These notes refer to the Localism Act 2011 (c.20)
which received Royal Assent on 15 November 2011

LOCALISM ACT 2011

EXPLANATORY NOTES

COMMENTARY

Part 6: Planning

Chapter 1: Plans and Strategies

Section 109: Abolition of Regional Strategies

239. Section 109 provides for the abolition of the regional planning tier, by repealing Part 5 of the Local Democracy, Economic Development and Construction Act 2009, which only applies in relation to England. This removes responsible regional authorities which are made up of the relevant leaders' board and regional development agency. Provision is also made to revoke the eight existing regional strategies outside London by order.

240. There is also an additional order making power allowing the Secretary of State to revoke any remaining county structure plan policies that were saved as part of the transitional provisions for the Planning and Compulsory Purchase Act 2004 so that those policies will cease to have effect. Currently, such saved policies form part of the development plan.

241. Finally, this section provides for the necessary consequential amendments to primary legislation, which are set out in Schedule 8 and Parts 15 and 16 of Schedule 25.

Section 110: Duty to co-operate in relation to planning of sustainable development

242. Section 110 provides for a duty on local planning authorities, county councils and other bodies with statutory functions to co-operate with each other. Those other bodies will be defined in regulations. Co-operation includes constructive and active engagement as part of an ongoing process to maximise effective working on the preparation of development plan documents, other local development documents and marine plans in relation to strategic matters including sustainable development that would have significant wider impacts.

243. Those that are subject to the requirements of the duty will be expected to consider whether to consult on and prepare, and enter into and publish, agreements on joint planning approaches. Local planning authorities will also be expected to consider whether to prepare joint local development documents.

244. Local authorities, county councils and prescribed bodies that are subject to the requirements of the duty to co-operate will also be required to have regard to the activities of other bodies, also to be prescribed in regulations.

245. At independent examination of development plan documents local authorities will have to provide evidence that they have complied with the duty if their plans are not to be rejected by the examiner.

246. This section also makes provision that local authorities and other public bodies must have regard to guidance issued by the Secretary of State about how they should comply with this duty.

Section 111: Local development schemes

247. Section 111 amends section 15 of the Planning and Compulsory Purchase Act 2004. Section 15 sets out the roles of the local planning authority, the Secretary of State and Mayor of London in relation to a local planning authority's local development scheme. The local development scheme sets out certain matters related to how the local planning authority is going to plan for development in its area. This includes the contents and timing of proposed development plan documents. Previously these schemes were submitted to the Secretary of State or the Mayor of London who could direct that the scheme should be modified.

248. This section amends section 15 of the Planning and Compulsory Purchase Act 2004 so that local planning authorities will have to publish up to date information direct to the public on the scheme, including their compliance with their timetable for the preparation or revision of development plan documents. They will no longer be required to submit the local development scheme to the Secretary of State or, if a London borough, the Mayor of London. The Secretary of State and Mayor of London will retain powers to direct changes, but will only be able to use them for the purpose of ensuring effective plan coverage.

Section 112: Adoption and withdrawal of development plan documents

249. Section 112 amends sections 20 to 23 of the Planning and Compulsory Purchase Act 2004. Section 20 of that Act provides that every development plan document must be submitted for independent examination to a planning inspector - a person appointed on behalf of the Secretary of State. The inspector produces a report determining whether or not the document is suitable for adoption; the inspector was able to recommend modifications to the draft document. The local planning authority was bound, under section 23, to implement the inspector's recommendations.

250. This section amends section 20 so that the inspector must recommend adoption where the inspector considers that it would be reasonable to conclude that the document satisfies the statutory requirements and can be considered sound. During the examination the local planning authority will have the power to request recommendations for modifications from the inspector that would make the document suitable for adoption. If the local planning authority does not make this request, the inspector will be unable to recommend any modifications.

251. This section also amends section 23 so that local planning authorities do not have to implement inspectors' recommendations. They will still only be able to adopt the development plan document if the inspector has recommended adoption. Where the inspector has not recommended adoption, the authority will be able to adopt after following the inspector's modifications or make their own modifications and re-submit the draft document to the inspector for examination. The authority will also be able to make non-material changes before adoption.

252. Section 22 previously restricted a local planning authority from withdrawing a development plan document after it had been submitted to the inspector. They could only do so if the inspector recommends withdrawal or the Secretary of State directed withdrawal. This section amends section 22 so that a local planning authority can withdraw a development plan document at any time before its adoption. The local planning authority will no longer require a recommendation from the person carrying out the examination or a direction from the Secretary of State. The Secretary of State retains the power to direct withdrawal, but this power has now been moved to section 21 so that it is with the Secretary of State's other powers.

