

## **PLANNING ACT 2008**

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### **EXPLANATORY NOTES**

#### **COMMENTARY**

#### **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.