

NEIGHBOURHOOD PLANNING ACT 2017

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Neighbourhood Planning Act 2017 (c. 20) which received Royal Assent on 27 April 2017.

- These Explanatory Notes have been prepared by the Department for Communities and Local Government in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

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Overview of the Act

- 1 The Neighbourhood Planning Act contains measures relating to planning and compulsory purchase and will contribute to the Government's aim of making sure the housing market works for everyone. The Act is made up of three parts. A summary of these parts and their contents is provided below.
 - Part 1: Planning
 - Part 2: Compulsory Purchase
 - Part 3: Final Provisions

Policy background

Neighbourhood planning

- 2 The Government committed to encourage communities engaged in neighbourhood planning to complete the process and to assist others to draw up their own plans. Over 2,000 communities have taken the decision to produce a neighbourhood development plan or an order. The Act strengthens neighbourhood planning by ensuring that planning decision-makers take account of well-advanced neighbourhood development plans; requiring parish councils and designated neighbourhood forums to be automatically notified of future planning applications in their area; and, by giving neighbourhood development plans full legal effect at an earlier stage. It introduces a proportionate process for modifying neighbourhood development orders and plans and facilitates the modification of neighbourhood areas where a neighbourhood development order or plan has already been made in relation to that area. The Act also makes the duty on local planning authorities to support neighbourhood planning groups and the neighbourhood planning examination process more transparent.

Local development documents

- 3 Development plan documents are the key documents through which local planning authorities can set out a vision and framework for the future development of the area, engaging with their communities in doing so. Producing these documents should be a shared endeavour – led by the local planning authority but in collaboration with local communities, developers, landowners and other interested parties. The measures in the Act strengthen this plan-led system by ensuring that all local planning authorities in England identify the strategic priorities for the development and use of land in their areas (with guidance to be provided on addressing the housing needs of older people and people with disabilities) in an up-to-date plan. The Act also provides for effective interventions where documents are not in place and seeks to improve the involvement of communities and others in plan-making.

Planning conditions

- 4 The Act introduces a power for the Secretary of State to make regulations which prescribe the circumstances where certain conditions may or may not be imposed and descriptions of such conditions for the purpose of ensuring that conditions meet national policy tests in the National Planning Policy Framework.
- 5 Pre-commencement conditions are planning conditions which prevent any development authorised by a planning permission from taking place until the condition has been formally discharged, for example, the condition may require the approval of detailed aspects of the development. The Act ensures that pre-commencement planning conditions are only used by local

planning authorities where they have the written agreement of the applicant, subject to any exemptions that the Secretary of State may prescribe in regulations.

- 6 It is intended that the process of agreeing pre-commencement conditions before a decision is issued should become a routine part of the dialogue between the applicant and the local planning authority, building on current best practice. In the event that an applicant refuses to accept a necessary pre-commencement condition proposed by a local planning authority, the authority can refuse planning permission. This will maintain appropriate protections for important matters such as heritage, the natural environment, green spaces, and measures to mitigate the risk of flooding.

Permitted development rights relating to drinking establishments

- 7 The Government is committed to supporting pubs, which can play an important role in communities. The Act requires the Secretary of State to remove permitted development rights for change of use from, and demolition of, drinking establishments, including pubs so that a planning application is required for local consideration. It further requires the introduction of a new permitted development right for change of use from a drinking establishment to a mixed use drinking establishment and restaurant, to provide greater flexibility for pubs to increase their food offer, ensuring pubs can develop their business to support their continued viability. Any change of use which involves a drinking establishment no longer operating as such would require a planning application.

Development of new towns by local authorities

- 8 In the Housing White Paper 2017, the Government committed to legislate to enable the creation of locally accountable new town development corporations by modifying the New Towns Act 1981. A local model would transfer the responsibility of overseeing the development corporation and the delivery of a new town to a local body.
- 9 The Act allows the Secretary of State to create a new town development corporation for which a local authority rather than central government is responsible. It allows the Secretary of State to appoint one or more local authorities to oversee the delivery of the new town through a development corporation. It also gives the Secretary of State the power to modify the New Towns Act 1981 through secondary legislation, so that some of the functions for overseeing the development corporation which sit with central government can be transferred to the relevant local authority or local authorities, and makes further changes necessary to enable the local authority led model to work effectively.

Planning Register

- 10 Permitted development rights for change of use to residential use, introduced in recent years, are contributing to housing delivery. The Act allows the Secretary of State to require local planning authorities to record specified prior approvals for permitted development rights on the planning register, as is the case for applications for planning permission. This enables the collection of information on the number of new homes permitted through permitted development, so that the contribution these measures are making to help achieve the Government's housing supply ambitions can be more accurately recorded.

Compulsory Purchase

- 11 Following the reforms introduced by the Housing and Planning Act 2016, the Act makes further changes to the law on compulsory purchase. It clarifies the statutory framework for compensation, which does not affect the fundamental principles on which it is assessed. The Act also makes further technical changes, such as introducing a general power to obtain temporary possession of land and a requirement to bring compulsory purchase orders into operation within a set period of time.

Legal background

- 12 The legislation which this Act amends is set out in a number of Acts of Parliament. This legislation is referred to below with further explanations, where required, set out in the section-by-section commentary.
- 13 The principal planning Act is the Town and Country Planning Act 1990 ('the 1990 Act'). This Act amends the 1990 Act, as well as the following other planning legislation:
 - a. The New Towns Act 1981;
 - b. Town and Country Planning (Use Classes) Order 1987
 - c. The Planning and Compulsory Purchase Act 2004 ('the 2004 Act') which brought about changes to the development plan system and to planning control; and
 - d. The Localism Act 2011, through its amendments to the 1990 and the 2004 Act.
- 14 The main legislation relating to compulsory purchase, which this Act amends, is:
 - a. The Land Compensation Act 1961;
 - b. The Compulsory Purchase Act 1965;
 - c. The Land Compensation Act 1973;
 - d. The Acquisition of Land Act 1981;
 - e. The Compulsory Purchase (Vesting Declarations) Act 1981
 - f. The Greater London Authority Act 1999; and
 - g. The Housing and Planning Act 2016.