Section 113: Local development: monitoring reports

253. Section 113 amends section 35 of the Planning and Compulsory Purchase Act 2004. Section 35 required local planning authorities to make an annual report to the Secretary of State about the implementation of their local development schemes and local development policies. This section amends this requirement so that local planning authorities must publish this information direct to the public at least yearly in the interests of transparency. The local planning authority is no longer required to send a report to the Secretary of State. The Secretary of State has powers to make regulations prescribing the timing, content and form of reports.

Chapter 2: Community Infrastructure Levy

Section 114: Community Infrastructure Levy: approval of charging schedules

254. This section makes amendments to Part 11 of the Planning Act 2008 concerning the Community Infrastructure Levy. The Community Infrastructure Levy may be charged by "charging authorities" (normally the local planning authority) in accordance with a charging schedule. A charging authority must, before approving a charging schedule, submit a draft to an independent examiner and was required to implement any recommendations made by the examiner. The draft charging schedule was required to be accompanied by a declaration that the charging authority has complied with all the relevant requirements in drafting the charging schedule.

255. The effect of this section is to change the relationship between the charging authority and the examiner. The charging authority will no longer be required to submit a declaration to the examiner with the draft charging schedule. The examiner will now consider whether the charging authority has complied with the relevant requirements within Part 11 of the Planning Act 2008 and the Community Infrastructure Levy Regulations, which will now be referred to as "drafting requirements". Any recommended modifications to the draft charging schedule made by the examiner will no longer be binding on the charging authority.

256. One of these drafting requirements is that the charging authority must have used appropriate available evidence to inform the charging schedule. The section enables the Secretary of State to make regulations that set out how this test is to be applied.

257. Where the examiner considers that the charging authority has not complied with the drafting requirements and that no modifications are capable of securing compliance, the examiner must recommend that the draft charging schedule should be rejected and a charging authority will continue to be bound by this recommendation. Otherwise, the section requires the examiner to recommend approval and the charging authority will have discretion over how they respond to any recommended modifications.

258. If the examiner has identified a failure to comply with the drafting requirements, the charging authority may only approve the charging schedule after they have had regard to the examiner's recommendations and reasons and have made such modifications as are necessary to secure compliance. But these modifications need not be the same as those recommended by the examiner. In such a case, the section requires the charging authority to draft a report saying how they have amended the draft charging schedule so as to comply with the drafting requirements. The section enables the Secretary of State to make regulations about the form or content of such a report.

Section 115: Use of Community Infrastructure Levy

259. This section amends Part 11 of the Planning Act 2008, concerning the Community Infrastructure Levy. The section extends the permitted uses of levy receipts, in specified situations, so that they may be applied to any matter that supports development by addressing the demands that it places on the areas that host it.

260. The section also amends the purpose of the Community Infrastructure Levy to explicitly require that regulations must aim to ensure that the imposition of a levy charge in an area will not make the development of the area economically unviable. The section also allows for regulations to require charging authorities to consider the costs of, and other sources of funding for, the matters that may be funded through the extended permissible uses of levy receipts when setting a charge in their area.

261. The section provides clarification that permitted spending on infrastructure includes providing it initially, improving or replacing infrastructure, and operating and maintaining it, where doing so supports development. Provisions for regulations to set out activities relating to maintenance, operation and promotion that may or may not be funded by the Community Infrastructure Levy are also included.

262. This section also provides regulation-making powers for requiring charging authorities to pass funds raised through the Community Infrastructure Levy to other bodies to spend. Where regulations require a local authority to pass funds to another person, those funds may be applied to infrastructure or any other matter that supports development by addressing the demands that it places on the areas that host it. This section sets out the framework for this process, providing for regulations to set out the details including: the area in which it will apply; the bodies it will apply to; the amount and timings of payments; things that may or may not be funded; monitoring, accounting and reporting responsibilities of charging authorities; and when funding is to be returned to the charging authority. The section also provides that regulations may allow a charging authority to apply some or all of their levy receipts raised in an area to the same extended matters, but only where they are not required to pass a proportion of their levy receipts to other bodies.

Chapter 3: Neighbourhood Planning

Section 116: Neighbourhood planning

263. Section 116 gives effect to Schedule 9 – Part 1 of which amends the Town and Country Planning Act 1990 by inserting a number of new sections in to it - and Schedules 10 and 11 which insert two Schedules (Schedules 4B and 4C) into that Act. These new provisions will allow for planning permission to be granted through neighbourhood development orders – including a category of such orders to be known as "Community Right to Build Orders". Part 2 of Schedule 9 amends the Planning and Compulsory Purchase Act 2004 to make provision in that Act on a new category of development plan – neighbourhood development plans. These plans and orders will be made by local planning authorities on the initiative of parish councils or neighbourhood forums.

