



# Neighbourhood Planning Act 2017

## 2017 CHAPTER 20

An Act to make provision about planning and compulsory purchase; and for connected purposes. [27th April 2017]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### Modifications etc. (not altering text)

- C1 Act excluded in part (31.5.2018) by [The Silvertown Tunnel Order 2018 \(S.I. 2018/574\)](#), arts. 1(2), **3(1)(p)**
- C2 Act excluded in part (3.10.2018) by [The A19/A184 Testos Junction Alteration Development Consent Order 2018 \(S.I. 2018/994\)](#), arts. 1, **2(7)** (with arts. 3(3), 5)
- C3 Act excluded in part (13.3.2019) by [The Port of Tilbury \(Expansion\) Order 2019 \(S.I. 2019/359\)](#), arts. 1, **3(1)(g)** (with arts. 55, 56)
- C4 Act excluded in part (3.4.2019) by [The Millbrook Gas Fired Generating Station Order 2019 \(S.I. 2019/578\)](#), arts. 1, **27(13)**, 28(12)
- C5 Act excluded in part (7.5.2019) by [The Midland Metro \(Birmingham City Centre Extension, etc.\) \(Edgbaston Extension Land Acquisition\) Order 2019 \(S.I. 2019/882\)](#), arts. 1, **3** (with art. 18)
- C6 Act excluded in part (10.10.2019) by [The Abergelli Power Gas Fired Generating Station Order 2019 \(S.I. 2019/1268\)](#), arts. 1, **28(13)**
- C7 Act excluded in part (10.10.2019) by [The Abergelli Power Gas Fired Generating Station Order 2019 \(S.I. 2019/1268\)](#), arts. 1, **29(12)**
- C8 Act excluded in part (25.10.2019) by [The Drax Power \(Generating Stations\) Order 2019 \(S.I. 2019/1315\)](#), arts. 1, **8(1)**

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## PART 1

### PLANNING

#### *Neighbourhood planning*

#### **1 Duty to have regard to post-examination neighbourhood development plan**

(1) Section 70 of the Town and Country Planning Act 1990 (determination of applications for planning permission: general considerations) is amended as follows.

(2) In subsection (2) (matters to which local planning authority must have regard in dealing with applications) after paragraph (a) insert—

“(aza) a post-examination draft neighbourhood development plan, so far as material to the application,”.

(3) Before subsection (4) insert—

“(3B) For the purposes of subsection (2)(aza) (but subject to subsections (3D) and (3E)) a draft neighbourhood development plan is a “post-examination draft neighbourhood development plan” if—

- (a) a local planning authority have made a decision under paragraph 12(4) of Schedule 4B with the effect that a referendum or referendums are to be held on the draft plan under that Schedule,
- (b) the Secretary of State has directed under paragraph 13B(2)(a) of that Schedule that a referendum or referendums are to be held on the draft plan under that Schedule,
- (c) an examiner has recommended under paragraph 13(2)(a) of Schedule A2 to the Planning and Compulsory Purchase Act 2004 (examination of modified plan) that a local planning authority should make the draft plan, or
- (d) an examiner has recommended under paragraph 13(2)(b) of that Schedule that a local planning authority should make the draft plan with modifications.

(3C) In the application of subsection (2)(aza) in relation to a post-examination draft neighbourhood development plan within subsection (3B)(d), the local planning authority must take the plan into account as it would be if modified in accordance with the recommendations.

(3D) A draft neighbourhood development plan within subsection (3B)(a) or (b) ceases to be a post-examination draft neighbourhood development plan for the purposes of subsection (2)(aza) if—

- (a) section 38A(4)(a) (duty to make plan) or (6) (cases in which duty does not apply) of the Planning and Compulsory Purchase Act 2004 applies in relation to the plan,
- (b) section 38A(5) (power to make plan) of that Act applies in relation to the plan and the plan is made by the local planning authority,
- (c) section 38A(5) of that Act applies in relation to the plan and the local planning authority decide not to make the plan,
- (d) a single referendum is held on the plan and half or fewer of those voting in the referendum vote in favour of the plan, or

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- (e) two referendums are held on the plan and half or fewer of those voting in each of the referendums vote in favour of the plan.
- (3E) A draft neighbourhood development plan within subsection (3B)(c) or (d) ceases to be a post-examination draft neighbourhood development plan for the purposes of subsection (2)(a) if—
  - (a) the local planning authority make the draft plan (with or without modifications), or
  - (b) the local planning authority decide not to make the draft plan.
- (3F) The references in subsection (3B) to Schedule 4B are to that Schedule as applied to neighbourhood development plans by section 38A(3) of the Planning and Compulsory Purchase Act 2004.”

#### Commencement Information

**II** [S. 1](#) in force at 19.7.2017 by [S.I. 2017/767](#), [reg. 2\(a\)](#)

## 2 Notification of applications to neighbourhood planning bodies

- (1) Schedule 1 to the Town and Country Planning Act 1990 (local planning authorities: distribution of functions) is amended as follows.
- (2) Paragraph 8 (duty to notify parish council of planning application etc) is amended in accordance with subsections (3) to (5).
- (3) After sub-paragraph (3) insert—
  - “(3A) Sub-paragraph (3B) applies to a local planning authority who have the function of determining applications for planning permission or permission in principle if—
    - (a) there is a relevant neighbourhood development plan for a neighbourhood area all or part of which falls within the authority's area, and
    - (b) a parish council are authorised to act in relation to the neighbourhood area as a result of section 61F.
  - (3B) The local planning authority must notify the parish council of—
    - (a) any relevant planning application, and
    - (b) any alteration to that application accepted by the authority.
  - (3C) Sub-paragraph (3B) does not apply if the parish council have notified the local planning authority in writing that they do not wish to be notified of any such application.
  - (3D) If the parish council have notified the local planning authority in writing that they only wish to be notified under sub-paragraph (3B) of applications of a particular description, that sub-paragraph only requires the authority to notify the council of applications of that description.
  - (3E) For the purposes of sub-paragraphs (3A) to (3D)—
    - “neighbourhood area” means an area designated as such under section 61G;

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“relevant neighbourhood development plan” means—

- (a) a post-examination draft neighbourhood development plan as defined by section 70(3B) to (3F), or
- (b) a neighbourhood development plan which forms part of a development plan by virtue of section 38(3) or (3A) of the Planning and Compulsory Purchase Act 2004 (plans which have been made or approved in a referendum);

“relevant planning application” means an application which relates to land in the neighbourhood area and is an application for—

- (a) planning permission or permission in principle, or
- (b) approval of a matter reserved under an outline planning permission within the meaning of section 92.”

- (4) In the opening words of sub-paragraph (4) for “the duty” substitute “ a duty under this paragraph ”.
- (5) In the opening words of sub-paragraph (5) for “their duty” substitute “ a duty under this paragraph ”.
- (6) Paragraph 8A (duty to notify neighbourhood forums) is amended in accordance with subsections (7) to (9).
- (7) After sub-paragraph (1) insert—

“(1A) Sub-paragraph (1B) applies to a local planning authority who have the function of determining applications for planning permission or permission in principle if—

- (a) there is a relevant neighbourhood development plan for a neighbourhood area all or part of which falls within the authority's area, and
- (b) a neighbourhood forum are authorised to act in relation to the neighbourhood area as a result of section 61F.

(1B) The local planning authority must notify the neighbourhood forum of—

- (a) any relevant planning application, and
- (b) any alteration to that application accepted by the authority.

(1C) Sub-paragraph (1B) does not apply if the neighbourhood forum has notified the local planning authority in writing that it does not wish to be notified of any such application.

(1D) If the neighbourhood forum has notified the local planning authority in writing that it only wishes to be notified under sub-paragraph (1B) of applications of a particular description, that sub-paragraph only requires the authority to notify the forum of applications of that description.”

- (8) In sub-paragraph (2)—

- (a) before the definition of “neighbourhood forum” insert—

““neighbourhood area” means an area designated as such under section 61G;”, and

- (b) after the definition of “neighbourhood forum” insert—

““relevant neighbourhood development plan” means—

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- (a) a post-examination draft neighbourhood development plan as defined by section 70(3B) to (3F), or
  - (b) a neighbourhood development plan which forms part of a development plan by virtue of section 38(3) or (3A) of the Planning and Compulsory Purchase Act 2004 (development plans which have been approved in a referendum or made)."
- (9) In sub-paragraph (3) for "(3) to (6)" substitute "(3) and (4) to (6)".
- (10) Section 62C of the Town and Country Planning Act 1990 (notification of parish councils of applications made to Secretary of State) is amended in accordance with subsections (11) and (12).
- (11) In subsection (2) after "paragraph 8(1)" insert "or (3B)".
- (12) In subsection (3) after "Schedule 1" insert "or notifications received by the authority under paragraph 8(3C) or (3D) of that Schedule."

#### Commencement Information

**I2** [S. 2](#) in force for specified purposes at Royal Assent, see [s. 46](#)

**I3** [S. 2](#) in force at 31.1.2018 in so far as not already in force by [S.I. 2018/38](#), [reg. 3\(a\)](#)

### 3 Status of approved neighbourhood development plan

In section 38 of the Planning and Compulsory Purchase Act 2004 (development plan) after subsection (3) insert—

“(3A) For the purposes of any area in England (but subject to subsection (3B)) a neighbourhood development plan which relates to that area also forms part of the development plan for that area if—

- (a) section 38A(4)(a) (approval by referendum) applies in relation to the neighbourhood development plan, but
- (b) the local planning authority to whom the proposal for the making of the plan has been made have not made the plan.

(3B) The neighbourhood development plan ceases to form part of the development plan if the local planning authority decide under section 38A(6) not to make the plan.”

#### Commencement Information

**I4** [S. 3](#) in force at 19.7.2017 by [S.I. 2017/767](#), [reg. 2\(b\)](#)

### 4 Modification of neighbourhood development order or plan

- (1) Section 61M of the Town and Country Planning Act 1990 (revocation or modification of neighbourhood development orders) is amended in accordance with subsections (2) and (3).

(2) After subsection (4) insert—

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“(4A) A local planning authority may at any time by order modify a neighbourhood development order they have made if they consider that the modification does not materially affect any planning permission granted by the order.”

(3) In subsection (5)—

- (a) for “that order” substitute “ the neighbourhood development order mentioned in subsection (4) or (4A) ”, and
- (b) after “(4)” insert “ or (4A) ”.

(4) The Planning and Compulsory Purchase Act 2004 is amended in accordance with subsections (5) to (10).

(5) In section 38A (meaning of “neighbourhood development plan”) after subsection (11) insert—

“(11A) Subsection (11) is subject to Schedule A2, which makes provision for the modification of a neighbourhood development plan.”

(6) Section 38C (neighbourhood development plans: supplementary provisions) is amended in accordance with subsections (7) to (9).

(7) After subsection (2) insert—

“(2A) Section 61F of the principal Act is to apply in accordance with subsection (2) of this section as if—

- (a) subsections (8)(a) and (8B) also referred to a proposal for the modification of a neighbourhood development plan,
- (b) subsection (13)(b) also referred to a proposal for the modification of a neighbourhood development plan made by a neighbourhood forum, and
- (c) subsection (13)(c) also referred to any duty of a local planning authority under paragraph 7, 8 or 9 of Schedule A2 to this Act.”

(8) In subsection (3)—

- (a) the words from “the words” to the end of the subsection become paragraph (a), and
- (b) at the end of that paragraph insert “, and
  - (b) the reference in subsection (4A) to a modification materially affecting any planning permission granted by the order were to a modification materially affecting the policies in the plan.”

(9) In subsection (6)—

- (a) the words from “on proposals” to the end of the subsection become paragraph (a), and
- (b) at the end of that paragraph insert “, or
  - (b) on proposals for the modification of neighbourhood development plans, or on modifications of neighbourhood development plans, that have already been made.”

(10) After Schedule A1 insert the Schedule A2 set out in Schedule 1 to this Act.

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**I5** [S. 4](#) in force for specified purposes at Royal Assent, see [s. 46](#)

**I6** [S. 4](#) in force at 31.1.2018 in so far as not already in force by [S.I. 2018/38](#), [reg. 3\(b\)](#)

## 5 Changes to neighbourhood areas etc

(1) The Town and Country Planning Act 1990 is amended in accordance with subsections (2) to (4).

(2) In section 61F (authorisation to act in relation to neighbourhood areas) after subsection (8) insert—

“(8A) A designation ceases to have effect if—

- (a) a new parish council is created or there is a change in the area of a parish council, and
- (b) as a result, the neighbourhood area for which the neighbourhood forum is designated consists of or includes the whole or any part of the area of the parish council.

(8B) The operation of subsection (8A) does not affect the validity of any proposal for a neighbourhood development order made before the event mentioned in paragraph (a) of that subsection took place.”

(3) In section 61G (meaning of “neighbourhood area”) after subsection (6) insert—

“(6A) The power in subsection (6) to modify designations already made includes power—

- (a) to change the boundary of an existing neighbourhood area,
- (b) to replace an existing neighbourhood area with two or more separate neighbourhood areas, and
- (c) to replace two or more existing neighbourhood areas with a single neighbourhood area.

(6B) A neighbourhood area created by virtue of subsection (6A)(b) may have the boundary created by splitting it from the existing area or a different boundary.

(6C) A neighbourhood area created by virtue of subsection (6A)(c) may have the boundary created by combining the existing areas or a different boundary.

(6D) A modification under subsection (6) of a designation already made does not affect the continuation in force of a neighbourhood development order even though as a result of the modification—

- (a) it no longer relates to a neighbourhood area, or
- (b) it relates to more than one neighbourhood area.”

(4) In section 61J (provision that may be made by neighbourhood development order) after subsection (5) insert—

“(5A) Subsection (5) is subject to section 61G(6D) (effect of modification of existing neighbourhood area).”

(5) The Planning and Compulsory Purchase Act 2004 is amended in accordance with subsections (6) to (8).

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- (6) In section 38A (meaning of “neighbourhood development plan”) after subsection (11A) (as inserted by section 4) insert—

“(11B) Subsection (11C) applies if, as a result of a modification of a neighbourhood area under section 61G(6) of the principal Act, a neighbourhood development plan relates to more than one neighbourhood area.

(11C) The replacement of the plan by a new plan in relation to one or some of those areas does not affect the continuation in force of the plan in relation to the other area or areas.”

- (7) In section 38B (provision that may be made by neighbourhood development plans) after subsection (2) insert—

“(2A) Subsections (1)(c) and (2) are subject to section 61G(6D) of the principal Act (as applied by section 38C(5A) of this Act).”