Territorial extent and application

- 15 Section 45 sets out the territorial extent of the Act. If a provision of an Act extends to a jurisdiction within the United Kingdom, this means that the provision will form part of the law of that jurisdiction. The extent of an Act can be different from its application. Application is about where an Act produces a practical effect.
- 16 The commentary on individual provisions of the Act includes a paragraph explaining their extent and application which can be summarised as follows:
 - Part 1: Neighbourhood Planning, Local Development Documents, Planning Conditions, Planning Register, permitted development rights related to drinking establishments, and development of new towns by local authorities extend to England and Wales, but apply to England only;
 - Part 2: Compulsory Purchase - these provisions extend and apply to England and Wales only, with the exception of sections 36 and 37 which extend to England and Wales but apply to England only.

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17 More detailed information about the extent and application of the individual provisions of the Act can be found in Annex A.

Commentary on provisions of Act

Part 1: Planning

Neighbourhood Planning

Section 1: Duty to have regard to post-examination neighbourhood development plan

18 This section amends section 70 of the Town and Country Planning Act 1990 to require a local planning authority or other planning decision-taker to have regard to a post-examination neighbourhood development plan when dealing with an application for planning permission, so far as that plan is material to the application. The section defines what is meant by a post-examination neighbourhood development plan.

19 This section extends to England and Wales but applies to England only.

Section 2: Notification of applications to neighbourhood planning bodies

20 This section amends Schedule 1 to the Town and Country Planning Act 1990 to require a local planning authority, or the Secretary of State, to notify any parish council or designated neighbourhood forum of any future planning applications or alterations to planning applications in their area. This requirement applies when there is a neighbourhood development plan which forms part of the statutory development plan, or when there is a post-examination neighbourhood development plan (as defined in section 1 of the Act) in place, for a neighbourhood area all or part of which falls within the authority's area. The requirement does not apply where the parish council or designated neighbourhood forum has given notification in writing that they do not wish to be notified of any such application.

21 This section extends to England and Wales but applies to England only.

Section 3: Status of approved neighbourhood development plan

22 This section amends section 38 of the Planning and Compulsory Purchase Act 2004 to provide for a neighbourhood development plan for an area to become part of the development plan for that area after it is approved in each applicable referendum (a residential referendum and, where the area is a business area, a business referendum). In the very limited circumstances that the local planning authority might decide not to make the neighbourhood development plan, it will cease to be part of the development plan for the area.

23 This section extends to England and Wales but applies to England only.

Section 4: Modification of neighbourhood development order or plan

24 This section amends section 61M of the Town and Country Planning Act 1990 to enable a local planning authority to modify, only with the consent of the qualifying body for the neighbourhood area, a neighbourhood development order or plan if they consider that the modification does not materially affect any planning permission granted by the order or the policies in the plan.

25 This section also amends the Planning and Compulsory Purchase Act 2004 to insert new Schedule A2 which sets out the process for the modification of a neighbourhood development plan in cases where the proposed modifications would materially affect the policies in the plan but are not so significant or substantial as to change the nature of the plan.

26 This section extends to England and Wales but applies to England only.

Schedule 1: New schedule A2 to the Planning and Compulsory Purchase Act 2004

- 27 This Schedule sets out the procedure for making a modification to a neighbourhood development plan. A qualifying body must submit the proposed modifications to the local planning authority. The procedure for making the modifications largely replicates the existing process for making a neighbourhood development order in Schedule 4B to the Town and Country Planning Act 1990, as applied to neighbourhood development plans by section 38A(3) of the Planning and Compulsory Purchase Act 2004. However, unlike the process for making a new neighbourhood development plan, examiners are expected to hold hearings only in exceptional circumstances and there is no referendum on the proposed modifications. A local planning authority will be required to make the modified neighbourhood development plan if that is what the examiner recommends (including modifications recommended by the examiner).
- 28 The local planning authority may only decline to follow the examiner's recommendation where it considers that would breach or be incompatible with any EU obligations or Convention rights.
- 29 This Schedule extends to England and Wales but applies to England only.

Section 5: Changes to neighbourhood areas etc

- 30 This section amends the Town and Country Planning Act 1990 and the Planning and Compulsory Purchase Act 2004 to facilitate the modification of a neighbourhood area and provide for what is to happen to a neighbourhood development order or plan that has already been made in relation to that area. This might be necessary, for example, where a community governance review leads to changes to a parish boundary or the creation of a new parish, or where parish councils choose to undertake neighbourhood planning together or to plan for their own area where they have previously acted together.
- 31 This section extends to England and Wales but applies to England only.

Section 6: Assistance in connection with neighbourhood planning

- 32 This section amends section 18 of the Planning and Compulsory Purchase Act 2004. That section requires a local planning authority to prepare a statement of community involvement setting out the authority's policy for involving interested parties in the preparation of local development documents. This section requires an authority to also set out their policy for discharging the duty to give advice or assistance to qualifying bodies to facilitate proposals for neighbourhood development plans (including proposals for the modification of neighbourhood development plans) or orders.
- 33 This section extends to England and Wales but applies to England only.

Section 7: Engagement by examiners with qualifying bodies etc

- 34 This section amends Schedule 4B of the Town and Country Planning Act 1990 as applied to neighbourhood development plans by Section 38C in accordance with section 38A(3) of the Planning and Compulsory Purchase Act 2004. It adds to the existing non-exhaustive list (set out in paragraph 11 of the same Schedule) of matters that regulations on the procedure for the examination of neighbourhood development orders and neighbourhood development plans may address. The section provides for regulations to set out the requirements that the person appointed to examine a neighbourhood development order or plan must follow during the examination process.
- 35 This section extends to England and Wales but applies to England only.

