

PLANNING ACT 2008

EXPLANATORY NOTES

COMMENTARY

Part 1: the Infrastructure Planning Commission

Section 1 and Schedule 1: The Infrastructure Planning Commission

37. [Section 1](#) provides that there will be a body called the Infrastructure Planning Commission (“the Commission”).
38. [Section 1](#) introduces Schedule 1, which describes the structure of the Commission, the process by which Commissioners are appointed, and their terms and conditions of employment.

Schedule 1

Schedule 1, Paragraph 1: Membership, chair and deputies

39. The Secretary of State will be responsible for appointing all Commissioners. As explained on page 92 of the White Paper, it is intended that appointments will be made according to the Code of Practice of the Commissioner for Public Appointments.
40. The Secretary of State must appoint one of the Commissioners to chair the Commission and at least two deputies to the chair.

Schedule 1, Paragraph 2: Terms of Appointment

41. The chair, deputies and other Commissioners will hold and vacate office in accordance with the terms of their appointment.

Schedule 1, Paragraphs 3 and 4: Tenure

42. This paragraph describes the tenure of Commissioners. Commissioners must be appointed for a fixed term of between five and eight years. A Commissioner can resign on giving at least three months’ written notice to the Secretary of State.
43. The Secretary of State can remove a Commissioner from office, but only if the Secretary of State is satisfied that the Commissioner:
- a) is unable or unwilling to perform his duties;
 - b) has been convicted of a criminal offence; or
 - c) is otherwise unfit to perform his duties.
44. Commissioners may be reappointed at the end of their term of office. The Act does not state a limit on the number of terms an individual may serve as a Commissioner, but the Code of Practice set out by the Committee on Standards in Public Life recommends ten years as an upper limit on the number of years a person should remain in one post.

Schedule 1, Paragraph 5: Remuneration of Commissioners

45. This paragraph states that the Commission must pay Commissioners such remuneration, allowances and pension as the Secretary of State determines. The Commission may also pay sums in respect of expenses to Commissioners.

Schedule 1, Paragraphs 6 to 10: Council

46. These paragraphs contain provisions relating to a body of Commissioners to be known as the Council. The Council's functions will include deciding applications referred under section 84 (following the report of a single Commissioner) and responding to consultations. Special provision is made regarding the appointment of Commissioners as ordinary members of the Council in the case of applications which relate to land in Wales.

Schedule 1, Paragraphs 11 to 13: Chief executive and staff

47. Paragraph 11 provides that the Secretary of State is responsible for appointing the chief executive, who must not be a Commissioner. The chief executive will be a member of the Commission's staff. The Secretary of State will determine the chief executive's terms and conditions.
48. By virtue of paragraph 12 the Commission may appoint such other staff as it thinks appropriate, but must obtain the approval of the Secretary of State as to the overall number of staff it proposes to appoint and their terms and conditions. A member of the Commission's staff cannot be a Commissioner.
49. Paragraph 13 provides that the terms and conditions of service of the chief executive and other members of staff may include payment of remuneration, allowances, sums in respect of expenses and pensions.

Schedule 1, Paragraph 14: Arrangements for assistance

50. This paragraph allows the Commission to make arrangements for others to assist it and to pay fees for their assistance.

Schedule 1, Paragraphs 15 and 16: Delegation

51. Paragraph 15 sets out that the Commission may delegate to any one or more Commissioners certain functions relating to the handling of applications for orders granting development consent. Any of the Commission's other functions may be delegated to-
- a) any one or more of the Commissioners;
 - b) the chief executive; or
 - c) any other member of its staff.
52. Paragraph 16 confers upon the chief executive the power to authorise (generally or specifically) any other member of the Commission's staff to do anything which the chief executive is authorised or required to do. An exception is made for the chief executive's role in relation to the certification of the Commission's annual accounts.

Schedule 1, Paragraphs 17 and 18: Reports

53. The Commission will be accountable to Ministers and Parliament for its overall performance as a public body. The Commission will have to submit a report to the Secretary of State at the end of each financial year relating to the performance of its functions during the year. This annual report on the activities of the Commission should give details of the exercise of its powers to authorise the compulsory acquisition of land and such matters as the Secretary of State directs the Commission to include. This report

must be published by the Commission and be laid before Parliament by the Secretary of State. The Secretary of State can also require the Commission to provide him with a report or information about any aspect of the Commission's work.

Schedule 1, Paragraph 19: Funding

54. The Secretary of State can make payments to the Commission out of money provided by Parliament as and when she considers it appropriate and subject to such conditions as the Secretary of State considers appropriate.

Schedule 1, Paragraph 20: Accounts

55. The Commission, in accordance with the normal accounting practice for public sector bodies, is required to keep accounts in such form as the Secretary of State directs. The Commission must prepare annual accounts for each financial year and send a copy to the Secretary of State and the Comptroller and Auditor General. The Secretary of State will lay a copy of the annual accounts and the Comptroller and Auditor General's report before Parliament each year.

Schedule 1, Paragraph 21: Status

56. The Commission and its staff are not to be regarded as servants or agents of the Crown.

Schedule 1, Paragraph 22: validity of proceedings

57. The validity of the Commission's work is not affected by a defect in the appointment of a Commissioner (including the chair or deputy chair), nor if there is a vacancy amongst any of the Commissioners.

Schedule 1, Paragraph 23: Application of seal and proof of instruments

58. The Commission's seal may be authenticated by the signature of a Commissioner or an authorised member of the Commission's staff.

Schedule 1, Paragraph 24: Parliamentary Commissioner

59. The Commission is to be added to the list of bodies which are subject to investigation by the Parliamentary Commissioner for Administration in the event of maladministration.

Schedule 1, Paragraphs 25 and 26: Disqualification/Public records

60. Paragraph 25 provides that Commissioners are disqualified from membership of the House of Commons and the Northern Ireland Assembly. The effect of paragraph 26 is to make the administrative records of the Commission public records for the purposes of the Public Records Act 1958.

Schedule 1, Paragraph 27:

61. By virtue of paragraph 27 the Commission is added to the list of bodies which are subject to the requirements of the Freedom of Information Act 2000 (and therefore also the requirements of the [Environmental Information Regulations 2004, SI 2004/3391](#)).

Section 2, Code of conduct

62. This section provides that the Commission must issue a code of conduct for its Commissioners, which should include a requirement for Commissioners to disclose all relevant interests, including financial information. The code of conduct and the register of interests must be published. The code of conduct should be reviewed regularly, and may from time to time be amended. A failure by a Commissioner to observe the Code will not in itself make a Commissioner liable to criminal or civil proceedings.

Section 3: Register of Commissioners' interests

63. The Commission must establish a procedure for the disclosure and registration of financial and other interests of Commissioners and arrange for a register of entries to be published.

Section 4: Fees

64. This section provides that the Secretary of State may make regulations to allow the Commission to charge fees for the performance of any of its functions. The section contains a non-exhaustive list of the matters that may be covered by any regulations, for example, the amount which may be charged, who is liable to pay a fee to be charged and when the fee is payable.

Part 2: National Policy Statements

Section 5: National Policy Statements

65. Subsections (1) & (2) of this section define what is meant by the term “national policy statement”.
66. Subsections (3) and (4) provide that a national policy statement can be designated only if the Secretary of State has first carried out a sustainability appraisal, has complied with the consultation requirements mentioned in section 7 and with the parliamentary requirements set out in section 9.
67. Subsection (5) gives examples of what types of policy may be contained in a national policy statement. These examples include setting out criteria to be applied in deciding whether a location is suitable for a particular description of development, and identifying a location as suitable (or potentially suitable) for development. Subsection (6) requires a national policy statement to set out criteria to be taken into account in the design of the relevant description of development.
68. Subsection (7) provides that a national policy statement must include reasons for the policy in the statement. Subsection (8) provides that the reasons must include an explanation of how the policy takes account of Government policy relating to the mitigation of, and adaptation to, climate change.
69. Subsection (9) requires the Secretary of State to arrange for a national policy statement to be published and to be laid before Parliament.

Section 6: Review

70. This section requires the Secretary of State to review all or part of a national policy statement when she considers it appropriate and specifies considerations which must be taken into account when deciding when to carry out a review. Provision is made for an appraisal of sustainability to be carried out when carrying out a review. Consultation on, and parliamentary scrutiny of, proposed amendments is required and if the statement is amended publication requirements apply.

Sections 7, 8 and 9: Consultation and publicity/Consultation on publicity requirements/Parliamentary requirements

71. Where the Secretary of State proposes to designate a statement to be a national policy statement, or amend a national policy statement, the Secretary of State must carry out such consultation and arrange for associated publicity as she thinks appropriate, and a Parliamentary scrutiny process must be completed. The Secretary of State must also consult such persons as are prescribed.
72. If the new or amended proposals refer to a particular location as being suitable (or potentially suitable) for a specified type of development, the Secretary of State must

ensure that there is suitable publicity for the proposal in that location. Section 8 sets out that in deciding what publicity is appropriate for this purpose the Secretary of State must consult the local authority in which the land is located and adjoining local authorities. If the location concerned is in Greater London, the Secretary of State must also consult the GLA.

Section 10: Sustainable development

73. This section provides that where the Secretary of State is either designating or reviewing a national policy statement, she must do so with the objective of contributing to sustainable development. This objective includes a duty to have regard to the desirability of mitigating, and adapting to, climate change, and achieving good design.

Section 11: Suspension pending review

74. This section provides that the Secretary of State may suspend the operation of part or all of a national policy statement if she decides that since the relevant part of the statement was issued or reviewed there has been a significant change in circumstances which was not anticipated. Suspension by the Secretary of State is possible only where she thinks that if the change had been anticipated any of the policy included in the relevant part of the statement would have been materially different.

Section 12 Pre-commencement statements of policy, consultation etc

75. Subsection (1) of this section provides that the Secretary of State may exercise her powers under section 5 to designate a statement as a national policy statement even if the statement was issued by the Secretary of State before section 5 comes into force, or if the statement refers to another statement so issued.
76. Subsection (2) prevents the Secretary of State from designating a pre-commencement statement where she thinks that there has been a significant and unanticipated change of circumstances, which if it had been anticipated, would have led to policy being materially different.
77. By virtue of subsection (4) of section 12 the Secretary of State may take account of appraisal carried out before section 5(2) comes into force for the purpose of complying with the requirements of section 5(2)..
78. Subsection (5) of section 12 enables the Secretary of State to take account of any consultation or publicity arranged before section 5 comes into force for the purpose of complying with the consultation and publicity requirements of section 7.

Section 13: Legal challenges relating to national policy statements

79. This section provides that legal challenges in connection with national policy statements can be brought only by judicial review and only during specified six-week periods.

Part 3: Nationally Significant Infrastructure Projects

Section 14: Nationally Significant Infrastructure Projects: General

80. Subsection (1) lists the categories of project which are “nationally significant infrastructure projects” for the purposes of the Act. Further details of these categories are given in subsequent sections in Part 3.
81. Subsection (3) of section 14 enables the Secretary of State to make an order which amends the categories of nationally significant infrastructure project. This power is subject to the limitation in subsection (5) that new types of project may be added only if they are projects for the carrying out of works in the fields of energy, transport, water, waste water or waste, and if the works are to be carried out in the areas specified in subsection (7).

Section 15: Generating Stations

82. This section states the circumstances in which the construction or extension of a generating station will be a nationally significant infrastructure project. The expression “generating station” has the same meaning as in section 36 of the Electricity Act 1989.

Section 16: Electric lines

83. This section describes the circumstances in which the installation of an electric line above ground will be a nationally significant infrastructure project. The expression “electric line” has the same meaning as in section 37 of the Electricity Act 1989.

Section 17: Underground gas storage

84. This section describes situations where development relating to the underground storage of gas will be a nationally significant infrastructure project.
85. To avoid disturbing the devolution settlement, section 17 provides for decisions on developments in Wales by persons other than gas transporters to continue to be taken by Welsh Ministers under the Town and Country Planning Act 1990 (which is referred to in these notes as “TCPA 1990”). However, projects in Wales which would previously have been considered by the UK Government Minister under section 4 of the Gas Act 1965 are included in this category of nationally significant infrastructure project.

Sections 18 and 19: LNG facilities/ Gas reception facilities

86. These sections provide that the construction or alteration of a facility for the import of liquid natural gas or other natural gas is a nationally significant infrastructure project if specified requirements are met as to the storage capacity or flow rate of the facility.

Section 20: Gas transporter pipe-lines

87. This section describes circumstances in which the construction of a pipe-line by a gas transporter licensed under the Gas Act 1986 is a nationally significant infrastructure project.

Section 21: Other pipe-lines

88. This section sets out the circumstances in which the construction of a pipe-line other than by a gas transporter is a nationally significant infrastructure project. The section avoids disturbing the devolution settlement under which pipe-lines wholly situated within Scotland require consent from Scottish Ministers under section 1 of the Pipe-lines Act 1962.

Section 22: Highways

89. This section sets out the circumstances in which highway-related development is a nationally significant infrastructure project. The following are relevant highway-related development:-
- construction of a highway which is to form part of the Strategic Road Network (that is, a highway in England for which the Secretary of State will be the highway authority)
 - improvement of a highway which forms part of the Strategic Road Network (but only where the improvement is likely to have a significant impact on the environment)
 - construction or alteration by the Secretary of State of a highway in England for a purpose connected with the Strategic Road Network

Section 23: Airports

90. This section sets out the circumstances in which airport-related development is a nationally significant infrastructure project. Construction and alteration of an airport is included within this category if a specified minimum passenger or cargo capacity is expected to be reached. Increases in permitted use of an airport are also covered by this category if a minimum capacity increase would be reached.
91. Currently, planning permission under TCPA 1990 is needed for airport developments. To avoid disturbing the devolution settlement, Welsh Ministers will retain their existing powers to determine applications for new airports or extensions in their territory, while applications relating to nationally significant airport projects in England will be determined under the new regime.

Section 24: Harbour facilities

92. This section sets out the circumstances in which the construction or alteration of harbour facilities is a nationally significant infrastructure project. Thresholds consisting of expected capacity thresholds apply.

Sections 25 and 26: Railways and Rail Freight interchanges

93. These sections set out the circumstances in which the construction or alteration of a railway or a rail freight interchange is a nationally significant infrastructure project. Only railways and rail freight interchanges which would be situated wholly in England are included.

Sections 27 and 28: Dams and reservoirs and transfers of water resources

94. These sections set out the circumstances in which the construction or alteration of a dam or reservoir or development relating to the transfer of water resources is a nationally significant infrastructure project. Only projects in England are included.

