

## SCHEDULES

### SCHEDULE 1

Section 6(2).

#### SCHEDULE TO BE INSERTED IN THE HOUSING ACT 1985

#### “SCHEDULE 3A

#### CONSULTATION BEFORE DISPOSAL TO PRIVATE SECTOR LANDLORD

##### *Disposals to which this Schedule applies*

- 1 (1) This Schedule applies to the disposal by a local authority of an interest in land as a result of which a secure tenant of the authority will become the tenant of a private sector landlord.
- (2) For the purposes of this Schedule the grant of 'an option which if exercised would result in a secure tenant of a local authority becoming the tenant of a private sector landlord shall be treated as a disposal of the interest which is the subject of the option.
- (3) Where a disposal of land by a local authority is in part a disposal to which this Schedule applies, the provisions of this Schedule apply to that part as to a separate disposal.
- (4) In this paragraph "private sector landlord" means a person other than an authority or body within section 80 (the landlord condition for secure tenancies).

##### *Application for Secretary of State's consent*

- 2 (1) The Secretary of State shall not entertain an application for his consent to a disposal to which this Schedule applies unless the authority certify either—
  - (a) that the requirements of paragraph 3 as to consultation have been complied with, or
  - (b) that the requirements of that paragraph as to consultation have been complied with except in relation to tenants expected to have vacated the dwelling-house in question before the disposal;and the certificate shall be accompanied by a copy of the notices given by the authority in accordance with that paragraph.
- (2) Where the certificate is in the latter form, the Secretary of State shall not determine the application until the authority certify as regards the tenants not originally consulted—
  - (a) that they have vacated the dwelling-house in question, or
  - (b) that the requirements of paragraph 3 as to consultation have been complied with ;and a certificate under sub-paragraph (b) shall be accompanied by a copy of the notices given by the authority in accordance with paragraph 3.

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- (3) References in this Schedule to the Secretary of State's consent to a disposal are to the consent required by section 32 or 43 (general requirement of consent for disposal of houses or land held for housing purposes).

*Requirements as to consultation*

- 3 (1) The requirements as to consultation referred to above are as follows.
- (2) The authority shall serve notice in writing on the tenant informing him of—
- (a) such details of their proposal as the authority consider appropriate, but including the identity of the person to whom the disposal is to be made,
  - (b) the likely consequences of the disposal for the tenant, and
  - (c) the effect of the provisions of this Schedule and of sections 171A to 171H (preservation of right to buy on disposal to private sector landlord),
- and informing him that he may, within such reasonable period as may be specified in the notice, make representations to the authority.
- (3) The authority shall consider any representations made to them within that period and shall serve a further written notice on the tenant informing him—
- (a) of any significant changes in their proposal, and
  - (b) that he may within such period as is specified (which must be at least 28 days after the service of the notice) communicate to the Secretary of State his objection to the proposal,
- and informing him of the effect of paragraph 5 (consent to be withheld if majority of tenants are opposed).

*Power to require further consultation*

- 4 The Secretary of State may require the authority to carry out such further consultation with their tenants, and to give him such information as to the results of that consultation, as he may direct.

*Consent to be withheld if majority of tenants are opposed*

- 5 (1) The Secretary of State shall not give his consent if it appears to him that a majority of the tenants of the dwelling-houses to which the application relates do not wish the disposal to proceed ; but this does not affect his general discretion to refuse consent on grounds relating to whether a disposal has the support of the tenants or on any other ground.
- (2) In making his decision the Secretary of State may have regard to any information available to him; and the local authority shall give him such information as to the representations made to them by tenants and others, and other relevant matters, as he may require.

*Protection of purchasers*

- 6 The Secretary of State's consent to a disposal is not invalidated by a failure on his part or that of the local authority to comply with the requirements of this Schedule.”

SCHEDULE 2

Section 8(2).

SCHEDULE TO BE INSERTED IN THE HOUSING ACT 1985

“SCHEDULE 9A

LAND REGISTRATION AND RELATED MATTERS WHERE RIGHT TO BUY PRESERVED

*Statement to be contained in instrument effecting qualifying disposal*

- 1 On a qualifying disposal, the disponor shall secure that the instrument effecting the disposal—
- (a) states that the disposal is, so far as it relates to dwelling-houses occupied by secure tenants, a disposal to which section 171A applies (preservation of right to buy on disposal to private landlord), and
  - (b) lists, to the best of the disponor's knowledge and belief, the dwelling-houses to which the disposal relates which are occupied by secure tenants.