Local development documents

Section 8: Content of development plan documents

- 36 This section amends sections 19 and 35 of the Planning and Compulsory Purchase Act 2004 ('the 2004 Act') to require local planning authorities in England to identify the strategic priorities for the development and use of land in the authority's area. Each authority must set out policies to address those priorities in their development plan documents unless they are satisfied that these priorities are addressed in a spatial development strategy that covers their area (in Greater London or in the area of a combined authority that has the function of preparing a spatial development strategy). Authorities must make clear in each monitoring report published under section 35 of the 2004 Act the extent to which they are relying on policies in a spatial development strategy to deliver their strategic priorities, and where the relevant policies are to be found.
- 37 This section also amends section 34 of the 2004 Act to require the Secretary of State to produce guidance for local planning authorities about how their local development documents, taken as a whole, should address the housing needs of older and disabled people. Local planning authorities must have regard to this guidance when discharging their plan-making responsibilities.
- 38 This section extends to England and Wales but applies to England only.

Section 9: Power to direct preparation of joint development plan documents

- 39 This section inserts new sections 28A to 28C of the Planning and Compulsory Purchase Act 2004 and makes consequential amendments. New section 28A enables the Secretary of State to direct two or more local planning authorities to prepare a joint development plan document where that will facilitate the more effective planning of the development and use of land in the area of one or more of those authorities.
- 40 This section extends to England and Wales but applies to England only.

Section 10: County Councils' default powers in relation to development plan documents

- 41 This Section introduces Schedule 2 to the Act, which enables the Secretary of State to invite a county council to prepare a development plan document for a local planning authority in their area.
- 42 This section extends to England and Wales but applies to England only.

Schedule 2: County council's default powers in relation to development plan documents

- 43 Schedule 2 amends Schedule A1 to the Planning and Compulsory Purchase Act 2004. That Schedule enables the Secretary of State to invite the Mayor of London or a combined authority to prepare a development plan document for an authority in their respective areas. Intervention is permitted only where the Secretary of State thinks that a local planning authority are failing or omitting to do anything it is necessary for them to do in connection with the preparation, revision or adoption of the document. The amendment enables the Secretary of State to additionally invite a county council to prepare a document for a local planning authority in their area.
- 44 Where a county council accepts the invitation, they are responsible for preparing the document and having it examined. They may then approve the document (or approve it subject to modifications recommended by the inspector) or direct the local planning authority to consider adopting it. The Secretary of State may 'call in' or require modifications to be made to a document being prepared by a county council as he or she can in relation to any other development plan document.

45 This schedule extends to England and Wales but applies to England only.

Section 11: Format of local development schemes and documents

46 This section amends section 36 of the Planning and Compulsory Purchase Act 2004 to enable the Secretary of State to publish data standards which set technical specifications for local development schemes and local development documents or data contained in them. Local planning authorities must comply with these standards when preparing, publishing, maintaining or revising any such scheme or document.

47 The section also amends section 15(8AA) of the 2004 Act to enable the Secretary of State or the Mayor of London (in the case of a London borough council) to direct a local planning authority to revise a local development scheme so that it complies with published data standards.

48 This section extends to England and Wales but applies to England only.

Section 12: Review of local development documents

49 This section amends section 17 of the Planning and Compulsory Purchase Act 2004 to enable the Secretary of State to prescribe in regulations the intervals at which local planning authorities must review their local development documents. Where an authority reviews a document but decides not to revise it, they must publish their reasons.

50 This section extends to England and Wales but applies to England only.

Section 13: Statements of community involvement

51 This section amends section 18 of the Planning and Compulsory Purchase Act 2004 to require local planning authorities to set out in their statements of community involvement policies for involving interested parties in the preliminary stages of plan-making. It also allows the Secretary of State to produce regulations which prescribe matters which local planning authorities must address in their statements of community involvement.

52 This section extends to England and Wales but applies to England only.

Planning Conditions

Section 14: Restrictions on power to impose planning conditions

53 This section inserts a new section 100ZA into the Town and Country Planning Act 1990. Section 100ZA provides the Secretary of State with the power to make regulations about what kind of conditions may or may not be imposed on a relevant grant of planning permission, that is any planning permission to develop land granted further to an application made under Part 3 of the Town and Country Planning Act 1990, and in which circumstances. Under this section, the Secretary of State can only make provision in regulations if and to the extent that the Secretary of State is satisfied that such provision is appropriate for the purpose of ensuring that conditions imposed by local planning authorities are necessary to make the development acceptable in planning terms, relevant to the development and planning considerations generally, sufficiently precise to make them capable of being complied with and enforced, and reasonable in all other aspects - in line with the policy tests on conditions in the National Planning Policy Framework. The section also contains a requirement to carry out a public consultation before making any such regulations.

54 This section further requires a local planning authority to obtain the written agreement of the applicant to the terms of any pre-commencement conditions before granting planning permission subject to any such conditions. A 'pre-commencement condition' is a planning condition imposed on a grant of planning permission, which the applicant must discharge before development (any building or other operations or a material change in the use of any buildings or other land) can

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commence on site. The Secretary of State can set out in regulations subject to the negative procedure circumstances in which this requirement does not apply. As with any regulations made under subsection (1), there is a requirement to carry out a public consultation in advance of prescribing such exclusions.

55 This section also requires the Secretary of State to provide local planning authorities with guidance, which he may amend, on section 100ZA and any regulations which are made under powers in this section.

56 This section extends to England and Wales but applies to England only.

Schedule 3: Planning conditions: consequential amendments

57 This Schedule makes a number of consequential amendments to the Town and Country Planning Act 1990.

58 This Schedule extends to England and Wales but applies to England only.

Permitted development rights relating to drinking establishments

Section 15: Permitted development rights relating to drinking establishments

59 This section requires the Secretary of State to bring forward an amendment to the Town and Country Planning General Permitted Development Order (England) 2015, to remove permitted development rights for the change of use and demolition of a drinking establishment. It also requires the Secretary of State to introduce a new permitted development right allowing the change of use from a drinking establishment to a mixed use drinking establishment and restaurant.