Section 29: Waste water treatment plants

95. This section sets out the circumstances in which the construction or alteration of a waste water treatment plant is a nationally significant infrastructure project. Only projects in England are included.

Section 30: Hazardous waste facility

96. This section sets out the circumstances in which the construction or alteration of a hazardous waste facility is a nationally significant infrastructure project. Only projects in England are included.

Part 4: Requirement for Development Consent

Section 31: When development consent is required

97. This section imposes a requirement of development consent for development which is, or forms part of, a nationally significant infrastructure project.

Section 32: Meaning of “development”

98. This section describes what constitutes “development” in the context of a nationally significant infrastructure project. It provides that “development” has the same meaning as “development” in TCPA 1990 subject to subsections (2) and (3).
99. The effect of subsection (2) is that the conversion of a generating station to enable it to use gas or petroleum as a fuel source, starting to use a cavity or strata underground for the purposes of gas storage and an increase in the permitted use of an airport count

as “development” for the purposes of the development consent regime. The provision relating to generating stations replicates the position under section 14 of the Energy Act 1976, which gives the Secretary of State the power to direct that conversions should not take place. Likewise, starting to use natural porous strata underground for the purposes of gas storage currently requires the consent of the Secretary of State under section 4 of the Gas Act 1965. Similarly, a material increase in the permitted use of an airport requires a change to a planning permission or a condition of a planning permission under TCPA 1990.

100. Subsection (3) is consistent with provisions in the Planning (Listed Buildings and Conservation Areas) Act 1990 (referred to in these notes as “the Listed Buildings Act”) and the Ancient Monuments and Archaeological Areas Act 1979. The subsection makes it clear that the types of works to heritage assets listed are to be treated as development for the purposes of the development consent regime.

Section 33: Effect of requirement for development consent on other consent regimes

101. Subsection (1) provides that where a project requires development consent under this Act, it will no longer require certain other consents under existing consent regimes. These consent regimes are listed in subsection (1), and include:
- planning permission under Part 3 of TCPA 1990 (or, in relation to the Scottish part of a cross-border oil or gas pipe-line, planning permission under Part 3 of the Town and Country Planning (Scotland) Act 1997);
 - listed building consent under section 8 of the Listed Buildings Act;
 - conservation area consent under section 74 of the Listed Buildings Act;
 - scheduled monument consent in England and Wales under section 2 of the Ancient Monuments and Archaeological Areas Act 1979.
102. Subsection (2) of section 33 provides that where development consent is required, development may not be authorised by an order under section 14 or 16 of the Harbours Act 1964 or section 1 or 3 of the Transport and Works Act 1992.
103. Section 4(1) of the Gas Act 1965 is mentioned in both subsections (1) and (2) of section 33. It appears in subsection (1) because (by virtue of section 4(2) of the Gas Act) there is a requirement to obtain an authorisation under section 4(1). It also appears in subsection 31(2), because section 4(1) can be read as conferring a separate power on the Secretary of State to make a storage authorisation order.
104. The Highways Act 1980 gives the Secretary of State the ability to make or confirm orders about a variety of matters to do with highways, including the construction of new highways. Subsection (4) of section 33 provides that where construction, improvement or alteration of the highway requires development consent, the Secretary of State may not make or confirm such orders in relation to the highway or in connection with the construction, improvement or alteration of the highway.

Section 34: Welsh offshore generating stations

105. This section relates to section 33(2)(c) and preserves the powers of Welsh Ministers to make orders under section 3 of the Transport and Works Act 1992 in relation to the construction or extension of Welsh offshore generating stations.

Section 35: Directions in relation to projects of national significance

106. This section provides that the Secretary of State may direct that an application made to the relevant authority for a consent or authorisation mentioned in section 33(1) or (2) should be referred to the Commission, which will then treat it as an application

for development consent. The Secretary of State can make such a direction only if the development is, or forms part of, a project in one of the fields mentioned in subsection (2) of section 35, the development would be wholly in England (or adjacent waters) and she considers that the project is of national significance. The Secretary of State may also make a direction in relation to more than one project in the same field if she believes that collectively they are of national significance. The Secretary of State must give reasons for making a direction under this section.

107. If the Secretary of State is considering making such a direction, she may direct the relevant authority to take no further action until she has reached her decision.

Section 36 and Schedule 2: Amendments consequential on development consent regime

108. This section and the Schedule which it introduces make consequential amendments to existing consent regimes. For the most part, these consequential amendments clarify that where development consent is required for a project under this Act, requirements for other consents no longer apply. In particular:

- a) Green Belt (London and Home Counties) Act 1938: restrictions on the erection of buildings no longer apply where the project requires development consent under the Planning Act.
- b) Pipe-lines Act 1962: authorisation is no longer required from the Secretary of State in order to construct a cross-country pipe-line where the project requires development consent under the Planning Act.
- c) Harbours Act 1964: it will no longer be possible to make harbour revision orders or harbour empowerment orders to permit development for a project that requires development consent under the Planning Act.
- d) Gas Act 1965: it will no longer be possible to make storage authorisation orders to permit development for a project that requires development consent under the Planning Act. Where an underground gas storage is covered by an order granting development consent, the Secretary of State will no longer be able to prevent mining and other operations in the vicinity of the underground gas storage, set safety conditions or order works to remedy a breach of a protective area.
- e) Energy Act 1976: it will no longer be necessary to seek permission for a conversion of a power station to gas or petroleum fuel from the Secretary of State under the 1976 Act, where the project requires development consent under the Planning Act.
- f) Ancient Monuments and Archaeological Areas Act 1979: scheduled monument authorisation is no longer required from the Secretary of State for works affecting scheduled monuments where the project requires development consent under the Planning Act.
- g) Highways Act 1980: it will no longer be possible for the Secretary of State to make orders or construct highways under the provisions of the Highways Act 1980, where the project requires development consent under the Planning Act.
- h) Electricity Act 1989: consent is no longer required from the Secretary of State to construct a generating station (see section 36 of the 1989 Act) or overhead electricity lines (see section 37 of the 1989 Act), where the project requires development consent under the Planning Act.
- i) TCPA 1990: planning permission under section 57 is no longer required for a project that constitutes a nationally significant infrastructure project. Projects which require development consent will be exempted from the provisions in

respect of tree preservation orders and the preservation of trees in conservation areas.

- j) The Listed Buildings Act: listed building consent is no longer required from the Secretary of State for works affecting listed buildings where the project requires development consent under the Planning Act, and in the case of such a project, conservation area consent is no longer required for works involving demolition of buildings in a conservation area.
- k) Planning (Hazardous Substances) Act 1990 (referred to in these notes as “the Hazardous Substances Act”): as part of an order granting development consent, the authority determining an application for consent may deem that the project has received hazardous substances consent. A hazardous substances authority may subsequently revoke or modify a hazardous substances consent so deemed.
- l) New Roads and Street Works Act 1991: it will no longer be possible for the Secretary of State to make a toll order where the project requires development consent under the Planning Act.
- m) Water Industry Act 1991: it will no longer be possible for the Secretary of State to make a compulsory works order in England where the project requires development consent under the Planning Act.
- n) Transport and Works Act 1992: it will no longer be possible for the Secretary of State to make an order under section 1 or 3 of the 1992 Act that permits development for a project that requires development consent under the Planning Act.

Part 5: Applications for Orders Granting Development Consent

Part 5, Chapter 1 – Applications

Section 37: Applications for order granting development consent

109. This section sets out that where development consent is required under the new single consent regime, promoters of nationally significant infrastructure projects will need to submit an application to the Commission. The application must be in the prescribed form, and be accompanied by the consultation report and such other documents and information as are prescribed. The Commission has the power to give guidance in connection with applications.

Sections 38: Model provisions

110. This section allows the Secretary of State to prescribe model provisions that developers may use if required to prepare a draft order to accompany an application for an order granting development consent. The Commission must have regard to any model provisions when making an order granting development consent. A similar power to issue model clauses already exists in section 8 of the Transport and Works Act 1992 (see the [Transport and Works \(Model Clauses for Railways and Tramways\) Regulations 2006, SI 2006/1954](#)), and model clauses are used extensively by promoters.

Section 39: Register of applications

111. The section requires the Commission to maintain a register of applications for orders granting development consent and to publish this register or make arrangements for its inspection by the public.

Section 40: Applications by Crown for orders granting development consent

112. This section allows the Secretary of State by regulations to modify or exclude certain statutory provisions in relation to applications made by the Crown for an order granting development consent. Regulations may relate to:
- a) the procedure to be followed before such applications are made;
 - b) the making of such applications;
 - c) the decision-making process.

Part 5, Chapter 2 – Pre-application procedure

Section 41: Chapter applies before application is made

113. This section provides that Chapter 2 applies to a proposed application for an order granting development consent and defines some of the terms used in the Chapter.

Sections 42 to 44: Duty to consult etc.

114. These sections require the applicant to consult certain people and categories of people about the proposed application. The consultees are certain local authorities and persons with rights over land and other prescribed persons.

Section 45: Timetable for consultation under section 42

115. This section provides that the applicant must give each consultee a deadline for responding to the consultation, but this must not be earlier than 28 days after receipt of the consultation documents.

Section 46: Duty to notify Commission of proposed application

116. This section provides that the applicant must give the Commission a copy of the consultation documents on or before commencing consultation under section 42.

Section 47: Duty to consult local community

117. This section requires the applicant to prepare and publish a statement setting out how he proposes to consult local people about the proposed application. The applicant must consult with the relevant local authority before publishing such a statement, and the local authority must reply within 28 days. The consultation must be carried out in the manner set out in the statement.

Section 48: Duty to publicise

118. This section provides that the applicant must publicise the proposed application in the prescribed manner. Regulations must require publicity to specify a deadline for responses.

Section 49: Duty to take account of responses to consultation and publicity

119. This section provides that the applicant must consider any relevant responses he has received to the consultation and publicity, and take these into account before submitting an actual application to the Commission.

Section 50: Guidance about pre-application procedure

120. This section gives the Commission and the Secretary of State the power to give guidance on how to comply with the requirements of the pre-application procedures of Chapter 2 of Part 5.

Part 5, Chapter 3 – Assistance for applicants and others

Section 51: Advice for potential applicants and others

121. The section provides that the Commission may give advice to an applicant, a potential applicant or others about applying for an order granting development consent or making representations about an application or proposed application. Any such advice cannot relate to the merits of any particular application or proposed application. The Secretary of State may make regulations about giving advice for the purpose of securing propriety. In particular, these regulations may provide for the disclosure of requests for advice and any advice by the Commission.

Section 52: Obtaining information about interests in land

122. This section provides that the Commission may authorise an applicant or proposed applicant to serve a notice on a person falling within one of the categories specified in subsection (3), requiring the person to give to the applicant the names and addresses of people who have an interest in the land to which the application relates. If the person fails to comply with such a notice, or wilfully gives misleading information, the person will commit an offence, and be liable to pay a fine up to level 5 on the standard scale (currently £5,000).

Sections 53 and 54: Rights of entry and Crown land

123. **Section 53** provides that the Commission may authorise a person to enter a particular piece of land, in order to survey or take levels in connection with:
- an application for an order granting development consent, which has been accepted by the Commission; or
 - an order granting development consent that includes authorisation for the compulsory purchase of land, or an interest in or right over land.
124. The Commission may also authorise a person to enter a particular piece of land in connection with a proposed application for an order granting development consent, but only if the proposed applicant:
- a) is considering a distinct project of real substance requiring entry onto the land;
 - b) is likely to seek authority to compulsorily acquire the land, or an interest in or right over land; and
 - c) has complied with the consultation requirements in section 42.
125. Subsection (5) of section 53 makes it an offence wilfully to obstruct an authorised person who is exercising a right of entry.
126. Subsection (7) of section 53 provides that the person entering land under this section is liable to pay compensation for any damage caused.
127. **Section 54** modifies the rights of entry in relation to Crown land.

Part 6: Deciding Applications for Orders Granting Development Consent

Part 6, Chapter 1 – Handling of application by the Commission

Section 55 – Acceptance of applications

128. This section provides that when the Commission receives an application for an order granting development consent, the Commission must decide whether or not to accept it. The Commission can accept the application only if it complies with the requirements set out in the Act at section 37 and the Commission is satisfied as to the other matters

set out in subsection (3) of section 55. The Commission must notify the applicant of its decision.

Sections 56 and 57 – Notifying persons of accepted application/Categories for purposes of section 56(2)(d)

129. These sections describe the persons who must be notified of an application for an order granting development consent which the Commission has accepted. The persons to be notified are certain local authorities, any persons prescribed by regulations and certain people with interests in land.
130. The form and content of the notice, and the manner in which it is to be given, may be prescribed in regulations by the Secretary of State. The applicant must inform the person of any deadline by which they should respond to the Commission; this deadline should not be less than 28 days.
131. Subsections (7) and (8) of section 56 require the applicant to publicise the application in the manner set out by the Secretary of State. Any publicity must include a deadline by which people should notify the Commission of their interest or objection to the application.

Section 58 – Certifying compliance with section 56

132. This section provides that the applicant must certify to the Commission that he has complied with section 56. If the applicant issues a certificate containing false or misleading information, he may be guilty of an offence and be liable to a fine.

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

133. This section provides that where the Commission has accepted an application for an order granting development consent that includes a request for authorisation of the compulsory acquisition of land or an interest in or right over land, the applicant must give the Commission names and other prescribed information in relation to persons with an interest in the land. The applicant is required to make diligent inquiry to ascertain the names of affected persons.

Section 60: Local impact report

134. This section requires the Commission to notify relevant local authorities of the acceptance of an application for development consent and to invite such authorities to submit (by a specified deadline) a report to it giving details of the likely impact of the proposed development on the authority's area.

Section 61: Initial choice of Panel or single Commissioner

135. This section provides that when the Commissioner accepts an application for an order granting development consent, the chair must decide whether the application should be handled by a Panel or by a single Commissioner. In making this decision, the chair must have regard to guidance issued by the Secretary of State and to the views of any of the other Commissioners and the chief executive of the Commission.

Section 62: Switching from single Commissioner to Panel

136. This section provides that where an application for an order granting development consent is being handled by a single Commissioner, the chair can decide that it should instead be handled by a Panel. In making this decision, the chair must have regard to guidance issued by the Secretary of State and to the views of other Commissioners and the chief executive of the Commission.

Section 63: Delegation of functions by person appointed to chair Commission

137. This section gives the chair the power to delegate any of his or her functions under Part 6 of the Act to one of the deputy chairs, subject to the limitations in subsections (5) to (10).

