

# LOCALISM ACT 2011

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## EXPLANATORY NOTES

### COMMENTARY

#### **Part 6: Planning**

#### *Chapter 6: Nationally Significant Infrastructure Projects*

#### *Section 128: Abolition of Infrastructure Planning Commission*

336. **Section 128** and Schedule 13 provide for the abolition of the Infrastructure Planning Commission. All property, rights and liabilities of the Infrastructure Planning Commission will transfer to the Secretary of State. The transfer will be treated as a relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 if it would not otherwise be treated as a relevant transfer under those regulations.

#### **Schedule 13: Infrastructure Planning Commission: transfer of functions to Secretary of State**

337. **Schedule 13** makes amendments consequential to the abolition of the Infrastructure Planning Commission including amendments transferring its functions to the Secretary of State. In particular, the amendments enable the Secretary of State to appoint an inspector, or a panel of three to five inspectors, to examine an application and make a recommendation to the Secretary of State as to the decision to be made on the application. The Secretary of State must decide the application in accordance with any relevant national policy statement, subject to specified exceptions.
338. A number of other amendments are made by Schedule 13, including the following:
- paragraph 3 amends section 4 of the Planning Act 2008 to provide for the Secretary of State to charge fees in connection with specified functions
  - paragraph 6 repeals provision for the Secretary of State to prescribe non-compulsory model provisions.

#### *Section 129: Transitional provision in connection with abolition*

339. **Section 129** enables the Secretary of State to make transitional provision governing how applications, or proposed applications, to the Infrastructure Planning Commission should be handled once the Infrastructure Planning Commission has been abolished. This section provides the Secretary of State with a power of direction to enable:
- the effect after abolition of things done before abolition to be specified
  - the Act as it applied before abolition to continue to apply, with modifications if necessary
  - the Act as it applies after abolition to apply with modifications

- Commissioners appointed to a panel or as a single Commissioner to continue to provide this service after abolition
- other transitional and savings provision to be made.

### ***Section 130: National policy statements***

340. *Subsections (2) to (7) and (13)* amend sections 5, 6 and 9 of the Planning Act 2008 to require House of Commons approval of national policy statements and material amendments to existing national policy statements. House of Commons approval is required in addition to complying with the existing consultation, publicity and Parliamentary scrutiny arrangements in sections 7 and 9 of the Planning Act 2008. A draft national policy statement or amendment to an existing national policy statement (a “proposal”) must be laid before Parliament and can only be designated if the House of Commons resolves within 21 sitting days that it should be proceeded with, or that period ends without the House of Commons resolving that it should not be proceeded with.
341. *Subsection (8)* inserts a new section 6A into the Planning Act 2008 Act. The rule in new section 6A(2) provides that if a proposal is an amended version of an earlier proposal, further consultation need not be carried out if the earlier proposal was consulted on, and the amendments do not materially affect the policy. In a situation where the amendments do materially affect the policy, the rule in new section 6A(3) provides that it is sufficient for further consultation to be limited to the material amendments.
342. New section 6A(4) of the Planning Act 2008 provides that, where a proposal is laid before parliament for approval of the House of Commons, it is not necessary to comply with the Parliamentary scrutiny requirements in section 9(2) to (7) of that Act in relation to that proposal if they have been complied with in relation to an earlier version of that proposal.
343. Section 8 of the Planning Act 2008 requires the Secretary of State to consult with certain local authorities on publicity requirements in relation to a proposal where the policy set out in the proposal identifies locations as suitable or potentially suitable for specified descriptions of development. *Subsections (9) to (12)* of section 130 of the Localism Act amend section 8 to bring it in line with the provisions amended by section 133 of the Localism Act.

### ***Section 131: Power to alter effect of requirement for development consent on other consent regimes***

344. Section 33 of the Planning Act 2008 provides that where a project requires development consent it will no longer require certain other consents listed in that section, for instance consent under section 36 of the Electricity Act 1989. Section 131 amends section 33 of the Planning Act 2008 to give the Secretary of State the ability to amend section 33 in an affirmative procedure order, to add or remove a type of consent or vary the cases in relation to which a type of consent is required. This section only applies to Wales in respect of non-devolved matters.

