



# Planning Act 2008

## 2008 CHAPTER 29

### PART 6

#### DECIDING APPLICATIONS FOR ORDERS GRANTING DEVELOPMENT CONSENT

#### CHAPTER 1

##### HANDLING OF APPLICATION BY COMMISSION

### 55 Acceptance of applications

- (1) The following provisions of this section apply where the Commission receives an application that purports to be an application for an order granting development consent.
- (2) The Commission must, by the end of the period of 28 days beginning with the day after the day on which it receives the application, decide whether or not to accept the application.
- (3) The Commission may accept the application only if the Commission concludes—
  - (a) that it is an application for an order granting development consent,
  - (b) that it complies with section 37(3) (form and contents of application) and with any standards set under section 37(5),
  - (c) that development consent is required for any of the development to which the application relates,
  - (d) that the application gives reasons for each respect in which any applicable guidance given under section 37(4) has not been followed in relation to it, and
  - (e) that the applicant has, in relation to a proposed application that has become the application, complied with Chapter 2 of Part 5 (pre-application procedure).
- (4) The Commission, when deciding whether it may reach the conclusion in subsection (3) (e), must have regard to—
  - (a) the consultation report received under section 37(3)(c),

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- (b) any adequacy of consultation representation received by it from a local authority consultee, and
  - (c) the extent to which the applicant has had regard to any guidance issued under section 50.
- (5) In subsection (4)—
- “local authority consultee” means—
    - (a) a local authority consulted under section 42(b) about a proposed application that has become the application, or
    - (b) the Greater London Authority if consulted under section 42(c) about that proposed application;
  - “adequacy of consultation representation” means a representation about whether the applicant complied, in relation to that proposed application, with the applicant's duties under sections 42, 47 and 48.
- (6) If the Commission accepts the application, it must notify the applicant of the acceptance.
- (7) If the Commission is of the view that it cannot accept the application, it must—
- (a) notify that view to the applicant, and
  - (b) notify the applicant of its reasons for that view.
- (8) If in response the applicant modifies (or further modifies) the application, subsections (2) to (7) then apply in relation to the application as modified.

#### **Commencement Information**

**II** S. 55 in force at 1.3.2010 by [S.I. 2010/101](#), [art. 3\(d\)](#) (with [art. 6](#))

## **56 Notifying persons of accepted application**

- (1) Subsections (2), (6) and (7) apply where the Commission accepts an application for an order granting development consent.
- (2) The applicant must give notice of the application to—
  - (a) such persons as may be prescribed,
  - (b) each authority which, in relation to the application, is a relevant local authority within the meaning given by section 102(5),
  - (c) the Greater London Authority if the land to which the application relates, or any part of it, is in Greater London, and
  - (d) each person who is within one or more of the categories set out in section 57.
- (3) Notice under subsection (2) must be in such form and contain such matter, and be given in such manner, as may be prescribed.
- (4) The applicant must, when giving notice to a person under subsection (2), notify the person of the deadline for receipt by the Commission of representations giving notice of the person's interest in, or objection to, the application.
- (5) A deadline notified under subsection (4) must not be earlier than the end of the period of 28 days that begins with the day after the day on which the person receives the notice.

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- (6) The applicant must make available, to each person to whom notice is given under subsection (2), a copy of—
  - (a) the application, and
  - (b) the documents and information that were required by section 37(3)(d) to accompany the application.
- (7) The applicant must publicise the application in the prescribed manner.
- (8) Regulations made for the purposes of subsection (7) must, in particular, make provision for publicity under subsection (7) to include a deadline for receipt by the Commission of representations giving notice of persons' interests in, or objections to, the application.
- (9) A deadline specified in accordance with subsection (8) does not apply to a person to whom notice is given under subsection (2).

#### Commencement Information

- I2** S. 56 partly in force; s. 56 in force for certain purposes at Royal Assent see s. 241
- I3** S. 56 in force at 1.10.2009 by [S.I. 2009/2260](#), [art. 2\(c\)](#)

#### 57 Categories for purposes of section 56(2)(d)

- (1) A person is within Category 1 if the applicant, after making diligent inquiry, knows that the person is an owner, lessee, tenant (whatever the tenancy period) or occupier of the land.
- (2) A person is within Category 2 if the applicant, after making diligent inquiry, knows that the person—
  - (a) is interested in the land, or
  - (b) has power—
    - (i) to sell and convey the land, or
    - (ii) to release the land.
- (3) An expression, other than “the land”, that appears in subsection (2) of this section and also in section 5(1) of the Compulsory Purchase Act 1965 (c. 56) has in subsection (2) the meaning that it has in section 5(1) of that Act.
- (4) A person is within Category 3 if the applicant thinks that, if the order sought by the application were to be made and fully implemented, the person would or might be entitled—
  - (a) as a result of the implementing of the order,
  - (b) as a result of the order having been implemented, or
  - (c) as a result of use of the land once the order has been implemented,to make a relevant claim.

This is subject to subsection (5).

- (5) A person is within Category 3 only if the person is known to the applicant after making diligent inquiry.
- (6) In subsection (4) “relevant claim” means—

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- (a) a claim under section 10 of the Compulsory Purchase Act 1965 (compensation where satisfaction not made for the taking, or injurious affection, of land subject to compulsory purchase);
  - (b) a claim under Part 1 of the Land Compensation Act 1973 (c. 26) (compensation for depreciation of land value by physical factors caused by use of public works).
- (7) In this section “the land” means the land to which the application relates or any part of that land.

**Commencement Information**

**I4** S. 57 in force at 1.10.2009 by [S.I. 2009/2260](#), [art. 2\(c\)](#)

**58 Certifying compliance with section 56**

- (1) Subsection (2) applies where—
- (a) the Commission has accepted an application for an order granting development consent, and
  - (b) the applicant has complied with section 56 in relation to the application.
- (2) The applicant must, in such form and manner as may be prescribed, certify to the Commission that the applicant has complied with section 56 in relation to the application.
- (3) A person commits an offence if the person issues a certificate which—
- (a) purports to be a certificate under subsection (2), and
  - (b) contains a statement which the person knows to be false or misleading in a material particular.
- (4) A person commits an offence if the person recklessly issues a certificate which—
- (a) purports to be a certificate under subsection (2), and
  - (b) contains a statement which is false or misleading in a material particular.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) A magistrates' court may try an information relating to an offence under this section whenever laid.
- (7) Section 127 of the Magistrates' Courts Act 1980 (c. 43) has effect subject to subsection (6) of this section.

**Commencement Information**

**I5** S. 58 in force at 1.10.2009 by [S.I. 2009/2260](#), [art. 2\(c\)](#)

**59 Notice of persons interested in land to which compulsory acquisition request relates**

- (1) This section applies where—

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- (a) the Commission has accepted an application for an order granting development consent, and
  - (b) the application includes a request for an order granting development consent to authorise compulsory acquisition of land or of an interest in or right over land (a “compulsory acquisition request”).
- (2) The applicant must give to the Commission a notice specifying the names, and such other information as may be prescribed, of each affected person.
  - (3) Notice under subsection (2) must be given in such form and manner as may be prescribed.
  - (4) A person is an “affected person” for the purposes of this section if the applicant, after making diligent inquiry, knows that the person is interested in the land to which the compulsory acquisition request relates or any part of that land.

#### Commencement Information

**I6** S. 59 partly in force; s. 59 in force for certain purposes at Royal Assent see s. 241

**I7** S. 59 in force at 1.10.2009 by S.I. 2009/2260, art. 2(c)

## 60 Local impact reports

- (1) Subsection (2) applies where the Commission—
  - (a) has accepted an application for an order granting development consent, and
  - (b) has received—
    - (i) a certificate under section 58(2) in relation to the application, and
    - (ii) where section 59 applies, a notice under that section in relation to the application.
- (2) The Commission must give notice in writing to each of the following, inviting them to submit a local impact report to it—
  - (a) each authority which, in relation to the application, is a relevant local authority within the meaning given by section 102(5), and
  - (b) the Greater London Authority if the land to which the application relates, or any part of it, is in Greater London.
- (3) A “local impact report” is a report in writing giving details of the likely impact of the proposed development on the authority's area (or any part of that area).
- (4) “The proposed development” is the development for which the application seeks development consent.
- (5) A notice under subsection (2) must specify the deadline for receipt by the Commission of the local impact report.