Part 6, Chapter 2: The Panel Procedure

Section 64: Panel for each application to be handled under this Chapter

138. This section provides that when the Commission has accepted an application and the chair has decided that it should be handled by a Panel, the provisions in Chapter 2 will apply.

Section 65: Appointment of members, and lead member, of Panel

139. This section concerns the appointment of the Panel. Subsection (1) provides that the chair of the Commission will be responsible for appointing to the Panel three or more Commissioners and appointing one of these Commissioners to chair the Panel. Before doing this the chair of the Commission must consult the other Commissioners and the chief executive of the Commission and have regard to their views.
140. Subsection (3) provides that the chair (or deputy chair) of the Commission may appoint himself to be a member of a Panel.

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

141. This section describes the circumstances in which a person ceases to be a member of the Panel. Subsection (1) provides that the person will cease to be a member of the Panel if he ceases to be a Commissioner, subject to section 67.
142. Subsection (3) provides that a person may resign from membership of the Panel by giving notice in writing to the Commission.
143. Subsection (5) sets out the circumstances in which the chair may remove a person from membership of the Panel or remove the lead member from that office. The chair must be satisfied that the member or lead member is unable, unwilling or unfit to perform his duties.

Section 67: Panel member continuing though ceasing to be Commissioner

144. This section provides that if, immediately before ceasing to be a Commissioner, a Commissioner was serving on a Panel which has not yet concluded its business, the Commissioner may decide to continue as a Panel member until the Panel completes its work, unless the reason that he is no longer a Commissioner is because the Secretary of State has removed him from office because he was unable, unwilling or unfit to perform the duties of his office.

Section 68: Additional appointments to Panel

145. This requires the chair to the Commission to appoint another Commissioner to membership of the Panel if at any time the Panel has fewer than three members. The chair (or a deputy chair) may appoint himself.

Section 69: Replacement of lead member of Panel

146. This section provides that if the lead member of the Panel ceases to hold that office, the chair to the Commission must appoint another member of the Panel to chair the Panel. This person need not have been a member of the Panel before the vacancy arose. The chair (or a deputy chair) to the Commission can appoint himself.

Section 70: Membership of Panel where application relates to land in Wales

147. This section concerns applications for orders granting development consent, which relate to land in Wales. The section requires a Panel that considers an application relating to land in Wales to include, if reasonably practicable, a Commissioner who was nominated for appointment as a Commissioner by the Welsh Ministers or any other Commissioner notified to the Commission by the Welsh Ministers as being a Commissioner who should be treated as a Welsh Commissioner nominated by them.

Section 71: Supplementary provision where Panel replaces single Commissioner

148. This section provides that if the chair of the Commission decides that an application which was being considered by a single Commissioner should instead be considered by a Panel, the single Commissioner who has considered the case may become a member of the Panel. Subsection (3) provides that the Panel may decide to treat anything done by a single Commissioner as done by the Panel. If the Panel decides to do this, the lead member of the Panel must ensure that the Panel acquires the necessary knowledge of the previous work undertaken.

Section 72: Panel ceasing to have any members

149. This section provides that if the Panel ceases to have any members, a new Panel must be constituted. If this happens, the new Panel may decide to treat anything done by a former Panel as done by the new Panel. If it is decided to do this, the lead member of the Panel must ensure that the Panel acquires the necessary knowledge of the previous work undertaken.

Section 73: Consequences of changes in Panel

150. This section provides that the identity of the Panel will not be affected by changes to the membership of the Panel or the lead member, or any vacancies.

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

151. This section sets out the Panel's role in relation to applications. Where there is an effective national policy statement in respect of the type of development to which an application relates, the Commission is responsible for examining and deciding the application. In any other case, the Panel will examine the application, and then make a report to the Secretary of State which sets out its findings and conclusions and makes a recommendation about the decision to be made by the Secretary of State. The Secretary of State will then be responsible for deciding the application,

Section 75: Decision-making by the Panel

152. This section provides that a decision of the Panel will require the agreement of a majority of its members and that the lead member has a second (or casting) vote.

Section 76: Allocation within Panel of Panel's functions

153. This section provides that during the examination of an application the Panel may allocate part of the examination to any one or more of its members. Where this is done the member/s may do anything the Panel as a whole could have done and their findings and conclusions will, in respect of the matters allocated, be taken to be the Panel's.

Section 77: Exercise of Panel's powers for examining application

154. This section concerns the exercise of the Panel's procedural powers for examining an application. Any such procedural power may, unless the Panel decides otherwise, be exercised by any one or more of the Panel's members.

Part 6, Chapter 3: The single Commissioner Procedure

Section 78: Single Commissioner to handle application

155. This section states that the provisions of this Chapter apply where it has been decided that an application should be handled by a single Commissioner.

Section 79: Appointment of single Commissioner

156. This section states that the chair (or a deputy chair) to the Commission must appoint a Commissioner to handle the application and that he may make a self-appointment. The chair is required to consult, and take account of the views expressed by any other Commissioner or the chief executive.

Section 80: Ceasing to be the single Commissioner

157. This section describes how a person can cease to be a single Commissioner. For example if a Commissioner stops being a Commissioner, he will cease to be a single Commissioner, subject to the provisions of section 81.

Section 81: Single Commissioner continuing though ceasing to be Commissioner

158. This section provides that in certain circumstances a person can continue to act as a single Commissioner although he is no longer a Commissioner. The section makes provision corresponding to that made for Panel membership by section 67.

Section 82: Appointment of replacement single Commissioner

159. This section provides that when a person ceases to be a single Commissioner a replacement Commissioner must be appointed. When this happens the replacement single Commissioner may decide to treat any work carried out by his predecessor as his own work. If this happens the replacement single Commissioner must ensure he acquires the necessary knowledge of the previous work undertaken.

Sections 83 and 84: single Commissioner to examine and report on application/ report from single Commissioner to be referred to Council

160. These sections provide that the single Commissioner is responsible for examining the application and then making a report to the authority responsible for determining the application. In the report the single Commissioner should set out his findings and conclusions and make a recommendation as to how the application should be determined. When the Commission is responsible for determining the application, the report is made to the Commission, who should refer it to the Council (see paragraphs 6 to 9 of Schedule 1 to the Act). In any other case it is made to the Secretary of State.

Section 85: Decisions made by the Council on the application

161. This section provides that at least five members of the Council must participate in any decision which requires majority agreement. The chair of the Council has a second (casting) vote.

Part 6, Chapter 4: Examination of applications under Chapter 2 or 3

Section 86: Chapter applies to examination by Panel or single Commissioner

162. This section provides for this Chapter to apply to the examination of an application by a Panel or by a single Commissioner. Where an application is to be examined by a Panel, the Panel is the Examining authority. Where an application is to be examined by a single Commissioner, the single Commissioner is the Examining authority.

Section 87: Examining authority to control examination of application

163. This section provides that it is for the Examining authority to decide how to examine an application. When doing this the examining authority must comply with the provisions of this Chapter and any procedural rules made by the Lord Chancellor and must have regard to any guidance given by the Secretary of State and the Commission.
164. Subsection (3) provides that the examining authority may disregard representations which it considers are vexatious or frivolous, relate to the merits of a policy set out in a national policy statement or to compensation for the compulsory acquisition of land or of an interest in or right over land.

Section 88: Initial assessment of issues and preliminary meeting

165. This section requires the Examining authority to make an initial assessment of the principal issues arising on an application. When it has done this it should hold a preliminary meeting with the applicant and each other interested party. The purpose of this meeting is to enable those present to make representations as to how the application should be examined and to discuss any other matter the Examining authority wishes.

Section 89: Examining authority's decisions about how application is to be examined

166. This section requires the Examining authority, in the light of the discussion at the preliminary meeting, to make procedural decisions in respect of the examination of the application. These decisions can be made at or after the meeting. The Examining authority must inform every interested party of its decisions.

Section 90: Written representations

167. This section provides that the Examining authority's examination of the application should take the form of the consideration of written representations subject to any requirements in section 91, 92 and 93 and to any decision of the Examining authority that it should take a different form (e.g. a site visit). The Lord Chancellor may make procedural rules about which written representations are to be considered.

Section 91: Hearings about specific issues

168. This section provides that the Examining authority must arrange a hearing when it decides that it is necessary for its examination of a specific issue to receive oral representations, either to ensure the adequate examination of the issue, or so that an interested party has a fair chance to put their case. Each interested party will be entitled to make oral representations about the specific issue. Concurrent hearings may be held where a Panel of Commissioners is the examining authority.

Section 92: Compulsory acquisition hearings

169. This section provides that where an application for a development consent order includes a request for authorisation of compulsory acquisition of land or an interest in or right over land the Examining authority must inform affected parties of a deadline by which they must notify the Commission that they require a compulsory acquisition hearing to take place. If such a request is received by the Commission before the deadline the Examining authority must cause a hearing to be held.

Section 93: Open-floor hearings

170. This section provides that the Examining authority must arrange an open floor hearing if at least one interested party informs the Examining authority of a wish to be heard within the specified deadline. Each interested party is entitled to make oral representations at an open-floor hearing.

Section 94: Hearings: general provisions

171. This section contains general provisions in respect of specific issue, compulsory acquisition and open floor hearings. It provides that these should be in public and presided over by at least one member of the Panel or the single Commissioner. The Examining authority will decide how a hearing is to be conducted.
172. In particular, the Examining authority can decide whether a person making an oral representation can be questioned by an interested party, and the duration of an oral representation and/or questioning. When making decisions about these matters, the Examining authority must apply the principle that it should undertake any oral questioning itself unless it is necessary to allow an interested party to do this in order to ensure adequate testing of any representations or that an interested party has a fair chance to put its case.
173. An Examining authority may refuse to allow a representation if it considers it:
- a) is irrelevant or frivolous;
 - b) relates to the merits of policy set out in a national policy statement;
 - c) repeats other representations already made; or
 - d) relates to the compensation payable on the compulsory acquisition of land or of an interest in or right over land.

Section 95: Hearings: disruption, supervision and costs

174. This section provides that the Examining authority may exclude a person from a hearing if he behaves in a disruptive manner.
175. Subsection (2) defines what is meant by a “hearing” for these purposes.
176. Subsection (3) provides that the Examining authority’s examination of an application is a statutory inquiry for the purposes of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007 and therefore is subject to supervision by the Administrative Justice and Tribunals Council.

Section 96: Representations not made orally may be made in writing

177. This section states that where a person has asked to make an oral representation at a hearing, but has not done so, he can make a written representation. The Examining authority must consider this as part of its examination of an application, if the written representation is received before it completes its examination of the application.

Section 97: Procedure rules

178. This section enables the Lord Chancellor, and, in the case of certain oil or gas cross-country pipe-lines, the Secretary of State, to make procedural rules for the examination of applications. Subsections (1) and (4) are based on the general rule-making powers conferred by section 9 of the Tribunals and Inquiries Act 1992. Subsection (3) is included to enable rules to make provision about site visits, including site visits where the applicant is neither the owner nor occupier of the land concerned. Subsection (7) follows the 1992 Act by providing for the rules to be subject to the negative resolution procedure in Parliament.

Section 98: Timetable for examining, and reporting on, application

179. This section imposes a duty on the Examining authority to complete its examination of an application within six months of the last day of the preliminary meeting held pursuant to section 88. The Examining authority must decide the application or (where the

Secretary of State or the Commission's Council is responsible for taking the decision) report to the Secretary of State or the Council within nine months of this date.

180. Subsection (4) gives the chair (or a deputy chair) of the Commission the power to extend these deadlines at any time. If the deadlines are extended, he must inform the Secretary of State of this decision, along with his justification for doing so. Any such change of date must be included in the Commission's annual report with an explanation of why the decision was taken.

Section 99: Completion of Examining authority's examination of application

181. This section provides that the Examining authority must tell each interested party once it has completed its examination of the application.

Section 100: Assessors

182. This gives the chair (or a deputy chair) of the Commission, at the Examining authority's request, the power to appoint an assessor to help it examine an application, providing the assessor is considered to have the relevant expertise.

Section 101: Legal advice and assistance

183. This section allows the chair of the Commission to appoint a barrister, solicitor or advocate to provide legal advice and assistance to the Examining authority. The advice and assistance which may be provided includes oral questioning at a hearing. The Examining authority must request an appointment before one can be made.

Section 102: Interpretation of Chapter 4: "interested party" and other expressions

184. This section defines "interested party" and "representation" for the purposes of Chapter 4 of Part 6 of the Act.

Part 6, Chapter 5: Decisions on applications

Section 103: Cases where Secretary of State is, and meaning of, decision-maker

185. Subsection (1) of this section provides that the Secretary of State has the function of deciding an application for an order granting development consent where he receives a report from the Panel or a single Commissioner. Subsection (2) defines the expression "decision-maker" in relation to an application for the purposes of the Act as meaning the Panel, the Council or the Secretary of State when it or she is responsible for deciding the application.

Section 104: Decisions of Panel and Council

186. This section provides that where a Panel or the Council is responsible for deciding an application for an order granting development consent, it must have regard to:
- a) any relevant national policy statement;
 - b) any local impact report submitted by a relevant local authority
 - c) any matters prescribed in relation to development of that description; and
 - d) any other matters which the Panel or Council considers are both important and relevant to its decision.
187. Subsection (3) provides that the Panel or Council must decide the application in accordance with any relevant national policy statement, except to the extent that one of the exceptions in sub-sections (4) to (8) applies.

Section 105: Decisions of Secretary of State

188. This section provides that where it is the Secretary of State who decides an application for an order granting development consent, she must have regard to any local impact report submitted by a relevant local authority; any matters prescribed and any other matters which the Secretary of State thinks are both important and relevant to her decision.

Section 106: Matters that may be disregarded when deciding application

189. This section provides that a person deciding an application for an order granting development consent may disregard a representation that he considers is vexatious or frivolous. Representations may also be disregarded if it is considered that they relate to the merits of policy set out in a national policy statement or to compensation payable on the compulsory acquisition of land or of an interest in or right over land.

Section 107: Timetable for decisions

190. This section specifies that the decision-maker is under a duty to decide an application for a development consent order within a period of three months. This period starts from the end of the examination (if the decision-maker is the Panel or Council), from the day the Secretary of State receives the Commission's report (if the decision-maker is the Secretary of State by virtue of section 103(1)) or from the deadline for completion of the Secretary of State's examination of the application under section 113(2)(a) (if the decision-maker is the Secretary of State by virtue of section 113(2)(b)). Subsection (3) allows the appropriate authority to extend this deadline.