*Registration of title on qualifying disposal*

- 2 (1) Where on a qualifying disposal the disponor's title to the dwelling-house is not registered, section 123 of the Land Registration Act 1925 (compulsory registration of title) applies—
- (a) whether or not the dwelling-house is in an area in which an Order in Council under section 120 of that Act (areas of compulsory registration) is in force, and
  - (b) whether or not, where the disposal takes the form of the grant or assignment of a lease, the lease is granted for a term of more than 21 years or, as the case may be, is a lease for a term of which more than 21 years are unexpired.
- (2) In such a case the disponor shall give the disponent a certificate stating that the disponor is entitled to effect the disposal subject only to such incumbrances, rights and interests as are stated in the instrument effecting the disposal or summarised in the certificate.
- (3) Where the disponor's interest in the dwelling-house is a lease, the certificate shall also state particulars of the lease and, with respect to each superior title—
- (a) where it is registered, the title number ;
  - (b) where it is not registered, whether it was investigated in the usual way on the grant of the disponor's lease.
- (4) The certificate shall be—
- (a) in a form approved by the Chief Land Registrar, and
  - (b) signed by such officer of the disponor or such other person as may be approved by the Chief Land Registrar,
- and the Chief Registrar shall, for the purpose of registration of title, accept the certificate as sufficient evidence of the facts stated in it.
- 3 Where a qualifying disposal takes the form of the grant or assignment of a lease, sections 8 and 22 of the Land Registration Act 1925 (application for registration of leasehold land and registration of dispositions of leasehold) apply notwithstanding that it is a lease for a term of which not more than 21 years are unexpired or, as the case may be, a lease granted for a term not exceeding 21 years; and accordingly section 70(1)(k) of that Act (leases which are overriding interests) does not apply.

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*Entries on register protecting preserved right to buy*

- 4 The Chief Land Registrar on application being made for registration of a disposition of registered land or, as the case may be, of the donee's title under a disposition of unregistered land, shall, if the instrument effecting the disposal contains the statement required by paragraph 1, enter in the register—
- (a) a notice protecting the rights of qualifying persons under this Part in relation to dwelling-houses comprised in the disposal, and
  - (b) a restriction stating the requirement of consent under section 171D(2) for certain subsequent disposals of the landlord's interest.

*Change of qualifying dwelling-house*

- 5 (1) This paragraph applies where by virtue of section 171B(6) a new dwelling-house becomes the qualifying dwelling-house which—
- (a) is entirely different from the previous qualifying dwelling house, or
  - (b) includes new land,
- and applies to the new dwelling-house or the new land, as the case may be.
- (2) If the landlord's title is registered, the landlord shall apply for the entry on the register of—
- (a) a notice protecting the rights of the qualifying person or persons under the provisions of this Part, and
  - (b) a restriction stating the requirement of consent under section 171D(2) for certain disposals of the landlord's interest.
- (3) A qualifying person may apply for the entry of such a notice and restriction and section 64(1) of the Land Registration Act 1925 (production of land certificate) does not apply to the entry of a notice or restriction on such an application; but without prejudice to the power of the Chief Land Registrar to call for the production of the certificate by the landlord.
- (4) If the landlord's title is not registered, the rights of the qualifying person or persons under the provisions of this Part are registrable under the Land Charges Act 1972 in the same way as an estate contract and the landlord shall, and a qualifying person may, apply for such registration.

*Effect of non-registration*

- 6 (1) The rights of a qualifying person under this Part in relation to the qualifying dwelling-house—
- (a) shall be treated as interests to which sections 20 and 23 of the Land Registration Act 1925 apply (under which the transferee or grantee under a registered disposition takes free from estates and interests which are not protected on the register and are not overriding interests), and
  - (b) shall not be treated as overriding interests for the purposes of that Act, notwithstanding that the qualifying person is in actual occupation of the land.
- (2) Where by virtue of paragraph 5(4) the rights of a qualifying person under this Part in relation to the qualifying dwelling-house are registrable under the Land Charges Act 1972 in the same way as an estate contract, section 4(6) of that Act (under which such a contract may be void against a purchaser unless registered) applies accordingly, with

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the substitution for the reference to the contract being void of a reference to the right to buy ceasing to be preserved.

*Statement required on certain disposals on which right to buy ceases to be preserved*

- 7 (1) A conveyance of the freehold or grant of a lease of the qualifying dwelling-house to a qualifying person in pursuance of the right to buy shall state that it is made in pursuance of the provisions of this Part as they apply by virtue of section 171A (preservation of the right to buy).
- (2) Where on a conveyance of the freehold or grant of a lease of the qualifying dwelling-house to a qualifying person otherwise than in pursuance of the right to buy the dwelling-house ceases to be subject to any rights arising under this Part, the conveyance or grant shall contain a statement to that effect.
- (3) Where on a disposal of an interest in a qualifying dwelling-house the dwelling-house ceases to be subject to the rights of a qualifying person under this Part by virtue of section 171D(1)(a) or 171E(2)(a) (qualifying person becoming tenant of authority or body satisfying landlord condition for secure tenancies), the instrument by which the disposal is effected shall state that the dwelling-house ceases as a result of the disposal to be subject to any rights arising by virtue of section 171A (preservation of the right to buy).

