THE ST HELENS BOROUGH COUNCIL (ST HELENS TOWN CENTRE) COMPULSORY PURCHASE ORDER 2022

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Land Compensation Act 1961 c. 33
s. 6A No-scheme principle

Law In Force

Version 1 of 1

22 September 2017 - Present

Subjects
Planning; Real property
[

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.

(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.

][1]

Notes

1 Ss 6A-6E substituted for ss 6-9 by Neighbourhood Planning Act 2017 c. 20 Pt 2 c.2 s.32 (September 22, 2017: commenced by an amendment)

Part II PROVISIONS DETERMINING AMOUNT OF COMPENSATION > General provisions > s. 6A No-scheme principle

Key Legal Concepts Library

Statutory Annotations

Section 6A

Introduction: Amendment Note

This section is inserted by the Neighbourhood Planning Act 2017s.32 (which replaces ss.6–9 with ss.6A–6E); for information on the background to the insertion (including Explanatory Notes and Ministerial Statements) see the annotations to that section.

Definitions Note (Sections 6A–6C):

Section 6D defines "scheme".

Analysis Note:

Subsection (1) — see Key Legal Concept: **Land**.

Table of Amendments

✓	1	Pt II s. 6A	Ss 6A-6E substituted for ss 6-9 by Neighbourhood Planning Act 2017 c. 20, Pt 2 c. 2 s. 32 *September 22, 2017: commenced by an amendment*

Commencement

Pt II s. 6A	Date not available

Town and Country Planning Act 1990 c. 8
s. 226 Compulsory acquisition of land for development and other planning purposes.


Law In Force With Amendments Pending

View proposed draft amended version

Version 4 of 4

7 June 2006 - Present

Subjects
Planning

Keywords
Compulsory purchase; Development; Local authorities' powers and duties; Planning control; Power to promote well-being

226.— Compulsory acquisition of land for development and other planning purposes.

(1) A local authority to whom this section applies shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily any land in their area [...][1] — [

(a) if the authority think that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land; or

][2]

(b) [which][3] is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated.

[

(1A) But a local authority must not exercise the power under paragraph (a) of subsection (1) unless they think that the development, re-development or improvement is likely to contribute to the achievement of any one or more of the following objects–

(a) the promotion or improvement of the economic well-being of their area;

(b) the promotion or improvement of the social well-being of their area;

(c) the promotion or improvement of the environmental well-being of their area.

][4] [...][5] [

(2A) The Secretary of State must not authorise the acquisition of any interest in Crown land unless–

(a) it is an interest which is for the time being held otherwise than by or on behalf of the Crown, and

(b) the appropriate authority consents to the acquisition.

][6]

(3) Where a local authority exercise their power under subsection (1) in relation to any land, they shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily—

(a) any land adjoining that land which is required for the purpose of executing works for facilitating its development or use; or

(b) where that land forms part of a common or open space or fuel or field garden allotment, any land which is required for the purpose of being given in exchange for the land which is being acquired.

(4) It is immaterial by whom the local authority propose that any activity or purpose mentioned in subsection (1) or (3)(a) should be undertaken or achieved (and in particular the local authority need not propose to undertake an activity or to achieve that purpose themselves).

(5) Where under subsection (1) the Secretary of State has power to authorise a local authority to whom this section applies to acquire any land compulsorily he may, after the requisite consultation, authorise the land to be so acquired by another authority, being a local authority within the meaning of this Act.

(6) Before giving an authorisation under subsection (5), the Secretary of State shall—

(a) if the land is in a non-metropolitan county [in England] [7] , consult with the councils of the county and the district;

(b) if the land is in a metropolitan district, consult with the council of the district; [...] [8]

[

(bb) if the land is in Wales, consult with the council of the county or county borough; and

] [8]

(c) if the land is in a London borough, consult with the council of the borough.

(7) The Acquisition of Land Act 1981 shall apply to the compulsory acquisition of land under this section.

(8) The local authorities to whom this section applies are the councils of counties, [county boroughs,] [9] districts and London boroughs.

[

(9) Crown land must be construed in accordance with Part 13.

] [10]

Notes

1 Word repealed by Planning and Compulsory Purchase Act 2004 c. 5 Sch.9 para.1 (October 31, 2004: repeal came into force on August 6, 2004 as SI 2004/2097 for the purpose of the making of or making provision for secondary legislation; October 31, 2004 as SI 2004/2593 otherwise)
2 Substituted by Planning and Compulsory Purchase Act 2004 c. 5 Pt 8 s.99(2)(b) (October 31, 2004)
3 Word inserted by Planning and Compulsory Purchase Act 2004 c. 5 Pt 8 s.99(2)(c) (October 31, 2004)
4 Added by Planning and Compulsory Purchase Act 2004 c. 5 Pt 8 s.99(3) (October 31, 2004)
5 Repealed by Planning and Compulsory Purchase Act 2004 c. 5 Sch.9 para.1 (October 31, 2004: repeal came into force on August 6, 2004 as SI 2004/2097 for the purpose of the making of or making provision for secondary legislation; October 31, 2004 as SI 2004/2593 otherwise)
6 Added by Planning and Compulsory Purchase Act 2004 c. 5 Sch.3 para.3(2) (June 7, 2006)
7 Words inserted after first "county" by Local Government (Wales) Act 1994 c. 19 Sch.6(II) para.24(6)(a) (April 1, 1996)

Notes

8 Added by Local Government (Wales) Act 1994 c. 19 Sch.6(II) para.24(6)(b) (April 1, 1996)
9 Words inserted by Local Government (Wales) Act 1994 c. 19 Sch.6(II) para.24(6)(b) (April 1, 1996)
10 Added by Planning and Compulsory Purchase Act 2004 c. 5 Sch.3 para.3(3) (June 7, 2006)

Part IX ACQUISITION AND APPROPRIATION OF LAND FOR PLANNING PURPOSES, ETC. > Acquisition for planning and public purposes > s. 226 Compulsory acquisition of land for development and other planning purposes.

Key Legal Concepts Library

Statutory Annotations

Section 226

Derivation of section

Subsections (1)–(4) replace the Town and Country Planning Act 1971s.112(1)(1A) to (1C); and the Local Government, Planning and Land Act 1980s.91(1).

Subsection (5) replaces the Town and Country Planning Act 1971s.112(2).

Subsection (6) replaces the Town and Country Planning Act 1971s.112(3); and the Local Government Act 1972s.179(3), Sch.30.

Subsection (7) replaces the Town and Country Planning Act 1971s.112(4); the Acquisition of Land Act 1981Sch.6 Pt.I; and the Acquisition of Land Act 1981Sch.4 para.1.

Subsection (8) replaces the Town and Country Planning Act 1971s.112(5); and the Local Government Act 1972s.179(3), Sch.30.

Navigation Note:

For application to Crown property see s.292A, Pt XIII generally and ss.325A, 329A, 330A (see also Key Legal Concept: **Crown Application**); for provision about public money see ss.303–314; for church property see s.318; for the Isles of Scilly see s.319; for determination of procedure for proceedings and appeals see ss.319A, 323, 333(1); for local inquiries and representations see ss.320-322B; for rights of entry see ss.324–325A; for compliance with formal requirements see s.327A; for educational-institutions' settled land see s.328; for service of notices see ss.329, 329A, 333(4) and (4A) (see also Key Legal Concept: **Service**); for power to require information about interests in land see ss.330, 330A; for offences by bodies corporate see s.331; for combination of applications see s.332; for overriding of old local enactments see s.335; for commencement and extent see s.337.

Definitions Note:

The principal interpretation section for this Act is s.336 — definitions include: "acquiring authority", "address", "advertisement", "agriculture", "appropriate Minister", "bridleway", "Broads", "building", "buildings or works", "building operations", "caravan site", "clearing", "common", "compulsory acquisition", "conservation area", "county" in relation to Wales (s336(1A)), "development", "development order", "development plan", "disposal", "electronic communication", "enactment" (see also Key Legal Concept: **Enactment**), "enforcement notice", "engineering operations", "erection", "footpath", "functions", "government department" (see also Key Legal Concept: **Government Department**; Key Legal Concept: **Minister of the Crown**), "highway", "improvement", "land" (see also Key Legal Concept: **Land**), "lease", "local authority" (s.336(1), (10) — see also Key Legal Concept: **Local Authorities**), "local highway authority", "local planning authority", "London

borough" (see also Key Legal Concept: **London**), "means of access", "mineral-working deposit", "minerals", "Minister" (see also Key Legal Concept: **Minister of the Crown**); "mortgage", "open space", "owner", "the planning Acts", "planning decision", "prescribed", "statutory undertaker" (s.262), "stop notice" (s.183), "tenancy", "title" (s.336(8)), "tree preservation order" (s.198), "use", "Valuation Office", "waste".

Abbreviations Note:

"the 1944 Act" — the Town and Country Planning Act 1944.

"the 1947 Act" — the Town and Country Planning Act 1947.

"the 1954 Act" — the Town and Country Planning Act 1954.

"the 1959 Act" — the Town and Country Planning Act 1959.

"the 1962 Act" — the Town and Country Planning Act 1962.

"the 1968 Act" — the Town and Country Planning Act 1968.

"the 1971 Act" — the Town and Country Planning Act 1971.

Subordinate Legislation Note:

For provision about powers and procedure for subordinate legislation under this Act see s.333; the default method by which matters are to be "prescribed" is by regulations — see s.336(1).

Quasi-Legislation Note:

See the Code of Conduct for planning inspectors and others issued by the Planning Inspectorate in June 2017.

Case Note:

> "8 CPOs made by a local authority under section 226 must be confirmed by the Secretary of State. If the owner of the land which is the subject of a CPO objects to the order, the Secretary of State will appoint an independent inspector to conduct a public inquiry. The inspector's report and recommendation will be considered by the Secretary of State when a decision whether or not to confirm the CPO is taken. Where land has been acquired by a local authority for planning purposes, the authority may dispose of the land to secure the best use of that or other land, or to secure the construction of buildings needed for the proper planning of the area: section 233 (1).
>
> "9 Compulsory acquisition by public authorities for public purposes has always been in this country entirely a creature of statute: *Rugby Joint Water Board v Shaw-Fox [1973] AC 202*,214. The courts have been astute to impose a strict construction on statutes expropriating private property, and to ensure that rights of compulsory acquisition granted for a specified purpose may not be used for a different or collateral purpose: see Taggart, Expropriation, Public Purpose and the Constitution, in The Golden Metwand and the Crooked Cord: Essays on Public Law in Honour of Sir William Wade QC, (1998) ed Forsyth and Hare, 91." (*Sainsbury's Supermarkets Ltd, R (on the application of) v Wolverhampton City Council [2010] UKSC 20*.)

Case Note:

"44 It is, of course, the case that section 226(1A) of the 1990 Act has permitted the compulsory purchase of land for planning purposes if one or other of the well being objectives are also satisfied, but that is a somewhat different context from the acquisition of land purely for one or more of the well-being objectives set out in section 2 of the [Local Government Act 2000]. Whilst the arguments before me did not descend to consideration of factual scenarios other than that which exists in the present case, it would not be difficult to envisage situations in which, if a local authority was truly empowered to acquire land compulsorily for the 'economic, social or environmental well being' of the local area, some quite radical and startling acquisitions might be sought to be justified. That seems to me not to have been the likely Parliamentary intention behind passing the Act and my inclination is to the view (supported by the court's normally strict view of the use of compulsory purchase powers: see paragraph 34 above) that the 2000 Act was passed with a clear appreciation that sections 120 and 121 of the [Local Government Act 1972] remained in force with full effect and that section 2 of the 2000 Act was not intended to alter the situation in which land could not be acquired compulsorily by a local authority simply for the 'benefit, improvement or development' of the local area. That can be achieved only by agreement.

45 To that extent, it seems to me that the Secretary of State was right to say that the CPO in this case would not be justified on the basis of a combined use of section 2 and section 121. Section 121 could not apply because of the prohibition of its use in the above circumstances by subsection 2(a)." (*R. (on the application of Barnsley MBC) v Secretary of State for Communities and Local Government [2012] EWHC 1366 (Admin)*.)

Case Note:

"The Secretary of State was entitled to disagree with the inspector's recommendation and confirm a compulsory purchase order on the basis that there was a compelling case in the public interest for the order as part of a regeneration scheme involving the relocation of a football stadium in North London." (Westlaw case summary of *Alliance Spring Co Ltd v First Secretary of State [2005] EWHC 18 (Admin)*.)

Case Note:

"There was nothing in the Town and Country Planning Act 1990 s.226(1) to require the Secretary of State, when making a compulsory purchase order, to consider whether, on a balance of probabilities, the development to which the order related would actually occur." (Westlaw case summary of *Chesterfield Properties Plc v Secretary of State for the Environment, Transport and the Regions (1998) 76 P. and C.R. 117*.)

Case Note:

"To meet the requirements of s.226 of the 1990 Act the appropriation had to be required in order to secure the carrying out of the development. In this context, 'required' means more than 'convenient'

and less than 'indispensable'; it means 'necessary in the circumstances of the case'." (Westlaw case summary of *R. v Leeds City Council Ex p. Leeds Industrial Cooperative Society Ltd (1997) 73 P. and C.R. 70*.)

Case Note:

For illustrative cases see: *R. (on the application of Hall) v First Secretary of State [2006] EWHC 2393 (Admin)*; *Gala Leisure Ltd v Secretary of State for the Environment, Transport and the Regions (2001) 82 P. and C.R. 11*; *Miles v Secretary of State for the Environment, Transport and the Regions [2000] J.P.L. 192*.

Subsection (1)

See Key Legal Concept: **Secretary of State**.

Think — see Key Legal Concept: **Levels of Certainty**.

Subsection (2A)

See Key Legal Concept: **The Crown**.

Subsection (5)

See Key Legal Concept: **Consultation**.

Subsection (6)

See Key Legal Concept: **England and Wales**.

Table of Amendments

✓	4	Pt IX s. 226(9)	Added by Planning and Compulsory Purchase Act 2004 c. 5, Sch. 3 para. 3(3) *June 7, 2006*
		Pt IX s. 226(2A)	Added by Planning and Compulsory Purchase Act 2004 c. 5, Sch. 3 para. 3(2) *June 7, 2006*
	3	Pt IX s. 226(2)	Repealed by Planning and Compulsory Purchase Act 2004 c. 5, Sch. 9 para. 1 *October 31, 2004: repeal came into force on August 6, 2004 as SI 2004/2097 for the purpose of the making of or making provision for secondary legislation; October 31, 2004 as SI 2004/2593 otherwise*
		Pt IX s. 226(1A)	Added by Planning and Compulsory Purchase Act 2004 c. 5, Pt 8 s. 99(3)

		October 31, 2004
	Pt IX s. 226(1)(b)	Word inserted by Planning and Compulsory Purchase Act 2004 c. 5, Pt 8 s. 99(2)(c) *October 31, 2004*
	Pt IX s. 226(1)(a)	Substituted by Planning and Compulsory Purchase Act 2004 c. 5, Pt 8 s. 99(2)(b) *October 31, 2004*
	Pt IX s. 226(1)	Word repealed by Planning and Compulsory Purchase Act 2004 c. 5, Sch. 9 para. 1 *October 31, 2004: repeal came into force on August 6, 2004 as SI 2004/2097 for the purpose of the making of or making provision for secondary legislation; October 31, 2004 as SI 2004/2593 otherwise*
2	Pt IX s. 226(8)	Words inserted by Local Government (Wales) Act 1994 c. 19, Sch. 6(II) para. 24(6)(b) *April 1, 1996*
	Pt IX s. 226(6)(bb)	Added by Local Government (Wales) Act 1994 c. 19, Sch. 6(II) para. 24(6)(b) *April 1, 1996*
	Pt IX s. 226(6)(a)	Words inserted after first "county" by Local Government (Wales) Act 1994 c. 19, Sch. 6(II) para. 24(6)(a) *April 1, 1996*
1		*see commencement below*

Proposed Draft Amendments

N/A	Pt IX s. 226(1B)	Added by Levelling-up and Regeneration Bill 2022-23 (HL Bill 84) Pt 9 s. 165 (Lords' Committee Stage, February 20, 2023) *Not yet in force*

Commencement

Pt IX s. 226	August 24, 1990 1990 c. 8 Pt XV s. 337(2)

Extent

Pt IX s. 226(1)-(9)	England, Wales

Town and Country Planning Act 1990 c. 8
s. 70 Determination of applications: general considerations.

Law In Force With Amendments Pending

View proposed draft amended version

Version 8 of 9

19 July 2017 - Present

Subjects
Planning

70.— Determination of applications: general considerations.

(1) Where an application is made to a local planning authority for planning permission—

(a) subject to [section 62D(5) and] [1] sections 91 and 92, they may grant planning permission, either unconditionally or subject to such conditions as they think fit; or

(b) they may refuse planning permission.

[

(1A) Where an application is made to a local planning authority for permission in principle—

(a) they may grant permission in principle; or

(b) they may refuse permission in principle.

] [2]

(2) In dealing with [an application for planning permission or permission in principle] [3] the authority shall have regard [to—] [4] [

(a) the provisions of the development plan, so far as material to the application,

[

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

] [5] [

(aa) any considerations relating to the use of the Welsh language, so far as material to the application;

] [6]

(b) any local finance considerations, so far as material to the application, and

(c) any other material considerations.

] [4]

[

(2ZZA) The authority must determine an application for technical details consent in accordance with the relevant permission in principle. This is subject to subsection (2ZZC).

(2ZZB) An application for technical details consent is an application for planning permission that—

(a) relates to land in respect of which permission in principle is in force,

(b) proposes development all of which falls within the terms of the permission in principle, and

(c) particularises all matters necessary to enable planning permission to be granted without any reservations of the kind referred to in section 92.

(2ZZC) Subsection (2ZZA) does not apply where—

(a) the permission in principle has been in force for longer than a prescribed period, and

(b) there has been a material change of circumstances since the permission came into force.

"Prescribed" means prescribed for the purposes of this subsection in a development order.

]7 [

(2ZA) Subsection (2)(aa) applies only in relation to Wales.

]8 [

(2A) [Subsections (1A), (2)(b) and (2ZZA) to (2ZZC) do not] 10 apply in relation to Wales.

]9

(3) Subsection (1) has effect subject to [section 65] 11 and to the following provisions of this Act, to sections 66, 67, 72 and 73 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and to section 15 of the Health Services Act 1976.

[

(3B) For the purposes of subsection (2)(aza) (but subject to subsections (3D) and (3E)) a draft neighbourhood development plan is a "postexamination 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 postexamination 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

(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)(aza) 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.

] [12] [

(4) In this section—

"local finance consideration" means—

(a) a grant or other financial assistance that has been, or will or could be, provided to a relevant authority by a Minister of the Crown, or

(b) sums that a relevant authority has received, or will or could receive, in payment of Community Infrastructure Levy;

"Minister of the Crown" has the same meaning as in the Ministers of the Crown Act 1975;

"relevant authority" means—

(a) a district council;

(b) a county council in England;

(c) the Mayor of London;

(d) the council of a London borough;

(e) a Mayoral development corporation;

(f) an urban development corporation;

(g) a housing action trust;

(h) the Council of the Isles of Scilly;

(i) the Broads Authority;

(j) a National Park authority in England;

(k) the Homes and Communities Agency; or

(l) a joint committee established under section 29 of the Planning and Compulsory Purchase Act 2004.

][13]

Notes

1 Words inserted by Planning (Wales) Act 2015 anaw. 4 Sch.4 para.5 (March 1, 2016 in relation to developments of national significance and secondary consents; not yet in force otherwise)
2 Added by Housing and Planning Act 2016 c. 22 Pt 6 s.150(3)(a) (July 12, 2016)
3 Words substituted by Housing and Planning Act 2016 c. 22 Sch.12 para.11(2) (July 13, 2016)
4 Word and s.70(2)(a)-(c) substituted for words by Localism Act 2011 c. 20 Pt 6 c.7 s.143(2) (January 15, 2012)
5 Added by Neighbourhood Planning Act 2017 c. 20 Pt 1 s.1(2) (July 19, 2017)
6 Added by Planning (Wales) Act 2015 anaw. 4 Pt 6 s.31(2) (January 4, 2016 as SI 2015/1987)
7 Added by Housing and Planning Act 2016 c. 22 Pt 6 s.150(3)(b) (July 12, 2016)
8 Added by Planning (Wales) Act 2015 anaw. 4 Pt 6 s.31(3) (January 4, 2016 as SI 2015/1987)
9 Added by Localism Act 2011 c. 20 Pt 6 c.7 s.143(3) (January 15, 2012)
10 Words substituted by Housing and Planning Act 2016 c. 22 Sch.12 para.11(3) (July 13, 2016)
11 Substituted by Planning and Compensation Act 1991 c. 34 Sch.7 para.14 (July 17, 1992)
12 Added by Neighbourhood Planning Act 2017 c. 20 Pt 1 s.1(3) (July 19, 2017)
13 Added by Localism Act 2011 c. 20 Pt 6 c.7 s.143(4) (January 15, 2012)

Town and Country Planning Act 1990 c. 8
s. 61W England: requirement to carry out pre-application consultation

Law In Force With Amendments Pending

View proposed draft amended version

Version 3 of 3

13 July 2016 - Present

Subjects
Planning

Keywords
Consultation; Development orders; Planning applications; Publicity
[

61W [England: requirement][2] to carry out pre-application consultation

(1) Where—

(a) a person proposes to make an application for planning permission [, or permission in principle,][3] for the development of any land in England, and

(b) the proposed development is of a description specified in a development order,

the person must carry out consultation on the proposed application in accordance with subsections (2) and (3).

(2) The person must publicise the proposed application in such manner as the person reasonably considers is likely to bring the proposed application to the attention of a majority of the persons who live at, or otherwise occupy, premises in the vicinity of the land.

(3) The person must consult each specified person about the proposed application.

(4) Publicity under subsection (2) must—

(a) set out how the person ("P") may be contacted by persons wishing to comment on, or collaborate with P on the design of, the proposed development, and

(b) give such information about the proposed timetable for the consultation as is sufficient to ensure that persons wishing to comment on the proposed development may do so in good time.

(5) In subsection (3) *"specified person"* means a person specified in, or of a description specified in, a development order.

(6) Subsection (1) does not apply—

(a) if the proposed application is an application under section 293A, or

(b) in cases specified in a development order.

(7) A person subject to the duty imposed by subsection (1) must, in complying with that subsection, have regard to the advice (if any) given by the local planning authority about local good practice.

][1]

Notes

1 Added by Localism Act 2011 c. 20 Pt 6 c.4 s.122(1) (November 15, 2011 for the purpose specified in 2011 c.20 s.240(5)(l); December 17, 2013 otherwise)

2 Word substituted by Planning (Wales) Act 2015 anaw. 4 Pt 4 s.17(4) (September 6, 2015 for the purposes of enabling the Welsh Ministers to exercise any function of making regulations or orders by statutory instrument under any enactment as amended by 2015 anaw 4 Pts 3-8; March 1, 2016 subject to transitional provisions specified in SI 2016/52 art.6 otherwise)

3 Words inserted by Housing and Planning Act 2016 c. 22 Sch.12 para.4 (July 13, 2016)

Part III CONTROL OVER DEVELOPMENT > England: consultation before applying for planning permission or permission in principle > s. 61W England: requirement to carry out pre-application consultation

Town and Country Planning Act 1990 c. 8
s. 61X Duty to take account of responses to consultation

Law In Force With Amendments Pending

Version 2 of 2

13 July 2016 - Present

Subjects
Planning

Keywords
Consultation; Development orders; Planning applications; Planning authorities' powers and duties; Responses
[

61X Duty to take account of responses to consultation

(1) Subsection (2) applies where a person—

(a) has been required by section 61W(1) to carry out consultation on a proposed application for planning permission [or permission in principle] [2] , and

(b) proposes to go ahead with making an application for planning permission [or permission in principle] [2] (whether or not in the same terms as the proposed application).

(2) The person must, when deciding whether the application that the person is actually to make should be in the same terms as the proposed application, have regard to any responses to the consultation that the person has received.

] [1]

Notes

1 Added by Localism Act 2011 c. 20 Pt 6 c.4 s.122(1) (November 15, 2011 for the purpose specified in 2011 c.20 s.240(5)(l); December 17, 2013 otherwise)
2 Words inserted by Housing and Planning Act 2016 c. 22 Sch.12 para.5 (July 13, 2016)

Part III CONTROL OVER DEVELOPMENT > England: consultation before applying for planning permission or permission in principle > s. 61X Duty to take account of responses to consultation

Human Rights Act 1998 c. 42
Schedule 1 THE ARTICLES
para. 1

Law In Force

View proposed draft amended version

Version 1 of 1

2 October 2000 - Present

Subjects
Constitutional law; Human rights

Keywords
Constitutional rights; Human rights
RIGHTS AND FREEDOMS

Right to life

Article 2

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Prohibition of torture

Article 3

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Prohibition of slavery and forced labour

Article 4

1. No one shall be held in slavery or servitude.

2. No one shall be required to perform forced or compulsory labour.

3. For the purpose of this Article the term *"forced or compulsory labour"* shall not include:

(a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;

(b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

(c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

(d) any work or service which forms part of normal civic obligations.

Right to liberty and security

Article 5

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

Right to a fair trial

Article 6

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

No punishment without law

Article 7

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

Right to respect for private and family life

Article 8

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Freedom of thought, conscience and religion

Article 9

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Freedom of expression

Article 10

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health

or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Freedom of assembly and association

Article 11

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Right to marry

Article 12

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

Prohibition of discrimination

Article 14

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Restrictions on political activity of aliens

Article 16

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

Prohibition of abuse of rights

Article 17

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

Limitation on use of restrictions on rights

Article 18

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

The Convention

This Schedule sets out the text of applicable provisions of the Convention.

Quasi-Legislation Note:

See Guidance — Independent Human Rights Act Review — the Review will consider how the Human Rights Act is working in practice and whether any change is needed, issued by the Ministry of Justice.

Article 5

Case Note:

For discussion of the appropriate balance of the right to liberty and security and the need to detain people in order to prevent a breach of the peace, see*Austin v Commissioner of Police of the Metropolis [2009] UKHL 5*.

Table of Amendments

✓	1		*see commencement below*

Proposed Draft Amendments

!	N/A	Sch. 1(I) para. 1	Repealed by Bill of Rights Bill 2022-23 (HC Bill 117) Sch. 5 para. 2 (Commons' Second Reading, Date to be appointed) *date to be appointed*

Commencement

Sch. 1(I) para. 1	October 2, 2000 SI 2000/1851 art. 2

Extent

Sch. 1(I) para. 1	United Kingdom

Human Rights Act 1998 c. 42
Schedule 1 THE ARTICLES
para. 1

Law In Force

View proposed draft amended version

Version 1 of 1

2 October 2000 - Present

Subjects
Human rights

Keywords
Protection of property; Right to education; Right to free elections

Protection of property

Article 1

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Right to education

Article 2

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

Right to free elections

Article 3

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

Schedule 1 THE ARTICLES > Part II THE FIRST PROTOCOL > para. 1

Key Legal Concepts Library

Statutory Annotations

The First Protocol

This Schedule sets out the text of applicable provisions of the Convention.

Quasi-Legislation Note:

See Guidance — Independent Human Rights Act Review — the Review will consider how the Human Rights Act is working in practice and whether any change is needed, issued by the Ministry of Justice.

Table of Amendments

✓	1	*see commencement below*

Proposed Draft Amendments

!	N/A Sch. 1(II) para. 1	Repealed by Bill of Rights Bill 2022-23 (HC Bill 117) Sch. 5 para. 2 (Commons' Second Reading, Date to be appointed) *date to be appointed*

Commencement

Sch. 1(II) para. 1	October 2, 2000 SI 2000/1851 art. 2

Extent

Sch. 1(II) para. 1	United Kingdom

Primary References

Key Cases Citing

Kerr v Northern Ireland Housing Executive
No Substantial Judicial Treatment
Lands Tribunal (Northern Ireland) - [2013] 1 WLUK 51 - 10 January 2013
Subject: Real property
Case Analysis | [2013] 1 WLUK 51 | [2013] R.V.R. 137 | Judgment

Summary:

Equality Act 2010 c. 15
s. 149 Public sector equality duty

Law In Force

Version 1 of 1

5 April 2011 - Present

Subjects
Employment; Government administration; Local government

Keywords
Public sector equality duty

149 Public sector equality duty

(1) A public authority must, in the exercise of its functions, have due regard to the need to—

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

(2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).

(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

(4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

(5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a) tackle prejudice, and

(b) promote understanding.

(6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

(7) The relevant protected characteristics are—

age;

disability;

gender reassignment;

pregnancy and maternity;

race;

religion or belief;

sex;

sexual orientation.

(8) A reference to conduct that is prohibited by or under this Act includes a reference to—

(a) a breach of an equality clause or rule;

(b) a breach of a non-discrimination rule.

(9) Schedule 18 (exceptions) has effect.

Part 11 ADVANCEMENT OF EQUALITY > Chapter 1 PUBLIC SECTOR EQUALITY DUTY > s. 149 Public sector equality duty

Key Legal Concepts Library

Statutory Annotations

Section 149

Introduction

This section introduces Pt 11. The Government's Explanatory Notes to the Bill for this Act (see Key Legal Concept: **Explanatory Notes**) say as follows:

> "492. This clause imposes a duty, known as the public sector equality duty, on the public bodies listed in Schedule 19 to have due regard to three specified matters when exercising their functions. The three matters are:
>
> - eliminating conduct that is prohibited by the Bill, including breaches of nondiscrimination rules in occupational pension schemes and equality clauses or rules which are read, respectively into a person's terms of work and into occupational pension schemes;
> - advancing equality of opportunity between people who share a protected characteristic and people who do not share it; and
> - fostering good relations between people who share a protected characteristic and people who do not share it.

European Convention on Human Rights

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

European Convention on Human Rights

as amended by Protocols Nos. 11, 14 and 15

supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13 and 16

The text of the Convention is presented as amended by the provisions of Protocol No. 15 (CETS No. 213) as from its entry into force on 1 August 2021 and of Protocol No. 14 (CETS No. 194) as from its entry into force on 1 June 2010. The text of the Convention had previously been amended according to the provisions of Protocol No. 3 (ETS No. 45), which entered into force on 21 September 1970, of Protocol No. 5 (ETS No. 55), which entered into force on 20 December 1971, and of Protocol No. 8 (ETS No. 118), which entered into force on 1 January 1990, and comprised also the text of Protocol No. 2 (ETS No. 44) which, in accordance with Article 5 paragraph 3 thereof, had been an integral part of the Convention since its entry into force on 21 September 1970. All provisions which had been amended or added by these Protocols were replaced by Protocol No. 11 (ETS No. 155), as from the date of its entry into force on 1 November 1998. As from that date, Protocol No. 9 (ETS No. 140), which entered into force on 1 October 1994, was repealed and Protocol No. 10 (ETS No. 146) lost its purpose.

The current state of signatures and ratifications of the Convention and its Protocols as well as the complete list of declarations and reservations are available at www.conventions.coe.int.

Only the English and French versions of the Convention are authentic.

European Court of Human Rights
Council of Europe
67075 Strasbourg cedex
France
www.echr.coe.int

Contents

Convention for the Protection of Human Rights and Fundamental Freedoms

Rome, 4.XI.1950

THE GOVERNMENTS SIGNATORY HERETO, being members of the Council of Europe,

Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th December 1948;

Considering that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared;

Considering that the aim of the Council of Europe is the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realisation of Human Rights and Fundamental Freedoms;

Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the Human Rights upon which they depend;

Being resolved, as the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration,

Affirming that the High Contracting Parties, in accordance with the principle of subsidiarity, have the primary responsibility to secure the rights and freedoms defined in this Convention and the Protocols thereto, and that in doing so they enjoy a margin of appreciation, subject to the supervisory jurisdiction of the European Court of Human Rights established by this Convention,

Have agreed as follows:

ARTICLE 1

Obligation to respect Human Rights

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

SECTION I
RIGHTS AND FREEDOMS

ARTICLE 2

Right to life

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.

ARTICLE 3

Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

ARTICLE 4

Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.

2. No one shall be required to perform forced or compulsory labour.

3. For the purpose of this Article the term "forced or compulsory labour" shall not include:

(a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;

(b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

(c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

(d) any work or service which forms part of normal civic obligations.

ARTICLE 5

Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

ARTICLE 6

Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

ARTICLE 7

No punishment without law

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

ARTICLE 8

Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 9

Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 10

Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

ARTICLE 11

Freedom of assembly and association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

ARTICLE 12

Right to marry

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

ARTICLE 13

Right to an effective remedy

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

ARTICLE 14

Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

ARTICLE 15

Derogation in time of emergency

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

ARTICLE 16

Restrictions on political activity of aliens

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

ARTICLE 17

Prohibition of abuse of rights

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

ARTICLE 18

Limitation on use of restrictions on rights

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

SECTION II
EUROPEAN COURT OF HUMAN RIGHTS

ARTICLE 19

Establishment of the Court

To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a European Court of Human Rights, hereinafter referred to as "the Court". It shall function on a permanent basis.

ARTICLE 20

Number of judges

The Court shall consist of a number of judges equal to that of the High Contracting Parties.

ARTICLE 21

Criteria for office

1. The judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence.

2. Candidates shall be less than 65 years of age at the date by which the list of three candidates has been requested by the Parliamentary Assembly, further to Article 22.

3. The judges shall sit on the Court in their individual capacity.

4. During their term of office the judges shall not engage in any activity which is incompatible with their independence, impartiality or with the demands of a full-time office; all questions arising from the application of this paragraph shall be decided by the Court.

ARTICLE 22

Election of judges

The judges shall be elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority of votes cast from a list of three candidates nominated by the High Contracting Party.

ARTICLE 23

Terms of office and dismissal

1. The judges shall be elected for a period of nine years. They may not be re-elected.

2. The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration.

3. No judge may be dismissed from office unless the other judges decide by a majority of two-thirds that that judge has ceased to fulfil the required conditions.

ARTICLE 24

Registry and rapporteurs

1. The Court shall have a Registry, the functions and organisation of which shall be laid down in the rules of the Court.

2. When sitting in a single-judge formation, the Court shall be assisted by rapporteurs who shall function under the authority of the President of the Court. They shall form part of the Court's Registry.

ARTICLE 25

Plenary Court

The plenary Court shall

(a) elect its President and one or two Vice-Presidents for a period of three years; they may be re-elected;

(b) set up Chambers, constituted for a fixed period of time;

(c) elect the Presidents of the Chambers of the Court; they may be re-elected;

(d) adopt the rules of the Court;

(e) elect the Registrar and one or more Deputy Registrars;

(f) make any request under Article 26, paragraph 2.

ARTICLE 26

Single-judge formation, Committees, Chambers and Grand Chamber

1. To consider cases brought before it, the Court shall sit in a single-judge formation, in committees of three judges, in Chambers of seven judges and in a Grand Chamber of seventeen judges. The Court's Chambers shall set up committees for a fixed period of time.

2. At the request of the plenary Court, the Committee of Ministers may, by a unanimous decision and for a fixed period, reduce to five the number of judges of the Chambers.

3. When sitting as a single judge, a judge shall not examine any application against the High Contracting Party in respect of which that judge has been elected.

4. There shall sit as an *ex officio* member of the Chamber and the Grand Chamber the judge elected in respect of the High Contracting Party concerned. If there is none or if that judge is unable to sit, a person chosen by the President of the Court from a list submitted in advance by that Party shall sit in the capacity of judge.

5. The Grand Chamber shall also include the President of the Court, the Vice-Presidents, the Presidents of the Chambers and other judges chosen in accordance with the rules of the Court. When a case is referred to the Grand Chamber under Article 43, no judge from the Chamber which rendered the judgment shall sit in the Grand Chamber, with the exception of the President of the Chamber and the judge who sat in respect of the High Contracting Party concerned.

ARTICLE 27

Competence of single judges

1. A single judge may declare inadmissible or strike out of the Court's list of cases an application submitted under Article 34, where such a decision can be taken without further examination.

2. The decision shall be final.

3. If the single judge does not declare an application inadmissible or strike it out, that judge shall forward it to a committee or to a Chamber for further examination.

ARTICLE 28

Competence of Committees

1. In respect of an application submitted under Article 34, a committee may, by a unanimous vote,

(a) declare it inadmissible or strike it out of its list of cases, where such decision can be taken without further examination; or

(b) declare it admissible and render at the same time a judgment on the merits, if the underlying question in the case, concerning the interpretation or the application of the Convention or the Protocols thereto, is already the subject of well-established case-law of the Court.

2. Decisions and judgments under paragraph 1 shall be final.

3. If the judge elected in respect of the High Contracting Party concerned is not a member of the committee, the committee may at any stage of the proceedings invite that judge to take the place of one of the members of the committee, having regard to all relevant factors, including whether that Party has contested the application of the procedure under paragraph 1.(b).

ARTICLE 29

Decisions by Chambers on admissibility and merits

1. If no decision is taken under Article 27 or 28, or no judgment rendered under Article 28, a Chamber shall decide on the admissibility and merits of individual applications submitted under Article 34. The decision on admissibility may be taken separately.

2. A Chamber shall decide on the admissibility and merits of inter-State applications submitted under Article 33. The decision on admissibility shall be taken separately unless the Court, in exceptional cases, decides otherwise.

ARTICLE 30

Relinquishment of jurisdiction to the Grand Chamber

Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the Protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber.

ARTICLE 31

Powers of the Grand Chamber

The Grand Chamber shall

(a) determine applications submitted either under Article 33 or Article 34 when a Chamber has relinquished jurisdiction under Article 30 or when the case has been referred to it under Article 43;

(b) decide on issues referred to the Court by the Committee of Ministers in accordance with Article 46, paragraph 4; and

(c) consider requests for advisory opinions submitted under Article 47.

ARTICLE 32

Jurisdiction of the Court

1. The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the Protocols thereto which are referred to it as provided in Articles 33, 34, 46 and 47.

2. In the event of dispute as to whether the Court has jurisdiction, the Court shall decide.

ARTICLE 33

Inter-State cases

Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the Protocols thereto by another High Contracting Party.

ARTICLE 34

Individual applications

The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

ARTICLE 35

Admissibility criteria

1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of four months from the date on which the final decision was taken.

2. The Court shall not deal with any application submitted under Article 34 that

(a) is anonymous; or

(b) is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.

3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:

(a) the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application; or

(b) the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits.

4. The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.

ARTICLE 36

Third party intervention

1. In all cases before a Chamber or the Grand Chamber, a High Contracting Party one of whose nationals is an applicant shall have the right to submit written comments and to take part in hearings.

2. The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings.

3. In all cases before a Chamber or the Grand Chamber, the Council of Europe Commissioner for Human Rights may submit written comments and take part in hearings.

ARTICLE 37

Striking out applications

1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

(a) the applicant does not intend to pursue his application; or

(b) the matter has been resolved; or

(c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.

2. The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course.

ARTICLE 38

Examination of the case

The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities.

ARTICLE 39

Friendly settlements

1. At any stage of the proceedings, the Court may place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the Protocols thereto.

2. Proceedings conducted under paragraph 1 shall be confidential.

3. If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached.

4. This decision shall be transmitted to the Committee of Ministers, which shall supervise the execution of the terms of the friendly settlement as set out in the decision.

ARTICLE 40

Public hearings and access to documents

1. Hearings shall be in public unless the Court in exceptional circumstances decides otherwise.

2. Documents deposited with the Registrar shall be accessible to the public unless the President of the Court decides otherwise.

ARTICLE 41

Just satisfaction

If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.

ARTICLE 42

Judgments of Chambers

Judgments of Chambers shall become final in accordance with the provisions of Article 44, paragraph 2.

ARTICLE 43

Referral to the Grand Chamber

1. Within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Grand Chamber.

2. A panel of five judges of the Grand Chamber shall accept the request if the case raises a serious question affecting the interpretation or application of the Convention or the Protocols thereto, or a serious issue of general importance.

3. If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.

ARTICLE 44

Final judgments

1. The judgment of the Grand Chamber shall be final.
2. The judgment of a Chamber shall become final
   (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or
   (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or
   (c) when the panel of the Grand Chamber rejects the request to refer under Article 43.
3. The final judgment shall be published.

ARTICLE 45

Reasons for judgments and decisions

1. Reasons shall be given for judgments as well as for decisions declaring applications admissible or inadmissible.

2. If a judgment does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

ARTICLE 46

Binding force and execution of judgments

1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

3. If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two-thirds of the representatives entitled to sit on the committee.

4. If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two-thirds of the representatives entitled to sit on the committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph1.

5. If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case.

ARTICLE 47

Advisory opinions

1. The Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and the Protocols thereto.

2. Such opinions shall not deal with any question relating to the content or scope of the rights or freedoms defined in Section I of the Convention and the Protocols thereto, or with any other question which the Court or the Committee of Ministers might have to consider in consequence of any such proceedings as could be instituted in accordance with the Convention.

3. Decisions of the Committee of Ministers to request an advisory opinion of the Court shall require a majority vote of the representatives entitled to sit on the committee.

ARTICLE 48

Advisory jurisdiction of the Court

The Court shall decide whether a request for an advisory opinion submitted by the Committee of Ministers is within its competence as defined in Article 47.

ARTICLE 49

Reasons for advisory opinions

1. Reasons shall be given for advisory opinions of the Court.

2. If the advisory opinion does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

3. Advisory opinions of the Court shall be communicated to the Committee of Ministers.

ARTICLE 50

Expenditure on the Court

The expenditure on the Court shall be borne by the Council of Europe.

ARTICLE 51

Privileges and immunities of judges

The judges shall be entitled, during the exercise of their functions, to the privileges and immunities provided for in Article 40 of the Statute of the Council of Europe and in the agreements made thereunder.

SECTION III
MISCELLANEOUS PROVISIONS

ARTICLE 52

Inquiries by the Secretary General

On receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention.

ARTICLE 53

Safeguard for existing human rights

Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a party.

ARTICLE 54

Powers of the Committee of Ministers

Nothing in this Convention shall prejudice the powers conferred on the Committee of Ministers by the Statute of the Council of Europe.

ARTICLE 55

Exclusion of other means of dispute settlement

The High Contracting Parties agree that, except by special agreement, they will not avail themselves of treaties, conventions or declarations in force between them for the purpose of submitting, by way of petition, a dispute arising out of the interpretation or application of this Convention to a means of settlement other than those provided for in this Convention.

ARTICLE 56

Territorial application

1. Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the present Convention shall, subject to paragraph 4 of this Article, extend to all or any of the territories for whose international relations it is responsible.

2. The Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary General of the Council of Europe.

3. The provisions of this Convention shall be applied in such territories with due regard, however, to local requirements.

4. Any State which has made a declaration in accordance with paragraph 1 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided by Article 34 of the Convention.

ARTICLE 57

Reservations

1. Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this Article.

2. Any reservation made under this Article shall contain a brief statement of the law concerned.

ARTICLE 58

Denunciation

1. A High Contracting Party may denounce the present Convention only after the expiry of five years from the date on which it became a party to it and after six months' notice contained in a notification addressed to the Secretary General of the Council of Europe, who shall inform the other High Contracting Parties.

2. Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under this Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation became effective.

3. Any High Contracting Party which shall cease to be a member of the Council of Europe shall cease to be a Party to this Convention under the same conditions.

4. The Convention may be denounced in accordance with the provisions of the preceding paragraphs in respect of any territory to which it has been declared to extend under the terms of Article 56.

ARTICLE 59

Signature and ratification

1. This Convention shall be open to the signature of the members of the Council of Europe. It shall be ratified. Ratifications shall be deposited with the Secretary General of the Council of Europe.

2. The European Union may accede to this Convention.

3. The present Convention shall come into force after the deposit of ten instruments of ratification.

4. As regards any signatory ratifying subsequently, the Convention shall come into force at the date of the deposit of its instrument of ratification.

5. The Secretary General of the Council of Europe shall notify all the members of the Council of Europe of the entry into force of the Convention, the names of the High Contracting Parties who have ratified it, and the deposit of all instruments of ratification which may be effected subsequently.

DONE AT ROME THIS 4TH DAY OF NOVEMBER 1950, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatories.

Protocol

to the Convention for the Protection of Human Rights and Fundamental Freedoms

Paris, 20.III.1952

THE GOVERNMENTS SIGNATORY HERETO, being members of the Council of Europe,

Being resolved to take steps to ensure the collective enforcement of certain rights and freedoms other than those already included in Section I of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Have agreed as follows:

ARTICLE 1

Protection of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

ARTICLE 2

Right to education

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

ARTICLE 3

Right to free elections

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

ARTICLE 4

Territorial application

Any High Contracting Party may at the time of signature or ratification or at any time thereafter communicate to the Secretary General of the Council of Europe a declaration stating the extent to which it undertakes that the provisions of the present Protocol shall apply to such of the territories for the international relations of which it is responsible as are named therein.

Any High Contracting Party which has communicated a declaration in virtue of the preceding paragraph may from time to time communicate a further declaration modifying the terms of any former declaration or terminating the application of the provisions of this Protocol in respect of any territory.

A declaration made in accordance with this Article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.

ARTICLE 5

Relationship to the Convention

As between the High Contracting Parties the provisions of Articles 1, 2, 3 and 4 of this Protocol shall be regarded as additional Articles to the Convention and all the provisions of the Convention shall apply accordingly.

ARTICLE 6

Signature and ratification

This Protocol shall be open for signature by the members of the Council of Europe, who are the signatories of the Convention; it shall be ratified at the same time as or after the ratification of the Convention. It shall enter into force after the deposit of ten instruments of ratification. As regards any signatory ratifying subsequently, the Protocol shall enter into force at the date of the deposit of its instrument of ratification.

The instruments of ratification shall be deposited with the Secretary General of the Council of Europe, who will notify all members of the names of those who have ratified.

DONE AT PARIS ON THE 20TH DAY OF MARCH 1952, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatory governments.

Protocol No. 4

to the Convention for the Protection of Human Rights and Fundamental Freedoms securing certain rights and freedoms other than those already included in the Convention and in the First Protocol thereto

Strasbourg, 16.IX.1963

THE GOVERNMENTS SIGNATORY HERETO, being members of the Council of Europe,

Being resolved to take steps to ensure the collective enforcement of certain rights and freedoms other than those already included in Section I of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4th November 1950 (hereinafter referred to as the "Convention") and in Articles 1 to 3 of the First Protocol to the Convention, signed at Paris on 20th March 1952,

Have agreed as follows:

ARTICLE 1

Prohibition of imprisonment for debt

No one shall be deprived of his liberty merely on the ground of inability to fulfil a contractual obligation.

ARTICLE 2

Freedom of movement

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

ARTICLE 3

Prohibition of expulsion of nationals

1. No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national.

2. No one shall be deprived of the right to enter the territory of the State of which he is a national.

ARTICLE 4

Prohibition of collective expulsion of aliens

Collective expulsion of aliens is prohibited.

ARTICLE 5

Territorial application

1. Any High Contracting Party may, at the time of signature or ratification of this Protocol, or at any time thereafter, communicate to the Secretary General of the Council of Europe a declaration stating the extent to which it undertakes that the provisions of this Protocol shall apply to such of the territories for the international relations of which it is responsible as are named therein.

2. Any High Contracting Party which has communicated a declaration in virtue of the preceding paragraph may, from time to time, communicate a further declaration modifying the terms of any former declaration or terminating the application of the provisions of this Protocol in respect of any territory.

3. A declaration made in accordance with this Article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.

4. The territory of any State to which this Protocol applies by virtue of ratification or acceptance by that State, and each territory to which this Protocol is applied by virtue of a declaration by that State under this Article, shall be treated as separate territories for the purpose of the references in Articles 2 and 3 to the territory of a State.

5. Any State which has made a declaration in accordance with paragraph 1 or 2 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided in Article 34 of the Convention in respect of all or any of Articles 1 to 4 of this Protocol.

ARTICLE 6

Relationship to the Convention

As between the High Contracting Parties the provisions of Articles 1 to 5 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

ARTICLE 7

Signature and ratification

1. This Protocol shall be open for signature by the members of the Council of Europe who are the signatories of the Convention; it shall be ratified at the same time as or after the ratification of the Convention. It shall enter into force after the deposit of five instruments of ratification. As regards any signatory ratifying subsequently, the Protocol shall enter into force at the date of the deposit of its instrument of ratification.

2. The instruments of ratification shall be deposited with the Secretary General of the Council of Europe, who will notify all members of the names of those who have ratified.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 16th day of September 1963, in English and in French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatory States.

Protocol No. 6

to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty

Strasbourg, 28.IV.1983

THE MEMBER STATES OF THE COUNCIL OF EUROPE, signatory to this Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Considering that the evolution that has occurred in several member States of the Council of Europe expresses a general tendency in favour of abolition of the death penalty;

Have agreed as follows:

ARTICLE 1

Abolition of the death penalty

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

ARTICLE 2

Death penalty in time of war

A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law.

ARTICLE 3

Prohibition of derogations

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

ARTICLE 4

Prohibition of reservations

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

ARTICLE 5

Territorial application

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the date of receipt of such declaration by the Secretary General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the date of receipt of such notification by the Secretary General.

ARTICLE 6

Relationship to the Convention

As between the States Parties the provisions of Articles 1 to 5 of this Protocol shall be regarded as additional Articles to the Convention and all the provisions of the Convention shall apply accordingly.

ARTICLE 7

Signature and ratification

The Protocol shall be open for signature by the member States of the Council of Europe, signatories to the Convention. It shall be subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol unless it has, simultaneously or previously, ratified the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

ARTICLE 8

Entry into force

1. This Protocol shall enter into force on the first day of the month following the date on which five member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 7.

2. In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the date of the deposit of the instrument of ratification, acceptance or approval.

ARTICLE 9

Depositary functions

The Secretary General of the Council of Europe shall notify the member States of the Council of:

(a) any signature;

(b) the deposit of any instrument of ratification, acceptance or approval;

(c) any date of entry into force of this Protocol in accordance with Articles 5 and 8;

(d) any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 28th day of April 1983, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Protocol No. 7

to the Convention for the Protection of Human Rights and Fundamental Freedoms

Strasbourg, 22.XI.1984

THE MEMBER STATES OF THE COUNCIL OF EUROPE, signatory hereto,

Being resolved to take further steps to ensure the collective enforcement of certain rights and freedoms by means of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Have agreed as follows:

ARTICLE 1

Procedural safeguards relating to expulsion of aliens

1. An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:

(a) to submit reasons against his expulsion,

(b) to have his case reviewed, and

(c) to be represented for these purposes before the competent authority or a person or persons designated by that authority.

2. An alien may be expelled before the exercise of his rights under paragraph 1.(a), (b) and (c) of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security.

ARTICLE 2

Right of appeal in criminal matters

1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.

2. This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal.

ARTICLE 3

Compensation for wrongful conviction

When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to the law or the practice of the State concerned, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

ARTICLE 4

Right not to be tried or punished twice

1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.

2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.

3. No derogation from this Article shall be made under Article 15 of the Convention.

ARTICLE 5

Equality between spouses

Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This Article shall not prevent States from taking such measures as are necessary in the interests of the children.

ARTICLE 6

Territorial application

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which the Protocol shall apply and State the extent to which it undertakes that the provisions of this Protocol shall apply to such territory or territories.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date of receipt by the Secretary General of such declaration.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of two months after the date of receipt of such notification by the Secretary General.

4. A declaration made in accordance with this Article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.

5. The territory of any State to which this Protocol applies by virtue of ratification, acceptance or approval by that State, and each territory to which this Protocol is applied by virtue of a declaration by that State under this Article, may be treated as separate territories for the purpose of the reference in Article 1 to the territory of a State.

6. Any State which has made a declaration in accordance with paragraph 1 or 2 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided in Article 34 of the Convention in respect of Articles 1 to 5 of this Protocol.

ARTICLE 7

Relationship to the Convention

As between the States Parties, the provisions of Article 1 to 6 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

ARTICLE 8

Signature and ratification

This Protocol shall be open for signature by member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

ARTICLE 9

Entry into force

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date on which seven member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 8.

2. In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date of the deposit of the instrument of ratification, acceptance or approval.

ARTICLE 10

Depositary functions

The Secretary General of the Council of Europe shall notify all the member States of the Council of Europe of:

(a) any signature;

(b) the deposit of any instrument of ratification, acceptance or approval;

(c) any date of entry into force of this Protocol in accordance with Articles 6 and 9;

(d) any other act, notification or declaration relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 22nd day of November 1984, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Protocol No. 12

to the Convention for the Protection of Human Rights and Fundamental Freedoms

Rome, 4.XI.2000

The member States of the Council of Europe, signatory hereto,

Having regard to the fundamental principle according to which all persons are equal before the law and are entitled to the equal protection of the law;

Being resolved to take further steps to promote the equality of all persons through the collective enforcement of a general prohibition of discrimination by means of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention");

Reaffirming that the principle of non-discrimination does not prevent States Parties from taking measures in order to promote full and effective equality, provided that there is an objective and reasonable justification for those measures,

Have agreed as follows:

ARTICLE 1

General prohibition of discrimination

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

ARTICLE 2

Territorial application

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt by the Secretary General of such declaration.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General of the Council of Europe. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

4. A declaration made in accordance with this Article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.

5. Any State which has made a declaration in accordance with paragraph 1 or 2 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided by Article 34 of the Convention in respect of Article 1 of this Protocol.

ARTICLE 3

Relationship to the Convention

As between the States Parties, the provisions of Articles 1 and 2 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

ARTICLE 4

Signature and ratification

This Protocol shall be open for signature by member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

ARTICLE 5

Entry into force

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which ten member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 4.

2. In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

ARTICLE 6

Depositary functions

The Secretary General of the Council of Europe shall notify all the member States of the Council of Europe of:

(a) any signature;

(b) the deposit of any instrument of ratification, acceptance or approval;

(c) any date of entry into force of this Protocol in accordance with Articles 2 and 5;

(d) any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Rome, this 4th day of November 2000, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

53

Protocol No. 13

to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty in all circumstances

Vilnius, 3.V.2002

THE MEMBER STATES OF THE COUNCIL OF EUROPE, signatory hereto,

Convinced that everyone's right to life is a basic value in a democratic society and that the abolition of the death penalty is essential for the protection of this right and for the full recognition of the inherent dignity of all human beings;

Wishing to strengthen the protection of the right to life guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention");

Noting that Protocol No. 6 to the Convention, concerning the Abolition of the Death Penalty, signed at Strasbourg on 28 April 1983, does not exclude the death penalty in respect of acts committed in time of war or of imminent threat of war;

Being resolved to take the final step in order to abolish the death penalty in all circumstances,

Have agreed as follows:

ARTICLE 1

Abolition of the death penalty

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

ARTICLE 2

Prohibition of derogations

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

ARTICLE 3

Prohibition of reservations

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

ARTICLE 4

Territorial application

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt by the Secretary General of such declaration.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

ARTICLE 5

Relationship to the Convention

As between the States Parties the provisions of Articles 1 to 4 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

ARTICLE 6

Signature and ratification

This Protocol shall be open for signature by member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

ARTICLE 7

Entry into force

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which ten member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 6.

2. In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

ARTICLE 8

Depositary functions

The Secretary General of the Council of Europe shall notify all the member States of the Council of Europe of:

(a) any signature;

(b) the deposit of any instrument of ratification, acceptance or approval;

(c) any date of entry into force of this Protocol in accordance with Articles 4 and 7;

(d) any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Vilnius, this 3rd day of May 2002, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Protocol No. 16

to the Convention on the Protection of Human Rights and Fundamental Freedoms

Strasbourg, 2.X.2013

The member States of the Council of Europe and other High Contracting Parties to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"), signatories hereto,

Having regard to the provisions of the Convention and, in particular, Article 19 establishing the European Court of Human Rights (hereinafter referred to as "the Court");

Considering that the extension of the Court's competence to give advisory opinions will further enhance the interaction between the Court and national authorities and thereby reinforce implementation of the Convention, in accordance with the principle of subsidiarity;

Having regard to Opinion No. 285 (2013) adopted by the Parliamentary Assembly of the Council of Europe on 28 June 2013,

Have agreed as follows:

ARTICLE 1

1. Highest courts and tribunals of a High Contracting Party, as specified in accordance with Article 10, may request the Court to give advisory opinions on questions of principle relating to the interpretation or application of the rights and freedoms defined in the Convention or the protocols thereto.

2. The requesting court or tribunal may seek an advisory opinion only in the context of a case pending before it.

3. The requesting court or tribunal shall give reasons for its request and shall provide the relevant legal and factual background of the pending case.

ARTICLE 2

1. A panel of five judges of the Grand Chamber shall decide whether to accept the request for an advisory opinion, having regard to Article 1. The panel shall give reasons for any refusal to accept the request.

2. If the panel accepts the request, the Grand Chamber shall deliver the advisory opinion.

3. The panel and the Grand Chamber, as referred to in the preceding paragraphs, shall include ex officio the judge elected in respect of the High Contracting Party to which the requesting court or tribunal pertains. If there is none or if that judge is unable to sit, a person chosen by the President of the Court from a list submitted in advance by that Party shall sit in the capacity of judge.

ARTICLE 3

The Council of Europe Commissioner for Human Rights and the High Contracting Party to which the requesting court or tribunal pertains shall have the right to submit written comments and take part in any hearing. The President of the Court may, in the interest of the proper administration of justice, invite any other High Contracting Party or person also to submit written comments or take part in any hearing.

ARTICLE 4

1. Reasons shall be given for advisory opinions.

2. If the advisory opinion does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

3. Advisory opinions shall be communicated to the requesting court or tribunal and to the High Contracting Party to which that court or tribunal pertains.

4. Advisory opinions shall be published.

ARTICLE 5

Advisory opinions shall not be binding.

ARTICLE 6

As between the High Contracting Parties the provisions of Articles 1 to 5 of this Protocol shall be regarded as additional articles to the Convention, and all the provisions of the Convention shall apply accordingly.

ARTICLE 7

1. This Protocol shall be open for signature by the High Contracting Parties to the Convention, which may express their consent to be bound by:

   (a) signature without reservation as to ratification, acceptance or approval; or

   (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

2. The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

ARTICLE 8

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which ten High Contracting Parties to the Convention have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 7.

2. In respect of any High Contracting Party to the Convention which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the expression of its consent to be bound by the Protocol in accordance with the provisions of Article 7.

ARTICLE 9

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

ARTICLE 10

Each High Contracting Party to the Convention shall, at the time of signature or when depositing its instrument of ratification, acceptance or approval, by means of a declaration addressed to the Secretary General of the Council of Europe, indicate the courts or tribunals that it designates for the purposes of Article 1, paragraph 1, of this Protocol. This declaration may be modified at any later date and in the same manner.

ARTICLE 11

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe and the other High Contracting Parties to the Convention of:

(a) a any signature;

(b) the deposit of any instrument of ratification, acceptance or approval;

(c) any date of entry into force of this Protocol in accordance with Article 8;

(d) any declaration made in accordance with Article 10; and

(e) any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 2nd day of October 2013, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to the other High Contracting Parties to the Convention.

European Convention
on Human Rights

European Court of Human Rights
Council of Europe
67075 Strasbourg cedex
France
www.echr.coe.int

ENG

2007 No. 3617

TRIBUNALS AND INQUIRIES, ENGLAND AND WALES

The Compulsory Purchase (Inquiries Procedure) Rules 2007

Made	*15th December 2007*
Laid before Parliament	*8th January 2008*
Coming into force	*29th January 2008*

The Lord Chancellor makes the following Rules in exercise of the powers conferred on him by section 9 of the Tribunals and Inquiries Act 1992[1] and after consultation with the Council on Tribunals:

Notes

1 For the definition of "Minister" for the purposes of section 9, seesection 16 (1) of the Tribunals and Inquiries Act 1992, which is amended by the Government of Wales Act 2006section 160(1), and Schedule 10, paragraph 38, to include the Welsh Ministers.

Extent

Preamble: England, Wales

1.— Citation, commencement and application

(1) These Rules may be cited as the Compulsory Purchase (Inquiries Procedure) Rules 2007 and shall come into force on 29th January 2008.

(2) Subject to rule 22(3) these Rules apply where—

(a) a confirming authority[1] causes a public local inquiry to be held pursuant to subsection (3)(a) of section 13A of the Acquisition of Land Act 1981[2] (compulsory purchase by local or other authority — remaining objections); or

(b) an appropriate authority[3] causes a public local inquiry to be held pursuant to sub-paragraph (3)(a) of paragraph 4A of Schedule 1 to that Act (compulsory purchase by Minister — remaining objections)[4].

Notes

1 For the definition of "confirming authority"seesection 7(1) of the Acquisition of Land Act 1981 (c.67).

2 Section 13A was substituted, with section 13, by section 100(1) and (6) of the Planning and Compulsory Purchase Act 2004 (c.5). A Minister is a confirming authority for the purposes of section 13A. Some, but not all, of the functions of the Secretary of State in authorising compulsory purchase of land in Wales were transferred to the National Assembly for Wales by article 2 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and to the Welsh Ministers by paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006 (c.32).

3 The Minister is the "appropriate authority" for the purposes of paragraph 4A of Schedule 1 to the Acquisition of Land Act 1981seeparagraph 4(8) of Schedule 1 to the Acquisition of Land Act 1981 as inserted by section 101(4) of the Planning and Compulsory Purchase Act 2004. Powers exercisable under section 4A of the Acquisition of Land 1981 in so far as they are exercisable in relation to Wales are now vested in the Welsh Ministers. They were previously transferred to the National Assembly for Wales by article 2 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and to the Welsh Ministers by paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006.

4 Paragraph 4A of Schedule 1 to the Act was inserted by section 101(1) and (4) of the Planning and Compulsory Purchase Act 2004 (c.5).

Wales

[1.— Citation, commencement and application

(1) These Rules may be cited as the Compulsory Purchase (Inquiries Procedure) Rules 2007 and shall come into force on 29th January 2008.

(2) [...]
][1]

Notes

1 Revoked by Compulsory Purchase (Inquiries Procedure) (Wales) Rules 2010/3015 rule 24(2) (January 31, 2011)

Commencement

rule 1(1)-(2)(b): January 29, 2008

Extent

rule 1(1)-(2)(b): England, Wales

Law In Force

2. Interpretation

[(1) In these Rules—

"the Act" means the Acquisition of Land Act 1981;

"assessor" means a person appointed by the authorising authority to sit with an inspector at an inquiry or re-opened inquiry to advise the inspector on such matters arising as the authorising authority may specify;

"authorising authority" means the confirming authority where subsection (3) (a) of section 13A of the Act applies or the appropriate authority where sub-paragraph (3) (a) of paragraph 4A of Schedule 1 to the Act applies;

"business day" means any day other than a Saturday, Sunday, Christmas Day, Good Friday, or a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971;

"document" includes a photograph, map or plan;

"electronic communication" has the meaning given in section 15(1) of the Electronic Communications Act 2000[2];

"inquiry" means a public local inquiry in relation to which these Rules apply;

"inspector" means a person appointed by the authorising authority to hold an inquiry or a re-opened inquiry;

"land" means the land to which an order relates or, where a right over land is proposed to be acquired by an order, the land over which the right would be exercised;

"ministerial order" means an order prepared in draft in accordance with Schedule 1 to the Act;

"non-ministerial order" means an order made and submitted for confirmation in accordance with Part 2 of the Act;

"order" means a compulsory purchase order as defined in section 7 of the Act;

"outline statement", means a written statement of the principal submissions which a person proposes to put forward at an inquiry;

"pre-inquiry meeting" means a meeting held before an inquiry to consider what may be done with a view to securing that the inquiry is conducted efficiently and expeditiously; and where two or more such meetings are held references to the conclusion of a pre-inquiry meeting are references to the conclusion of the final meeting;

"relevant date" means the date of the authorising authority's notice under paragraph (2) or (3) of rule 3;

"remaining objector" means a person who has a remaining objection within the meaning of section 13A or, as the case may be, paragraph 4A (1) of Schedule 1[3];

"statement of case" means a written statement comprising—

(a) full particulars of the case which a person proposes to put forward at the inquiry (including where that person is the acquiring authority[4] the reasons for making the order); and

(b) copies of, or relevant extracts from, any documents referred to in such statements and a list of any documents to which that person intends to refer or which he intends to put in evidence.

(2) In these Rules, and in relation to the use of electronic communications for any purpose of these Rules which is capable of being carried out electronically—

(a) the expression "address" includes any number or address used for the purposes of such communications;
(b) references to statements, notices or other documents, or to copies of such documents, include references to such documents or copies of them in electronic form.

(3) Paragraphs (4) to (7) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Rules to give or send any statement, notice or other document to any other person ("the recipient").

(4) The requirement is to be taken to be fulfilled where the document transmitted by means of the electronic communication is—
(a) capable of being accessed by the recipient,
(b) legible in all material respects, and
(c) sufficiently permanent to be used for subsequent reference.

(5) In paragraph (4), "legible in all material respects" means that the information contained in the document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(6) A requirement in these Rules that any document should be in writing is fulfilled where that document meets the criteria in paragraph (4), and "written" is to be construed accordingly.

(7) Where the electronic communication is received by the recipient outside the recipient's business hours, it is taken to have been received on the next business day.] [1]

Notes

1 Existing rule 2 renumbered as rule 2(1), definitions inserted and rule 2(2)-(7) added by Compulsory Purchase (Inquiries Procedure) (Miscellaneous Amendments and Electronic Communications) Rules 2018/248 Pt 3 rule 9 (April 6, 2018: substitution has effect as specified in SI 2018/248 rule 2(1))

2 Section 15(1) was amended by section 406(1) of, and paragraph 158 of Schedule 17 to, the Communications Act 2003 (c. 21).

3 For the definition of "remaining objection", seesection 13A (1) of, or as the case may be, paragraph 4A (1) of Schedule 1 to the Acquisition of Land Act 1981 (c.67), as inserted by sections 100(6) and 101(4) of the Planning and Compulsory Purchase Act 2004 (c.5).

4 For the definition of "acquiring authority"seesection 7(1) of the Acquisition of Land Act 1981.

Commencement

rule 2 definition of "the Act"- definition of "statement of case" (b): January 29, 2008

Extent

rule 2(1)-(2)(b), (3), (4)-(4)(c), (5), (6), (7): (extent not available)

rule 2 definition of "the Act", definition of "assessor", definition of "authorising authority", definition of "document", definition of "inquiry", definition of "inspector"- definition of "statement of case" (b): England, Wales

Law In Force

[2A.— Application of the Rules where a person is appointed under section 14D of the Act

(1) Where a person is appointed under section 14D of the Act[2], these Rules have effect subject to the modifications in the Schedule.

(2) Where a person's appointment under section 14D of the Act is revoked, these Rules have effect without the modifications in the Schedule and any step taken or thing done before the revocation, which could be taken or done under the Rules (without the modifications), is to have effect as if it had been taken or done under these Rules (without the modifications).
]1

Notes

1 Added by Compulsory Purchase (Inquiries Procedure) (Miscellaneous Amendments and Electronic Communications) Rules 2018/248 Pt 2 rule 5 (April 6, 2018: insertion has effect as specified in SI 2018/248 rule 2(1))

2 Section 14D of the Acquisition of Land Act 1981 (c. 67) was inserted by section 181(2) of the Housing and Planning Act 2016 (c. 22).

Extent

rule 2A(1)-(2): England, Wales

Law In Force

3.— Preliminary action to be taken by the authorising authority

(1) The authorising authority shall give written notice of its intention to cause an inquiry to be held in accordance with paragraph (2) or (3).

(2) In the case of an inquiry which relates to a ministerial order, notice shall be given—

(a) to each remaining objector;

(b) by a date which is not later than 5 weeks after the expiry of the time within which objections to the draft order may be made.

(3) In the case of an inquiry which relates to a non-ministerial order, notice shall be given—

(a) to the acquiring authority and to each remaining objector;

(b) by a date which is not later than 5 weeks after whichever is the later of—

(i) the expiry of the time within which objections to the order may be made; or

(ii) the submission of the order to the authorising authority for confirmation.

(4) At the same time as notice is given under paragraph (1), the authorising authority shall also give written notice to the acquiring authority (where that authority is not the authorising authority) of the substance of each objection made by a remaining objector, and, so far as practicable, the substance of any other objections.

Commencement

rule 3(1)-(4): January 29, 2008

Extent

rule 3(1)-(4): England, Wales

Law In Force

4. Pre-inquiry meetings

If it appears to the authorising authority to be desirable, the authorising authority may cause a pre-inquiry meeting to be held and, where it does so—

(a) the authorising authority shall give notice of its intention to hold a pre-inquiry meeting with the notice required under rule 3(2) or (3);

(b) the pre-inquiry meeting (or, where there is to be more than one, the first pre-inquiry meeting) shall be held not later than 16 weeks after the relevant date; and

(c) the procedures prescribed by rule 5 shall apply.

Commencement

rule 4(a)-(c): January 29, 2008

Extent

rule 4(a)-(c): England, Wales

Law In Force

5.— Pre-inquiry meetings: notices, outline statements, etc

(1) The authorising authority shall cause to be published not later than 3 weeks after the relevant date, in one or more local newspapers circulating in the locality in which the land is situated, a notice of its intention to cause a pre-inquiry meeting to be held.

(2) The acquiring authority shall, not later than 8 weeks after the relevant date, send its outline statement to each remaining objector and, in the case of a non-ministerial order, to the authorising authority.

(3) The authorising authority may by notice in writing require—

(a) any remaining objector, and

(b) any other person who has notified it of his intention or wish to appear at the inquiry,

to send, within 8 weeks of the date of such notice, an outline statement to the authorising authority and to any other person specified in the notice including, in the case of a non-ministerial order, the acquiring authority.

(4) The authorising authority shall give not less than 3 weeks' written notice of the meeting to—

(a) each remaining objector, and

(b) any other person whose presence at the meeting seems to it to be desirable, and

(c) in the case of a non-ministerial order, the acquiring authority.

(5) The authorising authority shall also give notice of the date, time and place of the pre-inquiry meeting by taking either or both of the following steps—

(a) fixing a notice—

(i) to a conspicuous object or place on or near the land; or where the land extends for more than 5 kilometres, at intervals of not more than 5 kilometres; and

(ii) in at least one place in the locality in which the land is situated where public notices are usually posted;

(b) publishing a notice in one or more newspapers circulating in the locality in which the land is situated.

Commencement

rule 5(1)-(5)(b): January 29, 2008

Extent

rule 5(1)-(5)(b): England, Wales

Law In Force

6.— Powers of inspector in respect of pre-inquiry meetings

(1) An inspector shall preside at a pre-inquiry meeting held under rule 4.

(2) Where a pre-inquiry meeting has been held under rule 4, the inspector may hold another meeting and shall arrange for such notice to be given of that other meeting as appears to him to be necessary.

(3) Where no pre-inquiry meeting is held under rule 4, the inspector may hold a pre-inquiry meeting if he thinks it desirable, and shall arrange for not less than 3 weeks' written notice of the meeting to be given to—

(a) the authorising authority;
(b) in the case of a non-ministerial order, the acquiring authority;
(c) each remaining objector;
(d) any other person known at the date of the notice to be entitled to appear at the inquiry; and
(e) any other person whose presence at the meeting appears to him to be desirable.

(4) At a pre-inquiry meeting held under rule 4 or this rule, the inspector shall determine the matters to be discussed and the procedure to be followed, and in particular he may—

(a) require any person present at the meeting who, in his opinion, is behaving in a disruptive manner to leave; and
(b) refuse to permit that person to return or to attend any further pre-inquiry meetings relating to the same inquiry; or
(c) permit that person to return or to attend any further pre-inquiry meetings relating to the same inquiry only on such conditions as he may specify.

Commencement

rule 6(1)-(4)(c): January 29, 2008

Extent

rule 6(1)-(4)(c): England, Wales

Law In Force

7.— Statements of case, etc

(1) The acquiring authority shall send a statement of case to each remaining objector and, in the case of a non-ministerial order, to the authorising authority—

(a) where a pre-inquiry meeting is held pursuant to rule 4 or rule 6(3), not later than 4 weeks after the conclusion of that meeting;

(b) in any other case, not later than 6 weeks after the relevant date.

(2) Unless every document, or the relevant part of every document, which the acquiring authority intends to refer to or put in evidence at the inquiry has been copied to each remaining objector, the acquiring authority shall send to each remaining objector a notice naming each place where a copy of those documents may be inspected free of charge at all reasonable hours until the date of commencement of the inquiry; and each place so named shall be as close as reasonably possible to the land.

(3) The authorising authority may by notice in writing require—

(a) any remaining objector; and

(b) any other person who has notified the authority of an intention to appear at the inquiry,

to send a statement of case to the authorising authority and to any other person specified in the notice (including, in the case of a non-ministerial order, the acquiring authority) within 6 weeks from the date of the notice.

(4) The authorising authority shall supply a copy of the acquiring authority's statement of case to any person who is not a remaining objector but has been required to send a statement of case under paragraph (3).

(5) The authorising authority or an inspector may require any person who has sent a statement of case in accordance with this rule to provide such further information about the matters contained in the statement as the authorising authority or inspector may specify.

(6) The acquiring authority shall afford to any person who so requests a reasonable opportunity to inspect, and where practicable take copies of any statement or document which has been sent to it in accordance with any of the preceding paragraphs of this rule; and shall specify in the statement sent in accordance with paragraph (1) the time and place at which the opportunity will be afforded.

Commencement

rule 7(1)-(6): January 29, 2008

Extent

rule 7(1)-(6): England, Wales

Law In Force

8.— Inquiry timetable

(1) Where a pre-inquiry meeting is held pursuant to rule 4 or 6 the inspector shall, and in any other case may, subject to the provisions of rule 10(1)(b) arrange a timetable for the proceedings at, or

at part of, an inquiry and may at any time vary the timetable; any changes to the timetable shall be notified to every person entitled to appear at the inquiry.

(2) The inspector may specify in a timetable arranged or varied pursuant to this rule the date by which any statement of evidence and summary required by rule 15(1) is to be sent to him.

