the land under the order ceases to have effect.

155 When development begins

(1) For the purposes of this Act (except Part 11) development is taken to begin on the earliest date on which any material operation comprised in, or carried out for the purposes of, the development begins to be carried out.

(2) "Material operation" means any operation except an operation of a prescribed description.

156 Benefit of order granting development consent

(1) If an order granting development consent is made in respect of any land, the order has effect for the benefit of the land and all persons for the time being interested in the land.

(2) Subsection (1) is subject to subsection (3) and any contrary provision made in the order.

(3) To the extent that the development for which development consent is granted is development within section 17(3), the order granting the consent has effect for the benefit of a person for the time being interested in the land only if the person is a gas transporter.

157 Use of buildings in respect of which development consent granted

(1) If development consent is granted for development which includes the erection, extension, alteration or re-erection of a building, the order granting consent may specify the purposes for which the building is authorised to be used.

(2) If no purpose is so specified, the consent is taken to authorise the use of the building for the purpose for which it is designed.

158 Nuisance: statutory authority

(1) This subsection confers statutory authority for—
  (a) carrying out development for which consent is granted by an order granting development consent;
  (b) doing anything else authorised by an order granting development consent.

(2) Statutory authority under subsection (1) is conferred only for the purpose of providing a defence in civil or criminal proceedings for nuisance.

(3) Subsections (1) and (2) are subject to any contrary provision made in any particular case by an order granting development consent.

159 Interpretation: land and rights over land

(1) This section applies for the purposes of this Part.

(2) "Land" includes any interest in or right over land.

(3) Acquiring a right over land includes acquiring it by the creation of a new right as well as by the acquisition of an existing one.

PART 8

ENFORCEMENT

Offences

160 Development without development consent

(1) A person commits an offence if the person carries out, or causes to be carried out, development for which development consent is required at a time when no development consent is in force in respect of the development.

(2) A person guilty of an offence under this section is liable—
(a) on summary conviction, to a fine not exceeding £50,000, or
(b) on conviction on indictment, to a fine.

(3) The Secretary of State may by order amend subsection (2)(a) to increase the level of the fine for the time being specified in that provision.

161 Breach of terms of order granting development consent

(1) A person commits an offence if without reasonable excuse the person—
(a) carries out, or causes to be carried out, development in breach of the terms of an order granting development consent, or
(b) otherwise fails to comply with the terms of an order granting development consent.

(2) Subsection (1) is subject to sections 148(4) and 149(4).

(3) It is a defence for a person charged with an offence under this section to prove that—
(a) the breach or failure to comply occurred only because of an error or omission in the order, and
(b) a correction notice specifying the correction of the error or omission has been issued under paragraph 2 of Schedule 4.

(4) A person guilty of an offence under this section is liable—
(a) on summary conviction, to a fine not exceeding £50,000, or
(b) on conviction on indictment, to a fine.

(5) The Secretary of State may by order amend subsection (4)(a) to increase the level of the fine for the time being specified in that provision.

162 Time limits

(1) A person may not be charged with an offence under section 160 or 161 after the end of—
(a) the relevant 4-year period, or
(b) if subsection (3) applies, the extended period.

(2) The "relevant 4-year period" means—
(a) in the case of an offence under section 160, the period of 4 years beginning with the date on which the development was substantially completed;

(b) in the case of an offence under section 161, the period of 4 years beginning with the later of—

(i) the date on which the development was substantially completed, and

(ii) the date on which the breach or failure to comply occurred.

(3) This subsection applies if during the relevant 4-year period—

(a) an information notice has been served under section 167, or

(b) an injunction has been applied for under section 171.

(4) The "extended period" means the period of 4 years beginning with—

(a) the date of service of the information notice, if subsection (3)(a) applies;

(b) the date of the application for the injunction, if subsection (3)(b) applies;

(c) the later (or latest) of those dates, if both paragraphs (a) and (b) of subsection (3) apply.

Rights of entry

163 Right to enter without warrant

(1) This section applies in relation to any land if the relevant local planning authority has reasonable grounds for suspecting that an offence under section 160 or 161 is being, or has been, committed on or in respect of the land.

(2) A person authorised in writing by the relevant local planning authority may at any reasonable hour enter the land for the purpose of ascertaining whether an offence under section 160 or 161 is being, or has been, committed on the land.

(3) A person may enter a building used as a dwelling-house under subsection (2) only if 24 hours' notice of the intended entry has been given to the occupier of the building.

164 Right to enter under warrant

(1) This section applies if it is shown to the satisfaction of a justice of the peace on sworn information in writing—

(a) that there are reasonable grounds for suspecting that an offence under section 160 or 161 is being, or has been, committed on or in respect of any land, and

(b) that the condition in subsection (2) is met.

(2) The condition is that—

(a) admission to the land has been refused, or a refusal is reasonably apprehended, or

(b) the case is one of urgency.

(3) The justice of the peace may issue a warrant authorising any person who is authorised in writing for the purpose by the relevant local planning authority to enter the land.

(4) For the purposes of subsection (2)(a) admission to land is to be regarded as having been refused if no reply is received to a request for admission within a reasonable period.

(5) A warrant authorises entry on one occasion only and that entry must be—

(a) before the end of the period of one month beginning with the date of the issue of the warrant, and

(b) at a reasonable hour, unless the case is one of urgency.

165 Rights of entry: supplementary provisions

(1) A person authorised to enter land in pursuance of a right of entry conferred under or by virtue of section 163 or 164 ("a relevant right of entry")—

(a) must, if so required, produce evidence of the authority and state the purpose of entry before entering the land,

(b) may take on to the land such other persons as may be necessary, and

(c) must, if the person leaves the land at a time when the owner or occupier is not present, leave it as effectively secured against trespassers as it was found.

(2) A person commits an offence if the person wilfully obstructs a person acting in the exercise of a relevant right of entry.

(3) A person guilty of an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) If any damage is caused to land or chattels in the exercise of a relevant right of entry, compensation may be recovered by any person suffering the damage from the local planning authority that authorised the entry.

(5) Except so far as otherwise provided by regulations, any question of disputed compensation under subsection (4) is to be referred to and determined by the Lands Tribunal.

(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.

166 Rights of entry: Crown land

Sections 163 and 164 do not apply to Crown land.

Information notices

167 Power to require information

(1) This section applies in relation to any land if it appears to the relevant local planning authority that an offence under section 160 or 161 may have been committed on or in respect of the land.

(2) The relevant local planning authority may serve an information notice.

(3) The information notice may be served on any person who—

(a) is the owner or occupier of the land or has any other interest in it, or

(b) is carrying out operations on the land or is using it for any purpose.

(4) The information notice may require the person on whom it is served to give such of the following information as may be specified in the notice—

(a) information about any operations being carried out in, on, over or under the land, any use of the land and any other activities being carried out in, on, over or under the land, and

(b) information about the provisions of any order granting development consent for development of the land.

(5) An information notice must inform the person on whom it is served of the likely consequences of a failure to respond to the notice.

(6) A requirement of an information notice is complied with by giving the required information to the relevant local planning authority in writing.

168 Offences relating to information notices

(1) A person commits an offence if without reasonable excuse the person fails to comply with any requirement of an information notice served under section 167 before the end of the period mentioned in subsection (2).

(2) The period referred to in subsection (1) is the period of 21 days beginning with the day on which the information notice is served.

(3) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) A person commits an offence if the person—

(a) makes any statement purporting to comply with a requirement of an information notice which he knows to be false or misleading in a material respect, or

(b) recklessly makes such a statement which is false or misleading in a material respect.

(5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Notices of unauthorised development

169 Notice of unauthorised development

(1) Subsection (2) applies if a person is found guilty of an offence under section 160 committed on or in respect of any land.

(2) The relevant local planning authority may serve a notice of unauthorised development on the person requiring such steps as may be specified in the notice to be taken—

(a) to remove the development, and

(b) to restore the land on which the development has been carried out to its condition before the development was carried out.

(3) Subsection (4) applies if a person is found guilty of an offence under section 161 committed on or in respect of any land.

(4) The relevant local planning authority may serve a notice of unauthorised development on the person requiring the person to remedy the breach or failure to comply.

(5) A notice of unauthorised development—

(a) must specify the period within which any steps are required to be taken, and

(b) may specify different periods for different steps.

(6) Where different periods apply to different steps, references in this Part to the period for compliance with a notice of unauthorised development, in relation to any step, are to the period within which the step is required to be taken.

(7) A notice of unauthorised development must specify such additional matters as may be prescribed.

170 Execution of works required by notice of unauthorised development

(1) If any of the steps specified in a notice of unauthorised development have not been taken before the end of the period for compliance with the notice, the relevant local planning authority may—

(a) enter the land on which the development has been carried out and take those steps, and

(b) recover from the person who is then the owner of the land any expenses reasonably incurred by it in doing so.

(2) Where a notice of unauthorised development has been served in respect of development—

(a) any expenses incurred by the owner or occupier of the land for the purposes of complying with it, and

(b) any sums paid by the owner of the land under subsection (1) in respect of expenses incurred by the relevant local planning authority in taking steps required by it,

are to be deemed to be incurred or paid for the use and at the request of the person found guilty of the offence under section 160 or 161.

(3) Regulations may provide that all or any of the following sections of the Public Health Act 1936 (c. 49) are to apply, subject to such adaptations and modifications as may be specified in the regulations, in relation to any steps required to be taken by a notice of unauthorised development—

section 276 (power of local authorities to sell materials removed in executing works under that Act subject to accounting for the proceeds of sale);

section 289 (power to require the occupier of any premises to permit works to be executed by the owner of the premises);

section 294 (limit on liability of persons holding premises as agents or trustees in respect of the expenses recoverable under that Act).

(4) Regulations under subsection (3) applying all or any of section 289 of that Act may include adaptations and modifications for the purpose of giving the owner of land to which such a notice relates the right, as against all other persons interested in the land, to comply with the requirements of the notice.

(5) Regulations under subsection (3) may also provide for the charging on the land on which the development is carried out of any expenses recoverable by the relevant local planning authority under subsection (1).

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

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

Injunctions

171 Injunctions

(1) A local planning authority may apply to the court for an injunction if it considers it necessary or expedient for any actual or apprehended prohibited activity to be restrained by injunction.

(2) Prohibited activity means activity that constitutes an offence under section 160 or 161 in relation to land in the area of the local planning authority.

(3) On an application under this section the court may grant such an injunction as the court thinks fit for the purpose of restraining the prohibited activity.

(4) In this section "the court" means the High Court or a county court.

Isles of Scilly

172 Isles of Scilly

(1) The Secretary of State may by order provide for the exercise by the Council of the Isles of Scilly in relation to land in the Council's area of any functions exercisable by a local planning authority under any provision of this Part.

(2) Before making an order under this section the Secretary of State must consult the Council of the Isles of Scilly.

The relevant local planning authority

173 The relevant local planning authority

(1) This section applies for the purposes of this Part.

(2) The relevant local planning authority in relation to any land is the local planning authority for the area in which the land is situated.
This is subject to subsections (3) to (5).

(3) Subsections (4) and (5) apply if the land is in an area for which there is both a district planning authority and a county planning authority.

(4) If any of the relevant development is the construction or alteration of a hazardous waste facility within section 14(1)(p), the relevant local planning authority is the county planning authority.

(5) In any other case, the relevant local planning authority is the district planning authority.

(6) "The relevant development" is—

(a) if the relevant offence is an offence under section 160 or 161(1)(a), the development referred to in section 160(1) or 161(1)(a);

(b) if the relevant offence is an offence under section 161(1)(b), the development to which the order granting development consent mentioned in section 161(1)(b) relates.

(7) "The relevant offence" is the offence by reference to which a provision of this Part confers a function on a local planning authority.

PART 9

CHANGES TO EXISTING PLANNING REGIMES

CHAPTER 1

CHANGES RELATED TO DEVELOPMENT CONSENT REGIME

Planning obligations

174 Planning obligations

(1) TCPA 1990 is amended as follows.

(2) In section 106 (planning obligations)—

(a) after subsection (1) insert—

"(1A) In the case of a development consent obligation, the reference to development in subsection (1)(a) includes anything that constitutes development for the purposes of the Planning Act 2008.";

(b) in subsection (9) after paragraph (a) insert—

"(aa) if the obligation is a development consent obligation, contains a statement to that effect;";

(c) after subsection (13) insert—

"(14) In this section and section 106A "development consent obligation" means a planning obligation entered into in connection with an application (or a proposed application) for an order granting development consent."

(3) In section 106A(11) (modification and discharge of planning obligations: meaning of "the appropriate authority") after paragraph (a) insert—

"(aa) the Secretary of State, in the case of any development consent obligation where the application in connection with which the obligation was entered into was (or is to be) decided by the Secretary of State;

(ab) the Infrastructure Planning Commission, in the case of any other development consent obligation;".

(4) In section 106B(1) (appeals) after "an authority" insert "(other than the Secretary of State or the Infrastructure Planning Commission)".

(5) After section 106B insert—

"106C Legal challenges relating to development consent obligations

(1) A court may entertain proceedings for questioning a failure by the Secretary of State or the Infrastructure Planning Commission to give notice as mentioned in section 106A(7) only if—

(a) the proceedings are brought by a claim for judicial review, and

(b) the claim form is filed during the period of 6 weeks beginning with the day on which the period prescribed under section 106A(7) ends.

(2) A court may entertain proceedings for questioning a determination by the Secretary of State or the Infrastructure Planning Commission that a planning obligation shall continue to have effect without modification only if—

(a) the proceedings are brought by a claim for judicial review, and

(b) the claim form is filed during the period of 6 weeks beginning with the day on which notice of the determination is given under section 106A(7)."

Blighted land

175 Blighted land: England and Wales

(1) TCPA 1990 is amended as follows.

(2) In Schedule 13 (blighted land) after paragraph 23 insert—

"24 Land falls within this paragraph if—

(a) the compulsory acquisition of the land is authorised by an order granting development consent, or

(b) the land falls within the limits of deviation within which powers of compulsory acquisition conferred by an order granting development consent are exercisable, or

(c) an application for an order granting development consent seeks authority to compulsorily acquire the land.

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

Land ceases to fall within this paragraph when the national policy statement—

(a) ceases to have effect, or

(b) ceases to identify the land as suitable or potentially suitable for that description of development."

(3) In section 150(1)(b) (notices requiring purchase of blighted land)—

(a) for "21 or" insert "21,",

(b) after "notes)" insert "or paragraph 24", and

(c) after "Schedule 13 and" insert "(except in the case of land falling within paragraph 24(c) of that Schedule)".

(4) In section 151 (counter-notices objecting to blight notices) after subsection (7) insert—

"(7A) The grounds on which objection may be made in a counter-notice to a blight notice served by virtue of paragraph 25 of Schedule 13 do not include those mentioned in subsection (4)(b)."

(5) After section 165 (power of Secretary of State to acquire land affected by orders

relating to new towns etc. where blight notice served) insert—

"165A Power of Secretary of State to acquire land identified in national policy statements where blight notice served

Where a blight notice has been served in respect of land falling within paragraph 25 of Schedule 13, the Secretary of State has power to acquire compulsorily any interest in the land in pursuance of the blight notice served by virtue of that paragraph."

(6) In section 169 (meaning of "the appropriate authority" for purposes of Chapter 2 of Part 6) after subsection (5) insert—

"(6) In relation to land falling within paragraph 25 of Schedule 13, "the appropriate authority" is—

(a) if the national policy statement identifies a statutory undertaker as an appropriate person to carry out the specified description of development in the location, the statutory undertaker;

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

(7) If any question arises by virtue of subsection (6)—

(a) whether the appropriate authority in relation to any land for the purposes of this Chapter is the Secretary of State or a statutory undertaker; or

(b) which of two or more statutory undertakers is the appropriate authority in relation to any land for those purposes,

that question shall be referred to the Secretary of State, whose decision shall be final.

(8) In subsections (6) and (7) "statutory undertaker" means a person who is, or is deemed to be, a statutory undertaker for the purposes of any provision of Part 11."

(7) In section 170 ("appropriate enactment" for purposes of Chapter 2) after subsection (8) insert—

"(8A) In relation to land falling within paragraph 24(a) or (b) of that Schedule, "the appropriate enactment" is the order granting development consent.

(8B) In relation to land falling within paragraph 24(c) of that Schedule, "the appropriate enactment" is an order in the terms of the order applied for.

(8C) In relation to land falling within paragraph 25 of that Schedule, "the appropriate enactment" is section 165A."

(8) In section 171(1) (general interpretation of Chapter 2 of Part 6) at the appropriate place insert—

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

176 Blighted land: Scotland

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

(2) In Schedule 14 (blighted land) after paragraph 16 insert—

"17 (1) This paragraph applies to land which relates to the construction (other than by a gas transporter) of an oil or gas cross-country 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 (other than by a gas transporter) of an oil or gas cross-country pipe-line—

(a) one end of which is in England or Wales, and

(b) the other end of which is in Scotland.

Note

Land ceases to be within this paragraph when the national policy statement—

(a) ceases to have effect, or

(b) ceases to identify the land as suitable or potentially suitable for the construction of such a pipe-line."

(3) In section 100 (scope of Chapter 2 of Part 5) after subsection (5) insert—

"(5A) In the application of subsections (3)(a) and (4) in relation to land to which paragraph 17 or 18 of Schedule 14 applies, references to the Scottish Ministers are to be read as references to the Secretary of State."

(4) In section 101(1)(b) (notices requiring purchase of blighted land)—

(a) for "or 15" substitute ", 15 or 17", and

(b) after "Schedule 14 and" insert "(except in the case of land falling within paragraph 17 by virtue of paragraph 17(2)(c))".

(5) In section 102 (counter-notices objecting to blight notices) after subsection (7) insert—

"(7A) An objection may not be made on the ground mentioned in paragraph (b) of subsection (4) in a counter-notice to a blight notice served by virtue of paragraph 18 of Schedule 14."

(6) After section 116 insert—

"116A Power of Secretary of State to acquire land identified in national policy statements where blight notice served

Where a blight notice has been served in respect of land falling within paragraph 18 of Schedule 14, the Secretary of State has power to acquire compulsorily any interest in the land in pursuance of the blight notice served by virtue of that paragraph."

(7) In section 120 (meaning of "the appropriate authority" for purposes of Chapter 2 of Part 5) after subsection (4) insert—

"(5) In relation to land falling within paragraph 18 of Schedule 14, "the appropriate authority" is—

(a) if the national policy statement identifies a statutory undertaker as an appropriate person to carry out the specified description of development in the location, the statutory undertaker;

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

(6) If any question arises by virtue of subsection (5)—

(a) whether the appropriate authority in relation to any land for the purposes of this Chapter is the Secretary of State or a statutory undertaker; or

(b) which of two or more statutory undertakers is the appropriate authority in relation to any land for those purposes,

that question shall be referred to the Secretary of State, whose decision shall be final.

(7) In subsections (5) and (6) "statutory undertaker" means a person who is, or is deemed to be, a statutory undertaker for the purposes of any provision of Part 10."

(8) In section 121 ("appropriate enactment" for purposes of Chapter 2) after subsection (7) insert—

"(7A) In relation to land falling within paragraph 17 of that Schedule by virtue of paragraph 17(2)(a) or (b), "the appropriate enactment" means the order granting development consent.

(7B) In relation to land falling within paragraph 17 of that Schedule by virtue of paragraph 17(2)(c), "the appropriate enactment" means an order in the terms of the order applied for.

(7C) In relation to land falling within paragraph 18 of that Schedule, "the appropriate enactment" means section 116A."

(9) In section 122 (general interpretation of Chapter 2 of Part 5)—

(a) after the definition of "crofter" insert—

""cross-country pipe-line" has the meaning given by section 66 of the Pipe-lines Act 1962 (c. 58);

"gas transporter" has the same meaning as in Part 1 of the Gas Act 1986 (see section 7(1) of that Act);", and

(b) after the definition of "hereditament" insert—

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

Grants

177 Grants for advice and assistance: England and Wales

In section 304A(1) of TCPA 1990 (grants for assisting the provision of advice and assistance in connection with planning matters), after paragraph (b) insert—

"(ba) the Planning Act 2008;".

178 Grants for advice and assistance: Scotland

(1) The Secretary of State may make grants for the purpose of assisting any person to provide advice and assistance in connection with any matter which is related to the application of this Act to Scotland.

(2) The Secretary of State may, as respects any such grant, provide that it is to be subject to such terms and conditions as the Secretary of State thinks appropriate.

CHAPTER 2

OTHER CHANGES TO EXISTING PLANNING REGIMES

Regional functions

179 Delegation of functions of regional planning bodies

(1) In Part 1 of PCPA 2004 (regional functions) after section 4 insert—

"4A Delegation of RPB functions to regional development agencies

(1) The RPB may make arrangements with the regional development agency for its region for the exercise by the agency on behalf of the RPB of any of the RPB's functions.

(2) Subsection (3) applies if, by virtue of section 2(7), the Secretary of State has power to exercise any functions of the RPB.

(3) The Secretary of State may make arrangements with the regional development agency for the region of the RPB for the exercise by the agency on behalf of the Secretary of State of any of the RPB's functions.

(4) Subsection (5) applies if, by virtue of section 10(3), the Secretary of State has power to prepare a draft revision of the RSS because of a failure to comply by the RPB.

(5) The Secretary of State may make arrangements with the regional development agency for the region of the RPB for the exercise by the agency on behalf of the Secretary of State of the Secretary of State's function under section 10(3).

(6) Arrangements under this section—

(a) may be made only if the regional development agency agrees to the making of the arrangements and their terms;

(b) may be varied only if the regional development agency agrees to the variation and the terms of the variation.

(7) Arrangements under subsection (1) may be brought to an end at any time by the RPB.

(8) Arrangements under subsection (3) or (5) may be brought to an end at any time by the Secretary of State.

(9) A regional development agency which, by virtue of arrangements under this section, has power, or is required, to exercise a function of the RPB, may do anything which is calculated to facilitate, or is conducive or incidental to, the exercise of the function.

(10) Arrangements under subsection (1) for the exercise of a function by a regional development agency do not prevent the RPB from exercising the function.

(11) Arrangements under subsection (3) or (5) for the exercise of a function by a regional development agency do not prevent the Secretary of State from exercising the function.

(12) "Regional development agency" means a development agency established under section 1 of the Regional Development Agencies Act 1998."'.

(2) The Regional Development Agencies Act 1998 (c. 45) is amended as follows.

(3) In section 8 (regional consultation) after subsection (2) insert—

"(2A) The reference in subsection (2)(b) to the functions of a regional development agency does not include any function conferred by arrangements under section 4A of the Planning and Compulsory Purchase Act 2004 (delegation of functions of regional planning bodies to regional development agencies)."

(4) In section 11 (borrowing) after subsection (4) insert—

"(4A) The references in subsections (2) and (4) to the functions of a regional development agency do not include any function conferred by arrangements under section 4A of the Planning and Compulsory Purchase Act 2004 (delegation of functions of regional planning bodies to regional development agencies)."

(5) In section 18 (regional accountability) after subsection (1) insert—

"(1A) The reference in subsection (1)(c) to the functions of a regional development agency does not include any function conferred by arrangements under section 4A of the Planning and Compulsory Purchase Act 2004 (delegation of functions of regional planning bodies to regional development agencies)."

(6) In paragraph 7 of Schedule 2 (delegation of functions by regional development agencies) after sub-paragraph (1) insert—

"(1A) The reference in sub-paragraph (1) to anything authorised or required to be done under an enactment includes a reference to anything authorised or required to be done under arrangements made under an enactment."

Local development

180 Local development documents

(1) PCPA 2004 is amended as follows.

(2) In section 15(2) (matters which must be specified in local development scheme)—

(a) omit paragraph (a);

(b) before paragraph (b) insert—

"(aa) the local development documents which are to be development plan documents;";

(c) in paragraph (b) for "document" substitute "development plan document";

(d) omit paragraph (c);

(e) in paragraphs (d) and (f) for "documents" substitute "development plan documents".

(3) In section 17 (local development documents)—

(a) omit subsections (1) and (2);

(b) in subsection (3) for "The local development documents" substitute "The local planning authority's local development documents";

(c) in subsection (4) for the words before "in relation to development which is a county matter" substitute "Where a county council is required to prepare a minerals and waste development scheme in respect of an area, the council's local development documents must (taken as a whole) set out the council's policies (however expressed) for that area";

(d) in subsection (7), before paragraph (a) insert—

"(za) which descriptions of documents are, or if prepared are, to be prepared as local development documents;".

(4) In section 18 (statements of community involvement)—

(a) for subsection (3) substitute—

"(3) For the purposes of this Part (except sections 19(2) and 24) the statement of community involvement is a local development document.

This is subject to section 17(8).";

(b) after subsection (3) insert—

"(3A) The statement of community involvement must not be specified as a development plan document in the local development scheme.";

(c) omit subsections (4) to (6).

(5) In section 19 (preparation of local development documents)—

(a) in subsection (1) for "Local development documents" substitute "Development plan documents";

(b) in subsection (2) after "In preparing a" insert "development plan document or any other";

(c) in subsection (3) for "other local development documents" substitute "local development documents (other than their statement of community involvement)";

(d) in subsection (5) for "document" substitute "development plan document".

(6) In section 37 (interpretation of Part 2)—

(a) in subsection (2) for "section 17" substitute "sections 17 and 18(3)";

(b) for subsection (3) substitute—

"(3) A development plan document is a local development document which is specified as a development plan document in the local development scheme."

(7) In section 38 (development plan) after subsection (8) insert—

"(9) Development plan document must be construed in accordance with section 37(3)."

Climate change

181 Regional spatial strategies: climate change policies

(1) Section 1 of PCPA 2004 (regional functions: regional spatial strategies) is amended as follows.

(2) After subsection (2) insert—

"(2A) The RSS must include policies designed to secure that the development and use of land in the region contribute to the mitigation of, and adaptation to, climate change."

(3) In subsection (3) for "subsection (2)" substitute "subsections (2) and (2A)".

182 Development plan documents: climate change policies

In section 19 of PCPA 2004 (preparation of local development documents) after subsection (1) insert—

"(1A) Development plan documents must (taken as a whole) include policies designed to secure that the development and use of land in the local planning authority's area contribute to the mitigation of, and adaptation to, climate change."

Good design

183 Good design

In section 39 of PCPA 2004 (sustainable development) after subsection (2) insert—

"(2A) For the purposes of subsection (2) the person or body must (in particular) have regard to the desirability of achieving good design."

Correction of errors

184 Correction of errors in decisions

In section 56(3)(c) of PCPA 2004 (appropriate consent required for correction of errors) at the beginning insert "in a case where the decision document relates to the exercise of a function in relation to Wales,".

Validity of strategies, plans and documents

185 Power of High Court to remit strategies, plans and documents

In section 113 of PCPA 2004 (validity of strategies, plans and documents) for subsection (7) substitute—

"(7) The High Court may—

(a) quash the relevant document;

(b) remit the relevant document to a person or body with a function relating to its preparation, publication, adoption or approval.

(7A) If the High Court remits the relevant document under subsection (7)(b) it may give directions as to the action to be taken in relation to the document.

(7B) Directions under subsection (7A) may in particular—

(a) require the relevant document to be treated (generally or for specified purposes) as not having been approved or adopted;

(b) require specified steps in the process that has resulted in the approval or adoption of the relevant document to be treated (generally or for specified purposes) as having been taken or as not having been taken;

(c) require action to be taken by a person or body with a function relating to the preparation, publication, adoption or approval of the document (whether or not the person or body to which the document is remitted);

(d) require action to be taken by one person or body to depend on what action has been taken by another person or body.

(7C) The High Court's powers under subsections (7) and (7A) are exercisable in relation to the relevant document—

(a) wholly or in part;

(b) generally or as it affects the property of the applicant."

186 Power of High Court to remit unitary development plans in Wales

(1) Subsection (2) applies in relation to section 287 of TCPA 1990 (proceedings for questioning validity of development plans etc.), as that section continues to have effect by virtue of paragraph (3) of article 3 of the Planning and Compulsory Purchase Act 2004 (Commencement No. 6, Transitional Provisions and Savings) Order 2005 (S.I. 2005/2847) for the purposes of the transitional arrangements mentioned in that paragraph.

(2) In that section, after subsection (3) insert—

"(3A) Subsections (3B) to (3E) apply if—

(a) an application is made under this section in relation to a unitary development plan, and

(b) on the application the High Court is satisfied as mentioned in subsection (2)(b).

(3B) The High Court may remit the plan to a person or body with a function relating to its preparation, publication, adoption or approval.

(3C) If the High Court remits the plan under subsection (3B) it may give directions as to the action to be taken in relation to the plan.

(3D) Directions under subsection (3B) may in particular—

(a) require the plan to be treated (generally or for specified purposes) as not having been approved or adopted;

(b) require specified steps in the process that has resulted in the approval or adoption of the plan to be treated (generally or for specified purposes) as having been taken or as not having been taken;

(c) require action to be taken by a person or body with a function relating to the preparation, publication, adoption or approval of the plan (whether or not the person or body to which it is remitted);

(d) require action to be taken by one person or body to depend on what action has been taken by another person or body.

(3E) The High Court's powers under subsections (3B) and (3C) are exercisable in relation to the plan—

(a) wholly or in part;

(b) generally or as it affects the property of the applicant."

Determination of applications

187 Power to decline to determine applications: amendments

Schedule 7 (power to decline to determine applications: amendments) has effect.

Planning permission

188 Local development orders: removal of requirement to implement policies

(1) Section 61A of TCPA 1990 (local development orders) is amended as set out in subsections (2) and (3).

(2) Omit subsection (1) (requirement to implement policies).

(3) In subsection (2) for "A local development order may" substitute "A local planning authority may by order (a local development order)".

(4) In paragraph 2 of Schedule 4A to TCPA 1990 (revision of local development orders) omit sub-paragraphs (4) and (5).

189 Compensation where development order or local development order withdrawn

(1) Section 108 of TCPA 1990 (compensation for refusal or conditional grant of planning permission formerly granted by development order or local development order) is amended as follows.

(2) After subsection (2) insert—

"(2A) Where—

(a) planning permission granted by a development order for development in England of a prescribed description is withdrawn by the issue of directions under powers conferred by the order, or

(b) planning permission granted by a local development order for development in England is withdrawn by the issue of directions under powers conferred by the order,

this section applies only if the application referred to in subsection (1)(b) is made before the end of the period of 12 months beginning with the date on which the directions took effect."

(3) After subsection (3A) insert—

"(3B) This section does not apply if—

(a) in the case of planning permission granted by a development order, the condition in subsection (3C) is met;

(b) in the case of planning permission granted by a local development order, the condition in subsection (3D) is met.

(3C) The condition referred to in subsection (3B)(a) is that—

(a) the planning permission is granted for development in England of a prescribed description,

(b) the planning permission is withdrawn in the prescribed manner,

(c) notice of the withdrawal was published in the prescribed manner not less than 12 months or more than the prescribed period before the withdrawal took effect, and

(d) either—

(i) the development authorised by the development order had not started before the notice was published, or

(ii) the development order includes provision in pursuance of section 61D permitting the development to be completed after the permission is withdrawn.

(3D) The condition referred to in subsection (3B)(b) is that—

(a) the planning permission is granted for development in England,

(b) the planning permission is withdrawn by the revocation or amendment of the local development order, or by the issue of directions under powers conferred by the local development order,

(c) notice of the revocation, amendment or directions was published in the prescribed manner not less than 12 months or more than the prescribed period before the revocation, amendment or directions (as the case may be) took effect, and

(d) either—

(i) the development authorised by the local development order had not started before the notice was published, or

(ii) the local development order includes provision in pursuance of section 61D permitting the development to be completed after the permission is withdrawn."

(4) After subsection (4) insert—

"(5) Regulations under this section prescribing a description of development may (in particular) do so by reference to one or more classes or descriptions of development specified in a development order.

(6) In this section "prescribed" means prescribed by regulations made by the Secretary of State."

190 Power to make non-material changes to planning permission

(1) TCPA 1990 is amended as follows.

(2) After section 96 insert—

"Non-material changes to planning permission

96A Power to make non-material changes to planning permission

(1) A local planning authority in England may make a change to any planning permission relating to land in their area if they are satisfied that the change is not material.

(2) In deciding whether a change is material, a local planning authority must have regard to the effect of the change, together with any previous changes made under this section, on the planning permission as originally granted.

(3) The power conferred by subsection (1) includes power—

(a) to impose new conditions;

(b) to remove or alter existing conditions.

(4) The power conferred by subsection (1) may be exercised only on an application made by or on behalf of a person with an interest in the land to which the planning permission relates.

(5) An application under subsection (4) must be made in the form and manner prescribed by development order.

(6) Subsection (7) applies in relation to an application under subsection (4) made by or on behalf of a person with an interest in some, but not all, of the land to which the planning permission relates.

(7) The application may be made only in respect of so much of the planning permission as affects the land in which the person has an interest.

(8) A local planning authority must comply with such requirements as may be prescribed by development order as to consultation and

publicity in relation to the exercise of the power conferred by subsection (1)."

(3) In section 5(3) (purposes for which Broads Authority is the sole local district planning authority) for "97" substitute "96A".

(4) In section 69(1) (register of applications etc)—

(a) after paragraph (a) insert—

"(aa) applications for non-material changes to planning permission under section 96A;",

(b) in subsection (2)(a) after "(1)(a)" insert "and (aa)", and

(c) in subsection (4) after "(1)(a)" insert ", (aa)".

(5) In section 286(1) (challenges to validity on ground of authority's powers) after paragraph (a) insert—

"(aa) an application for non-material changes to planning permission under section 96A;".

(6) In Schedule 1 (local planning authorities: distribution of functions), in paragraph 3(1), after paragraph (a) insert—

"(aa) applications for non-material changes to planning permission under section 96A;".

Validity of planning decisions

191 Validity of orders, decisions and directions

(1) Section 284(3) of TCPA 1990 (validity of certain actions on the part of the Secretary of State) is amended as follows.

(2) Before paragraph (a) insert—

"(za) any decision on an application referred to the Secretary of State under section 76A;".

(3) In paragraph (a) omit "for planning permission".

Trees

192 Tree preservation orders

(1) Chapter 1 of Part 8 of TCPA 1990 (special controls: trees) is amended as follows.

(2) In section 198 (power to make tree preservation orders) omit—

(a) subsections (3) and (4) (provision that may be made by tree preservation orders),

(b) subsection (6) (matters to which tree preservation orders do not apply), and

(c) subsections (8) and (9) (power to make provision about application for consent under tree preservation order).

(3) Omit section 199 (form of and procedure applicable to tree preservation orders).

(4) Omit section 201 (provisional tree preservation orders).

(5) In section 202 (power for Secretary of State or Welsh Ministers to make tree preservation orders), omit subsection (3) (procedure applicable to orders made by Secretary of State or Welsh Ministers).

(6) Omit sections 203 to 205 (compensation in connection with tree preservation orders).

(7) After section 202 insert—

"202A Tree preservation regulations: general

(1) The appropriate national authority may by regulations make provision in connection with tree preservation orders.

(2) Sections 202B to 202G make further provision about what may, in particular, be contained in regulations under subsection (1).

(3) In this section and those sections "tree preservation order" includes an order under section 202(1).

(4) In this Act "tree preservation regulations" means regulations under subsection (1).

(5) In subsection (1) "the appropriate national authority"—
(a) in relation to England means the Secretary of State, and
(b) in relation to Wales means the Welsh Ministers.

(6) Section 333(3) does not apply in relation to tree preservation regulations made by the Welsh Ministers.

(7) Tree preservation regulations made by the Welsh Ministers are subject to annulment in pursuance of a resolution of the National Assembly for Wales.

202B Tree preservation regulations: making of tree preservation orders

(1) Tree preservation regulations may make provision about—
(a) the form of tree preservation orders;
(b) the procedure to be followed in connection with the making of tree preservation orders;
(c) when a tree preservation order takes effect.

(2) If tree preservation regulations make provision for tree preservation orders not to take effect until confirmed, tree preservation regulations may—
(a) make provision for tree preservation orders to take effect provisionally until confirmed;
(b) make provision about who is to confirm a tree preservation order;
(c) make provision about the procedure to be followed in connection with confirmation of tree preservation orders.

202C Tree preservation regulations: prohibited activities

(1) Tree preservation regulations may make provision for prohibiting all or any of the following—
(a) cutting down of trees;
(b) topping of trees;

(c) lopping of trees;
(d) uprooting of trees;
(e) wilful damage of trees;
(f) wilful destruction of trees.

(2) A prohibition imposed on a person may (in particular) relate to things whose doing the person causes or permits (as well as to things the person does).

(3) A prohibition may be imposed subject to exceptions.

(4) In particular, provision may be made for a prohibition not to apply to things done with consent.

(5) In this section "tree" means a tree in respect of which a tree preservation order is in force.

202D Tree preservation regulations: consent for prohibited activities

(1) This section applies if tree preservation regulations make provision under section 202C(4).

(2) Tree preservation regulations may make provision—
(a) about who may give consent;
(b) for the giving of consent subject to conditions;
(c) about the procedure to be followed in connection with obtaining consent.

(3) The conditions for which provision may be made under subsection (2)(b) include—
(a) conditions as to planting of trees;
(b) conditions requiring approvals to be obtained from the person giving the consent;
(c) conditions limiting the duration of the consent.

(4) The conditions mentioned in subsection (3)(a) include—
(a) conditions requiring trees to be planted;
(b) conditions about the planting of any trees required to be planted by conditions within paragraph (a), including conditions about how, where or when planting is to be done;
(c) conditions requiring things to be done, or installed, for the protection of any trees planted in pursuance of conditions within paragraph (a).

(5) In relation to any tree planted in pursuance of a condition within subsection (4)(a), tree preservation regulations may make provision —
(a) for the tree preservation order concerned to apply to the tree;
(b) authorising the person imposing the condition to specify that the tree preservation order concerned is not to apply to the tree.

(6) "The tree preservation order concerned" is the order in force in relation to the tree in respect of which consent is given under tree preservation regulations.

(7) The provision that may be made under subsection (2)(c) includes provision about applications for consent, including provision as to—
(a) the form or manner in which an application is to be made;

(b) what is to be in, or is to accompany, an application.

(8) Tree preservation regulations may make provision for appeals—
(a) against refusal of consent;
(b) where there is a failure to decide an application for consent;
(c) against conditions subject to which consent is given;
(d) against refusal of an approval required by a condition;
(e) where there is a failure to decide an application for such an approval.

(9) Tree preservation regulations may make provision in connection with appeals under provision made under subsection (8), including—
(a) provision imposing time limits;
(b) provision for further appeals;
(c) provision in connection with the procedure to be followed on an appeal (or further appeal);
(d) provision about who is to decide an appeal (or further appeal);
(e) provision imposing duties, or conferring powers, on a person deciding an appeal (or further appeal).

202E Tree preservation regulations: compensation

(1) Tree preservation regulations may make provision for the payment of compensation—
(a) where any consent required under tree preservation regulations is refused;
(b) where any such consent is given subject to conditions;
(c) where any approval required under such a condition is refused.

(2) Tree preservation regulations may provide for entitlement conferred under subsection (1) to apply only in, or to apply except in, cases specified in tree preservation regulations.

(3) Tree preservation regulations may provide for entitlement conferred by provision under subsection (1) to be subject to conditions, including conditions as to time limits.

(4) Tree preservation regulations may, in relation to compensation under provision under subsection (1), make provision about—
(a) who is to pay the compensation;
(b) who is entitled to the compensation;
(c) what the compensation is to be paid in respect of;
(d) the amount, or calculation of, the compensation.

(5) Tree preservation regulations may make provision about the procedure to be followed in connection with claiming any entitlement conferred by provision under subsection (1).

(6) Tree preservation regulations may make provision for the determination of disputes about entitlement conferred by provision under subsection (1), including provision for and in connection with the referral of any such disputes to, and their determination by, the Lands Tribunal, the First-tier Tribunal or the Upper Tribunal.

202F Tree preservation regulations: registers

Tree preservation regulations may make provision for the keeping of, and public access to, registers containing information related to tree preservation orders.

202G Tree preservation regulations: supplementary

(1) Tree preservation regulations may provide for the application (with or without modifications) of, or make provision comparable to, any provision of this Act mentioned in subsection (2).

(2) The provisions are any provision of Part 3 relating to planning permission or applications for planning permission, except sections 56, 62, 65, 69(3) and (4), 71, 91 to 96, 100 and 101 and Schedule 8.

(3) Tree preservation regulations may make provision comparable to—

(a) any provision made by the Town and Country Planning (Tree Preservation Order) Regulations 1969 or the Town and Country Planning (Trees) Regulations 1999;

(b) any provision that could have been made under section 199(2) and (3).

(4) Tree preservation regulations may contain incidental, supplementary, consequential, transitional and transitory provision and savings."

(8) Schedule 8 makes further amendments in connection with tree preservation orders.

193 Existing tree preservation orders: transitional provision

(1) This section applies to a tree preservation order made before the appointed day.

(2) With effect from the beginning of the appointed day, a tree preservation order to which this section applies shall have effect with the omission of all of its provisions other than any that have effect for the purpose of identifying the order or for the purpose of identifying the trees, groups of trees or woodlands in respect of which the order—

(a) is in force, or

(b) may at any later time be in force.

(3) In this section—

"the appointed day"—

(a) in relation to England means the day on which subsection (1) comes fully into force in relation to England, and

(b) in relation to Wales means the day on which subsection (1) comes fully into force in relation to Wales;

"tree preservation order" means an order made under, or an order having effect as if made under, section 198(1) of TCPA 1990.

Use of land

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

(1) Schedule 9 (use of land: power to override easements and other rights when use is in accordance with planning permission) has effect.

(2) The Welsh Ministers may by order amend Schedule 4 to the Welsh Development Agency Act 1975 (c. 70) for the purpose of authorising the use in accordance with planning permission of land acquired under section 21A of that Act, even if the use involves—

(a) interference with an interest or right to which paragraph 6 of that Schedule applies, or

(b) a breach of a restriction as to the user of land arising by virtue of a contract.

(3) The power to make an order under subsection (2) is exercisable by statutory instrument.

(4) The power includes—

(a) power to make different provision for different purposes (including different areas);

(b) power to make incidental, consequential, supplementary, transitional or transitory provision or savings.

(5) No order may be made under subsection (2) unless a draft of the instrument containing the order has been laid before, and approved by resolution of, the National Assembly for Wales.

Statutory undertakers

195 Applications and appeals by statutory undertakers

In section 266 of TCPA 1990 (applications for planning permission by statutory undertakers), after subsection (1) insert—

"(1A) Subsection (1) has effect in relation to an application or appeal relating to land in England only if the Secretary of State or the appropriate Minister has given a direction for it to have effect in relation to the application or appeal (and the direction has not been revoked)."

Determination of procedure

196 Determination of procedure for certain proceedings

(1) After section 319 of TCPA 1990 insert—

"Determination of procedure

319A Determination of procedure for certain proceedings

(1) The Secretary of State must make a determination as to the procedure by which proceedings to which this section applies are to be considered.

(2) A determination under subsection (1) must provide for the proceedings to be considered in whichever of the following ways appears to the Secretary of State to be most appropriate—

(a) at a local inquiry;

(b) at a hearing;

(c) on the basis of representations in writing.

(3) The Secretary of State must make a determination under subsection (1) in respect of proceedings to which this section applies before the end of the prescribed period.

(4) A determination under subsection (1) may be varied by a subsequent determination under that subsection at any time before the proceedings are determined.

(5) The Secretary of State must notify the appellant or applicant (as the case may be) and the local planning authority of any determination made under subsection (1).

(6) The Secretary of State must publish the criteria that are to be applied in making determinations under subsection (1).

(7) This section applies to—

(a) an application referred to the Secretary of State under section 77 instead of being dealt with by a local planning authority in England;

(b) an appeal under section 78 against a decision of a local planning authority in England;

(c) an appeal under section 174 against an enforcement notice issued by a local planning authority in England;

(d) an appeal under section 195 against a decision of a local planning authority in England; and

(e) an appeal under section 208 against a notice under section 207(1) issued by a local planning authority in England.

(8) But this section does not apply to proceedings if they are referred to a Planning Inquiry Commission under section 101; and on proceedings being so referred, any determination made in relation to the proceedings under subsection (1) of this section ceases to have effect.

(9) The Secretary of State may by order amend subsection (7) to—

(a) add proceedings to, or remove proceedings from, the list of proceedings to which this section applies, or

(b) otherwise modify the descriptions of proceedings to which this section applies.

(10) An order under subsection (9) may—

(a) contain incidental, supplementary, consequential, transitional and transitory provision and savings;

(b) amend, repeal or revoke any provision made by or under this Act or by or under any other Act."

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

"88D Determination of procedure for certain proceedings

(1) The Secretary of State must make a determination as to the procedure by which proceedings to which this section applies are to be considered.

(2) A determination under subsection (1) must provide for the proceedings to be considered in whichever of the following ways appears to the Secretary of State to be most appropriate—

(a) at a local inquiry;

(b) at a hearing;

(c) on the basis of representations in writing.

(3) The Secretary of State must make a determination under subsection (1) in respect of proceedings to which this section applies before the end of the prescribed period.

(4) A determination under subsection (1) may be varied by a subsequent determination under that subsection at any time before the proceedings are determined.

(5) The Secretary of State must notify the appellant or applicant (as the case may be) and the local planning authority of any determination made under subsection (1).

(6) The Secretary of State must publish the criteria that are to be applied in making determinations under subsection (1).

(7) This section applies to—

(a) an application referred to the Secretary of State under section 12 instead of being dealt with by a local planning authority in England;

(b) an appeal under section 20 against a decision of a local planning authority in England; and

(c) an appeal under section 39 against a listed building enforcement notice issued by a local planning authority in England.

(8) The Secretary of State may by order amend subsection (7) to—

(a) add proceedings under this Act to, or remove proceedings under this Act from, the list of proceedings to which this section applies, or

(b) otherwise modify the descriptions of proceedings under this Act to which this section applies.

(9) An order under subsection (8) may—

(a) contain incidental, supplementary, consequential, transitional and transitory provision and savings;

(b) amend, repeal or revoke any provision made by or under this Act or by or under any other Act."

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

"21A Determination by Secretary of State of procedure for certain proceedings

(1) The Secretary of State must make a determination as to the procedure by which proceedings to which this section applies are to be considered.

(2) A determination under subsection (1) must provide for the proceedings to be considered in whichever of the following ways appears to the Secretary of State to be most appropriate—

(a) at a local inquiry;

(b) at a hearing;

(c) on the basis of representations in writing.

(3) The Secretary of State must make a determination under subsection (1) in respect of proceedings to which this section applies before the end of the prescribed period.

(4) A determination under subsection (1) may be varied by a subsequent determination under that subsection at any time before the proceedings are determined.

(5) The Secretary of State must notify the appellant or applicant (as the case may be) and the hazardous substances authority of any determination made under subsection (1).

(6) The Secretary of State must publish the criteria that are to be applied in making determinations under subsection (1).

(7) This section applies to—

(a) an application referred to the Secretary of State under section 20 instead of being dealt with by a hazardous substances authority in England;

(b) an appeal under section 21 against a decision of a hazardous substances authority in England.

(8) The Secretary of State may by order amend subsection (7) to—

(a) add proceedings under this Act to, or remove proceedings under this Act from, the list of proceedings to which this section applies, or

(b) otherwise modify the descriptions of proceedings under this Act to which this section applies.

(9) An order under subsection (8) may—

(a) contain incidental, supplementary, consequential, transitional and transitory provision and savings;

(b) amend, repeal or revoke any provision made by or under this Act or by or under any other Act.

(10) The power to make an order under subsection (8) is exercisable by statutory instrument.

(11) No order may be made under subsection (8) unless a draft of the instrument containing the order has been laid before, and approved by resolution of, each House of Parliament."

(4) Schedule 10 (further provisions as to the procedure for certain proceedings) has effect.

Appeals

197 Appeals: miscellaneous amendments

Schedule 11 (appeals: miscellaneous amendments) has effect.

198 Appeals relating to old mining permissions

(1) Schedule 6 to TCPA 1990 (determination of certain appeals by person appointed by Secretary of State) is amended as set out in subsections (2) and (3).

(2) In paragraph 1—

(a) in sub-paragraph (1) after "208" insert "of this Act, paragraph 5 of Schedule 2 to the Planning and Compensation Act 1991", and

(b) in sub-paragraph (4) for "any instrument made under it" substitute "any other Act or any instrument made under this Act or any other Act".

(3) In paragraph 2—

(a) after sub-paragraph (1)(d) insert—

"(e) in relation to an appeal under paragraph 5 of Schedule 2 to the Planning and Compensation Act 1991, as the Secretary of State has under paragraph 6(1) and (3) of that Schedule.", and

(b) in sub-paragraph (2) after "208(5)" insert "of this Act and paragraph 6(2) of Schedule 2 to the Planning and Compensation Act 1991".

(4) In paragraph 5 of Schedule 2 to the Planning and Compensation Act 1991 (c. 34) (registration of old mining permissions: right of appeal) after sub-paragraph (8) insert—

"(9) Schedule 6 to the principal Act (determination of appeals by persons appointed by Secretary of State) applies to appeals under this paragraph."

Fees

199 Fees for planning applications

For section 303 of TCPA 1990 substitute—

"303 Fees for planning applications etc.

(1) The appropriate authority may by regulations make provision for the payment of a fee or charge to a local planning authority in respect of—

(a) the performance by the local planning authority of any function they have;

(b) anything done by them which is calculated to facilitate or is conducive or incidental to the performance of any such function.

(2) The appropriate authority may by regulations make provision for the payment of a fee to the appropriate authority or the local planning authority (or of fees to both the appropriate authority and the local planning authority) in respect of any application for planning permission deemed to be made under section 177(5).

(3) The appropriate authority may by regulations make provision for the payment of a fee to the appropriate authority in respect of any application for planning permission which is deemed to be made to the appropriate authority under—

(a) any provision of this Act other than section 177(5), or

(b) any order or regulations made under this Act.

(4) The appropriate authority may by regulations make provision for the payment of a fee to the appropriate authority in respect of an application for planning permission made under section 293A (urgent Crown development).

(5) Regulations under this section may in particular—

(a) make provision as to when a fee or charge payable under the regulations is to be paid;

(b) make provision as to who is to pay a fee or charge payable under the regulations;

(c) make provision as to how a fee or charge payable under the regulations is to be calculated (including who is to make the calculation);

(d) prescribe circumstances in which a fee or charge payable under the regulations is to be remitted or refunded (wholly or in part);

(e) prescribe circumstances in which no fee or charge is to be paid;

(f) make provision as to the effect of paying or failing to pay a fee or charge in accordance with the regulations;

(g) prescribe circumstances in which a fee or charge payable under the regulations to one local planning authority is to be transferred to another local planning authority.

(6) Regulations under this section may—

(a) contain incidental, supplementary, consequential, transitional and transitory provision and savings;

(b) in the case of regulations made by virtue of subsection (5)(f) or paragraph (a) of this subsection, amend, repeal or revoke any provision made by or under this Act or by or under any other Act.

(7) In this section "the appropriate authority" means—

(a) the Secretary of State in relation to England;

(b) the Welsh Ministers in relation to Wales.

(8) No regulations shall be made under this section unless a draft of the regulations has been laid before and approved by resolution of—

(a) each House of Parliament, in the case of regulations made by the Secretary of State;

(b) the National Assembly for Wales, in the case of regulations made by the Welsh Ministers.

(9) Section 333(3) does not apply in relation to regulations made under this section by the Welsh Ministers.

(10) If a local planning authority calculate the amount of fees or charges in pursuance of provision made by regulations under subsection (1) the authority must secure that, taking one financial year with another, the income from the fees or charges does not exceed the cost of performing the function or doing the thing (as the case may be).

(11) A financial year is the period of 12 months beginning with 1 April."

200 Fees for appeals

In TCPA 1990 after section 303 insert—

"303ZA Fees for appeals

(1) The appropriate authority may by regulations make provision for the payment of a fee to the appropriate authority in respect of an appeal to the appropriate authority under any provision made by or under—
(a) this Act;
(b) the Planning (Listed Buildings and Conservation Areas) Act 1990.

(2) The regulations may in particular—
(a) make provision as to when a fee payable under the regulations is to be paid;
(b) make provision as to how such a fee is to be calculated (including who is to make the calculation);
(c) prescribe circumstances in which such a fee is to be remitted or refunded (wholly or in part);
(d) prescribe circumstances in which no fee is to be paid;
(e) make provision as to the effect of paying or failing to pay a fee in accordance with the regulations.

(3) A fee payable to the appropriate authority under regulations made under this section is payable—
(a) by the appellant;
(b) in addition to any fee payable to the appropriate authority under regulations made under section 303.

(4) Regulations under this section may—
(a) contain incidental, supplementary, consequential, transitional and transitory provision and savings;
(b) in the case of regulations made by virtue of subsection (2)(e) or paragraph (a) of this subsection, amend, repeal or revoke any provision made by or under this Act or by or under any other Act.

(5) In this section "the appropriate authority" means—
(a) the Secretary of State in relation to England;
(b) the Welsh Ministers in relation to Wales.

(6) No regulations shall be made under this section unless a draft of the regulations has been laid before and approved by resolution of—

(a) each House of Parliament, in the case of regulations made by the Secretary of State;

(b) the National Assembly for Wales, in the case of regulations made by the Welsh Ministers.

(7) Section 333(3) does not apply in relation to regulations made under this section by the Welsh Ministers."

Meaning of "local authority"

201 Meaning of "local authority" in planning Acts

In section 336(1) of TCPA 1990 (interpretation) in the definition of "local authority" after paragraph (aa) insert—

"(ab) the London Fire and Emergency Planning Authority;".

PART 10

WALES

202 Powers of National Assembly for Wales

In Part 1 of Schedule 5 to the Government of Wales Act 2006 (c. 32) (Assembly measures: matters within Assembly's legislative competence), after the heading "*Field 18: town and country planning*" insert—

"*Matter 18.1*

Provision for and in connection with—

(a) plans of the Welsh Ministers in relation to the development and use of land in Wales, and

(b) removing requirements for any such plans.

This does not include provision about the status to be given to any such plans in connection with the decision on an application for an order granting development consent under the Planning Act 2008.

Matter 18.2

Provision for and in connection with the review by local planning authorities of matters which may be expected to affect—

(a) the development of the authorities' areas, or

(b) the planning of the development of the authorities' areas.

Matter 18.3

Provision for and in connection with—

(a) plans of local planning authorities in relation to the development and use of land in their areas, and

(b) removing requirements for any such plans.

This does not include provision about the status to be given to any such plans in connection with the decision on an application for an order granting development consent under the Planning Act 2008.

Interpretation of this field

In this field—

"local planning authority" in relation to an area means—

(a) a National Park authority, in relation to a National Park in Wales;

(b) a county council in Wales or a county borough council, in any other case;

"Wales" has the meaning given by Schedule 1 to the Interpretation Act 1978."

203 Power to make provision in relation to Wales

(1) The Welsh Ministers may by order make provision—

(a) which has an effect in relation to Wales that corresponds to the effect an England-only provision has in relation to England;

(b) conferring power on the Welsh Ministers to do anything in relation to Wales that corresponds to anything the Secretary of State has power to do by virtue of an England-only provision.

(2) The England-only provisions are—

section 184 (correction of errors in decisions);

section 189 (compensation where development order or local development order withdrawn);

section 190 (power to make non-material changes to planning permission);

section 194(1) and Schedule 9 (use of land: power to override easements and other rights);

section 195 (applications and appeals by statutory undertakers);

section 196 and Schedule 10 (determination of procedure for certain proceedings);

paragraphs 2(3) and (4) and 3(3) of Schedule 7.

(3) Before an England-only provision is brought into force—

(a) the reference in subsection (1)(a) to the effect an England-only provision has is to be read as a reference to the effect the provision would have, if it were in force;

(b) the reference in subsection (1)(b) to anything the Secretary of State has power to do by virtue of an England-only provision is to be read as a reference to anything the Secretary of State would have power to do by virtue of the provision, if it were in force.

(4) The Welsh Ministers may by order make provision for the purpose of reversing the effect of any provision made in exercise of the power conferred by subsection (1).

(5) The Secretary of State may make an order in consequence of an order under subsection (1) for the purpose of ensuring that an England-only provision continues to have (or will when brought into force have) the effect in relation to England that it would have had if the order under subsection (1) had not been made.

(6) An order under this section may amend, repeal, revoke or otherwise modify a provision of—

(a) an Act, or

(b) an instrument made under an Act.

(7) The powers of the Welsh Ministers to make orders under this section are exercisable by statutory instrument.

(8) Those powers include—

(a) power to make different provision for different purposes (including different areas);

(b) power to make incidental, consequential, supplementary, transitional or transitory provision or savings.

(9) No order may be made by the Welsh Ministers under this section unless a draft of the instrument containing the order has been laid before, and approved by resolution of, the National Assembly for Wales.

204 Wales: transitional provision in relation to blighted land

(1) During the transitional period the repeal by PCPA 2004 of paragraphs 1 to 4 of Schedule 13 to TCPA 1990 in relation to Wales is subject to subsection (2).

(2) That repeal does not affect anything which is required or permitted to be done for the purposes of Chapter 2 of Part 6 of TCPA 1990 (interests affected by planning proposals: blight) in relation to land falling within any of paragraphs 1, 2, 3 and 4 of Schedule 13 to TCPA 1990.

(3) The transitional period is the period during which—

(a) in the case of land falling within paragraph 1 of Schedule 13 to TCPA 1990, a structure plan continues to be or to be comprised in the development plan for an area in Wales by virtue of Part 3 of Schedule 5 to the Local Government (Wales) Act 1994 (c. 19) and Part 1A of Schedule 2 to TCPA 1990;

(b) in the case of land falling within paragraph 2 of Schedule 13 to TCPA 1990, a local plan continues to be or to be comprised in the development plan for an area in Wales by virtue of Part 3 of Schedule 5 to the Local Government (Wales) Act 1994 and Part 1A of Schedule 2 to TCPA 1990;

(c) in the case of land falling within paragraphs 3 or 4 of Schedule 13 to TCPA 1990, a unitary development plan continues to form part of the development plan for an area in Wales by virtue of article 3(1) and (2) of the PCPA No.6 Order 2005.

(4) In this section "PCPA No.6 Order 2005" means the Planning and Compulsory Purchase Act 2004 (Commencement No.6, Transitional Provisions and Savings) Order 2005 (S.I. 2005/2847).

(5) This section is deemed to have come into force on the same day as the repeal of paragraphs 1 to 4 of Schedule 13 to TCPA 1990 came into force in relation to Wales (see Article 2(e) and (g) of the PCPA No.6 Order 2005).

PART 11

COMMUNITY INFRASTRUCTURE LEVY

205 The levy

(1) The Secretary of State may with the consent of the Treasury make regulations providing for the imposition of a charge to be known as Community Infrastructure Levy (CIL).

(2) In making the regulations the Secretary of State shall aim to ensure that the overall purpose of CIL is to ensure that costs incurred in providing infrastructure to support the development of an area can be funded (wholly or partly) by owners or developers of land.

(3) The Table describes the provisions of this Part.

Section	*Topic*
Section 206	The charge
Section 207	Joint committees
Sections 208 and 209	Liability
Section 210	Charities
Section 211	Amount
Sections 212 to 214	Charging schedule
Section 215	Appeals
Section 216	Application
Section 217	Collection
Section 218	Enforcement
Section 219	Compensation
Section 220	Procedure
Section 221	Secretary of State
Section 222	CIL regulations and orders: general
Section 223	Relationship with other powers
Section 224	Amendments
Section 225	Repeals

(4) In those sections regulations under this section are referred to as "CIL regulations".

206 The charge

(1) A charging authority may charge CIL in respect of development of land in its area.

(2) A local planning authority is the charging authority for its area.

(3) But—

(a) the Mayor of London is a charging authority for Greater London (in addition to the local planning authorities),

(b) the Broads Authority is the only charging authority for the Broads (within the meaning given by section 2(3) of the Norfolk and Suffolk Broads Act 1988 (c. 4)), and

(c) the Council of the Isles of Scilly is the only charging authority for the Isles of Scilly.

(4) CIL regulations may provide for any of the following to be the charging authority for an area, or in the case of Greater London one of the charging authorities, in place of the charging authority under subsection (2), (3)(b) or (c)—

(a) a county council,
(b) a county borough council,
(c) a district council,
(d) a metropolitan district council, and
(e) a London borough council (within the meaning of TCPA 1990).

(5) In this section, "local planning authority" has the meaning given by—

(a) section 37 of PCPA 2004 in relation to England, and
(b) section 78 of PCPA 2004 in relation to Wales.

207 Joint committees

(1) This section applies if a joint committee that includes a charging authority is established under section 29 of PCPA 2004.

(2) CIL regulations may provide that the joint committee is to exercise specified functions, in respect of the area specified in the agreement under section 29(1) of PCPA 2004, on behalf of the charging authority.

(3) The regulations may make provision corresponding to provisions relating to joint committees in Part 6 of the Local Government Act 1972 (c. 70) in respect of the discharge of the specified functions.

208 Liability

(1) Where liability to CIL would arise in respect of proposed development (in accordance with provision made by a charging authority under and by virtue of section 206 and CIL regulations) a person may assume liability to pay the levy.

(2) An assumption of liability—

(a) may be made before development commences, and
(b) must be made in accordance with any provision of CIL regulations about the procedure for assuming liability.

(3) A person who assumes liability for CIL before the commencement of development becomes liable when development is commenced in reliance on planning permission.

(4) CIL regulations must make provision for an owner or developer of land to be liable for CIL where development is commenced in reliance on planning permission if—

(a) nobody has assumed liability in accordance with the regulations, or
(b) other specified circumstances arise (such as the insolvency or withdrawal of a person who has assumed liability).

(5) CIL regulations may make provision about—

(a) joint liability (with or without several liability);
(b) liability of partnerships;
(c) assumption of partial liability (and subsection (4)(a) applies where liability has not been wholly assumed);

(d) apportionment of liability (which may—
  (i) include provision for referral to a specified person or body for determination, and
  (ii) include provision for appeals);
(e) withdrawal of assumption of liability;
(f) cancellation of assumption of liability by a charging authority (in which case subsection (4)(a) applies);
(g) transfer of liability (whether before or after development commences and whether or not liability has been assumed).

(6) The amount of any liability for CIL is to be calculated by reference to the time when planning permission first permits the development as a result of which the levy becomes payable.

(7) CIL regulations may make provision for liability for CIL to arise where development which requires planning permission is commenced without it (and subsection (6) is subject to this subsection).

(8) CIL regulations may provide for liability to CIL to arise in respect of a development where—
(a) the development was exempt from CIL, or subject to a reduced rate of CIL charge, and
(b) the description or purpose of the development changes.

209 Liability: interpretation of key terms

(1) In section 208 "development" means—
(a) anything done by way of or for the purpose of the creation of a new building, or
(b) anything done to or in respect of an existing building.

(2) CIL regulations may provide for—
(a) works or changes in use of a specified kind not to be treated as development;
(b) the creation of, or anything done to or in respect of, a structure of a specified kind to be treated as development.

(3) CIL regulations must include provision for determining when development is treated as commencing.

(4) Regulations under subsection (3) may, in particular, provide for development to be treated as commencing when some specified activity or event is undertaken or occurs, where the activity or event—
(a) is not development within the meaning of subsection (1), but
(b) has a specified kind of connection with a development within the meaning of that subsection.

(5) CIL regulations must define planning permission (which may include planning permission within the meaning of TCPA 1990 and any other kind of permission or consent (however called, and whether general or specific)).

(6) CIL regulations must include provision for determining the time at which planning permission is treated as first permitting development; and the regulations may, in particular, make provision—
(a) about outline planning permission;

(b) for permission to be treated as having been given at a particular time in the case of general consents.

(7) For the purposes of section 208—

(a) "owner" of land means a person who owns an interest in the land, and

(b) "developer" means a person who is wholly or partly responsible for carrying out a development.

(8) CIL regulations may make provision for a person to be or not to be treated as an owner or developer of land in specified circumstances.

210 Charities

(1) CIL regulations must provide for an exemption from liability to pay CIL in respect of a development where—

(a) the person who would otherwise be liable to pay CIL in respect of the development is a relevant charity in England and Wales, and

(b) the building or structure in respect of which CIL liability would otherwise arise is to be used wholly or mainly for a charitable purpose of the charity within the meaning of section 2 of the Charities Act 2006 (c. 50).

(2) CIL regulations may—

(a) provide for an exemption from liability to pay CIL where the person who would otherwise be liable to pay CIL in respect of the development is an institution established for a charitable purpose;

(b) require charging authorities to make arrangements for an exemption from, or reduction in, liability to pay CIL where the person who would otherwise be liable to pay CIL in respect of the development is an institution established for a charitable purpose.

(3) Regulations under subsection (1) or (2) may provide that an exemption or reduction does not apply if specified conditions are satisfied.

(4) For the purposes of subsection (1), a relevant charity in England and Wales is an institution which—

(a) is registered in the register of charities kept by the Charity Commission under section 3 of the Charities Act 1993 (c. 10), or

(b) is a charity within the meaning of section 1(1) of the Charities Act 2006 but is not required to be registered in the register kept under section 3 of the Charities Act 1993.

(5) In subsection (2), a charitable purpose is a purpose falling within section 2(2) of the Charities Act 2006; but CIL regulations may provide for an institution of a specified kind to be, or not to be, treated as an institution established for a charitable purpose.

211 Amount

(1) A charging authority which proposes to charge CIL must issue a document (a "charging schedule") setting rates, or other criteria, by reference to which the amount of CIL chargeable in respect of development in its area is to be determined.

(2) A charging authority, in setting rates or other criteria, must have regard, to the extent and in the manner specified by CIL regulations, to—

(a) actual and expected costs of infrastructure (whether by reference to lists prepared by virtue of section 216(5)(a) or otherwise);
(b) matters specified by CIL regulations relating to the economic viability of development (which may include, in particular, actual or potential economic effects of planning permission or of the imposition of CIL);
(c) other actual and expected sources of funding for infrastructure.

(3) CIL regulations may make other provision about setting rates or other criteria.

(4) The regulations may, in particular, permit or require charging authorities in setting rates or other criteria—
(a) to have regard, to the extent and in the manner specified by the regulations, to actual or expected administrative expenses in connection with CIL;
(b) to have regard, to the extent and in the manner specified by the regulations, to values used or documents produced for other statutory purposes;
(c) to integrate the process, to the extent and in the manner specified by the regulations, with processes undertaken for other statutory purposes;
(d) to produce charging schedules having effect in relation to specified periods (subject to revision).

(5) The regulations may permit or require charging schedules to adopt specified methods of calculation.

(6) In particular, the regulations may—
(a) permit or require charging schedules to operate by reference to descriptions or purposes of development;
(b) permit or require charging schedules to operate by reference to any measurement of the amount or nature of development (whether by reference to measurements of floor space, to numbers or intended uses of buildings, to numbers or intended uses of units within buildings, to allocation of space within buildings or units, to values or expected values or in any other way);
(c) permit or require charging schedules to operate by reference to the nature or existing use of the place where development is undertaken;
(d) permit or require charging schedules to operate by reference to an index used for determining a rate of inflation;
(e) permit or require charging schedules to operate by reference to values used or documents produced for other statutory purposes;
(f) provide, or permit or require provision, for differential rates, which may include provision for supplementary charges, a nil rate, increased rates or reductions.

(7) A charging authority may consult, or take other steps, in connection with the preparation of a charging schedule (subject to CIL regulations).

(8) The regulations may require a charging authority to provide in specified circumstances an estimate of the amount of CIL chargeable in respect of development of land.

(9) A charging authority may revise a charging schedule.

(10) This section and sections 212, 213 and 214(1) and (2) apply to the revision of a charging schedule as they apply to the preparation of a charging schedule.

212 Charging schedule: examination

(1) Before approving a charging schedule a charging authority must appoint a person ("the examiner") to examine a draft.

(2) The charging authority must appoint someone who, in the opinion of the authority—

(a) is independent of the charging authority, and

(b) has appropriate qualifications and experience.

(3) The charging authority may, with the agreement of the examiner, appoint persons to assist the examiner.

(4) The draft submitted to the examiner must be accompanied by a declaration (approved under subsection (5) or (6))—

(a) that the charging authority has complied with the requirements of this Part and CIL regulations (including the requirements to have regard to the matters listed in section 211(2) and (4)),

(b) that the charging authority has used appropriate available evidence to inform the draft charging schedule, and

(c) dealing with any other matter prescribed by CIL regulations.

(5) A charging authority (other than the Mayor of London) must approve the declaration—

(a) at a meeting of the authority, and

(b) by a majority of votes of members present.

(6) The Mayor of London must approve the declaration personally.

(7) The examiner must consider the matters listed in subsection (4) and—

(a) recommend that the draft charging schedule be approved, rejected or approved with specified modifications, and

(b) give reasons for the recommendations.

(8) The charging authority must publish the recommendations and reasons.

(9) CIL regulations must require a charging authority to allow anyone who makes representations about a draft charging schedule to be heard by the examiner; and the regulations may make provision about timing and procedure.

(10) CIL regulations may make provision for examiners to reconsider their decisions with a view to correcting errors (before or after the approval of a charging schedule).

(11) The charging authority may withdraw a draft.

213 Charging schedule: approval

(1) A charging authority may approve a charging schedule only—

(a) if the examiner under section 212 has recommended approval, and

(b) subject to any modifications recommended by the examiner.

(2) A charging authority (other than the Mayor of London) must approve a charging schedule—

(a) at a meeting of the authority, and

(b) by a majority of votes of members present.

(3) The Mayor of London must approve a charging schedule personally.

(4) CIL regulations may make provision for the correction of errors in a charging schedule after approval.

214 Charging schedule: effect

(1) A charging schedule approved under section 213 may not take effect before it is published by the charging authority.

(2) CIL regulations may make provision about publication of a charging schedule after approval.

(3) A charging authority may determine that a charging schedule is to cease to have effect.

(4) CIL regulations may provide that a charging authority may only make a determination under subsection (3) in circumstances specified by the regulations.

(5) A charging authority (other than the Mayor of London) must make a determination under subsection (3)—

(a) at a meeting of the authority, and

(b) by a majority of votes of members present.

(6) The Mayor of London must make a determination under subsection (3) personally.

215 Appeals

(1) CIL regulations must provide for a right of appeal on a question of fact in relation to the application of methods for calculating CIL to a person appointed by the Commissioners for Her Majesty's Revenue and Customs.

(2) The regulations must require that the person appointed under subsection (1) is—

(a) a valuation officer appointed under section 61 of the Local Government Finance Act 1988 (c. 41), or

(b) a district valuer within the meaning of section 622 of the Housing Act 1985 (c. 68).

(3) Regulations under this section or section 208(5)(d)(ii) may, in particular, make provision about—

(a) the period within which the right of appeal may be exercised,

(b) the procedure on an appeal, and

(c) the payment of fees, and award of costs, in relation to an appeal.

(4) In any proceedings for judicial review of a decision on an appeal, the defendant shall be the Commissioners for Her Majesty's Revenue and Customs and not the person appointed under subsection (1).

216 Application

(1) Subject to section 219(5), CIL regulations must require the authority that charges CIL to apply it, or cause it to be applied, to funding infrastructure.

(2) In subsection (1) "infrastructure" includes—

(a) roads and other transport facilities,
(b) flood defences,
(c) schools and other educational facilities,
(d) medical facilities,
(e) sporting and recreational facilities,
(f) open spaces, and
(g) affordable housing (being social housing within the meaning of Part 2 of the Housing and Regeneration Act 2008 (c. 17) and such other housing as CIL regulations may specify).

(3) The regulations may amend subsection (2) so as to—
(a) add, remove or vary an entry in the list of matters included within the meaning of "infrastructure";
(b) list matters excluded from the meaning of "infrastructure".

(4) The regulations may specify—
(a) works, installations and other facilities that are to be, or not to be, funded by CIL,
(b) criteria for determining the areas in relation to which infrastructure may be funded by CIL in respect of land, and
(c) what is to be, or not to be, treated as funding.

(5) The regulations may—
(a) require charging authorities to prepare and publish a list of projects that are to be, or may be, wholly or partly funded by CIL;
(b) include provision about the procedure to be followed in preparing a list (which may include provision for consultation, for the appointment of an independent person or a combination);
(c) include provision about the circumstances in which a charging authority may and may not apply CIL to projects not included on the list.

(6) In making provision about funding the regulations may, in particular—
(a) permit CIL to be used to reimburse expenditure already incurred;
(b) permit CIL to be reserved for expenditure that may be incurred on future projects;
(c) permit CIL to be applied (either generally or subject to limits set by or determined in accordance with the regulations) to administrative expenses in connection with infrastructure or in connection with CIL;
(d) include provision for the giving of loans, guarantees or indemnities;
(e) make provision about the application of CIL where the projects to which it was to be applied no longer require funding.

(7) The regulations may—
(a) require a charging authority to account separately, and in accordance with the regulations, for CIL received or due;
(b) require a charging authority to monitor the use made and to be made of CIL in its area;
(c) require a charging authority to report on actual or expected charging, collection and application of CIL;
(d) permit a charging authority to cause money to be applied in respect of things done outside its area;
(e) permit a charging authority or other body to spend money;

(f) permit a charging authority to pass money to another body (and in paragraphs (a) to (e) a reference to a charging authority includes a reference to a body to which a charging authority passes money in reliance on this paragraph).

217 Collection

(1) CIL regulations must include provision about the collection of CIL.

(2) The regulations may make provision for payment—
(a) on account;
(b) by instalments.

(3) The regulations may make provision about repayment (with or without interest) in cases of overpayment.

(4) The regulations may make provision about payment in forms other than money (such as making land available, carrying out works or providing services).

(5) The regulations may permit or require a charging authority or other public authority to collect CIL charged by another authority; and section 216(7)(a) and (c) apply to a collecting authority in respect of collection as to a charging authority.

(6) Regulations under this section may replicate or apply (with or without modifications) any enactment relating to the collection of a tax.

(7) Regulations under this section may make provision about the source of payments in respect of Crown interests.

218 Enforcement

(1) CIL regulations must include provision about enforcement of CIL.

(2) The regulations must make provision about the consequences of late payment and failure to pay.

(3) The regulations may make provision about the consequences of failure to assume liability, to give a notice or to comply with another procedure under CIL regulations in connection with CIL.

(4) The regulations may, in particular, include provision—
(a) for the payment of interest;
(b) for the imposition of a penalty or surcharge;
(c) for the suspension or cancellation of a decision relating to planning permission;
(d) enabling an authority to prohibit development pending assumption of liability for CIL or pending payment of CIL;
(e) conferring a power of entry onto land;
(f) requiring the provision of information;
(g) creating a criminal offence (including, in particular, offences relating to evasion or attempted evasion or to the provision of false or misleading information or failure to provide information, and offences relating to the prevention or investigation of other offences created by the regulations);

(h) conferring power to prosecute an offence;
(i) for enforcement of sums owed (whether by action on a debt, by distraint against goods or in any other way);
(j) conferring jurisdiction on a court to grant injunctive or other relief to enforce a provision of the regulations (including a provision included in reliance on this section);
(k) for enforcement in the case of death or insolvency of a person liable for CIL.

(5) CIL regulations may include provision (whether or not in the context of late payment or failure to pay) about registration or notification of actual or potential liability to CIL; and the regulations may include provision—
(a) for the creation of local land charges;
(b) for the registration of local land charges;
(c) for enforcement of local land charges (including, in particular, for enforcement—
(i) against successive owners, and
(ii) by way of sale or other disposal with consent of a court);
(d) for making entries in statutory registers;
(e) for the cancellation of charges and entries.

(6) Regulations under this section may—
(a) replicate or apply (with or without modifications) any enactment relating to the enforcement of a tax;
(b) provide for appeals.

(7) Regulations under this section may provide that any interest, penalty or surcharge payable by virtue of the regulations is to be treated for the purposes of sections 216 to 220 as if it were CIL.

(8) The regulations providing for a surcharge or penalty must ensure that no surcharge or penalty in respect of an amount of CIL exceeds the higher of—
(a) 30% of that amount, and
(b) £20,000.

(9) But the regulations may provide for more than one surcharge or penalty to be imposed in relation to a CIL charge.

(10) The regulations may not authorise entry to a private dwelling without a warrant issued by a justice of the peace.

(11) Regulations under this section creating a criminal offence may not provide for—
(a) a maximum fine exceeding £20,000 on summary conviction,
(b) a maximum term of imprisonment exceeding 6 months on summary conviction, or
(c) a maximum term of imprisonment exceeding 2 years on conviction on indictment.

(12) The Secretary of State may by order amend subsection (11) to reflect commencement of section 283 of the Criminal Justice Act 2003 (c. 44).

(13) In this Part a reference to administrative expenses in connection with CIL includes a reference to enforcement expenses.

219 Compensation

(1) CIL regulations may require a charging authority or other public authority to pay compensation in respect of loss or damage suffered as a result of enforcement action.

(2) In this section, "enforcement action" means action taken under regulations under section 218, including—

(a) the suspension or cancellation of a decision relating to planning permission, and

(b) the prohibition of development pending assumption of liability for CIL or pending payment of CIL.

(3) The regulations shall not require payment of compensation—

(a) to a person who has failed to satisfy a liability to pay CIL, or

(b) in other circumstances specified by the regulations.

(4) Regulations under this section may make provision about—

(a) the time and manner in which a claim for compensation is to be made, and

(b) the sums, or the method of determining the sums, payable by way of compensation.

(5) CIL regulations may permit or require a charging authority to apply CIL (either generally or subject to limits set by or determined in accordance with the regulations) for expenditure incurred under this section.

(6) A dispute about compensation may be referred to and determined by the Lands Tribunal.

(7) 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 the provisions of CIL regulations.

220 Community Infrastructure Levy: procedure

(1) CIL regulations may include provision about procedures to be followed in connection with CIL.

(2) In particular, the regulations may make provision about—

(a) procedures to be followed by a charging authority proposing to begin charging CIL;

(b) procedures to be followed by a charging authority in relation to charging CIL;

(c) procedures to be followed by a charging authority proposing to stop charging CIL;

(d) consultation;

(e) the publication or other treatment of reports;

(f) timing and methods of publication;

(g) making documents available for inspection;

(h) providing copies of documents (with or without charge);

(i) the form and content of documents;

(j) giving notice;

(k) serving notices or other documents;

(l) examinations to be held in public in the course of setting or revising rates or other criteria or of preparing lists;
(m) the terms and conditions of appointment of independent persons;
(n) remuneration and expenses of independent persons (which may be required to be paid by the Secretary of State or by a charging authority);
(o) other costs in connection with examinations;
(p) reimbursement of expenditure incurred by the Secretary of State (including provision for enforcement);
(q) apportionment of costs;
(r) combining procedures in connection with CIL with procedures for another purpose of a charging authority (including a purpose of that authority in another capacity);
(s) procedures to be followed in connection with actual or potential liability for CIL.

(3) CIL regulations may make provision about the procedure to be followed in respect of an exemption from CIL or a reduction of CIL; in particular, the regulations may include provision—
(a) about the procedure for determining whether any conditions are satisfied;
(b) requiring a charging authority or other person to notify specified persons of any exemption or reduction;
(c) requiring a charging authority or other person to keep a record of any exemption or reduction.

(4) A provision of this Part conferring express power to make procedural provision in a specified context includes, in particular, power to make provision about the matters specified in subsection (2).

(5) A power in this Part to make provision about publishing something includes a power to make provision about making it available for inspection.

(6) Sections 229 to 231 do not apply to this Part (but CIL regulations may make similar provision).

221 Secretary of State

The Secretary of State may give guidance to a charging authority or other public authority (including an examiner appointed under section 212) about any matter connected with CIL; and the authority must have regard to the guidance.

222 Regulations and orders: general

(1) CIL regulations—
(a) may make provision that applies generally or only to specified cases, circumstances or areas,
(b) may make different provision for different cases, circumstances or areas,
(c) may provide, or allow a charging schedule to provide, for exceptions,
(d) may confer, or allow a charging schedule to confer, a discretionary power on the Secretary of State, a local authority or another specified person,
(e) may apply an enactment, with or without modifications, and

(f) may include provision of a kind permitted by section 232(3)(b) (and incidental, supplemental or consequential provision may include provision disapplying, modifying the effect of or amending an enactment).

(2) CIL regulations—

(a) shall be made by statutory instrument, and

(b) shall not be made unless a draft has been laid before and approved by resolution of the House of Commons.

(3) An order under section 218(12) or 225(2)—

(a) shall be made by statutory instrument, and

(b) may include provision of a kind permitted by subsection (1)(a), (b) or (f) above, but may not amend an Act of Parliament in reliance on subsection (1)(f).

(4) An order under section 218(12) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(5) An order under section 225(2) shall be subject to annulment in pursuance of a resolution of the House of Commons.

223 Relationship with other powers

(1) CIL regulations may include provision about how the following powers are to be used, or are not to be used—

(a) section 106 of TCPA 1990 (planning obligations), and

(b) section 278 of the Highways Act 1980 (c. 66) (execution of works).

(2) CIL regulations may include provision about the exercise of any other power relating to planning or development.

(3) The Secretary of State may give guidance to a charging or other authority about how a power relating to planning or development is to be exercised; and authorities must have regard to the guidance.

(4) Provision may be made under subsection (1) or (2), and guidance may be given under subsection (3), only if the Secretary of State thinks it necessary or expedient for—

(a) complementing the main purpose of CIL regulations,

(b) enhancing the effectiveness, or increasing the use, of CIL regulations,

(c) preventing agreements, undertakings or other transactions from being used to undermine or circumvent CIL regulations,

(d) preventing agreements, undertakings or other transactions from being used to achieve a purpose that the Secretary of State thinks would better be achieved through the application of CIL regulations, or

(e) preventing or restricting the imposition of burdens, the making of agreements or the giving of undertakings, in addition to CIL.

(5) CIL regulations may provide that a power to give guidance or directions may not be exercised—

(a) in relation to matters specified in the regulations,

(b) in cases or circumstances specified in the regulations,

(c) for a purpose specified in the regulations, or

(d) to an extent specified in the regulations.

224 Community Infrastructure Levy: amendments

(1) In section 101 of the Local Government Act 1972 (c. 70) (arrangements for discharge of functions by local authorities) after subsection (6) insert—

"(6A) Community Infrastructure Levy under Part 11 of the Planning Act 2008 is not a rate for the purposes of subsection (6)."

(2) In section 9 of the Norfolk and Suffolk Broads Act 1988 (c. 4) (the Navigation Committee)—

(a) in subsection (8), after "Subject" insert "to subsection (8A) and";

(b) after subsection (8) insert—

"(8A) Subsection (8) does not apply in relation to functions under Part 11 of the Planning Act 2008 (Community Infrastructure Levy)."

(3) In section 71(3) of the Deregulation and Contracting Out Act 1994 (c. 40) (contracting out: functions of local authorities) omit the word "and" at the end of paragraph (g) and after paragraph (h) insert "; and

(i) sections 217 and 218 of the Planning Act 2008 (Community Infrastructure Levy: collection and enforcement)."

(4) In section 38 of the Greater London Authority Act 1999 (c. 29) (delegation), after subsection (2) insert—

"(2A) In relation to functions exercisable by the Mayor under Part 11 of the Planning Act 2008 (Community Infrastructure Levy) subsection (2) has effect with the omission of paragraphs (c) to (f)."

225 Community Infrastructure Levy: repeals

(1) The following provisions of PCPA 2004 shall cease to have effect—

(a) sections 46 to 48 (planning contribution), and

(b) paragraph 5 of Schedule 6 (repeal of sections 106 to 106B of TCPA 1990 (planning obligations)).

(2) The Treasury may by order repeal the Planning-gain Supplement (Preparations) Act 2007 (c. 2).

PART 12

FINAL PROVISIONS

The Crown and Parliament

226 The Crown

(1) This Act binds the Crown, subject to subsections (2) and (3).

(2) Sections 40, 54, 135, 166, 228 and 231 make special provision in relation to the application of some provisions of this Act to the Crown.

(3) The amendments made by this Act bind the Crown only to the extent that the provisions amended bind the Crown.

227 "Crown land" and "the appropriate Crown authority"

(1) In this Act, "Crown land" and "the appropriate Crown authority" must be read in accordance with this section.

(2) "Crown land" is land in which there is a Crown interest or a Duchy interest.

(3) For the purposes of this section, a Crown interest is any of the following—

(a) an interest belonging to Her Majesty in right of the Crown or in right of Her private estates;

(b) an interest belonging to a government department or held in trust for Her Majesty for the purposes of a government department;

(c) an interest belonging to an office-holder in the Scottish Administration or held in trust for Her Majesty for the purposes of the Scottish Administration by such an office-holder;

(d) the interest of the Speaker of the House of Lords in those parts of the Palace of Westminster and its precincts occupied on 23 March 1965 by or on behalf of the House of Lords;

(e) the interest of the Speaker of the House of Commons in those parts of the Palace of Westminster and its precincts occupied on 23 March 1965 by or on behalf of the House of Commons;

(f) the interest in any land of—

(i) the Corporate Officer of the House of Lords;

(ii) the Corporate Officer of the House of Commons;

(iii) those two Corporate Officers acting jointly;

(g) such other interest as the Secretary of State specifies by order.

(4) For the purposes of this section, a Duchy interest is—

(a) an interest belonging to Her Majesty in right of the Duchy of Lancaster, or

(b) an interest belonging to the Duchy of Cornwall.

(5) "The appropriate Crown authority" in relation to any land is—

(a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, the Crown Estate Commissioners;

(b) in relation to any other land belonging to Her Majesty in right of the Crown, the government department or, as the case may be, office-holder in the Scottish Administration, having the management of the land;

(c) in relation to land belonging to Her Majesty in right of Her private estates, a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Secretary of State;

(d) in relation to land belonging to Her Majesty in right of the Duchy of Lancaster, the Chancellor of the Duchy;

(e) in relation to land belonging to the Duchy of Cornwall, such person as the Duke of Cornwall, or the possessor for the time being of the Duchy, appoints;

(f) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, the department;

(g) in the case of land belonging to an office-holder in the Scottish Administration or held in trust for Her Majesty for the purposes of such an office-holder, the office-holder;

(h) in relation to Westminster Hall and the Chapel of St Mary Undercroft, the Lord Great Chamberlain and the Speakers of the House of Lords and the House of Commons acting jointly;

(i) in relation to Her Majesty's Robing Room in the Palace of Westminster, the adjoining staircase and ante-room and the Royal Gallery, the Lord Great Chamberlain.

(j) in relation to land in which there is a Crown interest by virtue of subsection (3)(d) or (f)(i), the Corporate Officer of the House of Lords;

(k) in relation to land in which there is a Crown interest by virtue of subsection (3)(e) or (f)(ii), the Corporate Officer of the House of Commons;

(l) in relation to land in which there is a Crown interest by virtue of subsection (3)(f)(iii), those two Corporate Officers acting jointly.

(6) If any question arises as to what authority is the appropriate Crown authority in relation to any land it must be referred to the Treasury, whose decision is final.

(7) References to Her Majesty's private estates must be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c. 37).

(8) References to an office-holder in the Scottish Administration are to be construed in accordance with section 126(7) of the Scotland Act 1998 (c. 46).

228 Enforcement in relation to the Crown and Parliament

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

(2) For the purposes of this section "the Crown" includes—

(a) the Duchy of Lancaster;

(b) the Duchy of Cornwall;

(c) the Speaker of the House of Lords;

(d) the Speaker of the House of Commons;

(e) the Corporate Officer of the House of Lords;

(f) the Corporate Officer of the House of Commons.

Service of notices and other documents

229 Service of notices: general

(1) A notice or other document required or authorised to be served, given or supplied under this Act may be served, given or supplied in any of these ways—

(a) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied,

(b) by leaving it at the usual or last known place of abode of that person or, in a case where an address for service has been given by that person, at that address,

(c) by sending it by post, addressed to that person at that person's usual or last known place of abode or, in a case where an address for service has been given by that person, at that address,

(d) by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to that person at that person's usual or last known place of abode or, in a case where an address for service has been given by that person, at that address,

(e) in a case where an address for service using electronic communications has been given by that person, by sending it using electronic communications, in accordance with the condition set out in subsection (2), to that person at that address,

(f) in the case of an incorporated company or body—

(i) by delivering it to the secretary or clerk of the company or body at their registered or principal office,

(ii) by sending it by post, addressed to the secretary or clerk of the company or body at that office,

(iii) by sending it in a prepaid registered letter or, or by the recorded delivery service, addressed to the secretary or clerk of the company or body at that office.

(2) The condition mentioned in subsection (1)(e) is that the notice or other document must be—

(a) capable of being accessed by the person mentioned in that provision,

(b) legible in all material respects, and

(c) in a form sufficiently permanent to be used for subsequent reference.

(3) For the purposes of subsection (2), "legible in all material respects" means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

(4) Subsection (1)(c), (e) and (f)(ii) do not apply to the service, giving or supply of any of the following—

(a) notice under section 53(4)(b);

(b) a compulsory acquisition notice under section 134;

(c) notice under section 163(3);

(d) an information notice under section 167;

(e) a notice of unauthorised development under section 169.

(5) This section is without prejudice to section 233 of the Local Government Act 1972 (c. 70) (general provisions as to service of notices by local authorities).

(6) This section is subject to any contrary provision made by or under this Act.

230 Service of documents to persons interested in or occupying premises

(1) Subsection (2) applies if—

(a) a notice or document is required or authorised to be served on or given or supplied to any person as having an interest in premises, and the name of that person cannot be ascertained after reasonable inquiry, or

(b) a notice or document is required or authorised to be served on or given or supplied to any person as an occupier of premises.

(2) The notice or document is to be taken to be duly served, given or supplied if either the condition in subsection (3) or the condition in subsection (4) is met.

(3) The condition is that the notice or document—

(a) is addressed to the person either by name or by the description of "the owner" or, as the case may be, "the occupier" of the premises (describing them), and

(b) is delivered or sent—

(i) in the case of a notice mentioned in section 229(4), in the manner specified in section 229(1)(a), (b) or (d), and

(ii) in any other case, in the manner specified in section 229(1)(a), (b), (c) or (d).

(4) The condition is that the notice or document is so addressed and is marked in such a manner as may be prescribed for securing that it is plainly identifiable as an important communication and—

(a) it is sent to the premises in a prepaid registered letter or by the recorded delivery service and is not returned to the authority sending it, or

(b) it is delivered to a person on those premises, or is affixed conspicuously to an object on those premises.

(5) Subsection (6) applies if—

(a) a notice or other document is required to be served on or given or supplied to all persons who have interests in or are occupiers of premises comprised in any land, and

(b) it appears to the authority required or authorised to serve, give or supply the notice or other document that any part of that land is unoccupied.

(6) The notice or other document is to be taken to be duly served on or given or supplied to all persons having interests in, and on any occupiers of, premises comprised in that part of the land (other than a person who has given to that authority an address for the service of the notice or document on him) if—

(a) it is addressed to "the owners and any occupiers" of that part of the land (describing it), and

(b) it is affixed conspicuously to an object on the land.

(7) This section is subject to any contrary provision made by or under this Act.

231 Service of notices on the Crown and Parliament

(1) Any notice or other document required under this Act to be served on or given or supplied to the Crown must be served on or given or supplied to the appropriate Crown authority.

(2) Sections 229 and 230 do not apply for the purposes of the service, giving or supply of such a notice or document.

(3) For the purposes of this section "the Crown" includes—

(a) the Duchy of Lancaster;

(b) the Duchy of Cornwall;

(c) the Speaker of the House of Lords;

(d) the Speaker of the House of Commons;

(e) the Corporate Officer of the House of Lords;

(f) the Corporate Officer of the House of Commons.

General

232 Orders and regulations

(1) Subsections (2) and (3) apply to a power to make an order or regulations conferred on the Secretary of State by this Act, except—

(a) power to make an order granting development consent;

(b) a power conferred by paragraph 1(4) of Schedule 4;

(c) a power to make changes to, or revoke, an order granting development consent;

(d) a power conferred by Part 11 or section 237 or 241.

(2) The power is exercisable by statutory instrument.

(3) The power includes—

(a) power to make different provision for different purposes (including different areas);

(b) power to make incidental, consequential, supplementary, transitional or transitory provision or savings.

(4) A statutory instrument containing an order or regulations under this Act is subject to annulment pursuant to a resolution of either House of Parliament.

This is subject to subsection (5) (and section 222(5)).

(5) Subsection (4) does not apply to a statutory instrument containing—

(a) an order granting development consent;

(b) an order made by virtue of paragraph 1(8) of Schedule 4;

(c) an order changing or revoking an order granting development consent;

(d) an order under section 14(3), 111, 160(3), 161(5), 172(1), 203(5) or 227(3)(g);

(e) regulations under section 104(2)(c) or 105(2)(b).

(6) No order may be made under section 14(3), 111, 160(3), 161(5), 203(5) or 227(3)(g) unless a draft of the instrument containing the order has been laid before, and approved by resolution of, each House of Parliament.

(7) No regulations may be made under section 104(2)(c) or 105(2)(b) unless a draft of the instrument containing the regulations has been laid before, and approved by resolution of, each House of Parliament.

233 Directions

(1) A direction given under this Act must be in writing.

(2) A power conferred by this Act to give a direction includes power to vary or revoke the direction.

234 Abbreviated references to Acts

In this Act—

"the Hazardous Substances Act" means the Planning (Hazardous Substances) Act 1990 (c. 10);

"the Listed Buildings Act" means the Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9);

"PCPA 2004" means the Planning and Compulsory Purchase Act 2004 (c. 5);

"TCPA 1990" means the Town and Country Planning Act 1990 (c. 8).

235 Interpretation

(1) In this Act (except in Part 11)—

"airport" has the meaning given by section 82(1) of the Airports Act 1986 (c. 31);

"alteration", in relation to an airport, must be read in accordance with section 23(6);

"alteration", in relation to a highway, includes stopping up the highway or diverting, improving, raising or lowering it;

"appropriate Crown authority" has the meaning given by section 227;

"building" has the meaning given by section 336(1) of TCPA 1990;

"the Commission" means the Infrastructure Planning Commission;

"Commissioner" means a member of the Commission;

"construction", in relation to so much of a generating station as comprises or is to comprise renewable energy installations, has the same meaning as in Chapter 2 of Part 2 of the Energy Act 2004 (c. 20) (see section 104 of that Act) (and related expressions must be read accordingly);

"construction", in relation to a pipe-line, includes placing (and related expressions must be read accordingly);

"the Council" means the Commission's Council;

"cross-country pipe-line" has the same meaning as in the Pipe-lines Act 1962 (c. 58) (see section 66 of that Act);

"Crown land" has the meaning given by section 227;

"decision-maker" has the meaning given by section 103(2);

"development" has the meaning given by section 32;

"development consent" has the meaning given by section 31;

"electric line" has the same meaning as in Part 1 of the Electricity Act 1989 (c. 29) (see section 64(1) of that Act);

"extension", in relation to a generating station, has the meaning given by section 36(9) of the Electricity Act 1989 (and "extend" must be read accordingly);

"gas" includes natural gas;

"gas reception facility" must be read in accordance with section 19(3);

"gas transporter" has the same meaning as in Part 1 of the Gas Act 1986 (c. 44) (see section 7(1) of that Act);

"generating station" has the same meaning as in Part 1 of the Electricity Act 1989 (see section 64(1) of that Act);

"goods" has the meaning given by section 83(1) of the Railways Act 1993 (c. 43);

"Green Belt land" has the meaning given by section 2(1) of the Green Belt (London and Home Counties) Act 1938 (c. xciii);

"harbour" and "harbour authority" have the meanings given by section 57(1) of the Harbours Act 1964 (c. 40);

"highway" has the meaning given by section 328 of the Highways Act 1980 (c. 66);

"highway authority" has the same meaning as in the Highways Act 1980 (c. 66) (see sections 1 to 3 of that Act);

"improvement", in relation to a highway, has the meaning given by section 329(1) of the Highways Act 1980;

"inland waters" has the same meaning as in the Water Resources Act 1991 (c. 57) (see section 221(1) of that Act);

"land" includes buildings and monuments, and land covered with water, and in relation to Part 7 must be read in accordance with section 159;

"LNG facility" must be read in accordance with section 18(3);

"local planning authority" has the same meaning as in TCPA 1990 (see section 336(1) of that Act);

"monument" has the same meaning as in the Ancient Monuments and Archaeological Areas Act 1979 (c. 46) (see section 61 of that Act);

"nationally significant infrastructure project" has the meaning given by Part 3;

"national policy statement" has the meaning given by section 5(2);

"natural gas" means any gas derived from natural strata (including gas originating outside the United Kingdom);

"navigable watercourse" has the same meaning as in Part 6 of the Highways Act 1980 (see section 111(1) of that Act);

"non-navigable watercourse" means a watercourse that is not a navigable watercourse;

"pipe-line" has the meaning given by section 65 of the Pipe-lines Act 1962 (c. 58);

"planning permission" means permission under Part 3 of TCPA 1990;

"prescribed" means prescribed by regulations made by the Secretary of State (except in relation to matters authorised or required by this Act to be prescribed in another way);

"rail freight interchange" means a facility for the transfer of goods between railway and road, or between railway and another form of transport;

"railway" has the meaning given by section 67(1) of the Transport and Works Act 1992 (c. 42);

"renewable energy installation" has the same meaning as in Chapter 2 of Part 2 of the Energy Act 2004 (c. 20) (see section 104 of that Act);

"Renewable Energy Zone" has the meaning given by section 84(4) of the Energy Act 2004;

"special road" means a highway which is a special road in accordance with section 16 of the Highways Act 1980 or by virtue of an order granting development consent;

"standard", in relation to a volume of gas, means the volume of gas at a pressure of 101.325 kiloPascals and a temperature of 273 Kelvin;

"trunk road" means a highway which is a trunk road by virtue of—

(a) section 10(1) or 19 of the Highways Act 1980,

(b) an order or direction under section 10 of that Act, or

(c) an order granting development consent,

or under any other enactment;

"underground gas storage facilities" must be read in accordance with section 17(6);

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

(2) A reference in this Act to a right over land includes a reference to a right to do, or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) Subsection (4) applies to the question of which parts of waters up to the seaward limits of the territorial sea—

(a) are adjacent to Wales (and, in consequence, are not adjacent to England), or

(b) are not adjacent to Wales (and, in consequence, are adjacent to England).

(4) The question is to be determined by reference to an order or Order in Council made under or by virtue of section 158(3) or (4) of the Government of Wales Act 2006 (c. 32) (apportionment of sea areas) if, or to the extent that, the order or Order in Council is expressed to apply—

(a) by virtue of this subsection, for the purposes of this Act, or

(b) if no provision has been made by virtue of paragraph (a), for the general or residual purposes of that Act.

(5) Subsection (6) applies to the question of which parts of waters up to the seaward limits of the territorial sea—

(a) are adjacent to Scotland (and, in consequence, are not adjacent to England), or

(b) are not adjacent to Scotland (and, in consequence, are adjacent to England).

(6) The question is to be determined by reference to an Order in Council made under section 126(2) of the Scotland Act 1998 (c. 46) if, or to the extent that, the Order in Council is expressed to apply—

(a) by virtue of this subsection, for the purposes of this Act, or

(b) if no provision has been made by virtue of paragraph (a), for the general or residual purposes of that Act.

236 Application of Act to Scotland: modifications

The modifications set out in Schedule 12 have effect in the application of this Act to Scotland for the purpose mentioned in section 240(4).

237 Supplementary and consequential provision

(1) The Secretary of State may by order made by statutory instrument make—

(a) such supplementary, incidental or consequential provision, or

(b) such transitory, transitional or saving provision,

as the Secretary of State thinks appropriate for the general purposes, or any particular purpose, of this Act or in consequence of, or for giving full effect to, any provision made by this Act.

(2) The power conferred by subsection (1) includes power to make different provision for different purposes (including different areas).

(3) An order under subsection (1) may amend, repeal, revoke or otherwise modify—

(a) an Act passed on or before the last day of the Session in which this Act is passed, or

(b) an instrument made under an Act before the passing of this Act.

(4) An order under this section which amends or repeals any provision of an Act may not be made unless a draft of the instrument containing the order has been laid before, and approved by resolution of, each House of Parliament.

(5) A statutory instrument containing an order under this section which does not amend or repeal any provision of an Act is subject to annulment pursuant to a resolution of either House of Parliament.

(6) In this section any reference to an Act (other than this Act) includes a reference to an Act of the Scottish Parliament.

238 Repeals

Schedule 13 contains repeals (including repeals of spent provisions).

239 Financial provisions

There is to be paid out of money provided by Parliament—

(a) any expenditure incurred under or by virtue of this Act by the Secretary of State, and

(b) any increase attributable to this Act in the sums payable under or by virtue of any other Act out of money so provided.

240 Extent

(1) The following provisions of this Act extend to England and Wales only—

(a) in Part 2, section 13;

(b) in Part 3, sections 15 to 20 and 22 to 30;

(c) in Part 6, section 118;

(d) in Part 7, sections 133 and 139 to 149;

(e) in Part 9, sections 193 and 194;

(f) in Part 10, sections 203 and 204;

(g) Part 11.

(2) Section 178 extends to Scotland only.

(3) The following provisions of this Act extend to England and Wales and (subject to subsection (4)) to Scotland—

(a) Parts 1 to 8 (except the sections listed in paragraphs (a) to (d) of subsection (1));

(b) this Part.

(4) Those provisions extend to Scotland only so far as required for the purpose of the construction (other than by a gas transporter) of an oil or gas cross-country pipe-line—

(a) one end of which is in England or Wales, and

(b) the other end of which is in Scotland.

(5) Subsections (3) and (4) are subject to subsection (6).

(6) So far as it amends or repeals an enactment, this Act has the same extent as the enactment amended or repealed.

(7) An order under section 225(2) extends to each part of the United Kingdom.

241 Commencement

(1) The following provisions of this Act come into force on the day on which this Act is passed—

(a) the provisions of Parts 1 to 9 (except section 194(2) to (5) and paragraph 7 of Schedule 7) which—

(i) confer power to make orders (other than orders granting, or making changes to orders granting, development consent), regulations or rules, or

(ii) make provision about what is (or is not) permitted to be done, or what is required to be done, in the exercise of any such power;

(b) Part 11, except sections 206, 211(7), 224 and 225;

(c) this Part, except section 238.

(2) Nothing in subsection (1)(a) affects the operation of section 13 of the Interpretation Act 1978 (c. 30) in relation to this Act.

(3) Except as provided by subsection (1)(a), the provisions listed in subsection (4) come into force on such day as may be appointed by order made by—

(a) the Welsh Ministers, in relation to Wales;

(b) the Secretary of State, in relation to England.

(4) The provisions are—

(a) sections 183, 185, 187, 188, 191(1) and (3), 192, 193 and 197 to 200;

(b) paragraphs 1, 2(1) and (2), 3(1), (2) and (4) and 4 to 6 of Schedule 7;

(c) Schedules 8 and 11;

(d) the repeals in—

(i) TCPA 1990 (except those in Schedules 1 and 1A to that Act);

(ii) the Environmental Protection Act 1990 (c. 43);

(iii) the Planning and Compensation Act 1991 (c. 34);

(iv) sections 42(3) and 53 of PCPA 2004.

(5) Section 186 and the repeal in Schedule 1A to TCPA 1990 come into force on such day as the Welsh Ministers may by order appoint.

(6) Sections 194(2) to (5), 201, 202, 203 and 225 (together with related entries in Schedule 13), and paragraph 7 of Schedule 7, come into force at the end of two months beginning with the day on which this Act is passed.

(7) Section 204 comes into force in accordance with subsection (5) of that section.

(8) The other provisions of this Act come into force on such day as the Secretary of State may by order appoint.

(9) The powers conferred by this section are exercisable by statutory instrument.

(10) An order under this section may—

(a) appoint different days for different purposes (including different areas);

(b) contain transitional, transitory or saving provision in connection with the coming into force of this Act.

242 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—

(a) a person appointed by the Secretary of State to chair the Commission ("the chair"),

(b) at least two persons appointed by the Secretary of State as deputies to the chair ("deputies"), and

(c) other Commissioners appointed by the Secretary of State.

(2) In appointing Commissioners, the Secretary of State must have regard to the desirability of securing that the Commission is able to perform its functions effectively and efficiently.

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.

Tenure

3 (1) The chair, or a deputy or other Commissioner, must be appointed for a fixed period.

(2) The fixed period must not be less than 5 years or more than 8 years.

4 (1) A person may resign as the chair, or as a deputy or other Commissioner, by giving at least 3 months' notice in writing to the Secretary of State.

(2) The Secretary of State may remove a person from office as the chair, or as a deputy or other Commissioner, if the Secretary of State is satisfied that—

(a) the person is unable or unwilling to perform the duties of the office,

(b) the person has been convicted of a criminal offence, or

(c) the person is otherwise unfit to perform the duties of the office.

(3) In deciding whether a Commissioner is unfit to perform the duties of the Commissioner's office, the Secretary of State must have regard to the provisions of the code of conduct issued under section 2.

(4) A person who holds or has held an office of one of the descriptions set out in sub-paragraph (6) may be re-appointed as a Commissioner, whether or not to an office of the same description.

(5) If a person who holds an office of one of those descriptions ("the first office") becomes the holder of an office of another of those descriptions, the person ceases to hold the first office.

(6) The descriptions are—
(a) office as the chair;
(b) office as a deputy;
(c) office as one of the other Commissioners.

Remuneration etc. of Commissioners

5 (1) The Commission must pay the Commissioners such remuneration and allowances as the Secretary of State may determine.

(2) The Commission must—
(a) pay to or in respect of the Commissioners such pensions as the Secretary of State may determine, and
(b) pay such sums as the Secretary of State may determine in respect of the provision of pensions to or in respect of the Commissioners.

(3) The Commission may pay sums to the Commissioners in respect of expenses.

(4) Sub-paragraph (5) applies if—
(a) a person ceases to hold office as a Commissioner, and
(b) the Secretary of State thinks that there are special circumstances that make it right for the person to receive compensation.

(5) The Commission must pay the person such compensation as the Secretary of State may determine.

Council

6 (1) There is to be a body of Commissioners to be known as the Commission's Council ("the Council").

(2) The members of the Council may be different for different purposes.

(3) Those purposes include (in particular)—
(a) the purpose of deciding a particular application referred under section 84;
(b) the purpose of responding to consultation about a matter.

(4) The members of the Council for any particular purpose are—
(a) the chair,
(b) each deputy, and
(c) the Commissioners appointed under paragraph 7 to be ordinary members of the Council for that purpose.

(5) The chair has the function of chairing the Council.

(6) The staff of the Commission have the function of providing or procuring support for members of the Council undertaking functions of the Council.

7 (1) The chair may appoint a Commissioner not within paragraph 6(4)(a) or (b) to be an ordinary member of the Council—
(a) for a particular purpose or for particular purposes,

(b) for all purposes, or

(c) for all purposes other than any specified on making the appointment.

(2) The chair may at any time end a person's appointment as an ordinary member of the Council.

(3) A person may resign from being an ordinary member of the Council by giving notice in writing to the Commission.

(4) The power under sub-paragraph (2) may be exercised, and a person may under sub-paragraph (3) resign, in relation to all, or some one or more, of the purposes for which the person is an ordinary member of the Council.

(5) A person ceases to be an ordinary member of the Council if the person ceases to be a Commissioner.

(6) The power under sub-paragraph (1) is to be exercised so as to secure that the Council has for any particular purpose at least 5, but no more than 9, members in total.

(7) The Council's continuing identity for any particular purpose is to be taken not to be affected by—

(a) a person ceasing to be a member of the Council for that purpose, so long as there continue to be at least 5 people who are members of the Council for that purpose;

(b) any change in the person chairing the Council.

8 (1) Sub-paragraphs (2) and (3) apply to any function conferred or imposed on the chair by paragraph 6(5) or 7.

(2) The chair may delegate the function to a deputy.

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

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

9 (1) Before making or ending an appointment under paragraph 7, the person doing so must consult—

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

(b) any Commissioner not within paragraph (a) who the person thinks it appropriate to consult, and

(c) the chief executive of the Commission.

(2) In making or ending an appointment under paragraph 7, the person doing so must have regard to any views expressed about the matter—

(a) by any of the other Commissioners, or

(b) by the chief executive of the Commission.

10 (1) This paragraph applies where an application referred to the Council under section 84 relates to land in Wales (even if the application also relates to land not in Wales).

(2) A person appointing Commissioners under paragraph 7(1) as ordinary members of the Council for the purpose of deciding the application must do

so with a view to securing that, if reasonably practicable, at least one of the members of the Council for that purpose is—

(a) a Commissioner who was nominated for appointment as a Commissioner by the Welsh Ministers, or

(b) a Commissioner who is within sub-paragraph (3).

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

Chief executive and staff

11 (1) The Secretary of State must appoint a person as the chief executive of the Commission.

(2) The chief executive—

(a) is not to be a Commissioner, and

(b) is to be a member of the Commission's staff.

(3) The chief executive's terms and conditions of service are to be determined by the Secretary of State.

12 (1) The Commission may appoint such other staff as it thinks appropriate.

(2) A member of the Commission's staff is not to be a Commissioner.

(3) Before the Commission appoints any staff, it must obtain the approval of the Secretary of State to the overall number of staff it proposes to appoint.

(4) The Commission must also obtain the approval of the Secretary of State to the terms and conditions of service of any staff it proposes to appoint.

13 The terms and conditions of service of the chief executive and any other member of staff may include provision—

(a) for the payment of remuneration, allowances and sums in respect of expenses,

(b) for the payment to or in respect of the person of pensions or sums in respect of the provision of pensions, and

(c) for the payment to or in respect of the person of compensation for loss of employment or reduction of remuneration.

Arrangements for assistance

14 (1) The Commission may make arrangements with such persons as it thinks appropriate for assistance to be provided to it.

(2) The arrangements may include provision for the payment of fees.

Delegation

15 (1) The Commission may delegate, to any one or more of the Commissioners, any of its functions under any of the following provisions—

section 37(4) or (5);

section 50;

section 52;
section 53;
section 55;
section 109(4);
section 136(5);
in Schedule 3, paragraph 1(2);
in Schedule 4, paragraphs 1 and 2(1);
in Schedule 6, paragraphs 2, 3 and 4.

(2) The Commission may delegate any of its other functions to—
(a) any one or more of the Commissioners,
(b) the chief executive, or
(c) any other member of its staff.

(3) Functions delegated under sub-paragraph (1) or (2) may be delegated to such extent and on such terms as the Commission determines.

(4) References in this Act or any other enactment to the Commission, in connection with the exercise of any function of the Commission, are to be read, so far as necessary, as references to a person or body to whom the Commission has delegated the function under sub-paragraph (1) or (2).

16 (1) The chief executive may authorise (generally or specifically) any other member of the Commission's staff to do anything authorised or required to be done by the chief executive.

(2) But sub-paragraph (1) does not apply to anything authorised or required to be done by the chief executive in relation to the certification of the annual accounts of the Commission.

Reports

17 (1) In respect of each financial year the Commission must prepare a report relating to its performance of its functions during the year.

(2) The report must—
(a) give details of any orders granting development consent made by the Commission during the year which have included provision authorising the compulsory acquisition of land or of an interest in or right over land, and
(b) deal with such matters as the Secretary of State may direct.

(3) The Commission must send the Secretary of State copies of the report as soon as practicable after the end of the financial year.

(4) The Commission must arrange for the report to be published in the manner it thinks appropriate.

(5) The Secretary of State must lay before Parliament a copy of every report sent under sub-paragraph (3).

(6) "Financial year" means—
(a) the period beginning with the day on which the Commission is established and ending with the following 31 March, and
(b) each successive period of 12 months.

18 (1) Sub-paragraph (2) applies if the Secretary of State asks the Commission to provide a report or information relating to an aspect of the Commission's performance of its functions.

(2) The Commission must provide the Secretary of State with the report or information.

Funding

19 (1) The Secretary of State may make such payments to the Commission as the Secretary of State thinks appropriate for the purpose of enabling the Commission to meet its expenses.

(2) Payments under sub-paragraph (1) are to be made out of money provided by Parliament.

(3) Payments under sub-paragraph (1) are to be made at such times and subject to such conditions (if any) as the Secretary of State thinks appropriate.

Accounts

20 (1) The Commission must keep accounts in such form as the Secretary of State directs.

(2) The Commission must prepare annual accounts in respect of each financial year in such form as the Secretary of State directs.

(3) Before the end of such period following each financial year as the Secretary of State directs, the Commission must send a copy of the annual accounts for the year—

(a) to the Secretary of State, and

(b) to the Comptroller and Auditor General.

(4) The Comptroller and Auditor General must—

(a) examine, certify and report on the annual accounts, and

(b) give a copy of the Comptroller and Auditor General's report to the Secretary of State.

(5) In respect of each financial year, the Secretary of State must lay before Parliament a document consisting of—

(a) a copy of the annual accounts for the year, and

(b) a copy of the Comptroller and Auditor General's report on the annual accounts.

(6) "Financial year" means—

(a) the period beginning with the day on which the Commission is established and ending with the following 31 March, and

(b) each successive period of 12 months.

Status

21 (1) The Commission is not to be regarded—

(a) as the servant or agent of the Crown, or

(b) as enjoying any status, immunity or privilege of the Crown.

(2) The Commission's property is not to be regarded as property of or held on behalf of the Crown.

(3) The Commission's staff are not to be regarded as servants or agents of the Crown or as enjoying any status, immunity or privilege of the Crown.

Validity of proceedings

22 The validity of proceedings of the Commission or the Council is not affected by—

(a) a defect in the appointment of the chair, or a deputy, or any other Commissioner, or

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

Application of seal and proof of instruments

23 (1) The application of the Commission's seal is authenticated by the signature of a Commissioner, or a member of the Commission's staff, who has been authorised (generally or specifically) by the Commission for the purpose.

(2) A document purporting to be duly executed under the seal of the Commission or to be signed on its behalf—

(a) is to be received in evidence, and

(b) is to be taken to be executed or signed in that way, unless the contrary is proved.

Parliamentary Commissioner

24 In Schedule 2 to the Parliamentary Commissioner Act 1967 (c. 13) (departments etc. subject to investigation) at the appropriate place insert—

"Infrastructure Planning Commission."

Disqualification

25 (1) In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (bodies of which all members are disqualified) at the appropriate place insert—

"The Infrastructure Planning Commission."

(2) In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c. 25) (bodies of which all members are disqualified) at the appropriate place insert—

"The Infrastructure Planning Commission."

Public records

26 In Schedule 1 to the Public Records Act 1958 (c. 51) (definition of public records) in Part 2 of the Table at the end of paragraph 3 at the appropriate place insert—

"Infrastructure Planning Commission."

Freedom of information

27 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (c. 36) (other

public bodies and offices: general) at the appropriate place insert—

"The Infrastructure Planning Commission."

SCHEDULE 2

Section 36

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.

2 In section 10 (restriction on erection of buildings) after subsection (1) insert—

"(1A) Subsection (1) of this section is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required)."

3 In section 11 (saving for lines, pipes, sewers etc.) after subsection (1) insert—

"(1A) The proviso to subsection (1) of this section is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required)."

4 In section 12 (erection of buildings for certain statutory purposes) after subsection (1) insert—

"(1A) Subsection (1) of this section is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required)."

Pipe-lines Act 1962 (c. 58)

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

6 (1) Section 1 (cross-country pipe-lines not to be constructed without authorisation) is amended as follows.

(2) After subsection (1) insert—

"(1ZA) Subsection (1) is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required)."

(3) In subsection (1A)(b) for "pipe-line which is the subject of a pipe-line construction authorisation" substitute "nationally significant pipe-line".

(4) After subsection (1A) insert—

"(1B) For the purposes of subsection (1A), a pipe-line is a nationally significant pipe-line if—

(a) its construction has been authorised by a pipe-line construction authorisation, or

(b) development consent under the Planning Act 2008 is required for its construction by virtue of section 14(1)(g) of that Act, and has been granted."

7 In section 66(1) (general interpretation provisions) in the definition of "diversion"—

(a) after paragraph (a) insert—

"(aa) if no such authorisation is required, beyond the limits of lateral diversion permitted by development consent under the Planning Act 2008 relating to that pipe-line, or";

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

Harbours Act 1964 (c. 40)

8 The Harbours Act 1964 is amended as follows.

9 In section 14 (harbour revision orders) after subsection (1) insert—

"(1A) Subsection (1) is subject to—

(a) section 33(2) of the Planning Act 2008 (exclusion of powers to authorise development);

(b) section 120(9) of that Act (exclusion of power to include ancillary provision in orders)."

10 In section 16 (harbour empowerment orders) after subsection (3) insert—

"(3A) Subsections (1) to (3) are subject to—

(a) section 33(2) of the Planning Act 2008 (exclusion of powers to authorise development);

(b) section 120(9) of that Act (exclusion of power to include ancillary provision in orders)."

Gas Act 1965 (c. 36)

11 The Gas Act 1965 is amended as follows.

12 In section 4 (storage authorisation orders) after subsection (2) insert—

"(2A) So far as relating to development within section 17(2), (3) or (5) of the Planning Act 2008—

(a) subsection (1) is subject to section 33(2) of that Act (exclusion of powers to authorise development for which development consent required), and

(b) subsection (2) is subject to section 33(1) of that Act (exclusion of requirement for other consents for development for which development consent required).

(2B) So far as relating to the use of strata for the storage of gas, subsections (1) and (2) are subject to section 120(9) of the Planning Act 2008 (exclusion of power to include ancillary provision in orders)."

13 In section 5 (control of mining and other operations in gas storage area and protective area) after subsection (2) insert—

"(2A) Subsection (2) does not apply so far as the controlled operations are authorised by an order granting development consent under the Planning Act 2008."

14 (1) Section 6 (controlled operations: carrying out of works to remedy a default) is amended as follows.

(2) In subsection (1)—

(a) for "without the consent of the Minister" substitute "in breach of section 5(2)",

(b) for "failure to comply with any conditions subject to which the Minister's consent to the carrying out of any controlled operations has been granted" substitute "relevant failure to comply", and

(c) after "foregoing section" insert "or in circumstances involving a relevant failure to comply".

(3) In subsection (5) for the words from "failed" to the end substitute "was responsible for the relevant failure to comply."

(4) After subsection (8) insert—

"(9) In this section "relevant failure to comply" means—

(a) in a case where the Minister's consent to the carrying out of controlled operations has been obtained under section 5, a failure to comply with any conditions subject to which the Minister's consent was granted;

(b) in a case where the carrying out of controlled operations has been authorised by an order granting development consent under the Planning Act 2008, a breach of the terms of the order or other failure to comply with the terms of the order."

Energy Act 1976 (c. 76)

15 In section 14 of the Energy Act 1976 (fuelling of new and converted power stations) after subsection (1) insert—

"(1A) Subsection (1) is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for notice to be given of development for which development consent required)."

Ancient Monuments and Archaeological Areas Act 1979 (c. 46)

16 The Ancient Monuments and Archaeological Areas Act 1979 is amended as follows.

17 In section 2(1) (offence of executing works affecting scheduled monuments without authorisation) after "authorised under this Part of this Act" insert "or by development consent".

18 In section 28(2) (offence of damaging ancient monuments: exception for authorised works) after "order under section 3)" insert "or for which development consent has been granted".

19 In section 37 (exemptions from offence under section 35) after subsection (1) insert—

"(1A) Section 35 does not apply to the carrying out of any operations for which development consent has been granted."

20 In section 61(1) (interpretation of Act) at the appropriate place insert—

""development consent" means development consent under the Planning Act 2008;".

Highways Act 1980 (c. 66)

21 The Highways Act 1980 is amended as follows.

22 In section 10 (general provision as to trunk roads) after subsection (2) insert—

"(2A) Subsection (2) is subject to section 33(4) of the Planning Act 2008 (exclusion of powers to make or confirm orders in relation to highways for which development consent required)."

23 In section 14 (powers as respects roads that cross or join trunk roads etc.) after subsection (1) insert—

"(1A) Subsection (1) is subject to section 33(4) of the Planning Act 2008 (exclusion of powers to make or confirm orders in relation to highways for which development consent required)."

24 In section 16 (general provision as to special roads) after subsection (3) insert—

"(3A) Subsection (3) is subject to section 33(4) of the Planning Act 2008 (exclusion of powers to make or confirm schemes in relation to highways for which development consent required)."

25 In section 18 (supplementary orders relating to special roads) after subsection (1) insert—

"(1A) Subsection (1) is subject to section 33(4) of the Planning Act 2008 (exclusion of powers to make or confirm orders in relation to highways for which development consent required)."

26 In section 106 (orders and schemes providing for construction of bridges over or tunnels under navigable waters) after subsection (4) insert—

"(4A) Subsections (1) and (3) are subject to section 33(4) of the Planning Act 2008 (exclusion of powers to make or confirm orders or schemes in relation to highways for which development consent required)."

27 In section 108 (power to divert navigable watercourses) after subsection (1) insert—

"(1A) Subsection (1) is subject to section 33(4) of the Planning Act 2008 (exclusion of powers to make or confirm orders in relation to highways for which development consent required)."

28 In section 110 (power to divert non-navigable watercourses and to carry out other works) after subsection (1) insert—

"(1A) Subsection (1) is subject to section 33(4) of the Planning Act 2008 (exclusion of powers to make or confirm orders in relation to highways for which development consent required)."

29 (1) Section 329(1) (further provision as to interpretation of Act) is amended as follows.

(2) In the definition of "special road" after "section 16 above" insert "or by virtue of an order granting development consent under the Planning Act 2008".

(3) In the definition of "trunk road" after "section 10 above" insert "or an order granting development consent under the Planning Act 2008,".

30 For section 337 (saving for obligation to obtain planning permission) substitute—

"337 Saving for obligation to obtain planning permission or development consent

Nothing in this Act authorises—

(a) the carrying out of any development of land for which permission is required by virtue of section 57 of the Town and Country Planning Act 1990 and which is not authorised by permission granted or deemed to be granted under or for the purposes of Part 3 of that Act; or

(b) the carrying out of any development for which development consent is required under the Planning Act 2008 and for which development consent has not been granted under that Act."

Electricity Act 1989 (c. 29)

31 The Electricity Act 1989 is amended as follows.

32 (1) Section 36 (consent for construction etc. of generating stations) is amended as follows.

(2) In subsection (1) after "subsections" insert "(1A) to".

(3) After subsection (1) insert—

"(1A) So far as relating to the construction or extension of a generating station, subsection (1) is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required).

(1B) So far as relating to the operation of a generating station, subsection (1) does not apply if the operation is authorised by an order granting development consent under the Planning Act 2008."

33 (1) Section 37 (consent for overhead lines) is amended as follows.

(2) In subsection (1) for "subsection (2)" substitute "subsections (1A) to (2)".

(3) After subsection (1) insert—

"(1A) So far as relating to the installation of an electric line, subsection (1) is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required).

(1B) So far as relating to keeping an electric line installed, subsection (1) does not apply if keeping the line installed is authorised by an order granting development consent under the Planning Act 2008."

Town and Country Planning Act 1990 (c. 8)

34 TCPA 1990 is amended as follows.

35 In section 57 (planning permission required for development) after

subsection (1) insert—

"(1A) Subsection (1) is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for planning permission etc. for development for which development consent required)."

36 (1) Section 211 (preservation of trees in conservation areas) is amended as follows.

(2) After subsection (1) insert—

"(1A) Subsection (1) does not apply so far as the act in question is authorised by an order granting development consent."

(3) After subsection (5) insert—

"(5A) Subsection (5) does not apply so far as the act in question is authorised by an order granting development consent."

37 In section 336(1) (interpretation) at the appropriate place insert—

""development consent" means development consent under the Planning Act 2008;".

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

38 The Listed Buildings Act is amended as follows.

39 (1) Section 7 (restriction on works affecting listed buildings) is amended as follows.

(2) At the beginning insert "(1)".

(3) After "authorised" insert "under section 8".

(4) At the end insert—

"(2) Subsection (1) is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required)."

40 In section 59(3) (offence relating to acts causing or likely to result in damage to listed building: exceptions) after paragraph (b) insert "; or

(c) of works for which development consent has been granted under the Planning Act 2008."

41 In section 74 (control of demolition in conservation areas) after subsection (1) insert—

"(1A) Subsection (1) is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required)."

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

42 The Hazardous Substances Act is amended as follows.

43 In section 9(2)(c) (determination of applications for hazardous substances consent: material considerations) after "planning permission" insert "or development consent".

44 In section 10(1) (conditions on grant of hazardous substances consent) after "planning permission" insert "or development consent".

45 (1) Section 12 (deemed hazardous substances consent: government authorisation) is amended as follows.

(2) After subsection (2A) insert—

"(2B) On making an order granting development consent in respect of development that would involve the presence of a hazardous substance in circumstances requiring hazardous substances consent, the person making the order may direct that hazardous substances consent shall be deemed to be granted, subject to such conditions (if any) as may be specified in the direction."

(3) For subsection (3) substitute—

"(3) Before giving a direction under any of subsections (1) to (2B), the person having power to give the direction must consult the Health and Safety Commission."

(4) In subsection (6)—

(a) for "government department or the Secretary of State" substitute "person", and

(b) after "directions" insert "given by the person".

46 In section 14(2)(b) (power to revoke or modify hazardous substances consent)—

(a) after "planning permission" insert "or development consent";

(b) after "the permission" insert "or development consent".

47 In section 39(1) (interpretation) at the appropriate place insert—

""development consent" means development consent under the Planning Act 2008;".

New Roads and Street Works Act 1991 (c. 22)

48 The New Roads and Street Works Act 1991 is amended as follows.

49 In section 6 (toll orders) after subsection (1) insert—

"(1A) Subsection (1) is subject to section 33(4) of the Planning Act 2008 (exclusion of powers to make or confirm orders in relation to highways for which development consent required)."

Water Industry Act 1991 (c. 56)

50 In section 167(1) of the Water Industry Act 1991 (compulsory works orders)—

(a) after "water undertaker" insert "whose area is wholly or partly in Wales", and

(b) after "functions" insert "in relation to an area in Wales".

Transport and Works Act 1992 (c. 42)

51 The Transport and Works Act 1992 is amended as follows.

52 In section 1 (orders as to railways, tramways etc.) after subsection (1)

insert—

"(1A) Subsection (1) is subject to—

(a) section 33(2) of the Planning Act 2008 (exclusion of powers to authorise development);

(b) section 120(9) of that Act (exclusion of power to include ancillary provision in orders)."

53 In section 3 (orders as to inland waterways etc.) after subsection (1) insert—

"(1A) Subsection (1) is subject to—

(a) section 33(2) of the Planning Act 2008 (exclusion of powers to authorise development);

(b) section 120(9) of that Act (exclusion of power to include ancillary provision in orders)."

Town and Country Planning (Scotland) Act 1997 (c. 8)

54 The Town and Country Planning (Scotland) Act 1997 is amended as follows.

55 In section 28 (planning permission required for development) after subsection (1) insert—

"(1A) Subsection (1) is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for planning permission etc. for development for which development consent required)."

56 In section 160(6) (tree preservation orders: exemptions) after paragraph (b) insert—

"(ba) it is authorised by an order granting development consent,".

57 (1) Section 172 (preservation of trees in conservation areas) is amended as follows.

(2) After subsection (1) insert—

"(1A) Subsection (1) does not apply so far as the act in question is authorised by an order granting development consent."

(3) After subsection (5) insert—

"(5A) Subsection (5) does not apply so far as the act in question is authorised by an order granting development consent."

58 In section 277(1) (interpretation) at the appropriate place insert—

""development consent" means development consent under the Planning Act 2008;".

Planning (Hazardous Substances) (Scotland) Act 1997 (c. 10)

59 The Planning (Hazardous Substances) (Scotland) Act 1997 is amended as follows.

60 In section 7(2)(c) (determination of applications for hazardous substances consent: material considerations) after "planning permission" insert "or development consent".

61 In section 8(1) (conditions on grant of hazardous substances consent) after "planning permission" insert "or development consent".

62 (1) Section 10 (deemed hazardous substances consent: government authorisation) is amended as follows.

(2) After subsection (2A) insert—

"(2B) On making an order granting development consent in respect of development that would involve the presence of a hazardous substance in circumstances requiring hazardous substances consent, the person making the order may direct that hazardous substances consent shall be deemed to be granted, subject to such conditions (if any) as may be specified in the direction."

(3) For subsection (3) substitute—

"(3) Before giving a direction under any of subsections (1) to (2B), the person having power to give the direction must consult the Health and Safety Commission."

(4) In subsection (6)—

(a) for the words from "government" to "Ministers" substitute "person", and

(b) after "directions" insert "given by the person".

63 In section 12(2)(b) (power to revoke or modify hazardous substances consent)—

(a) after "planning permission" insert "or development consent", and

(b) after "the permission" insert "or development consent".

64 In section 38(1) (interpretation) at the appropriate place insert—

""development consent" means development consent under the Planning Act 2008,".

Housing and Regeneration Act 2008 (c. 17)

65 In section 13(5) of the Housing and Regeneration Act 2008 (power of Secretary of State to make designation orders) in the definition of "permitted purposes" at the end insert ", and

(d) Part 8 of the Planning Act 2008,".

Crossrail Act 2008 (c. 18)

66 (1) Section 48 of the Crossrail Act 2008 (application of Act to extensions) is amended as follows.

(2) Before subsection (1) insert—

"(A1) Development consent under the Planning Act 2008 is not required for—

(a) an extension of Crossrail, or

(b) the provision, otherwise than as part of an extension of Crossrail, of a railway facility for use for the purposes of or in connection with Crossrail."

(3) In subsection (1) for paragraphs (a) and (b) substitute "a matter mentioned in subsection (A1)(a) or (b)."

(4) In subsection (2) for "(1)" substitute "(A1)".

(5) In subsection (5) for "(1)" substitute "(A1)".

SCHEDULE 3

Section 113

EXAMINATION OF APPLICATIONS BY SECRETARY OF STATE

Examination of matters by Commission: procedure

1 (1) This paragraph applies if—

(a) the Secretary of State gives a direction under section 112(1) in relation to an application, and

(b) for the purpose of the examination of the application under section 113(2)(a), the Secretary of State gives a direction under section 113(3)(a) for specified matters to be examined by the Commission.

(2) The Commission must secure that—

(a) an examination of the specified matters is conducted by a Panel or a single Commissioner, and

(b) a report is made by the Panel or Commissioner to the Secretary of State setting out the Panel or Commissioner's findings and conclusions on those matters.

(3) The Panel or single Commissioner must—

(a) complete the examination under sub-paragraph (2)(a) by the end of the period specified by the Secretary of State, and

(b) report under sub-paragraph (2)(b) by the end of the period specified by the Secretary of State.

(4) The Secretary of State may direct that things done in connection with the examination of the application under Chapter 2 or 3 of Part 6 are to be treated as done in connection with the examination under sub-paragraph (2)(a).

(5) The following provisions of Part 6 apply in relation to the specified matters as if for references to an application for an order granting development consent there were substituted references to the specified matters —

(a) in Chapter 1, sections 61(2) to (5), 62 and 63;

(b) in Chapter 2, sections 64 (except subsection (1)(a)), 65 to 73, 74(2) to (4) and 75 to 77;

(c) in Chapter 3, sections 78 (except subsection (1)(a)), 79 to 82 and 83 (except subsection (2)(a));

(d) in Chapter 4, sections 86 to 97 and 99 to 102.

(6) As applied by sub-paragraph (5), those provisions apply—

(a) with any necessary modifications, and

(b) with such other modifications as may be prescribed.

Examination of matters by Secretary of State: procedure

2 (1) This paragraph applies if—

(a) the Secretary of State gives a direction under section 112(1) in relation to an application, and

(b) for the purpose of the examination of the application under section 113(2)(a), the Secretary of State is to conduct an examination of any matters under section 113(3)(b).

(2) It is for the Secretary of State to decide how to conduct the examination under section 113(3)(b).

(3) The Secretary of State may in particular decide that all or part of the examination is to take the form of—

(a) consideration of written representations;

(b) consideration of oral representations at a hearing.

(4) The Secretary of State may treat things done in connection with the examination of the application under Chapter 2 or 3 of Part 6 as done in connection with the examination under section 113(3)(b).

(5) Sub-paragraph (6) applies if—

(a) the direction under section 112(1) is given by virtue of section 110,

(b) the Secretary of State has decided that all or part of the examination is to take the form of consideration of oral representations at a hearing, and

(c) the Secretary of State is satisfied that—

(i) the making of particular representations at the hearing would be likely to result in the disclosure of information as to defence or national security, and

(ii) the public disclosure of that information would be contrary to the national interest.

(6) The Secretary of State may direct that representations of a specified description may be made only to persons of a specified description (instead of being made in public).

(7) "Specified" means specified in the direction.

(8) The Secretary of State's powers under sub-paragraphs (2) to (4) are subject to—

(a) sub-paragraphs (5) to (7), and

(b) any rules made under paragraph 3.

(9) In this paragraph "representation" includes evidence.

Rules

3 (1) The Lord Chancellor or (if sub-paragraph (2) applies) the Secretary of State, after consultation with the Administrative Justice and Tribunals Council, may make rules regulating the procedure to be followed in connection with the Secretary of State's examination of an application under section 113.

(2) This sub-paragraph applies if the development to which the application relates (or part of the development) is the construction (other than by a gas transporter) of an oil or gas cross-country pipe-line—

(a) one end of which is in England or Wales, and

(b) the other end of which is in Scotland.

(3) Rules under sub-paragraph (1) may make provision for or in connection with authorising the Secretary of State, alone or with others, to enter onto land, including land owned or occupied otherwise than by the applicant, for

the purpose of inspecting the land as part of the Secretary of State's examination.

(4) Rules under sub-paragraph (1) may regulate procedure in connection with matters preparatory to the Secretary of State's examination, and in connection with matters subsequent to the examination, as well as in connection with the conduct of the examination.

(5) Power under this paragraph to make rules includes power to make different provision for different purposes.

(6) Power under this paragraph to make rules is exercisable by statutory instrument.

(7) A statutory instrument containing rules under this paragraph is subject to annulment pursuant to a resolution of either House of Parliament.

Appointed representatives

4 (1) Sub-paragraph (2) applies if the Secretary of State gives a direction under paragraph 2(6) for representations of a specified description to be made only to persons of a specified description (instead of being made in public).

(2) The Attorney General or (where the representations are to be made in Scotland) the Advocate General for Scotland may appoint a person (an "appointed representative") to represent the interests of an interested party who (by virtue of the direction) is prevented from being present when the representations are made.

(3) "Interested party" means a person who is an interested party in relation to the application for the purposes of Chapter 4 of Part 6 (see section 102).

(4) Rules under paragraph 3 may make provision as to the functions of an appointed representative.

(5) The Secretary of State may direct a person (a "responsible person") to pay the fees and expenses of an appointed representative, if the Secretary of State thinks that the responsible person is interested in the hearing in relation to any representations that are the subject of the direction under paragraph 2(6).

(6) If the Secretary of State gives a direction under sub-paragraph (5) and the appointed representative and the responsible person are unable to agree the amount of the fees and expenses, the amount must be determined by the Secretary of State.

(7) The Secretary of State must cause the amount agreed between the appointed representative and the responsible person, or determined by the Secretary of State, to be certified.

(8) An amount so certified is recoverable from the responsible person as a civil debt.

SCHEDULE 4

Section 119

CORRECTION OF ERRORS IN DEVELOPMENT CONSENT DECISIONS

Correction of errors

1 (1) This paragraph applies if—

(a) the decision-maker makes an order granting development consent, or refuses development consent, and

(b) the decision document contains a correctable error.

(2) The decision document is—

(a) in the case of an order granting development consent, the order;

(b) in the case of a refusal of development consent, the document recording the refusal.

(3) A correctable error is an error or omission which—

(a) is in a part of the decision document which records the decision, and

(b) is not part of the statement of reasons for the decision.

(4) The appropriate authority may correct the error or omission if (but only if) the conditions in sub-paragraphs (5) and (7) are met.

This is subject to sub-paragraph (11).

(5) The condition is that, before the end of the relevant period—

(a) the appropriate authority receives a written request to correct the error or omission from any person, or

(b) the appropriate authority sends a statement in writing to the applicant which explains the error or omission and states that the appropriate authority is considering making the correction.

(6) The relevant period is—

(a) if the decision document is an order granting development consent, the period specified in section 118(1)(b);

(b) if the decision document is the document recording a refusal of development consent, the period specified in section 118(2)(b).

(7) The condition is that the appropriate authority informs each relevant local planning authority that the request mentioned in sub-paragraph (5)(a) has been received or the statement mentioned in sub-paragraph (5)(b) has been sent (as the case may be).

(8) If—

(a) the decision document is an order granting development consent, and

(b) the order was required to be contained in a statutory instrument,

the power conferred by sub-paragraph (4) may be exercised only by order contained in a statutory instrument.

(9) If the instrument containing the order is made by the Commission, the Statutory Instruments Act 1946 (c. 36) applies in relation to the instrument as if it had been made by a Minister of the Crown.

(10) As soon as practicable after the instrument is made, the appropriate authority must deposit a copy of it in the office of the Clerk of the Parliaments.

(11) The power conferred by sub-paragraph (4) may not be exercised in relation to provision included in an order granting development consent by virtue of any of paragraphs 27 to 30 of Schedule 5 (deemed consent under Coast Protection Act 1949 (c. 74) and deemed licences under Food and Environment Protection Act 1985 (c. 48)).

Correction notice

2 (1) If paragraph 1(5)(a) or (b) applies the appropriate authority must issue a notice in writing (a "correction notice") which—

(a) specifies the correction of the error or omission, or

(b) gives notice of the decision not to correct the error or omission.

(2) The appropriate authority must issue the correction notice as soon as practicable after making the correction or deciding not to make the correction.

(3) The appropriate authority must give the correction notice to—

(a) the applicant,

(b) each relevant local planning authority, and

(c) if the correction was requested by any other person, that person.

(4) The Secretary of State may by order specify any other person or description of person to whom a correction notice must be given.

Effect of a correction

3 (1) If a correction is made in pursuance of paragraph 1—

(a) the original decision and the decision document containing it continue in force, and

(b) the decision document is treated as corrected as specified in the correction notice issued under paragraph 2 with effect from the date the correction notice is issued, or, if the correction is required to be made by order contained in a statutory instrument, the date specified in the order.

(2) If a correction is not made—

(a) the original decision continues to have full force and effect, and

(b) nothing in this Schedule affects anything done in pursuance of or in respect of the original decision.

(3) "The original decision" means the decision to—

(a) make an order granting development consent, or

(b) refuse development consent.