Schedule 9Part 1: Neighbourhood Development Orders

264. Part 1 of Schedule 9 inserts a number of new sections into the Town and Country Planning Act 1990 relating to neighbourhood development orders (a number of which will also apply in relation to neighbourhood development plans because of new section 38C of the Planning and Compulsory Purchase Act 2004 – which is inserted by paragraph 7 of the Schedule).

New section 61E: Neighbourhood Development Orders

265. New section 61E empowers either a parish council or a neighbourhood forum (as "qualifying bodies") to initiate the process for making a neighbourhood development order. It also places a duty on local planning authorities to make a neighbourhood development order as soon as reasonably practicable, if there is a referendum vote in favour of the order in each applicable referendum under new Schedule 4B. This is except in the narrow circumstances in which the authority considers that making the order would be incompatible with any EU obligation (a term which is defined in Schedule 1 to the European Communities Act 1972) or any of the rights under the

European Convention on Human Rights which are referred to in section 1 of the Human Rights Act 1998. New section 61E(5) empowers, but does not require, the local planning authority to make a neighbourhood development order if there is a referendum vote in favour of the order in one of the referendums (but not the other) held in a business neighbourhood area designated under new section 61H (where there are two applicable referendums – one of residents and one of non-domestic rate payers). The new section also confers powers on the Secretary of State to make regulations about the procedure to be followed by a local planning authority where it intends to refuse to make a neighbourhood development order despite a "yes" vote in a referendum. For example, requirements to consult before making a final decision could be imposed, as well as requirements for the local planning authority to give notice that they propose to refuse to make an order.

New section 61F: Authorisation to act in relation to neighbourhood areas

266. New section 61F (which will also apply in relation to neighbourhood development plans) sets out the circumstances in which qualifying bodies are authorised to bring forward proposals for neighbourhood development orders. In relation to any neighbourhood area (see new section 61G) which has a parish council, only a parish council (all or part of whose area is within the neighbourhood area) may make proposals for a plan or order. These proposals must be made with the consent of any other parish council for the area and proposals must be made one at a time (see new sections 61F(1), (2) and (10). In relation to neighbourhood areas without a parish council, only a person or body which has been designated as a "neighbourhood forum" for the particular neighbourhood area by the local planning authority may bring forward proposals (see new section 61F(3) to (7)). The conditions that must be met by an organisation seeking to be designated as a neighbourhood forum are set out in subsection new section 61F(5), though regulations may either add to those conditions or specify other categories of organisations that can become neighbourhood forums. Existing residents associations or civic groups may become neighbourhood forums. New section 61F(7) requires local planning authorities to have regard to the desirability of designating forums which meet certain criteria relating to the membership and purpose of the forum. New section 61F(8) empowers a local planning authority to withdraw a forum's designation in certain circumstances.

New section 61G: Meaning of "neighbourhood area"

267. New section 61G provides for a system under which local planning authorities are to designate neighbourhood areas, where they have received an application for an area to be designated as such either from a parish council or a body that could potentially be a neighbourhood forum. "Neighbourhood areas" are the areas that neighbourhood development plans and orders can be made in respect of. It is expected that in many cases these areas will follow the boundaries of existing parishes for which there is a parish council (see new section 61G(4)). This is unless the local planning authority concerned considers that some other area is more suitable for the purposes of neighbourhood planning.

New section 61H: Neighbourhood areas designated as business areas

268. New section 61H requires a local planning authority in designating neighbourhood areas (under new section 61G) to consider whether they should designate the area as a "business area". This is an area which they consider is wholly or predominantly business in nature (see new section 61H(3)). Regulations can be used to add criteria to be used by an authority in determining whether an area is a business area.

New section 61I: Neighbourhood areas in areas of two or more local planning authorities

269. New section 61I allows for neighbourhood areas to be designated which cross local planning authority boundaries. It also provides the Secretary of State with regulation-making powers to adapt the provisions in the Act relating to neighbourhood planning to ensure the appropriate operation of neighbourhood planning in such areas. For example, regulations could specify that local planning authorities must consult each other before deciding whether to approve a plan or order for referendum or that they may only take such a decision when acting jointly through a committee.

New section 61J: Provision that may be made by neighbourhood development order

270. New section 61J places restrictions on the contents of neighbourhood development orders (for example, they cannot relate to more than one neighbourhood area). In addition, it permits orders to grant either site-specific planning permission(s) or to grant planning permissions that relate to all or part of a neighbourhood area – for example, planning permission to build extensions to existing buildings.

New section 61K: Meaning of excluded development

271. New section 61K sets out a number of descriptions of development ("excluded development") which neighbourhood development orders or plans cannot relate to (because of new section 61J). For example, paragraph (a) has the effect to exclude mining-related development.

New section 61L: Permission granted by neighbourhood development orders

272. New section 61L allows neighbourhood development orders to give planning permission either with or without conditions. Regulation-making powers allow for parish councils to be given the option of determining decisions on conditions within neighbourhood development orders.