Part 6, Chapter 6: Suspension of decision-making process

Section 108: Suspension during review of national policy statement

191. This section states that if the Secretary of State considers it necessary to review all or part of a relevant national policy statement before an application for an order granting development consent is decided, she may direct that the examination and decision of the application is suspended by the Panel or Council until the review of the national policy statement has been completed.

Part 6, Chapter 7: Intervention by Secretary of State

***Sections 109, 110, 111 and 112: Intervention: significant change in circumstances/
Intervention: defence and national security / Intervention: other circumstances/
Power of Secretary of State to intervene***

192. These sections provide that the Secretary of State may intervene and decide an application in place of the Commission in certain circumstances.
193. The Secretary of State may intervene if she is satisfied that the condition set out in subsection (2) or (3) of section 109 is met. When deciding whether the tests in paragraphs (d) and (e) of subsections (2) and (3) are met, the Secretary of State must have regard to the views of the Commission.
194. The Secretary of State may also intervene if she is satisfied that the requirements of section 110 are met. She must be satisfied that intervention would be in the interests of defence or national security.
195. **Section 111** confers on the Secretary of State the power to make an order specifying other circumstances in which she may intervene in an application.
196. If the Secretary of State decides to exercise any of her powers of intervention she must make a direction, setting out her reasons for intervention, within four weeks of the end

of the meeting held under section 88(2). If the Secretary of State considers there to be exceptional circumstances, the direction may be given later.

Section 113: Effect of intervention

197. This section provides that where the Secretary of State intervenes under section 112, she has the functions of examining the application and deciding it. The Secretary of State may direct the Commission to examine such matters as may be specified by her. Schedule 3 makes provision in relation to the Secretary of State's function of examining an application under this section.

Part 6, Chapter 8: Grant or refusal

Sections 114 and 115: Grant or refusal of development consent/ development for which development consent may be granted/ reasons for decision/ formalities for orders

198. **Section 114** provides that at the conclusion of consideration of an application for an order granting development consent, the decision-maker (the Panel, the Council or the Secretary of State) must either make an order granting development consent or refuse development consent. Subsection (2) provides that the Secretary of State may make regulations about the procedures to be followed if the decision-maker proposes to make an order on terms which are materially different from those which were applied for.
199. **Section 115** provides that an order may grant development consent not only for development for which consent is required but also for associated development. The section defines the expression "associated development". This definition specifically excludes the construction of a dwelling and sets out other requirements which must be satisfied. In determining what is associated development, the Panel or Council must have regard to any statutory guidance given to it by the Secretary of State.
200. A statement of reasons for deciding to make an order granting development consent or to refuse development consent must be given to interested parties and published (section 116).
201. Certain formalities must be observed in relation to the order (section 117). The formalities differ depending on whether the order includes provisions made in exercise of the decision-maker's powers in relation to legislation.

Part 6, Chapter 9: Legal challenges

Section 118: Legal challenges relating to applications for orders granting development consent

202. This section provides that-
- an order granting development consent;
 - a refusal of development consent;
 - a decision not to accept (for examination) an application for an order granting development consent;
 - a decision in relation to an error or omission;
 - a decision to change or revoke a development consent order; or
 - anything else done by the Commission or the Secretary of State in respect of an application for an order granting development consent
- can be challenged only by means of a claim for judicial review made in accordance with the provisions of this section. These require that any challenge to an order granting

development consent must be made within 6 weeks of the order and statement of reasons being published and that a challenge to a decision to refuse development consent must be made within 6 weeks of publication of the statement of reasons for the refusal. A challenge to a decision of the Commission not to accept an application must be made within 6 weeks of the day on which the Commission notifies the applicant of its decision. A challenge to a decision in relation to an error or omission or in relation to a change to or revocation of an order should be filed within 6 weeks of the correction notice or notice of the change/revocation being given or the statutory instrument being published.

Part 6, Chapter 10: Correction of errors

Section 119 and Schedule 4: Correction of errors in development consent decisions

203. **Section 119** introduces Schedule 4, which describes the mechanisms by which the decision-maker can correct errors in decision documents relating to an application for an order granting development consent. A decision document is an order granting development consent, or a document recording a refusal of development consent.

Schedule 4

Schedule 4, Paragraph 1: Correction of errors

204. This paragraph gives the Commission and the Secretary of State the power to correct an error or omission in a decision document which it or she has issued. A correction may be made under this paragraph only if two conditions are satisfied. The first condition is that before the end of the relevant period the appropriate authority has been asked to make the correction or has sent a written statement to the applicant for the order proposing to make the correction. The ‘relevant period’ is defined as the period during which a challenge can be made to a decision to grant or refuse the application for an order granting development consent. The second condition is that the appropriate authority has notified each relevant local planning authority. Errors which may be corrected under this paragraph do not include errors in the statement of reasons for the decision.

Schedule 4, Paragraph 2: Correction notice

205. If the appropriate authority is asked to correct an error or omission in a decision document or proposes to make such a correction, it must issue a correction notice once it has finished considering the matter. Paragraph 2 contains this requirement and specifies the categories of person who must be given a copy of the notice by the appropriate authority.

Schedule 4, Paragraph 3: Effect of a correction

206. This paragraph states that where a correction is made, the original decision and decision document continue in force, but are treated as corrected with effect from the date the correction notice is issued.

Part 7: Orders Granting Development Consent

Part 7, Chapter 1: Content of development consent orders

Section 120: What may be included in order granting development consent

207. This section specifies what may be included in an order granting development consent.
208. Subsections (1) and (2) provide that an order granting development consent may impose requirements in connection with the development for which consent is granted. The types of requirements which may be imposed include those corresponding to conditions

that can be imposed under the regulatory regimes which currently apply to nationally significant infrastructure projects (see section 33(1)).

- 209. Subsection (3) provides that an order granting development consent may also make provision for ancillary matters.
- 210. Subsection (4) specifies that provision that may be made under subsection (3) include provisions relating to any of the matters specified in Part 1 of Schedule 5.
- 211. Subsection (5) provides that an order granting development consent may apply, modify or exclude statutory provisions and may amend, repeal or revoke the provisions of a local Act, in the circumstances described. An order may also include such provisions as are necessary or expedient in order to give full effect to its other provisions.
- 212. Subsection (7) provides that any provisions made under subsections (3) to (6) of this section are subject to the restrictions in the rest of Chapter 1 of Part 7 of this Act. In particular, subsection (8) states that orders granting development consent may not make byelaws or create criminal offences.

Schedule 5: Provision relating to, or to matters ancillary to, development

- 213. **Part 1** of this Schedule contains a (non-exhaustive) list of ancillary matters which may be included in an order granting development consent. These include provisions authorising the compulsory acquisition of land, the creation, suspension and extinguishment of rights over land, the stopping up of highways, the charging of tolls and the payment of contributions and compensation. Part 2 contains definitions of some of the terms used in Part 1.

Section 121: Proposed exercise of powers in relation to legislation

- 214. This section provides that before the Panel or Council can exercise its legislation powers under section 120(5)(a) and (b) it must send a draft of the proposed order granting development consent to the Secretary of State. If the Secretary of State considers that the provisions in the draft order would contravene European Community law or Convention rights under the Human Rights Act 1998, she may direct the Panel or Council to make specified changes to the order for the purpose of preventing the contravention arising. The Secretary of State must make any such direction within 28 days of receiving the draft order.

Section 122: Purpose for which compulsory acquisition may be authorised

- 215. This section specifies the purposes for which an order granting development consent can authorise the compulsory acquisition of land. The Panel, the Council or the Secretary of State, as the case may be, must be satisfied that the land:
 - a) is required for the development to which the development consent relates;
 - b) is required to facilitate or is incidental to that development; or
 - c) is replacement land (see sections 131 and 132),and that there is a compelling case in the public interest for the land to be acquired compulsorily.

Section 123: Land to which authorisation of compulsory acquisition can relate

- 216. This section provides that the decision-maker can authorise the compulsory acquisition of land only if the decision-maker is satisfied that one of the following conditions is met. The first condition is that the application included a request for compulsory acquisition of that land. The second condition is that all persons with an interest in that land consent to the inclusion of this provision. The third condition is that the prescribed procedure

has been followed in relation to that land. This provision is based on an equivalent provision in the Acquisition of Land Act 1981.

Section 124: Guidance about authorisation of compulsory acquisition

217. This section allows the Secretary of State to issue guidance about the authorisation of the compulsory acquisition of land in an order granting development consent. Where the Panel or Council wishes to include in an order authorisation to purchase land compulsorily, it must have regard to this guidance.

Section 125: Application of compulsory acquisition provisions

218. This section provides that Part 1 of the Compulsory Purchase Act 1965 applies (with specified modifications) to any order granting development consent that contains provisions on compulsory acquisition of land. However, the order itself may specify otherwise. The Compulsory Purchase Act 1965 sets out the procedure whereby ownership of the land is transferred to the acquiring authority. The section makes corresponding provision in relation to Scotland.
219. This section also has the effect that the 1965 Act will apply to any acquisition of land following the service of a blight notice on the grounds that the land is blighted because its compulsory purchase is proposed in an application for an order granting development consent.

Section 126: Compensation for compulsory acquisition

220. This section places restrictions on the provision which may be made about compensation in an order granting development consent which authorises the compulsory acquisition of land.

Section 127: Statutory undertakers' land

221. This section specifies the conditions which must be satisfied for an order granting development consent to authorise the compulsory purchase of land which a statutory undertaker has acquired for the purpose of its undertaking in circumstances where a representation has been made about the application for the order and that representation is not withdrawn. For such an order to be made the Secretary of State must certify that she is satisfied that:
- a) the land can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or
 - b) it can be purchased and replaced with other land without any such detriment.
222. Similarly, in the circumstances mentioned above, an order granting development consent can include a provision authorising the compulsory acquisition of a new right over land belonging to a statutory undertaker only if the Secretary of State certifies that she is satisfied that:
- a) the right can be purchased without serious detriment to the carrying on of the undertaking; or
 - b) any such detriment can be remedied by the statutory undertaker's using other land.
223. If the Secretary of State is satisfied of these matters, and issues a certificate to that effect, notice that the certificate has been given must be published in local newspapers and notified to the Commission where a Panel or the Council is the decision-maker.

***Sections 128 and 129: Local authority and statutory undertakers' land: general /
Local authority and statutory undertakers' land: acquisition by public body***

224. **Section 128** specifies the circumstances in which an order granting development consent that authorises the compulsory purchase of land belonging to a local authority or statutory undertakers is to be subject to special Parliamentary procedure. If a representation has been made by the local authority or statutory undertakers about an application for such an order and this has not been withdrawn, any order allowing compulsory acquisition would be subject to special Parliamentary procedure. The special Parliamentary procedure, and the system which governs it, is contained in the Statutory Orders (Special Procedure) Acts 1945 and 1965. Section 129 provides that the procedure does not apply where the person who would acquire the land is one of the public bodies listed in subsection (1).

Section 130: National Trust land

225. This section relates to land which is held inalienably by the National Trust. It provides that in certain circumstances an order granting development consent which authorises the compulsory purchase of such land or certain rights over such land, will be subject to special Parliamentary procedure. This is the case if the National Trust has made a representation about an application for such an order and this has not been withdrawn.

Section 131: Commons, open spaces etc: compulsory acquisition of land

226. This section applies to an order granting development consent which authorises the compulsory purchase of land forming part of a common, open space or fuel or field garden allotment, where this acquisition does not involve the acquisition of a new right over that land. This section specifies that such an order will be subject to special Parliamentary procedure unless the Secretary of State is satisfied either that:
- a. replacement land has been or will be given in exchange and that it will be subject to the same rights, trusts and incidents; or
 - b. the land being acquired does not exceed 200 square metres, or is required for the widening or drainage of an existing highway, or partly for the widening and partly for the drainage of such a highway, and the giving of land in exchange for it is unnecessary.

Any replacement land must be no less in area than the land being compulsorily acquired and must be no less advantageous.

227. If the Secretary of State proposes to issue a certificate confirming she is satisfied of the matters outlined above, she must follow the procedures set out in subsection (6). If the Secretary of State issues a certificate, she must follow the procedures set out in subsection (10).

Section 132: Commons, open spaces etc: compulsory acquisition of rights over land

228. This section applies to an order granting development consent which authorises the compulsory acquisition of a new right over land forming part of a common, open space or fuel or field garden allotment. It provides that such an order granting development consent will be subject to special Parliamentary procedure unless the Secretary of State is satisfied either that:
- a. the land will be no less advantageous when burdened with the right to the persons mentioned in subsection (3);
 - b. replacement land will be given in exchange and will be subject to the same rights, trusts and incidents; or

- c. the land over which the right is being acquired does not exceed 200 square metres, or the right is required in connection with the widening or drainage of an existing highway or in connection partly with the widening and partly with the drainage of such a highway, and the giving of land in exchange for it is unnecessary.
229. If the Secretary of State proposes to issue a certificate confirming she is satisfied of the matters outlined above, she must follow the procedures set out in subsection (6). If the Secretary of State issues a certificate she must follow the procedures set out in subsection (10).

Section 133: Rights in connection with underground gas storage facilities

230. This section modifies some of the usual procedures where an order granting development consent authorises the development of underground gas storage facilities within the meaning of section 14(1)(c), and authorises the compulsory acquisition of rights to store gas underground or certain other rights over land.

Section 134: Notice of authorisation of compulsory acquisition

231. This section requires a person (the prospective purchaser) who has been authorised to acquire land compulsorily by an order granting development consent to serve a notice about this on persons with certain interests in that land. This notice is referred to as a compulsory acquisition notice, must be in the prescribed form and must contain certain information. The prospective purchaser must also affix such a notice to a conspicuous object near the land to be acquired for 6 weeks, publish it in one or more local newspapers and make it available for inspection.

Section 135: Orders: Crown land

232. This section provides that an order granting development consent can authorise the compulsory purchase of an interest in Crown land only if the interest is for the time being held otherwise than by or on behalf of the Crown, and the appropriate Crown authority consents to the acquisition. An order granting development consent can include any other provision in relation to Crown land, or rights benefiting the Crown only if the appropriate Crown authority consents.

Section 136: Public rights of way

233. This section specifies that no order granting development consent can be made that extinguishes any public right of way over land unless the authority making it is satisfied that an alternative right of way has been or will be provided, or that such an alternative right of way is not required. Where an order granting development consent authorises the purchase of land and also extinguishes a non-vehicular public right of way over the land, the latter cannot take effect earlier than the date on which the order is published. Additionally, the appropriate authority must direct that the right revives, if the right is extinguished before the acquisition of the land is completed and the proposal to acquire the land is abandoned.