(3) Where a timetable under paragraph (1) has been arranged, the inspector shall no later than 4 weeks before the start of the inquiry send to every person entitled to appear at the inquiry a copy of the timetable for the proceedings.

Commencement

rule 8(1)-(3): January 29, 2008

Extent

rule 8(1)-(3): England, Wales

Law In Force

9. Notice of appointment of assessor

Where the authorising authority appoints an assessor, it shall give written notice to—

(a) every remaining objector;

(b) any other person who has sent an outline statement under rule 5 or a statement of case under rule 7; and

(c) in the case of a non-ministerial order, the acquiring authority,

of the name of the assessor and of the matters on which he is to advise the inspector.

Commencement

rule 9(a)-(c): January 29, 2008

Extent

rule 9(a)-(c): England, Wales

Law In Force

10.— Date of inquiry

(1) The date fixed by the authorising authority for the holding of an inquiry shall be—

(a) in a case where there is no pre-inquiry meeting, not later than 22 weeks after the relevant date;

(b) in a case where a pre-inquiry meeting (or where there is more than one, the final pre-inquiry meeting) is held pursuant to rule 4 or 6, not later than 8 weeks after the conclusion of that meeting; or

(c) where the authorising authority is satisfied that in all the circumstances of the case it is impracticable to hold the inquiry within the period mentioned in sub-paragraph (a) or (b) (as the case may be), the earliest practicable date after the end of that period.

(2) Unless the authorising authority agrees a lesser period of notice with the acquiring authority (where it is not that authority) and with each remaining objector, the authorising authority shall give not less than 6 weeks' written notice of the date, time and place fixed by it for the holding of an inquiry to—

(a) every remaining objector; and

(b) every person who has sent an outline statement under rule 5 or a statement of case under rule 7.

(3) The authorising authority may vary the date fixed for the holding of an inquiry (whether or not the date as varied complies with the requirements of paragraph (1)), and paragraph (2) shall apply in relation to the varied date as it applied in relation to the date originally fixed.

(4) The authorising authority may also vary the time or place for the holding of an inquiry and shall give such notice of the variation as appears to it to be reasonable.

(5) Where it is satisfied that it is reasonable to do so and having regard to the nature of the order or the draft order, the authorising authority may direct that the inquiry shall be held partly in one place and partly in another place.

Commencement

rule 10(1)-(5): January 29, 2008

Extent

rule 10(1)-(5): England, Wales

Law In Force

11.— Public notice of inquiry

(1) In relation to a ministerial order the acquiring authority shall, not later than 2 weeks before the date fixed for the holding of the inquiry—

(a) display a notice of the inquiry—

(i) by attaching it to the land or to a conspicuous object or place on or near the land; and, where the land extends for more than 5 kilometres, at intervals of not more than 5 kilometres; and

(ii) in at least one place in the locality in which the land is situated where public notices are usually posted; and

(b) publish notice of the inquiry in one or more newspapers circulating in the locality in which the land is situated.

(2) In relation to a non-ministerial order, the acquiring authority shall, not later than 2 weeks before the date fixed for the holding of the inquiry—

(a) unless the authorising authority directs otherwise, comply with the requirements of paragraph (1)(a); and

(b) if the authorising authority so directs, comply with the requirements of paragraph (1)(b).

(3) A notice displayed or published pursuant to paragraphs (1) or (2) shall contain a clear statement indicating the date, time and place of the inquiry, and of the powers under which the order has been

made, together with a description of the land sufficient to identify its approximate location without reference to the map referred to in the order.

Commencement

rule 11(1)-(3): January 29, 2008

Extent

rule 11(1)-(3): England, Wales

Law In Force

12.— Representation of Minister at inquiry

(1) In relation to a ministerial order the acquiring authority—

(a) may be represented at the inquiry by counsel or solicitor or by an officer of its department or other person authorised by the acquiring authority to represent it; and

(b) shall make a representative available at the inquiry to give evidence in elucidation of the statement of case, and such representative shall be subject to cross-examination to the same extent as any other witness.

(2) Nothing in paragraph (1) (b) shall require a representative of the acquiring authority to answer any question which in the opinion of the inspector is directed to the merits of government policy.

Commencement

rule 12(1)-(2): January 29, 2008

Extent

rule 12(1)-(2): England, Wales

Law In Force

13.— Representation of government departments at inquiry

(1) Where a government department (other than the department of a Minister who is the acquiring authority) has made a statement or representation in writing in support of the order or the draft order and the acquiring authority has included that statement in its statement of case, a representative of the department concerned shall be made available to attend the inquiry.

(2) Such a representative shall at the inquiry state the reasons for the view expressed by his department and shall give evidence and be subject to cross-examination to the same extent as any other witness.

(3) Nothing in paragraph (2) shall require a representative of a government department to answer any question which in the opinion of the inspector is directed to the merits of government policy.

Commencement

rule 13(1)-(3): January 29, 2008

Extent

rule 13(1)-(3): England, Wales

Law In Force

14.— Appearances at inquiry

(1) Every remaining objector and any other person who has sent an outline statement under rule 5 or a statement of case under rule 7 shall be entitled to appear at the inquiry.

(2) In relation to a non-ministerial order, the acquiring authority shall also be entitled to appear at the inquiry.

(3) The inspector may permit any other person to appear at the inquiry, and such permission shall not be unreasonably withheld.

(4) Any person entitled or permitted to appear may do so on his own behalf or be represented by counsel, solicitor or any other person.

(5) An inspector may allow one or more persons to appear on behalf of some or all of any persons having a similar interest in the matter under inquiry.

Commencement

rule 14(1)-(5): January 29, 2008

Extent

rule 14(1)-(5): England, Wales

Law In Force

15.— Evidence at inquiry

(1) A person entitled to appear at an inquiry to give, or to call another person to give, evidence at the inquiry by reading a statement of that evidence shall send to the inspector and (in the case of non-ministerial orders) to the acquiring authority, a copy of that statement and, subject to paragraph (2), a written summary of it together with any relevant supporting documents.

(2) No written summary shall be required where the statement mentioned in paragraph (1) contains not more than 1,500 words.

(3) The statement and the summary (if any) shall be sent to the inspector and to the acquiring authority not later than—

(a) 3 weeks before the date fixed for the commencement of the inquiry, or

(b) where, pursuant to rule 10, a timetable has been arranged which specifies a date by which the statement of evidence and summary shall be sent to the inspector, that date.

(4) Unless paragraph (2) applies, only the summary shall be read at the inquiry unless the inspector permits or requires otherwise.

(5) The acquiring authority shall afford to any person who so requests a reasonable opportunity to inspect and, where practicable and on payment of a reasonable charge, take copies of any document sent to or by it in accordance with this rule.

(6) Where the acquiring authority sends a copy of a statement of evidence or a summary to the inspector in accordance with paragraphs (1) and (2), it shall at the same time send a copy to every remaining objector and any other person who has sent an outline statement under rule 5 or a statement of case under rule 7.

Commencement

rule 15(1)-(6): January 29, 2008

Extent

rule 15(1)-(6): England, Wales

Law In Force

16.— Procedure at inquiry

(1) Except as otherwise provided in these Rules, the inspector shall determine the procedure at the inquiry.

(2) Unless in any particular case the inspector, with the consent of the acquiring authority, otherwise determines, the acquiring authority shall begin and shall have the right of final reply; and the other persons entitled or permitted to appear shall be heard in such order as the inspector may determine.

(3) A person entitled to appear at the inquiry by virtue of rule 14(1) or (2) shall be entitled to call evidence, and the acquiring authority and the remaining objectors shall be entitled to cross-examine persons giving evidence, but, subject to paragraphs (2), (4), (5) and (7), the calling of evidence and the cross-examination of persons giving evidence shall otherwise be at the inspector's discretion.

(4) The inspector may refuse to permit—

(a) the giving or production of evidence;

(b) the cross-examination of persons giving evidence; or

(c) the presentation of any other matter,

which he considers to be irrelevant or repetitious; but where he refuses to permit the giving of oral evidence, the person wishing to give the evidence may submit to him in writing any evidence or other matters before the close of the inquiry.

(5) Where a person gives evidence at an inquiry by reading a summary of his statement of evidence, the statement shall, unless he notifies the inspector that he wishes to rely on the contents of that summary only, be treated as tendered in evidence; and the person whose evidence the statement contains shall then be subject to cross-examination on it to the same extent as if it were evidence he had given orally.

(6) The inspector may direct the acquiring authority to provide facilities so that any person appearing at the inquiry may be afforded a reasonable opportunity to inspect, and where practicable and on payment of a reasonable charge, take copies of, any documents open to public inspection.

(7) The inspector may require any person appearing or present at the inquiry who, in his opinion, is behaving in a disruptive manner to leave and may refuse to permit that person to return, or may permit him to return only on such conditions as he may specify; but any such person may submit to him in writing any evidence or other matters before the close of the inquiry.

(8) The inspector may allow any person to alter or add to a statement of case sent under rule 7 so far as may be necessary for the purposes of the inquiry; but he shall (if necessary by adjourning the inquiry) give every remaining objector and any other person who has sent an outline statement under rule 5 or a statement of case under rule 7 an adequate opportunity of considering any new matter of fact or document introduced by the acquiring authority.

(9) The inspector may proceed with an inquiry in the absence of any person entitled to appear at it.

(10) The inspector may take into account any written representation or evidence or any other document received by him from any person before an inquiry opens or during the inquiry, provided that he discloses it at the inquiry.

(11) The inspector may from time to time adjourn the inquiry and, if the date, time and place of the resumed inquiry are announced at the inquiry before the adjournment, no further notice shall be required.

Commencement

rule 16(1)-(11): January 29, 2008

Extent

rule 16(1)-(11): England, Wales

Law In Force

17.— Site inspections

(1) The inspector may make an unaccompanied inspection of the land before or during the inquiry without giving notice of his intention to the persons entitled to appear at the inquiry.

(2) The inspector may, during the inquiry or after its close, inspect the land in the company of a representative of the acquiring authority and any remaining objector; and he shall make such an inspection if so requested by either the acquiring authority or by any remaining objector before or during the inquiry.

(3) Where the inspector intends to make an inspection of the kind described in paragraph (2) he shall announce during the inquiry the date and time at which he proposes to make it.

(4) The inspector shall not be bound to defer an inspection of the kind referred to in paragraph (2) where any person mentioned in that paragraph is not present at the time appointed.

Commencement

rule 17(1)-(4): January 29, 2008

Extent

rule 17(1)-(4): England, Wales

Law In Force

18.— Procedure after inquiry

[(A1) Within 10 business days beginning with the day after the day on which the inquiry closes, the authorising authority must inform the persons listed in rule 19(1) in writing of the expected date of its decision.] [1]

(1) After the close of the inquiry, the inspector shall make a report in writing to the authorising authority which shall include his conclusions and recommendations, or (as the case may be) his reasons for not making any recommendations.

(2) Where an assessor has been appointed, he may, after the close of the inquiry, make a report in writing to the inspector in respect of the matters on which he was appointed to advise.

(3) Where the assessor makes a report in accordance with paragraph (2), the inspector shall append it to his own report and shall state in his own report whether and to what extent he agrees or disagrees with the assessor's report and, where he disagrees with the assessor, his reasons for that disagreement.

(4) If, after the close of the inquiry, the authorising authority—

(a) differs from the inspector on any matter of fact mentioned in, or appearing to it to be material to, a conclusion reached by the inspector, or

(b) takes into consideration any new evidence or new matter of fact, other than a matter of government policy,

and is for that reason disposed to disagree with a recommendation made by the inspector, the authorising authority shall not come to a decision which is at variance with that recommendation without first notifying the persons who appeared at the inquiry of its disagreement and the reasons for it.

(5) The authorising authority shall give every person notified under paragraph (4) an opportunity—

(a) of making written representations to it within 3 weeks of the date of the notification, or

(b) if it has taken into consideration any new evidence or new matter of fact, other than a matter of government policy, of asking within that period for the re-opening of the inquiry.

(6) The authorising authority may, as it thinks fit, cause an inquiry to be re-opened to afford an opportunity for persons to be heard on such matters relating to the order as it may specify, and shall do so if asked by the acquiring authority (in relation to a non-ministerial order) or by a remaining objector in the circumstances and within the period mentioned in paragraph (5); and where an inquiry is re-opened (whether by the same or a different inspector)—

(a) the authorising authority shall send to those persons entitled to appear at the inquiry who appeared at it a written statement of the specified matters; and

(b) paragraphs (2) to (5) of rule 10 shall apply as if—

(i) references to an inquiry were references to a re-opened inquiry; and

(ii) in paragraph (2) of rule 10, for "6 weeks", there were substituted "4 weeks".

Notes

[1] Added by Compulsory Purchase (Inquiries Procedure) (Miscellaneous Amendments and Electronic Communications) Rules 2018/248 Pt 2 rule 6 (April 6, 2018: insertion has effect as specified in SI 2018/248 rule 2(1))

Commencement

rule 18(1)-(6)(b)(ii): January 29, 2008

Extent

rule 18(A1): (extent not available)

rule 18(1)-(6)(b)(ii): England, Wales

Law In Force

19.— Notice of decision

(1) The authorising authority shall give notice of its decision and the reasons for it in writing to—

(a) in the case of a non-ministerial order, the acquiring authority;

(b) each remaining objector;

(c) any person entitled to appear at the inquiry who did appear at it; and

(d) any other person who, having appeared at the inquiry, asked to be notified of the decision.

(2) Where a copy of the inspector's report is not sent with the notice of the decision, the notice shall be accompanied by a copy of his conclusions and of any recommendations made by him; and if a person entitled to be notified of the decision has not received a copy of that report, he shall be supplied with a copy of it on written application made to the authorising authority within 4 weeks of the date of the decision.

(3) In this rule "report" includes any assessor's report appended to the inspector's report but does not include any other documents so appended; but any person who has received a copy of the report may apply in writing to the authorising authority within 6 weeks of the publication of the notice of confirmation of the order pursuant to section 15 of the Act, or making of the order pursuant to paragraph 6 of Schedule 1 to the Act, as the case may be, for an opportunity to inspect such documents and the authorising authority shall afford him that opportunity.

Commencement

rule 19(1)-(3): January 29, 2008

Extent

rule 19(1)-(3): England, Wales

Law In Force

[19A.— Procedure following quashing of decision

(1) Where a decision notified under rule 19(1) is quashed, in full or in part, in proceedings before any court, the authorising authority—

(a) must send to any person who was entitled to appear at the inquiry a written statement of the matters with respect to which further representations are invited for the purposes of the further consideration of the order by the authorising authority;

(b) must afford to those persons the opportunity of making written representations to the authorising authority in respect of those matters or of asking for the re-opening of the inquiry; and

(c) may, as it thinks fit, cause the inquiry to be re-opened (whether by the same or a different inspector) and, if it does so, paragraphs (2) to (5) of rule 10 apply as if references to an inquiry were references to a re-opened inquiry.

(2) Those persons making representations or asking for the inquiry to be re-opened under paragraph (1)(b) must ensure that such representations or requests are received by the authorising authority within 3 weeks beginning with the date of the written statement sent under paragraph (1)(a).
] [1]

Notes

[1] Added by Compulsory Purchase (Inquiries Procedure) (Miscellaneous Amendments and Electronic Communications) Rules 2018/248 Pt 2 rule 7 (April 6, 2018: insertion has effect only to a decision notified under SI 2007/3617 rule 19(1) which is quashed, in full or in part, in proceedings before any court on or after April 6, 2018)

Extent

rule 19A(1)-(2): England, Wales

Law In Force

20. Allowing further time

The authorising authority may at any time in any particular case allow further time for the taking of any step which is to be taken by virtue of these Rules, and references in these Rules to a day by which, or a period within which, any step is to be taken shall be construed accordingly.

Commencement

rule 20: January 29, 2008

Extent

rule 20: England, Wales

Law In Force

[21. Sending of notices

Notices or documents required or authorised to be sent under any of the provisions of these Rules may be sent—

(a) by post; or

(b) by using electronic communications to send the notice or document (as the case may be) to a person at such address as may for the time being be specified by the person for that purpose.

]1

Notes

1 Substituted by Compulsory Purchase (Inquiries Procedure) (Miscellaneous Amendments and Electronic Communications) Rules 2018/248 Pt 3 rule 10 (April 6, 2018: substitution has effect as specified in SI 2018/248 rule 2(1))

Commencement

rule 21: January 29, 2008

Extent

rule 21(a)-(b): (extent not available)

Law In Force

[21A. Withdrawal of consent to use of electronic communications

Where a person is no longer willing to accept the use of electronic communications for any purpose which, under these Rules, is capable of being carried out using such communications, the person must give notice in writing—

(a) withdrawing any address notified to the authorising authority or the inspector for that purpose, or

(b) revoking any agreement entered into with the authorising authority or the inspector for that purpose,

and such withdrawal or revocation is final and takes effect on a date specified by the person in the notice but not less than 7 days after the date on which the notice is given.

]1

Notes

1 Added by Compulsory Purchase (Inquiries Procedure) (Miscellaneous Amendments and Electronic Communications) Rules 2018/248 Pt 3 rule 11 (April 6, 2018: insertion has effect as specified in SI 2018/248 rule 2(1))

Extent

rule 21A(a)-(b): England, Wales

Law In Force

22.— Revocation and savings

(1) Subject to paragraphs (2) and (3), the Compulsory Purchase by Non-Ministerial Acquiring Authorities (Inquiries Procedure) Rules 1990 ("the 1990 Rules") and the Compulsory Purchase by Ministers (Inquiries Procedure) Rules 1994 ("the 1994 Rules") are revoked.

(2) Where on the date on which these Rules come into force the Secretary of State, in accordance with rule 4(a) of the 1990 Rules, or the Minister, in accordance with rule 4 of the 1994 Rules, has given written notice of his intention to hold an inquiry, the 1990 Rules, or, as the case may be, the 1994 Rules shall continue to apply in relation to any inquiry which is caused to be held in England or Wales pursuant to that notice.

(3) [...][1]

Notes

1 Revoked by Compulsory Purchase (Inquiries Procedure) (Wales) Rules 2010/3015 rule 24(2) (January 31, 2011)

Commencement

rule 22(1)-(3): January 29, 2008

Extent

rule 22(1)-(3): England, Wales

Law In Force

On the authority of the Lord Chancellor

Bridget Prentice
Parliamentary Under Secretary of State Ministry of Justice

15th December 2007

[SCHEDULE

Modifications where a person is appointed under section 14D of the Act

Rule 2A

][1]

Notes

1 Added by Compulsory Purchase (Inquiries Procedure) (Miscellaneous Amendments and Electronic Communications) Rules 2018/248 Sch.1 para.1 (April 6, 2018: insertion has effect as specified in SI 2018/248 rule 2(1))

Law In Force

[1. Modification of rule 2

Rule 2(1) (interpretation) has effect as if, for the definition of "inspector", there were substituted—

> ""inspector" means a person appointed by a confirming authority under section 14D of the Act to act instead of it in relation to the confirmation of a non-ministerial order;".

]1

Notes

1 Added by Compulsory Purchase (Inquiries Procedure) (Miscellaneous Amendments and Electronic Communications) Rules 2018/248 Sch.1 para.1 (April 6, 2018: insertion has effect as specified in SI 2018/248 rule 2(1))

Extent

Sch. 1 para. 1: (extent not available)

Law In Force

[2. Modification of rule 4

Rule 4 (pre-inquiry meetings) has effect as if there were substituted—

> **"4.— Pre-inquiry meetings**
>
> (1) If it appears to the inspector to be desirable, he may hold a pre-inquiry meeting, and where he does so, he must arrange for not less than 3 weeks' written notice of the meeting to be given to—
>
> (a) the acquiring authority;
>
> (b) each remaining objector;
>
> (c) any other person known at the date of the notice to be entitled to appear at the inquiry; and
>
> (d) any other person whose presence at the meeting appears to him to be desirable.
>
> (2) The inspector is to determine the matters to be discussed and the procedure to be followed at a pre-inquiry meeting, and in particular he may require any person at the meeting who, in his opinion, is behaving in a disruptive manner to leave.
>
> (3) Where the inspector requires a person to leave under paragraph (2), he may refuse to permit that person to return or to attend any further pre-inquiry meetings relating to the same inquiry, or permit that person to return or to attend any further pre-inquiry meetings relating to the same inquiry only on such conditions as he may specify.".

]1

Notes

1 Added by Compulsory Purchase (Inquiries Procedure) (Miscellaneous Amendments and Electronic Communications) Rules 2018/248 Sch.1 para.1 (April 6, 2018: insertion has effect as specified in SI 2018/248 rule 2(1))

Extent

Sch. 1 para. 2: (extent not available)

Law In Force

[3. Disapplication of rules 5 and 6

Rules 5 and 6 (pre-inquiry meetings) have effect as if they were omitted.

]1

Notes

1 Added by Compulsory Purchase (Inquiries Procedure) (Miscellaneous Amendments and Electronic Communications) Rules 2018/248 Sch.1 para.1 (April 6, 2018: insertion has effect as specified in SI 2018/248 rule 2(1))

Extent

Sch. 1 para. 3: (extent not available)

Law In Force

[4. Modification of rule 7

Rule 7(1)(a) (statements of case) has effect as if the words "or rule 6(3)" were omitted.

]1

Notes

1 Added by Compulsory Purchase (Inquiries Procedure) (Miscellaneous Amendments and Electronic Communications) Rules 2018/248 Sch.1 para.1 (April 6, 2018: insertion has effect as specified in SI 2018/248 rule 2(1))

Extent

Sch. 1 para. 4: (extent not available)

Law In Force

[5. Modification of rule 8

Rule 8(1) (inquiry timetable) has effect as if the words "or 6" were omitted.

]1

Notes

1 Added by Compulsory Purchase (Inquiries Procedure) (Miscellaneous Amendments and Electronic Communications) Rules 2018/248 Sch.1 para.1 (April 6, 2018: insertion has effect as specified in SI 2018/248 rule 2(1))

Extent

Sch. 1 para. 5: (extent not available)

Law In Force

[6. Modification of rule 9

Rule 9(b) (notice of appointment of assessor) has effect as if the words "an outline statement under rule 5 or" were omitted.

]1

Notes

1 Added by Compulsory Purchase (Inquiries Procedure) (Miscellaneous Amendments and Electronic Communications) Rules 2018/248 Sch.1 para.1 (April 6, 2018: insertion has effect as specified in SI 2018/248 rule 2(1))

Extent

Sch. 1 para. 6: (extent not available)

Law In Force

[7. Modification of rule 10

Rule 10 (date of inquiry) has effect as if—

(a) in paragraph (1)(b), the words "or 6" were omitted;

(b) in paragraph (2)(b), the words "an outline statement under rule 5 or" were omitted.

]1

Notes

1 Added by Compulsory Purchase (Inquiries Procedure) (Miscellaneous Amendments and Electronic Communications) Rules 2018/248 Sch.1 para.1 (April 6, 2018: insertion has effect as specified in SI 2018/248 rule 2(1))

Extent

Sch. 1 para. 7(a)-(b): England, Wales

Law In Force

[8. Modification of rules 14(1), 15(6) and 16(8)

Rules 14(1), 15(6) and 16(8) have effect as if the words "an outline statement under rule 5 or" were omitted.

]1

Notes

1 Added by Compulsory Purchase (Inquiries Procedure) (Miscellaneous Amendments and Electronic Communications) Rules 2018/248 Sch.1 para.1 (April 6, 2018: insertion has effect as specified in SI 2018/248 rule 2(1))

Extent

Sch. 1 para. 8: (extent not available)

Law In Force

[9. Modification of rule 18

Rule 18 (procedure after inquiry) has effect as if there were substituted—

"18.— Procedure after inquiry

(1) Within 10 business days beginning with the day after the day on which the inquiry closes, the inspector must inform the relevant parties in writing of the expected date of his decision.

(2) For the purposes of paragraph (1), the relevant parties are—

(a) the acquiring authority;

(b) each remaining objector;

(c) any person entitled to appear at the inquiry who did appear at it; and

(d) any other person who, having appeared at the inquiry, asked to be notified of the decision.

(3) After the close of the inquiry, the inspector must make a report in writing which he must incorporate into the notice of his decision under rule 19(1).

(4) Where an assessor has been appointed, he may, after the close of the inquiry, make a report in writing to the inspector in respect of the matters on which the assessor was appointed to advise.

(5) Where the assessor makes a report in accordance with paragraph (4), the inspector must state in his decision that such a report was made.

(6) If, after the close of an inquiry, the inspector proposes to take into consideration any new evidence or any new matter of fact, other than a matter of government policy, which was not raised at the inquiry and which he considers to be material to his decision, he must not come to a decision without first notifying the persons who appeared at the inquiry of the matter in question.

(7) The inspector must give every person notified under paragraph (6) an opportunity of making written representations to him, or of asking for the re-opening of the inquiry.

(8) Any representations or request to re-open the inquiry under paragraph (7) must be sent to the authorising authority within 3 weeks of the date of the inspector's notification under paragraph (6).

(9) The inspector may as, as he thinks fit, cause an inquiry to be re-opened to afford an opportunity for persons to be heard on such matters relating to the order as he may specify, and must do so if asked by the acquiring authority or by a remaining objector under paragraph (7) and within the period mentioned in paragraph (8).

(10) Where an inquiry is re-opened—

(a) the inspector must send to those persons entitled to appear at the inquiry who appeared at it a written statement of the specified matters referred to in paragraph (9); and

(b) paragraphs (2) to (5) of rule 10 apply as if—

(i) references to an inquiry were references to a re-opened inquiry; and

(ii) in paragraph (2) of rule 10, for "6 weeks", there were substituted "4 weeks".".

]1

Notes

1 Added by Compulsory Purchase (Inquiries Procedure) (Miscellaneous Amendments and Electronic Communications) Rules 2018/248 Sch.1 para.1 (April 6, 2018: insertion has effect as specified in SI 2018/248 rule 2(1))

Extent

Sch. 1 para. 9: (extent not available)

Law In Force

[10. Modification of rule 19

Rule 19 (notice of decision) has effect as if there were substituted—

"19.— Notice of decision

(1) The inspector must give notice of his decision and the reasons for it in writing to—

(a) the acquiring authority;

(b) each remaining objector;

(c) any person entitled to appear at the inquiry who did appear at it; and

(d) any other person who, having appeared at the inquiry, asked to be notified of the decision.

(2) Any person entitled to be notified of the inspector's decision under paragraph (1) may apply, within 4 weeks beginning with the date of the decision, to the authorising authority in writing for an opportunity to see any documents listed in the notice of the inspector's decision or any report made by an assessor, and the authorising authority must afford the person that opportunity.".

]1

Notes

1 Added by Compulsory Purchase (Inquiries Procedure) (Miscellaneous Amendments and Electronic Communications) Rules 2018/248 Sch.1 para.1 (April 6, 2018: insertion has effect as specified in SI 2018/248 rule 2(1))

Extent

Sch. 1 para. 10: (extent not available)

Law In Force

[11. Modification of rule 19A and application of new rule 19B

Rule 19A (procedure following quashing of decision) has effect as if there were substituted—

"19A.— Procedure following quashing of decision

(1) Where a decision notified under rule 19(1) is quashed, in full or in part, in proceedings before any court, the authorising authority—

(a) must send to any person who was entitled to appear at the inquiry a written statement of the matters with respect to which further representations are invited for the purposes of the further consideration of the order by an inspector (who may or may not be the inspector who made the decision originally notified under rule 19(1));

(b) must afford to those persons the opportunity of making written representations to the inspector in respect of those matters or of asking for the re-opening of the inquiry.

(2) Those persons making representations or asking for the inquiry to be re-opened under paragraph (1)(b) must ensure that such representations or requests are received by the authorising authority within 3 weeks beginning with the date of the written statement sent under paragraph (1)(a).

(3) The inspector may, as he thinks fit, cause the inquiry to be re-opened and, if he does so, paragraphs (2) to (5) of rule 10 apply as if references to an inquiry were references to a re-opened inquiry.

19B. Inspector may act in place of the authorising authority

An inspector may in place of the authorising authority take such steps as the authorising authority is required or enabled to take under rules 7(3) and (4) and 20.".

]1

Notes

1 Added by Compulsory Purchase (Inquiries Procedure) (Miscellaneous Amendments and Electronic Communications) Rules 2018/248 Sch.1 para.1 (April 6, 2018: insertion has effect as specified in SI 2018/248 rule 2(1))

Extent

Sch. 1 para. 11: (extent not available)

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules prescribe the procedure to be followed in connection with public local inquiries relating to the authorisation of compulsory purchase orders. They replace the Compulsory Purchase by Non-Ministerial Acquiring Authorities (Inquiries Procedure) Rules 1990 and the Compulsory

Purchase by Ministers (Inquiries Procedure) Rules 1994. They relate to orders where a Minister is either the confirming authority in the case of a non-ministerial order or, in the case of inquiries relating to a compulsory purchase order made in draft by a UK government Minister, the appropriate authority.

In addition to the replacement of the term "statutory objector" by "remaining objector", in consequence of amendments made to the Acquisition of Land Act 1981 by the Planning and Compulsory Purchase Act 2004, there are a number of minor procedural changes. The deadline for serving notice of intention to hold an inquiry has been extended to five weeks from the end of the objection period. This allows for the consent stage in the written representations procedure which objectors may use as an alternative to the inquiry procedure as part of the decision process. The requirement that statements of case for non-ministerial order inquiries should be sent at least 28 days before the date fixed for the inquiry has been removed. Some terms have been modernised. The Rules now refer to the "authorising authority" which is the confirming authority in the case of a non-ministerial Order or the appropriate authority in the case of a Ministerial Order.

Rule 3 provides for written notice from the authorising authority of its intention to cause an inquiry to be held which commences the procedure. Pre-inquiry meetings are dealt with in rules 4 to 6. Rule 7 deals with statements of case and rules 8 to 14 with the inquiry timetable, appointment of assessor, the date and public notification of the inquiry and appearances at the inquiry including the representation of a Minister or government department at inquiry. The handling of evidence at inquiry is dealt with in rule 15 and rules 16 to 19 deals with procedure at the inquiry, site inspections and post-inquiry procedures (including notice of decisions). Rules 20 to 22 deal with the power to extend time, sending of notices by post and revocation (with a saving provision) of the 1990 and 1994 Rules referred to above.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

Table of Contents

Guidance

Town centres and retail

Provides guidance on planning for retail and other town centre uses.

From:
Department for Levelling Up, Housing and Communities (/government/organisations/department-for-levelling-up-housing-and-communities) and Ministry of Housing, Communities & Local Government (/government/organisations/ministry-of-housing-communities-and-local-government)

Published
3 March 2014

Last updated
18 September 2020 —

Contents

This replaces the previous guidance on Ensuring the vitality of town centres. See previous version (https://webarchive.nationalarchives.gov.uk/20190607162710tf_/https://www.gov.uk/guidance/ensuring-the-vitality-of-town-centres)

Where plans are being prepared under the transitional arrangements set out in Annex 1 to the revised National Planning Policy Framework (https://www.gov.uk/government/publications/national-planning-policy-framework--2), the policies in the previous version of the framework published in 2012 (http://webarchive.nationalarchives.gov.uk/20180608095821/https:/www.gov.uk/govern

ment/publications/national-planning-policy-framework--2) will continue to apply, as will any previous guidance which has been superseded since the new framework was published in July 2018. If you'd like an email alert when changes are made to planning guidance please subscribe (https://www.gov.uk/topic/planning-development/planning-officer-guidance/email-signup).

Planning for town centre vitality and viability

What role can planning authorities play in supporting the management, adaptation and growth of town centres? For planning purposes, town centres as defined in the National Planning Policy Framework comprise a range of locations where main town centre uses are concentrated, including city and town centres, district and local centres (and so includes places that are often referred to as high streets). Local planning authorities can take a leading role in promoting a positive vision for these areas, bringing together stakeholders and supporting sustainable economic and employment growth. They need to consider structural changes in the economy, in particular changes in shopping and leisure patterns and formats, the impact these are likely to have on individual town centres, and how the planning tools available to them can support necessary adaptation and change.

A wide range of complementary uses can, if suitably located, help to support the vitality of town centres, including residential, employment, office, commercial, leisure/entertainment, healthcare and educational development. The same is true of temporary activities such as 'pop ups', which will often benefit from permitted development rights. Residential development in particular can play an important role in ensuring the vitality of town centres, giving communities easier access to a range of services. Given their close proximity to transport networks and local shops and services, local authorities may wish to consider locating specialist housing for different groups including older people (https://www.gov.uk/guidance/housing-for-older-and-disabled-people) within town centres or edge of centre locations.

Evening and night time activities have the potential to increase economic activity within town centres and provide additional employment opportunities. They can allow town centres to diversify and help develop their unique brand and offer services beyond retail. In fostering such activities, local authorities will also need to consider and address any wider impacts in relation to crime, noise and security.

Paragraph: 001 Reference ID: 2b-001-20190722

Revision date: 22 07 2019

What planning tools are available to local planning authorities to help them shape and support town centres?

The key way to set out a vision and strategy for town centres is through the development plan and (if needed) supplementary planning documents. Planning policies are expected to define the extent of primary shopping areas. Authorities

may, where appropriate, also wish to define primary and secondary retail frontages where their use can be justified in supporting the vitality and viability of particular centres. In addition, a range of other planning tools can help to support town centres to adapt and thrive:

- Local Development Orders (https://www.gov.uk/guidance/when-is-permission-required#types-of-area-wide-permission) can provide additional planning certainty and help to bring forward development as part of a wider strategy to regenerate a town centre.
- a Neighbourhood Development Order (https://www.gov.uk/guidance/neighbourhood-planning--2#what-is-neighbourhood-planning) can be used in designated neighbourhood areas to grant planning permission for development specified in an Order. They give communities the opportunity to bring forward the type of development they wish to see in their neighbourhood areas.
- brownfield registers (https://www.gov.uk/guidance/brownfield-land-registers) contain details of previously-developed land that is suitable for housing development, which may help in identifying land in and around town centres that could be used for homes.
- local authorities have extensive compulsory purchase powers (https://www.gov.uk/government/publications/compulsory-purchase-process-and-the-crichel-down-rules-guidance), which may help to support identified development opportunities in town centres. The exercise of compulsory purchase powers can support delivery of a wide variety of development and regeneration projects – ranging from the refurbishment of empty properties, to comprehensive town centre redevelopment schemes.

Paragraph: 002 Reference ID: 2b-002-20190722

Revision date: 22 07 2019

Which stakeholders are important when planning for town centres?

Effective and creative leadership by local authorities and other stakeholders is key in bringing forward a vision for town centres that meets wider economic and community needs. Stakeholders with an interest in the success of the town centre should be encouraged to engage in the evolving vision for it. The stakeholders that need to be involved will depend on the local context, but could include:

- local authorities (and teams within them responsible for matters such as economic development)
- Local Enterprise Partnerships (LEPs)
- members of Business Improvement Districts (BIDs)
- Mayoral or combined authorities
- neighbourhood planning groups
- residents/general public (including those working and studying in the area)
- community and amenity groups/community interest companies
- landowners

- private sector businesses/representative groups (e.g. chambers of commerce, trade associations)
- town centre managers

Paragraph: 003 Reference ID: 2b-003-20190722

Revision date: 22 07 2019

What can a town centre strategy contain?

Any strategy should be based on evidence of the current state of town centres and the opportunities that exist to accommodate a range of suitable development and support their vitality and viability. Strategies can be used to establish:

- the realistic role, function and hierarchy of town centres over the plan period. Given the uncertainty in forecasting long-term retail trends and consumer behaviour, this assessment may need to focus on a limited period (such as the next five years) but will also need to take the lifetime of the plan into account and be regularly reviewed.
- the vision for the future of each town centre, including the most appropriate mix of uses to enhance overall vitality and viability.
- the ability of the town centre to accommodate the scale of assessed need for main town centre uses, and associated need for expansion, consolidation, restructuring or to enable new development or the redevelopment of under-utilised space. It can involve evaluating different policy options (for example expanding the market share of a particular centre) or the implications of wider policy such as infrastructure delivery and demographic or economic change.
- how existing land can be used more effectively – for example the scope to group particular uses such as retail, restaurant and leisure activities into hubs or for converting airspace above shops.
- opportunities for improvements to the accessibility and wider quality of town centre locations, including improvements to transport links in and around town centres and enhancement of the public realm (including spaces such as public squares, parks and gardens).
- what complementary strategies are necessary or appropriate to enhance the town centre and help deliver the vision for its future, and how these can be planned and delivered. For example, this may include consideration of how parking charges and enforcement can be made proportionate.
- the role that different stakeholders can play in delivering the vision. If appropriate, it can help establish the level of cross-boundary/strategic working or information sharing required between both public and private sector groups.
- appropriate policies to address environmental issues facing town centres, including opportunities to conserve and enhance the historic environment.

Paragraph: 004 Reference ID: 2b-004-20190722

Revision date: 22 07 2019

What if future development needs cannot be accommodated in the town centre?

It may not be possible to accommodate all forecast needs for main town centre uses in a town centre: there may be physical or other constraints which make it inappropriate to do so. In those circumstances, planning authorities should plan positively to identify the most appropriate alternative strategy for meeting the identified need for these main town centre uses, having regard to the sequential and impact tests. This should ensure that any proposed main town centre uses which are not in an existing town centre are in the best locations to support the vitality and vibrancy of town centres, and that no likely significant adverse impacts on existing town centres arise, as set out in paragraph 90 of the National Planning Policy Framework (https://www.gov.uk/guidance/national-planning-policy-framework/7-ensuring-the-vitality-of-town-centres).

Paragraph: 005 Reference ID: 2b-005-20190722

Revision date: 22 07 2019

Which indicators are useful when planning for town centres and high streets?

The following indicators, and their changes over time, may be relevant in assessing the health of town centres, and planning for their future:

- diversity of uses
- proportion of vacant street level property
- commercial yields on non-domestic property
- customers' experience and behaviour
- retailer representation and intentions to change representation
- commercial rents
- pedestrian flows
- accessibility – this includes transport accessibility and accessibility for people with different impairments or health conditions, as well as older people with mobility requirements.
- perception of safety and occurrence of crime
- state of town centre environmental quality
- balance between independent and multiple stores
- extent to which there is evidence of barriers to new businesses opening and existing businesses expanding
- opening hours/availability/extent to which there is an evening and night time economy offer

Paragraph: 006 Reference ID: 2b-006-20190722

Revision date: 22 07 2019

Permitted development and change of use in town centres

When is planning permission not required for changes involving town centre uses?

A change of use of land or buildings requires planning permission if it constitutes a material change of use (https://www.gov.uk/guidance/when-is-permission-required#changeofuse2). Many uses in town centres fall within Commercial, Business and Service use class. Movement from one use to another within the same use class is not development, and does not require planning permission.

A broad range of national permitted development rights support appropriate changes of use in town centres. These rights are set out in the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (http://www.legislation.gov.uk/uksi/2015/596). Many of these permitted development rights relate to uses defined in the Use Classes Order before it was amended on 1 September 2020. These rights will continue to apply in their current form until 31 July 2021.

Some permitted development rights allow the change of use without any application process. This includes the following:

- from shops to financial and professional services uses, such as a bank;
- from financial and professional services, a betting shop or pay day loan shop to a shop;
- from a betting shop or pay day loan shop to financial and professional services,
- from a restaurant or café, or a hot food takeaway to a shop or financial or professional services;
- from a hot food takeaway to a restaurant or café;
- from a shop, financial and professional services, betting shop or pay day loan shop with two flats above.

Further permitted development rights allow for a change of use subject to prior approval by the local planning authority on specific planning matters:

- from shops and financial and professional services, a betting shop or pay day loan shop to a restaurant or café;
- from shops and financial and professional services, a betting shop or pay day loan shop to an assembly and leisure use;
- from shops, financial and professional services, a betting shop, pay day loan shop, launderette, and hot food takeaway premises to office use;
- from shops, financial and professional services, a betting shop, pay day loan shop, launderette, and hot food takeaway premises to residential use;
- from amusement arcades / centres or casinos to residential use;
- from offices to residential use.

Paragraph: 007 Reference ID: 2b-007-20190722

Revision date: 18 09 2020 See previous version (https://webarchive.nationalarchives.gov.uk/20200821135903/https://www.gov.uk/guidance/ensuring-the-vitality-of-town-centres)

Are there other permitted development rights that can support flexibility in town centres?

To support new ventures and pop-ups and avoid buildings being left empty until 31 July 2021, a separate right allows a range of uses (such as offices, shops, financial and professional services, restaurants and cafes, hot food takeaways, assembly and leisure uses) to convert temporarily to another use (such as office, shop, financial and professional service, restaurant) for a single continuous period of up to three years. This allows start-ups to test a new business model, and then to seek planning permission for the permanent change of use on that or another site. The same right now allows for the temporary change of use to specified community uses (health centre, art gallery, museum, public library, public hall or exhibition hall) to provide a greater mix of uses on the high street and increase footfall, and bring community uses closer to communities.

Other permitted development rights provide for physical works to support the operation of shops or financial and professional services, including:

- extensions to existing buildings
- the provision of click and collect facilities for shops
- modification of shop loading bays
- hard surfacing for shops, financial and professional services and restaurants

Paragraph: 008 Reference ID: 2b-008-20190722

Revision date: 18 09 2020 See previous version (https://webarchive.nationalarchives.gov.uk/20200821135903/https://www.gov.uk/guidance/ensuring-the-vitality-of-town-centres)

Assessing proposals for out of centre development

Sequential test

What is the sequential test?

The sequential test guides main town centre uses towards town centre locations first, then, if no town centre locations are available, to edge of centre locations, and, if neither town centre locations nor edge of centre locations are available, to out of centre locations (with preference for accessible sites which are well connected to the town centre). It supports the viability and vitality of town centres by placing existing town centres foremost in both plan-making and decision-taking.

Paragraph: 009 Reference ID: 2b-009-20190722

Revision date: 22 07 2019

How should the sequential approach be used in plan-making?

In plan-making, the sequential approach requires a thorough assessment of the suitability, viability and availability of locations for main town centre uses. It requires clearly explained reasoning if more central opportunities to locate main town centre uses are rejected.

The checklist below sets out the matters that need to be considered when using the sequential approach as part of plan-making:

- has the need for main town centre uses been assessed? The assessment should consider the current situation, recent up-take of land for main town centre uses, the supply of and demand for land for main town centre uses, forecast of future need and the type of land needed for main town centre uses;
- can the identified need for main town centre uses be accommodated on town centre sites? When identifying sites, the suitability, accessibility, availability and viability of the site should be considered, with particular regard to the nature of the need that is to be addressed;
- If the additional main town centre uses required cannot be accommodated on town centre sites, what are the next sequentially preferable sites that they can be accommodated on?

Paragraph: 010 Reference ID: 2b-010-20190722

Revision date: 22 07 2019

How should the sequential test be used in decision-making?

It is for the applicant to demonstrate compliance with the sequential test (and failure to undertake a sequential assessment could in itself constitute a reason for refusing permission). Wherever possible, the local planning authority is expected to support the applicant in undertaking the sequential test, including sharing any relevant information. The application of the test will need to be proportionate and appropriate for the given proposal. Where appropriate, the potential suitability of alternative sites will need to be discussed between the developer and local planning authority at the earliest opportunity.

The checklist below sets out the considerations that should be taken into account in determining whether a proposal complies with the sequential test:

- with due regard to the requirement to demonstrate flexibility, has the suitability of more central sites to accommodate the proposal been considered? Where the proposal would be located in an edge of centre or out of centre location, preference should be given to accessible sites that are well connected to the town centre. It is important to set out any associated reasoning clearly.
- is there scope for flexibility in the format and/or scale of the proposal? It is not necessary to demonstrate that a potential town centre or edge of centre site can accommodate precisely the scale and form of development being proposed, but

rather to consider what contribution more central sites are able to make individually to accommodate the proposal.

- if there are no suitable sequentially preferable locations, the sequential test is passed.

In line with paragraph 86 of the National Planning Policy Framework, only if suitable sites in town centre or edge of centre locations are not available (or expected to become available within a reasonable period) should out of centre sites be considered. When considering what a reasonable period is for this purpose, the scale and complexity of the proposed scheme and of potentially suitable town or edge of centre sites should be taken into account.

Compliance with the sequential and impact tests does not guarantee that permission will be granted – all material considerations will need to be considered in reaching a decision.

Paragraph: 011 Reference ID: 2b-011-20190722

Revision date: 22 07 2019

How should locational requirements be considered in the sequential test?

Use of the sequential test should recognise that certain main town centre uses have particular market and locational requirements which mean that they may only be accommodated in specific locations. Robust justification will need to be provided where this is the case, and land ownership does not provide such a justification.

Paragraph: 012 Reference ID: 2b-012-20190722

Revision date: 22 07 2019

How should viability be promoted?

The sequential test supports the Government's 'town centre first' policy. However as promoting new development on town centre locations can be more expensive and complicated than building elsewhere, local planning authorities need to be realistic and flexible in applying the test.

Paragraph: 013 Reference ID: 2b-013-20190722

Revision date: 22 07 2019

Impact test

What is the impact test?

The purpose of the test is to consider the impact over time of certain out of centre and edge of centre proposals on town centre vitality/viability and investment. The test relates to retail and leisure developments (not all main town centre uses)

which are not in accordance with up to date plan policies and which would be located outside existing town centres. It is important that the impact is assessed in relation to all town centres that may be affected, which are not necessarily just those closest to the proposal and may be in neighbouring authority areas.

Paragraph: 014 Reference ID: 2b-014-20190722

Revision date: 22 07 2019

When should the impact test be used?

The impact test only applies to proposals exceeding 2,500 square metres gross of floorspace* unless a different locally appropriate threshold is set by the local planning authority. In setting a locally appropriate threshold it will be important to consider the:

- scale of proposals relative to town centres
- the existing viability and vitality of town centres
- cumulative effects of recent developments
- whether local town centres are vulnerable
- likely effects of development on any town centre strategy
- impact on any other planned investment

As a guiding principle impact should be assessed on a like-for-like basis in respect of that particular sector (e.g. it may not be appropriate to compare the impact of an out of centre DIY store with small scale town-centre stores as they would normally not compete directly). Retail uses tend to compete with their most comparable competitive facilities. Conditions may be attached to appropriately control the impact of a particular use (https://www.gov.uk/guidance/use-of-planning-conditions).

Where wider town centre developments or investments are in progress, it will also be appropriate to assess the impact of relevant applications on that investment. Key considerations will include:

- the policy status of the investment (i.e. whether it is outlined in the Development Plan)
- the progress made towards securing the investment (for example if contracts are established)
- the extent to which an application is likely to undermine planned developments or investments based on the effects on current/forecast turnovers, operator demand and investor confidence

Paragraph: 015 Reference ID: 2b-015-20190722

Revision date: 22 07 2019

How should the impact test be used in plan-making?

If plan policies are based on meeting the assessed need for town centre uses in accordance with the sequential approach, issues of adverse impact should not arise. The impact test may however be useful in determining whether proposals in certain locations would impact on existing, committed and planned public and private investment, or on the role of particular centres.

Paragraph: 016 Reference ID: 2b-016-20190722

Revision date: 22 07 2019

How should the impact test be used in decision-taking?

It is for the applicant to demonstrate compliance with the impact test in support of relevant applications. Failure to undertake an impact test could in itself constitute a reason for refusing permission.

The impact test will need to be undertaken in a proportionate and locally appropriate way, drawing on existing information where possible. Ideally, applicants and local planning authorities should seek to agree the scope, key impacts for assessment, and level of detail required in advance of applications being submitted.

Paragraph: 017 Reference ID: 2b-017-20190722

Revision date: 22 07 2019

Is there a checklist for applying the impact test?

The following steps need to be taken in applying the impact test:

- establish the state of existing centres and the nature of current shopping patterns (base year)
- determine the appropriate time frame for assessing impact, focusing on impact in the first five years, as this is when most of the impact will occur
- examine the 'no development' scenario (which should not necessarily be based on the assumption that all centres are likely to benefit from expenditure growth in convenience and comparison goods and reflect both changes in the market or role of centres, as well as changes in the environment such as new infrastructure);
- assess the proposal's turnover and trade draw* (drawing on information from comparable schemes, the operator's benchmark turnover of convenience and comparison goods, and carefully considering likely catchments and trade draw)
- consider a range of plausible scenarios in assessing the impact of the proposal on existing centres and facilities (which may require breaking the study area down into a series of zones to gain a finer-grain analysis of anticipated impact)
- set out the likely impact of the proposal clearly, along with any associated assumptions or reasoning, including in respect of quantitative and qualitative issues

- any conclusions should be proportionate: for example, it may be sufficient to give a broad indication of the proportion of the proposal's trade draw likely to be derived from different centres and facilities in the catchment area and the likely consequences for the vitality and viability of existing town centres

A judgement as to whether the likely adverse impacts are significant can only be reached in light of local circumstances. For example, in areas where there are high levels of vacancy and limited retailer demand, even very modest trade diversion from a new development may lead to a significant adverse impact.

Where evidence shows that there would be no likely significant impact on a town centre from an edge of centre or out of centre proposal, the local planning authority must then consider all other material considerations in determining the application, as it would for any other development.

The design year for impact testing will need to be selected to represent the year when the proposal has achieved a 'mature' trading pattern. This is conventionally taken as the second full calendar year of trading after the opening of each phase of a new retail development, but it may take longer for some developments to become established.

Paragraph: 018 Reference ID: 2b-018-20190722

Revision date: 22 07 2019

Footnotes

Gross retail floorspace (or gross external area) is the total built floor area measured externally which is occupied exclusively by a retailer or retailers, excluding open areas used for the storage, display or sale of goods.

Trade draw is the proportion of trade that a development is likely to receive from customers within and outside its catchment area. It is likely that trade draw will relate to a certain geographic area (i.e. the distance people are likely to travel) and for a particular market segment (e.g. convenience retail). The best way of assessing trade draw where new development is proposed is to look at existing proxies of that type of development in other areas.

Published 3 March 2014
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Historic environment

Advises on enhancing and conserving the historic environment.

From:
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Published
10 April 2014

Last updated
23 July 2019 —

Contents

This guidance has been updated see previous version (https://webarchive.nationalarchives.gov.uk/20190607161354/https://www.gov.uk/guidance/conserving-and-enhancing-the-historic-environment).

Where plans are being prepared under the transitional arrangements set out in Annex 1 to the revised National Planning Policy Framework (https://www.gov.uk/government/publications/national-planning-policy-framework--2), the policies in the previous version of the framework published in 2012 (https://webarchive.nationalarchives.gov.uk/ukgwa/20180608095821/https:/www.gov.uk/government/publications/national-planning-policy-framework--2) will continue to apply, as will any previous guidance which has been superseded since the new framework was published in July 2018. If you'd like an email alert when changes are made to planning guidance please subscribe (https://www.gov.uk/topic/planning-development/planning-officer-guidance/email-signup).

Overview: historic environment

What is the main legislative framework for the historic environment?

In addition to the planning framework which is primarily set out in the Town and Country Planning Act 1990 (http://www.legislation.gov.uk/ukpga/1990/8/contents):

- the Planning (Listed Buildings and Conservation Areas) Act 1990 (http://www.legislation.gov.uk/ukpga/1990/9/contents) provides specific protection for buildings and areas of special architectural or historic interest
- the Ancient Monuments and Archaeological Areas Act 1979 (http://www.legislation.gov.uk/ukpga/1979/46/contents) provides specific protection for monuments of national interest
- the Protection of Wrecks Act 1973 (http://www.legislation.gov.uk/ukpga/1973/33/contents) provides specific protection for wreck sites of archaeological, historic or artistic interest
- the Historic Buildings and Ancient Monuments Act 1953 (https://www.legislation.gov.uk/ukpga/Eliz2/1-2/49/contents) makes provision for the compilation of a register of gardens and other land (parks and gardens, and battlefields).

While not part of the legislative framework, the UNESCO Convention Concerning the Protection of the World Cultural and National Heritage 1972 (https://whc.unesco.org/en/conventiontext/) (to which the UK is a signatory) makes provision for the World Heritage List, which is a list of cultural and/or natural heritage sites of outstanding universal value.

Any decisions where listed buildings and their settings and conservation areas are a factor must address the statutory considerations of the Planning (Listed Buildings and Conservation Areas) Act 1990 (see in particular sections 16, 66 and 72) as well as applying the relevant policies in the development plan and the National Planning Policy Framework.

Paragraph: 001 Reference ID: 18a-001-20190723

Revision date: 23 07 2019

What is meant by the conservation and enhancement of the historic environment?

Conservation is an active process of maintenance and managing change. It requires a flexible and thoughtful approach to get the best out of assets as diverse as listed buildings in every day use and as yet undiscovered, undesignated buried remains of archaeological interest.

In the case of buildings, generally the risks of neglect and decay of heritage assets are best addressed through ensuring that they remain in active use that is consistent with their conservation. Ensuring such heritage assets remain used and valued is likely to require sympathetic changes to be made from time to time. In the case of archaeological sites, many have no active use, and so for those kinds of sites, periodic changes may not be necessary, though on-going management remains important.

Where changes are proposed, the National Planning Policy Framework sets out a clear framework for both plan-making and decision-making in respect of applications for planning permission and listed building consent to ensure that heritage assets are conserved, and where appropriate enhanced, in a manner that is consistent with their significance and thereby achieving sustainable development. Heritage assets are either designated heritage assets or non-designated heritage assets.

Part of the public value of heritage assets is the contribution that they can make to understanding and interpreting our past. So where the complete or partial loss of a heritage asset is justified (noting that the ability to record evidence of our past should not be a factor in deciding whether such loss should be permitted), the aim then is to:

- capture and record the evidence of the asset's significance which is to be lost
- interpret its contribution to the understanding of our past; and
- make that publicly available (National Planning Policy Framework paragraph 199 (https://www.gov.uk/guidance/national-planning-policy-framework/16-conserving-and-enhancing-the-historic-environment#para196))

Paragraph: 002 Reference ID: 18a-002-20190723

Revision date: 23 07 2019

Plan-making: historic environment

What is a positive strategy for conservation and enjoyment of the historic environment?

In line with the National Planning Policy Framework (paragraph 185) (https://www.gov.uk/guidance/national-planning-policy-framework/16-conserving-and-enhancing-the-historic-environment), plans should set out a positive strategy for the conservation and enjoyment of the historic environment. In developing their strategy, plan-making bodies should identify specific opportunities within their area for the conservation and enhancement of heritage assets, including their setting. This could include, where appropriate, the delivery of development that will make a positive contribution to, or better reveal the significance of, the heritage asset, or reflect and enhance local character and distinctiveness with particular regard given to the prevailing styles of design and use of materials in a local area.

The delivery of the strategy may require the development of specific policies, for example, in relation to use of buildings and design of new development and infrastructure. Plan-making bodies will need to consider the relationship and impact of other policies on the delivery of the strategy for conservation.

Paragraph: 003 Reference ID: 18a-003-20190723

Revision date: 23 07 2019

What is an appropriate evidence base for plan-making?

Policy on this is set out in paragraph 187 (https://www.gov.uk/guidance/national-planning-policy-framework/16-conserving-and-enhancing-the-historic-environment#para187) of the National Planning Policy Framework. Guidance can be found in the Plan-making (https://www.gov.uk/guidance/plan-making#045) section of the planning practice guidance.

Paragraph: 004 Reference ID: 18a-004-20190723

Revision date: 23 07 2019

How can heritage issues be addressed in neighbourhood plans?

Where it is relevant, neighbourhood plans (https://www.gov.uk/guidance/national-planning-policy-framework/annex-2-glossary) need to include enough information about local heritage to guide decisions and put broader strategic heritage policies into action at a neighbourhood scale.

It is beneficial for any designated and non-designated heritage assets (https://www.gov.uk/guidance/national-planning-policy-framework/annex-2-glossary) within the plan area to be clearly identified at the start of the plan-making process so they can be appropriately taken into account.

The historic environment record is a useful source of information on the local historic environment. The local planning authority heritage advisers can advise on local heritage issues to be considered when preparing a neighbourhood plan.

Further information on:

- Neighbourhood planning generally can be found in the neighbourhood planning section (https://www.gov.uk/guidance/neighbourhood-planning--2) of the planning practice guidance
- Heritage specific issues and neighbourhood planning (https://historicengland.org.uk/advice/hpg/historic-environment/neighbourhoodplanning/) is provided by Historic England.

Paragraph: 005 Reference ID: 18a-005-20190723

Revision date: 23 07 2019

Decision-making: historic environment

What is 'significance'?

'Significance' in terms of heritage-related planning policy is defined in the Glossary of the National Planning Policy Framework (https://www.gov.uk/guidance/national-planning-policy-framework/annex-2-glossary) as the value of a heritage asset to this and future generations because of its heritage interest. Significance derives not only from a heritage asset's physical presence, but also from its setting.

The National Planning Policy Framework definition further states that in the planning context heritage interest may be archaeological, architectural, artistic or historic. This can be interpreted as follows:

- archaeological interest: As defined in the Glossary to the National Planning Policy Framework, there will be archaeological interest in a heritage asset if it holds, or potentially holds, evidence of past human activity worthy of expert investigation at some point.
- architectural and artistic interest: These are interests in the design and general aesthetics of a place. They can arise from conscious design or fortuitously from the way the heritage asset has evolved. More specifically, architectural interest is an interest in the art or science of the design, construction, craftsmanship and decoration of buildings and structures of all types. Artistic interest is an interest in other human creative skill, like sculpture.
- historic interest: An interest in past lives and events (including pre-historic). Heritage assets can illustrate or be associated with them. Heritage assets with historic interest not only provide a material record of our nation's history, but can also provide meaning for communities derived from their collective experience of a place and can symbolise wider values such as faith and cultural identity.

In legislation and designation criteria, the terms 'special architectural or historic interest' of a listed building and the 'national importance' of a scheduled monument are used to describe all or part of what, in planning terms, is referred to as the identified heritage asset's significance.

Further commentary on the significance of World Heritage Sites.

Paragraph: 006 Reference ID: 18a-006-20190723

Revision date: 23 07 2019

Why is ‘significance’ important in decision-making?

Heritage assets may be affected by direct physical change or by change in their setting. Being able to properly assess the nature, extent and importance of the significance of a heritage asset, and the contribution of its setting, is very important to understanding the potential impact and acceptability of development proposals (see How can the possibility of harm to a heritage asset be assessed?).

Paragraph: 007 Reference ID: 18a-007-20190723

Revision date: 23 07 2019

How can proposals avoid or minimise harm to the significance of a heritage asset?

Understanding the significance of a heritage asset and its setting from an early stage in the design process can help to inform the development of proposals which avoid or minimise harm. Analysis of relevant information can generate a clear understanding of the affected asset, the heritage interests represented in it, and their relative importance.

Early appraisals, a conservation plan or targeted specialist investigation can help to identify constraints and opportunities arising from the asset at an early stage. Such appraisals or investigations can identify alternative development options, for example more sensitive designs or different orientations, that will both conserve the heritage assets and deliver public benefits in a more sustainable and appropriate way.

See the Historic England website for further advice on assessing the significance of heritage assets (https://historicengland.org.uk/images-books/publications/gpa2-managing-significance-in-decision-taking/).

Paragraph: 008 Reference ID: 18a-008-20190723

Revision date: 23 07 2019

What assessment of the impact of proposals on the significance of affected heritage assets should be included in an application?

Applicants are expected to describe in their application the significance of any heritage assets affected, including any contribution made by their setting (National Planning Policy Framework paragraph 189 (https://www.gov.uk/guidance/national-planning-policy-framework/16-conserving-and-enhancing-the-historic-environment#para189)). In doing so, applicants should include analysis of the significance of the asset and its setting, and, where relevant, how this has informed the development of the proposals. The level of detail should be proportionate to the

asset's importance and no more than is sufficient to understand the potential impact of the proposal on its significance.

Paragraph: 009 Reference ID: 18a-009-20190723

Revision date: 23 07 2019

Where can local planning authorities get help to assess the significance of heritage assets?

In most cases the assessment of the significance of the heritage asset by the local planning authority is likely to need expert advice in addition to the information provided by the applicant, historic environment record, similar sources of information and inspection of the asset itself. Advice may be sought from appropriately qualified staff and experienced in-house experts or professional consultants, complemented as appropriate by consultation with National Amenity Societies and other statutory consultees and other national and local organisations with relevant expertise.

Paragraph: 010 Reference ID: 18a-010-20190723

Revision date: 23 07 2019

What is a historic environment record?

Historic environment records are publicly-accessible and dynamic sources of information about the local historic environment. They provide core information for plan-making and designation decisions (such as information about designated and non-designated heritage assets, and information that helps predict the likelihood of currently unrecorded assets being discovered during development) and will also assist in informing planning decisions by providing appropriate information about the historic environment to communities, owners and developers as set out in the National Planning Policy Framework. See the Historic England website for details of how to access historic environment records (https://historicengland.org.uk/advice/technical-advice/information-management/hers/).

Paragraph: 011 Reference ID: 18a-011-20190723

Revision date: 23 07 2019

How do Design and Access Statement requirements relate to heritage assessments?

A Design and Access Statement (https://www.gov.uk/guidance/making-an-application#design-access-statement) is required to accompany certain applications for planning permission and applications for listed building consent.

Design and Access Statements provide a flexible framework for an applicant to explain and justify their proposal with reference to its context. In cases where both

a Design and Access Statement and an assessment of the impact of a proposal on a heritage asset are required, applicants can avoid unnecessary duplication and demonstrate how the proposed design has responded to the historic environment through including the necessary heritage assessment as part of the Design and Access Statement.

Paragraph: 012 Reference ID: 18a-012-20190723

Revision date: 23 07 2019

What is the setting of a heritage asset and how can it be taken into account?

The setting of a heritage asset is defined in the Glossary of the National Planning Policy Framework (https://www.gov.uk/guidance/national-planning-policy-framework/annex-2-glossary).

All heritage assets have a setting, irrespective of the form in which they survive and whether they are designated or not. The setting of a heritage asset and the asset's curtilage may not have the same extent.

The extent and importance of setting is often expressed by reference to the visual relationship between the asset and the proposed development and associated visual/physical considerations. Although views of or from an asset will play an important part in the assessment of impacts on setting, the way in which we experience an asset in its setting is also influenced by other environmental factors such as noise, dust, smell and vibration from other land uses in the vicinity, and by our understanding of the historic relationship between places. For example, buildings that are in close proximity but are not visible from each other may have a historic or aesthetic connection that amplifies the experience of the significance of each.

The contribution that setting makes to the significance of the heritage asset does not depend on there being public rights of way or an ability to otherwise access or experience that setting. The contribution may vary over time.

When assessing any application which may affect the setting of a heritage asset, local planning authorities may need to consider the implications of cumulative change. They may also need to consider the fact that developments which materially detract from the asset's significance may also damage its economic viability now, or in the future, thereby threatening its ongoing conservation.

See further guidance on setting of heritage assets and wind turbine development (https://www.gov.uk/guidance/renewable-and-low-carbon-energy#heritage-be-taken-into-account).

Paragraph: 013 Reference ID: 18a-013-20190723

Revision date: 23 07 2019

Should the deteriorated state of a heritage asset be taken into account in reaching a decision on an application?

Disrepair and damage and their impact on viability can be a material consideration in deciding an application. However, where there is evidence of deliberate damage to or neglect of a heritage asset in the hope of making consent or permission easier to gain the local planning authority should disregard the deteriorated state of the asset in any decision (National Planning Policy Framework paragraph 191 (https://www.gov.uk/guidance/national-planning-policy-framework/16-conserving-and-enhancing-the-historic-environment#para191)). Local planning authorities may need to consider exercising their repair and compulsory purchase powers to remedy deliberate neglect or damage.

Paragraph: 014 Reference ID: 18a-014-20190723

Revision date: 23 07 2019

What is the optimum viable use for a heritage asset and how is it taken into account in planning decisions?

The vast majority of heritage assets are in private hands. Thus, sustaining heritage assets in the long term often requires an incentive for their active conservation. Putting heritage assets to a viable use is likely to lead to the investment in their maintenance necessary for their long-term conservation.

By their nature, some heritage assets have limited or even no economic end use. A scheduled monument in a rural area may preclude any use of the land other than as a pasture, whereas a listed building may potentially have a variety of alternative uses such as residential, commercial and leisure.

In a small number of cases a heritage asset may be capable of active use in theory but be so important and sensitive to change that alterations to accommodate a viable use would lead to an unacceptable loss of significance.

It is important that any use is viable, not just for the owner, but also for the future conservation of the asset: a series of failed ventures could result in a number of unnecessary harmful changes being made to the asset.

If there is only one viable use, that use is the optimum viable use. If there is a range of alternative economically viable uses, the optimum viable use is the one likely to cause the least harm to the significance of the asset, not just through necessary initial changes, but also as a result of subsequent wear and tear and likely future changes. The optimum viable use may not necessarily be the most economically viable one. Nor need it be the original use. However, if from a conservation point of view there is no real difference between alternative economically viable uses, then the choice of use is a decision for the owner, subject of course to obtaining any necessary consents.

Harmful development may sometimes be justified in the interests of realising the optimum viable use of an asset, notwithstanding the loss of significance caused,

and provided the harm is minimised. The policy on addressing substantial and less than substantial harm is set out in paragraphs 193 to 196 (https://www.gov.uk/guidance/national-planning-policy-framework/16-conserving-and-enhancing-the-historic-environment#para193) of the National Planning Policy Framework.

Paragraph: 015 Reference ID: 18a-015-20190723

Revision date: 23 07 2019

When is securing a heritage asset's optimum viable use appropriate in planning terms?

Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, the National Planning Policy Framework (paragraph 196) (https://www.gov.uk/guidance/national-planning-policy-framework/16-conserving-and-enhancing-the-historic-environment#para196) requires that this harm should be weighed against the public benefits of the proposal including, where appropriate, securing the optimum viable use of that asset.

Where a heritage asset is capable of having a use, then securing its optimum viable use should be taken into account in assessing the public benefits of a proposed development.

'Area-based' designated heritage assets such as World Heritage Sites and conservation areas will not themselves have a single use (though any individual heritage assets within them may). Therefore, securing the optimum viable use of the area-based asset as a whole is not a relevant consideration in assessing the public benefits of development proposals affecting such heritage assets. However, securing the optimum viable use of any individual heritage assets within the area-based designated heritage asset may still be a relevant consideration.

Paragraph: 016 Reference ID: 18a-016-20190723

Revision date: 23 07 2019

What evidence is needed to demonstrate that there is no viable use?

Appropriate marketing is required to demonstrate that a heritage asset has no viable use in the circumstances set out in paragraph 195b of the National Planning Policy Framework (https://www.gov.uk/guidance/national-planning-policy-framework/16-conserving-and-enhancing-the-historic-environment#para195). The aim of such marketing is to reach potential buyers who may be willing to find a viable use for the site that still provides for its conservation to some degree. If such a purchaser comes forward, there is no obligation to sell to them, but it will not have been demonstrated that the heritage asset has no viable use .

Paragraph: 017 Reference ID: 18a-017-20190723

Revision date: 23 07 2019

How can the possibility of harm to a heritage asset be assessed?

What matters in assessing whether a proposal might cause harm is the impact on the significance (https://www.gov.uk/guidance/national-planning-policy-framework/annex-2-glossary) of the heritage asset. As the National Planning Policy Framework makes clear, significance derives not only from a heritage asset's physical presence, but also from its setting.

Proposed development affecting a heritage asset may have no impact on its significance or may enhance its significance and therefore cause no harm to the heritage asset. Where potential harm to designated heritage assets is identified, it needs to be categorised as either less than substantial harm or substantial harm (which includes total loss) in order to identify which policies in the National Planning Policy Framework (paragraphs 194 to 196) (https://www.gov.uk/guidance/national-planning-policy-framework/16-conserving-and-enhancing-the-historic-environment#para194) apply.

Within each category of harm (which category applies should be explicitly identified), the extent of the harm may vary and should be clearly articulated.

Whether a proposal causes substantial harm will be a judgment for the decision-maker, having regard to the circumstances of the case and the policy in the National Planning Policy Framework. In general terms, substantial harm is a high test, so it may not arise in many cases. For example, in determining whether works to a listed building constitute substantial harm, an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest. It is the degree of harm to the asset's significance rather than the scale of the development that is to be assessed. The harm may arise from works to the asset or from development within its setting.

While the impact of total destruction is obvious, partial destruction is likely to have a considerable impact but, depending on the circumstances, it may still be less than substantial harm or conceivably not harmful at all, for example, when removing later additions to historic buildings where those additions are inappropriate and harm the buildings' significance. Similarly, works that are moderate or minor in scale are likely to cause less than substantial harm or no harm at all. However, even minor works have the potential to cause substantial harm, depending on the nature of their impact on the asset and its setting.

The National Planning Policy Framework confirms that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). It also makes clear that any harm to a designated heritage asset requires clear and convincing justification and sets out certain assets in respect of which harm should be exceptional/wholly exceptional (see National Planning Policy Framework, paragraph 194 (https://www.gov.uk/guidance/national-planning-policy-framework/16-conserving-and-enhancing-the-historic-environment#para194)).

Paragraph: 018 Reference ID: 18a-018-20190723

Revision date: 23 07 2019

How can the possibility of harm to conservation areas be assessed?

Paragraph 201 of the National Planning Policy Framework (https://www.gov.uk/guidance/national-planning-policy-framework/16-conserving-and-enhancing-the-historic-environment#para196) is the starting point. An unlisted building that makes a positive contribution to a conservation area is individually of lesser importance than a listed building. If the building is important or integral to the character or appearance of the conservation area then its proposed demolition is more likely to amount to substantial harm to the conservation area, engaging the tests in paragraph 195 of the National Planning Policy Framework (https://www.gov.uk/guidance/national-planning-policy-framework/16-conserving-and-enhancing-the-historic-environment#para195). Loss of a building within a conservation area may alternatively amount to less than substantial harm under paragraph 196. However, the justification for a building's proposed demolition will still need to be proportionate to its relative significance and its contribution to the significance of the conservation area as a whole. The same principles apply in respect of other elements which make a positive contribution to the significance of the conservation area, such as open spaces.

See guidance on how trees are protected in conservation areas (https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas).

Paragraph: 019 Reference ID: 18a-019-20190723

Revision date: 23 07 2019

What is meant by the term public benefits?

The National Planning Policy Framework (https://www.gov.uk/guidance/national-planning-policy-framework/16-conserving-and-enhancing-the-historic-environment#para195) requires any harm to designated heritage assets to be weighed against the public benefits of the proposal.

Public benefits may follow from many developments and could be anything that delivers economic, social or environmental objectives as described in the National Planning Policy Framework (paragraph 8 (https://www.gov.uk/guidance/national-planning-policy-framework/2-achieving-sustainable-development)). Public benefits should flow from the proposed development. They should be of a nature or scale to be of benefit to the public at large and not just be a private benefit. However, benefits do not always have to be visible or accessible to the public in order to be genuine public benefits, for example, works to a listed private dwelling which secure its future as a designated heritage asset could be a public benefit.

Examples of heritage benefits may include:

- sustaining or enhancing the significance of a heritage asset and the contribution of its setting

- reducing or removing risks to a heritage asset
- securing the optimum viable use of a heritage asset in support of its long term conservation

Paragraph: 020 Reference ID: 18a-020-20190723

Revision date: 23 07 2019

How can Neighbourhood Development Orders and Community Right to Build Orders take account of heritage issues?

The policies in the National Planning Policy Framework, and the associated guidance, which relate to decision-making on planning applications which affect the historic environment, apply equally to the consideration of what planning permission may be granted through Neighbourhood Development Orders and Community Right to Build Orders.

Neighbourhood Development Orders and Community Right to Build Orders can only grant planning permission, not heritage consents (ie listed building consent or scheduled monument consent).

Historic England must be consulted on all Neighbourhood Development Orders and Community Right to Build Orders to allow it to assess the impacts on the heritage assets, and determine whether an archaeological statement (definition in regulation 22(2) of the Neighbourhood Planning (General) Regulations 2012 (http://www.legislation.gov.uk/uksi/2012/637/regulation/22/made)) is required. This, and other consultation requirements relating to development affecting heritage assets, are set out in regulation 21 of, and Schedule 1 to, the Neighbourhood Planning (General) Regulations 2012 (http://www.legislation.gov.uk/uksi/2012/637/contents/made).

Further information on making these Orders can be found:

- in the Neighbourhood planning section of guidance (https://www.gov.uk/guidance/neighbourhood-planning--2)
- in the When is permission required? section of guidance (https://www.gov.uk/guidance/when-is-permission-required)
- in the Neighbourhood Development Orders and Heritage guidance (https://historicengland.org.uk/advice/hpg/consent/ndo/) on the Historic England website

Paragraph: 021 Reference ID: 18a-021-20190723

Revision date: 23 07 2019

Designated heritage assets

How do heritage assets become designated?

The Department for Culture, Media and Sport (advised by Historic England) is responsible for the identification and designation of listed buildings, scheduled monuments and protected wreck sites.

Historic England identifies and designates registered parks and gardens and registered battlefields.

World Heritage Sites are inscribed by the United Nations Educational, Scientific and Cultural Organisation (UNESCO).

In most cases, conservation areas are designated by local planning authorities.

Historic England administers all the national designation regimes. See the Department for Culture, Media and Sport website for further information on selection criteria and processes (https://www.gov.uk/government/policies/conservation-of-historic-buildings-and-monuments).

Paragraph: 022 Reference ID: 18a-022-20190723

Revision date: 23 07 2019

What are the different types of designated heritage assets?

Listed building (https://www.legislation.gov.uk/ukpga/1990/9/contents) – a building which has been designated because of its special architectural or historic interest and (unless the list entry indicates otherwise) includes not only the building itself but also:

- any object or structure fixed to the building
- any object or structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so since before 1 July 1948

Scheduled monument (http://www.legislation.gov.uk/ukpga/1979/46/contents) – a monument which has been designated because of its national importance.