New section 61M: Revocation or modification of neighbourhood development orders

273. New section 61M allows for the Secretary of State and a local planning authority (with the consent of the Secretary of State) to revoke a neighbourhood development order and allows regulations to be made prescribing actions to be taken in relation to the revocation of an order. New section 61M also allows a local planning authority to modify a neighbourhood development order to correct errors.

New section 61N: Legal challenge in relation to neighbourhood development orders

274. New section 61N sets out the conditions for legal challenges in relation to decisions on neighbourhood development orders, requiring that challenges are filed within 6 weeks of the decision being published.

New section 61O: Guidance

275. New section 61O requires local planning authorities to have regard to any guidance issued by the Secretary of State relating to neighbourhood development orders.

New section 61P: Provision as to the making of certain decisions by local planning authorities

276. New section 61P provides power to regulate the decision-making of local planning authorities in relation to neighbourhood development orders. Provision might be made,

for example, as to whether or to what extent decisions may be delegated to officers or committees or prescribe that decisions need to be taken by the executive or by a majority of those members present at the meeting of an authority.

New section 61Q: Community right to build orders

277. New section 61Q makes provision for a particular type of neighbourhood development order - a "community right to build order". Details of the provisions are set out in Schedule 4C to the Town and Country Planning Act 1990 inserted by Schedule 11 to the Localism Act (see below).

Schedule 9Part 2: Neighbourhood development plans

278. Part 2 of Schedule 9 amends the Planning and Compulsory Purchase Act 2004 to empower parish councils and neighbourhood forums to propose neighbourhood development plans. Unlike neighbourhood development orders, these do not give planning permissions but instead set out policies in relation to the development and use of land in all or part of a defined neighbourhood area (see new section 38A(2)).

279. The amendments to section 38 of the Planning and Compulsory Purchase Act 2004 made by paragraph 6 of Schedule 9 mean that neighbourhood development plans, once they are made, will become part of the development plan for an area. Consequently, by virtue of section 38(6) of that Act certain decisions will need to be made in accordance with neighbourhood development plans unless material considerations indicate otherwise. Such decisions include decisions on applications for the grant of planning permission and appeals against the refusal of such applications.

280. New section 38A (inserted by paragraph 7 of Schedule 9) requires local planning authorities to make a neighbourhood development plan if there is a referendum vote in favour of the order in each applicable referendum under Schedule 4B. As with neighbourhood development orders, there are narrow circumstances in which a local planning authority may refuse here – for example, where the authority considers that making the plan would be incompatible with any EU obligation. As with neighbourhood development orders, new section 38A(5) empowers, but does not require, the local planning authority to make a neighbourhood development plan if there is a referendum vote in favour of the plan in one of the applicable referendums (but not the other) held in a business neighbourhood area designated under new section 61H (where there are two applicable referendums – one of residents and one of non-domestic rate payers).

281. New section 38B deals with the form and contents of neighbourhood development plans, requiring, for example, that they must specify the period for which they are to have effect and that they cannot relate to the classes of excluded development set out in new section 61K of the Town and Country Planning Act 1990 – such as development falling within Annex 1 of the Environmental Impact Assessment Directive (Council Directive 85/337/EEC). This section also specifies that only one neighbourhood development plan may be made for each neighbourhood area. A regulation-making power is provided (new section 38B(4)) which enables provision to be made, for example, on whether any maps need to be incorporated into a plan to show the extent of a policy and to what scale those maps should be.

282. New section 38C applies new provisions which are to be inserted into the Town and Country Planning Act 1990 on neighbourhood development orders to neighbourhood development plans (as if they were orders but with the necessary modification). Therefore, the provisions on revocation and modification of orders in new section 61M apply in relation to plans (though this does not need to be done by order – see new section 38C(3)), as do those on legal challenges by judicial review (new section 61N). Similarly, because of new section 38C(5) the provision in Schedule 10 (described below) will not only apply in relation to the making of neighbourhood development orders, but plans as well.

Schedule 10: Process for Making of Neighbourhood Development Orders

283. Schedule 10 of the Localism Act makes further provisions about making neighbourhood development orders and plans by inserting a new Schedule 4B into the Town and Country Planning Act 1990.

284. Paragraph 1 of Schedule 4B makes provision in connection with proposals to local planning authorities for neighbourhood development orders or plans. It allows the Secretary of State to prescribe the form of any such proposals in regulations and to require that other documents and information must accompany them. In addition, the Secretary of State may set minimum standards for the documentation which needs to be submitted along with proposal for plans or orders. These standards, as well as requirements set out in regulations under this paragraph, would be mandatory – i.e. a failure to meet them would result in an application being rejected – see paragraph 6(2) of Schedule 4B.