*Removal of entries on land register*

- 8 Where the registered title to land contains an entry made by virtue of this Schedule, the Chief Land Registrar shall, for the purpose of removing or amending the entry, accept as sufficient evidence of the facts stated in it a certificate by the registered proprietor that the whole or a specified part of the land is not subject to any rights of a qualifying person under this Part.

*Liability to compensate or indemnity*

- 9 (1) An action for breach of statutory duty lies where—
- (a) the disponent on a qualifying disposal fails to comply with paragraph 1 (duty to secure inclusion of statement in instrument effecting disposal), or
  - (b) the landlord on a change of the qualifying dwelling-house fails to comply with paragraph 5(2) or (4) (duty to apply for registration protecting preserved right to buy),
- and a qualifying person is deprived of the preserved right to buy by reason of the non-registration of the matters which would have been registered if that duty had been complied with.
- (2) If the Chief Land Registrar has to meet a claim under the Land Registration Acts 1925 to 1986 as a result of acting upon—
- (a) a certificate given in pursuance of paragraph 2 (certificate of title on first registration),
  - (b) a statement made in pursuance of paragraph 7 (statements required on disposal on which right to buy ceases to be preserved), or
  - (c) a certificate given in pursuance of paragraph 8 (certificate that dwelling-house has ceased to be subject to rights under this Part),
- the person who gave the certificate or made the statement shall indemnify him.

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*Meaning of "disposal" and "instrument effecting disposal"*

- 10 References in this Schedule to a disposal or to the instrument effecting a disposal are to the conveyance, transfer, grant or assignment, as the case may be.”

SCHEDULE 3

Section 15.

COMMON PARTS GRANTS

**PART I**

AMENDMENTS OF PART XV OF THE HOUSING ACT 1985

- 1 (1) Section 460 of the Housing Act 1985 (general description of main grants) is amended as follows.
- (2) In subsection (1) omit the word " and " after the reference to special grants and after the reference to repairs grants insert " common parts grants (sections 498A to 498G)".
- (3) In subsection (2) for paragraphs (b) and (c) substitute—
- “(b) the improvement or repair of dwellings,  
 (c) the improvement or repair of the common parts of a building including one or more flats, and”.
- 2 In section 462(1) of the Housing Act 1985 (preliminary condition for grants: the age of the property), after paragraph (b) insert “, or
- (c) a common parts grant in respect of a building which was erected after 2nd October 1961”.
- 3 In section 463(1) of the Housing Act 1985 (preliminary condition for eligibility for grant: the interest of the applicant in the property) for " may entertain an application for a grant only if" substitute " shall not entertain an application for a grant, other than an application for a common parts grant, unless ".
- 4 After section 464 of the Housing Act 1985 insert—

**“464A Preliminary conditions for application for common parts grant.**

- (1) A local housing authority shall not entertain an application for a common parts grant unless they are satisfied as regards the relevant works that the applicant either—
- (a) has a duty to carry them out, or
- (b) has power to carry them out and has a qualifying interest in the building or in a dwelling in the building,
- and that, at the date of the application, at least the required proportion of the dwellings in the building is occupied by tenants.
- (2) The following are qualifying interests for the purposes of subsection (1)(b)—
- (a) an estate in fee simple absolute in possession ;
- (b) a term of years absolute of which not less than five years remains unexpired at the date of the application ;

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- (c) a tenancy to which section 1 of the Landlord and Tenant Act 1954 applies (long tenancies at low rents);
  - (d) a protected tenancy, a secure tenancy, a protected occupancy or a statutory tenancy ;
  - (e) a tenancy which satisfies such conditions as may be prescribed by order of the Secretary of State.
- (3) The required proportion mentioned in subsection (1) is three-quarters or such other proportion as may be—
- (a) prescribed for the purposes of this section by order of the Secretary of State, or
  - (b) approved by him, in relation to a particular case or description of case, on application by the local housing authority;
- and " tenant" for the purposes of that requirement means a person who has an interest within any of paragraphs (b) to (e) of subsection (2) by virtue of which he occupies a dwelling in the building as his only or main residence.
- (4) An order under this section—
- (a) may make different provision with respect to different cases or descriptions of case, including different provision for different areas, and
  - (b) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) This section has effect subject to section 513 (parsonages, applications by charities, &c.).”
- 5 In section 466(1) of the Housing Act 1985 (grants requiring consent of the Secretary of State) for " or intermediate grant" substitute " , intermediate grant or common parts grant ".
- 6 After section 498 of the Housing Act 1985 insert—

*“Common parts grant*

**498A Works for which common parts grants may be given.**

- (1) The works for which a common parts grant may be given are works required for the improvement or repair of the common parts of a building in which there are one or more flats, other than works for the provision of a dwelling.
- (2) For this purpose—
  - (a) " flat" means a dwelling which is a separate set of premises, whether or not on the same floor, divided horizontally from some other part of the building, and
  - (b) " common parts " includes the structure and exterior of the building and common facilities provided, whether in the building or elsewhere, for persons who include the occupiers of one or more dwellings in the building.