### ***Section 132: Secretary of State’s directions in relation to projects of national significance***

345. [Section 132](#) amends section 35 of the Planning Act 2008. The amendments allow the Secretary of State to direct that a development is to be treated as requiring development consent under that Act before any application has been made in relation to the development.
346. [Section 132](#) also inserts a new section 35A into the Planning Act 2008, which provides a timetable for dealing with requests for the Secretary of State to exercise the powers of direction in section 35 of that Act. A request for a direction must specify the development to which it relates, and explain why the conditions in section 35(1)(b) and

(c) are met. The Secretary of State must make a decision on a request within 28 days of the date the request is made, unless the Secretary of State asks for further information from the person who made the request, in which case the Secretary of State must make a decision within 28 days of the information being provided.

***Section 133: Pre-application consultation with local authorities***

347. Sections 42 to 44 of the Planning Act 2008 require the applicant to consult certain persons and categories of person about a proposed application for an order granting development consent, including certain local authorities. Section 133 amends section 43 to alter the local authorities required to be consulted. Prior to this amendment being made where development is sited in a two-tier local authority area, all authorities which share a boundary with the upper-tier authority must be consulted. The effect of the amendments to section 43 is that, where development is sited in a two-tier local authority area, lower-tier district authorities will only need to be consulted if they share a boundary with the lower-tier district authority in whose area the development is sited.

***Section 134: Reform of duties to publicise community consultation statement***

348. Section 47 of the Planning Act 2008 requires the applicant for development consent to prepare and publish a statement setting out how the applicant proposes to consult local people about a proposed application. Section 134 amends section 47 of the Planning Act to remove the requirement for the statement to be published in a newspaper in full. Instead, the statement must be made available for inspection by the public in a way that is reasonably convenient for people living in the vicinity of the land. The applicant must also publish, in a newspaper circulating in the vicinity of the land, a notice stating where and when the statement can be inspected.

***Section 135: Claimants of compensation for effects of development***

349. **Section 135** amends section 52 of the Planning Act 2008 to provide an additional power for the Secretary of State to authorise an applicant (or a proposed applicant) to serve a notice on certain people requiring them to provide information.

350. The power in section 52 enables the Infrastructure Planning Commission to authorise an applicant (or a proposed applicant) to serve a notice on certain people (those falling within one of the categories specified in section 52(3)), requiring them to provide the applicant with the names and addresses of people with an interest in the land to which the application relates.

351. The additional power enables the Secretary of State to authorise an applicant (or a proposed applicant) to serve a notice on those same people, requiring them to provide the applicant with the names and addresses of persons entitled to make a relevant claim (as defined in new subsection (14) of section 52). For this additional power, the definition of land is widened to include land in respect of which a relevant claim may be made.

352. New subsection (14) of section 52 defines a relevant claim as:

- a) a claim under section 10 of the Compulsory Purchase Act 1965 (compensation where satisfaction not made for compulsory purchase of land or not made for injurious affection resulting from compulsory purchase);
- b) a claim under Part 1 of the Land Compensation Act 1973 (compensation for depreciation of land value by physical factors caused by public works); or
- c) a claim under section 152(3) of the Planning Act 2008.

***Section 136: Rights of entry for surveying etc in connection with applications***

353. **Section 136** amends section 53 of the Planning Act 2008 to clarify that entry to land may be authorised for the purpose of fulfilling the requirements of the Environmental Impact Assessment and Habitats Directives (85/337/EC and 92/43/EC).
354. The amendments also remove the requirements that the application must be likely to seek authority to compulsorily purchase the land, and for compliance with the consultation requirements of section 42 of the Planning Act 2008, before rights of entry can be granted.

***Section 137: Acceptance of applications for development consent***

355. **Section 137** removes the requirement, when the Secretary of State is deciding whether to accept an application, for absolute compliance with certain standards and guidance in order for the application to be accepted. This is replaced with a requirement that the Secretary of State must be satisfied that the application has been prepared to a satisfactory standard, and in coming to this decision must have regard to these standards and guidance.

