

HOUSING AND REGENERATION ACT 2008

EXPLANATORY NOTES

STRUCTURE OF THE ACT

Part 1 - the Homes and Communities Agency

Chapter 2 - Land and infrastructure

General

Sections 5 to 7 – Powers to provide housing or other land; Powers for regeneration, development or effective use of land; Powers in relation to infrastructure

22. *Section 5* enables the HCA to provide or facilitate the provision of housing or other land. *Subsection (3)* explains the meaning of “provide” in this context.
23. *Section 6* enables the HCA, directly or indirectly, to regenerate or develop land and bring land into more effective use.
24. *Section 7* enables the HCA to provide or facilitate the provision of infrastructure. Infrastructure is defined in section 2(3) and includes, for example, utilities such as water, electricity, gas, transport facilities, retail and other business facilities. *Subsection (3)* explains the meaning of “provide” in this context.

Powers to deal with land etc.

Section 8 - Powers to deal with land etc.

25. The HCA will be able to acquire, hold, improve, manage, reclaim, repair or dispose of housing or other land or property, or facilitate these activities. It will also be able to carry out building and other operations, including the demolition or conversion of buildings, or facilitate such operations. These powers are modelled on those of the Urban Regeneration Agency.

Section 9 - Acquisition of land

26. The HCA may need to acquire land in order to achieve its objects. The HCA will therefore be able to purchase land by agreement or may, where authorised to do so by the Secretary of State, acquire land and new rights over land compulsorily. This section is modelled on the powers of the Urban Regeneration Agency under section 162 of the Leasehold Reform, Housing and Urban Development Act 1993.
27. This section also introduces Schedule 2.

Section 10 - Restrictions on disposal of land

28. The HCA is not permitted to dispose of land for less than the best consideration it can reasonably obtain, unless the Secretary of State consents (section 48 provides that the Secretary of State may give consent, where required under Part 1, generally or

specifically). The restriction to dispose of land for less than best consideration does not apply where the HCA proposes to dispose of land by granting or assigning a short tenancy, that is to say of a term of seven years or less.

29. Unless the Secretary of State consents, the HCA is not permitted to dispose of land that it has acquired by way of compulsory purchase. Such a disposal would also be subject to the restrictions on disposal at less than best consideration. Aside from this, the HCA may dispose of land held by it in any way it considers appropriate.

Powers in relation to acquired land

Section 11 - Main powers in relation to acquired land

30. [Section 11](#) introduces Schedule 3.

Section 12 - Powers in relation to, and for, statutory undertakers

31. [Section 12](#) introduces Schedule 4.

Planning

Sections 13 and 14 - Power of Secretary of State to make designation orders; The HCA as the local planning authority; Contents of designation orders

32. [Section 13](#) gives the Secretary of State power to designate an area in England where she is of the opinion that the area is suitable for development and that it is appropriate for the HCA to be the local planning authority for the whole or part of the area for particular “permitted purposes” and in relation to particular kinds of development. It will only be “appropriate” if making the designation order is likely to improve the effectiveness with which the planning functions for the area or part of the area are discharged.
33. The designation of an area is to be made by order and before making such an order the Secretary of State is required to publish a draft of the order and her reasons for making it, and to consult a variety of bodies including every local authority or local planning authority who has an area, or part of an area, in the proposed designated area, persons representing the interests of local authorities and people who live or carry on business in the proposed designated area.
34. The range of planning functions that can be conferred on the HCA under a designation order provide the Secretary of State with the flexibility to confer only those functions considered to be necessary for that area. Section 14 sets out the functions which may be conferred on the HCA in relation to that designated area. In particular the designation order may provide that the HCA is to be the local planning authority in relation to development control under Part 3 of the Town and Country Planning Act 1990, it may be the local planning authority in relation to applications for listed building and conservation area consent and it may be the hazardous substances authority for the designated area. A designation order may also confer certain other planning functions (those which are not conferred on a local planning authority per se) on the HCA, either instead of or concurrently with, other persons who have them. An example of such a function is that of keeping enforcement notice registers, a function of the district council planning authority, district council or London borough council.
35. [Section 14](#) also enables the Secretary of State to confer responsibility on the HCA for preparing and maintaining all or part of the local development framework for the designated area. Conferring such powers may be useful in instances where a designated area covers two or more local authority areas.
36. Where the HCA is the local planning authority for a designated area, the designation order can ensure that it will be bound by the same legislation, consultation requirements and restrictions as any other local planning authority. The procedures set out in

the Town and Country Planning (General Development Procedure) Order 1995 are expected to apply where the HCA is an “interested planning authority”. In addition, it is expected that the HCA would also need to have regard to the same policies as any other local planning authority, whether these are development plan policies or policies of the Secretary of State.

37. Where the functions of a local planning authority or hazardous substances authority are conferred upon the HCA in relation to a designated area, it can have the power under the applied legislation to charge fees in relation to certain applications. The Secretary of State is given the power to prescribe in regulations fees payable for certain applications, including applications for planning permission and hazardous substances consent. The power to set fees in relation to applications for planning permission is found in section 303 of the Town and Country Planning Act 1990. Regulations made under this section are subject to the affirmative resolution procedure. In relation to applications for hazardous substances consent, the power of the Secretary of State to prescribe fees is found in section 26A of the Planning (Hazardous Substances) Act 1990. The Secretary of State also has the power to prescribe for the making of reasonable charges for the provision of copies of documents required by or under Part 2 of the Planning and Compulsory Purchase Act 2004. Whilst there is no express restriction on the regulation making powers to restrict fees to cover costs, the intention is that the power will be so exercised.

Section 15 – HCA as local planning authority: local involvement

38. Prior to exercising any function conferred upon it by a designation order, the HCA must prepare and publish a statement of local involvement. The statement will set out the HCA's policy on how it intends to involve affected local authorities, and other particular persons, in the exercise of functions conferred upon it by a designation order. This statement must be kept under review and revisions must be published. Where the HCA establishes a committee or sub-committee for the purposes of exercising those functions, every local authority within the designated area can suggest one or more candidates for membership to that committee or sub-committee

Section 16 - Regional planning

39. Where a regional planning body is to exercise certain of its functions (in particular the preparation of a draft revision, or review, of the regional spatial strategy and monitoring of the implementation of that strategy throughout the region, under section 4 of the Planning and Compulsory Purchase Act 2004) the regional planning body is required to seek the advice of any county council, metropolitan district council, district council for an area for which there is no county council and national park authority which is within the region. Section 16 adds the HCA to this list of bodies from whom the regional planning body must seek advice, where the HCA is the local planning authority for a designated area.

Other powers etc. in relation to land

Sections 17 and 18 - Power to enter and survey land; Section 17: supplementary

40. The HCA may authorise a person to enter any land in connection with a proposal by the HCA to acquire that land or other land, or a claim for compensation in respect of acquisition of land. This power may be exercised for the purpose of surveying the land or estimating its value. The section sets out entry and notice requirements, and enables compensation to be recovered if the land is damaged as a result of the authorised person entering the land or the survey being undertaken. An offence is committed if a person intentionally obstructs another person in the exercise of that other person's powers under section 17. A person who commits such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale, which is currently a fine not exceeding £500.

41. The power to survey land includes power to search and bore in order to establish the nature of the subsoil or the presence of any minerals, provided that notice of intention to do so is included in the notice of intended entry required under section 17. In addition, if the proposed works are to be carried out on land held by a statutory undertaker and the statutory undertaker objects because the works would seriously interfere with the carrying out of their functions, the consent of the appropriate Minister is needed before the works can be carried out.