These notes refer to the Growth and Infrastructure Act 2013 (c.27) which received Royal Assent on 25 April 2013

GROWTH AND INFRASTRUCTURE ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Promoting growth and facilitating provisions of infrastructure, and related matters

Section1: Option to make planning application directly to the Secretary of State

19. This section amends the Town and Country Planning Act 1990 ("the 1990 Act") by inserting new sections 62A to 62C.

20. Section 62A allows a planning application, an application for reserved matters consent and certain connected applications to be made directly to the Secretary of State where the local planning authority has been designated by him, provided the planning application is for (or the application for reserved matters consent relates to) major development. The "connected applications" can include applications for listed building or conservation area consent and other applications under the planning Acts that the Secretary of State may prescribe in regulations.

21. The conditions which must be satisfied before a planning authority may be designated for this purpose are set out in section 62B: by reference to published criteria the Secretary of State must consider that there are respects in which an authority are not adequately performing their function of determining applications under Part 3 of the 1990 Act. Section 62B also provides that the criteria must be contained in a document which is laid before both Houses of Parliament for a period of forty sitting days, and that they may come into effect only if neither House has voted against the document during this period.

22. Section 62C imposes a duty on the Secretary of State to notify parish councils of any applications submitted directly to him that relate to land in their area (where a parish council have previously asked the relevant local planning authority to be notified of applications submitted to that authority). It also requires a designated planning authority, if requested by the Secretary of State, to let the Secretary of State know which parish councils have asked to be notified in this way.

23. Schedule 1 makes consequential amendments. In particular, it–

- Amends section 2A of the 1990 Act to allow the Mayor of London to continue to "call in" planning applications of strategic significance where they have been submitted directly to the Secretary of State, rather than to a planning authority within Greater London.
- Inserts a new section 76C into the 1990 Act which allows applications submitted directly to the Secretary of State to be subject to the same procedural provisions (set out in a development order) as apply to applications made to a local planning authority.
- Inserts a new section 76D into the 1990 Act which allows for a person to be appointed to determine on the Secretary of State's behalf those applications that are submitted directly to the Secretary of State (in practice, the intention is to allow

the Planning Inspectorate to determine the majority of such decisions on behalf of the Secretary of State).

- Inserts a new section 76E into the 1990 Act which allows the Secretary of State to "recover" for decision any case that would otherwise be determined by an appointed person; the intention being that the Secretary of State should be able, for example, to determine any cases that raise issues of national importance.

- Amends the 1990 Act to give the Secretary of State the power to decline to determine applications of a similar nature to those recently refused, or which are similar to ones currently being considered (mirroring the powers available to local planning authorities).

- Amends the 1990 Act to provide that the right of appeal to the Secretary of State, against non-determination of an application within prescribed time limits, does not apply to applications that are submitted directly to the Secretary of State. Section 78(1) of the 1990 Act already limits the right of appeal against a refusal of permission to applications submitted to a local planning authority. Taken together, these provisions mean that there would be no right of appeal to the Secretary of State where an application is submitted directly to the Secretary of State (but, as a result of the amendment of section 284(3) of the 1990 Act, any decision on the application can be challenged in the High Court).

- Amends the 1990 Act to allow the Secretary of State to make regulations through which a fee may be charged for directly submitted planning applications, or for the provision of pre-application advice (as local planning authorities may do already).

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 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 sub-paragraph (11) enables connected matters, such as costs, to be dealt with directly by the Secretary of State rather than by an Inspector.

Section 3: Compulsory purchase inquires: costs

33. This section broadens the powers of the Secretary of State to award costs between the parties at compulsory purchase order inquiries. These inquiries are generally conducted on behalf of the Secretary of State by Inspectors in the Planning Inspectorate. The section adds a new subsection (4) to section 5 of the Acquisition of Land Act 1981. Section 5 applies section 250(5) of the Local Government Act 1972 ("the 1972 Act") to inquiries set up by Ministers to hear objections to the compulsory purchase of land by public authorities. Section 250(5) allows costs to be awarded between the parties at the inquiry.