#### Commencement Information

**I8** S. 60 in force at 1.3.2010 by S.I. 2010/101, art. 3(d) (with art. 6)

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## 61 Initial choice of Panel or single Commissioner

- (1) Subsection (2) applies where the Commission—
  - (a) has accepted an application for an order granting development consent, and
  - (b) has received—
    - (i) a certificate under section 58(2) in relation to the application, and
    - (ii) where section 59 applies, a notice under that section in relation to the application.
- (2) The person appointed to chair the Commission must decide whether the application—
  - (a) is to be handled by a Panel under Chapter 2, or
  - (b) is to be handled by a single Commissioner under Chapter 3.
- (3) A person making a decision under subsection (2) must have regard to any guidance issued by the Secretary of State as to which applications to the Commission for orders granting development consent are to be handled by a Panel under Chapter 2 and which by a single Commissioner under Chapter 3.
- (4) Before making a decision under subsection (2), the person making the decision must consult—
  - (a) the other Commissioners who, for the purpose of responding to consultation about the decision, are members of the Council,
  - (b) any Commissioner not within paragraph (a) who the person thinks it appropriate to consult, and
  - (c) the chief executive of the Commission.
- (5) In making a decision under subsection (2), the person making the decision must have regard to any views expressed—
  - (a) by any of the other Commissioners, or
  - (b) by the chief executive of the Commission,
 as to whether the application concerned should be handled by a Panel under Chapter 2 or by a single Commissioner under Chapter 3.

### Commencement Information

**I9** S. 61 in force at 1.3.2010 by [S.I. 2010/101](#), [art. 3\(d\)](#) (with [art. 6](#))

## 62 Switching from single Commissioner to Panel

- (1) Subsection (2) applies where an application for an order granting development consent is being handled by a single Commissioner under Chapter 3.
- (2) The person appointed to chair the Commission may decide that the application should instead be handled by a Panel under Chapter 2.
- (3) A person making a decision under subsection (2) must have regard to any guidance issued by the Secretary of State as to which applications are to be handled by a Panel under Chapter 2 and which by a single Commissioner under Chapter 3.
- (4) Before making a decision under subsection (2), the person making the decision must consult—

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- (a) the other Commissioners who, for the purpose of responding to consultation about the decision, are members of the Council,
  - (b) any Commissioner not within paragraph (a) who the person thinks it appropriate to consult, and
  - (c) the chief executive of the Commission.
- (5) In making a decision under subsection (2), the person making the decision must have regard to any views expressed—
  - (a) by any of the other Commissioners, or
  - (b) by the chief executive of the Commission,as to whether the application concerned should be handled by a Panel under Chapter 2 instead of by a single Commissioner under Chapter 3.

#### Commencement Information

**I10** S. 62 in force at 1.3.2010 by [S.I. 2010/101](#), [art. 3\(d\)](#) (with [art. 6](#))

### 63 Delegation of functions by person appointed to chair Commission

- (1) Subsections (2) and (3) apply to any function conferred or imposed by this Part on the person appointed to chair the Commission (“the chair”).
- (2) The chair may delegate the function to a person appointed as a deputy to the chair (a “deputy”), subject to subsections (5) to (10).
- (3) If at any time there is (apart from this subsection) no-one who is able and available to carry out the function, each deputy may carry out the function.
- (4) A function delegated under subsection (2) may be delegated to such extent and on such terms as the chair determines.
- (5) Where the chair is a member of a Panel under Chapter 2, the chair's function under section 66(5)(a) in relation to the chair's membership of the Panel is not exercisable by the chair but is exercisable by each deputy.
- (6) Where the chair is the lead member of a Panel under Chapter 2, the chair's function under section 66(5)(b) in relation to the chair's holding of the office of lead member of that Panel is not exercisable by the chair but is exercisable by each deputy.
- (7) Where the chair is the single Commissioner appointed to handle an application under Chapter 3, the chair's function under section 80(3) in relation to the chair's holding of the office of single Commissioner in relation to that application is not exercisable by the chair but is exercisable by each deputy.
- (8) Where a deputy is a member of a Panel under Chapter 2, the chair's function under section 66(5)(a) in relation to that deputy's membership of the Panel may not be delegated under subsection (2) to that deputy.
- (9) Where a deputy is the lead member of a Panel under Chapter 2, the chair's function under section 66(5)(b) in relation to that deputy's holding of the office of lead member of that Panel may not be delegated under subsection (2) to that deputy.
- (10) Where a deputy is the single Commissioner appointed to handle an application under Chapter 3, the chair's function under section 80(3) in relation to that deputy's holding of

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the office of single Commissioner in relation to that application may not be delegated under subsection (2) to that deputy.

**Commencement Information**

**I11** S. 63 in force at 1.3.2010 by [S.I. 2010/101](#), **art. 3(d)** (with [art. 6](#))

## CHAPTER 2

### THE PANEL PROCEDURE

#### *Panels*

#### **64 Panel for each application to be handled under this Chapter**

- (1) This Chapter applies where—
  - (a) the Commission accepts an application for an order granting development consent, and
  - (b) under section 61(2) or 62(2), it is decided that the application is to be handled by a Panel under this Chapter.
- (2) There is to be a Panel (referred to in this Chapter as “the Panel”) to handle the application.

**Commencement Information**

**I12** S. 64 in force at 1.3.2010 by [S.I. 2010/101](#), **art. 3(d)** (with [art. 6](#))

#### **65 Appointment of members, and lead member, of Panel**

- (1) The person appointed to chair the Commission must appoint—
  - (a) three or more Commissioners to be members of the Panel, and
  - (b) one of those Commissioners to chair the Panel.
- (2) In this Chapter “the lead member” means the person who for the time being is appointed to chair the Panel.
- (3) A person may under subsection (1) make a self-appointment.
- (4) Before making an appointment under subsection (1), the person making the appointment must consult—
  - (a) the other Commissioners who, for the purpose of responding to consultation about the appointment, are members of the Council,
  - (b) any Commissioner not within paragraph (a) who the person thinks it appropriate to consult, and
  - (c) the chief executive of the Commission.
- (5) In making an appointment under subsection (1), the person making the appointment must have regard to any views expressed—
  - (a) by any of the other Commissioners, or



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- (b) by the chief executive of the Commission,  
about how many or which Commissioners should be appointed to the Panel.

**Commencement Information**

**I13** S. 65 in force at 1.3.2010 by S.I. 2010/101, art. 3(d) (with art. 6)

**66 Ceasing to be member, or lead member, of Panel**

- (1) A person ceases to be a member of the Panel if the person ceases to be a Commissioner, but this is subject to section 67.
- (2) The person appointed to be the lead member ceases to hold that office if the person ceases to be a member of the Panel.
- (3) A person may resign from membership of the Panel by giving notice in writing to the Commission.
- (4) The lead member may resign that office, without also resigning from membership of the Panel, by giving notice in writing to the Commission.
- (5) The person appointed to chair the Commission (“the chair”)—
  - (a) may remove a person (“the Panel member”) from membership of the Panel if the chair is satisfied that the Panel member is unable, unwilling or unfit to perform the duties of Panel membership;
  - (b) may remove the lead member from that office, without also removing the lead member from membership of the Panel, if the chair is satisfied that the lead member is unable, unwilling or unfit to perform the duties of the office.

**Commencement Information**

**I14** S. 66 in force at 1.3.2010 by S.I. 2010/101, art. 3(d) (with art. 6)

**67 Panel member continuing though ceasing to be Commissioner**

- (1) This section applies if—
  - (a) a person (“the ex-Commissioner”) ceases to hold office as a Commissioner (other than by being removed from office under paragraph 4(2) of Schedule 1),
  - (b) immediately before ceasing to hold office, the ex-Commissioner is—
    - (i) a member of the Panel, or
    - (ii) a member of the Panel and the lead member,
  - (c) the Panel is still handling the application at the time the ex-Commissioner ceases to hold office, and
  - (d) before ceasing to hold office, the ex-Commissioner elects to continue acting as a Commissioner in relation to the application.
- (2) For the purpose of the application, the ex-Commissioner is to be treated as continuing to hold office until—
  - (a) the Panel has decided, or (as the case may be) reported to the Secretary of State on, the application, or

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- (b) (if earlier) the ex-Commissioner ceases to be a member of the Panel.
- (3) For the purpose of any proceedings arising out of the application, the ex-Commissioner is to be treated as having continued to hold office until—
  - (a) the Panel had decided, or (as the case may be) reported to the Secretary of State on, the application, or
  - (b) (if earlier) the ex-Commissioner ceased to be a member of the Panel.
- (4) An election under subsection (1)(d) is effective only if made in writing to each of the following—
  - (a) the chief executive of the Commission;
  - (b) the person appointed to chair the Commission, where the ex-Commissioner is not the person appointed to chair the Commission;
  - (c) the lead member of the Panel, where the ex-Commissioner is not the lead member of the Panel.