Interpretation

4 In this Schedule—

"the applicant" means the person who made the application to which the decision relates;

"the appropriate authority" means—

(a) the Commission where the decision-maker is a Panel or the Council;

(b) the Secretary of State where the decision-maker is the Secretary of State;

"a relevant local planning authority" means a local planning authority for all or any part of the area in which the land to which the decision relates is situated.

SCHEDULE 5

Section 120

PROVISION RELATING TO, OR TO MATTERS ANCILLARY TO, DEVELOPMENT

PART 1

THE MATTERS

1 The acquisition of land, compulsorily or by agreement.

2 The creation, suspension or extinguishment of, or interference with, interests in or rights over land (including rights of navigation over water), compulsorily or by agreement.

3 The abrogation or modification of agreements relating to land.

4 Carrying out specified excavation, mining, quarrying or boring operations in a specified area.

5 The operation of a generating station.

6 Keeping electric lines installed above ground.

7 The use of underground gas storage facilities.

8 The sale, exchange or appropriation of Green Belt land.

9 Freeing land from any restriction imposed on it by or under the Green Belt (London and Home Counties) Act 1938 (c. xciii), or by a covenant or other agreement entered into for the purposes of that Act.

10 The protection of the property or interests of any person.

11 The imposition or exclusion of obligations or liability in respect of acts or omissions.

12 Carrying out surveys or taking soil samples.

13 Cutting down, uprooting, topping or lopping trees or shrubs or cutting back their roots.

14 The removal, disposal or re-siting of apparatus.

15 Carrying out civil engineering or other works.

16 The diversion of navigable or non-navigable watercourses.

17 The stopping up or diversion of highways.

18 Charging tolls, fares and other charges.

19 The designation of a highway as a trunk road or special road.

20 The specification of the classes of traffic authorised to use a highway.

21 The appropriation of a highway for which the person proposing to construct or improve a highway is the highway authority.

22 The transfer to the person proposing to construct or improve a highway of a highway for which that person is not the highway authority.

23 The specification of the highway authority for a highway.

24 The operation and maintenance of a transport system.

25 Entering into an agreement for the provision of police services.

26 The discharge of water into inland waters or underground strata.

27 Deeming consent under section 34 of the Coast Protection Act 1949 (c. 74) to have been given by the Secretary of State for operations specified in the order and subject to such conditions as may be specified in the order.

28 Deeming any such conditions to have been imposed by the Secretary of State under that section.

29 Deeming a licence under Part 2 of the Food and Environment Protection Act 1985 (c. 48) to have been issued by a specified licensing authority for operations specified in the order and subject to such provisions as may be specified in the order.

30 Deeming any such provisions to have been included in the licence by the specified licensing authority by virtue of that Act.

31 The creation of a harbour authority.

32 Changing the powers and duties of a harbour authority.

33 The transfer of property, rights, liabilities, or functions.

34 The transfer, leasing, suspension, discontinuance and revival of undertakings.

35 The payment of contributions.

36 The payment of compensation.

37 The submission of disputes to arbitration.

38 The alteration of borrowing limits.

PART 2

INTERPRETATION

39 (1) This paragraph applies for the purposes of this Schedule.

(2) "Transport system" means any of the following—

(a) a railway,

(b) a tramway,

(c) a trolley vehicle system,

(d) a system using a mode of guided transport prescribed by order under section 2 of the Transport and Works Act 1992 (c. 42).

(3) "Maintenance", in relation to a transport system, includes the inspection, repair, adjustment, alteration, removal, reconstruction or replacement of the system.

(4) The following terms have the meanings given by section 67(1) (interpretation) of the Transport and Works Act 1992 (c. 42)—

"guided transport",

"tramway",

"trolley vehicle system".

SCHEDULE 6

Section 153

CHANGES TO, AND REVOCATION OF, ORDERS GRANTING DEVELOPMENT CONSENT

Preliminary

1 (1) This paragraph applies for the purposes of this Schedule.

(2) "The applicant", in relation to a development consent order, means the person who applied for the order.

(3) "A successor in title of the applicant" means a person who—

(a) derives title to the land from the applicant (whether directly or indirectly), and

(b) has an interest in the land.

(4) "The appropriate authority" means—

(a) in a case where a Panel or the Council made the order granting development consent, the Commission;

(b) in a case where the Secretary of State made the order, the Secretary of State.

(5) "Development consent order" means an order granting development consent.

(6) "The land", in relation to a development consent order, means the land to which the order relates or any part of that land.

Non-material changes

2 (1) The appropriate authority may make a change to a development consent order if it is satisfied that the change is not material.

This is subject to sub-paragraph (13).

(2) In deciding whether a change is material, the appropriate authority must have regard to the effect of the change, together with any previous changes made under this paragraph, on the development consent order as originally made.

(3) The power conferred by sub-paragraph (1) includes power—

(a) to impose new requirements in connection with the development for which consent is granted by the development consent order;

(b) to remove or alter existing requirements.

(4) The power conferred by sub-paragraph (1) may be exercised only on an application made to the Commission by or on behalf of—

(a) the applicant or a successor in title of the applicant,

(b) a person with an interest in the land, or

(c) any other person for whose benefit the development consent order has effect.

(5) An application under sub-paragraph (4) must be made in the prescribed form and manner.

(6) Sub-paragraph (7) applies in relation to an application under sub-paragraph (4) made by or on behalf of a person with an interest in some, but not all, of the land to which the development consent order relates.

(7) The application may be made only in respect of so much of the order as affects the land in which the person has an interest.

(8) The appropriate authority must comply with such requirements as may be prescribed as to consultation and publicity in relation to the exercise of the power conferred by sub-paragraph (1).

This is subject to sub-paragraphs (9) to (11).

(9) If the development consent order was required to be contained in a statutory instrument, the power conferred by sub-paragraph (1) may be exercised only by order contained in a statutory instrument.

(10) If the instrument containing the order is made by the Commission, the Statutory Instruments Act 1946 (c. 36) applies in relation to the instrument as if it had been made by a Minister of the Crown.

(11) As soon as practicable after the instrument is made, the appropriate authority must deposit a copy of it in the office of the Clerk of the Parliaments.

(12) If a change is made to a development consent order under the power conferred by sub-paragraph (1)—

(a) the order continues in force,

(b) the appropriate authority must give notice of the change to the order to such persons as may be prescribed, and

(c) the change to the order takes effect from the date on which the notice is issued, or, if the change to the order is required to be made by order contained in a statutory instrument, the date specified in the order making the change.

(13) The power conferred by sub-paragraph (1) may not be exercised in relation to provision included in an order granting development consent by virtue of any of paragraphs 27 to 30 of Schedule 5 (deemed consent under Coast Protection Act 1949 (c. 74) and deemed licences under Food and Environment Protection Act 1985 (c. 48)).

Changes to, and revocation of, orders granting development consent

3 (1) The appropriate authority may by order make a change to, or revoke, a development consent order.

(2) The power conferred by sub-paragraph (1) may be exercised only in accordance with—

(a) the following provisions of this paragraph, and
(b) paragraphs 4 and 5.

(3) The power may be exercised without an application being made if the appropriate authority is satisfied that—
(a) the development consent order contains a significant error, and
(b) it would not be appropriate for the error to be corrected by means of the power conferred by paragraph 1 of Schedule 4 or paragraph 2 of this Schedule.

(4) The power may be exercised on an application made by or on behalf of—
(a) the applicant or a successor in title of the applicant,
(b) a person with an interest in the land, or
(c) any other person for whose benefit the development consent order has effect.

(5) The power may be exercised on an application made by a local planning authority if the appropriate authority is satisfied that—
(a) the development consent order grants development consent for development on land all or part of which is in the local planning authority's area,
(b) the development has begun but has been abandoned, and
(c) the amenity of other land in the local planning authority's area or an adjoining area is adversely affected by the condition of the land.

(6) Where the appropriate authority is the Commission, the power may be exercised on an application made by the Secretary of State if the Commission is satisfied that—
(a) if the development were carried out in accordance with the development consent order, there would be a contravention of Community law or any of the Convention rights, or
(b) there are other exceptional circumstances that make it appropriate to exercise the power.

(7) Where the appropriate authority is the Secretary of State, the power may be exercised without an application being made if the Secretary of State is satisfied that—
(a) if the development were carried out in accordance with the development consent order, there would be a contravention of Community law or any of the Convention rights, or
(b) there are other exceptional circumstances that make it appropriate to exercise the power.

(8) In this paragraph—
"Community law" means—
(a) all the rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Community Treaties, and
(b) all the remedies and procedures from time to time provided for by or under the Community Treaties;
"the Convention rights" has the same meaning as in the Human Rights Act 1998 (c. 42).

Changes to, and revocation of, orders: supplementary

4 (1) An application under paragraph 3 must be—
(a) made in the prescribed form and manner, and
(b) accompanied by information of a prescribed description.

(2) Sub-paragraph (3) applies in relation to an application under paragraph 3(4) made by or on behalf of a person with an interest in some, but not all, of the land to which the development consent order relates.

(3) The application may be made only in respect of so much of the order as affects the land in which the person has an interest.

(4) The Secretary of State may by regulations make provision about—
(a) the procedure to be followed before an application under paragraph 3 is made;
(b) the making of such an application;
(c) the decision-making process in relation to the exercise of the power conferred by paragraph 3(1);
(d) the making of the decision as to whether to exercise that power;
(e) the effect of a decision to exercise that power.

(5) Paragraphs (c) to (e) of sub-paragraph (4) apply in relation to the exercise of the power conferred by paragraph 3(1)—
(a) on an application under paragraph 3, or
(b) on the initiative of the appropriate authority under paragraph 3(3) or (7).

(6) If a development consent order is changed or revoked in the exercise of the power conferred by paragraph 3(1), the appropriate authority must give notice of the change or revocation to such persons as may be prescribed.

(7) If a development consent order was required to be contained in a statutory instrument, an order changing or revoking the development consent order made in the exercise of the power conferred by paragraph 3(1) must also be contained in a statutory instrument.

(8) If the instrument containing the order is made by the Commission, the Statutory Instruments Act 1946 (c. 36) applies in relation to the instrument as if it had been made by a Minister of the Crown.

(9) As soon as practicable after the instrument is made, the appropriate authority must deposit a copy of it in the office of the Clerk of the Parliaments.

5 (1) This paragraph applies in relation to the power conferred by paragraph 3(1) to make a change to, or revoke, a development consent order.

(2) The power may not be exercised after the end of the period of 4 years beginning with the date on which the relevant development was substantially completed.

(3) Sub-paragraph (2) does not prevent the exercise of the power—
(a) in relation to requirements imposed by the development consent order in connection with the relevant development, or
(b) to revoke the development consent order.

(4) The power includes power—

(a) to require the removal or alteration of buildings or works;

(b) to require the discontinuance of a use of land;

(c) to impose specified requirements in connection with the continuance of a use of land;

(d) to impose new requirements in connection with the relevant development;

(e) to remove or alter existing requirements.

(5) Subject to sub-paragraph (4)(a), the exercise of the power does not affect any building or other operations carried out in pursuance of the development consent order before the power is exercised.

(6) The power may not be exercised in relation to provision included in an order granting development consent by virtue of any of paragraphs 27 to 30 of Schedule 5 (deemed consent under Coast Protection Act 1949 (c. 74) and deemed licences under Food and Environment Protection Act 1985 (c. 48)).

(7) "The relevant development" is the development for which consent is granted by the development consent order.

Compensation

6 (1) This paragraph applies if—

(a) in exercise of the power conferred by paragraph 3, the appropriate authority makes a change to, or revokes, a development consent order,

(b) the case in which the power is exercised is one falling within sub-paragraph (3), (6) or (7) of that paragraph,

(c) on a claim for compensation under this paragraph it is shown that a person with an interest in the land, or for whose benefit the development consent order has effect—

(i) has incurred expenditure in carrying out work which is rendered abortive by the change or revocation, or

(ii) has otherwise sustained loss or damage which is directly attributable to the change or revocation, and

(d) the claim is made to the appropriate authority in the prescribed manner and before the end of the prescribed period.

(2) Compensation in respect of the expenditure, loss or damage is payable to the person by—

(a) the appropriate authority, if the change or revocation is made in a case falling within paragraph 3(3);

(b) the Secretary of State, if the change or revocation is made in a case falling within paragraph 3(6) or (7).

(3) The reference in sub-paragraph (1)(c)(i) to expenditure incurred in carrying out any work includes a reference to expenditure incurred —

(a) in the preparation of plans for the purposes of the work, or

(b) on other similar matters preparatory to carrying out the work.

(4) Subject to sub-paragraph (3), no compensation is to be paid under this paragraph—

(a) in respect of any work carried out before the development consent order was made, or

(b) in respect of any other loss or damage arising out of anything done or omitted to be done before the development consent order was made (other than loss or damage consisting of depreciation of the value of an interest in land).

(5) The Secretary of State may by regulations make provision about the assessment of compensation payable under this paragraph.

(6) The regulations may in particular include provision—

(a) for the reference of disputes about compensation for depreciation to, and the determination of such disputes by, the Lands Tribunal, the Lands Tribunal for Scotland, the First-tier Tribunal or the Upper Tribunal;

(b) applying, with or without modifications, a provision of or made under an Act.

7 (1) In this paragraph "compensation for depreciation" means compensation payable under paragraph 6 in respect of loss or damage consisting of depreciation of the value of an interest in land.

(2) The Secretary of State may by regulations make provision about the apportionment of compensation for depreciation between different parts of the land to which the claim for the compensation relates.

(3) The regulations may in particular include provision about—

(a) who is to make an apportionment;

(b) the persons to whom notice of an apportionment is to be given;

(c) how an apportionment is to be made;

(d) the reference of disputes about an apportionment to, and the determination of such disputes by, the Lands Tribunal, the Lands Tribunal for Scotland, the First-tier Tribunal or the Upper Tribunal.

(4) The Secretary of State may by regulations make provision for, and in connection with, the giving of notice of compensation for depreciation.

(5) The regulations may in particular include provision about—

(a) the persons to whom notice of compensation for depreciation is to be given;

(b) the status of such a notice;

(c) the registration of such a notice.

SCHEDULE 7

Section 187

POWER TO DECLINE TO DETERMINE APPLICATIONS: AMENDMENTS

Town and Country Planning Act 1990 (c. 8)

1 TCPA 1990 is amended as follows.

2 (1) Section 70A (power of local planning authority to decline to determine subsequent application) is amended as follows.

(2) At the end of subsection (4)(b) insert "or, if there has been such an appeal, it has been withdrawn".

(3) After subsection (4) insert—

"(4A) A local planning authority in England may also decline to determine a relevant application if—

(a) the condition in subsection (4B) is satisfied, and

(b) the authority think there has been no significant change in the relevant considerations since the relevant event.

(4B) The condition is that—

(a) in the period of two years ending with the date on which the application mentioned in subsection (4A) is received the Secretary of State has refused a similar application,

(b) the similar application was an application deemed to have been made by section 177(5), and

(c) the land to which the application mentioned in subsection (4A) and the similar application relate is in England."

(4) In subsection (7)(a) for "and (4)" substitute ", (4) and (4B)".

3 (1) Section 70B (power of local planning authority to decline to determine overlapping application) is amended as follows.

(2) In subsection (1) after "which is" insert "—

(a) made on the same day as a similar application, or

(b) ".

(3) After subsection (4) insert—

"(4A) A local planning authority in England may also decline to determine an application for planning permission for the development of any land in England which is made at a time when the condition in subsection (4B) applies in relation to a similar application.

(4B) The condition is that—

(a) a similar application is under consideration by the Secretary of State,

(b) the similar application is an application deemed to have been made by section 177(5), and

(c) the Secretary of State has not issued his decision."

(4) After subsection (6) insert—

"(7) If a local planning authority exercise their power under subsection (1)(a) to decline to determine an application made on the same day as a similar application, they may not also exercise that power to decline to determine the similar application."

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

4 The Listed Buildings Act is amended as follows.

5 In section 81A (power of local planning authority to decline to determine subsequent application) at the end of subsection (4)(b) insert "or, if there has been such an appeal, it has been withdrawn".

6 (1) Section 81B (power of local planning authority to decline to determine overlapping application) is amended as follows.

(2) In subsection (1) after "which is" insert "—

(a) made on the same day as a similar application, or

(b) ".

(3) After subsection (4) insert—

"(4A) If a local planning authority exercise their power under subsection (1)(a) to decline to determine an application made on the same day as a similar application, they may not also exercise that power to decline to determine the similar application."

Planning and Compulsory Purchase Act 2004 (c. 5)

7 In section 121 of PCPA 2004 (commencement) after subsection (3) insert—

"(3A) Subsections (1) and (2) are subject to subsection (3B).

(3B) Section 43 (power to decline to determine applications) (so far as not in force on the day on which paragraph 7 of Schedule 7 of the Planning Act 2008 comes into force) comes into force on such day as may be appointed by order made by—

(a) the Secretary of State in relation to England;

(b) the Welsh Ministers in relation to Wales."

SCHEDULE 8

Section 192

TREE PRESERVATION ORDERS: FURTHER AMENDMENTS

Forestry Act 1967 (c. 10)

1 The Forestry Act 1967 is amended as follows.

2 (1) Section 15 (trees subject to preservation orders under Planning Acts) is amended as follows.

(2) In subsection (1) for "consent under the order" substitute "relevant consent".

(3) After subsection (1) insert—

"(1A) In subsection (1) "relevant consent" means—

(a) in the case of trees in England and Wales, consent under tree preservation regulations;

(b) in the case of trees in Scotland, consent under the tree preservation order."

(4) In subsection (5) for the words from "application" to "thereunder" substitute "relevant application shall be entertained".

(5) After subsection (5) insert—

"(5A) In subsection (5) "relevant application" means—

(a) in the case of trees in England and Wales, an application under tree preservation regulations for consent under the regulations;

(b) in the case of trees in Scotland, an application under a tree preservation order for consent under the order."

3 In section 18 (felling directions), in subsection (5) for the words from "shall" to the end substitute "shall be sufficient authority for the felling, notwithstanding anything in—

(a) tree preservation regulations, in the case of trees in England or Wales;

(b) the tree preservation order, in the case of trees in Scotland.

4 In section 21 (courses open to person adversely affected by felling direction), in subsection (7), after "a tree preservation order" insert ", or under tree preservation regulations,".

5 In section 35 (interpretation of Part 2) at the appropriate place insert—

""tree preservation regulations" means regulations made under section 202A(1) of the Town and Country Planning Act 1990;".

6 (1) Schedule 3 (proceedings under Town and Country Planning Acts in relation to tree preservation orders) is amended as follows.

(2) In paragraph 2—

(a) for "under the said Acts" substitute "under the Town and Country Planning (Scotland) Act 1997",

(b) omit the words from "section 77" to "(for Scotland)",

(c) for "provisions of the said Acts" substitute "provisions of that Act", and

(d) omit "the said section 77 or (for Scotland)".

(3) After paragraph 2 insert—

"2A (1) Where under section 15(2)(a) an application, on being referred to the appropriate national authority, falls to be dealt with under the Town and Country Planning Act 1990, the appropriate national authority must decide the application as if it were an application for consent for the felling of trees made under tree preservation regulations.

(2) In this paragraph, "the appropriate national authority" means—

(a) the Secretary of State in relation to England;

(b) the Welsh Ministers in relation to Wales.".

(4) In paragraph 3—

(a) for "the Town and Country Planning Acts" substitute "the Town and Country Planning (Scotland) Act 1997", and

(b) for "the Town and Country Planning Act 1990 or (for Scotland) the Town and Country Planning (Scotland) Act 1997" substitute "that Act".

(5) After paragraph 3 insert—

"3A Where under section 15(3)(a) an application, on being referred to an authority who have made a tree preservation order, falls to be

dealt with under the Town and Country Planning Act 1990, the authority must decide the application as if it were an application for consent for the felling of trees made under tree preservation regulations.".

Town and Country Planning Act 1990 (c. 8)

7 TCPA 1990 is amended as follows.

8 In section 198(7) (provisions subject to which section has effect), for "This section" substitute "Tree preservation regulations".

9 In section 200(1) (tree preservation orders do not affect things done or approved by Forestry Commissioners), for "A tree preservation order does not" substitute "Tree preservation regulations do not".

10 In section 202(2) (effect of order made by Secretary of State or Welsh Ministers), for the words from "have the same effect" to the end substitute ", once it has taken effect in accordance with tree preservation regulations, have the same effect as if it had been made by the local planning authority under section 198(1)."

11 In section 206(1) (duty to plant replacement tree)—

(a) in paragraph (a), for "the order" substitute "tree preservation regulations", and

(b) in paragraph (b), for the words from "at a time" to the end of the paragraph substitute "at a prescribed time,".

12 In section 207(1) (enforcement of duties to replace trees), in paragraph (b), for "a tree preservation order" substitute "tree preservation regulations".

13 (1) Section 210 (penalties for non-compliance with tree preservation order) is amended as follows.

(2) In subsection (1)—

(a) for "a tree preservation order" substitute "tree preservation regulations",

(b) in paragraph (a) omit the "or" at the end, and

(c) after paragraph (b) insert—"or

(c) causes or permits the carrying out of any of the activities in paragraph (a) or (b),".

(3) In subsection (4), for "a tree preservation order" substitute "tree preservation regulations".

(4) In the side-note, for "order" substitute "regulations".

14 In section 211 (preservation of trees in conservation areas)—

(a) in subsection (1), for "which might by virtue of section 198(3)(a) be prohibited by a tree preservation order" substitute "which might by virtue of section 202C be prohibited by tree preservation regulations", and

(b) in subsection (4), for "a tree preservation order" substitute "tree preservation regulations".

15 In section 212 (power to disapply section 211) omit subsection (4).

16 In section 213(1)(b) (duty to plant replacement tree in conservation area), for the words from "at a time" to the end of the paragraph substitute "at a prescribed time,".

17 In section 284(3)(h)(i) (decision relating to an application for consent under a tree preservation order is an action to which the section applies), for "a tree preservation order" substitute "tree preservation regulations".

18 In section 329(3B)(i) (section 329(1)(cc) does not apply to things done in connection with tree preservation orders), for "regulations under section 199" substitute "tree preservation regulations".

19 In section 336(1) (interpretation) at the appropriate place insert—

""tree preservation regulations" means regulations under section 202A(1);".

Planning and Compensation Act 1991 (c. 34)

20 (1) Part 1 of Schedule 18 to the Planning and Compensation Act 1991 (compensation provisions that do not provide for interest) is amended as follows.

(2) After the entry for section 186 of the Town and Country Planning Act 1990 (c. 8) insert—

"Section 202E of that Act	Date— (a) any consent required by tree preservation regulations is refused, (b) any such consent is granted subject to conditions, or (c) any approval required under such a condition is refused."

(3) Omit the entries for sections 203 and 204 of the Town and Country Planning Act 1990.

SCHEDULE 9

Section 194

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.

(2) After sub-paragraph (1) insert—

"(1A) The use of any land in England which has been vested in or acquired by an urban development corporation or local highway authority for the purposes of this Part of this Act, whether the use is by the corporation or authority or by any other person, is authorised by virtue of this paragraph if it is in accordance with planning permission even if the use involves—

(a) interference with an interest or right to which this paragraph applies, or
(b) a breach of a restriction as to the user of land arising by virtue of a contract."

(3) In sub-paragraph (2) after "sub-paragraph (1)" insert "or (1A)".

(4) In sub-paragraph (4)—
(a) after "sub-paragraph (1)" insert "or (1A)", and
(b) after "works on" insert ", or use of,".

(5) In sub-paragraph (7) after "sub-paragraph (1)" insert "or (1A)".

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.

(2) After subsection (1) insert—

"(1A) Subject to subsection (3), the use of any land in England which has been acquired by a development corporation or local highway authority for the purposes of this Act, whether the use is by the corporation or authority or by any other person, is authorised by virtue of this section if it is in accordance with planning permission even if the use involves—
(a) interference with an interest or right to which this section applies, or
(b) a breach of a restriction as to the user of land arising by virtue of a contract."

(3) In subsection (2) after "subsection (1)" insert "or (1A)".

(4) In subsection (4)—
(a) after "subsection (1)" insert "or (1A)", and
(b) in paragraph (b) after "works on" insert ", or use of,".

(5) In subsection (7) after "subsection (1)" insert "or (1A)".

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 10

Section 196

FURTHER PROVISIONS AS TO THE PROCEDURE FOR CERTAIN PROCEEDINGS

Town and Country Planning Act 1990 (c. 8)

1 TCPA 1990 is amended as follows.

2 In section 77 (reference of applications to Secretary of State) for subsection (6) substitute—

"(6) Subsection (5) does not apply to—

(a) an application for planning permission referred to a Planning Inquiry Commission under section 101; or

(b) an application referred to the Secretary of State under this section instead of being dealt with by a local planning authority in England."

3 In section 78(5) (appeals against failure to take planning decisions)—

(a) for "79(1)" substitute "79(1) and (3)", and

(b) for "and 288(10)(b)" substitute ", 288(10)(b) and 319A(7)(b)".

4 In section 79 (determination of appeals under section 78) for subsection (3) substitute—

"(3) Subsection (2) does not apply to—

(a) an appeal referred to a Planning Inquiry Commission under section 101; or

(b) an appeal against a decision of a local planning authority in England."

5 In section 175 (supplementary provisions about appeals against enforcement notices) after subsection (3) insert—

"(3A) Subsection (3) does not apply to an appeal against an enforcement notice issued by a local planning authority in England."

6 In section 176(4) (determination of appeals: disapplication of section 175(3))—

(a) after "If" insert "section 175(3) would otherwise apply and", and

(b) after "subsection (3)" insert "of this section".

7 In section 195(5) (appeals against failure to give decision on application under section 191 or 192) for "section 288(10)(b)" substitute "sections 196(1A), 288(10)(b) and 319A(7)(d)".

8 (1) Amend section 196 (further provision as to appeals to Secretary of State under section 195) as follows.

(2) After subsection (1) insert—

"(1A) Subsection (1) does not apply to an appeal against a decision of a local planning authority in England."

(3) In subsection (2) for "such an appeal" substitute "an appeal under section 195(1)".

9 (1) Amend section 208 (appeals against notices under section 207) as follows.

(2) After subsection (5) insert—

"(5A) Subsection (5) does not apply to an appeal against a notice issued by a local planning authority in England."

(3) In subsection (6) for "such an appeal is brought" substitute "an appeal is brought under subsection (1)".

10 In section 322 (orders as to costs of parties where no local inquiry held) after subsection (1) insert—

"(1A) This section also applies to proceedings under this Act to which section 319A applies."

11 In section 322A (orders as to costs: supplementary) after subsection (1) insert—

"(1A) This section also applies where—

(a) arrangements are made for a local inquiry or a hearing to be held pursuant to a determination under section 319A;

(b) the inquiry or hearing does not take place; and

(c) if it had taken place, the Secretary of State or a person appointed by the Secretary of State would have had power to make an order under section 250(5) of the Local Government Act 1972 requiring any party to pay any costs of any other party."

12 (1) Amend section 323 (procedure on certain appeals and applications) as follows.

(2) After subsection (1) insert—

"(1A) The Secretary of State may by regulations prescribe the procedure to be followed in connection with proceedings under this Act which, pursuant to a determination under section 319A, are to be considered on the basis of representations in writing."

(3) In subsections (2) and (3) for "The regulations may" substitute "Regulations under this section may".

(4) In subsection (2)(a) for "such an inquiry or hearing" substitute "an inquiry or hearing to which rules under section 9 of the Tribunals and Inquiries Act 1992 would apply".

13 (1) Amend section 333 (regulations and orders) as follows.

(2) In subsection (4) for "and 319" substitute ", 319 and 319A(9)".

(3) After subsection (5) insert—

"(5A) No order may be made under section 319A(9) unless a draft of the instrument containing the order has been laid before, and approved by resolution of, each House of Parliament."

14 (1) Amend Schedule 6 (determination of certain appeals by person appointed by Secretary of State) as follows.

(2) In paragraph 2 for sub-paragraph (5) substitute—

"(5) Sub-paragraph (2) does not apply—

(a) in the case of an appeal to which section 319A applies; or

(b) in the case of an appeal under section 78 if the appeal is referred to a Planning Inquiry Commission under section 101."

(3) After sub-paragraph (9) of that paragraph insert—

"(10) Sub-paragraph (9) does not apply to references to the Secretary of State in section 319A (powers and duties of the Secretary of State in relation to the determination of procedure for certain proceedings)."

(4) In paragraph 3 for sub-paragraph (5) substitute—

"(5) Sub-paragraph (4) does not apply—

(a) in the case of an appeal to which section 319A applies; or

(b) in the case of an appeal under section 78 if the appeal is referred to a Planning Inquiry Commission under section 101.

(5A) In the case of an appeal to which section 319A applies, the Secretary of State must give the appellant, the local planning authority and any person who has made any representations mentioned in sub-paragraph (2) an opportunity to make further representations if the reasons for the direction raise matters with respect to which any of those persons have not made representations."

(5) In sub-paragraph (6) of that paragraph after "(4)" insert "or (5A)".

(6) In paragraph 6 after sub-paragraph (1) insert—

"(1A) Sub-paragraph (1) does not apply in the case of an appeal to which section 319A applies; but an appointed person may hold a hearing or local inquiry in connection with such an appeal pursuant to a determination under that section."

(7) In sub-paragraph (2)(a) of that paragraph after "2(4)" insert "or this paragraph".

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

15 The Listed Buildings Act is amended as follows.

16 In section 12 (reference of applications to Secretary of State) after subsection (4) insert—

"(4A) Subsection (4) does not apply to an application referred to the Secretary of State under this section instead of being dealt with by a local planning authority in England."

17 In section 20(4) (right of appeal in case of failure to give notice of decision) for "22(1) and 63(7)(b)" substitute "22(1) and (2A), 63(7)(b) and 88D(7)(b)".

18 (1) Amend section 22 (determination of appeals under section 20) as follows.

(2) After subsection (2) insert—

"(2A) Subsection (2) does not apply to an appeal against a decision of a local planning authority in England."

(3) In subsection (3) for "the appeal" substitute "an appeal under section 20".

19 In section 40 (supplementary provisions about appeals against listed building enforcement notices) after subsection (2) insert—

"(2A) Subsection (2) does not apply to an appeal against a listed building enforcement notice issued by a local planning authority in England."

20 In section 41(4) (determination of appeals: disapplication of section 40(2))—

(a) after "If" insert "section 40(2) would otherwise apply and", and

(b) after "subsection (3)" insert "of this section".

21 In section 74(3) (application of certain provisions in relation to buildings in conservation areas) after "82D" insert ", 88D".

22 In section 89 (application of certain general provisions of TCPA 1990) after subsection (1) insert—

"(1ZA) In the application of sections 322, 322A and 323 of that Act by virtue of this section, references to section 319A of that Act shall have effect as references to section 88D of this Act."

23 (1) Amend section 93 (regulations and orders) as follows.

(2) In subsection (4) after "75(7)" insert ", 88D(8)".

(3) After subsection (5) insert—

"(5A) No order may be made under section 88D(8) unless a draft of the instrument containing the order has been laid before, and approved by resolution of, each House of Parliament."

24 (1) Amend Schedule 3 (determination of certain appeals by person appointed by Secretary of State) as follows.

(2) In paragraph 2 after sub-paragraph (4) insert—

"(4A) Sub-paragraph (2) does not apply in the case of an appeal to which section 88D applies."

(3) After sub-paragraph (8) of that paragraph insert—

"(9) Sub-paragraph (8) does not apply to references to the Secretary of State in section 88D (powers and duties of the Secretary of State in relation to the determination of procedure for certain proceedings)."

(4) In paragraph 3 after sub-paragraph (4) insert—

"(4A) Sub-paragraph (4) does not apply in the case of an appeal to which section 88D applies.

(4B) In the case of an appeal to which section 88D applies, the Secretary of State must give the appellant, the local planning authority and any person who has made any representations mentioned in sub-paragraph (2) an opportunity to make further representations if the reasons for the direction raise matters with respect to which any of those persons have not made representations."

(5) In sub-paragraph (5) of that paragraph after "(4)" insert "or (4B)".

(6) In paragraph 6 after sub-paragraph (1) insert—

"(1A) Sub-paragraph (1) does not apply in the case of an appeal to which section 88D applies; but an appointed person may hold a hearing or local inquiry in connection with such an appeal pursuant to a determination under that section."

(7) In sub-paragraph (2)(a) of that paragraph after "2(4)" insert "or this paragraph".

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

25 The Hazardous Substances Act is amended as follows.

26 In section 20 (reference of applications to Secretary of State) after subsection (4) insert—

"(4A) Subsection (4) does not apply to an application referred to the Secretary of State under this section instead of being dealt with by a hazardous substances authority in England."

27 In section 21 (appeals against decisions or failure to take decisions relating to hazardous substances) after subsection (5) insert—

"(5A) Subsection (5) does not apply to an appeal against a decision of a hazardous substances authority in England."

28 In section 25(1) (appeals against hazardous substances contravention notices)—

(a) in paragraph (b)(v) after "principal Act" insert "and section 21A of this Act", and

(b) in paragraph (c) for "that Act" substitute "the principal Act".

29 In section 37 (application of certain general provisions of TCPA 1990) after subsection (2) insert—

"(3) In the application of sections 322, 322A and 323 of that Act by virtue of this section, references to section 319A of that Act shall have effect as references to section 21A of this Act."

30 (1) Amend the Schedule (determination of appeals by person appointed by Secretary of State) as follows.

(2) In paragraph 2 after sub-paragraph (4) insert—

"(4A) Sub-paragraph (2) does not apply to an appeal against a decision of a hazardous substances authority in England."

(3) After sub-paragraph (8) of that paragraph insert—

"(9) Sub-paragraph (8) does not apply to references to the Secretary of State in section 21A (powers and duties of the Secretary of State in relation to the determination of procedure for certain proceedings)."

(4) In paragraph 3 after sub-paragraph (4) insert—

"(4A) Sub-paragraph (4) does not apply in the case of an appeal against a decision of a hazardous substances authority in England.

(4B) In the case of an appeal to which section 21A applies, the Secretary of State must give the appellant, the hazardous substances authority and any person who has made any representations mentioned in sub-paragraph (2) an opportunity to make further representations if the reasons for the direction raise matters with respect to which any of those persons have not made representations."

(5) In sub-paragraph (5) of that paragraph after "(4)" insert "or (4B)".

(6) In paragraph 6 after sub-paragraph (1) insert—

"(1A) Sub-paragraph (1) does not apply in the case of an appeal against a decision of a hazardous substances authority in England; but an appointed person may hold a hearing or a local inquiry in connection with such an appeal pursuant to a determination under section 21A."

(7) In sub-paragraphs (2)(a) and (3)(a) of that paragraph after "2(4)" insert "or this paragraph".

SCHEDULE 11

Section 197

APPEALS: MISCELLANEOUS AMENDMENTS

Town and Country Planning Act 1990 (c. 8)

1 TCPA 1990 is amended as follows.

2 In section 78 (appeals against planning decisions and failure to take planning decisions) after subsection (4) insert—

"(4A) A notice of appeal under this section must be accompanied by such information as may be prescribed by a development order.

(4B) The power to make a development order under subsection (4A) is exercisable by—

(a) the Secretary of State, in relation to England;

(b) the Welsh Ministers, in relation to Wales.

(4C) Section 333(5) does not apply in relation to a development order under subsection (4A) made by the Welsh Ministers.

(4D) A development order under subsection (4A) made by the Welsh Ministers is subject to annulment in pursuance of a resolution of the National Assembly for Wales."

3 In section 195 (appeals against refusal or failure to give decision on application under section 191 or 192) before subsection (2) insert—

"(1B) A notice of appeal under this section must be—

(a) served within such time and in such manner as may be prescribed by a development order;

(b) accompanied by such information as may be prescribed by such an order.

(1C) The time prescribed for the service of a notice of appeal under this section must not be less than—

(a) 28 days from the date of notification of the decision on the application; or

(b) in the case of an appeal under subsection (1)(b), 28 days from—

(i) the end of the period prescribed as mentioned in subsection (1)(b), or

(ii) as the case may be, the extended period mentioned in subsection (1)(b).

(1D) The power to make a development order under subsection (1B) is exercisable by—

(a) the Secretary of State, in relation to England;

(b) the Welsh Ministers, in relation to Wales.

(1E) Section 333(5) does not apply in relation to a development order under subsection (1B) made by the Welsh Ministers.

(1F) A development order under subsection (1B) made by the Welsh Ministers is subject to annulment in pursuance of a resolution of the National Assembly for Wales."

4 (1) Section 208 (appeals against notices under section 207) is amended as follows.

(2) For subsection (4) substitute—

"(4) The notice shall—

(a) indicate the grounds of the appeal,

(b) state the facts on which the appeal is based, and

(c) be accompanied by such information as may be prescribed.

(4A) The power to make regulations under subsection (4)(c) is exercisable by—

(a) the Secretary of State, in relation to England;

(b) the Welsh Ministers, in relation to Wales.

(4B) Section 333(3) does not apply in relation to regulations under subsection (4)(c) made by the Welsh Ministers.

(4C) Regulations under subsection (4)(c) made by the Welsh Ministers are subject to annulment in pursuance of a resolution of the National Assembly for Wales."

(3) In subsection (5) for "any such appeal" substitute "an appeal under subsection (1)".

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

5 In section 21 of the Listed Buildings Act (appeals: supplementary provisions) after subsection (7) insert—

"(8) Regulations under this Act may provide for an appeal under section 20 to be accompanied by such other information as may be prescribed.

(9) The power to make regulations under subsection (8) is exercisable by—

(a) the Secretary of State, in relation to England;

(b) the Welsh Ministers, in relation to Wales.

(10) Section 93(3) does not apply in relation to regulations under subsection (8) made by the Welsh Ministers.

(11) Regulations under subsection (8) made by the Welsh Ministers are subject to annulment in pursuance of a resolution of the National Assembly for Wales."

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

6 In section 21 of the Hazardous Substances Act (appeals against decisions and failure to take decisions relating to hazardous substances) after subsection (3) insert—

"(3A) A notice of appeal under this section must be accompanied by such information as may be prescribed.

(3B) The power to make regulations under subsection (3A) is exercisable by—

(a) the Secretary of State, in relation to England;

(b) the Welsh Ministers, in relation to Wales.

(3C) Section 40(3) does not apply in relation to regulations under subsection (3A) made by the Welsh Ministers.

(3D) Regulations under subsection (3A) made by the Welsh Ministers are subject to annulment in pursuance of a resolution of the National Assembly for Wales."

SCHEDULE 12

Section 236

APPLICATION OF ACT TO SCOTLAND: MODIFICATIONS

1 Section 5(10) applies as if the reference to Part 11 of TCPA 1990 were a reference to Part 10 of the Town and Country Planning (Scotland) Act 1997 (c. 8).

2 Section 14 applies as if—

(a) in subsection (1)—

(i) the words "any of the following" were omitted, and

(ii) paragraphs (a) to (f) and (h) to (p) were omitted, and

(b) in subsection (2) for "sections 15 to 30" there were substituted "section 21".

3 Section 32 applies as if—

(a) in subsection (1)—

(i) the reference to TCPA 1990 were a reference to section 26 of the Town and Country Planning (Scotland) Act 1997, and

(ii) the words "This is subject to subsections (2) and (3)." were omitted, and

(b) subsections (2) to (4) were omitted.

4 Section 33 applies as if—

(a) in subsection (1)—

(i) for "none" there were substituted "neither", and

(ii) paragraphs (b) and (d) to (j) were omitted, and

(b) subsections (2) to (4) were omitted.

5 Section 44 applies as if—

(a) in subsection (2)(b), the words from "or" to the end were omitted,

(b) in subsection (3), references to section 5(1) of the Compulsory Purchase Act 1965 (c. 56) were references to section 17 of the Lands Clauses Consolidation (Scotland) Act 1845 (c. 19), and

(c) in subsection (6)—

(i) for paragraph (a) there were substituted—

"(a) a claim arising by virtue of paragraph 1 of the Second Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42)", and

(ii) in paragraph (b), the reference to Part 1 of the Land Compensation Act 1973 (c. 26) were a reference to Part 1 of the Land Compensation (Scotland) Act 1973 (c. 56).

6 Section 52 applies as if—

(a) in subsection (2)(c), the words from "or" to the end were omitted,

(b) in subsection (3)(b)—

(i) the reference to a freeholder were a reference to an owner, and

(ii) the reference to a mortgagee were a reference to a heritable creditor, and

(c) in subsection (11), references to section 5(1) of the Compulsory Purchase Act 1965 (c. 56) were references to section 17 of the Lands Clauses Consolidation (Scotland) Act 1845 (c. 19).

7 Section 53 applies as if—

(a) in subsection (7), the reference to chattels were a reference to moveable property,

(b) in subsection (8), the reference to the Lands Tribunal were a reference to the Lands Tribunal for Scotland, and

(c) in subsection (11), in the definition of "statutory undertakers", the reference to Part 11 of TCPA 1990 were a reference to Part 10 of the Town and Country Planning (Scotland) Act 1997 (c. 8).

8 Section 57 applies as if—

(a) in subsection (2)(b), the words from "or" to the end were omitted,

(b) in subsection (3), references to section 5(1) of the Compulsory Purchase Act 1965 were references to section 17 of the Lands Clauses Consolidation (Scotland) Act 1845, and

(c) in subsection (6)—

(i) for paragraph (a) there were substituted—

"(a) a claim arising by virtue of paragraph 1 of the Second Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42)", and

(ii) in paragraph (b), the reference to Part 1 of the Land Compensation Act 1973 (c. 26) were a reference to Part 1 of the Land Compensation (Scotland) Act 1973 (c. 56).

9 Section 58 applies as if—

(a) for subsection (6) there were substituted—

"(6) Summary proceedings relating to an offence under this section may be commenced regardless of when the contravention occurred.", and

(b) in subsection (7), the reference to section 127 of the Magistrates' Courts Act 1980 (c. 43) were a reference to section 136 of the Criminal Procedure (Scotland) Act 1995 (c. 46).

10 Section 120(6) applies as if the references to an Act included references to an Act of the Scottish Parliament.

11 Section 127(8) applies as if, for the definition of "statutory undertakers" there were substituted—

""statutory undertakers" has the meaning given by section 214 of the Town and Country Planning (Scotland) Act 1997 and also includes the undertakers—

(a) which are deemed to be statutory undertakers for the purposes of that Act, by virtue of another enactment;

(b) which are statutory undertakers for the purposes of paragraphs 9 and 10 of the First Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42) (see paragraph 10A of that Schedule)."

12 Section 128(5) applies as if—

(a) in the definition of "local authority", the reference to section 7(1) of the Acquisition of Land Act 1981 (c. 67) were a reference to section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39), and

(b) for the definition of "statutory undertakers" there were substituted—

""statutory undertakers" has the meaning given by section 214 of the Town and Country Planning (Scotland) Act 1997 (c. 8) and also includes the undertakers—

(a) which are deemed to be statutory undertakers for the purposes of that Act, by virtue of another enactment;

(b) which are statutory undertakers for the purposes of paragraphs 9 and 10 of the First Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (see paragraph 10A of that Schedule);".

13 Section 129(2) applies as if—

(a) in the definition of "local authority", the reference to section 17(4) of the Acquisition of Land Act 1981 were a reference to section 2 of the Local Government etc. (Scotland) Act 1994, and

(b) for the definition of "statutory undertakers" there were substituted—

""statutory undertakers" has the meaning given by section 214 of the Town and Country Planning (Scotland) Act 1997 and also includes the undertakers which are deemed to be statutory undertakers for the purposes of that Act, by virtue of another enactment;".

14 Section 130 applies as if—

(a) in subsection (4), the references to section 21 of the National Trust Act 1907 (c. cxxxvi) and section 8 of the National Trust Act 1939 (c. lxxxvi) were references to section 22 of the Order confirmed by the National Trust for Scotland Order Confirmation Act 1935 (c. ii), and

(b) in subsection (5), for the definition of "the National Trust" there were substituted—

""the National Trust" means the National Trust for Scotland for Places of Historic Interest or Natural Beauty incorporated by the Order confirmed by the National Trust for Scotland Order Confirmation Act 1935 (c. ii)".

15 Section 131 applies as if—

(a) in subsection (1), for ", open space or fuel or field garden allotment" there were substituted "or open space", and

(b) in subsection (12), for the words from "common" to "1981" there were substituted—

"common" includes any town or village green;

"open space" means any land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground;".

16 Section 132 applies as if—

(a) in subsection (1), for ", open space or fuel or field garden allotment" there were substituted "or open space", and

(b) in subsection (12), for the words from "common" to "1981" there were substituted—

"common" and "open space" have the same meanings as in section 131 (as modified by paragraph 15 of Schedule 12);".

17 Section 134 applies as if—

(a) for subsection (4) there were substituted—

"(4) This subsection applies to—

(a) an owner, lessee, tenant (whatever the tenancy period) or occupier of the order land,

(b) a person known by the prospective purchaser (after diligent inquiry)—

(i) to be interested in the order land, or

(ii) to have power to sell and convey the order land,

(c) a person who, if the order were fully implemented, the prospective purchaser thinks would or might be entitled—

(i) as a result of the implementing of the order,

(ii) as a result of the order's having been implemented, or

(iii) as a result of use of the order land once the order has been implemented,

to make a relevant claim.

(4A) In subsection (4)(c) "relevant claim" means a claim arising by virtue of paragraph 1 of the Second Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42).

(4B) An expression that appears in subsection (4)(b) of this section and also in section 17 of the Lands Clauses Consolidation (Scotland) Act 1845 (c. 19) has in subsection (4)(b) the meaning that it has in section 17 of that Act.", and

(b) in subsection (7)(d) the words "only in accordance with section 118" were omitted.

18 Section 137(7) applies as if the reference to Part 11 of TCPA 1990 were a reference to Part 10 of the Town and Country Planning (Scotland) Act 1997 (c. 8).

19 Section 151 applies as if—

(a) for paragraph (c), there were substituted—

"(c) section 10 of the Water (Scotland) Act 1980 (compensation for damage resulting from exercise of statutory powers)", and

(b) paragraph (d) were omitted.

20 Section 152 applies as if—

(a) in subsection (4), the reference to the Lands Tribunal were a reference to the Lands Tribunal for Scotland,

(b) for subsections (5) and (6) there were substituted—

"(5) Section 6 of the Railway Clauses Consolidation (Scotland) Act 1845 (which makes the construction of the railway subject to that Act and the Lands Clauses Consolidation (Scotland) Act 1845) applies in relation to authorised works as it applies in relation to the construction of a railway.

(6) Any rule or principle applied to the construction of section 6 of the Railway Clauses Consolidation (Scotland) Act 1845 must be applied to the construction of subsection (3) of this section (with any necessary modifications).", and

(c) in subsection (7)—

(i) the reference to Part 1 of the Land Compensation Act 1973 were a reference to Part 1 of the Land Compensation (Scotland) Act 1973, and

(ii) in paragraph (c), for "17" there were substituted "15".

21 Section 164 applies as if the references to a justice of the peace were references to a sheriff.

22 Section 165 applies as if—

(a) in subsection (4), the reference to chattels were a reference to moveable property,

(b) in subsection (5), the reference to the Lands Tribunal were a reference to the Lands Tribunal for Scotland, and

(c) in subsection (6), the reference to sections 2 and 4 of the Land Compensation Act 1961 (c. 33) were a reference to sections 9 and 11 of the Land Compensation (Scotland) Act 1963 (c. 51).

23 Section 170 applies as if—

(a) in subsection (3)—

(i) for the words from "the", where it first occurs, to "(c.49)" there were substituted "subsections (5) to (9) of section 135 of the Town and Country Planning (Scotland) Act 1997 (c. 8) (which relate to the execution and cost of certain works)", and

(ii) the words from "section 276" to the end were omitted,

(b) in subsection (4), for "section 289" there were substituted "subsection (5) of section 135", and

(c) subsection (5) were omitted.

24 Section 171 applies as if—

(a) the references to an injunction were references to an interdict, and

(b) in subsection (4), the references to the High Court and a county court were references to the Court of Session and the sheriff.

25 Section 229(5) applies as if the reference to section 233 of the Local Government Act 1972 (c. 70) were a reference to section 192 of the Local Government (Scotland) Act 1973 (c. 65).

26 Section 235 applies as if—

(a) for the definition of "building" there were substituted—

""building" has the meaning given by section 277(1) of the Town and Country Planning (Scotland) Act 1997 (c. 8);",

(b) for the definition of "land" there were substituted—

""land" includes land covered with water and any building (as defined in section 277(1) of the Town and Country Planning (Scotland) Act 1997) and in relation to Part 7 must be read in accordance with section 159;",

(c) for the definition of "local planning authority" there were substituted—

""local planning authority" means a planning authority within the meaning of section 1 of the Town and Country Planning (Scotland) Act 1997;",

(d) in the definition of "planning permission", the reference to Part 3 of TCPA 1990 were a reference to Part 3 of the Town and Country Planning (Scotland) Act 1997, and

(e) in the definition of "use", the reference to section 336(1) of TCPA 1990 were a reference to section 277(1) of the Town and Country Planning (Scotland) Act 1997.

27 Part 1 of Schedule 5 applies as if paragraphs 4 to 6, 8, 9, 16 to 32 and 38 were omitted.

SCHEDULE 13

Section 238

REPEALS

Reference	*Extent of repeal*
Forestry Act 1967 (c. 10)	In paragraph 2 of Schedule 3— (a) the words from "section 77" to "(for Scotland)", and (b) "the said section 77 or (for Scotland)".
Town and Country Planning Act 1990 (c. 8)	Section 61A(1). Section 198(3), (4), (6), (8) and (9). Section 199. Section 201. Section 202(3). Sections 203 to 205. Section 212(4). In section 284(3)(a), "for planning permission". In Schedule 1, paragraph 17. In Schedule 1A, paragraph 9. In Schedule 4A, paragraph 2(4) and (5).
Environmental Protection Act 1990 (c. 43)	In Schedule 13, paragraph 10.
Planning and Compensation Act 1991 (c. 34)	Section 6(6). In Schedule 18, in Part 1, the entries for sections 203 and 204 of the Town and Country Planning Act 1990.
Planning and Compulsory Purchase Act 2004 (c. 5)	Section 15(2)(a) and (c). Section 17(1) and (2). Section 18(4) to (6).

Reference	*Extent of repeal*
Planning and Compulsory Purchase Act 2004 (c. 5) — *cont.*	Section 42(3). Sections 46 to 48. Section 53. Section 122(5)(a). In section 122(6), "(a),". In Schedule 6, paragraph 5.
Greater London Authority Act 2007 (c. 24)	Section 36.

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12/2008 415783 19585

Footnote 07

To

Further Supplementary Written Submissions

dated 30 September 2024

in Rebuttal to

Mona Offshore Wind Limited Document

Appendix to Response to WRs: Griffith Parry, Robert Parry and Kerry James

(Document Number S_D2_3.4)

R. v. SECRETARY OF STATE FOR THE ENVIRONMENT, Ex p. LEICESTER CITY COUNCIL

QUEEN'S BENCH DIVISION (McCullough J.): January 29, 1987

Town and country planning—Compulsory purchase—Council made order to purchase land for development—Council undertook not to enforce order if owners agreed to make financial contributions to building of sewers and road—Secretary of State refused to confirm order—Meaning of section 112(1)(a) Town and Country Planning Act 1971—Whether section required compulsory acquisition to be required—Whether section required only that land be required for development—Whether improper purpose to confirm order as means of persuading owners to contribute financially to development

Leicester City Council made a compulsory purchase order for land comprising 19 plots of privately owned land. Development of the land would require the construction of new sewers and a road. The council gave a global undertaking that they would not enforce the compulsory purchase order in respect of the separate plots provided that the owners withdrew their objections to the order and made an appropriate contribution, to be determined by the city engineer, towards the cost of providing the sewers and the road. The Secretary of State refused to confirm the order on the grounds that (i) as the council had indicated that they would not compulsorily acquire the land if the objectors agreed to make financial contributions the lands were not required to be compulsorily acquired by the council for the purpose of redevelopment and (ii) the power to confirm the order would be used for an improper purpose namely as a means of persuading the owners of the land to make financial contributions. The council applied for judicial review of the decision of the Secretary of State.

Held, dismissing the application, on a true construction of section 112(1)(*a*) of the Town and Country Planning Act 1971, the section required that the land must be required and required the need for its acquisition by the local authority in order to secure its development. Consequently, the Secretary of State had not erred in law when he refused to confirm a compulsory purchase order on the grounds that where the local authority would not compulsorily acquire the land if the owners entered into an agreement with the authority to make financial contributions towards the construction of roads and sewers the land was not required to be compulsorily acquired by the local authority. Nor had the Secretary of State erred in his conclusion that if he confirmed the order in those circumstances, he would be exercising his powers under section 112(1)(*a*) of the 1971 Act for an improper purpose, namely as a means of persuading the owners of the land covered by the order to make financial contributions to the development of the land.

Case cited:

Company Developments (Property) v. *Secretary of State for the Environment and Salisbury District Council* [1978] J.P.L. 107.

Legislation construed:

Town and Country Planning Act (c.78), s.112(1)(*a*). The provisions of this section are set out at page 367, *post*.

Application for judicial review by Leicester City Council of a decision of the Secretary of State for the Environment contained in a letter dated May 24, 1985 whereby he refused to exercise his powers under section

112(1)(*a*) of the Town and Country Planning Act 1971 to confirm the Leicester City Council (Tithe Street/Beatty Road) Compulsory Purchase Order 1983. The facts are set out in the judgment of McCullough J.

N. Thomas for the applicant.
D. Pannick for the respondent.

McCULLOUGH J. This is an application for judicial review of a decision by the Secretary of State for the Environment on May 24, 1985 not to confirm the Leicester City Council (Tithe Street/Beatty Road) Compulsory Purchase Order 1983 pursuant to section 112(1) of the Town and Country Planning Act 1971 (as amended).

The land covered by the order comprised about three and a half acres made up of 19 privately owned plots about two miles east of the centre of Leicester. In addition to a cleared area the plots are variously used as coal yards, car breakers' yards, a car park, storage and garages and a number appear to be derelict and overgrown. The land is served by unmade, unadopted roads. It is bounded on the north and west by residential development and on the east and south by industrial development. It lies in the northern position of an area allocated for industrial use on the adopted local plan.

The Secretary of State refused to confirm a previous compulsory purchase order relating to 9 of the 19 plots in July 1981.

The nearest foul and surface water sewers to the land are at the junction of Tithe Street, Dorrien Road and Robinson Road, some 35 metres from the southern edge of the land. There is no spare capacity in the surface water sewerage system and development of the order land would require the construction of a new outfall sewer, about 140 metres long, to a place called Bushby Brook at a cost of about £25,000. Foul drainage of the order land could be satisfactorily achieved by construction of a linked sewer to the foul sewer at the Tithe Street, Smith Dorrien Road and Robinson Road junction at a cost of about £5,000. The provision of an estate road on the land 7.5 metres wide with two footways, each 1.75 metres wide, would cost about £45,000.

Those facts are taken from the findings of fact by the inspector who held a public inquiry on December 11, 1984 and made his report to the Secretary of State on December 24, 1984. The inspector also found that the city council had given a global undertaking that they would not enforce the compulsory purchase order in respect of the separate ownerships provided the owners withdrew their objections to the order and made an appropriate contribution, to be determined by the city engineer, towards what were called "the infrastructure costs," in other words, the cost of providing these sewers and this road. This undertaking was only given on the basis that the order was confirmed in its entirety. This is to be found in paragraph 44(xi) of the inspector's report.

The inspector's conclusions were as follows:

> 45. The order land is an unattractive area which is ripe for redevelopment and is allocated for industrial use on the adopted local plan. It can only be satisfactorily developed in a comprehensive manner and the lack of movement towards its proper development in the three and a half years since the decision on the last order,

which involved less than a quarter of the current area, demonstrates that it is unlikely to be developed in the absence of proper road access and drainage over the whole area. This latter provision is unlikely to be achieved without there being a single co-ordinating force.

46. The council's compromise undertaking would enable the comprehensive provision of road and drainage and, at the same time, allow those owners who wished to develop their land themselves to do so. This solution seems acceptable to the majority of the objectors. I would hope that the council would carry out their undertaking to Mr. S. Collin and would endeavour to assist Messrs. Durston & Son Ltd. by, for example, allowing them a car park to meet the present degree of usage. (Mr. S. Collin is the lessee of plot 15 and George Durston & Son Ltd. are the owners and occupiers of plot 10.)

The report continues:

47. I recommend that the Leicester City Council (Tithe Street/Beatty Road) Compulsory Purchase Order 1983 be confirmed.

The Secretary of State, however, reached the opposite conclusion. His decision letter is dated May 24, 1985 and paragraphs 6 to 10 read as follows:

6. The Council's case and the argument and views put forward by the objectors and their representatives have been carefully considered.

7. The Inspector accepted that the order land should be redeveloped or improved for light industrial use and that it could only be redeveloped by a "single co-ordinating force."

8. However, the Secretary of State has had regard to the Council's evidence at the Inquiry that the Council would not compulsorily acquire the objectors' land if they entered into agreement with the Council to make financial contributions towards the construction of roads and sewers (see paragraphs 23, 25–27, 31 and 44(xi)). The Secretary of State is not, therefore, satisfied that the order lands are required to be compulsorily acquired by the Council for the purposes of redevelopment and improvement.

9. Moreover, the Secretary of State takes the view that if he were to confirm this order in these circumstances, he would be exercising his powers under section 112(1)(*a*) of the Town and Country Planning Act 1971 for an improper purpose namely as a means to persuade the owners of the order land to make financial contributions.

10. Accordingly, he has decided not to confirm this order. This letter constitutes his decision to that effect.

On behalf of the city council Mr. Thomas has mounted two attacks upon this decision, one on paragraph 8 and the other on paragraph 9. He accepts that for his present application to succeed both attacks must prevail.

The last sentence of paragraph 8 contains the phrase "to be compulsorily acquired by the council." Mr. Thomas submits that the

inclusion of those words indicates that the Secretary of State has put into section 112(1)(*a*) of the Town and Country Planning Act 1971 a requirement which is not there.

That provision (in its amended form applicable at the material time) reads:

> A local authority to whom this section applies shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily (a) any land which is in their area which is suitable for and is required in order to secure the carrying out of one or more of the following activities, namely, development, redevelopment and improvement.

In my opinion the Secretary of State has not in paragraph 8 added a requirement which is not found in the section itself. If one looks at the word "required" in section 112(1)(*a*) and asks by whom the land is to be required, the answer can only be "the local authority," in this case the city council. If one asks how the requirement is to be met, the answer can only be "by compulsory acquisition." Thus, all that the Secretary of State has done is to spell out what section 112(1)(*a*) itself states. He has added no further requirement.

Although he did not phrase his submission in the way which I am about to, Mr. Thomas invited me to treat the word "required" as indicating no more than that development, redevelopment or improvement was required. He submitted that there was no need for a compulsory purchase order to be required, let alone that compulsory acquisition was required. In my opinion such a construction is inconsistent with the plain words of the section. It could not stand with the phrase "and is required in order to." In my judgment the section requires that the land must be required, and requires the need for its acquisition by the local authority in order to secure its development. So much for the second sentence of paragraph 8 of the decision letter.

There is nothing wrong with the first sentence of paragraph 8 as a statement of fact. It is wholly accurate. It is founded on the paragraphs in the inspector's report to which the Secretary of State refers. I have already read paragraph 44(xi) of the inspector's report and I will now read paragraph 23:

> In order to effect the implementation of redevelopment of the order land the council have given the undertaking that they will not enforce the compulsory purchase order in respect of the separate ownerships provided the owners would withdraw their objection to the order and make an appropriate contribution, as shall be determined by the city engineer, towards the infrastructure costs. This undertaking is limited to confirmation of the order in its entirety in order to have a basis for the infrastructure contributions.

Paragraphs 25 to 27 and 31 (which it is not necessary to read) show that the owners of all the plots save numbers 1, 6, 7, 8, 9 and 10 (all of which are at the southern edge and south-west corner of the order land) and plot 16 (which lies on its own at the north of the order land) would accept the undertaking. Thus the Secretary of State knew when he was making his decision that in all probability the plots at the heart of the order land extending, as the plan reveals, to significantly over half its

total area would not be acquired by the city council. They would remain in individual ownership and occupation, the local authority being content that they should be individually developed, provided that the undertakings were accepted, which would involve the owners being prepared to make the desired financial contribution.

It seems to me, as it must have seemed to the Secretary of State, that it could not be said that the city council required the acquisition of the majority of the order land. The undertaking was offered to the owner of every one of the 19 sites. By the city council's own case, far from requiring the acquisition of plots, it did not even want to acquire them provided the owners made the desired financial contribution towards the cost of improving the roads and sewers.

In his submissions Mr. Thomas cited a passage from the judgment of Sir Douglas Frank, Q.C. sitting as a Deputy Judge of the High Court in *Company Developments (Property) Ltd.* v. *Secretary of State for the Environment and Salisbury District Council.*[1] There Sir Douglas Frank remarked that the word "required" in the context of compulsory purchase did not mean "essential." It meant no more than that the acquiring authority thought the acquisition desirable. In my judgment the observation is not a point in the present context. As Mr. Pannick said, it goes to the question of how badly the local authority want the land. In the present case they did not want the land at all provided they got the money.

I accept Mr. Pannick's submission that in reaching the conclusion expressed in the second sentence of paragraph 8 the Secretary of State reached a conclusion which on the material before him he could properly reach. Although I have no need to do so in order to decide the case, I would go further and say, as Mr. Pannick submitted, that had the Secretary of State reached the opposite conclusion he would have made an unlawful decision.

No one has impugned or sought to impugn the motives of the city council in deciding to proceed in the way they did. This was a site which had caused a good deal of trouble, one way and another, to those living in and about it and to the city council for a number of years. The city council had directed its mind to the best way in which to alleviate the difficulties.

I am going to read part of the affidavit of Mr. Donald Smith, the city's deputy city planning officer, quoting from paragraphs 6 and 7:

> The applicant felt that there was an impasse as there had been no improvement and no development by the individual owners and moreover that it was unlikely that there would be any improvement as they would not or could not carry out any works until the necessary services, such as roads, sewers and so on, had been constructed. This of course had to be paid for. A number of the individual owners were unwilling to make such payments. The only apparent alternative available was for the applicant to acquire all the Order Land in order to enable development to be effected and for the necessary infrastructure to be established.
>
> 7. The applicant's intention was not to acquire compulsorily land for the sake of it but simply to improve, by development, the Order

[1] [1978] J.P.L. 107 at p.109.

> Land. Therefore at public and local inquiries into the purchase orders the applicant was prepared to give undertakings to those individual owners of plots on the Order Land that the applicant would not compulsorily acquire the individual parcels of land so long as they entered into agreement with the applicant to make financial contributions towards the construction of roads and sewers. This undertaking was given as otherwise the applicant would be acquiring from individual owners land within the Order Land which would then be resold to those owners to carry out the necessary development although the resale price of course would have to take into account the costs of installing the roads and sewers and other services. The applicant realised that only some of the owners would be prepared to carry out the development and to make contributions and the order needed to be confirmed if the proposed plan was to proceed.

On the city council's behalf Mr. Thomas submits that what it was doing in offering the undertaking was making a sensible short cut of the process which would otherwise have taken place, *i.e.* the city council acquiring the land compulsorily, paying compensation on the basis that the sites were served by roads and sewers which were inadequate, the roads and sewers then being improved at the expense of the city council (and its ratepayers) and the city council then being likely to sell the individual sites back to their old owners who, if willing to buy, would have had to pay rather more on account of the improvements which had taken place.

One can see the attraction of offering this undertaking and, if it was accepted and if the necessary financial contributions were forthcoming, leaving the sites in the existing ownerships throughout. It is interesting to ask what decision the Secretary of State would have been likely to reach had the undertakings not been offered. Interesting though it be, this was not the factual position which he had to consider. However, I would say that it seems possible that he would, even then, have taken the view that it was not desirable to make any compulsory purchase order, having regard to the fact that the roads and sewers could have been provided by the use of the Private Street Works Code currently to be found, I believe, in Part XI of the Highways Act 1980, or by the acquisition of a mere strip of land from each frontage.

It seems to me that the decision which the Secretary of State reached and set out in paragraph 8 is unassailable.

Mr. Thomas went on to submit that the Secretary of State was in error in what he said in paragraph 9, in that he was wrong to believe that if he were to confirm the Order he would be acting improperly because it would be used as a means of persuading the owners of the land to make financial contributions. In answer Mr. Pannick submitted that the Secretary of State must be taken to have used the word "improper" as indicating that if he were to reach a contrary conclusion he would be using his powers under section 112(1)(*a*) of the Act for a purpose not intended by Parliament. He cited authorities in support of the proposition that the Secretary of State in such circumstances would not be at liberty to use the powers under that section for an ulterior object, however desirable.

I do not think the Secretary of State's approach can be faulted. I share his opinion of the law that on the material presented to him he could properly take the view that the city council's purpose in proceeding in this way was to encourage owners to make financial contributions towards a cost which would otherwise have to be borne by the ratepayers. That being the purpose of the compulsory purchase order, it seems to me that the Secretary of State was right to take the view that to confirm it would be a wrongful exercise of his powers.

In my judgment the attack on paragraph 9 also fails and accordingly the application for judicial review must be dismissed.

Application for judicial review dismissed.

Solicitors—Field Fisher and Martineau, London WC1, Agents for A. P. Price-Jones, Leicester City Council; Treasury Solicitor.

Footnote 08

To

Further Supplementary Written Submissions

dated 30 September 2024

in Rebuttal to

Mona Offshore Wind Limited Document

Appendix to Response to WRs: Griffith Parry, Robert Parry and Kerry James

(Document Number S_D2_3.4)

SHARKEY AND ANOTHER v. SECRETARY OF STATE FOR THE ENVIRONMENT AND SOUTH BUCKINGHAMSHIRE DISTRICT COUNCIL

QUEEN'S BENCH DIVISION (Roch J.): May 11, 1990

Town and country planning—Compulsory purchase order—Town and Country Planning Act 1971, s.112(1)(b)*—Land required for planning purpose—Meaning of "required"—Whether local authority must exhaust all other powers before exercising their compulsory purchase powers—Whether confirmation of order in respect of some parts of land vitiated by decision of Secretary of State to defer decision whether to confirm order in respect of other parts*

Swallow Street enters the village of Love Green, Ivor, Buckinghamshire, from the north. It was bounded by agricultural land on both sides until about 1981. At about that time, the land immediately adjoining the west of Swallow Street was sold. It was divided into plots. The plots were occupied by gipsies who wished to settle. However, Swallow Street was within the green belt and, the South Buckinghamshire District Council, as the local planning authority, served enforcement notices in relation to all the plots of land. In respect of one of the plots, the council ultimately obtained an injunction to prevent it being used by gipsies. In 1985, the council sought authorisation under section 112(1)(*b*) of the Town and Country Planning Act 1971 to compulsorily purchase the land comprising the plots in order to secure proper planning in the area. Appeals against the enforcement notices and the council's application to confirm the purchase order were both heard at a public inquiry in 1987. The inspector recommended that the order be not confirmed. He did not consider that the council had satisfactorily shown that the only practicable means of achieving proper planning of the area was by the order, save with the possible exception of the plot to which the injunction applied: at that stage, the order was premature. However, the Secretary of State confirmed the order in respect of some of the plots, but deferred his decision in respect of those where the time for compliance with the relevant enforcement notices had yet to expire. He concluded that successful restoration of the land via the enforcement notices was unlikely in respect of the former plots since the evidence was that the owners would not, or could not afford to, restore the land even if the notices were upheld. An application was made to quash the compulsory purchase order.

Held, dismissing the application, that the word "required" in section 112(1)(*b*) of the 1971 Act means that the land is needed for the accomplishment of one of the activities or purposes set out in the section. It is not enough that compulsory acquisition is desirable. However, it does not have to be shown that the compulsory acquisition of the land is indispensable to the carrying out of the activity or the achieving of the necessary planning purpose. The local authority need not have tried to use all their other powers before resorting to compulsory purchase, provided there is evidence on which they and the Secretary of State can conclude that, without the use of compulsory purchase powers, the necessary planning purpose is unlikely to be achieved. In this case, the Secretary of State correctly identified the purpose which it was necessary to achieve in the interest of proper planning, namely to remove inappropriate and unacceptable development and to ensure that the land should not be left in a derelict or neglected state. He was then entitled to reach the conclusion, on the balance of probabilities, that the restoration of the land was unlikely unless the order was confirmed and therefore that the compulsory purchase of the land was required in the sense of it being need for the accomplishment of that purpose.

The Secretary of State was entitled to confirm the compulsory purchase order in

some cases and to defer it in others. Had he refused to confirm the order in respect of those plots in respect of which it was deferred his decision might have been overturned on the ground of irrationality.

Legislation construed:
Town and Country Planning Act 1971 (c. 78), section 112(1)(*b*). This provision is set out at pages 132–133, *post.*

Cases cited:
(1) *Company Developments (Property) Ltd.* v. *Secretary of State for the Environment and Salisbury District Council* [1978] J.P.L. 107.
(2) *R.* v. *Secretary of State for the Environment, ex p. Leicester City Council* (1988) 55 P. & C.R. 364.

Application by L. Sharkey and C. Fitzgerald under section 23(1) of the Acquisition of Land Act 1981 to quash the "South Bucks District Council (Ivor No. 1) Compulsory Purchase Order 1985" in respect of certain plots of land at Swallow Street, Ivor, Buckinghamshire. The Secretary of State for the Environment confirmed part of the order and deferred a decision on the remainder in a letter dated February 24, 1989. The grounds of the application were that such confirmation was *ultra vires* section 112(1) of the Town and Country Planning Act 1971. In particular, that:

(1) The land was not "required" for proper planning; and
(2) It was illogical and absurd to confirm the order in respect of only four plots of land which were not contiguous.

H. Sales for the applicants.
M. Kent for the first respondent.
G. Stephenson for the second respondent.

ROCH J. Originally there were two applications for judicial review in this matter. The first application in which the applicants were a Mr. Carey, a Mr. Stubbings and a Mr. Fitzgerald has been withdrawn with no order as to costs on terms of an undertaking given by counsel for the local planning authority, Mr. Stephenson, to counsel for the applicants, Mr. Sales.

The second application relates to the decision of the Secretary of State in the letter dated February 24, 1989, to confirm the South Bucks District Council (Ivor No. 1) Compulsory Purchase Order 1985 in respect of plots 1, 5, 6 and 7A at Swallow Street, Ivor, Buckinghamshire.

Swallow Street, Ivor, Buckinghamshire runs approximately on a north/south line. It enters the village of Love Green from the north. Immediately to the north of Love Green, Swallow Street was bounded on both sides by agricultural land and the evidence indicates that in and before 1981 the land to the west of that part of Swallow Street was used for grazing.

In 1981 or 1982, the land to the west of Swallow Street and immediately adjoining it was sold. In time it was divided into seven plots. Those seven plots are shown on Plan No. 5 exhibited at a public inquiry which Mr. Stephenson placed before me with the consent of the other counsel in this case. The plots are numbered 1 to 7 when proceeding in a northerly direction. At some stage plot 7 was divided into two parts and those parts were referred to as plots 7A and 7B. Some of the plots had names, for example, plot 1 was known as the "Cherry Orchard Site." Plot 2 was known as "Springfield Rose Site." Plot 3 was known as "Little Apple" and also as

"Site 1." Plot 4 was known as "Mill Place" and also as "Site 2." Plot 5 was known as "The Silver Birch" and also as "Site 3" and plot 6 was known as "Swallows Nest" and also "Site 4." Plot 7A is also referred to as "Site 5A" and plot 7B as "Site 5B."

Unless it becomes necessary to refer to a parcel of land by other than its plot number, I shall refer to each parcel of land by its plot number.

Those plots were occupied by travellers or gipsies. Often the occupant was the person who had purchased the plot. Entrances were made on to Swallow Street in most cases, although in some cases it was said that existing entrances were used. Hardstanding was put down for caravans and for vehicles, walls were built and gardens cultivated. In addition some septic tanks were constructed.

It seems that the travellers who bought and occupied those plots were travellers who wished to settle, to send their children to school, and to avoid having to move their children from one school to another. In short that the occupants were responsible and orderly people.

However, Swallow Street is within the Metropolitan Green Belt and there was and is a presumption against such development which is only to be displaced in certain exceptional cases. The second respondent, as the local planning authority, were against this unpermitted development and took steps to terminate this unauthorised use of this land.

Enforcement notices were prepared and served under section 87 of the Town and Country Planning Act 1971. In respect of some of the plots there was more than one enforcement notice.

The history in relation to plot 1 was this: that in 1984 four enforcement notices were served. In August 1985 the second respondent used its powers under section 91 of the Town and Country Planning Act 1971 to enter plot 1 and execute the work set out in four enforcement notices. Consequently, by October 8, 1985, plot 1 was unoccupied and the hardstanding, fences and vehicular access which had existed on plot 1 had been removed.

In May 1986 a High Court injunction was obtained to prevent plot 1 being used by a traveller. In August 1986 a second such injunction was obtained by the second respondent. In February 1987 further action under section 91 of the Act was taken. In April 1987 a writ was served on the then occupant of plot 1. Nevertheless by September 1987, at the time that a public inquiry was held by a planning inspector, Mr. Brock, plot 1 was being used by a traveller who had a caravan on the plot sited on hardstanding.

The inspector's report indicates that four enforcement notices were served in respect of plot 2, the first on May 15, 1985, and the remaining three on September 3, 1985. Three enforcement notices were served in respect of plot 6, two on September 5, 1985, and the third on September 20, 1985. Five enforcement notices were served in respect of plot 4, four on September 5, 1985, and the fifth on March 7, 1986. One enforcement notice was served in respect of plot 7 on August 8, 1987.

On October 8, 1985, the second respondent promulgated a compulsory purchase order under section 112(1) (*b*) of the Town and Country Planning Act 1971 seeking authorisation to purchase compulsorily the land described in the schedule which was all eight plots, that is to say, plots 1 to 6, 7A and 7B which were described in the schedule simply as plot 7: "For the purpose which it is necessary to achieve in the interests of the proper planning in the area in which the land is."

Appeals were brought against the enforcement notices by the owners of

four of the plots, namely, plots 2, 5, 6 and 7 and the second respondent applied for confirmation of the compulsory purchase order. Those two matters were taken together at a public inquiry held by Mr. Brock between September 15 and 17, 1987. The inspector's recommendations with regard to the enforcement notices are no longer material. With respect to the compulsory purchase order, the inspector said: "I recommend that the South Bucks District Council (Ivor No. 1) Compulsory Purchase order 1985 be not confirmed." The inspector's findings on which that recommendation was based were these: that there was a compelling need to keep the order land free from inappropriate development; that the land development which had taken place on the order land was inappropriate and unacceptable; that the location of the order land was such that it should not be left in a derelict or neglected state but should be put to a suitable use: that that aim was one which it was necessary to achieve in the interests of the proper planning of the area.

However, the inspector did not consider that the second respondent had shown satisfactorily that the only practicable means of achieving the necessary purpose was by compulsory purchase, save with the possible exception of plot 1; that with regard to plots 3 to 6 there was no evidence of prosecutions or attempted prosecutions for non-compliance with the enforcement notices; that with regard to plots 7A and 7B action in respect of a breach of a stop notice was apparently still being pursued and the period of compliance with the enforcement notice had not expired; that there was insufficient evidence to substantiate the second respondent's claim that the general level of fines imposed for non-compliance with enforcement notices were so low as to vitiate the value of prosecution; that as to the enforcement notices which had been appealed, it might be that the appellants would now decide to comply with the requirements of those notices within the time allowed (the inspector having increased the time allowed with regard to those notices); that the second respondent had given evidence that it would seek to use its powers under section 91 of the Act if those notices were not obeyed; that it had not been shown by the history of plot 1 that further action by the second respondent under section 91 of the Act would fail to have the desired effect in the future; that even if the past history of plot 1 was a good reason for a compulsory purchase order in respect of that plot, the purpose of which it is necessary to achieve would be unlikely to be realised by the acquisition of an individual plot in isolation. The council had at the inquiry put forward a scheme for restoration and landscaping of the seven plots and the inspector found that that scheme could not be implemented by the compulsory purchase only of plot 1.

The inspector concluded that whereas it might eventually be shown that in order to achieve the necessary purpose on planning grounds, no practicable alternative existed to the compulsory purchase of the land, the making of the order at that stage was, at the least, premature.

The Secretary of State's decision on the compulsory purchase order was to confirm the order in relation to plots 1, 5, 6 and 7A and to defer his decision on the order in respect of plots 2, 3, 4 and 7B until the period for compliance with the relevant enforcement notices relating to those plots had elapsed. Accordingly the Secretary of State exercised his power under section 132(2) of the Town and Country Planning Act 1971 to confirm the compulsory purchase order in so far as it related to plots 1, 5, 6 and 7A,

subject to certain modifications, and to postpone his consideration of the order in relation to plots 2, 3, 4 and 7B until September 28, 1989.

I was told during the hearing that no further consideration had been given to the order in so far as it relates to plots 2, 3, 4 and 7B. The reasoning of the Secretary of State was this: that he agreed with the inspector that the development which had taken place on the order land was inappropriate and unacceptable; that the implementation of the second respondent's proposed landscaping scheme was consistent with green belt policy, but was not the only purpose to which the land could appropriately be put; that the land should not be left in a derelict or neglected state. The Secretary of State went on to say that he did not accept in its entirety the inspector's conclusion that the second respondent had not demonstrated satisfactorily that the only practicable means of achieving the aim of putting the order land to a suitable rural use was by compulsory acquisition. The Secretary of State had concluded that successful restoration of the land as a consequence of upholding the enforcement notices was unlikely as respects plots 1, 5, 6 and 7A since the evidence of the owners of those plots was to the effect that they would not, or, in one case, could not afford to restore the land even if the notices were upheld. Accordingly the Secretary of State had decided to confirm the order in relation to those plots. On the other hand, because the evidence given by the owners of plots 3 and 4 suggested that the land would be restored if the enforcement notices were upheld, the Secretary of State concluded that it would be appropriate to defer his decision in relation to those plots until the period for compliance with the relevant enforcement notices had elapsed.

He reached the same decision in respect of plots 2 and 7B where the owners either expressed no view or were undecided about restoration.

The applicants say that they are aggrieved by the compulsory purchase order and make application to this court, questioning the validity of the order, under section 23(1) of the Acquisition of Land Act 1981. The ground on which the validity of the compulsory purchase order is questioned is that the authorisation of a compulsory purchase order is not empowered to be granted under section 112(1) of the Town and Country Planning Act 1971. The powers of this court on such an application are set out in section 24 of the 1981 Act. Section 24(2) provides that if on the application this court is satisfied that the authorisation granted by the compulsory purchase order is not empowered to be granted under the 1981 Act or any such enactment as is mentioned in section 1(1) of the 1981 Act, the court may quash the compulsory purchase order either generally or in so far as it affects any property of the applicant.

Two submissions are made on behalf of the applicants to make good their claim that the decision of the Secretary of State to affirm the compulsory purchase order should be quashed. The first is that the land and the compulsory purchase order were not required by the local planning authority for the purpose which it was necessary to achieve in the interests of the proper planning of the area in which Swallow Street is situated. The second that the purpose which it was necessary to achieve contemplated by the local planning authority was not merely the removal of those matters in respect of which the enforcement notices were served, but also the return of the land, that is to say the whole of the strip comprising the eight plots, to a use appropriate to the metropolitan green belt and the area, so that the land should not be left in a derelict or neglected state. The purpose con-

templated by the local planning authority could only be achieved by confirmation of the compulsory purchase order in respect of all eight plots, because the purpose went beyond the simple removal of caravans, hardstanding, walls, septic tanks and so forth. That this was so is clearly demonstrated by the local planning authority's restoration and landscaping scheme prepared, authorised and budgeted for prior to the holding of the public inquiry. Against that purpose, submits Mr. Sales, it was illogical and absurd for the Secretary of State to confirm the compulsory purchase order only in respect of four of the eight plots and in respect of four plots which were not contiguous.

The respondents answered those submissions in these ways. First "required" does not mean that the land or the compulsory purchase order are essential, nor need the use of compulsory purchase powers be a last resort. "Required" means no more than the compulsory acquisition of the land is needed for the necessary planning purpose. It is for the Secretary of State, having identified the necessary planning purpose, to make a judgment whether the land and the compulsory purchase order are required to achieve that purpose. It is not for this court to make that judgment. In the present case there was clear evidence in respect of plot 1 that the local planning authority's other powers had not been and would not be effective to achieve the necessary planning purpose. There was evidence in respect of plots 5, 6 and 7A on which the Secretary of State was entitled to conclude that the compulsory purchase of those plots by the local planning authority was required in order that the necessary planning purpose be achieved.

Section 132(2) of the Town and Country Planning Act 1971 enables the Secretary of State, where a compulsory purchase order authorising the acquisition of land under section 112 of the Act is submitted to him, to confirm the order so far as it relates to part of the land comprised in the order, if he is satisfied that the order ought to be confirmed so far as it relates to such part of the land and to give directions postponing consideration of the order so far as it relates to any other land specified in the directions until such time as the Secretary of State specifies. It is submitted on behalf of the respondents that the Secretary of State in the present case has done no more than to exercise that power given to him by section 132(2) of the 1971 Act. Consequently, unless it can be shown that the decision to confirm part of the order in so far as it relates to plots 1, 5, 6 and 7A but to postpone consideration of the order so far as it relates to plots 2, 3, 4 and 7B was unreasonable in the *Wednesday* sense these applications must fail. It is pointed out, on behalf of the respondents, that this is not a case where the Secretary of State has confirmed the compulsory purchase order in part and refused to authorise the acquisition of the other parts of the land set out in the schedule to the order. In respect of those latter parts he has merely postponed consideration to see whether the owners of those plots will comply with the enforcement notices. Consequently there is nothing illogical, perverse or absurd about the decision reached by the Secretary of State and it was a decision which is consistent with the findings of fact made by his inspector. The mere fact that the Secretary of State has reached a conclusion different from that reached by his inspector, and that the court may consider that the inspector's conclusion is to be preferred to that of the Secretary of State, is not sufficient to enable these applications to succeed.

Mr. Sales' reply on behalf of the applicants is that the power given by

section 112 of the Town and Country Planning Act 1971 is one which should be used as a last resort; that this was accepted by the Secretary of State in paragraph 6 of his decision letter where the Secretary of State says that he does not accept in its entirety the inspector's conclusion that the council has not satisfactorily shown that the only practical means of achieving the aim of putting the order land to a suitable rural use is by compulsory acquisition. The principle was also accepted by Mr. Bradford, the planning officer of the second respondent, at the public inquiry when he gave evidence to this effect:

> If an owner consistently refuses to observe his obligations under the planning legislation, and normal legal measures designed to make him do so prove ineffective, the final essential step is the making of a compulsory purchase order.

In the next paragraph of the inspector's report, paragraph 154, Mr. Bradford is recorded as saying:

> Were the order (that is to say the compulsory purchase order) not to be confirmed but the enforcement notice is upheld, the council would seek to use its powers under section 91 of the 1971 Act in the event of non-compliance with the requirement of the notice.

Consequently, says Mr. Sales, the local planning authority were conceding that they were not using their power under section 112 as a last resort and that if the compulsory purchase order was not confirmed, they would use their powers under section 91 from which it must follow that the local planning authority were not of the view that the use of such powers would be a complete waste of time.

Mr. Sales further submits that the sentence in paragraph 6 of the Secretary of State's letter is unsatisfactory in that it is not clear to what extent the Secretary of State did or did not accept the inspector's conclusion that the council had not shown that the only practical means of achieving the aim of putting the land to suitable rural use was by compulsory acquisition. Because successful restoration of the land as a consequence of upholding the enforcement notices was unlikely in respect of plots 1, 5, 6 and 7A it did not mean that the local planning authority could resort straight away to their compulsory acquisition powers under section 112. They should first await the outcome of the enforcement notice, then use their powers under section 91 of their power to obtain an injunction in the High Court or both before resorting to section 112. The power to deprive a person of his or her land should only be used where both the land and its compulsory acquisition were necessary, otherwise the use of this confiscatory power would be arbitrary.

Mr. Stephenson on behalf of the second respondent submitted that the expense and difficulty of the compulsory purchase procedures were an adequate safeguard against the arbitrary use of the power given to local planning authorities by section 112, when taken together with the need to obtain the Secretary of State's authorisation and consequently the terms of the section should not be construed in the narrow way suggested on behalf of the applicants.

Section 112(1) of the Town and Country Planning Act 1971, in so far as it is material, provides:

A local authority to whom this section applies shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily

(a) any land which is in their area and which is suitable for and is required in order to secure the carrying out of one or more of the following activities, namely, development, redevelopment, and improvement;

(b) any land which is in their area and which is required for a purpose which it is necessary to achieve in the interest of the proper planning of an area in which the land is situated.

In the present case the respondents rely upon subsection (1)(*b*).

I was referred to two authorities. The first was the case of *Company Developments (Property) Ltd.* v. *Secretary of State for the Environment and Salisbury District Council*, a decision of Sir Douglas Frank, Q.C. sitting as a deputy judge of the Queen's Bench. That was a case where the compulsory purchase order had been made under section 112(1)(*a*). During the course of his judgment, Sir Douglas Frank accepted the submission that the word "required" in a compulsory purchase situation does not mean "essential." It meant that the acquiring authority and the Secretary of State considered that it was desirable to acquire the land to secure the development of the area as a whole. The second decision was that of McCullough J. in *R.* v. *Secretary of State for the Environment, ex p. Leicester City Council* where McCullough J. held that the Secretary of State had been right to refuse to authorise a compulsory purchase order made by the Leicester City Council under section 112(1)(*a*) of the 1971 Act on the ground that the local authority had not shown that it required the land and the compulsory purchase order in order to secure the carrying out of the development contemplated. McCullough J. referred to the dictum of Sir Douglas Frank in the earlier case but said that that observation was not in point in the case that he, McCullough J., had to decide.

Nevertheless, it emerges from the earlier passages in the judgment of McCullough J. that he considered that the word "required" meant more than simply the acquisition of the land being in the view of the local planning authority and the Secretary of State desirable and that what had to be demonstrated was a need on the part of the local authority both for the land and the power to acquire it compulsorily.

Although both those cases involve consideration of section 112(1)(*a*), in my judgment the word "required" must have the same meaning in section 112(1)(*a*) and in section 112(1)(*b*). Because of the nature of the power given to local authorities by section 112, namely, to deprive the owner of his land against the owner's will, I prefer and adopt the stricter meaning of the word "required" suggested by the judgment of McCullough J. In my judgment the word means that the compulsory acquisition of the land is called for; it is a thing needed for the accomplishment of one of the activities or purposes set out in the section. However, I accept the dictum of Sir Douglas Frank, Q.C. to this extent that neither the local authority nor the Secretary of State have to go so far as to show the compulsory acquisition of the land is indispensable to the carrying out of the activity or the achieving of the necessary planning purpose. The local authority need not have tried to use all their other powers before resorting to compulsory purchase, provided there is evidence on which they and the Secretary of State can

conclude that, without the use of compulsory purchase powers, the necessary planning purpose is unlikely to be achieved.

In this case the Secretary of State in paragraph 5 of the letter of his decision correctly, in my view, identified the purpose which it was necessary to achieve in the interest of proper planning of the area in which the land was situated, namely, to remove the development which had taken place and which was inappropriate and unacceptable and to ensure that the land should not be left in a derelict or neglected state. The Secretary of State then went on to consider whether acquisition of the land by compulsory powers was required in the sense of being needed for the accomplishment of the purpose because he has concluded, on the balance of probabilities, that successful restoration of the land was unlikely in respect of plots 1, 5, 6 and 7A, unless the order was confirmed in relation to those plots. In my judgment there was evidence on which the Secretary of State was entitled to reach that conclusion. If the Secretary of State had asked himself the question, is the compulsory acquistion of this land desirable for the accomplishment of the purpose, I would have held that he had applied the wrong test.

Had the Secretary of State gone on to refuse to confirm the compulsory purchase order with regard to the other four plots, then in my opinion there may have been some prospect of his decision being overturned on the grounds of irrationality. However, that is not the decision reached by the Secretary of State and I assume, in his favour, that he will confirm the compulsory purchase order in respect of those plots if, despite the removal of caravans and so forth from those plots, those plots are not restored to some use suitable for the area but are left in a state where they become or are likely to become derelict and neglected.

I may confess in this case that had the decision been mine, I would have reached the same conclusion as that reached by the inspector, namely, that the making of the compulsory purchase order at that stage was premature. However, it is a well established principle of administrative law that such judgments are for the local authority and the Secretary of State and not for this court.

Consequently the conclusion that I have reached is that I must dismiss these applications for judicial review.

Application dismissed. Applicants to pay first respondent's costs.

Solicitors—Lance Kent & Co., Chesham, Bucks; Treasury Solicitor; Solicitor to the South Buckinghamshire District Council.

Footnote 09

To

Further Supplementary Written Submissions

dated 30 September 2024

in Rebuttal to

Mona Offshore Wind Limited Document

Appendix to Response to WRs: Griffith Parry, Robert Parry and Kerry James

(Document Number S_D2_3.4)

Queens's Bench Division: 26 April 1985

Hodgson J.

REGINA V. BRENT LONDON BOROUGH COUNCIL, *ex parte* GUNNING AND OTHERS

Education — School — Closure and amalgamation of schools — Proper procedure — Director of education's proposal to close and amalgamate schools — Education committee requiring further report — Education authority releasing proposals for public consultation — Whether authority exercising education function requiring consideration of committee report — Public given three weeks to make representations on consultative document — Education committee recommending further investigation before schools closed or amalgamated — Proposals by education authority different from original proposals — Whether consultation adequate — Whether proposals ultra vires — Education Act 1944 (7 & 8 Geo. VI, c. 31), s. 6, Sch.1, Part II, para. 7.

The Education Act 1944 provides by section 6:

". . . (2) The local administration of the statutory system of public education shall be conducted in accordance with the provisions of Parts II . . . of Schedule 1."

Schedule 1, Part II, provides, by paragraph 1, for the establishment of education committees by local education authorities.

By paragraph 7:

"Every local authority shall consider a report from an education committee of the authority before exercising any of their functions with respect to education: Provided that an authority may dispense with such a report if, in their opinion, the matter is urgent . . ."

The Education Act 1980 provides by section 12:

"(1) Where a local education authority intend — . . . (*c*) to cease to maintain any county school . . . (*d*) to make any significant change in the character, or significant enlargement of the premises, of a county school; . . . they shall publish their proposals for that purpose in such manner as may be required by regulations made by the Secretary of State and submit to him a copy of their published proposals . . ."

In July 1983, after comprehensive public consultation, a local education authority made proposals relating to the intake of pupils at secondary schools in the area in response to the steadily decreasing number of children requiring secondary education. The proposals involved no structural changes in the education system and were generally believed to have determined the organisation of secondary education in the area for the next

five years. However, in December 1983 after a political change in the administration of the local authority, the chairman of the education committee required the director of education to prepare a report for the consideration of the education committee on future education in the area having regard to likely government action to restrict local government expenditure and new information about the cost of maintaining existing secondary schools. The director's report (55/1984) contained proposals which involved the closure of certain secondary schools and their amalgamation with other schools at the end of the summer term the following year. The only information in the report relating to the cost of the proposals was the expenditure required to maintain two of the secondary schools in the area. The education committee met to consider the report and resolved that the director should be instructed to prepare a new report which, subject to the agreement of the local authority, could be released for consultation. The director prepared a short additional report (2/1984) which contained no further information as to the cost of the proposals. On 10 May 1984 the local authority met to receive and consider the education committee's "report". Apart from the director's original report and his additional report, which the education committee had had no opportunity of considering, the only material considered by the local authority on that occasion was the minutes of the education committee's meeting, which the authority treated as a "report" for the purposes of paragraph 7 of Part II of Schedule I to the Education Act 1944. The local authority resolved that consultation should take place on the basis inter alia of four proposals relating to the amalgamation and closure of certain secondary schools. The director subsequently prepared a brief consultative document which contained no information as to the cost of the proposals other than that contained in his previous reports. The document stated that it would be the subject of a report by the education committee on 5 July and that the committee's recommendations would be considered by the local authority on 12 July; that any decision of the local authority relating to the closure or amalgamation of any school would be the subject of public notices and that there would be a period for further detailed discussions with governors, staff and parents. Copies of the consultative document with covering letters were given to pupils on 24 May 1984, the day before the schools closed for the half-term holidays, to be delivered to their parents. The majority of parents did not receive the document until 4 or 5 June. Public meetings were scheduled to take place on 7 June, and written responses had to be received by the director by 15 June. At its meeting on 5 July, the education committee had before it the director's report (79/1984) on the consultation. The committee noted that the consultation procedure was wholly inadequate in that it failed properly to explain the various proposals or to give the public an adequate opportunity for discussion, and resolved to recommend that the local authority should instigate an investigation into alternative methods of dealing with the problem of falling school rolls, and that there should be no school closures or amalgamations until a report of the investigation was available. The minutes of that meeting were the only documents from the education committee which were before the local authority at its meeting on 12 July. The local authority made proposals at the meeting which involved the closure and amalgamation of four schools, but which differed in material

respects from those on which consultation had taken place. The proposals were published on 20 July for the approval of the Secretary of State purportedly in pursuance of section 12 of the Education Act 1980.

On the applicants' application for judicial review by way of an order of certiorari to quash the local authority's decisions to make the proposals, and a declaration that the decisions and the publication of the proposals were ultra vires, void and of no effect, and that the proposals were not lawfully before the Secretary of State.

Held, granting the application, (1) that before exercising an education function a local education authority was obliged under the mandatory procedural requirements of paragraph 7 of Part II of Schedule 1 to the Act of 1944, to consider a report of its education committee, unless the authority specifically decided to dispense with such a report; that failure to comply with the procedural requirements invalidated any subsequent decision of the authority in respect of an education function; that in deciding to release proposals for consultation and to make proposals relating to the closure and amalgamation of schools the local authority in the instant case was exercising education functions, but because the minutes of the education committee meetings did not constitute reports for the purposes of paragraph 7, and because the local authority did not apply its collective mind to the decision to dispense with a report, the authority's decisions to go to consultation and to make proposals were made in breach of the procedural requirements of paragraph 7, and its decisions were accordingly ultra vires and vitiated all that happened thereafter.

Associated Provincial Picture Houses Ltd v. Wednesbury Corporation 1948 1 K.B. 223; 45 L.G.R. 635, applied.

Reg. v. Liverpool City Council, ex parte the Professional Association of Teachers (1984) 82 L.G.R. 648, followed.

(2) That, on the basis that the decision to consult had been lawfully made, although the applicants had no statutory right to be consulted, nevertheless, having regard in particular to the Department of Education and Science Circular 2/1980 and the exhortations therein to local education authorities to consult with parents before making proposals relating to the closure or amalgamation of schools, they had a legitimate expectation tantamount to a legal right to be properly consulted before proposals were made; that in the present case the content of the consultative document was wholly inadequate and misleading as to the cost of the proposals, the period allowed for consultation was unreasonably short and the authority's decisions made consequent upon the consultation were therefore unlawful and fell to be quashed; and that, furthermore, since the proposals finally made by the authority were materially different from those on which consultation had taken place, the parents of school children in the area were entitled to expect and should have been given a further opportunity to be consulted and the denial of such further consultation was an additional ground for quashing the authority's decision to make the proposals and publish them.

(3) That in arriving at its decision to make proposals the local education authority had neglected to take into account the cost of the closure and amalgamation of the school which was fundamental to its decision and a matter which the local authority was required by law to take into account;

that further, the phasing of the operation was a matter of fundamental importance and something to which the local authority should have applied its mind, preferably with the advice of its education committee; and that since the local authority had failed to take into account those relevant matters, on that ground also its decision must be quashed.

Associated Provincial Picture Houses Ltd v. Wednesbury Corporation (*supra*) applied.

APPLICATION for judicial review.

By re-amended notice of application dated 23 April 1985 the applicants, Hugo Gunning, Maureen Parris and Rachel Williams, parents of school children in the London Borough of Brent, sought judicial review of (1) decisions by the local education authority, Brent London Borough Council on 12 July 1984 to propose (*a*) with effect from the end of the summer term 1985 to cease to maintain Sladebrook High School and Willesden High School and from the beginning of the autumn term 1985 to establish a new school, initially using the current premises of the former Willesden and Sladebrook schools but moving in due course to consolidate on the Doyle Gardens site of the current Willesden High School premises; and (*b*) with effect from the end of the summer term 1985 to cease to maintain South Kilburn High School and Brondesbury and Kilburn High School and from the beginning of the autumn term 1985 establish a new school, initially using the current premises of Brondesbury and Kilburn High School and South Kilburn premises but moving in due course to consolidate on the current Brondesbury and Kilburn High School premises. (2) The publication on 20 July 1984 by the local authority of notices in respect of the proposals purportedly pursuant to section 12(1) of the Education Act 1980.

The relief sought was (a) an order of certiorari to quash the decisions of the local authority dated 12 July 1984 and each of them; (b) a declaration (i) that the decisions were ultra vires, void and of no effect; and (ii) that the publication of the proposals on 20 July 1984 was ultra vires, void and of no effect and that the proposals were not lawfully before the Secretary of State for Education and Science; and (c) such further and other relief as might be necessary or appropriate.

The applicants' grounds for relief were, inter alia, that the decisions taken on 12 July 1984 and the publications thereof were ultra vires, void and of no effect for the following reasons: (a) At its meeting on 10 May and 12 July 1984 the local authority had before it from the education committee nothing amounting to a report within the meaning of paragraph 7 of Part II of Schedule 1 to the Education Act 1944, as defined by Forbes J. in *Reg. v. Liverpool City Council, ex parte Professional Association of Teachers* (1984) 82 L.G.R. 648. No consideration was given by the full council of the local authority as to whether or not the matter was urgent.

Furthermore, no reasonable education authority could sensibly have regarded the matters before it as being sufficiently urgent to dispense with such a report. The decision-making process culminating on 12 July 1984 was flawed from the outset. (b) There was no consultation on the published proposals. Furthermore, such consultation as there was on earlier and different proposals was wholly inadequate and required the parents of the schools affected to complete the consultation process and submit written representations over a period of, at most, 10 days. (c) At its meeting on 12 July 1984 the local authority (i) had failed either to consider or lawfully dispense with a report of its education committee; and/or (ii) had failed sufficiently or at all to inform itself in relation to the proposals that it decided upon and the implications of them and in particular the expenditure required on works at Willesden and at Brondesbury and Kilburn Schools; and/or (iii) purported to pass a resolution of which no due notice had been given and which was not lawfully before the local authority. (d) The local authority had failed to exercise its discretion as to the timing of the publication of the proposals under section 12(1) of the Education Act 1980 or to recognise that it had such a discretion. (e) Alternatively, no local education authority, properly having regard to all relevant matters and no others including the fact that the statutory two month period for the lodging of objections to such proposals coincided almost entirely with the school holiday period, could have decided to publish the proposals on 20 July 1984 and ought instead to have delayed the publication to such a date as would have afforded to persons affected by the proposals a reasonable and proper opportunity to consider and respond to them.

The facts are stated in the judgment.

STEPHEN SEDLEY Q.C. and RICHARD ALLFREY for the applicants.

DAVID TURNER-SAMUELS Q.C. and PHILIP ENGLEMAN for the local authority.

Cur. adv. vult.

HODGSON J. In this case the applicants seek judicial review of the two decisions of the respondent local authority made on 12 July 1984 and the publication on 20 July 1984 of notices in respect of those decisions. The decisions arrived at by the local authority were to make proposals under section 12 of the Education Act 1980 which, if approved by the Secretary of State, would effectively result in the closure of two schools, Sladebrook High School and South Kilburn High School, and their amalgamation with and accommodation upon the premises of two other schools. The full

details of the proposals are set out in form 86A, as is the relief sought.

The details are:

" 1. (a) With effect from the end of the summer term 1985 to cease to maintain Sladebrook High School and Willesden High School and from the beginning of the autumn term 1985 establish a new school, initially using the current premises of the former Willesden and Sladebrook Schools but moving in due course to consolidate on the Doyle Gardens site of the current Willesden High School premises; (b) with effect from the end of the summer term 1985 to cease to maintain South Kilburn High School and Brondesbury and Kilburn High School and from the beginning of the autumn term 1985 establish a new school, initially using the current premises of Brondesbury and Kilburn High School and South Kilburn premises, but moving in due course to consolidate on the current Brondesbury and Kilburn High School premises. 2. The publication on 20 July 1984 by Brent London Borough Council of notices in respect of the said proposals purportedly pursuant to section 12(1) of the Education Act 1980."

The relief sought is certiorari to quash and two declarations: (1) that the said decisions and each of them were ultra vires, void and of no effect: and (2) that the publication of the said proposals on 20 July 1984 was ultra vires, void and of no effect and that the said proposals were not lawfully before the Secretary of State.

The applicants are all parents of children attending schools affected by the proposals and are all ratepayers in the London Borough of Brent. Mr Gunning is a parent governor of Brondesbury and Kilburn High School and chairman of the Parent Teachers and Friends Association of that school. Mrs Harris is a parent governor of Sladebrook High School and chairwoman of a community nursery which was due to transfer to Sladebrook School in 1985/1986. Mrs Williams is a parent governor at South Kilburn Community School.

The grounds upon which relief is sought are set out in detail and at length. In brief, they amount to allegations of breaches of the requirements of the Education Acts 1944 and 1980, failure to have proper consultation before reaching the decisions and unreasonable behaviour on the grounds set out in *Associated Provincial Picture Houses Ltd v. Wednesbury Corporation* [1948] 1 K.B. 223; 45 L.G.R. 635. There has, it is alleged, been both "procedural impropriety" and "irrationality" of the three category headings set out in the speech of Lord Diplock in *Council of Civil Service Unions v. Minister for Civil Service* [1985] A.C. 374.

The documentation in the case is enormous, stretching to well over 700 pages. To compress the facts into manageable size is not easy. But before I come to consider the way in which these decisions came to be made and the proposals published, it may be helpful if I set out the statutory framework and some of the conclusions as to the

law at which I have arrived.

The local authority is an outer London Borough and is also a local education authority for the purposes of the Education Act 1944 (section 30 of the London Government Act 1963). The local authority is therefore both an organ of local government and the authority for education but, whilst its composition in both these capacities is the same, its functions in each are different and differently circumscribed.

Section 6 of the Act of 1944 provides:

> "(2) The local administration of the statutory system of public education shall be conducted in accordance with the provisions of Parts II . . ." of Schedule 1.

Paragraph 1 of Part II of Schedule 1 provides for the setting up of education committees by local education authorities. Paragraph 5 provides:

> "Every education committee of a local education authority shall include persons of experience in education and persons acquainted with the educational conditions prevailing in the area for which the committee acts."

Paragraph 6, so far as is material, provides:

> "At least a majority of every education committee of a local education authority shall be members of the authority: . . ."

Clearly, therefore, education committees are autonomous, expert committees containing a mandatory body of expertise. The expert nature of such committees is emphasised by the fact that up to half of the members can be co-opted. In *Reg. v. Liverpool City Council, ex parte the Professional Association of Teachers*, (1984) 82 L.G.R. 648, at p. 654 Forbes J. commented that an education committee was an "important and expert committee" and "one of those very rare committees which does not consist entirely of elected members".

Paragraph 7 of Part II of Schedule 1 is of importance in this case. It reads:

> "Every local education authority shall consider a report from an education committee of the authority before exercising any of their functions with respect to education: Provided that an authority may dispense with such a report if, in their opinion, the matter is urgent . . ."

In that paragraph, the use of the wide word "functions" shows that the legislature intended that education committees should play an important part in all aspects of decision making by a local education authority. Its purpose is clearly to ensure that every local authority which proposes to take a step properly called a function, in its capacity as a local education authority, shall first consider a report of its statutory specialist committee, subject of course to the proviso. The making of a report is a function of the education committee alone and in making it the education committee is acting autonomously. A local education authority cannot call in the report,

alter or rewrite it, although of course it does not need to agree with it. Further, the report which is required to be considered must be one relating to the function which the local education authority is considering exercising. The use of the word "consider" shows that the legislature intended a report to be given full and proper weight. The word used is not "receive".

The question arises whether the procedural requirement as to consideration of a report is mandatory or discretionary. A passage in *de Smith's Judicial Review of Administrative Action,* 4th ed. (1980), p.142, was adopted by Templeman J. in *Coney v. Choyce* [1975] 1 W.L.R. 422, at p. 433. That passage reads:

> "The law relating to the effect of failure to comply with procedural requirements resembles an inextricable tangle of loose ends. Although it would be futile to attempt to unravel or cut all the knots, it is possible to state the main principles of interpretation that the courts have followed and to illustrate their application in a few settings. When Parliament prescribes the manner or form in which a duty is to be performed or a power exercised, it seldom lays down what will be the legal consequences of failure to observe its prescriptions. The courts must therefore formulate their own criteria for determining whether the procedural rules are to be regarded as mandatory, in which case disobedience will render void or voidable what has been done, or as directory, in which case disobedience will be treated as an irregularity not affecting the validity of what has been done (though in some cases it has been said that there must be 'substantial compliance' with the statutory provisions if the deviation is to be excused as a mere irregularity). Judges have often stressed the impracticability of specifying exact rules for the assignment of a procedural provision to the appropriate category. The whole scope and purpose of the enactment must be considered, and one must assess the 'importance of the provision that has been disregarded and the relation of that provision to the general object intended to be secured by the Act'. In assessing the importance of the provision, particular regard may be had to its significance as a protection of individual rights, the relative value that is normally attached to the rights that may be adversely affected by the decision and the importance of the procedural requirement in the overall administrative scheme established by the statute. Furthermore, much may depend upon the particular circumstances of the case in hand. Although 'nullification is the natural and usual consequence of disobedience', breach of procedural or formal rules is likely to be treated as a mere irregularity if the departure from the terms of the Act is of a trivial nature, or if no substantial prejudice has been suffered by those for whose benefit the requirements were introduced, or if serious public inconvenience would be caused by holding them to

be mandatory, or if the court is for any reason disinclined to interfere with the act or decision that is impugned."

I have also been referred to *Professor Wade's Administrative Law*, 5th ed. (1982) at pp. 218 and 219.

Mr Sedley emphasises the following features in this case, which he submits point to the procedural requirement in paragraph 7 being mandatory, so rendering a failure to consider a report a "procedural impropriety" within the third of Lord Diplock's categories of grounds for control of administrative action by judicial review. First, local education authorities are not specialist bodies and need have no specialist component, whereas education committees are specially appointed and have a mandatory expert content. The clear purpose, it is submitted, is to protect the public interest in the proper function of the state educational system. Second, the fact that paragraph 7 contains a carefully conditioned power to dispense with a report strongly suggests that barring such dispensation, consideration of a report is intended to be a mandatory procedural requirement. Third, he points to the similarity between the requirement of a report and the categories of due inquiry and consultation which have been held to require mandatory compliance. Fourth, it is submitted that it is difficult to see what countervailing interest would be jeopardised if the court insisted upon due compliance with paragraph 7. Fifth, a decision taken without consideration of a report is irretrievable. A process is set in motion for which no machinery of correction exists.

I would add also that the very terms of paragraph 7 are cast in a mandatory form. If that is right, it follows that if an authority performs a function without considering or dispensing with a report, it acts without power and the authority's ultra vires conduct will vitiate subsequent acts which are dependent upon or flow from the ultra vires act.

Even if paragraph 7 is not mandatory, it seems to me to be clear that proper consideration of a report is something which, on the principles in *Associated Provincial Picture Houses Ltd v. Wednesbury Corporation* (*supra*), a local authority must take into account in reaching a decision to exercise a function. If there is no report before a local education authority on a matter upon which it reaches a decision, then, subject to the proviso, the local education authority would be failing to take into account a factor which it ought to take into account. If there is a report, it must be accepted as such and given full consideration as part of the material upon which the local education authority reaches its decision. Put another way a local authority is ordinarily without power to exercise a function as a local education authority unless it receives and considers a report of an education committee on the exercise of that function.

In *Reg. v. Liverpool City Council, ex parte the Professional Association of Teachers* (*supra*) Forbes J. said, at p. 654:

"The matter does not end there, however, because it is quite plain, it seems to me, that the purpose of paragraph 7 of this schedule was to make certain that the education authority did not take any decision before having the views of this important and expert committee in relation to the exercise of any of its functions. Mr Goudie accepts that the appointment of associations to negotiating bodies is one of the functions of a local education authority. So, in deciding whether or not this association was to be accorded negotiating rights, the city council was performing one of the functions of a local education authority. It is quite plain that it cannot do that without first considering a report. There is argument about what a report consists of. Of course, it is very important to decide what a report is. In my view, in the context of this paragraph of this schedule, a report from an education committee should either make some recommendation or should at least, if not making a recommendation, set out the arguments for and against a particular course of action. Otherwise I cannot see how the local education authority are to inform themselves adequately of the views of the education committee before performing one of their functions."

The proviso in paragraph 7 permits a local education authority to dispense with a report. In order to come to a decision to dispense with a report, it must first form an opinion that the matter is urgent and thereafter decide that, accepting the fact of urgency, it will dispense with the report.

Pararaph 39(1) of Part VI of Schedule 12 to the Local Government Act 1972 provides:

"Subject to the provisions of . . . (any enactment in this Act) all questions coming or arising before a local authority shall be decided by a majority of the members of the authority present and voting thereon at a meeting of the authority."

There must, before a report is dispensed with, be, in my judgment, a collective consideration of the demands of time and the question of what would be gained and what lost by dispensing with a report. There must be a conscious decision to proceed or not proceed in the absence of a report.

Section 12 of the Education Act 1980 replaced the provisions previously contained in section 13 of the Education Act 1944 and provides for the establishment, discontinuation and alteration of schools and the procedures to be adopted by the local education authority. Subsection (1) of section 12, so far as is relevant, provides:

"Where a local authority intend— . . . (*c*) to cease to maintain any county school . . . (*d*) to make any significant change in the character, or significant enlargement of the premises, of a county school . . they shall publish their proposals for that purpose in such manner as may be required by regulations made by the Secretary of State and submit to him a copy of the published

proposals."

It is clear that the adoption of a proposal involves the discharge of a function by a local education authority. Mr Sedley submits that a decision to go to consultation at an early stage is also the discharge of a function. Paragraph 7 of Part II of Schedule 1 to the Act of 1944 therefore applies and, subject to the urgency proviso, a report of an education committee must be considered. I consider later whether a decision to consult and the subsequent consultation are functions.

Since the 1970s, the local authority have been faced with a steadily decreasing number of children requiring education. Over the years, a number of reports have been made to the Brent Education Committee. On 14 April 1980 the committee resolved that a consultative document should be prepared. In May 1980 one was published. It stretches to 38 pages. It is a very full and detailed document. It allowed something between one and two months for comments to be made and there was wide public consultation. After considering a report from the education committee, the local authority published proposals which, because they did not comply with the guidelines in Departmental Circular 2/1981, were not approved by the Secretary of State.

I have been referred by both counsel to the report of a study by the Audit Commission, "Obtaining Better Value in Education: Aspects of Non-Teaching Costs in Secondary Schools". It was made after the events with which I am concerned were over but, in it, the criteria for proper consultation were considered in great detail. With many of those criteria the 1980 consultative document complied.

Following this refusal, a working party was set up and a further consultative document was published in February 1982. This document took a slightly different form because, in addition to encouraging "organisations" to hold meetings, there was also included a questionnaire which individuals were invited to answer. This document also was a very full examination of the situation and set out the arguments for and against a number of options in some detail. Between one and two months was allowed for responses. That period the education committee called a "short time".

As well as the individual responses, further public consultations, on the evidence, took place. The education committee considered the outcome of this consultation. It reported to the local authority. The recommendation was that there should be no structural changes in the education system in the borough, but that the number of pupils admitted per form should be reduced from 30 to 25. This recommendation was considered by the local authority and accepted.

There can be no doubt that, following this decision, the general belief in the borough was that the education organisation of the borough was settled for the next five years or so. Mr Gunning, a parent governor of Brondesbury and Kilburn, understood, along with

the other governors, that this amounted to a guarantee, which is what Mr Grace, the applicants' solicitor, called it, erroneously, in his affidavit. In his report 55/1984, Mr Parsons, the director of education, himself wrote that "the decisions of the education committee" — it was in fact a decision of the local authority — "should have resolved the matter for the foreseeable future".

Considering the delicate political balance in the borough, these expectations were perhaps over optimistic. In December 1983, there was a political change of administration (due, I believe, to one councillor's change of allegiance) and a new chairman of the education committee was appointed. One of his first acts was to direct the newly appointed director of education

> "to prepare a report for the education committee to reconsider the question of the future of education within the borough in the likelihood of further Government action to restrict local government expenditure and in the further light of fresh information about the cost of maintaining the existing secondary school stock."

More importantly, in the opinion of the director, "the downward trend in numbers requiring secondary school places was continuing". Although the director so deposes, I do not accept that this was any new consideration at all. The forecast reduction was common knowledge. The 1983 consultative document began:

> "The years between now and 1995 will see the population of the secondary schools drop to its lowest point between 1988 and 1990 . . ."

Further, in his own report (55/1984) the director wrote: "The downward trend in secondary rolls was identifiable by the late 1970s in Brent".

It follows that the two things in the light of which the director of education was being asked by the chairman of the education committee — not the education committee itself — to report were (1) the likelihood of further Government action to restrict local government spending and (2) fresh information about the cost of maintaining the existing secondary school stock. These are both purely economic considerations. They are none the worse or better for that of course, but it is perhaps important to bear this fact in mind when considering what happened thereafter.

Chronologically, what happened next took place within the now majority coalition. In February or March Councillor Johnston, the Liberal Group representative on the education committee, had discussions with the director of education. Councillor Hammond was told that Councillor Johnston "was told of the falling school rolls" and "of the timetable necessary to give effect to the school courses" It is perhaps pertinent to note again that the "falling school rolls" was a fact commonly known and that no consideration had yet been given, except by a Conservative/Liberal caucus, to the closure of

schools.

The leader of the council, who is also leader of the Conservative members on the council, and the leader of the Liberal Group on the council have sworn affidavits. From them it is clear that the two ruling groups had decided to push through school closures in September 1985 if they could. They were advised that proposals for closure would have to be published by July 1984 at the latest. This timetable and its rigid implementation coloured everything that followed.

The annual meeting of the council took place on 2 April 1984. This is the meeting which fixes the annual schedule of council and committee meetings. Because, for some reason, the ruling coalition was unable to secure the election of a Conservative mayor, it was impossible to decide the annual schedule. Accordingly, it was necessary to defer the presentation of the amended schedule of meetings to the Policy Resources Urgency Subcommittee, which met on 18 April. At that meeting, the ruling coalition proposed a schedule of meetings to comply precisely with the director's report 55/1984. That report had not as yet, of course, been published at all. It was a report to the education committee and no one else. They had not even seen it. The education committee was required by the decision of the urgency subcommittee to meet on 2 May.

As we are now approaching the stage to which attack is mounted against the local authority on grounds both of procedural impropriety and irrationality, it will be as well if I remind myself of some general principles which Mr Turner-Samuels has seen that I do not forget.

I hope I do not need reminding that the onus of establishing error is upon the applicant; nor that in this case there is no allegation of mala fides, none having been made. Nor, I again hope, do I need reminding that a local education authority is not a tribunal, nor that there is nothing here resembling a lis inter partes. I hope that I appreciate by now, great though the temptation may sometimes be, that I am not concerned with the merits of an administrative decision.

I entirely accept that a local education authority is a political organ in which the party system legitimately operates and anything I appear heretofore to have said which might indicate an opposite view is purely historical. I agree entirely that the standard of good administration set by the court should not be such as to be a deterrent to the bona fide and legitimate exercise of an authority's powers and duties. It is quite vital in the exercise of the jurisdiction of this court to keep to the forefront of one's mind that it is only the most extreme examples of bad administration which can successfully attract judicial review of a decision otherwise lawfully arrived at. It follows that the court should not strain to find technical defects which will make the obligations imposed on local authorities

unworkable.

I agree that, in relation to such issues as to whether there has been a report or consultation or whether any other requirement of the law has been complied with, it is, pre-eminently in a matter of local government, the substance of matters not the form which is important. Nor should one, and I do not, forget that councillors are in possession of local knowledge.

I am further exhorted to bear in mind that we all have high and perhaps unreasonable expectations in relation to the education of our children and that we may, in the context of education, be unrealistic. That may be true, but I am here primarily concerned not with the rationality or otherwise of the parents' response to consultation, but with the question whether the way in which they were consulted was fair.

I am asked to accept that "that which required political judgment in an unpopular field requires courage which is not unnecessarily to be deterred". In the context of this case, that seems to me to be inapplicable. That which pleased not the parents might be caviar to the ratepayers or vice versa.

The director prepared his report and it was submitted to the education committee on 2 May. His remit was to take into account the "likelihood" of further Government restrictions on Government spending and "fresh information" as to the cost of maintaining the existing secondary school stock. The first of these two remits seems to have been entirely ignored by the director. The second and much more potentially specified remit relates to "fresh information", which presumably means "fresh" since summer 1983. The previous decision of the local authority was in July 1983. The remit by the new chairman was propounded in December 1983. The only "fresh information" about the cost of maintaining the existing secondary school stock appearing between these two dates, so far as is revealed in the evidence, was

> "the new cause of concern [which] is the report from the director of development [dated September 1983] which identifies significant problems with particular education premises which will require heavy expenditure if they are to remain serviceable for the next 10 to 15 years."

In his report the director added that

> "these are not a matter of normal decorations, nor really related to the low levels of maintenance in recent years. They do however require the committee to consider whether it is most sensible to continue to provide the number of post-eleven plus places it needs spread across all the existing premises."

The report of the director of development was attached to the report as Appendix C. It shows expenditure needed at Brondesbury and Kilburn as £206,800 and at Neasden High School at £100,000. These are round figures of course. The report contains no

information about the many other schools in the area.

Appending that appendix to the report is the only "cost" consideration given to the problem by the director of education in his report. No information was given as to the expenditure which would be needed if any other school were retained, though I fail to see how such information would be any more difficult to glean than that in relation to the two specifically mentioned school sites.

In paragraph 12 the director draws the obvious financial conclusions from the factual information as to cost. Paragraph 12.1 reads:

> "Given the new information about the expenditure now seen to be required to put the premises of Neasden and Brondesbury and Kilburn into good order, the committee might wish to take the opportunity to close one or both of these schools, while at the same time accepting a small increase in the number of forms of entry at other schools.
>
> 12.2. If it were decided to close Brondesbury and Kilburn all the pupils could be accommodated by the existing South Kilburn school. Closure of Neasden School could be met by pupils being accommodated at Sladebrook.
>
> 12.3 Such a move could be seen to be advantageous both educationally and financially. Educationally the advantages would arise from the elimination of two small schools, one operating from five sites, and the creation of slightly stronger units elsewhere. The financial benefits would derive from capital receipts if the sites were sold, and, over time, from a reduction in running costs and lower teaching and non-teaching costs; overall the closure would lead to slightly lower unit costs for secondary pupils."

I do not think I need refer to the report of the director further until we reach his consideration of "The Future". He first of all sets out the "new matters" which are said to have negated the decision which was to have "resolved the matter for the foreseeable future". They are, in addition to the two which I have mentioned, the change of administration.

These reiterate the remit to the director by the new chairman of the education committee. None is further elaborated in the report, which goes on to place before the education committee a number of options including maintenance of the status quo.

The options presented to the education committee were carefully considered in the report. They can be most easily followed in the note provided by the applicants. The important things to note about the options presented are, I think, these: (1) of the five options, the first was the maintenance of the status quo and the fourth and fifth were options never seriously considered by anyone. Option c(ii) which was to re-establish 30 as the size of form entry was not seriously considered either; (2) of the remaining options, (b) and (c)

both (not unnaturally in view of the only "cost" information ever available) recommended the closure of Neasden and Brondesbury and Kilburn; (3) option (c), called radical and disruptive in the report, would have added South Kilburn and John Kelly Boys to the list of closures: (4) there was no option offered which involved the closure of Sladebrook; and (5) it was only in the "radical and disruptive" option that South Kilburn, a modern and purpose-built school, which in option (b) was not only to continue to exist but to take in Brondesbury and Kilburn School, appeared as an option for closure.

I appreciate that in so summarising the options suggested in the report, I may appear to be equating a school with its topographical location. I do not intend to do so, but the reality of education in a London borough surely gives to the site upon which the school in fact exists an immense importance. No doubt on amalgamation each school takes with it into the amalgamation its own identity, but that can only really happen if the amalgamation is immediate, once for all and not gradual.

The director's report 55/1984 dealt with the timetable for consultation and decision making. In paragraph 21.2, it was stated:

> "(i) A decision of intent needs to be taken at education committee on 2 May 1984. This could then go to the special council meeting on 10 May 1984."

It is notable that no such decision was in fact taken.

> "(ii) Special meetings of governing bodies and parents meetings would need to be arranged. These could be completed by 15 June. (iii) Consultation with teaching and non-teaching members of schools together with other consultation procedures outlined in the local agreement would need to take place in this period. (iv) A final report containing the results of the consultations and the proposals would need to go to the special education committee on Thursday, 5 July then to a special council meeting on 12 July."

The "local agreement" in (iii) is a reference to an agreement with the Teachers Association, which does not affect this case.

The director was therefore dividing the process into four periods, the last of which dealt with the two dates at which the final report would have to be considered to meet the postulated deadline. At paragraph 27.5 the education committee were asked to respond to three questions:

> "(a) Do they wish to reaffirm their decision of 1983? or (b) do they wish to adopt one of the five lines of action set out in this report either as suggested or amended? or (c) do they wish the director of education to explore other approaches?"

Paragraph 27.6 provided:

> "Should the education committee decide to adopt (b) above action would then follow as detailed in paragraphs 12 and 22."

Paragraphs 22.1 and 22.2, under the heading of

"implementation", read:

> "1. If the education committee adopt either option (b), (c) or (e) a key issue for discussion with both teaching and non-teaching unions will be the method of implementation and an appointment procedure. 2. If the education committee adopt either option (b) or option (c) implementation could be either by simple closure or by merger. Though simple closure might be suitable in the case of option (b) it would not be recommended in the case of options c(i) or c(ii). Closure, though easy to administer, can have traumatic affects on both staff and pupils."

At an early stage, the actual mechanics of closure and amalgamation were being given, and properly given in my judgment, a great importance.

The director's report 55/1984 was considered by the education committee on 2 May 1984. The meeting was attended by 10 co-opted members. Councillor Hammond is recorded as having attended as an observer, as is Councillor Lacey. Councillor Hammond appears to have forgotten this, and Councillor Lacey makes no mention of the meeting in his affidavit.

The minutes of that meeting are very short, and despite Mr Turner-Samuel's efforts to persuade me to the contrary, they seem to me to be perfectly plain of meaning. Under the heading of "The Future Pattern of Secondary Education in the London Borough of Brent", the minutes record:

> "The committee debated the report from the director of education, No. 55/84 which set out various options for re-organising secondary education in Brent. RESOLVED: that this special education committee instructs the director to prepare a new report after consultation with the Teachers Panel of the Schools J.C.C., to provide options which can ensure a viable comprehensive system of secondary education in Brent and which, subject to the agreement of the council, can be released for consultation keeping to the final dates for the timetable proposed in report 55/84."

It is, I think, obvious that what the education committee was doing was responding to the questions posed by the director by answering only the third and answering that question in the affirmative. Mr Turner-Samuels submits that what that resolution means is that the education committee was deciding that the matter should go direct to the local authority after the director had had the consultation with the Teachers' Panel and he says that the fact that the new report had to be capable of being released for consultation, "keeping to the final dates for the timetable" shows that that was the intention.

...I cannot so read it. The reference to "final" dates seems to me to be a quite clear reference to the dates 5 and 12 July in the final paragraph (iv) of the director's report. If all the dates were

considered immoveable, then the adjective "final" would have been quite unnecessary. It is to be noted that of the 10 co-opted members only one, Mr Adams, voted against the motion. It seems to me obvious that what the education committee was doing was deciding to take no decision pending consideration of the new report which would, when prepared, be presented again to the education committee. The reason for mentioning the timetable seems to me obvious, namely, to ensure that the new report was quickly prepared.

It was after that meeting that things, in my judgment, began to go wrong. With commendable expedience, but with scant regard to his remit, the director had his consultation and prepared not a new, but a short additional report, the director's report 2/1984. The Teachers' Panel agreed that the options they thought should be considered were

> "the closure of the present South Kilburn, Brondesbury and Kilburn and Aylestone Schools and the opening of a new community school on the present Aylestone site with a designated maximum intake size of 8 form entry (200)."

It is noticeable that no consideration had been given to the cost of any of these options in the director's report 55/1984, nor was the omission in any way remedied. The only cost information remained that concerning the great cost of retaining Neasden and Brondesbury and Kilburn.

On 4 May 1984 the summons to attend the special council meeting of 10 May was issued. Item 6 read:

> "To receive and consider the report of the special education committee held on 2 May 1984 (to follow)."

In accordance with standing orders, notice of a motion in the name of Mr Anderson was given. Its effect would have been the retention of the status quo.

The local authority had before it at the meeting of 10 May the minutes of the education committee meeting on 2 May, the director's report 55/1984 and the director's report 2/1984 which had never been seen by the education committee. Mr Turner-Samuels submits that the minutes of the education committee constituted a report.

I am quite unable to see how they could be so construed, no matter how one might strain to give effect to administrative procedure. What the education committee clearly had decided was not to report at that stage. On 10 May I hold without hesitation that the local authority had no report before it from the education committee.

Mr Turner-Samuels points to evidence which he says shows that everyone knew that there was urgency about the matter. Whether that be so or not and it is certainly true that the ruling coalition were trying to push closures through before September, there is no suggestion anywhere that the local authority applied its collective mind to the decision whether or not to dispense with a report from the education committee under paragraph 7 of Part II of Schedule 1

to the Education Act 1944.

At the meeting, the local authority resolved that consultation should take place on the basis of eight proposals. Of these proposals, 1 to 4 were specific proposals for amalgamation and closures. Other proposals were framed in general policy terms.

The decision to go to consultation and the contents of the consultation document were thus decided without the education committee giving the matter any consideration whatsoever and without the 10 co-opted members having any say in the matter at all and partly on the basis of a report not even seen by the education committee. That decision meant that considerable expenditure would be incurred in the preparation and dissemination of the consultative document, that meetings of school governors would have to be convened and serviced by the council and that public meetings would have to be arranged and held; and that a report on the results of the consultation would have to be prepared for submission to the education committee on 5 July 1984.

Mr Turner-Samuels submits that in coming to the decision to consult and thereafter going through these procedures, the local authority was not exercising functions within the meaning of paragraph 7 of Part II of Schedule 1 to the Act of 1944. He submits that "function" in that paragraph is limited to exercising power or duty or making a statutory proposal; to making a decision which will affect matters finally and, I presume, irreversibly.

I am unconvinced by this, as it seems to me, wholly artificial meaning of the word "function". The content and conduct of consultation on an educational matter seem to me to be pre-eminently matters upon which the legislature considered it necessary, save in circumstances of exceptional urgency, that a local authority should have the advice and assistance of its expert education committee.

The first ground upon which the local authority's conduct is attacked is that it decided to consult and subsequently carried out the consultation without considering a report from an education committee and was consequently in breach of paragraph 7 of Part II of Schedule 1 to the Act of 1944 which is cast in mandatory terms and which I have held to be a mandatory requirement. In my judgment that attack succeeds. I hold that the local authority were guilty of grave procedural impropriety in doing what they did.

It is conceded that if I am right in these two conclusions as to the need for a report and the failure to consider one, there being none to consider, then it follows that everything that was done thereafter was ultra vires and must be quashed. If I am wrong then I must go on to consider what happened thereafter because many more attacks are mounted by the applicants.

On the basis that the decision to consult was lawfully made, the next attack made upon the local authority is that the period allowed

for consultation was far too short, particularly in respect of the parents, and that the consultative document was wholly inadequate as a basis for consultation. In its evidence, the local authority make a great deal of the wide dissemination of the consultative document eventually produced and the number of meetings held to consider it. That there was wide dissemination the applicants do not dispute, but they contend that you cannot cure an inadequate consultation by giving it wide dissemination; nor lack of time by efficient distribution in that too short time. I am of the opinion that the applicants are, in this respect, clearly correct.

The parents had no statutory right to be consulted, but that they had a legitimate expectation that they would be consulted seems to me to be beyond question. The interest of parents in the educational arrangements in the area in which they live is self-evident. It is explicitly recognised in the legislation (see, for example, section 6 of the Education Act 1980.). The legislation places clear duties upon parents, backed by draconian criminal sanctions. Local education authorities habitually do consult on these matters. In 1980 and 1983 this local authority itself had had comprehensive consultations which had led to the decision in 1983 to retain all school sites. Local education authorities are exhorted by the Secretary of State to consult, and the results of the consultations are something which he takes into account. On any test of legitimate expectation, it seems to me that these parents qualify (see *Council of Civil Service Unions v. Minister for the Civil Service* (*supra*)).

If I am right that the parents had this legitimate expectation, then they have the same legal right to consultation as they would have had if it had been given to them specifically by statute.

Before I deal with the form of consultation needed, I should refer to an argument propounded by Mr Turner-Samuels. He submits that because consultation is not a statutory requirement, a local authority can, at its risk, choose its own area of consultation and with that choice (however limited it may be), the courts should not interfere. The reasoning behind this argument is that the local authority can take the risk that the Secretary of State will not be satisfied with the consultation and refuse to approve the proposal, and that he is in a better position to judge whether the consultation is adequate than is the court.

If this argument is based upon a distinction between a statutory duty to consult and a duty to fulfil a legitimate expectation, it does not appeal to me. I do not think that the requirements differ in the two situations. If it is an argument urged in support of a submission that I should, in the exercise of my discretion, refuse to interfere even though I was convinced that consultation was inadequate, it does not appeal either. In *Port Louis Corporation v. Attorney-General of Mauritius* [1965] A.C. 1111, the Privy Council did not hesitate to lay down the principles upon which the adequacy or

otherwise of a consultation should be judged. That case was concerned with the alterations of boundaries of towns, districts or villages, an exercise plainly comparable with the closure and amalgamation of schools. I need do no more here than refer to the headnote.

> "*Held*, (1) that, since section 73(1) of the Local Government Ordinance, 1962 did not prescribe any set machinery for consultation, the nature and the object of consultation must be related to the circumstances which called for it; that in the situation to which section 73(1) related, a proposal to alter boundaries which must not be made until after consultation with the local authority concerned, the local authority must know what alterations of boundaries were proposed and must be given a reasonable opportunity to state their views or point to problems or difficulties, either orally or in writing, and must be free to say what they thought, but that they were not entitled to demand assurances as to the probable solutions of problems likely to arise from the alterations . . ."

Mr Turner-Samuels puts what I think is much the same argument in a different way relying upon sections 68 and 99 of the Education Act 1944. He submits that so long as a local education authority have done something which amounts to consultation, decision as to its adequacy should be left to the Secretary of State and the exercise of the powers given to him in those two sections. Section 68 gives the Secretary of State powers where local education authorities "have acted or are proposing to act unreasonably with respect to" the exercise of a power or performance of a duty. Section 99 gives the Secretary of State powers where there has been a failure by a local education authority to discharge a duty. He relies upon the decision of the Court of Appeal in *Cumings v. Birkenhead Corporation* [1972] 1 Ch.12; 69 L.G.R. 444. It is not a case I find easy to understand, but I do not think that I need deal with this argument in any greater detail because it is conceded that if there was a legal requirement that there should be consultation and that requirement was not fulfilled, then, in taking a relevant decision, the authority would be acting unlawfully or ultra vires.

I have heard submissions from both counsel as to what amounts to adequate consultation with parents, school governors and other interested parties, when the subject is school closures and amalgamations. Some assistance can be gained from circulars issued by the Department of Education and Science. In Circular 2/1980, one finds, at paragraph 5.1:

> "The Secretary of State regards it as very important that the local education authority should seek the views of local people when planning is still at a formative stage. He therefore expects that appropriate consultations will have taken place with parents, the teaching and other staff and governors of the school or schools

concerned and the teacher associations, before proposals are made under sections 12, 13 or 15. He would also expect such consultations to have taken place within the 12 months immediately before publication of proposals."

In March 1984 a circular in draft form was issued for consultation. This became Circular 4/1984. In paragraph 10, one finds the following passage:

"As was made clear in paragraph 5 of Circular 2/80 and paragraph 22 of Circular 2/81, the Secretary of State regards the adequacy of consultation as a material factor in considering proposals which fall to him to decide. He remains firmly committed to this policy. He acknowledges that local circumstances sometimes impose a tight timetable but he is, nevertheless, convinced that local people have a right to sufficient information to make a judgment on the need for, and purpose of, proposals at a stage when their views can influence the final decision of the proposers. Experience shows that inadequate consultation frequently results in a greater volume of objections."

The use of the word "proposals" in that paragraph should be noted. It is not, of course, to be confused with statutory proposals made under section 12 of the Education Act 1980, but it does point to the desirability that consultation should be upon proposals of some specificity into which those consulted can get their teeth, whether the proposals be framed in general policy terms or in terms of specific options.

Mr Sedley submits that these basic requirements are essential if the consultation process is to have a sensible content. First, that consultation must be at a time when proposals are still at a formative stage. Second, that the proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response. Third, to which I shall return, that adequate time must be given for consideration and response and, finally, fourth, that the product of consultation must be conscientiously taken into account in finalising any statutory proposals.

Following the decision to consult taken at the meeting on 10 May, the director prepared a consultative document which, because of the colour of its paper, became known as the gold document. A cursory reading of this document shows how sparse of information and reasoning it is in comparison with the 1980 and 1983 documents. Nor was any attempt made to include in the report material from the previous documents which could easily have been done.

After a brief history, although one occupying a fifth of the entire document, there are set out in paragraph 2 what are said to be the reasons for reconsideration. The first is a restatement of what has gone before. It reads:

"Apart from the likelihood of further Government action to restrict local government expenditure, there was certain new

information about the cost of maintaining the existing secondary school stock."

Those consulted were given no inkling at all as to what that new information was. We now know. It was nothing more than the estimate as to the high cost involved in the adoption of any proposal which included the retention of the school buildings at Neasden and Brondesbury and Kilburn. Those consulted were denied even this tiny piece of information as to cost. Worse, they were in my view misled into believing that, in arriving at the specific proposal, the local authority had had before it information of that sort as to the whole of the school stock.

Having dealt briefly with the matter of falling school rolls, the document plunges straight into the options which the local authority had at their meeting decided to canvass. The one thing that emerges with extreme clarity is that the closure of the school premises at Sladebrook was not on the cards. Had those consulted known of the cost situation at Brondesbury and Kilburn, it would have been equally obviously assumed that retention of those buildings was not on the cards either.

Having dealt with the mechanics of consultation and having given a brief glance at the tertiary system, the option of maintaining the status quo and the future use of premises no longer required for schools, the document deals with the "Timetable for Action" in this way:

> "The result of the consultation exercise will be the subject of a report to the special meeting of the education committee on 5 July 1984, whose recommendations will be submitted to a special meeting of the council on 12 July 1984. Decisions resulting in a proposal to close, amalgamate or reorganise any of the secondary schools will be the subject of public notices, which are required in accordance with the Education Act 1980. There will be a period for further detailed conversations with governors, teaching and non-teaching staff and parents, and objections may be addressed to the Secretary of State for Education and Science with whom rests the final decisions relating to any proposed reorganisation involving our schools. If the Secretary of State approves any proposals for changes, there would then be very detailed discussions with governors, staff and parents on their implementation."

It seems to me that there is contained in that paragraph a clear promise that there will be, after the projected meeting of 12 July, a further opportunity for consultation. A "conversation" can only take place if there is more than one person involved. It is clear on the evidence that this promise was not fulfilled, the response of officials being that, after publication, all they could do was accept objections.

In my judgment that document, on the most favourable criteria to

the local authority, was wholly inadequate, and it is clear from the evidence that, at the public meetings, no real attempt was made to flesh it out. On the question of cost it was, in my judgment, positively misleading. In suggesting in paragraph 2 that there was any new information since 1980 as to falling rolls it was also misleading; there was none. The trend had been present and known for years. In making the specific proposal in paragraphs 1 to 4, it was also, in the light of the events which followed consultation, positively misleading.

Mr Turner-Samuels seeks to flesh out the gold document by reference to the previous consultation documents. That seems to me to be an impossible submission. Whilst it might have some relevance to the consideration given to the proposals by the governing bodies of schools, it can have none in respect of ordinary parents. It is clear from the evidence that the manifest inadequacy of this document was deeply resented by the parents, a resentment which was vociferously and publicly expressed.

In the director's report 77/1984 to the education committee for its meeting on 5 July, the director wrote:

> "1.3.4. The objections to these proposals of the council which pointed to change have two main components: (1) An expressed belief that the consultation was totally inadequate because of the short time set aside for it, because of the nature of the exercise and because of the brevity of the consultation document. (2) A range of specific comments/objections which I itemise in the following paragraphs."

The dissemination of the gold document was first forecast in a bulletin on 17 May 1984. Under cover of a letter dated 23 May sufficient copies for all parents were sent to all schools. The first paragraph of that letter read:

> "I have sent you sufficient copies of the above documents for all parents. I shall be grateful if you will ensure that one copy, together with the correction slip, is given to each pupil/student to take home before school breaks for the mid-term holiday. I regret the shortness of the time which you are being given for this exercise, but the time scale set by the council makes it unavoidable."

24 May was the day before half term, and it was unrealistic of the director to expect the "pigeon post" method of distribution to be effective before half term. The vast majority of parents who were not school governors did not in fact receive the document until 4 or 5 June. The six public meetings were scheduled for and took place on 7 June. Written responses had to be received by the director by 15 June.

For consultation upon the fundamental change of a policy thought, with reason, to have been finally decided upon for the foreseeable future in the previous year, the period for consultation seems to me to have been wholly inadequate.

In *Lee v. Department of Education and Science* (1967) 66 L.G.R. 211, where the length of time to be given to governors by the Minister under section 17(5) of the Education Act 1944 was in issue, Donaldson J. held that anything less than one month in term time would be unreasonably short. The matter which had to be considered in that case was very much simpler and came within a far narrower compass than was here the case, where fundamental changes in the whole structure of education in Brent were in issue.

I am left in no doubt that the consultation process was woefully deficient, both as to content and timing and, on that ground also, in my judgment, any decision based upon the consultation should be struck down.

But Mr Turner-Samuels has submitted that this conclusion is wrong because any defects in consultation can and will be cured by the procedures for objections and their consideration provided for by statute in section 12(3), (4) and (6) of the Education Act 1980.