285. Paragraph 2 of Schedule 4B allows a qualifying body to withdraw its proposals for a plan or order at any time before the local planning authority makes a decision on the examiner's recommendations. Because of paragraph 7 each draft plan and order will be subject to examination by an independent person who will report back to the local planning authority recommending either that the plan or order is refused or put to a referendum (with or without modifications). Paragraph 2 also provides for what happens to proposals made by a qualifying body or designated neighbourhood forum whose designation is withdrawn – with submission to independent examination being the key point in making the decision as to whether proposals should be seen as valid (see paragraph 2(2) and 2(3)).

286. Paragraph 3 of Schedule 4B places a duty on local planning authorities to provide advice and assistance to qualifying bodies in developing proposals for plans or orders. This support could involve providing technical advice on how to draw up an order or plan or facilitating consultations with the public on proposals. There is no requirement here on local planning authorities to provide financial assistance.

287. Paragraphs 4 to 6 of Schedule 4B set out the arrangements for neighbourhood development orders and plans before they are submitted to independent examination. Paragraph 4 allows the Secretary of State to prescribe further requirements in regulations that must be complied with before proposals are submitted to a local planning authority. Paragraph 4(3) specifically requires the Secretary of State to use his or her regulation-making powers to prescribe consultation requirements which must be complied with before a neighbourhood planning proposal can be submitted to a local planning authority, including the requirement to submit a statement about the consultation carried out. Again, a failure to comply with these requirements will be a ground upon which a local planning authority is to reject an application. The regulations may make provision on procedural matters, for example, about notifying people or bodies and about consultation with and participation by the public.

288. Paragraph 5 of Schedule 4B allows a local planning authority to decline repeat proposals. These are proposals which are similar to other ones which have been made up to two years previously and which were refused by a local planning authority or which did not get sufficient votes in a referendum.

289. Paragraph 6 of Schedule 4B sets out matters which the local planning authorities must be satisfied with before proposals for a plan or order can be submitted to independent examination. This includes checking whether the body making the application is a qualified applicant – i.e. a parish council or designated neighbourhood forum, and that the application meets the requirements set out in legislation and regulations, including the requirement for a consultation statement under paragraph 4 (see paragraph 6(2)(d)). The local planning authority must notify the applicant whether or not the proposals will be submitted for examination and, if not, the reasons for refusing it.

290. Paragraphs 7 to 11 of Schedule 4B set out the arrangements for the independent examination of proposed orders and plans.

291. Paragraph 7 of Schedule 4B empowers the local planning authority to appoint an examiner, but only with the agreement of the parish council or neighbourhood forum. The Secretary of State may appoint an examiner if no agreement can be reached. The paragraph also requires that the examiner is independent of the body making the proposals and the local planning authority, and that he or she must not have any interest in land affected by the proposals and must have appropriate qualifications and experience.

292. Paragraph 8 of Schedule 4B lists the matters that the examiner must consider in their examination of the proposed plan or order. These include whether the plan or order is appropriate having regard to national policy, whether it contributes to the achievement of sustainable development, whether it is in general conformity with the strategic policies in the local development plan and whether the order is compatible with EU obligations. There is also a basic condition relating only to orders (see new section 38C(5)(d) of the Planning and Compulsory Purchase Act 2004) relating to the appropriateness of an order having regard to considerations relating to listed buildings and conservation areas (paragraph 8(2)(b) and (c) and (3) to (5) of Schedule 4B). The examiner is not able to consider any matter that doesn't fall within the list of matters in paragraph 8(1) of the Schedule (apart from compatibility with the Convention rights, as defined in the Human Rights Act 1988). The examiner will also consider whether the referendum area should extend beyond the neighbourhood area to which the draft order or plan relates. The paragraph also provides a power to require the examiner to consider such matters as are prescribed in regulations - for example, taking into account an environmental statement which meets the requirements of the Environmental Impact Assessment Directive.

293. Paragraph 9 of Schedule 4B prescribes the general rule that the examination will take the form of consideration of written representations but allows for oral representations. The examiner is required to hold a hearing where they consider oral representations are needed to ensure adequate examination of an issue or to ensure people get a fair chance to put their case. Where there are to be oral representations, the paragraph sets out those bodies who are entitled to be heard, including the parish council or neighbourhood forum promoting the plan or order and the local planning authority. The Secretary of State is given power to prescribe by regulation additional persons who will be entitled to make oral representations at any hearing held into a neighbourhood plan or order. For example, it may be appropriate to permit certain statutory parties to provide oral evidence on a particular issue where they have relevant expertise.