34. At present, the terms of section 250(5) suggest that successful objectors to a compulsory purchase order must appear "at the inquiry" in order to be awarded their costs. New subsection (4) of section 5 of the 1981 Act provides that where an inquiry is held as referred to in section 5(3)(a) and (b), section 250(5) of the 1972 Act also applies to allow the Secretary of State to award costs where an inquiry is cancelled, or where a party does not appear at an inquiry. These situations may occur when an acquiring authority does not wish to proceed with the compulsory purchase order, or an objector has reached an agreement with the acquiring authority to exclude their land from the order.

Section 4: Permitted development rights: prior approvals

35. Section 4(1) amends section 60 of the 1990 Act. Section 60(1) provides that planning permission granted by a development order may be granted unconditionally or subject to such conditions or limitations as may be specified in the order. Section 4(1) inserts new subsections (2A) to (2C) into section 60.

36. New subsection (2A) provides that where planning permission is granted for development which is a change of use the order may specify matters that relate to the new use for which the approval of the local planning authority or the Secretary of State may be required. For example, in relation to a change of use which might generate extra traffic and be noisier than the existing use, the local planning authority may be given the opportunity to approve a transport strategy prepared by the developer, and a plan to address noise impacts.

37. The key change made by new subsection (2B) is that, where a development order grants planning permission for development within the curtilage of a dwelling house, the order can include provision enabling the local planning authority to prevent the development going ahead in reliance on the order where: (1) there are objections from neighbours who share a boundary with the property to be developed; and (2) the authority considers that there would be an unacceptable impact on the amenity of adjoining properties

38. Section 4(2) amends section 70A(5) of the 1990 Act to provide that a local planning authority can decline to determine repeat applications for these approvals.

Section 5: Limits on power to require information with planning applications

39. Section 5 introduces a new provision into section 62 of the 1990 Act which introduces limits on local planning authorities' power to require information with planning applications. The limits are defined as: (1) information requests must be reasonable having regard to the nature and scale of the proposed development; and (2) it being reasonable to think that the subject-matter of the information will be a material consideration in the determination of the application in question.

Section 6: Local development orders: repeal of pre-adoption intervention powers

40. Section 6 amends section 61B(1) to (7) of the 1990 Act so that it ceases to have effect in England. This removes powers for the Secretary of State to direct that a local development order be submitted for approval before adoption, to reject an order or part of an order, and to direct that a local development order be modified before it is adopted. Section 6 also inserts a new section 61B(7A) which requires a local planning authority in England to submit a copy of a local development order to the Secretary of State after the order is adopted.

41. The section also removes the Secretary of State's power, under Schedule 4A to the 1990 Act, to prescribe a procedure for submitting local development orders for approval and replaces it with a power to prescribe a procedure for submitting orders to the Secretary of State after adoption. Schedule 4A is further amended to remove the requirement for a local planning authority in England to report on the extent to which a local development order is achieving its purpose.

Section 7: Modification or discharge of affordable housing requirements

42. This section inserts three new sections into the Town and Country Planning Act 1990. *Subsections (4) to (6)* repeal these sections at the end of 30 April 2016 and give the Secretary of State related powers to amend this date by affirmative order and make transitional provisions.

43. **New section 106BA – Modification or discharge of affordable housing requirements**: this new section provides for an application to vary an "affordable housing requirement" contained in a planning obligation, and defines that term for these purposes. Under subsection (14) the Secretary of State has the power to amend that definition by order, subject to the affirmative procedure. Special provision is made in relation to a first application made under section 106BA in subsection (3). If, on a first application, the affordable housing requirement makes development of the site economically unviable, the authority must modify or remove it so as to make the site

viable. The authority can not make the revised obligation more onerous than the original obligation.

44. In relation to a second or subsequent application, the authority has more flexibility in amending the affordable housing requirement under subsection (4). However, they cannot amend the requirement so as to make the relevant development economically unviable.

45. This section makes provision for regulations to prescribe procedural matters linked to these applications, and subsection (8) requires the appropriate authority to have regard to guidance issued by the Secretary of State. Where section 106BB applies, the authority must also have regard to any representations made by the Mayor of London. Under subsection (9) the authority must give the applicant notice of their determination within 28 days, unless a longer period is agreed between them. The Secretary of State can provide for a different determination period in regulations.