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#### **498B Standard of repair to be attained.**

- (1) The local housing authority shall not, without the consent of the Secretary of State, approve an application for a common parts grant in respect of a building unless they are satisfied that on completion of the relevant works the common parts of the building will be in reasonable repair.
- (2) The Secretary of State's consent to the approval of applications where that standard will not be attained may be given in particular cases or in relation to descriptions of case.
- (3) If in the opinion of the authority the relevant works are more extensive than is necessary for the purpose of securing that the common parts of the building will attain that standard, the authority may, with the consent of the applicant, treat the application as varied so that the relevant works include only such works as seem to the authority necessary for that purpose; and they may then approve the application as so varied.

#### **498C Rateable value limit.**

- (1) The local housing authority shall not approve an application for a common parts grant in respect of a building if, on the date of the application, the average rateable value of the dwellings in the building exceeds the limit specified for the purposes of this section by order of the Secretary of State.
- (2) The consent of the Treasury is required for the making of an order.
- (3) An order—
  - (a) may make different provision with respect to different cases or descriptions of case, including different provision for different areas, and
  - (b) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) For the purposes of this section—
  - (a) where a dwelling is a hereditament for which a rateable value is shown in the valuation list, the rateable value is the value shown ;
  - (b) where a dwelling forms part only of such a hereditament, or consists of or forms part of more than one such hereditament, the rateable value is such value as the local housing authority, after consultation with the applicant as to an appropriate apportionment or aggregation, shall determine.
- (5) This section does not apply to buildings in housing action areas.

#### **498D Common parts grants are discretionary.**

- (1) A local housing authority may approve an application for a common parts grant in such circumstances as they think fit.
- (2) Subsection (1) has effect subject to the following provisions (which restrict the cases in which applications may be approved)—



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section 465 (works already begun),  
section 466 (cases in which consent of Secretary of State is required),  
section 498B (standard of repair to be attained), and  
section 498C (rateable value limit).

**498E Common parts grants: estimated expense of works.**

- (1) Where a local housing authority approve an application for a common parts grant, they shall determine the amount of the expenses which in their opinion are proper to be incurred for the execution of the relevant works and shall notify the applicant of that amount.
- (2) If, after an application for a grant has been approved, the authority are satisfied that owing to circumstances beyond the control of the applicant the relevant works will not be carried out on the basis of the estimate contained in the application, they may, on receiving a further estimate, redetermine the estimated expense in relation to the grant.
- (3) If the applicant satisfies the authority that—
  - (a) the relevant works cannot be, or could not have been, carried out without carrying out additional works, and
  - (b) this could not have been reasonably foreseen at the time the application was made,the authority may determine a higher amount under subsection (1).

**498F Common parts grant: limit on expense eligible for grant.**

- (1) Except in a case or description of case in respect of which the Secretary of State approves a higher eligible expense, the eligible expense for the purposes of a common parts grant is so much of the estimated expense as does not exceed the prescribed amount.
- (2) In subsection (1) " the prescribed amount" means an amount prescribed, or ascertained in a manner prescribed, by order of the Secretary of State.
- (3) An order—
  - (a) may make different provision with respect to different cases or descriptions of case, including different provision for different areas, and
  - (b) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the House of Commons.

**498G Common parts grants: determination of amount.**

- (1) The amount of a common parts grant shall be fixed by the local housing authority when they approve the application, and shall not exceed the appropriate percentage of the eligible expense.
- (2) The authority shall notify the applicant of the amount of the grant together with the notification under section 498E(1) (notification of estimated expense of relevant works).