**Commencement Information**

**I15** S. 67 in force at 1.3.2010 by [S.I. 2010/101](#), [art. 3\(d\)](#) (with [art. 6](#))

**68 Additional appointments to Panel**

- (1) Subsections (2) and (3) apply at any time after the initial members of the Panel have been appointed under section 65(1)(a).
- (2) The person appointed to chair the Commission may appoint a Commissioner to be a member of the Panel.
- (3) If at any time the Panel has only two members or a single member, it is the duty of the person appointed to chair the Commission to ensure that the power under subsection (2) is exercised so as to secure that the Panel again has at least three members.
- (4) A person appointed under subsection (2) becomes a member of the Panel in addition to any person who is otherwise a member of the Panel.
- (5) A person may under subsection (2) make a self-appointment.

**Commencement Information**

**I16** S. 68 in force at 1.3.2010 by [S.I. 2010/101](#), [art. 3\(d\)](#) (with [art. 6](#))

**69 Replacement of lead member of Panel**

- (1) Subsection (2) applies where a person ceases to hold the office of lead member.
- (2) The person appointed to chair the Commission must appoint a member of the Panel to chair the Panel.
- (3) A person may be appointed under subsection (2) even though that person was not a member of the Panel when the vacancy arose.
- (4) A person may under subsection (2) make a self-appointment.

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#### Commencement Information

**I17** S. 69 in force at 1.3.2010 by S.I. 2010/101, art. 3(d) (with art. 6)

### 70 Membership of Panel where application relates to land in Wales

- (1) This section applies where the application relates to land in Wales (even if it also relates to land not in Wales).
- (2) A person exercising power under section 65(1)(a) or 68(2) must do so with a view to securing that, if reasonably practicable, at least one of the members of the Panel is—
  - (a) a Commissioner who was nominated for appointment as a Commissioner by the Welsh Ministers, or
  - (b) a Commissioner who is within subsection (3).
- (3) A Commissioner is within this subsection if, when appointed to be a member of the Panel, the Commissioner is one notified to the Commission by the Welsh Ministers as being a Commissioner who should be treated for the purposes of this section as being a Commissioner within subsection (2)(a).

#### Commencement Information

**I18** S. 70 in force at 1.3.2010 by S.I. 2010/101, art. 3(d) (with art. 6)

### 71 Supplementary provision where Panel replaces single Commissioner

- (1) Subsections (2) and (3) apply where this Chapter applies as the result of a decision under section 62(2).
- (2) A Commissioner who has handled the application under Chapter 3—
  - (a) may be appointed under section 65(1)(a) or 68(2) as a member of the Panel, and
  - (b) if a member of the Panel, may be appointed under section 65(1)(b) or 69(2) to chair the Panel.
- (3) The Panel may, so far as it thinks appropriate, decide to treat things done by or in relation to a Commissioner in proceedings under Chapter 3 on the application as done by or in relation to the Panel.
- (4) Where the Panel makes a decision under subsection (3), the lead member is under a duty to ensure that the membership of the Panel has the necessary knowledge of the proceedings under Chapter 3 on the application.

#### Commencement Information

**I19** S. 71 in force at 1.3.2010 by S.I. 2010/101, art. 3(d) (with art. 6)

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## 72 Panel ceasing to have any members

- (1) If the Panel ceases to have any members, a new Panel must be constituted under section 65(1).
- (2) At times after the new Panel has been constituted (but subject to the further application of this subsection in the event that the new Panel ceases to have any members), references in this Chapter to the Panel are to be read as references to the new Panel.
- (3) The new Panel may, so far as it thinks appropriate, decide to treat things—
  - (a) done by or in relation to a previous Panel appointed to handle the application, or
  - (b) treated under section 71(3) as done by or in relation to a previous Panel appointed to handle the application,
 as done by or in relation to the new Panel.
- (4) Where the Panel makes a decision under subsection (3), the lead member is under a duty to ensure that the membership of the Panel has the necessary knowledge of the proceedings on the application up until the reconstitution of the Panel.
- (5) The power under section 68(2) is not exercisable at times when the Panel has no members.

### Commencement Information

**I20** S. 72 in force at 1.3.2010 by S.I. 2010/101, art. 3(d) (with art. 6)

## 73 Consequences of changes in Panel

- (1) The Panel's continuing identity is to be taken not to be affected by—
  - (a) any change in the membership of the Panel;
  - (b) the Panel's coming to have only two members or a single member;
  - (c) any change in the lead member;
  - (d) a vacancy in that office.
- (2) When there is a change in the membership of the Panel, the lead member is under a duty to ensure that the membership of the Panel after the change has the necessary knowledge of the proceedings on the application up until the change.
- (3) Subsection (2) does not apply where the change occurs as a result of the Panel being reconstituted as required by section 72(1).

### Commencement Information

**I21** S. 73 in force at 1.3.2010 by S.I. 2010/101, art. 3(d) (with art. 6)

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### *Panel's role in relation to application*

#### **74 Panel to decide, or make recommendation in respect of, application**

- (1) Where a national policy statement has effect in relation to development of the description to which the application relates, the Panel has the functions of—
  - (a) examining the application, and
  - (b) deciding the application.
- (2) In any other case, the Panel has the functions of—
  - (a) examining the application, and
  - (b) making a report to the Secretary of State on the application setting out—
    - (i) the Panel's findings and conclusions in respect of the application, and
    - (ii) the Panel's recommendation as to the decision to be made on the application.
- (3) The Panel's functions under this section are to be carried out in accordance with Chapter 4.
- (4) The staff of the Commission have the function of providing or procuring support for members of the Panel undertaking the Panel's functions under this section.

#### **Commencement Information**

**I22** S. 74 in force at 1.3.2010 by S.I. 2010/101, art. 3(d) (with art. 6)

#### **75 Decision-making by the Panel**

- (1) The making of a decision by the Panel requires the agreement of a majority of its members.
- (2) The lead member has a second (or casting) vote in the event that the number of members of the Panel agreeing to a proposed decision is the same as the number of members not so agreeing.

#### **Commencement Information**

**I23** S. 75 in force at 1.3.2010 by S.I. 2010/101, art. 3(d) (with art. 6)

#### **76 Allocation within Panel of Panel's functions**

- (1) This section applies in relation to the Panel's examination of the application.
- (2) The Panel, as an alternative to itself undertaking a part of the examination, may allocate the undertaking of that part to any one or more of the members of the Panel.
- (3) Where there is an allocation under subsection (2)—
  - (a) anything that under Chapter 4 is required or authorised to be done by or to the Panel in connection with the allocated part of the examination may be done by or to the member or members concerned (or by or to the Panel), and

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- (b) findings and conclusions of the member or members concerned in respect of the matters allocated are to be taken to be the Panel's.
- (4) Subsection (3)(b) has effect subject to any decision of the Panel, made on the occasion of making the allocation or earlier, as to the status of any such findings or conclusions.
- (5) Where there is an allocation under subsection (2) to two or more of the members of the Panel, the making of a decision by the members concerned requires the agreement of all of them.

**Commencement Information**

**I24** S. 76 in force at 1.3.2010 by S.I. 2010/101, art. 3(d) (with art. 6)

**77 Exercise of Panel's powers for examining application**

- (1) In this section “procedural power” means any power conferred on the Panel for the purposes of its examination of the application.
- (2) A procedural power, as well as being exercisable by the Panel itself, is also (subject to subsection (3)) exercisable by any one or more of the members of the Panel.
- (3) The Panel may decide to restrict or prohibit the exercise of a procedural power otherwise than by the Panel itself.
- (4) Subsection (2)—
  - (a) applies whether or not there is an allocation under section 76(2), and
  - (b) where there is such an allocation, is in addition to section 76(3)(a).
- (5) Subsection (3) does not authorise curtailment of a power conferred by section 76(3)(a).

**Commencement Information**

**I25** S. 77 in force at 1.3.2010 by S.I. 2010/101, art. 3(d) (with art. 6)

**CHAPTER 3**

THE SINGLE-COMMISSIONER PROCEDURE

*The single Commissioner*

**78 Single Commissioner to handle application**

- (1) This Chapter applies where—
  - (a) the Commission accepts an application for an order granting development consent, and
  - (b) under section 61(2), it is decided that the application is to be handled by a single Commissioner under this Chapter.
- (2) In this Chapter “the single Commissioner” means the person who is appointed to handle the application under this Chapter.

*Status: Point in time view as at 01/03/2010.*

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#### **Commencement Information**

**I26** S. 78 in force at 1.3.2010 by [S.I. 2010/101](#), [art. 3\(d\)](#) (with [art. 6](#))

### **79 Appointment of single Commissioner**

- (1) The person appointed to chair the Commission must appoint a Commissioner to handle the application.
- (2) A person may under subsection (1) make a self-appointment.
- (3) Before making an appointment under subsection (1), the person making the appointment must consult—
  - (a) the other Commissioners who, for the purpose of responding to consultation about the appointment, are members of the Council,
  - (b) any Commissioner not within paragraph (a) who the person thinks it appropriate to consult, and
  - (c) the chief executive of the Commission.
- (4) In making an appointment under subsection (1), the person making the appointment must have regard to any views expressed—
  - (a) by any of the other Commissioners, or
  - (b) by the chief executive of the Commission,as to which Commissioner should be appointed.