Section 137: Public rights of way: statutory undertakers' apparatus etc.

234. This section applies to any order granting development consent which provides for the acquisition of land and authorises the extinguishment or diversion of a public right of way for non-vehicular traffic over land on which a statutory undertaker has erected apparatus or where electronic communications apparatus is kept installed. It provides that an order may include such a provision only where the relevant undertaker or operator of the network has given its consent. This consent can be subject to conditions. Any questions on the reasonableness of proposed conditions, or any refusal, are to be determined by the Secretary of State.

Section 138: Extinguishment of rights, and removal of apparatus, of statutory undertakers etc.

235. This section relates to orders granting development consent which authorise the acquisition of land falling into one or more of two categories. One category is land on, under or over which a statutory undertaker has erected apparatus or where electronic communications apparatus is kept installed. The other category is land in respect of which a statutory undertaker or electronic communications code network operator has a specified right. Orders may include a provision requiring the removal of such apparatus or the extinguishment of such rights only if the decision-maker is satisfied that it is necessary for carrying out the development. The consent of the Secretary of State to the inclusion of the provision is required even where she is not the decision-maker if the undertaker or operator makes a representation about the application for the order and that representation is not withdrawn.

Section 139: Common land and rights of common

236. This section states that an order granting development consent cannot include provisions that exclude or modify the application of a provision of, or made under, the Commons Act 2006, or authorise the suspension of, or extinguishment or interference with, registered rights of common. The exception to this is when an order granting development consent authorises the compulsory acquisition of common land or a right over it and the provisions of clause 131 or 132 apply.

Section 140: Operation of generating stations

237. This section provides that an order granting development consent which authorises the operation of a generating station can be made only if the development to which the order relates is or includes the construction or extension of the generating station.

Section 141: Keeping electric lines installed above ground

238. This section provides that an order granting development consent may authorise overhead electric lines to be kept installed only if the development to which the order relates is or includes the installation of such lines.

Section 142: Use of underground gas storage facilities

239. By virtue of this section an order granting development consent which authorises the use of underground gas storage facilities can be made only if the order authorises the development of such facilities.

Section 143: Diversion of watercourses

240. This section states that an order granting development consent which authorises the diversion of a navigable watercourse can be made only if the new length of watercourse is conveniently navigable by vessels of a kind accustomed to using that part of the watercourse. Such an order is also taken to authorise the diversion of any adjacent tow path.

Section 144: Highways

241. This section states that an order granting development consent may authorise the charging of tolls in relation to a highway only if a request for such provision was included in the application for the order. An order granting development consent may authorise the appropriation of a highway by a person or the transfer of a highway to a person only if the appropriation or transfer is connected with the construction or improvement by the person of a highway which is designated by the order as a special road.

Section 145: Harbours

242. This section sets out the circumstances in which an order granting development consent may provide for the creation of a harbour authority, the modification of the powers or duties of an existing harbour authority or the transfer of property, rights or liabilities from one harbour authority to another.

Section 146: Discharge of water

243. This section relates to an order granting development consent which authorises the discharge of water into inland waters or underground strata. The person to whom the order is granted does not acquire the power to take water or require discharges to be made from the source of water mentioned in the order.

Section 147: Development of Green Belt land

244. Where an order granting development consent includes the provisions specified in this section in relation to Green Belt land, the Panel, the Council or the Secretary of State (as the case may be) must notify the relevant local authorities of the provision made by the order and if it is the Panel or Council that decides the application, they must also notify the Secretary of State. This matches existing provisions in the Green Belt Act 1938.

Section 148: Deemed consent under section 34 of the Coast Protection Act 1949

245. This section specifies that an order granting development consent may deem a consent under section 34 of the Coast Protection Act 1949 to have been given in relation to operations in specified areas. A person who fails to comply with any conditions attached to the deemed consent does not commit an offence under Part 8 of this Act, but instead commits an offence under the 1949 Act.

Section 149: Deemed licences under Part 2 of the Food and Environment Protection Act 1985

246. This section specifies that an order granting development consent may deem a licence under Part 2 of the Food and Environment Protection Act 1985 to have been issued for operations in specified areas. A person who fails to comply with any conditions attached to the deemed licence does not commit an offence under Part 8 of this Act, but instead commits an offence under that Act.

Section 150: Removal of consent requirements

247. This section provides that an order granting development consent may include provision removing a requirement for a prescribed consent or authorisation to be granted only if the relevant body consents.

Section 151: Liability under existing regimes

248. This section prevents an order granting development consent from excluding or modifying liability under any of the statutory regimes specified.

Section 152: Compensation in case where no right to claim in nuisance

249. This section confers a right to compensation in cases where, as a result of section 158 or the terms of a development consent order, a person would not be able to succeed in a claim for nuisance in respect of works authorised by a development consent order. Compensation is available in relation to injurious affection to a person's land or depreciation in its value.

Chapter 2: Changes to, and revocation of, orders granting development consent

Section 153 & Schedule 6: Changes to, and revocations of, orders granting development consent

250. [Section 153](#) introduces Schedule 6, which describes the mechanisms by which subsequent modifications, or revocations, can be made to orders granting development consent.

Schedule 6

Schedule 6, Paragraph 1: Preliminary

251. This paragraph sets out definitions for the purposes of this Schedule.

Schedule 6, Paragraph 2: Non-material changes

252. This paragraph gives the appropriate authority (the Commission or the Secretary of State) a power to make a change to a development consent order. This particular power applies only where the appropriate authority is satisfied the change is not material. In deciding whether a change is material regard should be had to the effect of the change, together with the effect of previous changes, on the order as originally made. The power to make a non-material change includes the power to remove or alter existing requirements and also to impose new ones. This power may be exercised only on application by the people specified, and if made in the prescribed form and manner. Where the appropriate authority proposes to make a non-material change, it will have to comply with the prescribed requirements for consultation and publicity. Where a non-material change is made, the original order continues in force, but is treated as corrected with effect from the date the correction notice is issued.

Schedule 6, Paragraph 3: Changes to, and revocation of, orders granting development consent

253. This paragraph provides the appropriate authority with further powers to make a change to a development consent order. These powers are wide enough to make changes which the appropriate authority considers material and to allow a development consent order to be revoked. The powers may be exercised on application by the people specified. These include the applicant or a successor in title of the applicant, a person with an interest in the land, and in some circumstances, the local planning authority and the Secretary of State. However, no application is needed if the development consent order contains a significant error which it would not be appropriate to correct under Schedule 4. In addition, no application is needed where the appropriate authority is the Secretary of State and she is satisfied that either if the development were carried out, there would be breach of European Community or Convention rights under the Human Rights Act 1998, or that there are other exceptional circumstances.

Schedule 6, Paragraphs 4 and 5: Changes to, and revocation of, orders: supplementary

254. [Paragraph 4](#) provides that an application for a change to, or revocation of, a development consent order under paragraph 3 must be made in the prescribed form and manner and be accompanied by information of a prescribed description. The Secretary of State may prescribe procedures about how such an application must be made, the decision-making process for such an application, and the effect of a decision to exercise that power. If an order granting development consent is changed or revoked, the appropriate authority must give notice of this to prescribed persons.
255. [Paragraph 5](#) specifies that with the exception of changes to the requirements imposed by an order granting development consent, amendment under paragraph 3 of an order (short of revocation) may not be made more than 4 years after the relevant development

was substantially completed. This is the same time limit that applies in respect of enforcement proceedings (see section 162). Paragraph 5(4) lists some of the things that the power under paragraph 3 to change or revoke orders can be used to do, for example, require the removal or alteration of buildings or existing requirements. Paragraph 5(5) makes clear that existing building or other operations, which have already been carried out are not affected, unless they are the subject of the change or revocation.

Schedule 5, Paragraphs 6 and 7: Compensation

256. Paragraph 6 gives to those with an interest in land, or who benefit from an order, a right to compensation in respect of certain losses. Compensation may be payable if expenditure has been incurred in carrying out work (including preparatory work or planning) which is rendered abortive by a change to, or revocation of, the order. A right to compensation may also arise in relation other loss or damage which is directly attributable to the change or revocation. Paragraph 6 also specifies to whom and by whom the compensation must be paid. The Secretary of State may make regulations about the assessment of compensation. Paragraph 7 deals specifically with 'compensation for depreciation'. This term is defined as meaning compensation payable in respect of loss or damage consisting of depreciation of the value of an interest in land. The Secretary of State is given the power to make regulations about this and the apportionment of compensation under this head.

Part 7, Chapter 3: General

Section 154: Duration of order granting development consent

257. This section provides that after a development consent order is granted, the development must be begun before the end of the period prescribed by the Secretary of State or such other (shorter or longer) period as is specified in the order. Failure to begin development within this timescale leads to the order ceasing to have effect. The section also sets time limits for taking prescribed steps where the order authorises the compulsory acquisition of land. If the steps are not taken within the time limits the authority to compulsorily acquire the land ceases to have effect.

Section 155: When development begins

258. This section states that development is taken to begin as soon as any material operation comprised in, or carried out for the purposes of, the development begins to be carried out. There is a power for the Secretary of State to prescribe operations which do not constitute a "material operation".

Section 156: Benefit of order granting development consent

259. This section explains that the development consent order will generally have effect for the benefit of the land mentioned in the order and all those for the time being interested in the land. It is possible for the order to make provision to the contrary. Subsection (3) has the effect of restricting the benefit of a development consent order authorising underground gas storage facilities to a (licensed) gas transporter.

Section 157: Use of buildings in respect of which development consent granted

260. This section clarifies that where an order granting development consent grants consent for the erection, extension, alteration or re-erection of a building, the order may specify the purposes for which the building may be used. If it does not do so, the consent is presumed to authorise the use of the building for the purpose for which it is designed.

Section 158: Nuisance: statutory authority

261. This section provides a defence of statutory authority in proceedings for nuisance if a person carries out development for which consent is granted by an order granting

development consent. Such a defence is available in respect of anything else authorised by an order granting development consent.

Section 159: Interpretation: rights over land

262. This section clarifies that in Part 7 of this Act, the word “land” includes any interest in or right over land, and that acquiring a right over land includes creating a new right and not just acquiring an existing right.

Part 8: Enforcement

Section 160: Offence: development without development consent

263. This section provides that a person commits an offence if he carries out development for which development consent is required without development consent. A person who is found guilty of this offence is liable to a fine. The maximum fine which may be imposed varies depending on whether the case is tried in the Magistrates’ court or the Crown Court.

Section 161: Offence: breach of terms of order granting development consent

264. This section provides that a person commits an offence if without reasonable excuse he carries out development in breach of the terms of an order granting development consent or if he does not comply with the terms of such a consent. There are two exceptions to this offence: a person does not commit an offence under this section for failing to comply with the terms of any consent under the Coast Protection Act 1949 (CPA) or licence under the Food and Environmental Protection Act 1972 (FEPA) that is deemed to be granted or issued by a development consent order. This is because the CPA and FEPA have separate enforcement regimes. A person has a defence if the breach or failure occurred because of an error or omission in the order, which was subsequently corrected through the mechanism in Schedule 4. A person who is found guilty of this offence is liable to a fine. The provisions regarding the level of the fine match those under section 160.

Section 162: Time limits

265. This provision sets out time limits for bringing charges in relation to the offences created by sections 160 and 161.

Section 163: Right to enter without warrant

266. This section gives the relevant local planning authority the power to authorise a person to enter land, if it has reasonable grounds to suspect an offence is being, or has been, committed under sections 160 or 161. Entry may take place only at a reasonable hour and where the property to be entered is a building used as a dwelling house 24 hours’ notice of entry must be given to the occupier.

Section 164: Right to enter under warrant

267. This section provides that a justice of the peace may issue a warrant authorising a person, authorised by the relevant local planning authority, to enter land. The conditions of this are:
- a) there are reasonable grounds for suspecting that an offence is being, or has been, committed under section 160 or 161; and
 - b) either entry has been, or is likely to be, refused or this is an urgent case.
268. The warrant will authorise entry on one occasion only. The entry must take place within one month of the date of issue of the warrant. Generally entry is permitted only at a reasonable hour, but an exception may be made in urgent cases.

Section 165: Rights of entry: supplementary provisions

269. This section requires an authorised person entering land under section 163 or 164 to produce evidence, if requested, of the authority and state the purpose for entry before entering the land. It also allows an authorised person to take other persons as necessary and, if when the authorised person leaves, the owner or occupier is not present, the section requires the authorised person to take steps to ensure the land is left as effectively secured against trespassers as it was found.
270. This section provides that an offence is committed if someone wilfully obstructs a person authorised to enter land under section 163 or 164. Compensation for any damage caused by an authorised person on the land may be recovered from the authority that authorised the right of entry.

Section 166: Rights of entry: Crown land

271. This section provides that the rights of entry powers at sections 163 and 164 do not apply to Crown land.

Section 167: Power to require information

272. This section enables the relevant local planning authority to serve an information notice on the owner or occupier of land or anyone carrying out work on land or using it for any purpose. The power may be exercised where the authority suspects an offence under section 160 or 161 has been committed in respect of the land. The information notice may require the recipient to provide information about operations being carried out, the use of the land and any other activities. The notice may also require details about any development consent order applying to the land. The notice must set out the likely consequences of failing to respond. The recipient must send the information required in writing to the local planning authority.

Section 168: Offences relating to information notices

273. This section provides that a person commits an offence if, without reasonable excuse, he fails to comply with any requirement of an information notice, within a period of 21 days beginning on the day the notice is served. The offence is punishable with a fine. In addition, a person commits an offence if he makes a statement in response to the notice that he knows to be false or misleading in a material respect or is reckless as to whether it is true or false. This offence is also punishable by a fine.

Section 169: Notice of unauthorised development

274. This section provides that where a person has been found guilty of an offence under section 160, the relevant local planning authority may serve a notice requiring the person to remove the unauthorised development and return the land to its previous condition. Where a person has been found guilty of an offence under section 161 the local planning authority may serve a notice requiring the person to remedy the breach or failure to comply. Both types of notice of unauthorised development must specify the period within which any steps must be taken, and different periods may be specified for different steps.