- (8) In section 38C (supplementary provisions) after subsection (5) insert—

“(5A) Section 61G(6D) of the principal Act is to apply in relation to neighbourhood development plans as if it also provided that a modification under section 61G(6) of that Act of a designation of a neighbourhood area does not affect the continuation in force of a neighbourhood development plan even though, as a result of the modification, more than one plan has effect for the same area.”

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#### Commencement Information

**I7** [S. 5](#) in force at 31.1.2018 by [S.I. 2018/38](#), [reg. 3\(c\)](#)

## 6 Assistance in connection with neighbourhood planning

- (1) Section 18 of the Planning and Compulsory Purchase Act 2004 (statement of community involvement) is amended as follows.

- (2) At the beginning of subsection (2A) insert “ Subject to subsection (2B), ”.

- (3) After subsection (2A) insert—

“(2B) A statement of community involvement must set out the local planning authority's policies for giving advice or assistance under—

- (a) paragraph 3 of Schedule 4B to the principal Act (advice or assistance on proposals for making of neighbourhood development orders), and
- (b) paragraph 3 of Schedule A2 to this Act (advice or assistance on proposals for modification of neighbourhood development plans).

(2C) The reference in subsection (2B)(a) to Schedule 4B to the principal Act includes that Schedule as applied by section 38A(3) of this Act (process for making neighbourhood development plans).

(2D) Subsection (2B) applies regardless of whether, at any given time—

- (a) an area within the area of the authority has been designated as a neighbourhood area, or



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- (b) there is a qualifying body which is entitled to submit proposals to the authority for the making by the authority of a neighbourhood development order or a neighbourhood development plan.”

#### Commencement Information

**I8** S. 6 in force at 31.7.2018 by S.I. 2018/38, reg. 4(a)

PROSPECTIVE

### 7 Engagement by examiners with qualifying bodies etc

In Schedule 4B to the Town and Country Planning Act 1990 (process for making neighbourhood development orders), in paragraph 11 (regulations about independent examinations) after sub-paragraph (2) insert—

- “(3) The regulations may in particular impose duties on an examiner which are to be complied with by the examiner in considering the draft order under paragraph 8 and which require the examiner—
- (a) to provide prescribed information to each person within sub-paragraph (4);
  - (b) to publish a draft report containing the recommendations which the examiner is minded to make in the examiner's report under paragraph 10;
  - (c) to invite each person within sub-paragraph (4) or representatives of such a person to one or more meetings at a prescribed stage or prescribed stages of the examination process;
  - (d) to hold a meeting following the issuing of such invitations if such a person requests the examiner to do so.
- (4) Those persons are—
- (a) the qualifying body,
  - (b) the local planning authority, and
  - (c) such other persons as may be prescribed.
- (5) Where the regulations make provision by virtue of sub-paragraph (3)(c) or (d), they may make further provision about—
- (a) the procedure for a meeting;
  - (b) the matters to be discussed at a meeting.”

#### Local development documents

### 8 Content of development plan documents

- (1) In section 19 of the Planning and Compulsory Purchase Act 2004 (preparation of local development documents) after subsection (1A) insert—

“(1B) Each local planning authority must identify the strategic priorities for the development and use of land in the authority's area.

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- (1C) Policies to address those priorities must be set out in the local planning authority's development plan documents (taken as a whole).
- (1D) Subsection (1C) does not apply in the case of a London borough council or a Mayoral development corporation if and to the extent that the council or corporation are satisfied that policies to address those priorities are set out in the spatial development strategy.
- (1E) If a combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009 has the function of preparing the spatial development strategy for the authority's area, subsection (1D) also applies in relation to—
  - (a) a local planning authority whose area is within, or the same as, the area of the combined authority, and
  - (b) the spatial development strategy published by the combined authority.”
- (2) In section 34 of that Act (guidance)—
  - (a) the existing words become subsection (1), and
  - (b) after that subsection insert—
    - “(2) The Secretary of State must issue guidance for local planning authorities on how their local development documents (taken as a whole) should address housing needs that result from old age or disability.”
- (3) In section 35 of that Act (local planning authorities' monitoring reports) after subsection (3) insert—
  - “(3A) Subsection (3B) applies if a London borough council or a Mayoral development corporation have determined in accordance with section 19(1D) that—
    - (a) policies to address the strategic priorities for the development and use of land in their area are set out in the spatial development strategy, and
    - (b) accordingly, such policies will not to that extent be set out in their development plan documents.
  - (3B) Each report by the council or corporation under subsection (2) must—
    - (a) indicate that such policies are set out in the spatial development strategy, and
    - (b) specify where in the strategy those policies are set out.
  - (3C) If a combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009 has the function of preparing the spatial development strategy for the authority's area, subsections (3A) and (3B) also apply in relation to—
    - (a) a local planning authority whose area is within, or the same as, the area of the combined authority, and
    - (b) the spatial development strategy published by the combined authority.”

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**I9** [S. 8\(1\)\(3\)](#) in force at 16.1.2018 by [S.I. 2018/38](#), [reg. 2\(a\)](#)

**I10** [S. 8\(2\)](#) in force at 4.7.2019 by [S.I. 2019/1081](#), [reg. 2](#)

## 9 Power to direct preparation of joint development plan documents

- (1) The Planning and Compulsory Purchase Act 2004 is amended as follows.
- (2) After section 28 insert—

### “28A Power to direct preparation of joint development plan documents

- (1) The Secretary of State may direct two or more local planning authorities to prepare a joint development plan document.
- (2) The Secretary of State may give a direction under this section in relation to a document whether or not it is specified in the local development schemes of the local planning authorities in question as a document which is to be prepared jointly with one or more other local planning authorities.
- (3) The Secretary of State may give a direction under this section only if the Secretary of State considers that to do so will facilitate the more effective planning of the development and use of land in the area of one or more of the local planning authorities in question.
- (4) A direction under this section may specify—
  - (a) the area to be covered by the joint development plan document to which the direction relates;
  - (b) the matters to be covered by that document;
  - (c) the timetable for preparation of that document.
- (5) The Secretary of State must, when giving a direction under this section, notify the local planning authorities to which it applies of the reasons for giving it.
- (6) If the Secretary of State gives a direction under this section, the Secretary of State may direct the local planning authorities to which it is given to amend their local development schemes so that they cover the joint development plan document to which it relates.
- (7) A joint development plan document is a development plan document which is, or is required to be, prepared jointly by two or more local planning authorities pursuant to a direction under this section.

### 28B Application of Part to joint development plan documents

- (1) This Part applies for the purposes of any step which may be or is required to be taken in relation to a joint development plan document as it applies for the purposes of any step which may be or is required to be taken in relation to a development plan document.
- (2) For the purposes of subsection (1) anything which must be done by or in relation to a local planning authority in connection with a development plan

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document must be done by or in relation to each of the authorities mentioned in section 28A(1) in connection with a joint development plan document.

- (3) If the authorities mentioned in section 28A(1) include a London borough council or a Mayoral development corporation, the requirements of this Part in relation to the spatial development strategy also apply.
- (4) Those requirements also apply if—
  - (a) a combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009 has the function of preparing the spatial development strategy for the combined authority's area, and
  - (b) the authorities mentioned in section 28A(1) include a local planning authority whose area is within, or is the same as, the area of the combined authority.

### **28C Modification or withdrawal of direction under section 28A**

- (1) The Secretary of State may modify or withdraw a direction under section 28A by notice in writing to the authorities to which it was given.
- (2) The Secretary of State must, when modifying or withdrawing a direction under section 28A, notify the local planning authorities to which it was given of the reasons for the modification or withdrawal.
- (3) The following provisions of this section apply if—
  - (a) the Secretary of State withdraws a direction under section 28A, or
  - (b) the Secretary of State modifies a direction under that section so that it ceases to apply to one or more of the local planning authorities to which it was given.
- (4) Any step taken in relation to the joint development plan document to which the direction related is to be treated as a step taken by—
  - (a) a local planning authority to which the direction applied for the purposes of any corresponding document prepared by them, or
  - (b) two or more local planning authorities to which the direction applied for the purposes of any corresponding joint development plan document prepared by them.
- (5) Any independent examination of a joint development plan document to which the direction related must be suspended.
- (6) If before the end of the period prescribed for the purposes of this subsection a local planning authority to which the direction applied request the Secretary of State to do so, the Secretary of State may direct that—
  - (a) the examination is resumed in relation to—
    - (i) any corresponding document prepared by a local planning authority to which the direction applied, or
    - (ii) any corresponding joint development plan document prepared by two or more local planning authorities to which the direction applied, and
  - (b) any step taken for the purposes of the suspended examination has effect for the purposes of the resumed examination.

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- (7) The Secretary of State may by regulations make provision as to what is a corresponding document or a corresponding joint development plan document for the purposes of this section.”
- (3) In section 21 (intervention by Secretary of State) after subsection (11) insert—
- “(12) In the case of a joint local development document or a joint development plan document, the Secretary of State may apportion liability for the expenditure on such basis as the Secretary of State thinks just between the local planning authorities who have prepared the document.”
- (4) In section 27 (Secretary of State's default powers) after subsection (9) insert—
- “(10) In the case of a joint local development document or a joint development plan document, the Secretary of State may apportion liability for the expenditure on such basis as the Secretary of State thinks just between the local planning authorities for whom the document has been prepared.”
- (5) Section 28 (joint local development documents) is amended in accordance with subsections (6) and (7).
- (6) In subsection (9) for paragraph (a) substitute—
- “(a) the examination is resumed in relation to—
- (i) any corresponding document prepared by an authority which were a party to the agreement, or
- (ii) any corresponding joint local development document prepared by two or more other authorities which were parties to the agreement;”.
- (7) In subsection (11) (meaning of “corresponding document”) at the end insert “or a corresponding joint local development document for the purposes of this section.
- (8) In section 37 (interpretation) after subsection (5B) insert—
- “(5C) Joint local development document must be construed in accordance with section 28(10).
- (5D) Joint development plan document must be construed in accordance with section 28A(7).”
- (9) Schedule A1 (default powers exercisable by Mayor of London, combined authority and county council) is amended in accordance with subsections (10) and (11).
- (10) In paragraph 3 (powers exercised by the Mayor of London) after sub-paragraph (3) insert—
- “(4) In the case of a joint local development document or a joint development plan document, the Mayor may apportion liability for the expenditure on such basis as the Mayor thinks just between the councils for whom the document has been prepared.”
- (11) In paragraph 7 (powers exercised by combined authority) after sub-paragraph (3) insert—
- “(4) In the case of a joint local development document or a joint development plan document, the combined authority may apportion liability for the expenditure

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on such basis as the authority considers just between the authorities for whom the document has been prepared.”

#### Commencement Information

- I11** [S. 9](#) in force on for specified purposes at Royal Assent, see [s. 46](#)  
**I12** [S. 9](#) in force at 16.1.2018 in so far as not already in force by [S.I. 2018/38](#), [reg. 2\(b\)](#)

### 10 County councils' default powers in relation to development plan documents

Schedule 2 makes provision for the exercise of default powers by county councils in relation to development plan documents.

#### Commencement Information

- I13** [S. 10](#) in force at 16.1.2018 by [S.I. 2018/38](#), [reg. 2\(c\)](#)

### 11 Format of local development schemes and documents

- (1) Section 36 of the Planning and Compulsory Purchase Act 2004 (regulations under Part 2) is amended in accordance with subsections (2) and (3).
- (2) In the heading after “Regulations” insert “ and standards ”.
- (3) After subsection (2) insert—
  - “(3) The Secretary of State may from time to time publish data standards for—
    - (a) local development schemes,
    - (b) local development documents, or
    - (c) local development documents of a particular kind.
  - (4) For this purpose a “data standard” is a written standard which contains technical specifications for a scheme or document or the data contained in a scheme or document.
  - (5) A local planning authority must comply with the data standards published under subsection (3) in preparing, publishing, maintaining or revising a scheme or document to which the standards apply.”
- (4) In section 15(8AA) of that Act (cases in which direction to revise local development scheme may be given by Secretary of State or Mayor of London)—
  - (a) after “only if” insert “ —(a) ”, and
  - (b) at the end of paragraph (a) insert “, or
    - (b) the Secretary of State has published data standards under section 36(3) which apply to the local development scheme and the person giving the direction thinks that the scheme should be revised so that it complies with the standards.”

#### Commencement Information

- I14** [S. 11](#) in force at 19.7.2017 by [S.I. 2017/767](#), [reg. 2\(c\)](#)

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## 12 Review of local development documents

In section 17 of the Planning and Compulsory Purchase Act 2004 (local development documents) after subsection (6) insert—

“(6A) The Secretary of State may by regulations make provision requiring a local planning authority to review a local development document at such times as may be prescribed.

(6B) If regulations under subsection (6A) require a local planning authority to review a local development document—

- (a) they must consider whether to revise the document following each review, and
- (b) if they decide not to do so, they must publish their reasons for considering that no revisions are necessary.

(6C) Any duty imposed by virtue of subsection (6A) applies in addition to the duty in subsection (6).”

### Commencement Information

**I15** [S. 12](#) in force for specified purposes at Royal Assent, see [s. 46](#)

**I16** [S. 12](#) in force at 19.7.2017 in so far as not already in force by [S.I. 2017/767](#), [reg. 2\(d\)](#)

## 13 Statements of community involvement

(1) Section 18 of the Planning and Compulsory Purchase Act 2004 (statement of community involvement) is amended as follows.

(2) In subsection (2) after “sections” insert “ 13, 15, ”.

(3) After subsection (3A) insert—

“(3B) The Secretary of State may by regulations prescribe matters to be addressed by a statement of community involvement in addition to the matters mentioned in subsection (2).”