Protected wreck site (https://www.legislation.gov.uk/ukpga/1973/33/contents) – the site of a vessel lying wrecked on or in the sea bed, designated because of the historical, archaeological or artistic importance of the vessel, or of any objects contained or formerly contained in it.

Registered park or garden (https://www.legislation.gov.uk/ukpga/Eliz2/1-2/49/contents) – a designed landscape which has been designated because of its special historic interest.

Registered battlefield (https://www.legislation.gov.uk/ukpga/Eliz2/1-2/49/contents) – a battlefield which has been designated because of its special historic interest.

World heritage site – a cultural and/or natural heritage site inscribed because of its outstanding universal value.

Conservation area (https://www.legislation.gov.uk/ukpga/1990/9/part/II) – an area which has been designated because of its special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance.

Paragraph: 023 Reference ID: 18a-023-20190723

Revision date: 23 07 2019

What do local planning authorities need to consider before designating new conservation areas?

Local planning authorities need to ensure that the area has sufficient special architectural or historic interest to justify its designation as a conservation area. Undertaking a conservation area appraisal may help a local planning authority to make this judgment.

See the Historic England website for further advice on conservation area designation, appraisal and management (https://historicengland.org.uk/images-books/publications/conservation-area-appraisal-designation-management-advice-note-1/).

Paragraph: 024 Reference ID: 18a-024-20190723

Revision date: 23 07 2019

Do local planning authorities need to review conservation areas?

Local planning authorities must review their conservation areas from time to time (section 69(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (http://www.legislation.gov.uk/ukpga/1990/9/section/69)).

A conservation area appraisal can be used to help local planning authorities develop a management plan and plan-making bodies to develop appropriate policies for local and neighbourhood plans. A good appraisal will consider what features make a positive or negative contribution to the significance of the conservation area, thereby identifying opportunities for beneficial change or the need for planning protection.

Paragraph: 025 Reference ID: 18a-025-20190723

Revision date: 23 07 2019

How are World Heritage Sites protected and managed in England?

England protects its World Heritage Sites and their settings, including any buffer zones or equivalent, through the statutory designation process and through the planning system.

The Outstanding Universal Value of a World Heritage Site, set out in a Statement of Outstanding Universal Value, indicates its importance as a heritage asset of the highest significance to be taken into account by:

- the relevant authorities in plan-making, determining planning and related consent applications (including listed building consent, scheduled monument consent, development consent orders and Transport and Works Act Orders)
- and, where relevant, by the Secretary of State in determining such cases on appeal or following call in

Effective management of World Heritage Sites involves the identification and promotion of positive change that will conserve and enhance their Outstanding Universal Value, authenticity, integrity and with the modification or mitigation of changes which have a negative impact on those values.

Paragraph: 026 Reference ID: 18a-026-20190723

Revision date: 23 07 2019

How is the importance of World Heritage Sites reflected in the National Planning Policy Framework?

World Heritage Sites are defined as designated heritage assets (https://www.gov.uk/guidance/national-planning-policy-framework/annex-2-glossary) in the National Planning Policy Framework. The National Planning Policy Framework sets out detailed policies for the conservation and enhancement of the historic environment, including World Heritage Sites, through both plan-making and decision-making.

See further guidance on World Heritage Sites.

Paragraph: 027 Reference ID: 18a-027-20190723

Revision date: 23 07 2019

Further guidance on World Heritage Sites

Why are World Heritage Sites important?

The United Nations Educational, Scientific and Cultural Organisation (UNESCO) World Heritage Committee inscribes World Heritage Properties onto its World Heritage List for their Outstanding Universal Value – cultural and/or natural significance which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity. World Heritage Properties are referred to in the National Planning Policy Framework and in this guidance as ‘World Heritage Sites’ and are defined as designated heritage assets in the National Planning Policy Framework.

The government is a State Party to the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage (known as the World Heritage Convention) and it was ratified by the UK in 1984.

Paragraph: 028 Reference ID: 18a-028-20190723

Revision date: 23 07 2019

How is the importance of each Site recognised internationally?

A Statement of Outstanding Universal Value is agreed and adopted by the World Heritage Committee for each Site on inscription. The Statement sets out what the World Heritage Committee considers to be of Outstanding Universal Value about the Site in relation to the World Heritage Convention and includes statements of integrity and, in relation to cultural sites or the cultural aspects of 'mixed' Sites, authenticity, and the requirements for protection and management.

Statements of Outstanding Universal Value are key reference documents for the protection and management of each Site and can only be amended or altered by the World Heritage Committee.

Paragraph: 029 Reference ID: 18a-029-20190723

Revision date: 23 07 2019

How many World Heritage Sites are there and where are they?

There are currently 19 cultural World Heritage Sites wholly or partly in England and one natural World Heritage Site. Details of each can be found on the National Heritage List for England (https://historicengland.org.uk/listing/the-list/).

Paragraph: 030 Reference ID: 18a-030-20190723

Revision date: 23 07 2019

How does the terminology used by UNESCO relate to the policies of the National Planning Policy Framework?

The international policies concerning World Heritage Sites use different terminology to that in the National Planning Policy Framework. World Heritage Sites are inscribed for their 'Outstanding Universal Value' and each World Heritage Site has defined its 'attributes and components': the tangible remains, visual and cultural links that embody that value. The cultural heritage within the description of the Outstanding Universal Value will be part of the World Heritage Site's heritage significance and National Planning Policy Framework policies will apply to the Outstanding Universal Value as they do to any other heritage significance they hold. As the National Planning Policy Framework makes clear, the significance of the designated heritage asset derives not only from its physical presence, but also from its setting.

Paragraph: 031 Reference ID: 18a-031-20190723

Revision date: 23 07 2019

What principles need to be considered in developing a positive strategy for the conservation and enjoyment of World Heritage Sites?

In line with the National Planning Policy Framework, plans, at all levels should conserve the Outstanding Universal Value, integrity and authenticity (where relevant for cultural or 'mixed' sites) of each World Heritage Site and its setting, including any buffer zone or equivalent. World Heritage Sites are designated heritage assets of the highest significance. Appropriate policies for the protection and sustainable use of World Heritage Sites, including enhancement where appropriate, need to be considered in relevant plans. These policies will need to take account of international and national requirements as well as specific local circumstances.

When developing plan policies to protect and enhance World Heritage Sites and their Outstanding Universal Value, plan-making bodies should aim to satisfy the following principles:

- protecting the World Heritage Site and its setting, including any buffer zone, from inappropriate development
- striking a balance between the needs of conservation, biodiversity, access, the interests of the local community, the public benefits of a development and the sustainable economic use of the World Heritage Site in its setting, including any buffer zone
- protecting a World Heritage Site and its setting from the effect of changes which are relatively minor but which, on a cumulative basis, could have a significant effect
- enhancing the World Heritage Site and its setting where appropriate and possible through positive management
- protecting the World Heritage Site and its setting from climate change but ensuring that mitigation and adaptation is not at the expense of integrity or authenticity

Local planning authorities whose area covers either the World Heritage Site itself or all or part of its setting need to take these principles and the resultant policies into account when making decisions on applications

Paragraph: 032 Reference ID: 18a-032-20190723

Revision date: 23 07 2019

How is the setting of a World Heritage Site protected?

The UNESCO Operational Guidelines seek protection of "the immediate setting" of each World Heritage Site, of "important views and other areas or attributes that are functionally important as a support to the Property" and suggest designation of a buffer zone wherever this may be necessary. A buffer zone is defined as an area surrounding the World Heritage Site which has complementary legal restrictions placed on its use and development to give an added layer of protection to the

World Heritage Site. The buffer zone forms part of the setting of the World Heritage Site.

It may be appropriate to protect the setting of World Heritage Sites in other ways, for example by the protection of specific views and viewpoints, both from and to the site. Other landscape designations may also prove effective in protecting the setting of a World Heritage Site. However it is intended to protect the setting, it will be essential to explain how this is to be done in the relevant development plan policies.

Decisions on buffer zones are made on a case by case basis at the time of nomination and reviewed subsequently through the World Heritage Site Management Plan review process. Proposals to add or amend buffer zones following inscription are submitted by government for approval by the World Heritage Committee who will consider and adopt the proposals as appropriate.

Paragraph: 033 Reference ID: 18a-033-20190723

Revision date: 23 07 2019

What are World Heritage Site management plans?

Each World Heritage Site has a management plan which contains both long term and day to day actions to protect, conserve and present the Site. Steering Groups, including key representatives from a range of national and local bodies, are responsible for the formulation and implementation of the plan, and public consultation at key stages of its development. The relevant local planning authority will often lead the Steering Group.

Management plans need to be developed in a participatory way, fully involving all interested parties and in particular those responsible for managing, owning or administering the Site. Each plan will need to be attuned to the particular characteristics and needs of the site and incorporate sustainable development principles. Each plan will:

- contain the location and Site boundary details
- specify how the Outstanding Universal Value, authenticity and integrity of each site is to be maintained
- identify attributes
- examine issues affecting its conservation and enjoyment

Management plans will usually cover topics such as its boundaries, development, tourism, interpretation, education and transport.

Given their importance in helping to sustain and enhance the significance of the World Heritage Site, relevant policies in management plans need to be taken into account in preparing development plans for the historic or natural environment (as appropriate) and in determining relevant planning applications.

Paragraph: 034 Reference ID: 18a-034-20190723

Revision date: 23 07 2019

What approach can be taken to assessing the impact of development on World Heritage Sites?

Applicants proposing change that might affect the Outstanding Universal Value, integrity and, where applicable, authenticity of a World Heritage Site through development within the Site or affecting its setting (including any buffer zone or equivalent) need to submit sufficient information with their applications to enable assessment of the potential impact on Outstanding Universal Value. This may include visual impact assessments, archaeological data and/or historical information. In many cases this will form part of an Environment Statement. Applicants may find it helpful to use the approach set out in the International Council on Monuments and Sites Heritage Impact Assessment guidelines (https://www.icomos.org/en/home-wh/108301-new-guidance-set-to-help-reduce-impacts-from-development-on-world-heritage-sites) and Historic England's guidance on setting and views (https://historicengland.org.uk/advice/planning/setting-and-views/).

World Heritage Sites are 'sensitive areas' for the purposes of determining if an Environmental Impact Assessment (https://www.gov.uk/guidance/environmental-impact-assessment) is required for a particular development proposal. Lower development size thresholds apply to the requirement for Design and Access Statements (https://www.gov.uk/guidance/making-an-application#design-access-statement) within World Heritage Sites as compared with the norm.

Paragraph: 035 Reference ID: 18a-035-20190723

Revision date: 23 07 2019

What consultation is required in relation to proposals that affect a World Heritage Site?

The UNESCO Operational Guidelines for the Implementation of the World Heritage Convention ask governments to inform the World Heritage Committee at an early stage of proposals that may affect the Outstanding Universal Value of the Site and "before making any decisions that would be difficult to reverse, so that the Committee may assist in seeking appropriate solutions to ensure that the Outstanding Universal Value is fully preserved". Therefore, it would be very helpful if local planning authorities could consult Historic England (for cultural Sites) or Natural England (for natural Sites) and Department for Culture, Media and Sport at an early stage and preferably pre-application about any development proposals which may affect a World Heritage Site or its setting (including any buffer zone or its equivalent).

It would also be helpful if local planning authorities inform World Heritage Site Steering Groups of development proposals which would have an adverse impact on the Outstanding Universal Value, integrity, authenticity and significance of a World Heritage Site or its setting, including any buffer zone or its equivalent and consult them during the application process.

Local planning authorities are required to consult the Secretary of State for Housing, Communities and Local Government before approving any planning application to which Historic England maintains an objection and which would have an adverse impact on the Outstanding Universal Value, integrity, authenticity and significance of a World Heritage Site or its setting, including any buffer zone or its equivalent. The Secretary of State then has the discretion as to whether to call-in the application for his/her own determination. Further information on the Secretary of State's involvement in deciding an application can be found in Determining a planning application (https://www.gov.uk/guidance/determining-a-planning-application#consult-with-the-Secretary-of-State) section of guidance.

Paragraph: 036 Reference ID: 18a-036-20190723

Revision date: 23 07 2019

Are permitted development rights restricted in World Heritage Sites?

World Heritage Sites are defined as article 2(3) land (https://www.gov.uk/guidance/when-is-permission-required#article-2) in the Town and Country Planning (General Permitted Development) Order 2015. This means that certain permitted development rights are restricted within the Site. Local planning authorities can restrict further development by using article 4 (https://www.gov.uk/guidance/when-is-permission-required#article-4-direction) and article 5 (minerals operations) directions under the 2015 Order.

Paragraph: 037 Reference ID: 18a-037-20190723

Revision date: 23 07 2019

Where can I find further information about World Heritage Sites?

Further information on World Heritage Sites can be found on the Department for Culture, Media and Sport website (https://www.gov.uk/government/publications/2010-to-2015-government-policy-conservation-of-historic-buildings-and-monuments/2010-to-2015-government-policy-conservation-of-historic-buildings-and-monuments#appendix-1-nominating-places-in-the-uk-for-world-heritage-site-status) and on the UNESCO website (http://whc.unesco.org/).

Paragraph: 038 Reference ID: 18a-038-20190723

Revision date: 23 07 2019

Non-designated heritage assets

What are non-designated heritage assets?

Non-designated heritage assets are buildings, monuments, sites, places, areas or landscapes identified by plan-making bodies as having a degree of heritage

significance meriting consideration in planning decisions but which do not meet the criteria for designated heritage assets.

A substantial majority of buildings have little or no heritage significance and thus do not constitute heritage assets. Only a minority have enough heritage significance to merit identification as non-designated heritage assets.

Paragraph: 039 Reference ID: 18a-039-20190723

Revision date: 23 07 2019

How are non-designated heritage assets identified?

There are a number of processes through which non-designated heritage assets may be identified, including the local and neighbourhood plan-making processes and conservation area appraisals and reviews. Irrespective of how they are identified, it is important that the decisions to identify them as non-designated heritage assets are based on sound evidence.

Plan-making bodies should make clear and up to date information on non-designated heritage assets accessible to the public to provide greater clarity and certainty for developers and decision-makers. This includes information on the criteria used to select non-designated heritage assets and information about the location of existing assets.

It is important that all non-designated heritage assets are clearly identified as such. In this context, it can be helpful if local planning authorities keep a local list of non-designated heritage assets, incorporating any such assets which are identified by neighbourhood planning bodies. (See the Historic England website for advice on local lists (https://historicengland.org.uk/images-books/publications/local-heritage-listing-advice-note-7/.)) They should also ensure that up to date information about non-designated heritage assets is included in the local historic environment record.

In some cases, local planning authorities may also identify non-designated heritage assets as part of the decision-making process on planning applications, for example, following archaeological investigations. It is helpful if plans note areas with potential for the discovery of non-designated heritage assets with archaeological interest. The historic environment record will be a useful indicator of archaeological potential in the area.

Paragraph: 040 Reference ID: 18a-040-20190723

Revision date: 23 07 2019

What are non-designated heritage assets of archaeological interest and how important are they?

The National Planning Policy Framework identifies two categories of non-designated heritage assets of archaeological interest:

(1) Those that are demonstrably of equivalent significance to scheduled monuments and are therefore considered subject to the same policies as those for designated heritage assets (National Planning Policy Framework footnote 63). They are of 3 types:

- those that have yet to be formally assessed for designation.
- those that have been assessed as being nationally important and therefore, capable of designation, but which the Secretary of State for Culture, Media and Sport has exercised his/her discretion not to designate.
- those that are incapable of being designated by virtue of being outside the scope of the Ancient Monuments and Archaeological Areas Act 1979 because of their physical nature.

The reason why many nationally important monuments are not scheduled is set out in the document Scheduled Monuments, published by the Department for Culture, Media and Sport. Information on location and significance of such assets is found in the same way as for all heritage assets. Judging whether sites fall into this category may be assisted by reference to the criteria for scheduling monuments. Further information on scheduled monuments can be found on the Department for Culture, Media and Sport's website.

(2) Other non-designated heritage assets of archaeological interest. By comparison this is a much larger category of lesser heritage significance, although still subject to the conservation objective. On occasion the understanding of a site may change following assessment and evaluation prior to a planning decision and move it from this category to the first.

Where an asset is thought to have archaeological interest, the potential knowledge which may be unlocked by investigation may be harmed even by minor disturbance, because the context in which archaeological evidence is found is crucial to furthering understanding.

Decision-making regarding such assets requires a proportionate response by local planning authorities. Where an initial assessment indicates that the site on which development is proposed includes or has potential to include heritage assets with archaeological interest, applicants should be required to submit an appropriate desk-based assessment and, where necessary, a field evaluation. However, it is estimated that following the initial assessment of archaeological interest only a small proportion – around 3% – of all planning applications justify a requirement for detailed assessment.

Paragraph: 041 Reference ID: 18a-041-20190723

Revision date: 23 07 2019

Heritage consent processes

Is listed building consent the same as planning permission?

Listed building consent and planning permission are 2 separate regimes. For some proposed works both planning permission and listed building consent will be needed, but in other cases only one, or neither, is required.

Paragraph: 042 Reference ID: 18a-042-20190723

Revision date: 23 07 2019

When is an application for planning permission required to carry out works to a listed building?

This will depend on the particular works involved, but in general terms:

- an application for planning permission is required if the works would usually require a planning application if the building was not listed
- an application for planning permission is not required if the works would normally be permitted development, there are no restrictions on the permitted development rights in respect of listed buildings and the permitted development rights have not been removed locally
- an application for planning permission is not required if the works would not constitute 'development' (https://www.gov.uk/guidance/when-is-permission-required#what-is-development) eg internal works to listed buildings

Paragraph: 043 Reference ID: 18a-043-20190723

Revision date: 23 07 2019

When is listed building consent required?

Any works to demolish any part of a listed building or to alter or extend it in a way that affects its character as a building of special architectural or historic interest require listed building consent, irrespective of whether planning permission is also required. For all grades of listed building, unless the list entry indicates otherwise, the listing status covers the entire building, internal and external, and may cover objects fixed to it, and also curtilage buildings or other structures.

Undertaking works, or causing works to be undertaken, to a listed building which would affect its character as a building of special historic or architectural interest, without first obtaining listed building consent is a criminal offence under section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (http://www.legislation.gov.uk/ukpga/1990/9/section/9).

There is no fee for submitting an application for listed building consent.

Paragraph: 044 Reference ID: 18a-044-20190723

Revision date: 23 07 2019

What is a Listed Building Heritage Partnership Agreement?

A Listed Building Heritage Partnership Agreement is an Agreement between a local planning authority and the owner(s) of a listed building or group of listed buildings which grants listed building consent. It allows the local planning authority to grant listed building consent for the duration of the Agreement for specified works of alteration or extension (but not demolition) of those listed buildings covered by the Agreement (see sections 26A and 26B of the Planning (Listed Buildings and Conservation Areas) Act 1990) (https://www.legislation.gov.uk/ukpga/1990/9/contents).

Listed Building Heritage Partnership Agreements remove the need for the owner(s) concerned to submit repetitive applications for listed building consent for works covered by an Agreement.

When considering whether to grant listed building consent in a Listed Building Heritage Partnership Agreement local planning authorities are required to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest possessed by the listed building(s) to be included in the Agreement and will need to take account of the relevant policies in the National Planning Policy Framework.

Paragraph: 045 Reference ID: 18a-045-20190723

Revision date: 23 07 2019

How long will a Listed Building Heritage Partnership Agreement last?

A Listed Building Heritage Partnership Agreement must make provision for its termination. The duration of a Listed Building Heritage Partnership agreement will be a matter for the local planning authority and the other parties to the Agreement to decide. Setting a time limit for a Listed Building Heritage Partnership Agreement is recommended to ensure that the Agreement continues to meet appropriate standards and principles for conservation, and continues to have regard to the special interest of the building.

Paragraph: 046 Reference ID: 18a-046-20190723

Revision date: 23 07 2019

What procedures does a local planning authority need to follow for a Listed Building Heritage Partnership Agreement?

The procedures, including those around consultation and publicity, which local planning authorities must follow for Listed Building Heritage Partnership Agreements, are set out in the Planning (Listed Buildings and Conservation Areas) (Heritage Partnership Agreements) Regulations 2014 (http://www.legislation.gov.uk/uksi/2014/550/contents/made). See the Historic England website for advice on Listed Building Heritage Partnership Agreements (https://historicengland.org.uk/images-books/publications/setting-up-listed-building-hpa-advice-note-5/).

Paragraph: 047 Reference ID: 18a-047-20190723

Revision date: 23 07 2019

What is a Local Listed Building Consent Order?

Local Listed Building Consent Orders are made by local planning authorities and grant listed building consent for works of any description for the alteration or extension (but not demolition) of listed buildings in their area (see Planning (Listed Buildings and Conservation Areas) Act 1990 (https://www.legislation.gov.uk/ukpga/1990/9/section/26D)). This means that owners and developers do not need to submit repetitive applications for listed building consent for works covered by an Order.

When considering making a Local Listed Building Consent Order local planning authorities are required to have special regard to the desirability of preserving the listed building(s) to which the Order applies, their setting or any features of special architectural or historic interest they possess and will need to take account of the relevant policies in the National Planning Policy Framework.

Paragraph: 048 Reference ID: 18a-048-20190723

Revision date: 23 07 2019

How long will a Local Listed Building Consent Order last?

There is no time limit on the duration of Local Listed Building Consent Orders set out in the regulations. Local planning authorities may consider it expedient to set a time limit for the Order in each individual case.

Paragraph: 049 Reference ID: 18a-049-20190723

Revision date: 23 07 2019

What procedures does a local planning authority need to follow when making a Local Listed Building Consent Order?

The procedures, including those around consultation and publicity, which local planning authorities must follow when making a Local Listed Building Consent Order are set out in the Planning (Local Listed Building Consent Orders) (Procedure) Regulations 2014 (http://www.legislation.gov.uk/uksi/2014/551/contents/made) and the Historic England website has advice on Drawing up a Local Listed Building Consent Order (https://historicengland.org.uk/images-books/publications/drawing-up-local-listed-building-consent-order-advice-note-6/).

Paragraph: 050 Reference ID: 18a-050-20190723

Revision date: 23 07 2019

What is the difference between a Listed Building Heritage Partnership Agreement and a Local Listed Building Consent Order?

Listed Building Heritage Partnership Agreements are Agreements made between the local planning authority and the owner(s) of a listed building or group of listed buildings. There may be additional parties to the Agreement. As well as granting a general listed building consent for agreed works of alteration or extension to the listed building(s) to which the Agreement relates, they can cover other matters such as public access or management issues. They might be used, for example, to cover university campuses or large office buildings.

Local Listed Building Consent Orders are made by the local planning authority and grant a general listed building consent for specified works of alteration or extension to listed buildings of a specified description or in a specified part of the authority's area. They do not cover any other matters relating to the listed buildings. They are likely to be used for groups of similar or related listed buildings in multiple ownership, for example, estate villages or rows of terraced houses.

Paragraph: 051 Reference ID: 18a-051-20190723

Revision date: 23 07 2019

What is a Listed Building Consent Order?

A Listed Building Consent Order is made by the Secretary of State for Housing, Communities and Local Government to grant listed building consent for works of any description for the alteration or extension (but not demolition) of listed buildings of any description in England (see sections 26C, 26F, 26G and 28A of the Planning (Listed Buildings and Conservation Areas) Act 1990 (https://www.legislation.gov.uk/ukpga/1990/9/contents)).

When considering making a Listed Building Consent Order the Secretary of State is required to have special regard to the desirability of preserving the listed building(s) to which the Order applies, their setting or any features of special architectural or historic interest they possess and will need to take account of the relevant policies in the National Planning Policy Framework.

A pilot Listed Building Consent Order is currently being developed with the Canal & River Trust to help inform the approach to future Orders. See the Historic England website for further information on Listed Building Consent Orders (https://historicengland.org.uk/images-books/publications/notes-listed-building-consent-orders/).

Paragraph: 052 Reference ID: 18a-052-20190723

Revision date: 23 07 2019

What is a Certificate of Lawfulness of Proposed Works?

A Certificate of Lawfulness of Proposed Works provides formal confirmation that proposed works of alteration or extension (but not demolition) of a listed building do not require listed building consent because they do not affect the character of the listed building as a building of special architectural or historic interest (see section 26H of the Planning (Listed Buildings and Conservation Areas) Act 1990 (https://www.legislation.gov.uk/ukpga/1990/9/section/26H)).

Certificates of Lawfulness of Proposed Works are only available in respect of works which have not yet been carried out – they cannot be obtained retrospectively.

Works for which a Certificate of Lawfulness of Proposed Works is issued must be undertaken within 10 years from the date of issue of the Certificate.

Any person wishing to obtain a Certificate must submit an application to their local planning authority. The procedures for applications, and appeals against refusal or non-determination of an application, are set out in the Planning (Listed Buildings) (Certificates of Lawfulness of Proposed Works) Regulations 2014 (http://www.legislation.gov.uk/uksi/2014/552/contents/made).

Paragraph: 053 Reference ID: 18a-053-20190723

Revision date: 23 07 2019

Is it necessary to apply for a Certificate of Lawfulness of Proposed Works before carrying out minor works to a listed building?

There is no obligation on anyone to apply for a Certificate of Lawfulness of Proposed Works.

Where a person is satisfied that the works they want to carry out do not require listed building consent they can, if they wish, proceed with those works without obtaining any confirmation from the local planning authority.

In order to avoid unnecessary applications, if there is any doubt about whether listed building consent is required, we would encourage owners and developers to discuss the matter with the local planning authority before submitting any application.

Paragraph: 054 Reference ID: 18a-054-20190723

Revision date: 23 07 2019

Is an application for planning permission required to carry out works to an unlisted building in a conservation area?

Planning permission is required for the demolition of certain unlisted buildings in conservation areas (known as ‘relevant demolition’) – see ‘When is permission required?’ (https://www.gov.uk/guidance/when-is-permission-required#demolition-in-a-conservation-area) section of the guidance.

Generally the requirement for planning permission for other works to unlisted buildings in a conservation area is the same as it is for any building outside a conservation area, although some permitted development rights are more restricted in conservation areas. Further information in 'When is permission required?' (https://www.gov.uk/guidance/when-is-permission-required) section of guidance.

Demolishing an unlisted building in a conservation area, without first obtaining planning permission where it is needed, is an offence under section 196D of the Town and Country Planning Act 1990 (http://www.legislation.gov.uk/ukpga/2013/24/schedule/17).

There is no fee for submitting an application for planning permission for the 'relevant demolition' of certain unlisted buildings in conservation areas.

Paragraph: 055 Reference ID: 18a-055-20190723

Revision date: 23 07 2019

What permissions/consents are needed for works to scheduled monuments and protected wreck sites?

Planning permission may be required (https://www.gov.uk/guidance/when-is-permission-required) for works to these kinds of designated heritage assets depending on whether the works constitute 'development' and whether any permitted development rights apply.

Irrespective of any requirement to obtain planning permission, works to scheduled monuments may require scheduled monument consent and works relating to protected wreck sites may require licences. These consent/licence regimes are outside the planning system and are the responsibility of the Department for Culture, Media and Sport advised and administered by Historic England. To undertake works without first obtaining a consent/licence where it is needed is a criminal offence. It is recommended therefore, that those intending to carry out works to these types of heritage asset contact Historic England at an early stage to confirm whether a consent/licence is needed. See the Department for Culture, Media and Sport website for further information on these regimes, including any consultation arrangements (https://www.gov.uk/government/policies/conservation-of-historic-buildings-and-monuments).

Paragraph: 056 Reference ID: 18a-056-20190723

Revision date: 23 07 2019

What permissions/consents are needed for registered parks and gardens, and registered battlefields?

Registered parks and gardens and registered battlefields are subject to the usual requirements to obtain planning permission. As they are designated heritage assets, the policies on designated heritage assets in the National Planning Policy

Framework apply both in relation to plan-making and decision-making. As paragraph 194 (https://www.gov.uk/guidance/national-planning-policy-framework/16-conserving-and-enhancing-the-historic-environment#para194) of the National Planning Policy Framework makes clear, substantial harm to or loss of:

- any designated heritage asset of the highest significance, which includes, registered battlefields and Grade I and II* registered parks and gardens, should be 'wholly exceptional'
- any Grade II registered park or garden should be 'exceptional'

Local planning authorities are required to consult Historic England and The Gardens Trust (formerly known as The Garden History Society) on certain applications for planning permission in respect of registered parks and gardens and registered battlefields.

Local planning authorities may also consult other organisations that they consider may have a particular interest in the proposed development. In this respect, local authorities may wish to consider consulting the Battlefields Trust in relation to applications affecting registered battlefields.

Paragraph: 057 Reference ID: 18a-057-20190723

Revision date: 23 07 2019

Consultation and notification requirements for heritage related applications

When must local planning authorities consult or notify other organisations about heritage related applications?

Local planning authorities are required to consult or notify Historic England, The Gardens Trust (formerly known as The Garden History Society) and the National Amenity Societies (ie Historic Buildings & Places (the working name of the Ancient Monuments Society), the Council for British Archaeology, the Georgian Group, the Society for the Protection of Ancient Buildings, the Victorian Society and the Twentieth Century Society) on certain applications. Further details of the requirements are set out in the following section.

Paragraph: 058 Reference ID: 18a-058-20190723

Revision date: 23 07 2019

When does Historic England need to be consulted or notified on applications for planning permission and listed building consent?

The requirements for consulting or notifying Historic England for different types of applications are set out at the following links:

- applications for planning permission

- applications for listed building consent

Paragraph: 059 Reference ID: 18a-059-20190723

Revision date: 23 07 2019

When do National Amenity Societies need to be notified of listed building consent applications?

National Amenity Societies need to be notified of certain listed building consent applications. The requirements are set out in Table 3.

Paragraph: 060 Reference ID: 18a-060-20190723

Revision date: 23 07 2019

When does The Gardens Trust (formerly known as The Garden History Society) need to be consulted on applications for planning permission?

The Gardens Trust needs to be consulted on certain planning applications. The requirements are set out in Table 4.

Paragraph: 061 Reference ID: 18a-061-20190723

Revision date: 23 07 2019

When must local planning authorities notify the Secretary of State for Housing, Communities and Local Government on heritage applications?

The current requirements for notifying the Secretary of State for Housing, Communities and Local Government are set out in Table 5.

Paragraph: 062 Reference ID: 18a-062-20190723

Revision date: 23 07 2019

Are applications where the applicant is Historic England or a local planning authority treated differently?

Some applications where the applicant is Historic England or a local planning authority are treated differently and are determined by the Secretary of State for Housing, Communities and Local Government rather than the local planning authority. Details are set out in Table 6.

Paragraph: 063 Reference ID: 18a-063-20190723

Revision date: 23 07 2019

Where should applications which need to be referred to Secretary of State for Housing, Communities and Local Government be sent?

They should be sent to:

PCU@levellingup.gov.uk

Enquiry number: 0303 444 8050

Paragraph: 064 Reference ID: 18a-064-20190723

Revision date: 23 07 2019

Table 1: Applications for planning permission: requirements to consult or notify Historic England

Broad requirements	Detailed requirements
For development that would affect the setting of a Grade I or Grade II* listed building	Regulation 5A(3) of the Town and Country Planning (Listed Buildings and Conservation Areas) Regulations 1990 (as amended) (http://www.legislation.gov.uk/uksi/2015/809/contents/made)
For development involving the demolition, in whole or part, or the material alteration of Grade I or II* listed buildings	Article 18 of and Schedule 4 to the Town and Country Planning (Development Management Procedure)(England) Order 2015 (http://www.legislation.gov.uk/uksi/2015/595/contents/made)
For development that would affect the character and appearance of a conservation area where the development involves the erection of a new building or the extension of an existing building, and the area of land in respect of which the application is made is more than 1,000 square metres	Regulation 5A(3) of the Planning (Listed Buildings and Conservation Areas) Regulations 1990 (as amended) (http://www.legislation.gov.uk/uksi/2015/809/contents/made)

Broad requirements	Detailed requirements
For development likely to affect the site of a scheduled monument	Article 18 of and Schedule 4 to the Town and Country Planning (Development Management Procedure)(England) Order 2015 (http://www.legislation.gov.uk/uksi/2015/595/contents/made)
For development likely to affect a registered battlefield or a Grade I or II* park or garden on Historic England's Register of Historic Parks and Gardens of Special Historic Interest in England	Article 18 of and Schedule 4 to the Town and Country Planning (Development Management Procedure)(England) Order 2015 (http://www.legislation.gov.uk/uksi/2015/595/contents/made)
For development likely to affect certain strategically important views in London	Secretary of State for Housing, Communities and Local Government Directions relating to Protected Vistas (https://www.london.gov.uk/programmes-strategies/planning/implementing-london-plan/london-plan-guidance-and-spgs/london-view-management)
All applications by local planning authorities for demolition of an unlisted building in a conservation area	Regulation 4A of the Town and Country Planning General Regulations 1992 (as amended) (http://www.legislation.gov.uk/uksi/2015/807/contents/made)

Paragraph: 065 Reference ID: 18a-065-20190723

Revision date: 23 07 2019

Table 2: Applications for listed building consent: requirements to notify Historic England

Broad requirements	Detailed requirements
To give notice of applications and decisions for works in respect of	Arrangements for handling heritage applications – notification to Historic England and National Amenity Societies and the Secretary of State (England) Direction 2021 (https://www.gov.uk/government/publications/arrangements-for-handling-heritage-applications-direction-2021)

Broad requirements	Detailed requirements
a Grade I or II* listed building	
To give notice of applications and decisions for certain works to Grade II (unstarred) listed buildings. To notify where an application is made to a London borough, and the authority has not determined to refuse it	Arrangements for handling heritage applications – notification to Historic England and National Amenity Societies and the Secretary of State (England) Direction 2021 (https://www.gov.uk/government/publications/arrangements-for-handling-heritage-applications-direction-2021) and Section 14 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (http://www.legislation.gov.uk/ukpga/1990/9/section/14)

Paragraph: 066 Reference ID: 18a-066-20190723

Revision date: 23 07 2019

Table 3: Applications for listed building consent: requirements to notify the National Amenity Societies

Broad requirements	Detailed requirements
To give notice of applications and decisions for works which comprise or include the demolition of the whole or any part of a listed building	Arrangements for handling heritage applications – notification to Historic England and National Amenity Societies and the Secretary of State (England) Direction 2021 (https://www.gov.uk/government/publications/arrangements-for-handling-heritage-applications-direction-2021)

Paragraph: 067 Reference ID: 18a-067-20190723

Revision date: 23 07 2019

Table 4: Applications for planning permission: requirements to consult The Gardens Trust (formerly known as The Garden History Society)

Broad requirements	Detailed requirements
For development likely to affect any park or garden on Historic England's Register of Historic Parks and Gardens of Special Historic Interest in England	Article 18 of and Schedule 4 to the Town and Country Planning (Development Management Procedure)(England) Order 2015 (http://www.legislation.gov.uk/uksi/2015/595/contents/made)

Paragraph: 068 Reference ID: 18a-068-20190723

Revision date: 23 07 2019

Table 5: Applications for planning permission and listed building consent: requirements to notify the Secretary of State for for Housing, Communities and Local Government

Type of application	Broad requirements	Detailed requirements
Application for planning permission	Where the local planning authority intends to grant consent for proposals to which Historic England objects because it would have an adverse impact on a World Heritage Site	The Town and Country Planning (Consultation) (England) Direction 2021 (https://www.gov.uk/government/publications/the-town-and country-planning-consultation-england-direction-2021)
Application for listed building consent	Outside Greater London only, or in Greater London where the	Section 13 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (http://www.legislation.gov.uk/ukpga/1990/9/section/13) ar Arrangements for handling heritage applications – notification to Historic England and National Amenity Societies and the Secretary of State (England)

Type of application	Broad requirements	Detailed requirements
	application is made by Historic England, where the local planning authority intend to grant consent for works to any Grade I or II* listed building or certain works to Grade II (unstarred) listed buildings where Historic England or any of the National Amenity Societies are notified and object	Direction 2021 (https://www.gov.uk/government/publications/arrangement for-handling-heritage-applications-direction-2021)
Application for listed building consent	In Greater London only, where Historic England intend to direct the authority to grant consent or authorise it to determine the application as it sees fit, in relation to Grade I and II* listed buildings and certain works	Section 14 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (http://www.legislation.gov.uk/ukpga/1990/9/section/14) ar Arrangements for handling heritage applications – notification to Historic England and National Amenity Societies and the Secretary of State (England) Direction 2021 (https://www.gov.uk/government/publications/arrangement for-handling-heritage-applications-direction-2021)

Type of application	Broad requirements	Detailed requirements
	to Grade II (unstarred) listed buildings	

Paragraph: 069 Reference ID: 18a-069-20190723

Revision date: 23 07 2019

Table 6: Applications for listed building consent and planning permission for demolition of an unlisted building in a conservation area from Historic England and local planning authorities: requirement to refer to the Secretary of State for Housing, Communities and Local Government

Type of application	Broad requirements	Detailed requirements
Application for listed building consent by Historic England where Historic England or a national amenity society are notified and object to the work	To refer applications for Secretary of State's determination	Arrangements for handling heritage applications – notification to Historic England and National Amenit Societies and the Secretary of State (England) Direction 2021 (https://www.gov.uk/government/publications/arrangemen for-handling-heritage-applications-direction-2021)
Application for listed building consent by local planning authorities, where Historic England or a	To refer applications for Secretary of State's determination	Regulation 13 of the Planning (Listed Buildings and Conservation Areas) Regulations 1990 (as amende (http://www.legislation.gov.uk/uksi/2015/809/contents/ma

Type of application	Broad requirements	Detailed requirements
national amenity society are notified and object to the proposed works, and the local authority do not propose to refuse the application		
Application for planning permission for demolition of unlisted building in a conservation area by local planning authorities where Historic England objects to the proposed works, and the local authority do not propose to refuse the application	To refer applications for Secretary of State's determination	Regulation 4A of the Town and Country Planning General Regulations 1992 (as amended) (http://www.legislation.gov.uk/uksi/2015/807/contents/mad

Paragraph: 070 Reference ID: 18a-070-20190723

Revision date: 23 07 2019

Further information on heritage and planning issues

Where can I find further information on heritage planning issues?

- Listed building consent enforcement (https://www.gov.uk/guidance/ensuring-effective-enforcement#Listed-Building-enforcement)
- Listed building consent appeals (https://www.gov.uk/guidance/appeals#appeals-against-other-planning-decisions)
- Compulsory purchase in section 10 of the department's Guidance on compulsory purchase process and the Crichel Down Rules (https://www.gov.uk/government/publications/compulsory-purchase-process-and-the-crichel-down-rules-guidance)

Paragraph: 071 Reference ID: 18a-071-20190723

Revision date: 23 07 2019

Published 10 April 2014
Last updated 23 July 2019 + show all updates

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Guidance on

Compulsory purchase process

and

The Crichel Down Rules

This compulsory purchase guidance updates the previous version published in February 2018. It applies only to England.

(The guidance contains internal hyperlinks to navigate within the document. You may need to install command icons on your toolbar to allow you to do this. This can be done by downloading the document then opening it as a PDF. Go to View, then Page Navigation and select Previous view/Next view. Once you click on a hyperlink, you can use the Previous arrow to take you back to your original place in the document.)

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July 2019

Contents

Compulsory purchase guidance

Tier 1: compulsory purchase overview

Guidance relevant to all compulsory purchase orders
This tier contains guidance on:

- General overview
- The compulsory purchase process:
  - Stage 1: choosing the right compulsory purchase power
  - Stage 2: justifying a compulsory purchase order
  - Stage 3: preparing and making a compulsory purchase order
  - Stage 4: consideration of the compulsory purchase order
  - Stage 5: implementing a compulsory purchase order
  - Stage 6: compensation

General overview

1. What are compulsory purchase powers?

These are powers which enable ('enabling powers') public bodies on which they are conferred to acquire land compulsorily. Compulsory purchase of land requires the approval of a confirming minister.

Compulsory purchase powers are an important tool to use as a means of assembling the land needed to help deliver social, environmental and economic change. Used properly, they can contribute towards effective and efficient urban and rural regeneration, essential infrastructure, the revitalisation of communities, and the promotion of business – leading to improvements in quality of life.

2. When should compulsory purchase powers be used?

Acquiring authorities should use compulsory purchase powers where it is expedient to do so. However, a compulsory purchase order should only be made where there is a compelling case in the public interest.

The confirming authority will expect the acquiring authority to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement. Where acquiring authorities decide to/arrange to acquire land by agreement, they will pay compensation as if it had been compulsorily purchased, unless the land was already on offer on the open market.

Compulsory purchase is intended as a last resort to secure the assembly of all the land needed for the implementation of projects. However, if an acquiring authority waits for negotiations to break down before starting the compulsory purchase process, valuable time will be lost. Therefore, depending on when the land is required, it may often be sensible, given the amount of time required to complete the compulsory purchase process, for the acquiring authority to:

- plan a compulsory purchase timetable as a contingency measure; and
- initiate formal procedures

This will also help to make the seriousness of the authority's intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations.

When making and confirming an order, acquiring authorities and authorising authorities should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected. The officers' report seeking authorisation for the compulsory purchase order should address human rights issues. Further guidance on human rights issues can be found on the Equality and Human Rights Commission's website.

3. What should acquiring authorities consider when offering financial compensation in advance of a compulsory purchase order?

When offering financial compensation for land in advance of a compulsory purchase order, public sector organisations should, as is the norm, consider value for money in terms of the Exchequer as a whole in order to avoid any repercussive cost impacts or pressures on both the scheme in question and other publicly-funded schemes.

Acquiring authorities can consider all of the costs involved in the compulsory purchase process when assessing the appropriate payments for purchase of land in advance of compulsory purchase. For instance, the early acquisition may avoid some of the following costs being incurred:

- legal fees (both for the order making process as a whole and for dealing with individual objectors within a wider order, including compensation claims)
- wider compulsory purchase order process costs (for example, staff resources)
- the overall cost of project delay (for example, caused by delay in gaining entry to the land)
- any other reasonable linked costs (for example, potential for objectors to create further costs through satellite litigation on planning permissions and other orders)

In order to reach early settlements, public sector organisations should make reasonable initial offers, and be prepared to engage constructively with claimants about relocation issues and mitigation and accommodation works where relevant.

4. Who has compulsory purchase powers?

Many public bodies with statutory powers have compulsory purchase powers, including:

- local authorities (which include for some purposes national park authorities)
- statutory undertakers
- some executive agencies, including Homes England[1]
- health service bodies

Government ministers also have compulsory purchase powers, but departments that use them will have their own internal guidance on how to proceed.

5. How is a compulsory purchase order made?

Detailed guidance on the compulsory purchase process is provided in the section on the compulsory purchase order process.

[1] Homes England is the trading name for the Homes and Communities Agency (HCA) and operates under the powers given to the HCA in the Housing and Regeneration Act 2008.

6. How should the Public Sector Equality Duty be taken into account in the compulsory purchase regime?

All public sector acquiring authorities are bound by the Public Sector Equality Duty as set out in section 149 of the Equality Act 2010. Throughout the compulsory purchase process acquiring authorities must have due regard to the need to: (a) eliminate unlawful discrimination, harassment, victimisation; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. In performing their public functions, acquiring authorities must have due regard to the need to meet these three aims of the Equality Act 2010.

For example, an important use of compulsory purchase powers is to help regenerate run-down areas. Although low income is not a protected characteristic, it is not uncommon for people from ethnic minorities, the elderly or people with a disability to be over-represented in low income groups. As part of the Public Sector Equality Duty, acquiring authorities must have due regard to the need to promote equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. This might mean that the acquiring authority devises a process which promotes equality of opportunity by addressing particular problems that people with certain protected characteristics might have (eg making sure that documents are accessible for people with sight problems or learning difficulties and that people have access to advocates or advice).

7. Can anyone else initiate compulsory purchase?

In certain circumstances an owner may also initiate a compulsory purchase process. An owner may initiate the process by serving:

- a purchase notice under section 137 of the Town and Country Planning Act 1990 and section 32 Planning (Listed Buildings and Conservation Areas) Act 1990 - served by landowners following an adverse planning or listed building consent decision where, in specified circumstances, they consider that the land has become incapable of reasonable beneficial use in its existing state; or

- a blight notice under section 150 of the Town and Country Planning 1990 Act - served by landowners where they have made reasonable endeavours to sell their land but, because of blight caused by planning proposals affecting the land, they have not been able to do so, except at a substantially lower price than might reasonably have been expected. Blight notices can only be served in the circumstances listed in schedule 13 to the Town and Country Planning Act 1990

8. Are there any other ways to compulsorily acquire land?

Other powers of compulsory purchase include:

- a Transport and Works Act order under the Transport and Works Act 1992 - guidance on Transport and Works Act orders is available from the Department for Transport

- a development consent order under the Planning Act 2008 for a Nationally

Significant Infrastructure Project - guidance is available here

- a hybrid act of Parliament, such as the Crossrail Act 2008, which is one promoted by the government but in relation to specified land rather than the UK as a whole

- a harbour revision order and a harbour empowerment order under the Harbours Act 1964 – guidance is available here

This guidance relates to the use of compulsory purchase powers to make a compulsory purchase order that is provided by a specific act of Parliament and requires the approval of a confirming minister.

The compulsory purchase order process

9. What is the process for making a compulsory purchase order?

There are six key stages in the process:

- Stage 1: choosing the right compulsory purchase power
- Stage 2: justifying a compulsory purchase order
- Stage 3: preparing and making a compulsory purchase order
- Stage 4: consideration of the compulsory purchase order
- Stage 5: implementing a compulsory purchase order
- Stage 6: compensation

Stage 1: choosing the right compulsory purchase power

10. When can an acquiring authority use its compulsory purchase powers?

There are a large number of enabling powers, each of which specifies the bodies that are acquiring authorities for the purposes of the power and the purposes for which the land can be acquired. The purpose for which an acquiring authority seeks to acquire land will determine the statutory power under which compulsory purchase is sought. This in turn will influence the factors which the confirming minister will want to take into account in deciding whether to confirm a compulsory purchase order.

Most acts containing enabling powers specify that the procedures in the Acquisition of Land Act 1981 apply to orders made under those powers. Where this is the case, an acquiring authority must follow those procedures.

11. Which power should an acquiring authority use to make a compulsory purchase order?

Acquiring authorities should look to use the most specific power available for the purpose in mind, and only use a general power when a specific power is not available. The authority should have regard to any guidance relating to the use of the power and adhere to any legislative requirements relating to its use.

Specific guidance is available for:

- local authorities for planning purposes
- local authorities in conjunction with other powers or where land is required for more than one function
- Homes England
- urban development corporations
- new town development corporations
- local housing authorities for housing purposes
- to improve the appearance or condition of land
- for educational purposes
- for public libraries and museums
- for airport Public Safety Zones
- for listed buildings in need of repair

Stage 2: justifying a compulsory purchase order

12. How does an acquiring authority justify a compulsory purchase order?

It is the acquiring authority that must decide how best to justify its proposal to compulsorily acquire land under a particular act. The acquiring authority will need to be ready to defend the proposal at any inquiry or through written representations and, if necessary, in the courts.

There are certain fundamental principles that a confirming minister should consider when deciding whether or not to confirm a compulsory purchase order (see How will the Confirming minister consider the acquiring authority's justification for a compulsory purchase order?). Acquiring authorities may find it useful to take account of these in preparing their justification.

A compulsory purchase order should only be made where there is a compelling case in the public interest.

An acquiring authority should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected. Particular consideration should be given to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention.

13. How will the confirming minister consider the acquiring authority's justification for a compulsory purchase order?

The minister confirming the order has to be able to take a balanced view between the intentions of the acquiring authority and the concerns of those with an interest in the land that it is proposing to acquire compulsorily and the wider public interest. The more comprehensive the justification which the acquiring authority can present, the stronger its case is likely to be.

However, the confirming minister will consider each case on its own merits and this guidance is not intended to imply that the confirming minister will require any particular degree of justification for any specific order. It is not essential to show that land is required immediately to secure the purpose for which it is to be acquired, but a confirming minister will need to understand, and the acquiring authority must be able to demonstrate, that there are sufficiently compelling reasons for the powers to be sought at this time.

If an acquiring authority does not:

- have a clear idea of how it intends to use the land which it is proposing to acquire;
  and

- cannot show that all the necessary resources are likely to be available to achieve that end within a reasonable time-scale

it will be difficult to show conclusively that the compulsory acquisition of the land included in the order is justified in the public interest, at any rate at the time of its making.

See also Section 1: advice on section 226 of the Town and Country Planning Act 1990 for further information in relation to orders under that power.

14. What information about the resource implications of the proposed scheme does an acquiring authority need to provide?

In preparing its justification, the acquiring authority should address:

a) **sources of funding** - the acquiring authority should provide substantive information as to the sources of funding available for both acquiring the land and implementing the scheme for which the land is required. If the scheme is not intended to be independently financially viable, or that the details cannot be finalised until there is certainty that the necessary land will be required, the acquiring authority should provide an indication of how any potential shortfalls are intended to be met. This should include:

- the degree to which other bodies (including the private sector) have agreed to make financial contributions or underwrite the scheme; and
- the basis on which the contributions or underwriting is to be made

b) **timing of that funding** - funding should generally be available now or early in the process. Failing that, the confirming minister would expect funding to be available to complete the compulsory acquisition within the statutory period (see section 4 of the Compulsory Purchase Act 1965) following the operative date, and only in exceptional circumstances would it be reasonable to acquire land with little prospect of the scheme being implemented for a number of years.

Evidence should also be provided to show that sufficient funding could be made available immediately to cope with any acquisition resulting from a blight notice.

15. How does the acquiring authority address whether there are any other impediments to the scheme going ahead?

The acquiring authority will also need to be able to show that the scheme is unlikely to be blocked by any physical or legal impediments to implementation. These include:

- the programming of any infrastructure accommodation works or remedial work which may be required; and
- any need for planning permission or other consent or licence

Where planning permission will be required for the scheme, and permission has yet to be granted, the acquiring authority should demonstrate to the confirming minister that there are no obvious reasons why it might be withheld. Irrespective of the legislative powers under which the actual acquisition is being proposed, if planning permission is

required for the scheme, then, under section 38(6) of the Planning and Compulsory Purchase Act 2004, the planning application will be determined in accordance with the development plan for the area, unless material considerations indicate otherwise. Such material considerations might include, for example, a local authority's supplementary planning documents and national planning policy, including the National Planning Policy Framework.

Stage 3: preparing and making a compulsory purchase order

16. Can acquiring authorities enter land before deciding whether to include it in a compulsory purchase order?

In most cases, acquiring authorities have the right to enter and survey or value land in connection with a proposal to acquire an interest in or a right over land under powers in sections 172-179 of, and Schedule 14 to, the Housing and Planning Act 2016.

A minimum of 14 days' notice of entry must be given to owners and occupiers of the land concerned and compensation is payable by acquiring authorities for any damage arising as a result of the exercise of the power. Acquiring authorities may apply to a justice of the peace for a warrant to exercise the power if necessary. A justice of the peace may only issue a warrant authorising a person to use force if satisfied that another person has prevented or is likely to prevent entry, and that it is reasonable to use force.

17. What are the benefits of undertaking negotiations in parallel with preparing and making a compulsory purchase order?

Undertaking negotiations in parallel with preparing and making a compulsory purchase order can help to build a good working relationship with those whose interests are affected by showing that the authority is willing to be open and to treat their concerns with respect. This includes statutory undertakers and similar bodies as well as private individuals and businesses. Such negotiations can then help to save time at the formal objection stage by minimising the fear that can arise from misunderstandings.

Talking to landowners will also assist the acquiring authority to understand more about the land it seeks to acquire and any physical or legal impediments to development that may exist. It may also help in identifying what measures can be taken to mitigate the effects of the scheme on landowners and neighbours, thereby reducing the cost of a scheme. Acquiring authorities are expected to provide evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted, save for lands where land ownership is unknown or in question.

18. Can alternative dispute resolution techniques be used to address concerns about a compulsory purchase order?

In the interests of speed and fostering good will, acquiring authorities are urged to consider offering those with concerns about a compulsory purchase order full access to alternative dispute resolution techniques. These should involve a suitably qualified independent third party and should be available wherever appropriate throughout the whole of the compulsory purchase process, from the planning and preparation stage to agreeing the compensation payable for the acquired properties.

The use of alternative dispute resolution techniques can save time and money for both parties, while its relative speed and informality may also help to reduce the stress which the process inevitably places on those whose properties are affected. For example, mediation might help to clarify concerns relating to the principle of compulsorily acquiring the land, while other techniques such as early neutral evaluation might help to relieve worries at an early stage about the potential level of compensation eventually payable if

the order were to be confirmed.

19. What other steps should be considered to help those affected by a compulsory purchase order?

Compulsory purchase proposals will inevitably lead to a period of uncertainty and anxiety for the owners and occupiers of the affected land. Acquiring authorities should therefore consider:

- providing full information from the outset about what the compulsory purchase process involves, the rights and duties of those affected and an indicative timetable of events; information should be in a format accessible to all those affected
- appointing a specified case manager during the preparatory stage to whom those with concerns about the proposed acquisition can have easy and direct access
- keeping any delay to a minimum by completing the statutory process as quickly as possible and taking every care to ensure that the compulsory purchase order is made correctly and under the terms of the most appropriate enabling power
- offering to alleviate concerns about future compensation entitlement by entering into agreements about the minimum level of compensation which would be payable if the acquisition goes ahead (not excluding the claimant's future right to refer the matter to the Upper Tribunal (Lands Chamber))
- offering advice and assistance to affected occupiers in respect of their relocation and providing details of available relocation properties where appropriate
- providing a 'not before' date, confirming that acquisition will not take place before a certain time
- where appropriate, give consideration to funding landowners' reasonable costs of negotiation or other costs and expenses likely to be incurred in advance of the process of acquisition

20. Why is it important to make sure that a compulsory purchase order is made correctly?

The confirming minister has to be satisfied that the statutory procedures have been followed correctly, whether the compulsory purchase order is opposed or not. This means that the confirming department has to check that no one has been or will be substantially prejudiced as a result of:

- a defect in the compulsory purchase order; or
- by a failure to follow the correct procedures, such as the service of additional or amended personal notices

Where the procedures set out in the Acquisition of Land Act 1981 apply, acquiring authorities must prepare compulsory purchase orders in conformity with the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004 and are urged to take every possible care in doing so, including recording the names and addresses of those with

an interest in the land to be acquired. (See also Can acquiring authorities seek advice from the confirming department?)

Advice on how to complete the forms of orders to which the Compulsory Purchase of Land (Prescribed Forms) Regulations 2004 apply is available here.

21. Are there any other important matters that may require consideration when making a compulsory purchase order?

Where relevant, acquiring authorities should also have regard to advice available on:

- the need to justify the extent of the scheme to be disregarded at the outset
- the protection afforded to special kinds of land
- compulsory purchase of new rights and other interests - for example, in the compulsory creation of a right of access
- restrictions on the compulsory purchase of Crown land

22. Which parties should be notified of a compulsory purchase order?

The parties who must be notified of a compulsory purchase order are referred to as qualifying persons. A qualifying person includes:

- an owner
- an occupier
- a tenant (whatever the period of the tenancy)
- a person to whom the acquiring authority would be required to give notice to treat if it was proceeding under section 5(1) of the Compulsory Purchase Act 1965
- a person the acquiring authority thinks is likely to be entitled to make a claim for compensation under section 10 of the 1965 act (compensation for injurious affection) if the order is confirmed and the compulsory purchase takes place, so far as he is known to the acquiring authority after making diligent inquiry; this relates mainly, but not exclusively, to easements and restrictive covenants

When serving notice of an order on qualifying persons, the acquiring authority is also expected to send to each one a copy of the authority's statement of reasons for making the order. A copy of this statement should also be sent, where appropriate, to any applicant for planning permission in respect of the land. This statement of reasons, although non-statutory, should be as comprehensive as possible.

The general public will also be notified through newspaper notices and site notices.

23. Can objections be made to a compulsory purchase order?

There are statutory requirements for compulsory purchase orders that are about to be submitted to be advertised in newspapers and through site notices. These invite the

submission of objections to the relevant government minister. Objections can be made by owners, other qualifying persons and third parties, including members of the public. Objections must arrive with the minister within the period specified in the notice. This must be a minimum of 21 days. See here for further information on the requirements for grounds of objection and objectors' statements of case in relation to an inquiry. It is important to make objections as relevant as possible to the matters which fall for consideration, in order for the objection to have an effect.

Under rule 14 of the Compulsory Purchase (Inquiries Procedure) Rules 2007, third parties have no right to be heard at an inquiry, although the inspector may permit them to appear at his discretion (although permission is not to be unreasonably withheld).

Objections should be sent to the confirming department at the address provided.

24. Can acquiring authorities seek advice from the confirming department?

Acquiring authorities are expected to seek their own legal and professional advice when preparing and making compulsory purchase orders. Where an authority has taken advice but still retains doubts about particular technical points concerning the form of a proposed compulsory purchase order, it may seek informal written comments from the confirming department by submitting a draft for technical examination.

Experience suggests that technical examination by the confirming department can assist significantly in avoiding delays caused by drafting defects in orders submitted for confirmation. The role of the confirming department at this stage is confined to giving the draft compulsory purchase order a technical examination to check that it complies with the requirements on form and content in the statutes and the Compulsory Purchase of Land (Prescribed Forms) Regulations 2004, without prejudice to the consideration of its merits or demerits.

25. What documents should accompany a compulsory purchase order which is submitted for confirmation?

Below is a checklist of the documents to be submitted to the confirming minister with a compulsory purchase order:

- one copy of the sealed compulsory purchase order and two copies of the sealed map
- two copies each of the unsealed compulsory purchase order and unsealed map - follow the link for further guidance on order maps
- one copy of the general certificate in support of order submission including (where appropriate) confirmation that the proper notices have been correctly served in relation to: (a) an order made on behalf of a parish council; (b) Church of England property; or (c) a listed building in need of repair
- one copy of the protected assets certificate giving a nil return or a positive statement for each category of assets protection referred to in What information needs to be included in a positive statement? in section 16 (except for orders under section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990)

- two copies of the statement of reasons and, wherever practicable, any other documents referred to therein. A statement of reasons must include a statement concerning the planning permission (see How does the acquiring authority address whether there are any other impediments to the scheme going ahead?).

Compulsory purchase orders for listed buildings in need of repair will also require:

- one copy of the repairs notice served in accordance with section 48, where the order is made under section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990) - follow the link for further information on Compulsory purchase orders for listed buildings in need of repair

Additional guidance on the preparation, drafting and submission of compulsory purchase orders for highway schemes and car parks is set out in Department for Transport *Local Authority Circular 2/97: Notes on the preparation, drafting and submission of compulsory purchase orders for highway schemes and car parks for which the Secretary of State is the confirming authority*.

Stage 4: consideration of the compulsory purchase order

26. Who will take the decision to confirm or not a compulsory purchase order?

The 'confirming authority' under the Acquisition of Land Act 1981 is the minister having the power to authorise the acquiring authority to purchase the land compulsorily.

However, under new section 14D of the Acquisition of Land Act 1981[2] a 'confirming authority' can appoint an inspector to act instead of it in relation to the confirmation of a compulsory purchase order to which section 13A of the Acquisition of Land Act 1981 applies (ie a non-ministerial order where there is a remaining objection).

Where the Secretary of State for Levelling Up, Housing and Communities is the confirming authority for such an order, he will carefully consider the suitability of 'delegating' the confirmation decision to an inspector in line with the criteria set out in this guidance. The Secretary of State for Levelling Up, Housing and Communities will assess the suitability of each compulsory purchase order for delegation on its individual merits.

27. What criteria will the Secretary of State for Levelling Up, Housing and Communities consider in deciding whether to delegate a decision on a compulsory purchase order?

The Secretary of State for Levelling Up, Housing and Communities will carefully consider the suitability of all compulsory purchase orders to be delegated to an inspector but will generally delegate the decision on confirmation of a compulsory purchase order where, in his opinion, it appears unlikely to:

- conflict with national policies on important matters
- raise novel issues
- give rise to significant controversy
- have impacts which extend beyond the local area

However, the Secretary of State for Levelling Up, Housing and Communities will assess the suitability of each compulsory purchase order for delegation on its individual merits.

28. If a compulsory purchase order is delegated to an inspector and new issues/evidence emerge, can the Secretary of State revisit his decision to appoint an inspector to take the confirmation decision?

Section 14D of the Acquisition of Land Act 1981 enables a confirming authority to cancel the appointment of an inspector acting instead of him in relation to the confirmation of a

[2] The power to delegate a decision on a compulsory purchase order to an inspector was inserted by section 181 of the Housing and Planning Act 2016 and applies to compulsory purchase orders submitted to a confirming authority for confirmation on or after 6 April 2018.

compulsory purchase order. The appointment may be cancelled at any time before the inspector has made the confirmation decision.

While each compulsory purchase order will be considered on its individual merits, if, at any time until a decision is made by the appointed inspector, the Secretary of State for Levelling Up, Housing and Communities considers, in his opinion, that the compulsory purchase order now raises issues which should be considered by him, he may decide that the appointment of the inspector should be cancelled. In this instance, the inspector will be asked to submit a report and recommendation to the Secretary of State for Levelling Up, Housing and Communities who will make the confirmation decision.

If a confirming authority decides to cancel the appointment of an inspector (and does not appoint another inspector to take the decision instead), it must give its reasons for doing so to the inspector, acquiring authority and every person who has made a remaining objection (see section 14D(7) of the Acquisition of Land Act 1981).

29. What happens if no objections are made?

If no objections are made to a compulsory purchase order and the confirming minister is satisfied that the proper procedure for serving and publishing notices has been observed, he will consider the case on its merits. The minister can then confirm, modify or reject the compulsory purchase order without the need for any form of hearing. If the order can be confirmed without modification and does not include statutory undertakers' land or special kinds of land, the Secretary of State may remit the case back to the acquiring authority for confirmation. Go to Can the confirming minister modify an order? for more information.

30. What happens if there are objections and these are not withdrawn?

If objections are received and not withdrawn, the confirming minister will either arrange for a public local inquiry to be held or – where all the remaining objectors and the acquiring authority agree to it – arrange for the objections to be considered through the written representations procedure.

31. What are the different types of objection?

A 'relevant objection' is one made by a person who is an owner, lessee, tenant or occupier of the land or a person to whom the acquiring authority would be required to give a notice to treat.

It may also be an objection made by a person who might be able to make a claim for injurious affection under section 10 of the Compulsory Purchase Act 1965, but only if the acquiring authority think that he is likely to be entitled to make such a claim if the order is confirmed and the compulsory purchase takes place, so far as that person is known to the acquiring authority after making diligent inquiry.

A 'remaining objection' is a relevant objection that has not been withdrawn or disregarded (for example because it relates solely to compensation).

Other objections can be made by persons who are not a relevant objector, for example, by a third party, community group or special interest organisation.

32. Does an objection need to be in writing?

Section 13(3) of the Acquisition of Land Act 1981 enables the confirming minister to require every person who makes a relevant objection to state the grounds of objection in writing.

33. When might an objector's statement of case be required?

A confirming authority can also require remaining objectors, and others who intend to appear at inquiry, to provide a statement of case. This is a useful device for minimising the need to adjourn inquiries as a result of new information. This is most likely where commercial concerns are objecting to large or complex schemes. Under Rule 7(5) of the Compulsory Purchase (Inquiries Procedure) Rules 2007, a person may be required to provide further information about matters contained in any such statement of case.

Objectors may wish to prepare a statement of case even when not asked to do so because it may be helpful for themselves and the inquiry.

34. How are objections considered?

Although all remaining objectors have a right to be heard at an inquiry, acquiring authorities are encouraged to continue to negotiate with both remaining and other objectors after submitting an order for confirmation, with a view to securing the withdrawal of objections. In line with the advice on alternative dispute resolution, this should include employing such alternative dispute resolution techniques as may be agreed between the parties.

The Compulsory Purchase of Land (Written Representations Procedure) (Ministers) Regulations 2004 prescribe a procedure by which objections to an order can be considered in writing if all the remaining objectors agree and the confirming minister deems it appropriate, as an alternative to holding an inquiry. (In summary, these regulations provide that, once the confirming minister has indicated that the written representations procedure will be followed, the acquiring authority have 15 working days to make additional representations in support of the case it has already made for the order in its statement of reasons. Once these representations have been copied to the objectors, they will also have 15 working days to make representations to the confirming minister. These in turn are copied to the acquiring authority who then has a final opportunity to comment on the objectors' representations but cannot raise new issues.)

The Secretary of State for Levelling Up, Housing and Communities' practice is to offer the written representations procedure to objectors except where it is clear from the outset that the scale or complexity of the order makes it unlikely that the procedure would be acceptable or appropriate. In such cases an inquiry will be called in the normal way. The practice of other Secretaries of State may vary.

35. What procedures are followed for inquiries into compulsory purchase orders under Acquisition of Land Act 1981?

The Compulsory Purchase (Inquiries Procedure) Rules 2007[3] ('2007 Rules') apply to:

[3] The Compulsory Purchase (Inquiries Procedure) Rules 2007 were amended by the Compulsory Purchase (Inquiries Procedure) (Miscellaneous Amendments and Electronic Communications) Rules 2018 with effect from 6 April 2018

- all inquiries into compulsory purchase orders made under the Acquisition of Land Act 1981, both ministerial and non-ministerial, and to compulsory rights orders (see rule 2 of the Rules and section 29 of, and paragraph 11 of schedule 4 to, the 1981 act)

- rule 2A provides that where a person is appointed under section 14D of the Acquisition of Land Act 198 the 2007 Rules shall have effect subject to certain modifications as set out in the schedule

- rule 3 provides for written notice from the authorising authority of its intention to cause an inquiry to be held which commences the procedure

- rules 4 to 6 deal with pre-inquiry meetings

- rule 7 deals with statements of case

- rules 8 to 14 deal with the inquiry timetable, appointment of assessor, the date and public notification of the inquiry and appearances at the inquiry including the representation of a minister or government department at inquiry

- rule 15 deals with the handling of evidence at inquiry

- rules 16 to 19 deal with procedure at the inquiry, site inspections and post-inquiry procedures (including notice of decisions) – in particular rule 18(A1) imposes a requirement on the authorising authority to inform certain persons of the expected date of its decision as to whether to confirm the compulsory purchase order.

- rule 19A sets out the procedure to be followed where a decision notified under rule 19(1) is quashed in proceedings before any court

- rule 20 deals with the power to extend time

- rule 21 deals with sending notices or documents by post or by using electronic communications

- rule 21A provides for how a person may withdraw their consent to use of electronic communications

36. What information should an authority's statement of case contain?

It should be possible for the acquiring authority to use the non-statutory statement of reasons as the basis for the statement of case which is required to be served under rule 7 of the Compulsory Purchase (Inquiries Procedure) Rules 2007 where an inquiry is to be held. The acquiring authority's statement of case should set out a detailed response to the objections made to the compulsory purchase order.

37. What supplementary information may be required?

When considering the acquiring authority's order submission, the confirming department may, if necessary, request clarification of particular points. These may arise both before

the inquiry has been held or after the inquiry.

Such clarification will often relate to statutory procedural matters, such as confirmation that the authority has complied with the requirements relating to the service of notices. This information may be needed before the inquiry can be arranged. But it may also relate to matters raised by objectors, such as the ability of the authority or a developer to meet development costs.

Where further information is needed, the confirming minister's department will write to the acquiring authority setting out the points of difficulty and the further information or statutory action required. The department will copy its side of any such correspondence to remaining objectors, and requests that the acquiring authority should do the same.

38. Should a programme officer be appointed?

Acquiring authorities may wish to consider appointing a programme officer to assist the inspector in organising administrative arrangements for larger compulsory purchase order inquiries. A programme officer might undertake tasks such as assisting with preparing and running of any pre-inquiry meetings, preparing a draft programme for the inquiry, managing the public inquiry document library and, if requested by the inspector, arranging accompanied site inspections. A programme officer would also be able to respond to enquiries about the running of the inquiry during its course.

39. When will an inquiry be held?

Practice may vary between departments but, once the need for an inquiry has been established, it will normally be arranged by the Planning Inspectorate in consultation with the acquiring authority for the earliest date on which an appropriate inspector is available. Having regard to the minimum time required to check the orders and arrange the inquiry, this will typically be held around six months after submission. It is important to ensure that adequate notification is given to objectors of the inquiry dates, so that they have sufficient time to prepare evidence for the inquiry. This will also assist in the efficient conduct of the inquiry.

Once the date of the inquiry has been fixed it will be changed only for exceptional reasons. A confirming department will not normally agree to cancel an inquiry unless all statutory objectors withdraw their objections or the acquiring authority indicates formally that it no longer wishes to pursue the order, in sufficient time for notice of cancellation of the inquiry to be published. As a general rule, the inquiry date will not be changed because the authority or an objector needs more time to prepare its evidence. The authority should have prepared its case sufficiently rigorously before making the order to make such a postponement unnecessary. Nor would the inquiry date normally be changed because a particular advocate is unavailable on the specified date.

40. What scope is there for joint or concurrent inquiries?

It is important to identify at the earliest possible stage any application or appeal associated with, or related to, the order which may require approval or decision by the same, or a different, minister. This is to allow the appropriateness of arranging a joint inquiry or concurrent inquiries to be considered. Such actions might include, for example, an application for an order stopping up a public highway (when it is to be determined by a minister) or an appeal against the refusal of planning permission.

Any such arrangements cannot be settled until the full range of proposals and the objections or grounds of appeal are known. The acquiring authority should ensure that any relevant statutory procedures for which it is responsible (including actually making the relevant compulsory purchase order) are carried out at the right time to enable any related applications or appeals to be processed in step.

41. What advice is available about costs awards?

Advice on the inquiry costs for statutory objectors is given in Award of costs incurred in planning and other proceedings. The principles of this advice also apply to written representations procedure costs.

When notifying successful objectors of the decision on the order under the Compulsory Purchase (Inquiries Procedure) Rules 2007 or the Compulsory Purchase of Land (Written Representations Procedure)(Ministers) Regulations 2004, the Secretary of State for Levelling Up, Housing and Communities will tell them that they may be entitled to claim inquiry or written representations procedure costs and invite them to submit an application for an award of costs. The practice of other ministers may vary.

42. Are acquiring authorities normally required to meet the costs associated with an inquiry or written representations?

Acquiring authorities will be required to meet the administrative costs of an inquiry and the expenses incurred by the inspector in holding it. Likewise, the acquiring authority will be required to meet the inspector's costs associated with the consideration of written representations. Other administrative costs associated with the written representations procedure are, however, likely to be minor, and a confirming minister will decide on a case by case basis whether or not to recoup them from the acquiring authority under section 13B of the Acquisition of Land Act 1981. The daily amount of costs which may be recovered where an inquiry is held to which section 250(4) of the Local Government Act 1972 applies, or where the written representations procedure is used, is £630 per day as prescribed in The Fees for Inquiries (Standard Daily Amount) (England) Regulations 2000.

Further information on the award of costs is available in planning guidance: Award of costs incurred in planning and other proceedings.

43. What happens if there are legal difficulties with an order?

Whilst only the courts can rule on the validity of a compulsory purchase order, the confirming minister would not think it right to confirm an order if it appeared to be invalid, even if there had been no objections to it. Where this is the case, the relevant minister will issue a formal, reasoned decision refusing to confirm the order. The decision letter will be copied to all those who were entitled to be served with notice of the making and effect of the order and to any other person who made a representation.

44. Can the confirming minister modify an order?

The confirming minister may confirm a compulsory purchase order with or without modifications. Section 14 of the Acquisition of Land Act 1981 imposes limitations on the minister's power to modify the order. This provides that an order can only be

modified to include any additional land if all the people who are affected give their consent.

There is no scope for the confirming minister to add to, or substitute, the statutory purpose (or purposes) for which the order was made. The power of modification is used sparingly and not to rewrite orders extensively. While some minor slips can be corrected, there is no need to modify an order solely to show a change of ownership where the acquiring authority has acquired a relevant interest or interests after submitting the order.

If it becomes apparent to an acquiring authority that it may wish the confirming minister to substantially amend the order by modification at the time of any confirmation, the authority should write as soon as possible, setting out the proposed modification. This letter should be copied to each remaining objector, any other person who may be entitled to appear at the inquiry (such as any person required by the confirming authority to provide a statement of case) and to any other interested persons who seem to be directly affected by the matters that might be subject to modification. Where such potential modifications have been identified before the inquiry is held, the inspector will normally wish to provide an opportunity for them to be debated.

45. Can a compulsory purchase order be confirmed in stages?

In cases where the Acquisition of Land Act 1981 applies to a compulsory purchase order, section 13C of that act provides a general power for the order to be confirmed in stages, at the discretion of the confirming minister. This power is intended to make it possible for part of a scheme to be able to proceed earlier than might otherwise be the case, although its practical application is likely to be limited. It is not a device to enable the land required for more than one project or scheme to be included in a single order.

The decision to confirm in part must be accompanied by a direction postponing consideration of the remaining part until a specified date. The notices of confirmation of the confirmed part of the order must include a statement indicating the effect of that direction and be published, displayed and served in accordance with section 15 of the Acquisition of Land Act 1981.

46. When might an order be confirmed in stages?

The power to confirm an order in stages may be used when the minister is satisfied that an order should be confirmed for part of the land covered by the order but is not yet able to decide whether the order should be confirmed in relation to other parts of the order land. This could be, for example, because further investigations are required to establish the extent, if any, of alleged contaminated land. Where an order is confirmed in part under this power, the remaining undecided part is then treated as if it were a separate order.