In support of this at first sight ambitious submission he relies upon the decision of the Privy Council in *Calvin v. Carr* [1980] A.C. 574. That was the case where it was held that unfairness displayed at a hearing of a domestic tribunal could be cured by fair appellate proceedings. The Privy Council distinguished the judgment of Megarry J. in *Leary v. National Union of Vehicle Builders* [1971] Ch. 34.

I do not myself think that one can apply to purely administrative procedures of the sort with which we are concerned principles of fairness developed in the quasi-judicial field of domestic disciplinary proceedings. But, if that is wrong, given the choice, I prefer the reasoning of Megarry J. In *Leary,* Megarry J. laid down what he called a general rule. He said (*supra*), at p. 49:

> "If the rules and the law combine to give the member the right to a fair trial and the right of appeal, why should he be told that he ought to be satisfied with an unjust trial and a fair appeal? . . . . As a general rule . . . I hold that a failure of natural justice in the trial body cannot be cured by a sufficiency of natural justice in an appellate body."

The Privy Council in *Calvin v. Carr* (*supra*) at p. 593 held that that was too broadly stated and that there were intermediate cases in which it was for the court

> "in the light of the agreements made, and in addition having regard to the course of proceedings, to decide whether at the end of the day, there has been a fair result, reached by fair methods, such as the parties should fairly be taken to have accepted when they joined the association."

The reference to a "fair result" and "fair methods" seems to me to be contrary to fundamental principles of English administrative law. It is not the fairness or reasonableness of the result which can be attacked (save in cases of irrationality), but the legality of the

proceedings. Further, as Mr Sedley points out, such a principle would shut out the control of administrative action by the courts in granting judicial review by way of prohibition because it could be contended that the court should hold its hand until the appeal procedures had been completed.

In my judgment, the correct formulation is that of Megarry J., (*supra*), which allows only for rare exceptions, such as the rustication of stripping undergraduates. But, in any event, in the circumstances of this case, the statutory procedures are themselves fatally flawed by the inadequacies of the previous consultation.

Following the consultation the director wrote his director's report 79/1984 upon it for the education committee. There is no doubt that most of those who made any comments at all, whether at the public meetings or otherwise, were opposed to any closure. It is equally clear that there was a generally expressed belief that the consultation was totally inadequate because of the short time set aside for it, because of the nature of the exercise and because of the brevity of the consultation document. There were also a range of specific comments or objections which the director itemises. There was not a great deal of response to the specific options in the paper recorded, which, as the paper contains no mention of any reasoning behind them, is perhaps not wholly surprising but it is interesting to note one specific recommendation which emerged in respect of one option:

> "concern that the Aylestone premises could not sensibly accommodate the pupils at present going to Aylestone, Brondesbury and Kilburn and South Kilburn and/or as well as the community school aspect."

The director's own views were effectively unchanged as a result of consultation.

On 5 July the education committee met. They had before them the director's report on the consultation. It also had before it a motion in the name of Councillor Mrs Powell. It was in these terms:

> "Following consultation on the reorganisation of secondary education in Brent and taking into account the results thereof, we resolve to publish the following proposals: (i) that we cease to maintain Brondesbury and Kilburn High School and South Kilburn High School; (ii) that we establish and maintain a new six-form entry school, initially to operate on the sites of the existing schools in (i) above and as soon as practicable to be transferred on to the site of the existing Brondesbury and Kilburn High School; (iii) that we cease to maintain Willesden High School and Sladebrook High School; (iv) that we establish and maintain a new six form entry school, initially to operate on the sites of the existing schools in (iii) above as soon as practicable to be transferred on to the Doyle Gardens (part of the) site of the existing Willesden High School; (v) that the staff for the new

schools in (ii) and (iv) above should be drawn as far as possible from the existing staff of the schools respectively in (i) and (iii) above; (vi) that the size of form entry be reaffirmed as 25; (vii) that the foregoing proposals be given effect from September 1985; and (viii) that the officers report in due course on the future of any buildings becoming surplus as a result of the above."

When and by whom these proposals were formed does not appear. It does not seem that the director of education was consulted. The proposals are, in a number of respects, surprising and it is difficult, if not impossible, to see how they arise from any previous proposals or from any input from consultation.

The only financial information available was in respect of the cost involved in retaining Neasden and Brondesbury and Kilburn (in total over $300,000) and, less specifically, Willesden. Yet the Powell proposals involved the retention of all three of these sites. Save perhaps for the decision not to move any schools to Aylestone, the proposals bore little or no relation to the proposals previously considered. They would involve the closure of two modern and purpose-built schools at Sladebrook and South Kilburn. There was no information available as to the comparative cost of these proposals in relation to any of the previously considered specific proposals and the moves of South Kilburn to Brondesbury and Kilburn and Sladebrook to Willesden High School were merely stated to be "as soon as practicable".

A number of votes were taken and, in the final result, a substantive motion was evolved which was carried by 17 votes to 12, with two abstentions. Of the co-opted members, six voted for the motion, two (presumably the nominees of the ruling parties) voted against and one abstained. That motion was in these terms:

"Following consultation on the reorganisation of secondary education in Brent, and taking into account the results thereof, we resolve to publish the following proposals: (i) that the size of form entry be reaffirmed as 25; (ii) that we agree that the main concern of this council must be the quality of education; (iii) that we note with concern that the consultation procedure conducted by this council over school closure plans was totally inadequate. It failed to properly explain all options and did not give parents and the community adequate opportunity for discussion; (iv) that this committee recommends to the council to instigate an investigation into the alternative methods of tackling the problem of falling rolls, with a view to producing a long term policy on the structure of education in Brent, and that there be no school closures or amalgamations until the investigation reports."

The meeting lasted for nearly six hours and there must have been a great deal of debate, expression of opinion and comment upon the proposals, particularly, one would expect, from the co-opted "expert" members. The scheme of the legislation plainly, I think,

contemplates that after such a meeting the education committee would report to the local education authority dealing not only with the eventual decision but also with the pros and cons of the other proposals considered.

A week later at the meeting of the local authority on 12 July what happened was as follows:

> "The council received the minutes of the special meeting of the education committee held on 5 July which were presented by the chairman, Councillor Steel. In presenting the report Councillor Steel moved the following amendments to the decisions of the committee which were seconded by Councillor Mrs Powell."

After lengthy debate and a number of amendments the local authority purported to resolve to publish Mrs Powell's proposals with some additions, which are immaterial to this case.

Paragraph 7 of Part II of Schedule 1 to the Act of 1944 plainly requires that there should be a report from an education committee. An education committee is an autonomous body and it must, I think, make a decision to report before anything emanating from it becomes a report. Clearly, no decision of that sort was made on 5 July. It is of course perfectly true that a report can take many forms and a decision to adopt and forward as its report the report, say, of the director of education might amount to a report, but that is not what happened in this case.

Mr Turner-Samuels urges me to look at the substance not the form and certainly, unlike what was before the local authority on 10 May, one can cobble together from all the information eventually presented to the local authority an amalgam which would contain enough together to form a report, but I do not think that an exercise of that sort can be said to amount to a report when the education committee clearly did not decide to make one.

I find, therefore, that there was no report before the local authority at its meeting on 12 July. If that finding is correct, then it is conceded that any further action was ultra vires. If I am wrong, then I must go on to consider what happened after 5 July, on the assumption that what was before the local authority on 12 July amounted to a report.

Mr Sedley submitted that what happened at and before the meeting was procedurally wrong and that the statutory provisions contained in Schedule 12 to the Local Government Act 1972 and the local authority's own standing orders made under paragraph 42 of the Schedule and subject to the provisions of the Act, had not been complied with. At the hearing that submission and the local authority's response to it came within a fairly narrow compass. However, yesterday, I was asked to hear further argument from Mr Turner-Samuels based upon standing orders to which I had not previously been referred and detailed and complicated consideration was given by both counsel to the procedural requirements of the

standing orders. I do not, I think, need to burden this judgment with a detailed attempt to construe the local authority's standing orders within their statutory framework. It would be a lengthy and detailed exercise and one in which I might easily get some detail wrong or perhaps make more fundamental errors. In the event, because of the other findings I have already made and am about to make, a decision on this point would in no way affect the result of this case and both counsel are content that I should not embark upon the exercise. If there is an appeal from my decision, then it is accepted that it will be open to the applicants to take any points on the procedure followed at the meeting of 12 July which they may wish to do.

I turn then to consider the question whether, in arriving at its decision to make proposals, the local authority neglected to take into account matters which they ought to have taken into account. It is submitted that there are two such matters, cost and the phasing of the reorganisation.

In *Reg. v. Hillingdon Health Authority, ex parte Goodwin* [1984] I.C.R. 800, Woolf J., citing a passage from the judgment of Cook J. in a New Zealand case, *CREEDNZ Inc. v. Governor-General* [1981] 1 N.Z.L.R. 172, pointed to a distinction between relevant matters which an authority is entitled to take into account and those which it is required to take into account.

Clearly, both the matters I have mentioned were relevant to the proposals which the authority decided to publish. The question arises therefore whether, in Woolf J.'s words (*supra*) at p. 808E, they were "so fundamental that it was quite wrong, as a matter of law, for the authority not to have regard to" them.

So far as the cost of the proposals is concerned, I am satisfied that, for a number of reasons, cost was fundamental to the decision and was a matter which the authority was required by law to take into account. My reasons for reaching this conclusion are these. First, that the cost of proposals is actually spelt into the statutory framework. Section 76 of the Act of 1944 provides that authorities:

> "shall have regard to the general principles that, so far as is compatible with . . . the avoidance of unreasonable public expenditure, pupils are to be educated in accordance with the wishes of their parents."

By section 6(3)(*a*) of the Act of 1980 the duty of an authority in respect of parental preferences does not apply "if compliance with the preference would prejudice . . . the efficient use of resources"; . . . Second, as I have sought to show, the authority's own chosen ground of consultation was financial. The leader of council himself deposed:

> "our first political objective was to ensure that the previous administration's proposals for an increase in rate did not take effect. We were able to secure this primary objective by 7 March 1984 when the council meeting of that date resolved that there

would be no change to the rate. Thereafter we pursued the issue of school closures as a matter of priority and urgency."

Third, I think that it is really self-evident that one of the major concerns was the saving of cost.

Did the local authority consider cost at all? The only fact about the cost of either of the options proposed before the authority was the information in Appendix C to the director's report, the vague information about the dilapidated state of the Pound Lane annex at Willesden and the self-evident fact that to close any school will result in a saving. The proposals involved the retention of all the sites where substantial expenditure was known to be necessary and the sacrificing of two modern and purpose-built schools. There is no indication that comparative costs were ever considered and no effort was made to discover what cost would be incurred if other sites than those mentioned were retained. It is, I think, really quite clear that no consideration of cost was attempted because and only because everything was subordinated to the attempt to get the proposals approved for implementation in September 1985. I hold that, in failing to take into account the question of cost, the local authority failed to take into account something which by law they were required to take into account.

The second *Wednesbury* ground is less self-evidently one which the local authority was required to take into account. It is not disputed that all the authority decided, as recorded in its minutes, was that the transfer of pupils should be done as soon as practicable and that the way in which the transfer should take place was left for the director of education to decide. Nor can it, I think, be denied that the way in which it was decided pupils should be transferred would have caused extreme disruption to the pupils then at Sladebrook and South Kilburn. Over a period of three years, pupils at these two schools would have no new pupils arriving and a steady stream of older pupils crossing over to the new premises until at last a tiny and under-privileged rump remained.

It may well be that there will be no other practical way in which transfers can be achieved and it is certainly not for me to express any opinion one way or the other, but it does seem to me that the phasing of the operation was a matter of fundamental importance and something to which the local authority should have applied its mind preferably with the advice of its education committee. It did not. I hold, therefore, that on these two *Wednesbury* grounds also, the local authority's decision must be quashed.

A further attack is made by Mr Sedley upon the decision. It is that the proposals decided upon by the local authority were so radically different from the specific proposals adumbrated in the gold paper that, even had consultation on the gold paper been adequate, it was still necessary to have further consultation on the new proposals.

The local authority chose to consult both on broad principles and

on specific proposals. I have already stated my opinion that no one looking at the gold paper or attending the meeting could have thought that the eventual statutory proposals were even on the cards. The proposals, as I have also shown, would have quite dramatic effect upon the pupils of the schools involved. I consider that parents had a legitimate expectation that, if entirely different proposals were made from those consulted upon, they would be again consulted. Of course, the authority were in no way constrained to adopt without modification one or more of the proposals actually contained in the gold paper, but there is in my judgment a limit and, in this case, that limit was exceeded. There was in my opinion no consultation upon the statutory proposals and for that reason also they must be struck down.

It will be cold comfort to the authority that, in my judgment, the remaining two criticisms which the applicants make fail. The first is that the local authority failed to exercise their discretion as to the timing of the publication of their proposals or to recognise that they had such a discretion. The publication of the proposals on 20 July was designed to ensure that there was compliance with Department of Education and Science Circulars and the timetable, so rigidly adhered to, was decided upon after the director of education had consulted with the Department. The relevant parts of Circulars 2/1981 and the draft Circular of 1984 which became 4/1984 are, in the first: "he", that is the Secretary of State,

> "will also be prepared to approve proposals which have been put forward as the result of a timetable somewhat shorter than that recommended in Circular 2/80, provided he is satisfied, among other things, that consultation with those most concerned has been adequate and that early implementation is compatible with the interest of the pupils concerned."

Second,

> "The Secretary of State's policy on timing was modified in Circular 2/81. This stated in paragraph 22 that he is prepared to approve proposals on a somewhat shorter timetable than that recommended in Circular 2/80 provided he is satisfied, among other things, that consultation with those most concerned has been adequate and that early implementation is compatible with the interests of the pupils concerned. Put at its simplest, the Secretary of State's policy on the timing of proposals for school closures is that there should be at least one term between the date of the decision and the date of closure. In practice, and in view of the current volume of proposals, this means that proposals to discontinue a school at the end of the school year should be published no later than early autumn for a decision by the following Easter. For proposals involving two or more schools a longer period is, if practicable, desirable and may be essential if considerable preparatory work is required."

The authority's proposals involved four schools and therefore publication before early autumn was advised. The criticism made is that the two month period for objection fell, to a large extent, during school holidays. However, had there been a full and proper consultation that could not, in my judgment, have been a fatal flaw. The issues would have been already fully canvassed and the information upon which objections could be founded would have been readily available and fresh in people's minds. Had all gone well before, I do not think objection could properly be taken to the publication date of 20 July.

A final point is taken based on section 12(2) of the Act of 1980. It is submitted that the proposals which under section 12(1) are the proposals of the local education authority did not include particulars of the time or times at which it was intended to implement them. It is submitted that implementation means the phasing provisions contained not in the proposals but in the explanatory section added by the officers of the authority. Whilst it would no doubt have come as a surprise to the pupils and perhaps the teachers and parents as well at Sladebrook and South Kilburn to be told in September 1985 that they were now at school at Willesden High School and Brondesbury and Kilburn High School, that would in fact have been the result had the proposal been implemented. Physical transfer, although something which, in my opinion, as I have found, ought to have been considered by the local education authority, was not something which was required to figure in the actual proposal of the authority.

The final, somewhat bizarre, thing that happened in this unhappy saga was this. The next meeting of the education committee took place in October. At that meeting, the education committee was acting under powers delegated to it by the local authority and to it fell the task of sending objections received to the Secretary of State. In doing so, it made observations of the most critical kind, the terms of which are perhaps worth quoting as a tailpiece.

> "The decision of the council on 12 July 1984 was faulty for the following reasons: (a) The proposals adopted had not at any time been recommended by either the director of education or the education committee. (b) The proposals should not even have been considered by the council unless it had also considered at the same time the financial expenditure necessary to put Willesden and Brondesbury and Kilburn into proper structural and decorative order, as the director of education specifically showed to be necessary in his reports to this committee. (c) The council has not considered a thorough examination of its post 16 education to determine whether a tertiary structure might best meet the needs of pupils and the budgetary restraint on the council.
>
> The period for objection to the proposals fell almost entirely over the summer period. Moreover, as a result of the way the

decision was made, no one had sufficient information to make properly reasoned objections or a full assessment of their implications.

The character and quantity of the objections received makes it clear that the best course of action for the education authority to take would be to withdraw the current proposals for closures and amalgamations.

This committee therefore resolves, in its capacity as the local education authority acting under delegated powers, to forward to the Secretary of State as its observations on the objections received, this motion together with the letter and appendices of the director of education as amended by this committee."

It is perhaps finally worth noting that the reason for the difference of opinion between the education committee and the local authority was not, as deposed to by Mr Parsons, a reflection of the different political balance on the two committees. The differences between the two committees arose because there were co-opted "expert" members on the education committee. The actual political balance on the education committee was, I think, marginally more favourable to the ruling coalition than that on the council, in that two of the co-opted members were their nominations, whereas only one was an opposition nomination.

It only remains for me to consider one question more. The applicants filed evidence of a Professor Kogan, who holds the Chair of Government and Social Administration at Brunel University. He exhibited to his affidavit a report prepared by himself and two colleagues. Mr Turner-Samuels objected to the admissibility of this evidence. I read the report de bene esse. The only assistance I gained from it consisted in some saving of note taking because Mr Sedley adopted two paragraphs in the report. I think Mr Turner-Samuels' main concern is that a practice may develop in public law cases of expert evidence being led and I have been invited to make some general observations on the matter.

It seems to me that there may be two situations in which evidence of this sort might be material and helpful. The first is where it becomes material, as it may, to consider what the generally accepted practice is in any situation. In putting in extracts from answers to questions in Parliament as to the dates at which proposals under section 12 have been published by other authorities, Mr Turner-Samuels was himself doing just that. Such evidence would not be expert evidence, the distinguishing mark of which is that evidence of expert opinion becomes admissible. It would be factual evidence, although perhaps most cogently given by an expert in the field. Subject to the ordinary rules as to relevance and materiality, I cannot see any objection to the admission of such evidence.

Some part of the report does consist of expressions of opinion. I have not found them helpful because they appear to me to be, in

general terms, opinions as to the law which are matters for me. I think that it will be extremely rare that an expression of opinion as to whether or not there has been maladministration will be relevant and admissible, but I am not prepared to lay down any general rule; nor am I prepared to say that no such situation could ever arise.

I conclude with an expression of my genuine gratitude to counsel for the great clarity and, despite apparent indications to the contrary, economy with which they have made their submissions. I thank them.

Solicitor for the applicants — Clive Grace, Brent Community Law Centre.

Solicitor for the local authority — S. R. Forster, Solicitor, Brent London Borough Council.

Reported by Miss Isobel Collins, Barrister-at-Law.

Footnote 10

To

Further Supplementary Written Submissions

dated 30 September 2024

in Rebuttal to

Mona Offshore Wind Limited Document

Appendix to Response to WRs: Griffith Parry, Robert Parry and Kerry James

(Document Number S_D2_3.4)

Compulsory Purchase Act 1965

CHAPTER 56

LONDON
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Compulsory Purchase Act 1965

CHAPTER 56

ARRANGEMENT OF SECTIONS

PART I

COMPULSORY PURCHASE UNDER ACQUISITION OF LAND ACT OF 1946

Preliminary

Supplemental

ELIZABETH II

1965 CHAPTER 56

An Act to consolidate the Lands Clauses Acts as applied by Part I of Schedule 2 to the Acquisition of Land (Authorisation Procedure) Act 1946, and by certain other enactments, and to repeal certain provisions in the Lands Clauses Acts and related enactments which have ceased to have any effect.

[5th August 1965]

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 I

COMPULSORY PURCHASE UNDER ACQUISITION OF LAND ACT OF 1946

Preliminary

Application of Part I and interpretation. 1946 c. 49.

1.—(1) This Part of this Act shall apply in relation to any compulsory purchase to which the provisions of Schedule 1 to the Acquisition of Land (Authorisation Procedure) Act 1946 (in this Act referred to as "the Act of 1946") apply.

(2) In construing this Part of this Act the enactment under which the purchase is authorised and the compulsory purchase order under the Act of 1946 shall be deemed to be the special Act.

(3) In this Part of this Act, unless the context otherwise requires,—

"acquiring authority" means the person authorised by the compulsory purchase order under the Act of 1946 to purchase the land;

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"land" includes anything falling within any definition of that expression in the enactment under which the purchase is authorised;

"lease" includes an agreement for a lease;

"notice to treat" has the meaning given by section 5 of this Act;

"subject to compulsory purchase", in relation to land, means land the compulsory purchase of which is authorised by the compulsory purchase order.

(4) In this Part of this Act "the works" or "the undertaking" means the works or undertaking, of whatever nature, authorised to be executed by the special Act:

Provided that where this Part of this Act applies by virtue of Part V of the Town and Country Planning Act 1962 references in this Part of this Act to the execution of the works shall be construed in accordance with section 86(6) of that Act.

1962 c. 38.

(5) A justice of the peace may act under this Act in relation to land which is partly in one area, and partly in another, if he may act as respects land in either area, but no justice of the peace shall act under this Act if he is interested in the matter.

(6) Where under this Act any notice is to be given to the owner of any land or where any act is authorised or required to be done with the consent of any such owner, the word "owner" shall, unless the context otherwise requires, mean any person having power to sell and convey the land to the acquiring authority.

Persons without power to sell their interests.

2. Schedule 1 to this Act (which gives owners power to sell to the acquiring authority) shall have effect for the purposes of this Act.

Acquisition by agreement in pursuance of compulsory purchase order.

3. It shall be lawful for the acquiring authority to agree with the owners of any of the land subject to compulsory purchase, and with all parties having an estate or interest in any of the land, or who are by Schedule 1 to this Act or any other enactment enabled to sell and convey or release any of that land, for the absolute purchase, for a consideration in money, of any of that land, and of all estates and interests in the land.

Compulsory purchase

Time limit.

4. The powers of the acquiring authority for the compulsory purchase of the land shall not be exercised after the expiration of three years from the date on which the compulsory purchase order becomes operative.

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Notice to treat, and untraced owners.

5.—(1) When the acquiring authority require to purchase any of the land subject to compulsory purchase, they shall give notice (hereafter in this Act referred to as a " notice to treat ") to all the persons interested in, or having power to sell and convey or release, the land, so far as known to the acquiring authority after making diligent inquiry.

(2) Every notice to treat—

(*a*) shall give particulars of the land to which the notice relates,

(*b*) shall demand particulars of the recipient's estate and interest in the land, and of the claim made by him in respect of the land, and

(*c*) shall state that the acquiring authority are willing to treat for the purchase of the land, and as to the compensation to be made for the damage which may be sustained by reason of the execution of the works.

(3) Schedule 2 to this Act (which relates to absent or untraced owners) shall have effect for the purposes of this Act.

Reference to Lands Tribunal.

6. If a person served with a notice to treat does not within twenty-one days from the service of the notice state the particulars of his claim or treat with the acquiring authority in respect of his claim, or if he and the acquiring authority do not agree as to the amount of compensation to be paid by the acquiring authority for the interest belonging to him, or which he has power to sell, or for any damage which may be sustained by him by reason of the execution of the works, the question of disputed compensation shall be referred to the Lands Tribunal.

Measure of compensation in case of severance.

7. In assessing the compensation to be paid by the acquiring authority under this Act regard shall be had not only to the value of the land to be purchased by the acquiring authority, but also to the damage, if any, to be sustained by the owner of the land by reason of the severing of the land purchased from the other land of the owner, or otherwise injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.

Other provisions as to divided land.

8.—(1) No person shall be required to sell a part only—

(*a*) of any house, building or manufactory, or

(*b*) of a park or garden belonging to a house,

if he is willing and able to sell the whole of the house, building, manufactory, park or garden, unless the Lands Tribunal determines that—

(i) in the case of a house, building or manufactory the part proposed to be acquired can be taken without material detriment to the house, building or manufactory, or

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(ii) in the case of a park or garden, the part proposed to be acquired can be taken without seriously affecting the amenity or convenience of the house,

and, if the Lands Tribunal so determine, the Lands Tribunal shall award compensation in respect of any loss due to the severance of the part proposed to be acquired, in addition to its value; and thereupon the party interested shall be required to sell to the acquiring authority that part of the house, building, manufactory, park or garden.

(2) If any land which is not situated in a town or built upon is cut through and divided by the works so as to leave, either on both sides of the works, or on one side, a quantity of land which is less than half an acre, the owner of the land may require the acquiring authority to purchase the land along with the land subject to compulsory purchase:

Provided that this subsection shall not apply if the owner has other land adjoining the land so left into which it can be thrown so as to be conveniently occupied with it, and in that case the acquiring authority shall, if so required by the owner, at their own expense throw the piece of land so left into the adjoining land by removing the fences and levelling the sites thereof, and by soiling it in a satisfactory and workmanlike manner.

(3) If the owner of any land cut through and divided by the works requires the acquiring authority under the provisions of the special Act to make any bridge, culvert or other communication between the land so divided, and—

(*a*) the land is so cut through and divided as to leave, either on both sides or on one side, a quantity of land which is less than half an acre, or which is of less value than the expense of making the communication between the divided land, and

(*b*) the owner has not other land adjoining that piece of land,

the acquiring authority may require the owner to sell them the piece of land.

Any dispute as to the value of the piece of land, or as to the expense of making a communication between the divided land shall be determined by the Lands Tribunal, and either party to proceedings for determining the compensation to be paid for the land acquired may require the Lands Tribunal to make their determination under this subsection in those proceedings.

Deposit of compensation and execution of deed poll PART I

Refusal to convey, failure to make title, etc.

9.—(1) If the owner of any of the land purchased by the acquiring authority, or of any interest in the land so purchased, on tender of the compensation agreed or awarded to be paid in respect of the land or interest refuses to accept it, or neglects or fails to make out a title to the land or interest to the satisfaction of the acquiring authority, or refuses to convey or release the land as directed by the acquiring authority, it shall be lawful for the acquiring authority to pay into court the compensation payable in respect of the land or interest.

(2) The compensation so paid into court shall, subject to the provisions of this Act, be placed to the credit of the parties interested in the land and the acquiring authority shall, so far as they can, give their descriptions.

(3) When the acquiring authority have paid into court the compensation, it shall be lawful for them to execute a deed poll containing a description of the land in respect of which the payment into court was made, and declaring the circumstances under which, and the names of the parties to whose credit, the payment into court was made.

(4) On execution of the deed poll all the estate and interest in the land of the parties for whose use and in respect whereof the compensation was paid into court shall vest absolutely in the acquiring authority and as against those persons the acquiring authority shall be entitled to immediate possession of the land.

(5) On the application of any person claiming all or any part of the money paid into court, or claiming all or any part of the land in respect of which it was paid into court, or any interest in it, the High Court may order its distribution according to the respective estates, titles or interests of the claimants, and if, before the money is distributed, it is dealt with under section 6 of the Administration of Justice Act 1965 payment likewise of the dividends thereof, and may make such other order as the Court thinks fit. 1965 c. 2.

(6) Before Schedule 1 to the Administration of Justice Act 1965 comes into force, orders of the High Court under the last foregoing subsection may include an order for the money to be invested in accordance with rules of court and an order for payment of the dividends on the money.

Further provision as to compensation for injurious affection

Further provision as to compensation for injurious affection.

10.—(1) If any person claims compensation in respect of any land, or any interest in land, which has been taken for or injuriously affected by the execution of the works, and for which the acquiring authority have not made satisfaction under the

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provisions of this Act, or of the special Act, any dispute arising in relation to the compensation shall be referred to and determined by the Lands Tribunal.

(2) This section shall be construed as affording in all cases a right to compensation for injurious affection to land which is the same as the right which section 68 of the Lands Clauses Consolidation Act 1845 has been construed as affording in cases where the amount claimed exceeds fifty pounds.

1845 c. 18.

(3) Where this Part of this Act applies by virtue of Part V of the Town and Country Planning Act 1962 references in this section to the acquiring authority shall be construed in accordance with section 86(6)(*b*) of that Act.

1962 c. 38.

Entry on the land

Powers of entry.

11.—(1) If the acquiring authority have served notice to treat in respect of any of the land and have served on the owner, lessee and occupier of that land not less than fourteen days notice, the acquiring authority may enter on and take possession of that land, or of such part of that land as is specified in the notice; and then any compensation agreed or awarded for the land of which possession is taken shall carry interest at the rate prescribed under section 32 of the Land Compensation Act 1961 from the time of entry until the compensation is paid, or is paid into court in accordance with this Act.

1961 c. 33.

Where under this subsection a notice is required to be served on an owner of land, and the land is ecclesiastical property as defined in paragraph 3 of Schedule 1 to the Act of 1946, a like notice shall be served on the Church Commissioners.

In this subsection " owner " has the meaning given by section 8(1) of the Act of 1946.

(2) The acquiring authority may also enter on and take possession of any of the land by following the procedure in Schedule 3 to this Act.

Where this Part of this Act applies by virtue of Part V or Part II of the Housing Act 1957, this subsection has effect subject to section 98 and Schedule 1, paragraph 3, of that Act.

1957 c. 56.

(3) For the purpose of surveying and taking levels of any of the land subject to compulsory purchase, of probing or boring to ascertain the nature of the soil and of setting out the line of the works, the acquiring authority, after giving not less than three nor more than fourteen days' notice to the owners or occupiers of that land, may enter on that land, but the acquiring authority shall make compensation for any damage thereby occasioned to the owners or occupiers of the land,

and any question of disputed compensation under this subsection shall be referred to the Lands Tribunal.

(4) Except as provided by the foregoing provisions of this section, the acquiring authority shall not, except with the consent of the owners and occupiers, enter on any of the land subject to compulsory purchase until the compensation payable for the respective interests in that land has been agreed or awarded, and has been paid to the persons having those interests or has been paid into court in accordance with this Act.

Unauthorised entry.

12.—(1) If the acquiring authority, or any of their contractors, wilfully enter on and take possession of any of the land subject to compulsory purchase in contravention of subsection (4) of the last foregoing section, the acquiring authority shall forfeit to the person in possession of that land the sum of ten pounds in addition to the amount of any damage done to the land by entering and taking possession.

(2) The said sum of ten pounds, and the amount of any such damage, shall be recoverable summarily as a civil debt.

(3) An appeal shall lie to a court of quarter sessions against an order of a magistrates' court adjudging a sum to be forfeited under the foregoing provisions of this section.

(4) If, after a sum has been adjudged to be forfeited under this section, the acquiring authority, or their contractors, remain in unlawful possession of any of the land the acquiring authority shall be liable to forfeit the sum of twenty-five pounds for every day on which they so remain in possession.

(5) A sum forfeited under the last foregoing subsection shall be recoverable by the person in possession of that land in the High Court, and in any such proceedings the decision of the magistrates' court shall not be conclusive as to the acquiring authority's right of entry.

(6) This section shall not subject the acquiring authority to the payment of a penalty if they have in good faith and without collusion paid the compensation agreed or awarded in respect of the land to a person whom they reasonably believed to be entitled to the compensation, or have paid it into court for the benefit of the person entitled to the land, or have paid it into court under Schedule 3 to this Act by way of security, although such person may not have been legally entitled thereto.

Refusal to give possession to acquiring authority.

13.—(1) If the acquiring authority are under this Act authorised to enter on and take possession of any land, and the owner or occupier of any of that land, or any other person, refuses to give up possession of it, or hinders the acquir-

PART I

ing authority from entering on or taking possession of it, the acquiring authority may issue their warrant to the sheriff to deliver possession of it to the person appointed in the warrant to receive it.

(2) On receipt of the warrant the sheriff shall deliver possession of any such land accordingly.

(3) The costs accruing by reason of the issue and execution of the warrant, to be settled by the sheriff, shall be paid by the person refusing to give possession, and the amount of those costs shall be deducted and retained by the acquiring authority from the compensation, if any, payable by them to that person.

(4) If no compensation is payable to the person refusing to give possession, or if it is less than the amount of the costs, that amount or the amount by which the costs exceed the compensation, if not paid on demand, shall be levied by distress, and on application to any justice of the peace for that purpose he shall issue his warrant accordingly.

(5) The said amount shall be levied by distress and sale of the goods and chattels of the person liable to pay that amount, and any surplus arising from the sale, after satisfying the amount due, and the expenses of the distress and sale, shall be returned, on demand, to the person whose goods or chattels have been distrained.

(6) In this section " sheriff " includes an under sheriff or other legally competent deputy, and means the sheriff for the area where the land is situated, or if land in one ownership is not situated wholly in one such area the sheriff for the area where any part of the land is situated.

Acquisition of special interests

Mortgages.

14.—(1) The acquiring authority may purchase or redeem the interest of the mortgagee of any of the land subject to compulsory purchase in accordance with either of the two following subsections.

(2) The acquiring authority may pay or tender to the mortgagee the principal and interest due on the mortgage, together with his costs and charges, if any, and also six months additional interest, and thereupon the mortgagee shall immediately convey or release his interest in the land comprised in the mortgage to the acquiring authority, or as they may direct.

(3) Alternatively, the acquiring authority may give notice in writing to the mortgagee that they will pay all the principal and interest due on the mortgage at the end of six months, computed from the day of giving the notice; and if they have given any such notice, or if the person entitled to the equity of

redemption has given six months notice of his intention to redeem, then at the expiration of either of the notices, or at any intermediate period, on payment or tender by the acquiring authority to the mortgagee of the principal money due on the mortgage, and the interest which would become due at the end of six months from the time of giving either of the notices, together with his costs and expenses, if any, the mortgagee shall convey or release his interest in the land comprised in the mortgage to the acquiring authority, or as they may direct.

(4) If, in a case under subsection (2) or subsection (3) of this section, on such payment or tender the mortgagee fails to convey or release his interest in the mortgage as directed by the acquiring authority, or fails to make out a good title to that interest to the satisfaction of the acquiring authority, it shall be lawful for the acquiring authority to pay into court the sums payable under subsection (2) or subsection (3) of this section, as the case may be.

(5) When the acquiring authority have paid those sums into court, it shall be lawful for them to execute a deed poll in the manner provided by section 9(3) of this Act.

(6) On execution of the deed poll, as well as in the case of a conveyance by the mortgagee, all the estate and interest of the mortgagee (and of all persons in trust for him, or for whom he may be a trustee) in the land shall vest in the acquiring authority and, where the mortgagee was entitled to possession of the land, the acquiring authority shall be entitled to possession of the land.

(7) This section shall apply—

(*a*) whether or not the acquiring authority have previously purchased the equity of redemption,

(*b*) whether or not the mortgagee is a trustee,

(*c*) whether or not the mortgagee is in possession of the land, and

(*d*) whether or not the mortgage includes other land in addition to the land subject to compulsory purchase.

Mortgage debt exceeding value of mortgaged land.

15.—(1) If the value of any such mortgaged land is less than the principal, interest and costs secured on the land, the value of the land, or the compensation to be paid by the acquiring authority in respect of the land, shall be settled by agreement between the mortgagee and the person entitled to the equity of redemption on the one part, and the acquiring authority on the other part, or, if they fail to agree, shall be determined by the Lands Tribunal.

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(2) The amount so agreed or awarded shall be paid by the acquiring authority to the mortgagee in satisfaction or part satisfaction of his mortgage debt.

(3) On payment or tender of the amount so agreed or awarded the mortgagee shall convey or release all his interest in the mortgaged land to the acquiring authority or as they direct, and if he fails to do so, or fails to adduce a good title to that interest to the satisfaction of the acquiring authority, it shall be lawful for the acquiring authority to pay into court the amount agreed or awarded.

(4) When the acquiring authority have so paid into court the amount agreed or awarded, it shall be lawful for them to execute a deed poll in the manner provided by section 9(3) of this Act.

(5) On execution of the deed poll the land, as to the estate and interest which were then vested in the mortgagee, or any person in trust for him, shall become absolutely vested in the acquiring authority and, where the mortgagee was entitled to possession of the land, the acquiring authority shall be entitled to possession of the land.

(6) The making of payment to the mortgagee or into court of the amount agreed or awarded shall be accepted by the mortgagee in satisfaction, or part satisfaction, of his mortgage debt, and shall be a full discharge of the mortgaged land from all money due thereon.

(7) All rights and remedies possessed by the mortgagee against the mortgagor by virtue of any bond or covenant or other obligation, other than the right to the land, shall remain in force in respect of so much of the mortgage debt as has not been satisfied by payment to the mortgagee or into court.

Acquisition of part of land subject to mortgage.

16.—(1) If a part only of any mortgaged land is required by the acquiring authority, and —

(*a*) the part so required is of less value than the principal, interest and costs secured on such land, and

(*b*) the mortgagee does not consider the remaining part of the land a sufficient security for the money charged thereon, or is not willing to release the part so required,

then the value of that part, and also the compensation (if any) to be paid in respect of the severance thereof or otherwise, shall be settled by agreement between the mortgagee and the party entitled to the equity of redemption of that land on the one part and the acquiring authority on the other and, if the parties fail to agree, shall be determined by the Lands Tribunal.

(2) The amount so agreed or awarded shall be paid by the acquiring authority to the mortgagee in satisfaction or part satisfaction of his mortgage debt.

(3) On payment or tender of the amount so agreed or awarded the mortgagee shall convey or release all his interest in the land to be taken to the acquiring authority or as they direct.

(4) A memorandum of what has been so paid shall be endorsed on the deed creating the mortgage and shall be signed by the mortgagee; and a copy of the memorandum shall at the same time (if required) be furnished by the acquiring authority at their expense to the person entitled to the equity of redemption of the land comprised in the mortgage.

(5) If, on payment or tender to any such mortgagee of the amount of compensation agreed or awarded, the mortgagee fails to convey or release to the acquiring authority, or as they direct, his interest in the land in respect of which the compensation has been so paid or tendered, or if he fails to adduce a good title thereto to the satisfaction of the acquiring authority, it shall be lawful for the acquiring authority to pay into court the amount of the compensation; and subsections (4) to (6) of the last foregoing section shall apply as if references in those subsections to the land were references to the part of the land comprised in the mortgage which is required by the acquiring authority.

(6) Notwithstanding the foregoing provisions of this section the mortgagee shall have the same powers and remedies for recovering or compelling payment of the mortgage money or the residue of it (as the case may be), and the interest thereon, as against the remaining land comprised in the mortgage, as he would have had for recovering or compelling payment thereof as against the whole of the land originally comprised in the mortgage.

Compensation where mortgage paid off before stipulated time.

17.—(1) If in the mortgage deed a time was limited for the payment of the principal secured and under the three last foregoing sections the mortgagee has been required to accept payment of the principal at a time earlier than the time so limited, the amounts payable under those sections shall include—

(*a*) all such costs and expenses as may be incurred by the mortgagee in respect of, or as incidental to, the re-investment of the sum paid off, and

(*b*) if the rate of interest secured by the mortgage is higher than can reasonably be expected to be obtained on re-investment at the time the mortgage is paid off, regard being had to the current rate of interest, compensation in respect of the loss thereby sustained.

(2) The costs under paragraph (*a*) of the foregoing subsection shall, in case of difference, be taxed and their payment enforced in the manner provided in section 23 of this Act for costs of

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conveyances, and the amount of compensation under paragraph (*b*) of the foregoing subsection shall, in case of difference, be referred to and determined by the Lands Tribunal.

Rentcharges.

18.—(1) If any difference arises between the acquiring authority and a person entitled to a rentcharge on any of the land subject to compulsory purchase as to the compensation to be paid for the release of the land from the rentcharge, or from the part of the rentcharge affecting the land, it shall be referred to and determined by the Lands Tribunal.

(2) If part only of the land charged with a rentcharge is comprised in the land required by the acquiring authority the apportionment of the rentcharge—

(*a*) may be settled by agreement between the person entitled to the rentcharge and the owner of the land on the one part and the acquiring authority on the other part, and

(*b*) if not so settled, shall be referred to and determined by the Lands Tribunal,

but if the remaining part of the land so charged is a sufficient security for the rentcharge the person entitled to the rentcharge may, with the consent of the owner of that part of the land, release from the rentcharge the land required by the acquiring authority on condition or in consideration of that part of the land remaining exclusively subject to the whole of the rentcharge.

(3) If the person entitled to a rentcharge on any of the land subject to compulsory purchase, on payment or tender to him of the compensation agreed or awarded, fails to execute in favour of the acquiring authority a release of the rentcharge, or if he fails to make out a good title to the rentcharge to the satisfaction of the acquiring authority, it shall be lawful for the acquiring authority to pay into court the amount of the compensation.

When the acquiring authority have paid the compensation into court, it shall be lawful for them to execute a deed poll in the manner provided by section 9(3) of this Act, and on execution of the deed poll the rentcharge, or the part of the rentcharge in respect of which the compensation was paid, shall be extinguished.

(4) If any of the land subject to compulsory purchase is so released from a rentcharge, or part of a rentcharge, to which it was subject jointly with other land, the last-mentioned land shall alone be charged with the whole of the rentcharge, or, as the case may be, with the remainder of the rentcharge, and the person entitled to the rentcharge shall have all the

same rights and remedies over the last-mentioned land, for the whole, or as the case may be for the remainder, of the rentcharge as he had previously over the whole of the land subject to the rentcharge.

(5) If upon any rentcharge or part of a rentcharge being so released the deed or instrument creating or transferring the charge is tendered to the acquiring authority for the purpose, the acquiring authority shall affix their common or official seal to a memorandum of the release endorsed on the deed or instrument declaring—

(*a*) what part of the land originally subject to the rentcharge has been purchased by virtue of this Act, and

(*b*) if the land is released from part of the rentcharge, what part of the rentcharge has been released and how much of it continues payable, and

(*c*) if the land has been released from the whole of the rentcharge, then that the remaining land is thenceforward to remain exclusively charged with the rentcharge,

and the memorandum shall be made and executed at the expense of the acquiring authority and shall be evidence in all courts and elsewhere of the facts therein stated, but not so as to exclude any other evidence of the same facts.

(6) In this section "rentcharge", in relation to any land, includes any other payment or incumbrance charged on the land not provided for in the foregoing provisions of this Act.

Apportionment of rent under leases.

19.—(1) If part only of the land comprised in a lease for a term of years unexpired is required by the acquiring authority, the rent payable in respect of the land comprised in the lease shall be apportioned between the land so required and the residue of the land.

(2) The apportionment may be settled by agreement between the lessor and lessee of the land on the one part, and the acquiring authority on the other part, and if the apportionment is not so settled by agreement between the parties, it shall be settled by the Lands Tribunal.

(3) After the apportionment the lessee shall, as to all future accruing rent, be liable only for so much of the rent as is apportioned in respect of the land not required by the acquiring authority.

(4) As respects the land not so required, and as against the lessee, the lessor shall have all the same rights and remedies for the recovery of the apportioned rent as, before the apportionment, he had for the recovery of the whole rent reserved by

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the lease; and all the covenants, conditions and terms of the lease, except as to the amount of rent to be paid, shall remain in force with regard to the part of the land not so required in the same manner as they would have done if that part only of the land had been included in the lease.

(5) Every such lessee shall be entitled to receive from the acquiring authority compensation for the damage done to him in his tenancy by reason of the severance of the land required by the acquiring authority from that not required, or otherwise by reason of the execution of the works.

Tenants at will, etc.

20.—(1) If any of the land subject to compulsory purchase is in the possession of a person having no greater interest in the land than as tenant for a year or from year to year, and if that person is required to give up possession of any land so occupied by him before the expiration of his term or interest in the land, he shall be entitled to compensation for the value of his unexpired term or interest in the land, and for any just allowance which ought to be made to him by an incoming tenant, and for any loss or injury he may sustain.

(2) If a part only of such land is required, he shall also be entitled to compensation for the damage done to him in his tenancy by severing the land held by him or otherwise injuriously affecting it.

(3) If the parties differ as to the amount of compensation payable under the foregoing provisions of this section the dispute shall be referred to and determined by the Lands Tribunal.

(4) On payment or tender of the amount of such compensation all such persons shall respectively deliver up to the acquiring authority, or to the person appointed by them to take possession, any such land in their possession required by the acquiring authority.

(5) If any person having a greater interest than as tenant at will claims compensation in respect of any unexpired term or interest under any lease or grant of the land subject to compulsory purchase, the acquiring authority may require that person to produce the lease or grant, or the best evidence thereof in his power; and if, after demand in writing by the acquiring authority, the lease or grant, or that best evidence, is not produced within twenty-one days, that person shall be considered as a tenant holding only from year to year, and be entitled to compensation accordingly.

1954 c. 56.

(6) This section has effect subject to section 39 of the Landlord and Tenant Act 1954.

PART I
Common land.

21.—(1) Schedule 4 to this Act (which relates to common land) shall apply for the purposes of this Act.

(2) The said Schedule and the other provisions of this Act relating to common land have effect—

(*a*) subject to the provisions of the Inclosure Act 1852, the Inclosure Act 1854 and the Commonable Rights Compensation Act 1882 relating to the application of compensation money, and 1852 c. 79. 1854 c. 97. 1882 c. 15.

(*b*) subject to section 22 of the Commons Act 1899 (which restricts grants or inclosures of commons). 1899 c. 30.

Supplemental

Interests omitted from purchase.

22.—(1) If after the acquiring authority have entered on any of the land subject to compulsory purchase it appears that they have through mistake or inadvertence failed or omitted duly to purchase or to pay compensation for any estate, right or interest in or charge affecting that land the acquiring authority shall remain in undisturbed possession of the land provided that within the time limited by this section—

(*a*) they purchase or pay compensation for the estate, right or interest in or charge affecting the land, and

(*b*) they also pay to any person who may establish a right to it, full compensation for the mesne profits,

and the compensation shall be agreed or awarded and paid (whether to claimants or into court) in the manner in which, under this Act, it would have been agreed or awarded and paid if the acquiring authority had purchased the estate, right, interest or charge before entering on the land, or as near to that manner as circumstances admit.

(2) The foregoing subsection shall apply whether or not the period specified in section 4 of this Act has expired.

(3) The time limited by this section shall be six months after the acquiring authority have notice of the estate, right, interest or charge or, if it is disputed by the acquiring authority, six months after the right to the estate, right, interest or charge is finally established by law in favour of the claimant.

(4) In assessing compensation under this section the value of the land, and of any estate or interest in the land, or any mesne profits of the land, shall be taken to be the value at the time when the acquiring authority entered on the land, and without regard to any improvements or works made in or upon the land by the acquiring authority, and as though the works had not been constructed.

(5) In this section the "mesne profits" means the mesne profits or interest which would have accrued to the persons

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concerned during the interval between the entry of the acquiring authority and the time when the compensation is paid, so far as such mesne profits or interest may be recoverable in any proceedings.

Costs of conveyances etc.

23.—(1) The costs of all conveyances of the land subject to compulsory purchase shall be borne by the acquiring authority.

(2) The costs shall include all charges and expenses, whether incurred on the part of the seller or on the part of the purchaser,—

(*a*) of all conveyances and assurances of any of the land, and of any outstanding terms or interests in the land, and

(*b*) of deducing, evidencing and verifying the title to the land, terms or interests, and

(*c*) of making out and furnishing such abstracts and attested copies as the acquiring authority may require,

and all other reasonable expenses incident to the investigation, deduction and verification of the title.

(3) If the acquiring authority and the person entitled to any such costs do not agree as to the amount of the costs, the costs shall be taxed by a Master of the Supreme Court on an order of the court obtained by either of the parties.

(4) The acquiring authority shall pay what the Master certifies to be due in respect of the costs to the person entitled and, in default, that amount may be recovered in the same way as any other costs payable under an order of the Supreme Court.

(5) The expense of taxing the costs shall be borne by the acquiring authority unless on the taxation one-sixth of the amount of the costs is disallowed, and in that case the costs of the taxation shall be borne by the party whose costs have been taxed; and the amount thereof shall be ascertained by the Master and deducted by him accordingly in his certificate of taxation.

(6) Conveyances of the land subject to compulsory purchase may be according to the forms in Schedule 5 to this Act, or as near thereto as the circumstances of the case will admit, or by deed in any other form which the acquiring authority may think fit.

All conveyances made according to the forms in the said Schedule, or as near thereto as the circumstances of the case may admit, shall be effectual to vest the land thereby conveyed in the acquiring authority and shall operate to bar and

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to destroy all estates, rights, titles, remainders, reversions, limitations, trusts and interests whatsoever of and in the land comprised in the conveyance which have been purchased or compensated for by the consideration mentioned in the conveyance.

Power to sell in consideration of a rentcharge.

24.—(1) It shall be lawful for—

(*a*) a person having an estate in fee simple in the land, or entitled to dispose absolutely for his own benefit of the land, or

(*b*) a person who would have no power to sell or convey but for the provisions of Schedule 1 to this Act,

to sell and convey any of the land subject to compulsory purchase to the acquiring authority in consideration of an annual rentcharge payable by the acquiring authority.

(2) The annual rent so payable shall be secured in such manner as may be agreed between the parties, and shall be payable by the acquiring authority as the rent becomes due.

(3) If at any time any such rent is not paid within thirty days after it becomes due, and after demand in writing, the person to whom the rent is payable may either recover it from the acquiring authority by proceedings in the High Court or he may levy it by distress and sale of the goods and chattels of the acquiring authority.

Where distress is so levied, any balance remaining after satisfying the amount due, and the expenses of the distress and sale, shall be returned, on demand, to the acquiring authority.

(4) On a sale under subsection (1) (*b*) of this section paragraph 5 of Schedule 1 to this Act shall apply.

(5) If the acquiring authority are empowered by any Act relating to the undertaking and passed after 20th August 1860 (the date of passing of the Lands Clauses Consolidation Acts Amendment Act 1860) to borrow money to an amount not exceeding a prescribed sum, then in the event of the acquiring authority agreeing with any person under the powers of this Act for the purchase of any land in consideration of a payment of a rentcharge, the powers of the acquiring authority for borrowing money shall be reduced by an amount equal to twenty years purchase of any rent charged for the time being payable. 1860 c. 106.

(6) The provisions of this section are without prejudice to section 39(2) of the Settled Land Act 1925 or any other enactment under which a sale may be made in consideration of a rentcharge. 1925 c. 18.

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Payment into court.
1965 c. 2.

25.—(1) References in this Act to payment of money into court are references to payment of the money into the Supreme Court and section 4 of the Administration of Justice Act 1965 (which prescribes the method of payment into court) shall apply accordingly.

(2) Where any money paid into court under this Act was paid in respect of any lease, or any estate in land less than the whole fee simple, or of any reversion dependent on any such lease or estate, the High Court on the application of any person interested in the money may order that the money shall be laid out, invested, accumulated and paid in such manner as the court may consider will give to the persons interested in the money the same benefit as they might lawfully have had from the lease, estate or reversion or as near thereto as may be.

(3) If any question arises respecting the title to land in respect of which money has been paid into court under this Act, the persons respectively in possession of the land, as being the owners, or in receipt of the rents of the land, as being entitled to the rents at the time when the land was purchased, shall be deemed to have been lawfully entitled to the land until the contrary is shown to the satisfaction of the court; and unless the contrary is shown to the satisfaction of the court the persons so in possession, and all persons claiming under them, or consistently with their possession, shall be deemed to be entitled to the money so paid into court, and to the interest and dividends of it or of the securities purchased therewith; and the money, dividends, interest and annual proceeds shall be paid and applied accordingly.

(4) Before Schedule 1 to the Administration of Justice Act 1965 comes into force, subsection (1) of this section shall not apply, but any money to be paid into court under this Act shall be paid into the Bank of England in the name of the Accountant General of the Supreme Court and placed to his account and when deposited shall be subject to the control and disposition of the High Court.

Costs in respect of money paid into court.

26.—(1) This section shall apply in relation to any compensation paid into court under this Act except where it was so paid in consequence—

(*a*) of the wilful refusal of the person entitled to accept it, or

(*b*) of the wilful refusal of that person to convey the land in respect of which the compensation was payable, or

(*c*) of the wilful neglect of any person to make out a good title to the land.

(2) Where this section applies the High Court may order the acquiring authority to pay—

(*a*) the costs of, or incurred in consequence of, the purchase of the land, and

(*b*) the cost of the investment of the compensation paid into court, or of its reinvestment in the purchase of other land.

(3) References in this section to costs include references to all reasonable charges and expenses incidental to the matters mentioned in this section and to—

(*a*) the cost of obtaining the proper orders for any of the purposes set out above,

(*b*) the cost of obtaining the orders for the payment of dividends out of the compensation,

(*c*) the cost of obtaining the orders for the payment out of court of the principal amount of the compensation, or of any securities in which it is invested, and

(*d*) the cost of all proceedings relating to such orders, except such as are occasioned by litigation between adverse claimants.

(4) The costs of not more than one application for reinvestment in land shall be allowed unless it appears to the High Court that it is for the benefit of the parties interested in the compensation that it should be invested in the purchase of land in different sums and at different times.

Acquiring authority to make good deficiencies in rates. 1957 c. 56.

27.—(1) This section shall not apply—

(*a*) in any case in which the compulsory purchase order so provides; or

(*b*) where this Part of this Act applies to an acquisition of land under the Housing Act 1957.

(2) When the acquiring authority becomes possessed by virtue of this Act of any land which is liable to be assessed to rates, they shall from time to time, until the works are completed and assessed to rates, be liable to make good the deficiency in the several assessments for rates by reason of the land having been taken or used for the purposes of the works.

(3) Subject to the next following subsection, the deficiency shall be computed according to the rental at which the land, with any building thereon, was valued or rated at the time when the compulsory purchase order became operative.

(4) If the land is situated in a rating area which is a county borough, non-county borough or urban district or a rating area in Greater London, the amount required to be made good by the acquiring authority shall be one half of the deficiency in the several assessments to rates.

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(5) The assessment on which any payment made by the acquiring authority under this section is based shall be inserted in the valuation list and any such payments shall be taken into account for the purpose of ascertaining the proceeds of any rate.

(6) The acquiring authority shall on demand pay all such deficiencies to the collector.

(7) In this section "rate" means the general rate and, in relation to the City of London includes a reference to a poor rate and, in relation to the Temples, shall be construed as a reference to any rate in the nature of a general rate levied for the Inner Temple or the Middle Temple, as the case may be.

General provisions as to deeds poll.

28.—(1) Any deed poll executed by the acquiring authority in accordance with this Act shall be under their common seal or official seal.

(2) Any such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the acquiring authority of the land described therein, or otherwise duly stamped.

1925 c. 20.

(3) The provisions of this Act as to the execution of deeds poll have effect subject to section 7(4) of the Law of Property Act 1925 (under which any such power of disposing of a legal estate exercisable by a person who is not the estate owner is, when practicable, to be exercised in the name and on behalf of the estate owner).

Irregularities in proceedings under the Act.

29.—(1) No distress levied under this Act shall be deemed unlawful, nor shall the person making the distress be deemed a trespasser on account of any defect or want of form in the warrant of distress or other proceedings relating to the distress; and the person making the distress shall not be deemed a trespasser ab initio on account of any irregularity afterwards committed by him so, however, that any person aggrieved by any defect or irregularity may recover full satisfaction for the special damage in civil proceedings.

(2) If any person has committed any irregularity, trespass or other wrongful proceeding in the execution of this Act, or by virtue of any power or authority thereby given, and if, before proceedings are brought in respect of the wrongful proceeding, that person makes tender of sufficient amends to the party injured, the party injured shall not be entitled to recover anything in those proceedings.

Service of notices.

30.—(1) Notices required to be served by the acquiring authority on any person interested in or entitled to sell any of the land—

(*a*) shall be served personally, or left at his last usual place of abode, or

(*b*) if he is absent from the United Kingdom or cannot be found after diligent inquiry has been made, may be left with the occupier of the land or, if there is no occupier, shall be affixed upon some conspicuous part of the land.

(2) If any such person is a body corporate the notice shall be left at the principal office of the body corporate or, if no office can after diligent inquiry be found, shall be served on some principal member of the body corporate, and such notice shall also be left with the occupier of the land or, if there is no occupier, shall be affixed upon some conspicuous part of the land.

(3) Paragraph 19 of Schedule 1 to the Act of 1946 shall apply to the service of notices under section 11(1) of this Act and, notwithstanding anything in subsection (1) of this section, notices required to be served by the acquiring authority under any other provision of this Act may be served and addressed in the manner specified in that paragraph.

(4) A summons or notice, or writ or other legal proceeding, required to be served on the acquiring authority may be served by being left at, or sent by post addressed to, the principal office, or any of the principal offices, of the acquiring authority.

Ecclesiastical property.

31. Any sums agreed or awarded for the purchase of land being ecclesiastical property as defined in paragraph 3 of Schedule 1 to the Act of 1946, or to be paid by way of compensation for damage sustained by reason of severance or injury affecting such land, shall not be paid as directed by the other provisions of this Act, but shall be paid to the Church Commissioners to be applied for the purposes for which the proceeds of a sale by agreement of the land would be applicable under any enactment or Measure authorising such a sale or disposing of the proceeds of such a sale.

Commencement of Part I.

32. This Part of this Act shall not apply in relation to a compulsory purchase order confirmed under Part I of Schedule 1 to the Act of 1946, or made under Part II of that Schedule, before the commencement of this Act.

PART II

APPLICATION OF PART I IN OTHER CASES AND SUPPLEMENTAL PROVISIONS

Compulsory purchase orders under Water Acts 1945 and 1948. 1945 c. 42

33.—(1) Subject to this section Part I of this Act shall apply—

(*a*) in relation to an order authorising the compulsory purchase of land and made under section 9 or section 23 of the Water Act 1945, and

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(*b*) in relation to a compulsory purchase order made and confirmed under section 24(4) of that Act (that is, where a compulsory purchase under that subsection is not by a local authority and is not effected under the Act of 1946),

as it applies in relation to a compulsory purchase order under the Act of 1946, and in the said Part I as so applied the "special Act" means the said Act of 1945 together with the order.

(2) In the case of an order under section 9 or section 23 of the Water Act 1945,—

(*a*) Part I of this Act shall apply subject to such exceptions and modifications, if any, as may be specified in the order, and

(*b*) where the statutory water undertakers are not a local authority within the meaning of the Act of 1946, or a development corporation established under section 2 of the New Towns Act 1965, section 8(1) and section 11(1) of this Act shall not apply but no person shall at any time be required in pursuance of the order to sell or convey to the acquiring authority part only of any house or other building or manufactory if that person is willing and able to sell and convey the whole.

1965 c. 59.

1945 c. 42.

(3) If the order is made under section 24 of the Water Act 1945—

(*a*) section 8(1) of this Act shall not apply to the order but no person shall at any time be required in pursuance of the order to sell or convey to the acquiring authority a part only of any house or other building or manufactory, if that person is willing and able to sell and convey the whole,

(*b*) sections 11(1) and 30(3) of this Act shall not apply,

(*c*) section 27 of this Act shall apply as if subsection (1) of that section were omitted,

(*d*) in section 31 of this Act for the definition of "ecclesiastical property" there shall be substituted a reference to glebe land or other land belonging to an ecclesiastical benefice.

(4) If, in the case of an order under any of the said provisions of the Water Act 1945, the acquiring authority are not a local authority within the meaning of the Act of 1946 or a development corporation established under section 2 of the New Towns Act 1965, and the undertaking is intended to be carried into effect by means of capital to be subscribed by the acquiring authority, the whole of the capital or estimated sum for defraying the expenses of the undertaking shall be subscribed

under contract binding the subscribers to pay the sums respectively subscribed by them before the acquiring authority exercises any of the powers conferred by this Act in relation to the compulsory taking of land for the purposes of the undertaking.

A certificate signed by two justices certifying that the whole of the prescribed sum has been subscribed shall be sufficient evidence thereof and on the application of the acquiring authority, and the production of such evidence as the justices think proper and sufficient, the justices shall grant certificates accordingly.

Section 1 of this Act applies for the interpretation of this subsection.

(5) Part I of this Act as applied by this section shall not apply in relation to an order made under section 9 or section 23 of the Water Act 1945, or an order confirmed under section 24 of that Act, before the commencement of this Act. 1945 c. 42.

Compulsory purchase orders under Part III of Housing Act 1957.

34.—(1) Subject to this section Part I of this Act shall apply in relation to a compulsory purchase order under Part III of the Housing Act 1957 (clearance and redevelopment) as it applies in relation to a compulsory purchase order under the Act of 1946, and in the said Part I as so applied the "special Act" means the Housing Act 1957, together with the order. 1957 c. 56.

(2) Section 8(1) of this Act shall not apply to any such order, but no person shall at any time be required to sell or convey to the acquiring authority a part only of any house or any building or manufactory if that person is willing and able to sell and convey the whole:

Provided that in the case of an order under section 43 or section 51 of the Housing Act 1957, the Lands Tribunal may determine that such part of any house, building or manufactory as is proposed to be taken by the acquiring authority can be taken without material damage to the house, building or manufactory and, if they so determine, may award compensation in respect of the severance of the part so proposed to be taken in addition to the value of that part.

Where they so determine, the party interested shall be required to sell and convey to the acquiring authority that part of the house, building or manufactory.

(3) In section 11(1) of this Act as applied by this section for the reference to service of notice on the owner, lessee and occupier of the land there shall be substituted a reference to the service of notice on the owner (as defined in the Housing Act 1957) and occupier of the land.

PART II

(4) Where any land to which the compulsory purchase order relates is glebe land or any other land belonging to an ecclesiastical benefice the compulsory purchase order shall provide that sums agreed or awarded for the purchase of the land, or to be paid by way of compensation for damage to be sustained by the owner by reason of severance or injury affecting the land, shall not be paid as directed by this Act, but shall be paid to the Church Commissioners to be applied by them as money paid to them upon a sale, under the provisions of the Ecclesiastical Leasing Acts, of land belonging to a benefice.

This subsection shall have effect in substitution for section 31 of this Act.

(5) All notices required to be served by the acquiring authority may, notwithstanding anything in section 30(1) of this Act, be served and addressed in the manner prescribed by paragraph 2(2) of Schedule 3 to the Housing Act 1957 or by section 169 of that Act in relation to notices required to be served by or under that Act; and section 30(3) of this Act shall not apply.

1957 c. 56.

(6) Part I of this Act as applied by this section shall not apply in relation to an order confirmed before the commencement of this Act.

Purchase notice under Part III of Housing Act 1964.

1964 c. 56.

35.—(1) In section 59(2) of the Housing Act 1964 for the words "under the Lands Clauses Acts" there shall be substituted the words "by a compulsory purchase order in relation to which Part I of the Compulsory Purchase Act 1965 applies".

(2) This section shall have effect as respects notices served under the said section 59 after the commencement of this Act.

Orders relating to acquisition of land under s. 67 of Water Resources Act 1963.

1963 c. 38.

36.—(1) Subject to this section Part I of this Act shall apply in relation to the acquisition of any land, interest or right in the exercise of a power conferred by an order under section 67 of the Water Resources Act 1963 as it applies in relation to a compulsory purchase order under the Act of 1946, and as if the order were a compulsory purchase order made in accordance with the provisions of Schedule 1 to the Act of 1946.

(2) As so applied, Part I of this Act shall have effect subject to such exceptions and modifications (if any) as may be specified in the order, and subject also to the provisions (where applicable) of section 132 of, and of paragraphs 13 and 14 of Schedule 8 to, the said Act of 1963.

(3) Part I of this Act as applied by this section shall not apply in relation to an order made under the said section 67 before the commencement of this Act.

PART II
Compulsory purchase orders under s. 11 of Pipe-lines Act 1962.

37.—(1) Subject to this section Part I of this Act shall apply in relation to a compulsory purchase order under section 11 of the Pipe-lines Act 1962 as it applies in relation to a compulsory purchase order under the Act of 1946, and in the said Part I as so applied the " special Act " means the Pipe-lines Act 1962, together with the order.

(2) Subsections (1) and (2) of section 11, section 30(3) and section 31 of this Act shall not apply, and section 27 shall apply as if subsection (1) of that section were omitted. 1962 c. 58.

(3) Sections 127 to 132 of the Lands Clauses Consolidation Act 1845 (sale of superfluous land) shall apply in relation to land acquired in pursuance of a compulsory purchase order under section 11 of the Pipe-lines Act 1962, and in construing those sections as so applied— 1845 c. 18.

(*a*) the said Act of 1962 and the compulsory purchase order shall be deemed to be the special Act,

(*b*) references to the promoters of the undertaking shall be construed as references to the person authorised by the compulsory purchase order to purchase the land comprised therein.

(4) Part I of this Act as applied by this section shall not apply in relation to an order made before the commencement of this Act.

Application to enactments authorising acquisition of land by agreement.

38.—(1) The enactments mentioned in Schedule 6 to this Act (which apply the Lands Clauses Acts to certain of the powers of acquiring land by agreement possessed by authorities having power to acquire land compulsorily under the Act of 1946, or any of the enactments mentioned in the foregoing provisions of this Part of this Act) shall have effect subject to the amendments set out in that Schedule (which translate references to provisions of the Land Clauses Acts relating to the acquisition of land by agreement into references to corresponding provisions of Part I of this Act).

(2) Nothing in the provisions of Part I of this Act as applied by Schedule 6 to this Act, or in the enactments mentioned in that Schedule, shall enable a local authority to sell for the purposes of those enactments without the consent of the Minister of Housing and Local Government or of any other Minister any land which they could not have sold without that consent apart from the provisions of this section.

(3) In Part I of this Act as applied to the purchase of land by agreement under any of the enactments mentioned in Schedule 6 to this Act—

(*a*) " the acquiring authority " means a person authorised to purchase land by that enactment,

(*b*) " the special Act " means the enactment,

PART II

(*c*) in section 27 subsection (1) shall be omitted,

and for references to land subject to compulsory purchase there shall be substituted references to land which may be purchased by agreement under the enactment.

(4) This section shall not have effect as respects any purchase of land completed before the commencement of this Act.

Consequential amendments and repeals.

39.—(1) Any enactment or document referring to an enactment repealed and re-enacted by this Act shall be construed as referring to the corresponding enactment in this Act.

(2) Without prejudice to the generality of subsection (1) of this section, any reference in any enactment or document to the Lands Clauses Acts, or to any provision of the Lands Clauses Acts, which is, or includes, a reference to the Lands Clauses Acts, or that provision of the Lands Clauses Acts, as incorporated by the Act of 1946, or by any of the Acts mentioned in sections 33 to 37 of this Act or Schedule 6 to this Act, shall, unless the contrary intention appears, be construed as references to the corresponding provisions in Part I of this Act.

(3) Without prejudice to the last foregoing subsection, references to provisions of the Lands Clauses Acts in the enactments mentioned in Schedule 7 to this Act shall be amended in accordance with that Schedule.

(4) The enactments mentioned in Schedule 8 to this Act, of which those in Part II and Part III of that Schedule are spent or are superseded by the provisions of the Lands Tribunal Act 1949 and the Land Compensation Act 1961, shall be repealed to the extent specified in the third column of that Schedule, but subject to the respective provisions at the end of each Part of that Schedule.

1949 c. 42.
1961 c. 33.

(5) The mention of particular matters in this section shall not be taken to affect the general application to this Act of section 38 of the Interpretation Act 1889 (which relates to the effect of repeals).

1889 c. 63.

Short title, commencement and extent.

40.—(1) This Act may be cited as the Compulsory Purchase Act 1965.

(2) Except as otherwise expressly provided, this Act shall come into force on 1st January 1966.

(3) This Act shall not extend to Scotland or Northern Ireland.

SCHEDULES

SCHEDULE 1

Sections 2 and 3.

PERSONS WITHOUT POWER TO SELL THEIR INTERESTS

Preliminary

1.—(1) The provisions of this Schedule have effect subject to section 42(7) of the Law of Property Act 1925 (which provides that if on a compulsory purchase title could have been made without payment into court, title shall be made in that way unless the purchaser otherwise elects). 1925 c. 20.

(2) The provisions of this Schedule—

(*a*) have effect as if references to disabilities did not include references to disabilities of infants, married women or lunatics or defectives, and

(*b*) do not have effect in relation to patients and to persons as to whom powers are exercisable and have been exercised under section 104 of the Mental Health Act 1959. 1959 c. 72.

Power to sell and convey to the acquiring authority

2.—(1) It shall be lawful for all persons who are seised or possessed of or entitled to any of the land subject to compulsory purchase, or any estate or interest in any of that land, to sell and convey or release it to the acquiring authority, and to enter into all necessary agreements for the purpose.

(2) Subject to paragraph 1 of this Schedule, the foregoing sub-paragraph applies in particular—

(*a*) to corporations,

(*b*) to tenants in tail or for life,

(*c*) to trustees for charitable or other purposes, and

(*d*) to persons for the time being entitled to the receipt of the rents and profits of any of the land (whether in possession or subject to any lease for years or any less interest).

(3) Subject to paragraph 1 of this Schedule, the powers conferred by this paragraph on any person, other than a lessee for a term of years, or for any less interest, may be exercised not only on behalf of himself and his successors, but also for and on behalf of every person entitled in reversion, remainder or expectancy after him, or in defeasance of his estate.

(4) Trustees for a cestui que trust under any disability may exercise the powers conferred by this paragraph on behalf of that cestui que trust to the same extent that the cestui que trust could have exercised those powers if he had not been under any disability.

Additional powers of entering into transactions with acquiring authority

3. The following powers, that is—

(*a*) any power conferred on a lord of the manor by Schedule 4 to this Act, and

SCH. 1

(*b*) any power of releasing land from any rent, charge or incumbrance, or of agreeing to the apportionment of any rent, charge or incumbrance under sections 14 to 20 of this Act,

may lawfully be exercised by any person enabled under the last foregoing paragraph to sell and convey or release land to the acquiring authority.

Valuation on purchase by agreement

4.—(1) Subject to this paragraph, the compensation to be paid for any land to be purchased from a person under any disability or incapacity who has no power to sell or convey the land except under this Schedule, or for any permanent damage or injury to any such land, shall be determined by the valuation of two surveyors, one of whom shall be nominated by the acquiring authority, and the other by the other party.

(2) If the two surveyors cannot agree on a valuation, two justices of the peace may, on the application of either party, and after notice to the other party, nominate a third surveyor to make the valuation instead of the two other surveyors.

(3) Each of the two surveyors or, as the case may be, the third surveyor shall annex to any valuation made by him a declaration in writing signed by him of the correctness of the valuation.

(4) No valuation need be made under this paragraph if the compensation has been determined by, or by a member of, the Lands Tribunal in pursuance of the provisions of this Act or under paragraph 1 of Schedule 2 to this Act.

(5) In this paragraph "surveyor" means an able practical surveyor.

Sale in consideration of rentcharge

5.—(1) On a sale under section 24(1)(*b*) of this Act the amount of the rentcharge shall be settled in accordance with the last foregoing paragraph, but subject to the following provisions of this paragraph.

(2) The amount of the rentcharge shall not be less than five-fourths of the average net annual rent received by the persons beneficially interested in the land in question in the last seven years.

(3) A charge of five per cent. on the gross amount of any compensation estimated or fixed under this Act by way of compensation for any damage that may be done to the land shall be added to and form part of the rentcharge.

(4) No fine or premium, or consideration in the nature of a fine or premium, shall be paid or taken in respect of the land sold or damaged, other than the rentcharge.

(5) The rentcharge shall remain on the same trusts and for the same purposes as those on and for which the rents and profits of the land stood settled or assured at or immediately before the conveyance of the land.

SCH. 1

Application of compensation payable in respect of interest of person under disability

6.—(1) This paragraph applies to the compensation in respect of any land or interest in land purchased by the acquiring authority from a person who has no power to sell or convey it except under this Schedule, and compensation in respect of any permanent damage to any such land.

(2) Subject to this Schedule the compensation shall be paid into court and shall remain until applied to one or more of the following purposes on an order of the High Court, that is—

(*a*) in the discharge of any debt or incumbrance affecting the land, or affecting other land settled therewith on the same or the like trusts or purposes, or

(*b*) in the purchase of other land to be conveyed, limited and settled upon like trusts and purposes, and in the same manner, as the land stood settled in respect of which the compensation was paid, or

(*c*) if the compensation was paid in respect of any buildings taken or injured by the proximity of the works, in removing or replacing the buildings, or substituting other buildings, in such manner as the High Court may direct, or

(*d*) in payment to any party becoming absolutely entitled to the compensation.

(3) If, before compensation is applied under sub-paragraph (2) of this paragraph, it is dealt with under section 6 of the Administration of Justice Act 1965, the annual proceeds thereof shall be paid to the person who would for the time being have been entitled to the rents and profits of the land in respect of which the compensation was paid. 1965 c. 2.

(4) An order of the High Court under this paragraph may be made on the application of the person who would have been entitled to the rents and profits of the land in respect of which the compensation is paid.

(5) Before Schedule 1 to the Administration of Justice Act 1965 comes into force, compensation which has not been applied under sub-paragraph (2) of this paragraph may, on the order of the High Court, be invested in accordance with rules of court, and the interest, dividends and annual proceeds of the investment shall be paid to the person mentioned in sub-paragraph (3) of this paragraph.

Alternative method of disposing of compensation between £200 and £20

7.—(1) If the amount of the compensation exceeds twenty pounds but does not exceed two hundred pounds, it may, with the approval of the acquiring authority, instead of being paid into court under the last foregoing paragraph, be paid to two trustees approved by the acquiring authority and nominated by the person entitled to the rents or profits of the land in respect of which the compensation is paid by a nomination in writing signed by him.

SCH. 1

(2) The compensation paid to the trustees, and the income arising from it, shall be applied by the trustees in accordance with the last foregoing paragraph, except that it shall not be necessary to obtain any order of the High Court for that purpose, and the compensation until so applied may be invested in government or real securities.

Compensation not exceeding £20

8. If the compensation does not exceed twenty pounds, it shall be paid to the person entitled to the rents and profits of the land in respect of which it is payable, for his own use and benefit.

Sums payable under contract with persons not absolutely entitled

9.—(1) All sums of money exceeding twenty pounds payable by the acquiring authority in respect of the taking, using or interfering with any land under a contract or agreement with any person who is not entitled to dispose of the land absolutely for his own benefit shall be paid into court or to trustees in accordance with paragraphs 6 and 7 of this Schedule, and it shall not be lawful for any such person to retain to his own use—

(*a*) any part of any sums agreed or contracted to be paid for or in respect to the taking, using or interfering with any of the land, or

(*b*) any part of the sums agreed or contracted to be paid in lieu of bridges, tunnels or other accommodation works.

(2) All such money shall be deemed to have been contracted to be paid for and on account of the several parties interested in the land, whether in possession or in remainder, reversion or expectancy.

(3) Notwithstanding the last foregoing sub-paragraph, the High Court or, as the case may be, the trustees under paragraph 7 of this Schedule may if they think fit allot to any tenant for life, or to a tenant for any other partial or qualified estate, for his own use, a part of the sums of money paid into court or to trustees under this Schedule as compensation for any injury, inconvenience or annoyance which he may have sustained independently of the actual value of the land, and of the damage occasioned to the land held therewith, by reason of the taking of the land and the execution of the works.

Conveyance of the land or interest

10.—(1) When the compensation agreed or awarded in respect of the land has been paid into court under the foregoing provisions of this Schedule, the owner of the land (including all parties who are by this Schedule enabled to sell or convey the land) shall, when required to do so by the acquiring authority, duly convey the land or interest to the acquiring authority, or as they direct.

(2) If there is a failure to comply with the foregoing sub-paragraph, or a failure to adduce a good title to the land to the satisfaction of the acquiring authority, it shall be lawful for the acquiring authority to execute a deed poll containing a description

of the land, and reciting its acquisition by the acquiring authority, the names of the parties from whom it was purchased, the amount of compensation paid into court and the default. SCH. 1

(3) On execution of the deed poll all the estate and interest in the land belonging to, or capable of being sold and conveyed by, any person as between whom and the acquiring authority the compensation was agreed or awarded and paid into court shall vest absolutely in the acquiring authority, and as against all such persons and all parties on behalf of whom they are enabled by this Schedule to sell and convey, the acquiring authority shall be entitled to immediate possession of the land.

SCHEDULE 2

Section 5.

ABSENT AND UNTRACED OWNERS

1.—(1) The compensation to be paid for any land subject to compulsory purchase to be purchased by the acquiring authority—

(*a*) from a person who is prevented from treating with them on account of absence from the United Kingdom, or

(*b*) from a person who cannot be found after diligent inquiry has been made,

and the compensation to be paid for any permanent injury to any such land, shall be determined by the valuation of a surveyor selected from the members of the Lands Tribunal in accordance with section 3 of the Lands Tribunal Act 1949. 1949 c. 42.

(2) The surveyor shall before making the valuation make and sign a declaration in the following form in the presence of a justice of the peace,—

"I A.B. do solemnly and sincerely declare that I will faithfully, impartially and honestly, according to the best of my skill and ability, execute the duty of making the valuation hereby referred to me.

Made and signed in the presence of ....."

If a surveyor makes the declaration corruptly or, after having made the declaration, wilfully acts contrary to the declaration, he shall be guilty of a misdemeanour.

(3) The surveyor shall annex to the valuation made by him a declaration in writing, signed by him, of the correctness of the valuation, and the acquiring authority shall preserve the valuation and declaration together and produce them, on demand, to the owner of the land to which the valuation relates, and to all other persons interested in the land.

(4) All the expenses of and incident to the valuation shall be borne by the acquiring authority.

2.—(1) The acquiring authority may pay into court the compensation determined under this Schedule to be placed to the credit of the parties interested in the land, giving their descriptions so far as the acquiring authority is in a position to do so.

SCH. 2

(2) When the acquiring authority have paid into court the compensation, it shall be lawful for them to execute a deed poll containing a description of the land in respect of which the payment into court was made, and declaring the circumstances under which, and the names of the parties to whose credit, the payment into court was made.

(3) On execution of the deed poll all the estate and interest in the land of the parties for whose use and in respect whereof the compensation was paid into court shall vest absolutely in the acquiring authority, and as against those persons the acquiring authority shall be entitled to immediate possession of the land.

3.—(1) On the application of any person claiming any part of the money paid into court, or of the land or any interest in the land in respect of which it was paid into court, the High Court may order its distribution according to the respective estates, titles or interests of the claimants, and if, before the money is distributed, it is dealt with under section 6 of the Administration of Justice Act 1965 payment likewise of the dividends thereof, and may make such other order as the court thinks fit.

1965 c. 2.

(2) Before Schedule 1 to the Administration of Justice Act 1965 comes into force, orders of the High Court under the foregoing sub-paragraph may include an order for the money to be invested in accordance with rules of court and an order for payment of the dividends on the money.

4.—(1) If the person mentioned in paragraph 1(1) of this Schedule is dissatisfied with the surveyor's valuation he may, before applying under paragraph 3 of this Schedule to the High Court for payment or investment of the compensation paid into court, by notice in writing to the acquiring authority require the submission to the Lands Tribunal of the question whether the compensation paid into court was sufficient, or whether any and what further sum ought to be paid over or paid into court.

(2) If the Lands Tribunal award a further sum, the acquiring authority shall pay over or pay into court as the case may require that further sum within fourteen days of the making of the award, and if they make default, that further sum may be recovered in proceedings in the High Court.

(3) If the Lands Tribunal determine that the compensation paid into court was sufficient, the costs of and incident to the proceedings before the Lands Tribunal shall, in accordance with section 3(5) of the Lands Tribunal Act 1949, be in the discretion of that Tribunal, but if the Lands Tribunal determine that a further sum ought to be paid, all the costs of and incident to the proceedings shall be borne by the acquiring authority.

1949 c. 42.

Section 11.

SCHEDULE 3

ALTERNATIVE PROCEDURE FOR OBTAINING RIGHT OF ENTRY

1. Before entering on any of the land the acquiring authority shall comply with the requirements of paragraphs 2 and 3 of this Schedule as respects each person interested in or entitled to sell and convey the land who has not given his consent to the entry (hereinafter referred to as " the owner ").

SCH. 3

2.—(1) The acquiring authority shall pay into court by way of security—

(*a*) the amount of compensation claimed by the owner, or

(*b*) a sum equal to the value of his interest as determined by a surveyor appointed in accordance with the following sub-paragraph.

(2) The surveyor shall be an able practical surveyor appointed by two justices of the peace acting together by an instrument in writing signed by them.

3.—(1) The acquiring authority shall also give or tender to the owner a bond in a penal sum equal to the sum to be paid into court under paragraph 2 of this Schedule, conditioned for payment to the owner, or, as the case may be, for payment into court in accordance with this Act, of all the compensation which may be agreed or awarded, together with interest thereon at the rate prescribed under section 32 of the Land Compensation Act 1961 from the time of entry until the compensation is paid over, or paid into court, in accordance with this Act. 1961 c. 33.

(2) The bond shall, where the acquiring authority are a corporation, be under their common seal or official seal.

(3) The bond shall be with two sufficient sureties, and, if the acquiring authority and the owner do not agree, the sureties shall be approved by two justices of the peace acting together.

4.—(1) Money paid into court under paragraph 2 of this Schedule shall remain in court by way of security to him for the performance of the condition of the bond.

(2) If the money has been dealt with under section 6 of the Administration of Justice Act 1965, it shall be accumulated. 1965 c. 2.

(3) When the condition of the bond is fully performed, the High Court may, on the application of the acquiring authority, order the money, or the proceeds of the securities in which it has been invested, together with the accumulation, to be paid to the acquiring authority.

(4) If the condition of the bond has not been fully performed, the High Court may order the money to be applied, in such manner as the court thinks fit, for the benefit of the person for whose security it was paid into court.

(5) Before Schedule 1 to the Administration of Justice Act 1965 comes into force sub-paragraph (2) of this paragraph shall not apply, but the money paid into court may, on the application of the acquiring authority, be ordered to be invested in accordance with rules of court and accumulated.

SCHEDULE 4

Section 21.

COMMON LAND

General

1.—(1) The compensation in respect of the right in the soil of any of the land subject to compulsory purchase and subject to any rights of common shall be paid to the lord of the manor, in case he is entitled thereto, or to such party, other than the commoners, as is entitled to the right in the soil.

SCH. 4

(2) The compensation in respect of all other commonable and other rights in or over such land, including therein any commonable or other rights to which the lord of the manor may be entitled, other than his right in the soil of the land, shall be determined and paid and applied in the manner provided in the following provisions of this Schedule with respect to common land the right in the soil of which belongs to the commoners; and upon payment of the compensation so determined either to the persons entitled thereto or into court all such commonable and other rights shall cease and be extinguished.

Duty of owner of right in the soil to convey on payment of compensation

2.—(1) On payment or tender to the lord of the manor, or such other party as aforesaid, of the compensation agreed or awarded in respect of the right in the soil of any such land, or, where provided for in this Act, on payment into court of that compensation, the lord of the manor or other party shall convey the land to the acquiring authority.

(2) The conveyance shall have the effect of vesting the land in the acquiring authority as if the lord of the manor or other party had been seised in fee simple of the land at the time of executing the conveyance.

(3) In default of such a conveyance it shall be lawful for the acquiring authority, if they think fit, to execute a deed poll in the manner provided by section 9(3) of this Act, and thereupon the land in respect of which the compensation was paid into court shall vest absolutely in the acquiring authority and they shall be entitled to immediate possession thereof, subject nevertheless to the commonable and other rights theretofore affecting the same, until those rights have been extinguished by payment, as hereinafter provided, of compensation for the same either to the persons entitled thereto or into court.

Compensation for common land not held of a manor

3. The compensation in respect of any of the land subject to compulsory purchase, being common land, or in the nature thereof, the right to the soil of which belongs to the commoners, as well as the compensation in respect of the commonable and other rights in or over common land the right in the soil of which does not belong to the commoners (other than compensation to the lord of the manor or other party entitled to the soil of common lands in respect of his right in the soil) shall be determined by agreement between the acquiring authority and a committee of the persons entitled to commonable or other rights in the land to be appointed under the following provisions of this Schedule.

Appointment of committee of commoners

4.—(1) The acquiring authority may convene a meeting of the persons entitled to commonable or other rights over or in the land subject to compulsory purchase to be held at some convenient

place in the locality for the purpose of appointing a committee to treat with the acquiring authority for the compensation to be paid for the extinction of the commonable or other rights.

(2) The meeting shall be called by publishing a notice in two consecutive weeks in a newspaper circulating in the county or counties and in the locality in which the land is situated.

(3) The last of those notices shall be published not more than fourteen or less than seven days before the meeting.

(4) Notice of the meeting shall also, not less than seven days before the meeting, be affixed on the door of the parish church in the locality where the meeting is to be held, or if there is no such church, at some other place in the locality where notices are usually affixed; and if the land is parcel of or held of a manor, the notice of the meeting shall also be given to the lord of the manor.

(5) A meeting called under this paragraph may appoint a committee consisting of not more than five of the persons entitled to any such rights, and at such a meeting the decision of the majority of the persons so entitled who are present shall bind the minority and all absent parties.

(6) In this paragraph "county" includes any riding or other like division of a county, and a county of a city or of a town.

Negotiations with committee

5.—(1) The committee may agree on behalf of themselves and all other parties interested in the commonable and other rights, and all such parties shall be bound by the agreement.

(2) The committee may receive the compensation agreed to be paid, and the receipt of the committee, or of any three of them, shall be an effectual discharge for the compensation.

(3) The compensation when received shall be apportioned by the committee among the several persons interested, according to their respective interests, and the acquiring authority shall not be bound to see to the apportionment or to the application of the compensation, nor shall they be liable for the misapplication or nonapplication of the compensation.

(4) If the committee fail to agree with the acquiring authority as to the amount of the compensation it shall be referred to and determined by the Lands Tribunal.

Settlement of compensation where no committee is appointed

6. If there is a failure to hold an effective meeting under paragraph 4 of this Schedule, or if the meeting fails to appoint a committee, the amount of the compensation shall be determined by a surveyor selected from the members of the Lands Tribunal in accordance with section 3 of the Lands Tribunal Act 1949. 1949 c. 42.

Execution of deed poll

7.—(1) On payment or tender to the committee, or any three of them, or if there is no such committee then upon payment into

SCH. 4

court in the manner provided in the like case, of the compensation agreed or awarded in respect of the commonable or other rights, it shall be lawful for the acquiring authority, if they think fit, to execute a deed poll in the manner provided by section 9(3) of this Act.

(2) On execution of the deed poll the land in respect of which the compensation was paid over, or paid into court, shall vest in the acquiring authority freed and discharged from all such commonable or other rights, and they shall be entitled to immediate possession thereof.

(3) The High Court may order payment of the compensation paid into court to a committee appointed under this Schedule, or make such other order with respect thereto for the benefit of the parties interested as the High Court thinks fit.

Section 23(6).

SCHEDULE 5

FORMS OF CONVEYANCE

General

I , of , in consideration of the sum of paid to me [or, as the case may be], into court, in the name and with the privity of the Accountant General of the Supreme Court, ex parte "the acquiring authority" [naming them], or to A.B., of , and C.D., of , [two trustees appointed to receive the same], pursuant to the [here name the compulsory purchase order], by the [here name the acquiring authority], do hereby convey to the said authority [or other description], and their successors in title, all [describing the premises to be conveyed], and all such estate, right, title, and interest in and to the same as I am or shall become seised or possessed of, or am by the said order empowered to convey, to hold the premises to the said authority [for other description], and their successors in title, for ever. In witness, etc.

Conveyance on rentcharge

I , of in consideration of the rentcharge to be paid to me, and my successors in title as hereinafter mentioned, by "the acquiring authority" [naming them], do hereby convey to the said authority [or other description], and their successors in title, all [describing the premises to be conveyed], and all my estate, right, title, and interest in and to the same and every part thereof to hold the said premises to the said authority [or other description], and their successors in title, for ever, they the said authority [or other description], and their successors in title yielding and paying unto me, and my successors in title, one clear yearly rent of , by equal quarterly [or half-yearly, as agreed upon], portions, henceforth, on the [stating the days], clear of all deductions. In witness etc.

Section 38.

SCHEDULE 6

POWERS OF PURCHASING LAND BY AGREEMENT

1908 c. 36.

THE SMALL HOLDINGS AND ALLOTMENTS ACT 1908

In section 38 for the words from "the Lands Clauses Acts" to "by agreement" there shall be substituted the words "the provisions of

Part I of the Compulsory Purchase Act 1965 (so far as applicable) other than sections 4 to 8, section 10, subsections (1) to (5) of section 23, and section 31, shall apply". SCH. 6

THE SALMON AND FRESHWATER FISHERIES ACT 1923 1923 c. 16.

In section 16(2) for the words from "the Lands Clauses Acts" to "superfluous land" there shall be substituted the words "the provisions of Part I of the Compulsory Purchase Act 1965 (so far as applicable), other than sections 4 to 8, section 10 and section 31, shall apply".

THE LOCAL GOVERNMENT ACT 1933 1933 c. 51.

In section 176 for the words from "the Lands Clauses Acts" to the words "undertaking and" there shall be substituted the words "the provisions of Part I of the Compulsory Purchase Act 1965 (so far as applicable) other than sections 4 to 8, section 10 and section 31, shall apply, and in the said Part I as so applied".

THE WATER ACT 1945 1945 c. 42.

For section 24(3) there shall be substituted the following subsection—

"(3) The provisions of Part I of the Compulsory Purchase Act 1965 (so far as applicable), other than sections 4 to 8, section 10, section 21 and Schedule 4, and section 31, shall apply to the foregoing provisions of this section."

THE CIVIL AVIATION ACT 1949 1949 c. 67.

In section 19(5) for the words from "the Lands Clauses Acts" to the end of the subsection there shall be substituted the words "the provisions of Part I of the Compulsory Purchase Act 1965 (so far as applicable) other than sections 4 to 8, section 10, and section 31, together with sections 127 to 132 of the Lands Clauses (Consolidation) Act 1845 (superfluous land), shall apply".

THE MINERAL WORKINGS ACT 1951 1951 c. 60.

In section 17(2) for the words from "the Lands Clauses Acts" to the end of the subsection there shall be substituted the words "the provisions of Part I of the Compulsory Purchase Act 1965 (so far as applicable) other than sections 4 to 8, section 10, and section 31, shall apply".

THE PRISON ACT 1952 1952 c. 52.

In section 36(3) for the words from "the Lands Clauses Acts" to the end of the subsection there shall be substituted the words "the provisions of Part I of the Compulsory Purchase Act 1965 (so far as applicable) other than sections 4 to 8, section 10, and section 31, shall apply".

THE HIGHWAYS ACT 1959 1959 c. 25.

In section 222(11) for the words from "the Lands Clauses Acts" to the words "undertaking and" there shall be substituted the words "the provisions of Part I of the Compulsory Purchase Act 1965 (so far as applicable) other than sections 4 to 8, section 10 and section 31, shall apply, and in the said Part I as so applied".

SCH. 6

THE TOWN AND COUNTRY PLANNING ACT 1962

1962 c. 38.

For section 71(3) there shall be substituted the following subsection—

"(3) The provisions of Part I of the Compulsory Purchase Act 1965 (so far as applicable), other than sections 4 to 8, section 10, and section 31, shall apply in relation to the acquisition of land under this section".

1965 c. 16.

THE AIRPORTS AUTHORITY ACT 1965

In section 17(2) for the words from "the Lands Clauses Acts" to the end of the subsection there shall be substituted the words "the provisions of Part I of the Compulsory Purchase Act 1965 (so far as applicable) other than sections 4 to 8, section 27 and section 31, shall apply".

Section 39(3).

SCHEDULE 7

CONSEQUENTIAL AMENDMENTS OF REFERENCES TO ENACTMENTS RE-ENACTED IN THIS ACT

1845 c. 20.

THE RAILWAYS CLAUSES CONSOLIDATION ACT 1845

In section 6 as incorporated in any Act, or in any provision having effect under any Act, whether passed or made before or after the passing of this Act, for the words from "in the manner provided" to the end of the section there shall be substituted the words "by the Lands Tribunal" and in section 78 (as originally enacted, and so incorporated) for the words "the same shall be settled as in other cases of disputed compensation" there shall be substituted the words "the question shall be referred to and determined by the Lands Tribunal".

1899 c. 30.

THE COMMONS ACT 1899

In Schedule 1 there shall be included a reference to Part I of this Act.

1947 c. 48.

THE AGRICULTURE ACT 1947

In relation to any certificate given under the Act of 1947 on or after the commencement of this Act as respects the compulsory purchase of land, for the references to provisions of the Act of 1946 in section 92(2)(*b*) of that Act there shall be substituted references to Part I of this Act.

1954 c. 56.

THE LANDLORD AND TENANT ACT 1954

1845 c. 18.

In section 39(1) the reference to section 121 of the Lands Clauses Consolidation Act 1845 shall include a reference to section 20 of this Act.

1957 c. 56.

THE HOUSING ACT 1957

In section 98, paragraph 3 of Schedule 1 and paragraph 10 of Schedule 3—

(*a*) references to paragraph 3 of Schedule 2 to the Act of 1946 include references to section 11(1) of this Act, and

(*b*) references to section 121 of the Lands Clauses Consolidation Act 1845 include references to section 20 of this Act.

In section 101(2) the reference to sections 84 to 90 of the Lands Clauses Consolidation Act 1845 includes a reference to section 11 of this Act.

THE LAND COMPENSATION ACT 1961 SCH. 7

In section 19(1) the reference to section 58 of the Lands Clauses Consolidation Act 1845 includes a reference to Schedule 2 to this Act. 1961 c. 33.

THE TOWN AND COUNTRY PLANNING ACT 1962 1962 c. 38.

1. In the provisions of the Act relating to expedited procedure in column 1 of the following Table for the respective references to provisions of the Lands Clauses Consolidation Act 1845 and the Act of 1946 in column 2 of the Table there shall be substituted references to the provisions of this Act set out in column 3 of that Table. 1845 c. 18.

Context in Act of 1962	*Provision in Act of* 1845 *or Act of* 1946	*Corresponding provision in this Act*
Section 75(2) of Act of 1962	Section 18 of Act of 1845	Section 5 of this Act
Section 75(6) of Act of 1962	Sections 84 to 90 of Act of 1845	Section 11 of this Act
Schedule 4, paragraph 4 of Act of 1962	Schedule 2, paragraph 3 of Act of 1946	Section 11(1) of this Act
Schedule 4, paragraph 7 of Act of 1962	Schedule 2, paragraph 4 of Act of 1946	Section 8(1) of this Act
Schedule 4, paragraph 8 of Act of 1962	Sections 84 to 90 of Act of 1845	Section 11 of this Act
Schedule 4, paragraph 10 (1) of Act of 1962	Section 116 of Act of 1845	Section 18(2) of this Act
Schedule 4, paragraph 10 (2)(3)(4) of Act of 1962	Sections 115 to 118 of Act of 1845	Section 18 of this Act
Schedule 4, paragraph 10 (2) of Act of 1962	Section 117 of Act of 1845	Section 18(3) of this Act
Schedule 4, paragraph 11 of Act of 1962	Section 119 of Act of 1845	Section 19 of this Act

2. In paragraph 9 of Schedule 4 to the Town and Country Planning Act 1962 for the words from " the provisions of the Act of 1845 " where they first occur in sub-paragraph (1) to the end of the paragraph there shall be substituted the words " section 22 of, and Schedule 2 to, the Compulsory Purchase Act 1965 shall not apply ".

3. In section 86(6) of the said Act of 1962 for the words from the beginning to " Act of 1946) with " there shall be substituted the words " In construing the Compulsory Purchase Act 1965 as applied in relation to ", and in paragraph (*b*) of that subsection the reference to section 68 of the Lands Clauses Consolidation Act 1845 shall be taken as a reference to section 10 of this Act.

4. The above amendments of the Town and Country Planning Act 1962 do not have effect in relation to a compulsory purchase order confirmed under Part I of Schedule 1 to the Act of 1946, or made under Part II of that Schedule, before the commencement of this Act.

REFERENCES TO SECTIONS 63 AND 68 OF LANDS CLAUSES CONSOLIDATION ACT 1845

References to section 63 or section 68 of the Lands Clauses Consolidation Act 1845 in any enactment shall include references to section 7 or, as the case may be, section 10 of this Act.

Section 39(4).

SCHEDULE 8

REPEALS

PART I

ENACTMENTS CONSOLIDATED

Chapter	Short Title	Extent of Repeal
9 & 10 Geo. 5. c. 59.	The Land Settlement Facilities Act 1919.	Section 12(3).
16 & 17 Geo. 5. c. 52.	The Small Holdings and Allotments Act 1926.	Section 17(1).
8 & 9 Geo. 6. c. 42.	The Water Act 1945.	In Schedule 2, in paragraph 1, sub-paragraph (*a*) and (*b*), and in paragraph 2 the words "the Lands Clauses Acts and" and sub-paragraph (*b*).
9 & 10 Geo. 6. c. 49.	The Acquisition of Land (Authorisation Procedure) Act 1946.	In section 1(3), the words "Lands Clauses Acts and other" and the words "I and" in both places. In Schedule 2, Part I except for paragraph 1(*a*) as applied by paragraph 7(2) of that Schedule. In Schedule 4, in the entry amending the Land Settlement Facilities Act 1919 the words "In section 12, subsection (3) shall not apply to land purchased compulsorily".
11 & 12 Geo. 6. c. 22.	The Water Act 1948.	In the Schedule, in paragraph 1, the words from the beginning to "those Acts and", the words "I and" and the proviso, and paragraph 8 (2).
5 & 6 Eliz. 2. c. 56.	The Housing Act 1957.	In Schedule 1, paragraph 1(2). In Schedule 3, paragraph 7(1)(*a*) and sub-paragraphs (1) to (4), (6) and (8) of paragraph 8, and paragraph 9. In Schedule 7, paragraph 1(2).
10 & 11 Eliz. 2. c. 38.	The Town and Country Planning Act 1962.	In section 75(7), the words from "by the Second" to "1946 and". In section 86(6) the words from "(notwithstanding" to "1946)" In Schedule 4, paragraph 6(3).
10 & 11 Eliz. 2. c. 58.	The Pipe-lines Act 1962.	In Schedule 3, paragraphs 1 and 2.
1963 c. 38.	The Water Resources Act 1963.	In Schedule 8, paragraph 12 (1)(2)(3).
1964 c. 56	The Housing Act 1964.	Section 59(3).

The repeals in this Part of this Schedule do not apply—

(*a*) in relation to a compulsory purchase order confirmed before the commencement of this Act under Part I of Schedule 1 to the Act of 1946 or section 24 of the Water Act 1945 or Part III of the Housing Act 1957, or

1945 c. 42.
1957 c. 56.

(*b*) in relation to a compulsory purchase order made before the commencement of this Act under Part II of Schedule 1 to the Act of 1946, or section 9 or section 23 of the Water Act 1945 or section 67 of the Water Resources Act 1963, or section 11 of the Pipe-lines Act 1962, or SCH. 8 1945 c. 42. 1963 c. 38. 1962 c. 58.

(*c*) in relation to a notice served under section 59 of the Housing Act 1964 before the commencement of this Act. 1964 c. 56.

PART II

SPENT PROVISIONS IN LANDS CLAUSES CONSOLIDATION ACT 1845

Chapter	Short Title	Extent of Repeal
8 & 9 Vict. c. 18.	The Lands Clauses Consolidation Act 1845.	In section 7 the words from "married women" where they first occur to "idiots" where that word first occurs, the words "any estate in dower or to", the words "for life, or for lives and years, or", the words "married women entitled to dower or", the words "for life or for lives and years or", the words from "and as to such married women" to the word "disability" (before the words "and as to such trustees"). In section 8 the words from the beginning to "as well as" and the word "other". In section 69 the words from "married woman" to "idiot". In section 70 the words from first "three" to "annuities or in". In section 71 the words "coverture, infancy, lunacy or other" and the words "husbands, guardians, committees or". In section 72 the words "coverture, infancy, idiocy, or other" and the words "husbands, guardians, committees or". In section 74 the words from first "a life" to "lives and". In section 77 the words from "the Cashier" to "been paid in and". In section 81 the words from "to merge" to "conveyed and" and the words from "but although" to the end of the section. In section 87 the words "bank annuities or". Section 88. The enacting words prefacing sections 95 to 98, and those sections.

SCH. 8

Chapter	Short Title	Extent of Repeal
8 & 9 Vict. c. 18—*cont.*	The Lands Clauses Consolidation Act 1845—*cont.*	In the enacting words prefacing sections 115 to 118 the words " or chief or other rent ". In section 116 the words " chief or other rent ". In section 117 the words " chief or other rent ". Section 139. Section 143. Section 147.

The repeals in this Part of this Schedule take effect as from the expiration of a period of one month beginning with the passing of this Act, and extend to the provisions of the Act of 1845 as incorporated in any other Act or provision having effect under an Act.

PART III

PROVISIONS SUPERSEDED BY LANDS TRIBUNAL ACT 1949 AND LAND COMPENSATION ACT 1961

Chapter	Short Title	Extent of Repeal
8 & 9 Vict. c. 18.	The Lands Clauses Consolidation Act 1845.	In section 21 the word " hereinafter ". Section 22 except as applied by section 30 of the Railways Clauses Consolidation Act 1845. Sections 23 to 57. In section 58 the words from " or who shall " to " notice thereof " and the words from " as two " to the end of the section. In section 59 from the beginning to " as aforesaid and ". In section 68 the words " and if the compensation claimed in such case shall exceed the sum of fifty pounds " and the words from " either " to the end of the section. In section 76 the words " or fail to appear on the inquiry before a jury as herein provided for ". In section 106 the words from " to be appointed " to the end of the section. In section 121 the words from " and the amount " to " differ about the same ". Section 145.

SCH. 8

Chapter	Short Title	Extent of Repeal
10 & 11 Vict. c. 27.	The Harbours, Docks and Piers Clauses Act 1847.	In section 6 the words from " and except where " to " provided by ", the words from " for determining " to " last mentioned Acts " and the words " and to enforcing the payment or other satisfaction thereof ".
46 & 47 Vict. c. 15.	The Lands Clauses (Umpire) Act 1883.	The whole Act.
58 & 59 Vict. c. 11.	The Lands Clauses (Taxation of Costs) Act 1895.	The whole Act.
12, 13 & 14 Geo. 6. c. 27.	The Juries Act 1949.	Section 12. In section 18(1) proviso (*a*).
12, 13 & 14 Geo. 6. c. 42.	The Lands Tribunal Act 1949.	In section 1, in subsection (3)(*c*) the words " on an acquisition by any such authority ", and in subsection (6) the words from " instead of " to " therewith ".

The repeals in this Part of this Schedule take effect as from the expiration of a period of one month beginning with the passing of this Act and those in the Lands Clauses Consolidation Act 1845, and the Harbours, Docks and Piers Clauses Act 1847 extend to the provisions of those Acts as incorporated in any public general Act passed before this Act, and as incorporated in any Act or provision passed or made after the passing of this Act. 1845 c. 18. 1847 c. 27.

PRINTED BY SIR PERCY FAULKNER, K.B.E., C.B.
Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament
(37590)

Published by
HER MAJESTY'S STATIONERY OFFICE
To be purchased from
York House, Kingsway, London w.c.2
423 Oxford Street, London w.1
13A Castle Street, Edinburgh 2
109 St. Mary Street, Cardiff
39 King Street, Manchester 2
50 Fairfax Street, Bristol 1
35 Smallbrook, Ringway, Birmingham 5
80 Chichester Street, Belfast 1
or through any bookseller

Printed in England

Footnote 11

To

Further Supplementary Written Submissions

dated 30 September 2024

in Rebuttal to

Mona Offshore Wind Limited Document

Appendix to Response to WRs: Griffith Parry, Robert Parry and Kerry James

(Document Number S_D2_3.4)

Ministry of Housing, Communities & Local Government

Guidance on

Compulsory purchase process

and

The Crichel Down Rules

This compulsory purchase guidance updates the previous version published in February 2018. It applies only to England.

(The guidance contains internal hyperlinks to navigate within the document. You may need to install command icons on your toolbar to allow you to do this. This can be done by downloading the document then opening it as a PDF. Go to View, then Page Navigation and select Previous view/Next view. Once you click on a hyperlink, you can use the Previous arrow to take you back to your original place in the document.)

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July 2019

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Compulsory purchase guidance

Tier 1: compulsory purchase overview

Guidance relevant to all compulsory purchase orders
This tier contains guidance on:

- General overview
- The compulsory purchase process:
  - Stage 1: choosing the right compulsory purchase power
  - Stage 2: justifying a compulsory purchase order
  - Stage 3: preparing and making a compulsory purchase order
  - Stage 4: consideration of the compulsory purchase order
  - Stage 5: implementing a compulsory purchase order
  - Stage 6: compensation

General overview

1. What are compulsory purchase powers?

These are powers which enable ('enabling powers') public bodies on which they are conferred to acquire land compulsorily. Compulsory purchase of land requires the approval of a confirming minister.

Compulsory purchase powers are an important tool to use as a means of assembling the land needed to help deliver social, environmental and economic change. Used properly, they can contribute towards effective and efficient urban and rural regeneration, essential infrastructure, the revitalisation of communities, and the promotion of business – leading to improvements in quality of life.

2. When should compulsory purchase powers be used?

Acquiring authorities should use compulsory purchase powers where it is expedient to do so. However, a compulsory purchase order should only be made where there is a compelling case in the public interest.

The confirming authority will expect the acquiring authority to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement. Where acquiring authorities decide to/arrange to acquire land by agreement, they will pay compensation as if it had been compulsorily purchased, unless the land was already on offer on the open market.

Compulsory purchase is intended as a last resort to secure the assembly of all the land needed for the implementation of projects. However, if an acquiring authority waits for negotiations to break down before starting the compulsory purchase process, valuable time will be lost. Therefore, depending on when the land is required, it may often be sensible, given the amount of time required to complete the compulsory purchase process, for the acquiring authority to:

- plan a compulsory purchase timetable as a contingency measure; and
- initiate formal procedures

This will also help to make the seriousness of the authority's intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations.

When making and confirming an order, acquiring authorities and authorising authorities should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected. The officers' report seeking authorisation for the compulsory purchase order should address human rights issues. Further guidance on human rights issues can be found on the Equality and Human Rights Commission's website.

3. What should acquiring authorities consider when offering financial compensation in advance of a compulsory purchase order?

When offering financial compensation for land in advance of a compulsory purchase order, public sector organisations should, as is the norm, consider value for money in terms of the Exchequer as a whole in order to avoid any repercussive cost impacts or pressures on both the scheme in question and other publicly-funded schemes.

Acquiring authorities can consider all of the costs involved in the compulsory purchase process when assessing the appropriate payments for purchase of land in advance of compulsory purchase. For instance, the early acquisition may avoid some of the following costs being incurred:

- legal fees (both for the order making process as a whole and for dealing with individual objectors within a wider order, including compensation claims)
- wider compulsory purchase order process costs (for example, staff resources)
- the overall cost of project delay (for example, caused by delay in gaining entry to the land)
- any other reasonable linked costs (for example, potential for objectors to create further costs through satellite litigation on planning permissions and other orders)

In order to reach early settlements, public sector organisations should make reasonable initial offers, and be prepared to engage constructively with claimants about relocation issues and mitigation and accommodation works where relevant.

4. Who has compulsory purchase powers?

Many public bodies with statutory powers have compulsory purchase powers, including:

- local authorities (which include for some purposes national park authorities)
- statutory undertakers
- some executive agencies, including Homes England[1]
- health service bodies

Government ministers also have compulsory purchase powers, but departments that use them will have their own internal guidance on how to proceed.

5. How is a compulsory purchase order made?

Detailed guidance on the compulsory purchase process is provided in the section on the compulsory purchase order process.

[1] Homes England is the trading name for the Homes and Communities Agency (HCA) and operates under the powers given to the HCA in the Housing and Regeneration Act 2008.

6. How should the Public Sector Equality Duty be taken into account in the compulsory purchase regime?

All public sector acquiring authorities are bound by the Public Sector Equality Duty as set out in section 149 of the Equality Act 2010. Throughout the compulsory purchase process acquiring authorities must have due regard to the need to: (a) eliminate unlawful discrimination, harassment, victimisation; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. In performing their public functions, acquiring authorities must have due regard to the need to meet these three aims of the Equality Act 2010.

For example, an important use of compulsory purchase powers is to help regenerate run-down areas. Although low income is not a protected characteristic, it is not uncommon for people from ethnic minorities, the elderly or people with a disability to be over-represented in low income groups. As part of the Public Sector Equality Duty, acquiring authorities must have due regard to the need to promote equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. This might mean that the acquiring authority devises a process which promotes equality of opportunity by addressing particular problems that people with certain protected characteristics might have (eg making sure that documents are accessible for people with sight problems or learning difficulties and that people have access to advocates or advice).

7. Can anyone else initiate compulsory purchase?

In certain circumstances an owner may also initiate a compulsory purchase process. An owner may initiate the process by serving:

- a purchase notice under section 137 of the Town and Country Planning Act 1990 and section 32 Planning (Listed Buildings and Conservation Areas) Act 1990 - served by landowners following an adverse planning or listed building consent decision where, in specified circumstances, they consider that the land has become incapable of reasonable beneficial use in its existing state; or

- a blight notice under section 150 of the Town and Country Planning 1990 Act - served by landowners where they have made reasonable endeavours to sell their land but, because of blight caused by planning proposals affecting the land, they have not been able to do so, except at a substantially lower price than might reasonably have been expected. Blight notices can only be served in the circumstances listed in schedule 13 to the Town and Country Planning Act 1990

8. Are there any other ways to compulsorily acquire land?

Other powers of compulsory purchase include:

- a Transport and Works Act order under the Transport and Works Act 1992 - guidance on Transport and Works Act orders is available from the Department for Transport

- a development consent order under the Planning Act 2008 for a Nationally

Significant Infrastructure Project - guidance is available here

- a hybrid act of Parliament, such as the Crossrail Act 2008, which is one promoted by the government but in relation to specified land rather than the UK as a whole

- a harbour revision order and a harbour empowerment order under the Harbours Act 1964 – guidance is available here

This guidance relates to the use of compulsory purchase powers to make a compulsory purchase order that is provided by a specific act of Parliament and requires the approval of a confirming minister.

The compulsory purchase order process

9. What is the process for making a compulsory purchase order?

There are six key stages in the process:

- Stage 1: choosing the right compulsory purchase power
- Stage 2: justifying a compulsory purchase order
- Stage 3: preparing and making a compulsory purchase order
- Stage 4: consideration of the compulsory purchase order
- Stage 5: implementing a compulsory purchase order
- Stage 6: compensation

Stage 1: choosing the right compulsory purchase power

10. When can an acquiring authority use its compulsory purchase powers?

There are a large number of enabling powers, each of which specifies the bodies that are acquiring authorities for the purposes of the power and the purposes for which the land can be acquired. The purpose for which an acquiring authority seeks to acquire land will determine the statutory power under which compulsory purchase is sought. This in turn will influence the factors which the confirming minister will want to take into account in deciding whether to confirm a compulsory purchase order.

Most acts containing enabling powers specify that the procedures in the Acquisition of Land Act 1981 apply to orders made under those powers. Where this is the case, an acquiring authority must follow those procedures.

11. Which power should an acquiring authority use to make a compulsory purchase order?

Acquiring authorities should look to use the most specific power available for the purpose in mind, and only use a general power when a specific power is not available. The authority should have regard to any guidance relating to the use of the power and adhere to any legislative requirements relating to its use.

Specific guidance is available for:

- local authorities for planning purposes
- local authorities in conjunction with other powers or where land is required for more than one function
- Homes England
- urban development corporations
- new town development corporations
- local housing authorities for housing purposes
- to improve the appearance or condition of land
- for educational purposes
- for public libraries and museums
- for airport Public Safety Zones
- for listed buildings in need of repair

Stage 2: justifying a compulsory purchase order

12. How does an acquiring authority justify a compulsory purchase order?

It is the acquiring authority that must decide how best to justify its proposal to compulsorily acquire land under a particular act. The acquiring authority will need to be ready to defend the proposal at any inquiry or through written representations and, if necessary, in the courts.

There are certain fundamental principles that a confirming minister should consider when deciding whether or not to confirm a compulsory purchase order (see How will the Confirming minister consider the acquiring authority's justification for a compulsory purchase order?). Acquiring authorities may find it useful to take account of these in preparing their justification.

A compulsory purchase order should only be made where there is a compelling case in the public interest.

An acquiring authority should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected. Particular consideration should be given to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention.

13. How will the confirming minister consider the acquiring authority's justification for a compulsory purchase order?

The minister confirming the order has to be able to take a balanced view between the intentions of the acquiring authority and the concerns of those with an interest in the land that it is proposing to acquire compulsorily and the wider public interest. The more comprehensive the justification which the acquiring authority can present, the stronger its case is likely to be.

However, the confirming minister will consider each case on its own merits and this guidance is not intended to imply that the confirming minister will require any particular degree of justification for any specific order. It is not essential to show that land is required immediately to secure the purpose for which it is to be acquired, but a confirming minister will need to understand, and the acquiring authority must be able to demonstrate, that there are sufficiently compelling reasons for the powers to be sought at this time.

If an acquiring authority does not:

- have a clear idea of how it intends to use the land which it is proposing to acquire;
  and

- cannot show that all the necessary resources are likely to be available to achieve that end within a reasonable time-scale

it will be difficult to show conclusively that the compulsory acquisition of the land included in the order is justified in the public interest, at any rate at the time of its making.

See also Section 1: advice on section 226 of the Town and Country Planning Act 1990 for further information in relation to orders under that power.

14. What information about the resource implications of the proposed scheme does an acquiring authority need to provide?

In preparing its justification, the acquiring authority should address:

a) **sources of funding** - the acquiring authority should provide substantive information as to the sources of funding available for both acquiring the land and implementing the scheme for which the land is required. If the scheme is not intended to be independently financially viable, or that the details cannot be finalised until there is certainty that the necessary land will be required, the acquiring authority should provide an indication of how any potential shortfalls are intended to be met. This should include:

- the degree to which other bodies (including the private sector) have agreed to make financial contributions or underwrite the scheme; and
- the basis on which the contributions or underwriting is to be made

b) **timing of that funding** - funding should generally be available now or early in the process. Failing that, the confirming minister would expect funding to be available to complete the compulsory acquisition within the statutory period (see section 4 of the Compulsory Purchase Act 1965) following the operative date, and only in exceptional circumstances would it be reasonable to acquire land with little prospect of the scheme being implemented for a number of years.

Evidence should also be provided to show that sufficient funding could be made available immediately to cope with any acquisition resulting from a blight notice.

15. How does the acquiring authority address whether there are any other impediments to the scheme going ahead?

The acquiring authority will also need to be able to show that the scheme is unlikely to be blocked by any physical or legal impediments to implementation. These include:

- the programming of any infrastructure accommodation works or remedial work which may be required; and
- any need for planning permission or other consent or licence

Where planning permission will be required for the scheme, and permission has yet to be granted, the acquiring authority should demonstrate to the confirming minister that there are no obvious reasons why it might be withheld. Irrespective of the legislative powers under which the actual acquisition is being proposed, if planning permission is

required for the scheme, then, under section 38(6) of the Planning and Compulsory Purchase Act 2004, the planning application will be determined in accordance with the development plan for the area, unless material considerations indicate otherwise. Such material considerations might include, for example, a local authority's supplementary planning documents and national planning policy, including the National Planning Policy Framework.

Stage 3: preparing and making a compulsory purchase order

16. Can acquiring authorities enter land before deciding whether to include it in a compulsory purchase order?

In most cases, acquiring authorities have the right to enter and survey or value land in connection with a proposal to acquire an interest in or a right over land under powers in sections 172-179 of, and Schedule 14 to, the Housing and Planning Act 2016.

A minimum of 14 days' notice of entry must be given to owners and occupiers of the land concerned and compensation is payable by acquiring authorities for any damage arising as a result of the exercise of the power. Acquiring authorities may apply to a justice of the peace for a warrant to exercise the power if necessary. A justice of the peace may only issue a warrant authorising a person to use force if satisfied that another person has prevented or is likely to prevent entry, and that it is reasonable to use force.

17. What are the benefits of undertaking negotiations in parallel with preparing and making a compulsory purchase order?

Undertaking negotiations in parallel with preparing and making a compulsory purchase order can help to build a good working relationship with those whose interests are affected by showing that the authority is willing to be open and to treat their concerns with respect. This includes statutory undertakers and similar bodies as well as private individuals and businesses. Such negotiations can then help to save time at the formal objection stage by minimising the fear that can arise from misunderstandings.

Talking to landowners will also assist the acquiring authority to understand more about the land it seeks to acquire and any physical or legal impediments to development that may exist. It may also help in identifying what measures can be taken to mitigate the effects of the scheme on landowners and neighbours, thereby reducing the cost of a scheme. Acquiring authorities are expected to provide evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted, save for lands where land ownership is unknown or in question.

18. Can alternative dispute resolution techniques be used to address concerns about a compulsory purchase order?

In the interests of speed and fostering good will, acquiring authorities are urged to consider offering those with concerns about a compulsory purchase order full access to alternative dispute resolution techniques. These should involve a suitably qualified independent third party and should be available wherever appropriate throughout the whole of the compulsory purchase process, from the planning and preparation stage to agreeing the compensation payable for the acquired properties.

The use of alternative dispute resolution techniques can save time and money for both parties, while its relative speed and informality may also help to reduce the stress which the process inevitably places on those whose properties are affected. For example, mediation might help to clarify concerns relating to the principle of compulsorily acquiring the land, while other techniques such as early neutral evaluation might help to relieve worries at an early stage about the potential level of compensation eventually payable if

the order were to be confirmed.

19. What other steps should be considered to help those affected by a compulsory purchase order?

Compulsory purchase proposals will inevitably lead to a period of uncertainty and anxiety for the owners and occupiers of the affected land. Acquiring authorities should therefore consider:

- providing full information from the outset about what the compulsory purchase process involves, the rights and duties of those affected and an indicative timetable of events; information should be in a format accessible to all those affected
- appointing a specified case manager during the preparatory stage to whom those with concerns about the proposed acquisition can have easy and direct access
- keeping any delay to a minimum by completing the statutory process as quickly as possible and taking every care to ensure that the compulsory purchase order is made correctly and under the terms of the most appropriate enabling power
- offering to alleviate concerns about future compensation entitlement by entering into agreements about the minimum level of compensation which would be payable if the acquisition goes ahead (not excluding the claimant's future right to refer the matter to the Upper Tribunal (Lands Chamber))
- offering advice and assistance to affected occupiers in respect of their relocation and providing details of available relocation properties where appropriate
- providing a 'not before' date, confirming that acquisition will not take place before a certain time
- where appropriate, give consideration to funding landowners' reasonable costs of negotiation or other costs and expenses likely to be incurred in advance of the process of acquisition

20. Why is it important to make sure that a compulsory purchase order is made correctly?

The confirming minister has to be satisfied that the statutory procedures have been followed correctly, whether the compulsory purchase order is opposed or not. This means that the confirming department has to check that no one has been or will be substantially prejudiced as a result of:

- a defect in the compulsory purchase order; or
- by a failure to follow the correct procedures, such as the service of additional or amended personal notices

Where the procedures set out in the Acquisition of Land Act 1981 apply, acquiring authorities must prepare compulsory purchase orders in conformity with the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004 and are urged to take every possible care in doing so, including recording the names and addresses of those with

an interest in the land to be acquired. (See also Can acquiring authorities seek advice from the confirming department?)

Advice on how to complete the forms of orders to which the Compulsory Purchase of Land (Prescribed Forms) Regulations 2004 apply is available here.

21. Are there any other important matters that may require consideration when making a compulsory purchase order?

Where relevant, acquiring authorities should also have regard to advice available on:

- the need to justify the extent of the scheme to be disregarded at the outset
- the protection afforded to special kinds of land
- compulsory purchase of new rights and other interests - for example, in the compulsory creation of a right of access
- restrictions on the compulsory purchase of Crown land

22. Which parties should be notified of a compulsory purchase order?

The parties who must be notified of a compulsory purchase order are referred to as qualifying persons. A qualifying person includes:

- an owner
- an occupier
- a tenant (whatever the period of the tenancy)
- a person to whom the acquiring authority would be required to give notice to treat if it was proceeding under section 5(1) of the Compulsory Purchase Act 1965
- a person the acquiring authority thinks is likely to be entitled to make a claim for compensation under section 10 of the 1965 act (compensation for injurious affection) if the order is confirmed and the compulsory purchase takes place, so far as he is known to the acquiring authority after making diligent inquiry; this relates mainly, but not exclusively, to easements and restrictive covenants

When serving notice of an order on qualifying persons, the acquiring authority is also expected to send to each one a copy of the authority's statement of reasons for making the order. A copy of this statement should also be sent, where appropriate, to any applicant for planning permission in respect of the land. This statement of reasons, although non-statutory, should be as comprehensive as possible.

The general public will also be notified through newspaper notices and site notices.

23. Can objections be made to a compulsory purchase order?

There are statutory requirements for compulsory purchase orders that are about to be submitted to be advertised in newspapers and through site notices. These invite the

submission of objections to the relevant government minister. Objections can be made by owners, other qualifying persons and third parties, including members of the public. Objections must arrive with the minister within the period specified in the notice. This must be a minimum of 21 days. See here for further information on the requirements for grounds of objection and objectors' statements of case in relation to an inquiry. It is important to make objections as relevant as possible to the matters which fall for consideration, in order for the objection to have an effect.

Under rule 14 of the Compulsory Purchase (Inquiries Procedure) Rules 2007, third parties have no right to be heard at an inquiry, although the inspector may permit them to appear at his discretion (although permission is not to be unreasonably withheld).

Objections should be sent to the confirming department at the address provided.

24. Can acquiring authorities seek advice from the confirming department?

Acquiring authorities are expected to seek their own legal and professional advice when preparing and making compulsory purchase orders. Where an authority has taken advice but still retains doubts about particular technical points concerning the form of a proposed compulsory purchase order, it may seek informal written comments from the confirming department by submitting a draft for technical examination.

Experience suggests that technical examination by the confirming department can assist significantly in avoiding delays caused by drafting defects in orders submitted for confirmation. The role of the confirming department at this stage is confined to giving the draft compulsory purchase order a technical examination to check that it complies with the requirements on form and content in the statutes and the Compulsory Purchase of Land (Prescribed Forms) Regulations 2004, without prejudice to the consideration of its merits or demerits.

25. What documents should accompany a compulsory purchase order which is submitted for confirmation?

Below is a checklist of the documents to be submitted to the confirming minister with a compulsory purchase order:

- one copy of the sealed compulsory purchase order and two copies of the sealed map
- two copies each of the unsealed compulsory purchase order and unsealed map - follow the link for further guidance on order maps
- one copy of the general certificate in support of order submission including (where appropriate) confirmation that the proper notices have been correctly served in relation to: (a) an order made on behalf of a parish council; (b) Church of England property; or (c) a listed building in need of repair
- one copy of the protected assets certificate giving a nil return or a positive statement for each category of assets protection referred to in What information needs to be included in a positive statement? in section 16 (except for orders under section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990)

- two copies of the statement of reasons and, wherever practicable, any other documents referred to therein. A statement of reasons must include a statement concerning the planning permission (see How does the acquiring authority address whether there are any other impediments to the scheme going ahead?).

Compulsory purchase orders for listed buildings in need of repair will also require:

- one copy of the repairs notice served in accordance with section 48, where the order is made under section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990) - follow the link for further information on Compulsory purchase orders for listed buildings in need of repair

Additional guidance on the preparation, drafting and submission of compulsory purchase orders for highway schemes and car parks is set out in Department for Transport *Local Authority Circular 2/97: Notes on the preparation, drafting and submission of compulsory purchase orders for highway schemes and car parks for which the Secretary of State is the confirming authority*.

Stage 4: consideration of the compulsory purchase order

26. Who will take the decision to confirm or not a compulsory purchase order?

The 'confirming authority' under the Acquisition of Land Act 1981 is the minister having the power to authorise the acquiring authority to purchase the land compulsorily.

However, under new section 14D of the Acquisition of Land Act 1981[2] a 'confirming authority' can appoint an inspector to act instead of it in relation to the confirmation of a compulsory purchase order to which section 13A of the Acquisition of Land Act 1981 applies (ie a non-ministerial order where there is a remaining objection).

Where the Secretary of State for Housing, Communities and Local Government is the confirming authority for such an order, he will carefully consider the suitability of 'delegating' the confirmation decision to an inspector in line with the criteria set out in this guidance. The Secretary of State for Housing, Communities and Local Government will assess the suitability of each compulsory purchase order for delegation on its individual merits.

27. What criteria will the Secretary of State for Housing, Communities and Local Government consider in deciding whether to delegate a decision on a compulsory purchase order?

The Secretary of State for Housing, Communities and Local Government will carefully consider the suitability of all compulsory purchase orders to be delegated to an inspector but will generally delegate the decision on confirmation of a compulsory purchase order where, in his opinion, it appears unlikely to:

- conflict with national policies on important matters
- raise novel issues
- give rise to significant controversy
- have impacts which extend beyond the local area

However, the Secretary of State for Housing, Communities and Local Government will assess the suitability of each compulsory purchase order for delegation on its individual merits.

28. If a compulsory purchase order is delegated to an inspector and new issues/evidence emerge, can the Secretary of State revisit his decision to appoint an inspector to take the confirmation decision?

Section 14D of the Acquisition of Land Act 1981 enables a confirming authority to cancel the appointment of an inspector acting instead of him in relation to the confirmation of a

[2] The power to delegate a decision on a compulsory purchase order to an inspector was inserted by section 181 of the Housing and Planning Act 2016 and applies to compulsory purchase orders submitted to a confirming authority for confirmation on or after 6 April 2018.

compulsory purchase order. The appointment may be cancelled at any time before the inspector has made the confirmation decision.

While each compulsory purchase order will be considered on its individual merits, if, at any time until a decision is made by the appointed inspector, the Secretary of State for Housing, Communities and Local Government considers, in his opinion, that the compulsory purchase order now raises issues which should be considered by him, he may decide that the appointment of the inspector should be cancelled. In this instance, the inspector will be asked to submit a report and recommendation to the Secretary of State for Housing, Communities and Local Government who will make the confirmation decision.

If a confirming authority decides to cancel the appointment of an inspector (and does not appoint another inspector to take the decision instead), it must give its reasons for doing so to the inspector, acquiring authority and every person who has made a remaining objection (see section 14D(7) of the Acquisition of Land Act 1981).

29. What happens if no objections are made?

If no objections are made to a compulsory purchase order and the confirming minister is satisfied that the proper procedure for serving and publishing notices has been observed, he will consider the case on its merits. The minister can then confirm, modify or reject the compulsory purchase order without the need for any form of hearing. If the order can be confirmed without modification and does not include statutory undertakers' land or special kinds of land, the Secretary of State may remit the case back to the acquiring authority for confirmation. Go to Can the confirming minister modify an order? for more information.

30. What happens if there are objections and these are not withdrawn?

If objections are received and not withdrawn, the confirming minister will either arrange for a public local inquiry to be held or – where all the remaining objectors and the acquiring authority agree to it – arrange for the objections to be considered through the written representations procedure.

31. What are the different types of objection?

A 'relevant objection' is one made by a person who is an owner, lessee, tenant or occupier of the land or a person to whom the acquiring authority would be required to give a notice to treat.

It may also be an objection made by a person who might be able to make a claim for injurious affection under section 10 of the Compulsory Purchase Act 1965, but only if the acquiring authority think that he is likely to be entitled to make such a claim if the order is confirmed and the compulsory purchase takes place, so far as that person is known to the acquiring authority after making diligent inquiry.

A 'remaining objection' is a relevant objection that has not been withdrawn or disregarded (for example because it relates solely to compensation).

Other objections can be made by persons who are not a relevant objector, for example, by a third party, community group or special interest organisation.

32. Does an objection need to be in writing?

Section 13(3) of the Acquisition of Land Act 1981 enables the confirming minister to require every person who makes a relevant objection to state the grounds of objection in writing.

33. When might an objector's statement of case be required?

A confirming authority can also require remaining objectors, and others who intend to appear at inquiry, to provide a statement of case. This is a useful device for minimising the need to adjourn inquiries as a result of new information. This is most likely where commercial concerns are objecting to large or complex schemes. Under Rule 7(5) of the Compulsory Purchase (Inquiries Procedure) Rules 2007, a person may be required to provide further information about matters contained in any such statement of case.

Objectors may wish to prepare a statement of case even when not asked to do so because it may be helpful for themselves and the inquiry.

34. How are objections considered?

Although all remaining objectors have a right to be heard at an inquiry, acquiring authorities are encouraged to continue to negotiate with both remaining and other objectors after submitting an order for confirmation, with a view to securing the withdrawal of objections. In line with the advice on alternative dispute resolution, this should include employing such alternative dispute resolution techniques as may be agreed between the parties.

The Compulsory Purchase of Land (Written Representations Procedure) (Ministers) Regulations 2004 prescribe a procedure by which objections to an order can be considered in writing if all the remaining objectors agree and the confirming minister deems it appropriate, as an alternative to holding an inquiry. (In summary, these regulations provide that, once the confirming minister has indicated that the written representations procedure will be followed, the acquiring authority have 15 working days to make additional representations in support of the case it has already made for the order in its statement of reasons. Once these representations have been copied to the objectors, they will also have 15 working days to make representations to the confirming minister. These in turn are copied to the acquiring authority who then has a final opportunity to comment on the objectors' representations but cannot raise new issues.)

The Secretary of State for Housing, Communities and Local Government's practice is to offer the written representations procedure to objectors except where it is clear from the outset that the scale or complexity of the order makes it unlikely that the procedure would be acceptable or appropriate. In such cases an inquiry will be called in the normal way. The practice of other Secretaries of State may vary.

35. What procedures are followed for inquiries into compulsory purchase orders under Acquisition of Land Act 1981?

The Compulsory Purchase (Inquiries Procedure) Rules 2007[3] ('2007 Rules') apply to:

[3] The Compulsory Purchase (Inquiries Procedure) Rules 2007 were amended by the Compulsory Purchase (Inquiries Procedure) (Miscellaneous Amendments and Electronic Communications) Rules 2018 with effect from 6 April 2018

- all inquiries into compulsory purchase orders made under the Acquisition of Land Act 1981, both ministerial and non-ministerial, and to compulsory rights orders (see rule 2 of the Rules and section 29 of, and paragraph 11 of schedule 4 to, the 1981 act)

- rule 2A provides that where a person is appointed under section 14D of the Acquisition of Land Act 198 the 2007 Rules shall have effect subject to certain modifications as set out in the schedule

- rule 3 provides for written notice from the authorising authority of its intention to cause an inquiry to be held which commences the procedure

- rules 4 to 6 deal with pre-inquiry meetings

- rule 7 deals with statements of case

- rules 8 to 14 deal with the inquiry timetable, appointment of assessor, the date and public notification of the inquiry and appearances at the inquiry including the representation of a minister or government department at inquiry

- rule 15 deals with the handling of evidence at inquiry

- rules 16 to 19 deal with procedure at the inquiry, site inspections and post-inquiry procedures (including notice of decisions) – in particular rule 18(A1) imposes a requirement on the authorising authority to inform certain persons of the expected date of its decision as to whether to confirm the compulsory purchase order.

- rule 19A sets out the procedure to be followed where a decision notified under rule 19(1) is quashed in proceedings before any court

- rule 20 deals with the power to extend time

- rule 21 deals with sending notices or documents by post or by using electronic communications

- rule 21A provides for how a person may withdraw their consent to use of electronic communications

36. What information should an authority's statement of case contain?

It should be possible for the acquiring authority to use the non-statutory statement of reasons as the basis for the statement of case which is required to be served under rule 7 of the Compulsory Purchase (Inquiries Procedure) Rules 2007 where an inquiry is to be held. The acquiring authority's statement of case should set out a detailed response to the objections made to the compulsory purchase order.

37. What supplementary information may be required?

When considering the acquiring authority's order submission, the confirming department may, if necessary, request clarification of particular points. These may arise both before

the inquiry has been held or after the inquiry.

Such clarification will often relate to statutory procedural matters, such as confirmation that the authority has complied with the requirements relating to the service of notices. This information may be needed before the inquiry can be arranged. But it may also relate to matters raised by objectors, such as the ability of the authority or a developer to meet development costs.

Where further information is needed, the confirming minister's department will write to the acquiring authority setting out the points of difficulty and the further information or statutory action required. The department will copy its side of any such correspondence to remaining objectors, and requests that the acquiring authority should do the same.

38. Should a programme officer be appointed?

Acquiring authorities may wish to consider appointing a programme officer to assist the inspector in organising administrative arrangements for larger compulsory purchase order inquiries. A programme officer might undertake tasks such as assisting with preparing and running of any pre-inquiry meetings, preparing a draft programme for the inquiry, managing the public inquiry document library and, if requested by the inspector, arranging accompanied site inspections. A programme officer would also be able to respond to enquiries about the running of the inquiry during its course.

39. When will an inquiry be held?

Practice may vary between departments but, once the need for an inquiry has been established, it will normally be arranged by the Planning Inspectorate in consultation with the acquiring authority for the earliest date on which an appropriate inspector is available. Having regard to the minimum time required to check the orders and arrange the inquiry, this will typically be held around six months after submission. It is important to ensure that adequate notification is given to objectors of the inquiry dates, so that they have sufficient time to prepare evidence for the inquiry. This will also assist in the efficient conduct of the inquiry.

Once the date of the inquiry has been fixed it will be changed only for exceptional reasons. A confirming department will not normally agree to cancel an inquiry unless all statutory objectors withdraw their objections or the acquiring authority indicates formally that it no longer wishes to pursue the order, in sufficient time for notice of cancellation of the inquiry to be published. As a general rule, the inquiry date will not be changed because the authority or an objector needs more time to prepare its evidence. The authority should have prepared its case sufficiently rigorously before making the order to make such a postponement unnecessary. Nor would the inquiry date normally be changed because a particular advocate is unavailable on the specified date.

40. What scope is there for joint or concurrent inquiries?

It is important to identify at the earliest possible stage any application or appeal associated with, or related to, the order which may require approval or decision by the same, or a different, minister. This is to allow the appropriateness of arranging a joint inquiry or concurrent inquiries to be considered. Such actions might include, for example, an application for an order stopping up a public highway (when it is to be determined by a minister) or an appeal against the refusal of planning permission.

Any such arrangements cannot be settled until the full range of proposals and the objections or grounds of appeal are known. The acquiring authority should ensure that any relevant statutory procedures for which it is responsible (including actually making the relevant compulsory purchase order) are carried out at the right time to enable any related applications or appeals to be processed in step.

41. What advice is available about costs awards?

Advice on the inquiry costs for statutory objectors is given in Award of costs incurred in planning and other proceedings. The principles of this advice also apply to written representations procedure costs.

When notifying successful objectors of the decision on the order under the Compulsory Purchase (Inquiries Procedure) Rules 2007 or the Compulsory Purchase of Land (Written Representations Procedure)(Ministers) Regulations 2004, the Secretary of State for Housing, Communities and Local Government will tell them that they may be entitled to claim inquiry or written representations procedure costs and invite them to submit an application for an award of costs. The practice of other ministers may vary.

42. Are acquiring authorities normally required to meet the costs associated with an inquiry or written representations?

Acquiring authorities will be required to meet the administrative costs of an inquiry and the expenses incurred by the inspector in holding it. Likewise, the acquiring authority will be required to meet the inspector's costs associated with the consideration of written representations. Other administrative costs associated with the written representations procedure are, however, likely to be minor, and a confirming minister will decide on a case by case basis whether or not to recoup them from the acquiring authority under section 13B of the Acquisition of Land Act 1981. The daily amount of costs which may be recovered where an inquiry is held to which section 250(4) of the Local Government Act 1972 applies, or where the written representations procedure is used, is £630 per day as prescribed in The Fees for Inquiries (Standard Daily Amount) (England) Regulations 2000.

Further information on the award of costs is available in planning guidance: Award of costs incurred in planning and other proceedings.

43. What happens if there are legal difficulties with an order?

Whilst only the courts can rule on the validity of a compulsory purchase order, the confirming minister would not think it right to confirm an order if it appeared to be invalid, even if there had been no objections to it. Where this is the case, the relevant minister will issue a formal, reasoned decision refusing to confirm the order. The decision letter will be copied to all those who were entitled to be served with notice of the making and effect of the order and to any other person who made a representation.

44. Can the confirming minister modify an order?

The confirming minister may confirm a compulsory purchase order with or without modifications. Section 14 of the Acquisition of Land Act 1981 imposes limitations on the minister's power to modify the order. This provides that an order can only be

modified to include any additional land if all the people who are affected give their consent.

There is no scope for the confirming minister to add to, or substitute, the statutory purpose (or purposes) for which the order was made. The power of modification is used sparingly and not to rewrite orders extensively. While some minor slips can be corrected, there is no need to modify an order solely to show a change of ownership where the acquiring authority has acquired a relevant interest or interests after submitting the order.

If it becomes apparent to an acquiring authority that it may wish the confirming minister to substantially amend the order by modification at the time of any confirmation, the authority should write as soon as possible, setting out the proposed modification. This letter should be copied to each remaining objector, any other person who may be entitled to appear at the inquiry (such as any person required by the confirming authority to provide a statement of case) and to any other interested persons who seem to be directly affected by the matters that might be subject to modification. Where such potential modifications have been identified before the inquiry is held, the inspector will normally wish to provide an opportunity for them to be debated.

45. Can a compulsory purchase order be confirmed in stages?

In cases where the Acquisition of Land Act 1981 applies to a compulsory purchase order, section 13C of that act provides a general power for the order to be confirmed in stages, at the discretion of the confirming minister. This power is intended to make it possible for part of a scheme to be able to proceed earlier than might otherwise be the case, although its practical application is likely to be limited. It is not a device to enable the land required for more than one project or scheme to be included in a single order.

The decision to confirm in part must be accompanied by a direction postponing consideration of the remaining part until a specified date. The notices of confirmation of the confirmed part of the order must include a statement indicating the effect of that direction and be published, displayed and served in accordance with section 15 of the Acquisition of Land Act 1981.

46. When might an order be confirmed in stages?

The power to confirm an order in stages may be used when the minister is satisfied that an order should be confirmed for part of the land covered by the order but is not yet able to decide whether the order should be confirmed in relation to other parts of the order land. This could be, for example, because further investigations are required to establish the extent, if any, of alleged contaminated land. Where an order is confirmed in part under this power, the remaining undecided part is then treated as if it were a separate order.

To confirm in part, the confirming minister will need to be satisfied that:

- the proposed scheme or schemes underlying the need for the order can be independently implemented over that part of the order land to be confirmed, regardless of whether the remainder of the order is ever confirmed

- the statutory requirements for the service and publication of notices have been followed; and

- there are no remaining objections relating to the part to be confirmed (if the minister wishes to confirm part of an order prior to holding a public inquiry or following the written representations procedure)

If the confirming minister were to be satisfied on the basis of the evidence already available to him that a part of the order land should be excluded, he may exercise his discretion to refuse to confirm the order or, in confirming the order, he may modify it to exclude the areas of uncertainty.