### Commencement Information

**I17** [S. 13](#) in force for specified purposes at Royal Assent, see [s. 46](#)

**I18** [S. 13\(2\)](#) in force at 31.7.2018 in so far as not already in force by [S.I. 2018/38](#), [reg. 4\(b\)](#) (with [reg. 5](#))

### Planning conditions

## 14 Restrictions on power to impose planning conditions

(1) After section 100 of the Town and Country Planning Act 1990 insert—

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*“Power to impose conditions on grant of planning permission in England*

**100ZA Restrictions on power to impose planning conditions in England**

- (1) The Secretary of State may by regulations provide that—
  - (a) conditions of a prescribed description may not be imposed in any circumstances on a relevant grant of planning permission for the development of land in England,
  - (b) conditions of a prescribed description may be imposed on any such grant only in circumstances of a prescribed description, or
  - (c) no conditions may be imposed on any such grant in circumstances of a prescribed description.
- (2) Regulations under subsection (1) may make provision only if (and in so far as) the Secretary of State is satisfied that the provision is appropriate for the purposes of ensuring that any condition imposed on a relevant grant of planning permission for the development of land in England is—
  - (a) necessary to make the development acceptable in planning terms,
  - (b) relevant to the development and to planning considerations generally,
  - (c) sufficiently precise to make it capable of being complied with and enforced, and
  - (d) reasonable in all other respects.
- (3) Before making regulations under subsection (1) the Secretary of State must carry out a public consultation.
- (4) Subsection (5) applies in relation to an application for a relevant grant of planning permission for the development of land in England.
- (5) Planning permission for the development of the land may not be granted subject to a pre-commencement condition without the written agreement of the applicant to the terms of the condition.
- (6) But the requirement under subsection (5) for the applicant to agree to the terms of a pre-commencement condition does not apply in such circumstances as may be prescribed.
- (7) Before making regulations under subsection (6) the Secretary of State must carry out a public consultation.
- (8) “Pre-commencement condition” means a condition imposed on a grant of planning permission (other than a grant of outline planning permission within the meaning of section 92) which must be complied with—
  - (a) before any building or other operation comprised in the development is begun, or
  - (b) where the development consists of a material change in the use of any buildings or other land, before the change of use is begun.
- (9) A power conferred by any provision of this Part to impose a condition on a relevant grant of planning permission for the development of land in England is subject to—
  - (a) regulations under subsection (1), and



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- (b) subsection (5).
- (10) The Secretary of State must issue guidance to local planning authorities about the operation of this section and regulations made under it.
- (11) The Secretary of State may, from time to time, revise guidance issued under subsection (10).
- (12) The Secretary of State must arrange for guidance issued or revised under this section to be published in such manner as the Secretary of State considers appropriate.
- (13) In this section—
  - (a) references to a relevant grant of planning permission are to any grant of permission to develop land which is granted on an application made under this Part;
  - (b) references to a grant include the modification of any such grant;
  - (c) references to a condition include a limitation,and “prescribed” means prescribed by the Secretary of State.”
- (2) In section 333 of the Town and Country Planning Act 1990 (regulations and orders) after subsection (3ZA) insert—

“(3ZAA) No regulations may be made under section 100ZA(1) unless a draft of the instrument containing the regulations has been laid before, and approved by a resolution of, each House of Parliament.”
- (3) Section 100ZA of the Town and Country Planning Act 1990 (as inserted by subsection (1) of this section) has effect in relation to conditions on a grant or modification of planning permission only if the permission is granted or modified on or after the coming into force of this section.
- (4) Schedule 3 contains amendments in consequence of subsection (1).

#### Commencement Information

**I19** S. 14 in force at 19.7.2017 for specified purposes by S.I. 2017/767, reg. 2(e)

**I20** S. 14(1)(3) in force at 1.10.2018 for specified purposes by S.I. 2018/567, reg. 3(a)

**I21** S. 14(4) in force at 1.10.2018 for specified purposes by S.I. 2018/567, reg. 3(b)

#### *Permitted development rights relating to drinking establishments*

### **15 Permitted development rights relating to drinking establishments**

- (1) As soon as reasonably practicable after the coming into force of this section, the Secretary of State must make a development order under the Town and Country Planning Act 1990 which—
  - (a) removes any planning permission which is granted by a development order for development consisting of a change in the use of any building or land in England from a use within Class A4 to a use of a kind specified in the order (subject to paragraph (c)),
  - (b) removes any planning permission which is granted by a development order for a building operation consisting of the demolition of a building in England

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- which is used, or was last used, for a purpose within Class A4 or for a purpose including use within that class, and
- (c) grants planning permission for development consisting of a change in the use of a building in England and any land within its curtilage from a use within Class A4 to a mixed use consisting of a use within that Class and a use within Class A3.
- (2) Subsection (1) does not require the development order to remove planning permission for development which has been carried out before the coming into force of the order.
- (3) Subsection (1) does not prevent—
- (a) the inclusion of transitional, transitory or saving provision in the development order, or
  - (b) the subsequent exercise of the Secretary of State's powers by development order to grant, remove or otherwise make provision about planning permission for the development of buildings or land used, or last used, for a purpose within Class A4 or for a purpose including use within that class.
- (4) A reference in this section to Class A3 or Class A4 is to the class of use of that name listed in the Schedule to the Town and Country Planning (Use Classes) Order 1987 (SI 1987/764).
- (5) Expressions used in this section that are defined in the Town and Country Planning Act 1990 have the same meaning as in that Act.

### *Development of new towns by local authorities*

## **16 Development of new towns by local authorities**

- (1) The New Towns Act 1981 is amended as follows.
- (2) After section 1 insert—

### **“1A Local authority to oversee development of new town**

- (1) This section applies where the Secretary of State is considering designating an area of land in England as the site of a proposed new town in an order under section 1.
- (2) The Secretary of State may, in an order under section 1, appoint one or more local authorities to oversee the development of the area as a new town.
- (3) But a local authority may only be appointed if the area of land mentioned in subsection (1) is wholly or partly within the area of the local authority.
- (4) The Secretary of State may by regulations make provision about how a local authority is to oversee the development of an area as a new town.
- (5) Regulations under subsection (4) may, for example—
  - (a) provide that a local authority is to exercise specified functions under this Act which would otherwise be exercisable by the Secretary of State, the appropriate Minister or the Treasury;
  - (b) provide that a local authority is to exercise such functions subject to specified conditions or limitations;

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- (c) provide that specified functions under this Act may be exercised only with the consent of a local authority;
  - (d) make provision about the membership of a corporation established under section 3, including the proportion of the members of the corporation who may be members of or employed by a local authority;
  - (e) modify provisions of this Act;
  - (f) make different provision for different purposes;
  - (g) make incidental, supplementary or consequential provision.
- (6) In subsection (5)(a) the reference to “functions” does not include a power to make regulations or other instruments of a legislative character.
- (7) Where two or more local authorities are appointed in an order containing provision by virtue of subsection (2), the Secretary of State may in that order provide—
- (a) that a specified function is to be exercised by a specified local authority, or
  - (b) that a specified function is to be exercised by two or more specified local authorities jointly.
- (8) In this section—
- “local authority” means—
- (a) a district council,
  - (b) a county council, or
  - (c) a London borough council;
- “specified” means specified in—
- (a) an order containing provision by virtue of subsection (2), or
  - (b) regulations under subsection (4).”
- (3) In section 77 (regulations and orders)—
- (a) in subsection (2), after “which” insert “, subject to subsection (2A), ”, and
  - (b) after subsection (2) insert—
- “(2A) A statutory instrument containing regulations under section 1A(4) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”

#### Commencement Information

**I22** S. 16 in force at 19.7.2017 by [S.I. 2017/767](#), [reg. 2\(f\)](#)

### Planning register

## 17 Register of planning applications etc

After section 69 of the Town and Country Planning Act 1990 insert—

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### **“69A The register: additional requirements in relation to England**

- (1) A register kept under section 69 by a local planning authority in England must (in addition to the information prescribed under that section) also contain such information as is prescribed as to—
  - (a) prior approval applications made in connection with planning permission granted by a development order;
  - (b) the manner in which such applications have been dealt with by the authority;
  - (c) notifications of proposed development made in connection with planning permission granted by a development order;
  - (d) any actions taken by the authority following such notifications.
- (2) A “prior approval application”, in connection with planning permission granted by a development order, means an application made to a local planning authority for—
  - (a) any approval of the authority required under the order, or
  - (b) a determination from the authority as to whether such approval is required.
- (3) A “notification of proposed development”, in connection with planning permission granted by a development order, means a notification made to a local planning authority to meet a requirement under the order.
- (4) The power in subsection (1)(b) to prescribe information as to the manner in which applications have been dealt with by a local planning authority includes power to prescribe information as to cases where the authority does not respond to an application.
- (5) Where the register is kept in two or more parts, each part must contain such information as is prescribed relating to the matters mentioned in subsection (1) (a) and (c).
- (6) A development order may also make provision—
  - (a) for a specified part of the register to contain copies of applications or notifications and of any documents or material submitted with them;
  - (b) for the entry relating to an application (and everything relating to it) to be removed from that part of the register when the application (including any appeal arising out of it) has been finally disposed of;
  - (c) for the entry relating to a notification (and everything relating to it) to be removed from that part of the register in such circumstances as may be prescribed.
- (7) Provision under subsection (6)(b) or (c) does not prevent the inclusion of a different entry relating to the application or notification in another part of the register.
- (8) Anything prescribed under this section must be prescribed by development order.
- (9) A development order—
  - (a) may make different provision for different kinds of application or notification;

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- (b) may make provision which applies generally or only in relation to particular kinds of notification or application.”

## PART 2

### COMPULSORY PURCHASE ETC

## CHAPTER 1

### TEMPORARY POSSESSION OF LAND

#### Modifications etc. (not altering text)

- C9** Pt. 2 Ch. 1 excluded (26.9.2018) by [The Network Rail \(Felixstowe Branch Line Improvements Level Crossings Closure\) Order 2018 \(S.I. 2018/937\)](#), arts. 1, **28**
- C10** Pt. 2 Ch. 1 excluded (12.10.2018) by [The Eggborough Gas Fired Generating Station Order 2018 \(S.I. 2018/1020\)](#), arts. 1, **26(12)** (with arts. 6, 42)

#### PROSPECTIVE

### 18 Power to take temporary possession of land

- (1) Subsection (2) applies where a person (an “acquiring authority”)—
- (a) has a power conferred by an Act to acquire land compulsorily (with or without authorisation from another person), or
  - (b) is or has been, at any time, otherwise authorised to acquire land compulsorily.
- (2) The acquiring authority may, for purposes connected with the purposes for which it could acquire land compulsorily, take temporary possession of land—
- (a) by agreement, or
  - (b) compulsorily, if authorised to do so in accordance with section 19.
- (3) Subject to any express provision in another Act, the power in subsection (2) is the only power under which a person may take temporary possession of land compulsorily.
- (4) For the purposes of this Chapter references to acquiring land include references to acquiring a right over land by creation.

#### PROSPECTIVE

### 19 Procedure for authorising temporary possession etc

- (1) This section sets out how an acquiring authority may be authorised to take temporary possession of land compulsorily under section 18(2).
- (2) The temporary possession of the land must be authorised by the type of instrument (the “authorising instrument”) that would be required if the acquiring authority proposed to

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acquire that land compulsorily for the purposes for which it proposes to take temporary possession of that land.

- (3) Accordingly, the authorising instrument—
  - (a) may make provision relating to temporary possession of land as well as, or instead of, compulsory acquisition,
  - (b) if it authorises the compulsory acquisition of land, may authorise temporary possession of the same or other land, and
  - (c) if it makes provision relating to temporary possession, is to be subject to the same procedures for authorising and challenging it as if the provision relating to temporary possession were provision relating to compulsory acquisition.
- (4) But in so far as an authorising instrument authorises the temporary possession of land, the instrument is not to be subject to special parliamentary procedure by virtue of any enactment applying that procedure to an instrument authorising the compulsory acquisition of land, unless the land which is proposed to be subject to temporary possession is held by the National Trust inalienably.
- (5) For the purposes of subsection (4)—
  - (a) “the National Trust” means the National Trust for Places of Historic Interest or Natural Beauty incorporated by the National Trust Act 1907, and
  - (b) land is held by the National Trust “inalienably” if it is inalienable under section 21 of the National Trust Act 1907 or section 8 of the National Trust Act 1939.
- (6) For the purposes of subsection (3)(c), the reference to compulsory acquisition does not include the compulsory acquisition of a right over land by creation unless section 18(2) applies in relation to the acquiring authority by virtue only of a power or authorisation to acquire a right over land by creation.
- (7) The authorising instrument must—
  - (a) identify the land which is to be subject to temporary possession,
  - (b) describe the purposes for which temporary possession is required, and
  - (c) specify the total period of time for which the land may be subject to temporary possession.
- (8) The authorising instrument does not need to include the dates of any particular period of temporary possession (but see section 20).

PROSPECTIVE

## 20 Notice requirements

- (1) Before taking temporary possession of land compulsorily for a period of time by virtue of section 18(2) an acquiring authority must give a notice of intended entry to each person who has an interest in or a right to occupy the land, so far as known to the authority after making diligent inquiry.
- (2) The notice must specify the period after the end of which the acquiring authority may take temporary possession of the land (“the notice period”).

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- (3) The notice period must not end earlier than the end of the period of three months beginning with the day on which the notice is given.
- (4) The notice must specify the period for which the acquiring authority is to take temporary possession of the land.
- (5) For the purposes of this section an acquiring authority is to be treated as taking temporary possession of land at the beginning of the first day of any period of temporary possession.
- (6) The notice period may be reduced by agreement between the acquiring authority and all persons to whom a notice must be given under subsection (1).
- (7) An acquiring authority must comply with this section again in relation to each subsequent period of temporary possession even if there is to be no gap between periods.
- (8) Where the authorising instrument mentioned in section 19 is a compulsory purchase order, a notice of intended entry under this section may not be served after the end of the period of three years beginning with the day on which the authorising instrument becomes operative.
- (9) In any other case, a notice of intended entry under this section may not be served after the end of the period of five years beginning with the day on which the authorising instrument becomes operative.
- [<sup>F1</sup>(10) For the purposes of subsection (1), a person entitled to the benefit of an obligation under a conservation covenant is to be treated as having an interest in the land to which the obligation relates.]

#### Textual Amendments

- F1** [S. 20\(10\)](#) inserted (30.9.2022) by [Environment Act 2021 \(c. 30\)](#), s. 147(3), [Sch. 20 para. 9](#) (with s. 144); [S.I. 2022/48](#), reg. 5(d)

PROSPECTIVE

## 21 Counter-notice

- (1) This section applies where an acquiring authority gives a notice of intended entry under section 20 in relation to land to a person (the “owner”) who—
  - (a) has a leasehold interest in, and the right to occupy, the land, or
  - (b) has the freehold interest in the land.
- (2) The owner may give the acquiring authority a counter-notice which provides that the total period of time for which the land may be subject to temporary possession is limited to—
  - (a) 12 months where the land is or is part of a dwelling, or
  - (b) 6 years in any other case.