To confirm in part, the confirming minister will need to be satisfied that:

- the proposed scheme or schemes underlying the need for the order can be independently implemented over that part of the order land to be confirmed, regardless of whether the remainder of the order is ever confirmed

- the statutory requirements for the service and publication of notices have been followed; and

- there are no remaining objections relating to the part to be confirmed (if the minister wishes to confirm part of an order prior to holding a public inquiry or following the written representations procedure)

If the confirming minister were to be satisfied on the basis of the evidence already available to him that a part of the order land should be excluded, he may exercise his discretion to refuse to confirm the order or, in confirming the order, he may modify it to exclude the areas of uncertainty.

47. When can a compulsory purchase order be confirmed by the acquiring authority?

Section 14A of the Acquisition of Land Act 1981 provides a discretionary power for a confirming authority to give the acquiring authority responsibility for deciding an order which has been submitted for confirmation if certain specified conditions are met. The confirming minister must be satisfied that:

- there are no outstanding objections to the order
- all the statutory requirements as to the service and publication of notices have been complied with; and
- the order is capable of being confirmed without modification

The power of the confirming minister to issue such notice is excluded in cases where:

- the land to be acquired includes land acquired by a statutory undertaker for the purposes of its undertaking, that statutory undertaker has made representations to the minister responsible for sponsoring its business and he is satisfied that the land to be taken is used for the purposes of the undertaking; or
- the land to be acquired forms part of a common, open space, or fuel or field garden allotment

as confirmation of an order in these circumstances is contingent on other ministerial decisions.

The acquiring authority's power to confirm a compulsory purchase order does not extend to being able to modify the order or to confirm the order in stages. If the acquiring authority considers that there is a need for a modification, for example, to rectify drafting errors, it will have to ask the confirming minister to revoke the notice given under these provisions.

48. What should the confirming authority do if it decides to give an acquiring authority the power to confirm an order?

To exercise its discretionary power under section 14A of the Acquisition of Land Act 1981, the confirming authority serves a notice on the acquiring authority giving it the power to confirm the compulsory purchase order. The sealed order and one sealed map (or sets of sealed maps) will be returned with the notice. The notice should:

- indicate that if the acquiring authority decides to confirm the order, it should be endorsed as confirmed with the endorsement authenticated by a person

having authority to do so

- suggest a form of words for the endorsement
- refer to the statutory requirement to serve notice of confirmation under section 15 of the 1981 act as amended by section 34 of the Neighbourhood Planning Act 2017; and
- require that the relevant Secretary of State should be informed of the decision on the order as soon as possible with (where applicable) a copy of the endorsed order

49. What should the acquiring authority do if it decides to confirm its own order?

If the acquiring authority decides to confirm its own order, it should return the notice of confirmation to the confirming authority. The form of the notice of confirmation is set out in Forms 9A and 11 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004 as amended The Compulsory Purchase of Land (Prescribed Forms) (Ministers) (Amendment) Regulations 2017.

An acquiring authority exercising the power to confirm must notify the confirming authority as soon as reasonably practicable of its decision. Until such notification is received, the confirming minister can revoke the acquiring authority's power to confirm. This might be necessary, for example, if the confirming minister received a late objection which raised important issues, or if the acquiring authority were to fail to decide whether to confirm within a reasonable timescale.

Acquiring authorities are asked to ensure that in all cases the confirming department is notified without delay of the date when notice of confirmation of the order is first published in the press in accordance with the provisions of the Acquisition of Land Act 1981. This is important as the six weeks' period allowed by virtue of section 23 of the 1981 act for an application to the High Court to be made begins on this date. Similarly, and for the same reason, where the Secretary of State has given a certificate under section 19 of, or paragraph 6 of schedule 3 to, the 1981 act, the department giving the certificate should be notified straight away of the date when notice is first published.

50. Are there timetables for confirmation of compulsory purchase orders?

Section 14B of the Acquisition of Land Act 1981[4] requires the Secretary of State to publish one or more timetables for confirmation of compulsory purchase orders. The timescales are set out in this guidance. The target timescales will apply to all confirming authorities other than the Welsh Ministers (who have the power to publish their own timetables under section 14C of the Acquisition of Land Act 1981 in relation to compulsory purchase orders to be confirmed by them).

51. How long will it take to get a decision on a compulsory purchase order which is

[4] The requirement for the Secretary of State to publish one or more timetables setting out the steps to be taken by confirming authorities in confirming a compulsory purchase order was inserted by section 180 of the Housing and Planning Act 2016 and applies to orders which are submitted to a confirming authority for confirmation on or after 6 April 2018.

delegated to an inspector and subject to the written representation process?

Where a compulsory purchase order is delegated to an inspector and subject to the written representation procedure, there is a statutory requirement for a site visit, where necessary, to be conducted within 15 weeks of the starting date letter (see regulation 8(1) of the Compulsory Purchase of Land (Written Representations Procedure) (Ministers) Regulations 2004 as amended by the Compulsory Purchase of Land (Written Representations Procedure) (Ministers) (Miscellaneous Amendments and Electronic Communications) Regulations 2018).

A decision should be issued within 4 weeks of the site visit date in 80% of cases delegated by the Secretary of State for Levelling Up, Housing and Communities; with 100% of cases being decided within 8 weeks of the site visit date.

In cases where there has not been a site visit, the timescales for decision will be taken from the final exchange of representations under Regulation 5 of the Compulsory Purchase of Land (Written Representations Procedure) (Ministers) Regulations 2004.

52. How long will it take to get a decision on a compulsory purchase order which is delegated to an inspector and subject to the public inquiry procedure?

Where a compulsory purchase order is delegated to an inspector and subject to the public inquiry procedure, the parties will be notified within 10 working days beginning with the day after the inquiry closes of the expected date on which a decision will be issued (see the modified version of rule 18 in Schedule 1 to the Compulsory Purchase (Inquiries Procedure) Rules 2007 as amended by the Compulsory Purchase (Inquiries Procedure) (Miscellaneous Amendments and Electronic Communications) Rules 2018.

A decision on the compulsory purchase order should be issued by the inspector within 8 weeks of the close of the Inquiry in 80% of cases delegated by the Secretary of State for Levelling Up, Housing and Communities; with 100% of cases being decided within 12 weeks.

53. How long will it take to get a decision on a compulsory purchase order which is decided by a Secretary of State and subject to the written representation process?

Where a compulsory purchase order is subject to the written representation procedure, there is a statutory requirement for a site visit, where necessary, to be conducted within 15 weeks of the starting date letter (see regulation 8(1) of the Compulsory Purchase of Land (Written Representations Procedure) (Ministers) Regulations 2004 as amended by the Compulsory Purchase of Land (Written Representations Procedure) (Ministers) (Miscellaneous Amendments and Electronic Communications) Regulations 2018.

The relevant Secretary of State should issue 80% of compulsory purchase decisions on written representation cases within 8 weeks of the site visit. The remaining 20% of cases should be decided within 12 weeks of the site visit.

In cases where there has not been a site visit, the timescales for decision will be taken from the final exchange of representations under Regulation 5 of the Compulsory Purchase of Land (Written Representations Procedure) (Ministers) Regulations 2004.

54. How long will it take to get a decision on a compulsory purchase order which is decided by a Secretary of State and subject to the public inquiry process?

Where a compulsory purchase order is to be decided by the Secretary of State and subject to the public inquiry procedure, the parties will be notified within 10 working days beginning with the day after the inquiry closes of the expected date of the Secretary of State's decision (see rule 18(A1) of the Compulsory Purchase (Inquiries Procedure) Rules 2007 as amended by the Compulsory Purchase (Inquiries Procedure) (Miscellaneous Amendments and Electronic Communications) Rules 2018).

In addition, there is a target that 80% of cases should be decided by the relevant Secretary of State within 20 weeks of the close of the public inquiry – with the remaining cases decided within 24 weeks.

55. What happens if the Secretary of State or an inspector fails to issue a decision in accordance with the published timescales?

The Secretary of State must issue an annual report to Parliament showing the extent to which confirming authorities have complied with the published timescales.

The validity of a compulsory purchase order is not, however, affected by any failure to comply with a timetable (see section 14B(4) of the Acquisition of Land Act 1981).

56. Can a compulsory purchase order be challenged through the courts after it has been confirmed?

Any person aggrieved who wishes to dispute the validity of a compulsory purchase order, or any of its provisions, can challenge the order through an application to the High Court under section 23 of the Acquisition of Land Act 1981 ('the 1981 act') on the grounds that:

- the authorisation of the order is not empowered to be granted under the 1981 act or an enactment mentioned in section 1(1) of that act; or

- a 'relevant requirement' has not been complied with

A 'relevant requirement' is any requirement under the 1981 act, of any regulations made under it, or the Tribunals and Inquiries Act 1992 or of regulations made under that act.

Any such application must be made within 6 weeks of the date specified in section 23(4) of the 1981 act.

57. What powers does the court have on an application under section 23 of the Acquisition of Land Act 1981?

Section 24 of the 1981 act sets out the powers of the court on an application under section 23 of the 1981 act. First, the court has the discretionary power to grant interim relief suspending the operation of the order or certificate pending the final determination of the court proceedings (section 24(1)). Second, where a challenge under section 23 of the 1981 act is successful, the court has the discretionary power to quash:

- the decision to confirm the compulsory purchase order (section 24(3)) (NB: this does not apply in relation to an application under section 23 which was made before 13 July 2016); or

- the whole or any part of an order (section 24(2))

58. Is the time period for implementing a compulsory purchase order extended where it is the subject of a legal challenge?

Under section 4A of the Compulsory Purchase Act 1965 (for notice to treat process) and section 5B of the Compulsory Purchase (Vesting Declarations) Act 1981 (for general vesting declaration process) the normal three year period for implementing a compulsory purchase order is extended for:

- a period equivalent to the period from the date an application challenging the order is made until it is withdrawn or finally determined; or

- one year

whichever is the shorter. NB: The extended time period does not apply to an application made in respect of a compulsory purchase order which became operative before 13 July 2016.

An application to challenge an order is finally determined after the normal time for submitting an appeal has elapsed or, where an appeal has been submitted, it is either withdrawn or finally determined.

59. Can a decision not to confirm a compulsory purchase order be challenged through the courts?

A decision not to confirm a compulsory purchase order can be challenged through the courts by means of an application for judicial review under Part 54 of the Civil Procedure Rules 1998.

Stage 5: implementing a compulsory purchase order

60. When does an order become operative?

Unless it is subject to special parliamentary procedure (for example, in the case of certain special kinds of land, a compulsory purchase order which has been confirmed becomes operative on the date on which the notice of its confirmation is first published.

The method of publication and the information which must be included in a notice is set out in section 15 of the Acquisition of Land Act 1981. Confirmation notices must also contain:

- a prescribed statement about the effect of Parts 2 and 3 of the Compulsory Purchase (Vesting Declarations) Act 1981; and
- invite any person who would be entitled to claim compensation if a declaration were executed under section 4 of that act to give the acquiring authority information about the person's name, address and interest in land, using a prescribed form

Acquiring authorities must issue the confirmation notices within 6 weeks of the date of the order being confirmed or such longer period as may be agreed between the acquiring authority and the confirming authority (section 15(3A) of the Acquisition of Land Act 1981). Where an acquiring authority fails to do so, the confirming authority may take the necessary steps itself and recover its reasonable costs of doing so from the acquiring authority.

The acquiring authority may then exercise the compulsory purchase power (unless the operation of the compulsory purchase order is suspended by the High Court). The actual acquisition process will proceed by one of two routes - either by the acquiring authority serving a notice to treat or by executing a general vesting declaration.

61. How do I register a confirmation notice as a local land charge?

Section 15(6) of the Acquisition of Land Act 1981 provides that a confirmation notice should be sent by the acquiring authority to the Chief Land Register and that it shall be a local land charge. Where land in the order is situated in an area for which the local authority remains the registering authority for local land charges (ie where the changes made by Parts 1 and 3 of Schedule 5 to the Infrastructure Act 2015 have not yet taken effect in that local authority area), the acquiring authority should comply with the steps required by section 5 of the Local Land Charges Act 1975 (prior to it being amended by the Infrastructure Act 2015) to ensure that the charge is registered by the local authority as the registering authority.

62. What is a notice to treat?

There is no prescribed form for a notice to treat but the document must:

- describe the land to which it relates
- demand particulars of the interest in the land

- demand particulars of the compensation claim of the recipient and
- state that the acquiring authority is willing to treat for the purchase of the land and for compensation for any damage caused by the execution of the works

Possession cannot normally be taken until the acquiring authority has served a notice of entry and the minimum period specified in that notice has expired.

Title to the land is subsequently transferred by a normal conveyance.

63. When should a notice to treat be served?

A notice to treat may not be served after the end of the period of three years beginning with the date on which the compulsory purchase order becomes operative, under section 4 of the Compulsory Purchase Act 1965. The notice to treat then remains effective for a further three years, under section 5(2A) of that act.

It can be very stressful for those directly affected to know that a compulsory purchase order has been confirmed on their property. The prospect of a period of up to six years before the acquiring authority actually takes possession can be daunting. Acquiring authorities are therefore urged to keep such people fully informed about the various processes involved and of their likely timing, as well as keeping open the possibility of earlier acquisition where requested by an owner.

64. What period of notice should be given before taking possession under the notice to treat process?

Once the crucial stage of actually taking possession is reached, the acquiring authority is required by section 11 of the Compulsory Purchase Act 1965 to serve a notice of its intention to gain entry. In respect of a compulsory purchase order which is confirmed on or after 3 February 2017, the notice period will be not less than 3 months beginning with the date of service of the notice, except in either of the following circumstances:

- where it is a notice to which section 11A(4) of the 1965 act applies (ie where it is being served on a 'newly identified person' under section 11A(1)(b) and that person is not an occupier, or the acquiring authority was unaware of the person because they received misleading information in response to their inquiries under section 5(1) of the 1965 act. In these circumstances, section 11A(4) provides for a shorter minimum notice period
- where it is a notice to which paragraph 13 of Schedule 2A to the 1965 act applies (ie where under the material detriment provisions in that schedule, an acquiring authority is permitted to serve a further notice of entry, after the initial notice of entry ceased to have effect under paragraph 6, in respect of the land proposed to be acquired)

Although it is necessary for a notice to treat to have been served, this can be done at the same time as serving the notice of entry.

A notice of entry cannot be served after a notice to treat has ceased to be effective. A notice to treat can only be withdrawn in limited circumstances.

Acquiring authorities are encouraged to negotiate a mutually convenient date of entry with the claimant. It is good practice for the acquiring authority to:

- give owners an indication of the approximate date when possession will be taken when serving the notice to treat
- consider the steps which those being dispossessed will need to take to vacate their properties before deciding on the timing of actually taking possession

Authorities should also be aware that:

- agricultural landowners or tenants may need to know the date for the notice of entry earlier than others because of crop cycles and the need to find alternative premises
- short notice often results in higher compensation claims
- until there is an actual or deemed notice to treat an occupier is at risk that any costs they incur in anticipation of receiving such a notice may not be claimable; acquiring authorities would be advised to analyse how long it will take most occupiers to relocate and if the notice of entry is inadequate then they should consider giving an earlier commitment to pay certain costs such as their reasonable costs in identifying suitable alternative accommodation

It is usually important to make an accurate record of the physical condition of the land at the valuation date.

65. What happens if the acquiring authority does not take possession at the time specified in the notice of entry?

Where a compulsory purchase of land has been authorised on or after 3 February 2017 (ie where the order was confirmed on or after that date), section 11B of the Compulsory Purchase Act 1965 allows occupiers with an interest in the land to serve a counter-notice on an acquiring authority to require entry on a specified date which must not be earlier than the date specified in the notice of entry. The occupier must give at least 28 days notice of the date they want entry to be taken.

66. What is a general vesting declaration?

A general vesting declaration can be used as an alternative to the notice to treat procedure. It replaces the notice to treat, notice of entry and the conveyance with one procedure which automatically vests title in the land with the acquiring authority on a certain date.

General vesting declarations are made under the Compulsory Purchase (Vesting Declarations) Act 1981 and in accordance with the Compulsory Purchase of Land (Vesting Declarations) (England) Regulations 2017.

67. When might a general vesting declaration be used?

An acquiring authority may prefer to proceed by general vesting declaration as this

enables the authority to obtain title to the land without having first to be satisfied as to the vendor's title or to settle the amount of compensation (subject to any special procedures such as in relation to purchase of commoners' rights: see Compulsory Purchase Act 1965, section 21 and schedule 4). It can therefore be particularly useful where:

- some of the owners are unknown; or
- the authority wishes to obtain title with minimum delay (for example, to dispose of the land to developers)

A general vesting declaration may be made for any part or all of the land included in the compulsory purchase order except where an acquiring authority has already served (and not withdrawn) a notice to treat in respect of that land.

Section 4(1B) of the Compulsory Purchase (Vesting Declarations) Act 1981 makes clear that the above exception does not apply to deemed notices to treat that may, for example, arise from a blight notice or purchase notice.

For minor tenancies and long tenancies which are about to expire, a general vesting declaration will also not be effective. However, there is a special procedure set out in section 9 of the Compulsory Purchase (Vesting Declarations) Act 1981 for dealing with them.

Where unregistered land is acquired by general vesting declaration, acquiring authorities are recommended to voluntarily apply for first registration under section 3 of the Land Registration Act 2002.

68. When should a general vesting declaration be served?

For compulsory purchase orders which become operative on or after 13 July 2016, section 5A of the Compulsory Purchase (Vesting Declarations) Act 1981 makes clear that a general vesting declaration may not be executed after the end of the period of 3 years beginning with the day on which the compulsory purchase order becomes operative.

69. What period of notice should be given before taking possession under the general vesting declaration process?

For a compulsory purchase of land authorised on or after 3 February 2017, the acquiring authority must give at least three months' notice before taking possession (as this is the minimum vesting period which must be given in a general vesting declaration under section 4(1) of the Compulsory Purchase (Vesting Declarations) Act 1981). Acquiring authorities should consider how long it will take occupiers to reasonably relocate and if 3 months is considered insufficient, consider increasing the vesting period (and therefore the notice period).

70. How does the acquiring authority make a general vesting declaration if the owner, lessee or occupier is unknown?

If it is not possible (after reasonable enquiry) to ascertain the name or address of an owner, lessee or occupier of land, the acquiring authority should comply with section

329(2) of the Town and Country Planning Act 1990 to serve notice after execution of the declaration (required undersection 6 of the Compulsory Purchase (Vesting Declarations) Act 1981).

71. How can Charity Trustees convey land to a public authority?

If acquiring land from a charity, acquiring authorities should be aware of the provisions in Part 7 of the Charities Act 2011 and may need to consult the Charity Commission.

Stage 6: compensation

72. What is the basis of compensation?

Compensation payable for the compulsory acquisition of an interest in land is based on the principle that the owner should be paid neither less nor more than their loss. This is known as the 'equivalence principle'.

73. What are the elements of compensation where land is taken?

While the compensation payable is a single global figure, in practice, the assessment of compensation will involve various elements.

Broadly, the elements of compensation where land is taken are:

- the market value of the interest in the land taken
- 'disturbance' payments for losses caused by reason of losing possession of the land and other losses not directly based on the value of land
- loss payments for the distress and inconvenience of being required to sell and/or relocate from your property at a time not of your choosing
- 'severance/injurious affection' payments for the loss of value caused to retained land by reason of it being severed from the land taken, or caused as a result of the use to which the land is put

74. What are the elements of compensation where no land is taken?

Broadly, the elements of compensation where no land is taken are:

- injurious affection
- Part 1 Land Compensation Act 1973 claims

75. What is the market value of the interest in the land taken?

Compensation payable for the compulsory acquisition of an interest in land is based on the 'equivalence principle' (ie that the owner should be paid neither less nor more than their loss). The value of land taken is the amount which it might be expected to realise if sold on the open market by a willing seller (Land Compensation Act 1961, section 5, rule 2), disregarding any effect on value of the scheme of the acquiring authority (known as the 'no scheme' principle); Certificates of Appropriate Alternative Development may be used to indicate the planning permissions that could have been obtained, which will affect any development value of the land.

Alternatively, where the property is used for a purpose for which there is no general demand or market (eg a church) and the owner intends to reinstate elsewhere, he may be awarded compensation on the basis of the reasonable cost of equivalent reinstatement

(see Land Compensation Act 1961, section 5, rule 5).

76. How should the value of the land be assessed in light of the 'no scheme principle'?

Sections 6A to 6E of the Land Compensation Act 1961, inserted by section 32 of the Neighbourhood Planning Act 2017[5], set out how the value of the land should be assessed applying the 'no scheme principle'.

Section 6A sets out the 'no scheme principle' that any increases or decreases in value caused by the scheme or the prospect of the scheme must be disregarded and then lists the 5 'no scheme rules' to be followed when applying the 'no-scheme principle'.

Section 6B provides that any increases in the value of the claimant's other land, which is contiguous or adjacent to the land taken, is deducted from the compensation payable. This is known as 'betterment'.

Section 6C provides that where a claimant is compensated for injurious affection for other land when land is taken for a scheme, and then that other land is subsequently subject to compulsory purchase for the purposes of the scheme, the compensation for the acquisition of the other land is to be reduced by the amount received for injurious affection.

Section 6D defines the 'scheme' for the purposes of establishing the no-scheme world. The default case, set out in subsection (1), is that the 'scheme' to be disregarded is the scheme of development underlying the compulsory acquisition. Subsection (2) makes special provision for new towns, urban development corporations and mayoral development corporations. Where land is acquired in connection with these areas, the 'scheme' is the development of any land for the purposes for which the area is or was designated.

Section 6D(3) and (4) also makes special provision. It provides that where land is acquired for regeneration or redevelopment which is facilitated or made possible by a 'relevant transport project' (defined in section 6D(4)(a)) 'the scheme' includes the relevant transport project.

77. Why is special provision made for relevant transport projects?

New transport projects often raise land values in the vicinity of stations or hubs, which can facilitate regeneration and redevelopment schemes. Where land is acquired for regeneration or redevelopment which is facilitated or made possible by a relevant transport project, the effect of Section 6D(3) is that the scheme to be disregarded includes the relevant transport project - subject to the qualifying conditions and safeguards in section 6E. The intention of this special provision is to ensure that an acquiring authority should not pay for land it is acquiring at values that are inflated by its own or others' public investment in the relevant transport project. Where it applies, the land in question will be valued as if the transport project as well as the regeneration scheme had been cancelled on the relevant valuation date (defined in section 5A). The qualifying conditions and safeguards in section 6E(2) are, in summary that:

[5] The amendments made by section 32 of the Neighbourhood Planning Act 2017 apply to a compulsory purchase of land which is authorised on or after 22 September 2017.

- regeneration or redevelopment was part of the published justification for the relevant transport project

- the instrument authorising the compulsory purchase of the land acquired for regeneration or redevelopment was made or prepared in draft on or after 22 September 2017

- the regeneration or redevelopment land must be in the vicinity of land comprised in the relevant transport project

- the works comprised in the relevant transport project are first opened for use no earlier than 22 September 2022

- the compulsory purchase of the land acquired for regeneration or redevelopment must be authorised within 5 years of the works comprised in the relevant transport project first opening for use; and

- if the owner acquired the land after plans for the relevant transport project were announced but before 8 September 2016 'the scheme' will not be treated as if it included the relevant transport project

78. What is the specific safeguard in section 6E(3)?

Section 6E(3) provides a specific safeguard for persons who acquired land in the vicinity of a relevant transport project after plans for the relevant transport project were announced, but before 8 September 2016 (the day after the Neighbourhood Planning Bill was printed). The specific safeguard is intended to provide protection in circumstances where land was purchased:

- on the basis of a public announcement whose effect was to provide a reasonable degree of certainty about the delivery of a relevant transport project at a particular location

- before the Government introduced legislation that made special provision for relevant transport projects

Where the specific safeguard applies, the 'scheme' will not be treated as if it included the relevant transport project in assessing the compensation payable in respect of the compulsory acquisition of that land. In such circumstances, any increase or decrease in the value of the owner's land caused by the relevant transport project does not have to be disregarded.

79. When is a relevant transport project announced for the purposes of the specific safeguard in section 6E(3)?

Whether and/or when such a project is 'announced' is a question of fact in each case to be determined by the Upper Tribunal (Lands Chamber) in the event of disagreement. The evidence put before the Upper Tribunal (Lands Chamber) could include, among other things, the following matters:

- the inclusion of the relevant transport project, at or near a particular location, in an approved or adopted development plan document

- the inclusion of the relevant transport project in an application for a development consent order or in a compulsory purchase order

- the inclusion of the relevant transport project in a proposal contained in an application for, or in a draft, Transport and Works Act Order for the purposes of the Transport and Works Act 1992

- the inclusion of the relevant transport project in any Bill put before Parliament

- a decision announced by a Minister of, or of approval for, a relevant transport project at a particular location

80. What if the definition of the 'scheme' is disputed?

Section 6D(5) provides that if there is disagreement between parties as to the definition of the 'scheme' to be disregarded that this can be determined by the Upper Tribunal as a question of fact subject as follows. First, the 'scheme' is to be taken by the Upper Tribunal to be the underlying scheme provided for by the act, or other authorising instrument unless it is shown that the 'scheme' is a scheme larger than, but including, the scheme provided for by that authorising instrument. Second, except by agreement or in special circumstances, the Upper Tribunal may only permit the acquiring authority to advance evidence of a larger scheme if that larger scheme was identified in the authorising instrument and any documents made available with it read together.

81. What is the relevant valuation date?

Section 5A of the Land Compensation Act 1961 establishes the date at which land compulsorily acquired is to be valued for compensation purposes (the 'relevant valuation date'). It also establishes that such a valuation is to be based on the market values prevailing at the valuation date and on the condition of the relevant land and any structures on it on that date.

The relevant valuation date is:

- the date of entry and taking possession if the acquiring authority have served a notice to treat and notice of entry; or

- the vesting date if the acquiring authority has executed a general vesting declaration; or

- the date on which the Upper Tribunal (Lands Chamber) has determined compensation if earlier

A claimant can agree compensation with the acquiring authority at any time in accordance with the provisions of section 3 of the Compulsory Purchase Act 1965.

The relevant valuation date for the whole of the land included in any single notice of entry is the date on which the acquiring authority first takes possession of any part of that area

of land (under section 5A(5) of the Land Compensation Act 1961). This means that compensation becomes payable to the claimant for the whole site covered by that notice of entry from that date. The claimant also has the right to receive interest on the compensation due to him in respect of the value of the whole site covered by that notice of entry from that date until full payment is actually made (under section 5A(6) of the 1961 act).

Under the terms of section 11 of the Compulsory Purchase Act 1965, simple interest is payable at the prescribed rate from the date on which the authority enters and takes possession until the outstanding compensation is paid. Interest is not compounded as, neither section 32 nor regulations made under it, confer any power to pay interest on interest, and neither refers to frequency of calculation nor provides for periodic rests, which would be essential to any calculation of interest on a compound basis. It is therefore important that the date of entry is properly recorded by the acquiring authority.

82. Is an advance payment of compensation available?

If requested, and subject to sufficient information being made available by the claimant, the acquiring authority must make an advance payment on account of any compensation which is due for the acquisition of any interest in land, under section 52 of the Land Compensation Act 1973 as amended by sections 194 and 195 of the Housing and Planning Act 2016 and section 38 of the Neighbourhood Planning Act 2017[6]. Advance payments must be registered as local land charges to ensure that payments are not duplicated.

The amount payable in advance is:

- 90% of the agreed sum for the compensation; or
- 90% of the acquiring authority's estimate of the compensation due, if the acquiring authority takes possession before compensation has been agreed

83. Is an advance payment available for a mortgage?

In certain circumstances, a claimant can require the acquiring authority to make advance payments of compensation direct to his mortgage lender. Advance payments relating to the amount owing to the mortgage lender can be made:

- direct to the mortgage lender only with their consent
- to more than one mortgage lender, if the interest of any other mortgage lender whose interest has priority has been released

Section 52ZA of the Land Compensation Act 1973 as amended by section 195 of the Housing and Planning Act 2016 enables an acquiring authority to make an advance payment to a claimant's mortgage lender where the total amount outstanding under the mortgage does not exceed 90% of the estimated total compensation due to the claimant. Alternatively, section 52ZB as amended by section 195 of the Housing and Planning Act

[6] The amendments made by section 194(1) to (3) and section 195 of the Housing and Planning Act 2016 and section 38 of the Neighbourhood Planning Act 2017 apply to a compulsory purchase of land which is authorised on or after 6 April 2018

2016 applies where the total amount exceeds 90% of the total estimated compensation due to the claimant.

The conditions relating to both types of payments are complex and, in order to protect the interests of all parties, it will be advisable for an acquiring authority to work closely with both the claimant and his mortgage lender(s) in determining the amount of the advance payment payable.

84. What information should a claimant provide when requesting an advance payment of compensation?

As the amount payable is 90% of the acquiring authority's estimate of the compensation due, it is in the interests of claimants to provide early and full information to the authority to ensure that the estimate is as robust as possible.

Acquiring authorities should encourage claimants to seek professional advice in relation to their compensation claim. They should also provide claimants with information as to the kinds of evidence they may be expected to provide in support of their compensation claim including, for example:

- detailed records of losses sustained and costs incurred in connection with the acquisition of their property
- all relevant supporting documentary evidence such as receipts, invoices and fee quotes
- business accounts for at least 3 years prior to the acquisition and continuing to the date of the claim
- a record of the amount of time they have spent on matters relating to the compulsory purchase of their property

Sections 52(2) and (2A) and 52ZC(2) of the Land Compensation Act 1973 as amended by section 194 of the Housing and Planning Act 2016 set out what information the claimant must provide and give the acquiring authority 28 days to request further information. The Secretary of State has published a model claim form which claimants are strongly encouraged to use when making a claim for an advance payment.

85. Is there a deadline for making and paying an advance payment?[7]

Section 52(1) of the Land Compensation Act 1973 as amended by section 195 of the Housing and Planning Act 2016 allows a claim for an advance payment to be made and paid at any time after the compulsory acquisition has been authorised. However, an acquiring authority must make an advance payment within 2 months of receipt of the claim or any further information requested under subsection 52(2A)(b) or 52ZC(2), or the date the notice of entry was issued or general vesting declaration was executed, whichever is the later.

[7] The amendments made by section 195 of the Housing and Planning Act 2016 and section 38 of the Neighbourhood Planning Act 2017 apply to a compulsory purchase of land which is authorised on or after 6 April 2018

There is special provision, under subsections (1A) and (4) of section 52 of the 1973 act, where the compulsory acquisition is one to which the Lands Clauses Consolidation Act 1845 applies. In these cases, the acquiring authority may not make an advance payment if they have not taken possession of the land, but must do so if they have. The payment must be made before the end of the day on which possession is taken, or, if later, before the end of the period of two months beginning with the day on which the authority received the request for the payment or any further information required under section 52(2A)(b).

Acquiring authorities should make prompt and adequate advance payments as this can:

- reduce the amount of the interest ultimately payable by the authority on any outstanding compensation; and
- help claimants to have sufficient liquidity to be able to make satisfactory arrangements for their relocation

Acquiring authorities are urged to adopt a sympathetic approach and take advantage of the flexibility offered by section 52(1) of the 1973 act where possible.

86. What happens if an advance payment is made but the compulsory purchase does not go ahead?[8]

Section 52AZA of the Land Compensation Act 1973 as amended by section 197 of the Housing and Planning Act 2016 requires a claimant to repay any advance payment if the notice to treat is withdrawn or ceases to have effect after the advance payment is made. If another person has since acquired the whole of the claimant's interest in the land, the successor will be required to repay the advance payment (provided it was registered as a local land charge in accordance with section 52(8A) of the 1973 act).

Section 52ZE of the Land Compensation Act 1973 as amended by section 198 of the Housing and Planning Act 2016 provides for the recovery of an advance payment to a mortgage lender if the notice to treat has been withdrawn or ceases to have effect. In these circumstances, the claimant must repay the advance payment unless someone else has acquired the claimant's interest in the land. In this case, the successor to the claimant must make the repayment.

87. What is compensation for disturbance?

One element of compensation payable to a claimant is in respect of losses caused as a result of being disturbed from possession of the land taken and other losses caused by the compulsory purchase. This is known as 'disturbance' compensation. The right to compensation for disturbance is set out in the Land Compensation Act 1961, section 5, rule 6. Disturbance payments may include, for example, the costs and expenses of vacating the property and moving to a replacement property such as legal costs, other fees and losses, conveyancing costs and other professional fees.

There are also specific provisions for disturbance payments relating to different interests in land as follows:

[8] The amendments made by section 197 and section 198 of the Housing and Planning Act 2016 apply to a compulsory purchase of land which is authorised on or after 6 April 2018.

- section 20 of the Compulsory Purchase Act 1965 - disturbance for persons who have no greater interest in the land than as tenant for a year or from year to year

- section 46 of the Land Compensation Act 1973 - disturbance where a business is carried on by a person over sixty

- section 47 of the Land Compensation Act 1973 - disturbance where land is the subject of a business tenancy

- section 37 of the Land Compensation Act 1973 - disturbance for persons without compensatable interests in the land acquired

88. Does the '*Bishopsgate* principle' still apply to compensation for disturbance?

Prior to measures in the Neighbourhood Planning Act 2017, case law (*Bishopsgate Space Management v London Underground [2004] 2 EGLR 175*) held that for disturbance compensation purposes where the interest in the land to be acquired was a minor tenancy (a tenancy with less than a year left to run, or a tenancy from year to year) or an unprotected tenancy (a tenancy without the protection of Part 2 of the Landlord and Tenant Act 1954), the acquiring authority should assume that the landlord terminates the tenant's interest at the first available opportunity following notice to treat, whether that would happen in reality or not.

This was to be contrasted with the position for compensation for disturbance for occupiers of business premises with no interest in the land (payable under section 37 of the Land Compensation Act 1973) which was not subject to this artificial assumption.

Section 35 of the Neighbourhood Planning Act 2017[9] inserts a new section 47 into the Land Compensation Act 1973 bringing the assessment of compensation for disturbance for minor and unprotected tenancies into line with that for licensees and protected tenancies (a tenancy with the protection of Part 2 of the Landlord and Tenant Act 1954). Regard should be had to the likelihood of either continuation or renewal of the tenancy, the total period for which the tenancy might reasonably have been expected to continue, and the likely terms and conditions on which any continuation or renewal would be granted. For protected tenancies, the right of a tenant to apply for a new tenancy is also to be taken into account.

89. What are loss payments?

Loss payments are intended to compensate for the claimant's distress and inconvenience of being required to sell and/or relocate from their property at a time not of their choosing (see sections 29-36 of the Land Compensation Act 1973). There are three main types of loss payment:

- home loss payments – see sections 29-33 of the Land Compensation Act 1973

[9] The amendments made by section 35 of the Neighbourhood Planning Act 2017 apply to a compulsory purchase of land which is authorised on or after 22 September 2017

- basic loss payment – see 33A of the Land Compensation Act 1973
- occupier's loss payment - sections 33B and 33C of the Land Compensation Act 1973

90. What are severance and injurious affection?

Severance occurs when the land acquired contributes to the value of the land which is retained, so that when severed from it, the retained land loses value. For example, if a new road is built across a field it may no longer be possible to have access by vehicle to part of the field, rendering it less valuable.

Injurious affection is the depreciation in value of the retained land as a result of the proposed construction on, and use of, the land acquired by the acquiring authority for the scheme. For example, even though only a small part of a farm holding may be acquired for a new road, the impact of the use of the road may reduce the value of the farm.

The principle of compensation for severance is set out in section 7 of the Compulsory Purchase Act 1965.

91. What is injurious affection where no land is taken?

Injurious affection where no land is taken refers to the right to compensation in certain circumstances where the value of an interest in land has been reduced as a result of the execution of works authorised by statute.

The principle of compensation for injurious affection where no land is taken is set out in section 10 of the Compulsory Purchase Act 1965.

92. What are Part 1 claims?

In certain circumstances compensation is payable to landowners in respect of depreciation of the value of their land by certain physical factors (noise, vibration, smell, fumes, smoke, artificial lighting, discharge on the land of a liquid or solid substance) caused by the use of a new or altered highway, aerodrome or other public works (see Part 1 of the Land Compensation Act 1973).

Tier 2: enabling powers

It is likely that only one of the following enabling powers will be relevant in an individual case

93. Where can further information on the powers of acquisition be found?

Further information can be found here:

- Section 1: advice on section 226 of the Town and Country Planning Act 1990
- Section 2: advice on section 121 of the Local Government Act 1972
- Section 3: Homes England
- Section 4: urban development corporations
- Section 5: New Town Development Corporations
- Section 6: local housing authorities for housing purposes and listed buildings in slum clearance
- Section 7: to improve the appearance or condition of land
- Section 8: for educational purposes
- Section 9: for public libraries and museums
- Section 10: for airport Public Safety Zones
- Section 11: for listed buildings in need of repair

Section 1: advice on section 226 of the Town and Country Planning Act 1990

94. Can local authorities compulsorily acquire land for development and other planning purposes?

Under section 226 of the Town and Country Planning Act 1990 the following bodies (which are local authorities for the purposes of that section):

- county, district or London borough councils (section 226(8))
- joint planning boards (section 244(1)); or
- national park authorities (section 244A)

can acquire land compulsorily for development and other planning purposes as defined in section 246(1).

95. What is the purpose of this power?

This power is intended to provide a positive tool to help acquiring authorities with planning powers to assemble land where this is necessary to implement proposals in their Local Plan or where strong planning justifications for the use of the power exist. It is expressed in wide terms and can therefore be used to assemble land for regeneration and other schemes where the range of activities or purposes proposed mean that no other single specific compulsory purchase power would be appropriate.

96. Can this power be used in place of other more appropriate enabling powers?

This power should not be used in place of other more appropriate enabling powers. The statement of reasons accompanying the order should make clear the justification for the use of this specific power. In particular, the Secretary of State may refuse to confirm an order if he considers that this general power is or is to be used in a way intended to frustrate or overturn the intention of Parliament by attempting to acquire land for a purpose which had been explicitly excluded from a specific power.

97. What can the power be used for?

The power can be used as follows:

- section 226(1)(a) enables acquiring authorities with planning powers to acquire land if they think that it will facilitate the carrying out of development (as defined in section 55 of Town and Country Planning Act 1990), redevelopment or improvement on, or in relation to, the land being acquired and it is not certain that they will be able to acquire it by agreement - further guidance on use of the power under section 226(1)(a) can be found here

- section 226(1)(b) allows an authority, if authorised, to acquire land in their area which is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated. The potential scope of

this power is broad. It is intended to be used primarily to acquire land which is not required for development, redevelopment or improvement, or as part of such a scheme

- section 226(3) provides that an order made under either section 226(1)(a) or (b) may also provide for the compulsory purchase of:

    a) any adjoining land which is required for the purpose of executing works for facilitating the development or use of the primary land; or

    b) land to give in exchange for any of the primary land which forms part of a common or open space or fuel or field garden allotment

An authority intending to acquire land for either of these purposes in connection with the acquisition of land under subsection (1) must therefore specify *in the same order*, the appropriate subsection (3) acquisition power and purpose.

98. Does an order have to specify which paragraph of section 226(1) it is made under?

The Secretary of State takes the view that an order made under section 226(1) should be expressed in terms of either paragraph (a) *or* paragraph (b) of that subsection. As these are expressed as alternatives in the legislation, the order should clearly indicate which is being exercised, quoting the wording of paragraph (a) or (b) as appropriate as part of the description of what is proposed.

99. Can the powers in section 226(1) or 226(3)(a) be used only if the purpose or activity specified in the order is to be taken forward by the authority itself?

Section 226(4) provides that it is immaterial by whom the authority propose that any activity or purpose mentioned in section 226(1) or 226(3)(a) should be undertaken or achieved. In particular, the authority does not need to undertake an activity or achieve a purpose themselves.

100. In deciding whether to confirm orders made under section 226, does the Secretary of State need to take into account all objections?

Section 245(1) of the Town and Country Planning Act 1990 provides the Secretary of State with the right to disregard objections to orders made under section 226 which, in his opinion, amount to an objection to the provisions of the Local Plan.

101. Can Crown land be compulsorily purchased?

Sections 293 and 226(2A) of the Town and Country Planning Act 1990 apply where an acquiring authority with planning powers proposes to acquire land compulsorily under section 226 in which the Crown has an interest. The Crown's interest cannot be acquired compulsorily under section 226, but an interest in land held otherwise than by or on behalf of the Crown may be acquired with the agreement of the appropriate body. This might arise, for example, where a government department which holds the freehold interest in certain land may agree that a lesser interest, perhaps a lease or a right of way may be acquired compulsorily and that that interest may, therefore, be included in the order. Further advice about thepurchase of interests in Crown land is here.

Section 226(1)(a)

102. Does the development, redevelopment or improvement scheme need to be taking place on the land to be acquired?

The scheme of development, redevelopment or improvement for which the land needs to be acquired does not necessarily have to be taking place on that land so long as its acquisition can be shown to be essential to the successful implementation of the scheme. This could be relevant, for example, in an area of low housing demand where property might be being removed to facilitate replacement housing elsewhere within the same neighbourhood.

103. Are there any limitations on the use of this power?

The wide power in section 226(1)(a) is subject to the restriction under section 226(1A). This provides that the acquiring authority must not exercise the power unless they think that the proposed development, redevelopment or improvement is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of the area for which the acquiring authority has administrative responsibility.

The benefit to be derived from exercising the power is not restricted to the area subject to the compulsory purchase order, as the concept is applied to the wellbeing of the whole (or any part) of the acquiring authority's area.

104. What justification is needed to support an order to acquire land compulsorily under section 226(1)(a)?

Any programme of land assembly needs to be set within a clear strategic framework, and this will be particularly important when demonstrating the justification for acquiring land compulsorily under section 226(1)(a). Such a framework will need to be founded on an appropriate evidence base, and to have been subjected to consultation processes, including those whose property is directly affected.

The planning framework providing the justification for an order should be as detailed as possible in order to demonstrate that there are no planning or other impediments to the implementation of the scheme. Where the justification for a scheme is linked to proposals identified in a development plan document which has been through the consultation processes but has either not yet been examined or is awaiting the recommendations of the inspector, this will be given due weight.

Where the Local Plan is out of date, it may well be appropriate to take account of more detailed proposals being prepared on a non-statutory basis with the intention that they will be incorporated into the Local Plan at the appropriate time. Where such proposals are being used to provide additional justification and support for a particular order, there should be clear evidence that all those who might have objections to the underlying proposals in the supporting non-statutory plan have had an opportunity to have them taken into account by the body promoting that plan, whether or not that is the authority making the order. In addition, the National Planning Policy Framework is a material consideration in all planning decisions and should be taken into account.

105. Do full details of a scheme need to be worked up before an acquiring authority can proceed with an order?

It may not always be feasible or sensible to wait until the full details of the scheme have been worked up, and planning permission obtained, before proceeding with the order. Furthermore, in cases where the proposed acquisitions form part of a longer-term strategy which needs to be able to cope with changing circumstances, it may not always be possible to demonstrate with absolute clarity or certainty the precise nature of the end use proposed. In all such cases the responsibility will lie with the acquiring authority to put forward a compelling case for acquisition in advance of resolving all the uncertainties.

106. What factors will the Secretary of State take into account in deciding whether to confirm an order under section 226(1)(a)?

Any decision about whether to confirm an order made under section 226(1)(a) will be made on its own merits, but the factors which the Secretary of State can be expected to consider include:

- whether the purpose for which the land is being acquired fits in with the adopted Local Plan for the area or, where no such up to date Local Plan exists, with the draft Local Plan and the National Planning Policy Framework

- the extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social or environmental wellbeing of the area

- whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means. This may include considering the appropriateness of any alternative proposals put forward by the owners of the land, or any other persons, for its reuse. It may also involve examining the suitability of any alternative locations for the purpose for which the land is being acquired

- the potential financial viability of the scheme for which the land is being acquired. A general indication of funding intentions, and of any commitment from third parties, will usually suffice to reassure the Secretary of State that there is a reasonable prospect that the scheme will proceed. The greater the uncertainty about the financial viability of the scheme, however, the more compelling the other grounds for undertaking the compulsory purchase will need to be. The timing of any available funding may also be important. For example, a strict time limit on the availability of the necessary funding may be an argument put forward by the acquiring authority to justify proceeding with the order before finalising the details of the replacement scheme and/or the statutory planning position

Section 2: advice on Section 121 of Local Government Act 1972

107. What can the general compulsory purchase powers for local authorities be used for?

The general power of compulsory purchase at section 121 of the Local Government Act 1972 can (subject to certain constraints) be used by local authorities in conjunction with other enabling powers to acquire land compulsorily for the stated purpose. It may also be used where land is required for more than one function and no precise boundaries between uses are defined.

Section 121 can also be used to achieve compulsory purchase in conjunction with section 120 of the Local Government Act 1972. Section 120 provides a general power for a principal council ie a county, district or London borough council to acquire land by agreement for a statutory function in respect of which there is no specific land acquisition power or where land is intended to be used for more than one function.

Some of the enabling powers in legislation (in the enabling act) for local authorities to acquire land by agreement for a specific purpose do not include an accompanying power of compulsory purchase, for example:

- public walks and pleasure grounds - section 164, Public Health Act 1875
- public conveniences – section 87, Public Health Act 1936
- cemeteries and crematoria – section 214, Local Government Act 1972
- recreational facilities – section 19, Local Government (Miscellaneous Provisions) Act 1976
- refuse disposal sites – section 51, Environmental Protection Act 1990; and
- land drainage – section 62(2), Land Drainage Act 1991

In addition, section 125 contains a general power for a district council to acquire land compulsorily (subject to certain restrictions) on behalf of a parish council which is unable to purchase by agreement land needed for the purpose of a statutory function.

108. What considerations apply in relation to making and submitting an order under Part 7 of the Local Government Act 1972?

The normal considerations in relation to making and submission of a compulsory purchase order, as described in Section 13: preparing and serving the order and its notices, would apply to orders relying upon section 121 or section 125. These include the requirement that compulsory purchase should only be used where there is a compelling case in the public interest.

109. Who is the confirming authority for orders under Part 7 of the Local Government Act 1972?

The confirming authority for orders under Part 7 of the 1972 act is the Secretary of State for Levelling Up, Housing and Communities.

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110. What information should be included in orders under sections 121 or 125 about the acquisition power?

Paragraph 1 of the order should cite the relevant acquisition power (section 121 or 125) and state the purpose of the order, by reference to the enabling act under which the purpose may be achieved.

Where practicable, the words of the relevant section(s) of the enabling act(s) should be inserted into the prescribed form of the order (see Note (f) to Forms 1 to 3 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) Regulations 2004). For example:

'…. the acquiring authority is under section 121 [125] of the Local Government Act 1972 hereby authorised to purchase compulsorily [on behalf of the parish council of …….] the land described in paragraph 2 for the purpose of providing premises for use as a recreation/community centre under section 19 of the Local Government (Miscellaneous Provisions) Act 1976.'

111. What restrictions are there to the use of the powers under sections 121 and 125?

Section 121(2) sets out certain purposes for which principal councils may not purchase land compulsorily under section 121 as follows:

a) for the purposes specified in section 120(1)(b), ie the benefit, improvement or development of their area. Councils may consider using their acquisition powers under the Town and Country Planning Act 1990 for these purposes

b) for the purposes of their functions under the Local Authorities (Land) Act 1963; or

c) for any purpose for which their power of acquisition is expressly limited to acquisition by agreement only, eg section 9(a) of the Open Spaces Act 1906

There are similar limitations in section 125(1) for orders made by district councils on behalf of parish councils.

112. What should a district council consider in deciding whether to make an order on behalf of a parish council?

The district council should have regard to the representations made to them by the parish council in seeking to get them to make such an order and to all the other matters set out in section 125.

113. What restrictions are there on a district council's power to make an order on behalf of a parish council?

A district council may not acquire land compulsorily on behalf of a parish council for a purpose for which a parish council is not, or may not be, authorised to acquire land, eg section 226 of the Town and Country Planning Act 1990 (see subsections (1) and (8)).

Section 125 also does not apply where the purpose of the order is to provide allotments under the Smallholdings and Allotments Act 1908. In such a case, by virtue of section 39(7) of the 1908 act, the district council should purchase the land compulsorily, on behalf of the parish council, under section 25 of that act.

114. What happens if a district council refuses to make an order on behalf of a parish council or does not make one within required time period?

If a district council refuses to make an order under section 125, or does not make one within 8 weeks of the parish council's representations or within such an extended period as may be agreed between the two councils, the parish council may petition the Secretary of State, who may make the order.

Where an order is made by the Secretary of State in such circumstances, section 125 and the Acquisition of Land Act 1981 apply as if the order had been made by the district council and confirmed by the Secretary of State.

115. Can a single order be made by more than one authority and covering mixed purposes, and if so, how is it confirmed?

A single order may be made under section 121 of the Local Government Act 1972 by more than one council and for more than one purpose.

Where this would involve more than one confirming authority, the order may be submitted to one Secretary of State but it has to be processed through all the relevant government departments, involving concerted action by them.

Where an inquiry is required or is considered to be appropriate, the inspector's report will be submitted to each of the departments simultaneously and the decision will be given by the relevant ministers acting together.

116. Can a district council make an order on behalf of more than one parish council?

A district council may also make an order on behalf of more than one parish council. Such an order might, for example, be made under section 125, for the purposes of section 214, on behalf of several parish councils which form a joint burial committee in the area of the district council.

117. What does a parish council need to consider before asking a district council to make an order on its behalf?

A parish council should consider very carefully whether it has the necessary resources to carry out a compulsory purchase of land. A district council which makes an order on behalf of a parish council may (and, in the case of an order made under the Allotments Act 1908, shall) recover from the parish council the expenses which it has incurred. This includes:

- the administrative expenses and costs of the inquiry

- the inquiry costs awarded to successful statutory objectors, should the order not be confirmed, or confirmed in part

- statutory compensation including, where appropriate, any additional disturbance, home loss, or other loss payments, to which the dispossessed owners may be entitled; or

- any compensation for injurious affection payable to adjoining owners who may be entitled to claim

When considering whether to confirm or make an order, the Secretary of State will have regard to questions concerning the ability of the parish council to meet the costs of purchasing the land at market value and to carry forward the scheme for which the order has been or would be made.

Section 3: Homes England

118. What compulsory purchase powers does Homes England have?

Homes England has compulsory purchase powers to acquire land and new rights over land under subsections (2) and (3) of section 9 of the Housing and Regeneration Act 2008.

119. When can Homes England use its compulsory purchase powers?

Homes England can use its compulsory purchase powers to make a compulsory purchase order to facilitate the achievement of its objects set out in section 2 of the Housing and Regeneration Act 2008 (as amended). These are:

- to improve the supply and quality of housing in England
- to secure the regeneration or development of land or infrastructure in England
- to support in other ways the creation, regeneration or development of communities in England or their continued wellbeing
- and to contribute to the achievement of sustainable development and good design in England

with a view to meeting the needs of people living in England.

The made order would then be submitted to the Secretary of State for confirmation in the way set out in Tier 3 of this guidance.

The Localism Act 2011 amended the Greater London Authority Act 1999 so that Homes England's activities in London are now the responsibility of the Mayor to undertake.

120. Why does Homes England have compulsory purchase powers?

Homes England is tasked with supporting private and public sector bodies to deliver housing and regeneration priorities throughout England by providing land, funding and expertise. Powers to compulsorily acquire land can, subject to the normal strong safeguards, ensure that development and regeneration can take place in the right place at the right time.

121. How does Homes England justify the use of its compulsory purchase powers?

Homes England must demonstrate that the proposed acquisition is:

- for the purposes (or 'objects') set out in section 2 of the Housing and Regeneration Act 2008), in addition to any other valid reasons
- in the public interest
- and consistent with the policies in the National Planning Policy Framework and the relevant Local Plan

The justification should be included in the statement of reasons for the compulsory purchase order and preferably be backed up by a more detailed development framework.

122. What is Homes England expected to do when using its compulsory purchase powers?

Before making the compulsory purchase order, Homes England is normally expected to:

- have resolved any major planning difficulties (where practicable); or
- demonstrate that there are no planning or other impediments to the proposed scheme

If, for example, rapid action is essential, it may not always be feasible or sensible (particularly for schemes of strategic or national importance) to wait for planning permission for the replacement scheme or complete all statutory procedures before making the order.

Where the land is required for a defined end use or to provide essential infrastructure (such as roads and sewers) to facilitate regeneration or economic development, Homes England will also normally be expected to have:

- reasonably firm proposals; or
- a long-term strategic need for the land in place

When preparing and making a compulsory purchase order, Homes England should have regard to the general advice available here.

Homes England should submit orders for confirmation to the Planning Casework Unit, Birmingham.

123. Can Homes England compulsorily acquire land even if it has no specific development proposals in place?

It may sometimes be appropriate for Homes England to compulsorily acquire land which is in need of development or regeneration even though there are no specific detailed development proposals in place. Homes England does not usually undertake extensive building development itself. Instead, it often provides assistance for a scheme by stimulating as much private sector investment as possible. Therefore in some circumstances, it may be counterproductive for Homes England to predetermine what private sector development should take place once the land has been assembled. Land will often be suitable for a variety of developments and the market may change rapidly as implementation proceeds.

Nevertheless, when using its compulsory purchase powers, Homes England will still need to provide adequate justification and show that the compulsory acquisition is:

- supported by reasonably firm proposals or a long-term strategic need for the land
- for a clearly defined and deliverable objective; and
- in the public interest

124. How does the Secretary of State decide whether to confirm Homes England's compulsory purchase order?

To reach a decision about whether to confirm a compulsory purchase order made under section 9 of the Housing and Regeneration Act 2008, the Secretary of State will keep the following in mind:

- the statutory purposes (objects) of Homes England
- the general considerations identified in the process of confirming a compulsory purchase order
- any guidance and directions which may be given under section 46 and/or section 47 of the 2008 act or otherwise issued by the Secretary of State
- whether the compulsory purchase of the land supports the activities described in Homes England's statement of reasons
- whether Homes England has demonstrated (where appropriate) that the land is in need of housing development and/or regeneration

The Secretary of State will also take other factors into consideration, depending on whether Homes England has specific proposals for the development or regeneration of the land or it wishes to acquire the land to stimulate private sector investment:

a) **if Homes England has specific proposals for the land**

If Homes England has proposals for the development or regeneration of the land that it wishes to acquire through compulsory purchase, the Secretary of State will also consider:

- any alternative proposals that may have been put forward by the owners of the land or by other persons for the use or reuse of the land and:
  - whether they are likely to be, or are capable of being, implemented (including consideration of the experience and capability of the landowner or developer and any previous track record of delivery) what planning applications have been submitted and/or determined and the extent to which the proposals advocated by the other parties may conflict with Homes England's proposals (ie the timing and nature of any housing development and/or regeneration of the wider area concerned)
- whether the proposal is, on balance, more likely to be achieved if the land is acquired by Homes England, including the effect on the surrounding area that the purchase of the land by Homes England will have in terms of stimulating and/or maintaining the regeneration of the area
- and if Homes England intends to carry out direct development, whether this would displace or disadvantage private sector development or investment without proper justification and that the objects of Homes England cannot be achieved by any other means

- the quality of both Homes England's proposals for the land and any alternative proposals and the timetable for completing each

b) **if Homes England does not have specific proposals for the land**

If Homes England proposes to acquire the land for the purpose of stimulating private sector investment, the Secretary of State will also have regard to the fact that it will not always be possible or desirable to have specific proposals for the land concerned (beyond any broad indications in its Corporate Plan, or any justification given in Homes England's statement of reasons). However, the Secretary of State will still want to be reassured that:

- there is a realistic prospect of the land being brought into beneficial use within a reasonable timeframe; and

- Home England can show that the use of its compulsory purchase powers is clearly in the public interest.

Section 4: urban development corporations

125. What is the purpose of an urban development corporation?

An urban development corporation is set up under section 135 of the Local Government, Planning and Land Act 1980 ('the act') with the object, as set out in section 136(1), of securing the regeneration of the relevant urban development area. Under section 134(1), an area of land may be designated as an urban development area if the Secretary of State is satisfied that it is expedient in the national interest to do so. An urban development area is likely to have been designated because it contains significant areas of land not in effective use, suffered extensive dereliction and be unattractive to existing or potential developers, investors and residents. The acquisition of land and buildings by compulsory purchase is one of the main ways in which an urban development corporation can take effective steps to secure its statutory objectives.

126. How can regeneration be achieved?

Section 136(2) of the act indicates that regeneration can be achieved particularly by

- bringing land and buildings into effective use
- encouraging the development of existing and new industry and commerce
- creating an attractive environment; and
- ensuring that housing and social facilities are available to encourage people to live and work in the area

127. What powers does an urban development corporation have under the 1980 act?

Subject to any limitations imposed under section 137 or 138, section 136(3) of the act an urban development corporation can acquire, hold, manage, reclaim and dispose of land, and carry out a variety of incidental activities. The compulsory purchase powers are set out in section 142. They cover both land and 'new rights' over land (as defined in section 142(4)) and, in the circumstances described in section 142(1)(b) and (c), their exercise may extend outside the urban development corporation's area.

128. What compulsory purchase powers are available to urban development corporations?

It is for an urban development corporation to decide how best to use its land acquisition powers, having regard to this guidance. The compulsory purchase powers available to urban development corporations to assist with urban regeneration are expressed in broad terms. While an urban development corporation should acquire land by agreement wherever possible, it is recognised that this may not always be practicable and it may sometimes be necessary to use its compulsory purchase power to make an order at the same time as attempting to purchase by agreement.

129. Do urban development corporations have to predetermine what development will take place on land before it is acquired?

To achieve its objectives, it may sometimes be necessary for an urban development corporation to assemble land for which it has no specific development proposals. Urban development corporations are expected to achieve their objectives largely by stimulating and attracting greater private sector investment and do not usually carry out extensive building development themselves, as it may be counterproductive to decide what private sector development should take place. Land may be suitable for a variety of development and the market can change rapidly as regeneration proceeds. Urban development corporation ownership of land can stimulate confidence that regeneration will take place, and help to secure investment. Urban development corporations can often bring about regeneration by assembling land and providing infrastructure over a wide area to secure or encourage its development by others.

130. What is the urban development corporation expected to do where an existing user is affected by an urban development corporation compulsory purchase order?

Where existing users are affected by a compulsory purchase order relating to their premises, the urban development corporation will be expected to indicate how it proposes to assist these users to relocate to a site either within or outside the urban development area. Section 146(2) of the act encourages urban development corporations, where possible, to assist persons or businesses whose property has been acquired, to relocate to land owned by the urban development corporation.

131. What happens where an urban development corporation generates receipts in excess of the total cost of assembled land?

When assembling land for redevelopment, an urban development corporation may need to compulsorily acquire a site as part of a project to realise the development potential of a larger area. The Secretary of State recognises that the eventual sale of the assembled site will in many cases generate receipts in excess of the cost of the land to the urban development corporation. In such cases, the receipts generated can make an important contribution to reclamation costs incurred by the urban development corporation.

132. What does the Secretary of State need to consider when reaching a decision on whether to confirm a section 142 order to acquisition land?

In reaching a decision on whether to confirm a section 142 order, the Secretary of State will take into account the statutory objectives of the urban development corporation set out in paragraph 119 above and consider:

i. whether the urban development corporation has demonstrated that the land is in need of regeneration

ii. what alternative proposals (if any) have been put forward by the owners of the land or other persons for regeneration

iii. whether regeneration is on balance more likely to be achieved if the land is acquired by the urban development corporation

iv. the recent history and state of the land

v. whether the land is in an area for which the urban development corporation has a

comprehensive regeneration scheme; and the quality and timescale of both the urban development corporation's regeneration proposals and any alternative proposals

133. What level of detail do urban development corporations need to provide when seeking an order?

The Secretary of State recognises that given their specific duty to regenerate their areas, it will not always be possible or desirable for urban development corporations to have specific proposals for the land concerned beyond their general framework for the regeneration of the area, and detailed land use planning and other factors will not necessarily have been resolved before making an order. In cases where there is a defined end use, or provision of strategic infrastructure to facilitate regeneration, an urban development corporation will normally have reasonably firm proposals, and will have resolved as far as practicable any major planning impediments, before submitting the order for confirmation. Depending on the circumstances however, the Secretary of State accepts that it will not always be feasible for such developments to have received full planning permission, nor for all other statutory procedures necessarily to have been completed at the time of submission of the order.

134. Where detailed proposals are not provided what information is an urban development corporation expected to provide?

Where an urban development corporation does not provide detailed proposals for redevelopment, it will still be expected to demonstrate the case for acquisition in the context of its development strategy. The urban development corporation needs to be able to show that using compulsory purchase powers is in the public interest and that there is a real prospect of the land being brought into beneficial use within a reasonable timeframe. The Secretary of State will expect the statement of reasons accompanying the submission of the order to include a summary of the framework for the regeneration of the urban development area, and that the urban development corporation will be in a position to present evidence at the public inquiry to support its case for compulsory acquisition.

135. What does the Secretary of State have to consider where there are other proposals for the use of land contained within an order?

Where the owners of land or other parties have their own proposals for the use or development of land contained within an order, it will be necessary for the Secretary of State to consider whether these are capable of being or likely to be, implemented, taking into account the planning position, how long the land has been unused, and how the alternative proposals may conflict with those of the urban development corporation.

Section 5: new town development corporations

136. What is the purpose of a new town development corporation?

A new town development corporation can be established under section 3 of the New Towns Act 1981 ('the 1981 act') for the purposes of developing a new town. The objects of a new town development corporation, as set out in section 4(1) of the 1981 act, are to secure the laying out and development of the new town in accordance with proposals approved under the 1981 act. In pursuing those objects, new town development corporations must aim to contribute to the achievement of sustainable development, having particular regard to the desirability of good design (see sections 4(1A) and (1B) of the 1981 act).

An area can be designated as the site of a proposed new town under section 1 of the 1981 act where the Secretary of State is satisfied, after consulting with any local authorities who appear to him to be concerned, that it is expedient in the national interest for that area to be developed as a new town by a new town development corporation.

The development of new towns has traditionally been overseen by the Secretary of State. However, under section 1A of the 1981 act the Secretary of State may appoint one or more local authorities (an 'oversight authority') to oversee the development of the area as a 'locally-led' new town. Where an oversight authority is appointed a number of functions that would otherwise be exercisable by the Secretary of State are instead exercisable by the oversight authority – as provided for by the New Towns Act 1981 (Local Authority Oversight) Regulations 2018.

The Government has published separate guidance on the process for designating a new town and establishing locally-led new town development corporations.

137. What powers does a new town development corporation have under the 1981 act?

Subject to any restrictions imposed under section 5 of the 1981 act, section 4(2) gives new town development corporations the power, among other things, to acquire, hold, manage and dispose of land and other property, and generally to do anything necessary or expedient for the purposes or incidental purposes of the new town.

138. What powers does a new town development corporation have to acquire land?

The powers of new town development corporations to acquire land are set out in section 10 of the 1981 act. They provide for a new town development corporation to acquire (whether by agreement or by compulsion):

- any land within the area of the new town, whether or not it is proposed to develop that land
- any land adjacent to that area which they require for purposes connected with the development of the new town
- any land, whether adjacent to that area or not, which they require for the provision of services for the purposes of the new town

The compulsory purchase powers provided for by section 10 of the 1981 act apply to all new town development corporations – including in the case of locally-led new towns. Compulsory

purchase orders made by new town development corporations (regardless of whether the new town is nationally or locally-led) are subject to confirmation by the Secretary of State.

For nationally-led new towns the new town development corporation must obtain consent from the Secretary of State to acquire land by agreement. For locally-led new towns the new town development corporation must obtain consent to acquire land by agreement from the oversight authority, as provided by the New Towns Act 1981 (Local Authority Oversight) Regulations 2018.

139. What is the procedure for a new town development corporation acquiring land compulsorily by a compulsory purchase order?

The procedure for making a compulsory purchase order under the 1981 act is set out in schedule 4 to that Act.

140. In what circumstances can new town development corporations use their compulsory purchase powers?

It is for new town development corporations to decide how best to use their land acquisition powers, having regard to this guidance. The compulsory purchase powers available to a new town development corporation in section 10 of the 1981 act are expressed in broad terms, and are intended to assist with land assembly that is necessary to carry out its statutory objects of securing the laying out and development of a new town.

The Secretary of State will expect new town development corporations to demonstrate that they have taken reasonable steps to acquire the land included in a compulsory purchase order by agreement. Depending on when the land is required, it may be necessary for new town development corporations to initiate the compulsory purchase process in parallel with negotiations to acquire the land by agreement.

New town development corporation ownership of land early in the development process may assist with the proper planning for, infrastructure provision in and sustainable development of, a new town – in pursuit of its statutory objects under sections 4(1), (1A) and (1B) of the 1981 act. Specifically, it may help to ensure that developments brought forward using these powers are planned, designed and delivered in a sustainable and holistic way, in which the provision of infrastructure and community facilities are coordinated with the provision of new homes. New town development corporation ownership of land may also provide greater certainty of delivery: helping to stimulate confidence that the new town will proceed, helping to secure infrastructure investment, and thereby helping to promote development.

141. Can new town development corporations acquire land even if they have no specific development proposals in place?

Section 10(1) of the 1981 act enables new town development corporations to acquire land (compulsorily or by agreement) within the area of the new town whether or not it is proposed to be developed. The Secretary of State recognises that to achieve its statutory objects, it may be justified for a new town development corporation to acquire land for which it has no specific development proposals in place.

142. What level of detail do new town development corporations need to provide when seeking an order?

Given their scale, new towns are likely to be developed over an extended period of time, during which market conditions may change. In this context, the Secretary of State recognises that it will not always be possible or desirable for new town development

corporations to have fully worked up, and secured approval for, detailed development proposals prior to proceeding with a compulsory purchase order. While the Secretary of State will need to be reassured that there is a reasonable prospect of the scheme being funded and the development proceeding, it is also recognised that funding and delivery details will not necessarily have been fully worked up at that stage.

Where a new town development corporation does not have detailed proposals for the order lands, it will still be expected to demonstrate a compelling case for acquisition in the context of the planning framework that will guide development of the new town. The new town development corporation needs to be able to show that using compulsory purchase powers is necessary in the public interest and that the acquisition will support investment in and development of the new town.
The Secretary of State will expect the statement of reasons accompanying the submission of the compulsory purchase order to include a summary of the planning framework for the development of the new town and the justification for the timing of the acquisition, and that the new town development corporation will be in a position to present evidence at inquiry to support its case for compulsory acquisition.

While confirmation of a compulsory purchase order is a separate and distinct process from that of designating a new town, the Secretary of State acknowledges that evidence used to support the case for designation in the national interest may also be relevant to justifying the use of compulsory purchase powers in the public interest under section 10 of the 1981 act.

143. What factors will the Secretary of State take into account in deciding whether to confirm a compulsory purchase order under section 10 of the 1981 act?

Any decision about whether or not to confirm a compulsory purchase order will be made on its individual merits, but the factors which the Secretary of State can be expected to consider include:

- the statutory objects of the new town development corporation
- whether the purpose(s) for which the order lands are being acquired by the new town development corporation fits in with the planning framework for the new town area
- whether the new town development corporation has satisfactorily demonstrated that the order lands are needed to support the overall development of the new town
- the appropriateness of alternative proposals (if any) put forward by the owners of the land or other persons

144. What does the Secretary of State have to consider where there are other proposals for the use of land contained within a compulsory purchase order?

Where objectors put forward alternative proposals for the use or development of land contained within a compulsory purchase order, factors that the Secretary of State can be expected to consider include:

- whether these alternative proposals are likely to be implemented, taking into account the planning position and their promoter's track record of delivering large-scale housing development
- how the alternative proposals may conflict with those of the new town development corporation
- how the alternative proposals may, if implemented, affect:
    - the delivery of a new town on land designated for that purpose; and

- the new town development corporation's ability to fulfil its statutory objects (including in relation to achieving sustainable development and good design), and/or the purposes for which it was established.

145. How can new town development corporations dispose of the acquired land?
New town development corporations may dispose of land in such a manner as they deem expedient for securing the development of the new town or for purposes connected with the development of the new town (see section 17 of the New Towns Act 1981).

Section 18 of the 1981 act sets out certain requirements in respect of persons who were previously living or carrying on a business on land acquired by the new town development corporation. If such persons wish to obtain accommodation on land belonging to the new town development corporation and are willing to comply with any requirements of the corporation as to its development and use , section 18 requires the corporation, 'so far as practicable, to give them the opportunity to do so.

Section 6: powers of local housing authorities for housing purposes and listed buildings in slum clearances

Housing Act 1985: Part 2, Provision of housing accommodation

146. What can the power under Part 2 of the Housing Act 1985 be used for?

Section 17 of the Housing Act 1985 empowers local housing authorities to acquire land, houses or other properties by compulsion for the provision of housing accommodation. Acquisition must achieve a quantitative or qualitative housing gain.

The main uses of this power have been to assemble land for housing and ancillary development, including the provision of access roads; to bring empty properties into housing use; and to improve substandard or defective properties. Current practice is for authorities acquiring land or property compulsorily to dispose of it to the private sector, housing associations or owner-occupiers.

147. What information should be included with applications for confirmation of orders under section 17?

When applying for the confirmation of a compulsory purchase order made under Part 2 of the Housing Act 1985 the authority should include in its statement of reasons information regarding needs for the provision of further housing accommodation in its area. This information should normally include:

- the total number of dwellings in the district
- the total number of substandard dwellings (ie the quantity of housing with Category 1 hazards as defined in section 2 of the Housing Act 2004)
- the total number of households and the number for which, in the authority's view, provision needs to be made
- details of the authority's housing stock by type, particularly where the case for compulsory purchase turns on need to provide housing of particular type
- where a compulsory purchase order is made with a view to meeting special housing needs, eg, of the elderly, specific information about those needs
- where the authority proposes to dispose of the land or property concerned, details of the prospective purchaser, their proposals for the provision of housing accommodation and when this will materialise, and details of any other statutory consents required
- where it is not possible to identify a prospective purchaser at the time a compulsory purchase order is made, details of the authority's proposals to dispose of the land or property, its grounds for considering that this will achieve the provision of housing accommodation and when the provision will materialise

- where the authority has alternative proposals, it will need to demonstrate that each alternative is preferable to any proposals advanced by the existing owner

148. When does development on land to be acquired for housing development under section 17 need to be completed?

Section 17(4) of the Housing Act 1985 provides that the Secretary of State may not confirm a compulsory purchase order unless he is satisfied that the land is likely to be required within 10 years of the date the order is confirmed.

149. Will the Secretary of State refuse to confirm an order made under housing powers if it could have been made under planning powers instead?

Where an authority has a choice between the use of housing or planning compulsory purchase powers the Secretary of State will not refuse to confirm a compulsory purchase order solely on the grounds that it could have been made under another power.

Where land is being assembled under planning powers for housing development, the Secretary of State will have regard to the policies set out in this section.

150. When is the acquisition of empty properties for housing use justified?

Compulsory purchase of empty properties may be justified as a last resort in situations where there appears to be no other prospect of a suitable property being brought back into residential use. Authorities will first wish to encourage the owner to restore the property to full occupation. However, cases may arise where the owner cannot be traced and therefore use of compulsory purchase powers may be the only way forward.

When considering whether to confirm such an order the Secretary of State will normally wish to know:

- how long the property has been vacant
- what steps the authority has taken to encourage the owner to bring it into acceptable use and the outcome; and
- what works have been carried out by the owner towards its reuse for housing purposes

151. When is the acquisition of substandard properties justified?

Compulsory purchase of substandard properties may be justified as a last resort in cases where:

- a clear housing gain will be obtained
- the owner of the property has failed to maintain it or bring it to an acceptable standard; and
- other statutory measures, such as the service of statutory notices, have not achieved the authority's objective of securing the provision of acceptable housing accommodation

However, the Secretary of State would not expect an owner-occupied house, other than a house in multiple occupation, to be included in a compulsory purchase order unless the defects in the property adversely affected other housing accommodation.

In considering whether to confirm such a compulsory purchase order the Secretary of State will wish to know:

- what the alleged defects in the order property are
- what other steps the authority has taken to remedy matters and the outcome
- the extent and nature of any works carried out by the owner to secure the improvement and repair of the property.
- the Secretary of State will also wish to know the authority's proposals regarding any existing tenants of the property

152. Are there any limitations on the use of the power under Part 2 of the Housing Act 1985 to acquire property for the purpose of providing housing accommodation?

The powers do not extend to the acquisition of property for the purpose of improving the management of housing accommodation. A qualitative or quantitative housing gain must be achieved.

Following the judgment in the case of R v Secretary of State for the Environment ex parte Royal Borough of Kensington and Chelsea (1987) it may, however, be possible for authorities to resort to compulsory purchase under Part 2 where harassment or other grave conduct of a landlord has been such that proper housing accommodation could not be said to exist at the time when the authority resolved to make the compulsory purchase order. Such an order could be justified as achieving a housing gain.

153. Is consent required for the onward disposal of tenanted properties?

Consent may be required for the onward disposal of tenanted properties which have been compulsorily purchased. Before a local authority can dispose of housing occupied by secure tenants to a private landlord it must consult the tenants in accordance with section 106A of the Housing Act 1985.

The Secretary of State cannot give consent for the disposal if it appears to him that a majority of the tenants are opposed. An authority contemplating onward sale should, therefore, ensure in advance that it has the tenants' support.

154. Can the Secretary of State confirm an order where an acquiring authority has given an undertaking that it will not implement the order if the owner subsequently agrees to improve the property?

Such undertakings are a matter between the acquiring authority and owner, and the Secretary of State has no involvement. A compulsory purchase order which is the subject of such an agreement will be considered by the Secretary of State on its individual merits. The Secretary of State has no powers to confirm an order subject to conditions.

Housing Act 1985: Part 9, Slum clearance

155. What information needs to be submitted with an application for confirmation of a clearance area compulsory purchase order?