294. Paragraph 10 of Schedule 4B sets out how the examiner must report on proposals for an order or plan, including recommendations on whether the proposals should be put to referendum, or whether any modifications are needed so that the proposals can go to referendum, and whether the referendum area should be extended beyond the neighbourhood area. It may be appropriate to extend the referendum beyond the neighbourhood area to which a plan or order relates if, for example, proposals include development close to the boundary of a neighbourhood area which would have impacts on an adjoining area. The examiner will be obliged to give reasons for recommending a particular course of action and to provide a summary of his or her main findings.

295. Paragraph 11 of Schedule 4B gives the Secretary of State the power to make regulations in connection with the independent examination and sets out examples of what provision can be made. For example, regulations may require that notice is given of the time and place of an examination and how that is given and may regulate the procedure at an examination.

296. Paragraph 12 of Schedule 4B sets out the issues to be considered by the local planning authority, following an independent examination, in deciding whether or not a proposed plan or order should be put to a referendum (or referendums in the case

of a designated business area) and whether or not the proposed plan or order should be modified. These considerations include the recommendations of the examiner and like the examiner, for example, whether the proposals are appropriate having regard to national policy, whether they are in general conformity with the strategic policies of the local development plan and whether the referendum (or referendums in the case of a business area) should extend beyond the neighbourhood area to which the plan or order relates. The Secretary of State is given power to prescribe matters other than the recommendations in the report that the local planning authority must take into account. This is to ensure that relevant material is considered by the local planning authority before it reaches a decision on a draft order or plan.

297. Paragraph 13 of Schedule 4B provides for the situation where the local planning authority proposes to make a decision that differs from that recommended by the examiner because of new evidence, a new fact or a different view taken by the authority in relation to a particular fact. In such a case, the local planning authority may decide to refer the issue to independent examination. The Secretary of State is given power to make regulations relating to this independent examination. But in any event, in such circumstances the local planning authority is obliged to invite representations on what they propose from such persons as are prescribed in regulations and, by implication, take these into account before reaching a final view.

298. A referendum must be held on a plan or order once it is approved by the local planning authority (with or without modifications) under paragraph 12 of Schedule 4B. Paragraph 14 of Schedule 4B sets out provision in relation to such referendums, including who is responsible for holding the referendum (see paragraph 14(2)), who is entitled to vote in them and which local authorities are responsible for making arrangements for them. Paragraph 15 of Schedule 4B sets out provision in relation to additional referendums held in a designated "business area" (see new section 61H), including who is entitled to vote. The provisions about additional referendums do not apply to community right to build orders, on which only residents will have a vote in a referendum (see paragraph 10(6) of Schedule 4C inserted by Schedule 11). The Secretary of State is given the power to make provision in regulations about referendums, including additional referendums, under paragraph 16 of Schedule 4B – such as about how they are to be conducted (e.g. how postal voting can occur) or to impose duties on local authorities to publicise the time and place of a referendum. Before making these regulations, the Electoral Commission must be consulted by the Secretary of State.

Schedule 11: Neighbourhood Planning: Community Right to Build Orders

299. Schedule 11 inserts a new Schedule 4C to the Town and Country Planning Act 1990 which makes special provision about a particular type of neighbourhood development order called a community right to build order providing for community-led site-specific development. It gives a power for community organisations to apply for such an order to be made and sets out how the provisions in respect of neighbourhood development orders should apply to such an application. Schedule 4C sets out powers to disapply or modify certain enfranchisement rights in relation to land the development of which is authorised by a community right to build order.

Section 117: Charges for meeting costs relating to neighbourhood planning

300. This section confers a power on the Secretary of State to make regulations (with the consent of the Treasury) for the imposition of charges in relation to development authorised by neighbourhood development orders. The charges may either be set out in the regulations or the charges may be decided upon by local planning authorities for their areas, if this is what the regulations allow for (see *subsection(4)*). The purpose of these charges is to allow local planning authorities to recover costs which they have incurred in putting neighbourhood development plans or orders in place.

301. A charge will be payable to a local planning authority when development authorised by an order is commenced (see *subsection (3)*). In addition, the regulation-making powers permit liability for the charge to be imposed on owners or developers (see *subsections (6)(e) and (7)*) and for arrangements to be made for other persons to assume liability for the charge in advance of development being commenced (see *subsection (6)(a)*).

Section 118: Regulations under section 117: collection and enforcement

302. This section specifies that any regulations made under section 117 must include provisions on the collection of the charge (such as allowing for payments by instalments) and its enforcement. Whilst regulations might be made for different methods of enforcement, the section requires that at a minimum the enforcement of the charge is to be by treating it as a civil debt, which is recoverable through the magistrates' courts.

Section 119: Regulations under section 117: supplementary

303. Section 119 makes supplementary provision in connection with charges imposed under the regulations. For example, local planning authorities have a duty imposed on them (*see subsection (6)*) to have regard to guidance issued by the Secretary of State in relation to functions they might have under the regulations. Also, a power is provided in *subsections (1) and (2)* to prescribe in the regulations the procedures that must be followed by local planning authorities in relation to the charge. The provisions could include, for example, requirements for a local planning authority to publicise any charges on the internet (before they become payable) and to make a copy of them available at their principal offices or consult publicly before setting any charges.