60 This section extends to England and Wales and applies to England only.

Development of new towns by local authorities

Section 16: Development of new towns by local authorities

61 This section enables the Secretary of State to transfer oversight of New Town Development Corporations established under the New Towns Act 1981, to one or more local authorities covering the designated area for the new town. It provides a power to make regulations prescribing the transfer of functions under the Act from central government to the local authorities and other changes to the Act to enable this to work in practice.

62 This section will extend to England and Wales and apply to England only.

Planning Register

Section 17: Register of planning applications etc

63 This section inserts a new section 69A, into the Town and Country Planning Act 1990. It extends the scope of the planning register established under section 69 of the 1990 Act by allowing the Secretary of State to require that information about specified prior approval applications or notifications for permitted development rights is placed on this register. The section enables the Secretary of State to introduce regulations which prescribe the information and prior approval applications and notifications which must be placed on the planning register.

64 This section extends to England and Wales and applies to England only.

Part 2: Compulsory Purchase Etc

Chapter 1: Temporary possession of land

Section 18: Power to take temporary possession of land

- 65 This section gives all those with a power to acquire land compulsorily (e.g. local authorities and certain agencies, and statutory undertakers etc.), the power to take temporary possession of land, or a new right over land, by agreement or compulsorily. Unless there is express provision in another Act (such as a hybrid Act for a major infrastructure project) this is the only power by which temporary possession of land may be obtained.
- 66 This section extends and applies to England and Wales only.

Section 19: Procedure for authorising temporary possession etc

- 67 This section provides that compulsory temporary possession of land must be authorised in the same way as the compulsory acquisition of land would have been authorised for the same purpose as the temporary possession, for example through a compulsory purchase order. It sets out the information which must be included in the “authorising instrument”.
- 68 Section 19 permits the authorising instrument to include: both compulsory acquisition of land and temporary possession of other land; temporary possession of land only; and both temporary possession and compulsory acquisition of the same land.
- 69 If the authorising instrument would have been subject to special parliamentary procedure had the land subject to temporary possession been taken compulsorily, it will only be subject to special parliamentary procedure if the land proposed to be subject to temporary possession is held inalienably by the National Trust.
- 70 Section 19 also sets out the information which must be included in the authorising instrument.
- 71 This section extends and applies to England and Wales only.

Section 20: Notice requirements

- 72 This section requires acquiring authorities to give at least three months’ notice of intended entry to those with an interest in or a right to occupy the land before taking temporary possession and requires the notice of intended entry to specify the period for which the acquiring authority is to take temporary possession of the land.
- 73 The acquiring authority has three years in which to exercise their power of temporary possession by service of a notice of intended entry if the authorising instrument is a compulsory purchase order, or five years in any other case (for example, a development consent order).
- 74 This section extends and applies to England and Wales only.

Section 21: Counter-notice

- 75 This section provides that an ‘owner’ (defined as a freeholder or leaseholder) of the temporary possession land may serve a counter-notice on the acquiring authority within 28 days of the notice of intended entry being given limiting the period for which the acquiring authority may take temporary possession to either 12 months in the case of a dwelling (or part of a dwelling) or six years in any other case. The acquiring authority may then either accept the notice and limit the period of temporary possession as requested, withdraw the notice of intended entry, or proceed to compulsorily acquire the land and must give notice of its decision to the owner within 28 days of the counter-notice being given.

- 76 In addition, a leaseholder can instead opt to give a counter notice preventing the acquiring authority from taking temporary possession of the land. The acquiring authority may then either accept the notice, or proceed to compulsorily acquire the land and must give notice of its decision to the leaseholder within 28 days of the counter-notice being given.
- 77 If the owner's interest is purchased by the acquiring authority, the material detriment provisions in the Compulsory Purchase Act 1965 or the Compulsory Purchase (Vesting Declarations) Act 1981 may apply if only part of the owner's house, building or factory is taken.
- 78 This section extends and applies to England and Wales only.

Section 22: Refusal to give up possession

- 79 This section applies the enforcement provisions in section 13 of the Compulsory Purchase Act 1965 (where an owner or occupier of the land refuses to give up land to an acquiring authority) so that references in that Act to taking possession of land are taken to be references to taking temporary possession of land. This means that, where a person refuses to give up possession of the land, an acquiring authority can issue their warrant to a sheriff or enforcement officer to gain possession of the land on its behalf.
- 80 This section extends and applies to England and Wales only.

Section 23: Compensation

- 81 This section provides that a 'claimant' (defined as those with an interest in or a right to occupy the land), is entitled to compensation from the acquiring authority for any loss or injury sustained as a result of the temporary possession.
- 82 Compensation is also payable to a 'beneficial claimant' (defined as those with land benefitting from a "relevant right or interest" or a restrictive covenant) whose rights are interfered with by the temporary possession of land.
- 83 This section clarifies that if a claimant is carrying on a trade or business on the land, compensation includes any loss suffered because of the disturbance of the trade or business due to the claimant having to leave the land during the temporary possession period and sets out the matters to have regard to when estimating the loss.
- 84 Interest is payable from the day after the last day on which any particular head of loss or injury occurs, but for the purposes of section 9 of the Limitation Act 1980 only, the cause of action for claiming compensation is treated as accruing on the last day of the temporary possession period. Any disputes about compensation payable may be referred to and determined by the Upper Tribunal (Lands Chamber).
- 85 This section extends and applies to England and Wales only.

Section 24: Advance payments

- 86 This section provides for the advance payment of compensation due to a 'claimant' or 'beneficial claimant' (as set out in section 23 of the Act). Before taking possession of the land, the acquiring authority must give notice of intended entry (under section 20 of the Act) specifying a period after which temporary possession can be taken. Once a notice of intended entry has been given by the acquiring authority, a 'claimant' or 'beneficial claimant' can make a request in writing for advance payment of compensation. The request must set out the basis on which the 'claimant' or 'beneficial claimant' is or is going to be entitled to compensation and provide sufficient information to enable the acquiring authority to estimate the amount of compensation in respect of which the advance payment is to be made (under section 23). The process is modelled on the provisions dealing with advance payments of compensation where land is acquired by compulsion.