In addition to the general requirements, an authority submitting an order under section 290 of Part 9 of the Housing Act 1985 should only do so after considering all possible options for the area and will be expected to deal with the following matters in their statement of reasons:

- the declaration of the clearance area and its justification including a statement that all other possible options to maintain the clearance area have been considered
- the standard of buildings in the clearance area: incorporating a statement of the authority's principal grounds for being satisfied that the buildings are substandard the justification for acquiring any added lands included in the order
- proposals for rehousing and for relocating commercial and industrial premises affected by clearance
- the proposed after use of the cleared site
- where it is not practicable to table evidence of planning permission, the authority should demonstrate that their proposals are acceptable in planning terms and that there appear to be no grounds for thinking that planning permission will not materialise
- how they have fully considered the economic aspect of clearance and that they have responded to any submissions made by objectors regarding that

General guidance on clearance areas can be found in Housing health and safety rating system enforcement guidance.

Further information on listed buildings and unlisted buildings in conservation areas which are included in clearance compulsory purchase orders.

Local Government and Housing Act 1989: Part 7, Renewal Areas

156. What can the powers under Part 7 of the Local Government and Housing Act 1989 be used for?

Section 93(2) of the Local Government and Housing Act 1989 can be used by authorities:

- to acquire by agreement or compulsorily premises consisting of, or including, housing accommodation to achieve or secure their improvement or repair
- for their proper and effective management and use; or

- for the wellbeing of residents in the area

They may provide housing accommodation on land so acquired.

Authorities acquiring properties compulsorily should consider subsequently disposing of them to owner occupiers, housing associations or other private sector interests in line with their strategy for the Renewal Area. Where property in need of renovation is acquired, work should be completed as quickly as possible in order not to blight the area and undermine public confidence in the overall Renewal Area strategy. In exercising their powers of acquisition authorities will need to bear in mind the financial and other (eg manpower) resources available to them and to other bodies concerned.

Section 93(4) of the Local Government and Housing Act 1989 can be used by authorities to acquire by agreement or compulsorily land and buildings for the purpose of improving the amenities in a Renewal Area. This power also extends to acquisition where other persons will carry out the scheme. Examples might include the provision of public open space or community centres either by the authority or by a housing association or other development partner. Demolition of properties should be considered as a last resort only after all other possible options have been considered. In these exceptional cases regard should be had to any adverse effects on industrial or commercial concerns.

The powers in sections 93(2) and 93(4) of the Local Government and Housing Act 1989 are additional powers and are without prejudice to other powers available to local housing authorities to acquire land which might also be used in Renewal Areas.

The extent to which acquisitions will form part of an authority's programme will depend on the particular area. In some cases strategic acquisitions of land for amenity purposes will form an important element of the programme. However, as a general principle, the Secretary of State would not expect to see authorities acquiring compulsorily in order to secure improvement except where this cannot be achieved in any other way. Where acquisition is considered to be essential by an authority, they should first attempt to do so by agreement.

Where an authority submit a compulsory purchase order under section 93(2) or 93(4) of the Local Government and Housing Act 1989, their statement of reasons for making the order should demonstrate compulsory purchase is considered necessary in order to secure the objectives of the Renewal Area. It should also set out the relationship of the proposals for which the order is required to their overall strategy for the Renewal Area; their intentions regarding disposal of the property; and their financial ability, or that of the purchaser, to carry out the proposals for which the order has been made.

Other housing powers

157. Are there any other housing powers under which local authorities can make compulsory purchase orders?

Compulsory purchase orders can also be made by local authorities under sections 29 and 300 of the Housing Act 1985 and section 34 of the Housing Associations Act 1985. These orders will be considered on their merits in the light of the general requirement that there should be a compelling case for compulsory purchase in the public interest. The Secretary of State will also have regard to the policies set out in this section where applicable.

Listed buildings in slum clearance

158. If a building including in a clearance compulsory purchase order under section 290 of the Housing Act 1985 is subsequently listed will the clearance go ahead?

This is a matter for the local planning authority concerned. It will need to decide urgently whether the building should be retained because of its special interest, or whether it should proceed with the clearance proposals.

If the authority favours clearance, it must apply to the Secretary of State for listed building consent within three months of the date of listing (section 305 of the Housing Act 1985).

159. What happens if the building is listed after the order has been submitted to the Secretary of State for confirmation but before a decision is reached?

If a building in a clearance compulsory purchase order is listed after the order has been submitted to the Secretary of State for confirmation, but before he has reached a decision on it, the authority should inform the Secretary of State urgently how it wishes to proceed in the light of listing.

If it favours retaining the building, the authority should request that the building be withdrawn from the order.

If the authority applies for listed building consent to demolish, the Secretary of State will normally hold a joint local public inquiry at which the compulsory purchase order and the application for listed building consent will be considered together.

160. What happens if the building is listed after the order has been confirmed by the Secretary of State?

If listed building consent is applied for and granted, acquisition, if not completed, can proceed and demolition can follow.

If listed building consent is refused, or if no application is made within the three month period, subsequent action depends on whether or not notice to treat has been served and, if it has, whether the building is vested in the authority:

- if notice to treat has not been served, section 305(2) of the Housing Act 1985 prohibits the authority from serving it unless and until the Secretary of State gives listed building consent. Refusal of listed building consent or failure to apply for it within the specified period will effectively release the building from the compulsory purchase order and, where applicable, from the clearance area. In the latter event, the authority must then consider other appropriate action for dealing with unfitness under the housing acts

- if notice to treat has been served before the listing, but acquisition has not been completed before listed building consent is refused or the expiry of the three month period, compulsory acquisition may continue, but this will be under the powers contained in Part 2 of the Housing Act 1985 for residential buildings or Part 9 of the

Town and Country Planning Act 1990 for other buildings

- if the building is already vested in the authority, it will be appropriated to Part 2 of the 1985 act or Part 9 of the Town and Country Planning Act 1990 as the case may be

Local authorities are reminded that Housing health and safety rating system enforcement guidance advises that listed buildings and buildings subject to a building preservation notice should only be included in clearance areas in exceptional circumstances and only where listed building consent has been given.

161. What happens if the building was purchase by agreement under Part 9 of the Housing Act 1985, or under some other power and now held under Part 9 and is subsequently listed?

Under section 306 of the Housing Act 1985 the authority may apply for listed building consent if it still favours demolition. If consent is refused or not applied for within the specified period of three months from the date of listing, the authority is no longer subject to the duty to demolish the building imposed by Part 9 of the Housing Act 1985 and must appropriate it to Part 2 of the Housing Act 1985 or Part 9 of the Town and Country Planning Act 1990 as the case may be.

162. Is planning permission required to demolish an unlisted building in a conservation area where the building is included in a clearance compulsory purchase order?

In these circumstances demolition is permitted development (subject to article 4 directions and any Environmental Impact Assessment requirements) so an application for planning permission is not required – see 'What permissions/prior approvals are required for demolition in a conservation area?' in planning guidance for further information.

Where a submitted clearance compulsory purchase order includes buildings within a conservation area, the Secretary of State will wish to have regard to the conservation area aspect in reaching his decision on the order.

Section 7: to improve the appearance or condition of land

163. Can a local authority compulsorily acquire land to improve its appearance or condition?

In some circumstances a local authority can compulsorily acquire land to improve its appearance or condition. For instance, a local authority can use their compulsory purchase powers under section 89(5) of the National Parks and Access to the Countryside Act 1949 specifically for this purpose.

If the local authority is unsure whether to use these specific powers or if various uses are proposed for the land, the authority may consider using the powers granted by section 226 of the Town and Country Planning Act 1990 instead.

There are also various other compulsory purchase powers that local authorities may use to acquire and develop land that is derelict, neglected or unsightly for particular purposes such as housing or public open space.

164. When can a local authority use their powers under section 89 of the National Parks and Access to the Countryside 1949 Act to compulsorily purchase land?

A local authority can use their powers under section 89(5) of the National Parks and Access to the Countryside Act 1949 to compulsorily purchase land to plant trees to preserve or enhance the natural beauty of the land. The local authority can also use this power to carry out works to reclaim, improve or bring back into use land in their area that the authority believes to be:

- derelict, neglected or unsightly; or
- likely to become derelict, neglected or unsightly because the authority anticipate that the surface may collapse as a result of underground mining operations (other than coal mining)

165. Can a local authority still consider land to be 'derelict, neglected or unsightly' even if it is in use?

A local authority may still consider land to be 'derelict' or 'neglected' even if it is being put to some slight use when its condition is compared to the potential use of the land. However, it is not the purpose of these powers to enable a local authority to carry out works or acquire land solely because they believe that they can provide a better use than the present one.

166. Who decides whether to confirm an order to compulsorily purchase land under section 89 of the National Parks and Access to the Countryside Act 1949?

The Secretary of State for Environment, Food and Rural Affairs decides whether to confirm an order under section 89(5) of the National Parks and Access to the Countryside Act 1949.

167. What does the phrase 'derelict, neglected or unsightly' mean in connection with these compulsory purchase powers?

There are no statutory definitions so the natural, common sense meaning of the words should be taken. If possible, it is also preferable to consider the three words taken together as there is considerable overlap between each. For instance, the untidy or ‘unsightly’ appearance of the land may also be relevant in considering whether it is ‘derelict’ or ‘neglected’, or land might be considered ‘neglected’ but not ‘derelict’ if no building works, dumping or excavation have taken place.

The authority may wish to obtain the views of the Secretary of State for Environment, Food and Rural Affairs on the meaning of these words when considering whether to make a section 89(5) order.

Section 8: for educational purposes

168. What powers does a local authority have to make a compulsory purchase order for educational purposes?

A local authority can make a compulsory purchase order for educational purposes using its powers under section 530 of the Education Act 1996, as amended, with the confirmation of the Secretary of State for Education. These powers can be used to acquire land which is required for the purposes of its educational functions, including the purposes of:

- any local authority maintained or assisted school or institution; or
- an academy (whether established or to be established)

169. How does a local authority make a compulsory purchase order for educational purposes?

When making an order a compulsory purchase order under section 530 of the Education Act 1996, the authority should have due regard to statutory requirements from the Department for Education. The local authority may also seek guidance, if necessary, from that department on the form of draft orders where there is doubt about a particular point.

The local authority submits the order and other required documents for confirmation to the Secretary of State for Education at the following address:

Education Funding
Agency Schools
Assets Team
Mowden Hall,
Staindrop
Road,
Darlington,
Co. Durham DL3 9BG

If the compulsory purchase order is for a voluntary aided school, the local authority will need to submit certain additional documents with the order, as well as the standard documents required.

170. What additional documents are required to make a compulsory purchase order for voluntary aided schools?

In addition to the standard list of documents required to make a compulsory purchase order, an order for a voluntary aided school will require the following documents:

a) completed copy of the Site Acquisition form (form SB1), available from the Department for Education; and

b) a qualified valuer's report

These additional documents should accompany, or be submitted as soon as possible after, the order.

171. Can a local authority make a compulsory purchase order in connection with a proposal for changes in school provision?

A local authority may make a compulsory purchase order (under section 530 of the Education Act 1996) in connection with certain proposals for changes in school provision. A proposal could involve:

- the establishment of a new school for children of compulsory school age (under Part 2 of the Education and Inspections Act 2006); or
- a prescribed alteration to an existing maintained school (under Part 2 of the Education and Inspections Act 2006)

172. How does the Secretary of State consider a compulsory purchase order for educational purposes if it is accompanied by a statutory proposal?

The Secretary of State considers a compulsory purchase order made under section 530 of the Education Act 1996 separately to any accompanying statutory proposal for changes in school provision (made under Part 2 of the Education and Inspections Act 2006).

173. When can the Secretary of State for Education compulsorily purchase land that is required by an academy?

The Secretary of State for Education can compulsorily purchase land that is required by an academy using the powers granted by Paragraphs 5 and 7 of schedule 1 to the Academies Act 2010. The Secretary of State can use these powers if a local authority has either:

- disposed of land; or
- made an appropriation of land (that they hold a freehold or leasehold interest in) under section 122 of the Local Government Act 1972

without the consent of the Secretary of State, and if the land in question has been used wholly or mainly for the purposes of a school or a 16 to 19 academy at any time in the period of eight years ending with the day on which this disposal or appropriation was made.

174. What happens once the Secretary of State has completed the compulsory purchase of the land?

Once the Secretary of State has completed the compulsory purchase, the land must be transferred to a person concerned with the running of the academy. The Secretary of State is entitled to recover from the local authority any compensation awarded (and any interest) in relation to the compulsory purchase, together with costs and expenses incurred in connection with the making of the compulsory purchase order.

Arrangements for publishing/seeking proposals for a change in school provision that requires a compulsory purchase order

175. What can a local authority do, if it wishes to compulsorily purchase land to establish a new school for children of compulsory school age?

When a local authority decides that it needs a new school in its area for children of compulsory school age, it is required by section 6A of the Education and Inspections Act 2006 to seek proposals to establish an academy. If the local authority requires land to be compulsorily acquired for this purpose, it should publish the notice seeking proposals before making a compulsory purchase order.

The local authority is also expected to notify the Department for Education of their plan to seek proposals as soon as the need for a new school has been decided upon.

A local authority can only publish its own proposals in the limited circumstances set out in Part 2 of that act, for example if the new school is to replace one or more maintained schools. Further information is available from the Department for Education.

176. What can a local authority do, if it wishes to compulsorily purchase land to make a prescribed alteration to a school?

If a local authority wishes to make a prescribed alteration under Part 2 of the Education and Inspections Act 2006, the local authority should publish their proposals before making a compulsory purchase order.

177. What can an appropriate authority do if their proposal to restructure school sixth form education requires the compulsory purchase of land?

The appropriate authority (the Skills Funding Agency or the Education Funding Agency) should publish their proposal to restructure school sixth form education before the relevant local authority makes a compulsory purchase order.

Section 72 of the Education Act 2002 sets out arrangements for the publication of proposals to restructure sixth form education.

Deciding an application for approval for a change in school provision that accompanies a compulsory purchase order

178. How is a proposal for a change in school provision considered, if it relies on the approval of a compulsory purchase order?

Depending on the nature of the proposal, an application for approval is considered as follows:

a) **Proposals to establish a new academy**

The Secretary of State for Education makes the final decision on whether to approve a proposal to establish a new academy.

When considering the proposal, the Secretary of State takes into account the need for a compulsory purchase order and any decision to approve the proposal is then conditional on the local authority acquiring the site. The local authority is then informed of the decision on the proposal so that it may make and submit the compulsory purchase order.

b) **Proposals to make a prescribed alteration to an existing maintained school**

The relevant local authority or schools adjudicator decides whether to approve a proposal to make a prescribed alteration to an existing maintained school.

The relevant local authority or schools adjudicator considers the application for approval of a proposal for a prescribed alteration. Consideration is given on the merits of the proposal and independently from the Secretary of State's consideration of the compulsory purchase order.

Approval can only be given on the condition that the relevant site is acquired under regulation 16(2)(b) of the School Organisation (Establishment and Discontinuance of Schools) Regulations 2013. The local authority will then be informed of the decision so that it may make and submit the compulsory purchase order.

179. What happens if the proposal for a change in school provision is rejected?

If the decision is to reject the proposal for a change in school provision, the local authority is advised not make the order since, in these circumstances it would be inappropriate for the Secretary of State to confirm it.

180. What happens once the Secretary of State has decided whether or not to confirm the compulsory purchase order?

If the Secretary of State decides to confirm the compulsory purchase order the order will be sealed and returned to the local authority. When the local authority has purchased the site, the condition of the approval is met and the approval of the proposal becomes final with no further action required.

If the Secretary of State decides not to confirm the order, the proposal falls as the condition is not met.

Section 9: for public libraries and museums

181. Who has compulsory purchase powers to acquire land for public libraries and museums?

A local authority can compulsorily acquire land for public libraries and museums under section 121 of the Local Government Act 1972, using an appropriate enabling power (such as section 7 or 12 of the Public Libraries and Museums Act 1964).

182. How does a local authority make a compulsory purchase order for public libraries and museums?

When making a compulsory purchase order for public libraries and museums the local authority should have due regard to statutory requirements.

The order should be accompanied by each of the following additional documents:

- a completed copy of form CP/AL1 (obtainable from the Department for Digital, Culture, Media & Sport, Libraries Division)
- a qualified valuer‘s report

The order and accompanying documents are submitted to the Secretary of State for Digital, Culture, Media & Sport for confirmation at the address below:

Department for Digital, Culture, Media & Sport
100 Parliament Street
London
SW1A 2BQ

Section 10: for airport Public Safety Zones

183. Can an airport operator compulsorily purchase property that is located near an airport?

An airport operator can compulsorily purchase whole or part of a property if it is located within the 1 in 10,000 individual risk contour of an airport and if the property, or the relevant part of it, is:

- an occupied residential property
- a commercial or industrial property that is occupied as an all-day workplace

However, a compulsory purchase order should only be made as a last resort, if the airport authority is unable to purchase the property by agreement.

184. What should the airport operator do if a property falls into the categories described above?

If a property falls into the categories described above, the airport operator is expected to offer to purchase the property by agreement, with compensation being payable under the Compensation Code.

If purchase by agreement is not possible, the Secretary of State will be prepared to consider applications for compulsory purchase by airport operators with powers under section 59 of the Airports Act 1986.

To make a compulsory purchase order, the airport operator will need to demonstrate that the property falls within the categories described and that it has not been possible to purchase the property by agreement. The compulsory purchase order should be sent to the Secretary of State for Transport at:

Airports Policy Division
Zone 1/26, Great Minster House
33 Horseferry Road
London
SW1P 4DR

Once the property has been acquired, the airport operator will be expected to demolish any buildings and to clear the land.

185. What is the '1 in 10,000 individual risk contour' of an airport and why is property within this area significant?

The '1 in 10,000 individual risk contour' is an area of land within the Public Safety Zone of an airport where individual third party risk of being killed as a result of an aircraft accident is greater than 1 in 10,000 per year.

The level of risk in the '1 in 10,000 individual risk contour' is much higher than in other areas of the Public Safety Zone and at some airports, this contour extends beyond the airport boundary. As a result, it is the Secretary of State for Transport's policy that

there should be no occupied residential properties or all day workplaces within this area.

Further information can be found on the Department for Transport website (see circular 1/10).

Section 11: for listed buildings in need of repair

186. Who has compulsory purchase powers for listed buildings in need of repair?

Section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990 gives an appropriate authority compulsory purchase powers to acquire a listed building in need of repair with the authorisation of the Secretary of State. The appropriate authority may be:

- the relevant local planning authority
- Historic England, if the listed building is located in Greater London
- the Secretary of State for Digital, Culture, Media & Sport

It is the Secretary of State's policy to only use this power in exceptional circumstances.

187. How does an appropriate authority make a compulsory purchase order for a listed building in need of repair?

To make a compulsory purchase order for a listed building in need of repair under section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990, the appropriate authority is required to:

- serve a repairs notice under section 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990 on the owner (see section 31(2) of Planning (Listed Buildings and Conservation Areas) Act 1990/ section 336 of the Town and Country Planning Act 1990) of the listed building at least two months before making the compulsory purchase order
- prepare and serve the compulsory purchase order and its associated notices, if the repairs notice has not been complied with within two months of service
- submit the compulsory purchase order, a copy of the repairs notice and all supporting documents to the Secretary of State for Digital, Culture, Media & Sport

188. What if the owner has deliberately allowed the listed building to fall into disrepair to justify its demolition?

If there is clear evidence that the owner of a listed building has deliberately allowed the building to fall into disrepair to justify its demolition and the development of the site (or an adjoining site), the acquiring authority can include a direction for minimum compensation within the compulsory purchase order. Provisions for minimum compensation are given in section 50 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

The terms for a minimum compensation direction are set out in optional paragraph 4 of Form 1 in the schedule to the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004.

Follow the link for advice on how to include a direction for minimum compensation within a compulsory purchase order.

189. What should a local authority do if an application is made to a magistrates' court to contest a direction for minimum compensation?

As soon as a local authority becomes aware of any application to a magistrates' court:

- to stay further proceedings on the compulsory purchase order, under section 47(4) of the Planning (Listed Buildings and Conservation Areas) Act 1990; or

- for an order that a direction for minimum compensation is not included in the compulsory purchase order, under section 50(6) of the Planning (Listed Buildings and Conservation Areas) Act 1990

they should notify the Secretary of State for Digital, Culture, Media & Sport immediately. Depending on the circumstances, it may be necessary to hold the order in abeyance (ie suspend the order) until the court has considered the application.

Repairs notices

190. When might an appropriate authority serve a repairs notice?

An appropriate authority may consider issuing a repairs notice (under section 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990) if a listed building is at risk because its owner has failed to keep the building in reasonable repair for an extended period of time. A repairs notice is not the same as a notice for urgent works and can be served whether the listed building is occupied or not.

Further information on repairs notices and notices for urgent works are available from the Historic England website.

191. What information should the repairs notice include?

The repairs notice must:

- specify the works which the authority considers reasonably necessary for the proper preservation of the building; and

- explain the effect of sections 47-50 of the Planning (Listed Buildings and Conservation Areas) Act 1990

192. What works might be specified in the repairs notice?

The works specified in the repairs notice will always relate to the circumstances of the individual case and will involve judgments about what is considered reasonable to preserve (rather than restore) the listed building.

Other considerations may be used as a basis for determining the scope of works required. For example, the condition of the building when it was listed may be taken into account if the building has suffered damage or disrepair since being listed. In this case, the repairs

notice may include works to secure the building's preservation as at the date of listing, but should not be used to restore other features.

Alternatively, the notice may specify works that are necessary to preserve the rest of the building, such as repairs to a defective roof, whether or not the particular defect was present at the time of listing.

The form of the compulsory purchase order and its associated notices

193. How are the compulsory purchase order and associated notices prepared?

General guidance on the format of compulsory purchase orders is available here.

For compulsory purchase orders for listed buildings in need of repair, there are additional provisions set out in regulation 4 of the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004. These require additional paragraphs from the schedule to the regulations to be inserted into the relevant forms, as described below.

When preparing any personal notices:

- include additional paragraphs 3 and 5 of Form 8; and
- if a direction for minimum compensation is included within the order insert additional paragraph 4 of Form 8; and
- include an explanation of the meaning of the direction, as required by section 50(3) of the Planning (Listed Buildings and Conservation Areas) Act 1990. This should normally include the text of subsections (4) and (5) of section 50 of that act

When preparing the compulsory purchase order:

- if a direction for minimum compensation is included within the order, include optional paragraph 4 of Form 1 in orders drafted using Form 1

Tier 3: procedural issues

194. Where can guidance on common procedural issues be found?

Guidance can be found here:

- Section 12: preparing statement of reasons
- Section 13: general certificate
- Section 14: preparing and serving the order and notices
- Section 15: order maps
- Section 16: addresses

195. Where can further information on other procedural issues which will only apply in certain cases be found?

Further information can be found here:

- Section 17: for community assets (at the request of the community)
- Section 18: special kinds of land
- Section 19: compulsory purchase of new rights and other interests
- Section 20: compulsory purchase of Crown land
- Section 21: certificates of appropriate alternative development (under the Land Compensation Act 1961)
- Section 22: protected assets certificate
- Section 23: objection to division of land (material detriment)
- Section 24: overriding easements and other rights

Common procedural issues

Section 12: preparing statement of reasons

196. What information should be included in the statement of reasons?

The statement of reasons should include the following information:

(i) a brief description of the order land and its location, topographical features and present use

(ii) an explanation of the use of the particular enabling power

(iii) an outline of the authority's purpose in seeking to acquire the land

(iv) a statement of the authority's justification for compulsory purchase, with regard to Article 1 of the First Protocol to the European Convention on Human Rights, and Article 8 if appropriate

(v) a statement justifying the extent of the scheme to be disregarded for the purposes of assessing compensation in the 'no-scheme world'

(vi) a description of the proposals for the use or development of the land

(vii) a statement about the planning position of the order site. See also Section 1: advice on section 226 of the Town and Country Planning Act 1990 for planning orders.

(viii) information required in the light of government policy statements where orders are made in certain circumstances eg as stated in Section 5: local housing authorities for housing purposes where orders are made under the Housing Acts (including a statement as to unfitness where unfit buildings are being acquired under Part 9 of the Housing Act 1985)

(ix) any special considerations affecting the order site eg ancient monument, listed building, conservation area, special category land, consecrated land, renewal area, etc

(x) if the mining code has been included, reasons for doing so

(xi) details of how the acquiring authority seeks to overcome any obstacle or prior consent needed before the order scheme can be implemented eg need for a waste management licence

(xii) details of any views which may have been expressed by a government department about the proposed development of the order site

(xiii) what steps the authority has taken to negotiate for the acquisition of the land by agreement

(xiv) any other information which would be of interest to persons affected by the order eg proposals for rehousing displaced residents or for relocation of businesses

(xv) details of any related order, application or appeal which may require a co-ordinated decision by the confirming minister eg an order made under other powers, a planning appeal/application, road closure, listed building; and

(xvi) if, in the event of an inquiry, the authority would intend to refer to or put in evidence any documents, including maps and plans, it would be helpful if the authority could provide a list of such documents, or at least a notice to explain that documents may be inspected at a stated time and place

Section 13: general certificate

197. What is the purpose of a general certificate in support of an order submission?

A general certificate has no statutory status, but is intended to provide reassurance to the confirming authority that the acquiring authority has followed the proper statutory procedures.

198. What form should a general certificate in support of an order submission take?

The certificate should be submitted in the following form:

THE ……. COMPULSORY PURCHASE ORDER 20...

I hereby certify that:

1. A notice in the Form numbered……in the Compulsory Purchase of Land (Prescribed Forms)(Ministers) Regulations 2004 (SI 2004 No. 2595) was published in two issues of the …….. dated ……. 20…. and …… 20....(being one or more local newspapers circulating in the locality). The time allowed for objections was not less than 21 days from the date of the first publication of the notice and the last date for them is/was…….. ……. 20.... A notice in the same Form addressed to persons occupying or having an interest in the land was affixed to a conspicuous object or objects on or near the land comprised in the order on …….. 20.... and from that date remained in place for a period of at least 21 days which was the period allowed for objections, the last date being ……. 20....

2. Notices in the Form numbered ……. in the said Regulations were duly served on

(i) every owner, lessee, tenant and occupier of all land to which the order relates;

(ii) every person to whom the acquiring authority would, if proceeding under section 5(1) of the Compulsory Purchase Act 1965, be required to give a notice to treat; and

(iii) every person the acquiring authority thinks is likely to be entitled to make a claim for compensation under section 10 of the 1965 Act if the order is confirmed and the compulsory purchase takes place, so far as such a person is known to the acquiring authority after making diligent inquiry. (NB: For an order made under section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990, the notice must include additional paragraphs in accordance with regulation 4 of the 2004 Prescribed Forms Regulations.)

The time allowed for objections in each of the notices was not less than 21 days and the last date for them is/was …….. 20.... The notices were served by one or more of the methods described in section 6(1) of the 1981 Act.

3. [*Where the order includes land in unknown ownership*] Notices in the Form

numbered …….. in the said Regulations were duly served by one or more of the methods described in section 6(4) of the 1981 Act. The time allowed for objections in each of the notices was not less than 21 days and the last date is/was …….. 20.... .

4. A copy of the order and of the map were deposited at ……. on ……. 20.... and will remain/remained available for inspection until …….. .

5. (1) A copy of the authority's statement of reasons for making the order has been sent to:

(a) all persons referred to in paragraph 2(i), (ii) and (iii) above (see Which parties should be notified of a compulsory purchase order?)

(b) as far as is practicable, other persons resident on the order lands, and any applicant for planning permission in respect of the land

(2) Two copies of the statement of reasons are herewith forwarded to the Secretary of State.

6. [*Where the order includes ecclesiastical property*] Notice of the effect of the order has been served on the Church Commissioners (section 12(3) of the 1981 Act).]

NB. The Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950 (SI 1950 No. 792) apply where it is proposed to use for other purposes consecrated land and burial grounds which here acquired compulsorily under any enactment, or acquired by agreement under the Town and Country Planning Acts, or which were appropriated to planning purposes. Subject to sections 238 to 240 of the 1990 Act, permission (a 'faculty') is required for material alteration to consecrated land. (See Faculty Jurisdiction Measure 1964; Care of Churches and Ecclesiastical Jurisdiction Measure 1991.)

Section 14: preparing and serving the order and notices

199. What format should an order adopt?

The order and associated schedule should comply with the relevant form as prescribed by regulation 3 of, and the schedule to, the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004 (SI 2004 No. 2595).

In accordance with the notes to the prescribed forms, the title and year of the act authorising compulsory purchase must be inserted. Each acquisition power must be cited and its purpose clearly stated in paragraph 1 of the order. For orders made under section 17 of the Housing Act 1985, the purpose of the order may be described as 'the provision of housing accommodation'. Where there are separate compulsory acquisition and enabling powers, each should be identified and its purpose stated. In some cases, a collective title may be sufficient to identify two or more acts. (See Section 1: advice on section 226 of the Town and Country Planning Act 1990 and Section 18: compulsory purchase of new rights and other interests for examples of how orders made under certain powers may be set out. Section 2: advice on section 121 of the Local Government Act 1972 contains guidance on orders where the acquisition power is section 121 or section 125 of the Local Government Act 1972 and on orders for mixed purposes.)

200. Where should the order maps be deposited?

A certified copy of the order map should be deposited for inspection at an appropriate place within the locality eg the local authority offices. It should be within reasonably easy reach of persons living in the area affected. The two sealed order maps should be forwarded to the offices of the confirming authority.

201. Can the 'the mining code' be incorporated into an order?

Parts 2 and 3 of schedule 2 to the Acquisition of Land Act 1981, relating to mines ('the mining code'), may be incorporated in a compulsory purchase order made under powers to which the act applies. The incorporation of both parts does not, of itself, prevent the working of minerals within a specified distance of the surface of the land acquired under the order; but it does enable the acquiring authority, if the order becomes operative, to serve a counter-notice stopping the working of minerals, subject to the payment of compensation. Since this may result in the sterilisation of minerals (including coal reserves), the mining code should not be incorporated automatically or indiscriminately.

Therefore, authorities are asked to consider the matter carefully before including the code, and to omit it where existing statutory rights to compensation or repair of damage might be expected to provide an adequate remedy in the event of damage to land, buildings or works occasioned by mining subsidence.

The advice of the Valuation Office Agency's regional mineral valuers is available to authorities when considering the incorporation of the code.

202. Who should authorities notify if they make an order incorporating the mining code?

In areas of coal working notified to the local planning authority by the Coal Authority under article 16 of, and paragraph (o), schedule 4 to, the Town and Country Planning (Development Management Procedure) (England) Order 2015, authorities are asked to notify the Coal Authority and relevant licensed coal mine operator if they make an order which incorporates the mining code.

203. What information about the land to be acquired should be included in an order?

The prescribed order formats set out in the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004 require, subject to the flexibility to adapt them permitted by Regulation 2, that the extent of the land should be stated. Therefore, the area of each plot, eg in square metres, should normally be shown. This information will be particularly important where any potential exists for dispute about the boundary of the land included in the order, because section 14 of the Acquisition of Land Act 1981 prohibits the modification of an order on confirmation to include land which would not otherwise have been covered. It may not always be necessary for a measurement of the plot to be quoted, if the extent and boundaries can be readily ascertained without dispute. For instance, the giving of a postal address for a flat may be sufficient.

Each plot should be described in terms readily understood by a layman, and it is particularly important that local people can identify the land described. The Regulations require that the details about the extent, description and situation of the land should be sufficient to tell the reader approximately where the land is situated without reference to the map (see notes to prescribed Forms 1 to 6 in the regulations).

Simple descriptions in ordinary language are to be preferred. For example, where the land is agricultural it should be described as ‘pasture land’ or ‘arable land’; agricultural and non-agricultural afforested areas may be described as ‘woodland’ etc; and, if necessary, be related to some well known local landmark, eg ‘situated to the north of School Lane about 1 km west of George’s Copse’.

Where the description includes a reference to Ordnance Survey field numbers the description should also state or refer to the sheet numbers of the Ordnance Survey maps on which these field numbers appear. The Ordnance Survey map reference should quote the edition of the map.

Property, especially in urban areas, should be described by name or number in relation to the road or locality and where part of a property has a separate postal address this should be given. Particular care is necessary where the street numbers do not follow a regular sequence, or where individual properties are known by more than one name or number. The description should be amplified as necessary in such cases to avoid any possibility of mistaken identity. If the order when read with the order map fails to clearly identify the extent of the land to be acquired, the confirming authority may refuse to confirm the order even though it is unopposed.

204. What information should be included in the order where the authority already owns an interest in the land to be acquired?

Except for orders made under highway land acquisition powers in Part 12 of the Highways Act 1980, to which section 260 of that act applies, where the acquiring authority already own an interest or interests in land but wish to acquire the remaining interest or interests in the same land, usually to ensure full legal title, they should include a description of the land in column 2 of the Schedule in the usual way but qualify the description as follows; 'all interests in [describe the land] except those owned by the acquiring authority'. The remaining columns should be completed as described in *What information should be included in the order schedule?* This principle should be extended to other interests in the land which the acquiring authority does not wish to acquire, eg Homes England might decide it wishes to exclude its own interests and local authority interests from an order.

Compulsory purchase should not be used merely to resolve conveyancing difficulties. It is accepted, however, that it may only be possible to achieve satisfactory title to certain interests by the use of compulsory powers, perhaps followed by a general vesting declaration (see Stage 5: implementing a compulsory purchase order). Accordingly, acquiring authorities will be expected to explain and justify the inclusion of such interests. The explanation may be either in their preliminary statement of reasons or in subsequent correspondence, which may have to be copied to the parties. If no explanation is given or if the reasons are unsatisfactory, the confirming minister may modify an order to exclude interests which the acquiring authority already own, on the basis that compulsory powers are unnecessary.

A similar form of words to that described above may be appropriate where the acquiring authority wish to include in the order schedule an interest in Crown land which is held otherwise than by or on behalf of the Crown. (In most cases, the Crown's own interests cannot be acquired compulsorily.) Further guidance on this subject is given in Section 19: compulsory purchase of Crown land.

205. Who is the acquiring authority required to serve notice of the making of the order?

The schedule to the order should include the names and addresses of every qualifying person as defined in section 12(2), 12(2A) and 12(2B) of the Acquisition of Land Act 1981 and upon whom the acquiring authority is required to serve notice of the making of the order. A qualifying person is:

(i) every owner, lessee, tenant, and occupier (section 12(2)(a) of the act)

(ii) every person to whom the acquiring authority would, if proceeding under section 5(1) of the Compulsory Purchase Act 1965, be required to give a notice to treat (section 12(2A) of the act); and

(iii) every person the acquiring authority thinks is likely to be entitled to make a claim for compensation under section 10 of the Compulsory Purchase Act 1965 if the order is confirmed and compulsory purchase takes place, so far as such a person is known to the acquiring authority after making diligent inquiry under section 12(2B) of the act

206. Should the order schedule include persons who may have a valid claim to be owners or lessees?

The schedule should include persons who may have a valid claim to be owners or lessees for the purposes of the Acquisition of Land Act 1981, eg persons who have entered into a contract to purchase a freehold or lease.

207. How should partnerships be dealt with?

The acquiring authority should ask the partnership to nominate a person for service. This avoids having to include the names of all partners in a partnership in the schedule and ensuring all partners are personally served. Notice served upon the partner who habitually acts in the partnership business is probably valid (see section 16 of the Partnership Act 1890), especially if that partner has control and management of the partnership premises, but the position is not certain.

208. How should corporate bodies be dealt with?

Service should be effected on the secretary or clerk at the registered or principal office of a corporate body, which should be shown in the appropriate column, ie as owner, lessee etc. (section 6(2) and (3) of the Acquisition of Land Act 1981). NB: under Company Law requirements, notices served on a company should be addressed to the secretary of the company at its principal or registered office. It is good practice to send copies to the actual contact who has been dealing with negotiations.

209. How should Trusts be dealt with?

Individual trustees should be named and served.

210. How should unincorporated bodies be dealt with?

In the case of unincorporated bodies, such as clubs, chapels and charities, the names of the individual trustees should be shown and each trustee should be served as well as the secretary. NB: The land may be vested in the trustees and not the secretary, but the trustees may be somewhat remote from the running of the club etc; and since communications should normally be addressed to its secretary, it is considered to be reasonable that the secretary should also be served. However, service solely on the secretary of such a body is not sufficient unless it can be shown that the secretary has been authorised by the trustees, or has power under the trust instrument, to accept order notices on behalf of the trustees.

211. How should charitable trusts be dealt with?

In the case of land owned by a charitable trust it is advisable for notice of the making of the order to be served on the Charity Commissioners at their headquarters address as well as on the trustees. See Part 7 of the Charities Act 2011.

212. How should land which is ecclesiastical property be dealt with?

Where land is ecclesiastical property, ie owned by the Church of England, notice of the making of the order must be served on the Church Commissioners as well as on the owners etc of the property (see section 12(3) of the Acquisition of Land Act 1981).

213. How should ancient monuments be dealt with?

Where it appears that land is or may be an ancient monument, or forms the site of an ancient monument or other object of archaeological interest, authorities should, at an early stage and with sufficient details to identify the site, contact the Historic Buildings and Monuments Commission for England (otherwise known as Historic England), or the County Archaeologist, according to the circumstances shown below:

- in respect of a *scheduled* ancient monument – Historic England; or
- in respect of an unscheduled ancient monument or other object of archaeological interest – the County Archaeologist

This approach need not delay other action on the order or its submission for confirmation, but the authority should refer to it in the letter covering their submission.

214. How should land in a national park be dealt with?

Where orders include land in a national park, acquiring authorities are asked to notify the National Park Authority. Similarly, where land falls within a designated Area of Outstanding Natural Beauty or a Site of Special Scientific Interest, they should notify Natural England.

215. How should land which is being used for sport of physical recreation be dealt with?

When an order relates to land being used for the purposes of sport or physical recreation, Sport England should be notified of the making of the order.

216. Can notice be served at a person's accommodation address?

Notice can be served at an accommodation address, or where service is effected on solicitors etc, provided the acquiring authority has made sure that the person to be served has furnished this address or has authorised service in this way; where known, the served person's home or current address should also be shown.

217. What information should be included in the order schedule?

- **about the owner or reputed owner** - where known, the name and address of the owner or reputed owner of the property should be shown. If there is doubt whether someone is an owner, he or she should be named in the column and a notice served on him/her. Likewise, if there is doubt as to which of two (or more) persons is the owner, both (or all) persons should be named in the sub-column and a notice served on each. Questions of title can be resolved later. If the owner of a property cannot be traced the word 'unknown' should be entered in the column. An order should include those covenants or restrictions which amount to interests in land that the authority wish to acquire or extinguish. Where land owned by the authority is subject to such an encumbrance (for example, an easement, such as a private right of way), they may wish to make an order to discharge the land from it. In any such circumstances, the owner or occupier of the land and the person benefiting from the right should appear in the relevant table of the schedule. The statement of reasons should explain that authority is being sought to acquire or extinguish the relevant interest

Where the encumbrance affects land in which the acquiring authority have a legal interest, the description in the schedule should refer to the right etc and be qualified by the words 'all interests in, on, over or under [*the land*] except those already owned by the acquiring authority'. This should avoid giving the impression that the authority has no interest to acquire.

- **about lessees, tenants, or reputed lessees or tenants -** where there are no lessees, tenants or reputed lessees or tenants a dash should be inserted, otherwise names and addresses should be shown

- **about occupiers -** where a named owner, lessee, or tenant is the occupier, the word 'owner', 'lessee' or 'tenant' should be inserted or the relevant name given. Where the property is unoccupied the column should be endorsed accordingly

218. What information about qualifying persons under sections 12(2A) and 12(2B) found by diligent enquiries should be included in the order schedule?

Although most qualifying persons will be owners, lessees, tenants or occupiers, the possibility of there being anyone falling within one of the categories in sections 12(2A) and (2B) should not be ignored. The name and address of a person who is a qualifying person under section 12(2A) who is not included in column (3) of the order schedule should be inserted in column (5) together with a short description of the interest to be acquired. An example of a person who might fall within this category is the owner of land adjoining the order land who has the benefit of a private right of way across the order land, which the acquiring authority have under their enabling power a right to acquire which they are seeking to exercise. (An example of this is section 18(1) of the National Parks and Access to the Countryside Act 1949 which empowers the Natural England to acquire an 'interest in land' compulsorily which is defined in section 114(1) to include any right over land.)

Similarly the name and address of a person who is a qualifying person under section 12(2B) who is not included in columns (3) and (5) of the order schedule should be inserted in column (6), together with a description of the land in respect of which a compensation claim is likely to be made and a summary of the reasons for the claim. An example of such a potential claim might be where there could be interference with a private right of access across the land included in the order as a result of implementing the acquiring authority's proposals.

219. What is meant by 'diligent enquiries'?

In determining the extent to which it should make 'diligent' enquiries, an authority will wish to have regard to the fact that case law has established that, for the purposes of section 5(1) of the Compulsory Purchase Act 1965, 'after making diligent inquiry' requires some degree of diligence, but does not involve a very great inquiry (see Popplewell J. in R v Secretary of State for Transport ex parte Blackett [1992] JPL 1041).

Acquiring authorities are encouraged to serve formal notices seeking information on all interests they have identified to find out if there any additional interests they are not aware of if a landowner has been served with a notice and fails to respond.

An acquiring authority does not have any statutory power under section 5A of the Acquisition of Land Act 1981 act to requisition information about land other than that which

it is actually proposing to acquire. However, the site notice procedure in section 11(3) and (4) of the 1981 act provides an additional means of alerting people who might feel that they have grounds for inclusion in column (6) and who can then identify themselves.

220. How should special category land be recorded in the order?

Special category land ie land to which sections 17, 18 and 19 of the Acquisition of Land Act 1981 apply, (or paragraphs 4, 5 and 6 of schedule 3 to the act in the case of acquisition of a new right over such land) should be shown both in the order schedule and in the list at the end of the schedule, in accordance with the relevant notes. But in the case of section 17 of the act (or, for new rights, schedule 3, paragraph 4) it is only necessary to show land twice if the acquiring authority is not mentioned in section 17(3) or paragraph 4(3) of schedule 3 (see also Section 17: Special kinds of land). If an order erroneously fails to state in accordance with the prescribed form that land to be acquired is special category, then the confirming minister may need to consider whether confirmation should be refused as a result.

221. What information should be recorded in the order schedule where the land is common, open space etc?

An order may provide for special category land to which section 19 of the Acquisition of Land Act 1981 applies ('order land') to be discharged from rights, trusts and incidents to which it was previously subject; and for vesting in the owners of the order land, other land which the acquiring authority propose to give in exchange ('exchange land'). Such orders must be made in accordance with the appropriate prescribed form (Forms 2, 3, 5 or 6) adapted, in compliance with the notes, to suit the particular circumstances.

The order land and, where it is being acquired compulsorily, the exchange land, should be delineated and shown as stated in paragraph 1 of the order. Therefore, exchange land which is being acquired compulsorily and is to be vested in the owner(s) of the order land, should be delineated and shown (eg in green) on the order map and described in schedule 2 to the order. If the exchange land is not being acquired compulsorily it should be described in schedule 3.

When an authority make an order in accordance with Form 2, if the exchange land is also acquired compulsorily, the order should include paragraph 2(ii), adapted as necessary, and cite the relevant acquisition power, if different from the power cited in respect of the order land. Paragraph 2(ii) of the Form also provides for the acquisition of land for the purpose of giving it in part exchange, eg where the acquiring authority already own some of the exchange land.

In Form 2, there are different versions of paragraphs 5 and 6(2) (see Note (*s*)). Paragraph 5 of Form 2 defines the order land by reference to Schedule 1 and either:

a) where the order land is only part of the land being acquired, the specific, 'numbered' plots; or

b) where the order land is all the land being acquired, the land which is 'described'

But if the acquiring authority seek a certificate under paragraph 6(1)(b) of schedule 3 to the 1981 act, because they propose to provide additional land in respect of new rights being acquired (over 'rights land'), the order should include paragraph 6(1) and the appropriate

paragraph 6(2) of the Form (see Note (*s*)). Paragraph 6 becomes paragraph 5 if only new rights are to be acquired compulsorily. (See Section 18: compulsory purchase of new rights and other interests) in relation to additional land being given in exchange for a new right.)

Where Form 2 is used, the order land, including rights land, must always be described in Schedule 1 to the order. Exchange and additional land should be described in Schedule 2 to the order where it is being acquired compulsorily; in Schedule 3 to the order where the acquiring authority do not need to acquire it compulsorily; or both schedules may apply, eg the authority may only own part of the exchange and/or additional land. Schedule 3 becomes Schedule 2 if no exchange or additional land is being acquired compulsorily. Exchange or additional land which is not being acquired compulsorily should be delineated and shown on the map so as to clearly distinguish it from land which is being acquired compulsorily.

Paragraph 5 of Form 3 should identify the order land, by referring to either:

a) paragraph 2, where the order land is all the land being acquired; or

b) specific numbered plots in the schedule, where the order land is only part of the land being acquired

This form may also be used if new rights are to be acquired but additional land is not being provided. An order in this form will discharge the order land, or land over which new rights are acquired, from the rights, trusts and incidents to which it was previously subject (in the case of land over which new rights are acquired, only so far as the continuance of those rights, trusts and incidents would be inconsistent with the exercise of the new rights).

An order may not discharge land from rights etc if the acquiring authority seek a certificate in terms of section 19(1)(aa) of or paragraph 6(1)(aa) of schedule 3 to the 1981 act. (See also In what circumstances might an application for a certificate under section 19(1)(aa) of the Acquisition of Land Act 1981 be appropriate? and In which circumstances may a certificate be given?.) Note that the extinguishment of rights of common over land acquired compulsorily may require consent under section 22 of the Commons Act 1899.

222. What is the procedure for sealing, signing and dating orders?

All orders should be made under seal, duly authenticated and dated at the end (after the schedule). They should never be dated before they are sealed and signed, and should be sealed, signed and dated on the same day. The order map(s) should similarly be sealed, signed and dated on the same day as the order. Some authorities may wish to consider whether they ought to amend their standing orders or delegations to ensure that this is achieved.

Section 15: order maps

223. What information should order maps provide?

Order maps should provide details of the land proposed to be acquired, land over which a new right would subsist and exchange land in accordance with the requirements set out in the notes to the forms eg paragraph (g) of the notes that accompany both forms 1 and 2.

The heading of the map (or maps) should agree in all respects with the description of the map headings stated in the body of the order. The words 'map referred to in [*order title*]' should be included in the actual heading or title of the map(s).

Land may be identified on order maps by colouring or any other method (see Note (*g*) to Forms 1, 2 and 3 and, in relation to exchange land, Note (*q*) to Form 5 in the 2004 Prescribed Forms Regulations) at the discretion of the acquiring authority. Where it is decided to use colouring, the longstanding convention (without statutory basis) is that land proposed to be acquired is shown pink, land over which a new right would subsist is shown blue, and exchange land is shown green. Where black-and-white copies are used they must still provide clear identification of the order or exchange land.

The use of a sufficiently large scale, Ordnance Survey based map is most important and it should not generally be less than 1/1250 (1/2500 in rural areas). Where the map includes land in a densely populated urban area, experience suggests that the scale should be at least 1/500, and preferably larger. Where the order involves the acquisition of a considerable number of small plots, the use of insets on a larger scale is often helpful. If more than one map is required, the maps should be bound together and a key or master 'location plan' should indicate how the various sheets are interrelated.

Care should be taken to ensure that where it is necessary to have more than one order map, there are appropriate references in the text of the order to all of them, so that there is no doubt that they are all order maps. If it is necessary to include a location plan, then it should be purely for the purpose of enabling a speedy identification of the whereabouts of the area to which the order relates. It should be the order map and *not* the location plan which identifies the boundaries of the land to be acquired. Therefore whilst the order map would be marked 'Map referred to in... 'in accordance with the prescribed form' (as in Form 1), a location map might be marked 'Location plan for the Map referred to in...' Such a location plan would not form part of the order and order map, but be merely a supporting document.

It is also important that the order map should show such details as are necessary to relate it to the description of each parcel of land in the order schedule or schedules. This may involve marking on the map the names of roads and places or local landmarks not otherwise shown.

The boundaries between plots should be clearly delineated and each plot separately numbered to correspond with the order schedule(s). (For orders which include new rights, see section on Schedule and map.) Land which is delineated on the map, but which is not being acquired compulsorily should be clearly distinguishable from land which is being acquired compulsorily.

There should be no discrepancy between the order schedule(s) and the map or maps, and

no room for doubt on anyone’s part as to the precise areas of land which are included in the order. Where there is a minor discrepancy between the order and map confirming, the authority may be prepared to proceed on the basis that the boundaries to the relevant plot or plots are correctly delineated on the map. Where uncertainty over the true extent of the land to be acquired causes or may cause difficulties, the confirming authority may refuse to confirm all or part of the order.

Section 16: addresses

224. Where should orders, applications and objections be sent?

Department	Type of order or application	Address
Department for Levelling Up, Housing and Communities	Most orders for which the Secretary of State for Levelling Up, Housing and Communities is confirming authority Applications for certificates relating to open space under section 19 of, or paragraph 6 of Schedule 3 to, the Acquisition of Land Act 1981	Secretary of State for Levelling Up, Housing and Communities Planning Casework Unit 23 Stephenson Street Birmingham B2 4BH Email: pcu@levellingup.gov.uk
Department for Levelling Up, Housing and Communities	Applications for certificates relating to fuel or field garden allotments under section 19 of, or paragraph 6 of Schedule 3 to, the Acquisition of Land Act 1981	Secretary of State for Levelling Up, Housing and Communities Planning Casework Unit 23 Stephenson Street Birmingham B2 4BH Email:pcu@levellingup.gov.uk
Department for Environment, Food and Rural Affairs	Applications for certificates relating to common land, town or village greens under section 19 of, or paragraph 6 of Schedule 3 to, the Acquisition of Land Act 1981	Common Land Casework The Planning Inspectorate 3F Hawk Wing Temple Quay House The Planning Inspectorate 2 The Square Bristol BS1 6PN Email: Common Land Tel: 0303 444 5408

Department for Environment, Food and Rural Affairs	Orders for *waste disposal* purposes	Secretary of State for Environment, Food and Rural Affairs Waste Strategy & Management Nobel House 17 Smith Square London SW1P 3JR
Department for Environment, Food and Rural Affairs	Orders made by *water or sewerage* undertakers	Secretary of State for Environment, Food and Rural Affairs Water Programme Nobel House 17 Smith Square London SW1P 3JR
Department for Environment, Food and Rural Affairs	Orders made under section 62(2) of the Land Drainage Act 1991, relating to sewerage or flood defence (land drainage) functions by a local authority, and orders made by internal drainage boards under section 62(1)(b) of that Act	Secretary of State for Environment, Food and Rural Affairs Water and Flood Risk Management Nobel House 17 Smith Square London SW1P 3JR
Department for Environment, Food and Rural Affairs	Orders made by the Environment Agency in relation to its flood defence functions, or by local authorities under Part I of the Coast Protection Act 1949 relating to coast protection work	Secretary of State for Environment, Food and Rural Affairs Water and Flood Risk Management Nobel House 17 Smith Square London SW1P 3JR
Department for Transport	Orders made under the Highways Act 1980 or the Road Traffic Regulation Act 1984	Secretary of State for Transport National Transport Casework Team Department for Transport Tyneside House Skinnerburn Road Newcastle upon Tyne NE4 7AR

Department for Transport	Airports, and airport Public Safety Zones orders	Secretary of State for Transport Aviation Policy & Reform Zone 1/25, Great Minster House 33 Horseferry Road London SW1P 4DR
Department for Transport	Civil aviation orders under the Civil Aviation Act 2012 and the Airports Act 1986	Secretary of State for Transport Aviation Policy & Security Reform, Department for Transport Zone 1/25, Great Minster House 33 Horseferry Road London SW1P 4DR
OTHER CONFIRMING AUTHORITIES - for other confirming authorities the correspondence should be addressed to the appropriate Secretary of State. The following addresses may be helpful.		
Department for Education		Real Estate Team Education and Skills Funding Agency Bishopsgate House Darlington DL1 5QE
Department of Health	For NHS and civil estate occupied by DH	Richmond House 79 Whitehall London SW1A 2NS
Home Office		2 Marsham Street London SW1P 4DF
Department for Digital, Culture, Media & Sport	Orders relating to listed buildings	100 Parliament Street London SW1A 2BQ
Department for Work and Pensions	for Benefits Agency	BA Estates 1 Trevelyan Square Boar Lane Leeds LS1 6AB
Department for Business, Energy and Industrial Strategy	Electricity and gas undertakings Onshore Electricity Development Consents	Licensing and Consents Unit 3 Whitehall Place London SW1A 2AW

Procedural issues applying to some compulsory purchase orders

Section 17: for community assets (at the request of the community or a local body)

225. What requests can be made to a local authority?

Authorities can receive requests from the community or local bodies to use their compulsory purchase powers to acquire community assets, which may have been designated as Assets of Community Value, that are in danger of being lost where the owner of the asset is unwilling to sell or vacant commercial properties that are detracting from the vitality of an area.

226. What considerations need to be made when receiving a request?

Local authorities should consider all requests from third parties, but particularly voluntary and community organisations, and commercial groupings like Business Improvement District bodies, which put forward a scheme for a particular asset which would require compulsory purchase to take forward, and provide a formal response.

Local authorities must be able to finance the cost of the scheme (including the compensation to the owner) and the compulsory purchase order process either from their own resources, or with a partial or full contribution from those making the request.

Local authorities should, for example, ascertain the value of the asset to the community, or the effect of bringing it back into use; the perceived threat to the asset; the future use of the asset and who would manage it (including a business plan where appropriate); any planning issues; and how the acquisition would be financed.

Section 18: special kinds of land

227. What are ‘special kinds of land’?

Certain special kinds of land are afforded some protection against compulsory acquisition (including compulsory acquisition of new rights across them) by providing that the confirmation of a compulsory purchase order including such land may be subject to special parliamentary procedure. The ‘special kinds of land’ are set out in Part 3 of, and schedule 3 to, the Acquisition of Land Act 1981 and are:

a) land acquired by a statutory undertaker for the purposes of their undertaking (section 16 and schedule 3, paragraph 3) (see What protection is given by section 16 of the Acquisition of Land Act 1981?)

b) local authority owned land; or land acquired by any body except a local authority who are, or are deemed to be, statutory undertakers for the purposes of their undertaking (section 17 and schedule 3, paragraph 4) (see What protection is given by section 17 of the Acquisition of Land Act 1981?)

c) land held by the National Trust inalienably (section 18 and schedule 3, paragraph 5) (see What protection is given by section 18 of the Acquisition of Land Act 1981?); and

d) land forming part of a common, open space, or fuel or field garden allotment (section 19 and schedule 3, paragraph 6) (see What protection is given by section 19 of the Acquisition of Land Act 1981?)

228. Which bodies are defined as statutory undertakers under the Acquisition of Land Act 1981?

Section 8(1) of the Acquisition of Land Act 1981 defines ‘statutory undertakers’ for the *general* purposes of the act. These include:

- transport undertakings (rail, road, water transport)
- docks, harbours, lighthouses
- Civil Aviation Authority and National Air Traffic Services
- Universal postal service providers

British Telecom is not a statutory undertaker for the purposes of the act. Private bus operators, other road transport operators, taxi and car hire firms which are authorised by licence are not statutory undertakers for the purposes of the act. Where their operations are carried out under the specific authority of an act, however, such operators will fall within the definition in section 8(1) of the act.

In addition, other bodies may be defined as, or deemed to be, statutory undertakers for the purposes of section 16 of the act (various health service bodies) or section 17 of the act (eg Homes England) (see What protection is given by section 17 of the Acquisition of Land Act 1981?).

229. What protection is there for statutory undertakers' land?

Sections 16 and 17 of the Acquisition of Land Act 1981 provide protection for statutory undertakers' land.

In both cases, the land must have been acquired for the purposes of the undertaking. The provisions do not apply if the land was acquired for other purposes which are not directly connected to the undertakers' statutory functions. Before making a representation to the appropriate minister under section 16, or an objection in respect of land to which they think section 17 applies, undertakers should take particular care over the status of the land which the acquiring authority propose to acquire, have regard to the provisions of the relevant act, and seek their own legal advice as may be necessary. For example, whilst a gas transporter qualifies as a statutory undertaker, the protection under sections 16 and 17 would not apply in relation to non-operational land held by one, eg their administrative offices. In the circumstances, the land is not held for the purpose of the statutory provision: namely, the conveyance of gas through pipes to any premises or to a pipeline system operated by a gas transporter.

230. What protection is given by section 16 of the Acquisition of Land Act 1981?

Under section 16 of the Acquisition of Land Act 1981, statutory undertakers who wish to object to the inclusion in a compulsory purchase order of land which they have acquired for the purposes of their undertaking, may make representations to 'the appropriate minister'. This is the minister operationally responsible for the undertaker, eg in the case of a gas transporter or electricity licence holder, the Secretary of State for Business, Energy and Industrial Strategy. Such representations must be made within the period stated in the public and personal notices, ie not less than twenty-one days, as specified in the act.

A representation made by statutory undertakers under section 16 is quite separate from an objection made within the same period to the confirming authority ('the usual minister'). Where the appropriate minister is also the confirming authority the intention of the statutory undertakers should be clearly stated, particularly where it is intended that a single letter should constitute both a section 16 representation and an objection. The appropriate minister would also be the confirming authority where, for example, an airport operator under Part 5 of the Airports Act 1986 makes a section 16 representation to the Secretary of State for Transport about an order made under section 239 of the Highways Act 1980.

231. Can an order be confirmed where a representation under section 16 of the Acquisition of Land Act 1981 is not withdrawn?

Generally, where a representation under section 16 of the Acquisition of Land Act 1981 is not withdrawn, the order to which it relates may not be confirmed (or made, where the acquiring authority is a minister) so as to include the interest owned by the statutory undertakers unless the appropriate minister gives a certificate in the terms stated in section 16(2). These are either that:

- the land can be taken without serious detriment to the carrying on of the undertaking (section 16(2)(a)); or

- if taken it can be replaced by other land without serious detriment to the undertaking

(section 16(2)(b))

However, by virtue of section 31(2) of the act, an order made under any of the powers referred to in section 31(1) may still be confirmed where:

- a representation has been made under section 16(1) without an application for a section 16(2) certificate, or where such an application is refused; and

- the confirmation is undertaken jointly by the appropriate minister and the usual minister

232. What protection is given by section 17 of the Acquisition of Land Act 1981?

Section 17(2) of the Acquisition of Land Act 1981 provides that for an order acquiring land owned by a local authority or statutory undertaker, if that authority or undertaker objects, any confirmation would be subject to special parliamentary procedure.

However, section 17(3) excludes the application of section 17(2) if the acquiring authority is one of the bodies referred to in section 17(3) which include a local authority and statutory undertaker as defined in section 17(4). The application of section 17(2) will therefore, be very limited.

The Secretary of State may by order under section 17(4)(b) of the act extend the definition of statutory undertaker for the purposes of section 17(3) to include any other authority, body or undertaker. Also, some authorities have been defined as statutory undertakers for the purposes of section 17(3) by primary legislation. Examples of such provisions are:

a) a housing action trust – Housing Act 1988, section 78 and schedule 10, paragraph 3; and

b) Homes England – Housing and Regeneration Act 2008, section 9(6) and schedule 2, paragraph 1(2)

233. What protection is given by section 18 of the Acquisition of Land Act 1981?

Where an order seeks to authorise the compulsory purchase of land belonging to and held inalienably by the National Trust (as defined in section18(3) of the Acquisition of Land Act 1981), it will be subject to special parliamentary procedure if the Trust has made, and not withdrawn, an objection in respect of the land so held.

234. What protection is given by section 19 of the Acquisition of Land Act 1981?

Compulsory purchase orders may sometimes include land or rights over land which is, or forms part of, a common, open space, or fuel or field garden allotment. Under the Acquisition of Land Act 1981:

- ‘common’ includes any land subject to be enclosed under the Inclosure Acts 1845 to 1882, and any town or village green; the definition therefore includes, but may go wider than, land registered under the Commons Registration Act 1965

- ‘open space’ means any land laid out as a public garden, or used for the purposes of public recreation, or land being a disused burial ground; and

- ‘fuel or field garden allotment’ means any allotment set out as a fuel allotment, or field garden allotment, under an Inclosure Act

An order which authorises purchase of any such land will be subject to special parliamentary procedure unless the relevant Secretary of State (see Who should an acquiring authority apply to for a certificate under section 19 of the Acquisition of Land Act 1981?) gives a certificate under section 19 of the Acquisition of Land Act 1981 indicating his satisfaction that either:

- exchange land is being given which is no less in area and equally advantageous as the land taken (section 19(1)(a)); or
- that the land is being purchased to ensure its preservation or improve its management (section 19(1)(aa)); or
- that the land is 250 sq. yards (209 square metres) or less in area or is for the widening and/or drainage of an existing highway **and** that the giving of exchange land is unnecessary (section 19(1)(b))

Likewise, an order which authorises the purchase of new rights over such land will be subject to special parliamentary procedure unless the relevant Secretary of State gives a certificate under schedule 3, paragraph 6 (see also section of guidance on Compulsory purchase of new rights and other interests).

235. Who should an acquiring authority apply to for a certificate under section 19 of and/or schedule 3 to the Acquisition of Land Act 1981?

An acquiring authority requiring a certificate from the relevant Secretary of State under section 19 and/or schedule 3, paragraph 6 of the Acquisition of Land Act 1981, should apply as follows:

- common land – the Secretary of State for Environment, Food and Rural Affairs
- open space – Secretary of State for Levelling Up, Housing and Communities
- fuel or field garden allotments – Secretary of State for Levelling Up, Housing and Communities

Contact details can be found in Section15: addresses.

236. When should acquiring authority apply for a certificate under section 19 of and/or schedule 3 to the Acquisition of Land Act 1981?

Applications for certificates should be made when the order is submitted for confirmation or, in the case of an order prepared in draft by a minister, when notice is published and served in accordance with paragraphs 2 and 3 of schedule 1 to the act.

237. What information should be provided when applying for a certificate under section 19 of and/or Schedule 3 to the Acquisition of Land Act 1981?

The land, including any new rights, should be described in detail, by reference to the

compulsory purchase order, and all the land clearly identified on an accompanying map.

This should show the common/open space/fuel or field garden allotment plots to be acquired in the context of the common/open space/fuel or field garden allotment space as a whole, and in relation to any proposed exchange land.

The acquiring authority should also provide copies of the order, including the schedules, and order map. For a particularly large order, they may provide:

a) copies of the order and relevant parts or sheets of the map; and

b) a copy, or copies, of the relevant extract or extracts from the order schedule or schedules, which include the following:

(i) the plot(s) of common, open space etc which they propose to acquire or over which they propose to acquire a new right ('the order land'); and

(ii) any land which they propose to give in exchange ('the exchange land')

(Where schedule 3, paragraph 6(1)(b) applies and additional land is being given in exchange for a new right, substitute 'the rights land' and 'the additional land' for the definitions given in (i) and (ii) above, respectively.)

When drafting an order, careful attention should be given to the discharging and vesting provisions of section 19(3) of the 1981 act or of paragraph 6(4) of schedule 3 to that act.

It must be specified under which subsection(s) an application for a certificate is made eg section 19(1)(a), (aa) or (b), and/or paragraph 6(1)(a), (aa), (b) or (c). Where an application is under more than one subsection, this should be stated, specifying those plots that each part of the application is intended to cover. Where an application is under section 19(1)(b), it should be stated whether it is made on the basis that the land does not exceed 209 square metres (250 square yards) or under the highway widening or drainage criterion.

In writing, careful attention should be given to the particular criteria in section 19 and/or paragraph 6 that the Secretary of State will be considering. The information provided should include:

- the name of the common or green involved (including CL/VG number)
- the plots numbers and their areas, in square metres
- details of any rights of common registered, or rights of public access, and the extent to which they are exercised
- the purpose of the acquisition
- details of any special provisions or restrictions affecting any of the land in the application; and
- any further information which supports the case for a certificate

238. How will the Secretary of State decide whether to grant a certificate under section 19 of and/or schedule 3 to the Acquisition of Land Act 1981?

In most cases, arrangements will be made for the order/rights land to be inspected and, if applicable, for a preliminary appraisal of the merits of any proposed exchange/additional land. If, at this stage, the relevant Secretary of State is satisfied that a certificate could, in principle, be given, he will direct the acquiring authority to publish notice of his *intention* to give a certificate, with details of the address to which any representations and objections may be submitted. In most cases where there are objections, the matter will be considered by the inspector at the inquiry into the compulsory purchase order.

Where an inquiry has been held into the application for a certificate (including, where applicable, the merits of any proposed exchange/additional land), the inspector will summarise the evidence in his or her report and make a recommendation. The relevant Secretary of State's consideration of and response to the inspector's recommendation are subject to the statutory inquiry procedure rules which apply to the compulsory purchase order. Where there is no inquiry, the relevant Secretary of State's decision on the certificate will be made having regard to an appraisal by an inspector or a professionally qualified planner, and after taking into account the written representations from any objectors and from the acquiring authority.

239. When must a certificate under section 19 of and/or schedule 3 to the Acquisition of Land Act 1981 be declined by the Secretary of State?

The Secretary of State must decline to give a certificate if he is not satisfied that the requirements of the section have been complied with. Where exchange land is to be provided for land used by the public for recreation, the relevant Secretary of State will have regard (in particular) to the case of LB Greenwich and others v Secretary of State for the Environment, and Secretary of State for Transport (East London River Crossing: Oxleas Wood)([1994] J.P.L. 607).

240. What matters does the Secretary of State take into account when considering a certificate for 'exchange land' under section 19(1)(a) of the Acquisition of Land Act 1981?

Where a certificate would be in terms of section 19(1)(a) of the Acquisition of Land Act 1981, the exchange land must be:

- **no less** in area than the order land; and
- equally advantageous to any persons entitled to rights of common or to other rights, and to the public

Depending on the particular facts and circumstances, the relevant Secretary of State may have regard to such matters as relative size and proximity of the exchange land when compared with the order land. The date upon which equality of advantage is to be assessed is the date of exchange. (See paragraphs 5 and 6 of Form 2 in the schedule to the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004.) But the relevant Secretary of State may have regard to any prospects of improvement to the exchange land which exists at that date.

Other issues may arise about the respective merits of an order and exchange land. The latter may not possess the same character and features as the order land, and it may not offer the **same** advantages, yet the advantages offered may be sufficient to provide an overall equality of advantage. But land which is already subject to rights of common or to other rights, or used by the public, even informally, for recreation, cannot usually be given as exchange land, since this would reduce the amount of such land, which would be disadvantageous to the persons concerned. There may be some cases, where a current use of proposed exchange land is temporary, eg ending development. In such circumstances it may be reasonable to give the land in exchange, since its current use can thereby be safeguarded for the future. The relevant Secretary of State will examine any such case with particular care.

241. What is the definition of 'the public' in regard to exchange land?

With regard to exchange land included in an order, the Secretary of State takes the view that 'the public' means principally the section of the public which has hitherto benefited from the order land and, more generally, the public at large. But circumstances differ. For example, in the case of open space, a relatively small recreation ground may be used predominantly by local people, perhaps from a particular housing estate. In such circumstances, the Secretary of State would normally expect exchange land to be equally accessible to residents of that estate. On the other hand, open space which may be used as a local recreational facility by some people living close to it, but which is also used by a wider cross-section of the public may not need to be replaced by exchange land in the immediate area. One example of such a case might be land forming part of a regional park.

242. In what circumstances might an application for a certificate under section 19(1)(aa) of the Acquisition of Land Act 1981 be appropriate?

In some cases, the acquiring authority may wish to acquire land to which section 19 applies, eg open space, but do not propose to provide exchange land because, after it is vested in them, the land will continue to be used as open space. Typical examples might be where open space which is privately owned may be subject to development proposals resulting in a loss to the public of the open space; or where the local authority wish to acquire part or all of a privately owned common in order to secure its proper management.

Such a purpose might be 'improvement' within the sense of section 226(1)(a) of the Town and Country Planning Act 1990, or a purpose necessary in the interests of proper planning (section 226(1)(b)). The land might be neglected or unsightly (see Section 6: to improve the appearance or condition of land), perhaps because the owner is unknown, and the authority may wish to provide, or to enable provision of, proper facilities. Therefore, the acquisition or enabling powers and the specific purposes may vary. In such circumstances, ie where the reason for making the order is to secure preservation or improve management of land to which section 19 applies, a certificate may be given in the terms of section 19(1)(aa).

NB: Where the acquiring authority seek a certificate in terms of section 19(1)(aa), section 19(3)(b) cannot apply and the order may not discharge the land purchased from all rights, trusts and incidents to which it was previously subject. See also Section 13: preparing and serving the order and notices.

243. What factors does the Secretary of State have to consider when giving a certificate under section 19(1)(b) of the Acquisition of Land Act 1981?

A certificate can only be given in terms of section 19(1)(b) of the Acquisition of Land Act where the Secretary of State concerned is persuaded that the land is 250 square yards (209 square metres) or less in area or is for the widening and/or drainage of an existing highway **and** that the giving of exchange land is unnecessary. He will have regard to the overall extent of common land, open space land or fuel or field garden allotment land being acquired compulsorily. Where all or a large part of such land would be lost, he may be reluctant to certify in terms of section 19(1)(b). Should he refuse such a certificate, it would remain open to the acquiring authority to consider providing exchange land and seeking a certificate in terms of section 19(1)(a).

244. What is special parliamentary procedure?

If an order includes land whose acquisition is subject to special parliamentary procedure, any confirmation of the order by the confirming authority would be made subject to that procedure. This means that if the order is being confirmed so as to include the special category land, the acquiring authority will not be able to publish and serve notice of confirmation in the usual way. The order will, instead, be governed by the procedures set out in the Statutory Orders (Special Procedure) Acts 1945 and 1965 as amended by the Growth and Infrastructure Act 2013. The confirming authority will give full instructions at the appropriate time.

In brief, the special parliamentary procedure is:

- following the confirming authority's decision to confirm, after giving 3 days' notice in the London Gazette, the order is laid before Parliament
- if a petition against the special authorisation is lodged within a 21 day period, it will be referred to a Joint Committee of both Houses to consider and report to Parliament as to whether to approve
- if no petition is lodged, the confirmation is usually approved without such referral

Section 19: compulsory purchase of new rights and other interests

245. Is it possible to compulsorily acquire rights and other interests over land, without acquiring full land ownership?

There are powers available which provide for the compulsory acquisition of new rights over land where full land ownership is not required eg the compulsory creation of a right of access.

246. How can compulsory acquisition of rights over land be achieved?

The creation of new rights can only be achieved using a specific statutory power, known as an 'enabling power'. Powers include (with the bodies by whom they may be exercised) the following:

(i) Local Government (Miscellaneous Provisions) Act 1976, section 13 (local authorities)

(ii) Highways Act 1980, section 250 (all highway authorities) - guidance on the use of these powers is given in Department of Transport Local Authority Circular 2/97

(iii) Water Industry Act 1991, section 155(2) (water and sewerage undertakers)

(iv) Water Resources Act 1991, section 154(2) and Environment Act 1995, section 2(1)(a)(iv) (Environment Agency)

(v) Housing and Regeneration Act 2008, section 9(2) (Homes England)

(vi) Electricity Act 1989, schedule 3 (electricity undertakings); and

(vii) Gas Act 1986, schedule 3 (gas transporter undertakings)

The acquiring authority should take into account any special requirements which may apply to the use of any particular power.

Orders solely for new rights (no other interests in land to be purchased outright)

247. What should the order describe?

The order heading should mention the appropriate enabling power, together with the Acquisition of Land Act 1981.

Paragraph 1 of the order should describe the purpose for which the rights are required, eg 'for the purpose of providing an access to a community centre which the council are authorised to provide under section 19 of the Local Government (Miscellaneous Provisions) Act 1976.

Orders for new rights and other interests

248. What should an order describe where it relates to the purchase of new rights and of other interests in land under different powers?

The order heading should refer to the appropriate enabling act, any other act(s), and the Acquisition of Land Act 1981, as required by the regulations. See Note (b) to Forms 1, 2 and 3 in the schedule to the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004.

Paragraph 1 of the prescribed form of the order should describe all the relevant powers and purposes.

249. What if the purpose is the same for both new rights and other interests?

This should be relatively straightforward. The order should mention, eg:

> '. . . . . the acquiring authority is hereby authorised to compulsorily purchase
>
> (a) under section 121 of the Local Government Act 1972 the land described in paragraph 2(1) below for the purpose of providing a community centre under section 19 of the Local Government (Miscellaneous Provisions) Act 1976; and
>
> (b) under section 13 of the said act of 1976, the new rights which are described in paragraph 2(2) below for the same purpose
>
> *[etc, as in Form 1 of the schedule to the regulations*.]'

250. What if the purpose is not the same for the new rights and other interests?

Paragraph 1 of the prescribed form of the order should describe all of the relevant powers under, and purposes for which, the order has been made, eg:

> '. . . . . the acquiring authority is hereby authorised to compulsorily purchase
>
> (a) under section 89 of the National Parks and Access to the Countryside Act 1949 the derelict, neglected or unsightly land which is described in paragraph 2(1) below for the purpose of carrying out such works on the land as appear to them expedient for enabling it to be brought into use; and
>
> (b) under section 13 of the Local Government (Miscellaneous Provisions) Act 1976, the new rights which are described in paragraph 2(2) below for the purpose of providing an access to the abovementioned land for [*the authority*] and persons using the land, being a purpose which it is necessary to achieve in the interests of the proper planning of an area, in accordance with section 226(1)(b) of the Town and Country Planning Act 1990.'

251. What should the acquiring authority's statements of reasons and case explain?

They should explain the need for the new rights, give details of their nature and extent, and provide any further relevant information. Where an order includes new rights, the acquiring authority is also asked to bring that fact to the attention of the confirming authority in the letter covering their submission.

Schedule and map

252. What should the order schedule show?

The land over which each new right is sought needs to be shown as a separate plot in the order schedule.