Section 120: Financial assistance to neighbourhood development

304. This section authorises the Secretary of State to give financial assistance in connection with neighbourhood planning. The powers could be used, for example, to help fund a neighbourhood forum to develop a draft neighbourhood plan or order or to give assistance to help establish such a forum or a community right to build organisation or to support an education campaign about neighbourhood planning.

Section 121: Consequential amendments

305. This section (by giving effect to Schedule 12 to the Act) makes consequential amendments in connection with neighbourhood planning.

Chapter 4: Consultation

Section 122: Consultation before applying for planning permission

306. *Subsection (1)* amends the Town and Country Planning Act 1990 by inserting new sections to require prospective developers to consult local communities before submitting planning applications for certain developments.

307. New section 61W requires any person who intends to apply for planning permission for development of a prescribed description first to consult the local community and any specified persons, so that they may collaborate or comment. The prospective developer must have regard to any advice that the local planning authority may have provided.

308. New section 61X requires the developer to have regard to any comments or responses generated by the consultation undertaken in accordance with section 61W, when deciding whether to make any changes to their proposals before submitting their planning applications.

309. New section 61Y enables the Secretary of State to set out further provisions as to how the consultation required under new section 61W should be undertaken in practice.

310. *Subsection (2)* amends section 62 of the Town and Country Planning Act 1990 so that an account of the consultation undertaken in accordance with new section 61W must accompany any planning application for development to which the new duty applies, in order to make it valid.

Chapter 5: Enforcement

Section 123: Retrospective planning permission

311. *Subsection (2)* inserts new section 70C into the Town and Country Planning Act 1990 – it provides that a local planning authority in England may decline to determine a retrospective planning application if an enforcement notice has previously been issued in relation to any part of the development.

312. *Subsection (4)* amends section 174 of the Town and Country Planning Act 1990 to provide (in relation to England only) that if a retrospective planning application has been made, but an enforcement notice has been issued before the time for making a decision has expired, the developer cannot then appeal against the enforcement notice on the ground in section 174(2)(a) (that planning permission ought to be granted – "ground (a)").

313. *Subsections (5) and (6)* amend section 177 of the Town and Country Planning Act 1990 such that the Secretary of State (again, in relation to England only) may only grant planning permission when allowing an enforcement appeal if the appeal was made under ground (a) and that only ground (a) appeals result in a deemed application for planning permission.

Section 124: Time limits for enforcing concealed breaches of planning control

314. *Subsection (1)* inserts new sections 171BA, 171BB and 171BC into the Town and Country Planning Act 1990 to allow enforcement action, in England, to be taken against a breach of planning control when the time limits for taking action have expired and the breach has been concealed.

315. In order to use these powers, the local planning authority must apply to the magistrates' court for a "planning enforcement order" within six months of the day on which the apparent breach came to the authority's knowledge. If an order is granted, the authority has one year to take enforcement action. The authority can also apply for a planning enforcement order before the time limits for taking action have expired, as the expiry date may be in dispute.

316. The authority must serve a copy of the application on the persons on whom they would be required to serve an enforcement notice. Anyone served would be able to appear in court when the application was heard.

317. A magistrates' court may make the order only if satisfied, on the balance of probabilities, that a person or persons have deliberately concealed the apparent breach.

318. *Subsection (2)* provides for planning enforcement orders to be included in the local planning authority's enforcement register.

Section 126: Planning offences: time limits and penalties

319. Section 126 makes amendments to a number of planning-related offences in England. *Subsection (2)* raises the maximum penalty from level 3 on the standard scale (currently £1,000) to level 4 (currently £2,500) for failure to comply with a breach of condition notice under section 187A of the Town and Country Planning Act 1990.

320. For most offences prosecuted in the magistrates' court proceedings must be brought within six months of commission. In some cases it is not clear when an offence was committed, which can lead to difficulties in bringing forward a prosecution.

Subsections (3) and (4) provide that prosecution for the offences of lopping or damaging a protected tree under section 210(4) of the Town and Country Planning Act 1990, and of contravening regulations on the control of advertisements in section 224(3) of that Act, may be brought within six months of sufficient evidence of the offence coming to the prosecutor's knowledge (but no more than three years after the offence was committed).

Section 127: Powers in relation to: unauthorised advertisements; defacement of premises

321. *Subsection (1)* inserts five sections at the end of Chapter 3 of Part 8 of the Town and Country Planning Act 1990.