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- (3) If the owner falls within subsection (1)(a), the owner may instead give the acquiring authority a counter-notice which provides that the authority may not take temporary possession of the land.
- (4) A counter-notice under subsection (2) or (3) must be given within the period of 28 days beginning with the day on which the notice of intended entry was given.
- (5) On receiving a counter-notice under subsection (2), the acquiring authority must decide whether to—
  - (a) accept the counter-notice,
  - (b) withdraw the notice of intended entry, or
  - (c) proceed as if the land were subject to compulsory acquisition.
- (6) On receiving a counter-notice under subsection (3), the acquiring authority must decide whether to—
  - (a) accept the counter-notice, or
  - (b) proceed as if the land were subject to compulsory acquisition.
- (7) The acquiring authority must give a notice of its decision in response to a counter-notice to the owner within the period of 28 days beginning with the day on which the counter-notice was given.
- (8) If the acquiring authority decides to proceed as if the land were subject to compulsory acquisition—
  - (a) the instrument which authorised temporary possession of the land is to be treated as authorising the compulsory acquisition of the owner's interest in the land (as well as the temporary possession of the land, if there are other interests in it), and
  - (b) the authority may proceed as if it had given any notice or taken any step required in relation to the authorisation or confirmation of the instrument.
- (9) See Schedule 2A to the Compulsory Purchase Act 1965 and Schedule A1 to the Compulsory Purchase (Vesting Declarations) Act 1981 for options available to the owner if, in response to a counter-notice under this section, the acquiring authority decides to purchase the owner's interest in part of a house, building or factory.
- (10) Nothing in this section prevents an acquiring authority acquiring land compulsorily after accepting a counter-notice or withdrawing a notice of intended entry in respect of that land.

PROSPECTIVE

## 22 Refusal to give up possession

Section 13 of the Compulsory Purchase Act 1965 (refusal to give up possession of land to acquiring authority) applies in relation to temporary possession by virtue of section 18(2) of this Act as if—

- (a) the reference to “this Act” in subsection (1) were a reference to section 18(2) of this Act, and



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- (b) the references to taking possession of land were references to taking temporary possession of land compulsorily by virtue of section 18(2) of this Act.

## PROSPECTIVE

### 23 Compensation

- (1) This section applies if an acquiring authority takes or is authorised to take temporary possession of land compulsorily by virtue of section 18(2).
- (2) A person (a “claimant”) who has an interest in or a right to occupy the land is entitled to receive compensation from the authority for any loss or injury the claimant sustains as a result.
- (3) A person (a “beneficial claimant”) is entitled to receive compensation from the authority for any loss or injury the beneficial claimant sustains as a result of the authority—
  - (a) interfering with a relevant right or interest annexed to land belonging to the beneficial claimant, or
  - (b) breaching a restriction as to the user of land arising by virtue of a contract where—
    - (i) the beneficial claimant is a party to the contract, or
    - (ii) the restriction benefits land which belongs to the beneficial claimant.
- (4) Where the claimant is carrying on a trade or business on the land, the compensation to which the claimant is entitled includes compensation for any loss which the claimant sustains by reason of the disturbance of the trade or business consequent upon the claimant having to quit the land for the period of the temporary possession.
- (5) In estimating loss for the purposes of subsection (4) regard is to be had—
  - (a) to the period for which the land occupied by the claimant may reasonably have been expected to be available for the purposes of the claimant's trade or business,
  - (b) to the terms on which the land may reasonably have been expected to be available for those purposes, and
  - (c) to the availability of other land suitable for those purposes during the period of temporary possession.
- [<sup>F2</sup>(5A) For the purposes of subsections (2) and (3), the person is not entitled to compensation under this section by virtue of being the person entitled to the benefit of an obligation under a conservation covenant.]
- (6) For the purposes of section 9 of the Limitation Act 1980, a cause of action for compensation under this section which, apart from this subsection, would accrue before or during a period of compulsory temporary possession for which notice is given under section 20 is to be treated as accruing on the last day of the period.
- (7) Compensation under this section in relation to a particular head of loss or injury carries interest from the day after the last day on which that loss or injury occurs.

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- (8) The interest is to be at the rate prescribed by regulations under section 32 of the Land Compensation Act 1961 in relation to the compulsory acquisition of land.
- (9) Any dispute about compensation payable under this section may be referred to and determined by the Upper Tribunal.
- (10) In this Chapter “relevant right or interest” means any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land (including any natural right to support).

#### Textual Amendments

**F2** S. 23(5A) inserted (30.9.2022) by [Environment Act 2021 \(c. 30\)](#), s. 147(3), [Sch. 20 para. 10](#) (with s. 144); [S.I. 2022/48](#), [reg. 5\(d\)](#)

#### PROSPECTIVE

### 24 Advance payments

- (1) This section applies where a person (a “claimant”) to whom compensation is or will be payable under section 23 makes a request in accordance with subsection (3).
- (2) The acquiring authority—
  - (a) must make an advance payment on account of the compensation if it has given a notice of intended entry under section 20 in relation to the land in respect of which the claimant is or will be entitled to compensation, but
  - (b) may not do so if it has not given such a notice.
- (3) A request for advance payment must be made in writing by the claimant and must include—
  - (a) details of the basis on which the claimant is or is going to be entitled to compensation, and
  - (b) information which is sufficient to enable the acquiring authority to estimate the amount of the compensation in respect of which the advance payment is to be made.
- (4) Before the end of the period of 28 days beginning with the day on which the acquiring authority receives a request under subsection (3), the authority must—
  - (a) determine whether it has enough information to estimate the amount of compensation, and
  - (b) if it needs more information, require the claimant to provide it.
- (5) The amount of an advance payment is to be equal to 90% of—
  - (a) if the acquiring authority and the claimant have agreed on the amount of the compensation, the agreed amount, or
  - (b) in any other case, an amount equal to the compensation as estimated by the acquiring authority.
- (6) An advance payment must be made—

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- (a) before the end of the day on which the authority takes temporary possession of the land, or
  - (b) if later, before the end of the period of two months beginning with the day on which the authority—
    - (i) receives the request for the advance payment, or
    - (ii) receives any further information required under subsection (4)(b).
- (7) If, after making an advance payment on the basis of its estimate of the compensation, the acquiring authority considers that its estimate was too low, the authority must pay the claimant the balance of the amount of the advance payment calculated on the basis of the authority's new estimate of the compensation.
- (8) Where the total amount of any payments under this section made on the basis of the acquiring authority's estimate of the compensation exceeds the compensation as finally determined or agreed, the excess is to be repaid.
- (9) If, after a payment under this section has been made to a person, it is discovered that the person was not entitled to it, the person must repay it.

## PROSPECTIVE

### 25 Interest on advance payments of compensation paid late

- (1) If an acquiring authority is required by section 24(2) to make an advance payment of compensation but pays some or all of it after the day or (as the case may be) the end of the period specified in section 24(6), the authority must pay interest on the amount which is paid after that period (the “unpaid amount”).
- (2) Interest under subsection (1) accrues on the unpaid amount for the period beginning with the day after the day or (as the case may be) the end of the period specified in section 24(6).
- (3) If the total amount of any advance payment made under section 24 is greater than the compensation as finally determined or agreed (the “actual amount”), the claimant must repay any interest paid under this section that is attributable to the amount by which the advance payment exceeded the actual amount.
- (4) The Treasury must by regulations specify the rate of interest for the purposes of subsection (1).
- (5) Regulations under subsection (4) may contain further provision in connection with the payment of interest under subsection (1).

### 26 Consequential amendments

- (1) The Town and Country Planning Act 1990 is amended in accordance with subsections (2) to (7).
- (2) In section 150 (notices requiring purchase of blighted land), in subsection (1)(b), for “or paragraph 24” substitute “, paragraph 24 or paragraph 24A ”.
- (3) In section 151 (counter-notice objecting to blight notices)—

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- (a) in subsection (4)(b), after “to acquire” insert “ or (in the case of land to which paragraph 24A of Schedule 13 applies) take temporary possession of”, and
  - (b) in subsection (8), for “to acquire that land” substitute “ to acquire or (in the case of land to which paragraph 24A of Schedule 13 applies) to take temporary possession of that land ”.
- (4) In section 155 (effect on powers of compulsory acquisition of counter-notice disclaiming intention to acquire)—
  - (a) in the heading, after “acquire” insert “ etc. ”, and
  - (b) in subsection (2)—
    - (i) in paragraph (a), after “appropriate enactment” insert “ , or, in a case to which paragraph 24A of Schedule 13 applies, the temporary possession of land has been authorised by the appropriate enactment, ”,
    - (ii) in the closing words, after “that order” insert “ or appropriate enactment, ”, and
    - (iii) after “claimant in” insert “ , or the temporary possession of, ”.
- (5) In section 169 (meaning of “appropriate authority” in relation to blighted land), in subsection (1)—
  - (a) the words from “by whom” to the end become paragraph (a), and
  - (b) after that paragraph insert “, or
    - (b) which is authorised to take temporary possession of the land as mentioned in paragraph 24A of Schedule 13.”
- (6) In section 170 (meaning of “appropriate enactment” in relation to blighted land), after subsection (8B) insert—
 

“(8BA) In relation to land falling within paragraph 24A of that Schedule “the appropriate enactment” is the instrument mentioned in section 19(2) of the Neighbourhood Planning Act 2017 (procedure for authorising temporary possession etc.) under which the acquiring authority mentioned in section 18(1) of that Act (power to take temporary possession of land) is authorised to take temporary possession of the land.”
- (7) In Schedule 13 (list of categories of land which are blighted land as a result of planning proposals etc. by public authorities), after paragraph 24 insert—
 

“24A Land the temporary possession of which is authorised by virtue of section 18(2) of the Neighbourhood Planning Act 2017.”
- (8) In section 172 of the Housing and Planning Act 2016 (right to enter and survey land in connection with proposal to acquire land etc.)—
  - (a) in subsection (1)—
    - (i) the words from “to” to the end become paragraph (a), and
    - (ii) after paragraph (a) insert “, or
      - (b) take temporary possession of land compulsorily under section 18(2) of the Neighbourhood Planning Act 2017.”” and
  - (b) in subsection (6) for the words from “acquiring authority” to the end of the subsection substitute “—

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- (a) “acquiring authority” means a person who could be authorised to acquire compulsorily the land to which the proposal mentioned in subsection (1) relates (regardless of whether the proposal is to acquire an interest in or a right over the land or to take temporary possession of it), and
- (b) “owner” has the meaning given in section 7 of the Acquisition of Land Act 1981.”

#### Commencement Information

**I23** S. 26(8)(b) in force at 22.9.2017 by [S.I. 2017/936](#), [reg. 3\(a\)](#) (with [reg. 5](#))

PROSPECTIVE

### 27 Powers of acquiring authority in relation to land

- (1) Subject to subsection (4) and to any regulations under section 29, where an acquiring authority takes temporary possession of land compulsorily by virtue of section 18(2), the authority may use the land as if it had acquired all interests in it.
- (2) In particular, the acquiring authority may—
  - (a) remove or erect buildings or other works, and
  - (b) remove any vegetation,to the extent that it would be able to do so if it had acquired all interests in the land.
- (3) The acquiring authority may use land as described in subsection (1) even if this involves—
  - (a) interfering with a relevant right or interest, <sup>F3</sup>...
  - (b) breaching a restriction as to the user of land arising by virtue of a contract [<sup>F4</sup>, or
  - (c) causing a person to be in breach of an obligation under a conservation covenant relating to the land.]
- (4) But the acquiring authority may use the land only for the purposes for which temporary possession was required, as described in the authorising instrument (see section 19(7)(b)).
- [<sup>F5</sup>(4A) The acquiring authority is not bound by an obligation under a conservation covenant relating to the land by virtue of acquiring a right to use the land under this section.]
- (5) Nothing in this section authorises an interference with—
  - (a) a right of way on, under or over land that is a protected right, or
  - (b) a right of laying down, erecting, continuing or maintaining apparatus on, under or over land if it is a protected right.
- (6) Nothing in this section authorises—
  - (a) an interference with a relevant right or interest annexed to land belonging to the National Trust which is held by the National Trust inalienably, <sup>F6</sup>...
  - (b) a breach of a restriction as to the user of land which does not belong to the National Trust—
    - (i) arising by virtue of a contract to which the National Trust is a party, or

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- (ii) benefiting land which does belong to the National Trust [F7, or
- (c) a use of land that causes a person (or, if the person were to permit or suffer the use, would cause the person) to be in breach of an obligation under a conservation covenant relating to the land owed to the National Trust.]
- (7) For the purposes of subsection (6)—
- (a) “the National Trust” means the National Trust for Places of Historic Interest or Natural Beauty incorporated by the National Trust Act 1907, and
- (b) land is held by the National Trust “inalienably” if it is inalienable under section 21 of the National Trust Act 1907 or section 8 of the National Trust Act 1939.
- (8) In this section—
- “protected right” means—
- (a) a right vested in, or belonging to, a statutory undertaker for the purpose of carrying on its statutory undertaking, or
- (b) a right conferred by, or in accordance with, the electronic communications code on the operator of an electronic communications code network (and expressions used in this paragraph have the meaning given by paragraph 1(1) of Schedule 17 to the Communications Act 2003);
- “statutory undertaker” means a person who is, or who is deemed to be, a statutory undertaker for the purposes of any provision of Part 11 of the Town and Country Planning Act 1990;
- “statutory undertaking” is to be read in accordance with section 262 of the Town and Country Planning Act 1990 (meaning of “statutory undertakers”).