87 This section extends and applies to England and Wales only.

Section 25: Interest on advance payments of compensation paid late

88 This section requires the acquiring authority to pay interest on any outstanding amount of an advance payment of compensation which remains due after the last date on which it should have been paid. The rate of interest payable will be specified in regulations made by the Treasury.

89 This section extends and applies to England and Wales only.

Section 26: Consequential amendments

90 This section provides that temporary possession land is included in the list of categories of land which are blighted land.

91 It also extends the right to enter and survey land in section 172 of the Housing and Planning Act 2016 by making it available in connection with a proposal to take temporary possession under section 18 of the Act. A consequential amendment is also made to the definition of “acquiring authority” in section 172 of the Housing and Planning Act 2016 to clarify its meaning in this context.

92 This section extends and applies to England and Wales only.

Section 27: Powers of acquiring authority in relation to land

93 This section allows the acquiring authority to use the land as if it had acquired all interests in it and, in particular, provides the power to remove or erect buildings or other works and remove any vegetation. The acquiring authority may use land even if this involves interfering with a “relevant right or interest” or a restrictive covenant, except those owned by statutory undertakers (including Electronic Communications Code operators) and the National Trust.

94 But the powers of acquiring authorities in relation to land are limited to the purposes for which temporary possession was required as set out in the authorising instrument and subject to any regulations made under section 29 limiting the ways in which the land can be used.

95 This section extends and applies to England and Wales only.

Section 28: Impact of temporary possession on tenancies etc.

96 Where the land taken for temporary possession is subject to a tenancy, this section provides that the tenant is not considered to be in breach of any terms or obligations of the tenancy to the extent that the temporary possession prevents reasonable compliance with them. Any terms or obligations about the length of the tenancy or the payment of rent are not affected by this section, so the tenant must still comply with those.

97 Particular provision is made for protected tenancies under Part 2 of the Landlord and Tenant Act 1954 (security of tenure of business tenants), which expire during the period of temporary possession. If the protected tenant notifies in writing both the acquiring authority and the landlord prior to the period of temporary possession that they wish to resume occupation of the land after the period of temporary possession, the protected tenant is deemed to be in occupation to preserve their right to apply for a new tenancy under Part 2 of the Landlord and Tenant Act 1954.

98 This section extends and applies to England and Wales only.

Section 29: Supplementary provisions

99 This section requires the Secretary of State and the Welsh Ministers to make regulations about the reinstatement of land subject to temporary possession and the resolution of disputes about reinstatement by an independent person. The Secretary of State may also make regulations excluding the application of any of the temporary provisions of this Chapter in relation to an

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acquiring authority under the Pipe-lines Act 1962, the Gas Acts 1965 and 1986 or the Electricity Act 1989. This will put the acquiring authority on the same footing as bodies who are acquiring authorities under the Harbours Act 1964, the Transport and Works Act 1992, and the Planning Act 2008.

100 This section also provides the Secretary of State and the Welsh Ministers with the power to make other regulations in relation to the authorisation and exercise of the power to take temporary possession. Regulations may for example make different provision for different types of land to be occupied (such as residential) and may require an acquiring authority to provide specified information relating to the temporary possession period to specified persons. The Secretary of State or the Welsh Ministers are required to carry out a public consultation before making regulations under this section.

101 This section extends and applies to England and Wales only.

Section 30: Interpretation

102 This section is self-explanatory.

103 This section extends and applies to England and Wales only.

Section 31: Application to Crown land

104 This section is self-explanatory.

105 This section extends and applies to England and Wales only.

Chapter 2: Other provisions relating to compulsory purchase

Section 32: No-scheme principle

106 Compensation for land taken by compulsory purchase is assessed in the “no-scheme world”. This assumes that the scheme underlying the compulsory purchase was cancelled on the valuation date (the date of entry and taking possession of the land – if not agreed earlier). Compensation for interests in land is its open market value in the “no-scheme world”, disregarding both any increase or decrease in the value of the land which is solely attributable to the particular purpose for which it is acquired, and the acquiring authority’s need for the land for that purpose.

107 The principles and assumptions concerning the no-scheme world and the extent of the scheme to be disregarded are mainly to be found in sections 6 to 9 of the Land Compensation Act 1961 (‘1961 Act’) and around 100 years of case law on these provisions and their predecessors.

108 This section clarifies the principles and assumptions for the “no-scheme world”, taking into account the case law and judicial comment.

109 Subsection (3) inserts new sections 6A to 6E to replace sections 6 to 9 of the 1961 Act.

110 New Section 6A sets out the ‘no scheme principle’ that any increases or decreases in value of land caused by the scheme or by the prospect of that scheme must be disregarded in valuing the land which has been compulsorily acquired and lists the five ‘no-scheme rules’ to be followed when applying the ‘no-scheme principle’. Subsection 6A(10) provides a cross-reference to the planning assumptions in section 14 of the 1961 Act.

111 New section 6D defines ‘the scheme’ for the purposes of establishing the no-scheme world. The default position is set out in subsection (1), being that the ‘scheme’ means the scheme of development underlying the compulsory acquisition. Subsections (2) to (6) provide for special cases.

112 Subsection (2) clarifies that for urban development areas, new towns and Mayoral development areas, 'the scheme' is the development of any land for the purposes for which the area is (or was) designated.

113 Subsections (3) and (4) provide that where land is acquired for regeneration or redevelopment which is facilitated or made possible by a "relevant transport project" (defined in subsection (4)(a)), 'the scheme' includes the relevant transport project subject to the qualifying conditions and safeguards set out in new section 6E.