253. What level of detail does this require?

The nature and extent of each new right should be described and where new rights are being taken for the benefit of a plot or plots, that fact should be stated in the description of the rights plots. It would be helpful if new rights could be described immediately before or after any plot to which they relate; or, if this is not practicable, eg where there are a number of new rights, they could be shown together in the schedule with appropriate cross-referencing between the related plots.

254. What does the order map need to show?

The order map should clearly distinguish between land over which new rights would subsist and land in which it is proposed to acquire other interests. (See note (*g*) to Forms 1, 2 and 3 or Note (*d*) to Forms 4, 5 and 6.)

Special kinds of land (commons, open space and fuel or field garden allotment) (see also Section 17: Special kinds of land and Section 13: Preparing and serving the order and notices)

255. Which part of the Acquisition of Land Act 1981 applies where a new right over special kind of land is being acquired compulsorily?

Paragraph 6 of schedule 3 to the Acquisition of Land Act 1981 applies (in the same way that section 19 applies to the compulsory purchase of any land forming part of a common, open space etc). The order will be subject to special parliamentary procedure unless the relevant Secretary of State gives a certificate, in the relevant terms, under paragraph 6(1) and (2).

256. In which circumstances may a certificate be given?

A certificate may be given by the Secretary of State in the following circumstances:

- the land burdened with the right will be no less advantageous than before to those persons in whom it is vested and other persons, if any, entitled to rights of common or other rights, and to the public (paragraph 6(1)(a) of schedule 3 to the Acquisition of Land Act 1981); or

- paragraph 6(1)(aa) – the right is being acquired in order to secure the preservation or improve the management of the land. Where an acquiring authority propose to apply for a certificate in terms of paragraph 6(1)(aa), they should note that the order cannot, in that case, discharge the land over which the right is to be acquired from all rights, trusts and incidents to which it has previously been subject. See also Section 13: preparing and serving the order and notices and Section 17: special kinds of land; or

- paragraph 6(1)(b) – additional land will be given in exchange for the right which will be adequate to compensate the persons mentioned in relation to paragraph 6(1)(a) above for the disadvantages resulting from the acquisition of the right and will be vested in accordance with the act. Where an authority seek a certificate in terms of paragraph 6(1)(b) because they propose to give land ('the additional land') in exchange for the right, the order should include paragraph 4(1) and the appropriate paragraph 4(2) of Form 2 in the schedule to the 2004 Prescribed Forms Regulations (see Note (s)). The land over which the right is being acquired ('the rights land') and, where it is being acquired compulsorily, the additional land, should be delineated and shown as stated in paragraph 2 of the order. Paragraph 2 (ii) should be adapted as necessary. (See also Section 13: preparing and serving the order and notices and Section 17: special kinds of land); or

- paragraph 6(1)(c)

  (i) the land affected by the right to be acquired does not exceed 209 square metres (250 square yards); or

  (ii) in the case of an order made under the Highways Act 1980, the right is required in connection with the widening or drainage, or partly with the widening and partly with the drainage, of an existing highway

  and it is unnecessary, in the interests of persons, if any, entitled to rights of common or other rights or in the interests of the public, to give other land in exchange

The same order may authorise the purchase of land forming part of a common, open space etc and the acquisition of a new right over a different area of such land, and a certificate may be given in respect of each. The acquiring authority must always specify the type of certificate for which they are applying.

257. What other details needs to be shown where additional land, which is not being acquired compulsorily, is to be vested in the owners of the rights land?

The additional land should be delineated and shown on the order map (so as to clearly distinguish it from any land being acquired compulsorily) and described in schedule 3 to the order. Schedule 3 becomes schedule 2 if no other additional or exchange land is being acquired compulsorily.

258. What information has to be provided where and order, which does not provide for the vesting of additional land, but provides for discharging the rights land from all rights, trusts and incidents to which it has previously been subject (so far as their continuance would be inconsistent with the exercise of the right(s) to be acquired)?

The order needs to comply with Form 3 and should include the reference in paragraph 4(3) of that Form (or, if appropriate, as adapted for paragraph 4(2) of Form 6) to land over which the new right is acquired. (See also In which circumstances may a certificate be given?)

Section 20: compulsory purchase of Crown land

259. What is Crown land?

Crown land is defined in section 293(1) of the Town and Country Planning Act 1990, section 82C of the Planning (Listed Buildings and Conservation Areas) Act 1990 and section 31 of the Planning (Hazardous Substances) Act 1990 (as amended), as any land in which the Crown (including the Duchies of Lancaster and Cornwall) has a legal interest is 'Crown land'.

260. Who is the 'appropriate authority'?

As appropriate, the government department having management of the land, the Crown Estate Commissioners, the Chancellor of the Duchy of Lancaster, or a person appointed by the Duke of Cornwall or by the possessor, for the time being, of the Duchy.

261. Can Crown land be compulsorily purchased?

As a general rule, Crown land cannot be compulsorily acquired, as legislation does not bind the Crown unless it states to the contrary.

262. Are there any exceptions to this?

Specific compulsory purchase enabling powers can make provision for their application to Crown land, for example:

- section 327 of the Highways Act 1980 provides for a highway authority and the appropriate Crown authority to specify in an agreement that certain provisions of the 1980 act – including the compulsory purchase powers – shall apply to the Crown

- section 32 of the Coast Protection Act 1949 enables the compulsory purchase powers under Part I of that act to apply to Crown land with the consent of the 'appropriate authority'

The enactments listed below (which is not an exhaustive list) also provide that interests in Crown land **which are not held by or on behalf of the Crown** may be acquired compulsorily if the appropriate authority agrees:

- section 226(2A) of the Town and Country Planning Act 1990

- section 47(6A) of the Planning (Listed Buildings and Conservation Areas) Act 1990

- section 25 of the Transport and Works Act 1992; and

- section 221 of the Housing Act 1996 (applicable to the Housing Act 1985, the Housing Associations Act 1985, Part 3 of the Housing Act 1988 and Part 7 of the Local Government and Housing Act 1989

Issues for consideration

263. What issues should be considered?

Where the order is made under a power to which the provisions mentioned in Are there any exceptions to this? relate, or under any other enactment which provides for compulsory acquisition of interests in Crown land, Crown land should only be included where the acquiring authority has obtained (or is, at least, seeking) agreement from the appropriate authority. The confirming authority will have no power to authorise compulsory acquisition of the relevant interest or interests without such agreement.

Where an order is made under powers other than the Highways Act 1980, however, the acquiring authority should identify the relevant Crown body in the appropriate column of the order schedule and describe the interest(s) to be acquired. If the acquiring authority wish to acquire all interests other than those of the Crown, column two of the order schedule should specify that 'all interests' in [*describe the land*] except those held by or on behalf of the Crown' are being acquired. (See also Section 13: preparing and serving the order and notices).

Section 21: certificates of appropriate alternative development

264. What are the planning assumptions?

Part 2 of the Land Compensation Act 1961 as amended by Part 9 of the Localism Act 2011 provides that compensation for the compulsory purchase of land is on a market value basis. In addition to existing planning permissions, section 14 of the 1961 act provides for certain assumptions as to what planning permissions might be granted to be taken into account in determining market value.

Section 14 is about assessing compensation for compulsory purchase in accordance with rule (2) of section 5 of the 1961 act (open market value). The planning assumptions are as follows:

- subsection (2): account may be taken of (a) any planning permission in force for the development of the relevant land or other land at the relevant valuation date; and (b) the prospect (on the assumptions in subsection (5)) in the circumstances known to the market on the relevant valuation date of planning permission being granted, other than for development for which planning permission is already in force or appropriate alternative development

- subsection (3): it may also be assumed that planning permission for appropriate alternative development (as described in subsection (4)) is either in force at the relevant valuation date or it is certain than planning permission would have been granted at a later date

- subsection (4): defines appropriate alternative development as development, other than that for which planning permission is in force, that would, on the assumptions in subsection (5) but otherwise in the circumstances known to the market at the relevant valuation date, reasonably have been expected to receive planning permission on that date or a later date. Appropriate alternative development may be on the relevant land alone or on the relevant land together with other land.

- subsection (5): contains the basic assumptions that (a) the scheme underlying the acquisition had been cancelled on the launch date; (b) that no action has been taken by the acquiring authority for the purposes of the scheme; (c) that there is no prospect of the same or similar scheme being taken forward by the exercise of a statutory power or by compulsory purchase; and (d) that if the scheme is for a highway, no other highway would be constructed to meet the same need as the scheme

- subsection (6): defines the 'launch date' as (a) for a compulsory purchase order, the publication date of the notice required under section 11 of or paragraph 2 of schedule 1 to the Acquisition of Land Act 1981; (b) for any other order (such as under the Transport and Works Act 1992 or a development consent order under the Planning Act 2008) the date of first publication or service of the relevant notice; or (c) for a special enactment, the date of first publication of the first notice required in connection with the acquisition under section 15, planning permission is also to be

assumed for the acquiring authority's proposals

265. On what date are the planning assumptions assessed?

The main feature of the arrangements is that the planning assumptions are assessed on the relevant valuation date (as defined in section 5A of the Land Compensation Act 1961) rather than the launch date (even though the scheme is still assumed to have been cancelled on the launch date). This will avoid the need to reconstruct the planning regime that existed on the launch date, including old development plans, national planning policy and guidance. Also that the planning assumptions are based on 'the circumstances known to the market at the relevant valuation date', which would include the provisions of the development plan. This removes the need for the specific references to the development plan which were contained in the previous section 16 that had become out of date.

266. What is a certificate of appropriate alternative development?

Where existing permissions and assumptions are not sufficient to indicate properly the development value which would have existed were it not for the scheme underlying the compulsory purchase, Part 3 of the Land Compensation Act 1961 as amended by Part 9 of the Localism Act provides a mechanism for indicating the descriptions of development (if any) for which planning permission can be assumed by means of a 'certificate of appropriate alternative development'. The permissions indicated in a certificate can briefly be described as those with which an owner might reasonably have expected to sell his land in the open market if it had not been publicly acquired.

267. Who can apply for a certificate of appropriate alternative development?

Section 17(1) of the Land Compensation Act 1961 provides that either the owner of the interest to be acquired or the acquiring authority may apply to the local planning authority for a certificate. Where an application is made for development of the relevant land together with other land it is important that the certificate sought relates only to the land in which the applicant is a directly interested party. The description(s) of development specified in the application (and where appropriate the certificate issued in response) should clearly identify where other land is included and the location and extent of such other land.

268. In what circumstances might a certificate be helpful?

Circumstances in which certificates may be helpful include where:

a) there is no adopted development plan covering the land to be acquired

b) the adopted development plan indicates a 'green belt' or leaves the site without specific allocation; and

c) the site is allocated in the adopted development plan specifically for some public purpose, eg a new school or open space

d) the amount of development which would be allowed is uncertain

e) the extent and nature of planning obligations and conditions is uncertain

269. When does the right to apply for a certificate arise?

The right to apply for a certificate arises at the date when the interest in land is proposed to be acquired by the acquiring authority. Section 22(2) of the Land Compensation Act 1961 describes the circumstances where this is the position. These include the launch date as defined in section 14(6) for acquisitions by compulsory purchase order, other orders or by private or hybrid Bill. For acquisition by blight notice or a purchase notice it will be the date on which 'notice to treat' is deemed to have been served; or for acquisition by agreement it will be the date of the written offer by the acquiring authority to negotiate for the purchase of the land.

Once a compulsory purchase order comes into operation the acquiring authority should be prepared to indicate the date of entry so that a certificate can sensibly be applied for.

Thereafter application may be made at any time, except that after a notice to treat has been served or agreement has been reached for the sale of the interest and a case has been referred to the Upper Tribunal, an application may not be made unless both parties agree in writing, or the Tribunal gives leave. It will assist compensation negotiations if an application is made as soon as possible.

Acquiring authorities should ensure, when serving notice to treat in cases where a certificate could be applied for, that owners are made aware of their rights in the matter. In some cases, acquiring authorities may find it convenient themselves to apply for a certificate as soon as they make a compulsory purchase order or make an offer to negotiate so that the position is clarified quickly.

It may sometimes happen that, when proceedings are begun for acquisition of the land, the owner has already applied for planning permission for some development. If the local planning authority refuse planning permission or grant it subject to restrictive conditions and are aware of the proposal for acquisition, they should draw the attention of the owner to his right to apply for a certificate, as a refusal or restrictive conditions in response to an actual application (ie in the 'scheme world') do not prevent a positive certificate being granted (which would relate to the 'no scheme world').

270. How should applications for a certificate be made and dealt with?

The manner in which applications for a certificate are to be made and dealt with has been prescribed in articles 3, 4, 5 and 6 of the Land Compensation Development (England) Order 2012.

Article 3(3) of the order requires that if a certificate is issued otherwise than for the development applied for, or contrary to representations made by the party directly concerned, it must include a statement of the authority's reasons and of the right of appeal under section 18 of the 1961 act. From 6 April 2012, this has been to the Upper Tribunal. Article 4 requires the local planning authority (unless a unitary authority) to send a copy of any certificate to the county planning authority concerned if it specifies development related to a county matter or, if the case is one which has been referred to the county planning authority, to the relevant district planning authority. Where the certificate is issued by a London borough or the Common Council of the City of London, they must send a copy of the certificate to the Mayor of London if a planning application for such development would have to be referred to him.

Article 4 should be read with paragraph 55 of schedule 16 to the Local Government Act 1972, which provides that all applications for certificates must be made to the district planning authority in the first instance: if the application is for development that is a county matter, then the district must send it to the county for determination. This paragraph also deals with consultation between district and county authorities where the application contains some elements relating to matters normally dealt with by the other authority. Where this occurs, the authority issuing the certificate must notify the other of the terms of the certificate.

Article 5 of the order requires the local planning authority, if requested to do so by the owner of an interest in the land, to inform him whether an application for a certificate has been made, and if so by whom, and to supply a copy of any certificate that has been issued. Article 6 provides for applications and requests for information to be made electronically.

271. What information should be contained in an application for a certificate?

In an application under section 17, the applicant may seek a certificate to the effect that there either is any development that is appropriate alternative development for the purposes of section 14 (a positive certificate) or that there is no such development (a nil certificate).

If the application is for a positive certificate the applicant must specify each description of development that he considers that permission would have been granted for and his reasons for holding that opinion. The onus is therefore on the applicant to substantiate the reasons why he considers that there is development that is appropriate alternative development.

Acquiring authorities applying for a 'nil' certificate must set out the full reasons why they consider that there is no appropriate alternative development in respect of the subject land or property.

The phrase 'description of development' is intended to include the type and form of development. Section 17(3)(b) requires the descriptions of development to be 'specified', which requires a degree of precision in the description of development.

The purpose of a certificate is to assist in the assessment of the open market value of the land. Applicants should therefore consider carefully for what descriptions of development they wish to apply for certificates. There is no practical benefit to be gained from making applications in respect of descriptions of development which do not maximise the value of the land. Applicants should focus on the description or descriptions of development which will most assist in determining the open market value of the land.

An application under section 17 is not a planning application and applicants do not need to provide the kind of detailed information which would normally be submitted with a planning application. However, it is in applicants' interests to give as specific a description of development as possible in the circumstances, in order to ensure that any certificate granted is of practical assistance in the valuation exercise.

Applicants should normally set out a clear explanation of the type and scale of development that is sought in the certificate and a clear justification for this. This could be set out in a form of planning statement which might usefully cover the following matters:

- confirmation of the valuation date at which the prospects of securing planning permission need to be assessed

- the type or range of uses that it considers should be included in the certificate including uses to be included in any mixed use development which is envisaged as being included in the certificate

- where appropriate, an indication of the quantum and/or density of development envisaged with each category of land

- where appropriate an indication of the extent of built envelope of the development which would be required to accommodate the quantum of development envisaged

- a description of the main constraints on development which could be influenced by a planning permission and affect the value of the land, including matters on site such as ecological resources or contamination, and matters off site such as the existing character of the surrounding area and development

- an indication of what planning conditions or planning obligations the applicant considers would have been attached to any planning permission granted for such a development had a planning application been made at the valuation date

- a clear justification for its view that such a permission would have been forthcoming having regard to the planning policies and guidance in place at the relevant date; the location, setting and character of the site or property concerned; the planning history of the site and any other matters it considers relevant

Detailed plans are not required in connection with a section 17 application but drawings or other illustrative material may be of assistance in indicating assumed access arrangements and site layout and in indicating the scale and massing of the assumed built envelope. An indication of building heights and assumed method of construction may also assist the local planning authority in considering whether planning permission would have been granted at the relevant date.

272. Is there a fee for submitting an application for a certificate of appropriate development?

A fee is payable for an application for a certificate of appropriate alternative development. Details are set out in Regulation 18 of the The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (as amended).

273. What should a certificate contain?

The local planning authority is required to respond to an application by issuing a certificate of appropriate alternative development, saying what planning permissions would have been granted if the land were not to be compulsorily acquired. Section 17(1) requires the certificate to state either that:

a) there is appropriate alternative development for the purposes of section 14 (a

'positive' certificate); or

b) there is no development that is appropriate alternative development for the purposes of section 14 (a 'nil' or 'negative' certificate)

Section 17(4) of the Land Compensation Act 1961 requires the local planning authority to issue a certificate, but not before the end of 22 days from the date that the applicant has, or has stated that he or she will, serve a copy of his or her application on the other party directly concerned (unless otherwise agreed).

Section 17(5) requires (a) that a positive certificate must specify all the development that (in the local planning authority's opinion) is appropriate alternative development, even if it is not specified in the application and (b) give a general indication of any reasonable conditions; when permission would reasonably have been granted (if after the relevant valuation date); and any reasonable pre-condition, such as a planning obligation, that could reasonably have been expected.

Section 17(6) provides that for positive certificates, only that development specified in the certificate can be assumed to be appropriate alternative development for the purposes of section 14 and that the conditions etc apply to the planning permission assumed to be in force under section 14(3).

Local planning authorities should note that an application made under s17 is not a planning application. The authority should seek to come to a view, based on its assessment of the information contained within the application and of the policy context applicable at the relevant valuation date, the character of the site and its surroundings, as to whether such a development would have been acceptable to the Authority. As the development included in the certificate is not intended to be built the local planning authority does not need to concern itself with whether or not the granting of a certificate would create any precedent for the determination of future planning applications.

If giving a positive certificate, the local planning authority must give a general indication of the conditions and obligations to which planning permission would have been subject. As such the general indication of conditions and obligations to which the planning permission could reasonably be expected to be granted should focus on those matters which affect the value of the land. Conditions relating to detailed matters such approval of external materials or landscaping would not normally need to be indicated. However, clear indications should be given for matters which do affect the value of the land, wherever the authority is able to do so.

Such matters would include, for example, the proportion and type of affordable housing required within a development, limitations on height or density of development, requirements for the remediation of contamination or compensation for ecological impacts, and significant restrictions on use, as well as financial contributions and site-related works such as the construction of accesses and the provision of community facilities. The clearer the indication of such conditions and obligations can be, the more helpful the certificate will be in the valuation process.

274. Should a certificate be taken into account in assessing compensation?

A certificate once issued must be taken into account in assessing compensation for the

compulsory acquisition of an interest in land, even though it may have been issued on the application of the owner of a different interest in the land. But it cannot be applied for by a person (other than the acquiring authority) who has no interest in the land.

275. Should informal advice be given on open market value?

Applicants seeking a section 17 certificate should seek their own planning advice if this is felt to be required in framing their application.

In order that the valuers acting on either side may be able to assess the open market value of the land to be acquired they will often need information from the local planning authority about such matters as existing permissions; the development plan and proposals to alter or review the plan. The provision of factual information when requested should present no problems to the authority or their officers. But sometimes officers will in addition be asked for informal opinions by one side or the other to the negotiations. It is for authorities to decide how far informal expressions of opinion should be permitted with a view to assisting the parties to an acquisition to reach agreement. Where they do give it, the Secretary of State suggests that the authority should:

a) give any such advice to both parties to the negotiation

b) make clear that the advice is informal and does not commit them if a formal certificate or planning permission is sought

It is important that authorities do not do anything which prejudices their subsequent consideration of an application.

276. How are appeals against certificates made?

The right of appeal against a certificate under section 18 of the Land Compensation Act 1961, exercisable by both the acquiring authority and the person having an interest in the land who has applied for the certificate, is to the Upper Tribunal (Lands Chamber). It may confirm, vary or cancel it and issue a different certificate in its place, as it considers appropriate.

Rule 28(7) of the Upper Tribunal Rules, as amended, requires that written notice of an appeal (in the form of a reference to the Upper Tribunal) must be given within one month of receipt of the certificate by the planning authority. If the local planning authority fail to issue a certificate, notice of appeal must be given within one month of the date when the authority should have issued it (that date is either two months from receipt of the application by the planning authority, or two months from the expiry of any extended period agreed between the parties to the transaction and the authority) and the appeal proceeds on the assumption that a ‘nil’ or ‘negative’ certificate had been issued.

The reference to the Tribunal must include (in particular) a copy of the application to the planning authority, a copy of the certificate issued (if any) and a summary of the reasons for seeking the determination of the Tribunal and whether he or she wants the reference to be determined without a hearing. The Upper Tribunal does have the power to extend this period (under Rule 5), even if it receives the request to do so after it expires. Appeals against the Upper Tribunal’s decision on a point of law may be made to the Court of Appeal in the normal way.

More information on how to make an appeal can be found on the Upper Tribunal's website. Also available on the website is a form you will need to make an appeal and information on the fees payable. If you do not have access to the internet you can request a copy of the information leaflets and a form by telephoning 020 7612 9710 or by writing to:

Upper Tribunal (Lands Chamber)
5th floor, Rolls Building
7 Rolls Buildings
Fetter Lane
London
EC4A 1NL

Section 22: protected assets certificate

277. What are protected assets and protected assets certificates?

For the purposes of compulsory purchase protected assets are those set out below in What information needs to be included in a positive statement?. Listing them in a certificate allows the confirming authority to know which assets will be affected by the scheme and will therefore inform the decision as to whether to confirm the compulsory purchase order.

278. What information do authorities need to ensure is included in or accompanies the order?

Confirming authorities need to ensure that the circumstances of any protection applying to buildings and certain other assets on order lands are included in its consideration of the order.

Every order submitted for confirmation (except orders made under section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990) should therefore be accompanied by a protected assets certificate.

A protected asset certificate should include, for each category of building or asset protected, either a positive statement with specific additional information or a nil return.

279. What information needs to be included in a positive statement?

a) **listed buildings**

The proposals in the order will involve the demolition/alteration/extension* of the following building(s) which has/have been* listed under section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

b) **buildings subject to building preservation notices**

The proposals in the order will involve the demolition/alteration/extension* of the following building(s) which is/are* the subject(s)* of (a) building preservation notice(s) made by the…… [*insert name of authority*] ……on……..[*insert date(s) of notice(s)*].

c) **other buildings which may be of a quality to be listed**

The proposals in the order will involve the demolition/alteration/extension* of the following building(s) which may qualify for inclusion in the statutory list under the criteria in The Principles of Selection for Listing Buildings (March 2010).

d) **buildings within a conservation area**

The proposals in the order will involve the demolition of the following building(s) which is/are* included in a conservation area designated under section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (or, as the case may be, section 70) and which require planning permission for demolition.

e) **scheduled monuments**

The proposals in the order will involve the demolition/alteration/extension* of the following monument(s) which are scheduled under section 1 of the Ancient Monuments and Archaeological Areas Act 1979. An application for scheduled monument consent has been/will be* submitted to Historic England.

f) **registered parks/gardens/historic battlefields**

The proposal in the order will involve the demolition/alteration/extension* of the following park(s)/garden(s)/historic battlefield(s)* which is/are* registered under section 8C of the Historic Buildings and Ancient Monuments Act 1953.

280. What additional information must accompany a positive statement?

The following additional information is required to accompany a positive statement:

- particulars of the asset or assets
- any action already taken, or action which the acquiring authority proposes to take, in connection with the category of protection, eg consent which has been, or will be, sought; and
- a copy of any consent or application for consent, or an undertaking to forward such a copy as soon as the consent or application is available

281. What happens if a submitted order entails demolition of a building which is subsequently included in conservation area?

Where a submitted order entails demolition of any building which is subsequently included in a conservation area the confirming authority should be notified as soon as possible.

Section 23: objection to division of land (material detriment)

282. What happens where an owner objects to the division of land because it would cause material detriment to their retained land?

Where an acquiring authority proposes to acquire only part of a house (or park or garden belonging to a house), building or factory, the owner can serve a counter-notice on the acquiring authority requesting that it purchases the entire property.

On receipt of a counter-notice, the acquiring authority can either withdraw, decide to take all the land or refer the matter to the Upper Tribunal (Lands Chamber) for determination.

The Upper Tribunal will determine whether the severance of the land proposed to be acquired would in the case of a house, building or factory, cause material detriment to the house, building or factory (ie cause it to be less useful or less valuable to some significant degree), or in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

283. What is the procedure for serving a counter-notice?

In respect of a compulsory purchase order which is confirmed on or after 3 February 2017, the procedure for serving a counter-notice is set out in Schedule 2A to the Compulsory Purchase Act 1965 (where the notice to treat process is followed) and Schedule A1 to the Compulsory Purchase (Vesting Declarations) Act 1981 ('the CP(VD)A 1981') (where the general vesting declaration process is followed). The procedure is broadly the same in both cases.

284. What is the effect of a counter-notice on a notice of entry which has already been served on the owner?

Under Part 1 of Schedule 2A to the 1965 act, if the owner serves a counter-notice, any notice of entry under section 11(1) of the 1965 act that has already been served on the owner in respect of the land proposed to be acquired ceases to have effect (see paragraph 6 of Schedule 2A). The acquiring authority may not serve a further notice of entry on the owner under section 11(1) in respect of that land unless they are permitted to do so by paragraph 11 or 12 of Schedule 2A to the 1965 act.

285. Under the general vesting declaration procedure, what is the effect of a counter-notice on the vesting date of the owner's land specified in the declaration?

If a counter-notice is served under paragraph 2 of Schedule A1 to the CP(VD)A 1981 within the vesting period specified in the declaration in accordance with section 4(1) of the CP(VD)A 1981, the 'vesting date' for the land proposed to be acquired from the owner (i.e. the land actually specified in the declaration) will be the day determined as the vesting date for that land in accordance with Schedule A1 (see section 4(3)(b) of the CP(VD)A 1981).

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286. Can an acquiring authority enter the land it proposed to acquire from the owner where a counter-notice has been referred to the Upper Tribunal (Lands Chamber)?

Under Schedule 2A to the 1965 act and Schedule A1 to the CP(VD)A 1981, an acquiring authority is permitted to enter the land it proposed to acquire from the owner (ie the land included in its notice to treat / general vesting declaration) where a counter-notice has been referred to the Upper Tribunal.

Paragraph 12 of Schedule 2A to the 1965 act provides that, where a counter-notice has been referred to the Upper Tribunal, an acquiring authority may serve a notice of entry on the owner in respect of the land proposed to be acquired. If the authority had already served a notice of entry in respect of the land (ie a notice which ceased to have effect under paragraph 6(a) of Schedule 2A), the normal minimum three month notice period will not apply to the new notice in respect of that land (see section 11(1B) of the 1965 act). The period specified in any new notice must be a period that ends no earlier than the end of the period in the last notice of entry (see paragraph 13 of Schedule 2A).

Similarly, under the general vesting declaration procedure, if an acquiring authority refers a counter-notice (served before the original vesting date) to the Upper Tribunal, the authority may serve a notice on the owner specifying a new vesting date for the land proposed to be acquired (see paragraph 12 of Schedule A1 to the CP(VD)A 1981). This is intended to allow for the vesting of this land before the Upper Tribunal has determined the material detriment dispute.

However, if an acquiring authority enters, or vests in itself, the land it proposed to acquire **in advance** of the Upper Tribunal's determination and the Tribunal subsequently finds in favour of the owner (ie the Tribunal requires the authority to take additional land from the owner):

a) the authority will **not** have the option of withdrawing its notice to treat under paragraph 29 of Schedule 2A to the 1965 act or paragraph 17 of Schedule A1 to the CP(VD)A 1981, and so will be compelled to take the additional land; and

b) the Tribunal will be able to award the owner compensation for any losses caused by the temporary severance of the land proposed to be acquired from the additional land which is required to be taken (see paragraph 28(5) of schedule 2A to the 1965 Act and paragraph 16(4) of Schedule A1 to the CP(VD)A 1981.

287. Do the material detriment provisions in Schedule 2A to the 1965 act and Schedule A1 to the CP(VD)A 1981 apply in all cases?

An acquiring authority may, in a compulsory purchase order, disapply the material detriment provisions for specified land which is nine metres or more below the surface (see section 2A of the Acquisition of Land Act 1981). This is intended to prevent spurious claims for material detriment from owners of land above tunnels where the works will have no discernible effect on their land.

288. Are the material detriment provisions the same where a blight notice is served?

The material detriment provisions in relation to blight notices are set out in the Town and Country Planning Act 1990 (see, in particular, sections 151(4)(c), 153(4A) to (7) and 154(4) to (6)).

Section 24: overriding easements and other rights

289. Do acquiring authorities have power to override easements and other rights affecting the acquired land?

Prior to July 2016, only some acquiring authorities had the power to override easements and other rights on land they had acquired. However, provisions in section 203 of the Housing and Planning Act 2016 extended this power to all bodies with compulsory purchase powers and in section 37 of the Neighbourhood Planning Act 2017 to a company or body through which the Greater London Authority exercises functions in relation to housing or regeneration or to a company or body through which Transport for London exercises any of its functions.

290. Are there any restrictions on the use of the power to override easements and other rights?

There are several conditions/limitations on the use of the power to override easements and other rights. These are that:

- there must be planning consent for the building or maintenance work/use of the land
- the acquiring authority must have the necessary enabling powers in legislation to acquire the land compulsorily for the purpose of the building or maintenance work / the purpose of erecting or constructing any building, or carrying out any works, for the use
- the development must be related to the purposes for which the land was acquired or appropriated
- the land must have become vested in or acquired by an acquiring authority or been appropriated for planning purposes by a local authority on or after 13 July 2016 or be 'other qualifying land' (as defined in section 205(1))
- the power is not available in respect of a 'protected right' (as defined in section 205(1))
- the National Trust is subject to the protections in section 203(10)

291. Are owners of overridden easements and other rights entitled to compensation?

Under section 204 of the Housing and Planning Act 2016, owners of easements or other rights which are overridden are entitled to compensation calculated on the same basis as for injurious affection under sections 7 and 10 of the Compulsory Purchase Act 1965. Any dispute about compensation may be referred to the Upper Tribunal (Lands Chamber) for determination.

Separate but related guidance

292. What about related procedures?

See separate guidance on:

- Purchase notices
- The Crichel Down Rules

Purchase notices

293. What are the statutory provisions for the service of a purchase notice?

A purchase notice may be based upon:

- a refusal or conditional grant of planning permission or listed building consent
- a revocation or modification order
- a discontinuance, alteration or removal order

The statutory provisions enabling the service of a purchase notice are in section 137 of the Town and Country Planning Act 1990 and section 32 Planning (Listed Buildings and Conservation Areas) Act 1990.

The service of a purchase notice may *not* be based upon:

- a failure of the local planning authority to give notice of their decision on an application for planning permission (or listed building consent) within the requisite period
- a refusal of an application for approval of details or of reserved matters
- a refusal of an application for express consent for an advertisement display

294. What is the time for service of a purchase notice?

The time for service of a purchase notice is 12 months from the date of:

- the relevant decision for notices served under section 137 of the Town and Country Planning Act 1990 and section 32 Planning (Listed Buildings and Conservation Areas) Act 1990
- the Secretary of State's confirmation of the relevant order under section 137 Town and Country Planning Act 1990

The date is provided by regulation 12 of the Town and Country Planning General Regulations 1992 and regulation 9 of the Planning (Listed Buildings and Conservation

Areas) Regulations 1990.

The Secretary of State has power to extend this time limit and is normally prepared to do so where the service of a notice is delayed for good reasons. Councils have no power to extend the period for the service of a purchase notice.

295. Who should a purchase notice be served on?

A purchase notice must be served on the council of the district or London borough in which the land is situated. It cannot be served on a county council or government department.

296. What form should a purchase notice take?

There is no official form required for a purchase notice. A letter addressed to the council is enough if it:

- states that the relevant conditions in section 137 Town and Country Planning Act 1990 are fulfilled
- requires the council to purchase the interest(s) in the land, giving the names of the owners
- refers to the relevant planning application and decision
- identifies accurately the land concerned by reference to a plan
- provides the name and address of the owners

It should, if possible, be signed by the owners and state that it is a purchase notice.

297. Is there a right to amend a purchase notice once served?

It has been established that there is no right to amend a purchase notice once served, although an owner can serve more than one notice.

298. What happens where a purchase is accepted by the council or confirmed by the Secretary of State?

Where a purchase is accepted by the council or confirmed by the Secretary of State the council is deemed to have compulsory purchase powers and to have served notice to treat, so the price to be paid for the land is determined as if it were being compulsorily acquired.

299. What land can be included in a purchase notice?

Except in the case of a listed building purchase notice (see below), the land to which a purchase notice relates must be the *identical* area of land which was the subject of the relevant decision or order. If the notice relates to more land, it is invalid.

300. Who can serve a purchase notice?

A purchase notice may be served only by an 'owner' of the land, as defined in section

336(1) of the Town and Country Planning Act 1990. That means a person, at the time of service of the purchase notice, other than a mortgagee not in possession, who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the land or, where the land is not let at a rack rent, would be so entitled if it were so let.

The only exception is under section 137(2)(b) Town and Country Planning Act 1990 where in relation to a discontinuance notice under section 102 of the Town and Country Planning Act 1990 any person entitled to an interest in land in respect of which the order is made can serve a purchase notice.

301. Can a purchase notice be served in relation to Crown land?

Land owned by the Crown is covered by separate provisions in section 137A of the Town and Country Planning Act 1990 and section 32A of the Planning (Listed Buildings and Conservation Areas) Act 1990. A purchase notice may only be served in relation to Crown land in limited circumstances.

302. Can a purchase notice cover parcels of land in different ownership?

Where land comprises parcels in different ownerships, the owners of those parcels may combine to serve a purchase notice relating to their separate interests, provided that the notice relates to the whole of the land covered by the planning decision or the order.

Where there is more than one site, each the subject of a separate planning decision or order, a separate purchase notice should be served for each individual site.

For listed buildings, section 32(1) Planning (Listed Buildings and Conservation Areas) Act 1990 applies to the building and any land comprising the building, or contiguous or adjacent to it, and owned with it, where the use of the land is substantially inseparable from that of the building, such that it ought to be treated, together with the building, as a single holding. The relevant application site and the listed building purchase notice site need not necessarily be identical.

303. Is the land 'incapable of 'reasonably beneficial use'?

The question to be considered in every case is whether the land in its existing state, taking into account operations and uses for which planning permission (or listed building consent) is not required, is 'incapable of reasonably beneficial use'. The onus is on the person serving the notice to show this.

The potential of the land is to be taken into account rather than just its existing state, including if it is necessary to undertake work to realise that potential. No account is taken of any prospective use which would involve the carrying out of development other than any development specified in paragraph 1 or 2 of schedule 3 Town and Country Planning Act 1990 (development not constituting new development) or, in the case of a purchase notice served in consequence of a refusal or conditional grant of planning permission, if it would contravene the condition set out in schedule 10 to the Town and Country Planning Act 1990 (amount of gross floor space).

In the case of a listed building purchase notice, no account is taken of any prospective use of the land which would involve the carrying out of new development or of any works which require listed building consent, other than works for which the local planning authority or the

Secretary of State have undertaken to grant such consent.

In considering what capacity for use the land has, relevant factors include the physical state of the land, its size, shape and surroundings, and the general pattern of land uses in the area. A use of relatively low value may be regarded as reasonably beneficial if such a use is common for similar land in the vicinity.

It may sometimes be possible for an area of land to be rendered capable of reasonably beneficial use by being used in conjunction with neighbouring or adjoining land, provided that a sufficient interest in that land is held by the person serving the notice, or by a prospective owner of the purchase notice land. Whether it is or not would depend on the circumstances of the case. Use by a prospective owner cannot be taken into account unless there is a reasonably firm indication that there is in fact a prospective owner of the purchase notice site.

Profit may be a useful comparison in certain circumstances, but the absence of profit (however calculated) is not necessarily material. The concept of reasonably beneficial use is not synonymous with profit.

Where the use of land would mean it had some marketable value the land would be capable of reasonably beneficial use. Any reasonably beneficial use would suffice.

In determining whether the land has become incapable of reasonably beneficial use in its existing state, it may be relevant, where appropriate, to consider the difference (if any) between the annual value of the land in its existing state and the annual value of the land if development of a class specified in schedule 3 to the Town and Country Planning Act 1990 were carried out on the land. Development of any such class must not be taken into account.

The remedy by way of a purchase notice is not intended to be available where the owner shows merely that he is unable to realise the full development value of his land.

For the purposes of section 137(3)(c) Town and Country Planning Act 1990 or section 32(2)(c) Planning (Listed Buildings and Conservation Areas) Act 1990, any permission (or consent) granted, or deemed to be granted, and undertakings given up to the date of the Secretary of State's determination of the purchase notice, may be taken into account. To be capable of being taken into account, an undertaking should be in unequivocal language, and so worded as to be binding on the local planning authority. The Secretary of State would not regard a promise 'to give favourable consideration' to an application for permission to develop, as a binding undertaking. If no undertaking has been given, and the council consider that development of a kind not included in the original application ought to be permitted, and that the carrying out of such development would render the land capable of reasonably beneficial use, their proper course is to suggest that the Secretary of State should issue a direction under section 141(3) of the Town and Country Planning Act 1990 or section 35(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

304. How will the Secretary of State satisfy himself that the land is 'incapable of reasonably beneficial use'?

The Secretary of State considers that, in seeking to satisfy himself whether conditions (a) to (c) in section 137(3) of the Town and Country Planning Act 1990 have been fulfilled, he may take into account, among other things, whether there is a reasonable prospect of the

server selling or letting the land for any purpose, were its availability to be made known locally. He would normally expect to see some evidence to show that the person serving the notice has attempted to dispose of his interest in the land before he could be satisfied that the land had become incapable of reasonably beneficial use. This evidence is helpful to assist in demonstrating that there is no reasonably beneficial use for the land. Attempts to dispose of the interest should be reasonable and proportionate.

Where an owner of land claims that his land has become incapable of reasonably beneficial use, he is regarded as making that claim in respect of *the whole of the land* in question. Therefore, if a part of the land is found to be capable of reasonably beneficial use, the condition in section 137(3)(a) will not be fulfilled in respect of the whole of the land.

In section 137(3)(a) Town and Country Planning Act 1990 the phrase 'has become' is taken to mean 'is' in the context of purchase notices. The Secretary of State is only required to consider whether the land is incapable of reasonably beneficial use in its existing state. He is not required to compare the present state of the land with its state at some earlier time, since there is no period for comparison laid down within the provisions of the act. The only circumstances in which the Secretary of State would be concerned with what brought about the existing state of the land are where that state is due to activities having been carried out on it in breach of planning or listed building control.

When considering whether a listed building has reasonably beneficial use, a relevant factor to be taken into account may be the estimated cost of any renovations believed to be necessary. It is therefore helpful (but not conclusive) if estimated figures for such renovations, and an indication of the likely return on the relevant expenditure, can be provided. If no reasonable person would undertake the works because the benefits would not outweigh the costs then the building would not have a reasonably beneficial use.

305. What is the effect of a purchase notice?

A purchase notice does not require the council to purchase the land, unless (a) they state a willingness to comply with it, (b) it is confirmed by the Secretary of State or (c) it is deemed to have been confirmed under section 143 Town and Country Planning Act 1990. It is also possible that the council will find another authority or body willing to comply with the purchase notice in their place, or that the Secretary of State will confirm the notice on an alternative authority.

306. What should the council on whom notice is served do?

The council should first consider the validity of the notice. An invalid notice should not be sent to the Secretary of State. Instead, the council should inform the person serving the notice that in their view, for reasons stated, the purchase notice is invalid and they do not propose to take any further action on it.

If the purchase notice appears valid, the council should consider whether the conditions in section 137(3) Town and Country Planning Act 1990 or section 32(3) Planning (Listed Buildings and Conservation Areas) Act 1990 are satisfied. If the council regard the purchase notice as valid they must serve a counter-notice within three months from the date of service of the purchase notice (section139(2) Town and Country Planning Act 1990 or section 33(2) Planning (Listed Buildings and Conservation Areas) Act 1990).

307. What should the council do if they conclude the land has become incapable of reasonably beneficial use?

If the council conclude that the land has become incapable of reasonably beneficial use in its existing state, they may properly accept the purchase notice. If so, the council must serve, on the owner by whom the purchase notice was served, a response notice stating that they are willing to comply with the purchase notice (section139(1)(a) of the Town and Country Planning Act 1990 or section 33(1)(a) Planning (Listed Buildings and Conservation Areas) Act 1990).

If the council intend to seek a contribution from government under section 305 of the Town and Country Planning Act 1990 it is advisable to consult the relevant department at once and in any case before a response notice is served.

308. Can another local authority or a statutory undertaker comply with the notice instead?

Another local authority or a statutory undertaker may be willing to comply with the notice in place of the council on which it is served, for example because permission to develop the land was refused because it was required for their purposes. If so, the council should serve a notice to that effect on the owner by whom the purchase notice was served, giving the name of the other authority or body concerned (section139(1)(a) of the Town and Country Planning Act 1990 or section 33(1)(a) Planning (Listed Buildings and Conservation Areas) Act 1990). That other authority or body will then be deemed to have served notice to treat on the owner concerned.

The advice given in What should the council do if they conclude the land has become incapable of reasonably beneficial use? in relation to seeking a contribution under section 305 of the Town and Country Planning Act 1990 applies to a local authority specified in a response notice as it does to the council on which the purchase notice was served.

309. What happens if neither the council nor another local authority or statutory undertaker are willing to comply with a notice?

If neither the council on which the purchase notice was served nor another local authority or statutory undertaker are willing to comply with the purchase notice, the council are required to serve on the owner by whom the purchase notice was served, a response notice to that effect. The response notice must specify the council's reasons for not being willing to comply and state that they have sent a copy to the Secretary of State.

The specified reasons should be one or more of the following:

- that the requirements of section 137(3)(a) to (c) of the Town and Country Planning Act 1990 (or section 32(2)(a) to (c) of the Planning (Listed Buildings and Conservation Areas) Act 1990) are not fulfilled, in which case the council should specify the use to which, in their view, the land in its existing state could be put

- that, notwithstanding that the council are satisfied that the land has become incapable of reasonably beneficial use, it appears to them that the land ought, in accordance with a previous planning permission, to remain undeveloped, or be preserved or laid out as amenity land in relation to the larger area for which that planning permission was granted

- that another local authority or statutory undertaker which has not expressed willingness to comply with the notice should be submitted as acquiring authority for all or part of the land

- that, instead of confirming the notice, the Secretary of State should:

  - grant the planning permission or listed building consent sought by the application which gave rise to the purchase notice or revoke or amend specified conditions that were imposed; or

  - direct the grant of planning permission, or listed building consent, in relation to all or part of the land for some other form of development or works which would render the land capable of reasonably beneficial use within a reasonable time; or

  - in the case of a purchase notice served under section 137(1)(b) or (c), cancel or revoke the order or amend it so far as is necessary to render the land capable of reasonably beneficial use

310. What should a council's statement of reasons for not complying with the purchase notice include?

It is not sufficient for a council just to state that the site has a reasonably beneficial use. A council's statement of reasons should be full and clear. The reasons should explain fully, for example, why the land is capable of reasonably beneficial use, or why they regard the grant of planning permission (or listed building consent) or the cancellation, revocation or modification of the order (as the case may be) as desirable, or specify the likely ultimate use of the land which would justify the substitution of another local authority or statutory undertaker.

311. What information should be sent with the purchase notice to Secretary of State?

It is important that a council who have decided to send a purchase notice to the Secretary of State should quickly send him the information and documents he requires to deal with the notice. He cannot begin consideration of a notice without copies of the purchase notice, any accompanying plan, the response notice, the planning application with plans, and the decision on which the purchase notice was based. Other documents may also be necessary in particular cases. The documents should, if possible, accompany the notice but sending the notice should not be delayed because all the information cannot be provided at the same time. Any information not immediately available should be sent as soon as possible afterwards.

Failure to supply all the relevant information within a reasonable time could lead to deemed confirmation of the notice if, as a result of delay, the Secretary of State is unable to complete his action within the statutory time limit.

Additional particulars and documents are also required as follows:

- copies of any planning permissions relevant to section 142 of the Town and Country Planning Act 1990 and accompanying plans

- copies of any orders made under section 97, section 100 or section 102 of the Town and Country Planning Act 1990 or section 23 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and accompanying plans

- details of the location and condition of the land to which the notice relates and the nature of the surrounding land

- particulars of any permission or undertaking relevant to section 137(3)(c) of the Town and Country Planning Act 1990 or section 32(2)(c) of the Planning (Listed Buildings and Conservation Areas) Act 1990

- copies of relevant policies and allocations from the statutory development plan

- statements whether the land, or any part of it, falls within an area which is the subject of a compulsory purchase order or the subject of a direction which restricts permitted development or restricts the grant of planning permission

- the nature of the local planning authority's intentions for the land and the probable timing of any development involved

Copies of the documents submitted to the Secretary of State should be sent to both the person serving the notice and any county council. The Secretary of State should be told that this has been done.

312. What action should the Secretary of State take on receiving a purchase notice?

Under section 140 of the Town and Country Planning Act 1990 the Secretary of State must give notice of his proposed action on the purchase notice, and to specify a period (not less than 28 days) within which the parties may ask for an opportunity of being heard by a person (normally a planning inspector) appointed by the Secretary of State before any final determination is made. The period cannot be extended once it has been specified in the formal notification.

It is important to note that, where a hearing has been held, the Secretary of State may depart from his previously stated proposal and reach a different decision on the notice. An Inspector conducting a hearing will therefore be prepared to hear, and report, representations made by the parties on any alternative course of action open to the Secretary of State. If there is no request by either party to be heard, the Secretary of State must issue his formal decision in accordance with the proposed course of action previously notified.

The Secretary of State must consider whether to confirm the notice or to take other action under section 141 Town and Country Planning Act 1990. If, on the evidence before him, the Secretary of State is not satisfied that the relevant statutory conditions are fulfilled, he will not confirm the purchase notice. If he is satisfied that those conditions are fulfilled, he will either confirm the notice or, dependent upon the evidence before him, take such other action as may be appropriate under section 141.

Under section142 of the Town and Country Planning Act 1990 the Secretary of State is not required to confirm a purchase notice if it appears to him that, even though the land

has become incapable of reasonably beneficial use in its existing state, it ought, in accordance with a previous planning permission, to remain undeveloped or be preserved or laid out as amenity land in relation to the remainder of the larger area for which that planning permission was granted. This provision is considered to have effect *only* when the whole of the purchase notice site is comprised in the area required to be left undeveloped in the previous planning permission.

313. Are the Secretary of State's powers in regard to listed building purchase notices different?

The Secretary of State's powers in regard to listed building purchase notices are in section 35 of the Planning (Listed Buildings and Conservation Areas) Act 1990. In contrast to the powers available to him in respect of purchase notices served under the Town and Country Planning Act, the Secretary of State:

- is required to confirm a listed building purchase notice only in respect of part of the land to which it relates, if he is satisfied that the relevant conditions are fulfilled only in regard to that part of the land; and

- may not confirm a listed building purchase notice unless he is satisfied that the land covered by the notice comprises such land as is required for preserving the building or its amenities, or for affording access to it, or for its proper control or management

If it falls to be considered whether another local authority or a statutory undertaker should acquire the land, in place of the council on whom the purchase notice was served, the Secretary of State must have regard to the 'probable ultimate use' of the land or building or site of the building (as the case may be). He will accordingly exercise his power of substitution only where it is shown that the land or building is to be used in the reasonably near future for purposes related to the exercise of the functions of the other authority or body, eg where the land is needed for the building of a school, he will require the county council to acquire the land.

The Secretary of State will not (as he is sometimes asked to do) require another local planning authority to acquire land solely on the grounds that they refused permission for development in the normal exercise of their planning powers. There is no provision for confirmation of a purchase notice on a government department.

314. Is a hearing or local inquiry always held?

It is usual to hold a local inquiry or a hearing which interested members of the public may attend in light of the alternatives open to the Secretary of State under section 141 Town and Country Planning Act 1990. If a request to be heard is made, the department will follow the relevant procedural rules for an inquiry or a hearing as far as practicable although they do not formally apply. The parties will also be expected to observe the spirit of the rules. Because of the statutory time limits for determining purchase notices it will not normally be possible to adhere to the timescales set out for normal planning appeals. Statements of case should be provided by the parties as soon as possible.

315. Can an owner lodge an appeal against refusal of planning permission and serve a purchase notice?

There is nothing to prevent an owner from lodging an appeal against a refusal of planning

permission as well as serving a purchase notice. It is, however, sensible to leave serving a purchase notice until the result of the appeal is known, if this is practicable, because, by virtue of section 336(5) of the Town and Country Planning Act 1990, any decision by the Secretary of State to grant planning permission for the development which is the subject of the appeal dates from the time when the original planning decision was taken by the local planning authority. Since the granting of planning permission would normally be regarded as rendering the land capable of reasonably beneficial use, it is unlikely that the landowner could substantiate a claim that the conditions set out in section 137(3) of the Town and Country Planning Act 1990 are fulfilled. In considering whether to appeal as well as to serve a purchase notice, an aggrieved applicant for planning permission should bear in mind the advice given above on the timing of the service of purchase notices. The Secretary of State's attention should be drawn to any appeal which has been made to him, or any other matter which is before him for determination, relating to the purchase notice site or any part of it.

316. Is there a right of appeal against the Secretary of State's decision on a purchase notice?

Once the Secretary of State has issued his decision on the purchase notice, he has no further jurisdiction in the matter. Appeal against his decision is to the High Court under section 288 of the Town and Country Planning Act 1990. If the purchase notice has been confirmed, he has no power to compel either of the parties to conclude the transfer of the land. Matters related to the transfer of the land are for the parties themselves to settle.

317. How is compensation calculated?

When a purchase notice takes effect a notice to treat is deemed to have been served and the parties proceed to negotiate for the acquisition of the land as if the land had been the subject of compulsory purchase. If the parties are unable to agree the amount of compensation then either party may refer the matter to the Upper Tribunal (Lands Chamber) for determination. Where land is acknowledged to be incapable of reasonably beneficial use in its existing state, it will in most cases have little value and the landowner may simply wish to sell land which may be a liability for him. A person on whom a purchase notice is served may wish to take advice on the value of the land so that it does not spend a disproportionate amount of time disputing a notice about land which has no value.

For the purposes of calculating the compensation payable the valuation date is now fixed by section 5A of the Land Compensation Act 1961 being the earlier of (i) the date the authority enters on and takes possession of the land or (ii) the date when the assessment is made, either by agreement or by the Tribunal.

The nature of the interest to be valued is the interest which existed on the date the notice to treat is deemed to have been served. The normal rules of compensation which apply in compulsory purchase cases will apply in the case of purchase notices except in some cases there will be no scheme of the authority which has to be disregarded.

A purchase notice is normally used in two circumstances. First: where the physical characteristics of the land make it impossible to derive any beneficial use. In such circumstances the land is likely to have no value. Second, however, land may not be capable of a beneficial use in its existing state but may be rendered capable of a beneficial

use if developed, but for reasons of blight, planning permission will not be granted. In these circumstances it is possible to consider what planning permission may have been obtained absent the constraint and compensation will be payable on this basis. In this respect, these provisions complement the blight notice provisions in so far as they provide recompense to a landowner who is unable to secure any return from his land due to the blighting nature of public sector proposals.

The Crichel Down Rules

Rules and procedures

1. This section sets out the revised non statutory arrangements ('Crichel Down Rules') under which surplus government land which was acquired by, or under a threat of, compulsion (see paragraph 7 and the annex to this section below) should be offered back to former owners, their successors, or to sitting tenants (see paragraphs 13, 14, 17 and 18 below). For the sake of brevity, in this section all bodies to whom any one or more of the Rules apply or are commended are referred to as 'departments', whether they are government departments, including Executive Agencies, other non-departmental public bodies, local authorities or other statutory bodies. See paragraphs 3 and 4 below. The annex provides further guidance on the Rules including a list of those bodies to which, in the opinion of the department, the Rules apply in a mandatory manner.

2. These Rules apply to land in England. They also apply to land in Wales acquired by and still owned by a UK government department. For other land in Wales, departments disposing of land should follow the procedures set out in 'The Crichel Down Rules' issued by the Department of the Environment and the Welsh Office on 30 October 1992. Departments disposing of land in Scotland should follow the procedures set out in 'Scottish Planning Series: Planning Circular 5 2011: Disposal of Surplus Government Land – The Crichel Down Rules' and in Northern Ireland they should follow 'Disposal of Surplus Public Sector Property in Northern Ireland' produced by the Central Advisory Unit of the Land and Property Services agency of the Department of Finance and Personnel.

3. General guidance on asset management, which includes land and buildings is set out in annex 4.15 of Managing Public Money (Asset Management).

4. So far as local authorities and statutory bodies in England are concerned, it is recommended that they follow the Rules. They are also recommended to those bodies in Wales who seek to dispose of land acquired under an enabling power which remains capable of being confirmed by a UK Secretary of State for land in Wales. The Rules are also commended to bodies in the private sector to which public land holdings have been transferred, for example on privatisation.

5. It is the view of the government that where land is to be transferred to another body which is to take over some or all of the functions or obligations of the department that currently owns the land, the transfer itself does not constitute a disposal for the purpose of the Rules. Disposals for the purposes of Private Finance Initiative/Private Public Partnership projects do not fall within the Rules and the position of any land surplus once the project has been completed would be subject to the Private Finance Initiative/Private Public Partnership contract.

6. The Rules are not relevant to land transferred to the National Rivers Authority (now the Environment Agency) or to land acquired compulsorily by the Environment Agency or to the water and sewerage service companies in consequence of the Water Act 1989

or subsequently acquired by them compulsorily. Such land is governed by a special set of statutory restrictions on disposal under section 157 of the Water Resources Act 1991, as amended by the Environment Act 1995, and section 156 of the Water Industry Act 1991 and the consents or authorisations given by the Secretary of State for Environment, Food and Rural Affairs under those provisions.

The land to which the rules apply

7. The Rules apply to all land if it was acquired by or under threat of compulsion. A threat of compulsion will be assumed in the case of a voluntary sale if power to acquire the land compulsorily existed at the time unless the land was publicly or privately offered for sale immediately before the negotiations for acquisition.

8. The Rules also apply to land acquired under the statutory blight provisions (currently set out in Chapter 2 in Part 6 of, and schedule 13 to, the Town and Country Planning Act 1990). The Rules do not apply to land acquired by agreement in advance of any liability under these provisions.

9. The Rules apply to all freehold disposals and to the creation and disposal of a lease of more than seven years.

The general rules

10. Where a department wishes to dispose of land to which the Rules apply, former owners will, as a general rule, be given a first opportunity to repurchase the land previously in their ownership, provided that its character has not materially changed since acquisition. The character of the land may be considered to have 'materially changed' where, for example, dwellings or offices have been erected on open land, mainly open land has been afforested, or where substantial works to an existing building have effectively altered its character. The erection of temporary buildings on land, however, is not necessarily a material change. When deciding whether any works have materially altered the character of the land, the disposing department should consider the likely cost of restoring the land to its original use.

11. Where only part of the land for disposal has been materially changed in character, the general obligation to offer back will apply only to the part that has not been changed.

Interests qualifying for offer back

12. Land will normally be offered back to the former freeholder. If the land was, at the time of acquisition, subject to a long lease and more than 21 years of the term would have remained unexpired at the time of disposal, departments may, at their discretion, offer the freehold to the former leaseholder if the freeholder is not interested in buying back the land.

13. In these Rules 'former owner' may, according to the circumstances, mean former freeholder or former long leaseholder, and his or her successor. 'Successor' means the person on whom the property, had it not been acquired, would clearly have devolved under the former owner's will or intestacy; and may include any person who has succeeded, otherwise than by purchase, to adjoining land from which the land was severed by that acquisition.

Time horizon for obligation to offer back

14. The general obligation to offer back will not apply to the following types of land:

    1) agricultural land acquired before 1 January 1935

    2) agricultural land acquired on and after 30 October 1992 which becomes surplus, and available for disposal more than 25 years after the date of acquisition

    3) non-agricultural land which becomes surplus, and available for disposal more than 25 years after the date of acquisition

    The date of acquisition is the date of the conveyance, transfer or vesting declaration.

Exceptions from the obligation to offer back

15. The following are exceptions to the general obligation to offer back:

    1) where it is decided on specific ministerial authority that the land is needed by another department (ie that it is not, in a wider sense, surplus to government requirements)

    2) where it is decided on specific ministerial authority that for reasons of public interest the land should be disposed of as soon as practicable to a local authority or other body with compulsory purchase powers. However, transfers of land between bodies with compulsory purchase powers will not be regarded as exceptions unless at the time of transfer the receiving body could have bought the land compulsorily if it had been in private ownership. Appropriations of land within bodies such as local authorities for purposes different to that for which the land was acquired are exceptions if the body has compulsory purchase powers to acquire land for the new purpose

    3) where, in the opinion of the disposing body, the area of land is so small that its sale would not be commercially worthwhile

    4) where it would be mutually advantageous to the department and an adjoining owner to effect minor adjustments in boundaries through an exchange of land

    5) where it would be inconsistent with the purpose of the original acquisition to offer the land back; as, for example, in the case of:

        (i) land acquired under sections 16, 84 or 85 of the Agriculture Act 1947

        (ii) land which was acquired under the Distribution of Industry Acts or the Local Employment Acts, or under any legislation amending or replacing those acts, and which is resold for private industrial use

        (iii) where dwellings are bought for onward sale to a private registered provider of social housing or Registered Social Landlord in Wales

        (iv) sites purchased for redevelopment by the former English Partnerships or

former regional development agencies or Homes England

6) where a disposal is in respect of either:

   (i) a site for development or redevelopment which has not materially changed since acquisition and which comprises two or more previous land holdings; or

   (ii) a site which consists partly of land which has been materially changed in character and part which has not

   and there is a risk of a fragmented sale of such a site realising substantially less than the best price that can reasonably be obtained for the site as a whole (ie its market value). In such cases, consideration will be given to offering a right of first refusal of the property, or part of the property, to any former owner who has remained in continuous occupation of the whole or part of his or her former property (by virtue of tenancy or licence). In the case of land to which (i) applies, consideration will be given to a consortium of former owners who have indicated a wish to purchase the land collectively. However, if there are competing bids for a site, it will be disposed of on the open market.

7) where the market value of land is so uncertain that clawback provisions would be insufficient to safeguard the public purse and where competitive sale is advised by the department's professionally qualified valuer and specifically agreed by the responsible minister.

16. Where it is decided that a site does fall within any of the exceptions in Rule 15 or the general exception relating to material change (see rule 10) the former owner will be notified of this decision using the same procedures for contacting former owners as indicated in paragraphs 20-22 below.

17. In the case of a tenanted dwelling, any pre-emptive right of the former owner is subject to the prior right of the sitting tenant. See paragraph 18 below.

Dwelling tenancies

18. Where a dwelling, whether acquired compulsorily or under statutory blight provisions, has a sitting tenant (as defined in Appendix A to this section) at the time of the proposed disposal, the freehold should first be offered to the tenant. If the tenant declines to purchase the freehold, it should then be offered to the former owner, although this may be subject to the tenant's continued occupation. This paragraph does not apply where a dwelling with associated land is being sold as an agricultural unit; or where a dwelling was acquired with associated agricultural land but is being sold in advance of that land.

Procedures for disposal

19. Where it is decided that property to be disposed of is, by virtue of these Rules, subject to the obligation to offer back, departments should follow the appropriate procedures described in paragraphs 20-25 below.

Where former owner's address is known

20. Where the address of a former owner is known, a recorded delivery letter should be sent by or on behalf of the disposing department, inviting the former owner to buy the property at the valuation made by the department's professionally qualified valuer. The former owner will be given two months from the date of that letter to indicate an intention to purchase. Where there is no response or the former owner does not wish to purchase the property, it will be sold on the open market and the former owner will be informed by a recorded delivery letter that this step is being taken. If the former owner wishes to purchase the land there will be a further period of two months to agree terms, other than value, from the date of an invitation made by or on behalf of the disposing department. After these terms are agreed, there will be six weeks to negotiate the price. If the price or other terms cannot be agreed within these periods, or within such extended periods as may reasonably be allowed (for example, to negotiate appropriate clawback provisions), the property will be disposed of on the open market.

Where address is unknown

21. Where the former owner is not readily traceable, the disposing department will contact the solicitor or agent who acted for him or her in the original transaction. If a present address is then ascertained, the procedure described in paragraph 20 above should be followed. If the address is not ascertained, however, the department will attempt to contact the former owner by advertisement, as set out in paragraph 22 below, informing the solicitor or agent that this has been done.

22. Advertisements inviting the former owner to contact the disposing department will be placed as follows:

    a) for all land (including dwellings), in the London Gazette, in the Estates Gazette, in not less than two issues of at least one local newspaper and on the disposing department's web site

    b) in addition, for agricultural land, advertisements will be placed in the Farmer's Weekly

    Site notices announcing the disposal of the land will be displayed on or near the site and owners of the adjacent land will also receive notification of the proposed disposal.

Responses to invitation to purchase where address is unknown

23. Where no intention to purchase is indicated by or on behalf of a former owner within two months of the date of the latest advertisement which is published as described in paragraph 22 above, the land will be disposed of on the open market.

24. Where an intention to purchase is expressed by or on behalf of a former owner within two months of the date of the latest advertisement, he or she will be invited to negotiate terms and agree a price within the further periods, as may reasonably be extended, which are described in paragraph 20 above. If there is no agreement, the property will be disposed of on the open market.

Special procedures where boundaries of agricultural land have been obliterated

25. The procedures described in Appendix B to these Rules should be followed where changes, such as the obliteration of boundaries, prevent land which is still predominantly agricultural in character from being sold back as agricultural land in its original parcels.

Terms of resale

26. Disposals to former owners under these arrangements will be at current market value, as determined by the disposing department's professionally qualified valuer. There can be no common practice in relation to sales to sitting tenants because of the diversity of interests for which housing is held. Departments will, nonetheless, have regard to the terms set out in the Housing Act 1985, as amended, under which local authorities are obliged to sell dwelling-houses to tenants with the right to buy.

27. As a general rule, departments should obtain planning consent before disposing of properties which have potential for development. Where it would not be practicable or appropriate for departments to take action to establish the planning position at the time of disposal, or where it seems that the likelihood of obtaining planning permission (including a more valuable permission) is not adequately reflected in the current market value, the terms of sale should include clawback provisions in order to fulfil the government's or public body's obligation to the taxpayer to obtain the best price. The precise terms of clawback will be a matter for negotiation in each case.

Recording of disposals

28. Disposing departments will maintain a central record or file of all transactions covered by the Rules, including those cases that fall within Rules 10 and 15.

Appendix A (see paragraph 18 of the Rules)

Sitting tenants

1. In the context of the Rules, the expression ‘sitting tenant’ was generally intended to apply to tenants with indefinite or long-term security of tenure. A tenant for the time being of residential property which is to be sold as surplus to a department’s requirements is not, as a tenant of the Crown, in occupation by virtue of a statutory form of tenancy under the Rent Act 1977 or the Housing Act 1988. However, when deciding whether a person is a sitting tenant for the purposes of paragraph 18 of the Rules, the department concerned will have regard to the terms of tenancy and act according to the spirit of the legislation.

2. In practice, this will generally mean that a person may be regarded as a sitting tenant for the purposes of paragraph 18 of the Rules if the tenancy is analogous to either:

   a) a regulated tenancy under the Rent Act 1977, (ie a tenancy commenced before 15 January 1989, but excluding a protected shorthold tenancy); or

   b) an assured tenancy under the Housing Act 1988, (ie a tenancy begun on or after that date, but excluding an assured shorthold tenancy)

3. Without prejudice to paragraph 15(6) of the Rules, therefore, paragraph 18 of the Rules does not apply to a licensee or to a person in occupation under a tenancy the terms of which are analogous to:

   a) a protected shorthold tenancy under the Housing Act 1980, including any case where a person who held such a tenancy, or his or her successor, was granted a regulated tenancy of the same dwelling immediately after the end of the protected shorthold tenancy; or

   b) an assured shorthold tenancy under the Housing Act 1988

4. It is recognised, however, that some tenants who fall within paragraph 3 above, may have occupied the property over a number of years and may well have carried out improvements to the property. Where the former owner or successor does not wish to purchase the property, or cannot be traced, the department may wish to consider sympathetically any offer from such a tenant, of not less than two years, to purchase the freehold.

Appendix B (see paragraph 25 of the Rules)

Special procedures where boundaries of agricultural land have been obliterated

(a) Each former owner will be asked whether he or she wishes to acquire any land.

(b) Where former owners express interest in doing so, disposing departments will, subject to what is stated in (c) to (e) below, make every effort to offer them parcels which correspond, as nearly as is reasonably practicable, in size and situation to their former land.

(c) In large and complex cases, or where there is little or no room for choice between different methods of dividing the land into lots, it may be necessary to show former owners a plan indicating definite lots. This might be appropriate where, for example, the character of the land has altered; where there are existing tenancies; or where departments might otherwise be left with unsaleable lots.

(d) Where more than one former owner is interested in the same parcel of land it may be necessary to give priority to the person who owned most of the parcel or, in a case of near equality, to ask for tenders from interested former owners. Departments should, however, make every effort to offer each interested former owner at least one lot.

(e) If attempts to come to a satisfactory solution by dealing with former owners end in complete deadlock, departments will sell the land by public auction in the most convenient parcels and will inform the former owners of the date of the auction sale.

Annex (see paragraph 1 of the Rules)

Guidance for departments

Bodies to which these rules apply (Rule 2)

1. These Rules apply to all government departments, executive agencies and non departmental public bodies in England and other organisations in England (such as health service bodies) which are subject to a power of direction by a minister. They also apply to land in Wales acquired and still owned by a UK government department.

Application of the rules by local authorities and statutory bodies (Rule 4)

2. Local authorities and other statutory bodies which are not subject to a ministerial power of direction (for example, statutory undertakers) but who have powers of compulsory purchase, or who hold land which has been compulsorily purchased, are recommended to follow the Rules. Such authorities and bodies include those holding land in Wales acquired under an enabling power which remains capable of being confirmed by a UK minister, such as the Secretary of State for Business, Energy and Industrial Strategy. The previous practice amongst such authorities has been very variable, but the government would like there to be a high level of compliance. Former owners of surplus land will be likely to see as inequitable a system which requires government departments and others to offer back surplus land but not local authorities. A typical example would be on road schemes, where those who had lost land to a trunk road scheme would have surplus land offered back, while those who had lost land to a county road scheme might not.

3. The approach of these bodies when disposing of surplus land must, however, depend on their particular functions and circumstances. For example, in the case of exceptions to the Rules which depend upon ministerial authority (Rules 15(1), 15(2) and 15(7)) local authorities will have to rely on the decision of the political head of the authority. For other statutory bodies the decision will rest with the chairman. For disposals at the end of Private Finance Initiative/Private Public Partnership agreements, departments may wish to seek legal advice in order to take account of the Rules.

Transfer to the private sector (Rule 5)

4. This rule makes it clear that land transferred to another body for the same functions is not surplus.

The threat of compulsion (Rule 7)

5. A ‘threat of compulsion’ should be assumed in the case of a voluntary sale if the power to acquire the land compulsorily existed at the time. This means that the acquiring department did not need to have instituted compulsory purchase procedures or even to have actively ‘threatened’ to use them for this Rule to apply.

   It is enough for the acquiring authority to have statutory powers available if it wished to invoke them. For example, land acquired by a highway authority for the purposes of building a road is acquired under the threat of compulsion because such an authority

could use its powers under the Highways Act 1980 to make a compulsory purchase order. The only exception is where the land was publicly or privately offered for sale immediately before the negotiations for acquisition.

What constitutes a disposal? (Rule 9)

6. In addition to freehold disposals, any proposal to create and dispose of a leasehold interest of more than 7 years or capable of being extended to more than 7 years by virtue of contract or statute or where the total period of successive leases amounts to more than 7 years will be subject to the Rules. Disposals for the purposes of granting Private Finance Initiative/Private Public Partnership projects do not fall within the Rules, see Rule 5.

What is a material change of character? (Rule 10)

7. The Rules refer to a 'material change in character' to the land available for disposal. In the original Commons debate on the Crichel Down case in 1954, 'material change' was envisaged as relating to agricultural land and was illustrated by the example of an airfield having been built with concrete runways and buildings and where the original ownership boundaries have been lost. However, other examples of a material change of character could include the erection of buildings on bare, open land (although it should be noted that the erection of temporary buildings is not necessarily a material change); the afforestation of open land; or the undertaking of substantial works to an existing building, the demolition of a building or the installation of underground infrastructure or services to a site.

Land subject to a long lease (Rule 12)

8. If neither the former freeholder nor former leaseholder are identifiable or interested in buying the land back then the freehold freed from any lease can be disposed of on the open market.

Who is a successor? (Rule 13)

9. A successor under a will includes those who would have succeeded by means of a second or subsequent will or intestacy. The qualification 'otherwise than by purchase' may be relaxed if the successor to adjoining land acquired it by means of transfer within a family trust, including a transfer for monetary consideration.

When is the date of acquisition? (Rule 14)

10. Rule 14 says that the date of acquisition is the date of the conveyance, transfer or vesting declaration. Problems may arise where land has been requisitioned several (sometimes 10 or more) years before the title has transferred. Difficulties can be caused where the two dates straddle a time horizon, so that a disposal would fall within the Rules if the date of transfer was used, but not if the date of requisition was. To avoid these difficulties the date of acquisition is therefore taken to be the date of conveyance, transfer or vesting declaration.

What are ‘reasons of public interest’? (Rule 15(2))

11. The courts have held that rule 15(2) (formerly 14(2)) does not require these to be matters where life or limb are at risk. In practice, this exception may be invoked where the body to which the land is to be sold could have made a compulsory purchase order to obtain it had it been owned by a third party (See R-v-Secretary of State for the Environment, Transport and the Regions ex p. Wheeler, The Times 4 August 2000).

Small areas of land (Rule 15(3))

12. This exception provides departments with discretion as to whether to offer land back when the administrative costs in seeking to offer land back are out of proportion to the value of the land. It will also cover cases where there is a disposal of a small area of land without a sale.

When is it inconsistent with the purpose of the original acquisition to offer land back? (Rule 15(5))

13. The sections of the Agriculture Act 1947 referred to in this Rule deal with the dispossession of owners or occupiers on grounds of bad estate management (section 16) and the acquisition and retention of land to ensure the full and efficient use of the land for agriculture (sections 84 and 85). In addition to the statutory examples quoted, the general rule is that land purchased with the intention of passing it on to another body for a specific purpose is not surplus and therefore not subject to the Rules. Typical examples would be sites of special scientific interest (SSSIs) purchased for management reasons; a listed building purchased for restorations; properties purchased by a local authority for redevelopment which are sold to a private developer partner; or land purchased by the former English Partnerships or a former regional development agency (now Homes England) and sold for reclamation and redevelopment. This exception will apply to disposals by statutory bodies with specific primary rather than incidental functions to develop or redevelop land, and to disposals by their successor bodies. In such cases, land would only be subject to the Rules where it was without development potential and, therefore, genuinely surplus in relation to the purpose for which it was originally acquired.

Dwelling tenancies (Rule 18)

14. For the purposes of the Rules a ‘dwelling’ includes a flat.

Procedures for disposal (Rules 19-24)

15. The Rules specify various time limits in the procedures for disposal. However, to assist in the speedy disposal of sites, departments are encouraged to discuss with the former owner all aspects of the sale from the outset of negotiations.

Market value and the date of valuation (Rule 26)

16. For the purposes of the Rules, ‘market value’ means ‘the best price reasonably obtainable for the property’. This is equivalent to the definition of ‘market value’ in the

Royal Institution of Chartered Surveyors' Appraisal and Valuation Manual (the 'Red Book'), but including any 'Special Value' (ie any additional amount which is or might reasonably be expected to be available from a purchaser with a special interest like a former owner). 'Current market value' means the market value on the date of the receipt by the disposing department of the notification of the former owner's intention to purchase.

Maintenance of records (Rule 28)

17. In order to make it possible for the operation of these revised Rules to be monitored, disposing departments should include on each disposal file a note of its consideration of the Rules, including whether they applied (and if not, why not), the subsequent action taken and whether it was possible to sell to the former owner. It would also be very helpful if a copy of each of these notes (cross-referenced to the disposal file) could be held by the relevant department on a central (or regional) file, so that the information would be readily available for any future monitoring exercise.

Ministry of Housing,
Communities &
Local Government

National Planning Policy Framework

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Contents

1. Introduction

1. The National Planning Policy Framework sets out the Government's planning policies for England and how these should be applied[1]. It provides a framework within which locally-prepared plans for housing and other development can be produced.

2. Planning law requires that applications for planning permission be determined in accordance with the development plan[2], unless material considerations indicate otherwise[3]. The National Planning Policy Framework must be taken into account in preparing the development plan, and is a material consideration in planning decisions. Planning policies and decisions must also reflect relevant international obligations and statutory requirements.

3. The Framework should be read as a whole (including its footnotes and annexes). General references to planning policies in the Framework should be applied in a way that is appropriate to the type of plan being produced, taking into account policy on plan-making in chapter 3.

4. The Framework should be read in conjunction with the Government's planning policy for traveller sites, and its planning policy for waste. When preparing plans or making decisions on applications for these types of development, regard should also be had to the policies in this Framework, where relevant.