#### Textual Amendments

- F3** Word in s. 27(3)(a) omitted (30.9.2022) by virtue of Environment Act 2021 (c. 30), s. 147(3), **Sch. 20 para. 11(2)(a)** (with s. 144); S.I. 2022/48, reg. 5(d)
- F4** S. 27(3)(c) and word inserted (30.9.2022) by Environment Act 2021 (c. 30), s. 147(3), **Sch. 20 para. 11(2)(b)** (with s. 144); S.I. 2022/48, reg. 5(d)
- F5** S. 27(4A) inserted (30.9.2022) by Environment Act 2021 (c. 30), s. 147(3), **Sch. 20 para. 11(3)** (with s. 144); S.I. 2022/48, reg. 5(d)
- F6** Word in s. 27(6)(a) omitted (30.9.2022) by virtue of Environment Act 2021 (c. 30), s. 147(3), **Sch. 20 para. 11(4)(a)** (with s. 144); S.I. 2022/48, reg. 5(d)
- F7** S. 27(6)(c) and word inserted (30.9.2022) by Environment Act 2021 (c. 30), s. 147(3), **Sch. 20 para. 11(4)(b)** (with s. 144); S.I. 2022/48, reg. 5(d)

PROSPECTIVE

## 28 Impact of temporary possession on tenancies etc

- (1) Subsection (2) applies where an acquiring authority takes temporary possession under section 18(2) of land subject to a tenancy.
- (2) A person is not to be treated as being in breach of—
- (a) any term of the tenancy, or

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- (b) any other obligation associated with the tenancy or the land subject to temporary possession,  
to the extent that the person cannot reasonably comply with the term or other obligation as a result of the temporary possession.
- (3) Subsection (2) does not affect terms or obligations about—
  - (a) the length of the tenancy, or
  - (b) the payment of rent.
- (4) Subsection (5) applies where—
  - (a) an acquiring authority takes temporary possession of land subject to a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (security of tenure for business tenants) applies immediately before the period of temporary possession,
  - (b) the tenancy expires during the period of temporary possession, and
  - (c) prior to the period of temporary possession the tenant notifies in writing both the acquiring authority and the landlord that the tenant intends to resume occupation of the land after the period of temporary possession.
- (5) For the purposes of Part 2 of the Landlord and Tenant Act 1954 the tenant is to be deemed to continue to occupy the land in accordance with the tenancy mentioned in subsection (4)(b), and any tenancy which succeeds that tenancy, despite the period of temporary possession.
- (6) But if the tenant notifies in writing both the acquiring authority and the landlord that the tenant no longer intends to resume occupation of the land after the period of temporary possession subsection (5) ceases to apply.
- (7) In this section “tenancy” includes a sub-tenancy.

## 29 Supplementary provisions

- (1) The appropriate national authority must by regulations make provision about—
  - (a) the reinstatement of land subject to a period of temporary possession, and
  - (b) the resolution by an independent person of disputes about reinstatement.
- (2) The Secretary of State may by regulations exclude the application of any provision of this Chapter in relation to a person who is an acquiring authority as a result of an authorisation by virtue of—
  - (a) section 11, 12 or 12A of the Pipe-lines Act 1962 (compulsory purchase of land or rights over land in connection with pipe-lines),
  - (b) section 12 or 13 of the Gas Act 1965 (compulsory purchase of rights in relation to storage of gas etc),
  - (c) paragraph 1 of Schedule 3 to the Gas Act 1986 (compulsory purchase of land by gas transporter), or
  - (d) paragraph 1 of Schedule 3 to the Electricity Act 1989 (compulsory purchase of land by licence holder).
- (3) The appropriate national authority may by regulations make further provision in relation to—
  - (a) the authorisation and exercise of the power to take temporary possession of land by virtue of section 18(2), and



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- (b) the circumstances in which an acquiring authority may be authorised to acquire land after being authorised to take temporary possession of it.
- (4) Regulations under subsection (3) may for example—
  - (a) make provision that appears to the appropriate national authority to be necessary or expedient for giving full effect to a provision of this Chapter in relation to particular cases or types of case, including by modifying that provision so that it is effective in relation to those cases or types of case,
  - (b) limit the period for which an acquiring authority may take temporary possession of land,
  - (c) limit the circumstances in which an acquiring authority may take temporary possession of land,
  - (d) make provision about the use by an acquiring authority of land of which it has taken temporary possession (for example, by limiting what an acquiring authority may do or by requiring an acquiring authority to do certain things),
  - (e) limit the types of land which may be subject to temporary possession in specified circumstances,
  - (f) require an acquiring authority to provide specified information relating to a period of temporary possession to specified persons before, during or after the period,
  - (g) make provision in relation to the sale by a person with an interest in land where that land is or may be subject to temporary possession, and
  - (h) make provision for a person who has a right to occupy land subject to temporary possession to be deemed to occupy that land for specified purposes during the period of temporary possession.
- (5) Before making regulations under this section the Secretary of State or the Welsh Ministers, as the case may be, must carry out a public consultation.
- (6) In this section—
  - “appropriate national authority” means—
    - (a) in relation to cases where the Welsh Ministers are the acquiring authority or the confirming authority, the Welsh Ministers, and
    - (b) in all other cases, the Secretary of State;
  - “confirming authority” means the authority having power to authorise the acquiring authority to take temporary possession of land;
  - “specified” means specified in regulations under subsection (3).

#### Commencement Information

**I24** S. 29 in force at 19.7.2017 by [S.I. 2017/767](#), [reg. 2\(g\)](#)

## 30 Interpretation

In this Chapter—

- “acquiring authority” has the meaning given in section 18(1);
- “the notice period” has the meaning given in section 20(2);
- “possession” means exclusive occupation;
- “relevant right or interest” has the meaning given by section 23(10).



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#### Commencement Information

**I25** S. 30 in force at 19.7.2017 by [S.I. 2017/767](#), [reg. 2\(h\)](#)

PROSPECTIVE

### 31 Application to Crown land

- (1) This Chapter applies in relation to Crown land.
- (2) An acquiring authority may exercise the power conferred by section 18(2) in relation to Crown land only if the acquiring authority has the consent of the appropriate authority.
- (3) In this section “Crown land” and “the appropriate authority” have the meanings given in section 293 of the Town and Country Planning Act 1990.

## CHAPTER 2

### OTHER PROVISIONS RELATING TO COMPULSORY PURCHASE

### 32 No-scheme principle

- (1) The Land Compensation Act 1961 is amended in accordance with subsections (2) to (4).
- (2) In section 5, after rule (2) insert—

“(2A) The value of land referred to in rule (2) is to be assessed in the light of the no-scheme principle set out in section 6A.”
- (3) For sections 6 to 9 (provisions about how scheme is to be disregarded when assessing compensation in respect of compulsory acquisition) substitute—

#### “6A No-scheme principle

- (1) The no-scheme principle is to be applied when assessing the value of land in order to work out how much compensation should be paid by the acquiring authority for the compulsory acquisition of the land (see rule 2A in section 5).
- (2) The no-scheme principle is the principle that—
  - (a) any increase in the value of land caused by the scheme for which the authority acquires the land, or by the prospect of that scheme, is to be disregarded, and
  - (b) any decrease in the value of land caused by that scheme or the prospect of that scheme is to be disregarded.
- (3) In applying the no-scheme principle the following rules in particular (the “no-scheme rules”) are to be observed.
- (4) Rule 1: it is to be assumed that the scheme was cancelled on the relevant valuation date.

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- (5) Rule 2: it is to be assumed that no action has been taken (including acquisition of any land, and any development or works) by the acquiring authority wholly or mainly for the purposes of the scheme.
- (6) Rule 3: it is to be assumed that there is no prospect of the same scheme, or any other project to meet the same or substantially the same need, being carried out in the exercise of a statutory function or by the exercise of compulsory purchase powers.
- (7) Rule 4: it is to be assumed that no other projects would have been carried out in the exercise of a statutory function or by the exercise of compulsory purchase powers if the scheme had been cancelled on the relevant valuation date.
- (8) Rule 5: if there was a reduction in the value of land as a result of—
  - (a) the prospect of the scheme (including before the scheme or the compulsory acquisition in question was authorised), or
  - (b) the fact that the land was blighted land as a result of the scheme,
 that reduction is to be disregarded.
- (9) In this section—
  - “blighted land” means land of a description listed in Schedule 13 to the Town and Country Planning Act 1990;
  - “relevant valuation date” has the meaning given by section 5A.
- (10) See also section 14 for assumptions to be made in respect of planning permission.

## **6B Lower compensation if other land gains value**

- (1) This section applies where—
  - (a) a person is entitled to compensation for the compulsory acquisition of land (the “original land”) for the purposes of a scheme,
  - (b) on the date the notice to treat is served in respect of the original land, the person is entitled to an interest in other land (the “other land”) which is contiguous or adjacent to the original land,
  - (c) the person is entitled to the interest in the other land in the same capacity as the person is entitled to the interest in the original land, and
  - (d) the person's interest in the other land has increased in value as a result of the scheme.
- (2) The amount of compensation to which the person is entitled in respect of the compulsory acquisition of the original land is to be reduced by the amount of the increase in the value of the person's interest in the other land as at the relevant valuation date (determined in accordance with section 5A).
- (3) An amount by which the other land increases in value may not be set off against compensation payable to the person (for the original land or otherwise) in accordance with subsection (2) more than once.
- (4) If the other land is subsequently subject to compulsory acquisition for the purposes of the scheme mentioned in subsection (1), the compensation to which the person is entitled for the other land includes the amount which was

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deducted from the person's compensation for the original land in accordance with subsection (2) (despite the no-scheme principle).

- (5) If part only of the other land is subject to compulsory acquisition, the compensation to which the person is entitled by virtue of subsection (4) is to be reduced accordingly.
- (6) Subsections (4) and (5) apply in relation to a person (a “successor”) who derives title from the person mentioned in that subsection as if the original land had been acquired from the successor.
- (7) This section does not apply in relation to compensation which is to be assessed in accordance with section 261 of the Highways Act 1980 (benefit to vendor to be taken into account in assessing compensation on certain compulsory acquisitions for highway purposes).

#### **6C Increased compensation if other land loses value**

- (1) This section applies where—
  - (a) land (the “original land”) belonging to a person is acquired for the purposes of a scheme,
  - (b) as a result of the acquisition of the original land the person receives compensation for injurious affection in relation to other land, and
  - (c) the other land is subsequently subject to compulsory acquisition for the purposes of that scheme.
- (2) The compensation to which the person is entitled as a result of the compulsory acquisition of the other land is to be reduced by the amount which the person received in compensation for injurious affection in relation to the other land as a result of the acquisition of the original land.
- (3) Subsection (2) applies in relation to a person (a “successor”) who derives title from the person mentioned in that subsection as if the compensation for injurious affection had been paid to the successor.

#### **6D Meaning of “scheme” etc.**

- (1) For the purposes of sections 6A, 6B and 6C, the “scheme” in relation to a compulsory acquisition means the scheme of development underlying the acquisition (subject to subsections (2) to (5)).
- (2) Where the acquiring authority is authorised to acquire land in connection with the development of an area designated as—
  - (a) an urban development area by an order under section 134 of the Local Government, Planning and Land Act 1980,
  - (b) a new town by an order under section 1 of the New Towns Act 1981, or
  - (c) a Mayoral development area by a designation under section 197 of the Localism Act 2011,the scheme is the development of any land for the purposes for which the area is or was designated.

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- (3) Where land is acquired for regeneration or redevelopment which is facilitated or made possible by a relevant transport project, the scheme includes the relevant transport project (subject to section 6E).
- (4) For the purposes of subsection (3) and section 6E—
  - (a) a “relevant transport project” means a transport project carried out in the exercise of a statutory function or by the exercise of compulsory purchase powers (regardless of whether it is carried out before, after or at the same time as the regeneration or redevelopment), and
  - (b) where different parts of the works comprised in such a transport project are first opened for use on different dates, each part is to be treated as a separate relevant transport project.
- (5) If there is a dispute as to what is to be taken to be the scheme (the “underlying scheme”) then, for the purposes of this section, the underlying scheme is to be identified by the Upper Tribunal as a question of fact, subject as follows—
  - (a) the underlying scheme is to be taken to be the scheme provided for by the Act, or other instrument, which authorises the compulsory acquisition unless it is shown (by either party) that the underlying scheme is a scheme larger than, but incorporating, the scheme provided for by that instrument, and
  - (b) except by agreement or in special circumstances, the Upper Tribunal may permit the acquiring authority to advance evidence of such a larger scheme only if that larger scheme is one identified in the following read together—
    - (i) the instrument which authorises the compulsory acquisition, and
    - (ii) any documents made available with it.
- (6) In the application of no-scheme rule 3 in relation to the acquisition of land for or in connection with the construction of a highway (the “scheme highway”) the reference in that rule to “any other project” includes a reference to any other highway that would meet the same or substantially the same need as the scheme highway would have been constructed to meet.

### **6E Further provisions in relation to relevant transport projects**

- (1) This section has effect for the purposes of section 6D(3).
- (2) The scheme referred to in that section includes the relevant transport project only if—
  - (a) regeneration or redevelopment was part of the published justification for the relevant transport project,
  - (b) the works comprised in the relevant transport project are first opened for use after the period of 5 years beginning with [F822nd September 2017] ,
  - (c) the instrument authorising the compulsory acquisition of the land which is acquired for regeneration or redevelopment was made or prepared in draft on or after [F922nd September 2017] ,
  - (d) the compulsory acquisition of that land is authorised before the end of the period of 5 years beginning with the day on which the works

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- comprised in the relevant transport project are first opened for use, and
- (e) that land is in the vicinity of land comprised in the relevant transport project.
- (3) In assessing compensation payable to a person in respect of the compulsory acquisition of that land, the scheme is to be treated as if it did not include the relevant transport project if the person acquired the land—
- (a) after plans for the relevant transport project were announced, but
- (b) before 8 September 2016.
- (4) Subsections (5) and (6) set out how subsection (2)(b) should be applied if a claim for compensation is made by a person (the “claimant”)—
- (a) during the period of 5 years mentioned in that subsection, and
- (b) before the works are first opened for use.
- (5) Compensation is to be assessed on the basis that the works will first be opened for use after the period of 5 years unless the acquiring authority confirms that, in the authority's opinion, the works will first be opened during that period (in which case compensation is to be assessed on the basis that the works will first be opened for use during that period).
- (6) If the basis on which compensation was assessed proves to be incorrect—
- (a) the claimant's entitlement to any compensation which the claimant has already been awarded is not affected,
- (b) the acquiring authority must give the claimant a notice informing the claimant that the basis on which the compensation was assessed was incorrect,
- (c) the claimant may make a further claim for compensation in respect of the compulsory acquisition, and
- (d) for the purposes of the Limitation Act 1980, the further claim for compensation accrues on the day the claimant receives the notice.”
- (4) Omit—
- (a) section 15 (planning permission to be assumed for acquiring authority's proposals), and
- (b) Schedule 1 (actual or prospective development relevant for purposes of sections 6, 7 and 8).
- (5) In section 6(3) of the Land Compensation Act 1973 (reduction of compensation where land is benefited)—
- (a) for “section 6” substitute “ section 6A ”, and
- (b) for “section 7” substitute “ section 6B ”.
- (6) In section 78 of the Housing Act 1988 (supplementary provisions relating to vesting, acquisition and compensation) omit subsections (3) and (4).