Section 170: Execution of works required by unauthorised development notice

275. This section applies where steps have not been taken to comply with a notice of unauthorised development within the stipulated period for compliance. In such a case, the relevant local planning authority may enter the relevant land and carry out the works required in the notice and recover any expenses reasonably incurred in doing so from the owner of the land. This section provides for such expenses and other amounts to be deemed to be incurred or paid for the use and at the request of the person found guilty of the offence under section 160 or 161. The section contains a power to apply

certain provisions of the Public Health Act 1936. It also provides that a person commits an offence if the person wilfully obstructs a person acting under powers conferred by the section.

Section 171: Injunctions

276. This provision enables the relevant local planning authority to apply to the County Court or to the High Court for an injunction when it considers it necessary or expedient to prevent an actual or anticipated offence under section 160 or 161.

Section 172: Isles of Scilly

277. This section allows the Secretary of State to make an Order enabling the Council of the Isles of Scilly to carry out any functions set out in Part 8 that are exercisable by a local planning authority. The Secretary of State must consult the Council of the Isles of Scilly before making such an Order.

Section 173: The relevant local planning authority

278. This section explains what is meant by the expression “relevant local planning authority” when it is used in Part 8.

Part 9: Changes to Existing Planning Regimes

Part 9, Chapter 1: Changes related to development consent regime

Sections 174: Planning obligations

279. This section allows the promoter of a nationally significant infrastructure project to enter into agreements with local authorities, in the same way as a developer seeking planning permission under TCPA 1990.
280. Only the Commission or (as the case may be) the Secretary of State will be able subsequently to modify or discharge a planning obligation entered into in connection with an application (or proposed application) for an order granting development consent. It will be for the local planning authority to enforce the obligation. Provision is made concerning legal challenges in connection with planning obligations.

Sections 175 and 176: Blighted land: England and Wales / Blighted land: Scotland

281. A national policy statement identifying a location as a suitable (or potentially suitable) location for a nationally significant infrastructure project may create blight at that location, reducing land values and making it hard to sell the land. Blight may also result from an application being made for an order granting development consent authorising the compulsory acquisition of land or from such authorisation being given.
282. **Section 175** amends TCPA 1990 (which extends to England and Wales), so as to allow owner occupiers adversely affected in this way to have the benefit of the existing statutory provisions relating to blight. The effect of subsection (6) is that the “appropriate authority” (who should receive the blight notice) in the case of blight caused by a national policy statement is the statutory undertaker named as an appropriate person to carry out the development in the national policy statement, or the Secretary of State where there is no such named undertaker. The Secretary of State is to determine any disputes as to who should be the appropriate authority. Subsection (4) prevents the appropriate authority from serving a counter-notice to a blight notice on grounds of having no intention of conducting the development. Subsection (7) makes it clear that the “appropriate enactment” for a blight notice is the development consent order, or the draft order in the terms applied for.

283. **Section 176** makes equivalent provision for blight caused in Scotland by an order granting development consent which authorises the compulsory acquisition of land, or an application for such an order, or by a national policy statement identifying a location as a suitable (or potentially suitable) location for an oil or gas cross-country pipe-line.

Section 177: Grants for advice and assistance: England and Wales

284. **Section 177** amends section 304A(1) of TCPA 1990, so as to ensure that the Secretary of State may make grants for advice and assistance, in connection with applications for development consent under this Act.

Section 178: Grants for advice and assistance: Scotland

285. This section gives the Secretary of State the power to make grants for the purpose of assisting with the provision of advice and assistance in connection with any matter related to the application of the Planning Act to Scotland.

Part 9, Chapter 2: Other changes to existing planning regimes

Section 179: Delegation of functions of regional planning bodies

286. This section allows a regional planning body to enter into an agreement with the regional development agency for its region regarding the delegation of any of the body's functions. In addition where the Secretary of State has the power to exercise any functions of the regional planning body these powers may be delegated to the relevant regional development agency by agreement.

Section 180: Local development documents

287. **Section 180** amends the Planning and Compulsory Purchase Act 2004 (referred to in these notes as "PCPA 2004") with regard to supplementary planning documents and statements of community involvement. In these notes on this section, "supplementary planning document" means a document that for the purposes of PCPA 2004 is a local development document but is not a development plan document.
288. Subsection (2) provides for amendments such that local planning authorities will no longer need to list supplementary planning documents in their local development schemes. Subsection (5)(a) removes the requirement for supplementary planning documents to be produced in accordance with the local development scheme. The result will be that supplementary planning documents can be produced by local planning authorities without the agreement of the Secretary of State although they will continue to have the status of local development documents (and the Secretary of State will still be able to require pre-adoption modification of supplementary planning documents that the Secretary of State considers unsatisfactory). Subsection (5)(d) removes the requirement to carry out and report on a sustainability appraisal of the proposals in a supplementary planning document.
289. Subsection (3)(a) removes the requirement for the statement of community involvement to be specified in the local development scheme and subsection (4)(c) removes the requirement for an independent examination of the statement of community involvement.

Section 181: Regional spatial strategies: climate change policies

290. **Section 181** amends PCPA 2004 to require regional spatial strategies to include policies on climate change. These policies must be designed to secure that the development and use of land in the region to which a regional spatial strategy relates contribute to the mitigation of, and adaptation to, climate change.

Section 182: Development plan documents: climate change policies

291. **Section 182** places a duty on local planning authorities when preparing their development plan documents to include policies on climate change. These policies must be designed to secure that the development and use of land contributes to the mitigation of, and adaptation to, climate change.
292. The duty is set within the context of section 19(2) of PCPA 2004 which states that in preparing a local development document local planning authorities must have regard to national policies and advice contained in guidance issued by the Secretary of State. In practice this will be the Planning Policy Statement on Climate Change.

Section 183: Good design

293. Section 39 of PCPA 2004 imposes a duty on persons or bodies exercising functions in relation to development plans in England and Wales to do so with the objective of contributing to the achievement of sustainable development. Section 183 amends section 39 of PCPA 2004 requiring those persons and bodies, in complying with this duty, to have regard (in particular) to the desirability of achieving good design.

Section 184: Correction of errors in decisions

294. This section amends section 56(3)(c) of PCPA 2004 so as to remove the requirement in England for the Secretary of State or an inspector to obtain the consent in writing of the applicant and, if different, the owner of the land before she may correct an error in a decision document.

Section 185: Power of High Court to remit strategies, plans and documents

295. **Section 185** amends section 113 of PCPA 2004. Section 113 provides that certain development-related strategies, plans and documents may be challenged only by way of High Court proceedings under section 113. At present, if the Court upholds a challenge, its only power is to quash the whole or part of the document concerned. Preparation of the document has then to begin again. The amendments mean that the Court may instead: direct that a strategy, plan or document be treated as still being an unapproved/unadopted draft; send a strategy, plan or document back to any stage in its production process by specifying which steps in the process can be considered as having been taken satisfactorily; and give directions as to the action to be taken relating to its preparation, publication, adoption or approval. Section 113 as amended applies to all strategies, plans and documents in England and Wales listed in section 113(1).

Section 186: Power of High Court to remit unitary development plans in Wales

296. **Section 186** makes the same provision in relation to unitary development plans in Wales that are the subject of current transitional provisions. The intention of these arrangements is to enable certain local planning authorities in Wales to complete unitary development plans under TCPA 1990 before embarking on the local development plans required by PCPA 2004.

Section 187 and Schedule 7: Power to decline to determine applications: amendments

297. **Section 187** introduces Schedule 7 which amends sections 70A and 70B of TCPA 1990, sections 81A and 81B of the Listed Buildings Act and section 121 of PCPA 2004. Section 70A of TCPA 1990 and section 81A of the Listed Buildings Act provide powers for local planning authorities to decline to determine an application for planning permission, listed building consent or conservation area consent: if it is the same or substantially the same as an application which, within the previous two years, the Secretary of State has called in and refused or dismissed on appeal; or if the local planning authority has refused two similar applications in that period and there has been

no appeal. The Schedule provides that these sections will also apply where the earlier application is a deemed application arising from an enforcement appeal. The Schedule also amends these sections to ensure that a local planning authority is not prevented from exercising its powers to decline to determine an application by the fact that an appeal has been made but has been withdrawn before being determined.

298. Sections 70B of TCPA 1990 and 81B of the Listed Buildings Act provide powers for local planning authorities to exercise similar powers to those described in relation to sections 70A and 81A where they receive an application that is similar to one already under consideration. Schedule 7 amends sections 70B and 81B so that the powers also relate to applications received on the same day and section 70B is further amended so as to apply these provisions to deemed applications arising from an enforcement appeal.

Section 188: Local development orders: removal of requirement to implement policies

299. **Section 188** amends section 61A of TCPA 1990 so as to omit subsection (1) and thereby remove the requirement that a local development order can only be made to implement a policy in a development plan document or a local development plan. Subsections (3) and (4) of section 188 make consequential amendments to subsection (2) of section 61(A) and sub-paragraphs (4) and (5) of paragraph 2 of Schedule 4A of TCPA 1990.

Section 189: Compensation where development order or local development order withdrawn

300. **Section 189** inserts new subsections (2A) (3B), (3C), (3D), (5) and (6) into section 108 of TCPA 1990. Section 107 of TCPA 1990 sets out the entitlement to compensation where planning permission is revoked or modified. Section 108 extends this entitlement to compensation to circumstances where planning permission granted by a development order or a local development order is withdrawn. New subsection (2A) provides that where planning permission of a prescribed description granted by a development order or local development order is withdrawn by the issue of directions under powers conferred by that order, compensation would be payable only if an application for planning permission for development formerly permitted by that order is made within 12 months of the directions taking effect.
301. The effect of new subsections (3B) and (3C) is that, where planning permission granted by a development order is withdrawn, there will be no entitlement to compensation where the permission was granted for development of a prescribed description and is withdrawn in the prescribed manner, and notice of the withdrawal is published not less than 12 months or more than the prescribed period before the withdrawal takes effect. If development is started before the notice is published, compensation will be available unless the order in question contains provision permitting the completion of development.
302. Where planning permission granted by local development order is withdrawn, subsections (3B) and (3D) provide that there will be no entitlement to compensation where notice of the withdrawal is published not less than 12 months or more than the prescribed period before the withdrawal takes effect. If development is started before the notice is published, compensation will be available unless the order in question contains provision permitting the completion of development.

Section 190: Power to make non-material changes to planning permission

303. **Section 190** inserts a new section 96A into TCPA 1990. Its purpose is to introduce express power for a local planning authority to make a change to a planning permission if it is satisfied that that change is not material. In determining whether a change is material, a local planning authority must have regard to the effect of the change and any previous changes made under section 96A to the original planning permission: see new section 96A(2).

Section 191: Validity of orders, decisions and directions

304. Section 284 of TCPA 1990 provides that the validity of certain orders, directions and decisions (including certain decisions on planning applications) may not be questioned in any legal proceedings except in so far as may be provided in Part 12 of that Act. In particular, that Part of TCPA 1990 provides that any application to the High Court must be brought within a period of six weeks. Section 191 amends section 284 of TCPA 1990 so that the six week deadline for commencing any proceedings applies also to decisions on applications referred to the Secretary of State under her powers under section 76A of that Act (that is, applications for major infrastructure projects).

Section 192 and Schedule 8: Tree preservation orders

305. This section, and Schedule 8 which is introduced by this section, make amendments to provisions in TCPA 1990 concerning tree preservation orders. In short, they provide for the transfer of provisions from tree preservation orders into regulations.
306. Subsections (2) to (6) of section 192 repeal various provisions of TCPA 1990 which set out provision that may be included in tree preservation orders, including: (1) provision prohibiting works to trees without the consent of the local planning authority; (2) exemptions which allow works to protected trees without consent; (3) provision regulating applications for consent to carry out works to trees, and appeals; (4) provision for the payment of compensation for loss or damage caused by tree preservation orders.
307. Subsection (7) of section 192 enables these deleted provisions of TCPA 1990 to be replaced by provision included in regulations. For this purpose it inserts seven new sections into the Act. New section 202A makes general provision about the regulations, which would be subject to the negative resolution procedure. New sections 202B to 202G contain additional details about the sort of provision that may be contained in the regulations. In particular, the regulations may include provision about: the form of tree preservation orders; the procedures to be followed where tree preservation orders are to be confirmed; the prohibited activities in relation to trees; applications for consent to carry out works to trees; powers to give consent to works subject to conditions; applying the tree preservation order to trees planted under a condition; appeals against decisions to refuse consent; entitlement to compensation following decisions on applications for consent; and the keeping of public registers containing information on tree preservation orders.
308. **Schedule 8** makes further amendments needed to give effect to the transfer of provisions from tree preservation orders to regulations.

Section 193: Existing tree preservation orders: transitional provision

309. **Section 193** makes transitional provisions about tree preservation orders. The regime set out in tree preservation regulations will apply to trees identified in an existing order in place of the existing provisions.

Section 194 and Schedule 9: Use of land: power to override easements and other rights

310. Subsection (1) of section 194 introduces Schedule 9 which amends section 237 of TCPA 1990 so as to authorise a local authority to override easements and other rights restricting the use of land, which it has acquired or appropriated for planning purposes. The local authority can do this only if the use is in accordance with planning permission. Under section 237 it is already possible for a local authority, in these circumstances, to override easements and other rights restricting the execution of works on land.
311. Compensation will be payable for an interference with or a breach of an easement or other rights under this provision.

312. [Schedule 9](#) also makes corresponding amendments to equivalent provisions in other legislation and subsections (2) to (5) of section 194 confer on the Welsh Ministers the power to make corresponding amendments to the Welsh Development Agency Act 1975.

Section 195: Applications and appeals by statutory undertakers

313. Section 266(1) of TCPA 1990 provides for the Secretary of State and the appropriate Minister to decide jointly certain planning applications and appeals where the application has been made by a statutory undertaker and the case has been referred to the Secretary of State under Part 3 of TCPA 1990. Section 195 disapplies this provision in England except where the Secretary of State or the appropriate Minister gives a direction for section 266(1) to have effect in relation to the relevant application or appeal.

Section 196 and Schedule 10: Determination of procedure for certain proceedings

314. The purpose of section 196 is to require the Secretary of State to determine the procedure by which certain proceedings under TCPA 1990, the Listed Buildings Act and the Hazardous Substances Act should be considered. The procedure could be a local inquiry, a hearing or written representations, as the Secretary of State considers appropriate. The Secretary of State must make the determination within the prescribed period, notify the appellant/applicant and local planning authority of which procedure has been selected, and publish the criteria that are to be applied in determining the appeal method.
315. [Schedule 10](#) contains amendments to TCPA 1990, the Listed Buildings Act and the Hazardous Substances Act that are consequential on the new provisions inserted by section 196.

