

GROWTH AND INFRASTRUCTURE ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Promoting growth and facilitating provisions of infrastructure, and related matters

Section 2: Planning proceedings: costs

24. **Section 2** broadens the powers of the Secretary of State to award costs between the parties at planning appeals, and to recover the Secretary of State's own costs from the parties. It is an enabling measure that builds on existing powers to ensure that the Secretary of State may recover costs in full or in part, in respect of all appeal procedures, and where an inquiry is arranged but does not take place.
25. In practice, costs powers are usually exercised by Inspectors in the Planning Inspectorate, who are appointed under Schedule 6 to the Town and Country Planning Act 1990 ("the 1990 Act") to determine planning appeals on behalf of the Secretary of State.
26. Subsection (1) clarifies that costs may be recovered in part, as well as in full, following an appeal held at inquiry. It amends section 250(4) of the Local Government Act 1972 as it applies to planning appeals conducted as a local inquiry under section 320 of the 1990 Act. Section 250(4) enables the Secretary of State to recover "the costs incurred by him in relation to the inquiry". This amendment clarifies that a portion of the costs incurred by the Secretary of State may be recovered, not just the whole costs as section 250(4) currently implies.
27. Subsection (2) clarifies that costs may be recovered in part as well as in full following an appeal held by another procedure, such as a hearing or written representations. It amends section 322 of the 1990 Act (which deals with costs awards between parties) to apply section 250(4), with the same amendment as in subsection (1), to planning appeals which are not conducted as an inquiry, i.e. to appeals dealt with at a hearing or by way of written representations. This allows the Secretary of State to recover his own costs, or a portion of those costs, at all planning appeals, not just at inquiries as currently. New subsection (1D) applies section 42 of the Housing and Planning Act 1986 to hearings and written representations. Section 42 currently only applies to inquiries; it sets out the sorts of costs which may be recovered by the Secretary of State.
28. Subsection (3) clarifies that costs may be recovered in full or in part even when the inquiry or hearing does not take place. It makes similar amendments to section 322A of the 1990 Act (which deals with costs awards between parties) to ensure that the power of the Secretary of State to recover his own costs extends to situations where an inquiry or hearing has been arranged, but does not take place. This power could be used, for example, to recover from the responsible party wasted costs associated with arrangements for an inquiry or hearing which is cancelled at short notice.
29. Subsection (4) ensures that arrangements are in place with regard to appeals in London by amending section 322B of the 1990 Act in a similar way to subsection (1) to clarify

*These notes refer to the Growth and Infrastructure Act
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that a portion of the Secretary of State's own costs may be recovered at local inquiries in London.

30. Subsection (5) amends an existing power in section 323 of the 1990 Act to make regulations setting out the procedures to be followed at planning appeals conducted by written representations. Section 323 already enables procedures about costs to be made, and the amendment enables those procedures to set out the circumstances in which costs may be awarded between parties or recovered from the parties by the Secretary of State. This power would enable provision to be made about the criteria for awarding or recovering costs – for example, types of behaviour by parties which might result in costs being awarded or recovered.
31. Subsection (6) makes similar amendments to subsection (5), but to an existing power at section 9 of the Tribunals and Inquiries Act 1992 which is used to make procedures for planning appeals conducted as an inquiry or hearing. This power would enable provision to be made about the criteria for awarding or recovering costs, for example, what behaviour or actions by parties might result in costs being awarded or recovered.
32. Subsection (7) amends the Secretary of State's power, under Schedule 6 to the 1990 Act, to appoint persons to determine planning appeals and matters connected with planning appeals. This is the power under which Inspectors are appointed. New subparagraph (11) enables connected matters, such as costs, to be dealt with directly by the Secretary of State rather than by an Inspector.