#### **Commencement Information**

**I27** S. 79 in force at 1.3.2010 by [S.I. 2010/101](#), [art. 3\(d\)](#) (with [art. 6](#))

### **80 Ceasing to be the single Commissioner**

- (1) A person ceases to be the single Commissioner if the person ceases to be a Commissioner, but this is subject to section 81.
- (2) A person may resign from being the single Commissioner by giving notice in writing to the Commission.
- (3) The person appointed to chair the Commission (“the chair”) may remove a person (“the appointee”) from being the single Commissioner if the chair is satisfied that the appointee is unable, unwilling or unfit to perform the duties of the single Commissioner.

#### **Commencement Information**

**I28** S. 80 in force at 1.3.2010 by [S.I. 2010/101](#), [art. 3\(d\)](#) (with [art. 6](#))

### **81 Single Commissioner continuing though ceasing to be Commissioner**

- (1) This section applies if—

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- (a) a person (“the ex-Commissioner”) ceases to hold office as a Commissioner (other than by being removed from office under paragraph 4(2) of Schedule 1),
  - (b) immediately before ceasing to hold office, the ex-Commissioner is the single Commissioner,
  - (c) the ex-Commissioner is still handling the application at the time the ex-Commissioner ceases to hold office, and
  - (d) before ceasing to hold office, the ex-Commissioner elects to continue acting as a Commissioner in relation to the application.
- (2) For the purpose of the application, the ex-Commissioner is to be treated as continuing to hold office until—
- (a) the ex-Commissioner has reported to the Commission, or (as the case may be) the Secretary of State, on the application, or
  - (b) (if earlier) the ex-Commissioner ceases to be the single Commissioner.
- (3) For the purpose of any proceedings arising out of the application, the ex-Commissioner is to be treated as having continued to hold office until—
- (a) the ex-Commissioner had reported to the Commission, or (as the case may be) the Secretary of State, on the application, or
  - (b) (if earlier) the ex-Commissioner ceased to be the single Commissioner.
- (4) An election under subsection (1)(d) is effective only if made in writing to each of the following—
- (a) the chief executive of the Commission;
  - (b) the person appointed to chair the Commission, where the ex-Commissioner is not the person appointed to chair the Commission.

#### Commencement Information

**I29** S. 81 in force at 1.3.2010 by [S.I. 2010/101](#), [art. 3\(d\)](#) (with [art. 6](#))

## 82 Appointment of replacement single Commissioner

- (1) Where a person ceases to be the single Commissioner, a new appointment of a person to handle the application must be made under section 79.
- (2) Where that happens, the new single Commissioner may, so far as may be appropriate, decide to treat things done by or in relation to any previous single Commissioner as done by or in relation to the new single Commissioner.
- (3) Where the single Commissioner makes a decision under subsection (2), the single Commissioner is under a duty to acquire the necessary knowledge of the previous proceedings on the application.

#### Commencement Information

**I30** S. 82 in force at 1.3.2010 by [S.I. 2010/101](#), [art. 3\(d\)](#) (with [art. 6](#))



*Status: Point in time view as at 01/03/2010.*

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### *Single Commissioner's role in relation to application*

#### **83 Single Commissioner to examine and report on application**

- (1) The single Commissioner has the functions of—
  - (a) examining the application, and
  - (b) making a report on the application setting out—
    - (i) the single Commissioner's findings and conclusions in respect of the application, and
    - (ii) the single Commissioner's recommendation as to the decision to be made on the application.
- (2) A report under subsection (1)(b) is to be made—
  - (a) to the Commission, if a national policy statement has effect in relation to development of the description to which the application relates;
  - (b) to the Secretary of State, in any other case.
- (3) The single Commissioner's functions under subsection (1) are to be carried out in accordance with Chapter 4.
- (4) The staff of the Commission have the function of providing or procuring support for the single Commissioner in connection with the single Commissioner's carrying-out of the functions under subsection (1).

#### **Commencement Information**

**I31** S. 83 in force at 1.3.2010 by [S.I. 2010/101](#), **art. 3(d)** (with **art. 6**)

### *Commission's role in respect of application*

#### **84 Report from single Commissioner to be referred to Council**

- (1) This section applies where, in a case within section 83(2)(a), the Commission receives the single Commissioner's report on the application.
- (2) The Commission must—
  - (a) refer the application to the Council for decision, and
  - (b) supply the report to the Council.

#### **Commencement Information**

**I32** S. 84 in force at 1.3.2010 by [S.I. 2010/101](#), **art. 3(d)** (with **art. 6**)

#### **85 Decisions made by the Council on the application**

- (1) This section applies to decisions made by the Council in deciding the application.
- (2) At least five members of the Council must participate in making a decision.
- (3) The making of a decision requires the agreement of a majority of the members of the Council who are participating in making it.

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- (4) The person chairing the Council has a second (or casting) vote in the event that the number of members of the Council agreeing to a proposed decision is the same as the number of members not so agreeing.

**Commencement Information**

**I33** S. 85 in force at 1.3.2010 by [S.I. 2010/101](#), **art. 3(d)** (with **art. 6**)

## CHAPTER 4

### EXAMINATION OF APPLICATIONS UNDER CHAPTER 2 OR 3

#### **86 Chapter applies to examination by Panel or single Commissioner**

- (1) This Chapter applies—
- (a) in relation to the examination of an application by a Panel under Chapter 2, and
  - (b) in relation to the examination of an application by a single Commissioner under Chapter 3.
- (2) In this Chapter as it applies in relation to the examination of an application by a Panel under Chapter 2, “the Examining authority” means the Panel.
- (3) In this Chapter as it applies in relation to the examination of an application by a single Commissioner under Chapter 3, “the Examining authority” means the single Commissioner.

**Commencement Information**

**I34** S. 86 in force at 1.3.2010 by [S.I. 2010/101](#), **art. 3(d)** (with **art. 6**)

#### **87 Examining authority to control examination of application**

- (1) It is for the Examining authority to decide how to examine the application.
- (2) The Examining authority, in making any decision about how the application is to be examined, must—
- (a) comply with—
    - (i) the following provisions of this Chapter, and
    - (ii) any rules made under section 97, and
  - (b) have regard to any guidance given by the Secretary of State, and any guidance given by the Commission, relevant to how the application is to be examined.
- (3) The Examining authority may in examining the application disregard representations if the Examining authority considers that the representations—
- (a) are vexatious or frivolous,
  - (b) relate to the merits of policy set out in a national policy statement, or
  - (c) relate to compensation for compulsory acquisition of land or of an interest in or right over land.

*Status: Point in time view as at 01/03/2010.*

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#### Commencement Information

**I35** S. 87 in force at 1.3.2010 by S.I. 2010/101, art. 3(d) (with art. 6)

### **88 Initial assessment of issues, and preliminary meeting**

- (1) The Examining authority must make such an initial assessment of the principal issues arising on the application as the Examining authority thinks appropriate.
- (2) After making that assessment, the Examining authority must hold a meeting.
- (3) The Examining authority must invite to the meeting—
  - (a) the applicant, and
  - (b) each other interested party,whether or not the Examining authority is required by rules under section 97, or chooses, also to invite other persons.
- (4) The purposes of the meeting are—
  - (a) to enable invitees present at the meeting to make representations to the Examining authority about how the application should be examined,
  - (b) to discuss any other matter that the Examining authority wishes to discuss, and
  - (c) any other purpose that may be specified in rules under section 97.
- (5) Subsections (2) to (4) do not prevent the Examining authority holding other meetings.
- (6) Rules under section 97—
  - (a) may (in particular) make provision supplementing subsections (1) to (4), and
  - (b) must make provision as to when the assessment under subsection (1) is to be made and as to when the meeting required by subsection (2) is to be held.

#### Commencement Information

**I36** S. 88 in force at 1.3.2010 by S.I. 2010/101, art. 3(d) (with art. 6)

### **89 Examining authority's decisions about how application is to be examined**

- (1) The Examining authority must in the light of the discussion at the meeting held under section 88(2) make such procedural decisions as the Examining authority thinks appropriate.
- (2) The decisions required by subsection (1) may be made at or after the meeting.
- (3) The Examining authority may make procedural decisions otherwise than as required by subsection (1), and may do so at any time before or after the meeting.
- (4) The Examining authority must inform each interested party of any procedural decision made by the Examining authority.
- (5) In this section “procedural decision” means a decision about how the application is to be examined.