Section 197 and Schedule 11: Appeals: miscellaneous amendments

316. This section introduces Schedule 11 which makes various amendments of provisions of the Planning Acts to provide for notices of appeal to be accompanied by prescribed information. The Schedule also provides for a time limit for making an appeal against a local planning authority's refusal to issue a lawful development certificate to be prescribed by development order.

Section 198: Appeals relating to old mining permissions

317. This section amends Schedule 6 to TCPA 1990 to enable regulations to be made for the transfer to inspectors of appeals under Schedule 2 to the Planning and Compensation Act 1991 in respect of old mining permissions for development authorised under interim development orders made between 1943 and 1948.

Section 199: Fees for planning applications etc.

318. [Section 199](#) substitutes section 303 of TCPA 1990. The new elements are in subsections (2) and (4) of the substituted section. There are also new supplementary provisions in subsections (5)(a) and (f) and (6) of the substituted section.
319. Subsection (2) enables the appropriate authority (being the Secretary of State in England or the Welsh Ministers in Wales) to make provision in regulations for the whole of the fee which is payable when an applicant appeals under section 177(5) of TCPA 1990 against an enforcement notice to be paid to either the local planning authority, the appropriate authority, or both the local planning authority and the appropriate authority. The previous section 303(3)(a) had only allowed the Secretary of State to prescribe that the fee should be paid to her and the local planning authority.

320. Section 293A of TCPA 1990 (Urgent Crown development: application) provides for the appropriate authority (that is, the “appropriate authority” as defined in section 293 of TCPA 1990) to make a planning application direct to the Secretary of State (in England) or the Welsh Ministers (in Wales) instead of to the local planning authority. Subsection (4) of the substituted section 303 enables the Secretary of State (in England) and the Welsh Ministers (in Wales) to make provision in regulations for an application under section 293A to be accompanied by a fee payable to the Minister or Ministers to whom the application is made.
321. Subsection (8) provides that regulations made under section 303 of TCPA 1990 should continue to be subject to the affirmative resolution procedure.

Section 200: Fees for appeals

322. **Section 200** inserts a new section 303ZA into TCPA 1990 which allows the Secretary of State to make provision, by way of regulations, for the payment of a fee for appeals made under TCPA 1990 and the Listed Buildings Act. The fee is to be payable by the appellant and the regulations may set out, in particular, when the fee should be paid, how the fee should be calculated and by whom, the circumstances under which an appeal fee may be refunded, and the effect of either paying or not paying the fee.
323. Regulations made under the new section 303ZA are subject to the affirmative resolution procedure.

Section 201: Meaning of “local authority” in planning Acts

324. **Section 201** amends the definition of “local authority” in TCPA 1990 to include the London Fire and Emergency Planning Authority.

Part 10: Wales

Section 202: Powers of National Assembly for Wales

325. **Section 202** amends Schedule 5 to the Government of Wales Act 2006. The 2006 Act gives the National Assembly for Wales the power to pass legislation known as Assembly Measures in relation to the matters listed in fields in Part 1 of Schedule 5 to the 2006 Act. Legislative competence to pass Measures is conferred by adding matters to those Fields. Assembly Measures may make any provision that could be made by an Act of Parliament in relation to those matters, subject to the restrictions contained in the 2006 Act.
326. **Section 202** adds three new matters to Field 18 on town and country planning. This will enable the Assembly to pass Measures relating to plans of the Welsh Ministers and local planning authorities concerning the development and use of land, subject to an exception regarding the status of such plans. Measures may also be passed which relate to the review by local planning authorities of matters affecting their area’s development.

Section 203: Power to make provision in relation to Wales

327. **Section 203(1)** confers on the Welsh Ministers the power to make an order giving effect in Wales to certain reforms to the land use planning system provided for in Part 9 which would otherwise have effect only in England. Subsection (2) lists the relevant reforms. Subsection (4) allows the Welsh Ministers to make an order reversing the effect of an order made under subsection (1). Subsections (7) and (9) require orders under section 203 to be made by statutory instrument and to be subject to the affirmative resolution procedure of the National Assembly for Wales.

Section 204: Wales: transitional provision in relation to blighted land

328. This is a Wales-only provision relating to blighted land to ensure that blight notice procedures apply to land identified in all existing development plans in Wales. The blight notice procedure currently applies to land identified in local development plans. Section 204 will enable the blight notice procedure to apply to land identified in structure plans, local plans and unitary development plans in Wales until such time as those plans are superseded by a local development plan.

Part 11: Community Infrastructure Levy

Section 205: The levy

329. This section provides the regulation-making power to the Secretary of State to establish a Community Infrastructure Levy ("CIL") and sets out the overall purpose of the levy. The overall aim of the charge is to ensure that costs incurred in providing infrastructure to support the development of an area can be funded wholly or mainly by owners or developers of land (subsection (2)).

Section 206: The charge

330. This section (subsection (1)) provides a power to charging authorities to charge CIL in respect of development within their respective areas and then goes on to define which authorities are charging authorities. The position under subsections (2) and (3) is that charging authorities will be (a) the local planning authorities responsible for the production of local development plans in England and Wales (see subsection (5)); (b) the Council of the Isles of Scilly (which is treated as a local planning authority for the purpose of Part 2 of the PCPA 2004 for the Isles of Scilly by an order under section 116 of that Act) and (c) the Mayor of London for Greater London (in addition to local planning authorities there).
331. However, subsection (4) permits CIL regulations to depart from the position under subsections (2) and (3) (except in the case of the Mayor). A regulation-making power is given to provide that certain local authorities are instead to be charging authorities for any area. For example, it is possible for National Park authorities to have two areas, one very large, and one very small and in the area of another local planning authority. National Park authorities are local planning authorities for the purposes of Part 2 of the PCPA 2004, but for reasons of scale and efficiency it might not be thought appropriate for them to be charging authorities for a small separate area.

Section 207: Joint committees

332. This section allows CIL regulations to provide that a joint committee established under section 29 of the PCPA 2004, where it includes a charging authority, is to exercise specified functions in relation to the area of the committee on behalf of the charging authority. These joint committees are established under section 29 of the PCPA 2004 to act as the local planning authority for the purposes of Part 2 of that Act.
333. Subsection (3) provides supplementary powers to make provision corresponding to that which exists in Part 6 of the Local Government Act 1972 relating to joint committees of local authorities. For example, these supplementary powers might be used to permit the delegation of CIL functions exercisable by a joint committee to members of staff of the constituent authorities.

Section 208: Liability and Section 209: Liability: interpretation of key terms

334. **Section 208** makes provision about how liability to pay CIL is incurred (with section 209 providing some definitions of the terms in section 208 together with regulation-making powers to define others).

335. **Section 208(1)** expressly provides for an opportunity for any person to assume liability for CIL before the commencement of development (subsection (2)(a)), though this must be done in accordance with regulations (see subsection (2)(b)). CIL liable “development” is defined in section 209(1) as “anything done by way of or for the purpose of the creation of a new building, or anything done to or in respect of an existing building”. Section 209(2) provides a regulation making power to exclude works or changes of use from this definition of development and to provide for the creation of, or for anything done to or in respect of, a structure to fall within it. Section 209(3) provides that CIL regulations must include provision for determining when development is to be treated as commencing. Section 209(4) relates to how “development” has been defined in section 209(1) and the operation of section 209(3) there. The obligation in subsection (3) may be interpreted as requiring any definition of commencement of development to relate only to development of the sort defined by subsection (1) - something done specifically in relation to a building (or structure). Subsection (4) is intended to allow for the commencement of development to be defined by reference to other works which may be authorised by a planning permission that also authorises the building works for which there is CIL liability.
336. In default of liability not being assumed before development is commenced, or in other circumstances specified by the regulations (for example insolvency), subsection 208(4) provides that the CIL regulations must provide for an owner or developer of land to be liable for CIL. Section 209(7) defines “owner” as a person who owns an interest in the land and “developer” as a person who is wholly or partly responsible for carrying out a development. Section 209 also provides a power in subsection (8) to provide for a person to be treated or not to be treated as an “owner” or “developer”. The intention here is to allow for CIL regulations to be able to provide that certain types of interests are to be included or excluded from default liability - for example, easements and profits.
337. Under section 208(6), the extent of liability is to be determined by reference to the time when planning permission first permits the development (which is CIL liable). Section 209(6) provides connected powers. For example, in the case of those planning permissions where development is only permitted in phases, the powers allow for CIL regulations to specify that liability arises as each phase is commenced.
338. Since much of section 208 is premised on liability being incurred in connection with a planning permission, subsection (7) provides a power to deal with cases where development which requires planning permission is commenced without it. This is to close a potential loop-hole where development might be unlawfully commenced to avoid CIL.
339. Finally, section 208(8) provides powers for CIL regulations to make provision for, in effect, the claw back of an exemption or reduction in CIL. This is where the description or purpose of the development in respect of which the exemption or reduction was granted subsequently changes.

Section 210: Charities

340. This section relates to exemptions to or reductions in CIL for charities. The first subsection provides a duty that CIL regulations must provide for an exemption from liability to pay CIL to certain classes of charity (which are defined in subsection (4)). This duty applies where the building or structure in respect of which CIL liability arises is to be wholly or mainly used for a charitable purpose of the charity concerned. Subsection (2) expressly provides two powers. First, a power in CIL regulations to provide an exemption in CIL to institutions established for charitable purposes. Secondly, a power to require charging authorities to make arrangements for an exemption or reduction in CIL to institutions established for charitable purposes. Subsection (5) defines for the purposes of subsection (2) that a charitable purpose is one falling within section 2(2) of the Charities Act 2006. Subsection (3) contains a power

to prescribe conditions which must be met in order for a charity not to qualify for an exemption or reduction under subsection (2).

Section 211: Amount

341. This section requires a charging authority which proposes to charge CIL to issue a document known as a charging schedule. This schedule would set out for the authority's area the CIL rates, or other criteria, by reference to which the amount of CIL payable is to be calculated. Subsection (2) requires charging authorities in setting these CIL rates (or criteria) to have regard (in the manner and to the extent specified by regulations) to (a) the actual and expected costs of infrastructure; (b) matters specified by CIL regulations relating to the economic viability of development (such as the economic effects of planning permission or of the imposition of CIL); and (c) the actual and expected sources of funding for infrastructure.
342. Subsections (3) and (4) mean that CIL regulations may make further provision about how CIL rates or other criteria are to be set. Subsection (4) provides examples in this connection such as requiring authorities to take account of the potential administrative expenses connected with CIL. Subsection (5) provides powers for CIL regulations to permit or require charging schedules to adopt specified methods of calculation. For instance, charging schedules could operate on the basis of descriptions of the type of development or according to the location of the development (subsection (6)).
343. Subsection (7) provides an express power for charging authorities to undertake preparatory work, including consultation. Regulations might set out limits on the use of the power. Subsection (10) makes it clear that the requirements for the examination, approval and bringing into effect of charging schedules apply to revisions of a schedule (as they do to the preparation of the original charging schedule).

Section 212: Charging schedule: examination

344. This section contains a number of provisions relating to the independent examination of a draft charging schedule. Before a charging schedule is approved under section 213, a draft of it must have been examined by a person appointed for that purpose by the charging authority. Moreover, the charging authority must satisfy itself that this person is independent of it and has appropriate qualifications and experience (subsection (2)). Subsection (9) means that those persons who have made representations about the draft of the schedule have a right to be heard before the examiner (subject to any requirements in regulations about when and how this right is acquired).
345. Subsection (4) requires the draft charging schedule submitted to the examiner to be accompanied by a declaration that the charging authority has complied with a number of requirements. These include procedural requirements relating to the preparation of the draft, requirements under section 211 as to how the contents of the schedule are to be determined and that the charging authority has used appropriate evidence to inform the draft. The purpose here is to ensure that the charging authority have satisfied themselves that the draft schedule is ready and in an appropriate form to be examined.
346. The examiner is required to make recommendations (having considered the matters in subsection (4)) relating to whether the schedule should be approved (with or without modification) or rejected and to give reasons for those recommendations. The charging authority must publish both the recommendations and the reasons (subsections (7) and (8)).

Section 213 Charging schedule: approval

347. Section 213(1) to (3) prescribes the circumstances in which a charging authority may approve a charging schedule and how it is to approve one. A schedule may only be approved if the examiner appointed under section 212 recommends approval and with any modifications the examiner recommends. A charging authority (other than

the Mayor) must approve a charging schedule at a meeting of the authority and by a majority of votes of the members present. The Mayor must approve a charging schedule personally.

348. In addition, subsection (4) provides a regulation-making power to permit charging authorities to be able to correct errors in a charging schedule after it is approved (without having to formally review it).

Section 214: Charging schedule: effect

349. This section provides that a charging schedule which has been approved may not take effect until it has been published. It also permits charging authorities to determine that a schedule (which has been brought into effect) is to cease to have effect with a regulation-making power to prescribe the circumstances in which a charging authority may exercise this power (subsections (3) and (4)).
350. Subsection (5) requires that a decision to cease charging CIL must be taken by a majority of members of a charging authority (other than the Mayor of London) at a meeting of that authority. In the case of the Mayor, such a decision would have to be taken personally (subsection (6)).

Section 215: Appeals

351. Subsection (1) requires CIL regulations to provide for a right of appeal on a question of fact relating to the calculation of the amount of CIL due in respect of a particular development. Such appeals must be heard by a person appointed by the Commissioners for Her Majesty's Revenue and Customs. The person so appointed must be a valuation officer (appointed under section 61 of the Local Government Finance Act 1988 (c.41)) or a district valuer (within the meaning of section 622 of the Housing Act 1985).
352. Subsection (3) provides particular regulation-making powers in connection with these appeals (and appeals about apportionment of liability under section 208(5)(d)(ii)). Specifically provision may be made about the period within which a right of appeal must be exercised, appeal procedures and the award of costs and the payment of fees for an appeal.