47. When can a compulsory purchase order be confirmed by the acquiring authority?

Section 14A of the Acquisition of Land Act 1981 provides a discretionary power for a confirming authority to give the acquiring authority responsibility for deciding an order which has been submitted for confirmation if certain specified conditions are met. The confirming minister must be satisfied that:

- there are no outstanding objections to the order
- all the statutory requirements as to the service and publication of notices have been complied with; and
- the order is capable of being confirmed without modification

The power of the confirming minister to issue such notice is excluded in cases where:

- the land to be acquired includes land acquired by a statutory undertaker for the purposes of its undertaking, that statutory undertaker has made representations to the minister responsible for sponsoring its business and he is satisfied that the land to be taken is used for the purposes of the undertaking; or
- the land to be acquired forms part of a common, open space, or fuel or field garden allotment

as confirmation of an order in these circumstances is contingent on other ministerial decisions.

The acquiring authority's power to confirm a compulsory purchase order does not extend to being able to modify the order or to confirm the order in stages. If the acquiring authority considers that there is a need for a modification, for example, to rectify drafting errors, it will have to ask the confirming minister to revoke the notice given under these provisions.

48. What should the confirming authority do if it decides to give an acquiring authority the power to confirm an order?

To exercise its discretionary power under section 14A of the Acquisition of Land Act 1981, the confirming authority serves a notice on the acquiring authority giving it the power to confirm the compulsory purchase order. The sealed order and one sealed map (or sets of sealed maps) will be returned with the notice. The notice should:

- indicate that if the acquiring authority decides to confirm the order, it should be endorsed as confirmed with the endorsement authenticated by a person

having authority to do so

- suggest a form of words for the endorsement
- refer to the statutory requirement to serve notice of confirmation under section 15 of the 1981 act as amended by section 34 of the Neighbourhood Planning Act 2017; and
- require that the relevant Secretary of State should be informed of the decision on the order as soon as possible with (where applicable) a copy of the endorsed order

49. What should the acquiring authority do if it decides to confirm its own order?

If the acquiring authority decides to confirm its own order, it should return the notice of confirmation to the confirming authority. The form of the notice of confirmation is set out in Forms 9A and 11 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004 as amended The Compulsory Purchase of Land (Prescribed Forms) (Ministers) (Amendment) Regulations 2017.

An acquiring authority exercising the power to confirm must notify the confirming authority as soon as reasonably practicable of its decision. Until such notification is received, the confirming minister can revoke the acquiring authority's power to confirm. This might be necessary, for example, if the confirming minister received a late objection which raised important issues, or if the acquiring authority were to fail to decide whether to confirm within a reasonable timescale.

Acquiring authorities are asked to ensure that in all cases the confirming department is notified without delay of the date when notice of confirmation of the order is first published in the press in accordance with the provisions of the Acquisition of Land Act 1981. This is important as the six weeks' period allowed by virtue of section 23 of the 1981 act for an application to the High Court to be made begins on this date. Similarly, and for the same reason, where the Secretary of State has given a certificate under section 19 of, or paragraph 6 of schedule 3 to, the 1981 act, the department giving the certificate should be notified straight away of the date when notice is first published.

50. Are there timetables for confirmation of compulsory purchase orders?

Section 14B of the Acquisition of Land Act 1981[4] requires the Secretary of State to publish one or more timetables for confirmation of compulsory purchase orders. The timescales are set out in this guidance. The target timescales will apply to all confirming authorities other than the Welsh Ministers (who have the power to publish their own timetables under section 14C of the Acquisition of Land Act 1981 in relation to compulsory purchase orders to be confirmed by them).

51. How long will it take to get a decision on a compulsory purchase order which is

[4] The requirement for the Secretary of State to publish one or more timetables setting out the steps to be taken by confirming authorities in confirming a compulsory purchase order was inserted by section 180 of the Housing and Planning Act 2016 and applies to orders which are submitted to a confirming authority for confirmation on or after 6 April 2018.

delegated to an inspector and subject to the written representation process?

Where a compulsory purchase order is delegated to an inspector and subject to the written representation procedure, there is a statutory requirement for a site visit, where necessary, to be conducted within 15 weeks of the starting date letter (see regulation 8(1) of the Compulsory Purchase of Land (Written Representations Procedure) (Ministers) Regulations 2004 as amended by the Compulsory Purchase of Land (Written Representations Procedure) (Ministers) (Miscellaneous Amendments and Electronic Communications) Regulations 2018).

A decision should be issued within 4 weeks of the site visit date in 80% of cases delegated by the Secretary of State for Housing, Communities and Local Government; with 100% of cases being decided within 8 weeks of the site visit date.

In cases where there has not been a site visit, the timescales for decision will be taken from the final exchange of representations under Regulation 5 of the Compulsory Purchase of Land (Written Representations Procedure) (Ministers) Regulations 2004.

52. How long will it take to get a decision on a compulsory purchase order which is delegated to an inspector and subject to the public inquiry procedure?

Where a compulsory purchase order is delegated to an inspector and subject to the public inquiry procedure, the parties will be notified within 10 working days beginning with the day after the inquiry closes of the expected date on which a decision will be issued (see the modified version of rule 18 in Schedule 1 to the Compulsory Purchase (Inquiries Procedure) Rules 2007 as amended by the Compulsory Purchase (Inquiries Procedure) (Miscellaneous Amendments and Electronic Communications) Rules 2018.

A decision on the compulsory purchase order should be issued by the inspector within 8 weeks of the close of the Inquiry in 80% of cases delegated by the Secretary of State for Housing, Communities and Local Government; with 100% of cases being decided within 12 weeks.

53. How long will it take to get a decision on a compulsory purchase order which is decided by a Secretary of State and subject to the written representation process?

Where a compulsory purchase order is subject to the written representation procedure, there is a statutory requirement for a site visit, where necessary, to be conducted within 15 weeks of the starting date letter (see regulation 8(1) of the Compulsory Purchase of Land (Written Representations Procedure) (Ministers) Regulations 2004 as amended by the Compulsory Purchase of Land (Written Representations Procedure) (Ministers) (Miscellaneous Amendments and Electronic Communications) Regulations 2018.

The relevant Secretary of State should issue 80% of compulsory purchase decisions on written representation cases within 8 weeks of the site visit. The remaining 20% of cases should be decided within 12 weeks of the site visit.

In cases where there has not been a site visit, the timescales for decision will be taken from the final exchange of representations under Regulation 5 of the Compulsory Purchase of Land (Written Representations Procedure) (Ministers) Regulations 2004.

54. How long will it take to get a decision on a compulsory purchase order which is decided by a Secretary of State and subject to the public inquiry process?

Where a compulsory purchase order is to be decided by the Secretary of State and subject to the public inquiry procedure, the parties will be notified within 10 working days beginning with the day after the inquiry closes of the expected date of the Secretary of State's decision (see rule 18(A1) of the Compulsory Purchase (Inquiries Procedure) Rules 2007 as amended by the Compulsory Purchase (Inquiries Procedure) (Miscellaneous Amendments and Electronic Communications) Rules 2018).

In addition, there is a target that 80% of cases should be decided by the relevant Secretary of State within 20 weeks of the close of the public inquiry – with the remaining cases decided within 24 weeks.

55. What happens if the Secretary of State or an inspector fails to issue a decision in accordance with the published timescales?

The Secretary of State must issue an annual report to Parliament showing the extent to which confirming authorities have complied with the published timescales.

The validity of a compulsory purchase order is not, however, affected by any failure to comply with a timetable (see section 14B(4) of the Acquisition of Land Act 1981).

56. Can a compulsory purchase order be challenged through the courts after it has been confirmed?

Any person aggrieved who wishes to dispute the validity of a compulsory purchase order, or any of its provisions, can challenge the order through an application to the High Court under section 23 of the Acquisition of Land Act 1981 ('the 1981 act') on the grounds that:

- the authorisation of the order is not empowered to be granted under the 1981 act or an enactment mentioned in section 1(1) of that act; or

- a 'relevant requirement' has not been complied with

A 'relevant requirement' is any requirement under the 1981 act, of any regulations made under it, or the Tribunals and Inquiries Act 1992 or of regulations made under that act.

Any such application must be made within 6 weeks of the date specified in section 23(4) of the 1981 act.

57. What powers does the court have on an application under section 23 of the Acquisition of Land Act 1981?

Section 24 of the 1981 act sets out the powers of the court on an application under section 23 of the 1981 act. First, the court has the discretionary power to grant interim relief suspending the operation of the order or certificate pending the final determination of the court proceedings (section 24(1)). Second, where a challenge under section 23 of the 1981 act is successful, the court has the discretionary power to quash:

- the decision to confirm the compulsory purchase order (section 24(3)) (NB: this does not apply in relation to an application under section 23 which was made before 13 July 2016); or

- the whole or any part of an order (section 24(2))

58. Is the time period for implementing a compulsory purchase order extended where it is the subject of a legal challenge?

Under section 4A of the Compulsory Purchase Act 1965 (for notice to treat process) and section 5B of the Compulsory Purchase (Vesting Declarations) Act 1981 (for general vesting declaration process) the normal three year period for implementing a compulsory purchase order is extended for:

- a period equivalent to the period from the date an application challenging the order is made until it is withdrawn or finally determined; or

- one year

whichever is the shorter. NB: The extended time period does not apply to an application made in respect of a compulsory purchase order which became operative before 13 July 2016.

An application to challenge an order is finally determined after the normal time for submitting an appeal has elapsed or, where an appeal has been submitted, it is either withdrawn or finally determined.

59. Can a decision not to confirm a compulsory purchase order be challenged through the courts?

A decision not to confirm a compulsory purchase order can be challenged through the courts by means of an application for judicial review under Part 54 of the Civil Procedure Rules 1998.

Stage 5: implementing a compulsory purchase order

60. When does an order become operative?

Unless it is subject to special parliamentary procedure (for example, in the case of certain special kinds of land, a compulsory purchase order which has been confirmed becomes operative on the date on which the notice of its confirmation is first published.

The method of publication and the information which must be included in a notice is set out in section 15 of the Acquisition of Land Act 1981. Confirmation notices must also contain:

- a prescribed statement about the effect of Parts 2 and 3 of the Compulsory Purchase (Vesting Declarations) Act 1981; and
- invite any person who would be entitled to claim compensation if a declaration were executed under section 4 of that act to give the acquiring authority information about the person's name, address and interest in land, using a prescribed form

Acquiring authorities must issue the confirmation notices within 6 weeks of the date of the order being confirmed or such longer period as may be agreed between the acquiring authority and the confirming authority (section 15(3A) of the Acquisition of Land Act 1981). Where an acquiring authority fails to do so, the confirming authority may take the necessary steps itself and recover its reasonable costs of doing so from the acquiring authority.

The acquiring authority may then exercise the compulsory purchase power (unless the operation of the compulsory purchase order is suspended by the High Court). The actual acquisition process will proceed by one of two routes - either by the acquiring authority serving a notice to treat or by executing a general vesting declaration.

61. How do I register a confirmation notice as a local land charge?

Section 15(6) of the Acquisition of Land Act 1981 provides that a confirmation notice should be sent by the acquiring authority to the Chief Land Register and that it shall be a local land charge. Where land in the order is situated in an area for which the local authority remains the registering authority for local land charges (ie where the changes made by Parts 1 and 3 of Schedule 5 to the Infrastructure Act 2015 have not yet taken effect in that local authority area), the acquiring authority should comply with the steps required by section 5 of the Local Land Charges Act 1975 (prior to it being amended by the Infrastructure Act 2015) to ensure that the charge is registered by the local authority as the registering authority.

62. What is a notice to treat?

There is no prescribed form for a notice to treat but the document must:

- describe the land to which it relates
- demand particulars of the interest in the land

- demand particulars of the compensation claim of the recipient and
- state that the acquiring authority is willing to treat for the purchase of the land and for compensation for any damage caused by the execution of the works

Possession cannot normally be taken until the acquiring authority has served a notice of entry and the minimum period specified in that notice has expired.

Title to the land is subsequently transferred by a normal conveyance.

63. When should a notice to treat be served?

A notice to treat may not be served after the end of the period of three years beginning with the date on which the compulsory purchase order becomes operative, under section 4 of the Compulsory Purchase Act 1965. The notice to treat then remains effective for a further three years, under section 5(2A) of that act.

It can be very stressful for those directly affected to know that a compulsory purchase order has been confirmed on their property. The prospect of a period of up to six years before the acquiring authority actually takes possession can be daunting. Acquiring authorities are therefore urged to keep such people fully informed about the various processes involved and of their likely timing, as well as keeping open the possibility of earlier acquisition where requested by an owner.

64. What period of notice should be given before taking possession under the notice to treat process?

Once the crucial stage of actually taking possession is reached, the acquiring authority is required by section 11 of the Compulsory Purchase Act 1965 to serve a notice of its intention to gain entry. In respect of a compulsory purchase order which is confirmed on or after 3 February 2017, the notice period will be not less than 3 months beginning with the date of service of the notice, except in either of the following circumstances:

- where it is a notice to which section 11A(4) of the 1965 act applies (ie where it is being served on a 'newly identified person' under section 11A(1)(b) and that person is not an occupier, or the acquiring authority was unaware of the person because they received misleading information in response to their inquiries under section 5(1) of the 1965 act. In these circumstances, section 11A(4) provides for a shorter minimum notice period
- where it is a notice to which paragraph 13 of Schedule 2A to the 1965 act applies (ie where under the material detriment provisions in that schedule, an acquiring authority is permitted to serve a further notice of entry, after the initial notice of entry ceased to have effect under paragraph 6, in respect of the land proposed to be acquired)

Although it is necessary for a notice to treat to have been served, this can be done at the same time as serving the notice of entry.

A notice of entry cannot be served after a notice to treat has ceased to be effective. A notice to treat can only be withdrawn in limited circumstances.

Acquiring authorities are encouraged to negotiate a mutually convenient date of entry with the claimant. It is good practice for the acquiring authority to:

- give owners an indication of the approximate date when possession will be taken when serving the notice to treat
- consider the steps which those being dispossessed will need to take to vacate their properties before deciding on the timing of actually taking possession

Authorities should also be aware that:

- agricultural landowners or tenants may need to know the date for the notice of entry earlier than others because of crop cycles and the need to find alternative premises
- short notice often results in higher compensation claims
- until there is an actual or deemed notice to treat an occupier is at risk that any costs they incur in anticipation of receiving such a notice may not be claimable; acquiring authorities would be advised to analyse how long it will take most occupiers to relocate and if the notice of entry is inadequate then they should consider giving an earlier commitment to pay certain costs such as their reasonable costs in identifying suitable alternative accommodation

It is usually important to make an accurate record of the physical condition of the land at the valuation date.

65. What happens if the acquiring authority does not take possession at the time specified in the notice of entry?

Where a compulsory purchase of land has been authorised on or after 3 February 2017 (ie where the order was confirmed on or after that date), section 11B of the Compulsory Purchase Act 1965 allows occupiers with an interest in the land to serve a counter-notice on an acquiring authority to require entry on a specified date which must not be earlier than the date specified in the notice of entry. The occupier must give at least 28 days notice of the date they want entry to be taken.

66. What is a general vesting declaration?

A general vesting declaration can be used as an alternative to the notice to treat procedure. It replaces the notice to treat, notice of entry and the conveyance with one procedure which automatically vests title in the land with the acquiring authority on a certain date.

General vesting declarations are made under the Compulsory Purchase (Vesting Declarations) Act 1981 and in accordance with the Compulsory Purchase of Land (Vesting Declarations) (England) Regulations 2017.

67. When might a general vesting declaration be used?

An acquiring authority may prefer to proceed by general vesting declaration as this

enables the authority to obtain title to the land without having first to be satisfied as to the vendor's title or to settle the amount of compensation (subject to any special procedures such as in relation to purchase of commoners' rights: see Compulsory Purchase Act 1965, section 21 and schedule 4). It can therefore be particularly useful where:

- some of the owners are unknown; or
- the authority wishes to obtain title with minimum delay (for example, to dispose of the land to developers)

A general vesting declaration may be made for any part or all of the land included in the compulsory purchase order except where an acquiring authority has already served (and not withdrawn) a notice to treat in respect of that land.

Section 4(1B) of the Compulsory Purchase (Vesting Declarations) Act 1981 makes clear that the above exception does not apply to deemed notices to treat that may, for example, arise from a blight notice or purchase notice.

For minor tenancies and long tenancies which are about to expire, a general vesting declaration will also not be effective. However, there is a special procedure set out in section 9 of the Compulsory Purchase (Vesting Declarations) Act 1981 for dealing with them.

Where unregistered land is acquired by general vesting declaration, acquiring authorities are recommended to voluntarily apply for first registration under section 3 of the Land Registration Act 2002.

68. When should a general vesting declaration be served?

For compulsory purchase orders which become operative on or after 13 July 2016, section 5A of the Compulsory Purchase (Vesting Declarations) Act 1981 makes clear that a general vesting declaration may not be executed after the end of the period of 3 years beginning with the day on which the compulsory purchase order becomes operative.

69. What period of notice should be given before taking possession under the general vesting declaration process?

For a compulsory purchase of land authorised on or after 3 February 2017, the acquiring authority must give at least three months' notice before taking possession (as this is the minimum vesting period which must be given in a general vesting declaration under section 4(1) of the Compulsory Purchase (Vesting Declarations) Act 1981). Acquiring authorities should consider how long it will take occupiers to reasonably relocate and if 3 months is considered insufficient, consider increasing the vesting period (and therefore the notice period).

70. How does the acquiring authority make a general vesting declaration if the owner, lessee or occupier is unknown?

If it is not possible (after reasonable enquiry) to ascertain the name or address of an owner, lessee or occupier of land, the acquiring authority should comply with section

329(2) of the Town and Country Planning Act 1990 to serve notice after execution of the declaration (required undersection 6 of the Compulsory Purchase (Vesting Declarations) Act 1981).

71. How can Charity Trustees convey land to a public authority?

If acquiring land from a charity, acquiring authorities should be aware of the provisions in Part 7 of the Charities Act 2011 and may need to consult the Charity Commission.

Stage 6: compensation

72. What is the basis of compensation?

Compensation payable for the compulsory acquisition of an interest in land is based on the principle that the owner should be paid neither less nor more than their loss. This is known as the 'equivalence principle'.

73. What are the elements of compensation where land is taken?

While the compensation payable is a single global figure, in practice, the assessment of compensation will involve various elements.

Broadly, the elements of compensation where land is taken are:

- the market value of the interest in the land taken
- 'disturbance' payments for losses caused by reason of losing possession of the land and other losses not directly based on the value of land
- loss payments for the distress and inconvenience of being required to sell and/or relocate from your property at a time not of your choosing
- 'severance/injurious affection' payments for the loss of value caused to retained land by reason of it being severed from the land taken, or caused as a result of the use to which the land is put

74. What are the elements of compensation where no land is taken?

Broadly, the elements of compensation where no land is taken are:

- injurious affection
- Part 1 Land Compensation Act 1973 claims

75. What is the market value of the interest in the land taken?

Compensation payable for the compulsory acquisition of an interest in land is based on the 'equivalence principle' (ie that the owner should be paid neither less nor more than their loss). The value of land taken is the amount which it might be expected to realise if sold on the open market by a willing seller (Land Compensation Act 1961, section 5, rule 2), disregarding any effect on value of the scheme of the acquiring authority (known as the 'no scheme' principle); Certificates of Appropriate Alternative Development may be used to indicate the planning permissions that could have been obtained, which will affect any development value of the land.

Alternatively, where the property is used for a purpose for which there is no general demand or market (eg a church) and the owner intends to reinstate elsewhere, he may be awarded compensation on the basis of the reasonable cost of equivalent reinstatement

(see Land Compensation Act 1961, section 5, rule 5).

76. How should the value of the land be assessed in light of the 'no scheme principle'?

Sections 6A to 6E of the Land Compensation Act 1961, inserted by section 32 of the Neighbourhood Planning Act 2017[5], set out how the value of the land should be assessed applying the 'no scheme principle'.

Section 6A sets out the 'no scheme principle' that any increases or decreases in value caused by the scheme or the prospect of the scheme must be disregarded and then lists the 5 'no scheme rules' to be followed when applying the 'no-scheme principle'.

Section 6B provides that any increases in the value of the claimant's other land, which is contiguous or adjacent to the land taken, is deducted from the compensation payable. This is known as 'betterment'.

Section 6C provides that where a claimant is compensated for injurious affection for other land when land is taken for a scheme, and then that other land is subsequently subject to compulsory purchase for the purposes of the scheme, the compensation for the acquisition of the other land is to be reduced by the amount received for injurious affection.

Section 6D defines the 'scheme' for the purposes of establishing the no-scheme world. The default case, set out in subsection (1), is that the 'scheme' to be disregarded is the scheme of development underlying the compulsory acquisition. Subsection (2) makes special provision for new towns, urban development corporations and mayoral development corporations. Where land is acquired in connection with these areas, the 'scheme' is the development of any land for the purposes for which the area is or was designated.

Section 6D(3) and (4) also makes special provision. It provides that where land is acquired for regeneration or redevelopment which is facilitated or made possible by a 'relevant transport project' (defined in section 6D(4)(a)) 'the scheme' includes the relevant transport project.

77. Why is special provision made for relevant transport projects?

New transport projects often raise land values in the vicinity of stations or hubs, which can facilitate regeneration and redevelopment schemes. Where land is acquired for regeneration or redevelopment which is facilitated or made possible by a relevant transport project, the effect of Section 6D(3) is that the scheme to be disregarded includes the relevant transport project - subject to the qualifying conditions and safeguards in section 6E. The intention of this special provision is to ensure that an acquiring authority should not pay for land it is acquiring at values that are inflated by its own or others' public investment in the relevant transport project. Where it applies, the land in question will be valued as if the transport project as well as the regeneration scheme had been cancelled on the relevant valuation date (defined in section 5A). The qualifying conditions and safeguards in section 6E(2) are, in summary that:

[5] The amendments made by section 32 of the Neighbourhood Planning Act 2017 apply to a compulsory purchase of land which is authorised on or after 22 September 2017.

- regeneration or redevelopment was part of the published justification for the relevant transport project

- the instrument authorising the compulsory purchase of the land acquired for regeneration or redevelopment was made or prepared in draft on or after 22 September 2017

- the regeneration or redevelopment land must be in the vicinity of land comprised in the relevant transport project

- the works comprised in the relevant transport project are first opened for use no earlier than 22 September 2022

- the compulsory purchase of the land acquired for regeneration or redevelopment must be authorised within 5 years of the works comprised in the relevant transport project first opening for use; and

- if the owner acquired the land after plans for the relevant transport project were announced but before 8 September 2016 'the scheme' will not be treated as if it included the relevant transport project

78. What is the specific safeguard in section 6E(3)?

Section 6E(3) provides a specific safeguard for persons who acquired land in the vicinity of a relevant transport project after plans for the relevant transport project were announced, but before 8 September 2016 (the day after the Neighbourhood Planning Bill was printed). The specific safeguard is intended to provide protection in circumstances where land was purchased:

- on the basis of a public announcement whose effect was to provide a reasonable degree of certainty about the delivery of a relevant transport project at a particular location

- before the Government introduced legislation that made special provision for relevant transport projects

Where the specific safeguard applies, the 'scheme' will not be treated as if it included the relevant transport project in assessing the compensation payable in respect of the compulsory acquisition of that land. In such circumstances, any increase or decrease in the value of the owner's land caused by the relevant transport project does not have to be disregarded.

79. When is a relevant transport project announced for the purposes of the specific safeguard in section 6E(3)?

Whether and/or when such a project is 'announced' is a question of fact in each case to be determined by the Upper Tribunal (Lands Chamber) in the event of disagreement. The evidence put before the Upper Tribunal (Lands Chamber) could include, among other things, the following matters:

- the inclusion of the relevant transport project, at or near a particular location, in an approved or adopted development plan document

- the inclusion of the relevant transport project in an application for a development consent order or in a compulsory purchase order

- the inclusion of the relevant transport project in a proposal contained in an application for, or in a draft, Transport and Works Act Order for the purposes of the Transport and Works Act 1992

- the inclusion of the relevant transport project in any Bill put before Parliament

- a decision announced by a Minister of, or of approval for, a relevant transport project at a particular location

80. What if the definition of the 'scheme' is disputed?

Section 6D(5) provides that if there is disagreement between parties as to the definition of the 'scheme' to be disregarded that this can be determined by the Upper Tribunal as a question of fact subject as follows. First, the 'scheme' is to be taken by the Upper Tribunal to be the underlying scheme provided for by the act, or other authorising instrument unless it is shown that the 'scheme' is a scheme larger than, but including, the scheme provided for by that authorising instrument. Second, except by agreement or in special circumstances, the Upper Tribunal may only permit the acquiring authority to advance evidence of a larger scheme if that larger scheme was identified in the authorising instrument and any documents made available with it read together.

81. What is the relevant valuation date?

Section 5A of the Land Compensation Act 1961 establishes the date at which land compulsorily acquired is to be valued for compensation purposes (the 'relevant valuation date'). It also establishes that such a valuation is to be based on the market values prevailing at the valuation date and on the condition of the relevant land and any structures on it on that date.

The relevant valuation date is:

- the date of entry and taking possession if the acquiring authority have served a notice to treat and notice of entry; or

- the vesting date if the acquiring authority has executed a general vesting declaration; or

- the date on which the Upper Tribunal (Lands Chamber) has determined compensation if earlier

A claimant can agree compensation with the acquiring authority at any time in accordance with the provisions of section 3 of the Compulsory Purchase Act 1965.

The relevant valuation date for the whole of the land included in any single notice of entry is the date on which the acquiring authority first takes possession of any part of that area

of land (under section 5A(5) of the Land Compensation Act 1961). This means that compensation becomes payable to the claimant for the whole site covered by that notice of entry from that date. The claimant also has the right to receive interest on the compensation due to him in respect of the value of the whole site covered by that notice of entry from that date until full payment is actually made (under section 5A(6) of the 1961 act).

Under the terms of section 11 of the Compulsory Purchase Act 1965, simple interest is payable at the prescribed rate from the date on which the authority enters and takes possession until the outstanding compensation is paid. Interest is not compounded as, neither section 32 nor regulations made under it, confer any power to pay interest on interest, and neither refers to frequency of calculation nor provides for periodic rests, which would be essential to any calculation of interest on a compound basis. It is therefore important that the date of entry is properly recorded by the acquiring authority.

82. Is an advance payment of compensation available?

If requested, and subject to sufficient information being made available by the claimant, the acquiring authority must make an advance payment on account of any compensation which is due for the acquisition of any interest in land, under section 52 of the Land Compensation Act 1973 as amended by sections 194 and 195 of the Housing and Planning Act 2016 and section 38 of the Neighbourhood Planning Act 2017[6]. Advance payments must be registered as local land charges to ensure that payments are not duplicated.

The amount payable in advance is:

- 90% of the agreed sum for the compensation; or
- 90% of the acquiring authority's estimate of the compensation due, if the acquiring authority takes possession before compensation has been agreed

83. Is an advance payment available for a mortgage?

In certain circumstances, a claimant can require the acquiring authority to make advance payments of compensation direct to his mortgage lender. Advance payments relating to the amount owing to the mortgage lender can be made:

- direct to the mortgage lender only with their consent
- to more than one mortgage lender, if the interest of any other mortgage lender whose interest has priority has been released

Section 52ZA of the Land Compensation Act 1973 as amended by section 195 of the Housing and Planning Act 2016 enables an acquiring authority to make an advance payment to a claimant's mortgage lender where the total amount outstanding under the mortgage does not exceed 90% of the estimated total compensation due to the claimant. Alternatively, section 52ZB as amended by section 195 of the Housing and Planning Act

[6] The amendments made by section 194(1) to (3) and section 195 of the Housing and Planning Act 2016 and section 38 of the Neighbourhood Planning Act 2017 apply to a compulsory purchase of land which is authorised on or after 6 April 2018

2016 applies where the total amount exceeds 90% of the total estimated compensation due to the claimant.

The conditions relating to both types of payments are complex and, in order to protect the interests of all parties, it will be advisable for an acquiring authority to work closely with both the claimant and his mortgage lender(s) in determining the amount of the advance payment payable.

84. What information should a claimant provide when requesting an advance payment of compensation?

As the amount payable is 90% of the acquiring authority's estimate of the compensation due, it is in the interests of claimants to provide early and full information to the authority to ensure that the estimate is as robust as possible.

Acquiring authorities should encourage claimants to seek professional advice in relation to their compensation claim. They should also provide claimants with information as to the kinds of evidence they may be expected to provide in support of their compensation claim including, for example:

- detailed records of losses sustained and costs incurred in connection with the acquisition of their property
- all relevant supporting documentary evidence such as receipts, invoices and fee quotes
- business accounts for at least 3 years prior to the acquisition and continuing to the date of the claim
- a record of the amount of time they have spent on matters relating to the compulsory purchase of their property

Sections 52(2) and (2A) and 52ZC(2) of the Land Compensation Act 1973 as amended by section 194 of the Housing and Planning Act 2016 set out what information the claimant must provide and give the acquiring authority 28 days to request further information. The Secretary of State has published a model claim form which claimants are strongly encouraged to use when making a claim for an advance payment.

85. Is there a deadline for making and paying an advance payment?[7]

Section 52(1) of the Land Compensation Act 1973 as amended by section 195 of the Housing and Planning Act 2016 allows a claim for an advance payment to be made and paid at any time after the compulsory acquisition has been authorised. However, an acquiring authority must make an advance payment within 2 months of receipt of the claim or any further information requested under subsection 52(2A)(b) or 52ZC(2), or the date the notice of entry was issued or general vesting declaration was executed, whichever is the later.

[7] The amendments made by section 195 of the Housing and Planning Act 2016 and section 38 of the Neighbourhood Planning Act 2017 apply to a compulsory purchase of land which is authorised on or after 6 April 2018

There is special provision, under subsections (1A) and (4) of section 52 of the 1973 act, where the compulsory acquisition is one to which the Lands Clauses Consolidation Act 1845 applies. In these cases, the acquiring authority may not make an advance payment if they have not taken possession of the land, but must do so if they have. The payment must be made before the end of the day on which possession is taken, or, if later, before the end of the period of two months beginning with the day on which the authority received the request for the payment or any further information required under section 52(2A)(b).

Acquiring authorities should make prompt and adequate advance payments as this can:

- reduce the amount of the interest ultimately payable by the authority on any outstanding compensation; and
- help claimants to have sufficient liquidity to be able to make satisfactory arrangements for their relocation

Acquiring authorities are urged to adopt a sympathetic approach and take advantage of the flexibility offered by section 52(1) of the 1973 act where possible.

86. What happens if an advance payment is made but the compulsory purchase does not go ahead?[8]

Section 52AZA of the Land Compensation Act 1973 as amended by section 197 of the Housing and Planning Act 2016 requires a claimant to repay any advance payment if the notice to treat is withdrawn or ceases to have effect after the advance payment is made. If another person has since acquired the whole of the claimant's interest in the land, the successor will be required to repay the advance payment (provided it was registered as a local land charge in accordance with section 52(8A) of the 1973 act).

Section 52ZE of the Land Compensation Act 1973 as amended by section 198 of the Housing and Planning Act 2016 provides for the recovery of an advance payment to a mortgage lender if the notice to treat has been withdrawn or ceases to have effect. In these circumstances, the claimant must repay the advance payment unless someone else has acquired the claimant's interest in the land. In this case, the successor to the claimant must make the repayment.

87. What is compensation for disturbance?

One element of compensation payable to a claimant is in respect of losses caused as a result of being disturbed from possession of the land taken and other losses caused by the compulsory purchase. This is known as 'disturbance' compensation. The right to compensation for disturbance is set out in the Land Compensation Act 1961, section 5, rule 6. Disturbance payments may include, for example, the costs and expenses of vacating the property and moving to a replacement property such as legal costs, other fees and losses, conveyancing costs and other professional fees.

There are also specific provisions for disturbance payments relating to different interests in land as follows:

[8] The amendments made by section 197 and section 198 of the Housing and Planning Act 2016 apply to a compulsory purchase of land which is authorised on or after 6 April 2018.

- section 20 of the Compulsory Purchase Act 1965 - disturbance for persons who have no greater interest in the land than as tenant for a year or from year to year

- section 46 of the Land Compensation Act 1973 - disturbance where a business is carried on by a person over sixty

- section 47 of the Land Compensation Act 1973 - disturbance where land is the subject of a business tenancy

- section 37 of the Land Compensation Act 1973 - disturbance for persons without compensatable interests in the land acquired

88. Does the '*Bishopsgate* principle' still apply to compensation for disturbance?

Prior to measures in the Neighbourhood Planning Act 2017, case law (*Bishopsgate Space Management v London Underground [2004] 2 EGLR 175*) held that for disturbance compensation purposes where the interest in the land to be acquired was a minor tenancy (a tenancy with less than a year left to run, or a tenancy from year to year) or an unprotected tenancy (a tenancy without the protection of Part 2 of the Landlord and Tenant Act 1954), the acquiring authority should assume that the landlord terminates the tenant's interest at the first available opportunity following notice to treat, whether that would happen in reality or not.

This was to be contrasted with the position for compensation for disturbance for occupiers of business premises with no interest in the land (payable under section 37 of the Land Compensation Act 1973) which was not subject to this artificial assumption.

Section 35 of the Neighbourhood Planning Act 2017[9] inserts a new section 47 into the Land Compensation Act 1973 bringing the assessment of compensation for disturbance for minor and unprotected tenancies into line with that for licensees and protected tenancies (a tenancy with the protection of Part 2 of the Landlord and Tenant Act 1954). Regard should be had to the likelihood of either continuation or renewal of the tenancy, the total period for which the tenancy might reasonably have been expected to continue, and the likely terms and conditions on which any continuation or renewal would be granted. For protected tenancies, the right of a tenant to apply for a new tenancy is also to be taken into account.

89. What are loss payments?

Loss payments are intended to compensate for the claimant's distress and inconvenience of being required to sell and/or relocate from their property at a time not of their choosing (see sections 29-36 of the Land Compensation Act 1973). There are three main types of loss payment:

- home loss payments – see sections 29-33 of the Land Compensation Act 1973

[9] The amendments made by section 35 of the Neighbourhood Planning Act 2017 apply to a compulsory purchase of land which is authorised on or after 22 September 2017

- basic loss payment – see 33A of the Land Compensation Act 1973
- occupier's loss payment - sections 33B and 33C of the Land Compensation Act 1973

90. What are severance and injurious affection?

Severance occurs when the land acquired contributes to the value of the land which is retained, so that when severed from it, the retained land loses value. For example, if a new road is built across a field it may no longer be possible to have access by vehicle to part of the field, rendering it less valuable.

Injurious affection is the depreciation in value of the retained land as a result of the proposed construction on, and use of, the land acquired by the acquiring authority for the scheme. For example, even though only a small part of a farm holding may be acquired for a new road, the impact of the use of the road may reduce the value of the farm.

The principle of compensation for severance is set out in section 7 of the Compulsory Purchase Act 1965.

91. What is injurious affection where no land is taken?

Injurious affection where no land is taken refers to the right to compensation in certain circumstances where the value of an interest in land has been reduced as a result of the execution of works authorised by statute.

The principle of compensation for injurious affection where no land is taken is set out in section 10 of the Compulsory Purchase Act 1965.

92. What are Part 1 claims?

In certain circumstances compensation is payable to landowners in respect of depreciation of the value of their land by certain physical factors (noise, vibration, smell, fumes, smoke, artificial lighting, discharge on the land of a liquid or solid substance) caused by the use of a new or altered highway, aerodrome or other public works (see Part 1 of the Land Compensation Act 1973).

Tier 2: enabling powers

It is likely that only one of the following enabling powers will be relevant in an individual case

93. Where can further information on the powers of acquisition be found?

Further information can be found here:

- Section 1: advice on section 226 of the Town and Country Planning Act 1990
- Section 2: advice on section 121 of the Local Government Act 1972
- Section 3: Homes England
- Section 4: urban development corporations
- Section 5: New Town Development Corporations
- Section 6: local housing authorities for housing purposes and listed buildings in slum clearance
- Section 7: to improve the appearance or condition of land
- Section 8: for educational purposes
- Section 9: for public libraries and museums
- Section 10: for airport Public Safety Zones
- Section 11: for listed buildings in need of repair

Section 1: advice on section 226 of the Town and Country Planning Act 1990

94. Can local authorities compulsorily acquire land for development and other planning purposes?

Under section 226 of the Town and Country Planning Act 1990 the following bodies (which are local authorities for the purposes of that section):

- county, district or London borough councils (section 226(8))
- joint planning boards (section 244(1)); or
- national park authorities (section 244A)

can acquire land compulsorily for development and other planning purposes as defined in section 246(1).

95. What is the purpose of this power?

This power is intended to provide a positive tool to help acquiring authorities with planning powers to assemble land where this is necessary to implement proposals in their Local Plan or where strong planning justifications for the use of the power exist. It is expressed in wide terms and can therefore be used to assemble land for regeneration and other schemes where the range of activities or purposes proposed mean that no other single specific compulsory purchase power would be appropriate.

96. Can this power be used in place of other more appropriate enabling powers?

This power should not be used in place of other more appropriate enabling powers. The statement of reasons accompanying the order should make clear the justification for the use of this specific power. In particular, the Secretary of State may refuse to confirm an order if he considers that this general power is or is to be used in a way intended to frustrate or overturn the intention of Parliament by attempting to acquire land for a purpose which had been explicitly excluded from a specific power.

97. What can the power be used for?

The power can be used as follows:

- section 226(1)(a) enables acquiring authorities with planning powers to acquire land if they think that it will facilitate the carrying out of development (as defined in section 55 of Town and Country Planning Act 1990), redevelopment or improvement on, or in relation to, the land being acquired and it is not certain that they will be able to acquire it by agreement - further guidance on use of the power under section 226(1)(a) can be found here

- section 226(1)(b) allows an authority, if authorised, to acquire land in their area which is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated. The potential scope of

this power is broad. It is intended to be used primarily to acquire land which is not required for development, redevelopment or improvement, or as part of such a scheme

- section 226(3) provides that an order made under either section 226(1)(a) or (b) may also provide for the compulsory purchase of:

    a) any adjoining land which is required for the purpose of executing works for facilitating the development or use of the primary land; or

    b) land to give in exchange for any of the primary land which forms part of a common or open space or fuel or field garden allotment

An authority intending to acquire land for either of these purposes in connection with the acquisition of land under subsection (1) must therefore specify *in the same order*, the appropriate subsection (3) acquisition power and purpose.

98. Does an order have to specify which paragraph of section 226(1) it is made under?

The Secretary of State takes the view that an order made under section 226(1) should be expressed in terms of either paragraph (a) *or* paragraph (b) of that subsection. As these are expressed as alternatives in the legislation, the order should clearly indicate which is being exercised, quoting the wording of paragraph (a) or (b) as appropriate as part of the description of what is proposed.

99. Can the powers in section 226(1) or 226(3)(a) be used only if the purpose or activity specified in the order is to be taken forward by the authority itself?

Section 226(4) provides that it is immaterial by whom the authority propose that any activity or purpose mentioned in section 226(1) or 226(3)(a) should be undertaken or achieved. In particular, the authority does not need to undertake an activity or achieve a purpose themselves.

100. In deciding whether to confirm orders made under section 226, does the Secretary of State need to take into account all objections?

Section 245(1) of the Town and Country Planning Act 1990 provides the Secretary of State with the right to disregard objections to orders made under section 226 which, in his opinion, amount to an objection to the provisions of the Local Plan.

101. Can Crown land be compulsorily purchased?

Sections 293 and 226(2A) of the Town and Country Planning Act 1990 apply where an acquiring authority with planning powers proposes to acquire land compulsorily under section 226 in which the Crown has an interest. The Crown's interest cannot be acquired compulsorily under section 226, but an interest in land held otherwise than by or on behalf of the Crown may be acquired with the agreement of the appropriate body. This might arise, for example, where a government department which holds the freehold interest in certain land may agree that a lesser interest, perhaps a lease or a right of way may be acquired compulsorily and that that interest may, therefore, be included in the order. Further advice about thepurchase of interests in Crown land is here.

Section 226(1)(a)

102. Does the development, redevelopment or improvement scheme need to be taking place on the land to be acquired?

The scheme of development, redevelopment or improvement for which the land needs to be acquired does not necessarily have to be taking place on that land so long as its acquisition can be shown to be essential to the successful implementation of the scheme. This could be relevant, for example, in an area of low housing demand where property might be being removed to facilitate replacement housing elsewhere within the same neighbourhood.

103. Are there any limitations on the use of this power?

The wide power in section 226(1)(a) is subject to the restriction under section 226(1A). This provides that the acquiring authority must not exercise the power unless they think that the proposed development, redevelopment or improvement is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of the area for which the acquiring authority has administrative responsibility.

The benefit to be derived from exercising the power is not restricted to the area subject to the compulsory purchase order, as the concept is applied to the wellbeing of the whole (or any part) of the acquiring authority's area.

104. What justification is needed to support an order to acquire land compulsorily under section 226(1)(a)?

Any programme of land assembly needs to be set within a clear strategic framework, and this will be particularly important when demonstrating the justification for acquiring land compulsorily under section 226(1)(a). Such a framework will need to be founded on an appropriate evidence base, and to have been subjected to consultation processes, including those whose property is directly affected.

The planning framework providing the justification for an order should be as detailed as possible in order to demonstrate that there are no planning or other impediments to the implementation of the scheme. Where the justification for a scheme is linked to proposals identified in a development plan document which has been through the consultation processes but has either not yet been examined or is awaiting the recommendations of the inspector, this will be given due weight.

Where the Local Plan is out of date, it may well be appropriate to take account of more detailed proposals being prepared on a non-statutory basis with the intention that they will be incorporated into the Local Plan at the appropriate time. Where such proposals are being used to provide additional justification and support for a particular order, there should be clear evidence that all those who might have objections to the underlying proposals in the supporting non-statutory plan have had an opportunity to have them taken into account by the body promoting that plan, whether or not that is the authority making the order. In addition, the National Planning Policy Framework is a material consideration in all planning decisions and should be taken into account.

105. Do full details of a scheme need to be worked up before an acquiring authority can proceed with an order?

It may not always be feasible or sensible to wait until the full details of the scheme have been worked up, and planning permission obtained, before proceeding with the order. Furthermore, in cases where the proposed acquisitions form part of a longer-term strategy which needs to be able to cope with changing circumstances, it may not always be possible to demonstrate with absolute clarity or certainty the precise nature of the end use proposed. In all such cases the responsibility will lie with the acquiring authority to put forward a compelling case for acquisition in advance of resolving all the uncertainties.

106. What factors will the Secretary of State take into account in deciding whether to confirm an order under section 226(1)(a)?

Any decision about whether to confirm an order made under section 226(1)(a) will be made on its own merits, but the factors which the Secretary of State can be expected to consider include:

- whether the purpose for which the land is being acquired fits in with the adopted Local Plan for the area or, where no such up to date Local Plan exists, with the draft Local Plan and the National Planning Policy Framework

- the extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social or environmental wellbeing of the area

- whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means. This may include considering the appropriateness of any alternative proposals put forward by the owners of the land, or any other persons, for its reuse. It may also involve examining the suitability of any alternative locations for the purpose for which the land is being acquired

- the potential financial viability of the scheme for which the land is being acquired. A general indication of funding intentions, and of any commitment from third parties, will usually suffice to reassure the Secretary of State that there is a reasonable prospect that the scheme will proceed. The greater the uncertainty about the financial viability of the scheme, however, the more compelling the other grounds for undertaking the compulsory purchase will need to be. The timing of any available funding may also be important. For example, a strict time limit on the availability of the necessary funding may be an argument put forward by the acquiring authority to justify proceeding with the order before finalising the details of the replacement scheme and/or the statutory planning position

Section 2: advice on Section 121 of Local Government Act 1972

107. What can the general compulsory purchase powers for local authorities be used for?

The general power of compulsory purchase at section 121 of the Local Government Act 1972 can (subject to certain constraints) be used by local authorities in conjunction with other enabling powers to acquire land compulsorily for the stated purpose. It may also be used where land is required for more than one function and no precise boundaries between uses are defined.

Section 121 can also be used to achieve compulsory purchase in conjunction with section 120 of the Local Government Act 1972. Section 120 provides a general power for a principal council ie a county, district or London borough council to acquire land by agreement for a statutory function in respect of which there is no specific land acquisition power or where land is intended to be used for more than one function.

Some of the enabling powers in legislation (in the enabling act) for local authorities to acquire land by agreement for a specific purpose do not include an accompanying power of compulsory purchase, for example:

- public walks and pleasure grounds - section 164, Public Health Act 1875
- public conveniences – section 87, Public Health Act 1936
- cemeteries and crematoria – section 214, Local Government Act 1972
- recreational facilities – section 19, Local Government (Miscellaneous Provisions) Act 1976
- refuse disposal sites – section 51, Environmental Protection Act 1990; and
- land drainage – section 62(2), Land Drainage Act 1991

In addition, section 125 contains a general power for a district council to acquire land compulsorily (subject to certain restrictions) on behalf of a parish council which is unable to purchase by agreement land needed for the purpose of a statutory function.

108. What considerations apply in relation to making and submitting an order under Part 7 of the Local Government Act 1972?

The normal considerations in relation to making and submission of a compulsory purchase order, as described in Section 13: preparing and serving the order and its notices, would apply to orders relying upon section 121 or section 125. These include the requirement that compulsory purchase should only be used where there is a compelling case in the public interest.

109. Who is the confirming authority for orders under Part 7 of the Local Government Act 1972?

The confirming authority for orders under Part 7 of the 1972 act is the Secretary of State for Housing, Communities and Local Government.

110. What information should be included in orders under sections 121 or 125 about the acquisition power?

Paragraph 1 of the order should cite the relevant acquisition power (section 121 or 125) and state the purpose of the order, by reference to the enabling act under which the purpose may be achieved.

Where practicable, the words of the relevant section(s) of the enabling act(s) should be inserted into the prescribed form of the order (see Note (f) to Forms 1 to 3 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) Regulations 2004). For example:

'…. the acquiring authority is under section 121 [125] of the Local Government Act 1972 hereby authorised to purchase compulsorily [on behalf of the parish council of ……] the land described in paragraph 2 for the purpose of providing premises for use as a recreation/community centre under section 19 of the Local Government (Miscellaneous Provisions) Act 1976.'

111. What restrictions are there to the use of the powers under sections 121 and 125?

Section 121(2) sets out certain purposes for which principal councils may not purchase land compulsorily under section 121 as follows:

a) for the purposes specified in section 120(1)(b), ie the benefit, improvement or development of their area. Councils may consider using their acquisition powers under the Town and Country Planning Act 1990 for these purposes

b) for the purposes of their functions under the Local Authorities (Land) Act 1963; or

c) for any purpose for which their power of acquisition is expressly limited to acquisition by agreement only, eg section 9(a) of the Open Spaces Act 1906

There are similar limitations in section 125(1) for orders made by district councils on behalf of parish councils.

112. What should a district council consider in deciding whether to make an order on behalf of a parish council?

The district council should have regard to the representations made to them by the parish council in seeking to get them to make such an order and to all the other matters set out in section 125.

113. What restrictions are there on a district council's power to make an order on behalf of a parish council?

A district council may not acquire land compulsorily on behalf of a parish council for a purpose for which a parish council is not, or may not be, authorised to acquire land, eg section 226 of the Town and Country Planning Act 1990 (see subsections (1) and (8)).

Section 125 also does not apply where the purpose of the order is to provide allotments under the Smallholdings and Allotments Act 1908. In such a case, by virtue of section 39(7) of the 1908 act, the district council should purchase the land compulsorily, on behalf of the parish council, under section 25 of that act.

114. What happens if a district council refuses to make an order on behalf of a parish council or does not make one within required time period?

If a district council refuses to make an order under section 125, or does not make one within 8 weeks of the parish council's representations or within such an extended period as may be agreed between the two councils, the parish council may petition the Secretary of State, who may make the order.

Where an order is made by the Secretary of State in such circumstances, section 125 and the Acquisition of Land Act 1981 apply as if the order had been made by the district council and confirmed by the Secretary of State.

115. Can a single order be made by more than one authority and covering mixed purposes, and if so, how is it confirmed?

A single order may be made under section 121 of the Local Government Act 1972 by more than one council and for more than one purpose.

Where this would involve more than one confirming authority, the order may be submitted to one Secretary of State but it has to be processed through all the relevant government departments, involving concerted action by them.

Where an inquiry is required or is considered to be appropriate, the inspector's report will be submitted to each of the departments simultaneously and the decision will be given by the relevant ministers acting together.

116. Can a district council make an order on behalf of more than one parish council?

A district council may also make an order on behalf of more than one parish council. Such an order might, for example, be made under section 125, for the purposes of section 214, on behalf of several parish councils which form a joint burial committee in the area of the district council.

117. What does a parish council need to consider before asking a district council to make an order on its behalf?

A parish council should consider very carefully whether it has the necessary resources to carry out a compulsory purchase of land. A district council which makes an order on behalf of a parish council may (and, in the case of an order made under the Allotments Act 1908, shall) recover from the parish council the expenses which it has incurred. This includes:

- the administrative expenses and costs of the inquiry

- the inquiry costs awarded to successful statutory objectors, should the order not be confirmed, or confirmed in part

- statutory compensation including, where appropriate, any additional disturbance, home loss, or other loss payments, to which the dispossessed owners may be entitled; or

- any compensation for injurious affection payable to adjoining owners who may be entitled to claim

When considering whether to confirm or make an order, the Secretary of State will have regard to questions concerning the ability of the parish council to meet the costs of purchasing the land at market value and to carry forward the scheme for which the order has been or would be made.

Section 3: Homes England

118. What compulsory purchase powers does Homes England have?

Homes England has compulsory purchase powers to acquire land and new rights over land under subsections (2) and (3) of section 9 of the Housing and Regeneration Act 2008.

119. When can Homes England use its compulsory purchase powers?

Homes England can use its compulsory purchase powers to make a compulsory purchase order to facilitate the achievement of its objects set out in section 2 of the Housing and Regeneration Act 2008 (as amended). These are:

- to improve the supply and quality of housing in England
- to secure the regeneration or development of land or infrastructure in England
- to support in other ways the creation, regeneration or development of communities in England or their continued wellbeing
- and to contribute to the achievement of sustainable development and good design in England

with a view to meeting the needs of people living in England.

The made order would then be submitted to the Secretary of State for confirmation in the way set out in Tier 3 of this guidance.

The Localism Act 2011 amended the Greater London Authority Act 1999 so that Homes England's activities in London are now the responsibility of the Mayor to undertake.

120. Why does Homes England have compulsory purchase powers?

Homes England is tasked with supporting private and public sector bodies to deliver housing and regeneration priorities throughout England by providing land, funding and expertise. Powers to compulsorily acquire land can, subject to the normal strong safeguards, ensure that development and regeneration can take place in the right place at the right time.

121. How does Homes England justify the use of its compulsory purchase powers?

Homes England must demonstrate that the proposed acquisition is:

- for the purposes (or 'objects') set out in section 2 of the Housing and Regeneration Act 2008), in addition to any other valid reasons
- in the public interest
- and consistent with the policies in the National Planning Policy Framework and the relevant Local Plan

The justification should be included in the statement of reasons for the compulsory purchase order and preferably be backed up by a more detailed development framework.

122. What is Homes England expected to do when using its compulsory purchase powers?

Before making the compulsory purchase order, Homes England is normally expected to:

- have resolved any major planning difficulties (where practicable); or
- demonstrate that there are no planning or other impediments to the proposed scheme

If, for example, rapid action is essential, it may not always be feasible or sensible (particularly for schemes of strategic or national importance) to wait for planning permission for the replacement scheme or complete all statutory procedures before making the order.

Where the land is required for a defined end use or to provide essential infrastructure (such as roads and sewers) to facilitate regeneration or economic development, Homes England will also normally be expected to have:

- reasonably firm proposals; or
- a long-term strategic need for the land in place

When preparing and making a compulsory purchase order, Homes England should have regard to the general advice available here.

Homes England should submit orders for confirmation to the Planning Casework Unit, Birmingham.

123. Can Homes England compulsorily acquire land even if it has no specific development proposals in place?

It may sometimes be appropriate for Homes England to compulsorily acquire land which is in need of development or regeneration even though there are no specific detailed development proposals in place. Homes England does not usually undertake extensive building development itself. Instead, it often provides assistance for a scheme by stimulating as much private sector investment as possible. Therefore in some circumstances, it may be counterproductive for Homes England to predetermine what private sector development should take place once the land has been assembled. Land will often be suitable for a variety of developments and the market may change rapidly as implementation proceeds.

Nevertheless, when using its compulsory purchase powers, Homes England will still need to provide adequate justification and show that the compulsory acquisition is:

- supported by reasonably firm proposals or a long-term strategic need for the land
- for a clearly defined and deliverable objective; and
- in the public interest

124. How does the Secretary of State decide whether to confirm Homes England's compulsory purchase order?

To reach a decision about whether to confirm a compulsory purchase order made under section 9 of the Housing and Regeneration Act 2008, the Secretary of State will keep the following in mind:

- the statutory purposes (objects) of Homes England
- the general considerations identified in the process of confirming a compulsory purchase order
- any guidance and directions which may be given under section 46 and/or section 47 of the 2008 act or otherwise issued by the Secretary of State
- whether the compulsory purchase of the land supports the activities described in Homes England's statement of reasons
- whether Homes England has demonstrated (where appropriate) that the land is in need of housing development and/or regeneration

The Secretary of State will also take other factors into consideration, depending on whether Homes England has specific proposals for the development or regeneration of the land or it wishes to acquire the land to stimulate private sector investment:

a) **if Homes England has specific proposals for the land**

If Homes England has proposals for the development or regeneration of the land that it wishes to acquire through compulsory purchase, the Secretary of State will also consider:

- any alternative proposals that may have been put forward by the owners of the land or by other persons for the use or reuse of the land and:
  - whether they are likely to be, or are capable of being, implemented (including consideration of the experience and capability of the landowner or developer and any previous track record of delivery) what planning applications have been submitted and/or determined and the extent to which the proposals advocated by the other parties may conflict with Homes England's proposals (ie the timing and nature of any housing development and/or regeneration of the wider area concerned)
- whether the proposal is, on balance, more likely to be achieved if the land is acquired by Homes England, including the effect on the surrounding area that the purchase of the land by Homes England will have in terms of stimulating and/or maintaining the regeneration of the area
- and if Homes England intends to carry out direct development, whether this would displace or disadvantage private sector development or investment without proper justification and that the objects of Homes England cannot be achieved by any other means

- the quality of both Homes England's proposals for the land and any alternative proposals and the timetable for completing each

b) **if Homes England does not have specific proposals for the land**

If Homes England proposes to acquire the land for the purpose of stimulating private sector investment, the Secretary of State will also have regard to the fact that it will not always be possible or desirable to have specific proposals for the land concerned (beyond any broad indications in its Corporate Plan, or any justification given in Homes England's statement of reasons). However, the Secretary of State will still want to be reassured that:

- there is a realistic prospect of the land being brought into beneficial use within a reasonable timeframe; and

- Home England can show that the use of its compulsory purchase powers is clearly in the public interest.

Section 4: urban development corporations

125. What is the purpose of an urban development corporation?

An urban development corporation is set up under section 135 of the Local Government, Planning and Land Act 1980 ('the act') with the object, as set out in section 136(1), of securing the regeneration of the relevant urban development area. Under section 134(1), an area of land may be designated as an urban development area if the Secretary of State is satisfied that it is expedient in the national interest to do so. An urban development area is likely to have been designated because it contains significant areas of land not in effective use, suffered extensive dereliction and be unattractive to existing or potential developers, investors and residents. The acquisition of land and buildings by compulsory purchase is one of the main ways in which an urban development corporation can take effective steps to secure its statutory objectives.

126. How can regeneration be achieved?

Section 136(2) of the act indicates that regeneration can be achieved particularly by

- bringing land and buildings into effective use
- encouraging the development of existing and new industry and commerce
- creating an attractive environment; and
- ensuring that housing and social facilities are available to encourage people to live and work in the area

127. What powers does an urban development corporation have under the 1980 act?

Subject to any limitations imposed under section 137 or 138, section 136(3) of the act an urban development corporation can acquire, hold, manage, reclaim and dispose of land, and carry out a variety of incidental activities. The compulsory purchase powers are set out in section 142. They cover both land and 'new rights' over land (as defined in section 142(4)) and, in the circumstances described in section 142(1)(b) and (c), their exercise may extend outside the urban development corporation's area.

128. What compulsory purchase powers are available to urban development corporations?

It is for an urban development corporation to decide how best to use its land acquisition powers, having regard to this guidance. The compulsory purchase powers available to urban development corporations to assist with urban regeneration are expressed in broad terms. While an urban development corporation should acquire land by agreement wherever possible, it is recognised that this may not always be practicable and it may sometimes be necessary to use its compulsory purchase power to make an order at the same time as attempting to purchase by agreement.

129. Do urban development corporations have to predetermine what development will take place on land before it is acquired?

To achieve its objectives, it may sometimes be necessary for an urban development corporation to assemble land for which it has no specific development proposals. Urban development corporations are expected to achieve their objectives largely by stimulating and attracting greater private sector investment and do not usually carry out extensive building development themselves, as it may be counterproductive to decide what private sector development should take place. Land may be suitable for a variety of development and the market can change rapidly as regeneration proceeds. Urban development corporation ownership of land can stimulate confidence that regeneration will take place, and help to secure investment. Urban development corporations can often bring about regeneration by assembling land and providing infrastructure over a wide area to secure or encourage its development by others.

130. What is the urban development corporation expected to do where an existing user is affected by an urban development corporation compulsory purchase order?

Where existing users are affected by a compulsory purchase order relating to their premises, the urban development corporation will be expected to indicate how it proposes to assist these users to relocate to a site either within or outside the urban development area. Section 146(2) of the act encourages urban development corporations, where possible, to assist persons or businesses whose property has been acquired, to relocate to land owned by the urban development corporation.

131. What happens where an urban development corporation generates receipts in excess of the total cost of assembled land?

When assembling land for redevelopment, an urban development corporation may need to compulsorily acquire a site as part of a project to realise the development potential of a larger area. The Secretary of State recognises that the eventual sale of the assembled site will in many cases generate receipts in excess of the cost of the land to the urban development corporation. In such cases, the receipts generated can make an important contribution to reclamation costs incurred by the urban development corporation.

132. What does the Secretary of State need to consider when reaching a decision on whether to confirm a section 142 order to acquisition land?

In reaching a decision on whether to confirm a section 142 order, the Secretary of State will take into account the statutory objectives of the urban development corporation set out in paragraph 119 above and consider:

i. whether the urban development corporation has demonstrated that the land is in need of regeneration

ii. what alternative proposals (if any) have been put forward by the owners of the land or other persons for regeneration

iii. whether regeneration is on balance more likely to be achieved if the land is acquired by the urban development corporation

iv. the recent history and state of the land

v. whether the land is in an area for which the urban development corporation has a

comprehensive regeneration scheme; and the quality and timescale of both the urban development corporation's regeneration proposals and any alternative proposals

133. What level of detail do urban development corporations need to provide when seeking an order?

The Secretary of State recognises that given their specific duty to regenerate their areas, it will not always be possible or desirable for urban development corporations to have specific proposals for the land concerned beyond their general framework for the regeneration of the area, and detailed land use planning and other factors will not necessarily have been resolved before making an order. In cases where there is a defined end use, or provision of strategic infrastructure to facilitate regeneration, an urban development corporation will normally have reasonably firm proposals, and will have resolved as far as practicable any major planning impediments, before submitting the order for confirmation. Depending on the circumstances however, the Secretary of State accepts that it will not always be feasible for such developments to have received full planning permission, nor for all other statutory procedures necessarily to have been completed at the time of submission of the order.

134. Where detailed proposals are not provided what information is an urban development corporation expected to provide?

Where an urban development corporation does not provide detailed proposals for redevelopment, it will still be expected to demonstrate the case for acquisition in the context of its development strategy. The urban development corporation needs to be able to show that using compulsory purchase powers is in the public interest and that there is a real prospect of the land being brought into beneficial use within a reasonable timeframe. The Secretary of State will expect the statement of reasons accompanying the submission of the order to include a summary of the framework for the regeneration of the urban development area, and that the urban development corporation will be in a position to present evidence at the public inquiry to support its case for compulsory acquisition.

135. What does the Secretary of State have to consider where there are other proposals for the use of land contained within an order?

Where the owners of land or other parties have their own proposals for the use or development of land contained within an order, it will be necessary for the Secretary of State to consider whether these are capable of being or likely to be, implemented, taking into account the planning position, how long the land has been unused, and how the alternative proposals may conflict with those of the urban development corporation.

Section 5: new town development corporations

136. What is the purpose of a new town development corporation?

A new town development corporation can be established under section 3 of the New Towns Act 1981 ('the 1981 act') for the purposes of developing a new town. The objects of a new town development corporation, as set out in section 4(1) of the 1981 act, are to secure the laying out and development of the new town in accordance with proposals approved under the 1981 act. In pursuing those objects, new town development corporations must aim to contribute to the achievement of sustainable development, having particular regard to the desirability of good design (see sections 4(1A) and (1B) of the 1981 act).

An area can be designated as the site of a proposed new town under section 1 of the 1981 act where the Secretary of State is satisfied, after consulting with any local authorities who appear to him to be concerned, that it is expedient in the national interest for that area to be developed as a new town by a new town development corporation.

The development of new towns has traditionally been overseen by the Secretary of State. However, under section 1A of the 1981 act the Secretary of State may appoint one or more local authorities (an 'oversight authority') to oversee the development of the area as a 'locally-led' new town. Where an oversight authority is appointed a number of functions that would otherwise be exercisable by the Secretary of State are instead exercisable by the oversight authority – as provided for by the New Towns Act 1981 (Local Authority Oversight) Regulations 2018.

The Government has published separate guidance on the process for designating a new town and establishing locally-led new town development corporations.

137. What powers does a new town development corporation have under the 1981 act?

Subject to any restrictions imposed under section 5 of the 1981 act, section 4(2) gives new town development corporations the power, among other things, to acquire, hold, manage and dispose of land and other property, and generally to do anything necessary or expedient for the purposes or incidental purposes of the new town.

138. What powers does a new town development corporation have to acquire land?

The powers of new town development corporations to acquire land are set out in section 10 of the 1981 act. They provide for a new town development corporation to acquire (whether by agreement or by compulsion):

- any land within the area of the new town, whether or not it is proposed to develop that land
- any land adjacent to that area which they require for purposes connected with the development of the new town
- any land, whether adjacent to that area or not, which they require for the provision of services for the purposes of the new town

The compulsory purchase powers provided for by section 10 of the 1981 act apply to all new town development corporations – including in the case of locally-led new towns. Compulsory

purchase orders made by new town development corporations (regardless of whether the new town is nationally or locally-led) are subject to confirmation by the Secretary of State.

For nationally-led new towns the new town development corporation must obtain consent from the Secretary of State to acquire land by agreement. For locally-led new towns the new town development corporation must obtain consent to acquire land by agreement from the oversight authority, as provided by the New Towns Act 1981 (Local Authority Oversight) Regulations 2018.

139. What is the procedure for a new town development corporation acquiring land compulsorily by a compulsory purchase order?

The procedure for making a compulsory purchase order under the 1981 act is set out in schedule 4 to that Act.

140. In what circumstances can new town development corporations use their compulsory purchase powers?

It is for new town development corporations to decide how best to use their land acquisition powers, having regard to this guidance. The compulsory purchase powers available to a new town development corporation in section 10 of the 1981 act are expressed in broad terms, and are intended to assist with land assembly that is necessary to carry out its statutory objects of securing the laying out and development of a new town.

The Secretary of State will expect new town development corporations to demonstrate that they have taken reasonable steps to acquire the land included in a compulsory purchase order by agreement. Depending on when the land is required, it may be necessary for new town development corporations to initiate the compulsory purchase process in parallel with negotiations to acquire the land by agreement.

New town development corporation ownership of land early in the development process may assist with the proper planning for, infrastructure provision in and sustainable development of, a new town – in pursuit of its statutory objects under sections 4(1), (1A) and (1B) of the 1981 act. Specifically, it may help to ensure that developments brought forward using these powers are planned, designed and delivered in a sustainable and holistic way, in which the provision of infrastructure and community facilities are coordinated with the provision of new homes. New town development corporation ownership of land may also provide greater certainty of delivery: helping to stimulate confidence that the new town will proceed, helping to secure infrastructure investment, and thereby helping to promote development.

141. Can new town development corporations acquire land even if they have no specific development proposals in place?

Section 10(1) of the 1981 act enables new town development corporations to acquire land (compulsorily or by agreement) within the area of the new town whether or not it is proposed to be developed. The Secretary of State recognises that to achieve its statutory objects, it may be justified for a new town development corporation to acquire land for which it has no specific development proposals in place.

142. What level of detail do new town development corporations need to provide when seeking an order?

Given their scale, new towns are likely to be developed over an extended period of time, during which market conditions may change. In this context, the Secretary of State recognises that it will not always be possible or desirable for new town development

corporations to have fully worked up, and secured approval for, detailed development proposals prior to proceeding with a compulsory purchase order. While the Secretary of State will need to be reassured that there is a reasonable prospect of the scheme being funded and the development proceeding, it is also recognised that funding and delivery details will not necessarily have been fully worked up at that stage.

Where a new town development corporation does not have detailed proposals for the order lands, it will still be expected to demonstrate a compelling case for acquisition in the context of the planning framework that will guide development of the new town. The new town development corporation needs to be able to show that using compulsory purchase powers is necessary in the public interest and that the acquisition will support investment in and development of the new town.
The Secretary of State will expect the statement of reasons accompanying the submission of the compulsory purchase order to include a summary of the planning framework for the development of the new town and the justification for the timing of the acquisition, and that the new town development corporation will be in a position to present evidence at inquiry to support its case for compulsory acquisition.

While confirmation of a compulsory purchase order is a separate and distinct process from that of designating a new town, the Secretary of State acknowledges that evidence used to support the case for designation in the national interest may also be relevant to justifying the use of compulsory purchase powers in the public interest under section 10 of the 1981 act.

143. What factors will the Secretary of State take into account in deciding whether to confirm a compulsory purchase order under section 10 of the 1981 act?

Any decision about whether or not to confirm a compulsory purchase order will be made on its individual merits, but the factors which the Secretary of State can be expected to consider include:

- the statutory objects of the new town development corporation
- whether the purpose(s) for which the order lands are being acquired by the new town development corporation fits in with the planning framework for the new town area
- whether the new town development corporation has satisfactorily demonstrated that the order lands are needed to support the overall development of the new town
- the appropriateness of alternative proposals (if any) put forward by the owners of the land or other persons

144. What does the Secretary of State have to consider where there are other proposals for the use of land contained within a compulsory purchase order?

Where objectors put forward alternative proposals for the use or development of land contained within a compulsory purchase order, factors that the Secretary of State can be expected to consider include:

- whether these alternative proposals are likely to be implemented, taking into account the planning position and their promoter's track record of delivering large-scale housing development
- how the alternative proposals may conflict with those of the new town development corporation
- how the alternative proposals may, if implemented, affect:
    - the delivery of a new town on land designated for that purpose; and

- the new town development corporation's ability to fulfil its statutory objects (including in relation to achieving sustainable development and good design), and/or the purposes for which it was established.

145. How can new town development corporations dispose of the acquired land?
New town development corporations may dispose of land in such a manner as they deem expedient for securing the development of the new town or for purposes connected with the development of the new town (see section 17 of the New Towns Act 1981).

Section 18 of the 1981 act sets out certain requirements in respect of persons who were previously living or carrying on a business on land acquired by the new town development corporation. If such persons wish to obtain accommodation on land belonging to the new town development corporation and are willing to comply with any requirements of the corporation as to its development and use , section 18 requires the corporation, 'so far as practicable, to give them the opportunity to do so.

Section 6: powers of local housing authorities for housing purposes and listed buildings in slum clearances

Housing Act 1985: Part 2, Provision of housing accommodation

146. What can the power under Part 2 of the Housing Act 1985 be used for?

Section 17 of the Housing Act 1985 empowers local housing authorities to acquire land, houses or other properties by compulsion for the provision of housing accommodation. Acquisition must achieve a quantitative or qualitative housing gain.

The main uses of this power have been to assemble land for housing and ancillary development, including the provision of access roads; to bring empty properties into housing use; and to improve substandard or defective properties. Current practice is for authorities acquiring land or property compulsorily to dispose of it to the private sector, housing associations or owner-occupiers.

147. What information should be included with applications for confirmation of orders under section 17?

When applying for the confirmation of a compulsory purchase order made under Part 2 of the Housing Act 1985 the authority should include in its statement of reasons information regarding needs for the provision of further housing accommodation in its area. This information should normally include:

- the total number of dwellings in the district
- the total number of substandard dwellings (ie the quantity of housing with Category 1 hazards as defined in section 2 of the Housing Act 2004)
- the total number of households and the number for which, in the authority's view, provision needs to be made
- details of the authority's housing stock by type, particularly where the case for compulsory purchase turns on need to provide housing of particular type
- where a compulsory purchase order is made with a view to meeting special housing needs, eg, of the elderly, specific information about those needs
- where the authority proposes to dispose of the land or property concerned, details of the prospective purchaser, their proposals for the provision of housing accommodation and when this will materialise, and details of any other statutory consents required
- where it is not possible to identify a prospective purchaser at the time a compulsory purchase order is made, details of the authority's proposals to dispose of the land or property, its grounds for considering that this will achieve the provision of housing accommodation and when the provision will materialise

- where the authority has alternative proposals, it will need to demonstrate that each alternative is preferable to any proposals advanced by the existing owner

148. When does development on land to be acquired for housing development under section 17 need to be completed?

Section 17(4) of the Housing Act 1985 provides that the Secretary of State may not confirm a compulsory purchase order unless he is satisfied that the land is likely to be required within 10 years of the date the order is confirmed.

149. Will the Secretary of State refuse to confirm an order made under housing powers if it could have been made under planning powers instead?

Where an authority has a choice between the use of housing or planning compulsory purchase powers the Secretary of State will not refuse to confirm a compulsory purchase order solely on the grounds that it could have been made under another power.

Where land is being assembled under planning powers for housing development, the Secretary of State will have regard to the policies set out in this section.

150. When is the acquisition of empty properties for housing use justified?

Compulsory purchase of empty properties may be justified as a last resort in situations where there appears to be no other prospect of a suitable property being brought back into residential use. Authorities will first wish to encourage the owner to restore the property to full occupation. However, cases may arise where the owner cannot be traced and therefore use of compulsory purchase powers may be the only way forward.

When considering whether to confirm such an order the Secretary of State will normally wish to know:

- how long the property has been vacant
- what steps the authority has taken to encourage the owner to bring it into acceptable use and the outcome; and
- what works have been carried out by the owner towards its reuse for housing purposes

151. When is the acquisition of substandard properties justified?

Compulsory purchase of substandard properties may be justified as a last resort in cases where:

- a clear housing gain will be obtained
- the owner of the property has failed to maintain it or bring it to an acceptable standard; and
- other statutory measures, such as the service of statutory notices, have not achieved the authority's objective of securing the provision of acceptable housing accommodation

However, the Secretary of State would not expect an owner-occupied house, other than a house in multiple occupation, to be included in a compulsory purchase order unless the defects in the property adversely affected other housing accommodation.

In considering whether to confirm such a compulsory purchase order the Secretary of State will wish to know:

- what the alleged defects in the order property are
- what other steps the authority has taken to remedy matters and the outcome
- the extent and nature of any works carried out by the owner to secure the improvement and repair of the property.
- the Secretary of State will also wish to know the authority's proposals regarding any existing tenants of the property

152. Are there any limitations on the use of the power under Part 2 of the Housing Act 1985 to acquire property for the purpose of providing housing accommodation?

The powers do not extend to the acquisition of property for the purpose of improving the management of housing accommodation. A qualitative or quantitative housing gain must be achieved.

Following the judgment in the case of R v Secretary of State for the Environment ex parte Royal Borough of Kensington and Chelsea (1987) it may, however, be possible for authorities to resort to compulsory purchase under Part 2 where harassment or other grave conduct of a landlord has been such that proper housing accommodation could not be said to exist at the time when the authority resolved to make the compulsory purchase order. Such an order could be justified as achieving a housing gain.

153. Is consent required for the onward disposal of tenanted properties?

Consent may be required for the onward disposal of tenanted properties which have been compulsorily purchased. Before a local authority can dispose of housing occupied by secure tenants to a private landlord it must consult the tenants in accordance with section 106A of the Housing Act 1985.

The Secretary of State cannot give consent for the disposal if it appears to him that a majority of the tenants are opposed. An authority contemplating onward sale should, therefore, ensure in advance that it has the tenants' support.

154. Can the Secretary of State confirm an order where an acquiring authority has given an undertaking that it will not implement the order if the owner subsequently agrees to improve the property?

Such undertakings are a matter between the acquiring authority and owner, and the Secretary of State has no involvement. A compulsory purchase order which is the subject of such an agreement will be considered by the Secretary of State on its individual merits. The Secretary of State has no powers to confirm an order subject to conditions.

Housing Act 1985: Part 9, Slum clearance

155. What information needs to be submitted with an application for confirmation of a clearance area compulsory purchase order?

In addition to the general requirements, an authority submitting an order under section 290 of Part 9 of the Housing Act 1985 should only do so after considering all possible options for the area and will be expected to deal with the following matters in their statement of reasons:

- the declaration of the clearance area and its justification including a statement that all other possible options to maintain the clearance area have been considered
- the standard of buildings in the clearance area: incorporating a statement of the authority's principal grounds for being satisfied that the buildings are substandard the justification for acquiring any added lands included in the order
- proposals for rehousing and for relocating commercial and industrial premises affected by clearance
- the proposed after use of the cleared site
- where it is not practicable to table evidence of planning permission, the authority should demonstrate that their proposals are acceptable in planning terms and that there appear to be no grounds for thinking that planning permission will not materialise
- how they have fully considered the economic aspect of clearance and that they have responded to any submissions made by objectors regarding that

General guidance on clearance areas can be found in Housing health and safety rating system enforcement guidance.

Further information on listed buildings and unlisted buildings in conservation areas which are included in clearance compulsory purchase orders.

Local Government and Housing Act 1989: Part 7, Renewal Areas

156. What can the powers under Part 7 of the Local Government and Housing Act 1989 be used for?

Section 93(2) of the Local Government and Housing Act 1989 can be used by authorities:

- to acquire by agreement or compulsorily premises consisting of, or including, housing accommodation to achieve or secure their improvement or repair
- for their proper and effective management and use; or

- for the wellbeing of residents in the area

They may provide housing accommodation on land so acquired.

Authorities acquiring properties compulsorily should consider subsequently disposing of them to owner occupiers, housing associations or other private sector interests in line with their strategy for the Renewal Area. Where property in need of renovation is acquired, work should be completed as quickly as possible in order not to blight the area and undermine public confidence in the overall Renewal Area strategy. In exercising their powers of acquisition authorities will need to bear in mind the financial and other (eg manpower) resources available to them and to other bodies concerned.

Section 93(4) of the Local Government and Housing Act 1989 can be used by authorities to acquire by agreement or compulsorily land and buildings for the purpose of improving the amenities in a Renewal Area. This power also extends to acquisition where other persons will carry out the scheme. Examples might include the provision of public open space or community centres either by the authority or by a housing association or other development partner. Demolition of properties should be considered as a last resort only after all other possible options have been considered. In these exceptional cases regard should be had to any adverse effects on industrial or commercial concerns.

The powers in sections 93(2) and 93(4) of the Local Government and Housing Act 1989 are additional powers and are without prejudice to other powers available to local housing authorities to acquire land which might also be used in Renewal Areas.

The extent to which acquisitions will form part of an authority's programme will depend on the particular area. In some cases strategic acquisitions of land for amenity purposes will form an important element of the programme. However, as a general principle, the Secretary of State would not expect to see authorities acquiring compulsorily in order to secure improvement except where this cannot be achieved in any other way. Where acquisition is considered to be essential by an authority, they should first attempt to do so by agreement.

Where an authority submit a compulsory purchase order under section 93(2) or 93(4) of the Local Government and Housing Act 1989, their statement of reasons for making the order should demonstrate compulsory purchase is considered necessary in order to secure the objectives of the Renewal Area. It should also set out the relationship of the proposals for which the order is required to their overall strategy for the Renewal Area; their intentions regarding disposal of the property; and their financial ability, or that of the purchaser, to carry out the proposals for which the order has been made.

Other housing powers

157. Are there any other housing powers under which local authorities can make compulsory purchase orders?

Compulsory purchase orders can also be made by local authorities under sections 29 and 300 of the Housing Act 1985 and section 34 of the Housing Associations Act 1985. These orders will be considered on their merits in the light of the general requirement that there should be a compelling case for compulsory purchase in the public interest. The Secretary of State will also have regard to the policies set out in this section where applicable.

Listed buildings in slum clearance

158. If a building including in a clearance compulsory purchase order under section 290 of the Housing Act 1985 is subsequently listed will the clearance go ahead?

This is a matter for the local planning authority concerned. It will need to decide urgently whether the building should be retained because of its special interest, or whether it should proceed with the clearance proposals.

If the authority favours clearance, it must apply to the Secretary of State for listed building consent within three months of the date of listing (section 305 of the Housing Act 1985).

159. What happens if the building is listed after the order has been submitted to the Secretary of State for confirmation but before a decision is reached?

If a building in a clearance compulsory purchase order is listed after the order has been submitted to the Secretary of State for confirmation, but before he has reached a decision on it, the authority should inform the Secretary of State urgently how it wishes to proceed in the light of listing.

If it favours retaining the building, the authority should request that the building be withdrawn from the order.

If the authority applies for listed building consent to demolish, the Secretary of State will normally hold a joint local public inquiry at which the compulsory purchase order and the application for listed building consent will be considered together.

160. What happens if the building is listed after the order has been confirmed by the Secretary of State?

If listed building consent is applied for and granted, acquisition, if not completed, can proceed and demolition can follow.

If listed building consent is refused, or if no application is made within the three month period, subsequent action depends on whether or not notice to treat has been served and, if it has, whether the building is vested in the authority:

- if notice to treat has not been served, section 305(2) of the Housing Act 1985 prohibits the authority from serving it unless and until the Secretary of State gives listed building consent. Refusal of listed building consent or failure to apply for it within the specified period will effectively release the building from the compulsory purchase order and, where applicable, from the clearance area. In the latter event, the authority must then consider other appropriate action for dealing with unfitness under the housing acts

- if notice to treat has been served before the listing, but acquisition has not been completed before listed building consent is refused or the expiry of the three month period, compulsory acquisition may continue, but this will be under the powers contained in Part 2 of the Housing Act 1985 for residential buildings or Part 9 of the

Town and Country Planning Act 1990 for other buildings

- if the building is already vested in the authority, it will be appropriated to Part 2 of the 1985 act or Part 9 of the Town and Country Planning Act 1990 as the case may be

Local authorities are reminded that Housing health and safety rating system enforcement guidance advises that listed buildings and buildings subject to a building preservation notice should only be included in clearance areas in exceptional circumstances and only where listed building consent has been given.

161. What happens if the building was purchase by agreement under Part 9 of the Housing Act 1985, or under some other power and now held under Part 9 and is subsequently listed?

Under section 306 of the Housing Act 1985 the authority may apply for listed building consent if it still favours demolition. If consent is refused or not applied for within the specified period of three months from the date of listing, the authority is no longer subject to the duty to demolish the building imposed by Part 9 of the Housing Act 1985 and must appropriate it to Part 2 of the Housing Act 1985 or Part 9 of the Town and Country Planning Act 1990 as the case may be.

162. Is planning permission required to demolish an unlisted building in a conservation area where the building is included in a clearance compulsory purchase order?

In these circumstances demolition is permitted development (subject to article 4 directions and any Environmental Impact Assessment requirements) so an application for planning permission is not required – see 'What permissions/prior approvals are required for demolition in a conservation area?' in planning guidance for further information.

Where a submitted clearance compulsory purchase order includes buildings within a conservation area, the Secretary of State will wish to have regard to the conservation area aspect in reaching his decision on the order.

Section 7: to improve the appearance or condition of land

163. Can a local authority compulsorily acquire land to improve its appearance or condition?

In some circumstances a local authority can compulsorily acquire land to improve its appearance or condition. For instance, a local authority can use their compulsory purchase powers under section 89(5) of the National Parks and Access to the Countryside Act 1949 specifically for this purpose.

If the local authority is unsure whether to use these specific powers or if various uses are proposed for the land, the authority may consider using the powers granted by section 226 of the Town and Country Planning Act 1990 instead.

There are also various other compulsory purchase powers that local authorities may use to acquire and develop land that is derelict, neglected or unsightly for particular purposes such as housing or public open space.

164. When can a local authority use their powers under section 89 of the National Parks and Access to the Countryside 1949 Act to compulsorily purchase land?

A local authority can use their powers under section 89(5) of the National Parks and Access to the Countryside Act 1949 to compulsorily purchase land to plant trees to preserve or enhance the natural beauty of the land. The local authority can also use this power to carry out works to reclaim, improve or bring back into use land in their area that the authority believes to be:

- derelict, neglected or unsightly; or
- likely to become derelict, neglected or unsightly because the authority anticipate that the surface may collapse as a result of underground mining operations (other than coal mining)

165. Can a local authority still consider land to be 'derelict, neglected or unsightly' even if it is in use?

A local authority may still consider land to be 'derelict' or 'neglected' even if it is being put to some slight use when its condition is compared to the potential use of the land. However, it is not the purpose of these powers to enable a local authority to carry out works or acquire land solely because they believe that they can provide a better use than the present one.

166. Who decides whether to confirm an order to compulsorily purchase land under section 89 of the National Parks and Access to the Countryside Act 1949?

The Secretary of State for Environment, Food and Rural Affairs decides whether to confirm an order under section 89(5) of the National Parks and Access to the Countryside Act 1949.

167. What does the phrase 'derelict, neglected or unsightly' mean in connection with these compulsory purchase powers?

There are no statutory definitions so the natural, common sense meaning of the words should be taken. If possible, it is also preferable to consider the three words taken together as there is considerable overlap between each. For instance, the untidy or ‘unsightly’ appearance of the land may also be relevant in considering whether it is ‘derelict’ or ‘neglected’, or land might be considered ‘neglected’ but not ‘derelict’ if no building works, dumping or excavation have taken place.

The authority may wish to obtain the views of the Secretary of State for Environment, Food and Rural Affairs on the meaning of these words when considering whether to make a section 89(5) order.

Section 8: for educational purposes

168. What powers does a local authority have to make a compulsory purchase order for educational purposes?

A local authority can make a compulsory purchase order for educational purposes using its powers under section 530 of the Education Act 1996, as amended, with the confirmation of the Secretary of State for Education. These powers can be used to acquire land which is required for the purposes of its educational functions, including the purposes of:

- any local authority maintained or assisted school or institution; or
- an academy (whether established or to be established)

169. How does a local authority make a compulsory purchase order for educational purposes?

When making an order a compulsory purchase order under section 530 of the Education Act 1996, the authority should have due regard to statutory requirements from the Department for Education. The local authority may also seek guidance, if necessary, from that department on the form of draft orders where there is doubt about a particular point.

The local authority submits the order and other required documents for confirmation to the Secretary of State for Education at the following address:

Education Funding
Agency Schools
Assets Team
Mowden Hall,
Staindrop
Road,
Darlington,
Co. Durham DL3 9BG

If the compulsory purchase order is for a voluntary aided school, the local authority will need to submit certain additional documents with the order, as well as the standard documents required.

170. What additional documents are required to make a compulsory purchase order for voluntary aided schools?

In addition to the standard list of documents required to make a compulsory purchase order, an order for a voluntary aided school will require the following documents:

a) completed copy of the Site Acquisition form (form SB1), available from the Department for Education; and

b) a qualified valuer's report

These additional documents should accompany, or be submitted as soon as possible after, the order.

171. Can a local authority make a compulsory purchase order in connection with a proposal for changes in school provision?

A local authority may make a compulsory purchase order (under section 530 of the Education Act 1996) in connection with certain proposals for changes in school provision. A proposal could involve:

- the establishment of a new school for children of compulsory school age (under Part 2 of the Education and Inspections Act 2006); or
- a prescribed alteration to an existing maintained school (under Part 2 of the Education and Inspections Act 2006)

172. How does the Secretary of State consider a compulsory purchase order for educational purposes if it is accompanied by a statutory proposal?

The Secretary of State considers a compulsory purchase order made under section 530 of the Education Act 1996 separately to any accompanying statutory proposal for changes in school provision (made under Part 2 of the Education and Inspections Act 2006).

173. When can the Secretary of State for Education compulsorily purchase land that is required by an academy?

The Secretary of State for Education can compulsorily purchase land that is required by an academy using the powers granted by Paragraphs 5 and 7 of schedule 1 to the Academies Act 2010. The Secretary of State can use these powers if a local authority has either:

- disposed of land; or
- made an appropriation of land (that they hold a freehold or leasehold interest in) under section 122 of the Local Government Act 1972

without the consent of the Secretary of State, and if the land in question has been used wholly or mainly for the purposes of a school or a 16 to 19 academy at any time in the period of eight years ending with the day on which this disposal or appropriation was made.

174. What happens once the Secretary of State has completed the compulsory purchase of the land?

Once the Secretary of State has completed the compulsory purchase, the land must be transferred to a person concerned with the running of the academy. The Secretary of State is entitled to recover from the local authority any compensation awarded (and any interest) in relation to the compulsory purchase, together with costs and expenses incurred in connection with the making of the compulsory purchase order.

Arrangements for publishing/seeking proposals for a change in school provision that requires a compulsory purchase order

175. What can a local authority do, if it wishes to compulsorily purchase land to establish a new school for children of compulsory school age?

When a local authority decides that it needs a new school in its area for children of compulsory school age, it is required by section 6A of the Education and Inspections Act 2006 to seek proposals to establish an academy. If the local authority requires land to be compulsorily acquired for this purpose, it should publish the notice seeking proposals before making a compulsory purchase order.

The local authority is also expected to notify the Department for Education of their plan to seek proposals as soon as the need for a new school has been decided upon.

A local authority can only publish its own proposals in the limited circumstances set out in Part 2 of that act, for example if the new school is to replace one or more maintained schools. Further information is available from the Department for Education.

176. What can a local authority do, if it wishes to compulsorily purchase land to make a prescribed alteration to a school?

If a local authority wishes to make a prescribed alteration under Part 2 of the Education and Inspections Act 2006, the local authority should publish their proposals before making a compulsory purchase order.

177. What can an appropriate authority do if their proposal to restructure school sixth form education requires the compulsory purchase of land?

The appropriate authority (the Skills Funding Agency or the Education Funding Agency) should publish their proposal to restructure school sixth form education before the relevant local authority makes a compulsory purchase order.

Section 72 of the Education Act 2002 sets out arrangements for the publication of proposals to restructure sixth form education.

Deciding an application for approval for a change in school provision that accompanies a compulsory purchase order

178. How is a proposal for a change in school provision considered, if it relies on the approval of a compulsory purchase order?

Depending on the nature of the proposal, an application for approval is considered as follows:

a) **Proposals to establish a new academy**

The Secretary of State for Education makes the final decision on whether to approve a proposal to establish a new academy.

When considering the proposal, the Secretary of State takes into account the need for a compulsory purchase order and any decision to approve the proposal is then conditional on the local authority acquiring the site. The local authority is then informed of the decision on the proposal so that it may make and submit the compulsory purchase order.

b) **Proposals to make a prescribed alteration to an existing maintained school**

The relevant local authority or schools adjudicator decides whether to approve a proposal to make a prescribed alteration to an existing maintained school.

The relevant local authority or schools adjudicator considers the application for approval of a proposal for a prescribed alteration. Consideration is given on the merits of the proposal and independently from the Secretary of State's consideration of the compulsory purchase order.

Approval can only be given on the condition that the relevant site is acquired under regulation 16(2)(b) of the School Organisation (Establishment and Discontinuance of Schools) Regulations 2013. The local authority will then be informed of the decision so that it may make and submit the compulsory purchase order.

179. What happens if the proposal for a change in school provision is rejected?

If the decision is to reject the proposal for a change in school provision, the local authority is advised not make the order since, in these circumstances it would be inappropriate for the Secretary of State to confirm it.

180. What happens once the Secretary of State has decided whether or not to confirm the compulsory purchase order?

If the Secretary of State decides to confirm the compulsory purchase order the order will be sealed and returned to the local authority. When the local authority has purchased the site, the condition of the approval is met and the approval of the proposal becomes final with no further action required.

If the Secretary of State decides not to confirm the order, the proposal falls as the condition is not met.

Section 9: for public libraries and museums

181. Who has compulsory purchase powers to acquire land for public libraries and museums?

A local authority can compulsorily acquire land for public libraries and museums under section 121 of the Local Government Act 1972, using an appropriate enabling power (such as section 7 or 12 of the Public Libraries and Museums Act 1964).

182. How does a local authority make a compulsory purchase order for public libraries and museums?

When making a compulsory purchase order for public libraries and museums the local authority should have due regard to statutory requirements.

The order should be accompanied by each of the following additional documents:

- a completed copy of form CP/AL1 (obtainable from the Department for Digital, Culture, Media & Sport, Libraries Division)
- a qualified valuer‘s report

The order and accompanying documents are submitted to the Secretary of State for Digital, Culture, Media & Sport for confirmation at the address below:

Department for Digital, Culture, Media & Sport
100 Parliament Street
London
SW1A 2BQ

Section 10: for airport Public Safety Zones

183. Can an airport operator compulsorily purchase property that is located near an airport?

An airport operator can compulsorily purchase whole or part of a property if it is located within the 1 in 10,000 individual risk contour of an airport and if the property, or the relevant part of it, is:

- an occupied residential property
- a commercial or industrial property that is occupied as an all-day workplace

However, a compulsory purchase order should only be made as a last resort, if the airport authority is unable to purchase the property by agreement.

184. What should the airport operator do if a property falls into the categories described above?

If a property falls into the categories described above, the airport operator is expected to offer to purchase the property by agreement, with compensation being payable under the Compensation Code.

If purchase by agreement is not possible, the Secretary of State will be prepared to consider applications for compulsory purchase by airport operators with powers under section 59 of the Airports Act 1986.

To make a compulsory purchase order, the airport operator will need to demonstrate that the property falls within the categories described and that it has not been possible to purchase the property by agreement. The compulsory purchase order should be sent to the Secretary of State for Transport at:

Airports Policy Division
Zone 1/26, Great Minster House
33 Horseferry Road
London
SW1P 4DR

Once the property has been acquired, the airport operator will be expected to demolish any buildings and to clear the land.

185. What is the '1 in 10,000 individual risk contour' of an airport and why is property within this area significant?

The '1 in 10,000 individual risk contour' is an area of land within the Public Safety Zone of an airport where individual third party risk of being killed as a result of an aircraft accident is greater than 1 in 10,000 per year.

The level of risk in the '1 in 10,000 individual risk contour' is much higher than in other areas of the Public Safety Zone and at some airports, this contour extends beyond the airport boundary. As a result, it is the Secretary of State for Transport's policy that

there should be no occupied residential properties or all day workplaces within this area.

Further information can be found on the Department for Transport website (see circular 1/10).

Section 11: for listed buildings in need of repair

186. Who has compulsory purchase powers for listed buildings in need of repair?

Section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990 gives an appropriate authority compulsory purchase powers to acquire a listed building in need of repair with the authorisation of the Secretary of State. The appropriate authority may be:

- the relevant local planning authority
- Historic England, if the listed building is located in Greater London
- the Secretary of State for Digital, Culture, Media & Sport

It is the Secretary of State's policy to only use this power in exceptional circumstances.

187. How does an appropriate authority make a compulsory purchase order for a listed building in need of repair?

To make a compulsory purchase order for a listed building in need of repair under section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990, the appropriate authority is required to:

- serve a repairs notice under section 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990 on the owner (see section 31(2) of Planning (Listed Buildings and Conservation Areas) Act 1990/ section 336 of the Town and Country Planning Act 1990) of the listed building at least two months before making the compulsory purchase order
- prepare and serve the compulsory purchase order and its associated notices, if the repairs notice has not been complied with within two months of service
- submit the compulsory purchase order, a copy of the repairs notice and all supporting documents to the Secretary of State for Digital, Culture, Media & Sport

188. What if the owner has deliberately allowed the listed building to fall into disrepair to justify its demolition?

If there is clear evidence that the owner of a listed building has deliberately allowed the building to fall into disrepair to justify its demolition and the development of the site (or an adjoining site), the acquiring authority can include a direction for minimum compensation within the compulsory purchase order. Provisions for minimum compensation are given in section 50 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

The terms for a minimum compensation direction are set out in optional paragraph 4 of Form 1 in the schedule to the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004.

Follow the link for advice on how to include a direction for minimum compensation within a compulsory purchase order.

189. What should a local authority do if an application is made to a magistrates' court to contest a direction for minimum compensation?

As soon as a local authority becomes aware of any application to a magistrates' court:

- to stay further proceedings on the compulsory purchase order, under section 47(4) of the Planning (Listed Buildings and Conservation Areas) Act 1990; or

- for an order that a direction for minimum compensation is not included in the compulsory purchase order, under section 50(6) of the Planning (Listed Buildings and Conservation Areas) Act 1990

they should notify the Secretary of State for Digital, Culture, Media & Sport immediately. Depending on the circumstances, it may be necessary to hold the order in abeyance (ie suspend the order) until the court has considered the application.

Repairs notices

190. When might an appropriate authority serve a repairs notice?

An appropriate authority may consider issuing a repairs notice (under section 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990) if a listed building is at risk because its owner has failed to keep the building in reasonable repair for an extended period of time. A repairs notice is not the same as a notice for urgent works and can be served whether the listed building is occupied or not.

Further information on repairs notices and notices for urgent works are available from the Historic England website.

191. What information should the repairs notice include?

The repairs notice must:

- specify the works which the authority considers reasonably necessary for the proper preservation of the building; and

- explain the effect of sections 47-50 of the Planning (Listed Buildings and Conservation Areas) Act 1990

192. What works might be specified in the repairs notice?

The works specified in the repairs notice will always relate to the circumstances of the individual case and will involve judgments about what is considered reasonable to preserve (rather than restore) the listed building.

Other considerations may be used as a basis for determining the scope of works required. For example, the condition of the building when it was listed may be taken into account if the building has suffered damage or disrepair since being listed. In this case, the repairs

notice may include works to secure the building's preservation as at the date of listing, but should not be used to restore other features.

Alternatively, the notice may specify works that are necessary to preserve the rest of the building, such as repairs to a defective roof, whether or not the particular defect was present at the time of listing.

The form of the compulsory purchase order and its associated notices

193. How are the compulsory purchase order and associated notices prepared?

General guidance on the format of compulsory purchase orders is available here.

For compulsory purchase orders for listed buildings in need of repair, there are additional provisions set out in regulation 4 of the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004. These require additional paragraphs from the schedule to the regulations to be inserted into the relevant forms, as described below.

When preparing any personal notices:

- include additional paragraphs 3 and 5 of Form 8; and
- if a direction for minimum compensation is included within the order insert additional paragraph 4 of Form 8; and
- include an explanation of the meaning of the direction, as required by section 50(3) of the Planning (Listed Buildings and Conservation Areas) Act 1990. This should normally include the text of subsections (4) and (5) of section 50 of that act

When preparing the compulsory purchase order:

- if a direction for minimum compensation is included within the order, include optional paragraph 4 of Form 1 in orders drafted using Form 1

Tier 3: procedural issues

194. Where can guidance on common procedural issues be found?

Guidance can be found here:

- Section 12: preparing statement of reasons
- Section 13: general certificate
- Section 14: preparing and serving the order and notices
- Section 15: order maps
- Section 16: addresses

195. Where can further information on other procedural issues which will only apply in certain cases be found?

Further information can be found here:

- Section 17: for community assets (at the request of the community)
- Section 18: special kinds of land
- Section 19: compulsory purchase of new rights and other interests
- Section 20: compulsory purchase of Crown land
- Section 21: certificates of appropriate alternative development (under the Land Compensation Act 1961)
- Section 22: protected assets certificate
- Section 23: objection to division of land (material detriment)
- Section 24: overriding easements and other rights

Common procedural issues

Section 12: preparing statement of reasons

196. What information should be included in the statement of reasons?

The statement of reasons should include the following information:

(i) a brief description of the order land and its location, topographical features and present use

(ii) an explanation of the use of the particular enabling power

(iii) an outline of the authority's purpose in seeking to acquire the land

(iv) a statement of the authority's justification for compulsory purchase, with regard to Article 1 of the First Protocol to the European Convention on Human Rights, and Article 8 if appropriate

(v) a statement justifying the extent of the scheme to be disregarded for the purposes of assessing compensation in the 'no-scheme world'

(vi) a description of the proposals for the use or development of the land

(vii) a statement about the planning position of the order site. See also Section 1: advice on section 226 of the Town and Country Planning Act 1990 for planning orders.

(viii) information required in the light of government policy statements where orders are made in certain circumstances eg as stated in Section 5: local housing authorities for housing purposes where orders are made under the Housing Acts (including a statement as to unfitness where unfit buildings are being acquired under Part 9 of the Housing Act 1985)

(ix) any special considerations affecting the order site eg ancient monument, listed building, conservation area, special category land, consecrated land, renewal area, etc

(x) if the mining code has been included, reasons for doing so

(xi) details of how the acquiring authority seeks to overcome any obstacle or prior consent needed before the order scheme can be implemented eg need for a waste management licence

(xii) details of any views which may have been expressed by a government department about the proposed development of the order site

(xiii) what steps the authority has taken to negotiate for the acquisition of the land by agreement

(xiv) any other information which would be of interest to persons affected by the order eg proposals for rehousing displaced residents or for relocation of businesses

(xv) details of any related order, application or appeal which may require a co-ordinated decision by the confirming minister eg an order made under other powers, a planning appeal/application, road closure, listed building; and

(xvi) if, in the event of an inquiry, the authority would intend to refer to or put in evidence any documents, including maps and plans, it would be helpful if the authority could provide a list of such documents, or at least a notice to explain that documents may be inspected at a stated time and place

Section 13: general certificate

197. What is the purpose of a general certificate in support of an order submission?

A general certificate has no statutory status, but is intended to provide reassurance to the confirming authority that the acquiring authority has followed the proper statutory procedures.

198. What form should a general certificate in support of an order submission take?

The certificate should be submitted in the following form:

THE ……. COMPULSORY PURCHASE ORDER 20...

I hereby certify that:

1. A notice in the Form numbered……in the Compulsory Purchase of Land (Prescribed Forms)(Ministers) Regulations 2004 (SI 2004 No. 2595) was published in two issues of the …….. dated ……. 20…. and …… 20....(being one or more local newspapers circulating in the locality). The time allowed for objections was not less than 21 days from the date of the first publication of the notice and the last date for them is/was…….. ……. 20.... A notice in the same Form addressed to persons occupying or having an interest in the land was affixed to a conspicuous object or objects on or near the land comprised in the order on …….. 20.... and from that date remained in place for a period of at least 21 days which was the period allowed for objections, the last date being …… 20....

2. Notices in the Form numbered ……. in the said Regulations were duly served on

(i) every owner, lessee, tenant and occupier of all land to which the order relates;

(ii) every person to whom the acquiring authority would, if proceeding under section 5(1) of the Compulsory Purchase Act 1965, be required to give a notice to treat; and

(iii) every person the acquiring authority thinks is likely to be entitled to make a claim for compensation under section 10 of the 1965 Act if the order is confirmed and the compulsory purchase takes place, so far as such a person is known to the acquiring authority after making diligent inquiry. (NB: For an order made under section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990, the notice must include additional paragraphs in accordance with regulation 4 of the 2004 Prescribed Forms Regulations.)

The time allowed for objections in each of the notices was not less than 21 days and the last date for them is/was …….. 20.... The notices were served by one or more of the methods described in section 6(1) of the 1981 Act.

3. [*Where the order includes land in unknown ownership*] Notices in the Form

numbered …….. in the said Regulations were duly served by one or more of the methods described in section 6(4) of the 1981 Act. The time allowed for objections in each of the notices was not less than 21 days and the last date is/was …….. 20.... .

4. A copy of the order and of the map were deposited at …… on …… 20.... and will remain/remained available for inspection until …….. .

5. (1) A copy of the authority's statement of reasons for making the order has been sent to:

(a) all persons referred to in paragraph 2(i), (ii) and (iii) above (see Which parties should be notified of a compulsory purchase order?)

(b) as far as is practicable, other persons resident on the order lands, and any applicant for planning permission in respect of the land

(2) Two copies of the statement of reasons are herewith forwarded to the Secretary of State.

6. [*Where the order includes ecclesiastical property*] Notice of the effect of the order has been served on the Church Commissioners (section 12(3) of the 1981 Act).]

NB. The Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950 (SI 1950 No. 792) apply where it is proposed to use for other purposes consecrated land and burial grounds which here acquired compulsorily under any enactment, or acquired by agreement under the Town and Country Planning Acts, or which were appropriated to planning purposes. Subject to sections 238 to 240 of the 1990 Act, permission (a 'faculty') is required for material alteration to consecrated land. (See Faculty Jurisdiction Measure 1964; Care of Churches and Ecclesiastical Jurisdiction Measure 1991.)

Section 14: preparing and serving the order and notices

199. What format should an order adopt?

The order and associated schedule should comply with the relevant form as prescribed by regulation 3 of, and the schedule to, the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004 (SI 2004 No. 2595).

In accordance with the notes to the prescribed forms, the title and year of the act authorising compulsory purchase must be inserted. Each acquisition power must be cited and its purpose clearly stated in paragraph 1 of the order. For orders made under section 17 of the Housing Act 1985, the purpose of the order may be described as 'the provision of housing accommodation'. Where there are separate compulsory acquisition and enabling powers, each should be identified and its purpose stated. In some cases, a collective title may be sufficient to identify two or more acts. (See Section 1: advice on section 226 of the Town and Country Planning Act 1990 and Section 18: compulsory purchase of new rights and other interests for examples of how orders made under certain powers may be set out. Section 2: advice on section 121 of the Local Government Act 1972 contains guidance on orders where the acquisition power is section 121 or section 125 of the Local Government Act 1972 and on orders for mixed purposes.)

200. Where should the order maps be deposited?

A certified copy of the order map should be deposited for inspection at an appropriate place within the locality eg the local authority offices. It should be within reasonably easy reach of persons living in the area affected. The two sealed order maps should be forwarded to the offices of the confirming authority.

201. Can the 'the mining code' be incorporated into an order?

Parts 2 and 3 of schedule 2 to the Acquisition of Land Act 1981, relating to mines ('the mining code'), may be incorporated in a compulsory purchase order made under powers to which the act applies. The incorporation of both parts does not, of itself, prevent the working of minerals within a specified distance of the surface of the land acquired under the order; but it does enable the acquiring authority, if the order becomes operative, to serve a counter-notice stopping the working of minerals, subject to the payment of compensation. Since this may result in the sterilisation of minerals (including coal reserves), the mining code should not be incorporated automatically or indiscriminately.

Therefore, authorities are asked to consider the matter carefully before including the code, and to omit it where existing statutory rights to compensation or repair of damage might be expected to provide an adequate remedy in the event of damage to land, buildings or works occasioned by mining subsidence.

The advice of the Valuation Office Agency's regional mineral valuers is available to authorities when considering the incorporation of the code.

202. Who should authorities notify if they make an order incorporating the mining code?

In areas of coal working notified to the local planning authority by the Coal Authority under article 16 of, and paragraph (o), schedule 4 to, the Town and Country Planning (Development Management Procedure) (England) Order 2015, authorities are asked to notify the Coal Authority and relevant licensed coal mine operator if they make an order which incorporates the mining code.

203. What information about the land to be acquired should be included in an order?

The prescribed order formats set out in the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004 require, subject to the flexibility to adapt them permitted by Regulation 2, that the extent of the land should be stated. Therefore, the area of each plot, eg in square metres, should normally be shown. This information will be particularly important where any potential exists for dispute about the boundary of the land included in the order, because section 14 of the Acquisition of Land Act 1981 prohibits the modification of an order on confirmation to include land which would not otherwise have been covered. It may not always be necessary for a measurement of the plot to be quoted, if the extent and boundaries can be readily ascertained without dispute. For instance, the giving of a postal address for a flat may be sufficient.

Each plot should be described in terms readily understood by a layman, and it is particularly important that local people can identify the land described. The Regulations require that the details about the extent, description and situation of the land should be sufficient to tell the reader approximately where the land is situated without reference to the map (see notes to prescribed Forms 1 to 6 in the regulations).

Simple descriptions in ordinary language are to be preferred. For example, where the land is agricultural it should be described as ‘pasture land’ or ‘arable land’; agricultural and non-agricultural afforested areas may be described as ‘woodland’ etc; and, if necessary, be related to some well known local landmark, eg ‘situated to the north of School Lane about 1 km west of George’s Copse’.

Where the description includes a reference to Ordnance Survey field numbers the description should also state or refer to the sheet numbers of the Ordnance Survey maps on which these field numbers appear. The Ordnance Survey map reference should quote the edition of the map.

Property, especially in urban areas, should be described by name or number in relation to the road or locality and where part of a property has a separate postal address this should be given. Particular care is necessary where the street numbers do not follow a regular sequence, or where individual properties are known by more than one name or number. The description should be amplified as necessary in such cases to avoid any possibility of mistaken identity. If the order when read with the order map fails to clearly identify the extent of the land to be acquired, the confirming authority may refuse to confirm the order even though it is unopposed.

204. What information should be included in the order where the authority already owns an interest in the land to be acquired?

Except for orders made under highway land acquisition powers in Part 12 of the Highways Act 1980, to which section 260 of that act applies, where the acquiring authority already own an interest or interests in land but wish to acquire the remaining interest or interests in the same land, usually to ensure full legal title, they should include a description of the land in column 2 of the Schedule in the usual way but qualify the description as follows; 'all interests in [describe the land] except those owned by the acquiring authority'. The remaining columns should be completed as described in *What information should be included in the order schedule?* This principle should be extended to other interests in the land which the acquiring authority does not wish to acquire, eg Homes England might decide it wishes to exclude its own interests and local authority interests from an order.

Compulsory purchase should not be used merely to resolve conveyancing difficulties. It is accepted, however, that it may only be possible to achieve satisfactory title to certain interests by the use of compulsory powers, perhaps followed by a general vesting declaration (see Stage 5: implementing a compulsory purchase order). Accordingly, acquiring authorities will be expected to explain and justify the inclusion of such interests. The explanation may be either in their preliminary statement of reasons or in subsequent correspondence, which may have to be copied to the parties. If no explanation is given or if the reasons are unsatisfactory, the confirming minister may modify an order to exclude interests which the acquiring authority already own, on the basis that compulsory powers are unnecessary.

A similar form of words to that described above may be appropriate where the acquiring authority wish to include in the order schedule an interest in Crown land which is held otherwise than by or on behalf of the Crown. (In most cases, the Crown's own interests cannot be acquired compulsorily.) Further guidance on this subject is given in Section 19: compulsory purchase of Crown land.

205. Who is the acquiring authority required to serve notice of the making of the order?

The schedule to the order should include the names and addresses of every qualifying person as defined in section 12(2), 12(2A) and 12(2B) of the Acquisition of Land Act 1981 and upon whom the acquiring authority is required to serve notice of the making of the order. A qualifying person is:

(i) every owner, lessee, tenant, and occupier (section 12(2)(a) of the act)

(ii) every person to whom the acquiring authority would, if proceeding under section 5(1) of the Compulsory Purchase Act 1965, be required to give a notice to treat (section 12(2A) of the act); and

(iii) every person the acquiring authority thinks is likely to be entitled to make a claim for compensation under section 10 of the Compulsory Purchase Act 1965 if the order is confirmed and compulsory purchase takes place, so far as such a person is known to the acquiring authority after making diligent inquiry under section 12(2B) of the act

206. Should the order schedule include persons who may have a valid claim to be owners or lessees?

The schedule should include persons who may have a valid claim to be owners or lessees for the purposes of the Acquisition of Land Act 1981, eg persons who have entered into a contract to purchase a freehold or lease.

207. How should partnerships be dealt with?

The acquiring authority should ask the partnership to nominate a person for service. This avoids having to include the names of all partners in a partnership in the schedule and ensuring all partners are personally served. Notice served upon the partner who habitually acts in the partnership business is probably valid (see section 16 of the Partnership Act 1890), especially if that partner has control and management of the partnership premises, but the position is not certain.

208. How should corporate bodies be dealt with?

Service should be effected on the secretary or clerk at the registered or principal office of a corporate body, which should be shown in the appropriate column, ie as owner, lessee etc. (section 6(2) and (3) of the Acquisition of Land Act 1981). NB: under Company Law requirements, notices served on a company should be addressed to the secretary of the company at its principal or registered office. It is good practice to send copies to the actual contact who has been dealing with negotiations.

209. How should Trusts be dealt with?

Individual trustees should be named and served.

210. How should unincorporated bodies be dealt with?

In the case of unincorporated bodies, such as clubs, chapels and charities, the names of the individual trustees should be shown and each trustee should be served as well as the secretary. NB: The land may be vested in the trustees and not the secretary, but the trustees may be somewhat remote from the running of the club etc; and since communications should normally be addressed to its secretary, it is considered to be reasonable that the secretary should also be served. However, service solely on the secretary of such a body is not sufficient unless it can be shown that the secretary has been authorised by the trustees, or has power under the trust instrument, to accept order notices on behalf of the trustees.

211. How should charitable trusts be dealt with?

In the case of land owned by a charitable trust it is advisable for notice of the making of the order to be served on the Charity Commissioners at their headquarters address as well as on the trustees. See Part 7 of the Charities Act 2011.

212. How should land which is ecclesiastical property be dealt with?

Where land is ecclesiastical property, ie owned by the Church of England, notice of the making of the order must be served on the Church Commissioners as well as on the owners etc of the property (see section 12(3) of the Acquisition of Land Act 1981).

213. How should ancient monuments be dealt with?

Where it appears that land is or may be an ancient monument, or forms the site of an ancient monument or other object of archaeological interest, authorities should, at an early stage and with sufficient details to identify the site, contact the Historic Buildings and Monuments Commission for England (otherwise known as Historic England), or the County Archaeologist, according to the circumstances shown below:

- in respect of a *scheduled* ancient monument – Historic England; or
- in respect of an unscheduled ancient monument or other object of archaeological interest – the County Archaeologist

This approach need not delay other action on the order or its submission for confirmation, but the authority should refer to it in the letter covering their submission.

214. How should land in a national park be dealt with?

Where orders include land in a national park, acquiring authorities are asked to notify the National Park Authority. Similarly, where land falls within a designated Area of Outstanding Natural Beauty or a Site of Special Scientific Interest, they should notify Natural England.

215. How should land which is being used for sport of physical recreation be dealt with?

When an order relates to land being used for the purposes of sport or physical recreation, Sport England should be notified of the making of the order.

216. Can notice be served at a person's accommodation address?

Notice can be served at an accommodation address, or where service is effected on solicitors etc, provided the acquiring authority has made sure that the person to be served has furnished this address or has authorised service in this way; where known, the served person's home or current address should also be shown.

217. What information should be included in the order schedule?

- **about the owner or reputed owner** - where known, the name and address of the owner or reputed owner of the property should be shown. If there is doubt whether someone is an owner, he or she should be named in the column and a notice served on him/her. Likewise, if there is doubt as to which of two (or more) persons is the owner, both (or all) persons should be named in the sub-column and a notice served on each. Questions of title can be resolved later. If the owner of a property cannot be traced the word 'unknown' should be entered in the column. An order should include those covenants or restrictions which amount to interests in land that the authority wish to acquire or extinguish. Where land owned by the authority is subject to such an encumbrance (for example, an easement, such as a private right of way), they may wish to make an order to discharge the land from it. In any such circumstances, the owner or occupier of the land and the person benefiting from the right should appear in the relevant table of the schedule. The statement of reasons should explain that authority is being sought to acquire or extinguish the relevant interest

Where the encumbrance affects land in which the acquiring authority have a legal interest, the description in the schedule should refer to the right etc and be qualified by the words 'all interests in, on, over or under [*the land*] except those already owned by the acquiring authority'. This should avoid giving the impression that the authority has no interest to acquire.

- **about lessees, tenants, or reputed lessees or tenants -** where there are no lessees, tenants or reputed lessees or tenants a dash should be inserted, otherwise names and addresses should be shown

- **about occupiers -** where a named owner, lessee, or tenant is the occupier, the word 'owner', 'lessee' or 'tenant' should be inserted or the relevant name given. Where the property is unoccupied the column should be endorsed accordingly

218. What information about qualifying persons under sections 12(2A) and 12(2B) found by diligent enquiries should be included in the order schedule?

Although most qualifying persons will be owners, lessees, tenants or occupiers, the possibility of there being anyone falling within one of the categories in sections 12(2A) and (2B) should not be ignored. The name and address of a person who is a qualifying person under section 12(2A) who is not included in column (3) of the order schedule should be inserted in column (5) together with a short description of the interest to be acquired. An example of a person who might fall within this category is the owner of land adjoining the order land who has the benefit of a private right of way across the order land, which the acquiring authority have under their enabling power a right to acquire which they are seeking to exercise. (An example of this is section 18(1) of the National Parks and Access to the Countryside Act 1949 which empowers the Natural England to acquire an 'interest in land' compulsorily which is defined in section 114(1) to include any right over land.)

Similarly the name and address of a person who is a qualifying person under section 12(2B) who is not included in columns (3) and (5) of the order schedule should be inserted in column (6), together with a description of the land in respect of which a compensation claim is likely to be made and a summary of the reasons for the claim. An example of such a potential claim might be where there could be interference with a private right of access across the land included in the order as a result of implementing the acquiring authority's proposals.

219. What is meant by 'diligent enquiries'?

In determining the extent to which it should make 'diligent' enquiries, an authority will wish to have regard to the fact that case law has established that, for the purposes of section 5(1) of the Compulsory Purchase Act 1965, 'after making diligent inquiry' requires some degree of diligence, but does not involve a very great inquiry (see Popplewell J. in R v Secretary of State for Transport ex parte Blackett [1992] JPL 1041).

Acquiring authorities are encouraged to serve formal notices seeking information on all interests they have identified to find out if there any additional interests they are not aware of if a landowner has been served with a notice and fails to respond.

An acquiring authority does not have any statutory power under section 5A of the Acquisition of Land Act 1981 act to requisition information about land other than that which

it is actually proposing to acquire. However, the site notice procedure in section 11(3) and (4) of the 1981 act provides an additional means of alerting people who might feel that they have grounds for inclusion in column (6) and who can then identify themselves.

220. How should special category land be recorded in the order?

Special category land ie land to which sections 17, 18 and 19 of the Acquisition of Land Act 1981 apply, (or paragraphs 4, 5 and 6 of schedule 3 to the act in the case of acquisition of a new right over such land) should be shown both in the order schedule and in the list at the end of the schedule, in accordance with the relevant notes. But in the case of section 17 of the act (or, for new rights, schedule 3, paragraph 4) it is only necessary to show land twice if the acquiring authority is not mentioned in section 17(3) or paragraph 4(3) of schedule 3 (see also Section 17: Special kinds of land). If an order erroneously fails to state in accordance with the prescribed form that land to be acquired is special category, then the confirming minister may need to consider whether confirmation should be refused as a result.

221. What information should be recorded in the order schedule where the land is common, open space etc?

An order may provide for special category land to which section 19 of the Acquisition of Land Act 1981 applies ('order land') to be discharged from rights, trusts and incidents to which it was previously subject; and for vesting in the owners of the order land, other land which the acquiring authority propose to give in exchange ('exchange land'). Such orders must be made in accordance with the appropriate prescribed form (Forms 2, 3, 5 or 6) adapted, in compliance with the notes, to suit the particular circumstances.

The order land and, where it is being acquired compulsorily, the exchange land, should be delineated and shown as stated in paragraph 1 of the order. Therefore, exchange land which is being acquired compulsorily and is to be vested in the owner(s) of the order land, should be delineated and shown (eg in green) on the order map and described in schedule 2 to the order. If the exchange land is not being acquired compulsorily it should be described in schedule 3.

When an authority make an order in accordance with Form 2, if the exchange land is also acquired compulsorily, the order should include paragraph 2(ii), adapted as necessary, and cite the relevant acquisition power, if different from the power cited in respect of the order land. Paragraph 2(ii) of the Form also provides for the acquisition of land for the purpose of giving it in part exchange, eg where the acquiring authority already own some of the exchange land.

In Form 2, there are different versions of paragraphs 5 and 6(2) (see Note (*s*)). Paragraph 5 of Form 2 defines the order land by reference to Schedule 1 and either:

a) where the order land is only part of the land being acquired, the specific, 'numbered' plots; or

b) where the order land is all the land being acquired, the land which is 'described'

But if the acquiring authority seek a certificate under paragraph 6(1)(b) of schedule 3 to the 1981 act, because they propose to provide additional land in respect of new rights being acquired (over 'rights land'), the order should include paragraph 6(1) and the appropriate

paragraph 6(2) of the Form (see Note (*s*)). Paragraph 6 becomes paragraph 5 if only new rights are to be acquired compulsorily. (See Section 18: compulsory purchase of new rights and other interests) in relation to additional land being given in exchange for a new right.)

Where Form 2 is used, the order land, including rights land, must always be described in Schedule 1 to the order. Exchange and additional land should be described in Schedule 2 to the order where it is being acquired compulsorily; in Schedule 3 to the order where the acquiring authority do not need to acquire it compulsorily; or both schedules may apply, eg the authority may only own part of the exchange and/or additional land. Schedule 3 becomes Schedule 2 if no exchange or additional land is being acquired compulsorily. Exchange or additional land which is not being acquired compulsorily should be delineated and shown on the map so as to clearly distinguish it from land which is being acquired compulsorily.

Paragraph 5 of Form 3 should identify the order land, by referring to either:

a) paragraph 2, where the order land is all the land being acquired; or

b) specific numbered plots in the schedule, where the order land is only part of the land being acquired

This form may also be used if new rights are to be acquired but additional land is not being provided. An order in this form will discharge the order land, or land over which new rights are acquired, from the rights, trusts and incidents to which it was previously subject (in the case of land over which new rights are acquired, only so far as the continuance of those rights, trusts and incidents would be inconsistent with the exercise of the new rights).

An order may not discharge land from rights etc if the acquiring authority seek a certificate in terms of section 19(1)(aa) of or paragraph 6(1)(aa) of schedule 3 to the 1981 act. (See also In what circumstances might an application for a certificate under section 19(1)(aa) of the Acquisition of Land Act 1981 be appropriate? and In which circumstances may a certificate be given?.) Note that the extinguishment of rights of common over land acquired compulsorily may require consent under section 22 of the Commons Act 1899.

222. What is the procedure for sealing, signing and dating orders?

All orders should be made under seal, duly authenticated and dated at the end (after the schedule). They should never be dated before they are sealed and signed, and should be sealed, signed and dated on the same day. The order map(s) should similarly be sealed, signed and dated on the same day as the order. Some authorities may wish to consider whether they ought to amend their standing orders or delegations to ensure that this is achieved.

Section 15: order maps

223. What information should order maps provide?

Order maps should provide details of the land proposed to be acquired, land over which a new right would subsist and exchange land in accordance with the requirements set out in the notes to the forms eg paragraph (g) of the notes that accompany both forms 1 and 2.

The heading of the map (or maps) should agree in all respects with the description of the map headings stated in the body of the order. The words 'map referred to in [*order title*]' should be included in the actual heading or title of the map(s).

Land may be identified on order maps by colouring or any other method (see Note (*g*) to Forms 1, 2 and 3 and, in relation to exchange land, Note (*q*) to Form 5 in the 2004 Prescribed Forms Regulations) at the discretion of the acquiring authority. Where it is decided to use colouring, the longstanding convention (without statutory basis) is that land proposed to be acquired is shown pink, land over which a new right would subsist is shown blue, and exchange land is shown green. Where black-and-white copies are used they must still provide clear identification of the order or exchange land.

The use of a sufficiently large scale, Ordnance Survey based map is most important and it should not generally be less than 1/1250 (1/2500 in rural areas). Where the map includes land in a densely populated urban area, experience suggests that the scale should be at least 1/500, and preferably larger. Where the order involves the acquisition of a considerable number of small plots, the use of insets on a larger scale is often helpful. If more than one map is required, the maps should be bound together and a key or master 'location plan' should indicate how the various sheets are interrelated.

Care should be taken to ensure that where it is necessary to have more than one order map, there are appropriate references in the text of the order to all of them, so that there is no doubt that they are all order maps. If it is necessary to include a location plan, then it should be purely for the purpose of enabling a speedy identification of the whereabouts of the area to which the order relates. It should be the order map and *not* the location plan which identifies the boundaries of the land to be acquired. Therefore whilst the order map would be marked 'Map referred to in... 'in accordance with the prescribed form' (as in Form 1), a location map might be marked 'Location plan for the Map referred to in...' Such a location plan would not form part of the order and order map, but be merely a supporting document.

It is also important that the order map should show such details as are necessary to relate it to the description of each parcel of land in the order schedule or schedules. This may involve marking on the map the names of roads and places or local landmarks not otherwise shown.

The boundaries between plots should be clearly delineated and each plot separately numbered to correspond with the order schedule(s). (For orders which include new rights, see section on Schedule and map.) Land which is delineated on the map, but which is not being acquired compulsorily should be clearly distinguishable from land which is being acquired compulsorily.

There should be no discrepancy between the order schedule(s) and the map or maps, and

no room for doubt on anyone's part as to the precise areas of land which are included in the order. Where there is a minor discrepancy between the order and map confirming, the authority may be prepared to proceed on the basis that the boundaries to the relevant plot or plots are correctly delineated on the map. Where uncertainty over the true extent of the land to be acquired causes or may cause difficulties, the confirming authority may refuse to confirm all or part of the order.

Section 16: addresses

224. Where should orders, applications and objections be sent?

Department	Type of order or application	Address
Ministry of Housing, Communities and Local Government	Most orders for which the Secretary of State for Housing, Communities and Local Government is confirming authority Applications for certificates relating to open space under section 19 of, or paragraph 6 of Schedule 3 to, the Acquisition of Land Act 1981	Secretary of State for Housing, Communities and Local Government Planning Casework Unit 5 St Philip's Place Colmore Row Birmingham B3 2PW Email: pcu@communities.gsi.gov.uk
Ministry of Housing, Communities and Local Government	Applications for certificates relating to fuel or field garden allotments under section 19 of, or paragraph 6 of Schedule 3 to, the Acquisition of Land Act 1981	Secretary of State for Housing, Communities and Local Government Planning Casework Unit 5 St Philip's Place Colmore Row Birmingham B3 2PW Email:pcu@communities.gsi.gov.uk
Department for Environment, Food and Rural Affairs	Applications for certificates relating to common land, town or village greens under section 19 of, or paragraph 6 of Schedule 3 to, the Acquisition of Land Act 1981	Common Land Casework The Planning Inspectorate 3F Hawk Wing Temple Quay House The Planning Inspectorate 2 The Square Bristol BS1 6PN Email: Common Land Tel: 0303 444 5408

Department for Environment, Food and Rural Affairs	Orders for *waste disposal* purposes	Secretary of State for Environment, Food and Rural Affairs Waste Strategy & Management Nobel House 17 Smith Square London SW1P 3JR
Department for Environment, Food and Rural Affairs	Orders made by *water or sewerage* undertakers	Secretary of State for Environment, Food and Rural Affairs Water Programme Nobel House 17 Smith Square London SW1P 3JR
Department for Environment, Food and Rural Affairs	Orders made under section 62(2) of the Land Drainage Act 1991, relating to sewerage or flood defence (land drainage) functions by a local authority, and orders made by internal drainage boards under section 62(1)(b) of that Act	Secretary of State for Environment, Food and Rural Affairs Water and Flood Risk Management Nobel House 17 Smith Square London SW1P 3JR
Department for Environment, Food and Rural Affairs	Orders made by the Environment Agency in relation to its flood defence functions, or by local authorities under Part I of the Coast Protection Act 1949 relating to coast protection work	Secretary of State for Environment, Food and Rural Affairs Water and Flood Risk Management Nobel House 17 Smith Square London SW1P 3JR
Department for Transport	Orders made under the Highways Act 1980 or the Road Traffic Regulation Act 1984	Secretary of State for Transport National Transport Casework Team Department for Transport Tyneside House Skinnerburn Road Newcastle upon Tyne NE4 7AR

Department for Transport	Airports, and airport Public Safety Zones orders	Secretary of State for Transport Aviation Policy & Reform Zone 1/25, Great Minster House 33 Horseferry Road London SW1P 4DR
Department for Transport	Civil aviation orders under the Civil Aviation Act 2012 and the Airports Act 1986	Secretary of State for Transport Aviation Policy & Security Reform, Department for Transport Zone 1/25, Great Minster House 33 Horseferry Road London SW1P 4DR
OTHER CONFIRMING AUTHORITIES - for other confirming authorities the correspondence should be addressed to the appropriate Secretary of State. The following addresses may be helpful.		
Department for Education		Real Estate Team Education and Skills Funding Agency Bishopsgate House Darlington DL1 5QE
Department of Health	For NHS and civil estate occupied by DH	Richmond House 79 Whitehall London SW1A 2NS
Home Office		2 Marsham Street London SW1P 4DF
Department for Digital, Culture, Media & Sport	Orders relating to listed buildings	100 Parliament Street London SW1A 2BQ
Department for Work and Pensions	for Benefits Agency	BA Estates 1 Trevelyan Square Boar Lane Leeds LS1 6AB
Department for Business, Energy and Industrial Strategy	Electricity and gas undertakings Onshore Electricity Development Consents	Licensing and Consents Unit 3 Whitehall Place London SW1A 2AW

Procedural issues applying to some compulsory purchase orders

Section 17: for community assets (at the request of the community or a local body)

225. What requests can be made to a local authority?

Authorities can receive requests from the community or local bodies to use their compulsory purchase powers to acquire community assets, which may have been designated as Assets of Community Value, that are in danger of being lost where the owner of the asset is unwilling to sell or vacant commercial properties that are detracting from the vitality of an area.

226. What considerations need to be made when receiving a request?

Local authorities should consider all requests from third parties, but particularly voluntary and community organisations, and commercial groupings like Business Improvement District bodies, which put forward a scheme for a particular asset which would require compulsory purchase to take forward, and provide a formal response.

Local authorities must be able to finance the cost of the scheme (including the compensation to the owner) and the compulsory purchase order process either from their own resources, or with a partial or full contribution from those making the request.

Local authorities should, for example, ascertain the value of the asset to the community, or the effect of bringing it back into use; the perceived threat to the asset; the future use of the asset and who would manage it (including a business plan where appropriate); any planning issues; and how the acquisition would be financed.

Section 18: special kinds of land

227. What are ‘special kinds of land’?

Certain special kinds of land are afforded some protection against compulsory acquisition (including compulsory acquisition of new rights across them) by providing that the confirmation of a compulsory purchase order including such land may be subject to special parliamentary procedure. The ‘special kinds of land’ are set out in Part 3 of, and schedule 3 to, the Acquisition of Land Act 1981 and are:

a) land acquired by a statutory undertaker for the purposes of their undertaking (section 16 and schedule 3, paragraph 3) (see What protection is given by section 16 of the Acquisition of Land Act 1981?)

b) local authority owned land; or land acquired by any body except a local authority who are, or are deemed to be, statutory undertakers for the purposes of their undertaking (section 17 and schedule 3, paragraph 4) (see What protection is given by section 17 of the Acquisition of Land Act 1981?)

c) land held by the National Trust inalienably (section 18 and schedule 3, paragraph 5) (see What protection is given by section 18 of the Acquisition of Land Act 1981?); and

d) land forming part of a common, open space, or fuel or field garden allotment (section 19 and schedule 3, paragraph 6) (see What protection is given by section 19 of the Acquisition of Land Act 1981?)

228. Which bodies are defined as statutory undertakers under the Acquisition of Land Act 1981?

Section 8(1) of the Acquisition of Land Act 1981 defines ‘statutory undertakers’ for the *general* purposes of the act. These include:

- transport undertakings (rail, road, water transport)
- docks, harbours, lighthouses
- Civil Aviation Authority and National Air Traffic Services
- Universal postal service providers

British Telecom is not a statutory undertaker for the purposes of the act. Private bus operators, other road transport operators, taxi and car hire firms which are authorised by licence are not statutory undertakers for the purposes of the act. Where their operations are carried out under the specific authority of an act, however, such operators will fall within the definition in section 8(1) of the act.

In addition, other bodies may be defined as, or deemed to be, statutory undertakers for the purposes of section 16 of the act (various health service bodies) or section 17 of the act (eg Homes England) (see What protection is given by section 17 of the Acquisition of Land Act 1981?).

229. What protection is there for statutory undertakers' land?

Sections 16 and 17 of the Acquisition of Land Act 1981 provide protection for statutory undertakers' land.

In both cases, the land must have been acquired for the purposes of the undertaking. The provisions do not apply if the land was acquired for other purposes which are not directly connected to the undertakers' statutory functions. Before making a representation to the appropriate minister under section 16, or an objection in respect of land to which they think section 17 applies, undertakers should take particular care over the status of the land which the acquiring authority propose to acquire, have regard to the provisions of the relevant act, and seek their own legal advice as may be necessary. For example, whilst a gas transporter qualifies as a statutory undertaker, the protection under sections 16 and 17 would not apply in relation to non-operational land held by one, eg their administrative offices. In the circumstances, the land is not held for the purpose of the statutory provision: namely, the conveyance of gas through pipes to any premises or to a pipeline system operated by a gas transporter.

230. What protection is given by section 16 of the Acquisition of Land Act 1981?

Under section 16 of the Acquisition of Land Act 1981, statutory undertakers who wish to object to the inclusion in a compulsory purchase order of land which they have acquired for the purposes of their undertaking, may make representations to 'the appropriate minister'. This is the minister operationally responsible for the undertaker, eg in the case of a gas transporter or electricity licence holder, the Secretary of State for Business, Energy and Industrial Strategy. Such representations must be made within the period stated in the public and personal notices, ie not less than twenty-one days, as specified in the act.

A representation made by statutory undertakers under section 16 is quite separate from an objection made within the same period to the confirming authority ('the usual minister'). Where the appropriate minister is also the confirming authority the intention of the statutory undertakers should be clearly stated, particularly where it is intended that a single letter should constitute both a section 16 representation and an objection. The appropriate minister would also be the confirming authority where, for example, an airport operator under Part 5 of the Airports Act 1986 makes a section 16 representation to the Secretary of State for Transport about an order made under section 239 of the Highways Act 1980.

231. Can an order be confirmed where a representation under section 16 of the Acquisition of Land Act 1981 is not withdrawn?

Generally, where a representation under section 16 of the Acquisition of Land Act 1981 is not withdrawn, the order to which it relates may not be confirmed (or made, where the acquiring authority is a minister) so as to include the interest owned by the statutory undertakers unless the appropriate minister gives a certificate in the terms stated in section 16(2). These are either that:

- the land can be taken without serious detriment to the carrying on of the undertaking (section 16(2)(a)); or

- if taken it can be replaced by other land without serious detriment to the undertaking

(section 16(2)(b))

However, by virtue of section 31(2) of the act, an order made under any of the powers referred to in section 31(1) may still be confirmed where:

- a representation has been made under section 16(1) without an application for a section 16(2) certificate, or where such an application is refused; and

- the confirmation is undertaken jointly by the appropriate minister and the usual minister

232. What protection is given by section 17 of the Acquisition of Land Act 1981?

Section 17(2) of the Acquisition of Land Act 1981 provides that for an order acquiring land owned by a local authority or statutory undertaker, if that authority or undertaker objects, any confirmation would be subject to special parliamentary procedure.

However, section 17(3) excludes the application of section 17(2) if the acquiring authority is one of the bodies referred to in section 17(3) which include a local authority and statutory undertaker as defined in section 17(4). The application of section 17(2) will therefore, be very limited.

The Secretary of State may by order under section 17(4)(b) of the act extend the definition of statutory undertaker for the purposes of section 17(3) to include any other authority, body or undertaker. Also, some authorities have been defined as statutory undertakers for the purposes of section 17(3) by primary legislation. Examples of such provisions are:

a) a housing action trust – Housing Act 1988, section 78 and schedule 10, paragraph 3; and

b) Homes England – Housing and Regeneration Act 2008, section 9(6) and schedule 2, paragraph 1(2)

233. What protection is given by section 18 of the Acquisition of Land Act 1981?

Where an order seeks to authorise the compulsory purchase of land belonging to and held inalienably by the National Trust (as defined in section18(3) of the Acquisition of Land Act 1981), it will be subject to special parliamentary procedure if the Trust has made, and not withdrawn, an objection in respect of the land so held.

234. What protection is given by section 19 of the Acquisition of Land Act 1981?

Compulsory purchase orders may sometimes include land or rights over land which is, or forms part of, a common, open space, or fuel or field garden allotment. Under the Acquisition of Land Act 1981:

- ‘common’ includes any land subject to be enclosed under the Inclosure Acts 1845 to 1882, and any town or village green; the definition therefore includes, but may go wider than, land registered under the Commons Registration Act 1965

- ‘open space’ means any land laid out as a public garden, or used for the purposes of public recreation, or land being a disused burial ground; and

- ‘fuel or field garden allotment’ means any allotment set out as a fuel allotment, or field garden allotment, under an Inclosure Act

An order which authorises purchase of any such land will be subject to special parliamentary procedure unless the relevant Secretary of State (see Who should an acquiring authority apply to for a certificate under section 19 of the Acquisition of Land Act 1981?) gives a certificate under section 19 of the Acquisition of Land Act 1981 indicating his satisfaction that either:

- exchange land is being given which is no less in area and equally advantageous as the land taken (section 19(1)(a)); or

- that the land is being purchased to ensure its preservation or improve its management (section 19(1)(aa)); or

- that the land is 250 sq. yards (209 square metres) or less in area or is for the widening and/or drainage of an existing highway **and** that the giving of exchange land is unnecessary (section 19(1)(b))

Likewise, an order which authorises the purchase of new rights over such land will be subject to special parliamentary procedure unless the relevant Secretary of State gives a certificate under schedule 3, paragraph 6 (see also section of guidance on Compulsory purchase of new rights and other interests).

235. Who should an acquiring authority apply to for a certificate under section 19 of and/or schedule 3 to the Acquisition of Land Act 1981?

An acquiring authority requiring a certificate from the relevant Secretary of State under section 19 and/or schedule 3, paragraph 6 of the Acquisition of Land Act 1981, should apply as follows:

- common land – the Secretary of State for Environment, Food and Rural Affairs

- open space – Secretary of State for Housing, Communities and Local Government

- fuel or field garden allotments – Secretary of State for Housing, Communities and Local Government

Contact details can be found in Section15: addresses.

236. When should acquiring authority apply for a certificate under section 19 of and/or schedule 3 to the Acquisition of Land Act 1981?

Applications for certificates should be made when the order is submitted for confirmation or, in the case of an order prepared in draft by a minister, when notice is published and served in accordance with paragraphs 2 and 3 of schedule 1 to the act.

237. What information should be provided when applying for a certificate under section 19 of and/or Schedule 3 to the Acquisition of Land Act 1981?

The land, including any new rights, should be described in detail, by reference to the

compulsory purchase order, and all the land clearly identified on an accompanying map.

This should show the common/open space/fuel or field garden allotment plots to be acquired in the context of the common/open space/fuel or field garden allotment space as a whole, and in relation to any proposed exchange land.

The acquiring authority should also provide copies of the order, including the schedules, and order map. For a particularly large order, they may provide:

a) copies of the order and relevant parts or sheets of the map; and

b) a copy, or copies, of the relevant extract or extracts from the order schedule or schedules, which include the following:

(i) the plot(s) of common, open space etc which they propose to acquire or over which they propose to acquire a new right ('the order land'); and

(ii) any land which they propose to give in exchange ('the exchange land')

(Where schedule 3, paragraph 6(1)(b) applies and additional land is being given in exchange for a new right, substitute 'the rights land' and 'the additional land' for the definitions given in (i) and (ii) above, respectively.)

When drafting an order, careful attention should be given to the discharging and vesting provisions of section 19(3) of the 1981 act or of paragraph 6(4) of schedule 3 to that act.

It must be specified under which subsection(s) an application for a certificate is made eg section 19(1)(a), (aa) or (b), and/or paragraph 6(1)(a), (aa), (b) or (c). Where an application is under more than one subsection, this should be stated, specifying those plots that each part of the application is intended to cover. Where an application is under section 19(1)(b), it should be stated whether it is made on the basis that the land does not exceed 209 square metres (250 square yards) or under the highway widening or drainage criterion.

In writing, careful attention should be given to the particular criteria in section 19 and/or paragraph 6 that the Secretary of State will be considering. The information provided should include:

- the name of the common or green involved (including CL/VG number)
- the plots numbers and their areas, in square metres
- details of any rights of common registered, or rights of public access, and the extent to which they are exercised
- the purpose of the acquisition
- details of any special provisions or restrictions affecting any of the land in the application; and
- any further information which supports the case for a certificate

238. How will the Secretary of State decide whether to grant a certificate under section 19 of and/or schedule 3 to the Acquisition of Land Act 1981?

In most cases, arrangements will be made for the order/rights land to be inspected and, if applicable, for a preliminary appraisal of the merits of any proposed exchange/additional land. If, at this stage, the relevant Secretary of State is satisfied that a certificate could, in principle, be given, he will direct the acquiring authority to publish notice of his *intention* to give a certificate, with details of the address to which any representations and objections may be submitted. In most cases where there are objections, the matter will be considered by the inspector at the inquiry into the compulsory purchase order.

Where an inquiry has been held into the application for a certificate (including, where applicable, the merits of any proposed exchange/additional land), the inspector will summarise the evidence in his or her report and make a recommendation. The relevant Secretary of State's consideration of and response to the inspector's recommendation are subject to the statutory inquiry procedure rules which apply to the compulsory purchase order. Where there is no inquiry, the relevant Secretary of State's decision on the certificate will be made having regard to an appraisal by an inspector or a professionally qualified planner, and after taking into account the written representations from any objectors and from the acquiring authority.

239. When must a certificate under section 19 of and/or schedule 3 to the Acquisition of Land Act 1981 be declined by the Secretary of State?

The Secretary of State must decline to give a certificate if he is not satisfied that the requirements of the section have been complied with. Where exchange land is to be provided for land used by the public for recreation, the relevant Secretary of State will have regard (in particular) to the case of LB Greenwich and others v Secretary of State for the Environment, and Secretary of State for Transport (East London River Crossing: Oxleas Wood)([1994] J.P.L. 607).