*Status: Point in time view as at 01/03/2010.*

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**Commencement Information**

**I37** S. 89 in force at 1.3.2010 by S.I. 2010/101, art. 3(d) (with art. 6)

**90 Written representations**

- (1) The Examining authority's examination of the application is to take the form of consideration of written representations about the application.
- (2) Subsection (1) has effect subject to—
  - (a) any requirement under section 91, 92 or 93 to cause a hearing to be held, and
  - (b) any decision by the Examining authority that any part of the examination is to take a form that is neither—
    - (i) consideration of written representations, nor
    - (ii) consideration of oral representations made at a hearing.
- (3) Rules under section 97 may (in particular) specify written representations about the application which are to be, or which may be or may not be, considered under subsection (1).

**Commencement Information**

**I38** S. 90 in force at 1.3.2010 by S.I. 2010/101, art. 3(d) (with art. 6)

**91 Hearings about specific issues**

- (1) Subsections (2) and (3) apply where the Examining authority decides that it is necessary for the Examining authority's examination of the application to include the consideration of oral representations about a particular issue made at a hearing in order to ensure—
  - (a) adequate examination of the issue, or
  - (b) that an interested party has a fair chance to put the party's case.
- (2) The Examining authority must cause a hearing to be held for the purpose of receiving oral representations about the issue.
- (3) At the hearing, each interested party is entitled (subject to the Examining authority's powers of control over the conduct of the hearing) to make oral representations about the issue.
- (4) Where the Examining authority is a Panel acting under Chapter 2, any two or more hearings under subsection (2) may be held concurrently.

**Commencement Information**

**I39** S. 91 in force at 1.3.2010 by S.I. 2010/101, art. 3(d) (with art. 6)

*Status: Point in time view as at 01/03/2010.*

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## 92 Compulsory acquisition hearings

- (1) This section applies where the application includes a request for an order granting development consent to authorise compulsory acquisition of land or of an interest in or right over land (a “compulsory acquisition request”).
- (2) The Examining authority must fix, and cause each affected person to be informed of, the deadline by which an affected person must notify the Commission that the person wishes a compulsory acquisition hearing to be held.
- (3) If the Commission receives notification from at least one affected person before the deadline, the Examining authority must cause a compulsory acquisition hearing to be held.
- (4) At a compulsory acquisition hearing, the following are entitled (subject to the Examining authority's powers of control over the conduct of the hearing) to make oral representations about the compulsory acquisition request—
  - (a) the applicant;
  - (b) each affected person.
- (5) A person is an “affected person” for the purposes of this section if the person's name has been given to the Commission in a notice under section 59.

### Commencement Information

**I40** S. 92 in force at 1.3.2010 by S.I. 2010/101, art. 3(d) (with art. 6)

## 93 Open-floor hearings

- (1) The Examining authority must fix, and cause the interested parties to be informed of, the deadline by which an interested party must notify the Commission of the party's wish to be heard at an open-floor hearing.
- (2) If the Commission receives notification from at least one interested party before the deadline, the Examining authority must cause an open-floor hearing to be held.
- (3) At an open-floor hearing, each interested party is entitled (subject to the Examining authority's powers of control over the conduct of the hearing) to make oral representations about the application.

### Commencement Information

**I41** S. 93 in force at 1.3.2010 by S.I. 2010/101, art. 3(d) (with art. 6)

## 94 Hearings: general provisions

- (1) The following provisions of this section apply—
  - (a) to a hearing under section 91(2),
  - (b) to a compulsory acquisition hearing (see section 92), and
  - (c) to an open-floor hearing (see section 93).
- (2) The hearing—

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- (a) must be in public, and
  - (b) must be presided over by one or more of the members of the Panel or (as the case may be) the single Commissioner.
- (3) It is for the Examining authority to decide how the hearing is to be conducted.
- (4) In particular, it is for the Examining authority to decide—
- (a) whether a person making oral representations at the hearing may be questioned at the hearing by another person and, if so, the matters to which the questioning may relate;
  - (b) the amount of time to be allowed at the hearing—
    - (i) for the making of a person's representations (including representations made in exercise of an entitlement under section 91(3), 92(4) or 93(3)), or
    - (ii) for any questioning by another person.
- (5) The Examining authority's powers under subsections (3) and (4) are subject to—
- (a) subsection (2), and
  - (b) any rules made under section 97.
- (6) Although the Examining authority's powers under subsections (3) and (4) may be exercised for the purpose of controlling exercise of an entitlement under section 91(3), 92(4) or 93(3), those powers may not be exercised so as to deprive the person entitled of all benefit of the entitlement.
- (7) In making decisions under subsection (4)(a), the Examining authority must apply the principle that any oral questioning of a person making representations at a hearing (whether the applicant or any other person) should be undertaken by the Examining authority except where the Examining authority thinks that oral questioning by another person is necessary in order to ensure—
- (a) adequate testing of any representations, or
  - (b) that a person has a fair chance to put the person's case.
- (8) The Examining authority may refuse to allow representations to be made at the hearing (including representations made in exercise of an entitlement under section 91(3), 92(4) or 93(3)) if the Examining authority considers that the representations—
- (a) are irrelevant, vexatious or frivolous,
  - (b) relate to the merits of policy set out in a national policy statement,
  - (c) repeat other representations already made (in any form and by any person), or
  - (d) relate to compensation for compulsory acquisition of land or of an interest in or right over land.

#### **Commencement Information**

**I42** S. 94 in force at 1.3.2010 by [S.I. 2010/101](#), **art. 3(d)** (with **art. 6**)

## **95 Hearings: disruption, supervision and costs**

- (1) Where an interested party or any other person behaves in a disruptive manner at a hearing, the Examining authority may decide to do any one or more of the following—
- (a) exclude the person from all, or part, of the remainder of the hearing;

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- (b) allow the person to continue to attend the hearing only if the person complies with conditions specified by the Examining authority;
  - (c) exclude the person from other hearings;
  - (d) direct that the person is allowed to attend other hearings only if the person complies with conditions specified by the Examining authority.
- (2) In this section “hearing” means—
- (a) a preliminary meeting under section 88,
  - (b) a hearing under section 91(2),
  - (c) a compulsory acquisition hearing (see section 92),
  - (d) an open-floor hearing (see section 93),
  - (e) any other meeting or hearing that the Examining authority causes to be held for the purposes of the Examining authority's examination of the application, or
  - (f) a site visit.
- (3) The Examining authority's examination of the application is a statutory inquiry for the purposes of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007 (c. 15) (functions etc. of Administrative Justice and Tribunals Council).
- (4) Subsection (5) of section 250 of the Local Government Act 1972 (c. 70) (provisions about costs applying where Minister causes a local inquiry to be held) applies in relation to the Examining authority's examination of the application as it applies in relation to an inquiry under that section, but with references to the Minister causing the inquiry to be held being read as references to the Examining authority.
- This is subject to subsection (5) of this section.
- (5) Subsections (6) to (8) of section 210 of the Local Government (Scotland) Act 1973 (c. 65) (provisions about expenses applying where Minister causes a local inquiry to be held) apply in relation to the Examining authority's examination of the application in so far as relating to a hearing held in Scotland as they apply in relation to an inquiry under that section, but with references to the Minister causing the inquiry to be held being read as references to the Examining authority.

#### Commencement Information

**I43** S. 95 in force at 1.3.2010 by S.I. 2010/101, art. 3(d) (with art. 6)

## 96 Representations not made orally may be made in writing

- (1) Subsection (2) applies where—
- (a) a person asks the Examining authority to be allowed to make oral representations about the application at a hearing,
  - (b) the person does not (for whatever reason) make the representations orally at a hearing,
  - (c) written representations from the person are received by the Commission before the Examining authority completes the Examining authority's examination of the application, and
  - (d) the written representations state that they are ones that the person asked to be allowed to, but did not, make orally at a hearing.

*Status: Point in time view as at 01/03/2010.*

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- (2) The Examining authority must consider the written representations as part of the Examining authority's examination of the application, subject to section 87(3).

**Commencement Information**

**I44** S. 96 in force at 1.3.2010 by S.I. 2010/101, art. 3(d) (with art. 6)

**97 Procedure rules**

- (1) The Lord Chancellor or (if subsection (2) applies) the Secretary of State, after consultation with the Administrative Justice and Tribunals Council, may make rules regulating the procedure to be followed in connection with the Examining authority's examination of the application.
- (2) This subsection applies if the development to which the application relates (or part of the development) is the construction (other than by a gas transporter) of an oil or gas cross-country pipe-line—
  - (a) one end of which is in England or Wales, and
  - (b) the other end of which is in Scotland.
- (3) Rules under subsection (1) may make provision for or in connection with authorising the Examining authority, alone or with others, to enter onto land, including land owned or occupied otherwise than by the applicant, for the purpose of inspecting the land as part of the Examining authority's examination of the application.
- (4) Rules under subsection (1) may regulate procedure in connection with matters preparatory to the Examining authority's examination of the application, and in connection with matters subsequent to the examination, as well as in connection with the conduct of the examination.
- (5) Power under this section to make rules includes power to make different provision for different purposes.
- (6) Power under this section to make rules is exercisable by statutory instrument.
- (7) A statutory instrument containing rules under this section is subject to annulment pursuant to a resolution of either House of Parliament.