5. The Framework does not contain specific policies for nationally significant infrastructure projects. These are determined in accordance with the decision-making framework in the Planning Act 2008 (as amended) and relevant national policy statements for major infrastructure, as well as any other matters that are relevant (which may include the National Planning Policy Framework). National policy statements form part of the overall framework of national planning policy, and may be a material consideration in preparing plans and making decisions on planning applications.

6. Other statements of government policy may be material when preparing plans or deciding applications, such as relevant Written Ministerial Statements and endorsed recommendations of the National Infrastructure Commission.

[1] This document replaces the previous version of the National Planning Policy Framework published in February 2019.
[2] This includes local and neighbourhood plans that have been brought into force and any spatial development strategies produced by combined authorities or elected Mayors (see Glossary).
[3] Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

2. Achieving sustainable development

7. The purpose of the planning system is to contribute to the achievement of sustainable development. At a very high level, the objective of sustainable development can be summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs[4]. At a similarly high level, members of the United Nations – including the United Kingdom – have agreed to pursue the 17 Global Goals for Sustainable Development in the period to 2030. These address social progress, economic well-being and environmental protection[5].

8. Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):

   a) **an economic objective** – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;

   b) **a social objective** – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering well-designed, beautiful and safe places, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and

   c) **an environmental objective** – to protect and enhance our natural, built and historic environment; including making effective use of land, improving biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.

9. These objectives should be delivered through the preparation and implementation of plans and the application of the policies in this Framework; they are not criteria against which every decision can or should be judged. Planning policies and decisions should play an active role in guiding development towards sustainable solutions, but in doing so should take local circumstances into account, to reflect the character, needs and opportunities of each area.

10. So that sustainable development is pursued in a positive way, at the heart of the Framework is a **presumption in favour of sustainable development** (paragraph 11).

[4] Resolution 42/187 of the United Nations General Assembly.
[5] Transforming our World: the 2030 Agenda for Sustainable Development.

The presumption in favour of sustainable development

11. Plans and decisions should apply a presumption in favour of sustainable development.

For **plan-making** this means that:

a) all plans should promote a sustainable pattern of development that seeks to: meet the development needs of their area; align growth and infrastructure; improve the environment; mitigate climate change (including by making effective use of land in urban areas) and adapt to its effects;

b) strategic policies should, as a minimum, provide for objectively assessed needs for housing and other uses, as well as any needs that cannot be met within neighbouring areas[6], unless:

   i. the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for restricting the overall scale, type or distribution of development in the plan area[7]; or

   ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

For **decision-taking** this means:

c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date[8], granting permission unless:

   i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed[7]; or

   ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

[6] As established through statements of common ground (see paragraph 27).
[7] The policies referred to are those in this Framework (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 181) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 68); and areas at risk of flooding or coastal change.
[8] This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 74); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years.

12. The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.

13. The application of the presumption has implications for the way communities engage in neighbourhood planning. Neighbourhood plans should support the delivery of strategic policies contained in local plans or spatial development strategies; and should shape and direct development that is outside of these strategic policies.

14. In situations where the presumption (at paragraph 11d) applies to applications involving the provision of housing, the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, provided all of the following apply[9]:

    a) the neighbourhood plan became part of the development plan two years or less before the date on which the decision is made;

    b) the neighbourhood plan contains policies and allocations to meet its identified housing requirement;

    c) the local planning authority has at least a three year supply of deliverable housing sites (against its five year housing supply requirement, including the appropriate buffer as set out in paragraph 74); and

    d) the local planning authority's housing delivery was at least 45% of that required[10] over the previous three years.

[9] Transitional arrangements are set out in Annex 1.
[10] Assessed against the Housing Delivery Test, from November 2018 onwards.

3. Plan-making

15. The planning system should be genuinely plan-led. Succinct and up-to-date plans should provide a positive vision for the future of each area; a framework for addressing housing needs and other economic, social and environmental priorities; and a platform for local people to shape their surroundings.

16. Plans should:

a) be prepared with the objective of contributing to the achievement of sustainable development[11];

b) be prepared positively, in a way that is aspirational but deliverable;

c) be shaped by early, proportionate and effective engagement between plan-makers and communities, local organisations, businesses, infrastructure providers and operators and statutory consultees;

d) contain policies that are clearly written and unambiguous, so it is evident how a decision maker should react to development proposals;

e) be accessible through the use of digital tools to assist public involvement and policy presentation; and

f) serve a clear purpose, avoiding unnecessary duplication of policies that apply to a particular area (including policies in this Framework, where relevant).

The plan-making framework

17. The development plan must include strategic policies to address each local planning authority's priorities for the development and use of land in its area[12]. These strategic policies can be produced in different ways, depending on the issues and opportunities facing each area. They can be contained in:

a) joint or individual local plans, produced by authorities working together or independently (and which may also contain non-strategic policies); and/or

b) a spatial development strategy produced by an elected Mayor or combined authority, where plan-making powers have been conferred.

18. Policies to address non-strategic matters should be included in local plans that contain both strategic and non-strategic policies, and/or in local or neighbourhood plans that contain just non-strategic policies.

19. The development plan for an area comprises the combination of strategic and non-strategic policies which are in force at a particular time.

[11] This is a legal requirement of local planning authorities exercising their plan-making functions (section 39(2) of the Planning and Compulsory Purchase Act 2004).
[12] Section 19(1B-1E) of the Planning and Compulsory Purchase Act 2004.

Strategic policies

20. Strategic policies should set out an overall strategy for the pattern, scale and design quality of places, and make sufficient provision[13] for:

    a) housing (including affordable housing), employment, retail, leisure and other commercial development;

    b) infrastructure for transport, telecommunications, security, waste management, water supply, wastewater, flood risk and coastal change management, and the provision of minerals and energy (including heat);

    c) community facilities (such as health, education and cultural infrastructure); and

    d) conservation and enhancement of the natural, built and historic environment, including landscapes and green infrastructure, and planning measures to address climate change mitigation and adaptation.

21. Plans should make explicit which policies are strategic policies[14]. These should be limited to those necessary to address the strategic priorities of the area (and any relevant cross-boundary issues), to provide a clear starting point for any non-strategic policies that are needed. Strategic policies should not extend to detailed matters that are more appropriately dealt with through neighbourhood plans or other non-strategic policies.

22. Strategic policies should look ahead over a minimum 15 year period from adoption[15], to anticipate and respond to long-term requirements and opportunities, such as those arising from major improvements in infrastructure. Where larger scale developments such as new settlements or significant extensions to existing villages and towns form part of the strategy for the area, policies should be set within a vision that looks further ahead (at least 30 years), to take into account the likely timescale for delivery.[16]

23. Broad locations for development should be indicated on a key diagram, and land-use designations and allocations identified on a policies map. Strategic policies should provide a clear strategy for bringing sufficient land forward, and at a sufficient rate, to address objectively assessed needs over the plan period, in line with the presumption in favour of sustainable development. This should include planning for and allocating sufficient sites to deliver the strategic priorities of the area (except insofar as these needs can be demonstrated to be met more appropriately through other mechanisms, such as brownfield registers or non-strategic policies)[17].

[13] In line with the presumption in favour of sustainable development.
[14] Where a single local plan is prepared the non-strategic policies should be clearly distinguished from the strategic policies.
[15] Except in relation to town centre development, as set out in chapter 7.
[16] Transitional arrangements are set out in Annex 1.
[17] For spatial development strategies, allocations, land use designations and a policies map are needed only where the power to make allocations has been conferred.

Maintaining effective cooperation

24. Local planning authorities and county councils (in two-tier areas) are under a duty to cooperate with each other, and with other prescribed bodies, on strategic matters that cross administrative boundaries.

25. Strategic policy-making authorities should collaborate to identify the relevant strategic matters which they need to address in their plans. They should also engage with their local communities and relevant bodies including Local Enterprise Partnerships, Local Nature Partnerships, the Marine Management Organisation, county councils, infrastructure providers, elected Mayors and combined authorities (in cases where Mayors or combined authorities do not have plan-making powers).

26. Effective and on-going joint working between strategic policy-making authorities and relevant bodies is integral to the production of a positively prepared and justified strategy. In particular, joint working should help to determine where additional infrastructure is necessary, and whether development needs that cannot be met wholly within a particular plan area could be met elsewhere.

27. In order to demonstrate effective and on-going joint working, strategic policy-making authorities should prepare and maintain one or more statements of common ground, documenting the cross-boundary matters being addressed and progress in cooperating to address these. These should be produced using the approach set out in national planning guidance, and be made publicly available throughout the plan-making process to provide transparency.

Non-strategic policies

28. Non-strategic policies should be used by local planning authorities and communities to set out more detailed policies for specific areas, neighbourhoods or types of development. This can include allocating sites, the provision of infrastructure and community facilities at a local level, establishing design principles, conserving and enhancing the natural and historic environment and setting out other development management policies.

29. Neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan. Neighbourhood plans should not promote less development than set out in the strategic policies for the area, or undermine those strategic policies[18].

30. Once a neighbourhood plan has been brought into force, the policies it contains take precedence over existing non-strategic policies in a local plan covering the neighbourhood area, where they are in conflict; unless they are superseded by strategic or non-strategic policies that are adopted subsequently.

[18] Neighbourhood plans must be in general conformity with the strategic policies contained in any development plan that covers their area.

Preparing and reviewing plans

31. The preparation and review of all policies should be underpinned by relevant and up-to-date evidence. This should be adequate and proportionate, focused tightly on supporting and justifying the policies concerned, and take into account relevant market signals.

32. Local plans and spatial development strategies should be informed throughout their preparation by a sustainability appraisal that meets the relevant legal requirements[19]. This should demonstrate how the plan has addressed relevant economic, social and environmental objectives (including opportunities for net gains). Significant adverse impacts on these objectives should be avoided and, wherever possible, alternative options which reduce or eliminate such impacts should be pursued. Where significant adverse impacts are unavoidable, suitable mitigation measures should be proposed (or, where this is not possible, compensatory measures should be considered).

33. Policies in local plans and spatial development strategies should be reviewed to assess whether they need updating at least once every five years, and should then be updated as necessary[20]. Reviews should be completed no later than five years from the adoption date of a plan, and should take into account changing circumstances affecting the area, or any relevant changes in national policy. Relevant strategic policies will need updating at least once every five years if their applicable local housing need figure has changed significantly; and they are likely to require earlier review if local housing need is expected to change significantly in the near future.

Development contributions

34. Plans should set out the contributions expected from development. This should include setting out the levels and types of affordable housing provision required, along with other infrastructure (such as that needed for education, health, transport, flood and water management, green and digital infrastructure). Such policies should not undermine the deliverability of the plan.

Examining plans

35. Local plans and spatial development strategies are examined to assess whether they have been prepared in accordance with legal and procedural requirements, and whether they are sound. Plans are ‘sound’ if they are:

[19] The reference to relevant legal requirements refers to Strategic Environmental Assessment. Neighbourhood plans may require Strategic Environmental Assessment, but only where there are potentially significant environmental effects.
[20] Reviews at least every five years are a legal requirement for all local plans (Regulation 10A of the Town and Country Planning (Local Planning) (England) Regulations 2012).

a) **Positively prepared** – providing a strategy which, as a minimum, seeks to meet the area's objectively assessed needs[21]; and is informed by agreements with other authorities, so that unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development;

b) **Justified** – an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence;

c) **Effective** – deliverable over the plan period, and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground; and

d) **Consistent with national policy** – enabling the delivery of sustainable development in accordance with the policies in this Framework and other statements of national planning policy, where relevant.

36. These tests of soundness will be applied to non-strategic policies[22] in a proportionate way, taking into account the extent to which they are consistent with relevant strategic policies for the area.

37. Neighbourhood plans must meet certain 'basic conditions' and other legal requirements[23] before they can come into force. These are tested through an independent examination before the neighbourhood plan may proceed to referendum.

[21] Where this relates to housing, such needs should be assessed using a clear and justified method, as set out in paragraph 61 of this Framework.
[22] Where these are contained in a local plan.
[23] As set out in paragraph 8 of Schedule 4B to the Town and Country Planning Act 1990 (as amended).

4. Decision-making

38. Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.

Pre-application engagement and front-loading

39. Early engagement has significant potential to improve the efficiency and effectiveness of the planning application system for all parties. Good quality pre-application discussion enables better coordination between public and private resources and improved outcomes for the community.

40. Local planning authorities have a key role to play in encouraging other parties to take maximum advantage of the pre-application stage. They cannot require that a developer engages with them before submitting a planning application, but they should encourage take-up of any pre-application services they offer. They should also, where they think this would be beneficial, encourage any applicants who are not already required to do so by law to engage with the local community and, where relevant, with statutory and non-statutory consultees, before submitting their applications.

41. The more issues that can be resolved at pre-application stage, including the need to deliver improvements in infrastructure and affordable housing, the greater the benefits. For their role in the planning system to be effective and positive, statutory planning consultees will need to take the same early, pro-active approach, and provide advice in a timely manner throughout the development process. This assists local planning authorities in issuing timely decisions, helping to ensure that applicants do not experience unnecessary delays and costs.

42. The participation of other consenting bodies in pre-application discussions should enable early consideration of all the fundamental issues relating to whether a particular development will be acceptable in principle, even where other consents relating to how a development is built or operated are needed at a later stage. Wherever possible, parallel processing of other consents should be encouraged to help speed up the process and resolve any issues as early as possible.

43. The right information is crucial to good decision-making, particularly where formal assessments are required (such as Environmental Impact Assessment, Habitats Regulations assessment and flood risk assessment). To avoid delay, applicants should discuss what information is needed with the local planning authority and expert bodies as early as possible.

44. Local planning authorities should publish a list of their information requirements for applications for planning permission. These requirements should be kept to the minimum needed to make decisions, and should be reviewed at least every two

years. Local planning authorities should only request supporting information that is relevant, necessary and material to the application in question.

45. Local planning authorities should consult the appropriate bodies when considering applications for the siting of, or changes to, major hazard sites, installations or pipelines, or for development around them.

46. Applicants and local planning authorities should consider the potential for voluntary planning performance agreements, where this might achieve a faster and more effective application process. Planning performance agreements are likely to be needed for applications that are particularly large or complex to determine.

Determining applications

47. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. Decisions on applications should be made as quickly as possible, and within statutory timescales unless a longer period has been agreed by the applicant in writing.

48. Local planning authorities may give weight to relevant policies in emerging plans according to:

a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);

b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and

c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)[24].

49. However, in the context of the Framework – and in particular the presumption in favour of sustainable development – arguments that an application is premature are unlikely to justify a refusal of planning permission other than in the limited circumstances where both:

a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan; and

b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.

[24] During the transitional period for emerging plans submitted for examination (set out in paragraph 220), consistency should be tested against the original Framework published in March 2012.

50. Refusal of planning permission on grounds of prematurity will seldom be justified where a draft plan has yet to be submitted for examination; or – in the case of a neighbourhood plan – before the end of the local planning authority publicity period on the draft plan. Where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how granting permission for the development concerned would prejudice the outcome of the plan-making process.

Tailoring planning controls to local circumstances

51. Local planning authorities are encouraged to use Local Development Orders to set the planning framework for particular areas or categories of development where the impacts would be acceptable, and in particular where this would promote economic, social or environmental gains for the area.

52. Communities can use Neighbourhood Development Orders and Community Right to Build Orders to grant planning permission. These require the support of the local community through a referendum. Local planning authorities should take a proactive and positive approach to such proposals, working collaboratively with community organisations to resolve any issues before draft orders are submitted for examination.

53. The use of Article 4 directions to remove national permitted development rights should:

- where they relate to change from non-residential use to residential use, be limited to situations where an Article 4 direction is necessary to avoid wholly unacceptable adverse impacts (this could include the loss of the essential core of a primary shopping area which would seriously undermine its vitality and viability, but would be very unlikely to extend to the whole of a town centre)
- in other cases, be limited to situations where an Article 4 direction is necessary to protect local amenity or the well-being of the area (this could include the use of Article 4 directions to require planning permission for the demolition of local facilities)
- in all cases, be based on robust evidence, and apply to the smallest geographical area possible.

54. Similarly, planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.

Planning conditions and obligations

55. Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.

56. Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision-making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification[25].

57. Planning obligations must only be sought where they meet all of the following tests[26]:

a) necessary to make the development acceptable in planning terms;

b) directly related to the development; and

c) fairly and reasonably related in scale and kind to the development.

58. Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force. All viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available.

Enforcement

59. Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.

[25] Sections 100ZA(4-6) of the Town and Country Planning Act 1990 will require the applicant's written agreement to the terms of a pre-commencement condition, unless prescribed circumstances apply.
[26] Set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.

5. Delivering a sufficient supply of homes

60. To support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.

61. To determine the minimum number of homes needed, strategic policies should be informed by a local housing need assessment, conducted using the standard method in national planning guidance – unless exceptional circumstances justify an alternative approach which also reflects current and future demographic trends and market signals. In addition to the local housing need figure, any needs that cannot be met within neighbouring areas should also be taken into account in establishing the amount of housing to be planned for.

62. Within this context, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies (including, but not limited to, those who require affordable housing, families with children, older people, students, people with disabilities, service families, travellers[27], people who rent their homes and people wishing to commission or build their own homes[28]).

63. Where a need for affordable housing is identified, planning policies should specify the type of affordable housing required[29], and expect it to be met on-site unless:

    a) off-site provision or an appropriate financial contribution in lieu can be robustly justified; and

    b) the agreed approach contributes to the objective of creating mixed and balanced communities.

64. Provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer). To support the re-use of brownfield land, where vacant buildings are being reused or redeveloped, any affordable housing contribution due should be reduced by a proportionate amount[30].

65. Where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the total number of homes to

[27] Planning Policy for Traveller Sites sets out how travellers' housing needs should be assessed for those covered by the definition in Annex 1 of that document.
[28] Under section 1 of the Self Build and Custom Housebuilding Act 2015, local authorities are required to keep a register of those seeking to acquire serviced plots in the area for their own self-build and custom house building. They are also subject to duties under sections 2 and 2A of the Act to have regard to this and to give enough suitable development permissions to meet the identified demand. Self and custom-build properties could provide market or affordable housing.
[29] Applying the definition in Annex 2 to this Framework.
[30] Equivalent to the existing gross floorspace of the existing buildings. This does not apply to vacant buildings which have been abandoned.

be available for affordable home ownership[31], unless this would exceed the level of affordable housing required in the area, or significantly prejudice the ability to meet the identified affordable housing needs of specific groups. Exemptions to this 10% requirement should also be made where the site or proposed development:

a) provides solely for Build to Rent homes;

b) provides specialist accommodation for a group of people with specific needs (such as purpose-built accommodation for the elderly or students);

c) is proposed to be developed by people who wish to build or commission their own homes; or

d) is exclusively for affordable housing, an entry-level exception site or a rural exception site.

66. Strategic policy-making authorities should establish a housing requirement figure for their whole area, which shows the extent to which their identified housing need (and any needs that cannot be met within neighbouring areas) can be met over the plan period. Within this overall requirement, strategic policies should also set out a housing requirement for designated neighbourhood areas which reflects the overall strategy for the pattern and scale of development and any relevant allocations[32]. Once the strategic policies have been adopted, these figures should not need re-testing at the neighbourhood plan examination, unless there has been a significant change in circumstances that affects the requirement.

67. Where it is not possible to provide a requirement figure for a neighbourhood area[33], the local planning authority should provide an indicative figure, if requested to do so by the neighbourhood planning body. This figure should take into account factors such as the latest evidence of local housing need, the population of the neighbourhood area and the most recently available planning strategy of the local planning authority.

Identifying land for homes

68. Strategic policy-making authorities should have a clear understanding of the land available in their area through the preparation of a strategic housing land availability assessment. From this, planning policies should identify a sufficient supply and mix of sites, taking into account their availability, suitability and likely economic viability. Planning policies should identify a supply of:

a) specific, deliverable sites for years one to five of the plan period[34]; and

[31] As part of the overall affordable housing contribution from the site.
[32] Except where a Mayoral, combined authority or high-level joint plan is being prepared as a framework for strategic policies at the individual local authority level; in which case it may be most appropriate for the local authority plans to provide the requirement figure.
[33] Because a neighbourhood area is designated at a late stage in the strategic policy-making process, or after strategic policies have been adopted; or in instances where strategic policies for housing are out of date.
[34] With an appropriate buffer, as set out in paragraph 74. See Glossary for definitions of deliverable and developable.

b) specific, developable sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15 of the plan.

69. Small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly. To promote the development of a good mix of sites local planning authorities should:

a) identify, through the development plan and brownfield registers, land to accommodate at least 10% of their housing requirement on sites no larger than one hectare; unless it can be shown, through the preparation of relevant plan policies, that there are strong reasons why this 10% target cannot be achieved;

b) use tools such as area-wide design assessments and Local Development Orders to help bring small and medium sized sites forward;

c) support the development of windfall sites through their policies and decisions – giving great weight to the benefits of using suitable sites within existing settlements for homes; and

d) work with developers to encourage the sub-division of large sites where this could help to speed up the delivery of homes.

70. Neighbourhood planning groups should also give particular consideration to the opportunities for allocating small and medium-sized sites (of a size consistent with paragraph 69a) suitable for housing in their area.

71. Where an allowance is to be made for windfall sites as part of anticipated supply, there should be compelling evidence that they will provide a reliable source of supply. Any allowance should be realistic having regard to the strategic housing land availability assessment, historic windfall delivery rates and expected future trends. Plans should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area.

72. Local planning authorities should support the development of entry-level exception sites, suitable for first time buyers (or those looking to rent their first home), unless the need for such homes is already being met within the authority's area. These sites should be on land which is not already allocated for housing and should:

a) comprise of entry-level homes that offer one or more types of affordable housing as defined in Annex 2 of this Framework; and

b) be adjacent to existing settlements, proportionate in size to them[35], not compromise the protection given to areas or assets of particular importance in this Framework[36], and comply with any local design policies and standards.

[35] Entry-level exception sites should not be larger than one hectare in size or exceed 5% of the size of the existing settlement.
[36] i.e. the areas referred to in footnote 7. Entry-level exception sites should not be permitted in National Parks (or within the Broads Authority), Areas of Outstanding Natural Beauty or land designated as Green Belt.

73. The supply of large numbers of new homes can often be best achieved through planning for larger scale development, such as new settlements or significant extensions to existing villages and towns, provided they are well located and designed, and supported by the necessary infrastructure and facilities (including a genuine choice of transport modes). Working with the support of their communities, and with other authorities if appropriate, strategic policy-making authorities should identify suitable locations for such development where this can help to meet identified needs in a sustainable way. In doing so, they should:

a) consider the opportunities presented by existing or planned investment in infrastructure, the area's economic potential and the scope for net environmental gains;

b) ensure that their size and location will support a sustainable community, with sufficient access to services and employment opportunities within the development itself (without expecting an unrealistic level of self-containment), or in larger towns to which there is good access;

c) set clear expectations for the quality of the places to be created and how this can be maintained (such as by following Garden City principles); and ensure that appropriate tools such as masterplans and design guides or codes are used to secure a variety of well-designed and beautiful homes to meet the needs of different groups in the community;

d) make a realistic assessment of likely rates of delivery, given the lead-in times for large scale sites, and identify opportunities for supporting rapid implementation (such as through joint ventures or locally-led development corporations)[37]; and

e) consider whether it is appropriate to establish Green Belt around or adjoining new developments of significant size.

Maintaining supply and delivery

74. Strategic policies should include a trajectory illustrating the expected rate of housing delivery over the plan period, and all plans should consider whether it is appropriate to set out the anticipated rate of development for specific sites. Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies[38], or against their local housing need where the strategic policies are more than five years old[39].

[37] The delivery of large scale developments may need to extend beyond an individual plan period, and the associated infrastructure requirements may not be capable of being identified fully at the outset. Anticipated rates of delivery and infrastructure requirements should, therefore, be kept under review and reflected as policies are updated.
[38] For the avoidance of doubt, a five year supply of deliverable sites for travellers – as defined in Annex 1 to Planning Policy for Traveller Sites – should be assessed separately, in line with the policy in that document.
[39] Unless these strategic policies have been reviewed and found not to require updating. Where local housing need is used as the basis for assessing whether a five year supply of specific deliverable sites exists, it should be calculated using the standard method set out in national planning guidance.

The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period) of:

a) 5% to ensure choice and competition in the market for land; or

b) 10% where the local planning authority wishes to demonstrate a five year supply of deliverable sites through an annual position statement or recently adopted plan[40], to account for any fluctuations in the market during that year; or

c) 20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply[41].

75. A five year supply of deliverable housing sites, with the appropriate buffer, can be demonstrated where it has been established in a recently adopted plan, or in a subsequent annual position statement which:

a) has been produced through engagement with developers and others who have an impact on delivery, and been considered by the Secretary of State; and

b) incorporates the recommendation of the Secretary of State, where the position on specific sites could not be agreed during the engagement process.

76. To maintain the supply of housing, local planning authorities should monitor progress in building out sites which have permission. Where the Housing Delivery Test indicates that delivery has fallen below 95% of the local planning authority's housing requirement over the previous three years, the authority should prepare an action plan in line with national planning guidance, to assess the causes of under-delivery and identify actions to increase delivery in future years.

77. To help ensure that proposals for housing development are implemented in a timely manner, local planning authorities should consider imposing a planning condition providing that development must begin within a timescale shorter than the relevant default period, where this would expedite the development without threatening its deliverability or viability. For major development involving the provision of housing, local planning authorities should also assess why any earlier grant of planning permission for a similar development on the same site did not start.

Rural housing

78. In rural areas, planning policies and decisions should be responsive to local circumstances and support housing developments that reflect local needs. Local planning authorities should support opportunities to bring forward rural exception sites that will provide affordable housing to meet identified local needs, and consider whether allowing some market housing on these sites would help to facilitate this.

[40] For the purposes of paragraphs 74b and 75 a plan adopted between 1 May and 31 October will be considered 'recently adopted' until 31 October of the following year; and a plan adopted between 1 November and 30 April will be considered recently adopted until 31 October in the same year.
[41]This will be measured against the Housing Delivery Test, where this indicates that delivery was below 85% of the housing requirement.

79. To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Where there are groups of smaller settlements, development in one village may support services in a village nearby.

80. Planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply:

a) there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside;

b) the development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets;

c) the development would re-use redundant or disused buildings and enhance its immediate setting;

d) the development would involve the subdivision of an existing residential building; or

e) the design is of exceptional quality, in that it:

- is truly outstanding, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and
- would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.

6. Building a strong, competitive economy

81. Planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. The approach taken should allow each area to build on its strengths, counter any weaknesses and address the challenges of the future. This is particularly important where Britain can be a global leader in driving innovation[42], and in areas with high levels of productivity, which should be able to capitalise on their performance and potential.

82. Planning policies should:

a) set out a clear economic vision and strategy which positively and proactively encourages sustainable economic growth, having regard to Local Industrial Strategies and other local policies for economic development and regeneration;

b) set criteria, or identify strategic sites, for local and inward investment to match the strategy and to meet anticipated needs over the plan period;

c) seek to address potential barriers to investment, such as inadequate infrastructure, services or housing, or a poor environment; and

d) be flexible enough to accommodate needs not anticipated in the plan, allow for new and flexible working practices (such as live-work accommodation), and to enable a rapid response to changes in economic circumstances.

83. Planning policies and decisions should recognise and address the specific locational requirements of different sectors. This includes making provision for clusters or networks of knowledge and data-driven, creative or high technology industries; and for storage and distribution operations at a variety of scales and in suitably accessible locations.

Supporting a prosperous rural economy

84. Planning policies and decisions should enable:

a) the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings;

b) the development and diversification of agricultural and other land-based rural businesses;

[42] The Government's Industrial Strategy sets out a vision to drive productivity improvements across the UK, identifies a number of Grand Challenges facing all nations, and sets out a delivery programme to make the UK a leader in four of these: artificial intelligence and big data; clean growth; future mobility; and catering for an ageing society. HM Government (2017) *Industrial Strategy: Building a Britain fit for the future.*

c) sustainable rural tourism and leisure developments which respect the character of the countryside; and

d) the retention and development of accessible local services and community facilities, such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship.

85. Planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist.

7. Ensuring the vitality of town centres

86. Planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation. Planning policies should:

a) define a network and hierarchy of town centres and promote their long-term vitality and viability – by allowing them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries, allows a suitable mix of uses (including housing) and reflects their distinctive characters;

b) define the extent of town centres and primary shopping areas, and make clear the range of uses permitted in such locations, as part of a positive strategy for the future of each centre;

c) retain and enhance existing markets and, where appropriate, re-introduce or create new ones;

d) allocate a range of suitable sites in town centres to meet the scale and type of development likely to be needed, looking at least ten years ahead. Meeting anticipated needs for retail, leisure, office and other main town centre uses over this period should not be compromised by limited site availability, so town centre boundaries should be kept under review where necessary;

e) where suitable and viable town centre sites are not available for main town centre uses, allocate appropriate edge of centre sites that are well connected to the town centre. If sufficient edge of centre sites cannot be identified, policies should explain how identified needs can be met in other accessible locations that are well connected to the town centre; and

f) recognise that residential development often plays an important role in ensuring the vitality of centres and encourage residential development on appropriate sites.

87. Local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.

88. When considering edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored.

89. This sequential approach should not be applied to applications for small scale rural offices or other small scale rural development.

90. When assessing applications for retail and leisure development outside town centres, which are not in accordance with an up-to-date plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500m^2 of gross floorspace). This should include assessment of:

a) the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and

b) the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and the wider retail catchment (as applicable to the scale and nature of the scheme).

91. Where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the considerations in paragraph 90, it should be refused.

8. Promoting healthy and safe communities

92. Planning policies and decisions should aim to achieve healthy, inclusive and safe places which:

a) promote social interaction, including opportunities for meetings between people who might not otherwise come into contact with each other – for example through mixed-use developments, strong neighbourhood centres, street layouts that allow for easy pedestrian and cycle connections within and between neighbourhoods, and active street frontages;

b) are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion – for example through the use of attractive, well-designed, clear and legible pedestrian and cycle routes, and high quality public space, which encourage the active and continual use of public areas; and

c) enable and support healthy lifestyles, especially where this would address identified local health and well-being needs – for example through the provision of safe and accessible green infrastructure, sports facilities, local shops, access to healthier food, allotments and layouts that encourage walking and cycling.

93. To provide the social, recreational and cultural facilities and services the community needs, planning policies and decisions should:

a) plan positively for the provision and use of shared spaces, community facilities (such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments;

b) take into account and support the delivery of local strategies to improve health, social and cultural well-being for all sections of the community;

c) guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs;

d) ensure that established shops, facilities and services are able to develop and modernise, and are retained for the benefit of the community; and

e) ensure an integrated approach to considering the location of housing, economic uses and community facilities and services.

94. Planning policies and decisions should consider the social, economic and environmental benefits of estate regeneration. Local planning authorities should use their planning powers to help deliver estate regeneration to a high standard.

95. It is important that a sufficient choice of school places is available to meet the needs of existing and new communities. Local planning authorities should take a proactive, positive and collaborative approach to meeting this requirement, and to development that will widen choice in education. They should:

a) give great weight to the need to create, expand or alter schools through the preparation of plans and decisions on applications; and

b) work with school promoters, delivery partners and statutory bodies to identify and resolve key planning issues before applications are submitted.

96. To ensure faster delivery of other public service infrastructure such as further education colleges, hospitals and criminal justice accommodation, local planning authorities should also work proactively and positively with promoters, delivery partners and statutory bodies to plan for required facilities and resolve key planning issues before applications are submitted.

97. Planning policies and decisions should promote public safety and take into account wider security and defence requirements by:

a) anticipating and addressing possible malicious threats and natural hazards, especially in locations where large numbers of people are expected to congregate[43]. Policies for relevant areas (such as town centre and regeneration frameworks), and the layout and design of developments, should be informed by the most up-to-date information available from the police and other agencies about the nature of potential threats and their implications. This includes appropriate and proportionate steps that can be taken to reduce vulnerability, increase resilience and ensure public safety and security; and

b) recognising and supporting development required for operational defence and security purposes, and ensuring that operational sites are not affected adversely by the impact of other development proposed in the area.

Open space and recreation

98. Access to a network of high quality open spaces and opportunities for sport and physical activity is important for the health and well-being of communities, and can deliver wider benefits for nature and support efforts to address climate change. Planning policies should be based on robust and up-to-date assessments of the need for open space, sport and recreation facilities (including quantitative or qualitative deficits or surpluses) and opportunities for new provision. Information gained from the assessments should be used to determine what open space, sport and recreational provision is needed, which plans should then seek to accommodate.

99. Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:

a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or

[43] This includes transport hubs, night-time economy venues, cinemas and theatres, sports stadia and arenas, shopping centres, health and education establishments, places of worship, hotels and restaurants, visitor attractions and commercial centres.

b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or

c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.

100. Planning policies and decisions should protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users, for example by adding links to existing rights of way networks including National Trails.

101. The designation of land as Local Green Space through local and neighbourhood plans allows communities to identify and protect green areas of particular importance to them. Designating land as Local Green Space should be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services. Local Green Spaces should only be designated when a plan is prepared or updated, and be capable of enduring beyond the end of the plan period.

102. The Local Green Space designation should only be used where the green space is:

a) in reasonably close proximity to the community it serves;

b) demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and

c) local in character and is not an extensive tract of land.

103. Policies for managing development within a Local Green Space should be consistent with those for Green Belts.

9. Promoting sustainable transport

104. Transport issues should be considered from the earliest stages of plan-making and development proposals, so that:

a) the potential impacts of development on transport networks can be addressed;

b) opportunities from existing or proposed transport infrastructure, and changing transport technology and usage, are realised – for example in relation to the scale, location or density of development that can be accommodated;

c) opportunities to promote walking, cycling and public transport use are identified and pursued;

d) the environmental impacts of traffic and transport infrastructure can be identified, assessed and taken into account – including appropriate opportunities for avoiding and mitigating any adverse effects, and for net environmental gains; and

e) patterns of movement, streets, parking and other transport considerations are integral to the design of schemes, and contribute to making high quality places.

105. The planning system should actively manage patterns of growth in support of these objectives. Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. This can help to reduce congestion and emissions, and improve air quality and public health. However, opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making.

106. Planning policies should:

a) support an appropriate mix of uses across an area, and within larger scale sites, to minimise the number and length of journeys needed for employment, shopping, leisure, education and other activities;

b) be prepared with the active involvement of local highways authorities, other transport infrastructure providers and operators and neighbouring councils, so that strategies and investments for supporting sustainable transport and development patterns are aligned;

c) identify and protect, where there is robust evidence, sites and routes which could be critical in developing infrastructure to widen transport choice and realise opportunities for large scale development;

d) provide for attractive and well-designed walking and cycling networks with supporting facilities such as secure cycle parking (drawing on Local Cycling and Walking Infrastructure Plans);

e) provide for any large scale transport facilities that need to be located in the area[44], and the infrastructure and wider development required to support their operation, expansion and contribution to the wider economy. In doing so they should take into account whether such development is likely to be a nationally significant infrastructure project and any relevant national policy statements; and

f) recognise the importance of maintaining a national network of general aviation airfields, and their need to adapt and change over time – taking into account their economic value in serving business, leisure, training and emergency service needs, and the Government's General Aviation Strategy[45].

107. If setting local parking standards for residential and non-residential development, policies should take into account:

a) the accessibility of the development;

b) the type, mix and use of development;

c) the availability of and opportunities for public transport;

d) local car ownership levels; and

e) the need to ensure an adequate provision of spaces for charging plug-in and other ultra-low emission vehicles.

108. Maximum parking standards for residential and non-residential development should only be set where there is a clear and compelling justification that they are necessary for managing the local road network, or for optimising the density of development in city and town centres and other locations that are well served by public transport (in accordance with chapter 11 of this Framework). In town centres, local authorities should seek to improve the quality of parking so that it is convenient, safe and secure, alongside measures to promote accessibility for pedestrians and cyclists.

109. Planning policies and decisions should recognise the importance of providing adequate overnight lorry parking facilities, taking into account any local shortages, to reduce the risk of parking in locations that lack proper facilities or could cause a nuisance. Proposals for new or expanded distribution centres should make provision for sufficient lorry parking to cater for their anticipated use.

Considering development proposals

110. In assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that:

[44] Policies for large scale facilities should, where necessary, be developed through collaboration between strategic policy-making authorities and other relevant bodies. Examples of such facilities include ports, airports, interchanges for rail freight, public transport projects and roadside services. The primary function of roadside services should be to support the safety and welfare of the road user (and most such proposals are unlikely to be nationally significant infrastructure projects).
[45] Department for Transport (2015) *General Aviation Strategy.*

a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;

b) safe and suitable access to the site can be achieved for all users;

c) the design of streets, parking areas, other transport elements and the content of associated standards reflects current national guidance, including the National Design Guide and the National Model Design Code [46]; and

d) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.

111. Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

112. Within this context, applications for development should:

a) give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas; and second – so far as possible – to facilitating access to high quality public transport, with layouts that maximise the catchment area for bus or other public transport services, and appropriate facilities that encourage public transport use;

b) address the needs of people with disabilities and reduced mobility in relation to all modes of transport;

c) create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles, avoid unnecessary street clutter, and respond to local character and design standards;

d) allow for the efficient delivery of goods, and access by service and emergency vehicles; and

e) be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations.

113. All developments that will generate significant amounts of movement should be required to provide a travel plan, and the application should be supported by a transport statement or transport assessment so that the likely impacts of the proposal can be assessed.

[46] Policies and decisions should not make use of or reflect the former Design Bulletin 32, which was withdrawn in 2007.

10. Supporting high quality communications

114. Advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being. Planning policies and decisions should support the expansion of electronic communications networks, including next generation mobile technology (such as 5G) and full fibre broadband connections. Policies should set out how high quality digital infrastructure, providing access to services from a range of providers, is expected to be delivered and upgraded over time; and should prioritise full fibre connections to existing and new developments (as these connections will, in almost all cases, provide the optimum solution).

115. The number of radio and electronic communications masts, and the sites for such installations, should be kept to a minimum consistent with the needs of consumers, the efficient operation of the network and providing reasonable capacity for future expansion. Use of existing masts, buildings and other structures for new electronic communications capability (including wireless) should be encouraged. Where new sites are required (such as for new 5G networks, or for connected transport and smart city applications), equipment should be sympathetically designed and camouflaged where appropriate.

116. Local planning authorities should not impose a ban on new electronic communications development in certain areas, impose blanket Article 4 directions over a wide area or a wide range of electronic communications development, or insist on minimum distances between new electronic communications development and existing development. They should ensure that:

    a) they have evidence to demonstrate that electronic communications infrastructure is not expected to cause significant and irremediable interference with other electrical equipment, air traffic services or instrumentation operated in the national interest; and

    b) they have considered the possibility of the construction of new buildings or other structures interfering with broadcast and electronic communications services.

117. Applications for electronic communications development (including applications for prior approval under the General Permitted Development Order) should be supported by the necessary evidence to justify the proposed development. This should include:

    a) the outcome of consultations with organisations with an interest in the proposed development, in particular with the relevant body where a mast is to be installed near a school or college, or within a statutory safeguarding zone surrounding an aerodrome, technical site or military explosives storage area; and

    b) for an addition to an existing mast or base station, a statement that self-certifies that the cumulative exposure, when operational, will not exceed International Commission guidelines on non-ionising radiation protection; or

    c) for a new mast or base station, evidence that the applicant has explored the possibility of erecting antennas on an existing building, mast or other structure

and a statement that self-certifies that, when operational, International Commission guidelines will be met.

118. Local planning authorities must determine applications on planning grounds only. They should not seek to prevent competition between different operators, question the need for an electronic communications system, or set health safeguards different from the International Commission guidelines for public exposure.

11. Making effective use of land

119. Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or 'brownfield' land[47].

120. Planning policies and decisions should:

a) encourage multiple benefits from both urban and rural land, including through mixed use schemes and taking opportunities to achieve net environmental gains – such as developments that would enable new habitat creation or improve public access to the countryside;

b) recognise that some undeveloped land can perform many functions, such as for wildlife, recreation, flood risk mitigation, cooling/shading, carbon storage or food production;

c) give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land;

d) promote and support the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing where land supply is constrained and available sites could be used more effectively (for example converting space above shops, and building on or above service yards, car parks, lock-ups and railway infrastructure)[48]; and

e) support opportunities to use the airspace above existing residential and commercial premises for new homes. In particular, they should allow upward extensions where the development would be consistent with the prevailing height and form of neighbouring properties and the overall street scene, is well-designed (including complying with any local design policies and standards), and can maintain safe access and egress for occupiers.

121. Local planning authorities, and other plan-making bodies, should take a proactive role in identifying and helping to bring forward land that may be suitable for meeting development needs, including suitable sites on brownfield registers or held in public ownership, using the full range of powers available to them. This should include identifying opportunities to facilitate land assembly, supported where necessary by compulsory purchase powers, where this can help to bring more land forward for meeting development needs and/or secure better development outcomes.

[47] Except where this would conflict with other policies in this Framework, including causing harm to designated sites of importance for biodiversity.
[48] As part of this approach, plans and decisions should support efforts to identify and bring back into residential use empty homes and other buildings, supported by the use of compulsory purchase powers where appropriate.

122. Planning policies and decisions need to reflect changes in the demand for land. They should be informed by regular reviews of both the land allocated for development in plans, and of land availability. Where the local planning authority considers there to be no reasonable prospect of an application coming forward for the use allocated in a plan:

a) it should, as part of plan updates, reallocate the land for a more deliverable use that can help to address identified needs (or, if appropriate, deallocate a site which is undeveloped); and

b) in the interim, prior to updating the plan, applications for alternative uses on the land should be supported, where the proposed use would contribute to meeting an unmet need for development in the area.

123. Local planning authorities should also take a positive approach to applications for alternative uses of land which is currently developed but not allocated for a specific purpose in plans, where this would help to meet identified development needs. In particular, they should support proposals to:

a) use retail and employment land for homes in areas of high housing demand, provided this would not undermine key economic sectors or sites or the vitality and viability of town centres, and would be compatible with other policies in this Framework; and

b) make more effective use of sites that provide community services such as schools and hospitals, provided this maintains or improves the quality of service provision and access to open space.

Achieving appropriate densities

124. Planning policies and decisions should support development that makes efficient use of land, taking into account:

a) the identified need for different types of housing and other forms of development, and the availability of land suitable for accommodating it;

b) local market conditions and viability;

c) the availability and capacity of infrastructure and services – both existing and proposed – as well as their potential for further improvement and the scope to promote sustainable travel modes that limit future car use;

d) the desirability of maintaining an area's prevailing character and setting (including residential gardens), or of promoting regeneration and change; and

e) the importance of securing well-designed, attractive and healthy places.

125. Area-based character assessments, design guides and codes and masterplans can be used to help ensure that land is used efficiently while also creating beautiful and sustainable places. Where there is an existing or anticipated shortage of land for meeting identified housing needs, it is especially important that planning policies

and decisions avoid homes being built at low densities, and ensure that developments make optimal use of the potential of each site. In these circumstances:

a) plans should contain policies to optimise the use of land in their area and meet as much of the identified need for housing as possible. This will be tested robustly at examination, and should include the use of minimum density standards for city and town centres and other locations that are well served by public transport. These standards should seek a significant uplift in the average density of residential development within these areas, unless it can be shown that there are strong reasons why this would be inappropriate;

b) the use of minimum density standards should also be considered for other parts of the plan area. It may be appropriate to set out a range of densities that reflect the accessibility and potential of different areas, rather than one broad density range; and

c) local planning authorities should refuse applications which they consider fail to make efficient use of land, taking into account the policies in this Framework. In this context, when considering applications for housing, authorities should take a flexible approach in applying policies or guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site (as long as the resulting scheme would provide acceptable living standards).

12. Achieving well-designed places

126. The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Being clear about design expectations, and how these will be tested, is essential for achieving this. So too is effective engagement between applicants, communities, local planning authorities and other interests throughout the process.

127. Plans should, at the most appropriate level, set out a clear design vision and expectations, so that applicants have as much certainty as possible about what is likely to be acceptable. Design policies should be developed with local communities so they reflect local aspirations, and are grounded in an understanding and evaluation of each area's defining characteristics. Neighbourhood planning groups can play an important role in identifying the special qualities of each area and explaining how this should be reflected in development, both through their own plans and by engaging in the production of design policy, guidance and codes by local planning authorities and developers.

128. To provide maximum clarity about design expectations at an early stage, all local planning authorities should prepare design guides or codes consistent with the principles set out in the National Design Guide and National Model Design Code, and which reflect local character and design preferences. Design guides and codes provide a local framework for creating beautiful and distinctive places with a consistent and high quality standard of design. Their geographic coverage, level of detail and degree of prescription should be tailored to the circumstances and scale of change in each place, and should allow a suitable degree of variety.

129. Design guides and codes can be prepared at an area-wide, neighbourhood or site-specific scale, and to carry weight in decision-making should be produced either as part of a plan or as supplementary planning documents. Landowners and developers may contribute to these exercises, but may also choose to prepare design codes in support of a planning application for sites they wish to develop. Whoever prepares them, all guides and codes should be based on effective community engagement and reflect local aspirations for the development of their area, taking into account the guidance contained in the National Design Guide and the National Model Design Code. These national documents should be used to guide decisions on applications in the absence of locally produced design guides or design codes.

130. Planning policies and decisions should ensure that developments:

a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;

b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;

c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);

d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;

e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and

f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users[49]; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

131. Trees make an important contribution to the character and quality of urban environments, and can also help mitigate and adapt to climate change. Planning policies and decisions should ensure that new streets are tree-lined[50], that opportunities are taken to incorporate trees elsewhere in developments (such as parks and community orchards), that appropriate measures are in place to secure the long-term maintenance of newly-planted trees, and that existing trees are retained wherever possible. Applicants and local planning authorities should work with highways officers and tree officers to ensure that the right trees are planted in the right places, and solutions are found that are compatible with highways standards and the needs of different users.

132. Design quality should be considered throughout the evolution and assessment of individual proposals. Early discussion between applicants, the local planning authority and local community about the design and style of emerging schemes is important for clarifying expectations and reconciling local and commercial interests. Applicants should work closely with those affected by their proposals to evolve designs that take account of the views of the community. Applications that can demonstrate early, proactive and effective engagement with the community should be looked on more favourably than those that cannot.

133. Local planning authorities should ensure that they have access to, and make appropriate use of, tools and processes for assessing and improving the design of development. These include workshops to engage the local community, design advice and review arrangements, and assessment frameworks such as Building for a Healthy Life[51]. These are of most benefit if used as early as possible in the evolution of schemes, and are particularly important for significant projects such as large scale housing and mixed use developments. In assessing applications, local

[49] Planning policies for housing should make use of the Government's optional technical standards for accessible and adaptable housing, where this would address an identified need for such properties. Policies may also make use of the nationally described space standard, where the need for an internal space standard can be justified.
[50] Unless, in specific cases, there are clear, justifiable and compelling reasons why this would be inappropriate.
[51] Birkbeck D and Kruczkowski S et al (2020) *Building for a Healthy Life*

planning authorities should have regard to the outcome from these processes, including any recommendations made by design review panels.

134. Development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design[52], taking into account any local design guidance and supplementary planning documents such as design guides and codes. Conversely, significant weight should be given to:

a) development which reflects local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes; and/or
b) outstanding or innovative designs which promote high levels of sustainability, or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings.

135. Local planning authorities should seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (for example through changes to approved details such as the materials used).

136. The quality and character of places can suffer when advertisements are poorly sited and designed. A separate consent process within the planning system controls the display of advertisements, which should be operated in a way which is simple, efficient and effective. Advertisements should be subject to control only in the interests of amenity and public safety, taking account of cumulative impacts.

[52] Contained in the National Design Guide and National Model Design Code.

13. Protecting Green Belt land

137. The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.

138. Green Belt serves five purposes:

a) to check the unrestricted sprawl of large built-up areas;

b) to prevent neighbouring towns merging into one another;

c) to assist in safeguarding the countryside from encroachment;

d) to preserve the setting and special character of historic towns; and

e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

139. The general extent of Green Belts across the country is already established. New Green Belts should only be established in exceptional circumstances, for example when planning for larger scale development such as new settlements or major urban extensions. Any proposals for new Green Belts should be set out in strategic policies, which should:

a) demonstrate why normal planning and development management policies would not be adequate;

b) set out whether any major changes in circumstances have made the adoption of this exceptional measure necessary;

c) show what the consequences of the proposal would be for sustainable development;

d) demonstrate the necessity for the Green Belt and its consistency with strategic policies for adjoining areas; and

e) show how the Green Belt would meet the other objectives of the Framework.

140. Once established, Green Belt boundaries should only be altered where exceptional circumstances are fully evidenced and justified, through the preparation or updating of plans. Strategic policies should establish the need for any changes to Green Belt boundaries, having regard to their intended permanence in the long term, so they can endure beyond the plan period. Where a need for changes to Green Belt boundaries has been established through strategic policies, detailed amendments to those boundaries may be made through non-strategic policies, including neighbourhood plans.

141. Before concluding that exceptional circumstances exist to justify changes to Green Belt boundaries, the strategic policy-making authority should be able to demonstrate that it has examined fully all other reasonable options for meeting its identified need for development. This will be assessed through the examination of its strategic policies, which will take into account the preceding paragraph, and whether the strategy:

a) makes as much use as possible of suitable brownfield sites and underutilised land;

b) optimises the density of development in line with the policies in chapter 11 of this Framework, including whether policies promote a significant uplift in minimum density standards in town and city centres and other locations well served by public transport; and

c) has been informed by discussions with neighbouring authorities about whether they could accommodate some of the identified need for development, as demonstrated through the statement of common ground.

142. When drawing up or reviewing Green Belt boundaries, the need to promote sustainable patterns of development should be taken into account. Strategic policy-making authorities should consider the consequences for sustainable development of channelling development towards urban areas inside the Green Belt boundary, towards towns and villages inset within the Green Belt or towards locations beyond the outer Green Belt boundary. Where it has been concluded that it is necessary to release Green Belt land for development, plans should give first consideration to land which has been previously-developed and/or is well-served by public transport. They should also set out ways in which the impact of removing land from the Green Belt can be offset through compensatory improvements to the environmental quality and accessibility of remaining Green Belt land.

143. When defining Green Belt boundaries, plans should:

a) ensure consistency with the development plan's strategy for meeting identified requirements for sustainable development;

b) not include land which it is unnecessary to keep permanently open;

c) where necessary, identify areas of safeguarded land between the urban area and the Green Belt, in order to meet longer-term development needs stretching well beyond the plan period;

d) make clear that the safeguarded land is not allocated for development at the present time. Planning permission for the permanent development of safeguarded land should only be granted following an update to a plan which proposes the development;

e) be able to demonstrate that Green Belt boundaries will not need to be altered at the end of the plan period; and

f) define boundaries clearly, using physical features that are readily recognisable and likely to be permanent.

144. If it is necessary to restrict development in a village primarily because of the important contribution which the open character of the village makes to the openness of the Green Belt, the village should be included in the Green Belt. If, however, the character of the village needs to be protected for other reasons, other means should be used, such as conservation area or normal development management policies, and the village should be excluded from the Green Belt.

145. Once Green Belts have been defined, local planning authorities should plan positively to enhance their beneficial use, such as looking for opportunities to provide access; to provide opportunities for outdoor sport and recreation; to retain and enhance landscapes, visual amenity and biodiversity; or to improve damaged and derelict land.

146. The National Forest and Community Forests offer valuable opportunities for improving the environment around towns and cities, by upgrading the landscape and providing for recreation and wildlife. The National Forest Strategy and an approved Community Forest Plan may be a material consideration in preparing development plans and in deciding planning applications. Any development proposals within the National Forest and Community Forests in the Green Belt should be subject to the normal policies for controlling development in Green Belts.

Proposals affecting the Green Belt

147. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

148. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

149. A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are:

a) buildings for agriculture and forestry;

b) the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it;

c) the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;

d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;

e) limited infilling in villages;

f) limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites); and

g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:

- not have a greater impact on the openness of the Green Belt than the existing development; or
- not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.

150. Certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These are:

a) mineral extraction;

b) engineering operations;

c) local transport infrastructure which can demonstrate a requirement for a Green Belt location;

d) the re-use of buildings provided that the buildings are of permanent and substantial construction;

e) material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds); and

f) development, including buildings, brought forward under a Community Right to Build Order or Neighbourhood Development Order.

151. When located in the Green Belt, elements of many renewable energy projects will comprise inappropriate development. In such cases developers will need to demonstrate very special circumstances if projects are to proceed. Such very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources.

14. Meeting the challenge of climate change, flooding and coastal change

152. The planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure.

Planning for climate change

153. Plans should take a proactive approach to mitigating and adapting to climate change, taking into account the long-term implications for flood risk, coastal change, water supply, biodiversity and landscapes, and the risk of overheating from rising temperatures[53]. Policies should support appropriate measures to ensure the future resilience of communities and infrastructure to climate change impacts, such as providing space for physical protection measures, or making provision for the possible future relocation of vulnerable development and infrastructure.

154. New development should be planned for in ways that:

a) avoid increased vulnerability to the range of impacts arising from climate change. When new development is brought forward in areas which are vulnerable, care should be taken to ensure that risks can be managed through suitable adaptation measures, including through the planning of green infrastructure; and

b) can help to reduce greenhouse gas emissions, such as through its location, orientation and design. Any local requirements for the sustainability of buildings should reflect the Government's policy for national technical standards.

155. To help increase the use and supply of renewable and low carbon energy and heat, plans should:

a) provide a positive strategy for energy from these sources, that maximises the potential for suitable development, while ensuring that adverse impacts are addressed satisfactorily (including cumulative landscape and visual impacts);

b) consider identifying suitable areas for renewable and low carbon energy sources, and supporting infrastructure, where this would help secure their development; and

[53] In line with the objectives and provisions of the Climate Change Act 2008.

c) identify opportunities for development to draw its energy supply from decentralised, renewable or low carbon energy supply systems and for co-locating potential heat customers and suppliers.

156. Local planning authorities should support community-led initiatives for renewable and low carbon energy, including developments outside areas identified in local plans or other strategic policies that are being taken forward through neighbourhood planning.

157. In determining planning applications, local planning authorities should expect new development to:

a) comply with any development plan policies on local requirements for decentralised energy supply unless it can be demonstrated by the applicant, having regard to the type of development involved and its design, that this is not feasible or viable; and

b) take account of landform, layout, building orientation, massing and landscaping to minimise energy consumption.

158. When determining planning applications for renewable and low carbon development, local planning authorities should:

a) not require applicants to demonstrate the overall need for renewable or low carbon energy, and recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions; and

b) approve the application if its impacts are (or can be made) acceptable[54]. Once suitable areas for renewable and low carbon energy have been identified in plans, local planning authorities should expect subsequent applications for commercial scale projects outside these areas to demonstrate that the proposed location meets the criteria used in identifying suitable areas.

Planning and flood risk

159. Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.

160. Strategic policies should be informed by a strategic flood risk assessment, and should manage flood risk from all sources. They should consider cumulative impacts in, or affecting, local areas susceptible to flooding, and take account of advice from the Environment Agency and other relevant flood risk management authorities, such as lead local flood authorities and internal drainage boards.

[54] Except for applications for the repowering of existing wind turbines, a proposed wind energy development involving one or more turbines should not be considered acceptable unless it is in an area identified as suitable for wind energy development in the development plan; and, following consultation, it can be demonstrated that the planning impacts identified by the affected local community have been fully addressed and the proposal has their backing.

161. All plans should apply a sequential, risk-based approach to the location of development – taking into account all sources of flood risk and the current and future impacts of climate change – so as to avoid, where possible, flood risk to people and property. They should do this, and manage any residual risk, by:

a) applying the sequential test and then, if necessary, the exception test as set out below;

b) safeguarding land from development that is required, or likely to be required, for current or future flood management;

c) using opportunities provided by new development and improvements in green and other infrastructure to reduce the causes and impacts of flooding, (making as much use as possible of natural flood management techniques as part of an integrated approach to flood risk management); and

d) where climate change is expected to increase flood risk so that some existing development may not be sustainable in the long-term, seeking opportunities to relocate development, including housing, to more sustainable locations.

162. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The strategic flood risk assessment will provide the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.

163. If it is not possible for development to be located in areas with a lower risk of flooding (taking into account wider sustainable development objectives), the exception test may have to be applied. The need for the exception test will depend on the potential vulnerability of the site and of the development proposed, in line with the Flood Risk Vulnerability Classification set out in Annex 3.

164. The application of the exception test should be informed by a strategic or site-specific flood risk assessment, depending on whether it is being applied during plan production or at the application stage. To pass the exception test it should be demonstrated that:

a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and

b) the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.

165. Both elements of the exception test should be satisfied for development to be allocated or permitted.

166. Where planning applications come forward on sites allocated in the development plan through the sequential test, applicants need not apply the sequential test again. However, the exception test may need to be reapplied if relevant aspects of the proposal had not been considered when the test was applied at the plan-

making stage, or if more recent information about existing or potential flood risk should be taken into account.

167. When determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment[55]. Development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable) it can be demonstrated that:

a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;

b) the development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment;

c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;

d) any residual risk can be safely managed; and

e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.

168. Applications for some minor development and changes of use[56] should not be subject to the sequential or exception tests but should still meet the requirements for site-specific flood risk assessments set out in footnote 55.

169. Major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate. The systems used should:

a) take account of advice from the lead local flood authority;

b) have appropriate proposed minimum operational standards;

c) have maintenance arrangements in place to ensure an acceptable standard of operation for the lifetime of the development; and

d) where possible, provide multifunctional benefits.

Coastal change

[55] A site-specific flood risk assessment should be provided for all development in Flood Zones 2 and 3. In Flood Zone 1, an assessment should accompany all proposals involving: sites of 1 hectare or more; land which has been identified by the Environment Agency as having critical drainage problems; land identified in a strategic flood risk assessment as being at increased flood risk in future; or land that may be subject to other sources of flooding, where its development would introduce a more vulnerable use.
[56] This includes householder development, small non-residential extensions (with a footprint of less than 250m^2) and changes of use; except for changes of use to a caravan, camping or chalet site, or to a mobile home or park home site, where the sequential and exception tests should be applied as appropriate.

170. In coastal areas, planning policies and decisions should take account of the UK Marine Policy Statement and marine plans. Integrated Coastal Zone Management should be pursued across local authority and land/sea boundaries, to ensure effective alignment of the terrestrial and marine planning regimes.

171. Plans should reduce risk from coastal change by avoiding inappropriate development in vulnerable areas and not exacerbating the impacts of physical changes to the coast. They should identify as a Coastal Change Management Area any area likely to be affected by physical changes to the coast, and:

a) be clear as to what development will be appropriate in such areas and in what circumstances; and

b) make provision for development and infrastructure that needs to be relocated away from Coastal Change Management Areas.

172. Development in a Coastal Change Management Area will be appropriate only where it is demonstrated that:

a) it will be safe over its planned lifetime and not have an unacceptable impact on coastal change;

b) the character of the coast including designations is not compromised;

c) the development provides wider sustainability benefits; and

d) the development does not hinder the creation and maintenance of a continuous signed and managed route around the coast[57].

173. Local planning authorities should limit the planned lifetime of development in a Coastal Change Management Area through temporary permission and restoration conditions, where this is necessary to reduce a potentially unacceptable level of future risk to people and the development.

[57] As required by the Marine and Coastal Access Act 2009.

15. Conserving and enhancing the natural environment

174. Planning policies and decisions should contribute to and enhance the natural and local environment by:

a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);

b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland;

c) maintaining the character of the undeveloped coast, while improving public access to it where appropriate;

d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;

e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans; and

f) remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.

175. Plans should: distinguish between the hierarchy of international, national and locally designated sites; allocate land with the least environmental or amenity value, where consistent with other policies in this Framework[58]; take a strategic approach to maintaining and enhancing networks of habitats and green infrastructure; and plan for the enhancement of natural capital at a catchment or landscape scale across local authority boundaries.

176. Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty which have the highest status of protection in relation to these issues. The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas, and should be given great weight in National Parks

[58] Where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality.

and the Broads[59]. The scale and extent of development within all these designated areas should be limited, while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas.

177. When considering applications for development within National Parks, the Broads and Areas of Outstanding Natural Beauty, permission should be refused for major development[60] other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of:

a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;

b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and

c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

178. Within areas defined as Heritage Coast (and that do not already fall within one of the designated areas mentioned in paragraph 176), planning policies and decisions should be consistent with the special character of the area and the importance of its conservation. Major development within a Heritage Coast is unlikely to be appropriate, unless it is compatible with its special character.

Habitats and biodiversity

179. To protect and enhance biodiversity and geodiversity, plans should:

a) Identify, map and safeguard components of local wildlife-rich habitats and wider ecological networks, including the hierarchy of international, national and locally designated sites of importance for biodiversity[61]; wildlife corridors and stepping stones that connect them; and areas identified by national and local partnerships for habitat management, enhancement, restoration or creation[62]; and

b) promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity.

[59] *English National Parks and the Broads: UK Government Vision and Circular 2010* provides further guidance and information about their statutory purposes, management and other matters.
[60] For the purposes of paragraphs 176 and 177, whether a proposal is 'major development' is a matter for the decision maker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined.
[61] Circular 06/2005 provides further guidance in respect of statutory obligations for biodiversity and geological conservation and their impact within the planning system.
[62] Where areas that are part of the Nature Recovery Network are identified in plans, it may be appropriate to specify the types of development that may be suitable within them.

180. When determining planning applications, local planning authorities should apply the following principles:

a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;

b) development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest;

c) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons[63] and a suitable compensation strategy exists; and

d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.

181. The following should be given the same protection as habitats sites:

a) potential Special Protection Areas and possible Special Areas of Conservation;

b) listed or proposed Ramsar sites[64]; and

c) sites identified, or required, as compensatory measures for adverse effects on habitats sites, potential Special Protection Areas, possible Special Areas of Conservation, and listed or proposed Ramsar sites.

182. The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.

[63] For example, infrastructure projects (including nationally significant infrastructure projects, orders under the Transport and Works Act and hybrid bills), where the public benefit would clearly outweigh the loss or deterioration of habitat.

[64] Potential Special Protection Areas, possible Special Areas of Conservation and proposed Ramsar sites are sites on which Government has initiated public consultation on the scientific case for designation as a Special Protection Area, candidate Special Area of Conservation or Ramsar site.

Ground conditions and pollution

183. Planning policies and decisions should ensure that:

a) a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. This includes risks arising from natural hazards or former activities such as mining, and any proposals for mitigation including land remediation (as well as potential impacts on the natural environment arising from that remediation);

b) after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990; and

c) adequate site investigation information, prepared by a competent person, is available to inform these assessments.

184. Where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner.

185. Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:

a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life[65];

b) identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason; and

c) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.

186. Planning policies and decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and Clean Air Zones, and the cumulative impacts from individual sites in local areas. Opportunities to improve air quality or mitigate impacts should be identified, such as through traffic and travel management, and green infrastructure provision and enhancement. So far as possible these opportunities should be considered at the plan-making stage, to ensure a strategic approach and limit the need for issues to be reconsidered when

[65] See Explanatory Note to the *Noise Policy Statement for England* (Department for Environment, Food & Rural Affairs, 2010).

determining individual applications. Planning decisions should ensure that any new development in Air Quality Management Areas and Clean Air Zones is consistent with the local air quality action plan.

187. Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or 'agent of change') should be required to provide suitable mitigation before the development has been completed.

188. The focus of planning policies and decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively. Equally, where a planning decision has been made on a particular development, the planning issues should not be revisited through the permitting regimes operated by pollution control authorities.

16. Conserving and enhancing the historic environment

189. Heritage assets range from sites and buildings of local historic value to those of the highest significance, such as World Heritage Sites which are internationally recognised to be of Outstanding Universal Value[66]. These assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations[67].

190. Plans should set out a positive strategy for the conservation and enjoyment of the historic environment, including heritage assets most at risk through neglect, decay or other threats. This strategy should take into account:

a) the desirability of sustaining and enhancing the significance of heritage assets, and putting them to viable uses consistent with their conservation;

b) the wider social, cultural, economic and environmental benefits that conservation of the historic environment can bring;

c) the desirability of new development making a positive contribution to local character and distinctiveness; and

d) opportunities to draw on the contribution made by the historic environment to the character of a place.

191. When considering the designation of conservation areas, local planning authorities should ensure that an area justifies such status because of its special architectural or historic interest, and that the concept of conservation is not devalued through the designation of areas that lack special interest.

192. Local planning authorities should maintain or have access to a historic environment record. This should contain up-to-date evidence about the historic environment in their area and be used to:

a) assess the significance of heritage assets and the contribution they make to their environment; and

b) predict the likelihood that currently unidentified heritage assets, particularly sites of historic and archaeological interest, will be discovered in the future.

[66] Some World Heritage Sites are inscribed by UNESCO to be of natural significance rather than cultural significance; and in some cases they are inscribed for both their natural and cultural significance.
[67] The policies set out in this chapter relate, as applicable, to the heritage-related consent regimes for which local planning authorities are responsible under the Planning (Listed Buildings and Conservation Areas) Act 1990, as well as to plan-making and decision-making.

193. Local planning authorities should make information about the historic environment, gathered as part of policy-making or development management, publicly accessible.

Proposals affecting heritage assets

194. In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.

195. Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset's conservation and any aspect of the proposal.

196. Where there is evidence of deliberate neglect of, or damage to, a heritage asset, the deteriorated state of the heritage asset should not be taken into account in any decision.

197. In determining applications, local planning authorities should take account of:

a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;

b) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and

c) the desirability of new development making a positive contribution to local character and distinctiveness.

198. In considering any applications to remove or alter a historic statue, plaque, memorial or monument (whether listed or not), local planning authorities should have regard to the importance of their retention in situ and, where appropriate, of explaining their historic and social context rather than removal.

Considering potential impacts

199. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

200. Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Substantial harm to or loss of:

a) grade II listed buildings, or grade II registered parks or gardens, should be exceptional;

b) assets of the highest significance, notably scheduled monuments, protected wreck sites, registered battlefields, grade I and II* listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional[68].

201. Where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:

a) the nature of the heritage asset prevents all reasonable uses of the site; and

b) no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and

c) conservation by grant-funding or some form of not for profit, charitable or public ownership is demonstrably not possible; and

d) the harm or loss is outweighed by the benefit of bringing the site back into use.

202. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

203. The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing

[68] Non-designated heritage assets of archaeological interest, which are demonstrably of equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets.

applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

204. Local planning authorities should not permit the loss of the whole or part of a heritage asset without taking all reasonable steps to ensure the new development will proceed after the loss has occurred.

205. Local planning authorities should require developers to record and advance understanding of the significance of any heritage assets to be lost (wholly or in part) in a manner proportionate to their importance and the impact, and to make this evidence (and any archive generated) publicly accessible[69]. However, the ability to record evidence of our past should not be a factor in deciding whether such loss should be permitted.

206. Local planning authorities should look for opportunities for new development within Conservation Areas and World Heritage Sites, and within the setting of heritage assets, to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably.

207. Not all elements of a Conservation Area or World Heritage Site will necessarily contribute to its significance. Loss of a building (or other element) which makes a positive contribution to the significance of the Conservation Area or World Heritage Site should be treated either as substantial harm under paragraph 201 or less than substantial harm under paragraph 202, as appropriate, taking into account the relative significance of the element affected and its contribution to the significance of the Conservation Area or World Heritage Site as a whole.

208. Local planning authorities should assess whether the benefits of a proposal for enabling development, which would otherwise conflict with planning policies but which would secure the future conservation of a heritage asset, outweigh the disbenefits of departing from those policies.

[69] Copies of evidence should be deposited with the relevant historic environment record, and any archives with a local museum or other public depository.

17. Facilitating the sustainable use of minerals

209. It is essential that there is a sufficient supply of minerals to provide the infrastructure, buildings, energy and goods that the country needs. Since minerals are a finite natural resource, and can only be worked where they are found, best use needs to be made of them to secure their long-term conservation.

210. Planning policies should:

a) provide for the extraction of mineral resources of local and national importance, but not identify new sites or extensions to existing sites for peat extraction;

b) so far as practicable, take account of the contribution that substitute or secondary and recycled materials and minerals waste would make to the supply of materials, before considering extraction of primary materials, whilst aiming to source minerals supplies indigenously;

c) safeguard mineral resources by defining Mineral Safeguarding Areas and Mineral Consultation Areas[70]; and adopt appropriate policies so that known locations of specific minerals resources of local and national importance are not sterilised by non-mineral development where this should be avoided (whilst not creating a presumption that the resources defined will be worked);

d) set out policies to encourage the prior extraction of minerals, where practical and environmentally feasible, if it is necessary for non-mineral development to take place;

e) safeguard existing, planned and potential sites for: the bulk transport, handling and processing of minerals; the manufacture of concrete and concrete products; and the handling, processing and distribution of substitute, recycled and secondary aggregate material;

f) set out criteria or requirements to ensure that permitted and proposed operations do not have unacceptable adverse impacts on the natural and historic environment or human health, taking into account the cumulative effects of multiple impacts from individual sites and/or a number of sites in a locality;

g) when developing noise limits, recognise that some noisy short-term activities, which may otherwise be regarded as unacceptable, are unavoidable to facilitate minerals extraction; and

h) ensure that worked land is reclaimed at the earliest opportunity, taking account of aviation safety, and that high quality restoration and aftercare of mineral sites takes place.

[70] Primarily in two tier areas as stated in Annex 2: Glossary

211. When determining planning applications, great weight should be given to the benefits of mineral extraction, including to the economy[71]. In considering proposals for mineral extraction, minerals planning authorities should:

a) as far as is practical, provide for the maintenance of landbanks of non-energy minerals from outside National Parks, the Broads, Areas of Outstanding Natural Beauty and World Heritage Sites, scheduled monuments and conservation areas;

b) ensure that there are no unacceptable adverse impacts on the natural and historic environment, human health or aviation safety, and take into account the cumulative effect of multiple impacts from individual sites and/or from a number of sites in a locality;

c) ensure that any unavoidable noise, dust and particle emissions and any blasting vibrations are controlled, mitigated or removed at source[72], and establish appropriate noise limits for extraction in proximity to noise sensitive properties;

d) not grant planning permission for peat extraction from new or extended sites;

e) provide for restoration and aftercare at the earliest opportunity, to be carried out to high environmental standards, through the application of appropriate conditions. Bonds or other financial guarantees to underpin planning conditions should only be sought in exceptional circumstances;

f) consider how to meet any demand for the extraction of building stone needed for the repair of heritage assets, taking account of the need to protect designated sites; and

g) recognise the small-scale nature and impact of building and roofing stone quarries, and the need for a flexible approach to the duration of planning permissions reflecting the intermittent or low rate of working at many sites.

212. Local planning authorities should not normally permit other development proposals in Mineral Safeguarding Areas if it might constrain potential future use for mineral working.

Maintaining supply

213. Minerals planning authorities should plan for a steady and adequate supply of aggregates by:

a) preparing an annual Local Aggregate Assessment, either individually or jointly, to forecast future demand, based on a rolling average of 10 years' sales data and other relevant local information, and an assessment of all supply options (including marine dredged, secondary and recycled sources);

[71] Except in relation to the extraction of coal, where the policy at paragraph 217 of this Framework applies.
[72] National planning guidance on minerals sets out how these policies should be implemented.

b) participating in the operation of an Aggregate Working Party and taking the advice of that party into account when preparing their Local Aggregate Assessment;

c) making provision for the land-won and other elements of their Local Aggregate Assessment in their mineral plans, taking account of the advice of the Aggregate Working Parties and the National Aggregate Co-ordinating Group as appropriate. Such provision should take the form of specific sites, preferred areas and/or areas of search and locational criteria as appropriate;

d) taking account of any published National and Sub National Guidelines on future provision which should be used as a guideline when planning for the future demand for and supply of aggregates;

e) using landbanks of aggregate minerals reserves principally as an indicator of the security of aggregate minerals supply, and to indicate the additional provision that needs to be made for new aggregate extraction and alternative supplies in mineral plans;

f) maintaining landbanks of at least 7 years for sand and gravel and at least 10 years for crushed rock, whilst ensuring that the capacity of operations to supply a wide range of materials is not compromised[73];

g) ensuring that large landbanks bound up in very few sites do not stifle competition; and

h) calculating and maintaining separate landbanks for any aggregate materials of a specific type or quality which have a distinct and separate market.

214. Minerals planning authorities should plan for a steady and adequate supply of industrial minerals by:

a) co-operating with neighbouring and more distant authorities to ensure an adequate provision of industrial minerals to support their likely use in industrial and manufacturing processes;

b) encouraging safeguarding or stockpiling so that important minerals remain available for use;

c) maintaining a stock of permitted reserves to support the level of actual and proposed investment required for new or existing plant, and the maintenance and improvement of existing plant and equipment[74]; and

d) taking account of the need for provision of brick clay from a number of different sources to enable appropriate blends to be made.

[73] Longer periods may be appropriate to take account of the need to supply a range of types of aggregates, locations of permitted reserves relative to markets, and productive capacity of permitted sites.
[74] These reserves should be at least 10 years for individual silica sand sites; at least 15 years for cement primary (chalk and limestone) and secondary (clay and shale) materials to maintain an existing plant, and for silica sand sites where significant new capital is required; and at least 25 years for brick clay, and for cement primary and secondary materials to support a new kiln.

Oil, gas and coal exploration and extraction

215. Minerals planning authorities should:

a) when planning for on-shore oil and gas development, clearly distinguish between, and plan positively for, the three phases of development (exploration, appraisal and production), whilst ensuring appropriate monitoring and site restoration is provided for;

b) encourage underground gas and carbon storage and associated infrastructure if local geological circumstances indicate its feasibility;

c) indicate any areas where coal extraction and the disposal of colliery spoil may be acceptable;

d) encourage the capture and use of methane from coal mines in active and abandoned coalfield areas; and

e) provide for coal producers to extract separately, and if necessary stockpile, fireclay so that it remains available for use.