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- (3) Where the authority redetermine the amount of the estimated expense under section 498E(2) (new estimate where works cannot be carried out in accordance with original estimate), they shall make such other adjustments relating to the amount of the grant as appear to them to be appropriate; but the amount of the grant shall not be increased beyond the amount which could have been notified when the application was approved if the estimate contained in the application had been of the same amount as the further estimate.
- (4) Where the authority redetermine the amount of the estimated expense under section 498E(3) (redetermination where additional works prove necessary), the eligible expense under section 498F shall be recalculated and if on the recalculation the amount of the eligible expense is greater than it was at the time when the application was approved, the amount of the grant shall be increased and the applicant notified accordingly.”.
- 7 In section 499(3) of the Housing Act 1985 for " this Part" substitute " the following provisions of this Part down to section 507 ".
- 8 In section 511 of the Housing Act 1985 (payment of grants: general), in subsection (3)(b) for " or repairs grant " substitute " , repairs grant or common parts grant ".
- 9 In section 513 of the Housing Act 1985 (special cases: parsonages, applications by charities, &c), in subsection (2) (provisions disapplied) after the reference to section 464 omit the word " and " and insert—
- “so much of section 464A(1)(b) (preliminary conditions for application for common parts grant) as requires the applicant to have a qualifying interest in the premises, and”.
- 10 (1) Section 514 of the Housing Act 1985 (power of local housing authority to carry out works with agreement of person by whom application for grant might be made) is amended as follows.
- (2) For subsection (2) (definition of "requisite interest") substitute—
- “(2) The reference in subsection (1) to a person having the requisite interest is, except in the case of a common parts grant, to a person who has an owner's interest in every parcel of land on which the relevant works are to be carried out; and in this subsection " owner's interest" has the same meaning as in section 463(1)(fl).
- (2A) The reference in subsection (1) to a person having the requisite interest is in the case of a common parts grant to a person who as regards the relevant works either—
- (a) has a duty to carry them out, or
- (b) has power to carry them out and has a qualifying interest in the building or in a dwelling in the building;
- and in this subsection ' qualifying interest' has the same meaning as in section 464A(1)(b).”.
- 11 In section 515 of the Housing Act 1985, for subsections (2) and (3) (effect on grant of disposal by applicant of his interest in the property) substitute—

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- “(2) Where an application for a grant is approved but before the certified date the applicant ceases to be a person entitled to apply for a grant of that description—
- (a) in the case of an improvement grant, intermediate grant, special grant or repairs grant, no grant shall be paid or, as the case may be, no further instalments shall be paid, and
  - (b) in the case of a common parts grant, the local housing authority may refuse to pay the grant or any further instalment,
- and the authority may demand that any instalment of the grant which has been paid be repaid forthwith, together with interest from the date on which it was paid until repayment at such reasonable rate as the authority may determine.
- (3) In subsection (2) 'the certified date' means the date certified by the local housing authority as the date on which the dwelling, house or, as the case may be, the common parts of the building, first become fit for occupation or use after the completion of the relevant works to the satisfaction of the authority.
- (4) For the purposes of subsection (2) an applicant ceases to be a person entitled to apply for a grant, other than a common parts grant, if he—
- (a) ceases to have an owner's interest in every parcel of land on which the relevant works are to be or have been carried out, or
  - (b) ceases to be a tenant of the dwelling ;
- and in this subsection 'owner's interest' and 'tenant' have the same meaning as in section 463(1)(a) and (b).
- (5) For the purposes of subsection (2) an applicant ceases to be a person entitled to apply for a common parts grant if he—
- (a) ceases to have a duty to carry out the relevant works, or
  - (b) ceases to have power to carry them out or to have a qualifying interest in the building or in a dwelling in the building ;
- and in this subsection 'qualifying interest' has the same meaning as in section 464A(1)(b).”.

12 In section 518 of the Housing Act 1985 (meaning of " dwelling for a disabled occupant" and related expressions), for subsection (3) substitute—

- “(3) In this Part 'improvement'—
- (a) in relation to a dwelling for a disabled occupant, includes the doing of works required for making the dwelling suitable for his accommodation, welfare or employment, and
  - (b) in relation to the common parts of a building which includes such a dwelling, includes the doing of works required for making the common parts suitable for use by a disabled occupant of a dwelling.”.

13 Renumber section 519 of the Housing Act 1985 (meaning of "reasonable repair") as subsection (1) of that section and after it insert—

- “(2) In determining what is ' reasonable repair' in relation to the common parts of a building, a local housing authority shall have regard to—

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- (a) the age and character of the building and the locality in which it is situated, and
  - (b) the character of the dwellings in the building and the period during which they are likely to be available for use as dwellings,
- and shall disregard the state of internal decorative repair of the building and the dwellings in it.”.

14 (1) Section 526 of the Housing Act 1985 (the index to Part XV) is amended as follows.

(2) At the appropriate places insert—

“common parts (for the purposes of common parts grant)	section 498A(2)(b)”
“common parts grant	sections 460 and 498A”
“flat (for the purposes of common parts grant)	Section 49A(2)(a)”.

(3) In the second column of the entry relating to the expression "eligible expense" for "and 497" substitute " , 497 and 498F ".