46. Under subsection (12) applications and appeals under sections 106BA and 106BC cannot be made in relation to developments which were granted permission on the basis of a rural exception sites policy.

47. **New section 106BB**: this new section introduces a duty for London Boroughs to consult the Mayor of London in relation to applications made under section 106BA that fulfil two criteria. Firstly, that the application relates to development that section 2A of the Town and Country Planning Act 1990 applied to (applications of potential strategic importance relating to land in Greater London). Secondly, that an order under section 2A, or a development order, required the Mayor to be consulted on the original application. The current requirement to notify the Mayor in relation to applications for planning permission is contained in article 5 of the Town and Country Planning (Mayor of London) Order 2008 (S.I. 2008/580).

48. Under subsection (3) the Mayor must notify the Borough within 7 days as to whether he wishes to make representations and under subsection (4) must make those representations within 14 days unless a longer period is agreed with the authority. Subsection (5) extends the default period for notifying the applicant of the outcome of the application under section 106BA(9)(b) to 35 days in relation to these applications.

49. The authority dealing with an application under section 106BA must have regard to any representations made by the Mayor. As a result of section 106BC(6), this also applies to the Secretary of State when determining an appeal under section 106BC.

50. **New section 106BC**: this new section provides for an appeal to the Secretary of State in relation to applications made under section 106BA. An appeal can be made if the appropriate authority does not modify the planning obligation as requested, or fails to make a determination within a specified time. Such appeals are generally to be handled by the Planning Inspectorate on behalf of the Secretary of State.

51. The special provision in section 106BA in relation to first applications also applies in relation to appeals on a first application. Subsection (8) ensures that it does not apply to an appeal in relation to a second or subsequent application, whether or not it is the first appeal. Subsection (6) applies other aspects of section 106BA applications to appeals under section 106BC.

52. Where an appeal made under this section is successful, the modifications made by the Secretary of State only last for three years under subsections (11), (12) and (13). The modified planning obligation must contain provision to ensure that if development is to continue past that time, the original affordable housing requirements are reverted to. In this context, the original affordable housing requirements are those contained in the planning obligation before the first application under section 106BA was made in relation to it. The Secretary of State must vary the original requirements to ensure that they will not apply to that part of the development that is commenced in the three year period, and may make such variations as are necessary to ensure their effectiveness.

53. Subsection (14) ensures that this reversion provision can be reconsidered through applications and appeals under sections 106BA and 106BC. Under subsection (15), if it is removed on appeal under section 106BC, it must be replaced with a new reversion provision along the same lines.

54. As with section 106BA, this section provides for regulations to prescribe procedural matters linked to appeals. Subsections (3) and (4) contain a default provision that appeals must be made within 6 months if no regulations have been made about the time limit for appeals.

Schedule 2: Modification or discharge of affordable housing requirements: related amendments

55. Schedule 2 makes related and consequential amendments. These include:

- Amendment to section 5(3) of the 1990 Act to make the Broads Authority the sole district planning authority for these purposes.
- Consequential amendments to sections 106 to 106C of the 1990 Act.
- Amendments to section 106C of the 1990 Act to provide for a legal challenge where decisions are made under section 106BA by the Secretary of State. In particular, the amendments provide for legal challenge where a planning obligation is modified otherwise than in accordance with the application.
- Amendment to section 319A of the 1990 Act to give the Secretary of State the power to determine the procedure used to consider appeals under section 106BC.
- Amendments to Schedule 6 to the 1990 Act to ensure that appeals made under section 106BC can be determined by the Planning Inspectorate on behalf of the Secretary of State.

Section 8: Disposals of land held for planning purposes

56. This section amends section 233 of the 1990 Act (disposal by local authorities of land held for planning purposes) by providing for the Secretary of State to grant general consent for disposals as well as specific consent upon receipt of an application from a local authority.