240. What matters does the Secretary of State take into account when considering a certificate for 'exchange land' under section 19(1)(a) of the Acquisition of Land Act 1981?

Where a certificate would be in terms of section 19(1)(a) of the Acquisition of Land Act 1981, the exchange land must be:

- **no less** in area than the order land; and
- equally advantageous to any persons entitled to rights of common or to other rights, and to the public

Depending on the particular facts and circumstances, the relevant Secretary of State may have regard to such matters as relative size and proximity of the exchange land when compared with the order land. The date upon which equality of advantage is to be assessed is the date of exchange. (See paragraphs 5 and 6 of Form 2 in the schedule to the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004.) But the relevant Secretary of State may have regard to any prospects of improvement to the exchange land which exists at that date.

Other issues may arise about the respective merits of an order and exchange land. The latter may not possess the same character and features as the order land, and it may not offer the **same** advantages, yet the advantages offered may be sufficient to provide an overall equality of advantage. But land which is already subject to rights of common or to other rights, or used by the public, even informally, for recreation, cannot usually be given as exchange land, since this would reduce the amount of such land, which would be disadvantageous to the persons concerned. There may be some cases, where a current use of proposed exchange land is temporary, eg ending development. In such circumstances it may be reasonable to give the land in exchange, since its current use can thereby be safeguarded for the future. The relevant Secretary of State will examine any such case with particular care.

241. What is the definition of 'the public' in regard to exchange land?

With regard to exchange land included in an order, the Secretary of State takes the view that 'the public' means principally the section of the public which has hitherto benefited from the order land and, more generally, the public at large. But circumstances differ. For example, in the case of open space, a relatively small recreation ground may be used predominantly by local people, perhaps from a particular housing estate. In such circumstances, the Secretary of State would normally expect exchange land to be equally accessible to residents of that estate. On the other hand, open space which may be used as a local recreational facility by some people living close to it, but which is also used by a wider cross-section of the public may not need to be replaced by exchange land in the immediate area. One example of such a case might be land forming part of a regional park.

242. In what circumstances might an application for a certificate under section 19(1)(aa) of the Acquisition of Land Act 1981 be appropriate?

In some cases, the acquiring authority may wish to acquire land to which section 19 applies, eg open space, but do not propose to provide exchange land because, after it is vested in them, the land will continue to be used as open space. Typical examples might be where open space which is privately owned may be subject to development proposals resulting in a loss to the public of the open space; or where the local authority wish to acquire part or all of a privately owned common in order to secure its proper management.

Such a purpose might be 'improvement' within the sense of section 226(1)(a) of the Town and Country Planning Act 1990, or a purpose necessary in the interests of proper planning (section 226(1)(b)). The land might be neglected or unsightly (see Section 6: to improve the appearance or condition of land), perhaps because the owner is unknown, and the authority may wish to provide, or to enable provision of, proper facilities. Therefore, the acquisition or enabling powers and the specific purposes may vary. In such circumstances, ie where the reason for making the order is to secure preservation or improve management of land to which section 19 applies, a certificate may be given in the terms of section 19(1)(aa).

NB: Where the acquiring authority seek a certificate in terms of section 19(1)(aa), section 19(3)(b) cannot apply and the order may not discharge the land purchased from all rights, trusts and incidents to which it was previously subject. See also Section 13: preparing and serving the order and notices.

243. What factors does the Secretary of State have to consider when giving a certificate under section 19(1)(b) of the Acquisition of Land Act 1981?

A certificate can only be given in terms of section 19(1)(b) of the Acquisition of Land Act where the Secretary of State concerned is persuaded that the land is 250 square yards (209 square metres) or less in area or is for the widening and/or drainage of an existing highway **and** that the giving of exchange land is unnecessary. He will have regard to the overall extent of common land, open space land or fuel or field garden allotment land being acquired compulsorily. Where all or a large part of such land would be lost, he may be reluctant to certify in terms of section 19(1)(b). Should he refuse such a certificate, it would remain open to the acquiring authority to consider providing exchange land and seeking a certificate in terms of section 19(1)(a).

244. What is special parliamentary procedure?

If an order includes land whose acquisition is subject to special parliamentary procedure, any confirmation of the order by the confirming authority would be made subject to that procedure. This means that if the order is being confirmed so as to include the special category land, the acquiring authority will not be able to publish and serve notice of confirmation in the usual way. The order will, instead, be governed by the procedures set out in the Statutory Orders (Special Procedure) Acts 1945 and 1965 as amended by the Growth and Infrastructure Act 2013. The confirming authority will give full instructions at the appropriate time.

In brief, the special parliamentary procedure is:

- following the confirming authority's decision to confirm, after giving 3 days' notice in the London Gazette, the order is laid before Parliament
- if a petition against the special authorisation is lodged within a 21 day period, it will be referred to a Joint Committee of both Houses to consider and report to Parliament as to whether to approve
- if no petition is lodged, the confirmation is usually approved without such referral

Section 19: compulsory purchase of new rights and other interests

245. Is it possible to compulsorily acquire rights and other interests over land, without acquiring full land ownership?

There are powers available which provide for the compulsory acquisition of new rights over land where full land ownership is not required eg the compulsory creation of a right of access.

246. How can compulsory acquisition of rights over land be achieved?

The creation of new rights can only be achieved using a specific statutory power, known as an 'enabling power'. Powers include (with the bodies by whom they may be exercised) the following:

(i) Local Government (Miscellaneous Provisions) Act 1976, section 13 (local authorities)

(ii) Highways Act 1980, section 250 (all highway authorities) - guidance on the use of these powers is given in Department of Transport Local Authority Circular 2/97

(iii) Water Industry Act 1991, section 155(2) (water and sewerage undertakers)

(iv) Water Resources Act 1991, section 154(2) and Environment Act 1995, section 2(1)(a)(iv) (Environment Agency)

(v) Housing and Regeneration Act 2008, section 9(2) (Homes England)

(vi) Electricity Act 1989, schedule 3 (electricity undertakings); and

(vii) Gas Act 1986, schedule 3 (gas transporter undertakings)

The acquiring authority should take into account any special requirements which may apply to the use of any particular power.

Orders solely for new rights (no other interests in land to be purchased outright)

247. What should the order describe?

The order heading should mention the appropriate enabling power, together with the Acquisition of Land Act 1981.

Paragraph 1 of the order should describe the purpose for which the rights are required, eg 'for the purpose of providing an access to a community centre which the council are authorised to provide under section 19 of the Local Government (Miscellaneous Provisions) Act 1976.

Orders for new rights and other interests

248. What should an order describe where it relates to the purchase of new rights and of other interests in land under different powers?

The order heading should refer to the appropriate enabling act, any other act(s), and the Acquisition of Land Act 1981, as required by the regulations. See Note (b) to Forms 1, 2 and 3 in the schedule to the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004.

Paragraph 1 of the prescribed form of the order should describe all the relevant powers and purposes.

249. What if the purpose is the same for both new rights and other interests?

This should be relatively straightforward. The order should mention, eg:

> '. . . . . the acquiring authority is hereby authorised to compulsorily purchase
>
> (a) under section 121 of the Local Government Act 1972 the land described in paragraph 2(1) below for the purpose of providing a community centre under section 19 of the Local Government (Miscellaneous Provisions) Act 1976; and
>
> (b) under section 13 of the said act of 1976, the new rights which are described in paragraph 2(2) below for the same purpose
>
> *[etc, as in Form 1 of the schedule to the regulations*.]'

250. What if the purpose is not the same for the new rights and other interests?

Paragraph 1 of the prescribed form of the order should describe all of the relevant powers under, and purposes for which, the order has been made, eg:

> '. . . . . the acquiring authority is hereby authorised to compulsorily purchase
>
> (a) under section 89 of the National Parks and Access to the Countryside Act 1949 the derelict, neglected or unsightly land which is described in paragraph 2(1) below for the purpose of carrying out such works on the land as appear to them expedient for enabling it to be brought into use; and
>
> (b) under section 13 of the Local Government (Miscellaneous Provisions) Act 1976, the new rights which are described in paragraph 2(2) below for the purpose of providing an access to the abovementioned land for [*the authority*] and persons using the land, being a purpose which it is necessary to achieve in the interests of the proper planning of an area, in accordance with section 226(1)(b) of the Town and Country Planning Act 1990.'

251. What should the acquiring authority's statements of reasons and case explain?

They should explain the need for the new rights, give details of their nature and extent, and provide any further relevant information. Where an order includes new rights, the acquiring authority is also asked to bring that fact to the attention of the confirming authority in the letter covering their submission.

Schedule and map

252. What should the order schedule show?

The land over which each new right is sought needs to be shown as a separate plot in the order schedule.

253. What level of detail does this require?

The nature and extent of each new right should be described and where new rights are being taken for the benefit of a plot or plots, that fact should be stated in the description of the rights plots. It would be helpful if new rights could be described immediately before or after any plot to which they relate; or, if this is not practicable, eg where there are a number of new rights, they could be shown together in the schedule with appropriate cross-referencing between the related plots.

254. What does the order map need to show?

The order map should clearly distinguish between land over which new rights would subsist and land in which it is proposed to acquire other interests. (See note (*g*) to Forms 1, 2 and 3 or Note (*d*) to Forms 4, 5 and 6.)

Special kinds of land (commons, open space and fuel or field garden allotment) (see also Section 17: Special kinds of land and Section 13: Preparing and serving the order and notices)

255. Which part of the Acquisition of Land Act 1981 applies where a new right over special kind of land is being acquired compulsorily?

Paragraph 6 of schedule 3 to the Acquisition of Land Act 1981 applies (in the same way that section 19 applies to the compulsory purchase of any land forming part of a common, open space etc). The order will be subject to special parliamentary procedure unless the relevant Secretary of State gives a certificate, in the relevant terms, under paragraph 6(1) and (2).

256. In which circumstances may a certificate be given?

A certificate may be given by the Secretary of State in the following circumstances:

- the land burdened with the right will be no less advantageous than before to those persons in whom it is vested and other persons, if any, entitled to rights of common or other rights, and to the public (paragraph 6(1)(a) of schedule 3 to the Acquisition of Land Act 1981); or

- paragraph 6(1)(aa) – the right is being acquired in order to secure the preservation or improve the management of the land. Where an acquiring authority propose to apply for a certificate in terms of paragraph 6(1)(aa), they should note that the order cannot, in that case, discharge the land over which the right is to be acquired from all rights, trusts and incidents to which it has previously been subject. See also Section 13: preparing and serving the order and notices and Section 17: special kinds of land; or

- paragraph 6(1)(b) – additional land will be given in exchange for the right which will be adequate to compensate the persons mentioned in relation to paragraph 6(1)(a) above for the disadvantages resulting from the acquisition of the right and will be vested in accordance with the act. Where an authority seek a certificate in terms of paragraph 6(1)(b) because they propose to give land ('the additional land') in exchange for the right, the order should include paragraph 4(1) and the appropriate paragraph 4(2) of Form 2 in the schedule to the 2004 Prescribed Forms Regulations (see Note (s)). The land over which the right is being acquired ('the rights land') and, where it is being acquired compulsorily, the additional land, should be delineated and shown as stated in paragraph 2 of the order. Paragraph 2 (ii) should be adapted as necessary. (See also Section 13: preparing and serving the order and notices and Section 17: special kinds of land); or

- paragraph 6(1)(c)

  (i) the land affected by the right to be acquired does not exceed 209 square metres (250 square yards); or

  (ii) in the case of an order made under the Highways Act 1980, the right is required in connection with the widening or drainage, or partly with the widening and partly with the drainage, of an existing highway

  and it is unnecessary, in the interests of persons, if any, entitled to rights of common or other rights or in the interests of the public, to give other land in exchange

The same order may authorise the purchase of land forming part of a common, open space etc and the acquisition of a new right over a different area of such land, and a certificate may be given in respect of each. The acquiring authority must always specify the type of certificate for which they are applying.

257. What other details needs to be shown where additional land, which is not being acquired compulsorily, is to be vested in the owners of the rights land?

The additional land should be delineated and shown on the order map (so as to clearly distinguish it from any land being acquired compulsorily) and described in schedule 3 to the order. Schedule 3 becomes schedule 2 if no other additional or exchange land is being acquired compulsorily.

258. What information has to be provided where and order, which does not provide for the vesting of additional land, but provides for discharging the rights 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 right(s) to be acquired)?

The order needs to comply with Form 3 and should include the reference in paragraph 4(3) of that Form (or, if appropriate, as adapted for paragraph 4(2) of Form 6) to land over which the new right is acquired. (See also In which circumstances may a certificate be given?)

Section 20: compulsory purchase of Crown land

259. What is Crown land?

Crown land is defined in section 293(1) of the Town and Country Planning Act 1990, section 82C of the Planning (Listed Buildings and Conservation Areas) Act 1990 and section 31 of the Planning (Hazardous Substances) Act 1990 (as amended), as any land in which the Crown (including the Duchies of Lancaster and Cornwall) has a legal interest is 'Crown land'.

260. Who is the 'appropriate authority'?

As appropriate, the government department having management of the land, the Crown Estate Commissioners, the Chancellor of the Duchy of Lancaster, or a person appointed by the Duke of Cornwall or by the possessor, for the time being, of the Duchy.

261. Can Crown land be compulsorily purchased?

As a general rule, Crown land cannot be compulsorily acquired, as legislation does not bind the Crown unless it states to the contrary.

262. Are there any exceptions to this?

Specific compulsory purchase enabling powers can make provision for their application to Crown land, for example:

- section 327 of the Highways Act 1980 provides for a highway authority and the appropriate Crown authority to specify in an agreement that certain provisions of the 1980 act – including the compulsory purchase powers – shall apply to the Crown

- section 32 of the Coast Protection Act 1949 enables the compulsory purchase powers under Part I of that act to apply to Crown land with the consent of the 'appropriate authority'

The enactments listed below (which is not an exhaustive list) also provide that interests in Crown land **which are not held by or on behalf of the Crown** may be acquired compulsorily if the appropriate authority agrees:

- section 226(2A) of the Town and Country Planning Act 1990

- section 47(6A) of the Planning (Listed Buildings and Conservation Areas) Act 1990

- section 25 of the Transport and Works Act 1992; and

- section 221 of the Housing Act 1996 (applicable to the Housing Act 1985, the Housing Associations Act 1985, Part 3 of the Housing Act 1988 and Part 7 of the Local Government and Housing Act 1989

Issues for consideration

263. What issues should be considered?

Where the order is made under a power to which the provisions mentioned in Are there any exceptions to this? relate, or under any other enactment which provides for compulsory acquisition of interests in Crown land, Crown land should only be included where the acquiring authority has obtained (or is, at least, seeking) agreement from the appropriate authority. The confirming authority will have no power to authorise compulsory acquisition of the relevant interest or interests without such agreement.

Where an order is made under powers other than the Highways Act 1980, however, the acquiring authority should identify the relevant Crown body in the appropriate column of the order schedule and describe the interest(s) to be acquired. If the acquiring authority wish to acquire all interests other than those of the Crown, column two of the order schedule should specify that 'all interests' in [*describe the land*] except those held by or on behalf of the Crown' are being acquired. (See also Section 13: preparing and serving the order and notices).

Section 21: certificates of appropriate alternative development

264. What are the planning assumptions?

Part 2 of the Land Compensation Act 1961 as amended by Part 9 of the Localism Act 2011 provides that compensation for the compulsory purchase of land is on a market value basis. In addition to existing planning permissions, section 14 of the 1961 act provides for certain assumptions as to what planning permissions might be granted to be taken into account in determining market value.

Section 14 is about assessing compensation for compulsory purchase in accordance with rule (2) of section 5 of the 1961 act (open market value). The planning assumptions are as follows:

- subsection (2): account may be taken of (a) any planning permission in force for the development of the relevant land or other land at the relevant valuation date; and (b) the prospect (on the assumptions in subsection (5)) in the circumstances known to the market on the relevant valuation date of planning permission being granted, other than for development for which planning permission is already in force or appropriate alternative development

- subsection (3): it may also be assumed that planning permission for appropriate alternative development (as described in subsection (4)) is either in force at the relevant valuation date or it is certain than planning permission would have been granted at a later date

- subsection (4): defines appropriate alternative development as development, other than that for which planning permission is in force, that would, on the assumptions in subsection (5) but otherwise in the circumstances known to the market at the relevant valuation date, reasonably have been expected to receive planning permission on that date or a later date. Appropriate alternative development may be on the relevant land alone or on the relevant land together with other land.

- subsection (5): contains the basic assumptions that (a) the scheme underlying the acquisition had been cancelled on the launch date; (b) that no action has been taken by the acquiring authority for the purposes of the scheme; (c) that there is no prospect of the same or similar scheme being taken forward by the exercise of a statutory power or by compulsory purchase; and (d) that if the scheme is for a highway, no other highway would be constructed to meet the same need as the scheme

- subsection (6): defines the 'launch date' as (a) for a compulsory purchase order, the publication date of the notice required under section 11 of or paragraph 2 of schedule 1 to the Acquisition of Land Act 1981; (b) for any other order (such as under the Transport and Works Act 1992 or a development consent order under the Planning Act 2008) the date of first publication or service of the relevant notice; or (c) for a special enactment, the date of first publication of the first notice required in connection with the acquisition under section 15, planning permission is also to be

assumed for the acquiring authority's proposals

265. On what date are the planning assumptions assessed?

The main feature of the arrangements is that the planning assumptions are assessed on the relevant valuation date (as defined in section 5A of the Land Compensation Act 1961) rather than the launch date (even though the scheme is still assumed to have been cancelled on the launch date). This will avoid the need to reconstruct the planning regime that existed on the launch date, including old development plans, national planning policy and guidance. Also that the planning assumptions are based on 'the circumstances known to the market at the relevant valuation date', which would include the provisions of the development plan. This removes the need for the specific references to the development plan which were contained in the previous section 16 that had become out of date.

266. What is a certificate of appropriate alternative development?

Where existing permissions and assumptions are not sufficient to indicate properly the development value which would have existed were it not for the scheme underlying the compulsory purchase, Part 3 of the Land Compensation Act 1961 as amended by Part 9 of the Localism Act provides a mechanism for indicating the descriptions of development (if any) for which planning permission can be assumed by means of a 'certificate of appropriate alternative development'. The permissions indicated in a certificate can briefly be described as those with which an owner might reasonably have expected to sell his land in the open market if it had not been publicly acquired.

267. Who can apply for a certificate of appropriate alternative development?

Section 17(1) of the Land Compensation Act 1961 provides that either the owner of the interest to be acquired or the acquiring authority may apply to the local planning authority for a certificate. Where an application is made for development of the relevant land together with other land it is important that the certificate sought relates only to the land in which the applicant is a directly interested party. The description(s) of development specified in the application (and where appropriate the certificate issued in response) should clearly identify where other land is included and the location and extent of such other land.

268. In what circumstances might a certificate be helpful?

Circumstances in which certificates may be helpful include where:

a) there is no adopted development plan covering the land to be acquired

b) the adopted development plan indicates a 'green belt' or leaves the site without specific allocation; and

c) the site is allocated in the adopted development plan specifically for some public purpose, eg a new school or open space

d) the amount of development which would be allowed is uncertain

e) the extent and nature of planning obligations and conditions is uncertain

269. When does the right to apply for a certificate arise?

The right to apply for a certificate arises at the date when the interest in land is proposed to be acquired by the acquiring authority. Section 22(2) of the Land Compensation Act 1961 describes the circumstances where this is the position. These include the launch date as defined in section 14(6) for acquisitions by compulsory purchase order, other orders or by private or hybrid Bill. For acquisition by blight notice or a purchase notice it will be the date on which 'notice to treat' is deemed to have been served; or for acquisition by agreement it will be the date of the written offer by the acquiring authority to negotiate for the purchase of the land.

Once a compulsory purchase order comes into operation the acquiring authority should be prepared to indicate the date of entry so that a certificate can sensibly be applied for.

Thereafter application may be made at any time, except that after a notice to treat has been served or agreement has been reached for the sale of the interest and a case has been referred to the Upper Tribunal, an application may not be made unless both parties agree in writing, or the Tribunal gives leave. It will assist compensation negotiations if an application is made as soon as possible.

Acquiring authorities should ensure, when serving notice to treat in cases where a certificate could be applied for, that owners are made aware of their rights in the matter. In some cases, acquiring authorities may find it convenient themselves to apply for a certificate as soon as they make a compulsory purchase order or make an offer to negotiate so that the position is clarified quickly.

It may sometimes happen that, when proceedings are begun for acquisition of the land, the owner has already applied for planning permission for some development. If the local planning authority refuse planning permission or grant it subject to restrictive conditions and are aware of the proposal for acquisition, they should draw the attention of the owner to his right to apply for a certificate, as a refusal or restrictive conditions in response to an actual application (ie in the 'scheme world') do not prevent a positive certificate being granted (which would relate to the 'no scheme world').

270. How should applications for a certificate be made and dealt with?

The manner in which applications for a certificate are to be made and dealt with has been prescribed in articles 3, 4, 5 and 6 of the Land Compensation Development (England) Order 2012.

Article 3(3) of the order requires that if a certificate is issued otherwise than for the development applied for, or contrary to representations made by the party directly concerned, it must include a statement of the authority's reasons and of the right of appeal under section 18 of the 1961 act. From 6 April 2012, this has been to the Upper Tribunal. Article 4 requires the local planning authority (unless a unitary authority) to send a copy of any certificate to the county planning authority concerned if it specifies development related to a county matter or, if the case is one which has been referred to the county planning authority, to the relevant district planning authority. Where the certificate is issued by a London borough or the Common Council of the City of London, they must send a copy of the certificate to the Mayor of London if a planning application for such development would have to be referred to him.

Article 4 should be read with paragraph 55 of schedule 16 to the Local Government Act 1972, which provides that all applications for certificates must be made to the district planning authority in the first instance: if the application is for development that is a county matter, then the district must send it to the county for determination. This paragraph also deals with consultation between district and county authorities where the application contains some elements relating to matters normally dealt with by the other authority. Where this occurs, the authority issuing the certificate must notify the other of the terms of the certificate.

Article 5 of the order requires the local planning authority, if requested to do so by the owner of an interest in the land, to inform him whether an application for a certificate has been made, and if so by whom, and to supply a copy of any certificate that has been issued. Article 6 provides for applications and requests for information to be made electronically.

271. What information should be contained in an application for a certificate?

In an application under section 17, the applicant may seek a certificate to the effect that there either is any development that is appropriate alternative development for the purposes of section 14 (a positive certificate) or that there is no such development (a nil certificate).

If the application is for a positive certificate the applicant must specify each description of development that he considers that permission would have been granted for and his reasons for holding that opinion. The onus is therefore on the applicant to substantiate the reasons why he considers that there is development that is appropriate alternative development.

Acquiring authorities applying for a 'nil' certificate must set out the full reasons why they consider that there is no appropriate alternative development in respect of the subject land or property.

The phrase 'description of development' is intended to include the type and form of development. Section 17(3)(b) requires the descriptions of development to be 'specified', which requires a degree of precision in the description of development.

The purpose of a certificate is to assist in the assessment of the open market value of the land. Applicants should therefore consider carefully for what descriptions of development they wish to apply for certificates. There is no practical benefit to be gained from making applications in respect of descriptions of development which do not maximise the value of the land. Applicants should focus on the description or descriptions of development which will most assist in determining the open market value of the land.

An application under section 17 is not a planning application and applicants do not need to provide the kind of detailed information which would normally be submitted with a planning application. However, it is in applicants' interests to give as specific a description of development as possible in the circumstances, in order to ensure that any certificate granted is of practical assistance in the valuation exercise.

Applicants should normally set out a clear explanation of the type and scale of development that is sought in the certificate and a clear justification for this. This could be set out in a form of planning statement which might usefully cover the following matters:

- confirmation of the valuation date at which the prospects of securing planning permission need to be assessed

- the type or range of uses that it considers should be included in the certificate including uses to be included in any mixed use development which is envisaged as being included in the certificate

- where appropriate, an indication of the quantum and/or density of development envisaged with each category of land

- where appropriate an indication of the extent of built envelope of the development which would be required to accommodate the quantum of development envisaged

- a description of the main constraints on development which could be influenced by a planning permission and affect the value of the land, including matters on site such as ecological resources or contamination, and matters off site such as the existing character of the surrounding area and development

- an indication of what planning conditions or planning obligations the applicant considers would have been attached to any planning permission granted for such a development had a planning application been made at the valuation date

- a clear justification for its view that such a permission would have been forthcoming having regard to the planning policies and guidance in place at the relevant date; the location, setting and character of the site or property concerned; the planning history of the site and any other matters it considers relevant

Detailed plans are not required in connection with a section 17 application but drawings or other illustrative material may be of assistance in indicating assumed access arrangements and site layout and in indicating the scale and massing of the assumed built envelope. An indication of building heights and assumed method of construction may also assist the local planning authority in considering whether planning permission would have been granted at the relevant date.

272. Is there a fee for submitting an application for a certificate of appropriate development?

A fee is payable for an application for a certificate of appropriate alternative development. Details are set out in Regulation 18 of the The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (as amended).

273. What should a certificate contain?

The local planning authority is required to respond to an application by issuing a certificate of appropriate alternative development, saying what planning permissions would have been granted if the land were not to be compulsorily acquired. Section 17(1) requires the certificate to state either that:

a) there is appropriate alternative development for the purposes of section 14 (a

'positive' certificate); or

b) there is no development that is appropriate alternative development for the purposes of section 14 (a 'nil' or 'negative' certificate)

Section 17(4) of the Land Compensation Act 1961 requires the local planning authority to issue a certificate, but not before the end of 22 days from the date that the applicant has, or has stated that he or she will, serve a copy of his or her application on the other party directly concerned (unless otherwise agreed).

Section 17(5) requires (a) that a positive certificate must specify all the development that (in the local planning authority's opinion) is appropriate alternative development, even if it is not specified in the application and (b) give a general indication of any reasonable conditions; when permission would reasonably have been granted (if after the relevant valuation date); and any reasonable pre-condition, such as a planning obligation, that could reasonably have been expected.

Section 17(6) provides that for positive certificates, only that development specified in the certificate can be assumed to be appropriate alternative development for the purposes of section 14 and that the conditions etc apply to the planning permission assumed to be in force under section 14(3).

Local planning authorities should note that an application made under s17 is not a planning application. The authority should seek to come to a view, based on its assessment of the information contained within the application and of the policy context applicable at the relevant valuation date, the character of the site and its surroundings, as to whether such a development would have been acceptable to the Authority. As the development included in the certificate is not intended to be built the local planning authority does not need to concern itself with whether or not the granting of a certificate would create any precedent for the determination of future planning applications.

If giving a positive certificate, the local planning authority must give a general indication of the conditions and obligations to which planning permission would have been subject. As such the general indication of conditions and obligations to which the planning permission could reasonably be expected to be granted should focus on those matters which affect the value of the land. Conditions relating to detailed matters such approval of external materials or landscaping would not normally need to be indicated. However, clear indications should be given for matters which do affect the value of the land, wherever the authority is able to do so.

Such matters would include, for example, the proportion and type of affordable housing required within a development, limitations on height or density of development, requirements for the remediation of contamination or compensation for ecological impacts, and significant restrictions on use, as well as financial contributions and site-related works such as the construction of accesses and the provision of community facilities. The clearer the indication of such conditions and obligations can be, the more helpful the certificate will be in the valuation process.

274. Should a certificate be taken into account in assessing compensation?

A certificate once issued must be taken into account in assessing compensation for the

compulsory acquisition of an interest in land, even though it may have been issued on the application of the owner of a different interest in the land. But it cannot be applied for by a person (other than the acquiring authority) who has no interest in the land.

275. Should informal advice be given on open market value?

Applicants seeking a section 17 certificate should seek their own planning advice if this is felt to be required in framing their application.

In order that the valuers acting on either side may be able to assess the open market value of the land to be acquired they will often need information from the local planning authority about such matters as existing permissions; the development plan and proposals to alter or review the plan. The provision of factual information when requested should present no problems to the authority or their officers. But sometimes officers will in addition be asked for informal opinions by one side or the other to the negotiations. It is for authorities to decide how far informal expressions of opinion should be permitted with a view to assisting the parties to an acquisition to reach agreement. Where they do give it, the Secretary of State suggests that the authority should:

a) give any such advice to both parties to the negotiation

b) make clear that the advice is informal and does not commit them if a formal certificate or planning permission is sought

It is important that authorities do not do anything which prejudices their subsequent consideration of an application.

276. How are appeals against certificates made?

The right of appeal against a certificate under section 18 of the Land Compensation Act 1961, exercisable by both the acquiring authority and the person having an interest in the land who has applied for the certificate, is to the Upper Tribunal (Lands Chamber). It may confirm, vary or cancel it and issue a different certificate in its place, as it considers appropriate.

Rule 28(7) of the Upper Tribunal Rules, as amended, requires that written notice of an appeal (in the form of a reference to the Upper Tribunal) must be given within one month of receipt of the certificate by the planning authority. If the local planning authority fail to issue a certificate, notice of appeal must be given within one month of the date when the authority should have issued it (that date is either two months from receipt of the application by the planning authority, or two months from the expiry of any extended period agreed between the parties to the transaction and the authority) and the appeal proceeds on the assumption that a 'nil' or 'negative' certificate had been issued.

The reference to the Tribunal must include (in particular) a copy of the application to the planning authority, a copy of the certificate issued (if any) and a summary of the reasons for seeking the determination of the Tribunal and whether he or she wants the reference to be determined without a hearing. The Upper Tribunal does have the power to extend this period (under Rule 5), even if it receives the request to do so after it expires. Appeals against the Upper Tribunal's decision on a point of law may be made to the Court of Appeal in the normal way.

More information on how to make an appeal can be found on the Upper Tribunal's website. Also available on the website is a form you will need to make an appeal and information on the fees payable. If you do not have access to the internet you can request a copy of the information leaflets and a form by telephoning 020 7612 9710 or by writing to:

Upper Tribunal (Lands Chamber)
5th floor, Rolls Building
7 Rolls Buildings
Fetter Lane
London
EC4A 1NL

Section 22: protected assets certificate

277. What are protected assets and protected assets certificates?

For the purposes of compulsory purchase protected assets are those set out below in What information needs to be included in a positive statement?. Listing them in a certificate allows the confirming authority to know which assets will be affected by the scheme and will therefore inform the decision as to whether to confirm the compulsory purchase order.

278. What information do authorities need to ensure is included in or accompanies the order?

Confirming authorities need to ensure that the circumstances of any protection applying to buildings and certain other assets on order lands are included in its consideration of the order.

Every order submitted for confirmation (except orders made under section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990) should therefore be accompanied by a protected assets certificate.

A protected asset certificate should include, for each category of building or asset protected, either a positive statement with specific additional information or a nil return.

279. What information needs to be included in a positive statement?

a) **listed buildings**

The proposals in the order will involve the demolition/alteration/extension* of the following building(s) which has/have been* listed under section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

b) **buildings subject to building preservation notices**

The proposals in the order will involve the demolition/alteration/extension* of the following building(s) which is/are* the subject(s)* of (a) building preservation notice(s) made by the…… [*insert name of authority*] ……on……..[*insert date(s) of notice(s)*].

c) **other buildings which may be of a quality to be listed**

The proposals in the order will involve the demolition/alteration/extension* of the following building(s) which may qualify for inclusion in the statutory list under the criteria in The Principles of Selection for Listing Buildings (March 2010).

d) **buildings within a conservation area**

The proposals in the order will involve the demolition of the following building(s) which is/are* included in a conservation area designated under section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (or, as the case may be, section 70) and which require planning permission for demolition.

e) **scheduled monuments**

The proposals in the order will involve the demolition/alteration/extension* of the following monument(s) which are scheduled under section 1 of the Ancient Monuments and Archaeological Areas Act 1979. An application for scheduled monument consent has been/will be* submitted to Historic England.

f) **registered parks/gardens/historic battlefields**

The proposal in the order will involve the demolition/alteration/extension* of the following park(s)/garden(s)/historic battlefield(s)* which is/are* registered under section 8C of the Historic Buildings and Ancient Monuments Act 1953.

280. What additional information must accompany a positive statement?

The following additional information is required to accompany a positive statement:

- particulars of the asset or assets
- any action already taken, or action which the acquiring authority proposes to take, in connection with the category of protection, eg consent which has been, or will be, sought; and
- a copy of any consent or application for consent, or an undertaking to forward such a copy as soon as the consent or application is available

281. What happens if a submitted order entails demolition of a building which is subsequently included in conservation area?

Where a submitted order entails demolition of any building which is subsequently included in a conservation area the confirming authority should be notified as soon as possible.

Section 23: objection to division of land (material detriment)

282. What happens where an owner objects to the division of land because it would cause material detriment to their retained land?

Where an acquiring authority proposes to acquire only part of a house (or park or garden belonging to a house), building or factory, the owner can serve a counter-notice on the acquiring authority requesting that it purchases the entire property.

On receipt of a counter-notice, the acquiring authority can either withdraw, decide to take all the land or refer the matter to the Upper Tribunal (Lands Chamber) for determination.

The Upper Tribunal will determine whether the severance of the land proposed to be acquired would in the case of a house, building or factory, cause material detriment to the house, building or factory (ie cause it to be less useful or less valuable to some significant degree), or in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

283. What is the procedure for serving a counter-notice?

In respect of a compulsory purchase order which is confirmed on or after 3 February 2017, the procedure for serving a counter-notice is set out in Schedule 2A to the Compulsory Purchase Act 1965 (where the notice to treat process is followed) and Schedule A1 to the Compulsory Purchase (Vesting Declarations) Act 1981 ('the CP(VD)A 1981') (where the general vesting declaration process is followed). The procedure is broadly the same in both cases.

284. What is the effect of a counter-notice on a notice of entry which has already been served on the owner?

Under Part 1 of Schedule 2A to the 1965 act, if the owner serves a counter-notice, any notice of entry under section 11(1) of the 1965 act that has already been served on the owner in respect of the land proposed to be acquired ceases to have effect (see paragraph 6 of Schedule 2A). The acquiring authority may not serve a further notice of entry on the owner under section 11(1) in respect of that land unless they are permitted to do so by paragraph 11 or 12 of Schedule 2A to the 1965 act.

285. Under the general vesting declaration procedure, what is the effect of a counter-notice on the vesting date of the owner's land specified in the declaration?

If a counter-notice is served under paragraph 2 of Schedule A1 to the CP(VD)A 1981 within the vesting period specified in the declaration in accordance with section 4(1) of the CP(VD)A 1981, the 'vesting date' for the land proposed to be acquired from the owner (i.e. the land actually specified in the declaration) will be the day determined as the vesting date for that land in accordance with Schedule A1 (see section 4(3)(b) of the CP(VD)A 1981).

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286. Can an acquiring authority enter the land it proposed to acquire from the owner where a counter-notice has been referred to the Upper Tribunal (Lands Chamber)?

Under Schedule 2A to the 1965 act and Schedule A1 to the CP(VD)A 1981, an acquiring authority is permitted to enter the land it proposed to acquire from the owner (ie the land included in its notice to treat / general vesting declaration) where a counter-notice has been referred to the Upper Tribunal.

Paragraph 12 of Schedule 2A to the 1965 act provides that, where a counter-notice has been referred to the Upper Tribunal, an acquiring authority may serve a notice of entry on the owner in respect of the land proposed to be acquired. If the authority had already served a notice of entry in respect of the land (ie a notice which ceased to have effect under paragraph 6(a) of Schedule 2A), the normal minimum three month notice period will not apply to the new notice in respect of that land (see section 11(1B) of the 1965 act). The period specified in any new notice must be a period that ends no earlier than the end of the period in the last notice of entry (see paragraph 13 of Schedule 2A).

Similarly, under the general vesting declaration procedure, if an acquiring authority refers a counter-notice (served before the original vesting date) to the Upper Tribunal, the authority may serve a notice on the owner specifying a new vesting date for the land proposed to be acquired (see paragraph 12 of Schedule A1 to the CP(VD)A 1981). This is intended to allow for the vesting of this land before the Upper Tribunal has determined the material detriment dispute.

However, if an acquiring authority enters, or vests in itself, the land it proposed to acquire **in advance** of the Upper Tribunal's determination and the Tribunal subsequently finds in favour of the owner (ie the Tribunal requires the authority to take additional land from the owner):

a) the authority will **not** have the option of withdrawing its notice to treat under paragraph 29 of Schedule 2A to the 1965 act or paragraph 17 of Schedule A1 to the CP(VD)A 1981, and so will be compelled to take the additional land; and

b) the Tribunal will be able to award the owner compensation for any losses caused by the temporary severance of the land proposed to be acquired from the additional land which is required to be taken (see paragraph 28(5) of schedule 2A to the 1965 Act and paragraph 16(4) of Schedule A1 to the CP(VD)A 1981.

287. Do the material detriment provisions in Schedule 2A to the 1965 act and Schedule A1 to the CP(VD)A 1981 apply in all cases?

An acquiring authority may, in a compulsory purchase order, disapply the material detriment provisions for specified land which is nine metres or more below the surface (see section 2A of the Acquisition of Land Act 1981). This is intended to prevent spurious claims for material detriment from owners of land above tunnels where the works will have no discernible effect on their land.

288. Are the material detriment provisions the same where a blight notice is served?

The material detriment provisions in relation to blight notices are set out in the Town and Country Planning Act 1990 (see, in particular, sections 151(4)(c), 153(4A) to (7) and 154(4) to (6)).

Section 24: overriding easements and other rights

289. Do acquiring authorities have power to override easements and other rights affecting the acquired land?

Prior to July 2016, only some acquiring authorities had the power to override easements and other rights on land they had acquired. However, provisions in section 203 of the Housing and Planning Act 2016 extended this power to all bodies with compulsory purchase powers and in section 37 of the Neighbourhood Planning Act 2017 to a company or body through which the Greater London Authority exercises functions in relation to housing or regeneration or to a company or body through which Transport for London exercises any of its functions.

290. Are there any restrictions on the use of the power to override easements and other rights?

There are several conditions/limitations on the use of the power to override easements and other rights. These are that:

- there must be planning consent for the building or maintenance work/use of the land
- the acquiring authority must have the necessary enabling powers in legislation to acquire the land compulsorily for the purpose of the building or maintenance work / the purpose of erecting or constructing any building, or carrying out any works, for the use
- the development must be related to the purposes for which the land was acquired or appropriated
- the land must have become vested in or acquired by an acquiring authority or been appropriated for planning purposes by a local authority on or after 13 July 2016 or be 'other qualifying land' (as defined in section 205(1))
- the power is not available in respect of a 'protected right' (as defined in section 205(1))
- the National Trust is subject to the protections in section 203(10)

291. Are owners of overridden easements and other rights entitled to compensation?

Under section 204 of the Housing and Planning Act 2016, owners of easements or other rights which are overridden are entitled to compensation calculated on the same basis as for injurious affection under sections 7 and 10 of the Compulsory Purchase Act 1965. Any dispute about compensation may be referred to the Upper Tribunal (Lands Chamber) for determination.

Separate but related guidance

292. What about related procedures?

See separate guidance on:

- Purchase notices
- The Crichel Down Rules

Purchase notices

293. What are the statutory provisions for the service of a purchase notice?

A purchase notice may be based upon:

- a refusal or conditional grant of planning permission or listed building consent
- a revocation or modification order
- a discontinuance, alteration or removal order

The statutory provisions enabling the service of a purchase notice are in section 137 of the Town and Country Planning Act 1990 and section 32 Planning (Listed Buildings and Conservation Areas) Act 1990.

The service of a purchase notice may *not* be based upon:

- a failure of the local planning authority to give notice of their decision on an application for planning permission (or listed building consent) within the requisite period
- a refusal of an application for approval of details or of reserved matters
- a refusal of an application for express consent for an advertisement display

294. What is the time for service of a purchase notice?

The time for service of a purchase notice is 12 months from the date of:

- the relevant decision for notices served under section 137 of the Town and Country Planning Act 1990 and section 32 Planning (Listed Buildings and Conservation Areas) Act 1990
- the Secretary of State's confirmation of the relevant order under section 137 Town and Country Planning Act 1990

The date is provided by regulation 12 of the Town and Country Planning General Regulations 1992 and regulation 9 of the Planning (Listed Buildings and Conservation

Areas) Regulations 1990.

The Secretary of State has power to extend this time limit and is normally prepared to do so where the service of a notice is delayed for good reasons. Councils have no power to extend the period for the service of a purchase notice.

295. Who should a purchase notice be served on?

A purchase notice must be served on the council of the district or London borough in which the land is situated. It cannot be served on a county council or government department.

296. What form should a purchase notice take?

There is no official form required for a purchase notice. A letter addressed to the council is enough if it:

- states that the relevant conditions in section 137 Town and Country Planning Act 1990 are fulfilled
- requires the council to purchase the interest(s) in the land, giving the names of the owners
- refers to the relevant planning application and decision
- identifies accurately the land concerned by reference to a plan
- provides the name and address of the owners

It should, if possible, be signed by the owners and state that it is a purchase notice.

297. Is there a right to amend a purchase notice once served?

It has been established that there is no right to amend a purchase notice once served, although an owner can serve more than one notice.

298. What happens where a purchase is accepted by the council or confirmed by the Secretary of State?

Where a purchase is accepted by the council or confirmed by the Secretary of State the council is deemed to have compulsory purchase powers and to have served notice to treat, so the price to be paid for the land is determined as if it were being compulsorily acquired.

299. What land can be included in a purchase notice?

Except in the case of a listed building purchase notice (see below), the land to which a purchase notice relates must be the *identical* area of land which was the subject of the relevant decision or order. If the notice relates to more land, it is invalid.

300. Who can serve a purchase notice?

A purchase notice may be served only by an 'owner' of the land, as defined in section

336(1) of the Town and Country Planning Act 1990. That means a person, at the time of service of the purchase notice, other than a mortgagee not in possession, who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the land or, where the land is not let at a rack rent, would be so entitled if it were so let.

The only exception is under section 137(2)(b) Town and Country Planning Act 1990 where in relation to a discontinuance notice under section 102 of the Town and Country Planning Act 1990 any person entitled to an interest in land in respect of which the order is made can serve a purchase notice.

301. Can a purchase notice be served in relation to Crown land?

Land owned by the Crown is covered by separate provisions in section 137A of the Town and Country Planning Act 1990 and section 32A of the Planning (Listed Buildings and Conservation Areas) Act 1990. A purchase notice may only be served in relation to Crown land in limited circumstances.

302. Can a purchase notice cover parcels of land in different ownership?

Where land comprises parcels in different ownerships, the owners of those parcels may combine to serve a purchase notice relating to their separate interests, provided that the notice relates to the whole of the land covered by the planning decision or the order.

Where there is more than one site, each the subject of a separate planning decision or order, a separate purchase notice should be served for each individual site.

For listed buildings, section 32(1) Planning (Listed Buildings and Conservation Areas) Act 1990 applies to the building and any land comprising the building, or contiguous or adjacent to it, and owned with it, where the use of the land is substantially inseparable from that of the building, such that it ought to be treated, together with the building, as a single holding. The relevant application site and the listed building purchase notice site need not necessarily be identical.

303. Is the land 'incapable of 'reasonably beneficial use'?

The question to be considered in every case is whether the land in its existing state, taking into account operations and uses for which planning permission (or listed building consent) is not required, is 'incapable of reasonably beneficial use'. The onus is on the person serving the notice to show this.

The potential of the land is to be taken into account rather than just its existing state, including if it is necessary to undertake work to realise that potential. No account is taken of any prospective use which would involve the carrying out of development other than any development specified in paragraph 1 or 2 of schedule 3 Town and Country Planning Act 1990 (development not constituting new development) or, in the case of a purchase notice served in consequence of a refusal or conditional grant of planning permission, if it would contravene the condition set out in schedule 10 to the Town and Country Planning Act 1990 (amount of gross floor space).

In the case of a listed building purchase notice, no account is taken of any prospective use of the land which would involve the carrying out of new development or of any works which require listed building consent, other than works for which the local planning authority or the

Secretary of State have undertaken to grant such consent.

In considering what capacity for use the land has, relevant factors include the physical state of the land, its size, shape and surroundings, and the general pattern of land uses in the area. A use of relatively low value may be regarded as reasonably beneficial if such a use is common for similar land in the vicinity.

It may sometimes be possible for an area of land to be rendered capable of reasonably beneficial use by being used in conjunction with neighbouring or adjoining land, provided that a sufficient interest in that land is held by the person serving the notice, or by a prospective owner of the purchase notice land. Whether it is or not would depend on the circumstances of the case. Use by a prospective owner cannot be taken into account unless there is a reasonably firm indication that there is in fact a prospective owner of the purchase notice site.

Profit may be a useful comparison in certain circumstances, but the absence of profit (however calculated) is not necessarily material. The concept of reasonably beneficial use is not synonymous with profit.

Where the use of land would mean it had some marketable value the land would be capable of reasonably beneficial use. Any reasonably beneficial use would suffice.

In determining whether the land has become incapable of reasonably beneficial use in its existing state, it may be relevant, where appropriate, to consider the difference (if any) between the annual value of the land in its existing state and the annual value of the land if development of a class specified in schedule 3 to the Town and Country Planning Act 1990 were carried out on the land. Development of any such class must not be taken into account.

The remedy by way of a purchase notice is not intended to be available where the owner shows merely that he is unable to realise the full development value of his land.

For the purposes of section 137(3)(c) Town and Country Planning Act 1990 or section 32(2)(c) Planning (Listed Buildings and Conservation Areas) Act 1990, any permission (or consent) granted, or deemed to be granted, and undertakings given up to the date of the Secretary of State's determination of the purchase notice, may be taken into account. To be capable of being taken into account, an undertaking should be in unequivocal language, and so worded as to be binding on the local planning authority. The Secretary of State would not regard a promise 'to give favourable consideration' to an application for permission to develop, as a binding undertaking. If no undertaking has been given, and the council consider that development of a kind not included in the original application ought to be permitted, and that the carrying out of such development would render the land capable of reasonably beneficial use, their proper course is to suggest that the Secretary of State should issue a direction under section 141(3) of the Town and Country Planning Act 1990 or section 35(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

304. How will the Secretary of State satisfy himself that the land is 'incapable of reasonably beneficial use'?

The Secretary of State considers that, in seeking to satisfy himself whether conditions (a) to (c) in section 137(3) of the Town and Country Planning Act 1990 have been fulfilled, he may take into account, among other things, whether there is a reasonable prospect of the

server selling or letting the land for any purpose, were its availability to be made known locally. He would normally expect to see some evidence to show that the person serving the notice has attempted to dispose of his interest in the land before he could be satisfied that the land had become incapable of reasonably beneficial use. This evidence is helpful to assist in demonstrating that there is no reasonably beneficial use for the land. Attempts to dispose of the interest should be reasonable and proportionate.

Where an owner of land claims that his land has become incapable of reasonably beneficial use, he is regarded as making that claim in respect of *the whole of the land* in question. Therefore, if a part of the land is found to be capable of reasonably beneficial use, the condition in section 137(3)(a) will not be fulfilled in respect of the whole of the land.

In section 137(3)(a) Town and Country Planning Act 1990 the phrase 'has become' is taken to mean 'is' in the context of purchase notices. The Secretary of State is only required to consider whether the land is incapable of reasonably beneficial use in its existing state. He is not required to compare the present state of the land with its state at some earlier time, since there is no period for comparison laid down within the provisions of the act. The only circumstances in which the Secretary of State would be concerned with what brought about the existing state of the land are where that state is due to activities having been carried out on it in breach of planning or listed building control.

When considering whether a listed building has reasonably beneficial use, a relevant factor to be taken into account may be the estimated cost of any renovations believed to be necessary. It is therefore helpful (but not conclusive) if estimated figures for such renovations, and an indication of the likely return on the relevant expenditure, can be provided. If no reasonable person would undertake the works because the benefits would not outweigh the costs then the building would not have a reasonably beneficial use.

305. What is the effect of a purchase notice?

A purchase notice does not require the council to purchase the land, unless (a) they state a willingness to comply with it, (b) it is confirmed by the Secretary of State or (c) it is deemed to have been confirmed under section 143 Town and Country Planning Act 1990. It is also possible that the council will find another authority or body willing to comply with the purchase notice in their place, or that the Secretary of State will confirm the notice on an alternative authority.

306. What should the council on whom notice is served do?

The council should first consider the validity of the notice. An invalid notice should not be sent to the Secretary of State. Instead, the council should inform the person serving the notice that in their view, for reasons stated, the purchase notice is invalid and they do not propose to take any further action on it.

If the purchase notice appears valid, the council should consider whether the conditions in section 137(3) Town and Country Planning Act 1990 or section 32(3) Planning (Listed Buildings and Conservation Areas) Act 1990 are satisfied. If the council regard the purchase notice as valid they must serve a counter-notice within three months from the date of service of the purchase notice (section139(2) Town and Country Planning Act 1990 or section 33(2) Planning (Listed Buildings and Conservation Areas) Act 1990).

307. What should the council do if they conclude the land has become incapable of reasonably beneficial use?

If the council conclude that the land has become incapable of reasonably beneficial use in its existing state, they may properly accept the purchase notice. If so, the council must serve, on the owner by whom the purchase notice was served, a response notice stating that they are willing to comply with the purchase notice (section139(1)(a) of the Town and Country Planning Act 1990 or section 33(1)(a) Planning (Listed Buildings and Conservation Areas) Act 1990).

If the council intend to seek a contribution from government under section 305 of the Town and Country Planning Act 1990 it is advisable to consult the relevant department at once and in any case before a response notice is served.

308. Can another local authority or a statutory undertaker comply with the notice instead?

Another local authority or a statutory undertaker may be willing to comply with the notice in place of the council on which it is served, for example because permission to develop the land was refused because it was required for their purposes. If so, the council should serve a notice to that effect on the owner by whom the purchase notice was served, giving the name of the other authority or body concerned (section139(1)(a) of the Town and Country Planning Act 1990 or section 33(1)(a) Planning (Listed Buildings and Conservation Areas) Act 1990). That other authority or body will then be deemed to have served notice to treat on the owner concerned.

The advice given in What should the council do if they conclude the land has become incapable of reasonably beneficial use? in relation to seeking a contribution under section 305 of the Town and Country Planning Act 1990 applies to a local authority specified in a response notice as it does to the council on which the purchase notice was served.

309. What happens if neither the council nor another local authority or statutory undertaker are willing to comply with a notice?

If neither the council on which the purchase notice was served nor another local authority or statutory undertaker are willing to comply with the purchase notice, the council are required to serve on the owner by whom the purchase notice was served, a response notice to that effect. The response notice must specify the council's reasons for not being willing to comply and state that they have sent a copy to the Secretary of State.

The specified reasons should be one or more of the following:

- that the requirements of section 137(3)(a) to (c) of the Town and Country Planning Act 1990 (or section 32(2)(a) to (c) of the Planning (Listed Buildings and Conservation Areas) Act 1990) are not fulfilled, in which case the council should specify the use to which, in their view, the land in its existing state could be put

- that, notwithstanding that the council are satisfied that the land has become incapable of reasonably beneficial use, it appears to them that the land ought, in accordance with a previous planning permission, to remain undeveloped, or be preserved or laid out as amenity land in relation to the larger area for which that planning permission was granted

- that another local authority or statutory undertaker which has not expressed willingness to comply with the notice should be submitted as acquiring authority for all or part of the land

- that, instead of confirming the notice, the Secretary of State should:

    - grant the planning permission or listed building consent sought by the application which gave rise to the purchase notice or revoke or amend specified conditions that were imposed; or

    - direct the grant of planning permission, or listed building consent, in relation to all or part of the land for some other form of development or works which would render the land capable of reasonably beneficial use within a reasonable time; or

    - in the case of a purchase notice served under section 137(1)(b) or (c), cancel or revoke the order or amend it so far as is necessary to render the land capable of reasonably beneficial use

310. What should a council's statement of reasons for not complying with the purchase notice include?

It is not sufficient for a council just to state that the site has a reasonably beneficial use. A council's statement of reasons should be full and clear. The reasons should explain fully, for example, why the land is capable of reasonably beneficial use, or why they regard the grant of planning permission (or listed building consent) or the cancellation, revocation or modification of the order (as the case may be) as desirable, or specify the likely ultimate use of the land which would justify the substitution of another local authority or statutory undertaker.

311. What information should be sent with the purchase notice to Secretary of State?

It is important that a council who have decided to send a purchase notice to the Secretary of State should quickly send him the information and documents he requires to deal with the notice. He cannot begin consideration of a notice without copies of the purchase notice, any accompanying plan, the response notice, the planning application with plans, and the decision on which the purchase notice was based. Other documents may also be necessary in particular cases. The documents should, if possible, accompany the notice but sending the notice should not be delayed because all the information cannot be provided at the same time. Any information not immediately available should be sent as soon as possible afterwards.

Failure to supply all the relevant information within a reasonable time could lead to deemed confirmation of the notice if, as a result of delay, the Secretary of State is unable to complete his action within the statutory time limit.

Additional particulars and documents are also required as follows:

- copies of any planning permissions relevant to section 142 of the Town and Country Planning Act 1990 and accompanying plans

- copies of any orders made under section 97, section 100 or section 102 of the Town and Country Planning Act 1990 or section 23 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and accompanying plans

- details of the location and condition of the land to which the notice relates and the nature of the surrounding land

- particulars of any permission or undertaking relevant to section 137(3)(c) of the Town and Country Planning Act 1990 or section 32(2)(c) of the Planning (Listed Buildings and Conservation Areas) Act 1990

- copies of relevant policies and allocations from the statutory development plan

- statements whether the land, or any part of it, falls within an area which is the subject of a compulsory purchase order or the subject of a direction which restricts permitted development or restricts the grant of planning permission

- the nature of the local planning authority's intentions for the land and the probable timing of any development involved

Copies of the documents submitted to the Secretary of State should be sent to both the person serving the notice and any county council. The Secretary of State should be told that this has been done.

312. What action should the Secretary of State take on receiving a purchase notice?

Under section 140 of the Town and Country Planning Act 1990 the Secretary of State must give notice of his proposed action on the purchase notice, and to specify a period (not less than 28 days) within which the parties may ask for an opportunity of being heard by a person (normally a planning inspector) appointed by the Secretary of State before any final determination is made. The period cannot be extended once it has been specified in the formal notification.

It is important to note that, where a hearing has been held, the Secretary of State may depart from his previously stated proposal and reach a different decision on the notice. An Inspector conducting a hearing will therefore be prepared to hear, and report, representations made by the parties on any alternative course of action open to the Secretary of State. If there is no request by either party to be heard, the Secretary of State must issue his formal decision in accordance with the proposed course of action previously notified.

The Secretary of State must consider whether to confirm the notice or to take other action under section 141 Town and Country Planning Act 1990. If, on the evidence before him, the Secretary of State is not satisfied that the relevant statutory conditions are fulfilled, he will not confirm the purchase notice. If he is satisfied that those conditions are fulfilled, he will either confirm the notice or, dependent upon the evidence before him, take such other action as may be appropriate under section 141.

Under section142 of the Town and Country Planning Act 1990 the Secretary of State is not required to confirm a purchase notice if it appears to him that, even though the land

has become incapable of reasonably beneficial use in its existing state, it ought, in accordance with a previous planning permission, to remain undeveloped or be preserved or laid out as amenity land in relation to the remainder of the larger area for which that planning permission was granted. This provision is considered to have effect *only* when the whole of the purchase notice site is comprised in the area required to be left undeveloped in the previous planning permission.

313. Are the Secretary of State's powers in regard to listed building purchase notices different?

The Secretary of State's powers in regard to listed building purchase notices are in section 35 of the Planning (Listed Buildings and Conservation Areas) Act 1990. In contrast to the powers available to him in respect of purchase notices served under the Town and Country Planning Act, the Secretary of State:

- is required to confirm a listed building purchase notice only in respect of part of the land to which it relates, if he is satisfied that the relevant conditions are fulfilled only in regard to that part of the land; and

- may not confirm a listed building purchase notice unless he is satisfied that the land covered by the notice comprises such land as is required for preserving the building or its amenities, or for affording access to it, or for its proper control or management

If it falls to be considered whether another local authority or a statutory undertaker should acquire the land, in place of the council on whom the purchase notice was served, the Secretary of State must have regard to the 'probable ultimate use' of the land or building or site of the building (as the case may be). He will accordingly exercise his power of substitution only where it is shown that the land or building is to be used in the reasonably near future for purposes related to the exercise of the functions of the other authority or body, eg where the land is needed for the building of a school, he will require the county council to acquire the land.

The Secretary of State will not (as he is sometimes asked to do) require another local planning authority to acquire land solely on the grounds that they refused permission for development in the normal exercise of their planning powers. There is no provision for confirmation of a purchase notice on a government department.

314. Is a hearing or local inquiry always held?

It is usual to hold a local inquiry or a hearing which interested members of the public may attend in light of the alternatives open to the Secretary of State under section 141 Town and Country Planning Act 1990. If a request to be heard is made, the department will follow the relevant procedural rules for an inquiry or a hearing as far as practicable although they do not formally apply. The parties will also be expected to observe the spirit of the rules. Because of the statutory time limits for determining purchase notices it will not normally be possible to adhere to the timescales set out for normal planning appeals. Statements of case should be provided by the parties as soon as possible.

315. Can an owner lodge an appeal against refusal of planning permission and serve a purchase notice?

There is nothing to prevent an owner from lodging an appeal against a refusal of planning

permission as well as serving a purchase notice. It is, however, sensible to leave serving a purchase notice until the result of the appeal is known, if this is practicable, because, by virtue of section 336(5) of the Town and Country Planning Act 1990, any decision by the Secretary of State to grant planning permission for the development which is the subject of the appeal dates from the time when the original planning decision was taken by the local planning authority. Since the granting of planning permission would normally be regarded as rendering the land capable of reasonably beneficial use, it is unlikely that the landowner could substantiate a claim that the conditions set out in section 137(3) of the Town and Country Planning Act 1990 are fulfilled. In considering whether to appeal as well as to serve a purchase notice, an aggrieved applicant for planning permission should bear in mind the advice given above on the timing of the service of purchase notices. The Secretary of State's attention should be drawn to any appeal which has been made to him, or any other matter which is before him for determination, relating to the purchase notice site or any part of it.

316. Is there a right of appeal against the Secretary of State's decision on a purchase notice?

Once the Secretary of State has issued his decision on the purchase notice, he has no further jurisdiction in the matter. Appeal against his decision is to the High Court under section 288 of the Town and Country Planning Act 1990. If the purchase notice has been confirmed, he has no power to compel either of the parties to conclude the transfer of the land. Matters related to the transfer of the land are for the parties themselves to settle.

317. How is compensation calculated?

When a purchase notice takes effect a notice to treat is deemed to have been served and the parties proceed to negotiate for the acquisition of the land as if the land had been the subject of compulsory purchase. If the parties are unable to agree the amount of compensation then either party may refer the matter to the Upper Tribunal (Lands Chamber) for determination. Where land is acknowledged to be incapable of reasonably beneficial use in its existing state, it will in most cases have little value and the landowner may simply wish to sell land which may be a liability for him. A person on whom a purchase notice is served may wish to take advice on the value of the land so that it does not spend a disproportionate amount of time disputing a notice about land which has no value.

For the purposes of calculating the compensation payable the valuation date is now fixed by section 5A of the Land Compensation Act 1961 being the earlier of (i) the date the authority enters on and takes possession of the land or (ii) the date when the assessment is made, either by agreement or by the Tribunal.

The nature of the interest to be valued is the interest which existed on the date the notice to treat is deemed to have been served. The normal rules of compensation which apply in compulsory purchase cases will apply in the case of purchase notices except in some cases there will be no scheme of the authority which has to be disregarded.

A purchase notice is normally used in two circumstances. First: where the physical characteristics of the land make it impossible to derive any beneficial use. In such circumstances the land is likely to have no value. Second, however, land may not be capable of a beneficial use in its existing state but may be rendered capable of a beneficial

use if developed, but for reasons of blight, planning permission will not be granted. In these circumstances it is possible to consider what planning permission may have been obtained absent the constraint and compensation will be payable on this basis. In this respect, these provisions complement the blight notice provisions in so far as they provide recompense to a landowner who is unable to secure any return from his land due to the blighting nature of public sector proposals.

The Crichel Down Rules

Rules and procedures

1. This section sets out the revised non statutory arrangements ('Crichel Down Rules') under which surplus government land which was acquired by, or under a threat of, compulsion (see paragraph 7 and the annex to this section below) should be offered back to former owners, their successors, or to sitting tenants (see paragraphs 13, 14, 17 and 18 below). For the sake of brevity, in this section all bodies to whom any one or more of the Rules apply or are commended are referred to as 'departments', whether they are government departments, including Executive Agencies, other non-departmental public bodies, local authorities or other statutory bodies. See paragraphs 3 and 4 below. The annex provides further guidance on the Rules including a list of those bodies to which, in the opinion of the department, the Rules apply in a mandatory manner.

2. These Rules apply to land in England. They also apply to land in Wales acquired by and still owned by a UK government department. For other land in Wales, departments disposing of land should follow the procedures set out in 'The Crichel Down Rules' issued by the Department of the Environment and the Welsh Office on 30 October 1992. Departments disposing of land in Scotland should follow the procedures set out in 'Scottish Planning Series: Planning Circular 5 2011: Disposal of Surplus Government Land – The Crichel Down Rules' and in Northern Ireland they should follow 'Disposal of Surplus Public Sector Property in Northern Ireland' produced by the Central Advisory Unit of the Land and Property Services agency of the Department of Finance and Personnel.

3. General guidance on asset management, which includes land and buildings is set out in annex 4.15 of Managing Public Money (Asset Management).

4. So far as local authorities and statutory bodies in England are concerned, it is recommended that they follow the Rules. They are also recommended to those bodies in Wales who seek to dispose of land acquired under an enabling power which remains capable of being confirmed by a UK Secretary of State for land in Wales. The Rules are also commended to bodies in the private sector to which public land holdings have been transferred, for example on privatisation.

5. It is the view of the government that where land is to be transferred to another body which is to take over some or all of the functions or obligations of the department that currently owns the land, the transfer itself does not constitute a disposal for the purpose of the Rules. Disposals for the purposes of Private Finance Initiative/Private Public Partnership projects do not fall within the Rules and the position of any land surplus once the project has been completed would be subject to the Private Finance Initiative/Private Public Partnership contract.

6. The Rules are not relevant to land transferred to the National Rivers Authority (now the Environment Agency) or to land acquired compulsorily by the Environment Agency or to the water and sewerage service companies in consequence of the Water Act 1989

or subsequently acquired by them compulsorily. Such land is governed by a special set of statutory restrictions on disposal under section 157 of the Water Resources Act 1991, as amended by the Environment Act 1995, and section 156 of the Water Industry Act 1991 and the consents or authorisations given by the Secretary of State for Environment, Food and Rural Affairs under those provisions.

The land to which the rules apply

7. The Rules apply to all land if it was acquired by or under threat of compulsion. A threat of compulsion will be assumed in the case of a voluntary sale if power to acquire the land compulsorily existed at the time unless the land was publicly or privately offered for sale immediately before the negotiations for acquisition.

8. The Rules also apply to land acquired under the statutory blight provisions (currently set out in Chapter 2 in Part 6 of, and schedule 13 to, the Town and Country Planning Act 1990). The Rules do not apply to land acquired by agreement in advance of any liability under these provisions.

9. The Rules apply to all freehold disposals and to the creation and disposal of a lease of more than seven years.

The general rules

10. Where a department wishes to dispose of land to which the Rules apply, former owners will, as a general rule, be given a first opportunity to repurchase the land previously in their ownership, provided that its character has not materially changed since acquisition. The character of the land may be considered to have 'materially changed' where, for example, dwellings or offices have been erected on open land, mainly open land has been afforested, or where substantial works to an existing building have effectively altered its character. The erection of temporary buildings on land, however, is not necessarily a material change. When deciding whether any works have materially altered the character of the land, the disposing department should consider the likely cost of restoring the land to its original use.

11. Where only part of the land for disposal has been materially changed in character, the general obligation to offer back will apply only to the part that has not been changed.

Interests qualifying for offer back

12. Land will normally be offered back to the former freeholder. If the land was, at the time of acquisition, subject to a long lease and more than 21 years of the term would have remained unexpired at the time of disposal, departments may, at their discretion, offer the freehold to the former leaseholder if the freeholder is not interested in buying back the land.

13. In these Rules 'former owner' may, according to the circumstances, mean former freeholder or former long leaseholder, and his or her successor. 'Successor' means the person on whom the property, had it not been acquired, would clearly have devolved under the former owner's will or intestacy; and may include any person who has succeeded, otherwise than by purchase, to adjoining land from which the land was severed by that acquisition.

Time horizon for obligation to offer back

14. The general obligation to offer back will not apply to the following types of land:

    1) agricultural land acquired before 1 January 1935

    2) agricultural land acquired on and after 30 October 1992 which becomes surplus, and available for disposal more than 25 years after the date of acquisition

    3) non-agricultural land which becomes surplus, and available for disposal more than 25 years after the date of acquisition

    The date of acquisition is the date of the conveyance, transfer or vesting declaration.

Exceptions from the obligation to offer back

15. The following are exceptions to the general obligation to offer back:

    1) where it is decided on specific ministerial authority that the land is needed by another department (ie that it is not, in a wider sense, surplus to government requirements)

    2) where it is decided on specific ministerial authority that for reasons of public interest the land should be disposed of as soon as practicable to a local authority or other body with compulsory purchase powers. However, transfers of land between bodies with compulsory purchase powers will not be regarded as exceptions unless at the time of transfer the receiving body could have bought the land compulsorily if it had been in private ownership. Appropriations of land within bodies such as local authorities for purposes different to that for which the land was acquired are exceptions if the body has compulsory purchase powers to acquire land for the new purpose

    3) where, in the opinion of the disposing body, the area of land is so small that its sale would not be commercially worthwhile

    4) where it would be mutually advantageous to the department and an adjoining owner to effect minor adjustments in boundaries through an exchange of land

    5) where it would be inconsistent with the purpose of the original acquisition to offer the land back; as, for example, in the case of:

        (i) land acquired under sections 16, 84 or 85 of the Agriculture Act 1947

        (ii) land which was acquired under the Distribution of Industry Acts or the Local Employment Acts, or under any legislation amending or replacing those acts, and which is resold for private industrial use

        (iii) where dwellings are bought for onward sale to a private registered provider of social housing or Registered Social Landlord in Wales

        (iv) sites purchased for redevelopment by the former English Partnerships or

former regional development agencies or Homes England

6) where a disposal is in respect of either:

   (i) a site for development or redevelopment which has not materially changed since acquisition and which comprises two or more previous land holdings; or

   (ii) a site which consists partly of land which has been materially changed in character and part which has not

   and there is a risk of a fragmented sale of such a site realising substantially less than the best price that can reasonably be obtained for the site as a whole (ie its market value). In such cases, consideration will be given to offering a right of first refusal of the property, or part of the property, to any former owner who has remained in continuous occupation of the whole or part of his or her former property (by virtue of tenancy or licence). In the case of land to which (i) applies, consideration will be given to a consortium of former owners who have indicated a wish to purchase the land collectively. However, if there are competing bids for a site, it will be disposed of on the open market.

7) where the market value of land is so uncertain that clawback provisions would be insufficient to safeguard the public purse and where competitive sale is advised by the department's professionally qualified valuer and specifically agreed by the responsible minister.

16. Where it is decided that a site does fall within any of the exceptions in Rule 15 or the general exception relating to material change (see rule 10) the former owner will be notified of this decision using the same procedures for contacting former owners as indicated in paragraphs 20-22 below.

17. In the case of a tenanted dwelling, any pre-emptive right of the former owner is subject to the prior right of the sitting tenant. See paragraph 18 below.

Dwelling tenancies

18. Where a dwelling, whether acquired compulsorily or under statutory blight provisions, has a sitting tenant (as defined in Appendix A to this section) at the time of the proposed disposal, the freehold should first be offered to the tenant. If the tenant declines to purchase the freehold, it should then be offered to the former owner, although this may be subject to the tenant's continued occupation. This paragraph does not apply where a dwelling with associated land is being sold as an agricultural unit; or where a dwelling was acquired with associated agricultural land but is being sold in advance of that land.

Procedures for disposal

19. Where it is decided that property to be disposed of is, by virtue of these Rules, subject to the obligation to offer back, departments should follow the appropriate procedures described in paragraphs 20-25 below.

Where former owner's address is known

20. Where the address of a former owner is known, a recorded delivery letter should be sent by or on behalf of the disposing department, inviting the former owner to buy the property at the valuation made by the department's professionally qualified valuer. The former owner will be given two months from the date of that letter to indicate an intention to purchase. Where there is no response or the former owner does not wish to purchase the property, it will be sold on the open market and the former owner will be informed by a recorded delivery letter that this step is being taken. If the former owner wishes to purchase the land there will be a further period of two months to agree terms, other than value, from the date of an invitation made by or on behalf of the disposing department. After these terms are agreed, there will be six weeks to negotiate the price. If the price or other terms cannot be agreed within these periods, or within such extended periods as may reasonably be allowed (for example, to negotiate appropriate clawback provisions), the property will be disposed of on the open market.

Where address is unknown

21. Where the former owner is not readily traceable, the disposing department will contact the solicitor or agent who acted for him or her in the original transaction. If a present address is then ascertained, the procedure described in paragraph 20 above should be followed. If the address is not ascertained, however, the department will attempt to contact the former owner by advertisement, as set out in paragraph 22 below, informing the solicitor or agent that this has been done.

22. Advertisements inviting the former owner to contact the disposing department will be placed as follows:

    a) for all land (including dwellings), in the London Gazette, in the Estates Gazette, in not less than two issues of at least one local newspaper and on the disposing department's web site

    b) in addition, for agricultural land, advertisements will be placed in the Farmer's Weekly

    Site notices announcing the disposal of the land will be displayed on or near the site and owners of the adjacent land will also receive notification of the proposed disposal.

Responses to invitation to purchase where address is unknown

23. Where no intention to purchase is indicated by or on behalf of a former owner within two months of the date of the latest advertisement which is published as described in paragraph 22 above, the land will be disposed of on the open market.

24. Where an intention to purchase is expressed by or on behalf of a former owner within two months of the date of the latest advertisement, he or she will be invited to negotiate terms and agree a price within the further periods, as may reasonably be extended, which are described in paragraph 20 above. If there is no agreement, the property will be disposed of on the open market.

Special procedures where boundaries of agricultural land have been obliterated

25. The procedures described in Appendix B to these Rules should be followed where changes, such as the obliteration of boundaries, prevent land which is still predominantly agricultural in character from being sold back as agricultural land in its original parcels.

Terms of resale

26. Disposals to former owners under these arrangements will be at current market value, as determined by the disposing department's professionally qualified valuer. There can be no common practice in relation to sales to sitting tenants because of the diversity of interests for which housing is held. Departments will, nonetheless, have regard to the terms set out in the Housing Act 1985, as amended, under which local authorities are obliged to sell dwelling-houses to tenants with the right to buy.

27. As a general rule, departments should obtain planning consent before disposing of properties which have potential for development. Where it would not be practicable or appropriate for departments to take action to establish the planning position at the time of disposal, or where it seems that the likelihood of obtaining planning permission (including a more valuable permission) is not adequately reflected in the current market value, the terms of sale should include clawback provisions in order to fulfil the government's or public body's obligation to the taxpayer to obtain the best price. The precise terms of clawback will be a matter for negotiation in each case.

Recording of disposals

28. Disposing departments will maintain a central record or file of all transactions covered by the Rules, including those cases that fall within Rules 10 and 15.

Appendix A (see paragraph 18 of the Rules)

Sitting tenants

1. In the context of the Rules, the expression 'sitting tenant' was generally intended to apply to tenants with indefinite or long-term security of tenure. A tenant for the time being of residential property which is to be sold as surplus to a department's requirements is not, as a tenant of the Crown, in occupation by virtue of a statutory form of tenancy under the Rent Act 1977 or the Housing Act 1988. However, when deciding whether a person is a sitting tenant for the purposes of paragraph 18 of the Rules, the department concerned will have regard to the terms of tenancy and act according to the spirit of the legislation.

2. In practice, this will generally mean that a person may be regarded as a sitting tenant for the purposes of paragraph 18 of the Rules if the tenancy is analogous to either:

   a) a regulated tenancy under the Rent Act 1977, (ie a tenancy commenced before 15 January 1989, but excluding a protected shorthold tenancy); or

   b) an assured tenancy under the Housing Act 1988, (ie a tenancy begun on or after that date, but excluding an assured shorthold tenancy)

3. Without prejudice to paragraph 15(6) of the Rules, therefore, paragraph 18 of the Rules does not apply to a licensee or to a person in occupation under a tenancy the terms of which are analogous to:

   a) a protected shorthold tenancy under the Housing Act 1980, including any case where a person who held such a tenancy, or his or her successor, was granted a regulated tenancy of the same dwelling immediately after the end of the protected shorthold tenancy; or

   b) an assured shorthold tenancy under the Housing Act 1988

4. It is recognised, however, that some tenants who fall within paragraph 3 above, may have occupied the property over a number of years and may well have carried out improvements to the property. Where the former owner or successor does not wish to purchase the property, or cannot be traced, the department may wish to consider sympathetically any offer from such a tenant, of not less than two years, to purchase the freehold.

Appendix B (see paragraph 25 of the Rules)

Special procedures where boundaries of agricultural land have been obliterated

(a) Each former owner will be asked whether he or she wishes to acquire any land.

(b) Where former owners express interest in doing so, disposing departments will, subject to what is stated in (c) to (e) below, make every effort to offer them parcels which correspond, as nearly as is reasonably practicable, in size and situation to their former land.

(c) In large and complex cases, or where there is little or no room for choice between different methods of dividing the land into lots, it may be necessary to show former owners a plan indicating definite lots. This might be appropriate where, for example, the character of the land has altered; where there are existing tenancies; or where departments might otherwise be left with unsaleable lots.

(d) Where more than one former owner is interested in the same parcel of land it may be necessary to give priority to the person who owned most of the parcel or, in a case of near equality, to ask for tenders from interested former owners. Departments should, however, make every effort to offer each interested former owner at least one lot.

(e) If attempts to come to a satisfactory solution by dealing with former owners end in complete deadlock, departments will sell the land by public auction in the most convenient parcels and will inform the former owners of the date of the auction sale.

Annex (see paragraph 1 of the Rules)

Guidance for departments

Bodies to which these rules apply (Rule 2)

1. These Rules apply to all government departments, executive agencies and non departmental public bodies in England and other organisations in England (such as health service bodies) which are subject to a power of direction by a minister. They also apply to land in Wales acquired and still owned by a UK government department.

Application of the rules by local authorities and statutory bodies (Rule 4)

2. Local authorities and other statutory bodies which are not subject to a ministerial power of direction (for example, statutory undertakers) but who have powers of compulsory purchase, or who hold land which has been compulsorily purchased, are recommended to follow the Rules. Such authorities and bodies include those holding land in Wales acquired under an enabling power which remains capable of being confirmed by a UK minister, such as the Secretary of State for Business, Energy and Industrial Strategy. The previous practice amongst such authorities has been very variable, but the government would like there to be a high level of compliance. Former owners of surplus land will be likely to see as inequitable a system which requires government departments and others to offer back surplus land but not local authorities. A typical example would be on road schemes, where those who had lost land to a trunk road scheme would have surplus land offered back, while those who had lost land to a county road scheme might not.

3. The approach of these bodies when disposing of surplus land must, however, depend on their particular functions and circumstances. For example, in the case of exceptions to the Rules which depend upon ministerial authority (Rules 15(1), 15(2) and 15(7)) local authorities will have to rely on the decision of the political head of the authority. For other statutory bodies the decision will rest with the chairman. For disposals at the end of Private Finance Initiative/Private Public Partnership agreements, departments may wish to seek legal advice in order to take account of the Rules.

Transfer to the private sector (Rule 5)

4. This rule makes it clear that land transferred to another body for the same functions is not surplus.

The threat of compulsion (Rule 7)

5. A ‘threat of compulsion’ should be assumed in the case of a voluntary sale if the power to acquire the land compulsorily existed at the time. This means that the acquiring department did not need to have instituted compulsory purchase procedures or even to have actively ‘threatened’ to use them for this Rule to apply.

   It is enough for the acquiring authority to have statutory powers available if it wished to invoke them. For example, land acquired by a highway authority for the purposes of building a road is acquired under the threat of compulsion because such an authority

could use its powers under the Highways Act 1980 to make a compulsory purchase order. The only exception is where the land was publicly or privately offered for sale immediately before the negotiations for acquisition.

What constitutes a disposal? (Rule 9)

6. In addition to freehold disposals, any proposal to create and dispose of a leasehold interest of more than 7 years or capable of being extended to more than 7 years by virtue of contract or statute or where the total period of successive leases amounts to more than 7 years will be subject to the Rules. Disposals for the purposes of granting Private Finance Initiative/Private Public Partnership projects do not fall within the Rules, see Rule 5.

What is a material change of character? (Rule 10)

7. The Rules refer to a 'material change in character' to the land available for disposal. In the original Commons debate on the Crichel Down case in 1954, 'material change' was envisaged as relating to agricultural land and was illustrated by the example of an airfield having been built with concrete runways and buildings and where the original ownership boundaries have been lost. However, other examples of a material change of character could include the erection of buildings on bare, open land (although it should be noted that the erection of temporary buildings is not necessarily a material change); the afforestation of open land; or the undertaking of substantial works to an existing building, the demolition of a building or the installation of underground infrastructure or services to a site.

Land subject to a long lease (Rule 12)

8. If neither the former freeholder nor former leaseholder are identifiable or interested in buying the land back then the freehold freed from any lease can be disposed of on the open market.

Who is a successor? (Rule 13)

9. A successor under a will includes those who would have succeeded by means of a second or subsequent will or intestacy. The qualification 'otherwise than by purchase' may be relaxed if the successor to adjoining land acquired it by means of transfer within a family trust, including a transfer for monetary consideration.

When is the date of acquisition? (Rule 14)

10. Rule 14 says that the date of acquisition is the date of the conveyance, transfer or vesting declaration. Problems may arise where land has been requisitioned several (sometimes 10 or more) years before the title has transferred. Difficulties can be caused where the two dates straddle a time horizon, so that a disposal would fall within the Rules if the date of transfer was used, but not if the date of requisition was. To avoid these difficulties the date of acquisition is therefore taken to be the date of conveyance, transfer or vesting declaration.

What are ‘reasons of public interest’? (Rule 15(2))

11. The courts have held that rule 15(2) (formerly 14(2)) does not require these to be matters where life or limb are at risk. In practice, this exception may be invoked where the body to which the land is to be sold could have made a compulsory purchase order to obtain it had it been owned by a third party (See R-v-Secretary of State for the Environment, Transport and the Regions ex p. Wheeler, The Times 4 August 2000).

Small areas of land (Rule 15(3))

12. This exception provides departments with discretion as to whether to offer land back when the administrative costs in seeking to offer land back are out of proportion to the value of the land. It will also cover cases where there is a disposal of a small area of land without a sale.

When is it inconsistent with the purpose of the original acquisition to offer land back? (Rule 15(5))

13. The sections of the Agriculture Act 1947 referred to in this Rule deal with the dispossession of owners or occupiers on grounds of bad estate management (section 16) and the acquisition and retention of land to ensure the full and efficient use of the land for agriculture (sections 84 and 85). In addition to the statutory examples quoted, the general rule is that land purchased with the intention of passing it on to another body for a specific purpose is not surplus and therefore not subject to the Rules. Typical examples would be sites of special scientific interest (SSSIs) purchased for management reasons; a listed building purchased for restorations; properties purchased by a local authority for redevelopment which are sold to a private developer partner; or land purchased by the former English Partnerships or a former regional development agency (now Homes England) and sold for reclamation and redevelopment. This exception will apply to disposals by statutory bodies with specific primary rather than incidental functions to develop or redevelop land, and to disposals by their successor bodies. In such cases, land would only be subject to the Rules where it was without development potential and, therefore, genuinely surplus in relation to the purpose for which it was originally acquired.

Dwelling tenancies (Rule 18)

14. For the purposes of the Rules a ‘dwelling’ includes a flat.

Procedures for disposal (Rules 19-24)

15. The Rules specify various time limits in the procedures for disposal. However, to assist in the speedy disposal of sites, departments are encouraged to discuss with the former owner all aspects of the sale from the outset of negotiations.

Market value and the date of valuation (Rule 26)

16. For the purposes of the Rules, ‘market value’ means ‘the best price reasonably obtainable for the property’. This is equivalent to the definition of ‘market value’ in the

Royal Institution of Chartered Surveyors' Appraisal and Valuation Manual (the 'Red Book'), but including any 'Special Value' (ie any additional amount which is or might reasonably be expected to be available from a purchaser with a special interest like a former owner). 'Current market value' means the market value on the date of the receipt by the disposing department of the notification of the former owner's intention to purchase.

Maintenance of records (Rule 28)

17. In order to make it possible for the operation of these revised Rules to be monitored, disposing departments should include on each disposal file a note of its consideration of the Rules, including whether they applied (and if not, why not), the subsequent action taken and whether it was possible to sell to the former owner. It would also be very helpful if a copy of each of these notes (cross-referenced to the disposal file) could be held by the relevant department on a central (or regional) file, so that the information would be readily available for any future monitoring exercise.

Footnote 12

To

Further Supplementary Written Submissions

dated 30 September 2024

in Rebuttal to

Mona Offshore Wind Limited Document

Appendix to Response to WRs: Griffith Parry, Robert Parry and Kerry James

(Document Number S_D2_3.4)

Llywodraeth Cymru
Welsh Government

Circular Ref: 003/2019

Welsh Government

Circular

Compulsory Purchase in Wales and 'The Crichel Down Rules (Wales Version, 2020)'

October 2020

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

 WG41526 Digital ISBN: 978-1-80082-346-4

Circular 003/2019: Compulsory Purchase in Wales and 'The Crichel Down Rules (Wales Version 2020)'

Audience Local authorities; planning authorities; businesses; government agencies; other public bodies; professional bodies and interest groups; voluntary groups and the general public.

Overview This circular updates the information and guidance to be used by Local authorities, the Welsh Ministers and other acquiring authorities when making compulsory purchase orders to which the Acquisition of Land Act 1981 applies.

Action required For local authorities and other acquiring authorities to be aware, from 13 October 2020:

1. Welsh Government *Circular 003/2019: Compulsory Purchase in Wales and 'The Crichel Down Rules (Wales Version 2020)'* provides information and guidance on the use of compulsory purchase powers and the disposal of surplus government land in Wales.

2. National Assembly for Wales Circular (NAFWC) 14/2004: Revised Circular on Compulsory Purchase Orders is cancelled.

Further Information
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Additional copies This guidance is available from the Welsh Government website at:
http://gov.wales/topics/planning/policy/circulars/

Related documents Planning Policy Wales (PPW) (Edition 10, December 2018)
Development Management Manual Section 12 Annex: Award of Costs
Technical Advice Note (TAN) 24: Historic Environment (which replaced Welsh Office Circular 61/96)

Contents

Glossary

Term	Definition
1845 Act	Lands Clauses Consolidation Act 1845
1908 Act	Smallholdings and Allotments Act 1908
1949 Act	National Parks and Access to the Countryside Act 1949
1961 Act	Land Compensation Act 1961
1965 Act	Compulsory Purchase Act 1965
1972 Act	Local Government Act 1972
1973 Act	Land Compensation Act 1973
1975 Act	Welsh Development Agency Act 1975
1980 Act	Highways Act 1980
1981 Act	Acquisition of Land Act 1981
1985 Act	Housing Act 1985
1989 Act	Local Government and Housing Act 1989
1990 Act	Town and Country Planning Act 1990
1995 Order	The Town and Country Planning (General Permitted Development) Order 1995
1996 Act	Education Act 1996
2004 Regulations	Compulsory Purchase of Land (Written Representations Procedure) (National Assembly for Wales) Regulations 2004
2010 Rules	Compulsory Purchase (Inquiries Procedure) (Wales) Rules 2010
2012 Order	Land Compensation Development (Wales) Order 2012
2013 Act	School Standards and Organisation (Wales) Act 2013
2016 Act	Housing and Planning Act 2016
2017 Regulations	Compulsory Purchase of Land (Vesting Declarations) (Wales) Regulations 2017
ADR	Alternative Dispute Resolution
CAAD	Certificate of Appropriate Alternative Development
CPO	Compulsory Purchase Order
ECHR	European Convention on Human Rights
GVD	General Vesting Declaration
LDP	Local Development Plan
LGPL Act 1980	Local Government, Planning and Land Act 1980
LHA	Local Housing Association
LPA	Local Planning Authority
NAFWC	National Assembly for Wales Circular
NSIP	Nationally Significant Infrastructure Project
NTT	Notice To Treat
P(LBCA)	Planning (Listed Buildings and Conservation Areas) Act 1990
PPPs	Public Private Partnerships
PPW	Planning Policy Wales (Edition 10, December 2018)
SSSIs	Sites of Special Scientific Interest
TAN	Technical Advice Note
WBFG Act	Well-being of Future Generations (Wales) Act 2015

Part 1 - Compulsory purchase overview

General overview

1. The Welsh Government believes compulsory purchase powers are an important placemaking in action tool for local authorities and other bodies to use as a means of assembling the land needed to help deliver environmental, social and economic change. Used properly, they can contribute towards effective and efficient regeneration, placemaking[1], the revitalisation of communities, and the promotion of business – leading to improvements in the quality of life. Local authorities and other bodies possessing compulsory purchase powers – at whatever level – are encouraged to consider using them pro-actively wherever appropriate to ensure real gains are brought to residents and the business community without delay.

2. The purpose of this Circular is to provide guidance to local authorities and other bodies with powers to make compulsory purchase orders ("CPOs") under the Acquisition of Land Act 1981 ("the 1981 Act") and which are submitted to the Welsh Ministers for confirmation. Its aim is to assist the use of compulsory purchase powers to best effect and, by advising on the application of the correct procedures and statutory and/or administrative requirements to ensure CPOs progress quickly and are without defects. It is not, however, intended to be comprehensive. It concentrates mainly on those policy issues, procedures and administrative requirements to which local authorities and other bodies need to have regard to in order to assist the efficient handling of their CPOs by the Welsh Ministers. The Circular also contains guidance on certain key elements of the implementation and compensation arrangements. It should be read in conjunction with Planning Policy Wales (PPW) which sets out the land use planning policies of the Welsh Government, including for the use of compulsory purchase powers by local planning authorities ("LPAs").

3. The term "acquiring authority" is used throughout the Circular and refers to those bodies authorised by statute to acquire land by compulsion for a specific purpose i.e. local authority or other bodies such as statutory undertakers with compulsory purchase powers. Where a specific acquiring authority is stated in the guidance, i.e. local authorities, it is reflecting the statutory wording in legislation.

4. Parts 2–3 of this Circular provide detailed explanatory notes and relate to powers, procedural issues and allied matters including Certificates of Appropriate Alternative Development. They should be observed as closely as possible in the interest of avoiding delay incurred by the need to clarify details after submission of a CPO for confirmation. Part 5 of this Circular provides a process chart which illustrates steps and timescales for the processing and determination of a non-ministerial CPO.

[1] See page 16 of Planning Policy Wales (PPW) (Edition 10, December 2018) for a definition of 'placemaking'.

Part 6 of this Circular contains 'The Crichel Down Rules' (Wales version 2020) which provides guidance on the arrangements for offering back to former owners, their successors, or to sitting tenants surplus government land, which was acquired by, or under a threat of, compulsion.

5. The advice in Part 1 applies to CPOs which are to be confirmed by the Welsh Ministers and also the relevant UK Government Secretary of State in respect of a CPO made for flood defence/land drainage purposes covering land in Wales and England, acting jointly with the Welsh Ministers.

6. In addition to the guidance in Part 1, including any relevant other Parts, authorities should have regard to any particular requirements of the legislation granting the specific acquisition powers being exercised.

Related circulars and cancellations[2]

7. National Assembly for Wales Circular (NAFWC) 14/04: Revised Compulsory Purchase Orders is cancelled.

8. Welsh Office Circular 1/90: The Compulsory Purchase by Non-Ministerial Acquiring Authorities (Inquiries Procedure) Rules 1990 is redundant following the coming into force of the Compulsory Purchase (Inquiries Procedure) (Wales) Rules 2010 ("the 2010 Rules") which replaced the:

   - Compulsory Purchase by Non-Ministerial Acquiring Authorities (Inquiries Procedure) Rules 1990; and
   - Compulsory Purchase by Ministers (Inquiries Procedure) Rules 1994.

9. This Circular should be read with the following:

   - Paragraph 3.53 of PPW.
   - Development Management Manual Section 12 Annex: Award of Costs (which replaced Welsh Office Circular 23/93: Awards of Costs incurred in Planning and Other (including CPO) Proceedings).
   - Technical Advice Note (TAN) 24: Historic Environment (which replaced WO Circular 61/96) - CPOs affecting historic buildings and conservation areas.

The purpose and justification for compulsory purchase

10. CPOs allow acquiring authorities who need to obtain land or property to do so without the consent of the owner. CPOs are granted to facilitate development which is in the public interest, for example when building motorways on land which the owner does not wish to sell. National planning policy on the use of compulsory purchase powers[3] confirms the purchase of land to facilitate development, redevelopment or improvement should be done with the agreement of the landowner.

[2] This Circular applies only to Wales; separate arrangements have been made in respect of the applicability of Circulars in England.
[3] Paragraph 3.53 of Planning Policy Wales (PPW) (Edition 10, December 2018).

However, where such agreements cannot be reached, LPAs should consider use of their compulsory purchase powers to bring land and/or buildings forward for meeting development needs in their area and/or to secure better development outcomes where a compelling case in the public interest can be demonstrated which outweighs the loss of private interests.

11. Acquiring authorities do not have the powers to compulsorily acquire land until the 'confirming authority' approves the CPO. In Wales, the confirming authority for CPOs relating to a devolved matter is the Welsh Ministers.

Public bodies with statutory powers

12. Many public bodies with statutory powers have compulsory purchase powers in support of their functions and activities, including:

- local authorities (which include for some purposes National Park Authorities);
- statutory undertakers, for example, Network Rail and Natural Resources Wales;
- some executive agencies i.e. Coal Authority;
- health service bodies.

The Welsh Ministers also have powers to compulsory acquire land to facilitate the discharge of their functions under section 21A of the Welsh Development Agency Act 1975.

The Well-being of Future Generations (Wales) Act 2015

13. The Well-being of Future Generations (Wales) Act 2015 ("WBFG Act") establishes a sustainable development principle which requires public bodies in Wales to act in a manner which seeks to ensure the needs of the present are met without compromising the ability of future generations to meet their own needs. The WBFG Act places a duty on public bodies in Wales to improve the economic, social, environmental and cultural well-being of Wales when exercising their functions in accordance with "the sustainable development principle" (established under section 5(1) of the WBFG Act) which is aimed at achieving seven overarching well-being goals. Section 4 of the WBFG Act sets out the seven overarching well-being goals for Wales:

(i) 'A prosperous Wales' - An innovative, productive and low carbon society which recognises the limits of the global environment and therefore uses resources efficiently and proportionately (including acting on climate change); and which develops a skilled and well-educated population in an economy which generates wealth and provides employment opportunities, allowing people to take advantage of the wealth generated through securing decent work.

(ii) 'A resilient Wales' - A nation which maintains and enhances a biodiverse natural environment with healthy functioning ecosystems that support social, economic and ecological resilience and the capacity to adapt to change (for example climate change).

(iii) ‘A healthier Wales’ - A society in which people's physical and mental well-being is maximised and in which choices and behaviours that benefit future health are understood.
(iv) ‘A more equal Wales’ - A society that enables people to fulfil their potential no matter what their background or circumstances (including their socio economic background and circumstances).
(v) ‘A Wales of cohesive communities’ - Attractive, viable, safe and well-connected communities.
(vi) ‘A Wales of vibrant culture and thriving Welsh language’ - A society that promotes and protects culture, heritage and the Welsh language, and which encourages people to participate in the arts, and sports and recreation.
(vii) ‘A globally responsible Wales’ - A nation which, when doing anything to improve the economic, social, environmental and cultural well-being of Wales, takes account of whether doing such a thing may make a positive contribution to global well-being.

14. Not all acquiring authorities in Wales are public bodies for the purposes of the WBFG Act i.e. utility companies, electricity licence holders etc. As such, the duty under the WBFG Act does not apply to these types of acquiring authorities. The Welsh Ministers do however recommend as best practice that non-public bodies who are seeking to use and justify their compulsory purchase powers in Wales do so in accordance with the requirements of the WBFG Act.

The Well-being ‘Five Ways of Working’

15. To demonstrate consideration has been given to the seven WBFG Act well-being goals and the sustainable development principle, public bodies must have regard to the ‘Five Ways of Working’ contained in section 5 of the WBFG Act. These require:
- involving a diversity of the population in the decisions that affect them;
- working with others in a collaborative way to find shared sustainable solutions;
- taking an integrated approach so that all public bodies look at all the well-being goals in deciding on their priorities;
- understanding the root causes of issues to prevent them from occurring and examining whether resources are currently deployed should change; and
- looking to the long term so not to compromise the ability of future generations to meet their own needs.

Compulsory purchase and the well-being goals

16. The use of compulsory purchase powers can help facilitate achieving sustainable development in Wales. It can also provide a mechanism to manage effectively the use and development of land in the public interest so that it contributes positively to achieving the seven WBFG Act well-being goals. Public body acquiring authorities in Wales exercising their compulsory purchase powers must exercise those functions in accordance with the meaning of sustainable development as defined in section 3 of the WBFG Act.

They must, therefore, when making and justifying the compelling case for a CPO, give consideration to how the CPO achieves the seven WBFG Act well-being goals. For example, a use of compulsory purchase powers is to regenerate an area through bringing empty properties or vacant land back into use for the purpose of improving the attractiveness and viability of the area. Likewise, to improve safety. Such action would contribute to meeting the WBFG Act goal of building "a Wales of cohesive communities". Another example is the use of compulsory purchase powers to increase housing in a local area to provide opportunities for communities to access new housing accommodation. Such action can help people's physical and mental well-being and contribute to meeting the WBFG Act goal of building "a healthier Wales." An assessment should be given of the CPO's overall effect in relation to achieving the seven WBFG Act well-being goals.

17. As part of the decision making process on whether or not a CPO should be confirmed, the Welsh Ministers will give consideration to how their decision will contribute to achieving the seven WBFG Act well-being goals and its potential impact on the sustainable development principle. The Welsh Ministers will follow the WBFG Act's 'Five Ways of Working' as part of this process. Where a public inquiry or written representations procedure is to be used to consider a CPO, the relevant procedure rules/regulations set out in secondary legislation are required be followed.

Public Sector Equality Duty and the compulsory purchase regime

18. All public body acquiring authorities are bound by the Public Sector Equality Duty as set out in section 149 of the Equality Act 2010. Throughout the compulsory purchase process public body acquiring authorities must have due regard to the need to:
    (a) eliminate unlawful discrimination, harassment, and victimisation;
    (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
    (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. In performing their public functions, acquiring authorities must have due regard to the need to meet these three aims of the Equality Act 2010.

    An important use of compulsory purchase powers, for example, is to help regenerate areas. Although low income is not a protected characteristic, it is not uncommon for people from ethnic minorities, the elderly or people with a disability to be over-represented in low income groups. As part of the Public Sector Equality Duty, public body acquiring authorities must have due regard to the need to promote equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. This might mean the acquiring authority devises a process which promotes equality of opportunity by addressing particular problems people with certain protected characteristics might have.

For example, making sure documents are accessible for people with sight problems or learning difficulties and that people have access to advocates or advice.

19. As not all acquiring authorities in Wales are public bodies for the purposes of the Equality Act 2010, i.e. utility companies, electricity licence holders etc, the Public Sector Equality Duty does not apply to these types of acquiring authorities. The Welsh Ministers do however recommend as best practice that non-public bodies who are seeking to use and justify their compulsory purchase powers in Wales do so in accordance with the Public Sector Equality Duty as set out in section 149 of the Equality Act 2010.

Human Rights

20. When making a CPO, acquiring authorities should be sure the purposes for which the CPO is made sufficiently justifies interfering with the human rights of those with an interest in the land affected. Particular consideration should be given to the provisions of Article 1 of The First Protocol to the European Convention on Human Rights ("ECHR") and, in the case of a dwelling, Article 8 of the ECHR which provides the right to respect to a person's home. Article 1 of the ECHR provides for the right to the peaceful enjoyment of a person's possessions and protection of property. Depriving an individual or business of their rights is a serious step which an acquiring authority should consider carefully. However, it has been established compulsory purchase will not breach these Human Rights where it:

- is authorised by law;
- is proportionate;
- can be demonstrated to be in the public interest; and
- landowners and others with an interest in the land are appropriately compensated.

21. An acquiring authority's report seeking authorisation for the CPO should address human rights issues. In particular, it should explain why the acquiring authority considers that:

(a) The purposes for which land is to be acquired are sufficiently important to justify the deprivation of property or interference with possession which the compulsory purchase of land entails.

(b) The land in question is needed for the proper delivery of those purposes.

(c) A less intrusive measure could not have been used for those purposes.

(d) A fair balance has been struck between the rights of the individuals affected and the interests of the community.

Further guidance on human rights issues can be found on the Equality and Human Rights Commission's website[4].

[4] https://www.equalityhumanrights.com/en

22. To comply with the ECHR, acquiring authorities must adequately compensate landowners affected by compulsory purchase. However, it is worth reiterating that, whilst an acquiring authority must, generally speaking, have a fair estimate of the compensation which is likely to be payable at the time the CPO is made, the consideration of compensation is an entirely separate matter from the determination of whether the CPO is justified. Compensation disputes are subject to separate procedures. Consequently, an acquiring authority may have a CPO confirmed, and take possession of the land in question, before a resolution to the amount of compensation due has been reached.

Other persons eligible to initiate compulsory acquisition

23. In certain circumstances, a landowner may also initiate a compulsory purchase process. An owner may initiate the process by serving:

- A purchase notice under section 137 of the Town and Country Planning Act 1990 ("the 1990 Act") and section 32 of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the P(LBCA)") served by landowners following an adverse planning or listed building consent decision where, in specified circumstances, they consider that the land has become incapable of reasonable beneficial use in its existing state; or

- A blight notice under section 150 of the 1990 Act - served by landowners where they have made reasonable endeavours to sell their land but, because of blight caused by planning proposals affecting the land, they have not been able to do so, except at a substantially lower price than might reasonably have been expected. Blight notices can be served when:
  (i) Land is identified in a local development plan (LDP), strategic development plan, or the Future Wales – the National Plan 2040 for the purpose of a public function i.e. a function of the Welsh Ministers, a government department, local authority, National Park Authority or statutory undertakers.
  (ii) Land is indicated in a plan (other than a development plan) approved by a resolution passed by a LPA for the purpose of the exercise of their powers under Part 3 of the 1990 Act as land which may be required for the purposes of a public function (listed in (i) above).
  (iii) Land in respect of which a LPA —
    (a) has resolved to take action to safeguard it for development for the purposes of a public functions (listed in (i) above); or
    (b) has been directed by the Welsh Ministers to restrict the grant of planning permission in order to safeguard it for such development.
  (iv) Land within an area is declared to be a clearance area under section 289 of the Housing Act 1985 ("the 1985 Act").
  (v) Land on or adjacent to a highway is proposed to be constructed, improved or altered in relation to a power of compulsory acquisition conferred by Part 9 of the Highways Act 1980 ("the 1980 Act").
  (vi) Land is authorised to be compulsory acquired or falling within the limits of deviation within which the powers of compulsory acquisition are exercisable.

(vii) Land in respect of which—
(a) a CPO is in force; or
(b) there is in force a CPO providing for the acquisition of a right or rights over that land;
and the acquiring authority has power to serve, but have not served, notice to treat ("NTT").

The complete circumstances in which blight notices may be served are listed in Schedule 13 to the 1990 Act.

The right to serve blight notices is limited to the following categories of landowners:
(a) Residential owner-occupiers of a private dwelling.
(b) Owner-occupiers of agricultural units.
(c) Owner-occupiers of any rateable property (also known as hereditament) i.e. a unit of property/land that is, or may become, liable to non-domestic rating and appears in a rating list, of which the annual value does not exceed a limit prescribed in secondary legislation[5].

Other ways powers of compulsorily purchase are obtained

24. Other powers of compulsory purchase include:

- a Transport and Works Act order under the Transport and Works Act 1992;
- a development consent order under the Planning Act 2008 for a Nationally Significant Infrastructure Project (NSIP);
- a hybrid act of Parliament, such as the Cardiff Bay Barrage Act 1993, which is one promoted by the government and extends to England and Wales but applying specifically in terms of its compulsory purchase provisions to affected landowners;
- a harbour revision order and a harbour empowerment order under the Harbours Act 1964.

This Circular relates to the use of compulsory purchase powers to make a CPO that is provided by a specific act of Parliament, i.e. the1990 Act, and requires the approval of the Welsh Ministers. The other methods of compulsory purchase referred to above have their own applicable guidance and practice.

Financial compensation in advance of a compulsory purchase order

25. Acquiring authorities can acquire land by agreement at any time and should attempt to do so before acquiring land via CPO where necessary to do so.

[5] The current annual value limit of £36,000 is prescribed in the Town and Country Planning (Blight Provisions) (Wales) Order 2019.

When offering financial compensation for land in advance of a CPO, acquiring authorities should, as is the norm, consider value for money as a whole in order to avoid any repercussive cost impacts or pressures on both the scheme in question and other publicly-funded schemes.

26. Acquiring authorities can consider all of the costs involved in the compulsory purchase process when assessing the appropriate payments for purchase of land by agreement in advance of compulsory purchase. For instance, early acquisition by agreement may avoid some of the following costs being incurred:

- legal fees for the CPO making process as a whole including where a public inquiry is held when objections are not withdrawn;
- dealing with individual objectors to a CPO including potential compensation claims for:
  (a) where land is taken:
    (i) open market value of land
    (ii) disturbance payment
    (iii) loss payment
    (iv) severance/injurious affection' payment, and
  (b) where no land is taken:
    (i) injurious affection
    (ii) Part 1 Land Compensation Act 1973 claims;
- wider CPO process costs (for example, staff resources);
- the overall cost of project delay (for example, where a public inquiry is held or there is a delay in gaining entry to the land);
- any other reasonable linked costs (for example, potential for objectors to create further costs through satellite litigation on planning permissions and other orders).

In order to reach early settlements, acquiring authorities should make reasonable initial offers and be prepared to engage constructively with claimants about relocation issues, and mitigation and accommodation works where relevant.

27. The Welsh Ministers will expect acquiring authorities to demonstrate they have taken steps to acquire all of the land and rights included in the CPO by agreement wherever possible. Complex site assemblies involving multiple plots and titles (particularly infrastructure schemes) benefit from the certainty of timing and consistency of approach that a CPO will bring. However, it remains good practice to offer parties the opportunity to enter into an agreement to voluntarily sell where they are prepared to do so. Where acquiring authorities decide/arrange to acquire land by agreement, they will pay compensation as if it had been compulsorily purchased, unless the land was already on offer on the open market.

28. Compulsory purchase is intended to secure the assembly of land needed for the implementation of a scheme where it cannot be acquired by agreement. However, if an acquiring authority waits for negotiations to break down before starting the compulsory purchase process, valuable time will be lost. Therefore, depending on when the land is required, it may often be sensible, given the amount of time required to complete the compulsory purchase process and the number of plots of land required to be assembled, for the acquiring authority to:

- plan a compulsory purchase timetable as a contingency measure; and
- initiate formal procedures.

This is particularly relevant for large scale infrastructure schemes. These schemes often involve multiple plots and parties which can make it impracticable in terms of both time and resources required for acquiring authorities to reach agreement with individual landowners on the sale of their land in advance of a CPO. Initiating compulsory purchase procedures in these circumstances can help to make the seriousness of the acquiring authority's intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations. Ensuring the timely delivery of infrastructure schemes is often in the public interest and the use of compulsory purchase powers can help achieve this when negotiations on acquiring land by agreement become protracted.

29. Compulsory purchase powers should be used in instances where it is either impossible or impractical to buy the land or buildings by agreement and where the public interest in doing so out-weighs the rights of those individuals affected. It should be recognised, in some circumstances, there may be no realistic alternative to the use of compulsory purchase powers and it is for an acquiring authority to ultimately satisfy itself that it has the necessary powers to promote a CPO. However, acquiring authorities will need to satisfy the Welsh Ministers that there is a clear public interest case, supported by:

(a) strong evidence; and

(b) the necessary funds to:

(i) compensate owners for the purchase of the land; and

(ii) finance any subsequent development in order for them to confirm any CPO.

<u>Matters influencing the use of a CPO</u>

30. The following matters will influence whether or not it is appropriate to proceed with a CPO:

- Attempts has been made to acquire the land by agreement wherever possible.
- Taking the land is necessary to progress a development scheme.
- A compelling case in the public interest can be demonstrated.
- There is clear evidence the public benefit in the development scheme will outweigh the private loss.

31. Acquiring authorities considering the use of their compulsory purchase powers should take into account the following questions:

- Why do we need to compulsorily purchase the land and what are the benefits? What evidence exists to support our case for the purchase?
- What other options have been considered, and why are these not suitable?
- What would happen (likely impact) if we did not compulsorily purchase the land?
- What are the benefits of avoiding compulsory purchase, and how do these weigh up against the need for compulsory purchase? Are costs likely to increase if we delay compulsory purchase?
- Is the necessary finance available to fully compensate landowners (including not just the land acquisition cost, but compensation for severance, injurious affection, disturbance and reasonable professional fees where applicable)?
- Do we have sufficient powers to compulsorily purchase all of the land or interests in the land needed to enable the scheme to proceed?
- Is our proposed scheme included in a relevant plan or strategy, such as a LDP or housing plan? If not why not?
- Has there been engagement with landowners to find alternative resolution? If not, why not?
- Do any impediments exist which would prevent the proposed scheme proceeding if we acquired the land?
- Is planning permission needed and, if so, has it been secured? If not, why not?

If any of these points cannot be answered to the acquiring authority's satisfaction then it is likely the authority is not yet in a position to commence the CPO process. Once ready to proceed with a CPO, acquiring authorities should take into account the following factors to make the process run as efficiently as possible:

- Ensure good communication amongst the project team and with potential claimants (including their representatives) and contractors.
- Establish a good understanding of the true cost of professional advice required for meaningful early engagement which the authority may later be liable to finance.
- Maintain good working relationships with, and adopt close management of, contractors.
- Emphasise to claimants from an early stage they should provide adequate evidence to support claims for compensation in order for them to be settled in a timely manner, especially where requests for the advance payment for compensation are to be made.

- Ensure adequate payment systems are in place to allow prompt settlement of agreed claims for compensation to be made.
- Promote and demonstrate a willingness to use alternative dispute resolution techniques to resolve disputes with claimants.

Legislative competence and compulsory purchase

32. Following the coming into force of the Wales Act 2017, the Welsh Ministers were given legislative competence in respect of compulsory purchase powers and procedures relating to devolved matters i.e. land-use planning, transport, listed buildings, housing, health, education etc. Matters relating to land compensation are reserved to the UK Government and, as such, the Welsh Ministers have no powers to amend legislation underpinning the compensation regime in Wales.

The compulsory purchase process

33. There are six stages in the compulsory purchase process:
    - Stage 1: Choosing the right enabling compulsory purchase power
    - Stage 2: Justifying a CPO
    - Stage 3: Preparing and making a CPO
    - Stage 4: Consideration of a CPO
    - Stage 5: Implementing a CPO
    - Stage 6: Compensation

    An overview of the six stages relating to the processing and determination of a non-ministerial CPO is outlined in a process chart in Part 5 of this Circular.

Stage 1: Choosing the right enabling compulsory purchase power

34. An acquiring authority can only make use of the 1981 Act statutory procedures for the compulsory acquisition of land where an enabling power is provided in legislation. There are a large number of such enabling powers, each of which specifies the purposes for which land can be acquired under the particular legislation and the types of acquiring authority to which it applies (see Sections A to H in Part 2 of this Circular for detailed guidance on enabling powers). The table below provides a list of enabling powers commonly used by acquiring authorities[6]:

[6] List is not exhaustive.

Purpose	Compulsory Purchase Legislation	Acquiring Authority	Confirming Authority
Allotments	Sections 25 and 42 of the Small Holdings and Allotments Act 1908	Local Authority	Welsh Ministers
Animal and slaughterhouse services	Section 55 of the Animal Health Act 1981 Sections 15, 18 and 30 of the Slaughterhouses Act 1974	Local Authority Local Authority	Welsh Ministers Welsh Ministers
Aviation	Section 30 of the Civil Aviation Act 1982 Section 42 of the Civil Aviation Act 1982 Section 59 of the Airports Act 1986	Local Authority Civil Aviation Authority Airport Operator	Secretary of State Secretary of State Secretary of State
Caravan sites	Section 56 of the Mobile Homes (Wales) Act 2013	Local Authority	Welsh Ministers
Coal mine water discharge	Section 4C of the Coal Industry Act 1994	Coal Authority	Secretary of State
Coast protection	Section 14 of the Coast Protection Act 1949	Natural Resources Wales	Welsh Ministers
Country parks and nature conservation	Sections 7 and 9 of the Countryside Act 1968 Section 15A of the Countryside Act 1968	Local Authority Natural Resources Wales	Welsh Ministers Welsh Ministers
Education	Section 530 of the Education Act 1996	Local Authority	Welsh Ministers
Energy	Section 10 of, and Schedule 3 to, the Electricity Act 1989	Licensed Electricity Undertaker	Secretary of State
Flood defences and land drainage	Section 62 of the Land Drainage Act 1991	Internal Drainage Board and Local Authority	Welsh Ministers
Food markets	Section 110 of the Food Act 1984	Local Authority	Secretary of State
Gas	Section 9 of, and Schedule 3 to, the Gas Act 1986	Licensed Gas Transporter	Secretary of State

Health	Paragraph 20 of Schedule 2 to the National Health Service (Wales) Act 2006	Local Health Board	Welsh Ministers
Highway	Part 12 of the Highways Act 1980	Local Highway Authority	Welsh Ministers
Housing	Section 17 of the Housing Act 1985 Section 93(2) of the Local Government and Housing Act 1989	Local Housing Authority Local Housing Authority	Welsh Ministers Welsh Ministers
Listed Buildings	Section 47 of the Planning (Listed Buildings and Conservation Areas) 1990	Local Authority	Welsh Ministers
Making land available for development in Wales to facilitate the discharge of the Welsh Ministers' functions	Section 21A of the Welsh Development Agency Act 1975	Welsh Ministers	Welsh Ministers
Miscellaneous (including public libraries/ museums/ cemeteries)	Part 7 of the Local Government Act 1972	Local Authority	Welsh Ministers
National Parks, Nature Reserves, Access to the Countryside, Tree Planting and Neglected land	Sections 12, 13, 76 and 89 of the National Parks and Access to the Countryside Act 1949 Sections 17 and 18 of the National Parks and Access to the Countryside Act 1949 Section 53 of the National Parks and Access to the Countryside Act 1949	Local Authority Natural Resources Wales Local Highway Authority	Welsh Ministers Welsh Ministers Welsh Ministers

Navigable canals, rivers and associated infrastructure	Section 15(2A) of the Transport Act 1962	Canal & River Trust	Secretary of State
Pipe-lines	Sections 11, 12, 14 of, and Schedules 2 and 3 to, the Pipe-Lines Act 1962	Pipe-line Promoter	Secretary of State
Planning and regeneration	Section 226(1)(a), (1)(b), (3), (4) of the Town and Country Planning Act 1990	Local Authority	Welsh Ministers
Telecommunication services	Section 118 of, and Schedule 4 to, the Communications Act 2003	Provider of an Electronic Communications Network	Secretary of State
Universal postal service providers' purposes	Section 95 of, and Schedule 5 to, the Postal Services Act 2000	Universal Service Provider [i.e. postal operator]	Secretary of State
Water and Sewerage	Section 155 of the Water Industry Act 1991 Section 154 of the Water Resources Act 1991	Water and Sewerage Undertaker Natural Resources Wales	Welsh Ministers[7] Welsh Ministers[8]

35. The purpose for which an acquiring authority seeks to acquire land will determine the statutory power under which compulsory purchase is sought. This in turn will influence the factors which the Welsh Ministers will want to take into account when deciding whether or not to confirm a CPO.

36. Most Acts containing enabling powers specify that the procedures in the 1981 Act apply to CPOs made under those powers. Where this is the case, an acquiring authority must follow those procedures.

37. Acquiring authorities should look to use the most specific power available for the purpose in mind and which encapsulates the whole scheme.

[7] In relation to parts of Wales which are outside the catchment areas of the rivers Dee, Wye and Severn.
[8] In relation to land in Wales.

A general/wider power, for example, section 226 of the 1990 Act, should only be used when a specific power is not available or the content of the scheme goes beyond a power granted for a specific purpose i.e. the1980 Act, 1985 Act, or P(LBCA)[9]. In addition to the guidance in this Circular, the authority should have regard to any guidance relating to the use of the power and adhere to any legislative requirements relating to its use. The factors relevant to specific individual powers are considered in Sections A to H in Part 2 of this Circular. These are intended to supplement, rather than replace, the general guidelines set out in Part 1 of this Circular.

38. The advice in this Circular applies to CPOs which relate to devolved matters and are to be confirmed by the Welsh Ministers.

39. A relatively straight forward CPO, which requires a public inquiry or is to be considered via written representations, will likely take between 12 and 18 months to be determined from the date the CPO is made and submitted to the Welsh Ministers, the consideration of objections and the holding of a public inquiry or exchange of written representation, and the issuing of a decision by the Welsh Ministers or inspector. More complex cases, with a higher number of objectors, can take longer. Where cases face no objections, or the confirmation decision on a non-ministerial CPO is delegated to an inspector, these may be processed in a short timescale. The process chart in Part 5 of this Circular illustrates in more detail the timescales for the processing and determination of a non-ministerial CPO.

General considerations

40. There are a wide range of purposes for which it may be possible for an acquiring authority to put forward a sufficiently strong case to justify use of its compulsory purchase powers. Acquisition schemes may range in size from a major scheme to regenerate a large area which may involve the compulsory purchase of commercial properties, or to a small scheme to bring a single derelict property or empty house back into use. In some cases the scheme might benefit the immediate locality, whereas in others the scheme may benefit the wider area. Furthermore, the public benefit in a scheme may be economic – for example it may create jobs, encourage investment or promote sustainable economic growth. In other cases the public benefit may be environmental or social improvements, such as providing a public service, improving the amenity of an area, providing infrastructure to facilitate regeneration or delivering a network of paths to enable access.

[9] For instance, although the courts have held the compulsory purchase power at section 226(1)(b) of the Town and Country Planning Act 1990 Act may be used to acquire a house that has become dilapidated, the Welsh Ministers would normally expect such acquisitions to be made under Housing Act powers (see Section B in Part 2 of this Circular).

Resource implications of the proposed scheme: Funding

41. There must be reasonable prospect the acquisition scheme will proceed. In preparing its justification, the acquiring authority should address:

(a) Sources of funding – the acquiring authority should provide substantive information as to the sources of funding available for both acquiring the land (see paragraph 42 below) and implementing the scheme for which the land is required (including infrastructure costs). If the scheme is not intended to be independently financially viable, or the details cannot be finalised until there is certainty that the necessary land will be required, the acquiring authority should provide an indication of how any potential shortfalls are intended to be met. This should include:

- the degree to which other bodies (including the private sector) have agreed to make financial contributions or to underwrite the scheme (see paragraph 42 below) and
- on what basis such contributions or underwriting is to be made.

In the absence of public sector funding, Public Private Partnerships (PPPs) agreements may be necessary. PPPs are long-term contracts where the private sector designs, builds, finances and operates a project. PPPs transfer delivery, cost and performance risk to the private sector. Acquiring authorities have the right to choose their partners if it is in line with best value and the provisions of section 233 of the 1990 Act.

(b) The timing of that funding – funding should generally be available now or early in the process and linked to a credible timeline for the implementation of a CPO. Failing that, the Welsh Ministers would expect funding to be available to complete the compulsory acquisition within the statutory period (see section 4 of the Compulsory Purchase Act 1965 ("the 1965 Act")) following the operative date (i.e. the date on which the notice of confirmation ('confirmation notice') is published), and only in exceptional circumstances would it be reasonable to acquire land with little prospect of the scheme being implemented for a number of years. The acquiring authority must be able to demonstrate either public funds are forthcoming or, in the case of a joint venture, all or part of the funding will come from a private source. Funding must be identifiable for the whole scheme.

Evidence should also be provided to show sufficient resources could be made available immediately to cope with any acquisitions resulting from a blight notice.

42. In some instances acquiring authorities may not intend the acquisition scheme to be independently financially viable, or may be unable to finalise details until it has assembled the land. In such cases it will need to demonstrate satisfactorily there is a reasonable prospect it can meet any potential shortfalls (for example, through third party contributions or any underwriting of the scheme).

Acquiring authorities considering the use of compulsory purchase powers will need to ensure they have taken into account the potential costs associated with any proposed CPO, including:

(a) the market value of the property,

(b) funding landowners' reasonable costs of negotiation or other costs and expenses likely to be incurred in advance of the process of acquisition,

(c) reasonable professional fees for those affected,

(d) legal fees,

(e) consultant fees,

(f) administration costs,

(g) potential fees relating to the holding of a public inquiry and costs of a referral to the Upper Tribunal (Lands Chamber), and

(h) any relevant claims for compensation[10].

With these costs in mind, the overall cost of a CPO may be higher than the total value of the land generated through a private sale. Acquiring authorities should be mindful of the overall costs of a CPO and are encouraged to enter into, and continue, negotiations with landowners to purchase the land by agreement in parallel with initiating the formal compulsory purchase procedures. This will often provide a clear signal of the acquiring authority's intentions and its commitment to the acquisition of the land. This in turn may encourage those whose land is affected to enter more readily into meaningful negotiations and negate the need for the holding of a public inquiry.

43. Acquiring authorities should not threaten landowners with use of their compulsory purchase powers nor should they use them speculatively as there is a need to demonstrate there is a reasonable prospect of being able to meet any potential shortfalls in funding. Where funding is not fully committed prior to the CPO being made, the minimum the acquiring authority should be able to show is it will be able to make funding available to meet any likely compensation claims. Where an acquiring authority is relying on funding in whole or in part for an acquisition scheme from the Welsh Government, the acquiring authority should evidence this through the award of grant or contract letter issued by the Welsh Government.

Compulsory purchase where the acquiring authority will not develop the land itself

44. Acquiring authorities can, in some circumstances, undertake compulsory purchase to assemble land needed for a scheme and then bring the land to the market for a third party (including the private sector) to develop in accordance with the underlying scheme. Where this is the case, the responsibility for obtaining confirmation of and implementing the CPO, and ensuring the scheme is delivered appropriately, remains with the acquiring authority.

[10] This may include compensation for blight and the impact on the remaining land, and home or farm loss payments (see paragraphs 23 and 181 in Part 1 of this Circular).

Back-to-back agreements with a selected development partner

45. A local authority may use its powers of compulsory purchase to assemble a site for development by a selected development partner on the basis they agree to develop the site and to reimburse the authority its costs of acquiring the land through the compulsory purchase procedure. In this instance, the selected development partner's scheme would be the basis for the making of the CPO. The price and other conditions for such a sale will be decided by negotiation and set out in a formal agreement, known as a back-to-back agreement, prior to the exercise of compulsory purchase powers by the local authority. Provided local authorities can obtain the best terms which could reasonably be obtained in the circumstances with a selected development partner, such agreements are lawful[11]. Where there is a back-to-back agreement in place, the acquiring authority and the selected development partner should be prepared to disclose the terms of the agreement or a full summary, subject to the redaction of commercially confidential information.

46. Back-to-back agreements can be initiated by either the selected development partner or local authority. Local authorities should seek such agreements where there is a clear public interest in doing so and it will enable schemes to proceed that otherwise would not. It is common for town centre and other similar regeneration schemes to be initiated and developed through back-to-back agreements. Where a local authority wishes to enter into a back-to-back agreement but the public interest is not clear, any associated CPO would be difficult to justify.

47 Certain enabling compulsory purchase powers, i.e. section 226(4) of the 1990 Act, permit local authorities to dispose of land to selected development partners after acquisition through back-to-back agreements. Local authorities should check whether this is permitted under the relevant enabling power they have chosen to use. If an enabling power power is silent on back-to-back agreements then local authorities should rely on wider local authority powers to enter into various types of agreements. Where permitted, back-to-back agreements may involve:

- a third party approaching an acquiring authority to assist them in assembling land for a scheme they consider to be in the public interest; or
- the acquiring authority disposing of the land to a community group or other third party to carry out the acquiring authority's purpose.

In the event land is transferred to a selected development partner, the acquiring authority will fully remain responsible for implementation of the CPO, taking ownership of the land and ensuring the scheme is delivered appropriately.

[11] See *Standard Commercial Property Securities Ltd v Glasgow City Council* [2006].

Disposal of land

48. When considering the disposal of land to:
(a) a scheme promoter who has approached an acquiring authority to deploy its compulsory purchase powers to realise a scheme; or
(b) a selected development partner,
the acquiring authority should at a minimum satisfy itself with the following:
- no better solution exists;
- the developer has been unable to acquire the land through any other means;
- the developer can demonstrate through evidence it has actively engaged with the affected community in an attempt to achieve broad agreement, this should include landowners and all those directly or indirectly likely to be impacted by any proposed development;
- the developer can demonstrate a clear link to and/or compliance with a relevant plan or strategy;
- the developer can demonstrate the clear public interest in the development proceeding; and
- no procurement or State Aid issues arise, and if they do, they can be complied with.

49. Section 233 of the 1990 Act provides local authorities may dispose of land in order to secure the:
(a) best use of it or other land and any buildings or works which have been, or are to be, erected, constructed or undertaken on it (whether by themselves or by any other person), or
(b) erection, construction or undertaking on it of any buildings or works appearing to them to be needed for the proper planning of the area of the local authority.

The consent of the Welsh Ministers is required where the disposal is to be for a consideration less than the best that can reasonably be obtained and is not the:
(i) grant of a term of seven years or less; or
(ii) assignment of a term of years of which seven years or less are unexpired at the date of the assignment.

Section 233 (5) – (7) of the 1990 Act also provides an obligation on local authorities to provide relevant occupiers with an opportunity for accommodation when development on land held for planning purposes is subject of a disposal.

Surplus land following compulsory purchase

50. Where land has been purchased compulsorily and the public work completed, but some or all of the land is considered surplus to requirements and is available for disposal, acquiring authorities are expected, in the first instance, to offer the land for sale back to the original owner(s) from whom it was acquired, or their successors in title. For example, land which is left undeveloped because the scheme as completed did not require the land.

This should be done in accordance with 'The Crichel Down Rules' (Wales version 2020) contained in Part 6 of this Circular. Part 6 sets out the non-statutory arrangements under which surplus Government land acquired by, or under a threat of, compulsion should be offered back to former owners. It also provides guidance on the application of the Rules to local authorities and other bodies such as statutory undertakers.

51. There are exceptions to the general obligation to offer surplus land back to original owner(s) or their successors in title. For example, where land which was compulsory acquired for redevelopment purposes has not materially changed since acquisition and which comprised two or more previous land holdings (see rule 17 of 'The Crichel Down Rules' (Wales version, 2020)).

Stage 2: Justification for making a compulsory purchase order

52. It is for the acquiring authority to decide how best to justify its proposals to compulsorily acquire land or an interest in or right over land under a particular power. The acquiring authority will need to defend such proposals at any public inquiry or through written representations and, if necessary, in the courts. The following guidance indicates the factors to which the Welsh Ministers may have regard to in deciding whether or not to confirm a CPO and which acquiring authorities should take into account.

53. Acquiring authorities should use compulsory purchase powers where it is expedient to do so and CPOs should only be made where there is a compelling case in the public interest (see paragraph 10 and16 above).

Consideration by the Welsh Ministers of an acquiring authority's justification for a compulsory purchase order

54. The Welsh Ministers have to take a balanced view between the intentions of the acquiring authority and the concerns of those whose interest in land is proposed to be compulsorily acquired and the wider public interest. The more comprehensive the justification which the acquiring authority can present, the stronger its case is likely to be. Each case, however, will be considered on its own merits and this Circular is not intended to imply the Welsh Ministers will require any particular degree of justification for any specific CPO. It is not essential to show that land is required immediately to secure the purpose for which it is to be acquired. The Welsh Ministers will, however, need to understand, and the acquiring authority must be able to demonstrate, that there are sufficiently compelling reasons in the public interest for the powers to be sought. Acquiring authorities should not exercise their compulsory purchase powers speculatively.

55. If an acquiring authority does not:

(a) have a clear idea of how it intends to use the land which it is proposing to acquire, and

(b) cannot show that all the necessary resources are likely to be available to achieve that end within a reasonable time-scale,

it will be difficult to show conclusively that the compulsory acquisition of the land included in the CPO is justified in the public interest. The Welsh Ministers take the view that land should only be taken compulsorily where there is clear evidence that the public benefit will outweigh the private loss.

56. The consideration of the 'compelling case' will vary from CPO to CPO. For some compulsory acquisition schemes the impact will be small and it will be the local 'public' community affected. On the other hand, where it is a city centre scheme or the redevelopment of an airbase with runway extensions there will be a larger impact and a much wider public (regional or national) interest will be considered. Section I in Part 2 of this Circular provides an overview of the procedure where the Welsh Ministers seek to use their compulsory acquisition powers to facilitate the discharge of their functions including making land available for development. Where there is likely to be a wide public interest in a CPO, there may be the need for a cost/benefit study to demonstrate the economic benefits outweigh environmental and/or community impact. Acquiring authorities are advised to ensure compulsory acquisition schemes are appropriately described so the public are in no doubt as to the benefits of the scheme in question and that it is in their interest. Moreover, acquiring authorities should explain the making of a CPO is necessary to progress a scheme in the public interest and will only be used where acquisition by agreement cannot be reached. Acquiring authorities are encouraged to engage early and communicate regularly with land/property owners, in particular on relocation issues. The greater the transparency and community engagement early in the process can increase the likelihood of a justifiable CPO succeeding. Acquiring authorities should consider engaging with affected communities by calling public meetings to explain proposals, answer questions and confirm whether alterations can be made to their schemes. It is essential for acquiring authorities to remove potential barriers and minimise risks to particular acquisition schemes by assessing potential objections up-front and building the arguments into the case for the CPO. Many landowners who are often involuntary participants in the compulsory process argue they do not receive adequate compensation and compensation is not paid out early enough, if at all. Understanding those concerns, communicating and working with affected parties at an early stage and sustaining engagement throughout the CPO making process, including through mediation, can deliver positive results for all involved. This can also prevent compensation claims from becoming escalated embittered disputes over legal costs. Agreeing to fund landowners' reasonable costs of negotiation or other costs and expenses likely to be incurred in advance of the process of acquisition can build relations and help the scheme proceed more smoothly.

57. Acquiring authorities should recognise the additional time building trust and community relations with the public, from the pre-making stage of the CPO all the way through the process, contributes to more meaningful exchanges in consultations. Consultation should be carried out in full and in a timely manner with all interested parties as part of scheme detailing, planning, funding and final acquisition. Best practice in consultation should always be followed and consideration of the following practical issues undertaken:

- varied scheduling of events to enable access for different audiences from the community;
- accessible location of events;
- avoidance of last minute changes to venues and timing;
- a variety of communication options;
- avoidance of jargon, careful explanation of technical points.

Acquiring authorities should also appoint a named individual for the public to communicate with and publicise this opportunity widely. Furthermore, acquiring authorities would benefit from helping the public to understand the significance of all stages of the decision making process, especially the ways in which the consultation on the pre-making of a CPO can set the scope of the issues which are open for discussion during its potential examination via written representations or at a public inquiry. Acquiring authorities' performance of engaging and consulting communities on the pre-making stage of the CPO will be evaluated through the Welsh Government's technical examination service for draft CPOs (see paragraph 71 below).

Impact Assessments

58. Acquiring authorities should consider the need during the compulsory acquisition process to keep up-to-date any information which has been obtained as part of any Environmental Impact Assessment, Habitats Directive or Water Framework Directive exercises. A comprehensive impact assessment should be undertaken early in the process, alongside engagement with affected property owners and the wider local community. Any challenges identified early in the process may be addressed by expanding the scope of the purchase. It is good practice to explore compensatory or supplementary acquisition to mitigate potential environmental or public service losses.

Stage 3: Preparing and making a compulsory purchase order

Planning permission, other consents and impediments

59. In demonstrating there is a reasonable prospect of the scheme going ahead, the acquiring authority will need to show it is unlikely to be blocked by any impediments to implementation. These include:

- the programming, construction and maintenance of any infrastructure accommodation works or remedial work which may be required, and
- any need for planning permission or other consent or licence.

60. Where planning permission will be required for the scheme, and permission has yet to be granted, the acquiring authority should demonstrate to the Welsh Ministers there are no obvious reasons why it might be withheld. Likewise, listed building consent or conservation area consent. Irrespective of the legislative powers under which the actual acquisition is being proposed, if planning permission is required for the scheme, then, under section 38(6) of the Planning and Compulsory Purchase Act 2004, the planning application will be determined in accordance with the development plan for the area, unless material considerations indicate otherwise. Such material considerations may include, for example, a local authority's supplementary planning guidance, or national planning policy contained in PPW.

Preparatory work – entering land before deciding whether to include it in a compulsory purchase order

61. In most cases, acquiring authorities have the right to enter and survey or value land in connection with a proposal to acquire an interest in or a right over land under powers in sections 172-179 of, and Schedule 14 to, the Housing and Planning Act 2016 ("the 2016 Act"). A minimum of 14 days' notice of entry must be given to owners and occupiers of the land concerned and compensation is payable by acquiring authorities for any damage arising as a result of the exercise of the power. Acquiring authorities may apply to a justice of the peace for a warrant to exercise the power if necessary. A justice of the peace may only issue a warrant authorising a person to use force if satisfied that another person has prevented or is likely to prevent entry, and that it is reasonable to use force.

Undertaking negotiations in parallel with preparing and making a compulsory purchase order

62. Undertaking informal negotiations in parallel with preparing and making a CPO can help build good working relationships with those whose interests are affected. This action can demonstrate the acquiring authority is willing to be open and treat concerns with respect. This applies equally to statutory undertakers as well as private individuals and businesses who may be affected by a compulsory acquisition scheme. Such negotiations can help save time at the formal objection stage by minimising fears which may arise from misunderstandings. The strength of the statutory protection afforded to statutory undertakers must be taken into consideration by acquiring authorities during the planning of a CPO. Not addressing issues of serious detriment to an undertaking could lead to a failure to secure a section 16 certificate from the appropriate Minister (see Section J in Part 2 of this Circular). This is likely to result in a delay to the scheme (except for those CPOs where joint confirmation is available). The failure to fully engage with a statutory undertaker from the outset of a CPO may lead to the costs of dealing with the impacts on statutory undertakings and apparatus being underestimated by the acquiring authority.

63. Talking to landowners and statutory undertakers who's undertakings will be affected will also assist the acquiring authority to understand more about the land it seeks to acquire and any physical or legal impediments to development that may exist. It may also help in identifying what measures can be taken to mitigate the effects of the scheme on landowners and neighbours, thereby reducing the cost of a scheme. Acquiring authorities are expected to provide evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted, save for lands where land ownership is unknown or in question.

Use of alternative dispute resolution techniques

64. In the interests of speed and fostering good will, acquiring authorities are urged to consider offering those with concerns about a CPO full access to alternative dispute resolution (ADR) techniques. ADR techniques are used to resolve disputes without recourse to, or outside of, having to go to court or, in the land compensation context, the Upper Tribunal (Lands Chamber). These should involve a suitably qualified independent third party, including (in appropriate circumstances) those recommended by the Royal Institute of Chartered Surveyors (RICS) who must act in accordance with the 2017 RICS Professional Statement: "*Surveyors advising in respect of compulsory purchase and statutory compensation*". ADR should be available wherever appropriate[12] throughout the whole of the compulsory purchase process. his includes from the planning and preparation stage (i.e. pre-making) through to agreeing the compensation payable for the acquired properties/land. Where a compensation dispute is taken to the Upper Tribunal (Lands Chamber), the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 also allow the Tribunal to suggest and facilitate the use of ADR techniques in cases before it. When making an award of costs, the Welsh Ministers can consider whether a party has behaved unreasonably. This includes whether a party has unreasonably refused to consider the use of ADR techniques even when the refusing party is either: (a) a remaining objector whose objection to a CPO is successful; or (b) the acquiring authority whose CPO is confirmed without modification.

65. The use of ADR techniques can save time and money for both parties, while its relative speed and informality may also help to reduce the pressure which the process inevitably places on those whose properties/land are affected. Acquiring authorities have a duty of care to consider and mitigate the impact on potential claimants from the outset of preparing to make a CPO. For example, mediation might help to clarify concerns relating to the principle of compulsorily acquiring the land.

[12] Bearing in mind remaining objectors have a statutory right to be heard in person at a public inquiry and claimants have a statutory right of recourse to the Upper Tribunal (Lands Chamber) to determine compensation disputes.

Other techniques such as early neutral evaluation might help to relieve concerns at an early stage about the potential level of compensation eventually payable if the CPO were to be confirmed. The parties to a dispute can choose whether they want to use a binding ADR technique, meaning the outcome can be enforced, or a non-binding process to facilitate settlement. A non-binding ADR technique enables parties to commence or continue with litigation to resolve the dispute if settlement is not achieved through the process.

66. The range of ADR techniques available is non-exhaustive. However, the following are a number of recognised and well-established forms of ADR techniques widely adopted:

- Mediation - a neutral third party is appointed as a 'mediator' to help the parties reach a settlement on the dispute which is legally binding and enforceable in the courts. There are two main types of mediation – evaluative and facilitative. In evaluative mediation the mediator will tell the parties what they think of the merits of the case and how they think a court will decide it. Facilitative mediation is where the mediator does not make any evaluation and merely 'facilitates' the parties' discussions.
- Early neutral evaluation - aims to clarify and define legal and factual issues in the dispute, identifying risks and likely outcomes. It is intended to be used before any formal litigation and involves a neutral third party who is unconnected to the dispute or either party who produces an evaluation (or recommendation) as to the likely outcomes if the dispute were to go to court or to an arbitrator for a decision. The evaluation is non-binding and can be used alongside other ADR techniques.
- Expert determination - an independent expert is appointed by the parties to resolve a dispute and the expert's decision is, by prior agreement of the parties, legally binding on the parties and enforceable in the courts.
- Arbitration - a dispute is resolved outside the courts by one or more persons (the "arbitrators") who make the "arbitration award" which is legally binding on the parties and enforceable in the courts.
- Mediation combined with arbitration ('Med-Arb') - involves conferring the mediator with the jurisdiction to alter their role to that of an arbitrator if it appears the parties will not be able to reach a mediated settlement on the dispute. Once the switch has taken place and the mediator has become an arbitrator, they can make an award which is legally binding on the parties and enforceable in the courts.
- Conciliation - the parties to a dispute use a conciliator who meets with the parties both separately and together in an attempt to resolve the dispute. They do this by lowering tensions, improving communications, interpreting issues, encouraging parties to explore potential solutions and assisting parties in finding a mutually acceptable outcome.

Other means of helping those affected by a compulsory purchase order

67. Compulsory purchase proposals will inevitably lead to a period of uncertainty for the owners and occupiers of affected land. Acquiring authorities may wish to consider, if they think appropriate in the circumstances, undertaking the following during the preparatory stage:

- providing full information from the outset about what the compulsory purchase process involves, the rights and duties of those affected and an indicative timetable of events (information should be in a format accessible to all those affected);
- appointing a specified case manager to whom those with concerns about the proposed acquisition can have easy and direct access;
- keeping any delay to a minimum by completing the statutory process as quickly as possible and taking every care to ensure the CPO is advertised and made correctly, and under the terms of the most appropriate enabling power;
- providing a 'not before' date, confirming that acquisition will not take place before a certain time;
- where appropriate, give consideration to funding landowners' reasonable costs of negotiation or other costs and expenses likely to be incurred in advance of the process of acquisition;
- offering advice and assistance to affected occupiers in respect of their relocation; and;
- offering to alleviate concerns about future compensation entitlements by entering into agreements with those whose interests are directly affected on the minimum level of compensation which would be payable if an acquisition goes ahead (not excluding the claimant's future right to refer the matter to the Upper Tribunal (Lands Chamber)). This could include the basis on which disturbance costs would be assessed.

Making sure the compulsory purchase order is made correctly

68. The Welsh Ministers have to be satisfied the statutory procedures have been followed correctly, whether the CPO is opposed or not. This means they have to confirm no one has been, or will be, substantially prejudiced as a result of:

- a defect in the CPO, or
- by a failure to follow the correct procedures with regard to such matters as the service of additional or amended personal notices.

Where the procedures set out in the 1981 Act apply, acquiring authorities must prepare CPOs in conformity with the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004. Acquiring authorities are urged to take every possible care in preparing CPOs, including in recording the names and addresses of those with an interest in the land to be acquired.

69. It can be difficult to describe correctly all the interests in the land proposed for acquisition when preparing the schedule to a CPO. Errors or omissions may occasionally emerge after a CPO has been made and submitted to the Welsh Ministers. Acquiring authorities therefore need to bear in mind the Welsh Ministers' power of modification in such instances (as in all other cases, - see paragraphs 118 - 120 below) is limited by section 14 of the 1981 Act.

70. Acquiring authorities are expected to seek their own legal and professional advice when making CPOs. Where an authority has taken advice but still retains doubts about particular technical points concerning the form of a proposed CPO, it may seek informal written comments from the Welsh Government by submitting a draft CPO for technical examination.

71. Experience suggests that such technical examination by the Welsh Government can assist significantly in avoiding delays caused by drafting defects in CPOs submitted for confirmation. The role of the Welsh Government at this stage will be confined to undertaking a technical examination of the draft CPO to check it complies with the requirements on form and content in the statutes and the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004; without prejudice to the consideration of its merits or demerits.

72. The Land Division of the Welsh Government has responsibility for providing the capacity and resources to accelerate the development of public sector land for public benefit. One of its functions is to share expertise and best practice to address skill gaps in the public sector which includes compulsory purchase, land assembly and project delivery skills.

Other important matters which may require consideration when making a compulsory purchase order

73. Where relevant, acquiring authorities should also have regard to advice on:

- the need to justify the extent of the scheme to be disregarded at the outset,
- the protection afforded to special kinds of land (see Section J in Part 2 of this Circular),
- compulsory purchase of new rights and other interests - for example, in the compulsory creation of a right of access (see Section K in Part 2 of this Circular), and
- restrictions on the compulsory purchase of Crown land (see Section L in Part 2 of this Circular).