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#### Textual Amendments

- F8** Words in s. 32(3) substituted (22.9.2017) by [The Neighbourhood Planning Act 2017 \(Commencement No. 2\) Regulations 2017 \(S.I. 2017/936\)](#), [reg. 6](#)
- F9** Words in s. 32(3) substituted (22.9.2017) by [The Neighbourhood Planning Act 2017 \(Commencement No. 2\) Regulations 2017 \(S.I. 2017/936\)](#), [reg. 7](#)

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#### Commencement Information

**I26** S. 32 in force at 22.9.2017 by [S.I. 2017/936](#), [reg. 3\(b\)](#) (with [reg. 4](#))

### 33 Repeal of Part 4 of the Land Compensation Act 1961

- (1) In the Land Compensation Act 1961 omit—
  - (a) Part 4 (compensation where permission for additional development granted after acquisition), and
  - (b) Schedule 3 (application of Part 4 to certain cases).
- (2) In section 38(1) of that Act (service of notices) omit “or Part IV”.
- (3) In section 141 of the Local Government, Planning and Land Act 1980 (vesting by order of land in urban development corporation) omit subsection (5A) (no compensation payable under Part 4 of the Land Compensation Act 1961 by virtue of such an order).
- (4) In consequence of the amendments made by this section the following are repealed or revoked—
  - (a) section 66 of the Planning and Compensation Act 1991;
  - (b) Schedule 14 to that Act;
  - (c) paragraph 25 of Schedule 15 to that Act;
  - (d) paragraph 14 of Schedule 14 to the Government of Wales Act 1998;
  - (e) paragraph 15 of Schedule 1 to the Fire and Rescue Services Act 2004;
  - (f) the first paragraph 3 in Part 1 of Schedule 2 to the Welsh Development Agency (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005 (SI 2005/3226);
  - (g) paragraph 2 of Schedule 8 to the Housing and Regeneration Act 2008;
  - (h) paragraph 1 of Schedule 2 to the Localism Act 2011 (Consequential Amendments) Order 2012 (SI 2012/961).
- (5) The repeals and revocations made by this section have effect in relation only to an acquisition or sale of an interest in land in relation to which the date of completion (within the meaning of Part 4 of the Land Compensation Act 1961) falls on or after the day on which this section comes into force.

#### Commencement Information

**I27** S. 33 in force at 22.9.2017 by [S.I. 2017/936](#), [reg. 3\(c\)](#)

### 34 Time limit for confirmation notices

- (1) In section 15 of the Acquisition of Land Act 1981 (notices to be served and published etc after confirmation of compulsory purchase order) after subsection (3) insert—
 

“(3A) The acquiring authority must comply with subsections (1) and (3) before the end of—

  - (a) the period of 6 weeks beginning with the day on which the order is confirmed, or
  - (b) such longer period beginning with that day as may be agreed in writing between the acquiring authority and the confirming authority.

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- (3B) If the acquiring authority fails to comply with subsections (1) and (3) in accordance with subsection (3A), the confirming authority may—
- (a) take any steps that the acquiring authority was required but has failed to take to comply with those subsections, and
  - (b) recover the reasonable costs of doing so from the acquiring authority.”
- (2) The amendment made by this section applies only in relation to a compulsory purchase order which is confirmed after this section comes into force.

#### Commencement Information

**I28** S. 34 in force at 22.9.2017 by S.I. 2017/936, reg. 3(d)

### 35 Compensation for disturbance

For section 47 of the Land Compensation Act 1973 (compensation in respect of land subject to business tenancy) substitute—

#### “47 Compensation in respect of land subject to business tenancy

- (1) This section applies where—
- (a) in pursuance of an enactment providing for the acquisition or taking of possession of land compulsorily an acquiring authority—
    - (i) acquires the interest of the landlord in land subject to a tenancy, or
    - (ii) acquires the interest of the tenant in, or takes possession of, land subject to a tenancy, and
  - (b) before the authority acquired the interest or took possession of the land, the tenant under the tenancy was carrying on a trade or business on the land.
- (2) The principles in subsections (3) and (4) are to be applied in assessing the compensation payable by the authority to the landlord or the tenant in respect of the acquisition of the interest in or the taking of possession of the land or, as the case may be, under section 121 of the Lands Clauses Consolidation Act 1845 or section 20 of the Compulsory Purchase Act 1965 (tenants from year to year etc).
- (3) Regard must be had to—
- (a) the likelihood of the continuation or renewal of the tenancy,
  - (b) in the case of a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (security of tenure for business tenants) applies, the right of the tenant to apply for the grant of a new tenancy,
  - (c) the total period for which the tenancy may reasonably have been expected to continue, including after any renewal, and
  - (d) the terms and conditions on which a tenancy may reasonably have been expected to be renewed or continued.
- (4) It is to be assumed that neither the acquiring authority nor any other authority possessing compulsory purchase powers have acquired or propose to acquire any interest in the land.”

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### Commencement Information

**I29** S. 35 in force at 22.9.2017 by S.I. 2017/936, reg. 3(e) (with reg. 4)

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

- (1) The Greater London Authority Act 1999 is amended as follows.
- (2) After section 403 insert—

*“Acquisition of land for shared purposes*

### **403A Acquisition of land by the Authority and TfL for shared purposes**

- (1) This section applies where the Authority and Transport for London agree that the purposes for which they may acquire land compulsorily under—
  - (a) section 333ZA of this Act, and
  - (b) paragraph 19(1) of Schedule 11 to this Act or Part 12 of the Highways Act 1980,
 would be advanced by one or both of them acquiring land for a joint project.
- (2) The purposes for which the Authority may acquire land compulsorily under section 333ZA(1) are to be read as if they included the purposes for which Transport for London may acquire land compulsorily.
- (3) The purposes for which Transport for London may acquire land compulsorily under paragraph 19(1) of Schedule 11 to this Act or Part 12 of the Highways Act 1980 are to be read as if they included the purposes for which the Authority may acquire land compulsorily.
- (4) The Authority and Transport for London may agree that one of them is to acquire land on behalf of the other.
- (5) Where subsection (4) applies, a compulsory acquisition is to proceed under—
  - (a) section 333ZA if it is agreed that the Authority will acquire the land, or
  - (b) paragraph 19(1) of Schedule 11 to this Act or Part 12 of the Highways Act 1980 if it is agreed that Transport for London will acquire the land.
- (6) Subsection (7) applies where—
  - (a) the Authority and Transport for London both propose to acquire land compulsorily for a joint project, and
  - (b) the proposed compulsory acquisitions require authorisation by different confirming authorities.
- (7) The proposed compulsory acquisitions are to be treated as requiring the joint authorisation of the confirming authorities.
- (8) The Authority or Transport for London may acquire land by agreement for the same purposes as those for which that body may acquire land compulsorily by virtue of subsection (2) or (3).



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- (9) The joint project mentioned in subsection (1) is to be treated as the scheme for the purposes of the no-scheme principle in section 6A of the Land Compensation Act 1961 (impact of scheme to be disregarded when assessing value of land for compulsory purchase).

#### **403B Acquisition of land by MDC and TfL for shared purposes**

- (1) This section applies where a Mayoral development corporation and Transport for London agree that the purposes for which they may acquire land compulsorily under—
- (a) section 207 of the Localism Act 2011, and
  - (b) paragraph 19(1) of Schedule 11 to this Act or Part 12 of the Highways Act 1980,
- would be advanced by one or both of them acquiring land for a joint project.
- (2) The purposes for which the Mayoral development corporation may acquire land compulsorily under section 207 of the Localism Act 2011 are to be read as if they included the purposes for which Transport for London may acquire land compulsorily.
- (3) The purposes for which Transport for London may acquire land compulsorily under paragraph 19(1) of Schedule 11 to this Act or Part 12 of the Highways Act 1980 are to be read as if they included the purposes for which the Mayoral development corporation may acquire land compulsorily.
- (4) The Mayoral development corporation and Transport for London may agree that one of them is to acquire land on behalf of the other.
- (5) Where subsection (4) applies, a compulsory acquisition is to proceed under—
- (a) section 207 of the Localism Act 2011 if it is agreed that the Mayoral development corporation will acquire the land, or
  - (b) paragraph 19(1) of Schedule 11 to this Act or Part 12 of the Highways Act 1980 if it is agreed that Transport for London will acquire the land.
- (6) Subsection (7) applies where—
- (a) the Mayoral development corporation and Transport for London both propose to acquire land compulsorily for a joint project, and
  - (b) the proposed compulsory acquisitions require authorisation by different confirming authorities.
- (7) The proposed compulsory acquisitions are to be treated as requiring the joint authorisation of the confirming authorities.
- (8) The Mayoral development corporation or Transport for London may acquire land by agreement for the same purposes as those for which that body may acquire land compulsorily by virtue of subsection (2) or (3).
- (9) The joint project mentioned in subsection (1) is to be treated as the scheme for the purposes of the no-scheme principle in section 6A of the Land Compensation Act 1961 (impact of scheme to be disregarded when assessing value of land for compulsory purchase)."

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- (3) In paragraph 20 of Schedule 11 (limitations on Transport for London's power to acquire land compulsorily), after “provided by” insert “ section 403A, 403B or ”.

#### Commencement Information

**I30** S. 36 in force at 22.9.2017 by S.I. 2017/936, reg. 3(f)

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

- (1) The Housing and Planning Act 2016 is amended in accordance with subsections (2) to (4).
- (2) In section 203 (power to override easements and other rights)—
- (a) in the opening words of subsection (2)(b), for “13 July 2016” substitute “ the relevant day ”,
  - (b) in subsection (2)(b)(i), after “specified authority” insert “ or a specified company acting on behalf of a specified authority ”,
  - (c) in the opening words of subsection (5)(b), for “13 July 2016” substitute “ the relevant day ”, and
  - (d) in subsection (5)(b)(i), after “specified authority” insert “ or a specified company acting on behalf of a specified authority ”.
- (3) In section 204 (compensation for overridden easements), for subsection (4) substitute—
- “(4) The authority against which a liability is enforceable by virtue of subsection (3)(a) is—
- (a) where the land to which the compensation relates was vested in or acquired by a company through which the Greater London Authority exercises or has exercised functions in relation to housing or regeneration, the Greater London Authority,
  - (b) where the land was vested in or acquired by a company through which Transport for London exercises or has exercised any of its functions, Transport for London, or
  - (c) in all other cases, the specified or qualifying authority in which the land was vested, or by which the land was acquired or appropriated.”
- (4) In section 205 (interpretation of sections 203 and 204)—
- (a) in the definition of “other qualifying land”, in the opening words of paragraph (g), after “regeneration,” insert “ or vested in or acquired by a company or body through which the Greater London Authority exercises functions in relation to housing or regeneration, ”,
  - (b) in the definition of “qualifying authority”—
    - (i) for the words from “authority in” to “or which” substitute “ person in whom the land was vested, or who ”, and
    - (ii) at the end insert “ (but, for the purposes of section 203(3)(c) and (6)(c), where that person is a company or body through which the Greater London Authority exercises functions in relation to housing or regeneration, the qualifying authority is the Greater London Authority) ”,

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(c) after the definition of “qualifying authority” insert—

““relevant day” means—

- (a) in relation to a specified company which is a company or body through which Transport for London exercises any of its functions, [<sup>F10</sup>19th July 2017], and
- (b) in all other cases, 13 July 2016.”, and

(d) after the definition of “specified authority” insert—

““specified company” means—

- (a) a company or body through which the Greater London Authority exercises functions in relation to housing or regeneration, or
- (b) a company or body through which Transport for London exercises any of its functions;”.

(5) In the Housing and Planning Act 2016 (Commencement No. 2, Transitional Provisions and Savings) Regulations 2016 (S.I. 2016/733), the following regulations are revoked—

- (a) regulation 10 (savings in relation to company through which Greater London Authority exercises functions), and
- (b) regulation 12(3) (substitution of actual date for reference to commencement date).

#### Textual Amendments

**F10** Words in s. 37(4)(c) substituted (19.7.2017) by [The Neighbourhood Planning Act 2017 \(Commencement No. 1\) Regulations 2017 \(S.I. 2017/767\)](#), [reg. 3](#)

#### Commencement Information

**I31** S. 37 in force at 19.7.2017 by [S.I. 2017/767](#), [reg. 2\(i\)](#)

## 38 Timing of advance payments of compensation

(1) The Land Compensation Act 1973 is amended as follows.

(2) In section 52 (right to advance payment of compensation)—

(a) in subsection (4)(b)—

- (i) omit the “or” before sub-paragraph (ii), and
- (ii) at the end insert “, or

(iii) received any further information required under section 52ZC(2)(b).”, and

(b) in subsection (4ZA)(b)—

- (i) omit the “or” before sub-paragraph (ii), and
- (ii) at the end insert “, or

(iii) received any further information required under section 52ZC(2)(b).”

(3) In section 52ZC (land subject to mortgage: supplementary provisions)—

(a) in subsection (3A)(b)—

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- (i) omit the “or” before sub-paragraph (ii), and
- (ii) at the end insert “, or
- (iii) received any further information required under section 52(2A)(b).”, and
- (b) in subsection (3B)(b)—
  - (i) omit the “or” before sub-paragraph (ii), and
  - (ii) at the end insert “, or
  - (iii) received any further information required under section 52(2A)(b).”

#### Commencement Information

**I32** [S. 38](#) in force at 6.4.2018 by [S.I. 2018/252](#), [reg. 3](#) (with [reg. 4](#))

PROSPECTIVE

### 39 Interest on advance payments of compensation

In section 52A of the Land Compensation Act 1973 (right to interest where advance payment made), in subsection (2B), for “the paid amount” substitute “ the amount in respect of which the authority is required to pay interest under section 52B ”.

PROSPECTIVE

### 40 Interest on payments to mortgagee paid late

- (1) Section 52B of the Land Compensation Act 1973 (interest on advance payments of compensation paid late) is amended as follows.
- (2) In the heading, after “compensation” insert “etc.
- (3) In subsection (1)—
  - (a) after “(1B)” insert “, 52ZA(3) or 52ZB(3) ”,
  - (b) after “compensation” insert “ or (as the case may be) a payment to a mortgagee ”, and
  - (c) after “interest” insert “ to the claimant ”.
- (4) In subsection (2), after “(4ZA)” insert “ or (as the case may be) section 52ZC(3A) or (3B) ”.
- (5) In subsection (3)—
  - (a) for “the amount of the advance payment” substitute “ the total amount which the acquiring authority pays under section 52, 52ZA or 52ZB in respect of the claimant (the “paid amount”) ”, and
  - (b) for “by which the advance payment” substitute “ by which the paid amount ”.