## PART II

### AMENDMENTS OF OTHER ENACTMENTS

- 15 In section 116 of the Rent Act 1977 (consent of tenant to carrying out of works), in subsection (3) (cases in which county court may empower landlord to enter in absence of consent), for "improvement or intermediate grant" substitute " improvement grant, intermediate grant or common parts grant ".
- 16 (1) Part IV of the Housing Act 1985 (secure tenancies and rights of secure tenants) is amended as follows.
- (2) In section 100 (power to reimburse cost of improvements carried out by tenant), in subsection (2) (cost to be net of grant), for " or repairs grant" substitute " , repairs grant or common parts grant ".
- (3) In section 101 (rent not to be increased on account of improvements carried out by tenant), in the second part of subsection (1) (application of provision where improvement grant-aided), for " or repairs grant" substitute " , repairs grant or common parts grant ".
- 17 In section 244 of the Housing Act 1985 (powers of local housing authority with respect to environmental works in housing action area), in subsection (3) (no assistance for grant-aided works), for " or repairs grant" substitute " , repairs grant or common parts grant ".
- 18 In section 255 of the Housing Act 1985 (powers of local housing authority in general improvement area), in subsection (2) (b) (no assistance for grant-aided works) for " or repairs grant" substitute " , repairs grant or common parts grant ".
- 19 In section 535 of the Housing Act 1985 (exclusion of assistance under Part XVI (defective housing) where grant application pending under Part XV), in

subsection (1)(a) for " or repairs grant" substitute, " repairs grant or common parts grant ".

## SCHEDULE 4

Section 18.

### FURTHER PROVISIONS WITH RESPECT TO SHARED OWNERSHIP LEASES

#### *The Rent Act 1977 (c.42)*

- 1 (1) Part I of the Rent Act 1977 (preliminary provisions) is amended as follows.
- (2) After section 5 insert—

#### **“5A Certain shared ownership leases.**

- (1) A tenancy is not a protected tenancy if it is a qualifying shared ownership lease, that is—
  - (a) a lease granted in pursuance of the right to be granted a shared ownership lease under Part V of the Housing Act 1985, or
  - (b) a lease granted by a housing association and which complies with the conditions set out in subsection (2) below.
- (2) The conditions referred to in subsection (1)(b) above are that the lease—
  - (a) was granted for a term of 99 years or more and is not (and cannot become) terminable except in pursuance of a provision for re-entry or forfeiture ;
  - (b) was granted at a premium, calculated by reference to the value of the dwelling-house or the cost of providing it, of not less than 25 per cent., or such other percentage as may be prescribed, of the figure by reference to which it was calculated;
  - (c) provides for the tenant to acquire additional shares in the dwelling-house on terms specified in the lease and complying with such requirements as may be prescribed ;
  - (d) does not restrict the tenant's powers to assign, mortgage or charge his interest in the dwelling-house ;
  - (e) if it enables the landlord to require payment for outstanding shares in the dwelling-house, does so only in such circumstances as may be prescribed ;
  - (f) provides, in the case of a house, for the tenant to acquire the landlord's interest on terms specified in the lease and complying with such requirements as may be prescribed ; and
  - (g) states the landlord's opinion that by virtue of this section the lease is excluded from the operation of this Act.
- (3) The Secretary of State may by regulations prescribe anything requiring to be prescribed for the purposes of subsection (2) above.
- (4) The regulations may—
  - (a) make different provision for different cases or descriptions of case, including different provision for different areas, and

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- (b) contain such incidental, supplementary or transitional provisions as the Secretary of State considers appropriate, and shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) In any proceedings the court may, if of opinion that it is just and equitable to do so, treat a lease as a qualifying shared ownership lease notwithstanding that the condition specified in subsection (2)(g) above is not satisfied.
- (6) In this section—
- "house" has the same meaning as in Part I of the Leasehold Reform Act 1967 ;
- "housing association" has the same meaning as in the Housing Associations Act 1985 ; and
- "lease" includes an agreement for a lease, and references to the grant of a lease shall be construed accordingly.”
- (3) In section 19(5) (contracts which are not restricted contracts), after paragraph (c) insert—
- “(cc) it creates a qualifying shared ownership lease within the meaning of section 5A of this Act; or”.

*The Rent (Agriculture) Act 1976 (c.80)*

- 2 In Schedule 2 to the Rent (Agriculture) Act 1976 (licences and tenancies giving rise to protected occupancy), in paragraph 3 (adaptation of provisions of Rent Act 1977 as they apply for the purposes of the 1976 Act), after sub-paragraph (2) insert—
- “(2A) In section 5A (exclusion of certain shared ownership leases), in subsection (2)(g) (condition that lease states landlord's opinion that 1977 Act does not apply) for the reference to the 1977 Act substitute a reference to this Act.”.