Parties to be notified of the making of a compulsory purchase order

74. The parties who must be served notice of the making of a CPO are referred to as "qualifying persons". A qualifying person includes:

- an owner;
- an occupier;
- a tenant (whatever the period of the tenancy);
- a person to whom the acquiring authority would be required to give NTT if it was proceeding under section 5(1) of the 1965 Act;
- a person the acquiring authority thinks is likely to be entitled to make a claim for compensation under section 10 of the 1965 Act (compensation for injurious affection), for example someone with rights over land, if the CPO is confirmed and the compulsory purchase takes place, so far as they are known to the acquiring authority after making diligent inquiry. This relates mainly, but not exclusively, to easements and restrictive covenants.

Statement of Reasons

75. When serving notice of the making and effect of a CPO on qualifying persons, the acquiring authority is expected to send each qualifying person a copy of the authority's Statement of Reasons for making the CPO. A copy of the Statement of Reasons should also be sent, where appropriate, to any applicant for planning permission in respect of the land. Statements of Reasons, although non-statutory, should be as comprehensive as possible to allow acquiring authorities to use them as the basis for their Statements of Case which are required to be served under rules 8 and 9 of the 2010 Rules where a public inquiry is to be held. The general public will also be notified of the making of a CPO through newspaper notices and site notices. It is good practice to publish notice of the making of a CPO in any village/community magazine or newsletter circulating in the area.

76. Detailed guidance on preparing a Statement of Reasons is contained in Section U in Part 4 of this Circular.

Objections to a compulsory purchase order: Grounds of objection and how they should be made

77. For CPOs which are about to be submitted to the Welsh Ministers for confirmation there are statutory publicity requirements which need to be followed. These include placing an advertisement in local newspapers and posting site notices to invite the submission of objections to the Welsh Ministers. Objections can be made by owners, other qualifying persons and third parties, including members of the public. Objections must arrive with the Welsh Ministers within the period specified in the notice which must be a minimum of 21 days. Objectors to a CPO should in the first instance outline their objection in writing. If a bare letter of objection is submitted the Welsh Ministers have the power under section 13(3) of the 1981 Act to require grounds of objection be submitted in writing. Where objections relate exclusively to compensation the Welsh Ministers have the power under section 13(4) of the 1981 Act to disregard such objections.

Objections to a compulsory purchase order: Different types of objection

78. A 'relevant objection' is one made by a person who is an owner, lessee, tenant or occupier of the land or a person to whom the acquiring authority would be required to give a NTT.

79. It may also be an objection made by a person who might be able to make a claim for injurious affection undersection 10 of the 1965 Act. This only applies if the acquiring authority thinks the objector is likely to be entitled to make such a claim if the CPO is confirmed and the compulsory purchase takes place, so far as that person is known to the acquiring authority after making diligent inquiry.

80. A 'remaining objection' is a relevant objection that has not been withdrawn or disregarded (for example, because it relates solely to compensation).

81. Other objections can be made by third parties who are not relevant objectors, for example, a community group or special interest organisation. Although third parties can submit objections, they have no right to be heard at a public inquiry into a CPO. Under rule 16 of the 2010 Rules, however, the inspector may permit them to appear at their discretion (although permission is not to be unreasonably withheld).

Objections to a compulsory purchase order: An objector's Statement of Case

82. The Welsh Ministers can also require remaining objectors, and others who intend to appear at a public inquiry, to provide a Statement of Case. This is a useful device for minimising the need to adjourn inquiries as a result of new information. This is most likely where commercial concerns are objecting to large or complex schemes. Under rules 8(7) and 9(7) of the 2010 Rules, a person may be required to provide further information about matters contained in any such Statement of Case.

83. Objectors may wish to prepare a Statement of Case even when not asked to do so because it may be helpful for themselves and the public inquiry.

Publicising the making of a compulsory purchase order and the objection period

84. Site notices should be erected in a prescribed form (see Form 7 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004) to a conspicuous object or objects on or near the land comprised in the CPO at the start of the objection period, checked weekly and removed once the minimum 21 days objection period has closed. Site notices must:

(a) be addressed to persons occupying or having an interest in the land, and

(b) set out the following:

- state that the CPO has been made and is about to be submitted for confirmation,
- describe the land and state the purpose for which the land is required,
- name a place within the locality where a copy of the CPO and of the map referred to therein may be inspected, and
- specify the time (not being less than 21 days from the day when the notice is first affixed) within which, and the manner in which, objections to the CPO can be made.

Where land comprised in the CPO extends for more than 5 kilometres, it is best practice to fix site notices:

- at intervals of not more than 5 kilometres apart, and
- on or near land in different ownership.

85. To address concerns about information not being available through either the damage or removal of site notices, acquiring authorities should keep a record of weekly visits to check whether individual site notices are:

(a) correct;
(b) damaged;
(c) missing; or
(d) replaced.

By keeping this record it will demonstrate the efforts made by the acquiring authority to publicise the CPO should a challenge be made by an objector on the ground of lack of publicity. Acquiring authorities should also keep a photographic record of inspections to show dates and times.

Documentation to be submitted with a compulsory purchase order

86. Section Q in Part 4 of this Circular provides a checklist of the documents to be submitted to the Welsh Ministers with a CPO. The explanatory notes in Sections R - U in Part 4 of this Circular should be consulted when the CPO, the map and the supporting documents are being compiled.

Stage 4: Consideration of a compulsory purchase order

Decision maker on whether or not to confirm a compulsory purchase order

87. The 'confirming authority' under the 1981 Act is the Welsh Ministers who have the power to authorise acquiring authorities' compulsory purchase of land via CPOs which relate to devolved matters.

88. Under section 14D of the 1981 Act[13], however, the Welsh Minsters can appoint an inspector to act instead of them in relation to the confirmation of a CPO to which section 13A of the 1981 Act applies (i.e. a non-ministerial CPO where there is a remaining objection).

89. Where the Welsh Ministers are the confirming authority for a certain type of CPO, they will carefully consider the suitability of delegating the confirmation decision to an inspector in line with the criteria set out in this Circular. The Welsh Ministers will assess the suitability of delegation for each CPO on its individual merits.

Criteria for deciding whether or not to delegate a decision on a compulsory purchase order to an inspector

90. The Welsh Ministers will consider the suitability of delegating to an inspector the confirmation decision on the following types of non-ministerial CPOs, made under different enabling powers:
    - CPOs made under the 1980 Act;
    - CPOs made under the 1985 Act;
    - CPOs made under the P(LBCA);
    - CPOs made under the 1990 Act.

91. These powers are used selectively and each case is considered on an individual basis. The delegation of a confirmation decision to an inspector will generally only be considered appropriate where a CPO does not raise issues of more than local importance. It could be considered appropriate to delegate a decision to an inspector where, for example, the Welsh Ministers are of the opinion making the CPO appears unlikely to:
    - conflict with national policies;
    - raise novel issues;
    - give rise to substantial controversy beyond the immediate locality;
    - have wide effects beyond the immediate locality; or
    - raise significant legal difficulties.

[13] The power to delegate a decision on a compulsory purchase order to an inspector was inserted by section 181 of the Housing and Planning Act 2016 and applies to compulsory purchase orders submitted to the Welsh Ministers for confirmation in Wales on or after 6 April 2019.

Delegation of a compulsory purchase order to an inspector and new issues/evidence emerge

92. Section 14D of the 1981 Act enables the Welsh Ministers to cancel the appointment of an inspector acting instead of them in relation to the confirmation of a CPO. The appointment may be cancelled at any time before the inspector has made the confirmation decision.

93. While each CPO will be considered on its individual merits, if, at any time until a decision is made by the appointed inspector, the Welsh Ministers consider, in their opinion, the CPO raises issues which should be considered by them, they may decide that the appointment of the inspector should be cancelled. In this instance, the inspector will be asked to submit a report and recommendation to the Welsh Ministers who will make the confirmation decision.

94. If the Welsh Ministers decide to cancel the appointment of an inspector (and do not appoint another inspector to take the decision instead), they must give their reasons for doing so to the inspector, acquiring authority and every person who has made a remaining objection.

Objections to a compulsory purchase order: Where none are made or they are withdrawn

95. If no objections are made to a CPO, or they are withdrawn, and the Welsh Ministers are satisfied that the proper procedure for serving and publishing notices has been observed, they can confirm, modify or reject the CPO without the need for any form of hearing or a public inquiry. If the CPO can be confirmed without modification and does not include statutory undertakers' land or special kinds of land, the Welsh Ministers may under section 14A of the 1981 Act return it back to the acquiring authority for confirmation.

Objections to a compulsory purchase order: Where they are made and are not withdrawn

96. If objections are received and not withdrawn, the Welsh Ministers will either arrange for a public inquiry to be held or – where all the remaining objectors and the acquiring authority agree – arrange for the objections to be considered through the written representations procedure.

Objections to a compulsory purchase order: How they are considered

97. Although all remaining objectors have a right to be heard in person at a public inquiry, acquiring authorities are encouraged to continue to negotiate with both remaining and other objectors after submitting a CPO for confirmation, with a view to securing the withdrawal of objections. This should include employing such ADR techniques as may be agreed between the parties.

98. A CPO may also be considered via the written representations procedure if all the remaining objectors agree and the Welsh Ministers deem it appropriate, as an alternative to holding a public inquiry.

(a) Written representations procedure

99. The Compulsory Purchase of Land (Written Representations Procedure) (National Assembly for Wales) Regulations 2004 ("2004 Regulations"), prescribe the procedure by which objections can be considered in writing. Once the Welsh Ministers have indicated the written representations procedure will be followed, the acquiring authority has 15 working days to make additional representations in support of the CPO. Once these representations have been copied to the remaining objectors, the remaining objectors will also have 15 working days to make representations to the Welsh Ministers. These in turn are copied to the acquiring authority who then has a final opportunity to comment on the objectors' representations but cannot raise new issues.

100. The written representations procedure will be used to consider CPOs unless a remaining objector notifies the Welsh Ministers they wish for a public inquiry to be held. In such cases a public inquiry will be called in the normal way.

101. Where a CPO is subject to the written representation procedure, and a site visit is deemed necessary by the inspector, a site visit should be conducted within 15 weeks of the starting date letter. In cases where there has not been a site visit, the timescales for decision will be taken from the final exchange of representations under regulation 5 of the 2004 Regulations.

(b) Public inquiry procedure

(i) Inquiries procedure rules

102. Where a CPO is submitted to the Welsh Ministers for confirmation and objections have been received which are not withdrawn then, unless the matter can be dealt with by way of the written representation procedure, the Welsh Ministers must hold a public inquiry. The 2010 Rules prescribe the procedure by which objections to a CPO, or a compulsory rights orders (see rule 2 of the 2010 Rules and section 29 of, and paragraph 11 of Schedule 4 to, the 1981 Act), can be considered via a public inquiry.

103. The 2010 Rules can be summarised as follows:

- Rule 3 provides for written notice from the Welsh Ministers of their intention to cause a public inquiry to be held which commences the procedure.

- Rules 4 – 7 cover matters associated with the holding of pre-inquiry meetings including: serving of outline statements.

- Rules 8 – 9 deal with the timescales for the serving of statements of case.

- Rules 10 – 16 comprise matters associated with the public inquiry timetable, appointment of assessor, the date and public notification of the public inquiry and appearances at the public inquiry including the representation of the Welsh Ministers.

- Rule 17 provides for the handling of evidence at the public inquiry including submission/reading of proofs of evidence.

- Rules 18 – 21 deal with procedure at the public inquiry, site inspections and post-inquiry procedures (including notice of decisions).

- Rule 22 provides the power to extend time.

- Rule 23 allows the sending of notices or documents by post.

(ii) Timing of the public inquiry

104. Practice may vary but once the need for a public inquiry has been established, it will normally be arranged by the Planning Inspectorate Wales in consultation with the acquiring authority for the earliest date on which an appropriate inspector is available. Having regard to the minimum time requirements to comply with the 2010 Rules.

105. It is important to ensure adequate notification is given to objectors of the public inquiry dates to ensure they have sufficient time to prepare evidence for the public inquiry. This will also assist in the efficient conduct of the public inquiry.

106 Once the date of the public inquiry has been fixed it will be changed only for exceptional reasons. The Welsh Ministers will not normally agree to cancel a public inquiry unless all remaining objectors withdraw their objections or the acquiring authority indicates formally that it no longer wishes to pursue the CPO in sufficient time for notice of cancellation of the public inquiry to be published. As a general rule, the public inquiry date will not be changed where the acquiring authority or an objector needs more time to prepare its evidence. Nor would the public inquiry date normally be changed because a particular advocate is unavailable on the specified date.

(iii) Scope for joint or concurrent inquiries

107. It is important to identify at the earliest possible stage any application or appeal associated with, or related to, the CPO which may require approval or decision by the Welsh Ministers. This is to allow the appropriateness of arranging a joint public inquiry or concurrent public inquiries can be considered. Such actions might include, for example, an application for an order stopping up a highway (when it is to be determined by the Welsh Ministers) or an appeal against the refusal of planning permission.

108. Any such arrangements cannot be settled until the full range of proposals and the objections or grounds of appeal are known. The acquiring authority should ensure that any relevant statutory procedures for which it is responsible (including actually making the relevant CPO) are carried out at the right time to enable any related applications or appeals to be processed in step.

(iv) Statements of Case

109. Where a public inquiry is to be held into a CPO, it is possible for the acquiring authority to use the non-statutory Statement of Reasons as the basis for the Statement of Case required to be served under rule 8 or 9 of the 2010 Rules. The acquiring authority's Statement of Case should set out a detailed response to the objections made to the CPO.

(v) Supplementary information

110. When considering the acquiring authority's CPO submission, the Welsh Ministers may, if necessary, request clarification of particular points.

111. Such clarification will often relate to statutory procedural matters, such as confirmation that the acquiring authority has complied with the requirements relating to the service of notices (see also Section R in Part 4 of this Circular). This information may be needed before the public inquiry can be arranged. But it may also relate to matters raised by objectors, such as the ability of the acquiring authority or a developer to meet development costs.

112. Where further information is needed, the Welsh Ministers will write to the authority setting out the points of difficulty and the further information or statutory action required. The Welsh Ministers will copy its side of any such correspondence to remaining objectors, and request the acquiring authority should do the same.

(vi) Public inquiry costs

113. Advice on the award of costs is given in Section 12 Annex: Awards of Costs to the Welsh Government's Development Management Manual. The principles of this advice also apply to written representations procedure costs.

114. When notifying successful objectors of the decision whether or not to confirm a CPO under the 2010 Rules or the 2004 Regulations, the Welsh Ministers will remind them they may be entitled to claim public inquiry or written representations costs and invite them to submit an application for an award of costs. The Welsh Ministers may also award costs on the basis of unreasonable behaviour by any of the parties to a CPO.

115. Acquiring authorities will be required to meet the administrative costs of a public inquiry into a CPO and the expenses incurred by the inspector in holding it. Likewise, the acquiring authority will be required to meet the inspector's costs associated with the consideration of written representations. Other administrative costs associated with the written representations procedure are, however, likely to be minor and a confirming minister will decide on a case by case basis whether or not to recoup them from the acquiring authority under section 13B of the 1981 Act. The daily amount of costs which may be recovered where a public inquiry is held to which section 250(4) of the Local Government Act 1972 applies, or where the written representations procedure is used, is prescribed in secondary legislation[14].

[14] Current daily rates are prescribed in the Local Inquiries and Qualifying Procedures (Standard Daily Amount) (Wales) Regulations 2017.

(vii) Programme officers

116. Acquiring authorities may wish to consider appointing programme officers to assist inspectors in organising administrative arrangements for larger CPO inquiries. A programme officer might undertake tasks such as assisting with preparing and running of any pre-inquiry meetings, preparing a draft programme for the public inquiry, managing the public inquiry document library and, if requested by the inspector, arranging accompanied site visits. A programme officer would also be able to respond to enquiries about the running of the public inquiry during its course.

Legal difficulties

117. Whilst only the Courts can rule on the validity of a CPO, the Welsh Ministers will not confirm a CPO if it appears to be invalid, even if there are no objections to it. Where this is the case, the Welsh Ministers will issue a formal, reasoned decision refusing to confirm the CPO. The decision letter will be copied to all those who were entitled to be served with notice of the making and effect of the CPO and to any other person who made a representation.

Modification of compulsory purchase orders

118. The Welsh Ministers may confirm a CPO with or without modifications, or refuse to confirm the CPO. Section 14 of the 1981 Act imposes limitations on the Welsh Ministers' power to modify the CPO. This provides that a CPO can only be modified to include any additional land if all the people who are affected by the potential acquisition give their consent.

119. There is no scope for the Welsh Ministers to add to, or substitute, the statutory purpose (or purposes) for which it was made. The power of modification is used sparingly and not to re-write CPOs extensively. While some minor slips can be corrected, there is no need to modify a CPO solely to show a change of ownership where the acquiring authority has acquired a relevant interest or interests after submitting the CPO.

120. If it becomes apparent to an acquiring authority that it may wish the Welsh Ministers to substantially amend the CPO by modification at the time of any confirmation, the acquiring authority should inform the Welsh Ministers in writing as soon as possible, setting out the proposed modification. This communication should be copied to each remaining objector, any other person who may be entitled to appear at the public inquiry (such as any person required by the Welsh Ministers to provide a Statement of Case), and to any other interested persons who seem to be directly affected by the matters that might be subject to modification. Where such potential modifications have been identified before the public inquiry is held, the inspector will normally wish to provide an opportunity for them to be debated.

Confirmation of compulsory purchase orders in stages

121. In cases where the 1981 Act applies to a CPO, section 13C of that Act provides a general power for the CPO to be confirmed in stages.

This power is intended to make it possible for part of a scheme to be able to proceed earlier than might otherwise be the case, although its practical application is likely to be limited. It is not a device to enable the land required for more than one scheme to be included in a single CPO.

122. The decision to confirm in part must be accompanied by a direction postponing consideration of the remaining part until a specified date. The notices of confirmation of the confirmed part of the CPO must include a statement indicating the effect of that direction and be published, displayed and served in accordance with section 15 of the 1981 Act.

123. The power to confirm a CPO in stages may be used where the Welsh Ministers are satisfied a CPO should be confirmed for part of the land covered by the CPO but they cannot yet decide whether the CPO should be confirmed in relation to other parts of the CPO land. This could be, for example, because further investigations are required to establish the extent, if any, of alleged contaminated land. Where a CPO is confirmed in part under section 13C of the 1981 Act, the remaining undecided part is to be treated as if it were a separate CPO, and the Welsh Ministers will set a deadline for consideration of that remaining part.

124. To confirm in part, the Welsh Ministers will need to be satisfied that:

- the proposed scheme or schemes underlying the need for the CPO can be independently implemented over that part of the CPO land to be confirmed, regardless of whether the remainder of the CPO is ever confirmed;
- the statutory requirements for the service and publication of notices have been followed; and
- there are no remaining objections relating to the part to be confirmed (if the minister wishes to confirm part of a CPO prior to holding a public inquiry or following the written representations procedure).

If the Welsh Ministers were to be satisfied on the basis of the evidence already available to them that a part of the CPO land should be excluded, they may exercise their discretion to refuse to confirm the CPO or, in confirming the CPO, they may modify it to exclude the areas of uncertainty.

Confirmation of a compulsory purchase order by the acquiring authority

125. Section 14A of the 1981 Act provides a discretionary power for the Welsh Ministers to notify the acquiring authority that it may assume responsibility for confirming a CPO which was submitted to the Welsh Ministers for confirmation if certain specified conditions are met. The Welsh Ministers must be satisfied that:

- there are no outstanding objections to the CPO;
- all the statutory requirements as to the service and publication of notices have been complied with; and
- the CPO is capable of being confirmed without modification.

126. The power of the Welsh Ministers to issue such a notice to an acquiring authority is excluded in cases where:
- the land to be acquired includes land acquired by a statutory undertaker for the purposes of its undertaking, that statutory undertaker has made representations to the minister responsible for sponsoring its business and they are satisfied that the land to be taken is used for the purposes of the undertaking; or
- the land to be acquired forms part of a common, open space, or fuel or field garden allotment,

as confirmation of a CPO in these circumstances is contingent on other ministerial decisions.

127. To exercise their discretionary power under section 14A of the 1981 Act, the Welsh Ministers will serve a notice on the acquiring authority giving it the power to confirm the CPO. The sealed order and one sealed map (or sets of sealed maps) will be returned with the notice. The notice should:
- indicate that if the acquiring authority decides to confirm the CPO, it should be endorsed as confirmed with the endorsement authenticated by a person having authority to do so;
- suggest a form of words for the endorsement;
- refer to the statutory requirement to serve notice of confirmation under section 15 of the 1981 Act; and
- require that the relevant Welsh Minister should be informed of the decision on the CPO as soon as possible with (where applicable) a copy of the endorsed CPO.

128. If the acquiring authority decides to confirm its own CPO, it should return the notice of confirmation to the Welsh Ministers. The form of the notice of confirmation is set out in Forms 9A and 11 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004.

129. An acquiring authority exercising the power to confirm its CPO must notify the Welsh Ministers as soon as reasonably practicable of its decision. Until such notification is received, the Welsh Ministers can revoke the acquiring authority's power to confirm. This could be necessary, for example, if the Welsh Ministers receive a late objection, which raises important issues, is accepted, or if the acquiring authority failed to decide whether to confirm the CPO within a reasonable timescale.

130. An acquiring authority's power to confirm a CPO does not extend to being able to modify the CPO or to confirm the CPO in stages. If an acquiring authority considers there is a need for a modification, for example, to rectify drafting errors, it will have to ask the Welsh Ministers to revoke the notice which allowed them to assume responsibility for confirming their CPO.

Notification of the date of the confirmation of a compulsory purchase order

131. Acquiring authorities are asked to ensure in all cases, this includes where they confirm their own CPOs, that the Welsh Ministers are notified without delay of the date when notice of the confirmation of a CPO is first published in the press in accordance with section 15 of the 1981 Act. This is important as the six weeks' period allowed by virtue of section 23 of the 1981 Act for an application to the High Court to be made begins on this date. Similarly, and for the same reason, where the Welsh Ministers have given a certificate under section 19 of, or paragraph 6 of Schedule 3 to, the 1981 Act, they should be notified straight away of the date when notice of the confirmation of the associated CPO is first published.

Legal challenges relating to a compulsory purchase order

132. Any person aggrieved who wishes to dispute the validity of a CPO, or any of its provisions, can challenge the CPO through an application to the High Court under section 23 of the 1981 Act on the grounds that:

- the authorisation of the CPO is not empowered to be granted under the 1981 Act or an enactment mentioned in section 1(1) of that Act; or
- a 'relevant requirement' has not been complied with.

A 'relevant requirement' is any requirement under the1981 Act, of any regulations made under it, or the Tribunals and Inquiries Act 1992 or of regulations made under that act.

133. Any application to the High Court must be made within 6 weeks of the date when the acquiring authority first publishes notice of the confirmation of the CPO or making of the CPO in accordance with the 1981 Act.

134. In relation to a decision not to confirm a CPO, the decision can be challenged through the courts by means of an application for judicial review under Part 54 of the Civil Procedure Rules 1998.

High Court powers under section 23 of the Acquisition of Land Act 1981

135. Section 24 of the 1981 Act sets out the powers of the High Court on an application under section 23 of the 1981 Act. First, the High Court has the discretionary power to grant interim relief suspending the operation of the CPO or certificate pending the final determination of the court proceedings (section 24(1)). Second, where a challenge under section 23 is successful, the High Court has the discretionary power to quash:

- the decision to confirm the CPO (section 24(3)) (NB: this does not apply in relation to an application under section 23 which was made before 13 July 2016); or
- the whole or any part of a CPO (section 24(2)).

Time period for implementing a compulsory purchase order where it is the subject of a legal challenge

136. Under section 4A of the 1965 Act (for NTT process) and section 5B of the Compulsory Purchase (Vesting Declarations) Act 1981 (for general vesting declaration ("GVD") process) the normal three year period for implementing a CPO is extended for:

- a period equivalent to the period from the date an application challenging the CPO is made until it is withdrawn or finally determined; or
- one year

whichever is the shorter. NB: The extended time period does not apply to an application made in respect of a CPO which became operative before 13 July 2016. An application to challenge a CPO is finally determined after the normal time for submitting an appeal has elapsed or, where an appeal has been submitted, it is either withdrawn or finally determined.

Unconfirmed compulsory purchase orders

137. Unconfirmed CPOs will result in the compulsory purchase of the land not being authorised. Acquiring authorities should consider the reasons for non-confirmation and decide whether or not they wish to pursue a new CPO or seek alternative resolutions to acquire the land within the framework and principles of published guidance on the acquisition of assets[15].

Stage 5: Implementing a compulsory purchase order

Confirmation notice – A compulsory purchase order becoming operative

138. Unless it is subject to special Senedd procedure/special parliamentary procedure (for example, in the case of certain special kinds of land (see Section J in Part 2 of this Circular), a CPO which has been confirmed becomes operative on the date on which the notice of its confirmation ('confirmation notice') is first published. Section 3 of the 1965 Act provides following confirmation of a CPO, the acquiring authority can continue in their negotiations to acquire the CPO land (or any part of it) by agreement, avoiding the need to implement the CPO negotiations prove successful.

139. The method of publication and the information which must be included in a confirmation notice is set out in section 15 of the 1981 Act. Confirmation notices must also contain the following where a GVD is to be executed (see paragraphs 154 - 155 below):

- a prescribed statement about the effect of Parts 2 and 3 of the Compulsory Purchase (Vesting Declarations) Act 1981; and

[15] For example, the Welsh Government's *Managing Welsh Public Money (January 2016).*

- invite any person who would be entitled to claim compensation if a declaration were executed under section 4 of that Act to give the acquiring authority information about the person's name, address and interest in land, using a prescribed form.

140. Acquiring authorities must issue confirmation notices within 6 weeks of the date of the CPO being confirmed or such longer period as may be agreed between the acquiring authority and the Welsh Ministers. Where an acquiring authority fails to do so, the Welsh Ministers may take the necessary steps itself and recover their reasonable costs of doing so from the acquiring authority.

141. The acquiring authority may then exercise the compulsory purchase power (unless the operation of the CPO is suspended by the High Court). The actual acquisition process will proceed by the acquiring authority serving a NTT or by executing a GVD.

Confirmation notice – Registering a confirmation notice as a local land charge

142. Section 15(6) of the 1981 Act provides a confirmation notice should be sent by the acquiring authority to the Chief Land Register and that it shall be a local land charge. Where land in the CPO is situated in an area for which the local authority remains the registering authority for local land charges (i.e. where the changes made by Parts 1 and 3 of Schedule 5 to the Infrastructure Act 2015 have not yet taken effect in that local authority area), the acquiring authority should comply with the steps required by section 5 of the Local Land Charges Act 1975 (prior to it being amended by the Infrastructure Act 2015).

Notice to treat: Form

143. There is no prescribed form for a NTT but the document must:

- describe the land to which it relates
- demand particulars of the interest in the land
- demand particulars of the compensation claim of the recipient, and
- state that the acquiring authority is willing to treat for the purchase of the land and for compensation for any damage caused by the execution of the works.

A NTT should be served by acquiring authorities on all the persons interested in, or having power to sell and convey or release, the land, so far as known to the acquiring authority after making diligent inquiry.

144. Possession cannot normally be taken until the acquiring authority has served a ‘notice of entry’ and the minimum period specified in that notice has expired.

145. Where a NTT has been served, the title to the land is subsequently transferred by a normal conveyance.

Notice to treat: When a notice should be served

146. A NTT may not be served after the end of the period of three years beginning with the date on which the CPO becomes operative (i.e. the date on which the confirmation notice is first published) under section 4 of the 1965 Act. Where an acquiring authority does not implement a CPO within the three year period, the CPO will fall and will no longer authorise the compulsory acquisition of land. If an acquiring authority still wishes to proceed with the underlying scheme it will need to start the compulsory purchase process again. Where a NTT has been served before the end of the period of three years, it then remains effective for a further three years under section 5(2A) of the 1965 Act.

147. The prospect of a period of up to six years before the acquiring authority takes possession of land/property can cause uncertainty for those directly affected by the CPO. Acquiring authorities are therefore urged to minimise the period of uncertainty and keep affected people fully informed about the various processes involved and of their likely timing. Furthermore, keeping open the possibility of earlier acquisition where requested by an owner. In some cases, however, it may be in the best interests of the people affected for the acquiring authority to wait until it is ready to proceed with the next stage of its scheme. For example, if the acquiring authority intends to provide alternative accommodation for the people affected it may be in everyone's interests for the acquiring authority not to take the title to the land until the alternative accommodation is ready or available. Engaging quickly, clearly and effectively with the people affected will help acquiring authorities identify and address people's concerns or any particular circumstances affecting businesses or landowners that need to be taken into account in determining when the CPO should be implemented.

Notice to treat: Period of notice to be given before taking possession under the notice to treat process

148. Once the stage of taking possession of land is reached, the acquiring authority is required by section 11 of the 1965 Act to serve notice of its intention to gain entry and take possession of the land ('notice of entry'). In respect of a CPO which is confirmed on or after 3 February 2017, the notice period will be not less than 3 months beginning with the date of service of the notice of entry, except in either of the following circumstances:

- where it is a notice to which section 11A(4) of the 1965 Act applies i.e. where a further notice of entry is served on a 'newly identified person' under section 11A(1)(b) and that person is not an occupier, or the acquiring authority was unaware of the person because they received misleading information in response to their inquiries under section 5(1) of the 1965 Act. In these circumstances, section 11A(4) provides for a shorter minimum notice period; or

- where it is a notice to which paragraph 13 of Schedule 2A to the 1965 Act applies i.e. where under the material detriment provisions in that Schedule, an acquiring authority is permitted to serve a further notice of entry, after the initial notice of entry ceased to have effect under paragraph 6 of Schedule 2A to the 1965 Act, in respect of the land proposed to be acquired.

149. Although it is necessary for a NTT to have been served, this can be done at the same time as serving the notice of entry. A notice of entry, however, cannot be served after a NTT has ceased to be effective. A NTT can only be withdrawn in the following limited circumstances under the provisions of section 31(1) or (2) of the Land Compensation Act 1961 ("the 1961 Act"):

(a) Where a claimant has delivered a notice in writing of the amount claimed by them, stating the exact nature of the interest in respect of which compensation is claimed, and giving details of the compensation claimed, distinguishing the amounts under separate heads and showing how the amount claimed under each head is calculated, the acquiring authority may, at any time within six weeks after the delivery of the notice, withdraw any NTT which it has served in respect of the land the subject of the CPO.

(b) Where a claimant has failed to deliver such a notice as outlined in paragraph (a) above, the acquiring authority may, at any time after the decision of the Upper Tribunal (Lands Chamber) on their claim but not later than six weeks after the claim has been finally determined, withdraw any NTT which has been served in respect of the land the subject of the CPO unless the authority have entered into possession of the land by virtue of the NTT.

Agreeing a date of entry

150. Whichever procedure for taking title to and possession of the land is used the acquiring authority should consider the steps that the people affected will need to take to vacate their properties. Where possible, it should adopt a timetable that takes into account the needs of owners, tenants and occupiers to move out, relocate and/or cease their business operations. Even when this is not possible, acquiring authorities should give people as much notice as possible of proposed stages in the process. Acquiring authorities are encouraged to negotiate a mutually convenient date of entry with a claimant and it is good practice to:

- give owners an indication of the approximate date when possession will be taken when serving a NTT, and
- consider the steps which those being dispossessed will need to take to vacate their properties before deciding on the timing of actually taking possession.

151. Acquiring authorities should also be aware that:

- agricultural landowners or tenants may need to know the date for the notice of entry earlier than others because of crop cycles and the need to find alternative premises;
- short notice often results in higher compensation claims; and
- until there is an actual or deemed NTT an occupier is at risk of any costs they incur in anticipation of receiving such a notice not being claimable. Acquiring authorities would be advised to analyse how long it will take most occupiers to relocate and if the notice of entry is inadequate then they should consider giving an earlier commitment to pay certain costs such as their reasonable costs in identifying suitable alternative accommodation.

152. It is usually important to make an accurate record of the physical condition of the land at the valuation date.

Notice to treat: When the acquiring authority does not take possession at the time specified in the notice of entry

153. Where a compulsory purchase of land has been authorised on or after 3 February 2017 (i.e. where the CPO was confirmed on or after that date), section 11B of the 1965 Act allows occupiers with an interest in the land to serve a counter-notice on the acquiring authority to require it to take possession of the land by no later than a date specified in the counter-notice. The date specified in the counter-notice:

(a) must not be earlier than the date specified in the notice of entry; and

(b) must be at least 28 days after the day on which the counter-notice is served.

General vesting declaration: Form

154. A GVD can be used as an alternative to the NTT procedure. It replaces the NTT, notice of entry and the conveyance with one procedure which automatically vests title in the land with the acquiring authority on a certain date.

155. GVDs are made under the Compulsory Purchase (Vesting Declarations) Act 1981 in accordance with the Compulsory Purchase of Land (Vesting Declarations) (Wales) Regulations 2017 ("2017 Regulations") which prescribe the form a GVD should take i.e. Form 1 in Schedule 1 to the 2017 Regulations.

General vesting declaration: When may a declaration be used

156. An acquiring authority may prefer to proceed by GVD as this enables the authority to obtain title to the land without having first to investigate interests in the land, agree on a conveyance of the land with the landowner, or settle the amount of compensation owed to any person with a qualifying interest in the land (subject to any special procedures such as the purchase of commoners' rights: see section 21 of, and Schedule 4 to, the 1965 Act). It can be particularly useful where:

- some of the owners are unknown or hard to trace; or
- an acquiring authority wishes to obtain title with minimum delay (for example, the disposal of land to developers).

Using a GVD can therefore reduce the administration burden for the acquiring authority, particularly if multiple interests are being acquired (such as in major schemes and significant infrastructure developments). At the end of the period specified in the GVD, the title to the land, together with the right of entry, vest in the acquiring authority.

157. A GVD may be made for any part or all of the land included in a CPO except where an acquiring authority has already served (and not withdrawn) a NTT in respect of that land. Section 4(1B) of the Compulsory Purchase (Vesting Declarations) Act 1981 makes clear that this exception does not apply to deemed notices to treat that may, for example, arise from a blight notice or purchase notice.

158. For minor tenancies and long tenancies which are about to expire, a GVD will not be effective as the right of entry, and thus the obligation to pay compensation, does not apply. A minor tenancy is a tenancy for a year or from year to year or any lesser interest, for example, weekly or monthly tenancies. A long tenancy which is about to expire is a tenancy granted for a period greater than a year but that has, at the date of the GVD, a period still to run (which is longer than a year) but is less than the period specified at Clause 2 of the GVD for the land in question (see Form 1 in Schedule 1 to the 2017 Regulations).

159. The reason for excluding minor tenancies and long tenancies which are about to expire from the vesting of interests on the vesting date is to permit the acquiring authority to wait until such tenancies end in accordance with their terms rather than having to acquire them and pay compensation (the vesting date would be the valuation date). In this scenario, tenants are able to remain in occupation until their tenancies expire. All interests in the land, except the tenancies, would vest in the acquiring authority and the vesting would be subject to the tenancy until they expire or are determined by notice to quit. If a landlord's interest vests in the acquiring authority pursuant to the GVD and the authority waits until a tenancy ends, the interest vested in the authority is freed from the burden of the tenancy and the authority may then enter the land.

There is a special procedure set out in section 9 of the Compulsory Purchase (Vesting Declarations) Act 1981 for dealing with minor tenancies and long tenancies which are about to expire.

160. Where unregistered land is acquired by GVD, acquiring authorities are recommended to voluntarily apply for first registration under section 3 of the Land Registration Act 2002.

General vesting declaration: Executing the declaration

161. For a compulsory purchase of land authorised on or after 3 February 2017, section 5(2) of the Compulsory Purchase (Vesting Declarations) Act 1981 provides a GVD must not be executed before a CPO has become operative i.e. the date on which the confirmation notice is first published. This is particularly relevant for CPOs which are subject to special Senedd procedure/special Parliamentary procedure (for example, in the case of certain special kinds of land (see Section J in Part 2 of this Circular) and therefore do not come into operation in accordance with section 26(1) of the 1981 Act. Section 26(1) of the 1981 Act provides a CPO, other than one to which the Statutory Orders (Special Procedure) Act 1945 applies, shall become operative on the date on which notice of the confirmation or in the case of a ministerial CPO the making of the CPO is first published in accordance with the 1981 Act.

162. For a compulsory purchase of land authorised on or after 3 February 2017, acquiring authorities must execute a GVD in a prescribed form (i.e. Form 1 in Schedule 1 to the 2017 Regulations) to take possession of land which they are authorised to compulsorily acquire through a CPO. The GVD must specify the date on which the acquiring authority will take possession of the land. This date must be no less than three months after the date when the service of a notice specifying the land and stating the effect of the GVD is completed[16] (see paragraph 163 below). Acquiring authorities are required to confirm with affected parties the date on which the service of the notice was completed via the giving of a certificate[17]. This will assist determine the valuation date.

General vesting declaration: Period of notice to be given before taking possession and service of notice of execution

163. For a compulsory purchase of land authorised on or after 3 February 2017, the acquiring authority must, as soon as reasonably possible after executing the GVD and before taking possession of the land, serve a notice specifying the land and stating the effect of the GVD in a prescribed form[18] (i.e. Form 2 in Schedule 1 to the 2017 Regulations) on:

(a) every occupier of any part of the land specified in the declaration (other than land in which there subsists a minor tenancy or a long tenancy which is about to expire), and

[16] The minimum vesting period to be given in a GVD under section 4(1) of the Compulsory Purchase (Vesting Declarations) Act 1981.
[17] Section 4(2) of the Compulsory Purchase (Vesting Declarations) Act 1981.
[18] Section 6(1) of the Compulsory Purchase (Vesting Declarations) Act 1981.

(b) every other person who has given information to the acquiring authority with respect to any part of the land in pursuance of the invitation published and served under section 15 of, or paragraph 6 of Schedule 1 to, the 1981 Act.

The prescribed notice should:

- specify the CPO land;
- state the effect of the GVD and the date it was executed; and
- specify a date, which must be at least three months away, when title to the land will pass to the acquiring authority (the vesting date).

164. Acquiring authorities should consider how long it will take occupiers to reasonably relocate. If three months is deemed to be insufficient, consideration should be given to increasing the vesting period (and therefore the notice period).

General vesting declaration: When a declaration may not be served

165. For CPOs which become operative on or after 13 July 2016, section 5A of the Compulsory Purchase (Vesting Declarations) Act 1981 makes clear that a GVD may not be executed after the end of the period of three years beginning with the day on which the CPO becomes operative (i.e. the date on which the notice of confirmation ('confirmation notice') is published. Where an acquiring authority does not implement a CPO within the three year period, the CPO will fall and will no longer authorise the compulsory acquisition of land. If an acquiring authority still wishes to proceed with the underlying scheme it will need to start the compulsory purchase process again.

General vesting declaration*:* Making a declaration when the owner, lessee or occupier is unknown

166. If it is not possible, after reasonable enquiry, to ascertain the name or address of an owner, lessee or occupier of land, the acquiring authority should comply with section 329(2) of the 1990 Act to serve notice after execution of the declaration (required under section 6 of the Compulsory Purchase (Vesting Declarations) Act 1981).

Conveying of land from Charity Trustees to a public authority

167. If an acquiring authority is acquiring land from a charity, consideration should be given to the provisions in Part 7 of the Charities Act 2011 (i.e. restrictions on dispositions of land held by or in trust for a charity in Wales) and the Charity Commission may need to be consulted.

Delivery of the compulsory acquisition scheme

168. Acquiring authorities remain responsible for the implementation of a CPO and delivery of the underlying scheme, whether they are using a third party contractor or not. Acquiring authorities should ensure contractors and other parties acting on their behalf follow good practice when dealing with affected landowners.

Also, that responsibilities are clearly defined in contracts and contractors undertake work in line with agreed work schedules and conditions attached to associated planning permissions. They should also repair any damage caused before the work is signed-off and acquiring authorities should take necessary steps to resolve any disputes which may arise.

169. Acquiring authorities should:

- ensure they have in place a clear complaints procedure for any contract work, and
- provide a clear point of contact or liaison officer for landowners affected by the scheme to (where necessary) raise issues with the contractor.

Where complaints are made against a local authority acting in their role as an acquiring authority contact details of the authority's monitoring officer should be made readily available to any complainant.

Stage 6: Compensation

Basis of compensation

170. Compensation payable for the compulsory acquisition of an interest in land is based on the principle that the owner should be paid neither less nor more than their loss. This is known as the 'equivalence principle'. The Welsh Ministers expect acquiring authorities to adopt a facilitative approach to the process of negotiating compensation, to ensure that claims are dealt with efficiently and that advance payments (where requested) are paid promptly.

Compensation where land is taken

171. While the compensation payable is a single figure, in practice, the assessment of compensation will involve various elements. Broadly, the elements of compensation where land is taken are:

(a) payment on what the land might be expected to realise if sold on the open market by a willing seller (known as the 'open market value');

(b) 'disturbance' payments for losses caused by reason of losing possession of the land and other losses not directly based on the value of land;

(c) loss payments for the distress and inconvenience of being required to sell and/or relocate from your property at a time not of your choosing;

(d) 'severance/injurious affection' payments for the loss of value caused to retained land by reason of it being severed from the land taken, or caused as a result of the use to which the land is put.

(a) Market value of interest in land taken

172. The market value of land taken via compulsory acquisition is the amount which it might be expected to realise if sold on the open market by a willing seller (rule 2, section 5 of the 1961 Act), disregarding any effect of the value of the compulsory acquisition scheme (known as the 'no scheme' principle). If a claimant opts for the market value of land route they cannot also claim compensation for disturbance, for example, for relocating a business operation.

The logic being that to have achieved the market value of land the business would have relocated in any event. Disturbance can only be claimed where a claimant is arguing they would not have been a willing seller in the open market i.e. abandon their business, and, but for the compulsory acquisition, would have continued to operate their business on the land.

173. Certificates of Appropriate Alternative Development may also be used to indicate the planning permissions that could have been obtained for the land the subject of the compulsory acquisition, which would affect any development value of the land (section 17 of the 1961 Act).

174. Alternatively, where the property is used for a purpose for which there is no general demand or market (for example, a church) and the owner intends to reinstate elsewhere, they may be awarded compensation on the basis of the reasonable cost of equivalent reinstatement (see rule 5, section 5 of the 1961 Act).

Rule (2) of section 5 of the Land Compensation Act 1961

175. Rule (2) of section 5 of the 1961 Act provides that compensation is paid on what the land would have sold for on the open market. This value may derive from the existing use and condition of the land, referred to as existing use value, or from the potential for its development, referred to as hope value. Hope value is affected by taking account of actual or prospective planning permission (see section 14 of the 1961 Act). Section 14 of the 1961 Act provides that when assessing open market value account may be taken of-

(i) a planning permission in force at the relevant valuation date;

(ii) the prospect of the grant of planning permission on or after the relevant valuation date, subject to certain scheme cancellation assumptions; and/or

(iii) in the case of appropriate alternative development, an assumption may be made–

(a) of the grant of planning permission for that development on the relevant valuation date, or

(b) of a certainty on the relevant valuation date that planning permission for that development will be granted at a later time, subject to certain scheme cancellation assumptions.

176. A certificate may be granted identifying appropriate alternative development which could be expected to be granted planning permission, with a general indication of any conditions or planning obligation which the planning permission could be expected to be subject to (see Section O in Part 3 of this Circular).

177. The scheme cancellation assumptions referred to in paragraph 175(i) and (iii)(b) above are that—

(i) the scheme of development underlying the acquisition had been cancelled on the launch date,

(ii) no action has been taken (including acquisition of any land, and any development or works) by the acquiring authority wholly or mainly for the purposes of the scheme,

(iii) there is no prospect of the same scheme, or any other scheme to meet the same or substantially the same need, being carried out in the exercise of a statutory function or by the exercise of compulsory purchase powers, and

(iv) if the scheme was for use of the relevant land for or in connection with the construction of a highway including its alteration or improvement, that no highway will be constructed to meet the same or substantially the same need as the scheme highway would have been constructed to meet.

"The launch date" means whichever of the following dates applies—

(a) if the acquisition is authorised by a CPO, the date of first publication of the notice required under section 11 of the 1981 Act or (as the case may be) paragraph 2 of Schedule 1 to that Act,

(b) if the acquisition is authorised by any other order—

(i) the date of first publication, or

(ii) the date of service,

of the first notice that, in connection with the acquisition, is published or served in accordance with any provision of or made under any Act, or

(c) if the acquisition is authorised by a special enactment other than an order, the date of first publication of the first notice that, in connection with the acquisition, is published in accordance with any Standing Order of either House of Parliament relating to private bills.

178. Where there is a prospect of the grant of planning permission on or after the relevant valuation date, or in the case of appropriate alternative development planning permission is assumed to be granted on the relevant valuation date or it is considered certain that planning permission will be granted at a later time, the value given to that has to be determined. Planning permission might be approved for a very high specification for houses in a low price area, but the compensation would reflect what the local market would pay for such properties and what the land would be worth with the ability to construct them. Broadly, valuation is carried out by looking for the sale price of development land with that potential or by a residual valuation, calculating the land value by deducting the developer profit and build costs, risks and uncertainties from the value of the associated likely development. In both approaches the valuation would reflect what development would be approved having regard to adopted planning policies to make the development acceptable in planning terms, including: expectations as to affordable housing; good design; open space provision; provision for community facilities such as a doctor's surgery and a school; remediation of contamination; infrastructure and other obligations. Compensation for compulsory purchase therefore reflects the value of land with its current use or any prospect of a planning permission being granted which meets policy requirements. The compensation would also disregard any increase or decrease in land value caused by the compulsory purchase scheme i.e. the 'no scheme principle'.

(b) Compensation for disturbance

179. One element of compensation payable to a claimant is in respect of losses caused as a result of being disturbed from possession of the land taken and other losses caused by the compulsory purchase. This is known as 'disturbance' compensation. The right to compensation for disturbance is set out in rule 6, section 5 of the 1961 Act. Disturbance payments made as part of compensation claims may include, for example, the costs and expenses of vacating the property and relocating to a replacement property, temporary/ permanent loss of profits, reconnection of services, loss of fittings and certain reasonable professional fees, such as conveyancing, legal fees and the costs of employing a suitably qualified chartered surveyor to assess and negotiate compensation claims.

180. In relation to professional fees, it is for parties concerned to agree a reasonable basis for payment of these fees. This will normally need to be done on a case-by-case basis, but there may be circumstances where it is appropriate for acquiring authorities to make voluntary agreements with the relevant professional bodies setting out indicative levels of payment for specific types of routine claims. This may make sense, for example, in the case of negotiations for rights of access (wayleaves and easements) for utilities.

181. There are also specific provisions for disturbance payments relating to different interests in land as follows:

- Section 20 of the 1965 Act - disturbance for persons who have no greater interest in the land than as tenant for a year or from year to year.

- Section 46 of the Land Compensation Act 1973 ("the 1973 Act") - disturbance where a business is carried on by a person over the age of 60. Disturbance payments can be claimed on the basis of total extinguishment of a business as a consequence of compulsory acquisition providing the annual value of the property does not exceed a prescribed limit[19].

- Section 47 of the 1973 Act - disturbance where land is the subject of a business tenancy.

- Section 37 of the 1973 Act - disturbance for persons without compensatable interests in the land acquired.

[19] Currently prescribed in the Town and Country Planning (Blight Provisions) (Wales) Order 2019.

182. Prior to measures in section 47 of the 1973 Act (as amended by the Neighbourhood Planning Act 2017), case law (*Bishopsgate Space Management v London Underground [2004] 2 EGLR 175*) held that for disturbance compensation purposes where the interest in the land to be acquired was a minor tenancy (a tenancy with less than a year left to run, or a tenancy from year to year) or an unprotected tenancy (a tenancy without the protection of Part 2 of the Landlord and Tenant Act 1954), the acquiring authority should assume that the landlord terminates the tenant's interest at the first available opportunity following NTT, whether that would happen in reality or not.

183. This was to be contrasted with the position for compensation for disturbance for occupiers of business premises with no interest in the land (payable under section 37 of the 1973 Act) which was not subject to the artificial assumption established in the *Bishopsgate* case.

184. Section 47 of the 1973 Act brings the assessment of compensation for disturbance for minor and unprotected tenancies into line with that for licensees and protected tenancies (a tenancy with the protection of Part 2 of the Landlord and Tenant Act 1954). Regard should be had to the likelihood of either continuation or renewal of the tenancy, the total period for which the tenancy might reasonably have been expected to continue, and the likely terms and conditions on which any continuation or renewal would be granted. For protected tenancies, the right of a tenant to apply for a new tenancy is also to be taken into account.

(c)Loss payments

185. Loss payments are intended to compensate for the claimant's distress and inconvenience of being required to sell and/or relocate from their property at a time not of their choosing (see sections 29-36 of the 1973 Act). There are three main types of loss payment:

- Home loss payment – payable to owner-occupiers and tenants displaced from a dwelling on any land by a CPO or other circumstances specified in section 29 of the 1973 Act (see sections 29-33 of the 1973 Act). In Wales, the maximum, minimum and flat rate amounts for home loss payments are prescribed in secondary legislation[20].

- Basic loss payment - a person with a qualifying interest in the land which is to be compulsorily acquired i.e. a freehold interest or an interest as tenant and (in either case) it subsists for a period of not less than one year expiring before a specified date, and who is not entitled to a home-loss payment, is entitled to a basic loss payment (see section 33A of the 1973 Act). The payment is the lower of 7.5% of the value of the interest or £75,000.

[20] Currently prescribed in the Home Loss Payments (Prescribed Amounts) (Wales) Regulations 2020.

- Occupier's loss payment – for agricultural land and other land (sections 33B and 33C of the 1973 Act). It is payable if the person has a qualifying interest for the purpose of a basic loss payment, and has been in occupation of the land for a period of not less than one year ending on the earliest of the following specified dates:
  (a) Date on which the acquiring authority takes possession of the land following a notice of entry under section 11 of the 1965 Act.
  (b) Vesting date where a GVD is made under the Compulsory Purchase (Vesting Declarations) Act 1981.
  (c) Date on which compensation for the compulsory acquisition is agreed.
  (d) Date on which the Upper Tribunal (Lands Chamber) determines the amount of compensation.

  Where the land is either agricultural land or other land, the payment is the greatest of the following amounts:
  (i) 2.5% of the value of the interest;
  (ii) the land amount;
  (iii) the building amount.
  The maximum amount which may be paid under section 33B and 33C of the 1973 Act is £25,000.

(d) Severance and injurious affection

186. Severance occurs when the land acquired contributes to the value of the land which is retained, so that when severed from it, the retained land loses value. For example, if a new road is built across a field it may no longer be possible to have access by vehicle to part of the field, rendering it less valuable.

187. Injurious affection is the depreciation in value of the retained land as a result of the proposed construction on, and use of, the land acquired by the acquiring authority for the scheme. For example, even though only a small part of a farm holding may be acquired for a new road, the impact of the use of the road may reduce the value of the farm.

188. The principle of compensation for severance is set out in section 7 of the 1965 Act.

Loss payments: Exclusions

189. A person is not entitled to either a basic or occupier's loss payment where the following notices or orders have been served on that person and any such notice has not been compiled with or such order has not been quashed on appeal (see section 33D(1)-(3) of the 1973 Act):

(a) notice under section 215 of the 1990 Act requiring proper maintenance of land;

(b) notice under section 11 or 12 of the Housing Act 2004 i.e. an improvement notice relating to either a category 1 or 2 hazard requiring remedial action to be taken;

(c) notice under section 48 of the P(LBCA) i.e. a repairs notice prior to compulsory notice of acquisition of a listed building which is in an unsatisfactory state;

(d) orders under section 20 or 21 of the Housing Act 2004 i.e. prohibition orders relating to category 1 or 2 hazards;

(e) orders under section 43 of the Housing Act 2004 i.e. an emergency prohibition order; and

(f) orders under section 265 of the 1985 Act i.e. demolition order relating to category 1 or 2 hazards.

In the case of such notices outlined above, the right to payment is lost if the notice or order served has effect or is operative on the date on which the CPO is confirmed or, in the case of a ministerial CPO, made in draft.

Value of land assessed in light of the 'no scheme principle'

190. Sections 6A to 6E of the 1961 Act set out how the value of land should be assessed applying the 'no scheme principle'.

191. Section 6A sets out the 'no scheme principle' i.e. that any increases or decreases in value caused by the compulsory acquisition scheme or the prospect of the compulsory acquisition scheme must be disregarded. Section 6A lists the 5 'no scheme rules' to be followed when applying the 'no-scheme principle' which are:

- Rule 1: it is to be assumed that the compulsory acquisition scheme was cancelled on the relevant valuation date.
- Rule 2: it is to be assumed that no action has been taken (including acquisition of any land, and any development or works) by the acquiring authority wholly or mainly for the purposes of the compulsory acquisition scheme.
- Rule 3: it is to be assumed that there is no prospect of the same compulsory acquisition scheme, or any other scheme to meet the same or substantially the same need, being carried out in the exercise of a statutory function or by the exercise of compulsory purchase powers.
- Rule 4: it is to be assumed that no other schemes would have been carried out in the exercise of a statutory function or by the exercise of compulsory purchase powers if the compulsory acquisition scheme had been cancelled on the relevant valuation date.
- Rule 5: if there was a reduction in the value of land as a result of—
  (a) the prospect of the compulsory acquisition scheme (including before the compulsory acquisition scheme or the compulsory acquisition in question was authorised), or
  (b) the fact that the land was blighted land as a result of the compulsory acquisition scheme, that reduction is to be disregarded.

192. Section 6B provides any increases in the value of the claimant's other land, which is contiguous or adjacent to the land being compulsory acquired, is deductible from the compensation payable. This is known as 'betterment'.

193. Section 6C provides that where a claimant is compensated for injurious affection for other land when land is taken for a compulsory acquisition scheme, and then that other land is subsequently subject to compulsory purchase for the purposes of the original compulsory acquisition scheme, the compensation for the acquisition of the other land is to be reduced by the amount received for injurious affection.

194. Section 6D defines the compulsory acquisition scheme ('scheme') for the purposes of establishing the no-scheme world. The default case, set out in section 6D(1), is that the 'scheme' to be disregarded is the scheme of development underlying the compulsory acquisition. Section 6D(2) makes special provision for new towns, urban development corporations and mayoral development corporations. Where land is acquired in connection with these areas, the 'scheme' is the development of any land for the purposes for which the area is or was designated.

195. Section 6D(3) and (4) also make special provision. It provides that where land is acquired for regeneration or redevelopment which is facilitated or made possible by a 'relevant transport project' (defined in section 6D(4)(a)) 'the scheme' includes the relevant transport project.

Special provision for relevant transport projects

196. New transport projects often raise land values in the vicinity of stations or hubs, which can facilitate regeneration and redevelopment schemes. Where land is acquired for regeneration or redevelopment which is facilitated or made possible by a relevant transport project, the effect of section 6D(3) of the 1961 Act is that the scheme to be disregarded includes the relevant transport project - subject to the qualifying conditions and safeguards in section 6E of the 1961 Act.

197. The intention of this special provision is to ensure an acquiring authority should not pay for land it is acquiring at values that are inflated by its own or others' public investment in the relevant transport project. Where it applies, the land in question will be valued as if the transport project as well as the regeneration scheme had been cancelled on the relevant valuation date (defined in section 5A of the 1961 Act).

198. The qualifying conditions and safeguards in section 6E(2)(a) – (e) are, in summary, that:

- regeneration or redevelopment was part of the published justification for the relevant transport project;
- the instrument authorising the compulsory purchase of the land acquired for regeneration or redevelopment was made or prepared in draft on or after 22 September 2017;

- the regeneration or redevelopment land must be in the vicinity of land comprised in the relevant transport project;
- the works comprised in the relevant transport project are first opened for use no earlier than 22 September 2022;
- the compulsory purchase of the land acquired for regeneration or redevelopment must be authorised within 5 years of the works comprised in the relevant transport project first opening for use; and
- if the owner acquired the land after plans for the relevant transport project were announced but before 8 September 2016 'the scheme' will not be treated as if it included the relevant transport project.

199. Section 6E(3) provides a specific safeguard for persons who acquired land in the vicinity of a relevant transport project after plans for the relevant transport project were announced, but before 8 September 2016 - the day after the Neighbourhood Planning Bill (which became the Neighbourhood Planning Act 2017) was printed. The specific safeguard is intended to provide protection in circumstances where land was purchased:

- on the basis of a public announcement whose effect was to provide a reasonable degree of certainty about the delivery of a relevant transport project at a particular location;
- before legislation (i.e. the Neighbourhood Planning Act 2017) was introduced that made special provision for relevant transport projects.

200. Where the specific safeguard applies, the 'scheme' will not be treated as if it included the relevant transport project in assessing the compensation payable in respect of the compulsory acquisition of that land. In such circumstances, any increase or decrease in the value of the owner's land caused by the relevant transport project does not have to be disregarded.

201. Whether and/or when such a relevant transport project is 'announced' is a question of fact in each case to be determined by the Upper Tribunal (Lands Chamber) in the event of disagreement. The evidence put before the Upper Tribunal (Lands Chamber) could include, among other things, the following matters:

- the inclusion of the relevant transport project, at or near a particular location, in an approved or adopted development plan document;
- the inclusion of the relevant transport project in an application for a development consent order or in a CPO;
- the inclusion of the relevant transport project in a proposal contained in an application for, or in a draft, Transport and Works Act Order for the purposes of the Transport and Works Act 1992;
- the inclusion of the relevant transport project in any Bill put before Parliament;

- a decision announced by a Minister of, or of approval for, a relevant transport project at a particular location.

Where the definition of the 'scheme' is disputed

202. Section 6D(5) of the 1961 Act provides if there is disagreement between parties as to the definition of the 'scheme' to be disregarded that this can be determined by the Upper Tribunal (Lands Chamber) as a question of fact subject as follows:

- Firstly, the 'scheme' is to be taken by the Upper Tribunal (Lands Chamber) to be the underlying scheme provided for by the Act, or other authorising instrument unless it is shown that the 'scheme' is a scheme larger than, but including, the scheme provided for by that authorising instrument.
- Secondly, except by agreement or in special circumstances, the Upper Tribunal (Lands Chamber) may only permit the acquiring authority to advance evidence of a larger scheme if that larger scheme was identified in the authorising instrument and any documents made available with it read together.

Relevant valuation date

203. Section 5A of the 1961 Act establishes the date at which land compulsorily acquired is to be valued for compensation purposes (the 'relevant valuation date'). It also establishes that such a valuation is to be based on the market value prevailing at the valuation date and on the condition of the relevant land and any structures on it on that date.

204. The relevant valuation date is:

- the date of entry and taking possession if the acquiring authority have served a NTT and notice of entry; or
- the vesting date if the acquiring authority has executed a GVD; or
- the date on which the Upper Tribunal (Lands Chamber) has determined compensation if earlier.

A claimant can agree compensation with the acquiring authority at any time in accordance with the provisions of section 3 of the 1965 Act.

205. The relevant valuation date for the whole of the land included in any single notice of entry is the date on which the acquiring authority first takes possession of any part of that area of land (under section 5A(5) of the 1961 Act). This means compensation becomes payable to the claimant for the whole site covered by a notice of entry from that date. The claimant also has the right to receive interest on the compensation due to them in respect of the value of the whole site covered by a notice of entry from that date until full payment is actually made (under section 5A(6) of the 1961 Act).

206. Under the terms of section 11 of the 1965 Act, interest is payable at the prescribed rate from the date on which the acquiring authority enters and takes possession of the land until the outstanding compensation is paid. The current rate of interest is prescribed in the Acquisition of Land (Rate of Interest after Entry) Regulations 1995. Interest is not compounded as, neither section 32 of the 1961 Act nor regulations made under that section, confer any power to pay interest on interest, and neither refers to frequency of calculation nor provides for periodic rests, which would be essential to any calculation of interest on a compound basis. It is therefore important that the date of entry is properly recorded by the acquiring authority.

Advance payment of compensation

207. Under section 52(1) of the 1973 Act acquiring authorities may make an advance payment of compensation for the acquisition of an interest in land following a request being made by the person entitled to it i.e. the claimant. A request for an advance payment of compensation may be made at any time after the compulsory acquisition has been authorised.

208. A request for advance payment of compensation must be made in writing by the claimant and include details of the claimant's interest in the land. Information must also be included to enable the acquiring authority to estimate the amount of compensation owed. It is in the interests of claimants to provide early and full information to the acquiring authority to ensure estimates are as robust as possible. Acquiring authorities should encourage claimants to seek professional advice in relation to their compensation claim. They should also provide claimants with information as to the kinds of evidence they may be expected to provide in support of their compensation claim including, for example:

- detailed records of losses sustained and costs incurred in connection with the acquisition of their property;
- all relevant supporting documentary evidence such as receipts, invoices and fee quotes;
- business accounts for at least 3 years prior to the acquisition and continuing to the date of the claim;
- a record of the amount of time they have spent on matters relating to the compulsory purchase of their property;
- if not already supplied, evidence of the claimant’s interest in the land.

Acquiring authorities must determine within 28 days of receiving a request for advance payment of compensation whether or not they have enough information to estimate the amount of compensation owed. If required, the acquiring authority may seek further information from the claimant. A model claim form for claimants to use when making a claim for compensation and/or an advance payment can be found at the end of this section.

209. In all other cases, an acquiring authority must make an advance payment of compensation under section 52(1B) and (4ZA) of the 1973 Act if, before or after a request is made by the claimant, the authority:

(a) gives notice of entry undersection 11(1) of the 1965 Act; or

(b) executes a GVD under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 in respect of the land.

In these circumstances, the advance payment of compensation must be made on the day on which the notice of entry is given or the GVD is executed, or, if later, before the end of the period of two months beginning with the day on which the authority:

(i) received the request for the advance payment, or

(ii) received any further information required under section 52(2A)(b) or section 52ZC(2)(b) of the 1973 Act.

210. There is special provision under section 52(1A) and (4) of the 1973 Act relating to where the Lands Clauses Consolidation Act 1845 ("the 1845 Act") applies to the compulsory acquisition of land. The 1845 Act incorporates certain provisions into legislation conferring enabling compulsory purchase powers on local authorities, statutory undertakers and government departments to acquire land and requiring the payment of compensation. Although the 1845 Act has largely been superseded by the 1965 Act, provisions of the Act continue to apply in some extant legislation. For example, section 6 of the Railways Clauses Consolidation Act 1845 provides that in exercising a power given to a company by an Act which authorises the construction of a railway and to take lands for that purpose, the company shall be subject to the provisions and restrictions contained in the 1845 Act. Likewise, section 2 of the Military Lands Act 1892 incorporates certain provisions of the 1845 Act which apply to the compulsory purchase of land for military purposes.

211. In the circumstances where provisions of the 1845 Act apply, the acquiring authority may not make an advance payment if they have not taken possession of the land but must do if they have. The payment must be made before either:

(a) the end of the day on which possession is taken, or

(b) if later, before the end of the period of two months beginning with the day on which the acquiring authority received the request for the advance payment or any further information required under section 52(2A)(b) or 52ZC(2)(b) of the 1973 Act.

212. The amount of compensation payable in advance is:

- 90% of the sum of compensation agreed between the acquiring authority and claimant; or
- 90% of the acquiring authority's estimate of the compensation due, if the acquiring authority takes possession before compensation has been agreed.

213. Acquiring authorities should make prompt and adequate advance payments as this can:

- reduce the amount of the interest ultimately payable by the authority on any outstanding compensation; and
- help claimants to have sufficient liquidity to be able to make satisfactory arrangements for their relocation.

Acquiring authorities are urged to adopt a sympathetic approach and take advantage of the flexibility offered by section 52(1) of the 1973 Act where possible.

214. At any time after an advance payment of compensation has been made on the basis of an acquiring authority's estimate it appears to the acquiring authority their estimate was too low, they shall, if a request is made, pay the claimant the balance of the amount of advance payment calculated due at that time.

215. Before an acquiring authority makes an advance payment of compensation they must deposit with the local authority in which the land is situated details of the:

(a) advance payment to be made,

(b) sum of compensation, and

(c) the related interest in the land.

Any particulars deposited with a local authority shall be a local land charge to ensure advance payments are not duplicated.

Advance payment for a mortgage

216. In certain circumstances, a claimant can require the acquiring authority to make advance payments of compensation direct to their mortgage lender. Advance payments relating to the amount owing to the mortgage lender can be made:

- direct to the mortgage lender only with their consent,
- to more than one mortgage lender, if the interest of any other mortgage lender whose interest has priority has been released.

217. Section 52ZA of the 1973 Act enables an acquiring authority to make an advance payment to a claimant's mortgage lender where the total amount outstanding under the mortgage does not exceed 90% of the estimated total compensation due to the claimant.

218. Alternatively, section 52ZB of the 1973 Act applies where the total amount outstanding under the mortgage exceeds 90% of the total estimated compensation due to the claimant.

219. The conditions relating to both types of payments under sections 52ZA and 52ZB of the 1973 Act are complex and, in order to protect the interests of all parties, it will be advisable for an acquiring authority to work closely with both the claimant and their mortgage lender(s) in determining the amount of the advance payment payable.

Where an advance payment is made but the compulsory purchase does not go ahead

220. Section 52AZA of the 1973 Act requires a claimant to repay any advance payment if the NTT is withdrawn or ceases to have effect after the advance payment is made. If another person has since acquired the whole of the claimant's interest in the land, the successor will be required to repay the advance payment (provided it was registered as a local land charge in accordance with section 52(8A) of the 1973 Act).

221. Section 52ZE of the 1973 Act provides for the recovery of an advance payment to a mortgage lender if the NTT has been withdrawn or ceases to have effect. In these circumstances, the claimant must repay the advance payment unless someone else has acquired the claimant's interest in the land. In this case, the successor to the claimant must make the repayment.

Compensation where no land is taken

222. Broadly, the elements of compensation where no land is taken are:

(a) injurious affection

(b) Part 1 of the 1973 Act claims.

(a) Injurious affection

223. Injurious affection where no land is taken refers to the right to compensation in certain circumstances where the value of an interest in land has been reduced as a result of the execution of works authorised by statute. The principle of compensation for injurious affection where no land is taken is set out in section 10 of the 1965 Act.

(b) Part 1 Land Compensation Act 1973 claims

224. In certain circumstances compensation is payable to landowners in respect of depreciation of the value of their land by certain physical factors (noise, vibration, smell, fumes, smoke, artificial lighting, discharge on the land of a liquid or solid substance) caused by the use of a new or altered highway, aerodrome or other public works (see Part 1 of the 1973 Act). Compensation under Part I of the 1973 Act is payable providing the annual value of the land does not exceed a limit prescribed in secondary legislation[21].

Claims for compensation

225. When making compensation claims, claimants should ensure their claim form or claim letter, together with any supplementary valuations, calculations or other information, provide sufficient information to enable acquiring authorities to understand the claim and how it is supported.

[21] The current annual value limit is prescribed in the Town and Country Planning (Blight Provisions) (Wales) Order 2019.

An acquiring authority may request further information from a claimant if it believes it has insufficient information about the claim. Claimants are required by section 4(2) of the 1961 Act to state the exact nature of the interest in respect of which compensation is claimed, and give details of the compensation claimed, distinguishing the amounts under separate heads of claim and showing how the amount claimed under each head is calculated. The effect of section 4(2) is to disregard works or the creation of interests done for the purpose of increasing the amount of compensation payable.

226. Parties to a compensation claim should ensure any costs which they incur in relation to the claim are appropriate, reasonable and proportionate to the nature and complexity of the claim. Sufficient records should be kept of how costs have been incurred to enable items to be explained and justified. Parties should be aware the Upper Tribunal (Lands Chamber) has the power to order a party to pay all or part of another party's costs of a reference.

227. Although there is no prescribed form for a compensation claim related to a CPO, a model claim form, which is set out below, is available to download from the Welsh Government's website[22] and can be used for certain types of compensation claim involving compulsory purchase of land or interests and/or the taking of temporary possession.

"Claim for compensation for the compulsory acquisition or the occupation of land

This model claim form can be used to provide the information required:

- for a claim for compensation for the compulsory acquisition of land or interests and / or taking of temporary possession; and/or, when applying for an advance payment of compensation, whether in advance of, or after, possession is taken, in accordance with section 52 of the Land Compensation Act 1973 (as amended).

Please read the Explanatory Notes before completing this form.

*__In respect of the__ .....
(*Insert the title of the legislation which provides the enabling compulsory purchase powrs)*

*__For compulsory purchase / temporary possession__
(*Delete which is not applicable*)

*__Name of acquiring authority….__……

*__Address of land/property to be acquired:__...……...
.....
……

[22] https://gov.wales/building-planning

(**To be completed by the acquiring authority*)

Once completed, this form together with all accompanying plans and documents should be returned as soon as possible and within 21 days of the service of a notice to treat in respect of your land to:
(*Acquiring authority to insert address*)

Or emailed to:
(*Acquiring authority to insert email address*)

Explanatory Notes

If this form has been sent to you by an authority possessing compulsory purchase powers ("acquiring authority"), the plan attached to the notice identifying the relevant authorisation for the compulsory purchase of land shows the extent of the land to be acquired (or in respect of which temporary possession is to be taken) and in respect of which it is believed you have an interest.

If you wish to make a claim for compensation in respect of the land identified in the notice/on the plan, you should answer the questions in this form and provide the requested documentation to support your claim for compensation.

If you do not have an interest in the whole of the land identified, please:

- mark on the attached plan (or on a copy) the extent of the land in which you hold an interest.

Ensure you enclose:

- a copy of your title plan(s) if you own the freehold, or,
- a copy of the plan of your demise if you occupy under a lease, or,
- a copy of a plan indicating the area of land you occupy if you occupy under some other arrangement.

Answer the questions in relation to the land you own and/or occupy.
Where a request is being made for an advance payment of compensation for the compulsory purchase of land, section 52 of the Land Compensation Act 1973 (as amended) requires that the request be accompanied by the information the acquiring authority requires to estimate the amount of compensation due.

You should answer all questions relevant to your claim as fully and accurately as possible and provide copies of all documentation asked for in this form.

Where information is incomplete or unclear, the acquiring authority may not be able to make a proper assessment of any advance payment of compensation to be paid to you. In this case, the acquiring authority will notify you of what extra information it needs.

Where any claimed amount has been estimated, this must be clearly indicated alongside the relevant amount.

SECTION A – GENERAL INFORMATION		
1	Full name of claimant as stated on the registered title or lease (where one exists)	
2	Trading name (if different to 1 above)	
3	Have you instructed, or do you intend, to instruct a solicitor, surveyor or other professional person to advise you, or do you intend to deal with this matter yourself?	☐**Solicitor** / ☐**Surveyor** / ☐**Other** / ☐**Myself** *(Select which applies)* If solicitor/surveyor/other go to question 3a. If yourself, go to question 3b
3a	Name of solicitor/surveyor/other for correspondence relating to this matter	Name of practice: Contact name: Postal address: Email address: Telephone:
3b	Your address details for future correspondence relating to this matter	Postal address: Email address: Telephone:
4	Do you have a mortgage or other loan arrangement for the purchase of your interest in the property which has an outstanding balance	☐**Yes** / ☐**No** *(Select which applies)* If 'yes', go to question 4a. If no, go to question 5 **NB: If you have reason to believe the market value of the property will be insufficient to enable the present mortgage to be paid off in full, you must advise both your mortgage lender and the acquiring authority as soon as possible.**

4a	Name of lender Contact address of lender Lender's reference or Roll number Approximate balance outstanding	 **£**
5	If you have an interest in other land either contiguous or adjacent to the land on the attached plan, please provide a plan identifying the additional land owned. Please confirm the interest you have in this adjacent land: **Freehold/Leasehold** *(Circle which applies)*	
6	Do you own the freehold or a leasehold interest in the land to be acquired ?	☐**Yes** / ☐**Neither** *(Select which applies)* If you own the freehold interest, go to **SECTION B of this form** and answer the questions there.. If you own a leasehold interest, go to **SECTION C of this form** and answer the questions there.. If the answer is "Neither", go to **SECTION D** of this form and answer the questions there. If you have any rights over land or restrictive covenants that will be interfered with by the acquisition or temporary possession, go to **SECTION F of this form.** If your land is subject to temporary possession, go to **SECTION G of this form**.

	SECTION B – FREEHOLD INTEREST
7	Where you own the freehold interest, please provide your registered title number (if known)……..... If you do not know your registered title number, please provide a copy of your title and plan (available from your solicitor whose reasonable costs will be reimbursed in the event you are entitled to claim compensation) or by download from HM Land Registry if your title is Registered.
8	Where you own the freehold interest and have granted a right of occupation (such as a lease, tenancy or other arrangement) to anyone else, please provide a copy of any lease or other written agreement, whereby you have granted someone else occupation together with any related schedule of condition, memorandum relating to rent reviews, alterations etc. Please confirm the amount of any rent deposit you hold £……..... Please confirm the amount of rent currently paid to you £……. Please provide a copy of any notice relating to the lease that you have served on your tenant, the effect of which notice is still outstanding (for example, a break notice, notice under section 25 of the Landlord and Tenant Act 1954 etc) and a copy of any notice served by your tenant on you (for example, a break notice, notice under section 26 of the Landlord and Tenant Act 1954 etc). If there is no lease or agreement in writing, please provide a plan showing the area occupied by any third party and state: (a) The name of the occupier and contact address (if different to above) (b) Whether or not the land is shared with any other party; if so please provide contact details (c) The date the arrangement started (d) The current rent payable (e) The date the above rent became payable (f) The date the arrangement finishes If there is a connection or relationship between you as freeholder and any occupier, other than through whatever arrangement that you have made, please provide details of the relationship etc:

9	Where the following is not stated on the copy of your freehold title that you have provided, please provide details of any of these, on a separate sheet of paper: (i) Existing exceptions of mines and minerals and any other exceptions (ii) Rights of the Lord of the Manor to minerals and sporting rights and other rights and names and addresses of the Lord and Steward (if the property was formerly Copyhold). (iii) Any public or private rights of way or any other public or private rights or privileges affecting the property (iv) Existing covenants and restrictions affecting the property (v) Corn Rent payable (vi) Liability to repair the Chancel of any Church (vii) Land drainage rates payable (viii) Yearly rent charges and outgoings
10	Please provide particulars of: • Any Notices by a public or local authority affecting the property. • Any statutory charges affecting the property, for example, under the Town and Country Planning Acts, the Private Street Works Acts or the Highways Act 1980.
11	Please provide particulars of any outstanding right to compensation for refusal, conditional grant, revocation or modification of planning permission (section 12 of the Land Compensation Act 1961).
12	Please provide particulars of any un-implemented and/or partially implemented planning permission relating to the property.
13	**Now go to Section E**

	SECTION C – LEASEHOLD INTEREST
14	Where you own a leasehold interest, please provide a copy of your lease and a colour copy of any lease plan.
15	Where you have granted a right of occupation to anyone else by a sub-lease, licence or other arrangement, please provide a copy of any lease, or other written agreement, whereby you have granted someone else occupation. If there is no agreement in writing, please provide a plan showing the area let and state: (a) The name of the occupier and contact address (if different to above) (b) The date the arrangement started (c) The current rent payable (d) The date the above rent became payable (e) The date the arrangement finishes

	If there is a connection or relationship between you as leaseholder and any occupier, other than through whatever arrangement that you have made, please provide details of the relationship etc:
16	Please provide particulars of: • Any Notices by a public or local authority affecting the property • Any statutory charges affecting the property for example under the Town and Country Planning Acts, the Private Street Works Acts or the Highways Act 1980
17	Please provide particulars of any outstanding right to compensation for refusal, conditional grant, revocation or modification of planning permission (section 12 of the Land Compensation Act 1961)
18	Please provide particulars of any un-implemented and/or partially implemented planning permission relating to the property
19	**Now go to Section E.**

	SECTION D – OTHER INTEREST
20	Where you neither own the freehold interest nor occupy under a lease or other written agreement, on a separate sheet of paper, please state in as much detail as possible the exact circumstances of your occupation and by what right you consider you are entitled to be in occupation of the land and property at this address: If there is a connection or relationship between you as occupier and your landlord, other than through whatever arrangement that you have made, please provide details of the relationship etc:
21	**Now go to Section E**

	SECTION E – ACQUISITION
22	Is the claimant able to fully recover VAT: ☐**Yes /** ☐**No** *(Select which applies)* If 'No', can the claimant partially recover VAT: ☐**Yes /** ☐**No** *(Select which applies)* If 'Yes', please provide evidence (for example, an accountant's certification) to show what percentage of VAT can be usually be recovered.
22	Will the sale of the interest in land be liable to VAT? ☐**Yes /** ☐**No** *(Select which applies)*

	If 'Yes', please provide a copy of HMRC acknowledgment of the option to tax.
23	Particulars of claim: **NB The law requires you to provide a fully detailed valuation. You should include full details of any comparable evidence relied upon in support of the valuation to support your compensation claim. Please attach this as a separate document but summarise the individual figures below** For the value of the claimant's interest £ For severance/injurious affection of other land of the claimant £ For disturbance £ For easements etc £ Home loss payment £ Basic loss payment £ Occupier loss payment £ Total gross claim £ What sum, if any, is to be deducted for betterment £
24	If an amount for disturbance has been or is to be claimed, please provide: • Copies of any available estimates/quotations/costs already incurred for removal or other costs associated with moving to alternative premises. • In the case of a business where it is likely that the business will close down, copies of any available estimates/quotations for costs etc associated with closing the business down. • In the case of a business where it is possible that a claim for loss of profit (of either a temporary or permanent nature) might be made at any time in the future, copies of the full accounts (including the detailed Profit and Loss pages) for the last 3 accounting years that have been filed for taxation purposes with HMRC.
25	If you are making a claim for compensation in respect of the compulsory purchase of land and have not yet made an application for an advance payment of compensation, do you wish this claim to be accepted also as a formal request for an advance payment of compensation: ☐**Yes /** ☐**No** *(Select which applies)*

	SECTION F – INTERFERENCE WITH RIGHTS OVER LAND ETC
26	If an amount for loss or injury/damage caused by interference with any right over land or any restrictive covenant has been or is to be claimed, please provide: • Copies of any available estimates/quotations/costs already incurred or to be incurred.

	SECTION G – TEMPORARY POSSESSION
27	If an amount for loss or injury/damage caused by temporary possession has been or is to be claimed, please provide: • Copies of any available estimates/quotations/costs already incurred or to be incurred.

Date:……..

Signed by or on behalf of the Claimant:……
……

If not signed by the Claimant, please state the capacity in which signed:.....
……

Name and address of Signatory *(if different to the answer at Q3a*):……...
……
……

Please note:

For the purpose of receiving an advance payment compensation as much information as possible should be provided so to ensure the acquiring authority has every opportunity to make a proper assessment of the amount of any advance payment of compensation due.

If any required information is not available at the time this form is returned, please ensure it is provided to the acquiring authority as soon as it becomes available as a further advance payment of compensation due may then be payable.

Disputes over claims for compensation: References to the Upper Tribunal (Lands Chamber)

228. In the absence of an agreement between an acquiring authority and a claimant over a claim for compensation, a reference may be made to the Upper Tribunal (Lands Chamber)[23]. Before a reference is made, the claimant and acquiring authority should have:
- exchanged sufficient information to understand each other's positions;
- discussed each other's positions thoroughly and constructively;
- sought to narrow the issues that the Upper Tribunal (Lands Chamber) would have to determine if a reference were made;
- considered the use of ADR techniques to avoid a reference being made or to determine at least some of the issues which the Upper Tribunal (Lands Chamber) would otherwise have to determine.

Acquiring authorities are expected to, so far as possible, provide claimants with adequate information about:
- the relevant procedure for making a compensation claim (including whether there are any statutory requirements or time limits and whether there is any prescribed, model or suggested form for making a claim);
- the availability of professional advice to assist them in making and evidencing a compensation claim;
- whether, how and when any professional fees that may be incurred by them in relation to a compensation claim will be reimbursed; and
- the importance of maintaining appropriate records in order to substantiate a compensation claim.

229. Prior to making a reference, the party intending to make the reference should contact the other party in writing in order to:
- notify the other party of its intention to make a reference;
- summarise the matters agreed between the parties;
- summarise the outstanding issues in dispute between the parties;
- provide the other party with an opportunity to respond to the outstanding issues.

230. A reference should not be made prematurely when the resolution of outstanding issues is still actively being explored unless there is a requirement to comply with a statutory time limit in respect of a compensation claim.

[23] The Upper Tribunal (Lands Chamber) Procedure Rules 2010 (as amended) govern the practice and procedure to be followed in the Upper Tribunal (Lands Chamber).

Part 2 – Enabling compulsory purchase powers

Section A – Compulsory purchase orders made under section 226 of the Town and Country Planning Act 1990

Appropriate acquiring authorities

1. Under section 226 of the Town and Country Planning Act 1990 ("the 1990 Act") the following authorities (which are classed as "local authorities" for the purposes of that section) can acquire land compulsorily for development and other planning purposes as defined in section 246(1) of the 1990 Act:
   - county or county borough councils[24];
   - joint planning boards[25]; or
   - national park authorities[26].

   These are referred to collectively in this section as "acquiring authorities with planning powers".

Section 226 power

Purpose of the section 226 power

2. The compulsory acquisition power in section 226 is intended to provide a positive tool to help acquiring authorities with planning powers to assemble land where necessary to achieve the implementation of proposals in development plans or where strong planning justification for the use of the power exists. The section 226 power is expressed in wide terms and can therefore be used to assemble land for regeneration and other schemes where the range of activities or purposes proposed mean no other single specific compulsory purchase power would be appropriate. A CPO should only be made where there is a compelling case in the public interest. Factors which acquiring authorities should address when deciding whether or not to compulsorily acquire a site allocated for development in an adopted development plan are:
   - Is the development plan up-to-date?
   - Why hasn't the landowner brought the site forward?
   - Could the local authority do anything to bring forward the development of the site short of a CPO?
   - What are the consequences of the site not being developed?
   - Are there appropriate developers who would purchase the land from the council following its compulsory acquisition, and then develop it in a timely manner? If there are, acquiring authorities should receive, by way of sale proceeds for the land, a sum equivalent to the market value. As such, the most significant cost associated with a CPO, the market value element of the statutory compensation, can largely be recovered.

[24] Section 226(8) of the 1990 Act.
[25] Section 244(1) of the 1990 Act.
[26] Section 244A of the 1990 Act.

As such, acquiring authorities would need to budget for the actual legal and administrative costs of making the CPO and for those items of compensation in addition to market value i.e. payments for disturbance, home loss or severance/injurious affection. It would be in the interests of acquiring authorities to seek agreements with developers for them to cover these costs of the CPO process prior to commencing the compulsory purchase process.

3. The section 226 power should not be used in place of other enabling powers[27]. The Statement of Reasons accompanying a CPO should make clear the justification for the use of the section 226 power. In particular, the Welsh Ministers may refuse to confirm a CPO if they consider this general power is or is to be used in a way intended to frustrate or overturn the intention of Parliament by attempting to acquire land for a purpose which had been explicitly excluded from a specific power.

4. In preparing and submitting a CPO under section 226, acquiring authorities with planning powers should have regard to the general advice in Part 1 of this Circular including the guidance about planning requirements and the justification for making the CPO.

Use of the section 226 power

5. The compulsory acquisition power in section 226 can be used in the following ways:

(a) Section 226(1)(a) enables acquiring authorities with planning powers to acquire land in its area if they think it will facilitate the carrying out of development[28], redevelopment or improvement[29] on, or in relation to, the land being acquired and it is not certain that they will be able to acquire it by agreement. There are limitations to the section 226(1)(a) power and further guidance is given in paragraphs 10 - 11 below.

(b) Section 226(1)(b) allows acquiring authorities with planning powers, if authorised, to acquire land in their area which is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated. The potential scope of this power is broad.

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[27] For example, section 164 of the Public Health Act 1875, section 89 of the National Parks and Access to the Countryside Act 1949, section 19 of the Local Government (Miscellaneous Provisions) Act 1976, section 239 of the Highways Act 1980, or section 17 of the Housing Act 1985. In relation to the last, see also paragraph 7 of Section B in Part 2 of this Circular, which explains when land for housing development is being assembled under planning powers, the Welsh Ministers will have regard to the policies set out in Section B in Part 2 of this Circular.

[28] Under section 336(1) of the 1990 Act, "development" has the meaning given in section 55 of the 1990 Act (including any special controls given by direction in relation to demolition and redevelopment (see Welsh Office Circular 31/95: “Planning Controls over Demolition”).

[29] "Improvement" in this context might include a minor adjustment in the street pattern or the provision of space for vehicular access and parking.

It is intended to be used primarily to acquire land which is not required for development, redevelopment or improvement, or as part of such a scheme. It might be appropriate where, for example an acquiring authority wishes to:

(i) safeguard land for future development;
(ii) provide provision of access or amenity land which may not require planning permission and which forms part of an already approved scheme;
(iii) ensure it meets their contractual obligation to have vacant possession of properties in line with an agreed programme; or
(iv) secure the improvement of land by development once infrastructure is in place.

(c) Section 226(3) provides that a CPO made under either section 226(1)(a) or (b) may also provide for the compulsory purchase of-

(i) any adjoining land which is required for the purpose of executing works for facilitating the development or use of the primary land; or
(ii) land to give in exchange for any of the primary land which forms part of a common or open space or fuel or field garden allotment.

An acquiring authority with planning powers intending to acquire land for either of the purposes (outlined in paragraph 5(c)) in connection with the acquisition of land under section 226(1)(a) or (b) must therefore specify in the same CPO the appropriate section 226(3) acquisition power and purpose.

(d) Section 226(4) provides an acquiring authority with planning powers can exercise its compulsory purchase powers under section 226(1)(a) or (b) or (3) irrespective of whether it intends to undertake an activity or purpose mentioned in those subsections.

6. The compulsory acquisition power in section 226 is expressed as alternatives in the legislation, i.e. 226(1)(a) or 226(1)(b). The Welsh Ministers take the view that a CPO made under section 226(1) should be expressed in terms of either 226(1)(a) or 226(1)(b).The CPO should clearly indicate which power is being exercised, quoting the wording of 226(1)(a) or 226(1)(b) as appropriate as part of the description of what is proposed.

Deciding whether to confirm compulsory purchase orders made under section 226: section 245 of the 1990 Act

7. Section 245(1) of the 1990 Act provides the Welsh Ministers with the right to disregard objections to CPOs made under section 226 of the 1990 Act which, in their opinion, amount to an objection to the provisions of a development plan.

Section 226 and compulsory acquisition of interests in Crown land

8. Sections 226(2A) and 293 of the 1990 Act apply where an acquiring authority with planning powers proposes to acquire land compulsorily under section 226 in which the Crown has an interest.

The Crown's interest cannot be acquired compulsorily under section 226 but an interest in land held otherwise than by or on behalf of the Crown may be acquired with the agreement of the appropriate body. This might arise, for example, where a government department which holds the freehold interest in certain land may agree that a lesser interest, perhaps a lease or a right of way, may be acquired compulsorily and that interest may, therefore, be included in the CPO. Further advice about the purchase of interests in Crown land is given in Section L in Part 2 of this Circular.

Section 226(1)(a)

9. Section 226(1)(a) enables acquiring authorities with planning powers to acquire land in its area if they think it will facilitate the carrying out of development, redevelopment or improvement on, or in relation to, the land being acquired and it is not certain that they will be able to acquire it by agreement. This wide power may be used to acquire land for a variety of planning purposes such as:

- town centre redevelopment or other comprehensive regeneration schemes for which the authority wishes to assemble a number of individual properties including residential or commercial, or areas of land;
- housing led regeneration schemes including where the acquiring authority wishes to assemble a number of areas of land (see Section B in Part 2 of this Circular for advice on CPOs for the development for, and acquisition of, housing which must achieve a quantitative or qualitative housing gain);
- community assets following a request made by the community, for example, community and town councils requesting improvements or extensions to assets such as recreational open space;
- listed buildings in regeneration i.e. to restore rather than preserve (see Section H in Part 2 of this Circular for advice on CPOs for listed buildings in need of repair which aim to preserve listed buildings); or
- highways as part of wider mixed-use regeneration schemes (see Section G in Part 2 of this Circular for advice on CPOs specifically for highway purposes).

The scheme of development, redevelopment or improvement, for which the land needs to be acquired, does not necessarily have to be taking place on that land so long as its acquisition can be shown to be essential to the successful implementation of the scheme. This could be relevant, for example, in an area of low housing demand where property might be being removed to facilitate replacement housing elsewhere within the same community. Also, in areas vulnerable to flooding which might threaten the long term sustainability of a community, the acquisition of land could help bring forward a flood alleviation scheme. Likewise, the acquisition of land could help the remediation of land contamination.

Limitations of the section 226(1)(a) power

10. The wide power in section 226(1)(a) is subject to the restriction under section 226(1A) of the 1990 Act.

This provides that acquiring authorities with planning powers must not exercise the power under section 226(1)(a) unless it thinks the development, redevelopment or improvement of the land being acquired is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of the area for which the acquiring authority with planning powers has administrative responsibility. The acquiring authority with planning powers therefore needs to be able to demonstrate how the purpose for which the land is being acquired will contribute to the well-being of their area. This allows acquiring authorities with planning powers to develop a broader and more innovative role in better responding to the needs of their community identified through engagement and consultation.

11. The benefit to be derived from exercising the section 226(1)(a) power is not restricted to the area subject to the CPO, as the concept is applied to the well-being of the whole (or any part) of the acquiring authority with planning powers' area. This enables acquiring authorities with planning powers to do anything which they consider is likely to bring economic, social or environmental well-being benefits to a wider area. In practice, the purpose of section 226(1A) is to broaden the issues which must be taken into account by an acquiring authority when deciding whether to make a CPO under section 226(1)(a). Accordingly, an acquiring authority is entitled to take into account all the consequences that are likely to flow from the redevelopment of land the subject of CPO. The purpose of the section 226(1)(a) power is to encourage innovation and closer joint working between local authorities and their partners to improve the quality of life of those living, working or otherwise involved in the community life of their area.

The meaning of "well-being" in the context of the section 226(1)(a) power

12. Acquiring authorities with planning powers may determine the types of activities that will promote or improve the well-being of their areas. The term "well-being" is not directly defined in the 1990 Act nor in this guidance as different acquiring authorities with planning powers may have different views about the types of activities that will promote or improve the well-being of their areas. Each local authority in Wales is required to publish well-being objectives in a Local Well-Being Plan to demonstrate how they will achieve the 7 well-being goals outlined in the WBFG Act. As such, when considering whether or not to use the section 226(1)(a) "well-being" power, acquiring authorities with planning powers should give consideration to their adopted Local Well-Being Plan to ascertain the types of activities which may promote or improve the well-being of their areas in accordance with the WBFG Act. Actions taken under the section 226(1)(a) well-being power should be informed by, and be responsive to, the views of the communities in the area.

13. The well-being of an area will depend on many factors. Often these factors will not be under the direct control or influence of the acquiring authority with planning powers, for example, some national or global issues.

Acquiring authorities with planning powers are best placed to make an assessment of what is required to promote well-being, taking into account the needs of its communities, and can provide a solid foundation for the overall well-being of their area that responds directly to local, regional and national issues.

14. Key factors which contribute to the promotion or improvement of well-being may include:
    (a) Economic factors such as the availability of suitable and high quality jobs, measures to encourage local small businesses, efficient and effective transport links, lifelong learning, training and skills development, the provision of infrastructure and new information and communication technologies.
    (b) Social factors such as the promotion of good quality and affordable housing; safe communities; the encouragement of the voluntary sector; looking after the needs of children and young people, particularly the most vulnerable; access to the arts or leisure opportunities; access to education.
    (c) Health related factors such as the promotion of good physical, social and mental health and developing and promoting policies which have a positive impact on health outcomes, especially on health inequalities.
    (d) Environmental factors such as the availability of clean air, clean water, clean streets, the quality of the built environment, the removal of objects considered hazardous to health, protecting communities against the threat of climate change, freedom from a high risk of flooding, improving and promoting biodiversity and accessibility to nature.
    (e) Promoting sustainable development in ways which:
        - promote social justice and equality of opportunity; and
        - enhance the natural and cultural environment and respect its limits - using only a fair share of the earth's resources and sustaining cultural legacy.

15. In determining whether the purpose for which they propose to acquire land compulsorily under section 226(1)(a) can be expected to contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of their area, acquiring authorities with planning powers may find it helpful to have regard to the guidance issued by the Welsh Ministers concerning the interpretation of that power in the Local Government Act 2000[30].

16. PPW suggests inclusion of policies in development plans relating to issues such as the supply of land which delivers identified housing need, promoting regeneration initiatives, and improving local environmental quality. All such issues can have a significant impact on land use, for example by influencing the demands on or needs for development.

[30] Entitled "Statutory Guidance to Welsh Local Authorities on the Power to promote or improve Economic, Social or Environmental Well-Being under the Local Government Act 2000": https://gov.wales/sites/default/files/publications/2019-06/power-to-promote-well-being-guidance-for-local-authorities.pdf

They are not, however, necessarily capable of being delivered solely or mainly through the granting or refusal of planning permission. They may require a more proactive approach by the relevant LPA including facilitating the assembly of suitable sites, for which the compulsory purchase powers in section 226(1)(a) may provide helpful support where such acquisitions can be justified in the public interest.

17. The re-creation of sustainable communities through better balanced housing markets is one regeneration objective for which the section 226(1)(a) power might be appropriate. For example, it is likely to be more appropriate than a Housing Act power if the need to acquire and demolish dwellings were to arise as a result of an oversupply of a particular house type and/or housing tenure in a particular locality. A greater diversity of housing provision may be needed to ensure that neighbourhoods are sustainable in the long term, and improved housing quality and choice may be necessary to meet demand. This may involve acquiring land to secure a change in land use, for example, from residential to commercial/industrial or to ensure that new housing is located in a more suitable environment than that which it would replace.

18. A challenge faced by many local authorities relates to the adaptation of town centres to take account of the changing nature of retailing and leisure activities, the need to move to sustainable modes of transport, and the reintroduction of residential uses within the high street. These pressures will change the nature of land assembly needed to stimulate the redevelopment and re-use of sites scattered through a town centre or the regeneration and improvement of the well-being of the area. It might therefore be an appropriate use of the section 226(1)(a) power for such a purpose. A strategy based on:
    (a) the survey of under-used or derelict properties;
    (b) a "master-planning and placemaking approach[31]" to design and identify development constraints and well-being benefits for a wider area of a co-ordinated programme of acquisitions, accompanied by public and stakeholder engagement and consultation; and
    (c) a structured approach to negotiations with landowners to identify those willing to sell and those unwilling to do so or with unrealistic expectations as to value of future acceptable uses, and it being know that a CPO was in preparation in the background,

    should establish a case for acquisition which could tilt the balance in favour of the public interest in regeneration when weighed against the rights of an individual property owner. Such a strategy could form the basis on which to build a compelling case in the public interest.

[31] See page 16 of Planning Policy Wales (PPW) (Edition 10, December 2018) for a definition of 'placemaking'.

Justification needed to support a compulsory purchase order to acquire land compulsorily under section 226(1)(a) and the planning position

19. Paragraphs 54 - 57 in Part 1 of this Circular consider in general terms the need for acquiring authorities to be able to satisfy the Welsh Ministers that there is a compelling case in the public interest for the proposed compulsory acquisition. However, the wording of section 226(1)(a) of the 1990 Act requires an authority exercising those compulsory purchase powers to take into account further specific considerations i.e. the carrying out of development, redevelopment or improvement on or in relation to the land is likely to contribute to the achievement of the promotion or improvement of the economic, social, environmental well-being of the area. Comparing and contrasting these specific considerations with those applying to compulsory purchase powers under different statutes may have a bearing on deciding the most appropriate powers under which to acquire land.

20. The planning framework providing the justification for a CPO should be as detailed as possible in order to demonstrate there are no planning or other impediments to the implementation of the scheme. Where the justification for a scheme is linked to proposals identified in an adopted LDP, Strategic Development Plan or Future Wales: the National Plan 2040 covering the area, this will be given due weight by the Welsh Ministers when giving consideration to whether a CPO should be confirmed or not.

21. An acquiring authority with planning powers is not bound by the provisions of the development plan as the basis for justifying the compulsory purchase of land under the provisions of section 226(1)(a). These might relate to, for example, national policies concerning such issues as: the appropriate use of compulsory purchase powers; regeneration; or housing provision brought forward since the last revision of the development plan. Any deviation from an adopted LDP would, however, have to be justified and evidence based. In such situations, where there has not yet been an opportunity to incorporate such policies into the LDP for the area, the Welsh Ministers would normally expect to see the proposals underlying the compulsory purchase having been worked up in supplementary planning guidance which had been subjected to public consultation. The weight to be attached to an emerging LDP[32] by the Welsh Ministers when giving consideration to whether a CPO should be confirmed or not will depend on the stage the LDP has reached and the weight to be attached will not increase as the plan progresses to adoption. In considering the weight to be given to policies in an emerging LDP which apply to a particular scheme, acquiring authorities will need to consider carefully the underlying evidence and background to the policies. National policy can also be a material consideration in these circumstances. Further guidance on emerging or outdated LDPs can be found in the Welsh Government's Development Plans Manual (Edition 3, March 2020).

[32] Defined in regulation 2 of the Town and Country Planning (Local Development Plan) (Wales) Regulations 2005 (as amended).

22. Any programme of land assembly needs to be set within a clear strategic framework and this is particularly important when demonstrating the justification for acquiring land compulsorily under section 226(1)(a) powers as a means of furthering the well-being of the wider area. Such a framework will need to be founded on an appropriate evidence base and have been subjected to a consultation exercise including with those whose property is directly affected. This can help reduce the number of objections to the CPO.

23. Where a development plan is out of date, it may well be appropriate to take account of more detailed proposals being prepared on a non-statutory basis with the intention that they will be incorporated into the development plan at the appropriate time. Such proposals may relate, for instance, to accommodating the need for further growth in an area and may take the form of masterplans or other detailed delivery mechanisms prepared by the relevant local authority. Where such proposals are being used to provide additional justification and support for a CPO, there should be clear evidence that all those who might have objections to the underlying proposals in the supporting non-statutory plan have had an opportunity to make them known to the body promoting that plan, whether or not that is the acquiring authority making the CPO. In addition, PPW is a material consideration in all planning decisions and should be taken into account.

24. It is recognised it may not always be feasible or sensible to wait until the full details of the acquisition scheme have been worked up, and planning permission obtained, before an acquiring authority proceeds with a CPO and builds the compelling case. In cases where the proposed acquisitions form part of a longer-term strategy which needs to adapt to changing circumstances, it may not always be possible to demonstrate with absolute clarity or certainty the precise nature of the end-use proposed. In all such cases, the responsibility will lie with the acquiring authority to:
    - put forward a compelling case for compulsory acquisition in advance of resolving all the uncertainties; and
    - subsequently securing the necessary planning permission for the acquisition scheme.

25. If planning permission on land associated with a CPO has changed from the time the CPO is submitted to the Welsh Ministers for confirmation to the time of a public inquiry, it is important all planning changes are well tracked and documented. If a planning permission is subsequently amended after a CPO is confirmed, acquiring authorities should ensure the development the subject of the amended permission complements the description of the scheme in the CPO as this will set the purpose of the acquisition.

Factors to be taken into account by the Welsh Ministers in deciding whether or not to confirm a compulsory purchase order under section 226(1)(a)

26. Any decision about whether or not to confirm a CPO made under section 226(1)(a) to facilitate the carrying out of development, redevelopment or improvement on or in relation to the land will be made on its own merits, but the factors which the Welsh Ministers may consider include:

(a) Whether the purpose for which the land is being acquired aligns with PPW, the adopted LDP, Strategic Development Plan, or Future Wales: the National Plan 2040 covering the area or, where no such up to date development plan exists, with the draft development plan.

(b) The extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the acquiring authority with planning powers' area i.e. local authority area.

(c) Whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means. This may include considering the appropriateness of any alternative proposals put forward by the owners of the land, or any other persons, for its reuse. It may also involve examining the suitability of any alternative locations for the purpose for which the land is being acquired. The guidance in paragraphs 26 - 28 in Section G in Part 2 of this Circular in relation to CPOs which are made to acquire land for the purposes of facilitating an active travel route and the assessment of alternative proposals applies equally to CPOs made under the section 226 of the 1990 Act.

(d) The potential financial viability of the scheme for which the land is being acquired. A general indication of funding intentions, and of any commitment from third parties, will usually suffice to reassure the Welsh Ministers that there is a reasonable prospect that the scheme will proceed.
The greater the uncertainty about the financial viability of the scheme, however, the more compelling the other grounds for undertaking the compulsory purchase will need to be. The timing of any available funding may also be important. For example, a strict time limit on the availability of the necessary funding may be an argument put forward by the acquiring authority to justify proceeding with the CPO before finalising the details of the replacement scheme and/or the statutory planning position.

Section B – Compulsory purchase orders made under housing powers (including listed buildings in clearance areas)

Introduction

1. This Section provides guidance to local authorities considering whether to make CPOs under the: Housing Act 1985 ("the 1985 Act"); and Local Government and Housing Act 1989 ("the 1989 Act"). It also provides guidance on the information which should be submitted in support of housing CPOs in addition to the general requirements described in the Circular.

2. Housing CPOs submitted for confirmation by the Welsh Ministers will be considered on their merits in light of any objections received and the general requirement that CPOs should not be made unless there is a compelling case in the public interest.

Housing Act 1985: Part 2

Circumstances in which powers may be used

3. Section 17 of the 1985 Act empowers local housing authorities (LHAs) to compulsorily acquire land, houses or other properties for the provision of housing accommodation. Acquisition must achieve a quantitative or qualitative housing gain.

4. The main uses of this power have been to assemble land for housing and ancillary development, including the provision of access roads; to bring empty properties into housing use; and to improve sub-standard or defective properties. Current practice is for LHAs who compulsorily acquire land or property to dispose of it to the private sector, registered social landlords or owner-occupiers.

Information to be included in submissions of compulsory purchase orders

5. When submitting a CPO made under Part II of the 1985 Act for confirmation the acquiring authority should include in its Statement of Reasons for making the CPO information regarding needs for the provision of further housing accommodation in its area. This information should normally include:
   - the total number of dwellings in the district;
   - the total number of substandard dwellings (i.e. the quantity of housing with Category 1 hazards as defined in section 2 of the Housing Act 2004);
   - the total number of households and the number for which, in the authority's view, provision needs to be made;
   - details of the authority's housing stock, by type, particularly where the case for compulsory purchase turns on a need to provide housing of a particular type;
   - where a CPO is made with a view to meeting special housing needs, for example, the elderly, disabled or homeless, specific information about these needs should be included;

- where the authority proposes to dispose of the land or property concerned, details of the prospective purchaser, their proposals for the provision of housing accommodation and when this will materialise, and details of any other statutory consents required;
- where it is not possible to identify a prospective purchaser at the time a CPO is made, details of the authority's proposals to dispose of the land or property, its grounds for considering that this will achieve the provision of housing accommodation and when the provision will materialise;
- where the authority has alternative proposals, it will need to demonstrate that each alternative is preferable to any proposals advanced by the existing owner.

Acquisition of land for housing development

6. The acquisition of land for any type of housing development is an acceptable and justifiable use of compulsory purchase powers, including where it will make land available for private development or development by registered social landlords which is in accordance with the adopted LDP for an area and national planning policy. Section 17(4) of the 1985 Act provides the Welsh Ministers may not confirm a CPO unless they are satisfied the land is likely to be required within 10 years.

7. Where a LHA has a choice between the use of housing or planning compulsory purchase powers (referred to in Section A in Part 2 of this Circular) the Welsh Ministers will not refuse to confirm a CPO solely on the grounds that it could have been made under another power. Where land is being assembled under planning powers for housing development, the Welsh Ministers will have regard to the policies set out in this Section.

Acquisition of empty properties for housing use

8. Compulsory purchase of empty properties may be justified in situations where there appears to be no prospect of a suitable property being brought into residential use through acquisition by agreement. LHAs will first wish to encourage the owner to restore the property to full occupation. However, cases may arise where the owner cannot be traced and therefore use of compulsory purchase powers may be the only way forward. When considering whether or not to confirm a housing CPO the Welsh Ministers will normally wish to know:
   - how long the property has been vacant;
   - what steps the LHA has taken to encourage the owner to bring it into acceptable use and the outcome; and
   - what works have been carried out by the owner towards its re-use for housing purposes.

Acquisition of sub-standard properties

(a) General use of Power

9. Compulsory purchase of sub-standard properties may also be justified in cases where acquisition by agreement cannot be reached and:
   - a clear housing gain will be obtained;

- the owner of the property has failed to maintain it or bring it to an acceptable standard; and
- other statutory measures, such as the service of statutory notices, have not achieved the LHA's objective of securing the provision of acceptable housing accommodation.

The Welsh Ministers would not, however, expect an owner-occupied house, other than a house in multiple occupation, to be included in a CPO unless the defects in the property adversely affected other housing accommodation. In considering whether or not to confirm a housing CPO relating to a sub-standard property the Welsh Ministers will wish to know:

- what the alleged defects in the CPO property are;
- what other measures the authority has taken to remedy matters and the outcome (for example, service of a notice on the owner under section 215 of the 1990 Act requiring them to remedy the loss of amenity which such a property could cause);
- the extent and nature of any works carried out by the owner to secure the improvement and repair of the property; and
- the LHA's proposals regarding any tenants of the property.

(b) Limitations on use of the power under Part 2 of the Housing Act 1985 to acquire property for the purpose of providing housing accommodation

10. The powers under Part II of the 1985 Act to acquire property for the purpose of providing housing accommodation do not extend to acquisition for the purpose of improving the management of housing accommodation. A qualitative or quantitative housing gain must be achieved. Following the judgement in the case of *R v Secretary of State for the Environment ex parte Royal Borough of Kensington and Chelsea* (1987) it may, however, be possible for authorities to resort to compulsory purchase under Part II where harassment or other grave conduct of a landlord has been such that proper housing accommodation could not be said to exist at the time when the authority resolved to make the CPO. Such a CPO could be justified as achieving a housing gain.

11. Consent may be required for the onward disposal of tenanted properties which have been compulsorily purchased. Before a LHA can dispose of housing occupied by secure tenants to a private landlord it must consult the tenants in accordance with section 106A of the 1985 Act. The Welsh Ministers cannot give consent for the disposal if it appears to them that a majority of the tenants are opposed. A LHA contemplating onward sale should, therefore, ensure in advance that it has the tenants' support.

Housing Act 1985: Part 9 Clearance areas

12. Where a local authority has declared an area as a "clearance area"[33], it may proceed to secure the clearance of the area by purchasing the land comprised in the area and themselves undertaking, or otherwise securing, the demolition of the buildings on the land. Where a local authority has determined to purchase land under section 290 of the 1985 Act, it may purchase the land either by agreement or a CPO. In addition to the general requirements, an authority submitting a clearance area CPO will be expected to deal with the following matters in their Statement of Reasons:
    - the declaration of the clearance area and its justification including a statement that all other possible options to maintain the clearance area have been considered;
    - the standard of buildings in the clearance area i.e. incorporating a statement of the authority's principal grounds for being satisfied that the buildings are substandard;
    - the justification for acquiring any added lands included in the CPO;
    - proposals for re-housing and for re-locating commercial and industrial premises affected by clearance;
    - the proposed after-use of the cleared site;
    - where it is not practicable to provide evidence of planning permission, the authority should demonstrate their proposals are acceptable in planning terms and why, in their opinion, there appears to be no grounds that planning permission will not materialise; and
    - how they have fully considered the economic aspect of clearance and that they have responded to any submissions made by objectors on this subject.
13. General guidance on clearance areas can be found in *National Assembly for Wales Circular 20/02 - Housing Renewal*.

Building becoming listed when subject to compulsory purchase for clearance purposes

14. Where a building is included in a clearance area CPO under section 290 of the 1985 Act, and it is subsequently listed, the local authority will need to decide urgently whether the building should be retained because of its special interest, or whether it should proceed with the clearance proposals. As part of the listing process, the local authority will be invited to submit its views to Cadw. When a building is listed by Cadw, the local authority may apply to the Planning Inspectorate Wales for a review of the listing decision within 12 weeks of the listing decision date[34]. If the local authority decides clearance is the preferred action to take, it must apply to the Welsh Ministers for listed building consent to demolish the listed building within three months of the date of listing (section 305 of the 1985 Act).

[33] Defined in section 289 of the Housing Act 1985.
[34] See Part 5 of *Understanding Listing in Wales (Cadw, September 2018):* *https://cadw.gov.wales/sites/default/files/2019-05/Understanding%20Listing%20in%20Wales.pdf*

15. If a building in a clearance area CPO is subsequently listed after the CPO has been submitted to the Welsh Ministers for confirmation, but before they have reached a decision on it, the local authority should inform the Welsh Ministers urgently of how it wishes to proceed in light of the listing. If the local authority decides to retain the listed building, it should request the building be withdrawn from the CPO. If the local authority applies for listed building consent to demolish the listed building, the Welsh Ministers will normally hold a joint public inquiry at which the CPO and the application for listed building consent will be considered together.

16. If listed building consent is applied for and granted, acquisition, if not completed, can proceed and demolition can follow. If listed building consent is refused, or if no application is made within the three month period, subsequent action depends on whether or not NTT has been served and, if it has, whether the building is vested in the acquiring authority:

- If NTT has not been served, section 305(2) of the 1985 Act prohibits the local authority from serving it unless, and until, the Welsh Ministers give listed building consent. Refusal of listed building consent or failure to apply for it within the specified three month period will effectively release the building from the CPO and, where applicable, from the clearance area. In the latter event, the local authority must then consider other appropriate action for dealing with unfitness under the Housing Acts.

- If NTT has been served before the building is listed, but acquisition has not been completed before listed building consent is refused or the expiry of the three month period, compulsory acquisition may continue. However, this will proceed under the powers contained in Part 2 of the 1985 Act for residential buildings or Part 9 of the 1990 Act for other buildings.

- If the listed building is already vested in the local authority, it will be appropriated to Part 2 of the 1985 Act (provision of housing accommodation) or Part 9 of the 1990 Act (planning purposes) as the case may be.

Building becoming listed when acquired by agreement for clearance purposes

17. Where a building is purchased by agreement for clearance purposes[35] and is to be demolished, but subsequently becomes listed, the local authority may, under the provisions of section 306 of the 1985 Act, apply to the Welsh Ministers for consent to demolish the listed building[36]. If consent is refused or not applied for within the specified period of three months from the date of listing, the acquiring authority is no longer subject to the duty to demolish the building imposed by Part 9 of the 1985 Act and must appropriate it to Part 2 of the 1985 Act (provision of housing accommodation) or Part 9 of the 1990 Act (planning purposes) as the case may be.

[35] Under: (a) Part 9 of the Housing Act 1985; or (b) section 122 or 123 of the Local Government Act 1972.

[36] Under section 8 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Demolition of an unlisted building in a conservation area when subject to compulsory purchase for clearance purposes

18. Conservation area consent is not required for the demolition of an unlisted building in a conservation area which has been included in a clearance CPO under Part 9 of the 1985 Act[37]. Where a clearance CPO is submitted and includes buildings within a conservation area, the Welsh Ministers have regard to the conservation area aspect in reaching their decision on the CPO.

Other housing powers

19. CPOs made by local authorities under:
    (a) section 29 of the 1985 Act to provide houses for persons employed or paid by, or by a statutory committee of, the council; or
    (b) section 300 of the 1985 for the purchase of houses either liable to be demolished or subject to a prohibition order and are judged capable of being made habitable,

    fall to be considered on their merits in the light of the requirement that there should be a compelling case for compulsory purchase in the public interest. The Welsh Ministers will also have regard to the policies set out in this Section where applicable.

Local Government and Housing Act 1989: Part 7 Renewal Areas

20. Part 7 of the 1989 Act is a code relating to the declaration and administration of Renewal Areas. Section 93(1) of the Act provides where a LHA has declared an area to be a Renewal Area, the authority may exercise the powers of compulsory purchase under section 93. Section 93(2) of the 1989 Act provides LHAs may acquire, by agreement or compulsorily, any land in their area on which there are premises consisting of, or including, housing accommodation or which forms part of the curtilage of any such premises for the purposes of:
    - the improvement or repair of the premises (either by the authority or by a person to whom they propose to dispose of the premises);
    - the proper and effective management and use of the housing accommodation (either by the authority or by a person to whom they propose to dispose of the premises comprising the accommodation); and
    - the well-being of residents in the area.

    LHAs may provide housing accommodation on land which is acquired.

21. LHAs acquiring properties compulsorily should consider subsequently disposing of them to owner-occupiers, housing associations or other private sector interests in line with their strategy for a Renewal Area. Where property in need of renovation is acquired, work should be completed as quickly as possible in order not to blight the area and undermine public confidence in the overall Renewal Area strategy.

[37] Conservation Areas (Disapplication of Requirement for Conservation Area Consent for Demolition) (Wales) Direction (2017 No. 27).

In exercising their powers of compulsory acquisition, local authorities will need to bear in mind the financial and other resources available to them and to other bodies concerned.

22. Section 93(4) of the 1989 Act can be used by LHAs to acquire by agreement or compulsorily land and buildings for the purpose of improving the amenities in a Renewal Area. This power also extends to acquisition where other persons will carry out the scheme. Examples might include the provision of public open space or community centres either by the LHA or by a registered social landlord or other development partner. Demolition of properties should be considered only after all other possible options have been considered. In these cases regard should be had to any adverse effects on industrial or commercial concerns.

23. The powers in sections 93(2) and 93(4) of the 1989 Act are additional powers and are without prejudice to other powers available to LHAs to acquire land which might also be used in Renewal Areas.

24. The extent to which acquisitions will form part of a LHA's programme will depend on the particular area. In some cases strategic acquisitions of land for amenity purposes will form an important element of the programme. However, as a general principle, the Welsh Ministers would not expect to see LHAs acquiring compulsorily in order to secure improvement except where this cannot be achieved in any other way. Where acquisition is considered to be essential by a LHA, they should first attempt to do so by agreement.

25. Where a LHA submits a CPO under section 93(2) or 93(4) of the 1989 Act, their Statement of Reasons for making the CPO should demonstrate compulsory purchase is considered necessary in order to secure the objectives of the Renewal Area. It should also set out:
    - the relationship of the proposals for which the CPO is required to their overall strategy for the Renewal Area;
    - their intentions regarding disposal of the property; and
    - their financial ability, or that of the purchaser, to carry out the proposals for which the CPO has been made.

Section C – Compulsory purchase orders made under Part 7 of the Local Government Act 1972 for miscellaneous purposes (including for public libraries and museums)

Introduction

1. The general power of compulsory purchase at section 121 of the Local Government Act 1972 ("the 1972 Act") can (subject to certain constraints) be used by local authorities in conjunction with other enabling powers to acquire land compulsorily for the stated purpose. It may also be used where land is required for more than one function and no precise boundaries between uses are defined.

2. Section 121 can also be used to achieve compulsory purchase in conjunction with section 120 of the 1972 Act. Section 120 provides a general power for principal local authorities i.e. county or county borough council to acquire land by agreement for a statutory function in respect of which there is no specific land acquisition power or where land is intended to be used for more than one function.

3. Some of the enabling powers which do not include a specific land acquisition power and can be used by local authorities in conjunction with sections 120 and 121 of the 1972 Act to achieve compulsory purchase include:
   - public walks and pleasure grounds – section 164 of the Public Health Act 1875;
   - public conveniences - section 116 of the Public Health (Wales) Act 2017;
   - cemeteries and crematoria - section 214 of the 1972 Act (see also paragraph 6 below and paragraph 6 in Section D);
   - recreational facilities - section 19 of the Local Government (Miscellaneous Provisions) Act 1976 (used in the example in paragraph 7 below);
   - refuse disposal sites - section 51 of the Environmental Protection Act 1990; and
   - land drainage - section 62(2) of the Land Drainage Act 1991.

4. Section 125 of the 1972 Act contains a general power for a principal council[38] to acquire land compulsorily (subject to certain restrictions) on behalf of a community council which is unable to purchase by agreement land needed for the purpose of a statutory function – see Section D in this Part of the Circular.

5. The normal considerations in relation to the making and submission of a CPO, as described in Part 1 of this Circular, would apply to CPOs relying upon section 121 of the 1972 Act. These include the requirement that compulsory purchase powers should only be used where there is a compelling case in the public interest. The confirming authority for CPOs under Part 7 of the 1972 Act is the Welsh Ministers.

[38] See section 270 of the Local Government Act 1972 for the definition of "principal council".

Acquisition and enabling powers

6. When a CPO is made by a principal council under section 121 of the 1972 Act, or on behalf of a community council under section 125 of that Act, paragraph 1 of the CPO should cite the relevant acquisition power and state the purpose of the CPO, by reference to the Act ("enabling Act") under which the purpose may be achieved. For example:

   In relation to the compulsory purchase of land to provide a cemetery, the CPO could state:

   "1. Subject to the provisions of this Order, the acquiring authority is, under Section 121 of the Local Government Act 1972 ("the "Act"), hereby authorised to purchase compulsorily for the purpose of providing a cemetery under section 214(2) of the Act the land which is described in paragraph 2."

   In relation to the compulsory purchase of land to provide a treatment plant associated with a landfill site, the CPO could state:

   "1. Subject to the provisions of this Order, the acquiring authority is, under Section 121 of the Local Government Act 1972 ("the "Act"), hereby authorised to purchase compulsorily the land and new rights over land described in paragraph 2 for the purposes of the construction of pipes and other structures associated with a leachate treatment plant to be built on adjoining land owned by [Council X] for the purpose of treating contaminated water emanating from [Name of Landfill Site] owned and controlled by [Council X] pursuant to section 51 of the Environmental Protection Act 1990."
   .

7. Where practicable, the words of the relevant section(s) of the enabling Act(s) should be inserted in the CPO (see paragraph (f) of the Notes to Forms 1,2 and 3 contained in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004). For example: -

   ".....the acquiring authority is under section 121 [125] of the Local Government Act 1972 hereby authorised to purchase compulsorily [on behalf of the council of .....])[the land][and][the new rights over land] described in paragraph 2 for the purpose of providing premises for use as a recreation/community centre under section 19 of the Local Government (Miscellaneous Provisions) Act 1976.....".

Restrictions on use of the power under section 121 of the 1972 Act

8. Acquiring authorities should note that section 121 of the 1972 Act is subject to some constraints. Section 121(2) sets out certain purposes for which principal councils may not purchase land compulsorily under section 121. These are as follows:
   (a). For the purposes specified in section 120(1)(b), i.e. the benefit, improvement or development of their area. Councils may consider using their acquisition powers under section 226 of the 1990 Act for these purposes.
   (b). For the purposes of their functions under the Local Authorities (Land) Act 1963.
   (c). For any purpose for which their power of acquisition is expressly limited to acquisition by agreement only, for example, section 9(a) of the Open Spaces Act 1906.

Joint orders and mixed purposes

9. A single CPO may be made under section 121 of the 1972 Act by more than one council and for more than one purpose. Where this would involve more than one Welsh Minister, the CPO may be submitted to one Welsh Minister but it has to be processed through all the relevant government departments.

10. Where a public inquiry is required or is considered to be appropriate, the inspector's report will be submitted to each of the departments simultaneously and the decision will be given by the relevant ministers acting together.

Public libraries and museums

11. A principal council can compulsorily acquire land for public libraries and museums under section 121 of the 1972 Act using an appropriate enabling power (such as section 7 or 12 of the Public Libraries and Museums Act 1964). CPOs for these purposes should be submitted to the Welsh Ministers at the address given in Section R in Part 4 of this Circular. Such CPOs should be accompanied by the following additional documents:
   - a completed copy of form CP/AL1 (obtainable from Section V in Part 4 of this Circular or the Welsh Government's website); and
   - a qualified valuer's report.

Section D – Compulsory purchase orders made on behalf of community councils

Introduction

1. If a community council has been unable to acquire by agreement and on reasonable terms, they may make representations to the principal council to make a CPO under section 125 of the 1972 Act. The principal council should have regard to the representations and to all the other matters set out in section 125 some of which are mentioned in paragraph 5 below. Guidance on the drafting of a CPO made on behalf of a community council can be found in paragraphs 6 and 7 in Section C in Part 2 of this Circular.

Restrictions on a principal council's power to make a compulsory purchase order on behalf of a community council

2. A principal council may not acquire land compulsorily on behalf of a community council for a purpose for which a community council is not, or may not be, authorised to acquire land, for example, see section 226(1) and (8) of the 1990 Act.

3. Section 125 of the 1972 Act does not apply where the purpose of the CPO is to provide allotments under the Small Holdings and Allotments Act 1908 ("the 1908 Act"). In such a case, by virtue of section 39(7) of the 1908 Act, the principal council should purchase the land compulsorily, on behalf of the community council, under section 25 of that Act.

4. Acquiring authorities should note that section 125(1) of the 1972 Act sets out certain purposes for which principal councils may not purchase land compulsorily under section 125. These are as follows:
   (a). For the purposes specified in section 124(1)(b), i.e. the benefit, improvement or development of their area. Councils may consider using their acquisition powers under section 226 of the 1990 Act for these purposes.
   (b). For any purpose for which their power of acquisition is expressly limited to acquisition by agreement only, for example, section 9(a) of the Open Spaces Act 1906.

Refusal by a principal council to make a compulsory purchase order on behalf of a community council or does not make one within the required time period

5. If a principal council refuses to make a CPO under section 125 of the 1972 Act, or does not make one within 8 weeks of the community council's representations or within such an extended period as may be agreed between the two councils, the community council may petition the Welsh Ministers, who may make the CPO. Where a CPO is made by the Welsh Ministers in such circumstances, section 125 and the 1981 Act apply as if the CPO had been made by the principal council and confirmed by the Welsh Ministers.

Joint order

6. A principal council may also make a CPO on behalf of more than one community council. Such a CPO might, for example, be made under section 125 of the 1972 Act, for the purposes of section 214 of the 1972 Act, on behalf of several community councils which form a joint burial committee in the area of the principal council.

Costs and compensation

7. A community council should consider very carefully whether it has the necessary resources, including the finance, to carry out a compulsory purchase of land. A principal council which makes a CPO on behalf of a community council may (and, in the case of a CPO made under the 1908 Act, shall) recover from the community council the expenses which it has incurred. This includes:
   - the administrative expenses and costs of the public inquiry;
   - the public inquiry costs awarded to successful remaining objectors, should the CPO not be confirmed, or confirmed in part (see also paragraphs 113 - 115 in Part 1 of this Circular);
   - statutory compensation including, where appropriate, any additional disturbance, home loss, or other loss payments, to which the dispossessed owners may be entitled;
   - any compensation for injurious affection payable to adjoining owners who may be entitled to claim.

8. When considering whether or not to confirm or make a CPO, the Welsh Ministers will have regard to questions concerning the ability of the community council to meet the costs of purchasing the land at market value and to carry forward the scheme for which the CPO has been or would be made.

Section E – Compulsory purchase orders made under section 89 of the National Parks and Access to the Countryside Act 1949

1. In some circumstances, local authorities can compulsorily acquire land to improve its appearance or condition. For instance, a local authority can use their compulsory purchase powers under section 89(5) of the National Parks and Access to the Countryside Act 1949 ("the 1949 Act") for this purpose. The Welsh Ministers are the confirming authority for CPOs made under section 89(5) of the 1949 Act.

2. A local authority can use their powers under section 89(5) of the 1949 Act to compulsory purchase land to plant trees in order to preserve or enhance the natural beauty of that land. The local authority can also use this power to carry out works to reclaim, improve or bring back into use land in their area that the authority believes to be:
   - derelict, neglected or unsightly; or
   - is likely to become derelict, neglected or unsightly because the authority anticipates that the surface may collapse as the result of underground mining operations (other than coal mining).

3. If a local authority is unsure whether to use these specific powers, or if various uses are proposed for the land, the authority may consider using the powers granted by section 226 of the 1990 Act instead.

4. There are also various other compulsory purchase powers which local authorities may use to acquire and develop land that is derelict, neglected or unsightly for particular purposes such as housing or public open space.

5. There are no statutory definitions of the phrases "derelict, neglected or unsightly" used in connection with the compulsory purchase powers provided under section 89(2) of the 1949 Act. As such, the natural, common-sense meaning of the words should be taken. If possible, it is also preferable to consider the three words taken together, as there is a considerable overlap between each one. The word "unsightly" is clearly directed to the appearance of the land, but an untidy or uncared for appearance may also be relevant in considering whether the land is derelict or neglected. Land may be "neglected" without having been the subject of any operations (such as building works, dumping or excavating), but it may be inappropriate to describe such land as "derelict".

6. It may be that land is being put to some slight use but is still properly described as "derelict" or "neglected" when its condition is considered in the light of the potential use of the land. It is not the purpose of section 89 of the 1949 Act to enable a local authority to carry out works or to acquire land compulsorily solely because they consider they have a better use for the land than the present one.

7. When considering whether to make a CPO under section 89(5) of the 1949 Act, or when preparing their case in support of such a CPO, authorities may find it helpful to have the Welsh Ministers' view about the meaning of the words "derelict, neglected or unsightly" for these purposes.

Section F – Compulsory purchase orders for educational purposes

Local authorities' power to make a compulsory purchase order for educational purposes

1. A local authority can make a CPO for educational purposes using its powers under section 530 of the Education Act 1996 (as amended) ("the 1996 Act"). These powers can be used to acquire land which is required for the local authority's educational functions, including the purposes of any local authority maintained or assisted school or institution.

2. CPOs made undersection 530 of the 1996 Act should be submitted for confirmation by the Welsh Ministers at the address given in Section R in Part 4 of this Circular. When making a CPO under section 530 of the 1996 Act, local authorities may seek guidance, if necessary, from the Welsh Ministers on the form of draft CPOs where there is doubt about a particular point.

3. Before making a CPO under section 530 of the 1996 Act, local authorities should have regard to the suitability of the site and also whether the site area is essential to locate the school buildings and playing field.

4. A local authority may make a CPO under section 530 of the 1996 Act in conjunction with certain proposals for changes in school provision. A proposal could involve:
   - the establishment of a new school for children of compulsory school age (under Part 3 of the School Standards and Organisation (Wales) Act 2013 ("the 2013 Act")); or
   - a prescribed alteration to an existing maintained school (under Part 3 of the 2013 Act).

   In such circumstances, the local authority should publish the proposals made under Part 3 of the 2013 Act before making and submitting a CPO under section 530 of the 1996 Act. The Welsh Ministers will consider a CPO made under section 530 of the 1996 Act independently to any accompanying statutory proposals for changes in school provision made under Part 3 of the 2013 Act. These are considered separately.

5. If the Welsh Minsters decide to confirm a CPO under section 530 of the 1996 Act, the CPO will be sealed and returned to the local authority. When the local authority has purchased the site, and the condition of the approval met, the approval of the proposals becomes final with no further action required.

6. If a decision is made to reject the 2013 Act proposals for change in school provision, the local authority is advised not to make the CPO under section 530 of the 1996 Act. Since, in these circumstances, it would be inappropriate for the Welsh Ministers to confirm it.

Voluntary aided schools

7. Where CPOs are made for voluntary aided schools, the following documents, additional to those specified in Section Q in Part 4 of this Circular, should accompany the CPO or be submitted as soon as possible after:
   - a completed copy of form SB1 (obtainable from the Welsh Ministers at the address in Section R in Part 4 of this Circular); and
   - a qualified valuer's report.

Section G – Compulsory purchase orders for highway purposes

1. This Section refers to the compulsory acquisition of land under the Highways Act 1980 ("the 1980 Act").

Statement of purposes of acquisition in the compulsory purchase order

2. To enable the purposes of the acquisition to be properly stated in the CPO itself, it is important to determine whether the scheme involves the construction of a new highway or the improvement of an existing highway. In many cases the distinction is obvious but cases do arise (particularly where the scheme involves realignment of an existing highway) in which there can be some difficulty in ascertaining whether the scheme does or does not involve the construction of a new length or lengths of highway. It is considered the correct criterion to be applied in most cases to determine whether or not a scheme involves the construction of a new length of highway or the improvement of an existing highway is indicated in the wording of Part 13 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 ("the 1995 Order"). Part 13 of Schedule 2 to the 1995 Order provides where all the works are to be carried out on land outside but adjoining the boundary of an existing highway the scheme is involving the improvement or maintenance of an existing highway only. Where works are to be carried out on other land, so that when the scheme is complete there will be non-highway land between the projected works and the existing highway, then on that length of highway the works should be regarded as works for the construction of a new highway.

3. To assist in attaining clarity and accuracy in the statement of purposes in the CPO, regard should be had to the following points:-

   (a) *Construction as well as improvement*
   If construction of a new length of highway, and improvement of an existing highway, are involved, both purposes should be clearly stated.

   (b) *Ancillary roads, etc.*
   Where construction of a new highway involves construction of ancillary roads to connect the new road with the existing highway system, or related improvements to existing roads, this should be made clear.

   (c) *Highway to be improved*
   These should be named or briefly described.

   (d) *New lengths of highway*
   These should be briefly described (for example, "a new highway to bypass (name of town or village", "a new highway from Llewelyn Street to Heol-y-Mynydd in the said Council's area, etc), while noting any new bridges or tunnels to be constructed.

(e) *Land outside the highway*
Where the scheme is one for the improvement or construction of a highway, the land to be included in the CPO will normally be limited to that falling within the highway as improved or newly constructed.
If land outside these limits is required for use in connection with the improvement or construction of a highway (for example, as working space), this will need to be made clear and the power in section 240(2)(a) of the 1980 Act cited. If areas of land outside the proposed boundaries of the highway are to be acquired in reliance on section 239(6) of the 1980 Act, the description of purposes should include a reference to land adjoining or adjacent to the highway, as well as to the frontages to the highway.

(f) *Associated schemes/orders*
Where there is an associated side roads order the purposes need not be elaborate; they can be described in broad terms and as being in pursuance of the made side roads order.

(g) *Acquisition of rights*
Where it is proposed to acquire rights over land for various purposes (including drainage), these should be described.

Extent of land acquisition

Distance limits

4. Section 249 of, and Schedule 18 to, the 1980 Act specify distance limits applicable to the compulsory acquisition of land. These limits do not apply to land required for the drainage of a highway or proposed highway, or of a maintenance compound, service area, trunk road picnic area or lorry area, or required for the purpose of:
(a) the diversion of a navigable watercourse, or
(b) the provision of protection for a highway against snow, flood, landslide or other hazards of nature, or
(c) the carrying out of works on any watercourse under section 110 of the 1980 Act.

Private means of access

5. Section 240(1) of the 1980 Act gives highway authorities power to acquire land compulsorily for the purpose of providing new private means of access as authorised by section 129 of the 1980 Act or by an order under section 14 of the 1980 Act. Land needed for use in connection with the carrying out of such works may also be acquired under this power and included in the CPO.

Side roads

6. Section 240(1) of the 1980 Act empowers the compulsory acquisition of land required in connection with an order made under section 14 of the 1980 Act.

This includes alteration of side roads which cross or enter the route of a classified road or will otherwise be affected by the construction or improvement of a classified road. Land needed for use in connection with the carrying out of such works may also be acquired under this power and included in the CPO.

Working space

7. Section 240(2) of the 1980 Act authorises highway authorities to acquire compulsorily land adjoining or in the vicinity of an existing highway or the route of a proposed highway in order to enable them to carry out reasonably and effectively works in connection with the construction or improvement of the highway (i.e. land for working space, means of access to construction sites or the provision of spoil dumps, plant and machinery storage space, etc), (see paragraphs 5 and 6 above in relation to working space, etc, required in connection with works carried out under sections 14 and 129 of the 1980 Act).

Land burdened by restrictive covenants and third party rights

8. Section 260(1) and (2) of the 1980 Act empowers highway authorities to include in orders, land in which they have already acquired an interest by agreement. When such a CPO becomes effective, the provisions of the 1965 Act will apply, thus giving persons entitled to the benefit of covenants or other third party rights, a right to compensation in appropriate circumstances. It is not envisaged that section 260(1) of the 1980 Act can be used so as to sanction a CPO which does not cover land other than the land in which the highway authority have acquired the interest by agreement. Section 260(3) and (4) of the 1980 Act enables lessees of, or contractors operating, a service area or a lorry area to use the land for those purposes, in the same way that the highway authority themselves could use the land, notwithstanding the existence of a restrictive covenant or other third party rights.

Power to acquire land outside the highway boundary

9. Section 246 of the 1980 Act provides the power to acquire land compulsorily (or by agreement) outside the proposed boundary of a highway in order to reduce the adverse effect of the existence or use of the highway on its surroundings, as follows:-

    (i) Section 246(1) of the 1980 Act provides that highway authorities may acquire land compulsorily for the purpose of mitigating any adverse effect which the existence or use of a highway constructed or improved by them (or proposed to be constructed or improved by them) has or will have on its surroundings. This power enables the acquisition of land needed to maintain or improve the environment of areas adjacent to the road. Having acquired such land, highway authorities may make suitable use of it under the provisions of section 282 of the 1980 Act or they may dispose of it under existing powers should it be surplus to requirements. It is considered desirable, wherever possible, land acquired pursuant to section 246(1) should be included in the same CPO as the highway land.

The acquiring authority should, of course, be in a position to show what they intend to do with the land. Compulsory acquisition of land under the provisions of section 246(1) of the 1980 Act must begin before the opening of the new or improved highway, and section 246(4) of the 1980 Act defines the time when acquisition is begun.

(ii) Section 246(7) of the 1980 Act makes it clear that the reference to construction or improvement of highways in section 246 of the 1980 Act includes construction or improvement pursuant to a side roads order.

(iii) Section 250(1) of the 1980 Act makes it clear that the expression "highway land acquisition powers" includes the power to acquire land under section 246 of the 1980 Act. This means the powers to acquire rights compulsorily under section 250 of the 1980 Act, the power to make a CPO for the clearance of title to land acquired for statutory purposes under section 260 of the 1980 Act, and the provisions relating to concurrent procedure in section 257 of the 1980 Act will apply to the acquisition of land under section 246 of the 1980 Act.

(iv) Section 282 of the 1980 Act enables highway authorities to carry out works for mitigating the adverse effects which the construction, improvement, existence or use of a highway has or will have on the surroundings of the highway. This means there are specific powers to erect physical barriers (such as walls, screens or mounds of earth) alongside roads in order to reduce the effects of traffic noise on people living nearby. Section 282(2) of the 1980 Act enables the appearance of any earth mounds or other landscaped works to be improved by planting. The provision under section 282(3) of the 1980 Act that a highway authority may develop or redevelop any land acquired by them under section 246 of the 1980 Act enables the construction of buildings alongside new or improved roads. Such buildings may be constructed so as to act as a barrier against traffic noise or otherwise for the mitigation of adverse effects of the highway on its surroundings.

Boundary of land required cuts through building

10. Where the boundary of the widening or new construction cuts through a building, notwithstanding the powers of an owner to exercise his right under section 8 of the 1965 Act to require the highway authority to buy the entire building or in a case where the provision of that section may be inapplicable, it is usually appropriate to acquire the site of the entire building in reliance on section 240(2)(a) of the 1980 Act. Section 240(2)(a) of the 1980 Act provides the highway authority with power to acquire land which is required for use by them in connection with the construction or improvement of a highway or with the carrying out of works authorised by an order under section 14, section 18 or section 108(1) of the 1980 Act. This certainly should be done in cases where the demolition of part of a building would cause the rest of the building to collapse or leave a precariously poised or dangerous structure.

Where, however, the highway scheme involves the acquisition of significant areas of land which lies outside the highway boundary, in a case where section 240(2)(a) of the 1980 Act is inapplicable, use should be made of the following powers given by the1980 Act:

- section 239(6) – highway authorities may acquire land required for the improvement or development of frontages to a highway for which they are the highway authority or of the land adjoining or adjacent to that highway;
- section 239(1) – highway authorities may acquire land required for the construction of a highway which is to be a highway maintainable at the public expense, other than a trunk road;
- section 239(3) – highway authorities may acquire land required for the improvement of a highway, being an improvement which they are authorised by the 1980 Act to carry out in relation to the highway, and
- section 246(1) – highway authorities may acquire land for the purpose of mitigating any adverse effect which the existence or use of a highway constructed or improved by them, or proposed to be constructed or improved by them, has or will have on the surroundings of the highway.

Acquisition of full title to existing highways

11. Where existing highways of any age are affected by highway works then it is unlikely the highways authority will have full paper title to the land. Unless title to the land forming the existing highway is acquired by the CPO, the resulting title position could result in a mixture of registered titles acquired by transfer following a NTT or acquired by GVD, and areas of unregistered land showing where the land formed part of the former highway alignment. Where the highway authority wishes to acquire title to land forming part of a highway for which it is the highway authority, the authority will be expected to justify why its existing statutory highway ownership rights are insufficient.

Licences

12. Land which is required for one off purposes (for example, the construction of the highway or related structures where no future maintenance requirements are needed) should normally be included in the CPO as title with the land being described in the same way as a title plot. It is best practice to either issue a covering letter with any such order or include in the Statement of Reasons a list of the licencing plots to allow landowners to distinguish on the order map the plots for which titles are being permanently acquired and plots where one-off licences are sought. However, the intention should be to negotiate at acquisition stage for the necessary one-off licences and only to exercise acquisition of title if negotiations fail.

Acquisition of rights over land

13. There are frequent cases where highway schemes necessitate work on land not required to form part of the highway and where, so long as the highway authority have power to carry out such work, the landowner can by such an arrangement retain their land to mutual advantage, since the highway authority would not wish to incur the expense of acquiring and maintaining land unnecessarily.

Sections 250 to 252 of the 1980 Act (which should be read with Schedule 19 to the 1980 Act) provide for the compulsory acquisition of rights over land by the creation of new rights.

14. The types of rights for which these provisions are designed are in the nature of easements ancillary or belonging to the highway, proposed highway or other facility. Examples of those likely to be required in connection with highway schemes are as follows:

(i) the right to enter and re-enter upon x square metres of certain land to construct and maintain a bridge, viaduct, tunnel or other structure to carry a highway over or under land;

(ii) the right to enter and re-enter upon x square metres of certain land to lay and maintain drains and associated works (for example, inspection chambers); but see also paragraph 18 below;

(iii) the right to enter and re-enter upon x square metres of certain land to carry out works on watercourses (for example, diversions, widening or deepening channels, filling in old watercourse beds, etc);

(iv) the right to enter and re-enter upon x square metres of certain land to place and maintain footings or ground anchors in land;

(v) the right to enter and re-enter upon x square metres of certain land to place and maintain snow fences, etc, on land;

(v) the right to enter and re-enter upon x square metres of certain land for the construction and maintenance of a retaining wall (i.e. on other land to which title will be acquired and shown in a separate plot);

(vi) the right to enter and re-enter upon x square metres of certain land to gain access to environmental mitigation works;

(vii) the right to enter and re-enter upon x square metres of certain land to carry out environmental works to maintain the conservation status of an ancient woodland;

(viii) The right to enter and re-entre upon x square metres of certain land to construct and maintain works and use them in connection with the discharge of highway drains into a watercourse.