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#### 41 Compensation for temporary severance of land after vesting declaration

In Schedule A1 to the Compulsory Purchase (Vesting Declarations) Act 1981 (counter-notice requiring purchase of land not in general vesting declaration), in paragraph 16, after sub-paragraph (3) insert—

“(4) If the vesting date for the specified land is after the vesting date for any land proposed to be acquired, the Upper Tribunal's power to award compensation under section 7 of the Compulsory Purchase Act 1965 includes power to award compensation for any loss suffered by the owner by reason of the temporary severance of the land proposed to be acquired from the specified land.”

##### Commencement Information

I33 S. 41 in force at 19.7.2017 by S.I. 2017/767, reg. 2(j)

### CHAPTER 3

#### CONSEQUENTIAL PROVISION

#### 42 Consequential provision

- (1) The Secretary of State may by regulations make provision in consequence of any provision of this Part.
- (2) Regulations under subsection (1) may amend, repeal or revoke any enactment.
- (3) In subsection (2) “enactment” includes—
  - (a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978, and
  - (b) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales.

##### Commencement Information

I34 S. 2 in force for specified purposes at Royal Assent, see s. 46

### PART 3

#### FINAL PROVISIONS

#### 43 Financial provisions

The following are to be paid out of money provided by Parliament—

- (a) any expenditure incurred under or by virtue of this Act by a Minister of the Crown, a person holding office under Her Majesty or a government department, and

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- (b) any increase attributable to this Act in the sums payable under any other Act out of money so provided.

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#### Commencement Information

**I35** [S. 2](#) in force for specified purposes at Royal Assent, see [s. 46](#)

## 44 Regulations

- (1) Regulations under this Act are to be made by statutory instrument.
- (2) A statutory instrument containing (whether alone or with any other provision) any of the following regulations may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament—
  - (a) regulations under section 29(1), (2) or (3) made by the Secretary of State;
  - (b) regulations under section 42(1) which amend or repeal a provision of primary legislation.
- (3) A statutory instrument containing (whether alone or with any other provision) regulations under section 29(1) or (3) made by the Welsh Ministers may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.
- (4) A statutory instrument containing any of the following regulations and to which subsection (2) does not apply is subject to annulment in pursuance of a resolution of either House of Parliament—
  - (a) regulations under section 25(4);
  - (b) regulations under section 42(1) which do not amend or repeal a provision of primary legislation.
- (5) Regulations under this Act—
  - (a) may make different provision for different purposes or areas;
  - (b) may make provision which applies generally or for particular purposes or areas;
  - (c) may make transitional, transitory or saving provision;
  - (d) may make incidental, supplementary or consequential provision.
- (6) If a draft of regulations under section 29(3) would, apart from this subsection, be treated as a hybrid instrument for the purposes of the Standing Orders of either House of Parliament, it is to proceed in that House as if it were not a hybrid instrument.
- (7) In this section “primary legislation” means—
  - (a) an Act of Parliament, or
  - (b) a Measure or Act of the National Assembly for Wales.

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#### Commencement Information

**I36** [S. 2](#) in force for specified purposes at Royal Assent, see [s. 46](#)

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## 45 Extent

- (1) This Act extends to England and Wales only, subject to subsection (2).
- (2) Section 42 and this Part extend to England and Wales, Scotland and Northern Ireland.

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### Commencement Information

**I37** [S. 2](#) in force for specified purposes at Royal Assent, see [s. 46](#)

## 46 Commencement

- (1) This Act comes into force on such day as the Secretary of State appoints by regulations, subject to subsection (3).
- (2) Regulations under subsection (1) may appoint different days for different purposes or areas.
- (3) The following provisions come into force on the day on which this Act is passed—
  - (a) section 2, for the purposes only of enabling the Secretary of State to make provision by development order under paragraph 8(6) of Schedule 1 to the Town and Country Planning Act 1990;
  - (b) sections 4, 9, 12 and 13 and Schedule 1, to the extent that they confer power on the Secretary of State to make regulations;
  - (c) section 15;
  - (d) section 17;
  - (e) section 42;
  - (f) this Part.
- (4) The Secretary of State may by regulations make such transitional, transitory or saving provision as the Secretary of State considers appropriate in connection with the coming into force of any provision of this Act.

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### Commencement Information

**I38** [S. 2](#) in force for specified purposes at Royal Assent, see [s. 46](#)

## 47 Short title

This Act may be cited as the Neighbourhood Planning Act 2017.

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### Commencement Information

**I39** [S. 2](#) in force for specified purposes at Royal Assent, see [s. 46](#)

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## SCHEDULES

### SCHEDULE 1

Section 4

#### NEW SCHEDULE A2 TO THE PLANNING AND COMPULSORY PURCHASE ACT 2004

- 1 This is the new Schedule A2 to the Planning and Compulsory Purchase Act 2004 referred to in section 4—

#### “SCHEDULE A2

Section 38A(11A)

#### MODIFICATION OF NEIGHBOURHOOD DEVELOPMENT PLANS

##### *Proposals for modification of neighbourhood development plan*

- 1 (1) This Schedule applies if a neighbourhood development plan has effect for a neighbourhood area within the area of a local planning authority.
- (2) A qualifying body is entitled to submit a proposal to the local planning authority for the modification of the neighbourhood development plan.
- (3) The proposal must be accompanied by—
- (a) a draft of the neighbourhood development plan as proposed to be modified (the “draft plan”), and
  - (b) a statement which contains a summary of the proposals and sets out the reasons why the plan should be modified as proposed.
- (4) The proposal must—
- (a) be made in the prescribed form, and
  - (b) be accompanied by other documents and information of a prescribed description.
- (5) The qualifying body must send to prescribed persons a copy of—
- (a) the proposal,
  - (b) the draft plan, and
  - (c) such of the other documents and information accompanying the proposal as may be prescribed.
- (6) The Secretary of State may publish a document setting standards for—
- (a) the preparation of a draft of a neighbourhood development plan as proposed to be modified and other documents accompanying the proposal,
  - (b) the coverage in any document accompanying the proposal of a matter falling to be dealt with in it, and
  - (c) all or any of the collection, sources, verification, processing and presentation of information accompanying the proposal.



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- (7) The documents and information accompanying the proposal (including the draft plan) must comply with those standards.
- 2 (1) A qualifying body may withdraw a proposal at any time before the local planning authority act in relation to the proposal under paragraph 14.
- (2) If—
  - (a) a proposal by a qualifying body is made by an organisation or body designated as a neighbourhood forum, and
  - (b) the designation is withdrawn at any time before the proposal is submitted for independent examination under paragraph 9,
 the proposal is to be treated as withdrawn by the qualifying body at that time.
- (3) If the withdrawal of the designation occurs after the proposal is submitted for independent examination under that paragraph, the withdrawal is not to affect the validity of the proposal.

*Advice and assistance in connection with proposals*

- 3 (1) A local planning authority must give such advice or assistance to a qualifying body as, in all the circumstance, they consider appropriate for the purpose of, or in connection with, facilitating the making of a proposal for the modification of a neighbourhood development plan for a neighbourhood area within their area.
- (2) Nothing in this paragraph is to be read as requiring the giving of financial assistance.

*Requirements to be complied with before proposals made or considered*

- 4 (1) The Secretary of State may by regulations make provision as to requirements that must be complied with before proposals for the modification of a neighbourhood development plan may be submitted to a local planning authority or fall to be considered by a local planning authority.
- (2) The regulations may in particular make provision—
  - (a) as to the giving of notice and publicity,
  - (b) as to the information and documents that are to be made available to the public,
  - (c) as to the making of reasonable charges for anything provided as a result of the regulations,
  - (d) as to consultation with and participation by the public,
  - (e) as to the making and consideration of representations (including the time by which they must be made),
  - (f) requiring prescribed steps to be taken before a proposal of a prescribed description falls to be considered by a local planning authority, and
  - (g) conferring powers or imposing duties on local planning authorities, the Secretary of State or other public authorities.
- (3) The power to make regulations under this paragraph must be exercised to secure that—

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- (a) prescribed requirements as to consultation with and participation by the public must be complied with before a proposal for the modification of a neighbourhood development plan may be submitted to a local planning authority, and
- (b) a statement containing the following information in relation to that consultation and participation must accompany the proposal submitted to the authority—
  - (i) details of those consulted,
  - (ii) a summary of the main issues raised, and
  - (iii) any other information of a prescribed description.

#### *Consideration of proposals by authority*

- 5 (1) A local planning authority may decline to consider a proposal submitted to them if they consider that it is a repeat proposal.
- (2) A proposal (“the proposal in question”) is a “repeat” proposal for the purposes of this paragraph if it meets conditions A and B.
- (3) Condition A is that—
  - (a) in the period of two years ending with the date on which the proposal in question is received, the authority received a proposal under this Schedule (“the earlier proposal”),
  - (b) the authority did not make a neighbourhood development plan in response to the earlier proposal as a result of paragraph 8(4) or 14(4) or (8), and
  - (c) the earlier proposal was the same as or similar to the proposal in question.
- (4) Condition B is that the local planning authority consider that there has been no significant change in circumstances since the earlier proposal was dealt with as mentioned in sub-paragraph (3)(b).
- 6 If a local planning authority decline to consider a proposal under paragraph 5 they must notify the qualifying body of that fact and of their reasons for declining to consider it.
- 7 (1) This paragraph applies if—
  - (a) a proposal has been made to a local planning authority,
  - (b) the authority have not exercised their powers under paragraph 5 to decline to consider it, and
  - (c) the authority consider that the modifications contained in the draft plan to which it relates are so significant or substantial as to change the nature of the neighbourhood development plan which the draft plan would replace.
- (2) The local planning authority must instead consider the proposal under paragraph 6 of Schedule 4B to the principal Act (as applied by sections 38A(3) and 38C(5) of this Act).
- (3) That Schedule is to apply in relation to the proposal as if the proposal had been submitted to the local planning authority under that Schedule.
- 8 (1) This paragraph applies if—

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- (a) a proposal has been made to a local planning authority,
  - (b) the authority have not exercised their power under paragraph 5 to decline to consider it, and
  - (c) paragraph 7 does not apply.
- (2) The authority must consider—
  - (a) whether the qualifying body is authorised for the purposes of a neighbourhood development plan to act in relation to the neighbourhood area concerned as a result of section 61F of the principal Act (as applied by section 38C(2)(a) of this Act),
  - (b) whether the proposal by the body complies with provision made by or under that section,
  - (c) whether the proposal and the documents and information accompanying it (including the draft plan) comply with provision made by or under paragraph 1, and
  - (d) whether the body has complied with the requirements of regulations made under paragraph 4 imposed on it in relation to the proposal.
- (3) The authority must also consider whether the draft plan complies with the provision made by or under sections 38A and 38B.
- (4) The authority must—
  - (a) notify the qualifying body as to whether or not they are satisfied that the matters mentioned in sub-paragraphs (2) and (3) have been met or complied with, and
  - (b) in any case where they are not so satisfied, refuse the proposal and notify the body of their reasons for refusing it.

#### *Requirement to appoint examiner*

- 9 (1) This paragraph applies if—
- (a) a local planning authority have considered the matters mentioned in paragraph 8(2) and (3), and
  - (b) they are satisfied that the matters mentioned there have been met or complied with.
- (2) The local planning authority must submit for independent examination—
- (a) the draft plan, and
  - (b) such other documents as may be prescribed.
- (3) The authority must make such arrangements as they consider appropriate in connection with the holding of the examination.
- (4) The authority may appoint a person to carry out the examination, but only if the qualifying body consents to the appointment.
- (5) If—
- (a) it appears to the Secretary of State that no person may be appointed under sub-paragraph (4), and
  - (b) the Secretary of State considers that it is expedient for an appointment to be made under this sub-paragraph,
- the Secretary of State may appoint a person to carry out the examination.

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- (6) The person appointed must be someone who, in the opinion of the person making the appointment—
  - (a) is independent of the qualifying body and the authority,
  - (b) does not have an interest in any land that may be affected by the draft plan, and
  - (c) has appropriate qualifications and experience.
- (7) The Secretary of State or another local planning authority may enter into arrangements with the authority for the provision of the services of any of their employees as examiners.
- (8) Those arrangements may include—
  - (a) provision requiring payments to be made by the authority to the Secretary of State or other local planning authority, and
  - (b) other provision in relation to those payments and other financial matters.

*What examiner must consider*

- 10** (1) The examiner must first determine whether the modifications contained in the draft plan are so significant or substantial as to change the nature of the neighbourhood development plan which the draft plan would replace.
- (2) The following provisions of this paragraph apply if the examiner determines that the modifications would have that effect.
- (3) The examiner must—
  - (a) notify the qualifying body and the local planning authority of the determination, and
  - (b) give reasons for the determination.
- (4) The qualifying body must decide whether it wishes to proceed with the proposal or withdraw it, and must notify the examiner and the local planning authority of that decision.
- (5) If the qualifying body notifies the examiner that it wishes to proceed with the proposal, the examiner must consider the draft plan and the documents submitted with it under paragraph 8 of Schedule 4B to the principal Act (as applied by sections 38A(3) and 38C(5) of this Act).
- (6) In that event that Schedule is to apply in relation to the draft plan and the documents submitted with it as if they had been submitted to the examiner under that Schedule.
- 11** (1) If paragraph 10(2) does not apply, the examiner must consider the following—
  - (a) whether the draft plan meets the basic conditions (see subparagraph (2));
  - (b) whether the draft plan complies with the provision made by or under sections 38A and 38B;
  - (c) such other matters as may be prescribed.
- (2) A draft plan meets the basic conditions if—

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- (a) having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan,
  - (b) the making of the plan contributes to the achievement of sustainable development,
  - (c) the making of the plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area),
  - (d) the making of the plan does not breach, and is otherwise compatible with, EU obligations, and
  - (e) prescribed conditions are met in relation to the plan and prescribed matters have been complied with in connection with the proposal for the plan.
- (3) The examiner is not to consider any matter that does not fall within sub-paragraph (1) (apart from considering whether the draft plan is compatible with the Convention rights).

#### *Procedure for examination*

- 12** (1) The general rule is that the examination of the issues by the examiner under paragraph 10 or 11 is to take the form of the consideration of written representations.
- (2) But the examiner must cause a hearing to be held for the purpose of receiving oral representations about a particular issue at the hearing—
- (a) in any case where the examiner considers that there are exceptional reasons for doing so, or
  - (b) in such other cases as may be prescribed.
- (3) The following persons are entitled to make oral representations about the issue at the hearing—
- (a) the qualifying body,
  - (b) the local planning authority, and
  - (c) such other persons as may be prescribed.
- (4) The hearing must be in public.
- (5) It is for the examiner to decide how the hearing is to be conducted, including—
- (a) whether a person making oral representations may be questioned by another person and, if so, the matters to which the questioning may relate, and
  - (b) the amount of time for the making of a person's oral representations or for any questioning by another person.
- (6) In making decisions about the questioning of a person's oral representations by another, the examiner must apply the principle that the questioning should be done by the examiner except where the examiner considers that questioning by another is necessary to ensure—
- (a) adequate examination of a particular issue, or
  - (b) a person has a fair chance to put a case.
- (7) Sub-paragraph (5) is subject to regulations under paragraph 15.