*Part I of the Leasehold Reform Act 1967 (c.88)*

- 3 In section 1 of the Leasehold Reform Act 1967 (tenants entitled to enfranchisement or extension), after subsection (1) insert—
- “(1A) The references in subsection (1)(a) and (b) to a long tenancy at a low rent do not include a tenancy excluded from the operation of this Part by section 33A of and Schedule 4A to this Act”.
- 4 In section 3(2) of the Leasehold Reform Act 1967 after " long tenancy at a low rent" insert " (other than a lease excluded from the operation of this Part by section 33A of and Schedule 4A to this Act) ".
- 5 After section 33 of the Leasehold Reform Act 1967 insert—
- “33A Exclusion of certain shared! ownership leases.**
- The provisions of Schedule 4A to this Act shall have effect to exclude certain shared ownership leases from the operation of this Part of this Act”.
- 6 After Schedule 4 to the Leasehold Reform Act 1967 insert—

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*Status: This is the original version (as it was originally enacted).*

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“SCHEDULE  
4A

EXCLUSION OF CERTAIN SHARED OWNERSHIP LEASES

*Leases granted in pursuance of right to be granted a shared ownership lease*

- 1 A lease granted in pursuance of the right to be granted a shared ownership lease under Part V of the Housing Act 1985 is excluded from the operation of this Part of this Act.

*Certain leases granted by certain public authorities*

- 2 (1) A lease which—
- (a) was granted at a premium by a body mentioned in subparagraph (2), and
  - (b) complies with the conditions set out in sub-paragraph (3),
- is excluded from the operation of this Part at any time when the interest of the landlord belongs to such a body.
- (2) The bodies are—
- (a) a county, district or London borough council, the Common Council of the City of London or the Council of the Isles of Scilly ;
  - (b) the Inner London Education Authority or a joint authority established by Part IV of the Local Government Act 1985 ;
  - (c) the Commission for the New Towns or a development corporation established by an order made, or having effect as made, under the New Towns Act 1981 ;
  - (d) an urban development corporation within the meaning of Part XVI of the Local Government, Planning and Land Act 1980;
  - (e) the Development Board for Rural Wales ;
- (3) The conditions are that the lease—
- (a) provides for the tenant to acquire the freehold for a consideration which is to be calculated in accordance with the lease and which is reasonable, having regard to the premium or premiums paid by the tenant under the lease, and
  - (b) states the landlord's opinion that by virtue of this paragraph the tenancy will be excluded from the operation of this Part of this Act at any time when the interest of the landlord belongs to a body mentioned in subparagraph (2) above.
- (4) If, in proceedings in which it falls to be determined whether a lease complies with the condition in sub-paragraph (3)(a), the question arises whether the consideration payable by the tenant on acquiring the freehold is reasonable, it is for the landlord to show that it is.

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*Status: This is the original version (as it was originally enacted).*

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*Certain leases granted by housing associations*

- 3 (1) A lease granted by a housing association and which complies with the conditions set out in sub-paragraph (2) is excluded from the operation of this Part of this Act, whether or not the interest of the landlord still belongs to such an association.
- (2) The conditions are that the lease—
- (a) was granted for a term of 99 years or more and is not (and cannot become) terminable except in pursuance of a provision for re-entry or forfeiture ;
  - (b) was granted at a premium, calculated by reference to the value of the house or the cost of providing it, of not less than 25 per cent, or such other percentage as may be prescribed, of the figure by reference to which it was calculated ;
  - (c) provides for the tenant to acquire additional shares in the house on terms specified in the lease and complying with such requirements as may be prescribed ;
  - (d) does not restrict the tenant's powers to assign, mortgage or charge his interest in the house ;
  - (e) if it enables the landlord to require payment for outstanding shares in the house, does so only in such circumstances as may be prescribed ;
  - (f) provides for the tenant to acquire the landlord's interest on terms specified in the lease and complying with such requirements as may be prescribed ; and
  - (g) states the landlord's opinion that by virtue of this paragraph the lease is excluded from the operation of this Part of this Act.
- (3) In any proceedings the court may, if of the opinion that it is just and equitable to do so, treat a lease as satisfying the conditions in sub-paragraph (2) notwithstanding that the condition specified in paragraph (g) of that sub-paragraph is not satisfied.
- (4) In this paragraph " housing association " has the same meaning as in the Housing Associations Act 1985.
- 4 (1) A lease for the elderly granted by a registered housing association and which complies with the conditions set out in sub-paragraph (2) is excluded from the operation of this Part of this Act at any time when the interest of the landlord belongs to such an association.
- (2) The conditions are that the lease—
- (a) is granted at a premium which is calculated by reference to a percentage of the value of the house or of the cost of providing it,
  - (b) complies, at the time when it is granted, with such requirements as may be prescribed, and
  - (c) states the landlord's opinion that by virtue of this paragraph the lease will be excluded from the operation of this Part of this Act at any time when the interest of the landlord belongs to a registered housing association.