15. However, it is emphasised the Welsh Ministers do not envisage that these powers can be used by highway authorities in cases where the land will form part of the highway or where the works will, to all intents and purposes, deprive the landowner permanently of any real benefit from the land. In such cases, full title to the land would be appropriate.

Similarly, in cases where highway land acquisition powers are exercised to provide for a footpath, bridleway or other highway across land or for a new means of access to premises for a third party, full title should be included in the CPO.

NOTE
It is considered, because of the absence of express provision to this effect, sections 250 to 252 of the 1980 Act do not provide for the compulsory creation of rights for limited periods, though they do not preclude the creation of such rights by agreement. Also, sections 242(3), 254 and 255 of the 1980 Act which are rarely used powers (dealing with the creation of rights) are not affected by the provisions in sections 250 to 252 of the 1980 Act.

16. Where a CPO provides for the acquisition of rights over land forming part of a common, open space or fuel or field garden allotment, it will be subject to Standing Order 28 (i.e. special Senedd procedure) of the Senedd Cymru prior to confirmation. Specific power to acquire land to be given in exchange for rights which will burden common or other special category land is contained in section 250(2) of the 1980 Act. Rights acquired under the 1980 Act are, under section 251 of the 1980 Act, binding upon successors in title to the land concerned, and where a highway is transferred from one highway authority to another they are exercisable by the transferee authority. Section 252 of the 1980 Act provides that a landowner can require an acquiring authority to take full title to the land instead of the right authorised in a CPO.

17. Where a number of rights are included in a CPO, the following form of wording is suggested for inclusion in Article 1 of the CPO:

"1. Subject to the provisions of this Order, the acquiring authority is, under sections ……and 260 of the Highways Act 1980(**1**) and under section …. of, and paragraph ….. of Part .. of Schedule … to, the Acquisition of Land Act 1981(**2**), hereby authorised to purchase compulsorily the land and the new rights over land described in paragraph 2 for the purpose of:

(a) …….

2. The new rights to be purchased compulsorily under this Order are described in the Schedule and the land is shown coloured blue edged red on the said map."

The following notes should appear under the date the order was signed:

"(1) 1980 c.66
(2) 1981 c.67"

Drainage of highways

18. Reference has already been made to the power in the 1980 Act to acquire rights over land for drainage purposes. The following provisions should also be noted:

(i) Where it is proposed to lay drains for an existing highway, this work can be done under section 100(1) to (3) of the 1980 Act if the drains are to be laid on land adjoining or near to the highway. In addition, a highway authority can, under section 100(5) and (6) of the 1980 Act, use any powers exercisable by a sewerage undertaker under sections 158, 159, 163, 165 and 168 of the Water Industry Act 1991 to drain their highways and proposed highways. In all these cases the acquisition of specific rights by a CPO is unnecessary. The cases where rights acquisitions may be necessary or desirable are, generally, cases involving new highways, as section 100(1) to (3) of the 1980 Act only applies to highways – it does not apply to proposed highways.

(ii) Where rights to lay and maintain drains are involved and they are to be used for discharging water into any watercourse, drainage or other works vested in, or under, the control of a navigation authority, a water authority, or other drainage authority within the meaning of the Land Drainage Act 1991 (see section 72 of the Land Drainage Act 1991), section 339 of the 1980 Act will apply and the consent of the relevant authority required. Before confirming a CPO providing for the acquisition of land or rights in such cases, the Welsh Ministers will need to be satisfied that the necessary consents have been given or that the consent of these authorities is not needed.

Works affecting watercourses

19. Many highway schemes involve the diversion of, or execution of works to, watercourses. Sections 106 and 107 of the 1980 Act make provision for the construction of bridges over or tunnels under navigable waters and sections 108 and 109 of the 1980 Act give specific powers to divert a navigable watercourse. Sections 106 and 108 of the 1980 Act also contain provisions which allow the matters provided for therein to be dealt with by a side roads order, although it should be noted that in the case of section 106 of the 1980 Act this can be done only if the bridge or tunnel is part of a highway which is to be altered or constructed in pursuance of the side roads order. Section 110 of the 1980 Act provides powers to divert non-navigable watercourses and to carry out other general works in respect of both navigable and non-navigable watercourses. The power to acquire land for works under section 108 and 110 of the 1980 Act is contained in section 240(2)(b) of the 1980 Act and distance limits in relation to compulsory acquisition under section 249(3) the 1980 Act do not apply to land or rights acquired for this purpose.

20. It will be noted that section 110 of the 1980 Act provides for watercourse works to be carried out without the acquisition of land and, in such cases, section 110(5) and (7) of the 1980 Act contain a distinct procedure as to the serving of notices and hearing of objections. It is suggested, however, that where local highway authorities are proposing to carry out such works in connection with a highway scheme for which they are also making a CPO for other land they will find it advantageous to undertake early consultation with Natural Resources Wales and include in the CPO rights to carry out the watercourse works. This will ensure that all objections are dealt with under the compulsory purchase regime.

Acquisition of land in advance of requirements

21. The provisions of section 248(2)-(4) of the 1980 Act (together with Schedule 17 to the 1980 Act) enable highway authorities to use their land acquisition powers to acquire land compulsorily in advance of requirements, subject to one or more of the following conditions set out in section 248(3) of the 1980 Act being satisfied:

(a) the highway authority has an immediate intention to incorporate the acquired land ("subsequent stage area") within the boundaries of the initial stage area i.e. highway (for example, as a very wide verge), proposed highway, or, as the case may be, into the service area, maintenance compound or lorry area, for the purpose of which the initial stage areas is to be or has been acquired; or

(b) the highway authority's proposed use of the initial stage area involves the carrying out of works wholly or partly on, or under or over, the subsequent stage area; or

(c) the highway authority's plans for the use of the subsequent stage area (for the purpose for which the authority has power to acquire it by virtue of section 248 of the 1980 Act) have been made or approved by the Welsh Ministers.

This power is useful, for example, where land is required for the construction of a new road which is designed to be a dual carriageway road but where it is intended to build only one of the carriageways immediately, or where it is intended to carry out a major highway improvement but only a limited improvement is to be made in the first instance. These powers are also exercisable in relation to the provision of service areas, maintenance compounds and lorry areas. Where a subsequent stage area is not to be incorporated into the highway immediately (but the highway authority still exercises its power to acquire it), it may be possible for a landowner to retain an area of subsequent stage land under cultivation or for grazing until such time as the highway authority requires it for highway works. The power to acquire in advance of requirements facilitates the forward planning of highway authorities' major road projects, and also makes it possible to acquire the necessary land in one operation instead of two or more as well as avoiding the expense of making several orders and conducting associated public inquiries. The provisions may also be of benefit to landowners whose land might otherwise be subject to piecemeal acquisition.

Procedural points affecting the treatment of objections and the consideration of orders

Power to disregard certain objections

22. Where a CPO depends on any of the schemes or orders set out in Schedule 20 to the 1980 Act, and on which a decision has been given, the Welsh Ministers under section 258(1) of the 1980 Act have the power to disregard an objection to the order if, in their opinion, it amounts in substance to an objection to the related scheme or order. The power to disregard repetitious objections is discretionary and the Welsh Ministers are therefore not obliged to disregard them. The Welsh Ministers would however wish to hear and consider any such objection which appeared to raise new points or where, owing to the lapse of time since the earlier decision, changed circumstances might make it desirable to consider alterations to the road scheme as originally proposed. This power to disregard repetitious objections does not extend to persons appointed to conduct public inquiries. While they may draw the attention to objectors, in appropriate cases, to the existence of these provisions they will listen to and report on any points made by the objector so that they can be considered by the Welsh Ministers.

Submission of "alternative route" objections

23. Under section 258(2) and (3) of the 1980 Act an objector to a CPO who wishes to propose an alternative route at a public inquiry can be directed by the Welsh Ministers to provide them with sufficient information of the alternative route to enable it to be identified. The Welsh Ministers may wish to include any such direction in the notice of the public inquiry. Objectors must be given at least fourteen days in which to prepare their information of the alternative route and they are required to submit it to the Welsh Ministers a minimum of fourteen days before the date of the public inquiry. The Welsh Ministers would urge objectors to submit their information in advance of the minimum fourteen day deadline to prevent the public inquiry from being postponed due to the need for further information. As copies of such submissions received by the Welsh Ministers will need to be sent to the highway authority as they are received, but in sufficient time to enable the authority to consider them before the public inquiry, the Welsh Ministers will specify a submission date in its direction. The submission date will be no less than the period of 3 weeks before the start date of the public inquiry. If an objector fails to comply with a direction of the Welsh Ministers to submit details of alternative route proposals, both the Welsh Ministers and the inspector conducting the public inquiry may disregard the objection insofar as it consists of a submission about an alternative route.

24. If an alternative proposal is made by an objector to a CPO, the Welsh Ministers must consider the alternative put forward and evaluate it when judging whether there is a compelling case in the public interest for the CPO. However, the Welsh Ministers are not bound to accept an alternative on the basis that it is less intrusive than the scheme proposed.

Alternative proposals may not be preferable if they are, for example:

(a) uncertain in their delivery of the objectives which underpin the public interest basis for confirming the CPO, for example, because they do not secure the delivery of the scheme objectives, lack the relevant permissions or consents, or generally lack certainty in the delivery of relevant proposals in the public interest;
(b) will delay the implementation of the CPO scheme where a timely delivery of the proposals is in the public interest; or
(c) will not deliver the public interest benefits of the CPO scheme as well or as effectively as that scheme, or in the timely manner of the scheme where that difference in delivery of benefits and timing are material ones having regard to the public interest.

25. The potential delay and uncertainty in considering alternative proposals put forward in support of an objection to a CPO can be a material consideration when the Welsh Ministers decide whether or not to confirm, or make, the CPO. Case law dictates that if the delivery of an alternative route could cause delay and uncertainty in the delivery of a CPO scheme and the associated public benefits, this may be considered to be unacceptable and lead to the rejection of the objection[39].

Active travel

26. CPOs which are made to acquire land for the purposes of facilitating an active travel route[40] will carry a strong public interest case for the promotion or improvement of the environmental and social well-being of an area. The proposals are usually the result of prior public consultation, demonstrating demand and support. As outlined in paragraph 31 in Part 1 of this Circular, when planning and timetabling active travel route projects promoters should factor in the use of compulsory purchase powers to overcome potential delays caused by land ownership issues.

27. The Active Travel (Wales) Act 2013 requires local authorities to produce:

- maps of existing active travel routes and related facilities in their areas ("the existing routes map") which show the routes within designated areas that are considered suitable and appropriate for making active travel journeys; and
- maps of new and improved existing active travel routes and related facilities needed to develop or enhance integrated networks of active travel in their areas ("the integrated network map").

To support the justification for a CPO to acquire land for the facilitation of an active travel route, acquiring authorities should take into account:

(a) the Statutory Guidance accompanying the Active Travel (Wales) Act 2013; and

[39] *Bexley LBC v. Secretary of State [2001] EWHC Admin 323 at paras. [44], [47] & [48].*
[40] Defined by section 2(1) of the Active Travel (Wales) Act 2013.

(b) the approved existing and planned active travel for the area in which the land to be acquired is located.

28. The nature of active travel, however, is that any given walking path or cycle route may have an alternative which can circumvent the need to acquire land/individual properties via a CPO. Acquiring authorities should always consider and undertake an assessment of suitable alternatives as part of the planning process for a CPO. This will help address any potential alternative proposals which could be put forward by objectors. In some locations perhaps there will be no other suitable alternative routes, i.e. due to physical or geographical reasons, and acquiring authorities should make reference as to why this is the case.

Section H – Compulsory purchase powers for listed buildings in need of repair

Introduction

1. Section 47(1)(a) of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the P(LBCA)") provides an appropriate authority, i.e. the relevant LPA in which the listed building is situated, with compulsory purchase powers to acquire a listed building in need of repair with the authorisation of the Welsh Ministers. The Welsh Ministers will only exercise this power where there is a compelling case in the public interest. Section 47(1)(b) of the P(LBCA) also provides the Welsh Ministers with compulsory purchase powers to acquire listed buildings in need of repair, providing there is a compelling case in the public interest.

2. To make a CPO for a listed building in need of repair under section 47 of the P(LBCA), the appropriate authority, or the Welsh Ministers where they are the acquiring authority, are required to:
   - serve a repairs notice under section 48 of the P(LBCA) on the owner of the listed building (see section 91(2) of P(LBCA) / section 336 of the 1990 Act for the definition of "owner") at least two months before making the CPO;
   - prepare and serve the CPO and its associated notices (see general formatting requirements outlined in Section Q in Part 4 of this Circular and paragraphs 12 - 13 below), if the repairs notice has not been complied with within two months of service and is not withdrawn;
   - in the case of an appropriate authority CPO for a listed building in need of repair, submit the CPO, a copy of the repairs notice and all supporting documents (see checklist outlined in Section Q in Part 4 of this Circular) to the Welsh Ministers.

Deliberate owner neglect

3. If there is clear evidence that the owner of a listed building has deliberately allowed the building to fall into disrepair to justify its demolition and the development of the site (or an adjoining site), the appropriate authority can include a direction for minimum compensation within the CPO.

4. A direction for minimum compensation, in relation to a listed building compulsorily acquired, is a direction that for the purpose of assessing compensation it is to be assumed:
   (a) planning permission would not be granted for any development or redevelopment of the site of the listed building; and
   (b) listed building consent would not be granted for any works for the demolition, alteration or extension of the listed building other than development or works necessary for restoring it to, and maintaining it in, a proper state of repair.

5. Provisions for minimum compensation are given in section 50 of the P(LBCA). The terms for a minimum compensation direction are set out in paragraph 4 of Form 1 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004. Advice on how to include a direction for minimum compensation in a CPO for listed buildings in need of repair can be found in paragraph 13 below.

Applications to a magistrates' court under the Planning (Listed Buildings and Conservation Areas) Act 1990

6. As soon as an appropriate authority becomes aware of an application to a magistrates' court made by a person with an interest in a building the subject of a CPO under section 47 of the P(LBCA) requesting:
   (a) an order staying further proceedings on the CPO, which must be made within 28 days after the service of the notice required by section 12 of the 1981 Act or paragraph 3(1) of Schedule 1 to that Act); or
   (b) an order that no direction for minimum compensation be included in the CPO, under section 50(6) of the P(LBCA), which must be made within 28 days after the service of the notice required by section 12 of the 1981 Act or paragraph 3(1) of Schedule 1 to that Act and which includes a statement that a direction for minimum compensation has been included in the CPO,

   they should notify the Welsh Ministers immediately in all instances. Depending on the circumstances, it may be necessary to hold the relevant CPO in abeyance (i.e. suspend the CPO) until the court has considered the application.

Repairs notice

7. An appropriate authority may consider issuing a repairs notice (under section 48 of the P(LBCA)) if a listed building is at risk because its owner has failed to keep the building in reasonable repair for an extended period of time. A repairs notice is not the same as a notice for urgent works and can be served whether the listed building is occupied or not.

8. A repairs notice must:
   - specify the works which the appropriate authority considers reasonably necessary for the proper preservation of the building; and
   - explain the effect of sections 47- 50 of the P(LBCA).

   When a CPO made under section 47 of the P(LBCA) is submitted to the Welsh Ministers for confirmation, a copy of the repairs notice served in accordance with section 48 must be included with all the supporting documentation.

9. The works specified in the repairs notice will always relate to the circumstances of the individual case and will involve judgments about what is considered reasonable to preserve (rather than restore) the listed building.

10. Other considerations may be used as a basis for determining the scope of works required. For example, the condition of the building when it was listed may be taken into account if the building has suffered damage or disrepair since being listed. In this case, the repairs notice may include works to secure the building's preservation as at the date of listing, but should not be used to restore other features. Alternatively, the notice may specify works that are necessary to preserve the rest of the building, such as repairs to a defective roof, whether or not the particular defect was present at the time of listing.

11. Further advice about listed buildings in need of repair and repairs notices can be found in Annex B of TAN 24: Historic Environment (2017).

Form of compulsory purchase orders for listed buildings in need of repair and associated notices

12. General guidance on the format of CPOs is available at Section Q in Part 4 of this Circular.

13. CPOs for listed buildings in need of repair, in addition to being accompanied by copies of repairs notice and the general formatting requirements outlined in Section Q in Part 4 of this Circular, must include the following requirements set out in regulation 4 of the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004:

(a) When preparing personal notices (i.e. a notice to owners, lessees, tenants, occupiers or other qualifying persons[41] in respect of land (or land to be subject to New Rights) included in a CPO (see section 12(1) of the 1981 Act), insert:–

- additional paragraphs 3 and 5 of Form 8 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004 (provided under the 'Notes to the use of Form 8' section);

- where the appropriate authority has included a direction for minimum compensation under section 50 of the P(LBCA):
  (i) additional paragraph 4 of Form 8 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004 (provided under the 'Notes to the use of Form 8' section); and
  (ii) reference to where in the notice the explanation of the meaning of the direction, as required by section 50(3) of the P(LBCA), is provided.

[41] As defined in section 12(2A) of the Acquisition of Land Act 1981 i.e. a person: (a) to whom the acquiring authority would, if proceeding under section 5(1) of the Compulsory Purchase Act 1965, be required to give a notice to treat, or (b) the acquiring authority thinks is likely to be entitled to make a relevant claim if the compulsory purchase order is confirmed and the compulsory purchase takes place, so far as they are known to the acquiring authority after making diligent inquiry.

For example,

"*The [insert name of appropriate authority] have included in the Order a direction for minimum compensation (the meaning of which is explained [below]/[in the note attached to this Notice]/[below in paragraph 4A]).*"

The explanation should normally include the text of section 50(4) and (5) of the P(LBCA) and may be expressed in the following terms:

"*Under section 50 of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the Listed Buildings Act"), the [insert name of acquiring authority] make the following direction:*

For the purpose of assessing compensation and notwithstanding anything to the contrary in the Land Compensation Act 1961, the Town and Country Planning Act 1990 or the Listed Buildings Act, it is hereby directed that it shall be assumed that planning permission would not be granted for any development or redevelopment of the site of the building described in the Schedule to this order and that listed building consent would not be granted for any works for the demolition, alteration or extension of that building, other than development or works necessary for restoring it to, and maintaining it in, a proper state of repair."

(b) When preparing the CPO for listed buildings in need of repair using Form 1 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004) and a direction for minimum compensation is included within the CPO, insert:-

- paragraph 4 of Form 1 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004.

Section I – The Welsh Ministers' power to acquire land compulsorily

Welsh Development Agency Act 1975

1. The Welsh Development Agency Act 1975 ("1975 Act") provides the Welsh Ministers with powers under section 21A to acquire land compulsorily to facilitate the discharge of their functions. These are to:
   (a) promote Wales as a location for businesses, or assist its promotion as such a location;
   (b) provide finance for persons carrying on or intending to carry on businesses;
   (c) carry on industrial undertakings and to establish and carry on new businesses;
   (d) promote or assist the establishment, growth, modernisation or development of businesses, or a particular business or particular businesses;
   (e) make land available for development;
   (f) provide sites, premises, services and facilities for businesses;
   (g) manage sites and premises for businesses;
   (h) bring derelict land into use or improve its appearance;
   (i) undertake the development and redevelopment of the environment;
   (j) promote the private ownership of interests in businesses by the disposal of securities and other property held by the Welsh Ministers or any of their subsidiaries.

   The procedure contained in the 1981 Act applies in relation to the compulsory acquisition of land under section 21A of the 1975 Act subject to the modifications made by Schedule 4 to the 1975 Act.

2. The purpose for which the Welsh Ministers may exercise their function to make land available for development includes to:
   (i) further the economic and social development of Wales or any part of Wales, and in that connection to provide, maintain or safeguard employment;
   (ii) promote efficiency in business and international competitiveness in Wales; and
   (iii) further the improvement of the environment in Wales (having regard to existing amenity).

3. Before the Welsh Ministers acquire land under section 21A of the 1975 Act for the purpose of making land available for development, they are required to consider:
   (a) whether the land would or would not in their opinion be made available for development if they did not act,
   (b) the fact that planning permission has or has not been granted in respect of the land or is likely or unlikely to be granted,
   (c) (in a case where no planning permission has been granted in respect of the land) whether to consult every relevant local authority, and
   (d) the needs of those engaged in building, agriculture and forestry and of the community in general.

4. Where the Welsh Ministers wish to use their powers under section 21A of the 1975 Act to compulsory acquire land they must first prepare a CPO in draft. The relevant Minister with responsibility for promoting the CPO can then make the CPO with or without modifications only if they are satisfied the following have been met:
   (i) the requirements in relation to affixing and serving notices in connection with the CPO have been complied with; and
   (ii) one of the following conditions is satisfied:
      (a) no objection has been made by a person who is a qualifying person[42] or a relevant local authority[43]; or
      (b) every objection which has been made by a person who is a qualifying person or a relevant local authority is either withdrawn or disregarded (for example, if it relates exclusively to matters which can be dealt with by the Upper Tribunal (Lands Chambers) i.e. the assessment of compensation).

5. If an objection is made by a qualifying person or a relevant local authority and is not withdrawn or disregarded, an independent inspector will be appointed to consider objections and the CPO will proceed on the basis of either the:
   (a) written representations procedure; or
   (b) holding of a public inquiry.

   The relevant Minister with responsibility for promoting the CPO may then proceed to make the CPO with or without modifications if:
   (i) they have considered the objections, and
   (ii) one of the following conditions is satisfied:
      - the written representations procedure has been followed; or
      - if a public inquiry was held, the Welsh Ministers have considered the report of the inspector who was appointed to hold the public inquiry.

6. The procedures to be followed for where the Welsh Ministers acquire land compulsorily under section 21A of the 1975 Act are laid down in Schedule 1 to the 1981 Act.

Highways Act 1980

7. The 1980 Act places a duty on the Welsh Ministers to maintain highways at the public expense for which they are the highway authority. The Welsh Ministers are the highway authority in Wales for:
   - trunk roads such as the A470 and the A55;
   - special roads provided by them such as the M4 motorway;
   - highways for which they are responsible under any enactment;
   - highways transferred to them; and
   - highways constructed by them that have not been transferred to any local highway authority (see section 1(1) of the 1980 Act).

[42] "Qualifying person" as defined in section 12 of the Acquisition of Land Act 1981.
[43] "Relevant local authority" as defined in section 21A(5) of the Welsh Development Agency Act 1975.

8. In respect of other highways, the highway authority will nearly always be the local authority, other than in exceptional cases where for example the Welsh Ministers construct a highway other than a trunk road using their powers under section 24(1) of the 1980 Act.

9. CPOs can be used by the Welsh Ministers in their role as a highway authority to acquire land and/or rights over land in connection with highway improvements where it is not possible to acquire the land/rights by agreement. The power for the Welsh Ministers to acquire land by compulsory purchase for highway improvements is contained in the 1980 Act. The procedures to be followed for such compulsory acquisitions are laid down in Schedule 1 to the 1981 Act.

10. CPOs made for highway improvements by the Welsh Ministers tend not be in isolation and form a package of Orders (i.e. with line and side roads orders (SRO)) in connection with trunk road schemes/improvements. These allow changes and improvements to be made to the local non-vehicular highway network through a SRO (section 14 of the 1980 Act).

11. General guidance on the power to compulsory acquire land for highway purposes under the 1980 Act is contained in Section G in Part 2 of this Circular.

Section 228 of the Town and Country Planning Act 1990

12. Under section 228(1) of the 1990 Act the Welsh Ministers are entitled to acquire compulsorily:
(a) any land necessary for the public service which includes service in the United Kingdom—
(i) of any international organisation or institution whether or not the United Kingdom or Her Majesty's Government in the United Kingdom is or is to become a member;
(ii) of any office or agency established by such an organisation or institution or for its purposes, or established in pursuance of a treaty (whether or not the United Kingdom is or is to become a party to the treaty) – “treaty” includes any international agreement, and any protocol or annex to a treaty of international agreement;
(iii) of a foreign sovereign Power or the Government of such a Power; and

(b) any land which it is proposed to use not only for the public service but also “otherwise than for the public service” either —
(i) to meet the interests of proper planning of the area, or
(ii) to secure the best or most economic development or use of the land.

13. Where the Welsh Ministers have acquired or propose to acquire any land under section 228(1) of the 1990 Act (i.e. “the primary land”), and in their opinion other land ought to be acquired together with the primary land —
(a) in the interests of the proper planning of the area concerned; or

(b) for the purpose of ensuring that the primary land can be used, or developed and used, (together with that other land) in what appears to them to be the best or most economic way; or
(c) where the primary land or any land acquired, or which they propose to acquire, by virtue of section 228(2)(a) or (b) of the 1990 Act or of section 122(1)(a) or (b) of the Local Government, Planning and Land Act 1980, forms part of a common, open space or fuel or field garden allotment, for the purpose of being given in exchange for that land they may compulsorily acquire that other land.

14. The power for the Welsh Ministers to acquire land compulsorily under section 228 of the 1990 Act includes the power to acquire an easement or other right over land by the grant of a new right (section 228(3) of the 1990 Act) but this excludes an easement or other right over any land which would, for the purposes of the 1981 Act, form part of a common, open space or fuel or field garden allotment (section 228(4) of the 1990 Act).

15. As with acquisitions under section 226 of the 1990 Act, the Welsh Ministers are not permitted to acquire any interest in Crown Land unless it is an interest which is for the time being held otherwise than by or on behalf of the Crown and the appropriate authority consents to the acquisition (section 228(1A) of the 1990 Act). General guidance on the compulsory acquisition of interests in Crown land (held otherwise than by or on behalf of the Crown) is contained in Section L in Part 2 of this Circular.

16. The procedures to be followed for the compulsory acquisition of land by the Welsh Ministers under section 228 of the 1990 Act are laid down in Schedule 1 to the 1981 Act.

Section J – Special kinds of land

Introduction

1. Particular categories of land are afforded additional protection against compulsory acquisition (including compulsory acquisition of new rights across them) by providing that the confirmation of a CPO including such land may be subject to special Senedd procedure[44] (and in the case of National Trust land, special Parliamentary procedure and special Senedd procedure). These are known as "special kinds of land" and are defined in Part 3 of, and Schedule 3 to, the 1981 Act as:
   - land acquired by a statutory undertaker for the purposes of their undertaking (section 16 and paragraph 3 of Schedule 3);
   - local authority owned land or land acquired by any authority, body or undertaker, except a local authority, who are, or are deemed to be, statutory undertakers for the purposes of their undertaking, for example, electricity licence holders (section 17 and paragraph 4 of Schedule 3);
   - land held by the National Trust inalienably (section 18 and paragraph 5 of Schedule 3); and
   - land forming part of a common, open space, or fuel or field garden allotment (section 19 and paragraph 6 of Schedule 3).

Statutory undertakers' land and local authority owned land

Bodies defined as statutory undertakers under the Acquisition of Land Act 1981

2. Section 8(1) of the 1981 Act defines "statutory undertakers" for the general purposes of the Act. These include:
   - transport undertakings (air, rail, road, water transport),
   - docks, harbours, piers, lighthouses,
   - Civil Aviation Authority and or a person who holds a licence under Chapter I of Part I of the Transport Act 2000 (i.e. National Air Traffic Services), and
   - universal postal service providers.

   In addition, other bodies may be defined as, or deemed to be, statutory undertakers for the purposes of sections 16 or 17 or for the general purposes of the 1981 Act. These include:
   - various health bodies (for the purposes of sections 16 and 17)
   - public gas transporters (paragraph 2(1) of Schedule 4 to the Gas Act 1995)
   - certain electricity licence holders (paragraph 2(2)(g) of Schedule 16 to the Electricity Act 1989)
   - Natural Resources Wales (paragraph 1 of Schedule 25 to the Water Act 1989)
   - water and sewerage undertakers (paragraph 1 of Schedule 25 to the Water Act 1989).

[44] Standing Order 28 of the Senedd Cymru.

3. British Telecom is not a statutory undertaker for the purposes of the 1981 Act. Private bus operators, other road transport operators, taxi and car hire firms which are authorised by licence are not statutory undertakers for the purposes of the 1981 Act. Where their operations are carried out under the specific authority of an Act, however, such operators will fall within the definition in section 8(1) of the 1981 Act.

Protection for statutory undertakers' land

4. Sections 16 and 17 of the 1981 Act provide protection for statutory undertakers' land. In both cases, the land must have been acquired by the relevant statutory undertaker for the purposes of their undertaking. The provisions do not apply if the land was acquired by the relevant statutory undertaker for other purposes which are not directly connected to the undertakers' statutory functions.

5. Before making a representation to "the appropriate Minister" under section 16 (see paragraph 6 below), or an objection to the CPO submitted to the confirming Welsh Minister in respect of land to which they think section 17 applies, statutory undertakers should take particular care over the status of the land which the acquiring authority propose to acquire. Statutory undertakers should also have regard to the provisions of the relevant Act, and seek their own legal advice as may be necessary. For example, whilst a gas transporter qualifies as a statutory undertaker, the additional protection afforded to land held by a statutory undertaker under sections 16 and 17 of the 1981 Act does not apply to non-operational land. As such, a gas transporter's administrative offices or a redundant, manufactured gas works on their land would not be afforded additional protection. In these circumstances, the land is not held for the purpose of statutory provision i.e. the conveyance of gas through pipes to any premises or to a pipeline system operated by a licensed gas transporter who qualifies as a statutory undertaker for the purposes of the 1981 Act.

Section 16 of the Acquisition of Land Act 1981 and the role of the appropriate Minister

6. Under section 16 of the 1981 Act, statutory undertakers who wish to object to the inclusion in a CPO of land which they have acquired for the purposes of their undertaking, may make representations to "the appropriate Minister". Such representations must be made within the period outlined in the public and personal notices which state the effect of the CPO and that it is about to be submitted for confirmation (i.e not less than twenty-one days, as specified in the 1981 Act[45]).

7. The appropriate Minister is the Minister with supervisory/operational responsibility for activities carried on by a particular statutory undertaker. The functions of the appropriate Minister under the 1981 Act, in so far as they have been transferred to the Welsh Ministers, are undertaken by the Welsh Ministers.

[45] See sections 11(2)(d) and 12(1)(c) in the 1981 Act.

The appropriate Minister functions in respect of:

- cross-border harbours; and
- reserve trust ports

remain with the relevant Secretary of State[46].

8. A representation made by a statutory undertaker under section 16 to the appropriate Minister is separate from an objection to the CPO made to the confirming Welsh Minister. Where the appropriate Minister is also the confirming Minister the intention of the statutory undertakers should be clearly stated, particularly where it is intended that a single letter should constitute both a section 16 representation and an objection to the CPO. For example, the appropriate Minister would also be the confirming Minister where an airport operator under Part 5 of the Airports Act 1986 makes a section 16 representation to the Minister with responsibility for Transport about an order made under section 239 of the 1980 Act.

Where a representation under section 16 of the Acquisition of Land Act 1981 is not withdrawn: Joint confirmation

9. Where a statutory undertaker's representation under section 16 is not withdrawn, the CPO to which it relates may not be confirmed (or made, where the acquiring authority is one of the Welsh Ministers) so as to include the interest owned by the statutory undertaker unless the appropriate Minister gives a certificate in the terms stated in section 16(2) of the 1981 Act. These are either that:

- the land can be taken without serious detriment to the carrying on of the undertaking (section 16(2)(a)); or
- if taken it can be replaced by other land without serious detriment to the undertaking (section 16(2)(b)).

However, by virtue of section 31(2) of the 1981 Act, a CPO may still be confirmed or made where:

- a representation has been made under section 16(1) of, or paragraph 3(2) of Schedule 3 to, the 1981 Act without an application for either a section 16(2) or Schedule 3 (paragraph 3(2)) 1981 Act certificate, or where such an application for a certificate is refused or is made after the expiration of the time within which objections to the CPO can be made, and
- the confirmation or making is undertaken jointly by the appropriate Minister and the confirming Minister providing it was made under the following provisions[47]:
  - (a) the 1990 Act (acquisition by LPAs relating to development and regeneration purposes),
  - (b) the P(LBCA) (acquisition by local authorities relating to listed buildings in need of repair),

[46] Article 18 of the Welsh Ministers (Transfer of Functions) Order 2018.
[47] Section 31(1) of the 1981 Act.

(c) section 142 or 143 of the Local Government, Planning and Land Act 1980 (acquisition by an urban development corporation relating to development and regeneration purposes), or

(d) section 21A of, and Schedule 4 to, the 1975 Act (acquisition by the Welsh Ministers relating to development and regeneration purposes).

Section 17 of the Acquisition of Land Act 1981

10. Section 17(2) provides for a CPO which acquires land owned by a local authority or statutory undertaker, in the event that such an authority or undertaker objects, any confirmation would be subject to special Senedd procedure. Section 17(3), however, excludes the application of section 17(2) if the acquiring authority is one of the bodies referred to in section 17(3) which includes: a local authority, National Park authority, and statutory undertaker as defined in section 17(4). The application of section 17(2) is therefore very limited.

11. The Welsh Ministers may by order under section 17(4)(b) extend the definition of statutory undertaker for the purposes of section 17(3) to include any other authority, body or undertaker. Also, some authorities have been defined as statutory undertakers for the purposes of section 17(3) by primary legislation. An example of such a provision is a housing action trust (section 78 of, and paragraph 3 of Schedule 10 to, the Housing Act 1988).

Protection for National Trust Land

Section 18 of the Acquisition of Land Act 1981

12. Where a CPO seeks to authorise the compulsory purchase of land belonging to, and held inalienably by, the National Trust (as defined in section 18(3) of the 1981 Act), it will be subject to special Senedd procedure and special parliamentary procedure if the Trust has made, and not withdrawn, an objection in respect of the land.

Special Senedd procedure and special Parliamentary procedure

13. Where a CPO is being confirmed or made so as to include National Trust land, the acquiring authority will not be able to publish and serve notice of confirmation in the usual way. The CPO will, instead, be subject to the following procedures:

- special Senedd procedure set out in Standing Order 28 of the Senedd Cymru; and
- special Parliamentary procedure set out in the Statutory Orders (Special Procedure) Acts 1945 and 1965.

The Welsh Ministers will give full instructions at the appropriate time.

Protection for land forming part of a common, open space, or fuel or field garden allotment

Section 19 of the Acquisition of Land Act 1981

14. CPOs may sometimes include land or rights over land which is, or forms part of, a common, open space, or fuel or field garden allotment. Under the 1981 Act:
    - "common" includes any land subject to be enclosed under the Inclosure Acts 1845 to 1882, and any town or village green[48], the definition therefore includes, but may go wider than, land registered under the Commons Registration Act 1965;
    - "open space" means any land laid out as a public garden, or used for the purposes of public recreation, or land being a disused burial ground; and
    - "fuel or field garden allotment" means any allotment set out as a fuel allotment, or field garden allotment, under an Inclosure Act.

15. A CPO which authorises purchase of any such land will be subject to special Senedd procedure unless the Welsh Ministers give a certificate under section 19 of the 1981 Act indicating their satisfaction that either:
    - exchange land is being given which is no less in area and equally advantageous as the land taken (section 19(1)(a)); or
    - that the land is being purchased to ensure its preservation or improve its management (section 19(1)(aa)); or
    - that the land is 250 sq. yards (209 square metres) or less in area or is for the widening and/or drainage of an existing highway and that the giving of exchange land is unnecessary (section 19(1)(b)).

16. Likewise, a CPO which authorises the purchase of new rights over such land will be subject to special Senedd procedure unless the Welsh Ministers give a certificate under paragraph 6 of Schedule 3 to the 1981 Act (see paragraphs 3 - 5 of Section K in Part 2 of this Circular).

17. As to the form of the CPO, see paragraphs 25 – 32 of Section R in Part 4 of this Circular and paragraphs 4 - 7 of Section K in Part 2 of this Circular.

Application for a certificate under section 19 of and/or Schedule 3 to the Acquisition of Land Act 1981

18. An acquiring authority requiring a certificate from the Welsh Ministers under section 19 of and/or paragraph 6 of Schedule 3 to the 1981 Act should apply to the address given at Section R in Part 4 of this Circular. Applications for certificates should be made when the CPO is submitted for confirmation (or, in the case of a CPO prepared in draft by the Welsh Ministers, when notice is published and served in accordance with paragraphs 2 and 3 of Schedule 1 to the 1981 Act).

[48] Where rights of a common are extinguished by a CPO, acquiring authorities should also consider the need to seek consent under section 22 of the Commons Act 1899. Further information can be obtained from the address given in Section R in Part 4 of this Circular.

19. The land, including any new rights, should be described in detail, by reference to the CPO, and all the land clearly identified on an accompanying map. This should show the common/open space/fuel or field garden allotment plots to be acquired in the context of the common/open space/fuel or field garden allotment space as a whole, and in relation to any proposed exchange land.

20. The acquiring authority should also provide copies of the CPO, including the Schedules, and order map. For a particularly large CPO, they may provide:
    (a) copies of the CPO and relevant parts or sheets of the map; and
    (b) a copy, or copies, of the relevant extract or extracts from the CPO Schedule or Schedules, which include the following:
        (i) the plot(s) of common, open space etc which they propose to acquire or over which they propose to acquire a new right ("the CPO land"); and
        (ii) any land which they propose to give in exchange ("the exchange land").

    (Where paragraph 6(1)(b) of Schedule 3 to the 1981 Act applies and additional land is being given in exchange for a new right, substitute "the rights land" and "the additional land" for the definitions given in (i) and (ii) above, respectively).

21. When drafting a CPO, careful attention should be given to the discharging and vesting provisions of section 19(3) of, or paragraph 6(4) of Schedule 3 to, the 1981 Act.

22. It must be specified under which sub-section(s) an application for a certificate is made - for example, section 19(1)(a), (aa) or (b), and/or paragraph 6(1)(a), (aa), (b) or (c) of Schedule 3 to the 1981 Act. Where an application is under more than one sub-section, this should be stated, specifying those plots that each part of the application is intended to cover. Where an application is under section 19(1)(b), it should be stated whether it is made on the basis that the land does not exceed 209 square metres (250 square yards) or under the highway widening or drainage criterion.

23. Careful attention should be given to the following criteria, provided in section 19 of, and/or paragraph 6 of Schedule 3 to, the 1981 Act, which the Welsh Ministers will consider when deciding whether or not to issue a certificate under section 19 of, and/or paragraph 6 of Schedule 3 to, the 1981 Act:
    (a) that there has been or will be given in exchange for such land, other land, not being less in area and being equally advantageous to the persons, if any, entitled to rights of common or other rights, and to the public, and that the land given in exchange has been or will be vested in the persons in whom the land purchased was vested, and subject to the like rights, trusts and incidents as attach to the land purchased, or
    (b) that the land is being purchased in order to secure its preservation or improve its management;

(c) that the land does not exceed 250 square yards 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 that 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.

Acquiring authorities should provide the following information:

- the name of the common or green involved (including CL/VG number);
- the plots numbers and their areas, in square metres;
- details of any rights of common registered, or rights of public access, and the extent to which they are exercised;
- the purpose of the acquisition;
- details of any special provisions or restrictions affecting any of the land in the application; and
- any further information which supports the case for a certificate.

24. In most cases, arrangements will be made for the CPO/rights land to be inspected and, if applicable, for a preliminary appraisal of the merits of any proposed exchange/additional land. If, at this stage, the Welsh Ministers are satisfied a certificate could, in principle, be given, they will direct the acquiring authority to publish notice of the Welsh Ministers' intention to give a certificate, with details of the address to which any representations and objections may be submitted by all persons interested. In most cases where there are objections, the matter will be considered by the inspector at the public inquiry into the CPO.

25. Where a public inquiry has been held into the application for a certificate (including, where applicable, the merits of any proposed exchange/additional land), the inspector will summarise the evidence in their report and make a recommendation. The Welsh Ministers' consideration of, and response to, the inspector's recommendation are subject to the statutory public inquiry procedure rules which apply to the CPO. Where there is no public inquiry, the Welsh Ministers' decision on the certificate will be made having regard to an appraisal by an inspector or a professionally qualified planner, and after taking into account the written representations from any objectors and from the acquiring authority.

26. The Welsh Ministers must decline to give a certificate if they are not satisfied that the requirements of section 19 of, and/or paragraph 6 of Schedule 3 to, the 1981 Act have been complied with. Where exchange land is to be provided for land used by the public for recreation, the Welsh Ministers will have regard (in particular) to the case of *LB Greenwich and others v Secretary of State for the Environment, and Secretary of State for Transport (East London River Crossing: Oxleas Wood)*.

Exchange land

27. Where a certificate would be in terms of section 19(1)(a) of the 1981 Act, the exchange land must be:
    - no less in area than the CPO land; and
    - equally advantageous to any persons entitled to rights of common or to other rights, and to the public.

28. Depending on the particular facts and circumstances, the Welsh Ministers may have regard to such matters as relative size and proximity of the exchange land when compared with the CPO land. The date upon which equality of advantage is to be assessed is the date of exchange (see paragraphs 4 and 5 of Form 2 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004). The Welsh Ministers may, however, have regard to any prospects of improvement to the exchange land which exist at that date.

29. Other issues may arise involving questions of the respective merits of the CPO and exchange land. The latter may not possess the same character and features as the CPO land, and it may not offer the same advantages, yet the advantages offered may be sufficient to provide an overall equality of advantage. But land which is already subject to rights of common or to other rights, or used by the public, even informally, for recreation, cannot usually be given as exchange land, since this would reduce the amount of such land, which would be disadvantageous to the persons concerned. There may be some cases where a current use of proposed exchange land is temporary, for example, pending development. In such circumstances it may be reasonable to give the land in exchange, since its current use can thereby be safeguarded for the future. The Welsh Ministers will examine any such case with particular care.

Meaning of "the public" in regard to exchange land

30. With regard to exchange land for open space included in a CPO, the Welsh Ministers take the view that "the public" means principally the section of the public which has hitherto benefited from the CPO land and, more generally, the public at large. But circumstances differ. For example, in the case of open space, a relatively small recreation ground may be used predominantly by local people, perhaps from a particular housing estate. In such circumstances, the Welsh Ministers would normally expect exchange land to be equally accessible to residents of that estate. On the other hand, open space which may be used as a local recreational facility by some people living close to it but which is also used by a wider cross-section of the public may not need to be replaced by exchange land in the immediate area. One example of such a case might be land forming part of a regional or country park.

Section 19(1)(aa) of the Acquisition of Land Act 1981

31. In some cases, the acquiring authority may wish to acquire land to which section 19 applies, for example, open space, but do not propose to provide exchange land because, after it is vested in them, the land will continue to be used as open space. Typical examples might be where open space which is privately owned may be subject to development proposals in the future resulting in a loss to the public of the open space and the local authority wish to retain the open space in the meantime for the benefit of the public; or where the local authority wish to acquire part or all of a privately owned common in order to secure its proper management. Such a purpose might be "improvement" within the sense of section 226(1)(a) of the 1990 Act, or a purpose necessary in the interests of proper planning (section 226(1)(b) of the1990 Act). The land might be neglected or unsightly (see Section E in Part 2 of this Circular), perhaps because the owner is unknown, and the authority may wish to provide, or to enable provision of, proper facilities. Therefore, the acquisition or enabling powers and the specific purposes may vary. In such circumstances, i.e. where the reason for making the CPO is to secure preservation or improve management of land to which section 19 applies, a certificate may be given in the terms of section 19(1)(aa).

    NB Where the acquiring authority seek a certificate in terms of section 19(1)(aa), section 19(3)(b) cannot apply and the CPO may not discharge the land purchased from all rights, trusts and incidents to which it was previously subject. See also paragraph 32 of Section R in Part 4 of this Circular.

Section 19(1)(b) of the Acquisition of Land Act 1981

32. A certificate can only be given in terms of section 19(1)(b) where the Welsh Ministers are persuaded that the land is 250 square yards (209 square metres) or less in area or is for the widening and/or drainage of an existing highway and that the giving of exchange land is unnecessary. The Welsh Ministers will have regard to the overall extent of – common land, open space land or fuel or field garden allotment land - being acquired compulsorily. Where all or a large part of such land would be lost, the Welsh Ministers may be reluctant to certify in terms of section 19(1)(b). Should they refuse a certificate, it would remain open to the acquiring authority to consider providing suitable exchange land and seeking a certificate in terms of section 19(1)(a).

Section K – Compulsory purchase of new rights and other interests

Introduction

1. This Section gives some general advice[49] about the powers available which provide for the compulsory acquisition of rights over land by the creation of new rights where full land ownership is not required, for example, the compulsory creation of a right of access. Section R in Part 4 of this Circular provides guidance on the drafting and serving of CPOs which involve the acquisition of rights over land and other interests.

2. The compulsory acquisition of rights over land by the creation of new rights is, by virtue of section 28 of the 1981 Act, subject to the provisions of Schedule 3 to that Act. This can only be achieved using a specific statutory power, known as an 'enabling power'. Powers include (with the bodies by whom they may be exercised) the following:
   (i) Local Government (Miscellaneous Provisions) Act 1976, section 13 (local authorities);

   (ii) Highways Act 1980, section 250 (all highway authorities) (guidance on the use of these powers is given in Section G of Part 2 of this Circular);

   (iii) Water Industry Act 1991, section 155(2) (water and sewerage undertakers);

   (iv) Water Resources Act 1991, section 154(2) (Natural Resources Wales);

   (v) Electricity Act 1989, section 10 and paragraph 1 of Schedule 3 (electricity undertakings);

   (vi) Gas Act 1986, section 9 and paragraph 1 of Schedule 3 (gas transporter undertakings);

   (vii) Communications Act 2003, section 118 and paragraph 3(3) of Schedule 4 (a provider of an electronic communications network); and

   (viii) National Health Service (Wales) Act 2006, paragraph 20 of Schedule 2 (Local Health Board).

   The acquiring authority should take into account any special requirements which may apply to the use of any particular power.

[49] Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 is referred to within this Section as an example. Where in practice a different power is used, for example, section 250 of the Highways Act 1980, the acquiring authority should take into account any special requirements which may apply to the use of that power.

Special kinds of land - Land forming part of a common, open space, or fuel or field garden allotment (see also Sections J and R in Part 4 of this Circular)

3. Where a new right over land forming part of a common, open space, or fuel or field garden allotment is being acquired compulsorily, paragraph 6 of Schedule 3 to the 1981 Act applies (in the same way that section 19 applies to the compulsory purchase of any land forming part of a common, open space etc.). The CPO will be subject to special Senedd procedure[50] unless the Welsh Ministers give a certificate, in the relevant terms, under paragraph 6(1) and (2) of Schedule 3 to the 1981 Act.

4. A certificate may be given by the Welsh Ministers in the following circumstances:
   (a) paragraph 6(1)(a) - the land burdened with the right will be no less advantageous than before to those persons in whom it is vested and other persons, if any, entitled to rights of common or other rights, and to the public; or
   (b) paragraph 6(1)(aa) - the right is being acquired in order to secure the preservation or improve the management of the land. Where an acquiring authority propose to apply for a certificate in terms of paragraph 6(1)(aa), they should note that the CPO cannot, in that case, discharge the land over which the right is to be acquired from all rights, trusts and incidents to which it has previously been subject. (See also paragraph 31 of Section J in Part 2 of this Circular and paragraph 32 of Section R in Part 4 of this Circular); or
   (c) paragraph 6(1)(b) - additional land will be given in exchange for the right which will be adequate to compensate the persons mentioned in relation to paragraph 6(1)(a) for the disadvantages resulting from the acquisition of the right and will be vested in accordance with the 1981 Act. Where an authority seek a certificate in terms of paragraph 6(1)(b) because they propose to give land ("the additional land") in exchange for the right, the CPO should include paragraph 4(1) and the appropriate paragraph 4(2) of Form 2 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004 (see paragraph "(s)" on the "Notes on the use of Forms 1, 2 and 3" in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004). The land over which the right is being acquired ("the rights land") and, where it is being acquired compulsorily, the additional land, should be delineated and shown as stated in paragraph 2 of the CPO. Paragraph 2(ii) should be adapted as necessary (see also paragraphs 19 – 20 of Section J in Part 2 of this Circular and paragraphs 28 - 29 of Section R in Part 4 of this Circular); or
   (d) paragraph 6(1)(c)
      (i) the land affected by the right to be acquired does not exceed 250 square yards (209 square metres); or

[50] Standing Order 28 of the Senedd Cymru.

(ii) in the case of a CPO made under the1980 Act, the right is required in connection with the widening or drainage, or partly with the widening and partly with the drainage, of an existing highway,

and it is unnecessary, in the interests of persons, if any, entitled to rights of common or other rights or in the interests of the public, to give other land in exchange.

5. The same CPO may authorise the purchase of land forming part of a common, open space etc. and the acquisition of a new right over a different area of such land, and a certificate may be given in respect of each. The acquiring authority must always specify the type of certificate for which they are applying.

6. Where additional land, which is not being acquired compulsorily, is to be vested in the owners of the land over which the right is to be acquired, the additional land should be delineated and shown on the CPO map (so as to clearly distinguish it from any land being acquired compulsorily) and described in Schedule 3 to the CPO. Schedule 3 becomes Schedule 2 if no other additional or exchange land is being acquired compulsorily.

7. A CPO which does not provide for the vesting of additional land, but provides for discharging the rights 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 right(s) to be acquired), should comply with Form 3 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004) and should include the reference in paragraph 4(3) of that Form (or, if appropriate, as adapted for paragraph 4(2) of Form 6) to land over which the new right is acquired (see also paragraph 4(b) above).

Section L – Compulsory acquisition of interests in Crown land (held otherwise than by or on behalf of the Crown)

General position

1. Crown land is defined in section 293(1) of the 1990 Act, section 82C of the P(LBCA), and section 31 of the Planning (Hazardous Substances) Act 1990 (as amended), as any land in which the Crown (including the Duchies of Lancaster and Cornwall) has a legal interest is "Crown land".

2. As a general rule, Crown land cannot be compulsorily acquired as legislation does not bind the Crown unless it states to the contrary. Specific compulsory purchase enabling powers often make provision for their application to Crown land. If it is proposed to include such land in a CPO, careful consideration should be made of the enabling legislation.

Exceptions to general position

3. There are some limited exceptions to the general rule that compulsory purchase powers do not apply to Crown land, these include:
   - Section 327 of the 1980 Act provides for a highway authority and the appropriate Crown authority (the Welsh Ministers in relation to trunk roads in Wales) to specify in an agreement that certain provisions of the 1980 Act - including the compulsory purchase powers - shall apply to the Crown.
   - Section 32 of the Coast Protection Act 1949 enables the compulsory purchase powers under Part I of that Act to apply to Crown land with the consent of the "appropriate authority" (the Welsh Ministers in respect of land in Wales)[51].

4. The enactments listed below[52] also provide that interests in Crown land which are not held by or on behalf of the Crown may be acquired compulsorily if the appropriate authority agrees:
   - section 226(2A) of the 1990 Act;
   - section 47(6A) of the P(LBCA);
   - section 25 of the Transport and Works Act 1992; and
   - section 221 of the Housing Act 1996 (applicable to the 1985 Act, the Housing Associations Act 1985, Part 3 of the Housing Act 1988 and Part 7 of the 1989 Act).

Issues for consideration

5. A Crown interest in land should generally not be included in a CPO unless:
   (a) there is an agreement under section 327 of the 1980 Act which provides for the use of compulsory purchase powers; or

[51] As appropriate, the Government Department having management of the land, the Crown Estate Commissioners, the Chancellor of the Duchy of Lancaster, or a person appointed by the Duke of Cornwall or by the possessor, for the time being, of the Duchy.
[52] This is not an exhaustive list.

(b) the CPO is made under a power to which the provisions mentioned in paragraph 3 above relate or under any other enactment which provides for compulsory acquisition of interests in Crown land.

6. Where paragraph 5(b) above applies, Crown land should only be included where the acquiring authority has obtained (or is at least seeking) agreement from the appropriate authority. The Welsh Ministers have no power to authorise compulsory acquisition of the relevant interest or interests without such agreement.

7. Section R provides guidance on the drafting and serving of CPOs which include an interest in Crown land.

Section M – Overriding easements and other rights

Introduction

1. Regeneration and redevelopment schemes often take place on previously developed land. To ensure there are no impediments to the proposed regeneration, it may be necessary to deal with restrictive covenants and easements on land which can complicate the design of schemes and cause delay in their implementation. These third-party interests are typically rights to allow underground services of one property, for example water, gas, electricity and telecommunications, to pass beneath the land of neighbouring properties. There are also rights of light, rights of way and covenants restricting development to certain uses or density.

2. To override such easements and covenants for both the construction and use of development there are statutory powers available to LPAs under section 203 of the Housing and Planning Act 2016 ("the 2016 Act") extends and regeneration agencies, such as urban development corporations, under other legislation such as the Local Government, Planning and Land Act 1980. The use of such powers are subject to the payment of compensation. An important aspect of the power is that it transfers to subsequent purchasers of the land without the LPA or agency having to undertake the development itself. It is therefore a valuable feature of redevelopment schemes where LPAs acquire land to assemble it for development by a selected development partner.

3. The 2016 Act extends the existing powers to override restrictive covenants and easements on land to all acquiring authorities (including public bodies and statutory undertakers). The power also extends to successors in title. Section 203 of the 2016 Act enables a person, i.e. an acquiring authority or a successor in title, to carry out building or maintenance works on, or use, land even if it involves:
   (a) interfering with any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land (including any natural right to support), or
   (b) breaching a restriction as to the user of land arising by virtue of a contract.

4. Section 206 of the 2016 Act introduces Schedule 19 to the Act. Schedule 19 repeals the following powers to override easements and other rights which have been replaced by the new power in section 203:
   - Paragraph 6 in Schedule 4 to the 1975 Act;
   - Paragraph 6 in Schedule 28 to the Local Government, Planning and Land Act 1980;
   - Section 19 of the New Towns Act 1981;
   - Paragraph 5 in Schedule 10 to the Housing Act 1988;
   - Section 237 of the 1990 Act.

5. The power to override easements and other rights under section 203 of the 2016 Act may come to be exercised without there having been a formal CPO process.

In these circumstances the acquiring authority should give a notice of intention to use the section 203 power to the person with the benefit of the right, for example where land is acquired by private treaty for planning purposes or is appropriated for planning purposes, having initially been acquired voluntarily. In such instances, consideration should be given by the acquiring authority to the human rights aspects involved in the process of overriding easements and other rights, and with paying compensation. This is will also assist the compelling case in the public interest for use of the section 203 power to be established and evidenced.

Restrictions on the use of the power to override easements and other rights

6. There are several conditions on the use of the power to override easements and other rights. These are that:
   (a) there must be planning consent for the building or maintenance work or use of the land;
   (b) the land must have become vested in or acquired by an acquiring authority, or been appropriated for planning purposes by a local authority, on or after 13 July 2016 or be 'other qualifying land' i.e.
      (i) land acquired under section 21A of the 1975 Act;
      (ii) land vested in or acquired by an urban development corporation or a local highway authority for the purposes of Part 16 of the Local Government, Planning and Land Act 1980;
      (iii) land acquired by a development corporation or a local highway authority for the purposes of the New Towns Act 1981;
      (iv) land vested in or acquired by a housing action trust for the purposes of Part 3 of the Housing Act 1988;
      (v) land acquired or appropriated by a local authority for planning purposes as defined by section 246(1) of the 1990 Act;
   (c) the acquiring authority must have the necessary enabling powers in legislation to acquire the land compulsorily for the purpose of the building or maintenance work or the purpose of erecting or constructing any building, or carrying out any works, for that use;
   (d) the development must be related to the purposes for which the land was acquired or appropriated;
   (e) the power is not available in respect of:
      (i) interference with a right of way on, under or over land which is a protected right[53],
      (ii) interference with a right of laying down, erecting, continuing or maintaining apparatus on, under or over land if it is a protected right,
      (iii) interference with a relevant right or interest annexed to land belonging to the National Trust which is held by the National Trust inalienably, or

[53] "Protected right" is defined in section 205(1) of the 2016 Act as—
(a) a right vested in, or belonging to, a statutory undertaker for the purpose of carrying on its statutory undertaking, or
(b) a right conferred by, or in accordance with, the electronic communications code on the operator of an electronic communications code network (and expressions used in this paragraph have the meaning given by paragraph 1(1) of Schedule 17 to the Communications Act 2003).

(iv) a breach of a restriction as to the user of land which does not belong to the National Trust—

- arising by virtue of a contract to which the National Trust is a party, or
- benefiting land which does belong to the National Trust.

Compensation and owners of overridden easements and other rights

7. Under section 204 of the 2016 Act, owners of easements or other rights which are overridden are entitled to compensation calculated on the same basis as for injurious affection under sections 7 and 10 of the 1965 Act. Any dispute about compensation may be referred to the Upper Tribunal (Lands Chamber) for determination.

Section N – Minerals

Introduction

1. Section 3 of the 1981 Act brings into effect Schedule 2 to the 1981 Act which enables an acquiring authority to incorporate Parts 2 and 3 of Schedule 2 ("the Mining Code") in a CPO i.e.:
   - provision for purchasing surface land without purchasing an underlying mine or mineral i.e. lying under, or within the distance prescribed by the CPO ("the prescribed distance"), or if no distance is prescribed, 40 yards (Part 2 of Schedule 2), and
   - possible provision for the underlying mine or mineral not to be worked by the person who owns them, except if due notice has been given by the owner of their intention to work the underlying mine or mineral or an opportunity has been provided to the acquiring authority to acquire the underlying mine or mineral (Part 3 of Schedule 2).

   Guidance on the drafting of provisions in a CPO which apply the Mining Code can be found in paragraphs 5 – 8 of Section R in Part 4 of this Circular.

Part 2 of Schedule 2 to the Acquisition of Land Act 1981

2. Under Part 2 of Schedule 2 to the 1981 Act, acquiring authorities are not entitled to any mines of coal, ironstone, slate or other minerals ("mines") under the land comprised in the CPO unless they have been expressly purchased. Furthermore, all mines under the land comprised in the CPO shall be deemed to be exempted out of the conveyance of that land unless expressly named and conveyed. Part 2 of Schedule 2 provides these restrictions do not apply to minerals which are extracted or used as part of the undertaking which the acquiring authority is authorised to carry out by the CPO.

Part 3 of Schedule 2 to the Acquisition of Land Act 1981

3. Part 3 of Schedule 2 to the 1981 Act provides if an owner, which includes a lessee or occupier, of an underlying mine or mineral wishes to work them, they shall give notice in writing of their intention to do so ("notice of intention") to the acquiring authority 30 days before the commencement of working the underlying mine or mineral. If the acquiring authority considers the working of the underlying mine or mineral is likely to damage the scheme which the acquiring authority is authorised to carry out by the CPO, and is willing to compensate the owner in order to acquire all or any part of the mine or mineral, the acquiring authority should serve a counter-notice on the owner to stop the working of the underlying mine or mineral within 30 days of receipt of the notice of intention. In these circumstances the owner is then prevented from working the mine or obtaining the mineral which becomes a "protected mineral". If the acquiring authority and owner cannot agree the amount of compensation to be paid the matter will be referred to and determined by the Upper Tribunal (Lands Chamber).

4. If before the expiry of 30 days from receipt of a notice of intention the acquiring authority does not state their willingness to negotiate with the owner for the payment of compensation for the acquisition of all or any part of the mine or mineral, the owner may work any of the underlying mines for which the acquiring authority has not agreed to pay compensation.

5. If any damage or obstruction to the scheme which the acquiring authority is authorised to carry out by the CPO is caused by improper working of the underlying mine or mineral then:
   (a) the owner of the underlying mine or mineral is required to repair or remove the damage or obstruction at their own expense, and
   (b) the acquiring authority may, without waiting for the owner to perform their duty, or in case of default, repair or remove the damage or obstruction and recover their expenses from the owner in proceedings in the High Court.

Severed mines

6. If an underlying mine in which any protected minerals are situated extends on both sides of the scheme which the acquiring authority is authorised to carry out by the CPO, the owner of the mine is allowed to cut and make any communication works, i.e. airways, headings, gateways or water levels, through the protected minerals required for the ventilation, drainage and working of the mines. Where communication works are carried out and cause loss or damage to the owner or occupier of land lying over an underlying mine wherein protected minerals are situated and which extends on either side of a scheme which the acquiring authority is authorised to carry out by the CPO, the acquiring authority shall pay full compensation to them for the loss or damage unless the person sustaining the loss or damage is the owner of the mine.

7. The communication works must not exceed the dimensions or sections prescribed by the CPO, and where dimensions are not prescribed, they must not be more than 8 feet high and 8 feet wide. Also, the communication works shall not be cut or made on any part of the undertaking which the acquiring authority is authorised to carry out by the CPO, or so as to injure or impede its use.

8. If an underlying mine extends on both sides of the scheme which the acquiring authority is authorised to carry out by the CPO, the acquiring authority is required to pay to the owner of the mines on an adhoc basis (in addition to any compensation – see paragraph 3 above) any expenses and losses:
   (a) incurred by them in consequence of the:
      (i) severance by the scheme of the land lying over the mines,
      (ii) interruption of continuous working of the mines in consequence of the mineral becoming “protected” (see paragraph 3 above), and
      (iii) mines being worked in such manner and subject to such restrictions as not to prejudice or injure the scheme; and
   (b) for any minerals not purchased by the acquiring authority which cannot be obtained by reason of the making and maintenance of the scheme which the acquiring authority is authorised to carry out by the CPO.

The Welsh Ministers would expect the payment of expenses and losses to be undertaken on no less than a quarterly basis and any dispute as to the amount payable is to be determined by arbitration.

Powers of entry

9. To assess whether underlying mines have been worked which could damage the scheme the acquiring authority is authorised to carry out by the CPO, paragraph 8(1) of Schedule 2 to the 1981 Act provides the acquiring authority may, after giving 24 hours written notice to the owner of the mines:
   (a) enter on any land in which the mines are, or are thought to be, being worked, and which is in or near to the land where the scheme the acquiring authority is authorised to carry out by the CPO is situated, and
   (b) enter the mines and any works connected with the mines.

10. In undertaking this exercise, paragraph 8(2) of Schedule 2 to the 1981 Act allows the acquiring authority to make use of any apparatus or machinery belonging to the owner of the mines. Also, to use all necessary means for discovering the distance from the scheme the acquiring authority is authorised to carry out by the CPO to the parts of the mines which are, or are about to be, worked.

11. Paragraph 8(3) of Schedule 2 to the 1981 Act provides if the owner of the mines refuses to allow a person appointed by the acquiring authority to enter the mines or works for the purposes outlined in paragraph 9 above, they shall be liable for a fine not exceeding £50.

Remedial works

12. If it appears a mine has been worked contrary to the provisions of Schedule 2 to the 1981 Act, the acquiring authority may, under paragraph 9(1) of Schedule 2 to the 1981 Act, give notice to the owner of the mine to undertake works and adopt such means necessary or proper for making safe the scheme the acquiring authority is authorised to carry out by the CPO and preventing injury to it. Paragraph 9(2) of Schedule 2 to the 1981 Act provides if the owner of the mines does not comply with the notice, the acquiring authority may construct the works and recover their expenses from the owner by proceedings in the High Court.

Part 3 - Procedures ancillary to compensation claims

Section O – Certificates of Appropriate Alternative Development

Introduction

1. Part 2 of the Land Compensation Act 1961 Act ("the 1961 Act") provides that compensation for the compulsory purchase of land is on a market value basis. When determining market value, section 14 of the 1961 Act provides account is taken of any pre-existing potential development value, including any existing planning permissions, as well as any prospective permissions which can be assumed would have been granted were it not for the compulsory acquisition of the land/property.

Planning assumptions

2. Section 14 of the 1961 Act provides provisions on assessing compensation for compulsory purchase in accordance with rule (2) of section 5 of the 1961 Act (open market value). The planning assumptions are as follows:

- Section14(2): account may be taken of –
  (a) any planning permission in force for the development of the relevant land or other land at the relevant valuation date; and
  (b) the prospect (on the assumptions in section 14(5)) in the circumstances known to the market on the relevant valuation date of planning permission being granted, other than for development for which planning permission is already in force or appropriate alternative development.
- Section 14(3): it may also be assumed that planning permission for appropriate alternative development (as described in section 14(4)) is either in force at the relevant valuation date or it is certain than planning permission would have been granted at a later date.

- Section 14(4): defines appropriate alternative development as development, other than that for which planning permission is in force, that would, on the assumptions in section 14(5) but otherwise in the circumstances known to the market at the relevant valuation date, reasonably have been expected to receive planning permission on that date or a later date. Appropriate alternative development may be on the relevant land alone or on the relevant land together with other land.

- Section 14(5): contains the basic assumptions that-
  (a) the scheme underlying the acquisition had been cancelled on the launch date;
  (b) no action has been taken by the acquiring authority for the purposes of the scheme;
  (c) there is no prospect of the same or similar scheme being taken forward by the exercise of a statutory power or by compulsory purchase; and
  (d) if the scheme is for a highway, no other highway would be constructed to meet the same need as the scheme.

- Section 14(6): defines the 'launch date' as –
  (a) for a CPO, the publication date of the notice required under section 11 of, or paragraph 2 of schedule 1 to, the 1981 Act;
  (b) for any other order (such as under the Transport and Works Act 1992 or a development consent order under the Planning Act 2008) the date of first publication or service of the relevant notice; or
  (c) for a special enactment than an order, the date of first publication of the first notice that, in connection with the acquisition, is published in accordance with any Standing Order of either House of Parliament relating to private bills.

The date on which planning assumptions are assessed

3. The main feature of the arrangements is that the planning assumptions are assessed on the relevant valuation date (as defined in section 5A of the 1961 Act) rather than the launch date (even though the compulsory acquisition scheme is still assumed to have been cancelled on the launch date). This will avoid the need to reconstruct the planning regime that existed on the launch date, including old development plans, national planning policy and guidance. Also, that the planning assumptions are based on 'the circumstances known to the market at the relevant valuation date', which would include the provisions of the development plan.

A Certificate of Appropriate Alternative Development

4. Where existing permissions and assumptions are not sufficient to indicate properly the development value which would have existed were it not for the scheme underlying the compulsory purchase, Part 3 of the 1961 Act provides a mechanism for indicating what development or class(es) of development (if any) for which it is certain planning permission can be assumed to have been granted on an application by means of a "Certificate of Appropriate Alternative Development" (CAAD). The planning permissions indicated in a certificate can briefly be described as those with which an owner might reasonably have expected to sell their land in the open market if it had not been publicly acquired.

5. It should be emphasised a CAAD is not an actual planning permission, or a planning permission in principle. It is a tool to help property valuers, acting on behalf of both acquiring authorities and claimants, arrive at an accurate opinion of the market value of land or property and, thus, the fair amount of compensation to be paid. It should be noted a CAAD only applies and relates to land or property acquired compulsorily.

Certificate system

6. Section 17(1) of the 1961 Act provides an application for a CAAD can be made to a LPA by either:
   (a) the owner of an interest identified within a CPO and which is to be acquired; or
   (b) the acquiring authority making a CPO.

   A person who has no interest in land which is to be acquired cannot apply for a CAAD. Where an application for a CAAD is made for development of the relevant land together with other land it is important that the certificate sought relates only to the land in which the applicant is a directly interested party. The description(s) of development specified in the application (and where appropriate the certificate issued in response) should clearly identify where other land is included and the location and extent of such other land.

7. The circumstances in which CAADs may be helpful include:
   (a) where there is no adopted development plan covering the land to be acquired;
   (b) where the adopted development plan indicates a "green belt" or leaves the site without specific allocation;
   (c) where the site is allocated in the adopted development plan specifically for some public purpose, for example, a new school or open space;
   (d) the amount of development which would be allowed is uncertain;
   (e) the extent and nature of planning obligations and conditions is uncertain.

Right to apply for a Certificate of Appropriate Alternative Development

8. The right to apply for a CAAD arises at the date when the interest in land is proposed to be acquired by the acquiring authority. The relevant date will be:
   (i). acquisition by CPO – the date of a notice required to be published or served in connection with the making of a CPO (or date of publication of the draft CPO, if the acquiring authority is the Welsh Ministers) under any enactment;

   (ii). acquisition by private or hybrid Parliamentary Bill – the date on which notice of the proposal to acquire the land was served in accordance with the requirements of the relevant Standing Order of either House of Parliament;

   (iii). acquisition by Transport and Works Act order – the date of first publication, or date of service, of the first notice of the making of the order;

   (iv). acquisition by blight notice or a purchase notice – the date on which 'NTT' is deemed to have been served;

   (v). acquisition by agreement – the date of the written offer by the acquiring authority to negotiate for the purchase of the land.

Once a CPO comes into operation the acquiring authority should be prepared to indicate the date of entry so a CAAD can sensibly be applied for if one is required. Thereafter, application for a CAAD may be made at any time except after a NTT has been served or agreement has been reached for the sale of the interest and a case has been referred to the Upper Tribunal (Lands Chamber). In these situations an application may not be made unless both parties agree or the Upper Tribunal (Lands Chamber) gives leave. It will assist compensation negotiations if an application for a CAAD is made as soon as possible to inform those negotiations. An overview of the timescales associated with a CAAD is provided at the end of this section.

9. Acquiring authorities should ensure, when serving NTT in cases where a certificate could be applied for, that owners are made aware of their rights in the matter. In some cases, acquiring authorities may find it convenient themselves to apply for a certificate as soon as they make a CPO or make an offer to negotiate so that the position is clarified quickly. It may sometimes happen that, when proceedings begin for the acquisition of the land, the owner has already applied for planning permission for some development. If the LPA refuse planning permission or grant it subject to restrictive conditions and are aware of the proposal for acquisition, they should draw the attention of the owner to their right to apply for a certificate, as a refusal or restrictive conditions in response to an actual application (i.e. in the 'scheme world') do not prevent a positive certificate being granted (which would relate to the 'no scheme world').

10. The Welsh Ministers consider it important as far as possible the certificate system should be operated on broad and common-sense lines. It should be borne in mind a certificate is not a planning permission but a statement to be used in ascertaining the fair, open market value of land. An example of how the system could work might be where land is allocated in the development plan as part of an open space or a site for a school, and is being acquired for that or a similar purpose. If there had been no question of public acquisition, the owner might have expected to be able to sell it with planning permission for some other form or forms of development. The purpose of the certificate is to state what, if any, are those other forms of development. In determining this question, the Welsh Ministers would expect the LPA to exercise its planning judgement, on the basis of the absence of the acquisition scheme, taking into account those factors which would normally apply to consideration of planning applications. For example:
    - the character of the development in the surrounding area;
    - any general policy of the adopted development plan and national planning policy; and
    - any other relevant considerations where the site raises more complex issues which it would be unreasonable to disregard (see paragraph 26 below).

    Only those forms of development which for some reason or other are inappropriate should be excluded.

11. Where there is no adopted LDP limited weight will be given to a draft or emerging plan, the decisions given on other planning applications relating to neighbouring land (including land unaffected by the proposed acquisition), and the existing character of the surrounding area and development. Where there is no adopted LDP, draft or emerging plan, weight will be given to national policy contained in PPW and the Future Wales: the National Plan 2040.

Making an application for a Certificate of Appropriate Alternative Development

12. The manner in which applications for a certificate are to be made and dealt with is prescribed in articles 3, 4, 5 and 6 of the Land Compensation Development (Wales) Order 2012 ("the 2012 Order") and applications must:
    (a) be made in writing to a LPA;
    (b) include a plan or map sufficient to identify the land to which the application relates; and
    (c) comply with the requirements of section 17(3) of the 1961 Act i.e. contain whichever of the following statements is applicable:
        (i) that in the applicant's opinion there is development that, for the purposes of section 14 of the 1961 Act, is appropriate alternative development in relation to the acquisition concerned; or
        (ii) that in the applicant's opinion there is no development that, for the purposes of section 14 of the 1961 Act, is appropriate alternative development in relation to the acquisition concerned.

13. Article 3(3) of the 2012 Order requires if a CAAD is issued otherwise than for the class or classes of development applied for, or contrary to representations made by the party directly concerned, it must include a statement of the LPA's reasons and of the right of appeal under section 18 of the 1961 Act to the Upper Tribunal (Lands Chamber) (see paragraphs 32 – 38 below). Article 4 of the 2012 Order requires the LPA, if requested to do so by the owner of an interest in the land, to inform them whether an application for a certificate has been made, and if so by whom, and to supply a copy of any certificate that has been issued. Article 5 of the 2012 Order provides for applications for CAADs and requests for information to be made electronically.

Information to be contained in an application for a Certificate of Appropriate Alternative Development

14. In an application for a CAAD under section 17 of the 1961 Act, the applicant may seek a certificate to the effect that there is either:
    (a) any development that is appropriate alternative development for the purposes of section 14 (a positive certificate); or
    (b) that there is no such development (a nil certificate).

15. If the application is for a positive certificate, the applicant must specify:
    (i) each description of development they consider planning permission would have been granted for, and
    (ii) their reasons for holding that opinion.

The onus is on the applicant to substantiate the reasons why they consider in their view there is development that is appropriate alternative development.

16. The phrase 'description of development' is intended to include the type and form of development. Section 17(3)(b)(i) of the 1961 Act requires the descriptions of development to be 'specified', which requires a degree of precision in the description of development.

17. An application for a 'nil' certificate must set out the full reasons why the applicant considers in their opinion there is no appropriate alternative development in respect of the subject land or property. The issuing of a 'nil' certificate can be useful evidence in disputing or justifying an acquiring authorities valuations and can be material to any future ruling by the Upper Tribunal (Lands Chamber).

18. The purpose of a CAAD is to assist in the assessment of the open market value of the land to be acquired by a CPO – see Stage 6 in Part 1 of this Circular. Applicants should therefore consider carefully for what descriptions of development they wish to apply for via a certificate. There is no practical benefit to be gained from making applications in respect of descriptions of development which do not maximise the value of the land. Applicants should focus on the description or descriptions of development which will most assist in determining the open market value of the land.

19. An application for a CAAD under section 17 of the 1961 Act is not a planning application and applicants do not need to provide the detailed, technical information which would normally be submitted with a planning application. However, it is in applicants' interests to give as specific a description of development as possible in the circumstances in order to ensure that any certificate granted is of practical assistance in the valuation exercise.

20. Applicants should normally set out a clear explanation of the type and scale of development sought in the CAAD and a clear justification for this. This could be set out in a form of planning statement which might usefully cover the following matters:

- confirmation of the valuation date at which the prospects of securing planning permission need to be assessed;

- the type or range of uses the applicant considers should be included in the certificate including uses to be included in any mixed use development which is envisaged as being included in the certificate;

- where appropriate, an indication of the quantum and/or density of development envisaged with each category of land;

- where appropriate an indication of the extent of built envelope of the development which would be required to accommodate the quantum of development envisaged;

- a description of the main constraints on development which could be influenced by a planning permission and affect the value of the land, including matters on site such as ecological resources or contamination, and matters off site such as the existing character of the surrounding area and development;

- an indication of what planning conditions or planning obligations the applicant considers would have been attached to any planning permission granted for such a development had a planning application been made at the valuation date;

- a clear justification for the applicant's view that such a permission would have been forthcoming having regard to the planning policies and guidance in place at the relevant date (see paragraph 8 above) when an interest in land is proposed to be acquired; the location, setting and character of the site or property concerned; the planning history of the site and any other matters it considers relevant.

21 Detailed plans are not required in connection with a section 17 application but drawings or other illustrative material may be of assistance in indicating assumed access arrangements and site layout and in indicating the scale and massing of the assumed built envelope. An indication of building heights and assumed method of construction may also assist the LPA in considering whether planning permission would have been granted at the relevant date (see paragraph 8 above) when an interest in land is proposed to be acquired.

The issuing of a Certificate of Appropriate Alternative Development

22. LPAs are required to respond to an application by issuing a CAAD, outlining what planning permissions would have been granted if the land were not to be compulsorily acquired. The LPA will assume the scheme for which the land is to be acquired, together with any references to the underlying proposal that appear in any planning documents, were cancelled on the relevant date (see paragraph 8 above) when an interest in land is proposed to be acquired. Section 17(1) of the 1961 Act requires the certificate to state in the LPA's opinion there is either:
(a) development that, for the purposes of section 14 of the 1961 Act, is appropriate alternative development (a 'positive' certificate); or
(b) no development that, for the purposes of section 14 of the 1961 Act, is appropriate alternative development (a 'nil' or 'negative' certificate). In such circumstances, the LPA should set out its reasons why it believes there is no development which is appropriate alternative development for the land in question.

23. Under section 17(4) of the 1961 Act LPAs must not issue a CAAD before the end of twenty two days from the date the applicant has, or has stated they will, serve a copy of their application on the other party directly concerned (unless otherwise agreed).

Under the 2012 Order LPAs must, however, issue a CAAD within two months from the date it receives the application and all the required associated information (or such extended period as may be agreed with the applicant in writing).

24. Where a LPA is to issue a positive certificate, section 17(5) of the 1961 Act requires the certificate must:
(a) specify all the development that (in the LPA's opinion) is appropriate alternative development, even if it not specified in the application; and
(b) give a general indication of:
(i) any reasonable conditions;
(ii) when the permission could reasonably have been granted at a time after the relevant valuation date; and
(iii) any reasonable pre-condition, such as a planning obligation, that could reasonably have been expected to have been met.

25. Section 17(6) of the 1961 Act provides that for positive certificates:
(a) only the development identified in the certificate is appropriate alternative development for the purposes of section 14 of the 1961 Act; and
(b) that the matters outlined in paragraph 24(b) above (conditions etc) apply to the planning permission assumed to be in force under section 14(3) of the 1961 Act for that development.

26. LPAs should note an application made under section 17 of the 1961 Act is not a planning application. The authority should seek to come to a view based on its assessment of:
- the information contained within the application;
- the policy context applicable at the relevant date (see paragraph 8 above);
- the character of the site and its surroundings; and
- whether such a development would have been acceptable to the authority.

As the development included in the certificate is not intended to be built the LPA does not need to concern itself with whether or not the granting of a certificate would create any precedent for the determination of future planning applications.

27. If giving a positive certificate, the LPA must give a general indication of the conditions and obligations to which planning permission would have been subject. As such, the general indication of conditions and obligations to which the planning permission could reasonably be expected to be granted should focus on those matters which affect the value of the land. Conditions relating to detailed matters such approval of external materials or landscaping would not normally need to be indicated. However, clear indications should be given to matters which do affect the value of the land, wherever the authority is able to do so. Such matters would include, for example:
- the proportion and type of affordable housing required within a development;
- limitations on height or density of development;
- requirements for the remediation of contamination or compensation for ecological impacts; and

- significant restrictions on use, as well as financial contributions and site-related works such as the construction of accesses and the provision of community facilities and other infrastructure.

The clearer the indication of such conditions and obligations, the more helpful the certificate will be in the valuation process.

28. A CAAD, once issued, must be taken into account in assessing compensation for the compulsory acquisition of an interest in land, even though it may have been issued on the application of the owner of a different interest in the land. It cannot, however, be applied for by a person (other than the acquiring authority) who has no interest in the land. It should be noted that, whilst a CAAD is determined at the relevant date (see paragraph 8 above) when an interest in land is proposed to be acquired, compensation is valued/assessed at the relevant valuation date (see section 5A of the 1961 Act). There may be circumstances (for example, where a CPO receives objections and a public inquiry needs to be scheduled, or where a confirmed CPO is challenged) where there may be a gap between these two dates, during which market conditions may change and, hence, the amount of compensation due could also change.

Additional informal advice on open market value

29. Applicants seeking a section 17 CAAD should seek their own planning advice when compiling their application.

30. In order that the valuers acting on either side may be able to assess the open market value of the land to be acquired they will often need information from the LPA. Such as:
    - existing permissions,
    - the development plan and
    - proposals to alter or review the plan.

    However, sometimes LPA officers will, in addition, be asked for informal opinions by one side or the other to the negotiations. It is for LPAs to decide how far informal expressions of opinion should be permitted with a view to assisting the parties to an acquisition to reach agreement. Where they do give it, the Welsh Ministers suggest the LPA should:-

    (a) give any such advice to both parties to the negotiation; and
    (b) make clear that the advice is informal and does not commit them if a formal certificate or planning permission is sought.

31. It is important LPAs do not do anything which prejudices their subsequent consideration of an application for a CAAD.

Appeals against Certificates of Appropriate Alternative Development

32. The right of appeal against a certificate under section 18 of the 1961 Act, exercisable by both the acquiring authority and the person having the interest in the land who has applied for the certificate, is to the Upper Tribunal (Lands Chamber). It may confirm, vary or cancel certificate, and issue a different certificate in its place, as it considers appropriate.

33 Rule 28(7) of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 (as amended) requires written notice of an appeal (in the form of a reference to the Upper Tribunal (Lands Chamber)) must be given within one month of receipt of the certificate by the LPA. If the LPA fail to issue a certificate, notice of appeal must be given within one month of the date when the authority should have issued it (i.e. either two months from receipt of the application by the LPA, or two months from the expiry of any extended period agreed between the parties to the transaction and the authority) and the appeal proceeds on the assumption that a 'nil' or 'negative' certificate had been issued.

34. The Upper Tribunal (Lands Chamber) does have the power to extend the one month time period (under Rule 5 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 (as amended)) even if it receives the request to do so after it expires. Appeals against a decision by the Upper Tribunal (Lands Chamber) on a point of law may be made to the Court of Appeal in the normal way.

35. The Upper Tribunal (Lands Chamber) when considering any appeal under section 18 of the 1961 Act must consider the matters relating to the CAAD if the application for the CAAD had been made to it in the first place, and either:
(a) confirm the CAAD,
(b) vary the CAAD, or
(c) cancel the CAAD and issue a different CAAD in its place.

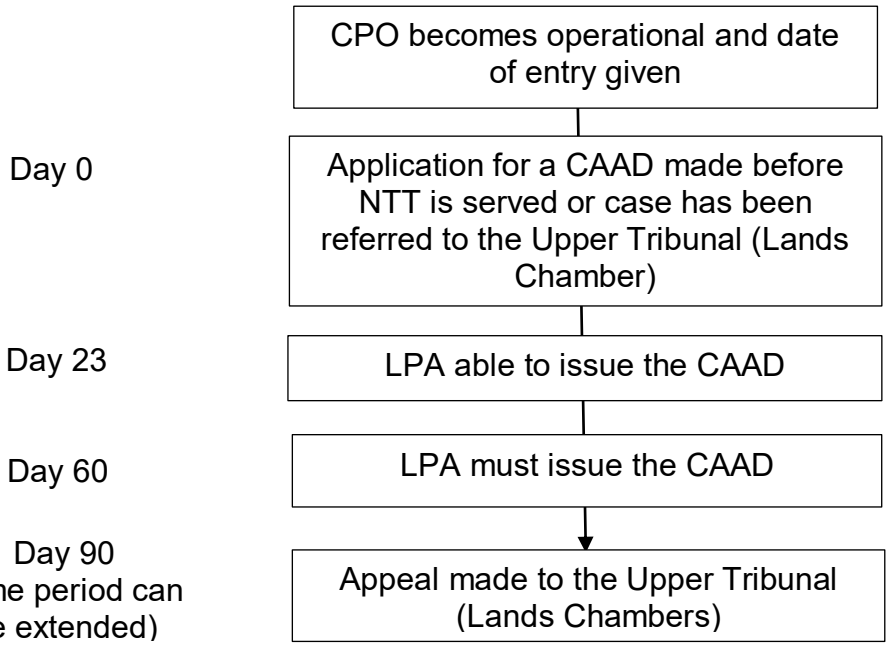
36. A reference to the Upper Tribunal (Lands Chamber) must include (in particular):
- a copy of the application to the LPA for a CAAD;
- a copy of the certificate issued (if any); and
- a summary of the reasons for seeking the determination of the Tribunal and whether the reference should be determined without a hearing.

37. More information on how to make an appeal can be found on the Upper Tribunal (Lands Chamber)'s website: https://www.gov.uk/administrative-appeals-tribunal.

38. Available on the Upper Tribunal (Lands Chamber)'s website is a form to make an appeal and information on the fees payable. If you do not have access to the internet you can request a copy of the information leaflets and a form by telephoning 020 7071 5662 or by writing to:
Upper Tribunal (Administrative Appeals Chamber)
5th floor, Rolls Building
7 Rolls Buildings
Fetter Lane
London
EC4A 1NL

An overview of timescales

39. The timescales associated with a CAAD are outlined below:



Section P – Objection to division of land – the serving of counter-notices (material detriment)

Introduction

1. Where an acquiring authority proposes to acquire only part of a house (or park or garden belonging to a house), building or factory, the owner can serve a counter-notice on the acquiring authority requesting that it purchases the entire property.

2. On receipt of a counter-notice, the acquiring authority can either withdraw, decide to take all the land or refer the matter to the Upper Tribunal (Lands Chamber) for determination.

3. The Upper Tribunal (Lands Chamber) will determine whether the severance of the land proposed to be acquired would in the case of a house, building or factory, cause material detriment to the house, building or factory (i.e. cause it to be less useful or less valuable to some significant degree), or in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

Procedure for serving a counter-notice

4. In respect of a CPO which is confirmed on or after 3 February 2017, the procedure for serving a counter-notice is set out in Schedule 2A to the 1965 Act (where the NTT process is followed) and Schedule A1 to the Compulsory Purchase (Vesting Declarations) Act 1981 (where the GVD process is followed). The procedure is broadly the same in both cases.

The effect of a counter-notice on a notice of entry which has already been served on the owner

5. Under Part 1 of Schedule 2A to 1965 Act, if the owner serves a counter-notice, any notice of entry under section 11(1) of the 1965 Act that has already been served on the owner in respect of the land proposed to be acquired ceases to have effect (see paragraph 6 of Schedule 2A to the 1965 Act). The acquiring authority may not serve a further notice of entry on the owner under section 11(1) of the 1965 Act in respect of that land unless they are permitted to do so by paragraph 11 or 12 of Schedule 2A to the 1965 Act.

General vesting declaration procedure: The effect of a counter-notice on the vesting date of the owner's land specified in the declaration

6. If a counter-notice is served under paragraph 2 of Schedule A1 to the Compulsory Purchase (Vesting Declarations) Act 1981 within the vesting period specified in the declaration in accordance with section 4(1) of the Compulsory Purchase (Vesting Declarations) Act 1981, the 'vesting date' for the land proposed to be acquired from the owner (i.e. the land actually specified in the declaration) will be the day determined as the vesting date for that land in accordance with Schedule A1 (see section 4(3)(b) of the Compulsory Purchase (Vesting Declarations) Act 1981).

Entry by an acquiring authority on to land proposed to be acquired from an owner where a counter-notice has been referred to the Upper Tribunal (Lands Chamber)

7. Under Schedule 2A to the 1965 Act and Schedule A1 to the Compulsory Purchase (Vesting Declarations) Act 1981, an acquiring authority is permitted to enter the land it proposed to acquire from the owner (i.e. the land included in its NTT / GVD) where a counter-notice has been referred to the Upper Tribunal (Lands Chamber).

8. Paragraph 12 of Schedule 2A to the 1965 Act provides that, where a counter-notice has been referred to the Upper Tribunal (Lands Chamber), an acquiring authority may serve a notice of entry on the owner in respect of the land proposed to be acquired. If the authority had already served a notice of entry in respect of the land (i.e. a notice which ceased to have effect under paragraph 6(a) of Schedule 2A to the 1965 Act), the normal minimum three month notice period will not apply to the new notice in respect of that land (see section 11(1B) of the 1965 Act). The period specified in any new notice must be a period that ends no earlier than the end of the period in the last notice of entry (see paragraph 13 of Schedule 2A to the 1965 Act).

9. Similarly, under the GVD procedure, if an acquiring authority refers a counter-notice (served before the original vesting date) to the Upper Tribunal (Lands Chamber), the authority may serve a notice on the owner specifying a new vesting date for the land proposed to be acquired (see paragraph 12 of Schedule A1 to the Compulsory Purchase (Vesting Declarations) Act 1981). This is intended to allow for the vesting of this land before the Upper Tribunal (Lands Chamber) has determined the material detriment dispute.

10. However, if an acquiring authority enters, or vests in itself, the land it proposed to acquire in advance of the Upper Tribunal (Lands Chamber)'s determination and the Tribunal subsequently finds in favour of the owner (i.e. the Tribunal requires the authority to take additional land from the owner):
    (a) the authority will not have the option of withdrawing its NTT under paragraph 29 of Schedule 2A to the 1965 Act or paragraph 17 of Schedule A1 to the Compulsory Purchase (Vesting Declarations) Act 1981, and so will be compelled to take the additional land; and

    (b) the Upper Tribunal (Lands Chamber) will be able to award the owner compensation for any losses caused by the temporary severance of the land proposed to be acquired from the additional land which is required to be taken (see paragraph 28(5) of schedule 2A to the 1965 Act and paragraph 16(4) of Schedule A1 to the Compulsory Purchase (Vesting Declarations) Act 1981.

Material detriment provisions in Schedule 2A to the Compulsory Purchase Act 1965 and Schedule A1 to the Compulsory Purchase (Vesting Declarations) Act 1981

11. An acquiring authority may, in a CPO, disapply the material detriment provisions for specified land which is nine metres or more below the surface (see Schedule 2A of the 1965 Act). This is intended to prevent spurious claims for material detriment from owners of land above tunnels where the works will have no discernible effect on their land.

Material detriment provisions and blight notices

12. The material detriment provisions in relation to blight notices are set out in the 1990 Act (see, in particular, sections 151(4)(c), 153(4A) to (7) and 154(4) to (6)).

Part 4 - Procedural and drafting issues

Section Q – Checklist of documents to be submitted to the Welsh Ministers with a compulsory purchase order[54]

The following documents should accompany all CPOs submitted to the Welsh Ministers for confirmation (except where stated):

DOCUMENT TYPE AND CIRCULAR REFERENCE	DOCUMENT REQUIRED	NUMBER OF COPIES (INCLUDING ORIGINALS WHERE APPROPRIATE)
Orders and maps		
Section R	Sealed order	1
	Unsealed order	1
Section S	Sealed map	2
	Unsealed map	1
Certificates		
Section T	General certificate in support of the CPO submission including (where appropriate) confirmation that the proper notices have been correctly served in relation to: - (a) a CPO made on behalf of a community council; (b) a listed building in need of repair; or (c) Church of England property.	1
Section T	Protected assets certificate giving a nil return or a positive statement for each category of asset protection i.e. listed building preservation; any land and unlisted buildings in a conservation area.	1

[54] See also paragraph 86 in Part 1 of this Circular.

Statements		
Section U	An acquiring authority's Statement of Reasons and, wherever practicable, any other documents referred to in the Statement of Reasons.	1
Notices		
Section H	CPOs for listed buildings in need of repair only: Repairs notice.	1

Section R – Guidance on drafting and serving a compulsory purchase order and associated applications

Prescribed form

1. The CPO and Schedule should comply with the relevant form as prescribed by regulation 3 of, and the Schedule to, the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004.

2. In accordance with the notes to the prescribed forms, the title and year of the Act authorising compulsory purchase must be inserted. Each acquisition power must be cited and the purpose(s) clearly stated in paragraph 1 of the CPO. For CPOs made under section 17 of the 1985 Act, the purpose of the CPO may be described as "the provision of housing accommodation". Where there are separate compulsory acquisition and enabling powers, each should be identified and the purpose(s) stated. In some cases, a collective title may be sufficient to identify two or more Acts. See the following sections in Part 2 of this Circular:
   (a) Section A - Advice on section 226 of the 1990 Act;
   (b) Section C - Advice on CPOs where the acquisition power is section 121 of the 1972 Act for mixed purposes
   (c) Section D - Advice on CPOs where the acquisition power is section 125 of the 1972 Act for mixed purposes on behalf of community and town councils;
   (d) Section G – Advice on powers to acquire land for highway related purposes under the 1980 Act; and
   (e) Section K - Compulsory purchase of new rights and other interests
   for examples of how orders made under certain powers may be set out.

Title of compulsory purchase order

3. The Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004 require that the title of the CPO should be at the head of the CPO, before the titles and years of the Acts, and should indicate the general area within which the CPO land is situated (see paragraph (a) of "Notes to the use of Forms 1, 2 and 3" in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004) (see also paragraph 10 below). The title to a CPO should include the current year, i.e. the year in which the CPO is actually made and not the year in which the authority resolved to make it, if different.

Places for the deposit of the compulsory purchase order map

4. A certified copy of the CPO map should be deposited for inspection at an appropriate place within the locality, for example, the local authority's offices. It should be within reasonably easy reach of persons living in the area affected. The two sealed CPO maps (see Section Q in Part 4 of this Circular) should be forwarded to the offices of the Welsh Ministers (the address of which is outlined in paragraph 34 below).

Incorporation of the Mining Code

5. Parts 2 and 3 of Schedule 2 to the 1981 Act, relating to mines ("the Mining Code"), may be incorporated in a CPO made under powers to which the 1981 Act applies. The incorporation of both Parts does not, of itself, prevent the working of minerals within a specified distance of the surface of the land acquired under the CPO. It does, however, enable the acquiring authority, if the CPO becomes operative, to serve a counter-notice stopping the working of minerals, subject to the payment of compensation. Detailed guidance on minerals is contained in Section N in Part 2 of this Circular. Since this may result in the sterilisation of minerals, the Mining Code should not be incorporated automatically or indiscriminately in a CPO.

6. Acquiring authorities are therefore asked to consider the matter carefully before including the code, and to omit it where existing statutory rights to compensation or repair of damage might be expected to provide an adequate remedy in the event of damage to land, buildings or works occasioned by mining subsidence.

7. The advice of the Valuation Office Agency's regional mineral valuers is available to acquiring authorities when considering the incorporation of the Mining Code.

8. In areas of coal working notified to the LPA by the Coal Authority under paragraph (1)(a) of article 17 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012, authorities are asked to notify the Coal Authority and relevant licensed coal mine operators if they make a CPO which incorporates the Mining Code.

Extent, description and situation of land scheduled

9. The prescribed order formats set out in the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004 require, subject to the flexibility to adapt them permitted by Regulation 2, that the extent of the land should be stated. Therefore, the area of each plot, for example, in square metres, should normally be shown. This information will be particularly important where any potential exists for dispute about the boundary of the land included in the CPO, because section 14 of the 1981 Act prohibits the modification of a CPO on confirmation to include land which would not otherwise have been covered. It may not always be necessary for a measurement of the plot to be quoted, if the extent and boundaries can be readily ascertained without dispute. For instance, the giving of a postal address for a flat may be sufficient.

10. Each plot should be described in terms which are readily understandable and it is particularly important local people can identify the land described. The Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004 require that the details about the extent, description and situation of the land should be sufficient to tell the reader approximately where the land is situated without reference to the map (see the notes to prescribed Forms 1 to 6 contained in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004).

11. Simple descriptions in ordinary language are preferred. For example, where the land is agricultural it should be described as “pasture land” or “arable land”; agricultural and non-agricultural afforested areas may be described as “woodland” etc.; and, if necessary, be related to some well-known local landmark, for example, “situated to the north of School Lane about 1 km west of George’s Copse”.

12. Where the description includes a reference to Ordnance Survey field numbers the description should also state or refer to the sheet numbers of the Ordnance Survey maps on which these field numbers appear. The Ordnance Survey map reference should quote the edition of the map.

13. Property, especially in urban areas, should be described by name or number in relation to the road or locality and where part of a property has a separate postal address this should be given. Particular care is necessary where the street numbers do not follow a regular sequence, or where individual properties are known by more than one name or number. The description should be amplified as necessary in such cases to avoid any possibility of mistaken identity. If the CPO when read with the CPO map fails to clearly identify the extent of the land to be acquired the Welsh Ministers may refuse to confirm the CPO even though it is unopposed.

Compulsory acquisition of new rights

Compulsory purchase orders solely for new rights

14. For a CPO which relates solely to new rights, the order heading should mention the appropriate enabling power, for example, one of those listed in paragraph 2(i) – (viii) of Section K in Part 2 of this Circular, together with the 1981 Act. Where a CPO relates solely to new rights, and does not include other interests in land which are to be purchased outright, paragraph 1 of the CPO should identify the purpose for which the rights are required. For example, “for the purpose of providing an access to a community centre which the Council are authorised to provide under section 19 of the Local Government (Miscellaneous Provisions) Act 1976”.

Compulsory purchase orders for new rights and other interests

15. For a CPO which includes new rights and land to be acquired for other purposes, the order heading should refer to the appropriate enabling power, any other Act(s), and the 1981 Act, as required by the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004 (see paragraph “(b)” on the “Notes on the use of Forms 1, 2 and 3” in the Schedule to the Regulations). Where a CPO relates to the purchase of new rights and of other interests in land, paragraph 1 of the order should describe all the relevant powers and purposes.

It should mention, for example:

". . . . . .the acquiring authority is hereby authorised to compulsory purchase

(a) under section 121 of the Local Government Act 1972 the land described in paragraph 2(1) below for the purpose of providing a community centre under section 19 of the Local Government (Miscellaneous Provisions) Act 1976; and
(b) under section 13 of the said Act of 1976, the new rights which are described in paragraph 2(2) below for the same purpose"

[etc, as in Form 1 of the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004].

16. Where the purposes for which new rights are being acquired differ from the purposes for which other interests are being purchased, paragraph 1 of the CPO should describe all of the relevant powers under, and purposes for which, the CPO has been made. For example:
    (a) ".....the acquiring authority is hereby authorised to compulsory purchase under section 89 of the National Parks and Access to the Countryside Act 1949, the derelict, neglected or unsightly land which is described in paragraph 2(1) below for the purpose of carrying out such works on the land as appear to them expedient for enabling it to be brought into use; and
    (b) under section 13 of the Local Government (Miscellaneous Provisions) Act 1976, the new rights which are described in paragraph 2(2) below for the purpose of providing an access to the above mentioned land for [the authority] and persons using the land, being a purpose which it is necessary to achieve in the interests of the proper planning of an area, in accordance with section 226(1)(b) of the Town and Country Planning Act 1990."

    [etc, as in Form 1 of the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004].

17. The acquiring authority's Statement of Reasons and Statement of Case should explain the need for the new rights, give details of their nature and extent, and provide any further relevant information. Where a CPO includes new rights, the acquiring authority is also asked to bring that fact to the attention of the Welsh Ministers in the letter covering their submission.

Schedule and map

18. The land over which each new right is sought needs to be shown as a separate plot in the CPO Schedule. The nature and extent of each new right should be described and where new rights are being taken for the benefit of a plot or plots, that fact should be stated in the description of the rights plots. It is helpful if new rights are described immediately before or after any plot to which they relate; or, if this is not practicable, for example where there are a number of new rights, they are shown together in the Schedule with appropriate cross-referencing between the related plots.

Acquiring authorities are advised to give careful attention to the drafting of new rights and a similar degree of precision employed in drafting the terms of easements and rights in property transactions is required.

19. The CPO map should clearly distinguish between land over which new rights would subsist and land in which it is proposed to acquire other interests (see paragraph "(f)" on the "Notes on the use of Forms 1, 2 and 3" or paragraph "(d)" on the "Notes on the use of Forms 4, 5 and 6" in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004).

Compulsory acquisition where an acquiring authority already owns interests

20. Except for CPOs made under highway land acquisition powers in Part 12 of the 1980 Act, to which section 260 of that Act applies, where the acquiring authority already own an interest or interests in land but wish to acquire the remaining interest or interests in the same land, usually to ensure full legal title, they should include a description of the land in column 2 of the Schedule to the CPO in the usual way but qualify the description as follows:

"*all interests in [*describe the land] *except those owned by the acquiring authority*".

The remaining columns of the Schedule to the CPO should be completed as described insub-paragraphs (a) to (p) in paragraph 24 below. This principle should be extended to other interests in the land which the acquiring authority does not wish to acquire, for example, the Welsh Ministers might decide they wish to exclude their own interests and local authority interests from a CPO.

21. Compulsory purchase should not be used merely to resolve conveyancing difficulties. It is accepted, however, that it may only be possible to achieve satisfactory title to certain interests by the use of compulsory powers, perhaps followed by a GVD (see paragraphs 154 - 155 in Part 1 of this Circular). This is particularly relevant where, following acquisition, an acquiring authority transfers the land to a selected development partner to develop. Accordingly, acquiring authorities will be expected to explain and justify the inclusion of such interests. The explanation may be either in their Statement of Reasons or in subsequent correspondence, which may have to be copied to the parties. If no explanation is given or if the reasons are unsatisfactory, the Welsh Ministers may modify a CPO to exclude interests which the acquiring authority already own, on the basis that compulsory powers are unnecessary.

Compulsory acquisition involving an interest in Crown land

22. Where the appropriate authority has entered into an agreement with a highway authority so as to permit the inclusion in a CPO of the Crown's interest or interests, the land may be included and described as for any privately owned land.

Where a CPO is made under powers other than the 1980 Act, however, the acquiring authority should identify the relevant Crown body in the appropriate column of the CPO Schedule and describe the interest(s) to be acquired. If the acquiring authority wish to acquire all interests other than those of the Crown, column two of the CPO Schedule should specify that "all interests in [describe the land] except the interest(s) held by [*the relevant Crown body*]" are being acquired.

23. A similar form of words to that described in paragraph 20 above may be appropriate where the acquiring authority wish to include in the Schedule to the CPO an interest in Crown land which is held otherwise than by or on behalf of the Crown. In most cases, the Crown's own interests cannot be acquired compulsorily - further guidance on this subject is given in Section L in Part 2 of this Circular.

Interests required to be served notice of the making of a compulsory purchase order

24. The Schedule to the CPO should include the names and addresses of every qualifying person as defined in section 12 of the 1981 Act and upon whom the acquiring authority is required to serve notice of the making of the CPO. A qualifying person is:

(i) every owner, lessee, tenant and occupier (section 12(2)(a) of the 1981 Act);

(ii) every person to whom the acquiring authority would, if proceeding under section 5(1) of the 1965 Act, be required to give a NTT (section 12(2A)(a) of the 1981 Act); and

(iii) every person the acquiring authority thinks is likely to be entitled to make a claim for compensation under section 10 of the 1965 Act if the CPO is confirmed and compulsory purchase takes place, so far as such person is known to the acquiring authority after making diligent inquiry (section 12(2A)(b) of the 1981 Act).

The guidance in the following table should be noted in connection with the service of the notice of the making of a CPO and the compilation of the Schedule to the CPO:

(a)	The Schedule should include persons who may have a valid claim to be owners or lessees for the purposes of the 1981 Act, for example, persons who have entered into a contract to purchase a freehold or lease.
(b)	The names of partners in a partnership should be included in the Schedule and all partners should be personally served, unless the partnership agrees that service may be upon a person whom they nominate to accept service on their behalf. This avoids having to include the names of all partners in a partnership in the Schedule and ensuring all partners are personally served. Notice served upon the partner who habitually acts in the partnership business is likely to be valid (see section 16 of the Partnership Act 1890), especially if that partner has control and management of the partnership premises, but the position is not certain.

(c)	Service should be effected on the Secretary or Clerk at the registered or principal office of a corporate body, which should be shown in the appropriate column, i.e. as owner, lessee etc. (section 6(2) and (3) of the 1981 Act). NB. Under Company Law requirements, notices served on a company should be addressed to the Secretary of the company at its principal or registered office. It is good practice to send copies to the actual contact who has been dealing with negotiations.
(d)	Individual trustees (including joint tenants and tenants in common) should be named and served separately.
(e)	In the case of unincorporated bodies such as clubs, chapels and charities, the names of the individual trustees should be shown and each trustee should be served as well as the Secretary. NB. The land may be vested in the trustees and not the Secretary but the trustees may be somewhat remote from the running of the club etc; and since communications should normally be addressed to its Secretary, it is considered to be reasonable that the Secretary should also be served. However, service solely on the Secretary of such a body is not sufficient unless it can be shown that the Secretary has been authorised by the trustees, or has power under the trust instrument, to accept order notices on behalf of the trustees.
(f)	In the case of land owned by a charitable trust it is advisable for notices to be served on the Charity Commissioners at their headquarters address[55] as well as on the trustees (see Part 7 of the Charities Act 2011).
(g)	Where land is ecclesiastical property, i.e. owned by the Church of England (it retains control over many border parishes) (see section 12(3) of the 1981 Act where this term is defined), notice of the making of the CPO must be served on the Church Commissioners[56] as well as on the owners etc. of the property.
(h)	Where it appears that land is or may be an ancient monument, or forms the site of an ancient monument or other object of archaeological interest, acquiring authorities should, at an early stage and with sufficient details to identify the site, contact Cadw or the County Archaeologist according to the circumstances shown below: • in respect of a scheduled ancient monument – Cadw Welsh Government Plas Carew Unit 5/7 Cefn Coed Parc Nantgarw Cardiff, CF15 7QQ

[55] Charity Commission, PO Box 211, Bootle, L20 7YX.
[56] The Church Commissioners for England, 1 Millbank, Westminster, London SW1 3JZ.

	• in respect of an unscheduled ancient monument or other object of archaeological interest – the relevant County Archaeologist. This approach need not delay other action on the CPO or its submission for confirmation, but the authority should refer to it in the letter covering their submission.
(i)	Where a CPO includes land in a national park, acquiring authorities are asked to notify the National Park Authority of the making of the CPO. Similarly, where land falls within a designated Area of Outstanding Natural Beauty or a Site of Special Scientific Interest, they should notify Natural Resources Wales[57].
(j)	When a CPO relates to land being used for the purposes of sport or physical recreation, Sport Wales[58] should be notified of the making of the CPO.
(k)	Where a person is served notice of the making of the CPO at an accommodation address, or where service is effected on solicitors etc., the acquiring authority should make sure the person to be served has furnished this address or has authorised service in this way; where known, the served person's home or current address should also be served.
(l)	Owners or reputed owners - where known, the name and address of the owner or reputed owner of the property should be shown in column (3) of Table 1 in the Schedule to the CPO (see Form 1 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004). If there is doubt whether someone is an owner, they should be named in column (3) and a notice served on them. Likewise, if there is doubt as to which of two (or more) persons is the owner, both (or all) persons should be named in column (3) and a notice served on each of them. Questions of title can be resolved later. If the owner of a property cannot be traced the word "unknown" should be entered in column (3). A CPO should include covenants or restrictions which amount to interests in land the acquiring authority wishes to acquire or extinguish. Where land owned by the acquiring authority is subject to such an encumbrance (for example, an easement, such as a private right of way), they may wish to make a CPO to discharge the land from it. In any such circumstances, the owner or occupier of the land and the person benefiting from the right should appear in the relevant table in the Schedule to the CPO (see Form 3 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004). The Statement of Reasons should explain that authority is being sought to acquire or extinguish the relevant interest.

[57] Natural Resources Wales, c/o Customer Care Centre, Ty Cambria, 29 Newport Rd, Cardiff, CF24 0TP.
[58] Sport Wales, Sophia Gardens, Cardiff, CF11 9SW.

	Where the encumbrance affects land in which the acquiring authority has a legal interest, the description in the Schedule to the CPO should refer to the right etc and be qualified by the words “all interests in [the land] except those already owned by the acquiring authority”. This should avoid giving the impression that the acquiring authority has no interest to acquire.
(m)	Lessees, tenants, or reputed lessees or tenants (column (3) of Table 1 in the Schedule to the CPO (see Form 1 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004) - where there are no lessees, tenants or reputed lessees or tenants a dash should be inserted, otherwise names and addresses should be shown.
(n)	Occupiers (column (3) of Table 1 in the Schedule to the CPO (see Form 1 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004) - where a named owner, lessee or tenant is the occupier, the word “owner”, “lessee” or “tenant” should be inserted or the relevant name given. Where the property is unoccupied the column should be endorsed accordingly.
(o)	Although most qualifying persons will be owners, lessees, tenants or occupiers (section 12(2)(a) of the 1981 Act), the possibility of there being anyone falling within one of the categories in section 12(2A)(a) and (2A)(b) of the 1981 Act should not be ignored. The name and address of a person who is a qualifying person under section 12(2A)(a) who is not included in column (3) of Table 1 in the Schedule to the CPO (see Form 1 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004) should be inserted in column (5) of Table 2 in the Schedule to the CPO (see Form 1 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004) together with a short description of the interest to be acquired. An example of a person who might fall within this category is the owner of land adjoining the CPO land, which the acquiring authority has under their enabling power a right to acquire which they are seeking to exercise. An example of this is section 18(1) of the 1949 Act which empowers Natural Resources Wales to acquire an ‘interest in land’ compulsorily which is defined in section 114(1) of the 1949 Act to include any right over land. Similarly, the name and address of a person who is a qualifying person under section 12(2A)(b) who is not included in either: column (3) of Table 1 in the Schedule to the CPO (see Form 1 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004); or

	column (5) of Table 2 in the Schedule to the CPO (see Form 1 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004), should be included in column (6) of Table 2 in the Schedule to the CPO (see Form 1 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004), together with a description of the land in respect of which a compensation claim is likely to be made and a summary of reasons for the claim. An example of such a potential claim might be where there could be interference with a private right of access across the land included in the CPO as a result of implementing the acquiring authority's scheme.
(p)	In determining the extent to which the acquiring authority should make 'diligent' enquiries, an acquiring authority will wish to have regard to the fact that case law has established that, for the purposes of section 5(1) of the 1965 Act, 'after making diligent inquiry' requires some degree of diligence, but does not involve a very great inquiry (see *Popplewell J. in R v Secretary of State for Transport ex parte Blackett [1992] JPL 1041*). Acquiring authorities are encouraged to serve formal notices seeking information on all interests they have identified to ascertain if there are any additional interests they are not aware of if a landowner has been served a notice and fails to respond. Acquiring authorities do not have any statutory power under section 5A of the 1981 Act to requisition information about land other than that which it is actually proposing to acquire. However, the site notice procedure in section 11(3) and (4) of the 1981 Act provides an additional means of alerting people who may consider they have grounds for inclusion in column (6) of Table 2 in the Schedule to the CPO (see Form 1 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004) and who can identify themselves.

Special category land *(see also Sections J and K in Part 2 of this Circular)*

25. Land to which sections 17, 18 and 19 of the 1981 Act apply, (or paragraphs 4, 5 and 6 of Schedule 3 to the 1981 Act in the case of acquisition of a new right over such land) should be shown both in the Schedule to the CPO and in the list at the end of the Schedule, in accordance with paragraph (o) of the Notes on the use of Forms 1, 2 and 3 contained in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004. In the case of section 17 of the 1981 Act (or, for new rights, paragraph 4 of Schedule 3 to the 1981 Act) it is only necessary to show land twice if the acquiring authority is not mentioned in section 17(3) of, or paragraph 4(3) of Schedule 3 to, the 1981 Act (see also Section J: Special kinds of land in Part 2 of this Circular). If a CPO erroneously fails to state in accordance with the prescribed form that land to be acquired is special category, then the Welsh Ministers may consider whether confirmation should be refused as a result.

Commons, open spaces etc

26. A CPO may provide for special category land to which section 19 of the 1981 Act applies ("order land") to be discharged from rights, trusts and incidents to which it was previously subject; and for vesting in the owners of the order land, other land which the acquiring authority propose to give in exchange ("exchange land"). Such CPOs must be made in accordance with the appropriate prescribed form (Forms 2, 3, 5 or 6 in the Schedule to Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004) adapted, in compliance with the notes, to suit the particular circumstances.

27. The order land and, where it is being acquired compulsorily, the exchange land, should be delineated and shown as stated in paragraph 1 of the CPO. Therefore, exchange land which is being acquired compulsorily and is to be vested in the owner(s) of the order land, should be delineated and shown (for example, in green) on the CPO map and described in Schedule 2 to the CPO. If the exchange land is not being acquired compulsorily it should be described in Schedule 3 to the CPO. See paragraph 30 below.

28. When an acquiring authority makes a CPO in accordance with Form 2 in the Schedule to Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004, if the exchange land is also acquired compulsorily, the CPO should include paragraph 2(ii) of Form 2 in the Schedule to Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004, adapted as required by paragraph (i) of the Notes on the use of Forms 1, 2 and 3 contained in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004. The relevant acquisition power should also be cited, if different from the power cited in respect of the order land. Paragraph 2(ii) of Form 2 in the Schedule to Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004 also provides for the acquisition of land for the purpose of giving it in part exchange, for example, where the acquiring authority already own some of the exchange land.

29. In Form 2 in the Schedule to Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004 there are different versions of paragraphs 4 and 5(2) (see paragraph (s) of the Notes on the use of Forms 1, 2 and 3 contained in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004). Paragraph 4 of Form 2 in the Schedule to Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004 defines the order land by reference to Schedule 1 to the CPO and either:
    (a) where the order land is only part of the land being acquired, the specific, "numbered" plots; or
    (b) where the order land is all the land being acquired, the land which is "described".

However, if the acquiring authority seek a certificate in accordance with paragraph 6(1)(b) of Schedule 3 to the 1981 Act, because they propose to provide additional land in respect of new rights being acquired (over "rights land"), the CPO should include paragraph 5(1) and the appropriate paragraph 5(2) of Form 2 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004 (see paragraph (s) of the Notes on the use of Forms 1, 2 and 3 contained in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004). Paragraph 5 of Form 2 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004 becomes paragraph 4 only if new rights are to be acquired compulsorily. (See paragraph 4(c) of Section K in Part 2 of this Circular).

30. Where Form 2 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004 is used, the order land, including rights land, must always be described in Schedule 1 to the CPO. Exchange and additional land should be described in Schedule 2 to the CPO where it is being acquired compulsorily; in Schedule 3 to the CPO where the acquiring authority do not need to acquire it compulsorily; or where both Schedules 2 and 3 may apply, for example, the acquiring authority may only own part of the exchange and/or additional land. Schedule 3 to the CPO becomes Schedule 2 to the CPO if no exchange or additional land is being acquired compulsorily. Exchange or additional land which is not being acquired compulsorily should be delineated and shown on the map so as to clearly distinguish it from land which is being acquired compulsorily.

31. Paragraph 4 of Form 3 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004 should identify the order land by referring to either:

(a) paragraph 2 of Form 3 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004, where the order land is all the land being acquired; or

(b) specific, numbered plots in the Schedule to the CPO, where the order land is only part of the land being acquired.

Form 3 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004 may also be used if new rights are to be acquired but additional land is not being provided. A CPO in this Form will discharge the order land, or land over which new rights are acquired, from the rights, trusts and incidents to which it was previously subject (in the case of land over which new rights are acquired, only so far as the continuance of those rights, trusts and incidents would be inconsistent with the exercise of the new rights).

32. A CPO may not discharge land from rights etc. if the acquiring authority seek a certificate in terms of section 19(1)(aa) of, or paragraph 6(1)(aa) of Schedule 3 to, the 1981 Act. (See also paragraph 31 of Section J in Part 2 of this Circular and paragraph 4(b) of Section K in Part 2 of this Circular in relation to additional land being given in exchange for a new right). Note that the extinguishment of rights of common over land acquired compulsorily may require consent under section 22 of the Commons Act 1899.

Sealing, signing and dating

33. All CPOs should be made under seal, duly authenticated and dated at the end (after the Schedule to the CPO). They should never be dated before they are sealed and signed, and should be sealed, signed and dated on the same day. The CPO map(s) should similarly be sealed, signed and dated on the same day as the CPO. Some authorities may wish to consider whether they ought to amend their Standing Orders or delegations to ensure this is achieved. Where a purpose of a CPO is to give effect to another instrument, then that instrument should be sealed first i.e. where one of the purposes of a highways or planning CPO is to give effect to a side roads order then the side roads order should be sealed first.

Address for submission of compulsory purchase orders, applications and objections

34. All compulsory purchase and associated orders requiring confirmation by the Welsh Ministers should be sent to:
The Planning Inspectorate Wales
Specialist Case Work
Government Building
Cathays Park
Cardiff,
CF10 3NQ

Section S – Compulsory purchase order map(s)

1. Maps accompanying CPOs should provide details of the land proposed to be acquired, land over which a new right would subsist, and exchange land in accordance with the requirements set out in the notes to the forms. I.e. paragraph (g) of the Notes on the use of Forms 1, 2 and 3 contained in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004. The heading of the map (or maps) should agree in all respects with the description of the map headings stated in the body of the order. The words "map referred to in [order title]" should be included in the actual heading or title of the map(s).

2. Land may be identified on CPO maps by colouring or any other method[59] at the discretion of the acquiring authority. Where it is decided to use colouring, the long-standing convention (without statutory basis) is that land proposed to be acquired is shown pink, land over which a new right would subsist is shown blue, and exchange land is shown green. Where black-and-white copies are used they must still provide clear identification of the order or exchange land.

3. The use of a sufficiently large scale Ordnance Survey based map is most important and it should not generally be less than 1/1250 (1/2500 in rural areas). Where the map includes land in a densely populated urban area, experience suggests the scale should be at least 1/500, and preferably larger. Where the CPO involves the acquisition of a considerable number of small plots, the use of insets on a larger scale is often helpful. If more than one map is required, the maps should be bound together and a key or master "location plan" should indicate how the various sheets are interrelated.

4. Care should be taken to ensure where it is necessary to have more than one CPO map, there are appropriate references in the text of the CPO to all of them, so there is no doubt they are all CPO maps. To enable easy identification of the CPO maps, good practice is for acquiring authorities to affix an impression of the seal on them in addition to the seal on the CPO itself. If it is necessary to include a location plan, then it should be purely for the purpose of enabling a speedy identification of the whereabouts of the area to which the CPO relates. It should be the CPO map and not the location plan which identifies the boundaries of the land to be acquired. Therefore, whilst the CPO map would be marked "Map referred to in..." in accordance with the prescribed form (see paragraph 2 of Form 1 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004), a location map might be marked "Location plan for the Map referred to in...". Such a location plan would not form part of the CPO and CPO map but be merely a supporting document.

[59] See paragraph (g) of the Notes on the use of Forms 1, 2 and 3 contained in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004 and, in relation to exchange land, paragraph (g) of the Notes on the use of Forms 4, 5 and 6 contained in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004.

5. It is also important the CPO map should show such details as are necessary to relate it to the description of each parcel of land in the CPO Schedule or Schedules. This may involve marking on the map the names of roads and places or local landmarks not otherwise shown.

6. The boundaries between plots should be clearly delineated and each plot separately numbered to correspond with the CPO Schedule(s). For CPOs which include new rights, see paragraphs 18 and 19 of Section R in Part 4 of this Circular. Land which is delineated on the map, but which is not being acquired compulsorily, should be clearly distinguishable from land which is being acquired compulsorily.

7. There should be no discrepancy between the CPO Schedule(s) and the map or maps, and no room for doubt on anyone's part as to the precise areas of land which are included in the CPO. Where there is a minor discrepancy between the CPO and map, the Welsh Ministers may be prepared to proceed on the basis that the boundaries to the relevant plot or plots are correctly delineated on the map. Where uncertainty over the true extent of the land to be acquired causes or may cause difficulties, the Welsh Ministers may refuse to confirm all or part of the CPO.

Section T – Certificates to accompany the submission of a compulsory purchase order

General certificate in support of a compulsory purchase order submission

1. A general certificate has no statutory status, but is intended to provide reassurance to the Welsh Ministers that the acquiring authority has followed the proper statutory procedures.

Format of general certificate

2. The certificate should be submitted in the following form:

"THE .....COMPULSORY PURCHASE ORDER 20...

I hereby certify that:

1. A notice in the Form numbered.....in the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004 (SI 2004 No. 2732) was published in two issues[60] of the ..... dated ..... 20..... and ..... 20.... (being one or more local newspapers circulating in the locality). The time allowed for objections was not less than 21 days from the date of the first publication of the notice and the last date for them is/was..... ..... 20.....
A notice in the same Form addressed to persons occupying or having an interest in the land was affixed to a conspicuous object or objects on or near the land comprised in the order on ……..20… and from that date remained in place for a period of at least 21 days which was the period allowed for objections, the last date being……20…

2. Notice in the Form numbered.....in the said Regulations were duly served on
(i) every owner, lessee, tenant and occupier of all land to which the order relates;
(ii) every person to whom the acquiring authority would, if proceeding under section 5(1) of the Compulsory Purchase Act 1965, be required to give a notice to treat; and
(iii) every person the acquiring authority thinks is likely to be entitled to make a claim for compensation under section 10 of the Compulsory Purchase Act 1965 if the order is confirmed and the compulsory purchase takes place, so far as such a person is known to the acquiring authority after making diligent inquiry.

[60] The notice must be published in two successive weeks in one or more local newspapers circulating in the locality. Copies of the newspapers need not be sent to the Welsh Ministers – section 11 of, and paragraph 2 of Schedule 1 to, the Acquisition of Land Act 1981.

(NB. For a CPO made under section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990, the notice must include additional paragraphs in accordance with regulation 4 of the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004).

The time allowed for objections in each of the notices was not less than 21 days and the last date for them is/was..... 20..... . The notices were served by one or more of the methods described in section 6(1) of the Acquisition of Land Act 1981.

3. [*Where the order includes land in unknown ownership.]* Notices in the Form numbered.....in the said Regulations were duly served by one or more of the methods described in section 6(4) of the Acquisition of Land Act 1981 . The time allowed for objections in each of the notices was not less than 21 days and the last date is/was ..... 20.... .

4. A copy of the order and of the map were deposited at ..... on ..... 20... and will remain/remained available for inspection until ..... .

5. (1) A copy of the authority's Statement of Reasons for making the CPO has been sent to:
   (a) all persons referred to in paragraph 2 (i), (ii) and (iii) above;
   (b) as far as is practicable, other persons resident on the order lands, and any applicant for planning permission in respect of the land.
   (2) A copy of the Statement of Reasons is herewith forwarded to Welsh Ministers.

6. [Where the CPO includes ecclesiastical property – (see paragraph 24(g) in Section R of Part 4 of this Circular)]. Notice of the effect of the CPO has been served on the Church Commissioners (section 12(3) of the Acquisition of Land Act 1981)."

NB. The Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950 (SI 1950 No. 792) apply where it is proposed to use for other purposes consecrated land and burial grounds of the Church of England which are acquired compulsorily under any enactment, or acquired by agreement under the Town and Country Planning Acts, or which were appropriated to planning purposes. Subject to sections 238 to 240 of the 1990 Act, permission (a "faculty") is required for material alteration to consecrated land. (See Care of Churches and Ecclesiastical Jurisdiction Measure 1991; Ecclesiastical Jurisdiction and Care of Churches Measure 2018).

Protected assets certificate

3. For the purposes of compulsory purchase, protected assets are those set out below in paragraph 6. Listing them in a certificate allows confirming authorities to consider which protected buildings and assets will be affected by a scheme. It will also inform the decision as to whether or not the CPO should be confirmed.

4. Confirming authorities will need to ensure the circumstances of any protection applying to buildings and certain other assets on order lands are included in its consideration of a CPO.

5. Every CPO submitted for confirmation (except CPOs made under section 47 of the P(LBCA)[61] should be accompanied by a protected assets certificate. A protected assets certificate should include, for each category of protected building or asset protected, either a "positive statement" with specific additional information or a nil return for that category of protection.

6. The forms of positive statement to be included in protected assets certificates are as follows (numbers in brackets refer to the Notes at the end of this section) (* = delete as appropriate):

   (a) Listed buildings(1)
   The proposals in the CPO will involve the demolition/alteration/extension* of the following building(s) which has/have been* listed under section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990 [*insert order reference, list reference, address*].

   (b) Buildings with interim protection(2)
   The proposals in the CPO will involve the demolition/alteration/extension* of the following building(s) which has/have* interim protection under section 2B of the Planning (Listed Buildings and Conservation Areas) Act 1990 but which has/have* not yet been formally listed by the Welsh Ministers.

   (c) Buildings subject to building preservation notices
   The proposals in the CPO will involve the demolition/alteration/extension* of the following building(s) which is/are* the subject(s)* of (a) building preservation notice(s) made by the……[*insert name of authority*] ……on……..[*insert date(s) of notice(s)].*

   (d) Other buildings which may be of a quality to be listed
   The proposals in the CPO will involve the demolition/alteration/extension* of the following building(s) which may qualify for inclusion in the statutory list under the criteria in the Welsh Government's Technical Advice Note 24: The Historic Environment.

[61] For such compulsory purchase orders which are submitted to the Welsh Ministers for confirmation, only a copy of the repairs notice made under section 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990 is required - see Section H in Part 2 of this Circular.

(e) Buildings within a conservation area (3)
The proposals in the CPO will involve the demolition of the following building(s) which is/are* included in a conservation area designated under section 69 (or, as the case may be, section 70) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

(f) Scheduled monuments
The proposals in the CPO will involve the demolition/alteration/extension* of the following monument(s) which are scheduled under section 1 of the Ancient Monuments and Archaeological Areas Act 1979. An application for scheduled monument consent has been/will be* submitted to the Welsh Ministers.

(g) Registered historic parks/gardens
The proposal in the CPO will involve the demolition/alteration/extension* of the following park(s)/garden(s) which has/have* been included on the register of historic parks and gardens compiled in accordance with section 41A of the Ancient Monuments and Archaeological Areas Act 1979.

7. A positive statement should also be accompanied by the following additional information:
   - particulars of the assets;
   - any action already taken, or which the acquiring authority proposes to take, in connection with the category of protection, for example, consent which has been, or will be, sought;
   - a copy of any consent or application for consent, or an undertaking to forward such a copy as soon as the consent or application is available.

   The Welsh Ministers should also be notified as soon as possible where a CPO, which has been submitted to them for confirmation, entails demolition of any building which is subsequently included in a conservation area.
   Notes
   (1) This refers to buildings listed by the Welsh Ministers (not other forms of listing).

   (2) This refers to where the Welsh Ministers consult on a proposal to either include a building in a list compiled or approved under section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990 or exclude a building from such a list (i.e. buildings listed by the Welsh Ministers (not other forms of listing)).

   (3) The 'Conservation Areas (Disapplication of Requirement for Conservation Area Consent for Demolition) (Wales) Direction (2017 No. 27)' (31 May 2017) applies for the purposes of sections 74 and 75 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

The effect is to exempt the demolition of certain categories of unlisted buildings in conservation areas from the requirement to obtain conservation area consent. Therefore, it is unnecessary to include such categories in any certificate which is submitted in compliance with paragraph 10(e) above. If development is of a type normally permitted as a right by the Town and Country Planning (General Permitted Development) Order 1995, it need not be included unless, as a result of a direction issued under article 4 of the Town and Country Planning (General Permitted Development) Order 1995, the permitted development right has been withdrawn and a planning application required.

Section U – Preparing the Statement of Reasons

1. The Statement of Reasons (see paragraph 75 in Part 1 of this Circular) should include the following information (adapted and supplemented as necessary according to the circumstances of the particular CPO):

The land to be acquired

(i) A brief description of the CPO land/buildings and its location, such as:
- topographical features;
- present use; and
- reference to any relevant development plan.

(ii) The historical development of the site to understand the context of the proposal.

(iii) Any special considerations affecting the land. For example, details of any ancient monument, listed building, conservation area, special category land, consecrated land, renewal area, etc.

The acquiring authority's purpose

(iv) An outline of the acquiring authority's purpose in seeking to acquire the land.

(v) A description of how the acquiring authority proposes to use or develop the land or deliver the scheme after acquisition including (if applicable) details of any third party who may develop the land on its behalf.

(vi) A description of any new rights being created, such as a right of access, and an explanation of why the new rights are needed;

(vii) A description of the enabling power the acquiring authority intends to use to acquire the land and an explanation of the use of the particular enabling power.

(viii) A statement that the land subject to compulsory purchase is the minimum required for the scheme.

Engagement with affected parties

(ix) The steps the acquiring authority has taken to negotiate for the acquisition of the land by agreement.

(x) How the acquiring authority has engaged with the people affected by the proposal and the issues or concerns raised by them. If the acquiring authority altered its plans to address people's concerns it should be explained how. Alternatively, the acquiring authority should explain why it was not able to address specific concerns. It should also explain what it has done or will do to lessen the impact on people, communities and businesses and/or to help them relocate.

For example, it should include any proposals for re-housing displaced residents or relocating affected businesses and addresses, telephone numbers, web sites and e-mail addresses where further information on these matters can be obtained.

(xi) If the acquiring authority has listed any of the owners as 'unknown' in the schedule to the CPO, details of the steps that it took to identify the owner(s).

(xii) A list of any documents, maps and plans explaining the proposals that the acquiring authority has made publicly available and/or details of where people can see these documents.

(xiii) If, in the event of a public inquiry, the acquiring authority would intend to refer to or put in evidence any documents, including maps and plans, it would be helpful if the acquiring authority could provide a list of such documents, or at least a notice to explain that documents may be inspected at a stated time and place.

Justification

(xiv) A statement of the acquiring authority's justification for the use of its compulsory purchase powers, including:

- the public benefit of the acquiring authority's proposed scheme and how the acquiring authority weighed this against the impact on the people affected; and
- reference to Article 1 of the First Protocol to the ECHR, and Article 8 if appropriate.

(xv) The case for the proposals (with reference to relevant plans and strategies), and a statement about the planning position of the CPO land (see paragraphs 59 - 60 in Part 1 of this Circular and the advice on CPOs made under section 226 of the 1990 Act contained in Section A in Part 2 of this Circular).

(xvi) Information required in the light of Welsh Government policy statements where CPOs are made in certain circumstances, for example, as stated in Section B in Part 2 of this Circular where CPOs are made under the Housing Acts (including a statement as to unfitness where unfit buildings are being acquired under Part 9 of the 1985 Act); or such information as may be required by any of the other documents mentioned in paragraph 9 in Part 1 of this Circular.

(xvii) Relevant information specific to the acquiring authority's purpose (for example, crime reports or environmental studies).

(xviii) Details of any views which may have been expressed by a government department about the proposed development of the CPO land.

(xix) If the Mining Code has been included, reasons for doing so.

Funding and delivery plans

(xx) A statement justifying the extent of the scheme to be disregarded for the purposes of assessing compensation in the 'no-scheme world'.

(xxi) Details of how the acquiring authority seeks to overcome any obstacle or potential barrier, and any prior consent needed before the CPO scheme can be implemented, for example, need for a waste management licence.

(xxii) Details of any related CPO, application or appeal which may require a co-ordinated decision by the Welsh Ministers, for example, a CPO made under other powers, a planning appeal/application, road closure, listed building or conservation area consent application.

Section V – The acquisition of land for public libraries and museums under section 121 of the Local Government Act 1972: Form CP/AL1

Form CP/AL1 (Revised 9/2019)

Welsh Government
SITE OR PROPERTY TO BE ACQUIRED BY COMPULSORY PURCHASE

Please continue on a separate sheet if there is insufficient space in the boxes below

1. Name of Authority: _____

2. Name of scheme for which site is required (for example, Any town Branch Library/Museum):

   _____

   _____

3. Details of site or property:

   i. Site area:_____m2

   ii. Description of site: _____

   iii. Additional information, including reference to steep slopes or other features which might affect access: _____

   _____

   _____

   _____

   iv. Description of any building on the site which it is proposed to retain and use:

   _____

   _____

   _____

   _____

Please enclose a map showing the site and its surroundings, including shops and other community facilities

4. Details of scheme:
   i. Will this be a new building OR an adaptation OR an extension of an existing building? _____
   _____
   _____
   ii. What decisions have been taken by the authority as to the probable date of the construction, adaptation or extension? Please quote any relevant council resolutions. _____
   _____
   _____
   _____
   _____
   iii. What will be the approximate total floor area of the proposed building? ___m2
   iv. What facilities will the building provide? If plans have been prepared, please enclose copies. _____
   _____
   _____
   _____
5. Statement of need for the proposed facilities:
   i. What is the present approximate population which will be served by the public departments?_____
   ii. What is expected to be the population in ten years' time? _____
   iii. How are the needs of the area being met at present? Please give locations of and approximate distances from the site to the sites of any similar facilities.
   _____
   _____
   _____
   _____

iv. Please give any other information which will help to clarify the need for acquiring this site or property. _____

_____

_____

_____

(Signed) _____

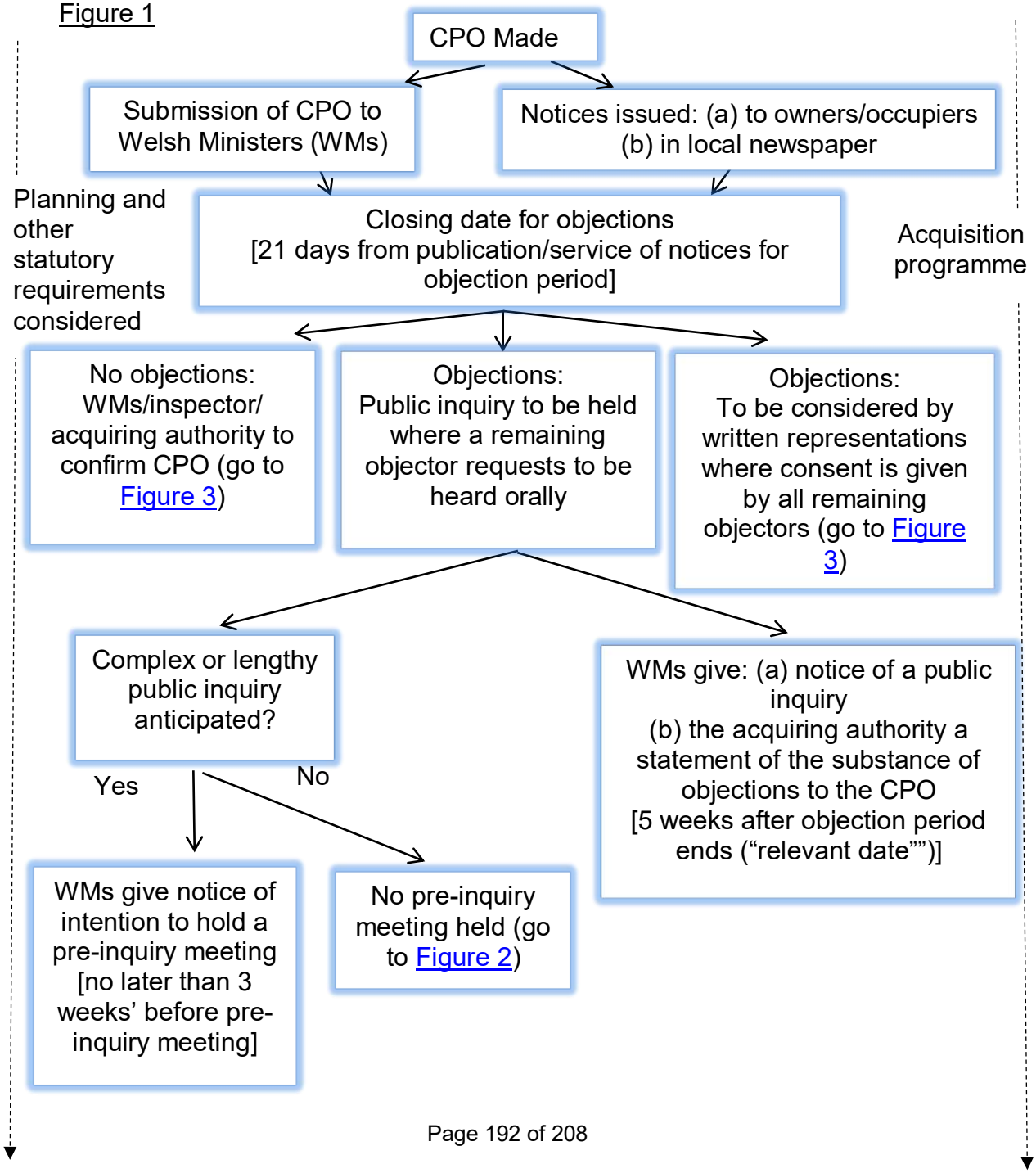
State official position of signatory: _____

Dated this ___day of ____20 ____

Part 5 – Overview in diagrammatic form of the compulsory purchase process for non-ministerial compulsory purchase orders

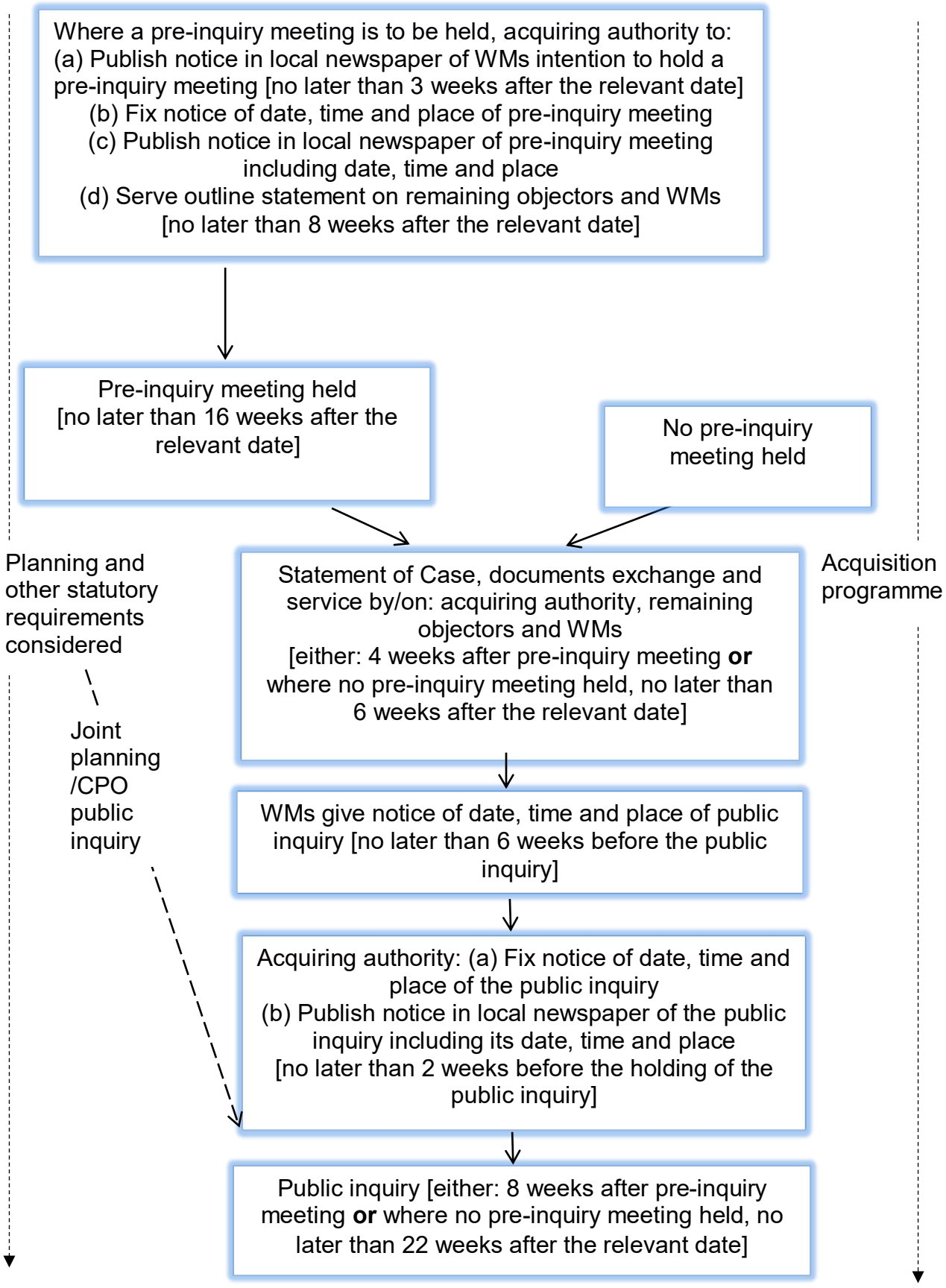
1. Once a CPO is made and sealed by an acquiring authority, the statutory process begins. Figure 1 below shows the process from the point of making a CPO followed by submission through to a decision where no objections are received or a public inquiry/written representations where objections are received.