216. When determining planning applications, minerals planning authorities should ensure that the integrity and safety of underground storage facilities are appropriate, taking into account the maintenance of gas pressure, prevention of leakage of gas and the avoidance of pollution.

217. Planning permission should not be granted for the extraction of coal unless:

a) the proposal is environmentally acceptable, or can be made so by planning conditions or obligations; or

b) if it is not environmentally acceptable, then it provides national, local or community benefits which clearly outweigh its likely impacts (taking all relevant matters into account, including any residual environmental impacts).

Annex 1: Implementation

218. The policies in this Framework are material considerations which should be taken into account in dealing with applications from the day of its publication. Plans may also need to be revised to reflect policy changes which this Framework has made.

219. However, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).

220. The policies in the original National Planning Policy Framework published in March 2012 will apply for the purpose of examining plans, where those plans were submitted on or before 24 January 2019. Where such plans are withdrawn or otherwise do not proceed to become part of the development plan, the policies contained in this Framework will apply to any subsequent plan produced for the area concerned.

221. For the purposes of the policy on larger-scale development in paragraph 22, this applies only to plans that have not reached Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (pre-submission) stage at the point this version is published (for Spatial Development Strategies this would refer to consultation under section 335(2) of the Greater London Authority Act 1999).

222. The Housing Delivery Test will apply the day following publication of the results, at which point they supersede previously published results. Until new Housing Delivery Test results are published, the previously published result should be used. For the purpose of footnote 8 in this Framework, delivery of housing which was substantially below the housing requirement means where the Housing Delivery Test results:

    a) for years 2016/17 to 2018/19 (Housing Delivery Test: 2019 Measurement, published 13 February 2020), indicated that delivery was below 45% of housing required over the previous three years;

    b) for years 2017/18 to 2019/20 (Housing Delivery Test: 2020 Measurement, published 19 January 2021), and in subsequent years indicate that delivery was below 75% of housing required over the previous three years.

223. The Government will continue to explore with individual areas the potential for planning freedoms and flexibilities, for example where this would facilitate an increase in the amount of housing that can be delivered.

Annex 2: Glossary

Affordable housing: housing for sale or rent, for those whose needs are not met by the market (including housing that provides a subsidised route to home ownership and/or is for essential local workers); and which complies with one or more of the following definitions:

a) **Affordable housing for rent:** meets all of the following conditions: (a) the rent is set in accordance with the Government's rent policy for Social Rent or Affordable Rent, or is at least 20% below local market rents (including service charges where applicable); (b) the landlord is a registered provider, except where it is included as part of a Build to Rent scheme (in which case the landlord need not be a registered provider); and (c) it includes provisions to remain at an affordable price for future eligible households, or for the subsidy to be recycled for alternative affordable housing provision. For Build to Rent schemes affordable housing for rent is expected to be the normal form of affordable housing provision (and, in this context, is known as Affordable Private Rent).

b) **Starter homes:** is as specified in Sections 2 and 3 of the Housing and Planning Act 2016 and any secondary legislation made under these sections. The definition of a starter home should reflect the meaning set out in statute and any such secondary legislation at the time of plan-preparation or decision-making. Where secondary legislation has the effect of limiting a household's eligibility to purchase a starter home to those with a particular maximum level of household income, those restrictions should be used.

c) **Discounted market sales housing:** is that sold at a discount of at least 20% below local market value. Eligibility is determined with regard to local incomes and local house prices. Provisions should be in place to ensure housing remains at a discount for future eligible households.

d) **Other affordable routes to home ownership:** is housing provided for sale that provides a route to ownership for those who could not achieve home ownership through the market. It includes shared ownership, relevant equity loans, other low cost homes for sale (at a price equivalent to at least 20% below local market value) and rent to buy (which includes a period of intermediate rent). Where public grant funding is provided, there should be provisions for the homes to remain at an affordable price for future eligible households, or for any receipts to be recycled for alternative affordable housing provision, or refunded to Government or the relevant authority specified in the funding agreement.

Air quality management areas: Areas designated by local authorities because they are not likely to achieve national air quality objectives by the relevant deadlines.

Ancient or veteran tree: A tree which, because of its age, size and condition, is of exceptional biodiversity, cultural or heritage value. All ancient trees are veteran trees. Not all veteran trees are old enough to be ancient, but are old relative to other trees of the same species. Very few trees of any species reach the ancient life-stage.

Ancient woodland: An area that has been wooded continuously since at least 1600 AD. It includes ancient semi-natural woodland and plantations on ancient woodland sites (PAWS).

Annual position statement: A document setting out the 5 year housing land supply position on 1st April each year, prepared by the local planning authority in consultation with developers and others who have an impact on delivery.

Archaeological interest: There will be archaeological interest in a heritage asset if it holds, or potentially holds, evidence of past human activity worthy of expert investigation at some point.

Article 4 direction: A direction made under Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 which withdraws permitted development rights granted by that Order.

Best and most versatile agricultural land: Land in grades 1, 2 and 3a of the Agricultural Land Classification.

Brownfield land: See Previously developed land.

Brownfield land registers: Registers of previously developed land that local planning authorities consider to be appropriate for residential development, having regard to criteria in the Town and Country Planning (Brownfield Land Registers) Regulations 2017. Local planning authorities will be able to trigger a grant of permission in principle for residential development on suitable sites in their registers where they follow the required procedures.

Build to Rent: Purpose built housing that is typically 100% rented out. It can form part of a wider multi-tenure development comprising either flats or houses, but should be on the same site and/or contiguous with the main development. Schemes will usually offer longer tenancy agreements of three years or more, and will typically be professionally managed stock in single ownership and management control.

Climate change adaptation: Adjustments made to natural or human systems in response to the actual or anticipated impacts of climate change, to mitigate harm or exploit beneficial opportunities.

Climate change mitigation: Action to reduce the impact of human activity on the climate system, primarily through reducing greenhouse gas emissions.

Coastal change management area: An area identified in plans as likely to be affected by physical change to the shoreline through erosion, coastal landslip, permanent inundation or coastal accretion.

Community forest: An area identified through the England Community Forest Programme to revitalise countryside and green space in and around major conurbations.

Community Right to Build Order: An Order made by the local planning authority (under the Town and Country Planning Act 1990) that grants planning permission for a site-specific development proposal or classes of development.

Competent person (to prepare site investigation information): A person with a recognised relevant qualification, sufficient experience in dealing with the type(s) of pollution or land instability, and membership of a relevant professional organisation.

Conservation (for heritage policy): The process of maintaining and managing change to a heritage asset in a way that sustains and, where appropriate, enhances its significance.

Decentralised energy: Local renewable and local low carbon energy sources.

Deliverable: To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular:

a) sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans).
b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.

Design code: A set of illustrated design requirements that provide specific, detailed parameters for the physical development of a site or area. The graphic and written components of the code should build upon a design vision, such as a masterplan or other design and development framework for a site or area.

Design guide: A document providing guidance on how development can be carried out in accordance with good design practice, often produced by a local authority.

Designated heritage asset: A World Heritage Site, Scheduled Monument, Listed Building, Protected Wreck Site, Registered Park and Garden, Registered Battlefield or Conservation Area designated under the relevant legislation.

Designated rural areas: National Parks, Areas of Outstanding Natural Beauty and areas designated as ‘rural’ under Section 157 of the Housing Act 1985.

Developable: To be considered developable, sites should be in a suitable location for housing development with a reasonable prospect that they will be available and could be viably developed at the point envisaged.

Development plan: Is defined in section 38 of the Planning and Compulsory Purchase Act 2004, and includes adopted local plans, neighbourhood plans that have been made and published spatial development strategies, together with any regional strategy policies that remain in force. Neighbourhood plans that have been approved at referendum are also part of the development plan, unless the local planning authority decides that the neighbourhood plan should not be made.

Edge of centre: For retail purposes, a location that is well connected to, and up to 300 metres from, the primary shopping area. For all other main town centre uses, a location within 300 metres of a town centre boundary. For office development, this includes locations outside the town centre but within 500 metres of a public transport interchange. In determining whether a site falls within the definition of edge of centre, account should be taken of local circumstances.

Entry-level exception site: A site that provides entry-level homes suitable for first time buyers (or equivalent, for those looking to rent), in line with paragraph 72 of this Framework.

Environmental impact assessment: A procedure to be followed for certain types of project to ensure that decisions are made in full knowledge of any likely significant effects on the environment.

Essential local workers: Public sector employees who provide frontline services in areas including health, education and community safety – such as NHS staff, teachers, police, firefighters and military personnel, social care and childcare workers.

General aviation airfields: Licenced or unlicenced aerodromes with hard or grass runways, often with extensive areas of open land related to aviation activity.

Geodiversity: The range of rocks, minerals, fossils, soils and landforms.

Green infrastructure: A network of multi-functional green and blue spaces and other natural features, urban and rural, which is capable of delivering a wide range of environmental, economic, health and wellbeing benefits for nature, climate, local and wider communities and prosperity.

Habitats site: Any site which would be included within the definition at regulation 8 of the Conservation of Habitats and Species Regulations 2017 for the purpose of those regulations, including candidate Special Areas of Conservation, Sites of Community Importance, Special Areas of Conservation, Special Protection Areas and any relevant Marine Sites.

Heritage asset: A building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest. It includes designated heritage assets and assets identified by the local planning authority (including local listing).

Heritage coast: Areas of undeveloped coastline which are managed to conserve their natural beauty and, where appropriate, to improve accessibility for visitors.

Historic environment: All aspects of the environment resulting from the interaction between people and places through time, including all surviving physical remains of past human activity, whether visible, buried or submerged, and landscaped and planted or managed flora.

Historic environment record: Information services that seek to provide access to comprehensive and dynamic resources relating to the historic environment of a defined geographic area for public benefit and use.

Housing Delivery Test: Measures net homes delivered in a local authority area against the homes required, using national statistics and local authority data. The Secretary of State will publish the Housing Delivery Test results for each local authority in England every November.

International, national and locally designated sites of importance for biodiversity: All international sites (Special Areas of Conservation, Special Protection Areas, and Ramsar sites), national sites (Sites of Special Scientific Interest) and locally designated sites including Local Wildlife Sites.

Irreplaceable habitat: Habitats which would be technically very difficult (or take a very significant time) to restore, recreate or replace once destroyed, taking into account their age, uniqueness, species diversity or rarity. They include ancient woodland, ancient and veteran trees, blanket bog, limestone pavement, sand dunes, salt marsh and lowland fen.

Local Development Order: An Order made by a local planning authority (under the Town and Country Planning Act 1990) that grants planning permission for a specific development proposal or classes of development.

Local Enterprise Partnership: A body, designated by the Secretary of State for Housing, Communities and Local Government, established for the purpose of creating or improving the conditions for economic growth in an area.

Local housing need: The number of homes identified as being needed through the application of the standard method set out in national planning guidance (or, in the context of preparing strategic policies only, this may be calculated using a justified alternative approach as provided for in paragraph 61 of this Framework).

Local Nature Partnership: A body, designated by the Secretary of State for Environment, Food and Rural Affairs, established for the purpose of protecting and improving the natural environment in an area and the benefits derived from it.

Local planning authority: The public authority whose duty it is to carry out specific planning functions for a particular area. All references to local planning authority include the district council, London borough council, county council, Broads Authority, National Park Authority, the Mayor of London and a development corporation, to the extent appropriate to their responsibilities.

Local plan: A plan for the future development of a local area, drawn up by the local planning authority in consultation with the community. In law this is described as the development plan documents adopted under the Planning and Compulsory Purchase Act 2004. A local plan can consist of either strategic or non-strategic policies, or a combination of the two.

Main town centre uses: Retail development (including warehouse clubs and factory outlet centres); leisure, entertainment and more intensive sport and recreation uses (including cinemas, restaurants, drive-through restaurants, bars and pubs, nightclubs, casinos, health and fitness centres, indoor bowling centres and bingo halls); offices; and arts, culture and tourism development (including theatres, museums, galleries and concert halls, hotels and conference facilities).

Major development[75]**:** For housing, development where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more. For non-residential development

[75] Other than for the specific purposes of paragraphs 176 and 177 in this Framework.

it means additional floorspace of 1,000m^2 or more, or a site of 1 hectare or more, or as otherwise provided in the Town and Country Planning (Development Management Procedure) (England) Order 2015.

Major hazard sites, installations and pipelines: Sites and infrastructure, including licensed explosive sites and nuclear installations, around which Health and Safety Executive (and Office for Nuclear Regulation) consultation distances to mitigate the consequences to public safety of major accidents may apply.

Minerals resources of local and national importance: Minerals which are necessary to meet society's needs, including aggregates, brickclay (especially Etruria Marl and fireclay), silica sand (including high grade silica sands), coal derived fly ash in single use deposits, cement raw materials, gypsum, salt, fluorspar, shallow and deep-mined coal, oil and gas (including conventional and unconventional hydrocarbons), tungsten, kaolin, ball clay, potash, polyhalite and local minerals of importance to heritage assets and local distinctiveness.

Mineral Consultation Area: a geographical area based on a Mineral Safeguarding Area, where the district or borough council should consult the Mineral Planning Authority for any proposals for non-minerals development.

Mineral Safeguarding Area: An area designated by minerals planning authorities which covers known deposits of minerals which are desired to be kept safeguarded from unnecessary sterilisation by non-mineral development.

National trails: Long distance routes for walking, cycling and horse riding.

Natural Flood Management: managing flood and coastal erosion risk by protecting, restoring and emulating the natural 'regulating' function of catchments, rivers, floodplains and coasts.

Nature Recovery Network: An expanding, increasingly connected, network of wildlife-rich habitats supporting species recovery, alongside wider benefits such as carbon capture, water quality improvements, natural flood risk management and recreation. It includes the existing network of protected sites and other wildlife rich habitats as well as and landscape or catchment scale recovery areas where there is coordinated action for species and habitats.

Neighbourhood Development Order: An Order made by a local planning authority (under the Town and Country Planning Act 1990) through which parish councils and neighbourhood forums can grant planning permission for a specific development proposal or classes of development.

Neighbourhood plan: A plan prepared by a parish council or neighbourhood forum for a designated neighbourhood area. In law this is described as a neighbourhood development plan in the Planning and Compulsory Purchase Act 2004.

Non-strategic policies: Policies contained in a neighbourhood plan, or those policies in a local plan that are not strategic policies.

Older people: People over or approaching retirement age, including the active, newly-retired through to the very frail elderly; and whose housing needs can encompass accessible, adaptable general needs housing through to the full range of retirement and specialised housing for those with support or care needs.

Open space: All open space of public value, including not just land, but also areas of water (such as rivers, canals, lakes and reservoirs) which offer important opportunities for sport and recreation and can act as a visual amenity.

Original building: A building as it existed on 1 July 1948 or, if constructed after 1 July 1948, as it was built originally.

Out of centre: A location which is not in or on the edge of a centre but not necessarily outside the urban area.

Out of town: A location out of centre that is outside the existing urban area.

Outstanding universal value: Cultural and/or natural significance which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations. An individual Statement of Outstanding Universal Value is agreed and adopted by the UNESCO World Heritage Committee for each World Heritage Site.

People with disabilities: People have a disability if they have a physical or mental impairment, and that impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. These persons include, but are not limited to, people with ambulatory difficulties, blindness, learning difficulties, autism and mental health needs.

Permission in principle: A form of planning consent which establishes that a site is suitable for a specified amount of housing-led development in principle. Following a grant of permission in principle, the site must receive a grant of technical details consent before development can proceed.

Planning condition: A condition imposed on a grant of planning permission (in accordance with the Town and Country Planning Act 1990) or a condition included in a Local Development Order or Neighbourhood Development Order.

Planning obligation: A legal agreement entered into under section 106 of the Town and Country Planning Act 1990 to mitigate the impacts of a development proposal.

Playing field: The whole of a site which encompasses at least one playing pitch as defined in the Town and Country Planning (Development Management Procedure) (England) Order 2015.

Previously developed land: Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds

and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.

Primary shopping area: Defined area where retail development is concentrated.

Priority habitats and species: Species and Habitats of Principal Importance included in the England Biodiversity List published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006.

Ramsar sites: Wetlands of international importance, designated under the 1971 Ramsar Convention.

Renewable and low carbon energy: Includes energy for heating and cooling as well as generating electricity. Renewable energy covers those energy flows that occur naturally and repeatedly in the environment – from the wind, the fall of water, the movement of the oceans, from the sun and also from biomass and deep geothermal heat. Low carbon technologies are those that can help reduce emissions (compared to conventional use of fossil fuels).

Rural exception sites: Small sites used for affordable housing in perpetuity where sites would not normally be used for housing. Rural exception sites seek to address the needs of the local community by accommodating households who are either current residents or have an existing family or employment connection. A proportion of market homes may be allowed on the site at the local planning authority's discretion, for example where essential to enable the delivery of affordable units without grant funding.

Recycled aggregates: aggregates resulting from the processing of inorganic materials previously used in construction, e.g. construction and demolition waste.

Safeguarding zone: An area defined in Circular 01/03: *Safeguarding aerodromes, technical sites and military explosives storage areas*, to which specific safeguarding provisions apply.

Secondary aggregates: aggregates from industrial wastes such as glass (cullet), incinerator bottom ash, coal derived fly ash, railway ballast, fine ceramic waste (pitcher), and scrap tyres; and industrial and minerals by-products, notably waste from china clay, coal and slate extraction and spent foundry sand. These can also include hydraulically bound materials.

Self-build and custom-build housing: Housing built by an individual, a group of individuals, or persons working with or for them, to be occupied by that individual. Such housing can be either market or affordable housing. A legal definition, for the purpose of applying the Self-build and Custom Housebuilding Act 2015 (as amended), is contained in section 1(A1) and (A2) of that Act.

Setting of a heritage asset: The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.

Significance (for heritage policy): The value of a heritage asset to this and future

generations because of its heritage interest. The interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting. For World Heritage Sites, the cultural value described within each site's Statement of Outstanding Universal Value forms part of its significance.

Special Areas of Conservation: Areas defined by regulation 3 of the Conservation of Habitats and Species Regulations 2017 which have been given special protection as important conservation sites.

Special Protection Areas: Areas classified under regulation 15 of the Conservation of Habitats and Species Regulations 2017 which have been identified as being of international importance for the breeding, feeding, wintering or the migration of rare and vulnerable species of birds.

Site investigation information: Includes a risk assessment of land potentially affected by contamination, or ground stability and slope stability reports, as appropriate. All investigations of land potentially affected by contamination should be carried out in accordance with established procedures (such as BS10175 Investigation of Potentially Contaminated Sites – Code of Practice).

Site of Special Scientific Interest: Sites designated by Natural England under the Wildlife and Countryside Act 1981.

Spatial development strategy: A plan containing strategic policies prepared by a Mayor or a combined authority. It includes the London Plan (prepared under provisions in the Greater London Authority Act 1999) and plans prepared by combined authorities that have been given equivalent plan-making functions by an order made under the Local Democracy, Economic Development and Construction Act 2009 (as amended).

Stepping stones: Pockets of habitat that, while not necessarily connected, facilitate the movement of species across otherwise inhospitable landscapes.

Strategic environmental assessment: A procedure (set out in the Environmental Assessment of Plans and Programmes Regulations 2004) which requires the formal environmental assessment of certain plans and programmes which are likely to have significant effects on the environment.

Strategic policies: Policies and site allocations which address strategic priorities in line with the requirements of Section 19 (1B-E) of the Planning and Compulsory Purchase Act 2004.

Strategic policy-making authorities: Those authorities responsible for producing strategic policies (local planning authorities, and elected Mayors or combined authorities, where this power has been conferred). This definition applies whether the authority is in the process of producing strategic policies or not.

Supplementary planning documents: Documents which add further detail to the policies in the development plan. They can be used to provide further guidance for development on specific sites, or on particular issues, such as design. Supplementary planning documents are capable of being a material consideration in planning decisions but are not

part of the development plan.

Sustainable transport modes: Any efficient, safe and accessible means of transport with overall low impact on the environment, including walking and cycling, ultra low and zero emission vehicles, car sharing and public transport.

Town centre: Area defined on the local authority's policies map, including the primary shopping area and areas predominantly occupied by main town centre uses within or adjacent to the primary shopping area. References to town centres or centres apply to city centres, town centres, district centres and local centres but exclude small parades of shops of purely neighbourhood significance. Unless they are identified as centres in the development plan, existing out-of-centre developments, comprising or including main town centre uses, do not constitute town centres.

Transport assessment: A comprehensive and systematic process that sets out transport issues relating to a proposed development. It identifies measures required to improve accessibility and safety for all modes of travel, particularly for alternatives to the car such as walking, cycling and public transport, and measures that will be needed deal with the anticipated transport impacts of the development.

Transport statement: A simplified version of a transport assessment where it is agreed the transport issues arising from development proposals are limited and a full transport assessment is not required.

Travel plan: A long-term management strategy for an organisation or site that seeks to deliver sustainable transport objectives and is regularly reviewed.

Wildlife corridor: Areas of habitat connecting wildlife populations.

Windfall sites: Sites not specifically identified in the development plan.

Annex 3: Flood risk vulnerability classification

ESSENTIAL INFRASTRUCTURE

- Essential transport infrastructure (including mass evacuation routes) which has to cross the area at risk.
- Essential utility infrastructure which has to be located in a flood risk area for operational reasons, including infrastructure for electricity supply including generation, storage and distribution systems; and water treatment works that need to remain operational in times of flood.
- Wind turbines.
- Solar farms

HIGHLY VULNERABLE

- Police and ambulance stations; fire stations and command centres; telecommunications installations required to be operational during flooding.
- Emergency dispersal points.
- Basement dwellings.
- Caravans, mobile homes and park homes intended for permanent residential use.
- Installations requiring hazardous substances consent. (Where there is a demonstrable need to locate such installations for bulk storage of materials with port or other similar facilities, or such installations with energy infrastructure or carbon capture and storage installations, that require coastal or water-side locations, or need to be located in other high flood risk areas, in these instances the facilities should be classified as ‘Essential Infrastructure’.)

MORE VULNERABLE

- Hospitals
- Residential institutions such as residential care homes, children’s homes, social services homes, prisons and hostels.
- Buildings used for dwelling houses, student halls of residence, drinking establishments, nightclubs and hotels.
- Non–residential uses for health services, nurseries and educational establishments.
- Landfill* and sites used for waste management facilities for hazardous waste.
- Sites used for holiday or short-let caravans and camping, subject to a specific warning and evacuation plan.

LESS VULNERABLE

- Police, ambulance and fire stations which are not required to be operational during flooding.

- Buildings used for shops; financial, professional and other services; restaurants, cafes and hot food takeaways; offices; general industry, storage and distribution; non-residential institutions not included in the ‘more vulnerable’ class; and assembly and leisure.
- Land and buildings used for agriculture and forestry.
- Waste treatment (except landfill* and hazardous waste facilities).
- Minerals working and processing (except for sand and gravel working).
- Water treatment works which do not need to remain operational during times of flood.
- Sewage treatment works, if adequate measures to control pollution and manage sewage during flooding events are in place.
- Car parks.

WATER-COMPATIBLE DEVELOPMENT

- Flood control infrastructure.
- Water transmission infrastructure and pumping stations.
- Sewage transmission infrastructure and pumping stations.
- Sand and gravel working.
- Docks, marinas and wharves.
- Navigation facilities.
- Ministry of Defence installations.
- Ship building, repairing and dismantling, dockside fish processing and refrigeration and compatible activities requiring a waterside location.
- Water-based recreation (excluding sleeping accommodation).
- Lifeguard and coastguard stations.
- Amenity open space, nature conservation and biodiversity, outdoor sports and recreation and essential facilities such as changing rooms.
- Essential ancillary sleeping or residential accommodation for staff required by uses in this category, subject to a specific warning and evacuation plan.

* Landfill is as defined in Schedule 10 of the Environmental Permitting (England and Wales) Regulations 2010.

Levelling-up and Regeneration Bill 2022-23 (HL Bill 142)
s. 170 Acquisition by local authorities for purposes of regeneration

Bill

Type of Bill
Public Bill (Government Bill)

Subjects
Economics; Local government; Planning

Text of Bill as published by Parliament on February 20, 2023. Will not reflect new amendments proposed. The Associated Documents section will display Amendment Papers when available.

170 Acquisition by local authorities for purposes of regeneration

In section 226 of TCPA 1990 (power of local authority to acquire land compulsorily for development and other planning purposes), after subsection (1A) insert—

"(1B) In the application of subsections (1) and (1A) in England, *"improvement"* includes regeneration."

Part 9 COMPULSORY PURCHASE > Powers > s. 170
Acquisition by local authorities for purposes of regeneration

Acquisition of Land Act 1981 c. 67
s. 6 Service of documents.

Law In Force

Version 3 of 3

6 August 2004 - Present

Subjects
Planning; Real property

Keywords
Compulsory purchase; Documents; Service provision

6.— Service of documents.

(1) Any notice or other document required or authorised to be served under this Act may be served on any person either by delivering it to him, or by leaving it at his proper address, or by post, so however that the document shall not be duly served by post unless it is sent by registered letter, or by the recorded delivery service.

(2) Any such document required or authorised to be served upon an incorporated company or body shall be duly served if it is served upon the secretary or clerk of the company or body.

(3) For the purposes of this section and of section 7 of the Interpretation Act 1978 the proper address of any person upon whom any such document as aforesaid is to be served shall, in the case of the secretary or clerk of any incorporated company or body, be that of the registered or principal office of the company or body, and in any other case be the last known address of the person to be served:

Provided that where the person to be served has furnished an address for service, his proper address for the purposes aforesaid shall be the address furnished.

(4) If the authority or Minister having jurisdiction to make the order in connection with which the document is to be served is satisfied that reasonable inquiry has been made and that it is not practicable to ascertain the name or address of an owner, lessee [, tenant] [1] or occupier of land on whom any such document as aforesaid is to be served, the document may be served by addressing it to him by the description of "Owner" "lessee" [, "tenant"] [2] or "occupier" of the land (describing it) to which it relates, and by delivering it to some person on the [land or, if there is no person on the land to whom it may be delivered, by leaving it or a copy of it on or near the land] [3] :

Provided that this subsection shall not have effect in relation to an owner, lessee [, tenant] [1] or occupier being a local authority or statutory undertakers or the National Trust.

Notes

1 Word inserted by Planning and Compulsory Purchase Act 2004 c. 5 Pt 8 s.100(2)(a) (August 6, 2004 in relation to the exercise of powers specified in SI 2004/2097 art.2; October 21, 2004 otherwise)
2 Word inserted by Planning and Compulsory Purchase Act 2004 c. 5 Pt 8 s.100(2)(b) (August 6, 2004 in relation to the exercise of powers specified in SI 2004/2097 art.2; October 21, 2004 otherwise)
3 Words substituted by Planning and Compensation Act 1991 c. 34 Sch.15(I) para.8 (September 25, 1991)

Part I GENERAL > Supplemental > s. 6 Service of documents.

Acquisition of Land Act 1981 c. 67
s. 12 Notices to owners, lessees, occupiers and others.


Law In Force With Amendments Pending

View proposed draft amended version

Version 5 of 5

30 September 2022 - Present

Subjects
Local government; Planning; Real property

Keywords
Compulsory purchase orders; Lessees; Notices; Occupiers; Owners

12.— Notices to owners, lessees [, occupiers and others] [1] **.**

(1) The acquiring authority shall serve on every [qualifying person] [2] a notice in the prescribed form—

(a) stating the effect of the order,

(b) stating that it is about to be submitted for confirmation, and

(c) specifying the time (not being less than twenty-one days from service of the notice) within which, and the manner in which, objections to the order can be made.

[

(2) A person is a qualifying person, in relation to land comprised in an order, if–

(a) he is an owner, lessee, tenant (whatever the tenancy period) or occupier of the land, [...] [4]

(b) he falls within subsection (2A) [, or] [5]

[

(c) the person is entitled to the benefit of an obligation under a conservation covenant (within the meaning of Part 7 of the Environment Act 2021) relating to the land.

] [5]

(2A) A person falls within this subsection if he is–

(a) a person to whom the acquiring authority would, if proceeding under section 5(1) of the Compulsory Purchase Act 1965, be required to give a notice to treat, or

(b) a person the acquiring authority thinks is likely to be entitled to make a relevant claim if the order is confirmed and the compulsory purchase takes place, so far as he is known to the acquiring authority after making diligent inquiry.

(2B) A relevant claim is a claim for compensation under section 10 of the Compulsory Purchase Act 1965 (compensation for injurious affection).

] [3]

(3) Where under this section any notice is required to be served on an owner of land, and the land is ecclesiastical property, a like notice shall be served on the [Diocesan Board of Finance for the diocese in which the land is situated] [6] . In this subsection *"ecclesiastical property"* means land belonging to any ecclesiastical benefice [of the Church of England] [7] , or being or forming part of a church subject to the jurisdiction of the bishop of any diocese [of the Church of England] [7] or the site of such a church, or being or forming part of a burial ground subject to such jurisdiction [...] [8] .

Notes

1 Words substituted by Environment Act 2021 c. 30 Sch.20 para.2(2) (September 30, 2022)
2 Words substituted by Planning and Compulsory Purchase Act 2004 c. 5 Pt 8 s.100(5)(a) (August 6, 2004 in relation to the exercise of powers specified in SI 2004/2097 art.2; October 21, 2004 otherwise)
3 S.12(2)-(2B) substituted for s.12(2) by Planning and Compulsory Purchase Act 2004 c. 5 Pt 8 s.100(5)(b) (August 6, 2004 in relation to the exercise of powers specified in SI 2004/2097 art.2; October 21, 2004 otherwise)
4 Word repealed by Environment Act 2021 c. 30 Sch.20 para.2(3)(a) (September 30, 2022)
5 Added by Environment Act 2021 c. 30 Sch.20 para.2(3)(b) (September 30, 2022)
6 Words substituted by Church of England (Miscellaneous Provisions) Measure 2006 No. 1 Sch.5 para.24(1)(a) (October 1, 2006 as jointly appointed by the Archbishops of Canterbury and York in an instrument dated September 11, 2006)
7 Words inserted by Church of England (Miscellaneous Provisions) Measure 2006 No. 1 Sch.5 para.24(1)(b) (October 1, 2006 as jointly appointed by the Archbishops of Canterbury and York in an instrument dated September 11, 2006)
8 Words repealed by Church of England (Miscellaneous Provisions) Measure 2006 No. 1 Sch.5 para.24(1)(c) (October 1, 2006 as jointly appointed by the Archbishops of Canterbury and York in an instrument dated September 11, 2006)

Part II PURCHASES BY LOCAL AND OTHER AUTHORITIES > Notices prior to submission of order to confirming authority > s. 12 Notices to owners, lessees, occupiers and others.

Table of Amendments

✓	5	Pt II s. 12(2)(c)	Added by Environment Act 2021 c. 30, Sch. 20 para. 2(3)(b) *September 30, 2022*
		Pt II s. 12(2)(a)	Word repealed by Environment Act 2021 c. 30, Sch. 20 para. 2(3)(a) *September 30, 2022*
		Pt II s. 12	Words substituted by Environment Act 2021 c. 30, Sch. 20 para. 2(2) *September 30, 2022*
	4	Pt II s. 12(3)	Words repealed by Church of England (Miscellaneous Provisions) Measure 2006 No. 1, Sch. 5 para. 24(1)(c) *October 1, 2006 as jointly appointed by the Archbishops of Canterbury and York in an instrument dated September 11, 2006*
		Pt II s. 12(3)	Words inserted by Church of England (Miscellaneous Provisions) Measure 2006 No. 1, Sch. 5 para. 24(1)(b) *October 1, 2006 as jointly appointed by the Archbishops of Canterbury and York in an instrument dated September 11, 2006*

	Pt II s. 12(3)	Words substituted by Church of England (Miscellaneous Provisions) Measure 2006 No. 1, Sch. 5 para. 24(1)(a) *October 1, 2006 as jointly appointed by the Archbishops of Canterbury and York in an instrument dated September 11, 2006*
3	Pt II s. 12(2)	S.12(2)-(2B) substituted for s.12(2) by Planning and Compulsory Purchase Act 2004 c. 5, Pt 8 s. 100(5)(b) *August 6, 2004 in relation to the exercise of powers specified in SI 2004/2097 art.2; October 21, 2004 otherwise*
	Pt II s. 12(1)	Words substituted by Planning and Compulsory Purchase Act 2004 c. 5, Pt 8 s. 100(5)(a) *August 6, 2004 in relation to the exercise of powers specified in SI 2004/2097 art.2; October 21, 2004 otherwise*
2	Pt II s. 12(3)	Words added by Planning and Compensation Act 1991 c. 34, Sch. 15(II) para. 27 *September 25, 1991*
1		Incorporates amendments made up to June 1, 1991 *see commencement below*

Proposed Draft Amendments

N/A	Pt II s. 12(1)(b)	Word repealed by Levelling-up and Regeneration Bill 2022-23 (HL Bill 142) Pt 9 s. 171(4)(a) (Lords' Report Stage, July 11, 2023) *Not yet in force*
N/A	Pt II s. 12(1)(ba)	Added by Levelling-up and Regeneration Bill 2022-23 (HL Bill 142) Pt 9 s. 171(4)(b) (Lords' Report Stage, July 11, 2023) *Not yet in force*
N/A	Pt II s. 12(1)(bb)	Added by Levelling-up and Regeneration Bill 2022-23 (HL Bill 142) Pt 9 s. 171(4)(b) (Lords' Report Stage, July 11, 2023) *Not yet in force*
N/A	Pt II s. 12(1)(c)	Substituted by Levelling-up and Regeneration Bill 2022-23 (HL Bill 142) Pt 9 s. 171(4)(c) (Lords' Report Stage, July 11, 2023) *Not yet in force*

Commencement

Pt II s. 12	January 30, 1982 1981 c. 67 Pt VII s. 35(2)

Extent

Pt II s. 12(1)-(2), (2)(c), (3)	England, Wales (this Act extends to England and Wales only, except so far as Schedule 4 amends any enactment which extends to Scotland or Northern Ireland)
Pt II s. 12(2)(a)-(2)(b), (2A)-(2B)	England, Wales

Modifications

Pt II s. 12	Modified in relation to its application to compulsory rights orders 1958 c.69 s.4 by Acquisition of Land Act 1981 c. 67, Pt V s. 29(4)
	Modified in relation to the compulsory purchase of land under 1993 c.35 s.42(5) by Education Act 1993 c. 35, Pt II c. III s. 42(6)
	Modified by Education Act 1996 c. 56, Pt III c. III s. 205(6)
	Modified in relation to the compulsory purchase of land under 1992 c.13 s.40(5) by Further and Higher Education Act 1992 c. 13, Pt I c. II s. 40(6)
Pt II s. 12(2)	Modified in relation to the service of a notice under 1958 c.69 s.16 as respects any land in England and Wales by Opencast Coal Act 1958 c. 69, Pt I s. 16
Pt II s. 12(3)	Modified in relation to the service of a notice under 1958 c.69 s.16 as respects any land in England and Wales by Opencast Coal Act 1958 c. 69, Pt I s. 16

SIs Made Under Act

Pt II s. 12

Opencast Coal (Compulsory Rights, Drainage and Rights of Way) (Forms) Regulations 1994/3097

Pt II s. 12(1)

Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004/2595
Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004/2732
Compulsory Purchase of Land Regulations 1990/613
Compulsory Purchase of Land Regulations 1994/2145

Local Government Act 1972 c. 70
s. 12A Parishes: alternative styles

Law In Force

Version 2 of 2

1 April 2010 - Present

Subjects
Local government

Keywords
Names; Parishes; Resolutions; Variation
[

12A Parishes: alternative styles

(1) This section applies to a parish which is not grouped with any other parish.

(2) The appropriate parish authority may resolve that the parish shall have one of the alternative styles.

(3) If the parish has an alternative style, the appropriate parish authority may resolve that the parish shall cease to have that style.

(4) A single resolution may provide for a parish–

(a) to cease to have an alternative style, and

(b) to have another of the alternative styles instead.

(5) As soon as practicable after passing a resolution under this section, the appropriate parish authority must give notice of the change of style to all of the following–

(a) the Secretary of State;

(b) the [Local Government Boundary Commission for England] [2] ;

(c) the Office of National Statistics;

(d) the Director General of the Ordnance Survey;

(e) any district council, county council or London borough council within whose area the parish lies.

(6) In this section *"appropriate parish authority"* means–

(a) the parish council, or

(b) if the parish does not have a parish council, the parish meeting.

] [1]

Notes

1 Added by Local Government and Public Involvement in Health Act 2007 c. 28 Pt 4 c.1 s.75(3) (February 13, 2008)
2 Words substituted by Local Democracy, Economic Development and Construction Act 2009 c. 20 Sch.4 para.3 (April 1, 2010)

Local Government (Miscellaneous Provisions) Act 1976 c. 57
s. 13 Compulsory acquisition by local authorities of rights over land.

Law In Force

Version 1 of 1

Date not available - Present

Subjects
Local government; Real property

Keywords
Compulsory purchase orders; Local authorities' powers and duties

13.— Compulsory acquisition by local authorities of rights over land.

(1) A local authority which may be authorised by a Minister of the Crown, by means of a compulsory purchase order, to purchase any land compulsorily for any purpose may be authorised by that Minister, by means of such an order, to purchase compulsorily for that purpose such new rights over the land as are specified in the order; and in this subsection *"new rights"* means rights which are not in existence when the order specifying them is made.

(2) [...][1] The Compulsory Purchase Act 1965 shall have effect with the modifications necessary to make them apply to the compulsory purchase of rights by virtue of the preceding subsection as they apply to the compulsory purchase of land so that, in appropriate contexts, references in those Acts to land are read as referring, or as including references, to the rights or to land over which the rights are or are to be exercisable, according to the requirements of the particular context.

(3) Without prejudice to the generality of the preceding subsection, in relation to the purchase of rights in pursuance of subsection (1) of this section—[...][2]

(b) Part I of the said Act of 1965 [...][1] shall have effect with the modifications specified in Part II of Schedule 1 to this Act; and

(c) the enactments relating to compensation for the compulsory purchase of land shall apply with the necessary modifications as they apply to such compensation.

(4) Nothing in the preceding provisions of this section shall authorise the purchase of any rights by an authority for a purpose for which there is power by virtue of [section 250 of the Highways Act 1980][3] (which relates to the compulsory acquisition of rights by highway authorities) to authorise the authority to acquire the rights.

[

(5) In this section *"compulsory purchase order"* has the same meaning as in the Acquisition of Land Act 1981, and Schedule 3 to that Act shall apply to the compulsory purchase of rights by virtue of subsection (1) above.

][4][5][6][7]

Notes

1 Words repealed by Acquisition of Land Act 1981 (c.67), s. 34(3), Sch. 6 Pt. I
2 Repealed by Acquisition of Land Act 1981 (c.67), s. 34(3), Sch. 6 Pt. I
3 Words substituted by Highways Act 1980 (c.66), s. 343(2), Sch. 24 para. 27(a)
4 Substituted by Acquisition of Land Act 1981 (c.67), s. 34(1), Sch. 4 para. 26
5 Words of enactment omitted under authority of Statute Law Revision Act 1948 (c. 62), s. 3
6 Pt.I (ss.1–44) extended by Airports Act 1986 (c. 31), s. 58, Sch. 2 para. 1(1) and by Water Act 1989 (c. 15), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 25 para. 1(2)(xxi), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58
7 S. 13 applied by Town and Country Planning Act 1990 (c. 8), s. 244(4)

Part I GENERAL > Land > s. 13 Compulsory acquisition by local authorities of rights over land.

Planning and Compulsory Purchase Act 2004 c. 5
s. 38 Development plan

Law In Force With Amendments Pending

View proposed draft amended version

Version 7 of 7

21 January 2021 - Present

Subjects
Planning

Keywords
Development plans; Interpretation

38 Development plan

(1) A reference to the development plan in any enactment mentioned in subsection (7) must be construed in accordance with subsections (2) to (5).

(2) For the purposes of any area in Greater London the development plan is–

(a) the spatial development strategy, [...] [1]

(b) the development plan documents (taken as a whole) which have been adopted or approved in relation to that area [, and] [1]

[

(c) the neighbourhood development plans which have been made in relation to that area.

] [1]

(3) For the purposes of any other area in England the development plan is–

(a) the [regional strategy] [2] for the region in which the area is situated [(if there is a regional strategy for that region)] [3] , [...] [4]

(b) the development plan documents (taken as a whole) which have been adopted or approved in relation to that area [, and] [4]

[

(c) the neighbourhood development plans which have been made in relation to that area.

] [4]

[

(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.

][5]

(4) For the purposes of any area in Wales the development plan is [—][6] [

(a) the National Development Framework for Wales,

[

(b) any strategic development plan for an area that includes all or part of that area, and

][7]

(c) the local development plan for that area.

][6]

(5) If to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document [to become part of the development plan][8] .

(6) If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.

(7) The enactments are–

(a) this Act;

(b) the planning Acts;

(c) any other enactment relating to town and country planning;

(d) the Land Compensation Act 1961 (c. 33);

(e) the Highways Act 1980 (c. 66).

(8) In subsection (5) references to a development plan include a development plan for the purposes of paragraph 1 of Schedule 8.

[

(9) Development plan document must be construed in accordance with section 37(3).

][9] [

(10) Neighbourhood development plan must be construed in accordance with section 38A.

][10]

Notes

1 Added by Localism Act 2011 c. 20 Sch.9(2) para.6(a) (November 15, 2011 for the purpose specified in 2011 c.20 s.240(5)(j); April 6, 2012 except for the purpose specified in SI 2012/628 art.8(a) subject to transitional, saving and transitory provisions specified in SI 2012/628 arts 9, 12, 13, 16 and 18-20; August 3, 2012 except for the purpose specified in SI 2012/2029 art.3(a) subject to transitional, saving and transitory provisions specified in SI 2012/2029 art.5; April 6, 2013 otherwise)

2 Words substituted by Local Democracy, Economic Development and Construction Act 2009 c. 20 Pt 5 s.82(1) (April 1, 2010)

3 Words inserted by Localism Act 2011 c. 20 Sch.8 para.13(1) (November 15, 2011)

4 Added by Localism Act 2011 c. 20 Sch.9(2) para.6(b) (November 15, 2011 for the purpose specified in 2011 c.20 s.240(5)(j); April 6, 2012 except for the purpose specified in SI 2012/628 art.8(a) subject to transitional, saving and transitory provisions specified in SI 2012/628 arts 9, 12, 13, 16 and 18-20; August 3, 2012 except for the purpose specified in SI 2012/2029 art.3(a) subject to transitional, saving and transitory provisions specified in SI 2012/2029 art.5; April 6, 2013 otherwise)

5 Added by Neighbourhood Planning Act 2017 c. 20 Pt 1 s.3 (July 19, 2017)

6 S.38(4)(a)-(c) substituted for words by Planning (Wales) Act 2015 anaw. 4 Pt 3 s.9 (December 4, 2020)

7 Substituted by Local Government and Elections (Wales) Act 2021 asc. 1 Sch.9(1) para.2 (January 21, 2021)

8 Words substituted by Localism Act 2011 c. 20 Sch.9(2) para.6(c) (November 15, 2011 for the purpose specified in 2011 c.20 s.240(5)(j); April 6, 2012 except for the purpose specified in SI 2012/628 art.8(a) subject to transitional, saving and transitory provisions specified in SI 2012/628 arts 9, 12, 13, 16 and 18-20; August 3, 2012 except for the purpose specified in SI 2012/2029 art.3(a) subject to transitional, saving and transitory provisions specified in SI 2012/2029 art.5; April 6, 2013 otherwise)

9 Added by Planning Act 2008 c. 29 Pt 9 c.2 s.180(7) (April 6, 2009 in relation to England and Wales)

10 Added by Localism Act 2011 c. 20 Sch.9(2) para.6(d) (November 15, 2011 for the purpose specified in 2011 c.20 s.240(5)(j); April 6, 2012 except for the purpose specified in SI 2012/628 art.8(a) subject to transitional, saving and transitory provisions specified in SI 2012/628 arts 9, 12, 13, 16 and 18-20; August 3, 2012 except for the purpose specified in SI 2012/2029 art.3(a) subject to transitional, saving and transitory provisions specified in SI 2012/2029 art.5; April 6, 2013 otherwise)

Town and Country Planning (Development Management Procedure) (England) Order 2015/595
art. 15 Publicity for applications for planning permission

Law In Force

Version 8 of 8

16 July 2021 - Present

Subjects
Planning

15.— Publicity for applications for planning permission

(1) An application for planning permission must be publicised by the local planning authority to which the application is made in the manner prescribed by this article.

[

(1A) In the case of any EIA application accompanied by an environmental statement, the application must be publicised in accordance with the requirements of paragraph (7) and by giving requisite notice—

(a) by site display in at least one place on or near the land to which the application relates for not less than 30 days; and

(b) by publication of the notice in a newspaper circulating in the locality in which the land to which the application relates is situated.

] [1]

(2) In the case of an application for planning permission for development which—[...] [2]

(b) does not accord with the provisions of the development plan in force in the area in which the land to which the application relates is situated, or

(c) would affect a right of way to which Part 3 of the Wildlife and Countryside Act 1981 (public rights of way) [3] applies,

the application must be publicised in the manner specified in paragraph (3).

(3) An application falling within paragraph (2) ("a paragraph (2) application") must be publicised in accordance with the requirements in paragraph (7) and by giving requisite notice—

(a) by site display in at least one place on or near the land to which the application relates for not less than 21 days; and

(b) by publication of the notice in a newspaper circulating in the locality in which the land to which the application relates is situated.

(4) In the case of an application for planning permission which is [neither an application to which paragraph (1A) applies nor a paragraph (2) application] [4] , if the development proposed is major development the application must be publicised in accordance with the requirements in paragraph (7) and by giving requisite notice—

(a)

(i) by site display in at least one place on or near the land to which the application relates for not less than 21 days; or

(ii) by serving the notice on any adjoining owner or occupier; and

(b) by publication of the notice in a newspaper circulating in the locality in which the land to which the application relates is situated.

[

(4A) In a case of an application for technical details consent to which neither paragraph (2) nor paragraph (4) applies, the application must be publicised—

(a) in accordance with the requirements of paragraph (7), and

(b) by giving requisite notice by site display in at least one place on or near the land to which the application relates for not less than 21 days.

][5]

(5) [In a case to which paragraphs (1A), (2), (4) and (4A) do not apply the application must][6] be publicised in accordance with the requirements in paragraph (7) and by giving requisite notice—

(a) by site display in at least one place on or near the land to which the application relates for not less than 21 days; or

(b) by serving the notice on any adjoining owner or occupier.

(6) Where the notice is, without any fault or intention of the local planning authority, removed, obscured or defaced before the period of 21 days referred to in paragraph (3)(a), (4)(a)(i) [, (4A)(b)][7] or (5)(a) [, or before the period of 30 days referred to in [paragraph (1A)(a)][9] ,][8] has elapsed, the authority is to be treated as having complied with the requirements of the relevant paragraph if they have taken reasonable steps for protection of the notice and, if need be, its replacement.

(7) The following information must be published on a website maintained by the local planning authority—

(a) the address or location of the proposed development;

(b) a description of the proposed development;

[

(ba) in the case of EIA application accompanied by an environmental statement, that statement;

][10]

(c) the date by which any representations about the application must be made, which must not be before the last day of the period of [14 days][11] [, or in the case of an EIA application accompanied by an environmental statement 30 days,][12] beginning with the date on which the information is published;

(d) where and when the application may be inspected;

(e) how representations may be made about the application; and

(f) that, in the case of a householder or minor commercial application, in the event of an appeal that proceeds by way of the expedited procedure, any representations made about the application will be passed to the Secretary of State and there will be no opportunity to make further representations.

[...][13]

(8) Subject to paragraph (9), if the local planning authority have failed to satisfy the requirements of this article in respect of an application for planning permission at the time the application is referred to the Secretary of State under section 77 (reference

of applications to Secretary of State) of the 1990 Act [14], or any appeal to the Secretary of State is made under section 78 of the 1990 Act [15], this article continues to apply as if such referral or appeal to the Secretary of State had not been made.

(9) Where paragraph (8) applies, the local planning authority must inform the Secretary of State as soon as they have satisfied the relevant requirements in this article.

(10) In this article—

"adjoining owner or occupier" means any owner or occupier of any land adjoining the land to which the application relates; and

"requisite notice" means notice in the appropriate form set out in Schedule 3 or in a form substantially to the same effect.

[

(10A) In this article, when computing the number of days, any day which is a public holiday must be disregarded unless—

(i) the application is an EIA application [17] accompanied by an environmental statement; or

(ii) the application is one to which paragraph (11) applies.

] [16] [

(10B) In this article, in the case of an application for public service infrastructure development, in paragraphs (3)(a), (4)(a)(i), and (6), "21 days" is to be read, in each place it occurs, as if it were a reference to "18 days".

] [18]

(11) Paragraphs (1) to (6) apply to applications made to the Secretary of State under section 293A of the 1990 Act (urgent Crown development: application) [19] as if the references to a local planning authority were references to the Secretary of State.

Notes

1 Added by Town and Country Planning (Environmental Impact Assessment) Regulations 2017/571 Pt 12 reg.72(3)(a) (May 16, 2017)
2 Revoked by Town and Country Planning (Environmental Impact Assessment) Regulations 2017/571 Pt 12 reg.72(3)(b) (May 16, 2017)
3 1981 c. 69; *see* section 66. There are amendments to Part 3 which are not relevant to this Order.
4 Words substituted by Town and Country Planning (Environmental Impact Assessment) Regulations 2017/571 Pt 12 reg.72(3)(c) (May 16, 2017)
5 Added by Town and Country Planning (Permission in Principle) Order 2017/402 Sch.1 para.2(2)(a) (April 15, 2017)
6 Words substituted by Town and Country Planning and Infrastructure Planning (Environmental Impact Assessment) (Amendment) Regulations 2018/695 reg.3(2) (October 1, 2018)
7 Word inserted by Town and Country Planning (Permission in Principle) Order 2017/402 Sch.1 para.2(2)(c) (April 15, 2017)
8 Words inserted by Town and Country Planning (Environmental Impact Assessment) Regulations 2017/571 Pt 12 reg.72(3)(e) (May 16, 2017)
9 Words substituted by Town and Country Planning and Infrastructure Planning (Environmental Impact Assessment) (Amendment) Regulations 2018/695 reg.3(3) (October 1, 2018)
10 Added by Town and Country Planning (Environmental Impact Assessment) Regulations 2017/571 Pt 12 reg.72(3)(f)(i) (May 16, 2017)

Notes

11 Words substituted by Town and Country Planning (Development Management Procedure, Listed Buildings and Environmental Impact Assessment) (England) (Coronavirus) (Amendment) Regulations 2020/505 Pt 2 reg.5 (June 30, 2021: repeal has effect subject to savings specified in SI 2020/505 reg.19)

12 Words inserted by Town and Country Planning (Environmental Impact Assessment) Regulations 2017/571 Pt 12 reg.72(3)(f)(ii) (May 16, 2017)

13 Revoked by Town and Country Planning (Development Management Procedure, Listed Buildings and Environmental Impact Assessment) (England) (Coronavirus) (Amendment) Regulations 2020/505 Pt 2 reg.4 (June 30, 2021: revocation has effect subject to savings specified in SI 2020/505 reg.19)

14 Section 77 was amended by paragraph 18 of Schedule 7 to the Planning and Compensation Act 1991 (c. 34) ("the 1991 Act"), paragraph 2 of Schedule 10 to the Planning Act 2008 (c. 29) ("the 2008 Act") and paragraph 10 of Schedule 12 to the Localism Act 2011 (c. 20) ("the 2011 Act").

15 Section 78 was amended by section 17(2) of the 1991 Act and paragraphs 1 and 3 of Schedule 10 (amendments in force for certain purposes and to come into force for remaining purposes on a date to be appointed, *see* S.I. 2009/400) and paragraphs 1 and 2 of Schedule 11 to the 2008 Act.

16 Added by Town and Country Planning (Local Authority Consultations etc.) (England) Order 2018/119 Pt 2 art.4 (June 1, 2018)

17 For the definition of *"EIA application"* see article 2(1) of S.I. 2015/595.

18 Added by Town and Country Planning (Development Management Procedure and Section 62A Applications) (England) (Amendment) Order 2021/746 Pt 2 art.6 (July 16, 2021: insertion has effect in relation to applications for planning permission made on or after August 1, 2021)

19 Section 293A was inserted by section 82(1) of the 2004 Act.

Part 3 Applications > art. 15 Publicity for applications for planning permission

Town and Country Planning (Development Management Procedure) (England) Order 2015/595
art. 18 Consultations before the grant of permission

Law In Force

Version 3 of 3

16 July 2021 - Present

Subjects
Planning

18.— Consultations before the grant of permission

(1) [Subject to paragraph (1A),][1] granting planning permission for development which, in their opinion, falls within a category set out in the Table in Schedule 4, a local planning authority must consult the authority or person mentioned in relation to that category, except where—

(a) the local planning authority are the authority so mentioned;

(b) the local planning authority are required to consult the authority so mentioned under paragraph 7 of Schedule 1 to the 1990 Act (local planning authorities: distribution of functions)[2] or article 24;

(c) the authority or person so mentioned has advised the local planning authority that they do not wish to be consulted;

(d) the development is subject to any standing advice published by the authority or person so mentioned in relation to the category of development; or

(e) the development is not EIA development and is the subject of an application in relation to which article 20 applies.

[

(1A) Paragraph (1) does not apply in relation to an application for technical details consent unless the authority or person mentioned in relation to a category in the Table in Schedule 4 has advised the local planning authority by a valid notice that they wish to be consulted in relation to the development.

(1B) For the purposes of paragraph (1A) a notice is valid if it specifies a particular site and it was given in writing to the local planning authority before the date on which the permission in principle to which the application for technical details consent relates was granted.

][3]

(2) The exception in paragraph (1)(c) does not apply where, in the opinion of the local planning authority, development falls within paragraph (zb) of the Table in Schedule 4.

(3) The exception in paragraph (1)(d) does not apply where—

(a) the development is EIA development; or

(b) the standing advice was published more than 2 years before the date of the application for planning permission for the development and the guidance has not been amended or confirmed as being current by the authority or person within that period.

(4) The Secretary of State may give directions to a local planning authority requiring that authority to consult any person or body named in the directions, in any case or class of case specified in the directions.

(5) Where, by or under this article or article 20, a local planning authority are required to consult any person or body ("consultee") before granting planning permission—

(a) they must, unless an applicant has served a copy of an application for planning permission on the consultee, give notice of the application to the consultee; and

(b) [subject to paragraphs (6) and (8)] [4] , they must not determine the application until at least 21 days after the date on which notice is given under sub-paragraph (a) or, if earlier, 21 days after the date of service of a copy of the application on the consultee by the applicant.

(6) Paragraph (5)(b) does not apply if before the end of the period referred to in that sub-paragraph—

(a) the local planning authority have received representations concerning the application from all consultees; or

(b) all consultees give notice that they do not intend to make representations.

(7) The local planning authority must, in determining the application, take into account any representations received from any consultee.

[

(8) In the case of an application for public service infrastructure development, in paragraph (5)(b), "21 days" is to be read, in each place it occurs, as if it were a reference to "18 days".

] [5]

Notes

1 Words inserted by Town and Country Planning (Permission in Principle) Order 2017/402 Sch.1 para.2(3)(a) (April 15, 2017)

2 Paragraph 7 of Schedule 1 was substituted by section 118(1) of, and paragraphs 1 and 16 of Schedule 6 to, the 2004 Act, and was amended by paragraph 3 of Schedule 5 to the Local Democracy, Economic Development and Construction Act 2009 (c. 20) and paragraph 1 of Schedule 8 and Schedule 25 to the 2011 Act.

3 Added by Town and Country Planning (Permission in Principle) Order 2017/402 Sch.1 para.2(3)(b) (April 15, 2017)

4 Words substituted by Town and Country Planning (Development Management Procedure and Section 62A Applications) (England) (Amendment) Order 2021/746 Pt 2 art.7(2) (July 16, 2021: substitution has effect in relation to applications for planning permission made on or after August 1, 2021)

5 Added by Town and Country Planning (Development Management Procedure and Section 62A Applications) (England) (Amendment) Order 2021/746 Pt 2 art.7(3) (July 16, 2021: insertion has effect in relation to applications for planning permission made on or after August 1, 2021)

art. 19 Consultations before the grant of planning permission: urgent Crown development

Law In Force

Version 2 of 2

16 July 2021 - Present

Subjects
Planning

19.— Consultations before the grant of planning permission: urgent Crown development

(1) This article applies in relation to applications made to the Secretary of State under section 293A of the 1990 Act (urgent Crown development: application) [1] .

(2) Before granting planning permission for development which, in the opinion of the Secretary of State, falls within a category set out in the Table in Schedule 4, the Secretary of State must consult the authority or person mentioned in relation to that category, except where—

(a) the Secretary of State is required to consult the authority so mentioned under section 293A(9)(a) of the 1990 Act;

(b) the authority or person so mentioned has advised the Secretary of State that they do not wish to be consulted; or

(c) the development is subject to any standing advice published by the authority or person so mentioned to the Secretary of State in relation to the category of development.

(3) The exception in paragraph (2)(b) does not apply where, in the opinion of the Secretary of State, development falls within paragraph (zb) of the Table in Schedule 4.

(4) The exception in paragraph (2)(c) does not apply where—

(a) the development is EIA development; or

(b) the standing advice was issued more than 2 years before the date of the application for planning permission for the development and the guidance has not been amended or confirmed as being current by the authority or person within that period.

(5) Where, by or under this article, the Secretary of State is required to consult any person or body ("consultee") before granting planning permission—

(a) the Secretary of State must, unless an applicant has served a copy of an application for planning permission on the consultee, give notice of the application to the consultee; and

(b) [subject to paragraphs (6) and (8)] [2] , the Secretary of State must not determine the application until at least 21 days after the date on which notice is given under sub-paragraph (a) or, if earlier, 21 days after the date of service of a copy of the application on the consultee by the applicant.

(6) Paragraph (5)(b) does not apply if before the end of the period referred to in that sub-paragraph—

(a) the Secretary of State has received representations concerning the application from the consultee; or

(b) all consultees give notice that they do not intend to make representations.

(7) The Secretary of State must, in determining the application, take into account any representations received from any consultee.

[

(8) In the case of an application for public service infrastructure development, in paragraph (5)(b), "21 days"is to be read, in each place it occurs, as if it were a reference to "18 days".

][3]

Notes

1 Section 293A was inserted by section 82(1) of the 2004 Act.

2 Words substituted by Town and Country Planning (Development Management Procedure and Section 62A Applications) (England) (Amendment) Order 2021/746 Pt 2 art.8(2) (July 16, 2021: substitution has effect in relation to applications for planning permission made on or after August 1, 2021)

3 Added by Town and Country Planning (Development Management Procedure and Section 62A Applications) (England) (Amendment) Order 2021/746 Pt 2 art.8(3) (July 16, 2021: insertion has effect in relation to applications for planning permission made on or after August 1, 2021)

art. 20 Consultations before the grant of planning permission pursuant to section 73 or the grant of a replacement planning permission subject to a new time limit

Law In Force

Version 1 of 1

15 April 2015 - Present

Subjects
Planning

20.— Consultations before the grant of planning permission pursuant to section 73 or the grant of a replacement planning permission subject to a new time limit

(1) Paragraph (2) applies in relation to an application—

(a) made pursuant to section 73 of the 1990 Act (determination of applications to develop land without conditions previously attached);

(b) for planning permission where the development that is the subject of the application—

(i) has not yet begun; and

(ii) was granted planning permission on or before 1st October 2010 subject to a time limit imposed by or under section 91 (general condition limiting duration of planning permission) or 92 (outline planning permission) of the 1990 Act [1] which has not expired; or

(c) for outline planning permission where the development that is the subject of the application—

(i) has begun in accordance with the terms of, and any reserved matters approved under, an outline planning permission which is required or expressly permitted to be implemented in phases, other than a permission granted on an application made under sub-paragraph (b); and

(ii) was granted that outline planning permission on or before 1st October 2010 subject to a time limit imposed by or under section 91 or 92 of the 1990 Act which has not expired.

(2) Before granting planning permission on an application in relation to which this paragraph applies, the local planning authority must consult such authorities or persons falling within a category set out in the Table in Schedule 4 as the local planning authority consider appropriate.

Notes

1 Sections 91 and 92 were amended by section 51(1) of the 2004 Act and section 91 was subsequently amended by paragraph 13 of Schedule 12 to the Localism Act 2011 (c. 20); there have been other amendments to section 91 which are not relevant to this Order.

Part 4 Consultation > art. 20 Consultations before the grant of planning permission pursuant to section 73 or the grant of a replacement planning permission subject to a new time limit

art. 21 Consultation with county planning authority

Law In Force

Version 2 of 2

16 July 2021 - Present

Subjects
Planning
[

21.—

(1) Subject to paragraph (2) the period prescribed for the purposes of paragraph 7(7)(c) of Schedule 1 to the 1990 Act (local planning authorities: distribution of functions) is 21 days.

(2) In the case of an application for public service infrastructure development, in paragraph (1), "21 days" is to be read as if it were a reference to "18 days".

][1]

Notes

1 Substituted by Town and Country Planning (Development Management Procedure and Section 62A Applications) (England) (Amendment) Order 2021/746 Pt 2 art.9 (July 16, 2021: substitution has effect in relation to applications for planning permission made on or after August 1, 2021)

art. 22 Duty to respond to consultation

Law In Force With Amendments Pending

Version 3 of 4

1 August 2021 - Present

Subjects
Planning

22.— Duty to respond to consultation

(1) The requirements to consult which are prescribed for the purposes of section 54(2)(b) of the 2004 Act (duty to respond to consultation) are those contained in—

(a) articles 18 and 19 and Schedule 4, except as provided for in paragraph (2);

(b) article 20;

(c) article 24;

(d) paragraphs W(5) and (6) of Part 3 of Schedule 2 to the Permitted Development Order (change of use) [1] ;

[

(da) paragraph W(6A) of Part 3 of Schedule 2 to the Permitted Development Order as provided for by paragraph MA.2(4)(c) of that Part;

] [2]

(e) paragraph E.3(5) and (6) of Part 4 of Schedule 2 to the Permitted Development Order (filming);

(f) paragraph A.3(5)(a) of Part 16 of Schedule 2 to the Permitted Development Order (development by electronic communications code operators);

[

(fa) paragraph B(5), (6) and (6A) of Part 20 of Schedule 2 to the Permitted Development Order (construction of new dwellinghouses);

] [3]

(g) section 71(3) of the 1990 Act (consultations in connection with determinations under section 70);

(h) paragraph 4(2) of Schedule 1 to the 1990 Act [4] ;

(i) paragraph 7 of Schedule 1 to the 1990 Act; and

(j) paragraph 3(b) of Schedule 4 to the Planning (Listed Buildings and Conservation Areas) Act 1990 (further provisions as to exercise of functions by different authorities) [5] .

(2) A requirement to consult under paragraph (zb)(iii) of Schedule 4 is not a prescribed requirement for the purposes of section 54(2)(b) of the 2004 Act.

[

(3) Subject to paragraph (6) the period prescribed for the purposes of section 54(4) of the 2004 Act is—

(a) the period of 21 days beginning with the day on which—

(i) the document on which the views of the consultee are sought is received by the consultee, or

(ii) where there is more than one such document and they are sent on different days, the last of those documents is received by the consultee, or

(b) such other period as may be agreed in writing between the consultee and the consultor.

][6]

(4) The information to be provided to the consultee for the purposes of the consultation, pursuant to section 54(5)(b) of the 2004 Act, is such information as will enable that person to provide a substantive response.

(5) For the purposes of this article and article 23 and pursuant to section 54(5)(c) of the 2004 Act, a substantive response is one which—

(a) states that the consultee has no comment to make;

(b) states that, on the basis of the information available, the consultee is content with the development proposed;

(c) refers the consultor to current standing advice by the consultee on the subject of the consultation; or

(d) provides advice to the consultor.

[

(6) In the case of an application for public service infrastructure development, where the requirements to consult contained in paragraph (1)(a), (b), (c), (h) or (i) apply, the prescribed period of 21 days in paragraph (3) is to be read as if it were a reference to 18 days.

][7]

Notes

1 S.I. 2015/596.

2 Added by Town and Country Planning (General Permitted Development etc.) (England) (Amendment) (No. 2) Order 2021/814 art.10(a) (August 1, 2021: insertion has effect subject to savings and transitional provisions specified in SI 2021/814 art.13 and Sch.1)

3 Added by Town and Country Planning (General Permitted Development etc.) (England) (Amendment) (No. 2) Order 2021/814 art.10(b) (August 1, 2021: insertion has effect subject to savings and transitional provisions specified in SI 2021/814 art.13 and Sch.1)

4 Paragraph 4(2) of Schedule 1 was amended by sections 19(2) and 84 of, and paragraph 53 of Schedule 7 and Part 1 of Schedule 19 to, the Planning and Compensation Act 1991 (c. 34).

5 1990 c. 9; Paragraph 3 of Schedule 4 was substituted by paragraph 61 of Schedule 7 to the Planning and Compensation Act 1991 (c. 34) and amended by sections 78 and 120 of, and paragraph 33(7) of Schedule 10 and Schedule 24 to, the Environment Act 1995 (c. 25).

6 Substituted by Town and Country Planning (Development Management Procedure and Section 62A Applications) (England) (Amendment) Order 2021/746 Pt 2 art.10(2) (July 16, 2021: substitution has effect in relation to applications for planning permission made on or after August 1, 2021)

Notes

7 Added by Town and Country Planning (Development Management Procedure and Section 62A Applications) (England) (Amendment) Order 2021/746 Pt 2 art.10(3) (July 16, 2021: insertion has effect in relation to applications for planning permission made on or after August 1, 2021)

Part 4 Consultation > art. 22 Duty to respond to consultation

art. 23 Duty to respond to consultation: annual reports

Law In Force

Version 1 of 1

15 April 2015 - Present

Subjects
Planning

23.— Duty to respond to consultation: annual reports

(1) Each consultee who is, by virtue of section 54 of the 2004 Act and article 22, under a duty to respond to consultation, must give to the Secretary of State, not later than 1st July in each year, a report as to that consultee's compliance with section 54(4) of the 2004 Act.

(2) The report must relate to the period of 12 months commencing on 1st April in the preceding year ("the report year").

(3) The report must contain, in respect of any report year—

(a) a statement as to the number of occasions on which the consultee was consulted by a person other than a local planning authority;

(b) a statement as to the number of occasions on which a substantive response was given to a person other than a local planning authority within the period referred to in section 54(4) of the 2004 Act;

(c) a statement as to the number of occasions on which the consultee was consulted by a local planning authority;

(d) a statement as to the number of occasions on which a substantive response was given to a local planning authority within the period referred to in section 54(4) of the 2004 Act; and

(e) in relation to occasions on which the consultee has given a substantive response outside the period referred to in section 54(4) of the 2004 Act, a summary of the reasons why the consultee failed to comply with the duty to respond within that period.

art. 24 Recommendations by district planning authority before determination of county matters application

Law In Force

Version 2 of 2

16 July 2021 - Present

Subjects
Planning

24.— Recommendations by district planning authority before determination of county matters application

(1) [Subject to paragraphs (2) and (3)] [1] , a county planning authority must, before determining—

(a) an application for planning permission under Part 3 of the 1990 Act (control over development),

(b) an application for a certificate of lawful use or development under section 191 or 192 of the 1990 Act (certificates of lawfulness of existing or proposed use or development) [2] , or

(c) an application for approval of reserved matters,

give the district planning authority, if any, for the area in which the relevant land lies a period of at least 21 days, from the date of receipt of the application by the district authority, within which to make recommendations about the manner in which the application must be determined; and must take any such recommendations into account.

(2) Paragraph (1) does not prevent a county planning authority determining an application if before the end of the period referred to in that paragraph—

(a) the county planning authority have received recommendations concerning the application from the district planning authority; or

(b) the district planning authority give notice to the county planning authority that they do not intend to make recommendations.

[

(3) In the case of an application for planning permission for public service infrastructure development, in paragraph (1) "21 days" is to be read as if it were a reference to "18 days".

][3]

Notes

1 Words substituted by Town and Country Planning (Development Management Procedure and Section 62A Applications) (England) (Amendment) Order 2021/746 Pt 2 art.11(2) (July 16, 2021: substitution has effect in relation to applications for planning permission made on or after August 1, 2021)

2 Sections 191 and 192 were substituted by section 10(1) of the Planning and Compensation Act 1991 (c. 34).

3 Possible drafting error - art.24(3) purportedly inserted but art.24(3) already exists and therefore is substituted by Town and Country Planning (Development Management Procedure and Section 62A Applications) (England) (Amendment)

Notes

Order 2021/746 Pt 2 art.11(3) (July 16, 2021: substitution has effect in relation to applications for planning permission made on or after August 1, 2021)

Part 4 Consultation > art. 24 Recommendations by district planning authority before determination of county matters application

art. 25 Representations by parish council before determination of application

Law In Force

Version 3 of 3

16 July 2021 - Present

Subjects
Planning

25.— Representations by parish council before determination of application

(1) [Subject to paragraph (5) where] [1] the council of a parish are given information in relation to an application pursuant to [paragraph 8(1) or paragraph 8(3B) of Schedule 1] [2] to the 1990 Act (local planning authorities: distribution of functions) [3], they must, as soon as practicable, notify the local planning authority who are determining the application whether they propose to make any representations about the manner in which the application should be determined, and must make any representations to that authority within 21 days of the notification to them of the application.

(2) A local planning authority must not determine any application in respect of which a parish are required to be given information before—

(a) the council of the parish inform them that they do not propose to make any representations;

(b) representations are made by that council; or

(c) the period of 21 days mentioned in paragraph (1) has elapsed,

whichever occurs first; and in determining the application the authority must take into account any representations received from the council of the parish.

(3) The appropriate authority must notify the council of the parish of—

(a) the terms of the decision on any such application; or

(b) where the application is referred to the Secretary of State—

(i) the date when it was so referred; and

(ii) when notified to the appropriate authority, the terms of the Secretary of State's decision.

(4) For the purposes of paragraph (3), the *"appropriate authority"* is—

(a) where the parish is situated in a National Park, the National Park authority;

(b) where the parish is situated in Greater London or a metropolitan county, and is not situated in a National Park, the local planning authority;

(c) where the parish is situated in a district which has no district council and is not situated in a National Park, the county planning authority;

(d) in any other case, the district planning authority.

[

(5) In the case of an application for planning permission for public service infrastructure development, in paragraph (1) and sub-paragraph (c) of paragraph (2) "21 days" is to be read as if it were a reference to "18 days".

][4]

Notes

1 Words inserted by Town and Country Planning (Development Management Procedure and Section 62A Applications) (England) (Amendment) Order 2021/746 Pt 2 art.12(2) (July 16, 2021: insertion has effect in relation to applications for planning permission made on or after August 1, 2021)

2 Words inserted by Neighbourhood Planning (General) and Development Management Procedure (Amendment) Regulations 2017/1243 reg.12(2) (January 31, 2018)

3 Paragraph 8(1) of Schedule 1 was substituted by paragraph 53 of Schedule 7 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to paragraph 8 which are not relevant to this Order.

4 Added by Town and Country Planning (Development Management Procedure and Section 62A Applications) (England) (Amendment) Order 2021/746 Pt 2 art.12(3) (July 16, 2021: insertion has effect in relation to applications for planning permission made on or after August 1, 2021)

art. 25A Representations by neighbourhood forum before determination of application

Law In Force

Version 3 of 3

16 July 2021 - Present

Subjects
Planning
[

25A.—

(1) Where a neighbourhood forum for a neighbourhood area are given information in relation to an application under paragraph 8A(1) or paragraph 8A(1B) of Schedule 1 to the 1990 Act (local planning authorities: distribution of functions)—

(a) subject to paragraph (2) the forum must, as soon as practicable, notify the local planning authority who are determining the application whether the forum proposes to make representations about the manner in which the application should be determined, and must make any representations to that authority within 21 days of the notification to the forum of the application; and

(b) article 25(2) to (4) applies in relation to any such application as if any reference to a council of a parish or to the parish (however expressed) were a reference to the neighbourhood forum or neighbourhood area, as appropriate.

(2) In the case of an application for public service infrastructure development, in paragraph (1), "21 days" is to be read as if it were a reference to "18 days".

][1]

Notes

1 Substituted by Town and Country Planning (Development Management Procedure and Section 62A Applications) (England) (Amendment) Order 2021/746 Pt 2 art.13 (July 16, 2021: substitution has effect in relation to applications for planning permission made on or after August 1, 2021)

art. 26 Notification of mineral applications

Law In Force

Version 2 of 2

1 October 2016 - Present

Subjects
Planning

26.— Notification of mineral applications

(1) Where notice has been given for the purposes of this article to a mineral planning authority as respects land which is in their area and it is specified in the notice—

(a) by the Coal Authority that the land contains coal,

(b) by the [Oil and Gas Authority] [1] that the land contains gas or oil, or

(c) by the Crown Estate Commissioners that the land contains silver or gold,

the mineral planning authority must not determine any application for planning permission to win and work any mineral on that land without first notifying the body or person who gave the notice that an application has been made.

(2) In paragraph (1)(a), *"coal"* means coal other than that—

(a) won or worked during the course of operations which are carried on exclusively for the purpose of exploring for coal; or

(b) which it is necessary to dig or carry away in the course of activities carried on for purposes which do not include the getting of coal or any product of coal.

Notes

1 Words substituted by Energy (Transfer of Functions, Consequential Amendments and Revocation) Regulations 2016/912 reg.26(2) (October 1, 2016)