***Section 138: Procedural changes relating to applications for development consent***

356. **Section 138** amends sections 56, 60, 88, 89 and 102 of the Planning Act 2008, and inserts new sections 56A, 88A, 102A and 102B.
357. **Subsection (8)** amends section 102 of the Planning Act 2008 to amend the definition of interested party for the purposes of Chapter 4 of Part 6 of the Act. New subsection (1ZA) of section 102 provides that a person ceases to be an interested party upon notifying the Examining authority in writing that the person no longer wishes to be an interested party.
358. **Subsection (9)** inserts new sections 102A and 102B in to the Planning Act 2008. Section 102A provides that a person may make a request to become an interested party where they believe that they fall within one or more of the categories in section 102B and they were not notified of the acceptance of the application by the applicant.
359. Section 88 of the Planning Act 2008 requires the Examining authority to make an initial assessment of the principal issues arising on an application. When it has done this it must hold a preliminary meeting, inviting the applicant and each other interested party. **Subsection (5)** amends section 88 to provide that the Examining authority must also invite each statutory party and each local authority within new section 88A (inserted by **subsection (6)**) to the preliminary meeting.
360. Section 89 of the Planning Act 2008 requires the Examining authority, in the light of the discussion at the preliminary meeting, to make procedural decisions in respect of the examination of the application. The Examining authority must inform every interested party of its decisions. **Subsection (7)** amends section 89 to provide that the Examining authority must also inform each statutory party and local authority invited to the meeting under section 88 of those decisions, and that those persons may notify the Examining authority if they wish to become interested parties.
361. **Subsections (2) to (4)** make amendments which are consequential on the other amendments made by the section.

***Section 139: Timetables for reports and decisions on applications for development consent***

362. **Section 139** amends sections 98 and 107 of the Planning Act 2008 to set the deadline for the submission of a report to the Secretary of State by reference to the deadline for completion of the examination, or the day of completion if earlier, and the deadline for deciding an application by reference to the deadline for the completion of the

examination, or the day on which the Secretary of State receives a report of the examination if earlier.

***Section 140: Development consent subject to requirement for further approval***

363. Prior to the coming in to force of this section, section 120 of the Planning Act 2008 enabled a consent order to require subsequent approval by the Secretary of State or another person (e.g. a local authority) for a matter connected with the development after the consent order has been granted. This subsequent approval is akin to planning conditions which may be imposed under the town and country planning system.
364. However, a limitation exists under section 120(2) of the Planning Act 2008, in that a requirement for subsequent approval can only be imposed if an equivalent requirement could have been imposed under one of the consent regimes listed in section 33(1) of that Act (that is those regimes under which applications had to be made before the introduction of the Planning Act 2008).
365. **Section 140** allows the order to impose a requirement for subsequent approval whether or not an equivalent requirement could have been imposed under the consent regimes listed in section 33(1) of the Planning Act 2008.

***Section 141: Local authority, statutory undertakers' and National Trust land***

366. **Section 141** amends sections 128 and 130 of the Planning Act 2008, to require an order granting development consent to be subject to special parliamentary procedure only if the relevant body has made a representation which contains an objection to the compulsory acquisition of that body's land and has not withdrawn the objection. This applies to land owned by a local authority or the National Trust, or which has been acquired by a statutory undertaker for their undertaking.

***Section 142: Changes to notice requirements for compulsory acquisition***

367. Section 134 of the Planning Act 2008 require a person (the prospective purchaser) who has been authorised to acquire land compulsorily to serve a notice about this on persons with certain interests in that land. Section 142 amends section 134 to remove the requirement for a copy of the order to be served instead requiring a copy of the order to be made available, at a place in the vicinity of the land, for inspection by the public at all reasonable hours.
368. The definition of 'compulsory acquisition notice' (*subsection (7)*) is also amended to include a requirement that it must state where and when a copy of the order is available for inspection.