Figure 1



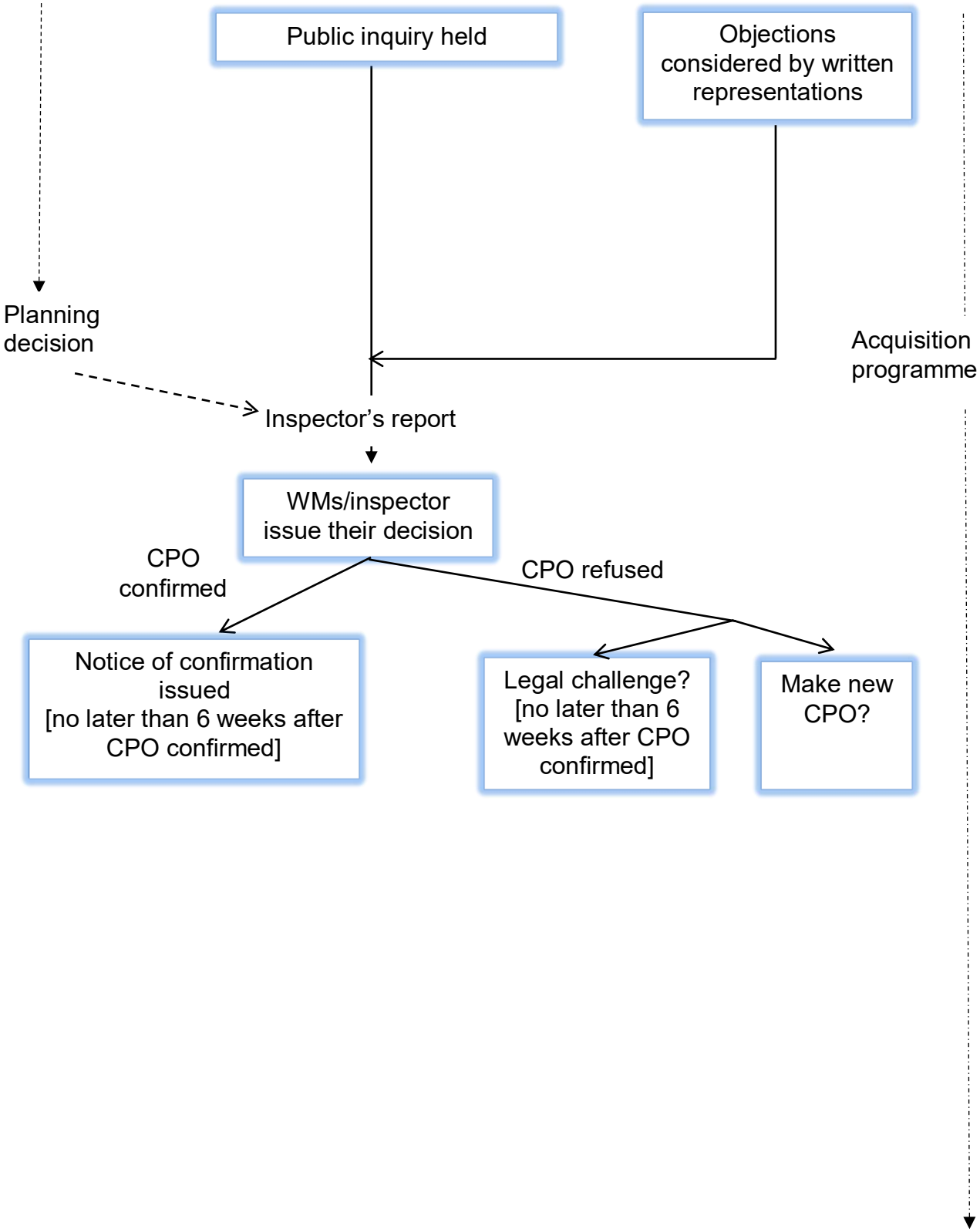
2. Figure 2 provides an overview of the public inquiry stage.

Figure 2



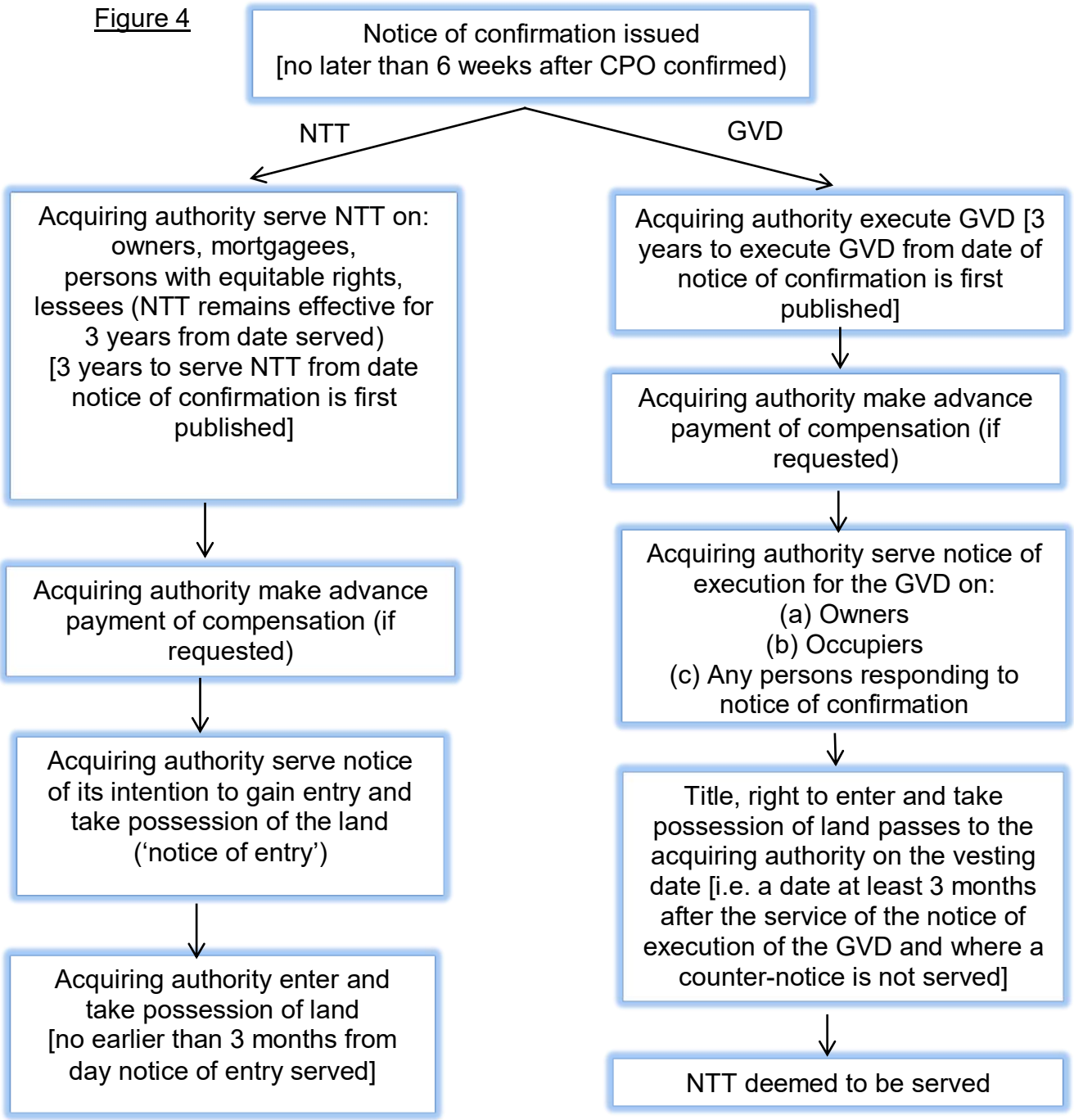
3. Figure 3 provides an overview of the decision making stage.

Figure 3



4. Figure 4 provides an overview of the vesting and possession involving the notice to treat (NTT) or general vesting declaration (GVD) procedures.

Figure 4



Part 6 – ‘The Crichel Down Rules’ (Wales version, 2020)

Rules and procedures for the disposal of surplus government land, obligation to offer land back to former owners or their successors

Introduction

1. This Part sets out the revised non-statutory arrangements (‘The Crichel Down Rules’ (Wales version, 2020)) under which surplus government land which was acquired by, or under a threat of, compulsion (see rule 5 below) should be offered back to former owners, their successors, or to sitting tenants (see rules 15, 16, 19 and 20 below). ‘The Crichel Down Rules’ (Wales version, 2020) are mandatory for the Welsh Ministers, executive agencies and other non-departmental public bodies such as Health Service Boards which are subject to a power of direction by the Welsh Ministers.

2. ‘The Crichel Down Rules’ (Wales, version 2020) (“The Crichel Down Rules”) apply in Wales in respect of land which has been acquired by the Welsh Ministers using those statutory powers transferred to them by virtue of section 28 of, and Schedule 4 to, the Government of Wales Act 1998. For the sake of brevity, all bodies to whom any one or more of The Crichel Down Rules are mandatory or are commended as best practice are referred to as “disposing bodies

3. Similar Rules have been issued by the Ministry of Housing and Communities & Local Government, which are contained in “Guidance on Compulsory Purchase Process and The Crichel Down Rules (July 2019)”, and apply to surplus land in Wales acquired by and still owned by a UK government department. Where statutory bodies in Wales seek to dispose of its surplus land acquired under an enabling power which remains capable of being confirmed by a UK Secretary of State, ‘The Crichel Down Rules’ published in 1992 by the Department of the Environment and the Welsh Office (30 October 1992) continue to apply.

The Crichel Down Rules

4. Rule 1: Local authorities and other statutory bodies which are not subject to a Ministerial power of direction (for example, statutory undertakers), but who have powers of compulsory purchase, or who hold land which has been compulsorily purchased, are highly recommended to follow ‘The Crichel Down Rules’ (Wales version, 2020) as best practice. Previous practice amongst such authorities has been variable and the Welsh Ministers would like there to be a high level of compliance. Former owners of surplus land will be likely to see as inequitable a system which requires the Welsh Ministers and others to offer back surplus land but not local authorities.

A typical example would be on road schemes, where those who had lost land to a trunk road scheme would have surplus land offered back, while those who had lost land to a county road scheme might not. The Crichel Down Rules are also recommended to bodies in the private sector to which public sector land holdings have been transferred, for example on privatisation.

5. Rule 2: The approach of local authorities and other statutory bodies when disposing of surplus land must, however, depend on their particular functions and circumstances. For example, in the case of exceptions to The Crichel Down Rules which depend upon the Welsh Ministers authority (rules 17(1), 17(2), 17(7), local authorities will have to rely on the decision of the political head of the authority. For other statutory bodies the decision will rest with the Chairman. For disposals at the end of Private Finance Initiative/Private Public Partnership agreements, disposing bodies may wish to seek legal advice in order to take account of The Crichel Down Rules.

6. Rule 3: Detailed guidance on a best practice solution for property asset coordination and the transfer, disposal or sharing of land/property between public bodies in Wales is set out in “Estate Co-ordination & Land Transfer Protocol” (National Assets Working Group – NAWG, June 2014). General guidance on asset management, which includes land and buildings is set out in Annex 4.14 of “Managing Welsh Public Money” (Welsh Government, January 2016).

7. Rule 4: It is the view of the Welsh Government that where land is to be transferred to another body which is to take over some or all of the functions or obligations of the department that currently owns the land, the land is not surplus and the transfer itself does not constitute a disposal for the purpose of The Crichel Down Rules. Disposals for the purposes of Private Finance Initiative/Private Public Partnership schemes do not fall within The Crichel Down Rules and the position of any land surplus once the scheme has been completed would be subject to the Private Finance Initiative/Private Public Partnership contract.

8. Rule 5: The Crichel Down Rules are not relevant to land transferred to, or land acquired compulsorily by, Natural Resources Wales or water and sewerage service companies in consequence of the Water Act 1989 or subsequently acquired by them compulsorily. Such land is governed by a special set of statutory restrictions on disposal under section 157 of the Water Resources Act 1991 (as amended) and section 156 of the Water Industry Act 1991 and the consents or authorisations given by the Welsh Ministers under those provisions.

9. Rule 6: Section 98 of the Local Government, Planning and Land Act 1980 ("LGPL Act 1980") provides a power for the Welsh Ministers to direct a body to dispose of land where they consider the following conditions are met:
   (a) a freehold or leasehold interest in the land is owned by a body to which Part 10 of the LBPL Act 1980 applies or a subsidiary of such a body;
   (b) it is situated in an area in relation to which Part 10 of the LGPL Act 1980 is in operation or it adjoins other land which is situated and a freehold or leasehold interest is owned by a body to which Part 10 of the LGPL Act 1980 applies or a subsidiary of such a body; and
   (c) in the opinion of the Welsh Ministers the land is not being used or not being sufficiently used for the purposes of the performance of the body's functions or of carrying on their undertaking.

   This process is commonly referred to as 'Community Right to Reclaim Land' or 'Public Right to Order Disposal'.

10. Rule 7: Section 98 of the LGPL Act 1980 applies to the following bodies which are listed in Schedule 16 to the Act and are relevant to Wales:
   (a) A county council / county borough council;
   (b) An urban development corporation;
   (c) A housing action trust;
   (d) The Civil Aviation Authority;
   (e) The Coal Authority;
   (f) The British Broadcasting Corporation;
   (g) Statutory undertakers (other than Canal & River Trust).

11. Rule 8: A direction can only be made under section 98 of the LGPL Act 1980 by the Welsh Ministers after the body concerned has had an opportunity to make representations. If representations are received then a direction cannot be given unless the Welsh Ministers consider the disposal can be made without serious detriment to the performance of the body's functions or the carrying on of their undertaking. If representations are not made within 42 days from the date of being notified by the Welsh Ministers, or within such longer period as the Welsh Ministers may allow, the Welsh Ministers may give the direction as proposed.

The land to which 'The Crichel Down Rules' apply

12. Rule 9: The Crichel Down Rules apply to all land if it was acquired by or under threat of compulsion. A threat of compulsion will be assumed in the case of a voluntary sale if power to acquire the land compulsorily existed at the time unless the land was publicly or privately offered for sale immediately before the negotiations for acquisition. This means the acquiring authority did not need to have initiated compulsory purchase procedures or actively 'threatened' to use them for this Rule to apply. It is enough for the acquiring authority to have statutory powers available if it wished to invoke them.

For example, land acquired by a highway authority for the purposes of building a road is acquired under the threat of compulsion because such an authority could use its powers under the 1980 Act to make a CPO.

13. Rule 10: They also apply to land acquired under the statutory blight provisions (currently set out in Chapter 2 in Part 6 of, and Schedule 13 to, the 1990 Act). The Crichel Down Rules do not apply to land acquired by agreement in advance of any liability under these provisions.

14. Rule 11: Likewise, The Crichel Down Rules apply to all freehold disposals. Also, to the creation and disposal of a leasehold interest of more than seven years or which is capable of being extended to more than seven years by virtue of contract or statute or where the total period of successive leases amounts to more than seven years.

15. Rule 12: Where a disposing body wishes to dispose of land to which The Crichel Down Rules apply, former owners will, as a general rule, be given a first opportunity to repurchase the land previously in their ownership, provided that its character has not materially changed since acquisition. The character of the land may be considered to have "materially changed" where, for example, dwellings or offices have been erected on open land; mainly open land has been afforested; or the undertaking of substantial works to an existing building, the demolition of a building or the installation of underground infrastructure or services to a site have effectively altered its character. In the original Commons debate on the Crichel Down case in 1954 "material change" was envisaged as relating to agricultural land and was illustrated by the example of an airfield having been built with concrete runways and buildings and where the original ownership boundaries had been lost. The erection of temporary buildings on land is not, however, necessarily a material change. When deciding whether any works have materially altered the character of the land, the disposing body should consider the likely cost of restoring the land to its original use.

16. Rule 13: Where only part of the land for disposal has been materially changed in character, the general obligation to offer back will apply only to the part that has not been changed.

Interests qualifying for offer back

17. Rule 14: Land will normally be offered back to the former freeholder. If the land was, at the time of acquisition, subject to a long lease and more than 21 years of the term would have remained unexpired at the time of disposal, disposing bodies may, at their discretion, offer the freehold to the former leaseholder if the freeholder is not interested in buying back the land. If neither the former freeholder nor former leaseholder is interested in buying the land back or identifiable then the freehold freed from any lease can be disposed of on the open market.

18. Rule 15: In these Crichel Down Rules “former owner” may, according to the circumstances, mean former freeholder or former long leaseholder, and their successor. “Successor” means the person on whom the property, had it not been acquired, would clearly have devolved under the former owner's will or intestacy, and may include any person who has succeeded, otherwise than by purchase, to adjoining land from which the land was severed by that acquisition. A successor under a will includes those who would have succeeded by means of a second or subsequent will or intestacy. The qualification ‘otherwise than by purchase’ may be relaxed if the successor to adjoining land acquired it by means of transfer within a family trust, including a transfer for monetary consideration.

Time horizon for obligation to offer back

19. Rule 16: The general obligation to offer back will not apply to the following types of land:

(a) agricultural land acquired before 1 January 1935;

(b) agricultural land acquired on and after 30 October 1992 which becomes surplus, and available for disposal more than 25 years after the date of acquisition;

(c) non - agricultural land which becomes surplus, and available for disposal more than 25 years after the date of acquisition.

Problems may arise where land has been acquisitioned several (sometimes 10 or more) years before the title has transferred. Difficulties can be caused where the two dates straddle a time horizon, so that a disposal would fall within The Crichel Down Rules if the date of transfer was used, but not if the date of acquisitioned was. To avoid these difficulties the date of acquisition is taken to be the date of the conveyance, transfer or vesting declaration.

Exceptions from the obligation to offer back

20. Rule 17: The following are exceptions to the general obligation to offer back:

1. Where it is decided on specific Welsh Minister authority that the land is needed by another government department (i.e. that it is not, in a wider sense, surplus to Government requirements).

2. Where it is decided on specific Welsh Minister authority that for reasons of public interest the land should be disposed of as soon as practicable to a local authority or other body with compulsory purchase powers. However, transfers of land between bodies with compulsory purchase powers will not be regarded as exceptions unless at the time of transfer the receiving body could have bought the land compulsorily if it had been in private ownership (see R-v-Secretary of State for the Environment, Transport and the Regions ex p. Wheeler, The Times 4 August 2000).

Appropriations of land within bodies such as local authorities for purposes different to that for which the land was acquired are exceptions if the body has compulsory purchase powers to acquire land for the new purpose.

3. Where, in the opinion of the disposing body, the area of land is so small that its sale would not be commercially worthwhile. This exception provides departments with discretion as to whether to offer land back when the administrative costs in seeking to offer land back are out of proportion to the value of the land. It will also cover cases where there is a disposal of a small area of land without a sale.

4. Where it would be mutually advantageous to the disposing body and an adjoining owner to effect minor adjustments in boundaries through an exchange of land.

5. Where it would be inconsistent with the purpose of the original acquisition to offer the land back, as, for example, in the case of:
   (i) Land acquired under sections 16, 84 or 85 of the Agriculture Act 1947 – these sections deal with the dispossession of owners or occupiers on grounds of bad estate management (section 16) and the acquisition and retention of land to ensure the full and efficient use of the land for agriculture (sections 84 and 85).
   (ii) Land which was acquired under the Distribution of Industry Acts or the Local Employment Acts, or under any legislation amending or replacing those acts, and which is resold for private industrial use.
   (iii) Where dwellings are bought for onward sale to a Registered Social landlord (RSL).
   (iv) Sites purchased for reclamation and redevelopment by the former Welsh Development Agency and its predecessors, Land Authority for Wales and Development Board for Rural Wales.

The general rule is that land purchased with the intention of passing it on to another body for a specific purpose is not surplus and therefore not subject to The Crichel Down Rules. Typical examples would be sites of special scientific interest (SSSIs) purchased for management reasons; a listed building purchased for restorations; properties purchased by a local authority for redevelopment which are sold to a private developer partner. This exception will apply to disposals by statutory bodies with specific primary, rather than incidental, functions to develop or redevelop land, and to disposals by their successor bodies.

In such cases, land would only be subject to The Crichel Down Rules where it was without development potential and, therefore, genuinely surplus in relation to the purpose for which it was originally acquired.

6. Where a disposal is in respect of either:
   (i) a site for development or redevelopment which has not materially changed since acquisition and which comprises two or more previous land holdings; or
   (ii) a site which consists partly of land which has been materially changed in character and part which has not;

   and there is a risk of a fragmented sale of such a site realising substantially less than the best price that can reasonably be obtained for the site as a whole (i.e. its market value).

   In such cases, consideration will be given to offering a right of first refusal of the property, or part of the property, to any former owner who has remained in continuous occupation of the whole or part of their former property (by virtue of tenancy or licence). In the case of land to which (i) applies, consideration will be given to a consortium of former owners who have indicated a wish to purchase land collectively. However, if there are competing bids for a site, it will be disposed of on the open market.

7. Where the market value of land is so uncertain that clawback provisions would be insufficient to safeguard the public purse and where competitive sale is advised by the disposing body's professionally qualified appointed valuer and specifically agreed by the Welsh Ministers.

21. Rule 18: Where it is decided that a site does fall within any of the exceptions in rule 17 or the general exception relating to material change (see rule 12) the former owner will be notified of this decision using the same procedures for contacting former owners as indicated in rules 22-25 below.

22. Rule 19: In the case of a tenanted dwelling, any pre-emptive right of the former owner is subject to the prior right of the sitting tenant. See rule 20 below.

Dwelling tenancies

23. Rule 20: Where a dwelling (including a flat), whether acquired compulsorily or under statutory blight provisions, has a sitting tenant (as defined in Appendix A) at the time of the proposed disposal, the freehold should first be offered to the tenant.

If the tenant declines to purchase the freehold, it should then be offered to the former owner, although this may be subject to the tenant's continued occupation. This rule does not apply where a dwelling with associated land is being sold as an agricultural unit; or where a dwelling was acquired with associated agricultural land but is being sold in advance of that land.

Procedures for disposal

24. Rule 21: Where it is decided that property to be disposed of is, by virtue of these Crichel Down Rules, subject to the obligation to offer back, disposing bodies should follow the appropriate procedures described in rules 22 - 28 below. To assist in the speedy disposal of sites, disposing bodies are encouraged to discuss with the former owner all aspects of the sale from the outset of negotiations.

Where former owner's address is known

25. Rule 22: Where the address of a former owner is known, a recorded delivery letter should be sent by or on behalf of the disposing body, inviting the former owner to buy the property at the valuation made by the disposing body's professionally qualified valuer. The former owner will be given two months from the date of that letter to indicate an intention to purchase. If the former owner wishes to purchase the land there will be a further period of two months to agree terms, other than value, from the date of an invitation made by or on behalf of the disposing body. After these terms are agreed, there will be six weeks to negotiate the price. If the price or other terms cannot be agreed within these periods, or within such extended periods as may reasonably allowed (for example, to negotiate appropriate clawback provisions), the property will be disposed of on the open market. Prior to the property being marketed, the former owner will be informed by a recorded delivery letter that this step is being taken.

26. Rule 23: Where there is no response or the former owner does not wish to purchase the property, it will be sold on the open market and the former owner will be informed by a recorded delivery letter that this step is being taken.

Where address is unknown

27. Rule 24: Where the former owner is not readily traceable, the disposing body will contact the solicitor or agent who acted for them in the original transaction. If a present address is then ascertained the procedure described in rule 22 above should be followed. If the address is not ascertained, however, the disposing body will attempt to contact the former owner by advertisement, as set out in rule 25 below, informing the solicitor or agent that this has been done.

28. Rule 25: Advertisements inviting the former owner to contact the disposing body will be placed as follows:

(a) for all land (including dwellings), in the London Gazette, in the Estates Gazette, in not less than two issues of at least one local newspaper and on the disposing body's web site; and

(b) in addition, for agricultural land, advertisements will be placed in the Farmer's Weekly.

Site notices announcing the disposal of the land will be displayed on or near the site. It is recommended site notices are erected for a minimum of 21 days starting either on the day when the advertisement first appears in an issue of the local newspaper or on the disposing body's web site, whichever is the latest. Site notices should be checked weekly and removed once the minimum 21 days day period has ended. To address concerns about information not being available through either the damage or removal of site notices, disposing bodies should keep a record of weekly visits to check whether individual site notices are:

(i) correct;
(ii) damaged;
(iii) missing; or
(iv) replaced.

By keeping this record it will demonstrate the efforts made by the disposing body to publicise the disposal of the land should a challenge be made on the ground of lack of publicity. Owners of the adjacent land will also receive notification of the proposed disposal.

Responses to invitation to purchase where address is unknown

29. Rule 26: Where no intention to purchase is indicated by or on behalf of a former owner within two months of the date of the latest advertisement which is published as described in rule 25 above, the land will be disposed of on the open market.

30. Rule 27: Where an intention to purchase is expressed by or on behalf of a former owner within two months of the date of the latest advertisement, they will be invited to negotiate terms and agree a price within the further periods, as may reasonably be extended, which are described in rule 22 above. If there is no agreement, the property will be disposed of on the open market. Prior to the property being marketed, the former owner or a person on their behalf will be informed by a recorded delivery letter that this step is being taken.

Special procedure where boundaries of agricultural land have been obliterated

31. Rule 28: The procedures described in Appendix B to these Crichel Down Rules should be followed where changes, such as the obliteration of boundaries, prevent land which is still predominantly agricultural in character from being sold back as agricultural land in its original parcels.

Terms of resale

32. Rule 29: Disposals to former owners under these arrangements will be at current market value, as determined by the disposing body's professionally qualified, appointed valuer. There can be no common practice in relation to sales to sitting tenants because of the diversity of interests for which housing is held. Disposing bodies will, nonetheless, have regard to the terms set out in the Housing Act 1985, as amended, under which local authorities are obliged to sell houses to tenants with the right to buy. For the purposes of The Crichel Down Rules, 'market value' means 'the best price reasonably obtainable for the property'. This is equivalent to the definition of 'market value' in the Royal Institution of Chartered Surveyors' Appraisal and Valuation Manual (the 'Red Book'), but including any 'Special Value' (i.e. any additional amount which is or might reasonably be expected to be available from a purchaser with a special interest like a former owner). 'Current market value' means the market value on the date of the receipt by the disposing body of the notification of the former owner's intention to purchase.

33. Rule 30: As a general rule, disposing bodies should obtain planning permission before disposing of properties which have potential for development. Where it would not be practicable or appropriate for disposing bodies to take action to establish the planning position at the time of disposal, or where it seems that the likelihood of obtaining planning permission (including a more valuable permission) is not adequately reflected in the current market value, the terms of sale should include clawback provisions in order to fulfil the Welsh Ministers' or public body's obligation to the taxpayer to obtain the best price. The precise terms of clawback will be a matter for negotiation in each case.

Recording of disposals

34. Rule 31: Disposing bodies will maintain a central record or file of all transactions covered by The Crichel Down Rules, including those cases that fall within rules 12 and 17. To make it possible for the operation of The Crichel Down Rules to be monitored, disposing bodies should include on each disposal file a note of its consideration of The Crichel Down Rules, including whether they applied (and if not, why not), the subsequent action taken and whether it was possible to sell to the former owner.

It would also be helpful if a copy of each of these notes (cross-referenced to the disposal file) could be held by the relevant disposal body on a central file, so that the information would be readily available for any future monitoring exercise.

The 1992 Rules

35. Rule 32: The version of 'The Crichel Down Rules' published in 1992 by the Department of the Environment and the Welsh Office (30 October 1992) are superseded by 'The Crichel Down Rules' (Wales version, 2020) set out in this Circular in relation to land which has been acquired by the Welsh Ministers using statutory powers transferred to them by virtue of section 28 of, and Schedule 4 to, the Government of Wales Act 1998 only. Where statutory bodies in Wales seek to dispose of its surplus land acquired under an enabling power which remains capable of being confirmed by a UK Secretary of State, 'The Crichel Down Rules' published in 1992 by the Department of the Environment and the Welsh Office (30 October 1992) continue to apply.

Appendix A – Sitting tenants
(see rule 20) of

1. In the context of The Crichel Down Rules, the expression “sitting tenant” was generally intended to apply to tenants with indefinite or long-term security of tenure. A tenant for the time being of residential property, which is to be sold as surplus to a disposing body's requirements is not, as a tenant of the Crown, in occupation by virtue of statutory form of tenancy under the Rent Act 1977 or the Housing Act 1988. However, when deciding whether a person is a sitting tenant for the purposes of rule 20, the disposing body concerned will have regard to the terms of tenancy and act according to the spirit of the legislation.

2. In practice, this will generally mean that a person may be regarded as a sitting tenant for the purposes of rule 20 if the tenancy is analogous to either:
   (a) a regulated tenancy under the Rent Act 1977, (i.e. a tenancy commenced before 15 January 1989, but excluding a protected shorthold tenancy); or
   (b) an assured tenancy under the Housing Act 1988, (i.e. a tenancy begun on or after that date, but excluding an assured shorthold tenancy).

3. Without prejudice to rule 17(6) , therefore, rule 20 does not apply to a licensee or to a person in occupation under a tenancy the terms of which are analogous to:
   (a) a protected shorthold tenancy under the Housing Act 1980, including any case where a person who held such a tenancy, or their successor, was granted a regulated tenancy of the same dwelling immediately after the end of the protected shorthold tenancy; or
   (b) an assured shorthold tenancy under the Housing Act 1988.

4. It is recognised, however, that some tenants who fall within rule 3, may have occupied the property over a number of years and may well have carried out improvements to the property. Where the former owner or successor does not wish to purchase the property, or cannot be traced, the department may wish to consider sympathetically any offer from such a tenant, of not less than two years, to purchase the freehold.

Appendix B – Special procedures where boundaries of agricultural land have been obliterated
(see rule 28)

(a) Each former owner will be asked whether they wish to acquire any land.

(b) Where former owners express interest in doing so, disposing departments will, subject to what is stated in (c) to (e) below, make every effort to offer them parcels which correspond, as nearly as is reasonably practicable, in size and situation to their former land.

(c) In large and complex cases, or where there is little or no room for choice between different methods of dividing the land into lots, it may be necessary to show former owners a plan indicating definite lots. This might be appropriate where, for example, the character of the land has altered; where there are existing tenancies; or where departments might otherwise be left with unsaleable lots.

(d) Where more than one former owner is interested in the same parcel of land it may be necessary to give priority to the person who owned most of the parcel or, in a case of near equality, to ask for tenders from interested former owners. Disposing bodies should, however, make every effort to offer each interested former owner at least one lot.

(e) If attempts to come to a satisfactory solution by dealing with former owners end in complete deadlock, disposing bodies will sell the land by public auction in the most convenient parcels and will inform the former owners of the date of the auction sale.

Footnote 13

To

Further Supplementary Written Submissions

dated 30 September 2024

in Rebuttal to

Mona Offshore Wind Limited Document

Appendix to Response to WRs: Griffith Parry, Robert Parry and Kerry James

(Document Number S_D2_3.4)

BP

This article is more than **1 month old**

BP imposes hiring freeze and halts new offshore wind projects

New boss Murray Auchincloss reverses move away from fossil fuels, which had weighed on company's share price

Julia Kollewe *and* **Jillian Ambrose**

Thu 27 Jun 2024 16.35 BST

The head of BP has imposed a hiring freeze and halted new offshore wind projects, in an apparent attempt to placate investors who are unhappy with the oil company's green targets.

Murray Auchincloss, BP's former finance chief, took up the role of CEO in January after the shock departure of his predecessor, Bernard Looney, with a promise to focus on delivering value for shareholders.

Looney, who had committed BP to some of the industry's greenest climate goals, was ousted last September for failing to disclose relationships with colleagues.

The decision to slow BP's green ambitions has stoked concerns that Looney's plan to move the company away from fossil fuels, with a pledge to "become a net zero company by 2050 or sooner", may soon be derailed.

BP has come under pressure from shareholders over its green targets because some renewable projects have proved more costly than expected, and profits from oil and gas have soared after Russia's invasion of Ukraine more than two years ago.

In response, the company set out plans earlier this year to cut oil and gas production by just 25% between 2019 and 2030 - well short of its previous target of a 40% reduction over the same timeframe.

Greenpeace UK said BP's plans were "disappointing but sadly unsurprising".

Areeba Hamid, its joint executive director, said: "Murray Auchincloss had a chance to build on his predecessor's legacy and become part of the solution to the climate crisis, rather than its harbinger. Instead, BP is following other fossil fuel majors by abandoning renewables and doubling down on oil and gas in the hopes of a quick buck."

Auchincloss is reportedly looking at investing in and possibly acquiring new oil and gas assets to strengthen BP's existing operations, particularly in the Gulf of Mexico and the shale basins acquired from the Anglo-Australian miner BHP in Texas.

Earlier this month BP's rival Shell set out its own plans to scale back its green growth ambitions, reducing the number of staff working on low-carbon solutions by about 200 roles while shifting the focus towards high-profit oil projects and expanding its gas business.

Alice Harrison, the head of fossil fuels campaigning at Global Witness, said: "Since the energy crisis began earning [BP] record-breaking profits, it has shown its true colours, slashing its climate targets and renewables investments in favour of earning a quick buck from increased fossil fuel production."

Over the past four years, BP has built up a sizeable portfolio of offshore wind

projects capable of generating 9.5 gigawatts of energy in total in the UK, Germany and the US that are yet to be developed. It wants to focus on these assets, it is understood, rather than bidding for new renewable projects.

It has reassigned dozens of people tasked with finding new renewables opportunities to its offshore wind projects in Britain and Germany, Reuters reports, and could make some job cuts in renewables. The hiring freeze is expected to have a few exceptions for frontline roles.

BP shares were up more than 1% on Thursday, but have underperformed rivals in recent months, prompting speculation that the company could be a takeover target. Looney set out a "net zero" plan that originally aimed to cut the company's oil production by 2030, while others plan to increase their fossil fuel production.

BP is also investing in biofuels and low-carbon businesses that can generate returns in the short term. A week ago the company agreed a $1.4bn (£1.1bn) deal to take full ownership of its Brazilian sugar and ethanol joint venture, but it said it was scaling back plans for development of new biofuels projects.

BP said: "As Murray Auchincloss said in February, BP's destination - transforming from international oil company to integrated energy company - is unchanged, but we are going to deliver as a simpler, more focused and higher-value company.

"We set out six priorities that underpin this, including driving greater focus into the business, on to activities that create the most value, as well as delivering both the next wave of efficiencies and BP's growth projects."

Auchincloss has pledged a "more pragmatic" approach to BP's green targets since taking up the CEO role permanently in January. In May, BP said it would cut $2bn of costs by the end of 2026, after reporting lower than expected profits for the first quarter of the year. Auchincloss said he planned to make the savings by choosing fewer new projects to invest in over the coming years.

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Appendix to Response to WRs: Griffith Parry, Robert Parry and Kerry James

(Document Number S_D2_3.4)

IN THE SUPREME COURT OF JUDICATURE QBCOF 1999/0110/4
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE QUEEN'S BENCH DIVISION (Crown Office List)
(MR JUSTICE HIDDEN)

Royal Courts of Justice
Strand
London WC2

Friday 16 July 1999

B e f o r e:

THE MASTER OF THE ROLLS
(LORD WOOLF)
LORD JUSTICE MUMMERY
LORD JUSTICE SEDLEY

- - - - - -

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

R E G I N A

- v -

NORTH AND EAST DEVON HEALTH AUTHORITY **Respondent**
EX PARTE PAMELA COUGHLAN **Applicant**

and

SECRETARY OF STATE FOR HEALTH **Intervenor**

and

ROYAL COLLEGE OF NURSING **Intervenor**

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(Transcript of the Handed Down Judgment of
Smith Bernal Reporting Limited, 180 Fleet Street,
London EC4A 2HD
Tel: 0171 421 4040
Official Shorthand Writers to the Court)

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MR R GORDON QC with MR T WARD and MISS J RICHARDS (Instructed by Messrs T V Edwards, London, E1 4TP) appeared on behalf of the Appellant.
MR N PLEMING QC and MR S KOVATS (Instructed by the Treasury Solicitor, London, SW1H 9JS) appeared on behalf of the Secretary of State.
MR T GOUDIE and MISS S WARD (Instructed by Messrs Bevan Ashford, Bristol, BS1 4TT) appeared on behalf of the Respondent
MR P HAVERS and MR K STERN (Instructed by the Royal College of Nursing Legal Dept, London, W1M OAB) appeared on behalf of the Royal College of Nursing.

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J U D G M E N T
(As approved by the Court)

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Friday 16 July 1999

JUDGMENT

LORD WOOLF, MR: This is a judgment of the Court to which all the members of the Court have contributed.

INTRODUCTION

1. The critical issue in this appeal is whether nursing care for a chronically ill patient may lawfully be provided by a local authority as a social service (in which case the patient pays according to means) or whether it is required by law to be provided free of charge as part of the National Health Service ("NHS"). If local authority provision is lawful, a number of further important questions arise: as to the propriety of the process by which eligibility for long term health care on the NHS, instead of as a social service, is determined; as to the effect of an assurance given by the Exeter Health Authority, the predecessor of the appellant, the North and East Devon Health Authority ("Health Authority") to the respondent to this appeal (the applicant for judicial review), Miss Coughlan, that she should have a home for life at Mardon House, a NHS facility; and as to the process by which Miss Coughlan has been assigned to local authority care.

2. Normally where a person is assigned to local authority care she will, subject to a means test, be liable to meet the cost of that care. For reasons to which we will come, Miss Coughlan will not in any event be called upon to pay for her care; but, in hearing her claim, which he decided in her favour, Hidden J. did not consider

that this made the issues and, in particular, the critical issue academic. Now that all issues have been decided in her favour both the Health Authority and (on this appeal) the Secretary of State for Health plainly have a proper interest in challenging the judgment.

3. Miss Coughlan was grievously injured in a road traffic accident in 1971. She is tetraplegic; doubly incontinent, requiring regular catheterisation; partially paralysed in the respiratory tract, with consequent difficulty in breathing; and subject not only to the attendant problems of immobility but to recurrent headaches caused by an associated neurological condition. In 1993 she and seven comparably disabled patients were moved with their agreement from Newcourt Hospital, which it was desired to close, to a purpose-built facility, Mardon House. It is a decision of the Health Authority made on 7 October 1998 to close Mardon House which is the immediate cause of the present litigation.

The Judgment

4. In a reserved judgment delivered on 10 December 1998 Hidden J. reached the following conclusions.

> (a) Miss Coughlan and the other patients had been given a clear promise that Mardon House would be their home for life, and the Health Authority had established no such overriding public interest as justified it in breaking the promise.
>
> (b) The process by which the decision to close Mardon

House was arrived at was flawed by a want of proper assessment of Miss Coughlan, by a bias in favour of closure in the materials laid before the Health Authority, and because no alternative placement for Miss Coughlan had been identified.

The bias was in part due to a consultation process which was vitiated by pre-judgment, non-disclosure of materials and inadequate time for response.

(d) In law, all nursing care was the sole responsibility of the NHS acting through the Health Authority. It was therefore not open to the Health Authority to transfer the responsibility for long-term general nursing care of a patient such as Miss Coughlan to the social services department of the local authority.

(e) The eligibility criteria adopted and applied by the Health Authority for long-term health care were correspondingly flawed.

Hidden J. accordingly granted an order of certiorari quashing the closure decision.

Intervention on the Appeal: Secretary of State and Royal College of Nursing

5. Upon the Health Authority's appeal two further parties have sought to be heard. For reasons mentioned above, the Secretary of State for Health applied and was given leave to be heard. It is appropriate that he should be treated for all purposes as a party. He was represented by Mr Nigel Pleming QC. Thereafter the Royal

College of Nursing ("the Royal College") applied to be heard and was given leave to put in a written submission on two issues of particular concern to it: whether nursing care is required to be provided free of charge in nursing homes, as it is in the patients' own home and in hospitals; and whether the distinction made by the Health Authority between specialist and general nursing care is contrary to law. We have taken into account that written submission and the evidence in support of it, as well as the Secretary of State's response to it. We have briefly heard Mr. Philip Havers QC on behalf of the Royal College. Its intervention has been of assistance, but it has rightly not sought to do more than intervene for a limited purpose.

Nursing Care for Miss Coughlan at Mardon House

6. From the time of her accident until the events with which this appeal is concerned, Miss Coughlan's care, which has always included, but has not been confined to, nursing care, was accepted as the responsibility of the NHS acting through the Exeter Health Authority and, more recently, the Health Authority. The Health Authority does not dispute that Miss Coughlan and her fellow long-term patients accepted the move from Newcourt Hospital to Mardon House in 1993 on the basis of a clear promise that Mardon House would be their home for life. Although both Mr. James Goudie QC for the Health Authority and Mr. Richard Gordon QC for Miss Coughlan have based their arguments upon a clear promise to this effect, it will be necessary later in this judgment to look at its precise terms because Mr. Gordon contends that when it took the closure decision the Health Authority was presented with a diluted

version of the promise.

7. For the first year the John Grooms charity was engaged to run Mardon House, which was leased to the charity and registered as a nursing home under the Registered Homes Act 1984. By the summer of 1994, however, this arrangement had failed and the premises reverted to the local NHS Trust. Section 21(3) of the Registered Homes Act 1984 excludes NHS hospitals from registration as nursing homes. By section 128(1) of the National Health Service Act 1977 ("the Health Act") a "hospital" includes any institution for the reception and treatment of persons suffering from illness, so that Mardon House could no longer be registered as a nursing home, albeit this was the description which most nearly fitted it.

8. Mardon House, although purpose-built for the long-term disabled, had other health service functions as a rehabilitation – or "reablement" – unit. For reasons which we do not have to analyse, the Health Authority by 1995 was having to consider whether the reablement service could realistically be kept at Mardon House. This in turn threw up the question whether, if the reablement service were to go, Mardon House could be maintained as a home for younger chronically disabled patients together with some alternative health service use or uses.

NHS Changes: Legislation, Policy and Guidelines

9. Alongside these difficulties of health service provision changes were taking place in health service policy. On 1 April 1993 the National Health Service and Community Care Act 1990 came

into force. Among the purposes set out in the long title were "to make further provision about health authorities and other bodies constituted in accordance with the [Health Act], to provide for the establishment of National Health Service Trusts; …. to make further provision concerning the provision of accommodation and other welfare services by local authorities …". Mr. Gordon's initial charge that this legislation was mistakenly taken by the NHS to permit long-term nursing care to be handed over to local authorities has been defused by Mr. Pleming's acceptance, adopted by Mr. Goudie, that no material change was introduced by the Act of 1990 and that all the material powers are to be found in the Health Act, the successor to the originating National Health Service Act 1946. It will be necessary to consider in detail the history and significance of those statutory provisions which adjust the relationship between NHS and local authority provision for persons who are ill.

10. The coming into force of the Act of 1990 was accompanied by a guideline document, HSG (92) 50, issued by the NHS Management Executive to District Health Authorities. It is captioned "Local Authority Contracts for Residential and Nursing Home Care: NHS Related Aspects" and begins:

> "This guidance sets out District Health Authority and Local Authority responsibilities, from April 1993, for funding community health services for residents of residential care and nursing homes who have been placed in those homes by local authorities."

The guidance drew a distinction between "specialist" nursing

services, which were to continue to be provided by the NHS, and "general nursing care", which the guidance proposed should be for the local authority to purchase. It said:

> "Full implementation of the White Paper "Caring for People" will mean that local authorities will have responsibilities for purchasing nursing home care for the great majority of people who need it and who require to be publicly supported. When, after April 1993, a local authority places a person in a nursing home after joint HA/LA assessment, the local authority is responsible for purchasing services to meet the general nursing care needs of that person, including the cost of incontinence services (eg laundry) and those incontinence and nursing supplies which are not available on NHS prescription. Health authorities will be responsible for purchasing, within the resources available and in line with their priorities, physiotherapy, chiropody and speech and language therapy, with the appropriate equipment, and the provision of ***specialist*** nursing advice, eg continence advice and stoma care, for those people placed in nursing homes by local authorities with the consent of a DHA. Health authorities can opt to purchase these services through directly managed units, NHS Trusts, or other providers including the nursing home concerned. Health Authorities continue to have the power to enter into a contractual arrangement with a nursing home where a patient's need is primarily for health care. Such placements must be fully funded by the health authority."

11. In March 1993 the Secretary of State gave approvals and directions under section 21(1) of the National Assistance Act 1948 ("the Care Act") – to which we will come – directing local authorities to make arrangements to provide residential accommodation for persons who were unable through illness to take care of themselves, and to enable such people to obtain nursing attention so long as this did not impinge upon statutory NHS provision.

12. In 1995 further guidance was issued by the Secretary of State for Health, directed both to NHS bodies and to local authorities (HSG

(95) 8; LAC (95) 5)). It sought to delineate in further detail the appropriate division of responsibility between the NHS and local authorities for those in need of continuing health care. It made clear that access to specialist medical and nursing services should be available and provided at the expense of the NHS for those persons who were no longer eligible for in patient care. It called on health authorities to develop and publish policies and eligibility criteria for the purchase of continuing health care as from April 1996.

13. The Health Authority published policies and eligibility criteria in conjunction with its twin Devon Health Authority and Devon Social Services. The published document builds upon the distinction made in the 1992 guidelines between specialist and general nursing care, setting out a definition of specialist nursing which Mr. Gordon and Mr. Havers have submitted is idiosyncratic. It relates specialisation not to qualification but to employment, and it lists as examples of specialist nursing continence care, stoma, diabetic, paediatric, palliative, tissue viability and breast care. It distinguishes these from what it calls core nursing: the work of district nurses, health visitors, practice nurses, community psychiatric nurses, community mental handicap nurses and midwives. Of those areas identified as specialist, none are recognised as such by the United Kingdom Central Council for Nursing. Those listed as non-specialist are arguably all examples of specialist nursing. It is not for us to resolve this difference of approach, but it is relevant to note that the notion of specialist nursing, introduced by way of policy guidance and not by statute, is, on any view, elusive. As to nursing home care the document says:

"Many people regard care in a Nursing Home as health care, and therefore the purchasing responsibility of the NHS. However, under the NHS and Community Care Act, Social Services were given a new responsibility for purchasing Nursing Home beds. As with the previous arrangement through the Department of Social Security this is subject to a means test. The regulations governing this are laid down nationally. It is anticipated that the majority of placements in Nursing Homes in Devon will continue to be made through Social Services.

Under the terms of the government's guidance it is open to Health Authorities to purchase care from Nursing Homes as NHS Continuing Care (although they do not have to do so if they can meet these responsibilities in other ways ie through contracting for hospital beds). Patients eligible for NHS purchased nursing home care would need to meet the criteria for in-patient care. The care required would be at a higher level than that normally provided by Nursing Homes.

Health and Social Services purchasers are working together to describe more clearly Social Services "normal" expectations of Nursing Homes and how an NHS purchased placement would differ from this.

NHS in-patient care is free at the point of need but Social Services are obliged by law to charge for care; this is decided by Parliament. The question of charging cannot be taken into account in these eligibility criteria nor in decisions on care for individuals, since these are based on Consultants' clinical judgements."

The policy statement goes on to say:

"The National Health Service Executive recommend that the following services are to be regarded as standard, ie. not specialist, in nursing homes: general physical and mental nursing care, artificial feeding, continuous oxygen therapy, wound care, pain control, administration of drugs and medication, catheter care, bladder wash-outs, suction, tracheotomy care, tissue viability."

14. In spite of counsel's best endeavours it has proved impossible to locate the source of the recommendation upon which this passage of the policy is expressly based. Their best guess – that it is HSG (92) 50 – is insufficient because only the broad division between general and specialist nursing care is to be found there. Those instructing

Mr. Goudie have been able to tell us that from their recollection some recommendations were conveyed in meetings convened by the South West Regional Office of the National Health Service Executive. Mr. Pleming has been able to ascertain nothing about these meetings from the departmental end, and neither party has been able to produce a single memorandum or note relating to them. In this situation, which in the experience of the court is unusual, we will take the policy at face value and infer that the allocation of functions is not the work of the Health Authority alone but derives from central NHS guidance.

Closure of Mardon House

15. In the first months of 1996 a review was instituted by the Health Authority of the options for the placement and care of Miss Coughlan and her two fellow patients. It was based upon the eligibility criteria for NHS care and concluded that Miss Coughlan did not meet these. (Nor, it was considered, did her fellow patient Ross Bentley, who was immobile, unable to communicate, and doubly incontinent.) In January 1998, a week after Devon County Council had assessed Mardon House as "ideally suited" to Miss Coughlan's physical and psychological needs, the Health Authority issued a consultation paper which set out five options, of which its Board approved the fifth, which involved the closure of Mardon House. In April 1998, after public consultation, the Health Authority approved Option 5. Option 5 did not include an alternative placement for Miss Coughlan or her fellow-patients, but the Health Authority was satisfied that one would be found.

16. Following the grant of leave by Laws J. on 3 June 1998 the Health Authority agreed to rescind its decision and to go out again to

consultation. A new consultation paper was issued on 2 September 1998. Through her solicitors Miss Coughlan responded to it. It took time to reach those representing other Mardon House residents, but they responded by 22 September, two days before the consultation period ended. Meanwhile the Health Authority had bespoken and received a report from Dr. Clark which was not disclosed as part of the consultation process. It supported the closure proposal. Accordingly, on 7 October 1998 the Health Authority took a fresh decision to withdraw services from Mardon House, which would inevitably result in its closure. The consultation process, which has been the subject of a discrete head of challenge, will be examined in more detail later in this judgment. The Form 86A was amended accordingly and the proceedings, for which leave had already been granted, continued.

Grounds of Challenge

17. Miss Coughlan's case that the decision to close Mardon House is flawed is put on a number of different grounds by Mr Gordon QC. Any one of those grounds, if established, is sufficient to render the decision unlawful. We shall deal with the points in the following order:

A. Nursing as Health Care and as Social Care (Paras 18 – 32)
B. Eligibility Criteria (Paras 33 – 50)
C. The Promise of a Home for Life (Paras 51 – 90)
D. Human Rights (Paras 91 – 94)
E. Assessment and Placement (Paras 95 – 108)
F. Consultation (Paras 109 – 118)

A. NURSING AS "HEALTH CARE" AND AS "SOCIAL CARE"

18. Before Hidden J., the question of the legality of nursing care being provided by a local authority was not the primary issue raised by Mr

Gordon on behalf of Miss Coughlan. The decision of the judge has made it the most important issue on this appeal. As to this issue the judge said:

> "I accept Mr Gordon's submissions on the question of nursing care that nothing in either NHSCCA or in HSG (95) 8 altered the statutory responsibilities of Health Authorities to provide health services including nursing care. As a result both general and specialist nursing care remain the *sole responsibility* of the Health Authorities. Thus the Respondent Authority was clearly wrong in law in assuming that the law had changed and that it was no longer entitled or empowered to provide or arrange long term general nursing care in an NHS setting and/or that there had been a transfer to Social Services Department of such responsibility as a result of "new legislation". Those assumptions were wholly misconceived and led to the Authority taking account of irrelevant matters. …. [emphasis added] …… I conclude that nursing is "health care" and can never be "social care" and that ….. HSG (95) 8 did not make any change to any NHS responsibility for health care services including nursing".

19. If the judge's decision is right on this issue, his decision will have significant adverse financial consequences for the Secretary for State and the Health Authority. In addition it will mean that the policy of the Secretary of State as to the provision of nursing care, which has existed for a number of years, has been unlawful. It will, on the other hand, improve the position of those in a similar situation to that of Miss Coughlan. If the judge is right, those who receive nursing care while residing in the community in a nursing or similar home provided by a local authority will be entitled to have that care provided free of charge. This would be the same position as would apply if they were living in their own homes. If the judge is wrong, it means that the nursing services will have to be paid for, unless the financial resources of the person concerned have been nearly exhausted. In these circumstances

it is not surprising that a substantial proportion of the argument on this appeal has been devoted to this issue.

20. The answer to this issue depends on the correct interpretation of three sections: sections 1 and 3 of the Health Act and section 21 of Part III of the Care Act. The language of the sections today can be readily traced back to the original legislation which founded the welfare state after the last war. Their legislative history reflects the changes in the manner in which health and care services have been provided since that time. We have, therefore, had the legislative history of the three sections explained to us in depth. (The Health Act is a descendant of the National Health Act 1946. The Care Act has been substantially amended since 1948). In the end, however, this issue has to be determined by construing the provisions in their current form.

In examining the language of the sections it is desirable to start with the Health Act because, as the Care Act makes clear, the Health Act is the dominant act. This dominance is consistent with the long standing role of local authorities under Part III of the Care Act of only being required to provide assistance for those in need who have no other way of obtaining that assistance. In that sense, assistance under the Care Act is provided as a last resort.

The Health Act

22. The Health Act is a consolidating Act. Section 1(1) places upon the Secretary of State a duty to continue to promote a comprehensive health service. It sets out the target which the Secretary of State

should seek to achieve in the following terms:

"1(1) It is the Secretary of State's duty to continue the promotion in England and Wales of a comprehensive health service designed to secure improvement –

(a) in the physical and mental health of the people of those countries, and

(b) in the prevention, diagnosis and treatment of illness,

and for that purpose to provide or secure the effective provision of services in accordance with this Act.

It will be noted that Section 1(1) does not place a duty on the Secretary of State to provide a comprehensive health service. His duty is "to continue to promote" such a service. In addition the services which he is required to provide have to be provided "in accordance with this Act".

Section 1(2) makes clear that those services are in general to be provided free. Section 1(2) provides:

"The services so provided shall be free of charge except in so far as the making and recovery of charges is expressly provided for by or under any enactment, whenever passed".

Moving to section 3, it is only necessary to refer to section 3(1). That sub-section states :

"It is the Secretary of State's duty to provide throughout England and Wales, to such extent as he considers necessary to meet all reasonable requirements –

(a) hospital accommodation ;

(b) other accommodation for the purpose of any service provided under this Act;

(c) medical, dental, nursing and ambulance services;

(d) such other facilities for the care of expectant and nursing mothers and young children as he considered are appropriate as part of the health service;

(e) such facilities for the prevention of illness, the care of persons suffering from illness and the after-care of persons who have suffered from illness as he considers are appropriate as part of the health service;

(f) such other services as are required for the diagnosis and treatment of illness."

23. It will be observed that the Secretary of State's section 3 duty is subject to two different qualifications. First of all there is the initial qualification that his obligation is limited to providing the services identified to the extent that he considers that they are necessary to meet all reasonable requirements. In addition, in the case of the facilities referred to in (d) and (e), there is a qualification in that he has to consider whether they are appropriate to be provided "as part of the health service". We are not concerned here with this second qualification since nursing services would come under section 3(1)(c).

24. The first qualification placed on the duty contained in section 3 makes it clear that there is scope for the Secretary of State to exercise a degree of judgment as to the circumstances in which he will provide the services, including nursing services referred to in the section. He does not automatically have to meet all nursing requirements. In certain circumstances he can exercise his judgment and legitimately decline to provide nursing services. He need not provide nursing services if he does not consider they are reasonably required or necessary to

meet a reasonable requirement.

25. When exercising his judgment he has to bear in mind the comprehensive service which he is under a duty to promote as set out in section 1. However, as long as he pays due regard to that duty, the fact that the service will not be comprehensive does not mean that he is necessarily contravening either section 1 or section 3. The truth is that, while he has the duty to continue to promote a comprehensive free health service and he must never, in making a decision under section 3, disregard that duty, a comprehensive health service may never, for human, financial and other resource reasons, be achievable. Recent history has demonstrated that the pace of developments as to what is possible by way of medical treatment, coupled with the ever increasing expectations of the public, mean that the resources of the NHS are and are likely to continue, at least in the foreseeable future, to be insufficient to meet demand.

26. In exercising his judgment the Secretary of State is entitled to take into account the resources available to him and the demands on those resources. In *R v Secretary of State for Social Services and Ors ex parte Hincks*[1980] 1 BMLR 93 the Court of Appeal held that section 3(1) of the Health Act does not impose an absolute duty to provide the specified services. The Secretary of State is entitled to have regard to the resources made available to him under current government economic policy.

The Care Act

27. To ascertain whether local authorities can provide any nursing services as part of their care services pursuant to their Part III

responsibilities it is now necessary to turn to the third of the trio of sections, namely section 21 of the Care Act. The section provides:

> "(1) [Subject to and in accordance with the provisions of this Part of the Act, a local authority may with the approval of the Secretary of State, and to such extent as he may direct shall, make arrangements for providing] –
>
> (a) residential accommodation for persons [aged eighteen or over] who by reason of age, [illness, disability] or any other circumstances are in need of care and attention which is not otherwise available to them; [and
>
> (aa) residential accommodation for expectant and nursing mothers who are in need of care and attention which is not otherwise available to them.]
>
> (2) In [making any such arrangements] a local authority shall have regard to the welfare of all persons for whom accommodation is provided, and in particular to the need for providing accommodation of different descriptions suited to different descriptions of such persons as are mentioned in the last foregoing subsection.
>
> (5) References in this Act to accommodation provided under this Part thereof shall be construed as references to accommodation provided in accordance with this and the five next following sections, and as including references to board and other services, amenities and requisites provided in connection with the accommodation except where in the opinion of the authority managing the premises their provision is unnecessary.
>
> (7) Without prejudice to the generality of the foregoing provisions of this section, a local authority may –
>
> (a) ....
>
> [(b) make arrangements for the provision on the premises in which accommodation is being provided of such other services as appear to the local authority to be required.]
>
> (8) Nothing in this section shall authorise or require a local authority to make any provision authorised or required to be made (whether by that or by any other authority) by or under any enactment not contained in this Part of this Act [or authorised or required to be provided under the National Health Service Act 1977.]"
>
> (The passages in square brackets indicate amendments).

The following points should be noted in relation to section 21.

(a) The requirements for approval and directions by the Secretary of State in section 21(1) give the Secretary of State considerable control over both what and how services are provided by local authorities under Part III. (The necessary directions were given in 1993 in an appendix to guidance issued by the Secretary of State in 17 March 1993.)

(b) Under section 21 the primary service provided is accommodation. But the express reference to age, illness and disability as being among the characteristics of the person who is seeking accommodation, which amount to a qualification for the grant of the accommodation, indicate that in many cases there is likely to be a need for nursing services as part of the care provided.

(c) The words in section 21(5), "board and other services" are readily capable of being construed as including nursing services and there appears to be no reason why they should not be so construed. If there were any doubt as to this, it would be removed by the reference in section 26(1B) to "residential accommodation where nursing care is provided".

(d) The nursing services would, however, as section 21(5) requires, have to be "provided in connection with the accommodation".

So far the language of three sections creates no particular difficulty as long as it is subjected to detailed analysis. Section 21(8) remains to be considered. It provides the key to this issue. How are the words "or authorised or required to be provided under" the Health Act to be applied?

28. Each word is of significance. The powers of the local authority are not excluded *by* the existence of a power in the Health Act to provide the service, but they are excluded where the provision is authorised or required to be made *under* the Health Act. The position is different in the case of "any other enactment", where it is sufficient if there is an authority or requirement to be made *by or under* the enactment.

29. The references in s.21 to the Health Act were added by the National Health Service and Community Care Act 1990. The amendment was made in

part by section 42 of Part III of that Act. Part III introduced the new arrangements for community care. The same section also added the provision which is now section 26 (1B) of the Care Act to which we have already referred. It was clearly contemplated that services which could be provided might include nursing services. Section 21(8) was added to by s.66 and para 5(3) of Schedule 9, entitled "Minor and Consequential Amendments". The section should not be regarded as preventing a local authority from providing any health services. The subsection's prohibitive effect is limited to those health services which, in fact, have been authorised or required to be provided under the Health Act. Such health services would not therefore include services which the Secretary of State legitimately decided under section 3(1) of the Health Act it was not necessary for the NHS to provide. It would have been remarkable if a minor and consequential amendment of s.21(8) of the Care Act had had the effect, as Mr Goudie contended, of reducing the Secretary of State's important public obligations under the Health Act. The true effect is to emphasise that Care Act provision, which is secondary to Health Act provision, may nevertheless include nursing care which properly falls outside the NHS.

Conclusion

30. The result of the detailed examination of the three sections can be summarised as follows:

(a) The Secretary of State can exclude some nursing services from the services provided by the NHS. Such services can then be provided as a social or care service rather than as a health service.

(b) The nursing services which can be so provided as part of the care services are limited to those which can legitimately be

regarded as being provided in connection with accommodation which is being provided to the classes of persons referred to in section 21 of the Care Act who are in need of care and attention; in other words as part of a social services care package.

(c) The fact that the nursing services are to be provided as part of social services care and will have to be paid for by the person concerned, unless that person's resources mean that he or she will be exempt from having to pay for those services, does not prohibit the Secretary of State from deciding not to provide those services. The nursing services are part of the social services and are subject to the same regime for payment as other social services. Mr Gordon submitted that this is unfair. He pointed out that if a person receives comparable nursing care in a hospital or in a community setting, such as his or her home, it is free. The Royal Commission on Long Term Care, in its report, With Respect to Old Age, (March 1999 chapter 6 pages 62 et seq. Cm 4192-1) not surprisingly agrees with this assessment and makes recommendations to improve the situation. However, as long as the nursing care services are capable of being properly classified as part of the social services' responsibilities, then, under the present legislation, that unfairness is part of the statutory scheme.

(d) The fact that some nursing services can be properly regarded as part of social services' care, to be provided by the local authority, does not mean that all nursing services provided to those in the care of the local authority can be treated in this way. The scale and type of nursing required in an individual case may mean that it would not be appropriate to regard all or part of the nursing as being part of "the package of care" which can be provided by a local authority. There can be no precise legal line drawn between those nursing services which are and those which are not capable of being treated as included in such a package of care services.

(e) The distinction between those services which can and cannot be so provided is one of degree which in a borderline case will depend on a careful appraisal of the facts of the individual case. However, as a very general indication as to where the line is to be drawn, it can be said that if the nursing services are (i) merely incidental or ancillary to the provision of the accommodation which a local authority is under a duty to provide to the category of persons to whom section 21 refers and (ii) of a nature which it can be expected that an authority whose primary responsibility is to provide social services can be expected to provide, then they can be provided under section 21. It will be appreciated that the first part of the test is focusing on the overall quantity of the services and the second part on the quality of the services provided.

(f) The fact that care services are provided on a means tested contribution basis does not prevent the Secretary of State declining to provide the nursing part of those services on the NHS. However, he can only decline if he has formed a judgment which is tenable that consistent with his long term general duty to continue to promote a comprehensive free health service that it is not necessary to provide the services. He cannot decline simply because social

services will fill the gap.

31. It follows that we do not accept the judge's conclusion that all nursing care must be the sole responsibility of the NHS and has to be provided by the Health Authority. Whether it can be provided by the local authority has to be determined on an assessment of the circumstances of the individual concerned. The Secretary of State accepts that, where the primary need is a health need, then the responsibility is that of the NHS, even when the individual has been placed in a home by a local authority. The difficulty is identifying the cases which are *required* to be placed into that category on their facts in order to comply with the statutory provisions. Here the needs of Miss Coughlan and her fellow occupants were primarily health needs for which the Health Authority is as a matter of law responsible, for reasons which we will now explain.

B. ELIGIBILITY CRITERIA

32. Mr Pleming, on behalf of the Secretary of the State, submitted that since the inception of the NHS there has been a broad division between specialist medical services, which are always the NHS's responsibility, and general care services, which can be the responsibility of local authorities. A reflection of this distinction was to be found in section 21(7) of the Care Act prior to its amendment. The section excluded from the services which could be provided by local authorities "specialist services or services of a kind normally provided only on admission to a hospital ...." He also contended that there can be an overlap between the categories of services which can be provided by the NHS and local authorities and that therefore a method needs to exist to determine an individual's eligibility for NHS services for which there would be no

charge. The selected method is a combination of guidance by the Secretary of State, to be implemented by health authorities and local authorities, and eligibility criteria drawn up by health authorities in accordance with that guidance. The next issue which has to be determined is whether the guidance and eligibility criteria which have been adopted and applied by the twin Health Authorities and Devon Social Services were flawed. The eligibility criteria could be flawed because they reflected guidance of the Secretary of State, which itself was flawed or they could be flawed because the Health Authorities, in laying down the eligibility criteria, misunderstood, misapplied or failed to follow that guidance.

33. We have already referred to the documents that contained the formal guidance, namely HSG (92) 50 and HSG (95) 8. Those documents could not and, as the judge accepted, did not alter the legal responsibilities of the NHS under the Health Act. They did, however, reflect a change of policy in relation to those who needed long-term care. Although the policy change is not directly relevant to the outcome of this appeal, it probably explains how the legal problems to be resolved by this case arose and some of the confusion on the part of the Health Authority as to its responsibilities.

34. At the request of this Court, Mr Pleming, on behalf of the Secretary of State, prepared a helpful note as to how the present policy in relation to long-term care evolved. In general there has been a shift from in-patient hospital care to community provision. This has coincided with advances in the way health and social services treatment and care are provided. Community care can offer improvements in terms of the quality of life it provides over long term residence in institutions,

such as hospitals. We also recognise that, because of that improvement, the scale of health care which is needed may be reduced. However, subject to this, the fact that a patient is being treated in one setting rather then another will not affect their health care needs.

35. In keeping with this change of approach an announcement was made in the House of Commons on 12 July 1989 indicating that the aim of the policy would be to enable people to live as full and independent a life as is possible in the community for so long as they wished to do so. This statement was considered to be in accord with the report by Sir Roy Griffiths in 1988, "Community Care: Agenda for Action". The report accepted the distinction between health and social care and did not alter what should be the responsibility of the NHS for health care. It was, however, intended that local authorities should normally assume responsibility for the care element of public support for people in private and voluntary residential care and nursing homes. A text of the statement was issued under cover of circular HN (89) 18/LASSL (89) 6. Paragraph 25 of the statement confirmed:

> "Community care is no longer primarily about providing an alternative to long-stay hospital care. The vast majority of people needing care have never been, nor expect to be in such institutions. The policy aim is to now strike the right balance between home and day care on the one hand, and residential and nursing home care on the other, while reserving hospital care for those whose needs truly cannot be met elsewhere. The changes we propose will for the first time ensure that all public monies are devoted to the primary objective of supporting people at home whenever possible."

36. The policy was developed and implemented by a White Paper, "Caring for People, Community Care in the Next Decade and Beyond"

(Cm. 849, November 1989) and the National Health Service and Community Care Act 1990 which was brought into force in April 1993. The Act was accompanied by policy guidance "Caring for People: Community Care in the Next Decade and Beyond". Again it was not intended to alter the responsibilities of the NHS. So far as funding was concerned, the change which occurred in April 1993 is that, whereas previously funding for residential nursing home care had been met by central social security funding, after April 1993 this became the direct responsibility of the local authorities. This was intended to induce a more responsible approach on the part of local authorities as to how the resources were deployed.

37. It is accepted, however, that the NHS continued to be responsible for (a) funding placements for nursing home residents requiring continuing in-patient care and (b) meeting the specialist health care needs of residents of nursing homes for whom the local authority was generally responsible. As we will see, the category (a) responsibility is of significance. It involves the recognition that there will be residents of nursing homes who, while they do not require in patient care in hospital, do need NHS care in the community.

38. As a result of a report by the Health Service Commissioner in 1994, it was accepted by the then Secretary of State and the Chief Executive of the Health Service that the Health Service had withdrawn too far from its responsibilities in relation to continuing health care. This was followed by the issue of the guidance circular HSG (95) 8/LAC (95) 5 which was intended to address the concerns which had been expressed in the Commissioner's report. This was followed

by further guidance on 26 September 1995 provided in Circular HSG (95) 45. The annex to that circular states in para 4.1:

> "....In respect of people being discharged from long stay institutions, the NHS is responsible for negotiating arrangements with local authorities, including any appropriate transfer of resources which assist the local authority meeting the care needs of such people and of their successors who may otherwise have entered the institution.....”

It is stated in paragraph 5.1 that Health Authorities are also responsible for the purchase and provision of:

> "(ii) specialist or intensive medical or nursing support for people in nursing homes .....” (emphasis added)

39. We have no difficulty with the Secretary of State adopting a policy of treatment in the community where in-patient treatment in a hospital is not required. In determining what health services are to be provided by the NHS, the Secretary of State may take into account what services are and can be lawfully provided by local authorities as care provision. However, the question remains as to whether the correct boundary has been identified between what is the proper responsibility of the NHS and what is the proper responsibility of local authorities.

40. The Secretary of State does not suggest that the NHS need not fund those health services which would not be an appropriate part of the package of care which a local authority can provide under s.21. We recognise that what services can be appropriately treated as responsibilities of a local authority under section 21 may evolve with the changing standards of society. It is always going to be

difficult to identify the limits of those services. In the case of the circulars published by the Secretary of State, despite Mr Gordon's submissions on behalf of Miss Coughlan to the contrary, we do not find that they improperly place any responsibilities on local authorities or remove any responsibilities of health authorities. In fact both the judge and Mr Gordon accepted that these circulars had made no change to the responsibilities for health care of the NHS.

41. What Mr Gordon particularly complained of was the distinction which the circulars adopted between general and specialist nursing care. We have already indicated why a dividing line based on this distinction can be described as idiosyncratic. Certainly the expressions should not be regarded as giving anything more than the most general indication of what is and is not health care which the NHS should provide. The distinction between general and special or specialist services does provide a degree of non technical guidance as to the services which, because of their nature or quality, should be regarded in any particular case as being more likely to be the responsibility of the NHS. Where the issue is whether the services should be treated as the responsibility of the NHS, not because of their nature or quality, but because of their quantity or the continuity with which they are provided, the distinction between general and specialist services is of less assistance. The distinction certainly does not provide an exhaustive test. The distinction does not necessarily cater for the situation where the demands for nursing attention are continuous and intense. In that situation the patient may not require in-patient care in a hospital under the new policy,

but the nursing care which is necessary may still exceed that which can be properly provided as a part of social services care provision. We read circular HSG (95) 8 as recognising that there can be such cases (see paragraph 21). But the shortcoming of the circular is that it associates such cases only with in-patient treatment and does not make clear whether the in-patient treatment to which it refers has to be in a hospital. What the circulars do not contain are clear statements that the fact that a case does not qualify for in-patient treatment in a hospital does not mean that the person concerned should not be a NHS responsibility. The importance of there being clear statements as to this arise because of the increased emphasis being placed on care in the community. This could result in it being assumed that, because patients who would previously have been treated as in-patients in hospital no longer qualify for such treatment, they are automatically disqualified from receiving care on the NHS. This is not what is permitted.

42. On this aspect of the case, two things are clear. First, the fact that the resident at a nursing home does not require in-patient treatment in a hospital does not mean that his or her care should not be the responsibility of the NHS. Secondly, as the judge points out, at one time the Health Authority was totally confused as to what the proper division of responsibility between the Health Authority and the local authorities was. Dr Gillian Morgan, the Chief Executive of the Health Authority, in her first affidavit accepts that this was the position. In paragraph 39 of her first affidavit she apologises for the confusion which she and other officers of the authority were under and appear to have caused by their statements.

This could be the result of the shortcomings of the circulars.

43. The fact that there is this background of possible confusion makes it important that any eligibility criteria should be drawn up with particular care. They need to identify at least two categories of persons who, although receiving nursing care while in a nursing home, are still entitled to receive the care at the expense of the NHS. First, there are those who, because of the scale of their health needs, should be regarded as wholly the responsibility of a health authority. Secondly, there are those whose nursing services in general can be regarded as being the responsibility of the local authority, but whose additional requirements are the responsibility of the NHS.

44. As to the second of those two categories, in her affidavit Dr Morgan states:

> "Nursing Homes do not generally divide their charges between accommodation and care. In my view, it would be very difficult if not impossible to distinguish between the elements of nursing care and what otherwise might be called social care – for example help with eating or washing. The difficulty is particularly acute in the context of work carried out by nursing auxiliaries or other carers under the supervision of qualified nurses. This will generally parallel the equivalent arrangements in NHS hospitals where care is delivered by a range of individuals including nursing auxiliaries and others who are not professional nurses. I therefore seriously doubt whether a coherent and consistent division could be maintained between what is a nursing task and what is a carer's task if it were proposed that there should be a different funding regime for the two types of care."

45. We are not in a position to comment on the correctness of this

view of Dr Morgan. However if she is correct, then the position can be remedied by the Health Service taking responsibility for the whole cost. Either a proper division needs to be drawn (we are not saying that it has to be exact) or the Health Service has to take the whole responsibility. The local authority cannot meet the costs of services which are not its responsibility because of the terms of section 21 (8) of the 1948 Act.

46. Mr Gordon contended that it would be absurd for those who do not meet the Health Authority's eligibility criteria for in-patient care not to be entitled to "general" nursing care services free if they are entitled to "specialist" health care services free. As we have already indicated, there are clearly grounds for saying that for there to be a different regime with regard to payment dependent upon the location where a person is receiving nursing services is unfair, but, that point apart, if a portion of nursing care can still be provided as a service for which the local authority is responsible, then we do not see anything improper in those services being charged for under the local authority regime. Other services for which the NHS is responsible can still be provided on health service terms.

47. It is Criterion 1 of the Eligibility Criteria of the twin Health Authorities and Social Services which is relevant to the issues in this case. It commences by recognising in extremely guarded terms that patients will be eligible for continuing health care "possibly exceptionally in nursing home settings". This follows an introduction which indicates that usually the need for on-site care from doctors (ie not nurses) is a reliable test for eligibility. There are also

examples given of "the characteristics which are likely to apply" in cases for which the NHS has a continuing responsibility and they are extreme cases. Core nursing is given the definition which we have already cited. This indicates that nursing is not specialist nursing not because of what nursing services are rendered but because of the title of the nurse, such as district nurses or midwives, who provides the care. This is followed by the statement said to be that of the NHS Executive already quoted.

48. It is for the Health Authority to decide what should be the eligibility criteria in its area in the co-operative framework envisaged by the circulars. In doing so it can take account of conditions in its area. We do not accept the argument that there cannot be variations between the services provided by the NHS in different areas. However the eligibility criteria cannot place a responsibility on the local authority which goes beyond the terms of section 21. This is what these criteria do. Cases where the health care element goes far beyond what the section permits were being placed upon the local authority as a result of the rigorous limits placed on what services can be considered to be NHS care services. That this is the position is confirmed by the result of the assessment of Miss Coughlan and her fellow occupants. Their disabilities are of a scale which are beyond the scope of local authority services.

49. The relevance of our upholding Miss Coughlan's complaint as to the eligibility criteria is that this could be a factor contributing to the decision to close Mardon House due to lack of support. She argued that, if the proper approach had been adopted as to who

qualifies for NHS care, there would not have been this lack of support. Mardon House was an imaginatively conceived NHS facility in part for those who were unfortunate enough to have a similar degree of disability to Miss Coughlan. We agree that the closure decision is called into question by the erroneous view of the Health Authority as to its general legal obligations towards patients, such as Miss Coughlan.

We turn next to its specific legal obligations owed to her personally.

C. THE PROMISE OF A HOME FOR LIFE

50. The Health Authority appeals on the ground that the judge wrongly held that it had failed to establish that there was an overriding public interest which entitled it to break the "home for life" promise. In particular, the judge erred in concluding that the Health Authority had applied the wrong legal test in deciding whether the promise could or should be broken and that it had wrongly diluted the promise and treated it as merely a promise to provide care. It contends that it applied the correct legal test and that the promise had, in the decision making process, been plainly and accurately expressed and given appropriate prominence.

51. It is also contended that the judge failed to address the overwhelming evidence on the urgent need to remedy the deficiencies of the reablement service and of the serious and acute risks to the reablement service if the status quo at Mardon House were maintained. If he had addressed that issue he would and should have concluded that the Health Authority was entitled to decide that such consideration pointed inexorably to the closure decision

52. It has been common ground throughout these proceedings that in public law the Health Authority could break its promise to Miss Coughlan that Mardon House would be her home for life if, and only if, an overriding public interest required it. Both Mr. Goudie and Mr. Gordon adopted the position that, while the initial judgment on this question has to be made by the Health Authority, it can be impugned if improperly reached. We consider that it is for the court to decide in an arguable case whether such a judgment, albeit properly arrived at, strikes a proper balance between the public and the private interest.

The Facts

53. In order to determine this issue it is necessary to set out the facts in more detail than we have so far. They are as follows:

(a) From the date of her tragic accident in 1971 until 1993 Miss Coughlan lived in and received nursing care in Newcourt Hospital for the chronically sick and disabled. It was a large old house with communal wards. It was considered unacceptable for modern care. A decision was taken to discharge the residents "to a setting which would be more clinically and socially appropriate".

(b) On 15 March 1993 Miss Coughlan moved to Mardon House along with other patients and the majority of the staff from Newcourt. Mardon House was a purpose built NHS facility costing £1.5m. It was designed to house young, long term, severely disabled, residential patients. It had been proposed as early as 1989 as a replacement for

Newcourt. There were 20 beds. There were 17 purpose built, individual flatlets each designed to have a bedroom, sitting room, inter-connecting bathroom and a designated kitchenette area. They were individually tailored for the needs of those moving into them. The residents of Newcourt had been involved in discussions about the nature and design of the building and its services. They chose their flatlets and the decor. Intensive reablement services and respite care were also to be provided there. There was a mix of residential/nursing home care and active acute treatment.

(c) The Newcourt patients were persuaded to move to Mardon House by representations on behalf of the Health Authority that it was more appropriate to their needs. The patients relied on an express assurance or promise that they could live there "for as long as they chose". Nursing care was to be provided for them in Mardon House. It was the "new Newcourt".

(d) Mardon House was let by the Exeter & District Community Health Service NHS Trust to a charity, the John Grooms Association, and it was registered as a nursing home. John Grooms withdrew in June 1994, as they felt that the evolving service was so heavily weighted in favour of acute clinical work that the unit would be unregistrable under the terms of the Registered Homes Act 1984. It ceased to be a registered nursing home and became the responsibility of the NHS Trust. It reverted to being solely a NHS facility. No new long term patients were admitted from mid-1994.

(e) On 7 October 1998 the decision was taken by the Health Authority

to withdraw services from Mardon House and to close the facility. It was minuted in these terms-

> "Option 11 - Move reablement to Heavitree Hospital, Exeter Community Trust to sell Mardon House and the residents to move to nursing/residential homes/community care settings.
>
> The Authority unanimously voted to support this option."

Three patients, all ex-Newcourt including Miss Coughlan are left living there. They are all chronically sick and disabled and are considered by the Health Authority to require "generalist nursing care."

(f) The decision was preceded by a Consultation Paper (DHA 98/109) dated 25 August 1998 on the options for the future of services for people with physical disability currently provided at Mardon House. Section 2.0 of the paper deals with <u>"PROMISE TO THE RESIDENTS"</u> as follows-

> "2.1 When Mardon House opened in 1993 several of the residents expressed their desire to stay at Newcourt Hospital. Verbal assurances were given by senior officers of the former Exeter Health Authority and the Exeter Community Unit that Mardon House would be expected to be the residents "home for life."
>
> 2.2 In June 1994, the General Manager of the former Exeter Health Authority wrote to the residents for whom Exeter and North Devon Health Authority were responsible [two of the current three residents] assuring them that he would ask the Exeter Community Trust to ensure that Mardon House would be their permanent home, for as long as they wished to remain there.
>
> 2.3 The Authority needs to give due recognition and weight to this promise in taking any decisions about the future configuration of services.
>
> 2.4 The Authority has previously recognised this commitment and accepted continuing responsibility for funding the

residents' care."

The Section headed "CONSIDERATIONS" identifies this as one of the issues to be discussed-

> "the Authority needs to consider carefully the "promise for life" given to residents, its implications and whether this outweighs any considerations for the acute service. Is an ongoing commitment to fund care ie, to maintain the residents in continuing NHS funded continuing care fair or appropriate?"

(g) The Consultation Paper and a further paper, "Responses from the Consultation" (DHA 98/127) were placed before the Health Authority at the meeting on 7 October 1998. There was included a "Response by the Residents". In the section "DECISION MAKING PROCESS" 3.1 states that:

> "The starting point is the promise to the residents that Mardon House would be a home for life".

The "CONCLUSIONS" section 5.0 states that :

> "The Health Authority has to decide, in the light of all available evidence, either to support the Exeter Community Trust in running a residential home which may not be viable, or to assist the residents to move whilst "in breach of the original promises" or to move alternative NHS services into Mardon House with a less than satisfactory outcome both financially and from the point of clinical compatibility."

Various options were then set out in section 6.0, including retaining the status quo at Mardon House (Option 1) and Option 11, which was eventually taken.

On this issue the ground of review relied on was that the Health Authority had acted unlawfully:

> "...in breaking the recent and unequivocal promise given by it that the Applicant and other patients could live there for as long as they chose".

The Judgment

54. It is also helpful to set out the views of the judge on this issue. The judge regarded as "the proper starting point" the question of what effect did the "promise for life" have in law. He held that it was a clear promise to Miss Coughlan and the other patients that Mardon House would be a permanent home for them; that a decision to break it, if unfair, would be equivalent to a breach of contract; that a public authority could reasonably resile from such a promise where the overriding public interest demanded it; and that the Health Authority had failed to discharge the burden of establishing that there were "compelling circumstances" amounting to an overreaching public interest. The Health Authority had concluded that, in its scale of priorities, reablement came higher than Miss Coughlan and her fellow patients. The "promise for life " was a relevant consideration . The judge concluded as follows :

> "Consideration of the promise had to start with a proper understanding of the promise. It was a promise to provide care at Mardon House but the respondent wrongly treated it as merely a promise to provide care. That meant that the Authority's attitude to the place where care was to be provided was flawed from the start."

Legitimate Expectation – The Court's Role

55. In considering the correctness of this part of the judge's decision it is necessary to begin by examining the court's role where what is in issue is a promise as to how it would behave in the future made by a public body when exercising a statutory function. In the past it would have been argued that the promise was to be ignored since it could not have any effect on how the public body exercised its judgment in what it thought was the public interest. Today such an argument would have no prospect of success, as Mr Goudie and Mr. Gordon accept.

56. What is still the subject of some controversy is the court's role when a member of the public, as a result of a promise or other conduct, has a legitimate expectation that he will be treated in one way and the public body wishes to treat him or her in a different way. Here the starting point has to be to ask what in the circumstances the member of the public could legitimately expect. In the words of Lord Scarman in *Re Findlay [1985] 1AC 318* at p338, "But what was their *legitimate* expectation?" Where there is a dispute as to this, the dispute has to be determined by the court, as happened in *Findlay*. This can involve a detailed examination of the precise terms of the promise or representation made, the circumstances in which the promise was made and the nature of the statutory or other discretion.

57. There are at least three possible outcomes. (a) The court may decide that the public authority is only required to bear in mind its previous policy or other representation, giving it the weight it thinks right, but no more, before deciding whether to change course. Here the court is confined to reviewing the decision on Wednesbury

grounds. This has been held to be the effect of changes of policy in cases involving the early release of prisoners (see *Re Findlay* [1985] AC 318; *R v Home Secretary ex parte Hargreaves* [1997] 1 WLR 906. (b) On the other hand the court may decide that the promise or practice induces a legitimate expectation of, for example, being consulted before a particular decision is taken. Here it is uncontentious that the court itself will require the opportunity for consultation to be given unless there is an overriding reason to resile from it (see *A-G for Hong Kong v Ng Yuen Shiu* [1983] 2 AC 629) in which case the court will itself judge the adequacy of the reason advanced for the change of policy, taking into account what fairness requires. (c) Where the court considers that a lawful promise or practice has induced a legitimate expectation of a benefit which is substantive, not simply procedural, authority now establishes that here too the court will in a proper case decide whether to frustrate the expectation is so unfair that to take a new and different course will amount to an abuse of power. Here, once the legitimacy of the expectation is established, the court will have the task of weighing the requirements of fairness against any overriding interest relied upon for the change of policy.

58. The court having decided which of the categories is appropriate, the court's role in the case of the second and third categories is different from that in the first. In the case of the first, the court is restricted to reviewing the decision on conventional grounds. The test will be rationality and whether the public body has given proper weight to the implications of not fulfilling the promise. In the case of the second category the

court's task is the conventional one of determining whether the decision was procedurally fair. In the case of the third, the court has when necessary to determine whether there is a sufficient overriding interest to justify a departure from what has been previously promised.

59. In many cases the difficult task will be to decide into which category the decision should be allotted. In what is still a developing field of law, attention will have to be given to what it is in the first category of case which limits the applicant's legitimate expectation (in Lord Scarman's words in *Re Findlay*) to an expectation that whatever policy is in force at the time will be applied to him. As to the second and third categories, the difficulty of segregating the procedural from the substantive is illustrated by the line of cases arising out of decisions of justices not to commit a defendant to the Crown Court for sentence, or assurances given to a defendant by the court: here to resile from such a decision or assurance may involve the breach of legitimate expectation (See *R v Reilly* [1985] 1 Cr. App.R (5) 273,276; *R v Southampton Magistrates Court* [1994] Cr. App.R (5) 778, 781-2).

No attempt is made in those cases, rightly in our view, to draw the distinction. Nevertheless, most cases of an enforceable expectation of a substantive benefit (the third category) are likely in the nature of things to be cases where the expectation is confined to one person or a few people, giving the promise or representation the character of a contract. We recognise that the courts' role in relation to the third category is still controversial; but, as we

hope to show, it is now clarified by authority.

60. We consider that Mr Goudie and Mr Gordon are correct, as was the judge, in regarding the facts of this case as coming into the third category. (Even if this were not correct because of the nature of the promise, and even if the case fell within the second category, the Health Authority in exercising its discretion and in due course the court would have to take into account that only an overriding public interest would justify resiling from the promise.) Our reasons are as follows. First, the importance of what was promised to Miss Coughlan, (as we will explain later, this is a matter underlined by the Human Rights Act 1998); second, the fact that promise was limited to a few individuals, and the fact that the consequences to the Health Authority of requiring it to honour its promise are likely to be financial only.

The Authorities

61. Whether to frustrate a legitimate expectation can amount to an abuse of power is the question which was posed by the House of Lords in *R. v. IRC, ex parte Preston* [1985] AC 835 and addressed more recently by this court in *R v. IRC, ex parte Unilever Plc* [1996] STC 681. In each case it was in relation to a decision by a public authority (the Crown) to resile from a representation about how it would treat a member of the public (the taxpayer). It cannot be suggested that special principles of public law apply to the Inland Revenue or to taxpayers. Yet this is an area of law which has been a site of recent controversy, because while Preston has been followed in tax cases, using the vocabulary of abuse of power, in other fields

of public law analogous challenges, couched in the language of legitimate expectation, have not all been approached in the same way.

62. There has never been any question that the propriety of a breach by a public authority of a legitimate expectation of the second category, of a procedural benefit – typically a promise of being heard or consulted – is a matter for full review by the court. The court has, in other words, to examine the relevant circumstances and to decide for itself whether what happened was fair. This is of a piece with the historic jurisdiction of the courts over issues of procedural justice. But in relation to a legitimate expectation of a substantive benefit (such as a promise of a home for life) doubt has been cast upon whether the same standard of review applies. Instead it is suggested that the proper standard is the so-called Wednesbury standard which is applied to the generality of executive decisions. This touches the intrinsic quality of the decision, as opposed to the means by which it has been reached, only where the decision is irrational or (per Lord Diplock in *CCSU v. Minister for the Civil Service* [1985] AC 374, 410) immoral.

63. This is not a live issue in the common law of the European Union, where a uniform standard of full review for fairness is well established (see J. Schwarze, *European Administrative Law*, English language ed., 1992, pp. 1134-5 and the ECJ cases reviewed in *R. v. MAFF, ex parte Hamble (Offshore) Fisheries Ltd* [1996] 2 All ER 714 at 726-8). It is however, something on which the Human Rights Act 1998, when it comes into force, may have a bearing.

64. It is axiomatic that a public authority which derives its existence and its powers from statute cannot validly act outside those powers. This is the familiar ultra vires doctrine adopted by public law from company law (*Colman v. Eastern Counties Railway Co. Ltd.* (1846) 16 L.J.Ch. 73). Since such powers will ordinarily include anything fairly incidental to the express remit, a statutory body may lawfully adopt and follow policies (*British Oxygen v. Ministry of Technology* [1971] AC 610) and enter into formal undertakings. But since it cannot abdicate its general remit, not only must it remain free to change policy; its undertakings are correspondingly open to modification or abandonment. The recurrent question is when and where and how the courts are to intervene to protect the public from unwarranted harm in this process. The problem can readily be seen to go wider than the exercise of statutory powers. It may equally arise in relation to the exercise of the prerogative power, which at least since the decision in *R. v. Criminal Injuries Compensation Board, ex parte Lain* [1967] 2 QB 864 has been subject to judicial review, and in relation to private monopoly powers (*R. v. Panel on Take-overs and Mergers, ex parte Datafin* [1987] QB 875).

65. The court's task in all these cases is not to impede executive activity but to reconcile its continuing need to initiate or respond to change with the legitimate interests or expectations of citizens or strangers who have relied, and have been justified in relying, on a current policy or an extant promise. The critical question is by what standard the court is to resolve such conflicts. It is when one examines the implications for a case like the present of the proposition that so long as the decision-making process has been

lawful, the court's only ground of intervention is the intrinsic rationality of the decision, that the problem becomes apparent. Rationality, as it has developed in modern public law, has two faces: one is the barely known decision which simply defies comprehension; the other is a decision which can be seen to have proceeded by flawed logic (though this can often be equally well allocated to the intrusion of an irrelevant factor). The present decision may well pass a rationality test; the Health Authority knew of the promise and its seriousness; it was aware of its new policies and the reasons for them; it knew that one had to yield, and it made a choice which, whatever else can be said of it, may not easily be challenged as irrational. As Lord Diplock said in *Secretary of State for Education and Science v. Tameside MBC*:

> "The very concept of administrative discretion involves a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred."

But to limit the court's power of supervision to this is to exclude from consideration another aspect of the decision which is equally the concern of the law.

66. In the ordinary case there is no space for intervention on grounds of abuse of power once a rational decision directed to a proper purpose has been reached by lawful process. The present class of case is visibly different. It involves not one but two lawful exercises of power (the promise and the policy change) by the same public authority, with consequences for individuals trapped between

the two. The policy decision may well, and often does, make as many exceptions as are proper and feasible to protect individual expectations. The departmental decision in *Hamble Fisheries* is a good example. If it does not, as in the *Unilever* case, the court is there to ensure that the power to make and alter policy has not been abused by unfairly frustrating legitimate individual expectations. In such a situation a bare rationality test would constitute the public authority judge in its own cause, for a decision to prioritise a policy change over legitimate expectations will almost always be rational from where the authority stands, even if objectively it is arbitrary or unfair. It is in response to this dilemma that two distinct but related approaches have developed in the modern cases.

67. One approach is to ask not whether the decision is ultra vires in the restricted *Wednesbury* sense but whether, for example through unfairness or arbitrariness, it amounts to an abuse of power. The leading case on the existence of this principle is *Preston*. It concerned an allegation, not in the event made out, that the Inland Revenue Commissioners had gone back impermissibly on their promise not to re-investigate certain aspects of an individual taxpayer's affairs. Lord Scarman, expressing his agreement with the single fully reasoned speech (that of Lord Templeman) advanced a number of important general propositions. First, he said:

> "...I must make clear my view that the principle of fairness has an important place in the law of judicial review, and that in an appropriate case it is a ground on which the court can intervene to quash a decision made by a public officer or authority in purported exercise of a power

conferred by law."

Second, Lord Scarman reiterated, citing the decision of the House in the *National Federation of Self-Employed* case [1982] AC 617, that a claim for judicial review may arise where the Commissioners have failed to discharge their statutory duty to an individual or "have abused their powers or acted outside them". Third, that "unfairness in the purported exercise of a power can be such that it is an abuse or excess of the power".

68. It is evident from these passages and from Lord Scarman's further explanation of them that, in his view at least, it is unimportant whether the unfairness is analytically within or beyond the power conferred by law: on either view public law today reaches it. The same approach was taken by Lord Templeman:

> "Judicial review is available where a decision-making authority exceeds its powers, commits an error of law, commits a breach of natural justice, reaches a decision which no reasonable tribunal could have reached or abuses its powers."

69. Abuses of power may take many forms. One, not considered in the *Wednesbury* case (even though it was arguably what the case was about), was the use of a power for a collateral purpose. Another, as cases like *Preston* now make clear, is reneging without adequate justification, by an otherwise lawful decision, on a lawful promise or practice adopted towards a limited number of individuals. There is no suggestion in *Preston* or elsewhere that the final arbiter of justification, rationality apart, is the decision-maker rather than

the court. Lord Templeman at 864-6 reviewed the law in extenso, including the classic decisions in *Laker Airways v Department of Trade* [1977] QB 643; *Padfield v Minister of Agric*ulture [1968] AC 997; *Congreve v Home Office* [1976] WB 629 and *HTV v Price Commission* [1976] ICR 170 ("It is a commonplace of modern law that such bodies must act fairly … and that the courts have power to redress unfairness": Scarman LJ at 189.)

He reached this conclusion :

> "In principle I see no reason why the taxpayer should not be entitled to judicial review of a decision taken by the commissioners if that decision is unfair to the taxpayer because the conduct of the commissioners is equivalent to a breach of contract or a breach of representation. Such a decision falls within the ambit of an abuse of power for which in the present case judicial review is the sole remedy and an appropriate remedy. There may be cases in which conduct which savours of breach of contract or breach of representation does not constitute an abuse of power; there may be circumstances in which the court in its discretion might not grant relief by judicial review notwithstanding conduct which savours of breach of contract or breach of representation. In the present case, however, I consider that the taxpayer is entitled to relief by way of judicial review for "unfairness" amounting to abuse of power if the commissioners have been guilty of conduct equivalent to a breach of contract or breach of representation on their part."

The entire passage, too long to set out here, merits close attention. It may be observed that Lord Templeman's final formulation, taken by itself, would allow no room for a test of overriding public interest. This, it is clear, is because of the facts then before the House. In a case such as the present the question posed in the **HTV** case remains live.

70. This approach, in our view, embraces all the principles of public law which we have been considering. It recognises the primacy of the public authority both in administration and in policy development but it insists, where these functions come into tension, upon the adjudicative role of the court to ensure fairness to the individual. It does not overlook the passage in the speech of Lord Browne-Wilkinson in *R. v. Hull University Visitor ex parte Page* [1993] AC 682, 701, that the basis of the "fundamental principle … that the courts will intervene to ensure that the powers of public decision-making bodies are exercised lawfully" is the *Wednesbury* limit on the exercise of powers; but it follows the authority not only of *Preston* but of Lord Scarman's speech in *Nottinghamshire County Council v. Secretary of State for the Environment* [1986] AC 240, 249, in treating a power which is abused as a power which has not been lawfully exercised.

71. Fairness in such a situation, if it is to mean anything, must for the reasons we have considered include fairness of outcome. This in turn is why the doctrine of legitimate expectation has emerged as a distinct application of the concept of abuse of power in relation to substantive as well as procedural benefits, representing a second approach to the same problem. If this is the position in the case of the third category, why is it not also the position in relation to the first category? May it be (though this was not considered in *Findlay* or *Hargreaves*) that, when a promise is made to a category of individuals who have the same interest it is more likely to be

considered to have binding effect than a promise which is made generally or to a diverse class, when the interests of those to whom the promise is made may differ or, indeed, may be in conflict? Legitimate expectation may play different parts in different aspects of public law. The limits to its role have yet to be finally determined by the courts. Its application is still being developed on a case by case basis. Even where it reflects procedural expectations, for example concerning consultation, it may be affected by an overriding public interest. It may operate as an aspect of good administration, qualifying the intrinsic rationality of policy choices. And without injury to the *Wednesbury* doctrine it may furnish a proper basis for the application of the now established concept of abuse of power.

72. A full century ago in the seminal case of *Kruse v. Johnson* [1898] 2 QB 91 Lord Russell of Killowen CJ set the limits of the courts' benevolence towards local government bylaws at those which were "manifestly unjust, partial, made in bad faith or so gratuitous and oppressive that no reasonable person could think them justified". While it is the latter two classes which reappear in the decision of this court in the *Wednesbury* case, the first two are equally part of the law. Thus in *R. v. IRC ex parte MFK Underwriting Agents Ltd*. [1990] 1 WLR 1545 a Divisional Court (Bingham LJ and Judge J.) rejected on the facts a claim for the enforcement of a legitimate expectation in the face of a change of practice by the Inland Revenue. But having set out the need for certainty of representation, Bingham LJ went on (at 1569):

"In so stating these requirements I do not, I hope, diminish or emasculate the valuable developing doctrine of legitimate expectation. If a public authority so conducts itself as to create or legitimate expectation that a certain course will be followed it would often be unfair if the authority were permitted to follow a different course to the detriment of one who entertained the expectation, particularly if he acted on it. If in private law a body would be in breach of contract in so acting or estopped from so acting, a public authority should generally be in no better position. The doctrine of legitimate expectation is rooted in fairness."

73. This approach, which makes no formal distinction between procedural and substantive unfairness, was expanded by reference to the extant body of authority by Simon Brown LJ in ***R.*** *v. Devon County Council ex parte Baker* [1995] 1 All ER 73, 89. He identified two categories of substantive legitimate expectation recognised by modern authority:

"(1) Sometimes the phrase is used to denote a substantive right: an entitlement that the claimant asserts cannot be denied him. It was used in this sense and the assertion upheld in cases such as *R. v. Secretary of State for the Home Dept, ex p Khan* [1985] 1 All ER 40, [1984] 1 WLR 1337 and *R v Secretary of State for the Home dept, ex p Ruddock* [1987] 2 All ER 518, [1987] 1 WLR 1482. It was used in the same sense but unsuccessfully in, for instance, ***R v. Board of Inland Revenue, ex p MFK Underwriting Agencies Ltd*** [1990] 1 All ER 91, [1990] 1 WLR 1545 and *R v. Jockey Club, ex p RAM Rececourses Ltd* [1993] 2 All ER 225. These various authorities show that the claimant's right will only be found established when there is a clear and unambiguous representation upon which it was reasonable for him to rely. Then the administrator or other public body will be held bound in fairness by the representation made unless only its promise or undertaking as to how its power would be exercised is inconsistent with the statutory duties imposed upon it. The doctrine employed in this sense is akin to an Estoppel. In so far as the public body's representation is communicated by way of a stated policy, this type of legitimate expectation falls into two distinct sub-categories: cases in which the authority are held entitled to change their policy even so as to affect the claimant, and those in which they are not. An illustration of the former is ***R v. Torbay BC, ex p Cleasby*** [1991] COD 142; of the latter, *Ex p Khan.*

(2) Perhaps more conventionally the concept of legitimate expectation is used to refer to the claimant's interest in some ultimate benefit which he hopes to retain (or, some would argue, attain). Here, therefore, it is the interest itself rather than the benefit that is the substance of the expectation. In other words the expectation arises not because the claimant asserts any specific right to a benefit but rather because his interest in it is one that the law holds protected by the requirements of procedural fairness; the law recognises that the interest cannot properly be withdrawn (or denied) without the claimant being given an opportunity to comment and without the authority communicating rational grounds for any adverse decision. Of the various authorities drawn to our attention, *Schmidt v Secretary of State for Home Affairs* [1969] 1 All ER 904, [1969] 2 Ch 149, *O'Reilly v. Mackman* [1982] 3 All ER 1124, [1983] 2 AC 237 and the recent decision of Roch J. in *R. v. Rochdale Metropolitan BC, ex p Schemet* [1993] 1 FCR 306 are clear examples of this head of legitimate expectation."

Simon Brown LJ has not in that passage referred expressly to the situation where the individual can claim no higher expectation than to have his individual circumstances considered by the decision maker in the light of the policy then in force. This is not surprising because this entitlement, which can also be said to be rooted in fairness, adds little to the standard requirements of any exercise of discretion: namely that the decision will take into account all relevant matters which here will include the promise or other conduct giving rise to the expectation and that if the decision maker does so the courts will not interfere except on the basis that the decision is wholly unreasonable. It is the classic *Wednesbury* situation, not because the expectation is substantive but because it lacks legitimacy.

74. Nowhere in this body of authority, nor in *Preston*, nor in *Findlay*, is there any suggestion that judicial review of a decision which

frustrates a substantive legitimate expectation is confined to the rationality of the decision. But in *R. v. Home Secretary ex parte Hargreaves* [1997] 1 WLR 906 Hirst LJ. (with whom Peter Gibson LJ. agreed) was persuaded to reject the notion of scrutiny for fairness as heretical, and Pill LJ. to reject it as "wrong in principle".

75. *Hargreaves* concerned prisoners whose expectations of home leave and early release were not to be fulfilled by reason of a change of policy. Following *Re. Findlay* [1985] AC 318 this court held that such prisoners' only legitimate expectation was that their applications would be considered individually in the light of whatever policy was in force at the time: in other words the case came into the first category. This conclusion was dispositive of the case. What Hirst LJ went on to say under the head of "The proper approach for the court to the Secretary of State's decision" was therefore obiter. However Hirst LJ. accepted in terms the submission of leading counsel for the Home Secretary that, beyond review on *Wednesbury* grounds, the law recognised no enforceable legitimate expectation of a substantive benefit. In relation to the decision in *Hamble Fisheries* (above), he said:

> "Mr. Beloff characterised Sedley J's approach as heresy, and in my judgment he was right to do so. On matters of substance (as contrasted with procedure) *Wednesbury* provides the correct test".

A number of learned commentators have questioned this conclusion (see e.g. P.P. Craig, "Substantive legitimate expectations and the principles of judicial review" in *English Public Law and the Common*

Law of Europe, ed. M. Andenas 1998; T.R.S. Allan, "Procedure and Substance in judicial review", [1997] C.L.J. 246; S. Foster, "Legitimate expectations and prisoners' rights" (1997) 60 M.L.R. 727).

76. *Hargreaves* can, in any event, be distinguished from the present case. Mr. Gordon has sought to distinguish it on the ground that the present case involves an abuse of power. On one view all cases where proper effect is not given to a legitimate expectation involve an abuse of power. Abuse of power can be said to be but another name for acting contrary to law. But the real distinction between *Hargreaves* and this case is that in this case it is contended that fairness in the statutory context required more of the decision maker than in *Hargreaves* where the sole legitimate expectation possessed by the prisoners had been met. It required the Health Authority, as a matter of fairness, not to resile from their promise unless there was an overriding justification for doing so. Another way of expressing the same thing is to talk of the unwarranted frustration of a legitimate expectation and thus an abuse of power or a failure of substantive fairness. Again the labels are not important except that they all distinguish the issue here from that in *Hargreaves*. They identify a different task for the court from that where what is in issue is a conventional application of policy or exercise of discretion. Here the decision can only be justified if there is an overriding public interest. Whether there is an overriding public interest is a question for the court.

77. The cases decided in the European Court of Justice cited in *Hamble*

Fisheries all concern policies or practices conferring substantive benefits from which member states were not allowed to resile when the policy or practice was altered. In this country *R. v. Home Secretary ex parte Ruddock* [1987] 1 WLR 1482 and *R. v. Home Secretary ex parte Khan* [1984] 1 WLR 1337 were cited as instances of substantive legitimate expectations to which the courts were if appropriate prepared to give effect. Reliance was also placed, as we would place it, on Lord Diplock's carefully worded summary in *CCSU v. Minister for Civil Service* [1985] 374, 408 of the contemporary heads of judicial review. They included "benefits or advantages which the applicant can legitimately expect to be permitted to continue to enjoy". Not only did Lord Diplock not limit these to procedural benefits or advantages; he referred expressly to *Re Findlay* (a decision in which he had participated) as an example of a case concerning a claim to a legitimate expectation – plainly a substantive one, albeit that the claim failed. One can readily see why: Lord Scarman's speech in *Findlay* is predicated on the assumption that the courts will protect a substantive legitimate expectation if one is established; and Taylor J so interpreted it in ***Ruddock***. None of these cases suggests that the standard of review is always limited to bare rationality, though none developed it as the revenue cases have done.

78. It is from the revenue cases that, in relation to the third category, the proper test emerges. Thus in *R. v. IRC, ex parte Unilever Plc* [1996] STC 681 this court concluded that for the Crown to enforce a time limit which for years it had not insisted upon would be so unfair as to amount to an abuse of power. As in other tax cases, there was no question of the court's deferring to the Inland Revenue's

view of what was fair. The court also concluded that the Inland Revenue's conduct passed the "notoriously high" threshold of irrationality; but the finding of abuse through unfairness was not dependent on this.

79. It is worth observing that this was how the leading textbook writers by the mid-1990s saw the law developing. In the (still current) seventh edition of Wade and Forsyth's Administrative Law (1994) the authors reviewed a series of modern cases and commented (p.419):

> "These are revealing decisions. They show that the courts now expect government departments to honour their statements of policy or intention or else to treat the citizen with the fullest personal consideration. Unfairness in the form of unreasonableness is clearly allied to unfairness by violation of natural justice. It was in the latter context that the doctrine of legitimate expectation was invented but it is now proving to be a source of substantive as well as of procedural rights. Lord Scarman [in Preston] has stated emphatically that unfairness in the purported exercise of power can amount to an abuse or excess of power, and this may become an important general doctrine."

To similar effect is De Smith, Woolf and Jowell, **Judicial Review of Administrative Action**, fifth edition (1995) para 13-035. Craig, **Administrative Law**, third edition (1994), pp 672-5, links the issue, as Schwarze (op.cit.) does, to the fundamental principle of legal certainty.

80. In *Unilever* Simon Brown LJ. proposed a valuable reconciliation of the existing strands of public law:

> "Unfairness amounting to an abuse of power as ..... in *Preston* and the other revenue cases is unlawful not because it involves conduct such as would offend some equivalent private law principle, not principally indeed because it breaches a legitimate expectation that some different substantive decision will be taken, but rather because it is illogical or immoral or both for a public authority to act with conspicuous unfairness and in that sense abuse its power. As Lord Donaldson MR said in *R. v. ITC ex p TSW:*
>
> > "The test in public law is fairness, not an adaptation of the law of contract or estoppel."
>
> In short, I regard the *MFK* category of legitimate expectation as essentially but a head of *Wednesbury* unreasonableness, not necessarily exhaustive of the grounds upon which a successful substantive unfairness challenge may be based."

81. For our part, in relation to this category of legitimate expectation, we do not consider it necessary to explain the modern doctrine in *Wednesbury* terms, helpful though this is in terms of received jurisprudence (cf. Dunn LJ. in *R.v. Home Secretary, ex p Khan* [1984] 1 WLR 1337, 1352: "an unfair action can seldom be a reasonable one"). We would prefer to regard the *Wednesbury* categories themselves as the major instances (not necessarily the sole ones: see *CCSU v. Minister for the Civil Service* [1985] AC 374, 410, per Lord Diplock) of how public power may be misused. Once it is recognised that conduct which is an abuse of power is contrary to law its existence must be for the court to determine.

82. The fact that the court will only give effect to a legitimate expectation within the statutory context in which it has arisen should avoid jeopardising the important principle that the executive's policy-making powers should not be trammelled by the courts (see *Hughes v. DHSS* [1985] AC 766, 788, per Lord Diplock). Policy being

(within the law) for the public authority alone, both it and the reasons for adopting or changing it will be accepted by the courts as part of the factual data – in other words, as not ordinarily open to judicial review. The court's task – and this is not always understood – is then limited to asking whether the application of the policy to an individual who has been led to expect something different is a just exercise of power. In many cases the authority will already have considered this and made appropriate exceptions (as was envisaged in *British Oxygen v. Board of Trade* [1971] AC 610 and as had happened in *Hamble Fisheries*), or resolved to pay compensation where money alone will suffice. But where no such accommodation is made, it is for the court to say whether the consequent frustration of the individual's expectation is so unfair as to be a misuse of the authority's power.

Fairness and the Decision to Close

83. How are fairness and the overriding public interest in this particular context to be judged? The question arises concretely in the present case. Mr. Goudie argued, with detailed references, that all the indicators, apart from the promise itself, pointed to an overriding public interest, so that the court ought to endorse the Health Authority's decision. Mr. Gordon contended, likewise with detailed references, that the data before the Health Authority were far from uniform. But this is not what matters. What matters is that, having taken it all into account, the Health Authority voted for closure in spite of the promise. The propriety of such an exercise of power should be tested by asking whether the need which the Health Authority judged to exist to move Miss Coughlan to a local authority

facility was such as to outweigh its promise that Mardon House would be her home for life.

84. That a promise was made is confirmed by the evidence of the Health Authority that:

> "...the Applicant and her fellow residents were justified in treating certain statements made by the Authority's predecessor, coupled with the way in which the Authority's predecessor conducted itself at the time of the residents' move from Newcourt Hospital, as amounting to an assurance that, having moved to Mardon House, Mardon House would be a permanent home for them".

And the letter of 7 June 1994 sent to the residents by Mr Peter Jackson, the then General Manager of the predecessor of the Health Authority, following the withdrawal of John Grooms stated:

> "During the course of a meeting yesterday with Ross Bentley's father, it was suggested that each of the former Newcourt residents now living at Mardon House would appreciate a further letter of reassurance from me.
>
> I am writing to confirm therefore, that the Health Authority has made it clear to the Community Trust that it expects the Trust to continue to provide good quality care for you at Mardon House for as long as you choose to live there. I hope that this will dispel any anxieties you may have arising from the forthcoming change in management arrangements, about which I wrote to you recently."

As has been pointed out by the Health Authority, the letter did not actually use the expression "home for life."

85. The Health Authority had, according to its evidence, formed the view that it should give considerable weight to the assurances given to Miss Coughlan; that those assurances had given rise to expectations

which should not, in the ordinary course of things, be disappointed; but that it should not treat those assurances as giving rise to an absolute and unqualified entitlement on the part of the Miss Coughlan and her co-residents since that would be unreasonable and unrealistic; and that

> "if there were compelling reasons which indicated overwhelmingly that closure was the reasonable and-other things being equal-the right course to take, provided that steps could be taken to meet the Applicant's (and her fellow residents') expectations to the greatest degree possible following closure, it was open to the Authority, weighing up all these matters with care and sensitivity, to decide in favour of the option of closure".

Although the first consultation paper made no reference to the "home for life" promise, it was referred to in the second consultation paper as set out above.

86. It is denied in the Health Authority's evidence that there was any misrepresentation at the meeting of the Board on 7 October 1998 of the terms of the "home for life" promise. It is asserted that the Board had taken the promise into account; that members of the Board had previously seen a copy of Mr Jackson's letter of 7 June 1994, which, they were reminded, had not used the word "home"; and that every Board member was well aware that, in terms of its fresh decision-making, the starting point was that the Newcourt patients had moved to Mardon on the strength of an assurance that Mardon would be their home as long as they chose to live there. This was an express promise or representation made on a number of occasions in precise terms. It was made to a small group of severely disabled individuals who had been housed and cared for over a substantial period in the Health Authority's

predecessor's premises at Newcourt. It specifically related to identified premises which it was represented would be their home for as long as they chose. It was in unqualified terms. It was repeated and confirmed to reassure the residents. It was made by the Health Authority's predecessor for its own purposes, namely to encourage Miss Coughlan and her fellow residents to move out of Newcourt and into Mardon House, a specially built substitute home in which they would continue to receive nursing care. The promise was relied on by Miss Coughlan. Strong reasons are required to justify resiling from a promise given in those circumstances. This is not a case where the Health Authority would, in keeping the promise, be acting inconsistently with its statutory or other pubic law duties. A decision not to honour it would be equivalent to a breach of contract in private law.

87. The Health Authority treated the promise as the "starting point" from which the consultation process and the deliberations proceeded. It was a factor which should be given "considerable weight", but it could be outweighed by "compelling reasons which indicated overwhelmingly that closure was the reasonable and the right course to take". The Health Authority, though "mindful of the history behind the residents' move to Mardon House and their understandable expectation that it would be their permanent home", formed the view that there were "overriding reasons" why closure should nonetheless proceed. The Health Authority wanted to improve the provision of reablement services and considered that the mix of a long stay residential service and a reablement service at Mardon House was inappropriate and detrimental to the interests of both users of the service. The acute reablement service could not be supported there without an uneconomic investment

which would have produced a second class reablement service. It was argued that there was a compelling public interest which justified the Health Authority's prioritisation of the reablement service.

88. It is, however, clear from the Health Authority's evidence and submissions that it did not consider that it had a legal responsibility or commitment to provide a home, as distinct from care or funding of care, for the Applicant and her fellow residents. It considered that, following the withdrawal of the John Grooms Association, the provision of care services to the current residents had become "excessively expensive", having regard to the needs of the majority of disabled people in the Authority's area and the "insuperable problems " involved in the mix of long term residential care and reablement services at Mardon House. Mardon House had, contrary to earlier expectations, become:

> "a prohibitively expensive white elephant. The unit was not financially viable. Its continued operation was dependent upon the Authority supporting it at an excessively high cost. This did not represent value for money and left fewer resources for other services".

The Health Authority's attitude was that:

> "It was because of our appreciation of the residents' expectation that they would remain at Mardon House for the rest of their lives that the Board agreed that the Authority should accept a continuing commitment to finance the care of the residents of Mardon for whom it was responsible."

But the cheaper option favoured by the Health Authority misses the essential point of the promise which had been given. The fact is that the Health Authority has not offered to the Applicant an equivalent facility to replace what was promised to her. The Health Authority's

undertaking to fund her care for the remainder of her life is substantially different in nature and effect from the earlier promise that care for her would be provided at Mardon House. That place would be her home for as long as she chose to live there.

89. We have no hesitation in concluding that the decision to move Miss Coughlan against her will and in breach of the Health Authority's own promise was in the circumstances unfair. It was unfair because it frustrated her legitimate expectation of having a home for life in Mardon House. There was no overriding public interest which justified it. In drawing the balance of conflicting interests the court will not only accept the policy change without demur but will pay the closest attention to the assessment made by the public body itself. Here, however, as we have already indicated, the Health Authority failed to weigh the conflicting interests correctly. Furthermore, we do not know (for reasons we will explain later) the quality of the alternative accommodation and services which will be offered to Miss Coughlan. We cannot prejudge what would be the result if there was on offer accommodation which could be said to be reasonably equivalent to Mardon House and the Health Authority made a properly considered decision in favour of closure in the light of that offer. However, absent such an offer, here there was unfairness amounting to an abuse of power by the Health Authority.

D. HUMAN RIGHTS

90. One further element must be considered by the court. Mardon House is Miss Coughlan's home, and by Article 8(1) of the European Convention on Human Rights:

"Everyone has the right to respect for ….. his home …".

Once the Human Rights Act 1998 is in force it will be the obligation of the court as a public authority to give effect to this value, except to the extent that statutory provision makes this impossible. In the interim between the enactment and the coming into force of the Act it is right that the courts should pay particular attention to them. Article 8(2) provides:

> "There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of … the economic wellbeing of the country…"

91. Not one but two policy decisions were in play. The first, which we have considered separately, was to let Miss Coughlan's nursing care be provided by the local social services authority. The second was to evict Miss Coughlan from the home which had been promised to her for life in order to make better and more economic use of the premises. For reasons which we have given we do not consider that the kind of nursing care needed by Miss Coughlan could lawfully be provided by the local authority under section 21; but this need not have affected the second decision, since the Health Authority has in any case been prepared to pay for Miss. Coughlan's future nursing care wherever she is located. So the Health Authority's decision to move Miss Coughlan from Mardon House falls to be matched, irrespective of the larger healthcare provision issue, against its promise that this would not happen. To consider this properly the Health Authority needed to be in a position,

which it was not, to compare what Mardon House offered with what the alternative accommodation would offer Miss Coughlan.

92. The extent to which the public cost was going to be reduced by moving Miss Coughlan to local authority care was not dramatic. The local authority and the Health Authority between them would still be paying for the whole of her care – for we have no doubt that the undertaking to pay was rightly given. The saving would be in terms of economic and logistical efficiency in the use respectively of Mardon House and the local authority home. The price of this saving was to be not only the breach of a plain promise made to Miss Coughlan but, perhaps more importantly, the loss of her only home and of a purpose-built environment which had come to mean even more to her than a home does to most people. It was known to the Health Authority, as it is known to this court, that Miss Coughlan views the possible loss of her accommodation in Mardon House as life-threatening. While this may be putting the reality too high, we can readily see why it seems so to her; and we accept, on what is effectively uncontested evidence, that an enforced move of this kind will be emotionally devastating and seriously anti-therapeutic.

93. The judge was entitled to treat this as a case where the Health Authority's conduct was in breach of Article 8 and was not justified by the provisions of Article 8(2). Mardon House is, in the circumstances described, Miss Coughlan's home. It has been that since 1993. It was promised to be just that for the rest of her life. It is not suggested that it is not her home or that she has a home elsewhere or that she has done anything to justify depriving her of her home at Mardon House.

By closure of Mardon House the Health Authority will interfere with what will soon be her right to her home. For the reasons explained, the Health Authority would not be justified in law in doing so without providing accommodation which meets her needs.. As Sir Thomas Bingham MR said in R.v. Ministry of Defence , ex parte Smith [1996] QB 517 at 554E-

> "The more substantial the interference with human rights, the more the court will require by way of justification before it is satisfied that the decision is reasonable..."

or, we would add, in a case such as the present, fair.

E. ASSESSMENT AND PLACEMENT

94. Miss Coughlan's case on this issue was that there had been no multi-disciplinary assessment of her individual needs and no risk assessment of the effects of moving her from Mardon House. These assessments were required both by the Guidance in both HSG(95)8 (paras 17-20) and HSC 1998/048 and also by the general obligation to take all relevant factors into account in making the closure decision. There should be assessment or consideration by the Health Authority of the patients' health and social needs, including emotional and psychological needs; whether their needs are met at Mardon House; whether and to what extent their needs can be met elsewhere; and what would be the effect on each patient of a forced move from Mardon House. All this should be viewed against the background of the home for life promise.

95. Mr Gordon submitted that the only clinical assessments that were

made were directed to the different issue of whether she and the other patients met the Health Authority's eligibility criteria for continuing in-patient NHS care. Those criteria were unlawful for other reasons (see paras 33-50). There was a Social Services assessment of the Applicant on 8 January 1998 which concluded that Mardon House was ideally suited to her needs. In the absence of proper multi-disciplinary and risk assessments the Health Authority could not make a lawful decision to close Mardon House.

Further, the Health Authority and the Social Services Department were required to identify an alternative placement in which her needs could be as, or more, appropriately met before they were in a position to balance the individual interests of Miss Coughlan against the reasons for closing Mardon House and make a lawful decision to close. No alternative placements were ever identified. A place in, for example, a geriatric nursing home would not be a suitable alternative placement. Against the background of the home for life promise the identification of alternative suitable homes for Miss Coughlan and the other residents should have been of paramount importance, but it was impossible to consider suitable alternative placements without the information which would have been derived from a multi-disciplinary assessment. In the absence of such consideration the Health Authority was in no position to consult properly on the closure of Mardon House or to reach a lawful decision whether the home for life promise should be broken. Furthermore our decision as to what nursing services have to be provided by the Health Authority may result in greater demand for places at Mardon House.

96. The judge held the Health Authority had failed, prior to consultation and a decision on closure, to conduct any lawful and rational multi-disciplinary assessment of the needs of Miss Coughlan and the other patients or of the risk in relation to their health. The Health Authority had also failed to identify any alternative placement to Mardon House.

97. The Health Authority rely on the fact that it had identified 43 potential alternative new care settings prior to making the closure decision and had to the extent practicable investigated their suitability. To the extent that the Health Authority had failed to identify alternative placements, Mr Goudie submits that the judge ought to have held that that Miss Coughlan ought not to be permitted to rely on such failure since she was unwilling to co-operate with the Health Authority in any collaborative process aimed at identifying an alternative placement for her.

98. The Health Authority appeals on the ground that the judge was wrong to hold that it was required to carry out a multi-disciplinary assessment before consulting on and arriving at its closure decision. Under the 1995 Guidance what was required was such an assessment of the patient's needs before any decision was made about the discharge of the patient from NHS care or on how their continuing care needs might best be met. The closure decision was not, as Miss Coughlan contended, a collective decision to discharge the individual patients. Under the 1998 Guidance there were four distinct stages in the transfer process, the first of which was the closure decision and it was only after that

that the detailed transfer procedures operated. It was submitted that it would be impracticable and unrealistic in the vast majority of cases to carry out the assessments and to identify alternative placements prior to a closure decision, let alone prior to consultation on a proposed closure. Funds for the development of alternative facilities might only become available after the closure decision is taken; only then would the range of alternative available placements become clear; large closure programmes might take years to implement, in which case assessments and alternative facilities considered at the time of consultation or closure would change over time; and in practice the necessary co-operation of individual patients for effective assessments and alternative placements might be more difficult to obtain before rather than after a final decision has been taken on closure. Mr Goudie QC submitted that these issues are of great practical importance for health and social services authorities throughout the country.

99. The Health Authority contended that, in any event, the judge was wrong in holding that multi-disciplinary assessment of Miss Coughlan's needs had not been undertaken in accordance with the 1995 Guidance. Prior even to consultation on the closure there had been three clinical assessments of Miss Coughlan as well as a Social Services assessment.

100. To the extent that the required assessments had not been carried out in accordance with the Guidance, the Health Authority submitted that the judge had failed to address the question whether this was the result of Miss Coughlan's unwillingness to co-operate in the assessment with the Health Authority and the Social Services in the manner and

to the extent contemplated by the Guidance. This was disputed by Miss Coughlan, who contended that she co-operated with the assessments that were made and that she would have fully co-operated with any multi-disciplinary assessment had it been offered. It was also pointed out that this criticism has not been made of the other two residents.

101. The Health Authority also contended that the judge was wrong to hold that it was under an obligation to identify alternative placements for Miss Coughlan prior to the closure decision. Reliance was placed on the stages of the transfer procedure referred to above. It was submitted that the obligation to consider the options for where care might best be provided only arose at the third stage of the four stage process. The new care setting for each individual patient was only identified at the fourth stage of the transfer process.

102. In our judgment the Health Authority's handling of the assessments and the finding of suitable alternative placement was not established as a separate ground for challenging the decision to close Mardon House.

103. The concerns of the Health Authority about the practical implications of the judge's decision on these two points are well understood. In the absence of special circumstances, normally we would expect it to be unrealistic and unreasonable, on grounds of prematurity alone, for the Health Authority in all cases to make assessments of patients and to take decisions on the details of placement ahead of a decision on closure. Neither the statutory provisions nor the Guidance issued expressly require assessments to be made or decisions on

alternative placements to be taken before a decision to close can be lawfully made.

104. If and when a decision is taken to discharge Miss Coughlan and to place her in alternative accommodation, it may be open to her, on the grounds of the alleged shortcomings in the assessment procedures and in the consideration of alternative placements, to challenge the lawfulness of those decisions.

105. It is, however, unnecessary to say more generally about the timing of those decisions in view of the special circumstances of this case, namely the impact of both the promise of a home for life issue and the unlawfulness of the eligibility criteria on the assessment and placement issues.

106. If, as we hold, the promise of a home for life at Mardon House rendered the decision to close it at this stage an abuse of power, there is no need to address the question of whether a suitable alternative placement could be found offering conditions similar to those available at Mardon House.

107. Further, if, as we hold, the eligibility criteria were in themselves unlawful, it follows that those assessments of Miss Coughlan (and the other patients) which have been made on the basis of the criteria cannot fairly be treated as assessments for the purpose of making a decision, whether it be before closure, as she contended it should be, or after closure, as the Authority contended it should be, to discharge Miss Coughlan from Mardon House or to place her

elsewhere.

CONSULTATION

108. It is common ground that, whether or not consultation of interested parties and the public is a legal requirement, if it is embarked upon it must be carried out properly. To be proper, consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is taken (*R v Brent LBC ex parte Gunning* [1986] 84 LGR 168).

109. We have dealt separately with the impact of the home-for-life promise and with the assessments made of the applicant. These had a bearing, of course, on the content of the consultation process, but we are concerned here with the machinery of consultation. Central to Miss Coughlan's successful critique of it was the report of Dr Clark, which is summarised in paragraph 16 above. Hidden J held:

> "... the decision process ended with the Board considering the ethical decision-making paper which said that 'Professionals advise that leaving the residents isolated will do particular harm to two residents' (page 1760). Next to that sentence was the further information that "Professionals advice that no moving the acute service will do harm to other disabled people". Such a combination of arguments in favour of the decision to close Mardon House ... were unseen by the applicant and therefore not something upon which she could comment or which she could refute. They are far from the stuff of which true consultation is made.

> The same is true of the report of Dr Clark which was commissioned by the respondent and seen by the Board who drew comfort from it but not seen by the applicant and the other consultees who would have wished to refute it".

110. Hidden J was also impressed by the letter from the Health Authority commissioning Dr Clark's report. It anticipated a judicial review hearing following the "final decision" , suggesting an anticipation that the decision would be in favour of closure. He rejected the Health Authority's reason – lack of time – for the non-disclosure of Dr Clark's report; and he went on to deduce from it that the consultation process had been too hurried to meet the *Gunning* standard. He concluded that none of the four *Gunning* criteria were met.

111. Although the notice of appeal does not contest every one of the judge's findings about consultation, Mr Goudie attacks his conclusion in relation to three critical issues: Dr Clark's report, the length of the consultation period and the question of pre-judgment.

112. Miss Coughlan's solicitor received Dr Clark's report only two working days before the Board met on 7 October, a date well after the end of the consultation period, which had run only to 24 September 1998. Although Mr Goudie's skeleton argument focuses upon the substance of Miss Coughlan's opportunity to respond, he has taken in oral argument a point which seems to us to be sound and to bypass this debate: there was, he submits, no need to consult on Dr Clark's report, which was external advice on the opinions of local clinicians and was therefore itself a response to the consultation, albeit one solicited by the Health Authority. It has to be remembered that consultation is not litigation:

the consulting authority is not required to publicise every submission it receives or (absent some statutory obligation) to disclose all its advice. Its obligation is to let those who have a potential interest in the subject matter know in clear terms what the proposal is and exactly why it is under positive consideration, telling them enough (which may be a good deal) to enable them to make an intelligent response. The obligation, although it may be quite onerous, goes no further than this.

113. We accept, too, Mr Goudie's submission that the letter went from an officer of the Authority and not from any of its decision-makers. It did undoubtedly reveal an anticipated outcome, but the mind was not that of a decision-maker. It may well be, as Mr Gordon suggests, that Dr Clark would have had little difficulty in deducing which way Mrs Jefferies, who wrote the letter to him, would prefer his advice to go; but this is a long way from a case of pre-judgment in either the Authority or the adviser.

114. The formal consultation period lasted just over three weeks, from 2 to 24 September 1998. It had, however, been preceeded by an eight-week consultation period in the first months of the year, leading to the first closure decision which was quashed by consent. Among the effects of the shortage of time identified by Mr Gordon is the loss of a proper opportunity to comment on Dr Clark's report. Mr Goudie relies not only on the pre-history of consultation but on the fact that the consultation paper itself had an input from the applicant and her advisers: they had had it in draft some weeks before the beginning of the consultation period, and had made their view known. There seems to us to be strength in the Health Authority's position in this regard.

115. Mr Gordon, however, defends Hidden J's conclusion by reference to a number of other aspects of the consultation. It turned out when the consultation was over that the Health Authority had had before it a paper on ethical decision-making which Miss Coughlan and her advisers would have wanted an opportunity to comment on. The paper, it seems to us, is of the same character as Dr Clark's report. It was not a part of the proposal and not necessary to explain the proposal. The risk an authority takes by not disclosing such documents is not that the consultation process will be insufficient but that it may turn out to have taken into account incorrect or irrelevant matters which, had there been an opportunity to comment, could have been corrected. That, however, is not this case.

116. There is, it is true, a further list of flaws with which Mr Gordon submits the consultation process was riddled. Without reciting these, we consider that all are points which within the admittedly modest time available were fully capable of being pointed out to the Health Authority before it met to take its decision. To draw attention to them now is not to the point.

117. We conclude therefore that although there are criticisms to be levelled at the consultation process, and although it ran certain risks, it was not flawed by any significant non-compliance with the *Gunning* criteria.

CONCLUSIONS

It follows that, although we disagree with some of the reasoning of

the judge, Miss Coughlan was entitled to succeed and we dismiss the appeal.

Our conclusions may be summarised as follows :

(a) The NHS does not have sole responsibility for all nursing care. Nursing care for a chronically sick patient may in appropriate cases be provided by a local authority as a social service and the patient may be liable to meet the cost of that care according to the patient's means. The provisions of the Health Act and the Care Act do not, therefore, make it necessarily unlawful for the Health Authority to decide to transfer responsibility for the general nursing care of Miss Coughlan to the local authority's social services. Whether it was unlawful depends, generally, on whether the nursing services are merely (i) incidental or ancillary to the provision of the accommodation which a local authority is under a duty to provide and (ii) of a nature which it can be expected that an authority whose primary responsibility is to provide social services can be expected to provide. Miss Coughlan needed services of a wholly different category.

(b) The consultation process adopted by the Health Authority preceding the decision to close Mardon House is open to criticism, but was not unlawful.

(c) The decision to close Mardon House was, however, unlawful on the grounds that:

(i) The Health authority reached a decision which depended on

a misinterpretation of its statutory responsibilities under the Health Act.

(ii) The eligibility criteria adopted and applied by the Health Authority for long term NHS health care were unlawful and depended on an approach to the services which a local authority was under a duty to provide which was not lawful.

(iii) The decision was an unjustified breach of a clear promise given by the Health Authority's predecessor to Miss Coughlan that she should have a home for life at Mardon House. This constituted unfairness amounting to an abuse of power by the Health Authority. It would be a breach of Article 8 of the European Convention

(d) In these circumstances assessments of Miss Coughlan and other patients on the basis of the eligibility criteria were also similarly flawed.

Order: Appeal dismissed with costs.

Footnote 13

To

Further Supplementary Written Submissions

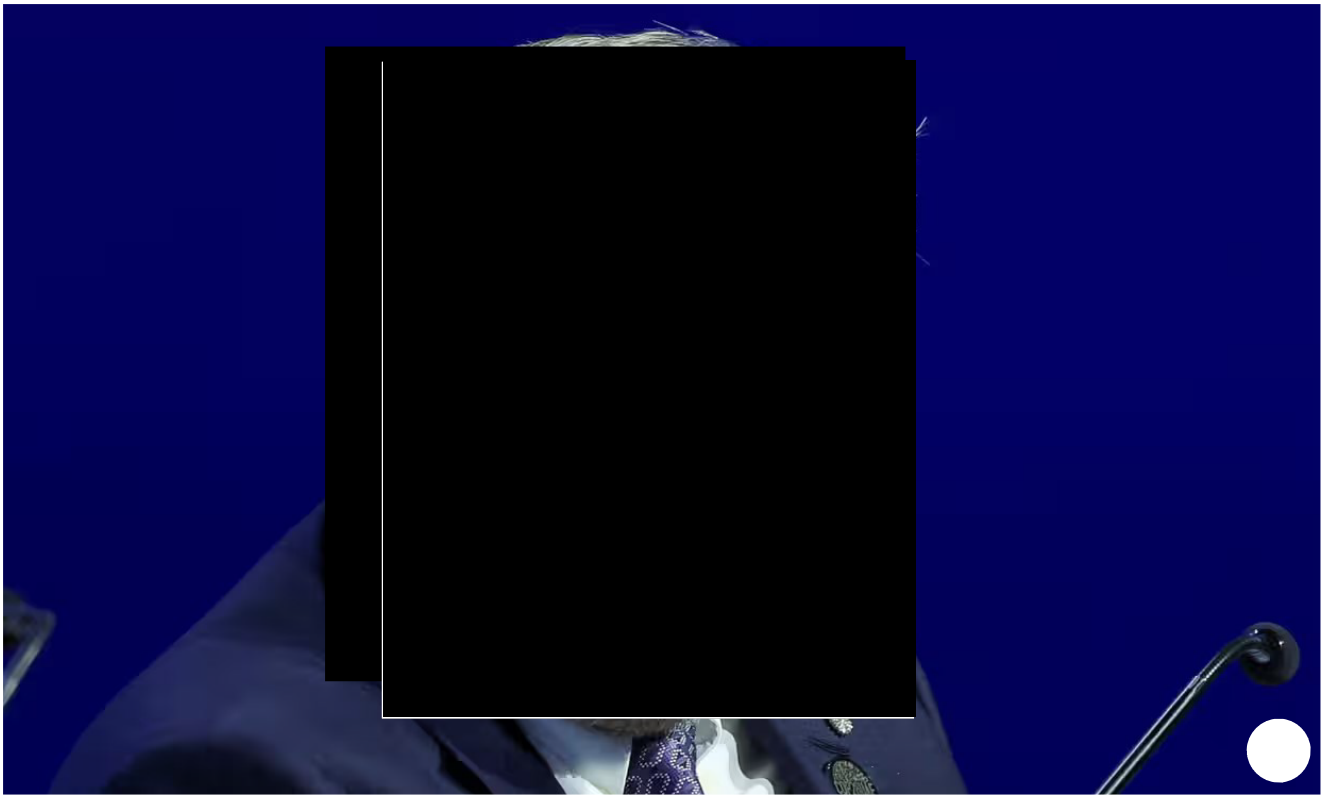
dated 30 September 2024

in Rebuttal to

Mona Offshore Wind Limited Document

Appendix to Response to WRs: Griffith Parry, Robert Parry and Kerry James

(Document Number S_D2_3.4)



BP

This article is more than **1 month old**

BP imposes hiring freeze and halts new offshore wind projects

New boss Murray Auchincloss reverses move away from fossil fuels, which had weighed on company's share price

Julia Kollewe *and* **Jillian Ambrose**

Thu 27 Jun 2024 16.35 BST

The head of BP has imposed a hiring freeze and halted new offshore wind projects, in an apparent attempt to placate investors who are unhappy with the oil company's green targets.

Murray Auchincloss, BP's former finance chief, took up the role of CEO in January after the shock departure of his predecessor, Bernard Looney, with a promise to focus on delivering value for shareholders.

Looney, who had committed BP to some of the industry's greenest climate goals, was ousted last September for failing to disclose relationships with colleagues.

The decision to slow BP's green ambitions has stoked concerns that Looney's plan to move the company away from fossil fuels, with a pledge to "become a net zero company by 2050 or sooner", may soon be derailed.

BP has come under pressure from shareholders over its green targets because some renewable projects have proved more costly than expected, and profits from oil and gas have soared after Russia's invasion of Ukraine more than two years ago.

In response, the company set out plans earlier this year to cut oil and gas production by just 25% between 2019 and 2030 - well short of its previous target of a 40% reduction over the same timeframe.

Greenpeace UK said BP's plans were "disappointing but sadly unsurprising".

Areeba Hamid, its joint executive director, said: "Murray Auchincloss had a chance to build on his predecessor's legacy and become part of the solution to the climate crisis, rather than its harbinger. Instead, BP is following other fossil fuel majors by abandoning renewables and doubling down on oil and gas in the hopes of a quick buck."

Auchincloss is reportedly looking at investing in and possibly acquiring new oil and gas assets to strengthen BP's existing operations, particularly in the Gulf of Mexico and the shale basins acquired from the Anglo-Australian miner BHP in Texas.

Earlier this month BP's rival Shell set out its own plans to scale back its green growth ambitions, reducing the number of staff working on low-carbon solutions by about 200 roles while shifting the focus towards high-profit oil projects and expanding its gas business.

Alice Harrison, the head of fossil fuels campaigning at Global Witness, said: "Since the energy crisis began earning [BP] record-breaking profits, it has shown its true colours, slashing its climate targets and renewables investments in favour of earning a quick buck from increased fossil fuel production."

Over the past four years, BP has built up a sizeable portfolio of offshore wind

projects capable of generating 9.5 gigawatts of energy in total in the UK, Germany and the US that are yet to be developed. It wants to focus on these assets, it is understood, rather than bidding for new renewable projects.

It has reassigned dozens of people tasked with finding new renewables opportunities to its offshore wind projects in Britain and Germany, Reuters reports, and could make some job cuts in renewables. The hiring freeze is expected to have a few exceptions for frontline roles.

BP shares were up more than 1% on Thursday, but have underperformed rivals in recent months, prompting speculation that the company could be a takeover target. Looney set out a "net zero" plan that originally aimed to cut the company's oil production by 2030, while others plan to increase their fossil fuel production.

BP is also investing in biofuels and low-carbon businesses that can generate returns in the short term. A week ago the company agreed a $1.4bn (£1.1bn) deal to take full ownership of its Brazilian sugar and ethanol joint venture, but it said it was scaling back plans for development of new biofuels projects.

BP said: "As Murray Auchincloss said in February, BP's destination - transforming from international oil company to integrated energy company - is unchanged, but we are going to deliver as a simpler, more focused and higher-value company.

"We set out six priorities that underpin this, including driving greater focus into the business, on to activities that create the most value, as well as delivering both the next wave of efficiencies and BP's growth projects."

Auchincloss has pledged a "more pragmatic" approach to BP's green targets since taking up the CEO role permanently in January. In May, BP said it would cut $2bn of costs by the end of 2026, after reporting lower than expected profits for the first quarter of the year. Auchincloss said he planned to make the savings by choosing fewer new projects to invest in over the coming years.

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