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*Recommendation by examiner*

- 13** (1) After considering a draft plan under paragraph 11, the examiner must make a report on the draft plan containing recommendations in accordance with this paragraph (and no other recommendations).
- (2) The report must recommend either—
- (a) that the local planning authority should make the draft plan,
  - (b) that the local planning authority should make the draft plan with the modifications specified in the report, or
  - (c) that the local planning authority should not make the draft plan.
- (3) The only modifications that may be recommended are—
- (a) modifications that the examiner considers need to be made to secure that the draft plan meets the basic conditions mentioned in paragraph 11(2),
  - (b) modifications that the examiner considers need to be made to secure that the draft plan is compatible with the Convention rights,
  - (c) modifications that the examiner considers need to be made to secure that the draft plan complies with the provision made by or under sections 38A and 38B, and
  - (d) modifications for the purpose of correcting errors.
- (4) The report may not recommend that a plan (with or without modifications) should be made if the examiner considers that the plan does not—
- (a) meet the basic conditions mentioned in paragraph 11(2), or
  - (b) comply with the provision made by or under sections 38A and 38B.
- (5) The report must—
- (a) give reasons for each of its recommendations, and
  - (b) contain a summary of its main findings.
- (6) The examiner must send a copy of the report to the qualifying body and the local planning authority.
- (7) The local planning authority must then arrange for the publication of the report in such manner as may be prescribed.

*Functions of authority: modifications proposed by qualifying body*

- 14** (1) This paragraph applies if an examiner has made a report under paragraph 13.
- (2) If the report recommends that the local planning authority should make the draft plan, the authority must do so (subject as follows).
- (3) But if the examiner's report recommends that the authority should make the draft plan with the modifications specified in the report, the authority must make the draft plan with those modifications (subject as follows).
- (4) Sub-paragraph (2) or (3) does not apply if the authority consider that to make the draft plan or (as the case may be) to do so with those modifications would breach, or would otherwise be incompatible with, any EU obligation or any of the Convention rights.

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- (5) If the authority do not make the draft plan on that ground, they must give reasons to the qualifying body for doing so.
- (6) Where sub-paragraph (2) or (3) applies, the authority may make the draft plan with modifications or (as the case may be) modifications other than those specified in the report if—
  - (a) the authority considers the modifications need to be made to secure that the draft plan is compatible with EU obligations and the Convention rights, or
  - (b) the modifications are for the purpose of correcting errors.
- (7) The authority must make the draft plan or (as the case may be) the draft plan with modifications permitted by this paragraph as soon as reasonably practicable and, in any event, by such date as may be prescribed.
- (8) If the examiner's report recommends that the local planning authority should not make the draft plan, the authority must not make the draft plan.

#### *Regulations about examinations*

- 15** (1) The Secretary of State may by regulations make provision in connection with examinations under paragraph 9.
- (2) The regulations may in particular make provision as to—
- (a) the giving of notice and publicity in connection with an examination,
  - (b) the information and documents relating to an examination that are to be made available to the public,
  - (c) the making of reasonable charges for anything provided as a result of the regulations,
  - (d) the making of written or oral representations in relation to draft plans (including the time by which written representations must be made),
  - (e) the written representations which are to be, or which may be or may not be, considered at an examination,
  - (f) the refusal to allow oral representations of a prescribed description to be made at a hearing,
  - (g) the procedure to be followed at an examination (including the procedure to be followed at a hearing),
  - (h) the payment by a local planning authority of remuneration and expenses of the examiner, and
  - (i) the award of costs by the examiner.
- (3) The regulations may in particular impose duties on an examiner which are to be complied with by the examiner in considering the draft plan under paragraphs 10 and 11 and which require the examiner—
- (a) to provide prescribed information to each person within sub-paragraph (4);
  - (b) to publish a draft report containing the recommendations which the examiner is minded to make in the examiner's report under paragraph 13;

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- (c) to invite each person within sub-paragraph (4) or representatives of such a person to one or more meetings at a prescribed stage or prescribed stages of the examination process;
  - (d) to hold a meeting following the issuing of such invitations if such a person requests the examiner to do so.
- (4) Those persons are—
- (a) the qualifying body,
  - (b) the local planning authority, and
  - (c) such other persons as may be prescribed.
- (5) Where the regulations make provision by virtue of sub-paragraph (3)(c) or (d), they may make further provision about—
- (a) the procedure for a meeting;
  - (b) the matters to be discussed at a meeting.

### Interpretation

#### 16 In this Schedule—

“the Convention rights” has the same meaning as in the Human Rights Act 1998;

“the development plan”—

- (a) includes a development plan for the purposes of paragraph 1 of Schedule 8 (transitional provisions);
- (b) does not include so much of a development plan as consists of a neighbourhood development plan under section 38A;

“draft plan” has the meaning given by paragraph 1(3);

“prescribed” means prescribed by regulations made by the Secretary of State.”

#### Commencement Information

**I40** Sch. 1 in force for specified purposes at Royal Assent, see s. 46

**I41** Sch. 1 para. 1 in force at 31.1.2018 in so far as not already in force by S.I. 2018/38, reg. 3(b)

## SCHEDULE 2

Section 10

### COUNTY COUNCILS' DEFAULT POWERS IN RELATION TO DEVELOPMENT PLAN DOCUMENTS

#### 1 The Planning and Compulsory Purchase Act 2004 is amended as follows.

#### Commencement Information

**I42** Sch. 2 para. 1 in force at 16.1.2018 by S.I. 2018/38, reg. 2(c)

#### 2 Schedule A1 (default powers exercisable by Mayor of London or combined authority) is amended in accordance with paragraphs 3 to 8.



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#### Commencement Information

**I43** Sch. 2 para. 2 in force at 16.1.2018 by S.I. 2018/38, reg. 2(c)

- 3 In the heading for “or combined authority” substitute “ , combined authority or county council ”.

#### Commencement Information

**I44** Sch. 2 para. 3 in force at 16.1.2018 by S.I. 2018/38, reg. 2(c)

- 4 After paragraph 7 insert—

#### *“Default powers exercisable by county council*

- 7A In this Schedule—

“upper-tier county council” means a county council for an area for which there is also a district council;

“lower-tier planning authority”, in relation to an upper-tier county council, means a district council which is the local planning authority for an area within the area of the upper-tier county council.

- 7B If the Secretary of State—

- (a) thinks that a lower-tier 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 a development plan document, and
- (b) invites the upper-tier county council to prepare or revise the document,

the upper-tier county council may prepare or revise (as the case may be) the development plan document.

- 7C (1) This paragraph applies where a development plan document is prepared or revised by an upper-tier county council under paragraph 7B.

- (2) The upper-tier county council must hold an independent examination.

- (3) The upper-tier county council—

- (a) must publish the recommendations and reasons of the person appointed to hold the examination, and
- (b) may also give directions to the lower-tier planning authority in relation to publication of those recommendations and reasons.

- (4) The upper-tier county council may—

- (a) approve the document, or approve it subject to specified modifications, as a local development document, or
- (b) direct the lower-tier planning authority to consider adopting the document by resolution of the authority as a local development document.

- 7D (1) Subsections (4) to (7C) of section 20 apply to an examination held under paragraph 7C(2)—

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- (a) with the reference to the local planning authority in subsection (7C) of that section being read as a reference to the upper-tier county council, and
  - (b) with the omission of subsections (5)(c), (7)(b)(ii) and (7B)(b).
- (2) The upper-tier county council must give reasons for anything they do in pursuance of paragraph 7B or 7C(4).
- (3) The lower-tier planning authority must reimburse the upper-tier county council—
  - (a) for any expenditure that the upper-tier county council incur in connection with anything which is done by them under paragraph 7B and which the lower-tier planning authority failed or omitted to do as mentioned in that paragraph;
  - (b) for any expenditure that the upper-tier county council incur in connection with anything which is done by them under paragraph 7C(2).
- (4) In the case of a joint local development document or a joint development plan document, the upper-tier council may apportion liability for the expenditure on such basis as the council considers just between the authorities for whom the document has been prepared.”

#### Commencement Information

**I45** Sch. 2 para. 4 in force at 16.1.2018 by S.I. 2018/38, reg. 2(c)

- 5 (1) Paragraph 8 is amended as follows.
- (2) In sub-paragraph (1)—
    - (a) omit the “or” at the end of paragraph (a), and
    - (b) at the end of paragraph (b) insert “, or
    - (c) under paragraph 7B by an upper-tier county council.”
  - (3) In sub-paragraph (2)(a)—
    - (a) for “or 6(4)(a)” substitute “, 6(4)(a) or 7C(4)(a)”, and
    - (b) for “or the combined authority” substitute “, the combined authority or the upper-tier county council”.
  - (4) In sub-paragraph (3)(a) for “or the combined authority” substitute “, the combined authority or the upper-tier county council”.
  - (5) In sub-paragraph (5) for “or 6(4)(a)” substitute “, 6(4)(a) or 7C(4)(a)”.
  - (6) In sub-paragraph (7)—
    - (a) in paragraph (b) for “or 6(4)(a)” substitute “, 6(4)(a) or 7C(4)(a)”, and
    - (b) in the words following that paragraph for “or the combined authority” substitute “, the combined authority or the upper-tier county council”.

#### Commencement Information

**I46** Sch. 2 para. 5 in force at 16.1.2018 by S.I. 2018/38, reg. 2(c)

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- 6 In paragraph 9(8) for “or the combined authority” substitute “ , the combined authority or the upper-tier county council ”.

**Commencement Information**

**I47** Sch. 2 para. 6 in force at 16.1.2018 by S.I. 2018/38, reg. 2(c)

- 7 In paragraph 12—
- (a) for “or the combined authority” substitute “ , the combined authority or the upper-tier county council ”, and
  - (b) for “or the authority” substitute “ , the authority or the council ”.

**Commencement Information**

**I48** Sch. 2 para. 7 in force at 16.1.2018 by S.I. 2018/38, reg. 2(c)

- 8 In paragraph 13(1)—
- (a) for “or a combined authority” substitute “ , a combined authority or an upper-tier county council ”, and
  - (b) for “or the authority” substitute “ , the authority or the council ”.

**Commencement Information**

**I49** Sch. 2 para. 8 in force at 16.1.2018 by S.I. 2018/38, reg. 2(c)

- 9 In section 17(8) (document a local development document only if adopted or approved) after paragraph (d) insert—
- “(e) is approved by an upper-tier county council (as defined in that Schedule) under paragraph 7C of that Schedule.”

**Commencement Information**

**I50** Sch. 2 para. 9 in force at 16.1.2018 by S.I. 2018/38, reg. 2(c)

- 10 In section 27A (default powers exercisable by Mayor of London or combined authority) for “or combined authority” in both places substitute “ , combined authority or county council ”.

**Commencement Information**

**I51** Sch. 2 para. 10 in force at 16.1.2018 by S.I. 2018/38, reg. 2(c)

SCHEDULE 3

Section 14

PLANNING CONDITIONS: CONSEQUENTIAL AMENDMENTS

- 1 The Town and Country Planning Act 1990 is amended as follows.

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#### Commencement Information

**I52** [Sch. 3 para. 1](#) in force at 1.10.2018 by [S.I. 2018/567](#), [reg. 3\(b\)](#)

#### PROSPECTIVE

- 2 In section 70 (determination of applications: general considerations), after subsection (3) insert—
- “(3A) See also section 100ZA, which makes provision about restrictions on the power to impose conditions under subsection (1)(a) on a grant of planning permission in relation to land in England.”
- 3 In section 72 (conditional grant of planning permission), after subsection (5) insert—
- “(6) See also section 100ZA, which makes provision about restrictions on the power to impose conditions by virtue of this section on a grant of planning permission in relation to land in England.”

#### Commencement Information

**I53** [Sch. 3 para. 3](#) in force at 1.10.2018 by [S.I. 2018/567](#), [reg. 3\(b\)](#)

- 4 In section 73 (determination of applications to develop land without compliance with conditions previously attached), after subsection (2) insert—
- “(2A) See also section 100ZA, which makes provision about restrictions on the power to impose conditions under subsection (2) on a grant of planning permission in relation to land in England.”

#### Commencement Information

**I54** [Sch. 3 para. 4](#) in force at 1.10.2018 by [S.I. 2018/567](#), [reg. 3\(b\)](#)

- 5 In section 90(3) (effect of deemed planning permission) after “except” insert “section 100ZA and”.

#### Commencement Information

**I55** [Sch. 3 para. 5](#) in force at 1.10.2018 by [S.I. 2018/567](#), [reg. 3\(b\)](#)

#### PROSPECTIVE

- 6 In section 93 (provisions supplementary to sections 91 and 92), after subsection (4) insert—
- “(5) Section 100ZA(1) (power to provide for restrictions in relation to conditions or limitations that may be imposed on a grant of planning permission in relation to land in England) does not apply in the case

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of conditions attached to a grant of planning permission as a result of section 91(1)(a) or 92(2).

(6) But section 100ZA(1) applies to the exercise of the powers conferred by section 91(1)(b) and 92(4) and (5).”

#### PROSPECTIVE

7 In section 141 (action by Secretary of State in relation to purchase notice), after subsection (5) insert—

“(6) Section 100ZA(1) (which confers power to provide for restrictions in relation to conditions or limitations that may be imposed on a grant of planning permission for the development of land in England) applies in relation to conditions imposed under or by virtue of subsection (2) or (3) as it applies in relation to conditions imposed on a grant of planning permission to develop land which is granted on an application made under Part 3.”

8 In section 177 (grant or modification of planning permission on appeals against enforcement notices), after subsection (4) insert—

“(4A) Section 100ZA (which makes provision about restrictions on the power to impose conditions or limitations on a grant of planning permission in relation to land in England) applies in relation to conditions substituted under subsection (4) as it applies in relation to conditions imposed on a grant of planning permission to develop land which is granted on an application made under Part 3.”

#### Commencement Information

**I56** Sch. 3 para. 8 in force at 1.10.2018 by S.I. 2018/567, reg. 3(b)

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