57. Subsection (2) enables the Secretary of State to give consent generally for the disposal of land at less than the best consideration reasonably obtainable. Such consent may be granted by reference to:

- any particular disposal or disposals, or in relation to a particular class of disposals;
- local authorities generally, or local authorities of a particular class, or to any particular local authority or authorities, and
- either unconditionally or subject to conditions (either generally or in relation to any particular disposal or disposals or class of disposals).

58. Subsection (3) applies the protection for purchasers in respect of certain land transactions contained in section 128(2) of the Local Government Act 1972 to all purchasers of land disposed of by local authorities under section 233 of the 1990 Act. Such transactions will not be void where a local authority has failed to obtain the relevant consent and a prospective purchaser will not have to enquire whether the disposing local authority has obtained the necessary consent. Section 29 of the Town and Country Planning Act 1959, which also provides protection to purchasers of land from local authorities in certain circumstances, has therefore been disapplied.

Section 9: Electronic communications code: the need to promote growth

59. Section 109(1) of the Communications Act 2003 ("2003 Act") gives the Secretary of State the power to make regulations imposing conditions and restrictions on the application of the electronic communications code (as defined in section 106) to network operators. Section 109(2) sets out a list of considerations to which the Secretary of State must have regard in exercising the power to make regulations under section 109(1). Subsection (1) of the section adds to that list the need to promote economic growth.

60. Subsection (2) of the section, as respects the making of regulations under section 109 of the 2003 Act, deems any duties owed under the provisions at (a) to (e) below to have been complied with if the Secretary of State has complied with section 109(2)(b) of the 2003 Act (duty to have regard to the need to protect the environment and, in particular, to conserve the natural beauty and amenity of the countryside):

a) section 85 of the Countryside and Rights of Way Act 2000 (relating to areas of outstanding natural beauty in England and Wales),

b) section 11A of the National Parks and Access to the Countryside Act 1949 (relating to National Parks in England and Wales),

c) section 17A of the Norfolk and Suffolk Broads Act 1988 (relating to the Broads),

d) Article 4 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985 (relating to areas of outstanding natural beauty in Northern Ireland), and

e) section 14 of the National Parks (Scotland) Act 2000 (relating to National Parks in Scotland)

61. Subsection (3) deems the meaning of "statutory undertakers" in the Norfolk and Suffolk Broads Act 1988 to be read so that electronic code operators will not be subject to the duty in section 17A of that Act to have regards to Broads purposes when exercising their function so as to affect land in the Broads.

62. The provisions in section 9(2) and (3) are subject to a sunset date of 6 April 2018.

Section 10 and Schedule 3: Periodic review of mineral planning permissions

63. This section of the Act together with Schedule 3 changes the current regime of reviews of mineral planning permissions to give mineral planning authorities in England greater local discretion over whether reviews are required and when they take place.

64. Schedule 14 to the Environment Act 1995 (“the 1995 Act”) requires mineral planning authorities in England and Wales to cause periodic reviews of the mineral permissions relating to mining sites in their areas to be carried out. Schedule 14 makes separate provision for the first periodic review (paragraph 3) and any second or subsequent periodic review (paragraph 12). In each case, the review date is the date falling 15 years after the conditions to which the site’s mineral permissions are subject were last determined.

65. This section of the Act gives effect to Schedule 3, which amends Schedule 14 to the 1995 Act. The amendments give mineral planning authorities in England discretion as to whether to cause a periodic review to be carried out in any case and to set a review date. The review date may not be earlier than the date found under paragraph 3 of Schedule 14 to the 1995 Act (in the case of a first periodic review) or paragraph 12 (in the case of a second or subsequent periodic review). These changes do not apply to Wales.

Section 11: Stopping up and diversion of highways

66. This section amends section 253 of the Town and Country Planning Act 1990 ("the 1990 Act"). A stopping up order extinguishes the public right to pass and re-pass over the land in question. This enables development to be carried out on the land. A diversion generally also involves a stopping up together with the creation of a new highway. The effect of the section is to enable a draft order for stopping up or diversion of highways to be published at the planning application stage. At present, in the majority of cases, the applicant must wait until planning permission has been granted before they can apply for a stopping up or diversion order. This section applies to England only and retains the current provisions for Wales.