New sections 225A and 225B: Power to remove structures used for unauthorised display

322. New section 225A allows a local planning authority in England to remove any display structure in their area which, in their opinion, is used for the display of illegal advertisements. This is not effective against a structure in a building to which the public have no right of access.

323. Before taking any action, the local planning authority must serve a removal notice on the person responsible for the erection and maintenance of the structure, provided they can identify the person. If not, the authority must fix the removal notice to the structure or display it in the vicinity and serve a copy on the occupier of the land, if one is known or can be identified. If the removal notice is not complied with within the time allowed (at least 21 days), the authority may remove the structure and recover its expenses from anyone served with the removal notice. A person who can satisfy the authority that he or she was not responsible for either the erection or maintenance of the structure cannot be required to pay the expenses.

324. If the authority damages any land or chattels in removing the structure, they must pay compensation, but not for damage to the structure removed or for damage reasonably caused in moving the structure.

325. There is a right of appeal to the magistrates' court against a section 225A notice. However, in proceedings for cost recovery the applicant cannot raise any issue that they could have raised in an appeal against the notice.

New sections 225C to 225E: Remedying persistent problems with unauthorised advertisements

326. New section 225C allows local planning authorities in England to take action against persistent fly-posting on 'surfaces'. They may serve an action notice on the owner or occupier of the land where the surface is situated if their name and address are known or can be discovered. If not, they may fix the notice to the surface. The action notice requires the owner or occupier to take specified measures to prevent or reduce the frequency of the unauthorised advertisements. At least 27 days must be allowed for action to be taken. If action is not taken, the authority may take the specified action itself and recover its expenses from the owner or occupier. Expenses cannot be recovered if the surface is on, within the curtilage of, or forms part of the curtilage boundary of, a dwellinghouse.

327. There is a right of appeal to the magistrates' court against a section 225C notice. However, in proceedings for cost recovery the applicant cannot raise any issue that they could have raised in an appeal against the notice.

328. New section 225E modifies the notice procedure for statutory undertakers. If a notice under new section 225C is served on a statutory undertaker, it can serve a counter-notice

on the local planning authority specifying alternative measures which would have the same effect as the notice in dealing with fly-posting.

329. *Subsection (2)* of section 127 inserts new Chapters 4 and 5 into Part 8 of the Town and Country Planning Act 1990.

New sections 225F to 225J: Power to remedy defacement of premises

330. New section 225F allows local planning authorities in England to take action against signs (graffiti) which it considers to be detrimental to the amenity of the area or offensive. The authority may serve a notice on the occupier of the premises requiring them to remove or obliterate the sign allowing at least 14 days to comply. If there appears to be no occupier, the authority may fix the notice to the surface. If action is not taken within the time specified, the authority may take the action itself and recover its expenses from the person who should have done it. Expenses cannot be recovered if the surface is on, within the curtilage of, or forms part of the curtilage boundary of, a dwellinghouse.

331. New sections 225G and 225H provide that the local planning authority must give 28 days' notice of their intention to serve a notice under new section 225F on the owners of letter boxes and bus shelters and other street furniture.

332. There is a right of appeal to the magistrates' court against a section 225F notice. However, in proceedings for cost recovery the applicant cannot raise any issue that they could have raised in an appeal against the notice.

333. New section 225J enables the local planning authority to remove signs at the request of the owner or occupier of premises at that person's expense.

334. New section 225K modifies the provisions to enter land and do works to remove hoardings, fly-posters or graffiti so far as they apply to the operational land of transport statutory undertakers (except airports). The power can only be exercised if the local planning authority has given 28 days' notice of its intention to do so. The statutory undertaker can serve a counter-notice which, on safety or operational grounds or to protect other works or apparatus, would impose conditions on the taking of the action. The statutory undertaker can also prevent the action being taken.

335. Section 127 replaces provisions of certain London Local Authorities Acts that apply only in relation to London with provisions that apply throughout England.

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.

Chapter 7: Other planning matters

Section 143: Applications for planning permission: local finance considerations

369. Section 143 amends section 70(2) of the Town and Country Planning Act 1990 which sets out the matters to which regard is to be had when determining a planning application. The new subsection (2)(b) expressly mentions certain matters that have previously fallen within the reference to "any other material considerations". These matters are "local finance considerations" (a phrase which is defined in a new subsection (4)), in so far as they are material to the application.

370. The new provision applies to England only. *Subsection (5)* clarifies that the amendments made to section 70 of the Town and Country Planning Act 1990 do not alter whether (under subsection (2) of that section) regard is to be had to any particular consideration, or the weight to be given to any consideration to which regard is had under that subsection. It will remain for the decision-maker, such as the local planning authority, to decide the weight to be given to each material consideration in the context of each application. The amendment is clarificatory, making it clear to decision-makers (without the need to consult case law) that local finance considerations are capable of being taken into account when determining a planning application – in so far as they are material to the application.