114 Subsection (5) provides that disputes as to the 'scheme' (the "underlying scheme") to be disregarded can be referred to and determined by the Upper Tribunal. The underlying scheme shall be taken by the Upper Tribunal to be the scheme provided for by the Act or authorising instrument (e.g. compulsory purchase order) unless it is shown that it is part of a larger scheme. Save by agreement or in special circumstances, the Upper Tribunal shall not permit the acquiring authority to advance evidence of a larger scheme to be disregarded unless it is identified in the authorising instrument or any documents made available with it.

115 This section extends and applies to England and Wales only.

Section 33: Repeal of Part 4 of the Land Compensation Act 1961

116 This section repeals Part 4 of the Land Compensation Act 1961 and related provisions so that a claimant is no longer entitled to claim additional compensation where, within 10 years of the completion of the compulsory purchase by the acquiring authority, a planning decision is made granting consent for additional development on the land. The claimant used to be entitled to claim the additional amount that would have been payable with the consent.

117 This section extends and applies to England and Wales.

Section 34: Time limit for confirmation notices

118 Where a compulsory purchase order is confirmed by the confirming authority (the authority with the power to authorise the acquiring authority's compulsory acquisition), the acquiring authority is required to serve a confirmation notice upon every owner, tenant and occupier, to affix a confirmation notice on or near the land comprised in the compulsory purchase order, and to publish a confirmation notice in one or more local newspapers circulating in the locality in which that land is situated.

119 This section amends section 15 of the Acquisition of Land Act 1981 by introducing a six-week statutory time limit for issue of the confirmation notices unless a longer period is agreed in writing between the acquiring authority and the confirming authority. It also provides for the confirming authority to issue the confirmation notices, and recover the costs of doing so, where an acquiring authority fails to do so.

120 This section extends and applies to England and Wales only.

Section 35: Compensation for disturbance

121 Persons in lawful possession of, but without any further interest in, land which is to be compulsorily acquired (licensees) are entitled to compensation for disturbance representing the losses caused by reason of losing possession of the land. Where the person is carrying on a trade or business then regard is had, when calculating the losses, to the period for which the land occupied by the person might reasonably have been expected to be available for the purpose of the person's trade or business.

122 For protected tenancies (those with the protection of Part 2 of the Landlord and Tenant Act 1954), the right of a tenant to apply for a new tenancy is taken into account in the assessment of compensation for the acquisition of the interest of the landlord or tenant.

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123 Disturbance payments for licensees and secure tenancies is to be contrasted with the historic position for minor tenancies (a tenancy with less than a year left to run, or a tenancy from year to year) and for unprotected tenancies (those without the protection of Part 2 of the Landlord and Tenant Act 1954). Case law (*Bishopsgate Space Management v London Underground* [2004] 2 EGLR 175) had held that for these purposes it has to be assumed that the landlord would terminate the tenant's interest at the first available opportunity following notice to treat, whether or not that would happen in reality.

124 This section brings the assessment of compensation for disturbance for minor and unprotected tenancies into line with that for licensees and protected tenancies. It provides that regard should be had to: the likelihood of either continuation or renewal of the tenancy; the total period for which the tenancy might reasonably have been expected to continue; and the likely terms and conditions on which any continuation or renewal would be granted. For protected tenancies, this section also provides that the right of a tenant to apply for a new tenancy is to be taken into account.

125 This section extends and applies to England and Wales only.

Section 36: GLA, MDCs and TfL: joint acquisition of land

126 Transport for London ('TfL') can seek compulsory purchase powers only for transport and highways purposes, and the Greater London Authority ('GLA') can seek compulsory purchase powers only for housing and regeneration purposes. Mayoral development corporations ('MDCs') can seek compulsory purchase powers for the regeneration of their area.

127 This section applies where the GLA, or an MDC, and TfL agree that the purposes for which they may acquire land compulsorily would be advanced by one or both of them acquiring land for a joint project. Where this is the case, the purposes for which the GLA, or an MDC, may acquire land are extended to include those of TfL. Similarly, the purposes for which TfL may acquire land are extended to include those of the GLA, or an MDC. This therefore enables either body to acquire all the land required for a combined transport and regeneration or housing scheme on behalf of the other. It provides that the acquisition of land by one body on behalf of the other is to proceed under the procedure that applies to that one and provides that the joint project is 'the scheme' for the purposes of the no-scheme principle.

128 This section extends to England and Wales and applies to England only

Section 37: Overriding easements: land held on behalf of GLA or TfL

129 This section amends the provisions for overriding easements in sections 203 to 206 of the Housing and Planning Act 2016 to ensure they work as intended for the Greater London Authority and Transport for London. The GLA and TfL have land-holding subsidiary companies, and can only carry on particular specified activities for a commercial purpose through a taxable body. These subsidiary companies do not have independent compulsory purchase powers. The provisions in the 2016 Act would therefore not function as intended without the amendments made by section 37.

130 This section extends to England and Wales and applies to England only.

Section 38: Timing of advance payments of compensation

131 Section 39 to 40 make a number of technical amendments to the provisions on advance payments of compensation in the Land Compensation Act 1973 ("the LCA 1973") (as amended by Part 7 of the Housing and Planning Act 2016). The amendments ensure the changes made by the 2016 Act work as intended in all cases, in particular where the land is subject to a mortgage.

132 Section 38 amends sections 52 and 52ZC of the LCA 1973 to ensure that, where an acquiring authority is required to make an advance payment to a claimant or a payment to a mortgagee, the payment does not have to be made before the authority has received any further information required under section 52(2A)(b) (to estimate the amount of compensation) or under section 52ZC(2)(b) (to establish the amount of the mortgage).

133 This section extends and applies to England and Wales only.

Section 39: Interest on advance payments of compensation

134 This section makes a technical amendment to section 52A(2B) of the LCA 1973 (inserted by section 196 of the Housing and Planning Act 2016).