Section 12: Stopping up and diversion of public paths

67. This section amends section 257 of the 1990 Act. Section 257 currently enables an order authorising the stopping up or diversion of footpaths (and certain other paths) where this is necessary in order to enable development to be carried out in accordance with planning permission (or by a Government department). The amendment enables an order stopping up or diverting a public path to be made in anticipation of planning permission. The section also amends section 259 of the 1990 Act so that the competent authority or Secretary of State may not confirm a stopping up or diversion order until planning permission has actually been granted. It also amends section 259 so that the competent authority or Secretary of State may not confirm an order unless satisfied that it is necessary to enable the development to be carried out. This section applies to England only.

Section 13: Declarations negativing intention to dedicate way as highway

68. Section 31(6) of the Highways Act 1980 allows for a landowner to deposit a map and statement with the highway authority, showing admitted public paths, and a declaration that the landowner has no intention to allow any other part of the land to become subject to a public right of way.

69. This section amends section 31 to allow the Secretary of State to make regulations prescribing: (i) the form of such statements, maps and declarations with the aim of minimising the administrative burden on landowners who wish to make such statements at the same time as statements are made to protect land from registration as a town or village green under section 15 of the Commons Act 2006; and (ii) fees to be levied in relation to the deposit of a map and statement and the lodging of a declaration (including for a fee payable under the regulations to be determined by the appropriate council).

70. Section 13, by amending section 31 of the Highways Act 1980, allows the Secretary of State to prescribe in regulations the steps an appropriate council must take in relation to a map, statement, or declaration deposited with it, as well as the manner and period in which such steps must be completed. Section 13 also amends section 31 of that Act to extend the period for renewing declarations from ten to twenty years. Section 13 contains a restatement of the existing law applicable to Wales. It does not amend the law applicable to Wales.

Section 14: Registration of town or village green: reduction of section 15(3)(c) period

71. Section 14 amends section 15(3)(c) of the Commons Act 2006 ("the 2006 Act") in relation to land in England so as to reduce the period within which a town or village green application can be made (after the requisite 20 years of recreational use "as of right" has ceased) from two years to one year.

72. Section 14 contains a restatement of the existing law applicable to Wales. It does not amend the law applicable to Wales.

Section 15: Registration of town or village green: statement by owner

73. Applications can be made under section 15(1) of the 2006 Act to register land as a town or village green, broadly, where the land has been used "as of right" for lawful sports and pastimes by a significant number of people in the local community for at least twenty years. Use "as of right" means without force, secrecy or permission, the rationale being that a landowner must be in a position to know that a right is being asserted and acquiesce in the assertion of the right.

74. This section inserts a new section 15A into the 2006 Act which allows an owner of land in England (as defined in section 61(3) of the 2006 Act) to deposit a statement and map with the commons registration authority, the effect of which is to bring to an end any period of use as of right for lawful sports and pastimes on the land to which the statement relates. The form of the statement and map will be prescribed by regulations which can provide for the statement to be combined with a statement or declaration made to counter rights of way claims under section 31(6) of the Highways Act 1980. Regulations may provide for the statement to refer to a map deposited under section 31(6) of the Highways Act 1980. The aim is to reduce the administrative burden on landowners who, for example, wish to make statements or declarations for both purposes at the same time.

75. Where the requisite period of twenty years' use as of right has already accrued by the time the deposit of the statement and map takes place, an application for registration of the land as a town or village green can still be made within the relevant period from the date of the deposit in reliance on section 15(3) of the 2006 Act. In relation to land in England, the relevant period specified in section 15(3)(c) of the 2006 Act is (by virtue of section 14 of this Act) reduced from two years to one year.

76. The deposit of the statement and map will not prevent commencement of a new period of recreational use as of right, but an owner of land may deposit subsequent statements in order to interrupt future periods of use.

77. The Secretary of State has the power to prescribe in regulations the steps a commons registration authority must take in relation to a statement and map deposited with it, as well as the manner and period within which such steps must be completed. An example of how this power may be used is to require a commons registration authority to give notice of the deposit of a statement and map, in order to make the local community aware that any recreational use of the land as of right has been interrupted, triggering the operation of the grace period for an application to be made in reliance on section 15(3) of the 2006 Act (in cases where the criteria for registration have been satisfied).