**Commencement Information**

**I45** S. 97 in force at 1.3.2010 in so far as not already in force by S.I. 2010/101, art. 3(d) (with art. 6)

**98 Timetable for examining, and reporting on, application**

- (1) The Examining authority is under a duty to complete the Examining authority's examination of the application by the end of the period of 6 months beginning with the day after the start day.
- (2) The start day is the day on which the meeting required by section 88 is held or, if that meeting is held on two or more days, the later or latest of those days.



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- (3) In a case where the Examining authority is required to make a report to the Secretary of State under section 74(2)(b) or 83(2)(b), the Examining authority is under a duty to make its report by the end of the period of 3 months beginning with the day after the deadline for completion of its examination of the application.
- (4) The person appointed to chair the Commission may set a date for a deadline under this section that is later than the date for the time being set.
- (5) The power under subsection (4) may be exercised—
  - (a) more than once in relation to the same deadline;
  - (b) after the date for the time being set for the deadline.
- (6) Where the power under subsection (4) is exercised—
  - (a) the person exercising the power must notify the Secretary of State of what has been done and of the reasons for doing it, and
  - (b) the Commission's report under paragraph 17 of Schedule 1 for the financial year in which the power is exercised must mention and explain what has been done.

#### Commencement Information

**I46** S. 98 in force at 1.3.2010 by [S.I. 2010/101](#), [art. 3\(d\)](#) (with [art. 6](#))

### 99 Completion of Examining authority's examination of application

When the Examining authority has completed its examination of the application, it must inform each of the interested parties of that fact.

#### Commencement Information

**I47** S. 99 in force at 1.3.2010 by [S.I. 2010/101](#), [art. 3\(d\)](#) (with [art. 6](#))

### 100 Assessors

- (1) The person appointed to chair the Commission (“the chair”) may, at the request of the Examining authority, appoint a person to act as an assessor to assist the Examining authority in the Examining authority's examination of the application.
- (2) A person may be appointed as an assessor only if it appears to the chair that the person has expertise that makes the person a suitable person to provide assistance to the Examining authority.

#### Commencement Information

**I48** S. 100 in force at 1.3.2010 by [S.I. 2010/101](#), [art. 3\(d\)](#) (with [art. 6](#))

### 101 Legal advice and assistance

- (1) The person appointed to chair the Commission may, at the request of the Examining authority, appoint a barrister, solicitor or advocate to provide legal advice and

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assistance to the Examining authority in connection with its examination of the application.

- (2) The assistance that may be given by a person appointed under subsection (1) includes carrying out on behalf of the Examining authority any oral questioning of a person making representations at a hearing.

#### Commencement Information

**I49** S. 101 in force at 1.3.2010 by S.I. 2010/101, art. 3(d) (with art. 6)

## 102 Interpretation of Chapter 4: “interested party” and other expressions

- (1) For the purposes of this Chapter, a person is an “interested party” if—
- (a) the person is the applicant,
  - (b) the person is a statutory party,
  - (c) the person is a relevant local authority,
  - (d) the person is the Greater London Authority and the land is in Greater London, or
  - (e) the person has made a relevant representation.
- (2) In this Chapter “representation” includes evidence, and references to the making of a representation include the giving of evidence.
- (3) In subsection (1) “statutory party” means a person specified in, or of a description specified in, regulations made by the Secretary of State.
- (4) A representation is a relevant representation for the purposes of subsection (1) to the extent that—
- (a) it is a representation about the application,
  - (b) it is made to the Commission in the prescribed form and manner,
  - (c) it is received by the Commission no later than the deadline that applies under section 56 to the person making it,
  - (d) it contains material of a prescribed description, and
  - (e) it does not contain—
    - (i) material about compensation for compulsory acquisition of land or of an interest in or right over land,
    - (ii) material about the merits of policy set out in a national policy statement, or
    - (iii) material that is vexatious or frivolous.
- (5) In subsection (1) “relevant local authority” means a local authority within subsection (6) or (7).
- (6) A local authority is within this subsection if the land is in the authority's area.
- (7) A local authority (“A”) is within this subsection if—
- (a) the land is in the area of another local authority (“B”), and
  - (b) any part of the boundary of A's area is also a part of the boundary of B's area.
- (8) In subsections (5) to (7) “local authority” means—
- (a) a county council, or district council, in England;

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- (b) a London borough council;
  - (c) the Common Council of the City of London;
  - (d) the Council of the Isles of Scilly;
  - (e) a county council, or county borough council, in Wales;
  - (f) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39);
  - (g) a National Park authority;
  - (h) the Broads Authority.
- (9) In this section “the land” means the land to which the application relates or any part of that land.

#### Commencement Information

**I50** S. 102 in force for certain purposes at Royal Assent see s. 241

**I51** S. 102 in force at 1.3.2010 by [S.I. 2010/101](#), [art. 3\(d\)](#) (with [art. 6](#))

## CHAPTER 5

### DECISIONS ON APPLICATIONS

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

- (1) The Secretary of State has the function of deciding an application for an order granting development consent where—
- (a) in a case within section 74(2), the Secretary of State receives the Panel's report on the application, or
  - (b) in a case within section 83(2)(b), the Secretary of State receives the single Commissioner's report on the application.
- (2) In this Act “decision-maker” in relation to an application for an order granting development consent—
- (a) means the Panel that has the function of deciding the application, or
  - (b) where the Council or the Secretary of State has the function of deciding the application, means the Council or (as the case may be) the Secretary of State.

#### Commencement Information

**I52** S. 103 in force at 1.3.2010 by [S.I. 2010/101](#), [art. 3\(d\)](#) (with [art. 6](#))

#### 104 Decisions of Panel and Council

- (1) This section applies in relation to an application for an order granting development consent if the decision-maker is a Panel or the Council.
- (2) In deciding the application the Panel or Council must have regard to—
- (a) any national policy statement which has effect in relation to development of the description to which the application relates (a “relevant national policy statement”),

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- [<sup>F1</sup>(aa) the appropriate marine policy documents (if any), determined in accordance with section 59 of the Marine and Coastal Access Act 2009;]
- (b) any local impact report (within the meaning given by section 60(3)) submitted to the Commission before the deadline specified in a notice under section 60(2),
- (c) any matters prescribed in relation to development of the description to which the application relates, and
- (d) any other matters which the Panel or Council thinks are both important and relevant to its decision.
- (3) The Panel or Council must decide the application in accordance with any relevant national policy statement, except to the extent that one or more of subsections (4) to (8) applies.
- (4) This subsection applies if the Panel or Council is satisfied that deciding the application in accordance with any relevant national policy statement would lead to the United Kingdom being in breach of any of its international obligations.
- (5) This subsection applies if the Panel or Council is satisfied that deciding the application in accordance with any relevant national policy statement would lead to the Panel or Council, or the Commission, being in breach of any duty imposed on it by or under any enactment.
- (6) This subsection applies if the Panel or Council is satisfied that deciding the application in accordance with any relevant national policy statement would be unlawful by virtue of any enactment.
- (7) This subsection applies if the Panel or Council is satisfied that the adverse impact of the proposed development would outweigh its benefits.
- (8) This subsection applies if the Panel or Council is satisfied that any condition prescribed for deciding an application otherwise than in accordance with a national policy statement is met.
- (9) For the avoidance of doubt, the fact that any relevant national policy statement identifies a location as suitable (or potentially suitable) for a particular description of development does not prevent one or more of subsections (4) to (8) from applying.

#### Textual Amendments

**F1** S. 104(2)(aa) inserted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), ss. **58(5)**, 324(2)(a)

#### Commencement Information

**I53** S. 104 partly in force; s. 104 in force for certain purposes at Royal Assent see s. 241

**I54** S. 104 in force at 1.3.2010 by [S.I. 2010/101](#), art. **3(d)** (with art. 6)

## 105 Decisions of Secretary of State

- (1) This section applies in relation to an application for an order granting development consent if the decision-maker is the Secretary of State.
- (2) In deciding the application the Secretary of State must have regard to—

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- (a) any local impact report (within the meaning given by section 60(3)) submitted to the Commission before the deadline specified in a notice under section 60(2),
- (b) any matters prescribed in relation to development of the description to which the application relates, and
- (c) any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State's decision.