135 Section 52A(2B) is intended to ensure that in respect of any period in relation to which an acquiring authority is required to pay interest under section 52B, it does not have to pay interest under section 52A on the same amount. Section 52A(2B) currently provides that the interest payable under section 52A(2) is limited to the interest which accrues on the difference between the total amount and “the paid amount”. The “paid amount” (as defined in section 52A(2A)) may not, however, always equate to the amount which is accruing interest under section 52B. Section 39, therefore, replaces “the paid amount” with “the amount in respect of which the authority is required to pay interest under section 52B”.

136 This section extends and applies to England and Wales only.

Section 40: Interest on payments to mortgagee paid late

137 This section ensures that where a payment to a mortgagee under section 52ZA or 52ZB of the LCA 1973 is paid late, interest is payable to the claimant (in the same way as when an advance payment to a claimant is paid late).

138 This section extends and applies to England and Wales only.

Section 41: Compensation for temporary severance of land after vesting declaration

139 This section amends Schedule A1 to the Compulsory Purchase (Vesting Declarations) Act 1981 to include an equivalent provision to paragraph 28(5) of Schedule 2A to the Compulsory Purchase Act 1965. The amendment makes clear that the Upper Tribunal may require an acquiring authority to pay compensation for temporary severance, under section 7 of the 1965 Act, when, after executing a general vesting declaration, the authority vests in itself the part of a claimant’s land that it needs for its scheme, while a material detriment claim is being considered by the Tribunal: and the Tribunal subsequently determines that the acquiring authority must take additional land from the claimant. The Upper Tribunal may require the authority to pay compensation for the temporary severance of the land it planned to take from the additional land.

140 This section extends and applies to England and Wales only.

Chapter 3: Consequential Provision

Section 42: Consequential Provision

141 This section provides that the Secretary of State may update primary legislation through regulations as a consequence of any changes that are required to make the measures in Part 2 of the Act on compulsory acquisition operate effectively.

Part 3

Final Provisions

142 Sections 43-47 are self-explanatory.

Commencement

143 Section 46 provides that the provisions in Part 3 (financial provisions, regulations, extent, commencement and short title) of this Act, together with the powers conferred by the Act to make secondary legislation within section 2, 4, 9, 12, 13 and Schedule 1 (neighbourhood planning and local development documents) and section 15 (permitted development rights relating to drinking establishments) and section 17 (planning register) will come into force on the day on Royal Assent. All other provisions of this Act will be commenced by regulations at least two months after Royal Assent.

Related documents

144 The following documents are relevant to the Act and can be read at the stated locations:

- The Neighbourhood Planning Act 2017
<http://www.legislation.gov.uk/ukpga/2017/20/contents/enacted/data.htm>
- ECHR memorandum:
<https://www.gov.uk/government/publications/neighbourhood-planning-bill-over-arching-documents>
- Delegated powers memorandum:
<http://services.parliament.uk/bills/2016-17/neighbourhoodplanning/documents.html>
- The Conservative Party Manifesto 2015, April 2015:
<https://www.conservatives.com/manifesto>
- The Queen's Speech 2016:
<https://www.gov.uk/government/speeches/queens-speech-2016>
- The Housing and Planning Act 2016:
<http://www.legislation.gov.uk/ukpga/2016/22/contents/enacted/data.htm>
- The Housing White Paper 2017 "Fixing our broken housing market":
<https://www.gov.uk/government/collections/housing-white-paper>
- Implementation of neighbourhood planning provisions in the Neighbourhood Planning Bill:
<https://www.gov.uk/government/consultations/implementation-of-neighbourhood-planning-provisions-in-the-neighbourhood-planning-bill>

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Annex A - Territorial extent and application in the United Kingdom

145 The table below sets out the extent and application of each provision in the Act.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?
Neighbourhood Planning Section 1 to 7	Yes	No	No	No
Local Development Documents Sections 8 to 13	Yes	No	No	No
Planning Conditions Section 14	Yes	No	No	No
Change of use of drinking establishment Section 15	Yes	No	No	No
Development of new towns by local authorities Section 16	Yes	No	No	No
Planning Register Section 17	Yes	No	No	No
Compulsory Purchase (see below)				
Sections 18 to 35	Yes	Yes	No	No
Sections 36 and 37	Yes	No	No	No
Sections 38 to 41	Yes	Yes	No	No
Schedules (see below)				
Schedule 1	Yes	No	No	No
Schedule 2	Yes	No	No	No
Schedule 3	Yes	No	No	No

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Annex B - Hansard References

146 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
<i>House of Commons</i>		
Introduction	07 September 2016	Vol. 614 Col. 363
Second Reading	10 October 2016	Vol. 615 Col. 77
Public Bill Committee	18 October 2016	First sitting ; Second sitting
	20 October 2016	Third sitting ; Fourth sitting
	25 October 2016	Fifth sitting ; Sixth sitting
	27 October 2016	Seventh sitting ; Eighth sitting
Report and Third Reading	13 December 2016	Vol. 618 Col. 673
<i>House of Lords</i>		
Introduction	14 December 2016	Vol. 777
Second Reading	17 January 2017	Vol. 778 Col. 141
Grand Committee	31 January 2017	Vol. 778 Col. 168
	02 February 2017	Vol. 778 Col. 230
	06 February 2017	Vol. 778 Col. 296
	08 February 2017	Vol.778 Col. 370
Report	23 February 2017	Vol. 779 Col. 419
	28 February 2017	Vol. 779 Col. 722
Third Reading	15 March 2017	Vol. 779 Col. 1883
Commons Consideration of Lords Amendments	28 March 2017	House of Commons Vol. 624 Col. 151
Lords Consideration of Commons Amendments	25 April 2017	House of Lords Vol. 782 Col. 1278
Royal Assent	27 April 2017	House of Commons Vol. 624 Col. 1230]
		House of Lords Vol. 782 Col. 1528

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Annex C - Progress of Bill Table

147 This Annex shows how each section and Schedule of the Act was numbered during the passage of the Bill through Parliament.