78. Subsection (5) of new section 15A allows a landowner to make a statement referring to a map which accompanied an earlier statement, whether the landowner is the same person that deposited the earlier statement or not. For example a successor in title may wish to treat a map provided with a statement deposited by the previous landowner as accompanying his later statement.

79. The Secretary of State may make regulations prescribing the fees payable in relation to the depositing of a statement and when a statement is to be regarded as having been deposited with the commons registration authority.

80. Any straddling agreement made under section 4(3) of the 2006 Act or section 2(2) of the Commons Registration Act 1965 which has the effect of requiring an owner of land in England to deposit a statement with a registration authority in Wales, is disregarded to avoid imposing new burdens on Welsh registration authorities.

81. This section also inserts a new section 15B in the 2006 Act which requires each commons registration authority to keep a register containing prescribed information about statements and maps deposited with that authority. Such information may be included in a register maintained by the authority under section 31A of the Highways

Act 1980 and regulations may make provision for the creation of a new part in such registers for that purpose.

Section 16: Restrictions on right to register land as town or village green

82. This section inserts new section 15C into the 2006 Act, the effect of which is to exclude the right to apply under section 15(1) of the 2006 Act for registration of land in England to which Part 1 of the Act applies as a town or village green if any of the events ("trigger events") specified in the first column of the Table set out in the new Schedule 1A to the 2006 Act occur (the new Schedule 1A is set out at Schedule 4 to this Act). The right to apply under section 15(1) becomes exercisable again in respect of that land only if one of the terminating events specified in the second column of the Table set out in Schedule 1A which corresponds to that trigger event occurs. The exclusion of the right to apply for registration of a green does not affect the accrual of any period of user as of right or prevent any such user ceasing to be as of right.

83. The Secretary of State may by order make provision as to when a trigger event or terminating event is to be treated as having occurred for the purposes of the exclusion under section 15C(1) and may define circumstances in which the exclusion will not apply. The Secretary of State may also by virtue of an order under section 15C(5), subject to the affirmative procedure, insert additional trigger or terminating events, or amend or omit any trigger or terminating events for the time being specified in Schedule 1A. Where the Secretary of State makes an order under section 15C(5)(a) specifying an additional trigger or terminating event, provision may be made for the provisions of section 15C to apply where an event has occurred before the date on which the order is made or comes into force. Any additional trigger or terminating event specified must be an event related to the development (whether past, present or future) of the land.

84. If an application for registration of land as a town or village green is made in reliance on section 15(3) of the 2006 Act (i.e. in circumstances where use of the land as of right ceased before the application was submitted), any period during which the exclusion in new section 15C applies is disregarded for the purpose of calculating the period in section 15(3)(c) within which an application must be made. The operation of this period is suspended while the exclusion is in place. In relation to land in England, the period specified in section 15(3)(c) of the 2006 Act (by virtue of section 14 of this Act) is to be reduced from two years to one year.

85. For the purposes of the exclusion of the right to apply for registration of a town or village green in new section 15C(1) it does not matter whether a trigger event occurred before or after the commencement of section 16. However, under section 16, the exclusion in new section 15C does not apply in relation to an application for registration of a green which is sent before the day on which section 16 comes into force. Where an application pertains to a site which is partly subject to the exclusion and partly not, the commons registration authority should proceed to determine the application in respect of the part which is not subject to the exclusion.

Section 17: Applications to amend registers: modification of power to provide for fees

86. This section amends in relation to England the power in section 24(2)(d) of the Commons Act 2006 ("the 2006 Act") to charge fees for applications made under Part 1 of that Act to amend a register of common land or a register of town or village greens. The revised power allows the Secretary of State to make provision in regulations for fees to be payable in relation to an application, in particular provision for a fee payable to be determined by the person to whom an application is made or (if different) the person by whom the application is to be determined. The aim of this section is to allow for greater flexibility and targeting of fees – subject to secondary legislation and Parliamentary scrutiny – for example in circumstances where an application is made to the commons

registration authority but referred to the Planning Inspectorate. The power as it applies to Wales is restated but is unchanged.