#### Commencement Information

**I55** S. 105 partly in force; s. 105 in force for certain purposes at Royal Assent see s. 241

**I56** S. 105 in force at 1.3.2010 by [S.I. 2010/101](#), [art. 3\(d\)](#) (with [art. 6](#))

### 106 Matters that may be disregarded when deciding application

- (1) In deciding an application for an order granting development consent, the decision-maker may disregard representations if the decision-maker considers that the representations—
  - (a) are vexatious or frivolous,
  - (b) relate to the merits of policy set out in a national policy statement, or
  - (c) relate to compensation for compulsory acquisition of land or of an interest in or right over land.
- (2) In this section “representation” includes evidence.

#### Commencement Information

**I57** [S. 106](#) in force at 1.3.2010 by [S.I. 2010/101](#), [art. 3\(d\)](#) (with [art. 6](#))

### 107 Timetable for decisions

- (1) The decision-maker is under a duty to decide an application for an order granting development consent by the end of the period of 3 months beginning with the day after the start day.
- (2) The start day is—
  - (a) in a case where a Panel is the decision-maker, the deadline for the completion of its examination of the application under section 98;
  - (b) in a case where the Council is the decision-maker, the deadline for the completion of the single Commissioner's examination of the application under section 98;
  - (c) in a case where the Secretary of State is the decision-maker by virtue of section 103(1), the day on which the Secretary of State receives a report on the application under section 74(2)(b) or 83(2)(b);
  - (d) in a case where the Secretary of State is the decision-maker by virtue of section 113(2)(b), the deadline for the completion of the Secretary of State's examination of the application under section 113(2)(a).
- (3) The appropriate authority may set a date for the deadline under subsection (1) that is later than the date for the time being set.

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- (4) The appropriate authority is—
- (a) in a case where a Panel or the Council is the decision-maker, the person appointed to chair the Commission;
  - (b) in a case where the Secretary of State is the decision-maker, the Secretary of State.
- (5) The power under subsection (3) may be exercised—
- (a) more than once in relation to the same deadline;
  - (b) after the date for the time being set for the deadline.
- (6) Where the power under subsection (3) is exercised other than by the Secretary of State—
- (a) the person exercising the power must notify the Secretary of State of what has been done and of the reasons for doing it, and
  - (b) the Commission's report under paragraph 17 of Schedule 1 for the financial year in which the power is exercised must mention and explain what has been done.
- (7) Where the power under subsection (3) is exercised by the Secretary of State, the Secretary of State must—
- (a) notify each interested party of what has been done and of the reasons for doing it, and
  - (b) lay before Parliament a report explaining what has been done.
- (8) A report under subsection (7)(b) must be published in such form and manner as the Secretary of State thinks appropriate.
- (9) “Interested party” means a person who is an interested party in relation to the application for the purposes of Chapter 4 (see section 102).

**Commencement Information**

**I58** S. 107 in force at 1.3.2010 by **S.I. 2010/101, art. 3(d)** (with art. 6)

## CHAPTER 6

### SUSPENSION OF DECISION-MAKING PROCESS

#### **108 Suspension during review of national policy statement**

- (1) This section applies where—
- (a) an application is made for an order granting development consent for development of a description in relation to which a national policy statement has effect, and
  - (b) the Secretary of State thinks that, as a result of a change in circumstances since the national policy statement was first published or (if later) the statement or any part of it was last reviewed, all or part of the statement should be reviewed before the application is decided.

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- (2) The Secretary of State may direct that, until the review has been completed and the Secretary of State has complied with section 6(5) in relation to the review, the following are suspended—
- (a) examination of the application by a Panel under Chapter 2 or a single Commissioner under Chapter 3 (if not already completed), and
  - (b) decision of the application by that Panel or (as the case may be) the Council.

#### **Commencement Information**

**I59** S. 108 in force at 1.3.2010 by S.I. 2010/101, art. 3(d) (with art. 6)

## **CHAPTER 7**

### INTERVENTION BY SECRETARY OF STATE

#### **109 Intervention: significant change in circumstances**

- (1) Section 112 applies by virtue of this section if—
- (a) an application is made for an order granting development consent for development of a description in relation to which a national policy statement has effect,
  - (b) the Commission has accepted the application and has received a certificate under section 58(2), and (where section 59 applies) a notice under that section, in relation to the application, and
  - (c) the Secretary of State is satisfied that the condition in subsection (2) or (3) is met.
- (2) The condition is that—
- (a) since the time when the national policy statement was first published or (if later) last reviewed, there has been a significant change in any circumstances on the basis of which any policy set out in the statement (“the relevant policy”) was decided,
  - (b) the change was not anticipated at that time,
  - (c) if the change had been anticipated at that time, the relevant policy would have been materially different,
  - (d) if the relevant policy was materially different, it would be likely to have a material effect on the decision on the application, and
  - (e) there is an urgent need in the national interest for the application to be decided before the national policy statement is reviewed.
- (3) The condition is that—
- (a) since the time when part of the national policy statement (“the relevant part”) was first published or (if later) last reviewed, there has been a significant change in any circumstances on the basis of which any of the policy set out in the relevant part (“the relevant policy”) was decided,
  - (b) the change was not anticipated at that time,
  - (c) if the change had been anticipated at that time, the relevant policy would have been materially different,

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- (d) if the relevant policy was materially different, it would be likely to have a material effect on the decision on the application, and
  - (e) there is an urgent need in the national interest for the application to be decided before the relevant part is reviewed.
- (4) In deciding whether the tests in subsection (2)(d) and (e), or (3)(d) and (e), are met, the Secretary of State must have regard to the views of the Commission.

**Commencement Information**

**I60** S. 109 in force at 1.3.2010 by S.I. 2010/101, art. 3(d) (with art. 6)

**110 Intervention: defence and national security**

Section 112 applies by virtue of this section if—

- (a) an application is made for an order granting development consent,
- (b) the Commission has accepted the application and has received a certificate under section 58(2) in relation to the application, and
- (c) the Secretary of State is satisfied that intervention by the Secretary of State would be in the interests of defence or national security.

**Commencement Information**

**I61** S. 110 in force at 1.3.2010 by S.I. 2010/101, art. 3(d) (with art. 6)

**111 Intervention: other circumstances**

The Secretary of State may by order specify other circumstances in which section 112 is to apply in relation to an application for an order granting development consent.

**Commencement Information**

**I62** S. 111 in force at 1.3.2010 in so far as not already in force by S.I. 2010/101, art. 3(d) (with art. 6)

**112 Power of Secretary of State to intervene**

- (1) Where this section applies in relation to an application for an order granting development consent, the Secretary of State may direct that the application is to be referred to the Secretary of State.
- (2) A direction under subsection (1) must be given by the end of the period of 4 weeks beginning with the day after the end of the meeting held under section 88(2).
- (3) Subsection (2) does not apply if the Secretary of State thinks there are exceptional circumstances which justify a direction under subsection (1) being given at a later time.
- (4) In a case where this section applies by virtue of section 109, a direction under subsection (1) must state the Secretary of State's reasons for being satisfied that the condition in section 109(2) or (3) is met.



*Status: Point in time view as at 01/03/2010.*

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#### Commencement Information

**I63** S. 112 in force at 1.3.2010 by S.I. 2010/101, art. 3(d) (with art. 6)

### 113 Effect of intervention

- (1) This section applies if the Secretary of State gives a direction under section 112(1) in relation to an application.
- (2) The Secretary of State has the functions of—
  - (a) examining the application, and
  - (b) deciding the application.
- (3) The Secretary of State may discharge the function of examining the application by—
  - (a) directing the Commission to examine such matters as may be specified by the Secretary of State;
  - (b) conducting an examination of any matters in relation to which a direction under paragraph (a) is not given.
- (4) Schedule 3 makes provision in relation to the Secretary of State's function of examining an application under this section.
- (5) An examination under subsection (3)(a) is to be conducted in accordance with paragraph 1 of Schedule 3.
- (6) An examination under subsection (3)(b) is to be conducted in accordance with paragraph 2 of Schedule 3.
- (7) Rules under paragraph 3 of Schedule 3 must provide for a deadline for the completion by the Secretary of State of—
  - (a) the examination of the application under subsection (2)(a);
  - (b) the examination of any matters under subsection (3)(b).
- (8) The Secretary of State's examination of the application is a statutory inquiry for the purposes of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007 (c. 15) (functions etc. of Administrative Justice and Tribunals Council).
- (9) Subsection (5) of section 250 of the Local Government Act 1972 (c. 70) (provisions about costs applying where Minister causes a local inquiry to be held) applies in relation to the Secretary of State's examination of the application as it applies in relation to an inquiry under that section, but with references to the Minister causing the inquiry to be held being read as references to the Secretary of State.