Section of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 1	Clause 1	Clause 1	Clause 1	Clause 1	Clause 1
Section 2	N/A	N/A	N/A	Clause 2	Clause 2
Section 3	Clause 2	Clause 2	Clause 2	Clause 3	Clause 3
Section 4	Clause 3	Clause 3	Clause 3	Clause 4	Clause 4
Section 5	Clause 4	Clause 4	Clause 4	Clause 5	Clause 5
Section 6	Clause 5	Clause 5	Clause 5	Clause 6	Clause 6
Section 7 (Introduced at Lords Third Reading)	N/A	N/A	N/A	N/A	N/A
Section 8	N/A	Clause 6	Clause 6	Clause 7	Clause 7
Section 9	N/A	Clause 7	Clause 7	Clause 8	Clause 8
Section 10	N/A	Clause 8	Clause 8	Clause 9	Clause 9
Section 11	N/A	Clause 9	Clause 9	Clause 10	Clause 10
Section 12	N/A	Clause 10	Clause 10	Clause 11	Clause 11
Section 13	N/A	Clause 11	Clause 11	Clause 12	Clause 12
Section 14	Clause 7	Clause 12	Clause 12	Clause 13	Clause 13
Section 15 (introduced at Commons Consideration of Lords Amendments)	N/A	N/A	N/A	N/A	N/A
Section 16 (introduced to the Bill at Lords Third Reading)	N/A	N/A	N/A	N/A	N/A
Section 17	Clause 8	Clause 13	Clause 13	Clause 14	Clause 15
Section 18	Clause 9	Clause 14	Clause 14	Clause 15	Clause 16
Section 19	Clause 10	Clause 15	Clause 15	Clause 16	Clause 17
Section 20	N/A	Clause 16	Clause 16	Clause 17	Clause 18
Section 21	Clause 12	Clause 17	Clause 17	Clause 18	Clause 19
Section 22	Clause 13	Clause 18	Clause 18	Clause 19	Clause 20
Section 23	Clause 14	Clause 19	Clause 19	Clause 20	Clause 21
Section 24	Clause 15	Clause 20	Clause 20	Clause 21	Clause 22

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Section of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 25	Clause 16	Clause 21	Clause 21	Clause 22	Clause 23
Section 26	Clause 18	Clause 23	Clause 22	Clause 23	Clause 24
Section 27	Clause 17	Clause 22	Clause 23	Clause 24	Clause 25
Section 28	N/A	N/A	N/A	Clause 25	Clause 26
Section 29	Clause 19	Clause 24	Clause 24	Clause 26	Clause 27
Section 30	Clause 20	Clause 25	Clause 25	Clause 27	Clause 28
Section 31	Clause 21	Clause 26	Clause 26	Clause 28	Clause 29
Section 32	Clause 22	Clause 27	Clause 27	Clause 29	Clause 30
Section 33	Clause 23	Clause 28	Clause 28	Clause 30	Clause 31
Section 34	Clause 24	Clause 29	Clause 29	Clause 31	Clause 32
Section 35	Clause 25	Clause 30	Clause 30	Clause 32	Clause 33
Section 36	Clause 26	Clause 31	Clause 31	Clause 33	Clause 34
Section 37	Clause 27	Clause 32	Clause 32	Clause 34	Clause 35
Section 38	Clause 28	Clause 33	Clause 33	Clause 35	Clause 36
Section 39	Clause 29	Clause 34	Clause 34	Clause 36	Clause 37
Section 40	Clause 30	Clause 35	Clause 35	Clause 37	Clause 38
Section 41	N/A	N/A	Clause 36	Clause 38	Clause 39
Section 42	N/A	N/A	N/A	N/A	Clause 40
Section 43	Clause 31	Clause 36	Clause 36	Clause 39	Clause 41
Section 44	Clause 33	Clause 38	Clause 39	Clause 41	Clause 42
Section 45	Clause 34	Clause 39	Clause 40	Clause 42	Clause 43
Section 46	Clause 35	Clause 40	Clause 41	Clause 43	Clause 44
Section 47	Clause 36	Clause 41	Clause 42	Clause 44	Clause 45
Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1
Schedule 2	N/A	Schedule 2	Schedule 2	Schedule 2	Schedule 2
Schedule 3	Schedule 2	Schedule 3	Schedule 3	Schedule 3	Schedule 3

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Minor or consequential effects¹

148 There are no provisions which apply to England only that have minor or consequential effects outside England and there are no provisions which apply to England and Wales that have minor or consequential effects outside England and Wales.

Subject matter and legislative competence of devolved legislatures

149 Part 1 and sections 1 to 17 of the Act make provision in relation to town and country planning. Town and country planning is a devolved matter in Scotland, Wales and Northern Ireland (town and country planning is a conferred matter by virtue of Schedule 7, part 1, paragraph 18 of the Government of Wales Act 2006; it is not a reserved matter listed in Schedule 5 to the Scotland Act 1998; and is not an excepted or reserved matter in Schedule 2 or 3 of the Northern Ireland Act 1998). The Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly could therefore make corresponding provision in respect of these measures.

150 Part 2 and sections 18 to 36, and 38 to 41 of the Act make provision in relation to compulsory purchase. Compulsory purchase is reserved in Wales. It is not a conferred matter in Schedule 7 of the Government of Wales Act 2006 and is therefore not within the legislative competence of the Assembly. Compulsory Purchase is not reserved under the Scotland Act 1998 and it is not an excepted or reserved matter under the Northern Ireland Act 1998. The Scottish Parliament and the Northern Ireland Assembly could therefore make corresponding provision in respect of these measures.

151 Section 37 of the Act makes provision in relation to overriding easements. Land law is reserved in Wales. It is not a conferred matter in Schedule 7 of the Government of Wales Act 2006 and is therefore not within the legislative competence of the Assembly. Land law is not reserved under the Scotland Act 1998 and it is not an excepted or reserved matter under the Northern Ireland Act 1998. The Scottish Parliament and the Northern Ireland Assembly could therefore make corresponding provision in respect of this measure.

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¹ References to an effect of a provision being minor or consequential are to its being minor or consequential for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.



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