Section 216: Application

353. **Section 216(1)** provides that, subject to section 219(5) (which permits CIL regulations to permit or require CIL to be spent on expenditure relating to compensation under section 219), CIL regulations must require authorities charging CIL to apply it to funding infrastructure. Subsection (2) defines what constitutes "infrastructure", which ranges from roads and transport facilities and open spaces to affordable housing (which includes social housing within the meaning of Part 2 of the Housing and Regeneration Act 2008). Subsection (3) provides powers for CIL regulations to amend this definition and therefore, powers to control at a macro-level what CIL is spent on. Subsection (4) allows for finer controls here by providing powers, for example, to specify what works, installations and other facilities may be funded through CIL or to specify what is or is not to be treated as funding. Examples of how this latter power may be used are set out in subsection (6). It includes powers to permit CIL to be used for the reimbursement of expenditure already incurred and for the giving of loans, guarantees and indemnities.
354. For the purposes of providing for accountability and public scrutiny, powers are provided in subsection (5) to require charging authorities to prepare lists of projects which they propose will be funded by CIL and to circumscribe the circumstances in which CIL can be spent on projects which are not listed. The procedures to be followed in preparing such lists may be prescribed in CIL regulations. Similarly, under subsection (7), regulations may require the separate accounting of revenue from CIL and require its use to be monitored and reported on by any body which holds CIL

revenue (for example, an authority collecting it under section 217(5) or a body to which it is passed under regulations made under subsection (7)(f)).

Section 217: Collection

355. **Section 217(1)** provides that CIL regulations shall include provision about the collection of CIL. The rest of the subsections here provide instances of how that power may be exercised. For example, CIL regulations may require the repayment of CIL, with or without interest, in cases of overpayment (subsection (3)). In addition, regulations may make provision for payments to varying timescales and payments in forms other than money (subsections (2) and (4)). The regulations may also permit or require one authority to collect CIL charged by another (subsection (5)). In addition regulations may replicate or apply enactments relating to the collection of tax (subsection (6)).
356. Finally, subsection (7) allows for CIL regulations to make provision about the sources of payments in respect of Crown interests. For example, under section 8 of the Duchy of Cornwall Management Act 1863 certain capital receipts received by the Duchy of Cornwall may only be spent for the purposes specified there. Subsection (7) allows CIL regulations to provide that CIL which is payable by the Duchy where development takes place on its land, may be paid out of these monies.

Section 218: Enforcement

357. This section provides that CIL regulations must include provision on the enforcement of CIL, including about the consequences of late payment or failure to pay (subsections (1) and (2)). Subsection (3) provides further powers covering, for example, providing for consequences (which might include a penalty or interest becoming payable) where liability is not assumed in accordance with section 208(2).
358. The type of provision which might be made on enforcement is exemplified in subsections (4) to (6) and includes, injunctions and powers to require information and provision to cover cases of death or insolvency. Specifically, subsection (5) relates to the registration or notification of actual or potential liability to CIL and to local land charges. It provides, for example, powers for such liability to be registered by way of a local land charge or in a statutory register (such as the register of planning applications which is maintained by local planning authorities under article 25 of the Town and Country Planning (General development Procedure) Order 1995) (see subsection (5) (b) and (d)). In addition, local land charges may be a device for charging liability to land and for ensuring that successive owners are liable for that charge. Subsection (5) (a) and (c) permit regulations to provide for CIL liability to be a local land charge in this respect or for its enforcement, such as by way of sale with the consent of a court.
359. Also, a power is provided to make regulations creating criminal offences (subsection (4) (g)). However, subsection (11) provides for limits on the exercise of these powers. These relate to the maximum level of fines (£20,000 on summary conviction) and terms of imprisonment (six months on summary conviction and 2 years on conviction on indictment) that can be imposed in connection with an offence created under CIL regulations. These limits may be adjusted by means of an order under subsection (12) (which because of section 222(4) will be subject to the negative resolution procedure) to reflect the commencement of section 283 of the Criminal Justice Act 2003. Section 283 of the 2003 Act allows for amendments to be made by order to pre-existing enactments so that the maximum levels of imprisonment for criminal offences in them can be made 51 weeks in the case of purely summary offences and 12 months, on summary conviction, in the case of indictable offences. The order-making power in subsection (12), therefore, allows for subsection (11) to be amended so that the restrictions in it are raised to a maximum of 51 weeks imprisonment in the case of purely summary offences and a maximum of 12 months imprisonment in the case of indictable offences, after summary conviction.

360. In addition, powers are provided to make provision in regulations for the imposition of penalties and surcharge (subsection (4)(b)) and conferring powers to enter land (subsection (4)(e)). Like in the case of the power to create criminal offences, the extent of these powers is circumscribed. Under subsection (8) a penalty or surcharge will not be able to exceed the higher of 30% of any outstanding CIL or £20,000. Subsection (9) in effect provides that these limitations do not apply cumulatively but only in respect of each surcharge or penalty provided for under CIL regulations. Subsection (10) ensures that CIL regulations cannot authorise entry to a private dwelling without a warrant from a justice of the peace.
361. Finally, subsection (7) provides regulation-making powers to ensure that regulations on application, collection and enforcement (under sections 216 to 220) can make provision in relation to interest, penalties and surcharges.

Section 219: Compensation

362. **Section 219** allows CIL regulations to require a charging or other public authority to pay compensation for loss and damage caused by enforcement action that has been improperly taken by them (see subsection (1)). “Enforcement action” is defined in subsection (2) to be action taken under regulations made under section 218. It includes the suspension or cancellation of a decision relating to planning permission and the prohibition of development pending assumption of CIL liability or the payment of CIL.
363. Regulations under this section cannot require the payment of compensation to a person who has failed to satisfy their liability for paying CIL (see subsection (3)). In the event of dispute, the quantum of compensation which is payable in accordance with the regulations may be determined by the Lands Tribunal (see subsection (6)). Regulation-making powers are also provided in subsection (4) to deal with the time and manner in which a claim for compensation must be made and how compensation is to be calculated. Powers are provided in subsection (5) to permit or require charging authorities to use CIL receipts to pay for any compensation and other expenditure under this section.
364. Finally, subsection (7) applies sections 2 and 4 of the Land Compensation Act 1961 to determinations by the Lands Tribunal under subsection (6) subject to any necessary modifications and to the provisions of CIL regulations. Sections 2 and 4 of the 1961 Act cover procedures on a reference to the Lands Tribunal and the award of costs by the Tribunal.

Section 220: Community Infrastructure Levy: procedure

365. **Section 220(1)** provides power for CIL regulations to make provision about the procedures to be followed in connection with CIL, with examples of what might be done using this power set out in subsections (2) and (6).
366. For instance, subsection (2)(r) provides power to combine procedures in connection with CIL with procedures for another purpose of a charging authority. An example of the use of this power might be to combine the procedures for producing a draft charging schedule with the procedures for preparing development plan documents under Part 2 of the PCPA 2004. Alternatively, it might be used to require reports on the use of CIL under section 216(7)(c) to be combined with the annual monitoring reports required under section 35 of the PCPA 2004. Subsection (2)(l) to (o) might be used to require in CIL regulations that an examination in public to be held into a list (produced under section 216(5)(a)) of the items of infrastructure on which CIL may be spent. This might be combined with an examination in public into a charging schedule with connected provision being made on how the costs of the examinations are to be met.. Finally, by way of example, subsection (2)(s) provides a power to make provision about procedures to be followed in connection with actual or potential liability for CIL. Under this provision regulations could prescribe the form and contents of any notice which must be served on a charging authority or another party and the form which service of

such a notice may or must take in order for liability to be assumed or transferred under section 208(2) or (5)(g).

367. Subsection (3) provides power to make regulations regarding procedures to be followed in connection with exemptions or reductions of CIL. For example, if a charging authority were to grant any exemption it could be required to keep a record of that and to notify the Secretary of State that it has been granted. Or instead, the power could be used to require potential recipients to provide certain information before they can be granted an exemption.

Section 221: Secretary of State

368. This section provides the Secretary of State with a power to give guidance on any matter connected with CIL to, for example, a charging authority, an authority (other than a charging authority) collecting CIL pursuant to regulations under section 217(5) or to a person appointed to carry out an independent examination under section 212(1). Any person to whom guidance is given under this section would need to have regard to it.

Section 222: Regulations and orders: general

369. **Section 222(1)** provides a number of supplementary powers in relation to the making of CIL regulations. For example, there are powers in paragraphs (c) and (d) to provide for exceptions and to confer discretionary powers. In combining these powers, it would be possible to give charging authorities a degree of discretion in deciding whether to give exemptions to CIL. Paragraph (d) might be used in combination with section 217(2)(b) to allow charging authorities to decide when payment by instalments can be accepted.
370. Subsection (2) provides that CIL regulations shall be made by statutory instrument and shall not be made unless a draft has been laid before and approved by resolution of the House of Commons.
371. Subsection (3) similarly provides that an order under section 218(12) (changing the maximum level of criminal penalties prescribed by section 218(11)) or under section 225(2) (repeal of the Planning-gain Supplement (Preparations) Act 2007) is to be made by statutory instrument. However, either type of order is subject to the negative resolution procedure, in the former case it could be subject to annulment pursuant to a resolution of either House and in the latter case, pursuant to a resolution of the House of Commons only (see subsections (4) and (5), respectively).

Section 223: Relationship with other powers

372. Subsection (1) provides that CIL regulations may include provision about controlling the use of section 106 of the TCPA 1990 (which relates to planning obligations) and section 278 of the Highways Act 1980 (which relates to agreements with highways authorities for highways works). It also provides power to make CIL regulations about the exercise of any other power relating to planning and development (subsection (2)) and for the Secretary of State to give guidance to charging and other authorities on the exercise of such powers (subsection (3)). The purposes to which any of these regulation-making or guidance giving powers may be put are circumscribed by subsection (4). For example, they may be used to enhance the effectiveness or use of CIL regulations (for example, to encourage charging authorities to charge CIL) or to prevent or restrict the entering into of agreements (or the giving of undertakings) under section 106 of the TCPA 1990 or section 278 of the Highways Act 1980 in addition to CIL. Finally, subsection (5) provides powers for CIL regulations to control the exercise of powers to give directions or guidance.

Section 224: Community Infrastructure Levy: amendments

373. **Section 224** makes amendments to a number of Acts (which are to be brought into force by an order under section 241(8)). In broad terms the amendments are concerned

with the delegation of functions under Part 11 of the Act. In particular, subsection (1) amends section 101 of the Local Government Act 1972 by inserting a new subsection which specifies that Community Infrastructure Levy is not a rate for the purposes of subsection (6) of section 101. Subsection (6) prevents the application of section 101 (which permits, for example, local authorities to delegate their functions to their officers, committee and sub-committees) with respect to functions relating to levying a rate.

374. Subsection (2) amends section 9 of the Norfolk and Suffolk Broads Act 1988. Section 9(8) of the 1988 Act provides, in broad terms, that the Broads Authority may delegate its functions relating to its navigation area only to its Navigation Committee. The effect of the amendment is that this restriction does not apply to functions of the Broads Authority under Part 11.
375. Subsection (3) amends section 71(3) of the Deregulation and Contracting Out Act 1994. Section 71(1)(c) of the 1994 Act prevents orders under section 70 of that Act from being made which would permit a local authority from contracting out “a power or right of entry, search or seizure into or of any property”. Subsection (3) amends section 71(3) of the 1994 Act so that this restriction does not apply in relation to collection and enforcement powers under Part 11 (much like the existing provision in section 71(3) of the 1994 Act relating to, for example, the business improvement district levy and council tax).
376. Finally, subsection (4) amends section 38 of the Greater London Authority Act 1999. Section 38 permits the Mayor of London to delegate his functions to certain persons who include Transport for London, the London Development Agency, the Common Council of the City of London and a local authority. Subsection (4) prevents the Mayor from delegating his functions under Part 11 to these persons (though he would be able to delegate these functions to the Deputy Mayor or any member of staff of the Greater London Authority, the remaining persons in section 38(4)).

Section 225: Community Infrastructure Levy: repeals

377. Subsection (1) makes a number of repeals which will be commenced two months after Royal Assent (see section 241(6)). In particular, sections 46 to 48 of the PCPA 2004 will be repealed (which provide powers to establish, by regulations, a system of planning contributions in England or Wales) and paragraph 5 of the Schedule 6 to the same Act will be repealed (which provides for the repeal of sections 106 to 106B of the TCPA 1990). The system of planning contributions under sections 46 to 48 of the 2004 Act was intended to replace the regime for planning obligations under sections 106 to 106B of the TCPA 1990.
378. In addition, subsection (2) provides a power to the Treasury to repeal by order the Planning-gain Supplement (Preparations) Act 2007. Section 222 deals with the procedure for such an order and in particular subsection (5) there, provides that such an order may be annulled pursuant to a resolution of the House of Commons.

Part 12: Final Provisions

Section 226: The Crown

379. This section applies the Act to the Crown, subject to the exceptions set out in subsections (2) and (3).

Section 227: “Crown land” and “the appropriate Crown authority”

380. This section defines the expressions “Crown land” and “the appropriate authority” which are used in the Act.

Section 228: Enforcement in relation to the Crown and Parliament

381. This section provides that the offences in the Act do not apply to the Crown. Subsection (2) contains an extended definition of the Crown for the purposes of this section, including, for example, the Speakers of the House of Commons and the House of Lords.

Section 229: Service of notices: general

382. This section contains provision in respect of how notices and other documents should be served.

Section 230: Service of documents to persons interested in or occupying premises

383. This section sets out the conditions which must be satisfied in order to show that a notice, served under the provisions of the Act to a person interested in or occupying premises, has been properly served.

Section 231: Service of notices on the Crown and Parliament

384. This section specifies that any notice required under the Act to be served on the Crown must be served on the appropriate Crown authority. For these purposes the expression “the Crown” has an extended meaning.

Sections 232-242: Additional provisions, including commencement

385. The remainder of Part 12 contains supplementary provisions. Sections 232 and 233 contain general provision for orders, regulations and directions under the Act. Section 232 sets out the procedure which is to apply in respect of certain powers to make regulations and orders conferred by the Act, and states that these powers include the power to make different provision for different cases and to make incidental, consequential, supplementary, transitional or transitory provision or savings. Sections 234 and 235 deal with abbreviations and interpretation. Section 236 introduces Schedule 12 which contains modifications of certain provisions of the Act in their application to Scotland. Section 237 confers upon the Secretary of State an order making power which may be used to make supplementary and consequential provision. Sections 238 to 240 make provision as to repeals, financial provisions and extent.
386. **Section 241** makes provision about commencement. In general the provisions of the Act will be brought into force by order made by the Secretary of State. Certain provisions of the Act will come into force on the day on which the Act is passed; these are set out in subsection (1) of section 241. Certain provisions will be brought into force in relation to Wales by order made by the Welsh Ministers; these are set out in subsections (3) and (4) of section 241. Certain provisions will be brought into force by order made by the Welsh Ministers, these are set out in subsection (5). Provisions which will come into force at the end of two months beginning with the day on which the Act is passed are set out in subsection (6).