This is subject to subsection (10).

- (10) Subsections (6) to (8) of section 210 of the Local Government (Scotland) Act 1973 (c. 65) (provisions about expenses applying where Minister causes a local inquiry to be held) apply in relation to the Secretary of State's examination of the application in so far as relating to a hearing held in Scotland as they apply in relation to an inquiry under that section, but with references to the Minister causing the inquiry to be held being read as references to the Secretary of State.
- (11) In subsection (10) “hearing” means—

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- (a) any meeting or hearing that the Secretary of State causes to be held for the purposes of the Secretary of State's examination of the application, or
- (b) a site visit.

**Commencement Information**

**I64** S. 113 in force at 1.3.2010 by S.I. 2010/101, art. 3(d) (with art. 6)

## CHAPTER 8

### GRANT OR REFUSAL

#### 114 Grant or refusal of development consent

- (1) When it has decided an application for an order granting development consent, the decision-maker must either—
  - (a) make an order granting development consent, or
  - (b) refuse development consent.
- (2) The Secretary of State may by regulations make provision regulating the procedure to be followed if the decision-maker proposes to make an order granting development consent on terms which are materially different from those proposed in the application.

**Commencement Information**

**I65** S. 114 partly in force; s. 114 in force for certain purposes at Royal Assent see s. 241

**I66** S. 114 in force at 1.3.2010 in so far as not already in force by S.I. 2010/101, art. 3(d) (with art. 6)

#### 115 Development for which development consent may be granted

- (1) Development consent may be granted for development which is—
  - (a) development for which development consent is required, or
  - (b) associated development.
- (2) “Associated development” means development which—
  - (a) is associated with the development within subsection (1)(a) (or any part of it),
  - (b) is not the construction or extension of one or more dwellings, and
  - (c) is within subsection (3) or (4).
- (3) Development is within this subsection if it is to be carried out wholly in one or more of the following areas—
  - (a) England;
  - (b) waters adjacent to England up to the seaward limits of the territorial sea;
  - (c) in the case of development in the field of energy, a Renewable Energy Zone, except any part of a Renewable Energy Zone in relation to which the Scottish Ministers have functions.
- (4) Development is within this subsection if—
  - (a) it is to be carried out wholly in Wales,

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- (b) it is the carrying out or construction of surface works, boreholes or pipes, and
  - (c) the development within subsection (1)(a) with which it is associated is development within section 17(3).
- (5) To the extent that development consent is granted for associated development, section 33 applies to the development as it applies to development for which development consent is required.
- (6) In deciding whether development is associated development, a Panel or the Council must have regard to any guidance issued by the Secretary of State.

#### Commencement Information

**I67** S. 115 in force at 1.3.2010 by [S.I. 2010/101](#), [art. 3\(d\)](#) (with [art. 6](#))

### 116 Reasons for decision to grant or refuse development consent

- (1) The decision-maker must prepare a statement of its reasons for deciding to—
- (a) make an order granting development consent, or
  - (b) refuse development consent.
- (2) The appropriate authority must provide a copy of the statement to each person who is an interested party in relation to the application for the purposes of Chapter 4 (see section 102).
- (3) The appropriate authority must publish the statement in such manner as the authority thinks appropriate.
- (4) In subsections (2) and (3) “the appropriate authority” means—
- (a) the Commission where the decision-maker is a Panel or the Council;
  - (b) the Secretary of State where the decision-maker is the Secretary of State.

#### Commencement Information

**I68** S. 116 in force at 1.3.2010 by [S.I. 2010/101](#), [art. 3\(d\)](#) (with [art. 6](#))

### 117 Orders granting development consent: formalities

- (1) This section applies in relation to an order granting development consent.
- (2) If the order is made by a Panel or the Council it must be made in the name of the Commission.
- (3) Except in a case within subsection (4), the appropriate authority must publish the order in such manner as the authority thinks appropriate.
- (4) If the order includes provision made in the exercise of any of the powers conferred by section 120(5)(a) or (b), the order must be contained in a statutory instrument.
- (5) If the instrument containing the order is made by a Panel or the Council in the name of the Commission, the Statutory Instruments Act 1946 (c. 36) applies in relation to the instrument as if it had been made by a Minister of the Crown.

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- (6) As soon as practicable after the instrument is made, the appropriate authority must deposit in the office of the Clerk of the Parliaments a copy of—
- (a) the instrument,
  - (b) the latest version of any plan supplied by the applicant in connection with the application for the order contained in the instrument, and
  - (c) the statement of reasons prepared under section 116(1).
- (7) In this section “the appropriate authority” means—
- (a) the Commission where the decision-maker is a Panel or the Council;
  - (b) the Secretary of State where the decision-maker is the Secretary of State.

#### Commencement Information

**I69** S. 117 in force at 1.3.2010 by S.I. 2010/101, art. 3(d) (with art. 6)

## CHAPTER 9

### LEGAL CHALLENGES

#### **118 Legal challenges relating to applications for orders granting development consent**

- (1) A court may entertain proceedings for questioning an order granting development consent only if—
- (a) the proceedings are brought by a claim for judicial review, and
  - (b) the claim form is filed during the period of 6 weeks beginning with—
    - (i) the day on which the order is published, or
    - (ii) if later, the day on which the statement of reasons for making the order is published.
- (2) A court may entertain proceedings for questioning a refusal of development consent only if—
- (a) the proceedings are brought by a claim for judicial review, and
  - (b) the claim form is filed during the period of 6 weeks beginning with the day on which the statement of reasons for the refusal is published.
- (3) A court may entertain proceedings for questioning a decision of the Commission under section 55 not to accept an application for an order granting development consent only if—
- (a) the proceedings are brought by a claim for judicial review, and
  - (b) the claim form is filed during the period of 6 weeks beginning with the day on which the Commission notifies the applicant as required by subsection (7) of that section.
- (4) A court may entertain proceedings for questioning a decision under paragraph 1 of Schedule 4 in relation to an error or omission in a decision document only if—
- (a) the proceedings are brought by a claim for judicial review, and
  - (b) the claim form is filed during the period of 6 weeks beginning with the day on which a correction notice in respect of the error or omission is issued

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- under paragraph 2 of that Schedule or, if the correction is required to be made by order contained in a statutory instrument, the day on which the order is published.
- (5) A court may entertain proceedings for questioning a decision under paragraph 2(1) of Schedule 6 to make a change to an order granting development consent only if—
- (a) the proceedings are brought by a claim for judicial review, and
  - (b) the claim form is filed during the period of 6 weeks beginning with the day on which notice of the change is given under paragraph 2(12)(b) of that Schedule or, if the change to the order is required to be made by order contained in a statutory instrument, the day on which the order making the change is published.
- (6) A court may entertain proceedings for questioning a decision under paragraph 3(1) of Schedule 6 to make a change to, or revoke, an order granting development consent only if—
- (a) the proceedings are brought by a claim for judicial review, and
  - (b) the claim form is filed during the period of 6 weeks beginning with the day on which notice of the change or revocation is given under paragraph 4(6) of that Schedule or, if the change or revocation is required to be made by order contained in a statutory instrument, the day on which the order making the change or revocation is published.
- (7) A court may entertain proceedings for questioning anything else done, or omitted to be done, by the Secretary of State or the Commission in relation to an application for an order granting development consent only if—
- (a) the proceedings are brought by a claim for judicial review, and
  - (b) the claim form is filed during the period of 6 weeks beginning with the relevant day.
- (8) “The relevant day”, in relation to an application for an order granting development consent, means the day on which—
- (a) the application is withdrawn,
  - (b) the order granting development consent is published or (if later) the statement of reasons for making the order is published, or
  - (c) the statement of reasons for the refusal of development consent is published.
- (9) Subsections (7) and (8) do not apply in relation to—
- (a) a failure to decide an application for an order granting development consent, or
  - (b) anything which delays (or is likely to delay) the decision on such an application.

#### **Commencement Information**

**I70** S. 118 in force at 1.3.2010 by [S.I. 2010/101](#), [art. 4\(c\)](#) (with [art. 6](#))

**I71** S. 118 in force at 1.3.2010 by [S.I. 2010/101](#), [art. 3\(d\)](#) (with [art. 6](#))

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**Status:** Point in time view as at 01/03/2010.

**Changes to legislation:** Planning Act 2008, Part 6 is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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## CHAPTER 10

### CORRECTION OF ERRORS

#### 119 Correction of errors in development consent decisions

Schedule 4 (correction of errors in development consent decisions) has effect.

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#### Commencement Information

**I72** S. 119 in force at 1.3.2010 by S.I. 2010/101, art. 3(d) (with art. 6)

**Status:**

Point in time view as at 01/03/2010.

**Changes to legislation:**

Planning Act 2008, Part 6 is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.