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*Status: This is the original version (as it was originally enacted).*

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(3) In this paragraph—

" lease for the elderly " has such meaning as may be prescribed ; and

" registered housing association " has the same meaning as in the Housing Associations Act 1985.

*Power to prescribe matters by regulations*

5 (1) The Secretary of State may by regulations prescribe anything requiring to be prescribed for the purposes of this Schedule.

(2) The regulations may—

(a) make different provision for different cases or descriptions of case, including different provision for different areas, and

(b) contain such incidental, supplementary or transitional provisions as the Secretary of State considers appropriate,

and shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

*Interpretation*

6 In this Schedule " lease " means a lease at law or in equity, and references to the grant of a lease shall be construed accordingly.”.

*Consequential amendments and repeals*

7 In the Housing Act 1980, omit section 140.

8 In the Local Government, Planning and Land Act 1980, omit section 156(3).

9 (1) The Local Government Act 1985 is amended as follows.

(2) In Schedule 13 (application of local authority provisions to residuary bodies), in paragraph 14, after sub-paragraph (a) insert—

“(aa) paragraph 2 of Schedule 4A to the Leasehold Reform Act 1967 ;”  
and at the end of sub-paragraph (b) insert " and " and omit subparagraph (d) and the word " and " preceding it.

(3) In Schedule 14, omit paragraph 58(e).

10 In Part IV of the Housing Act 1985 (secure tenancies), in section 115 (meaning of "long tenancy"), in subsection (2)(c) after " 1980 " insert " or paragraph 3(2)(b) of Schedule 4A to the Leasehold Reform Act 1967 ".

*Transitional provisions and savings*

11 (1) The amendments made by this Schedule apply only in relation to leases granted after the commencement of this Schedule.

(2) This Schedule does not affect the operation of section 140 of the Housing Act 1980, the enactments applying that section and regulations made under it, in relation to leases granted before the commencement of this Schedule.

SCHEDULE 5

Section 24(1), (2).

HOUSING : MINOR AND CONSEQUENTIAL AMENDMENTS

**PART I**

MINOR AMENDMENTS

*Effect of covenant for repayment of discount*

- 1 (1) In section 36 of the Housing Act 1985 (charge to secure repayment of discount given on voluntary disposal), after subsection (3) insert—
- “(3A) The covenant required by section 35 (covenant for repayment of discount) does not, by virtue of its binding successors in tide of the purchaser, bind a person exercising rights under a charge having priority over the charge taking effect by virtue of this section, or a person deriving title under him ; and a provision of the conveyance, grant or assignment, or of a collateral agreement, is void in so far as it purports to authorise a forfeiture, or to impose a penalty or disability, in the event of any such person failing to comply with the covenant.”.
- (2) In section 156 of the Housing Act 1985 (charge to secure repayment of discount given on exercise of right to buy), after subsection (3) insert—
- “(3A) The covenant required by section 155 (covenant for repayment of discount) does not, by virtue of its binding successors in title of the tenant, bind a person exercising rights under a charge having priority over the charge taking effect by virtue of this section, or a person deriving tide under him ; and a provision of the conveyance or grant, or of a collateral agreement, is void in so far as it purports to authorise a forfeiture, or to impose a penalty or disability, in the event of any such person failing to comply with that covenant.”.
- (3) In section 158 of the Housing Act 1985 (consideration for reconveyance or surrender of dwelling-house in National Park, etc. acquired in pursuance of right to buy) in subsection (3) (reduction of consideration where discount to be repaid or outstanding share to be paid for) after " shall be reduced " insert " , subject to subsection (4), " , and after that subsection insert—
- “(4) Where there is a charge on the dwelling-house having priority over the charge to secure payment of the sum due under the covenant mentioned in subsection (2), the consideration shall not be reduced under subsection (3) below the amount necessary to discharge the outstanding sum secured by the first-mentioned charge at the date of the offer to reconvey or surrender.”.
- (4) In paragraph 2 of Schedule 2 to the Housing Associations Act 1985 (charge to secure repayment of discount given on voluntary disposal by housing association), after sub-paragraph (3) insert—
- “(3A) The covenant required by paragraph 1 (covenant for repayment of discount) does not, by virtue of its binding successors in title of the purchaser, bind a person exercising rights under a charge having priority over the charge taking effect by virtue of this paragraph, or a person

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deriving title under him; and a provision of the conveyance, grant or assignment, or of a collateral agreement, is void in so far as it purports to authorise a forfeiture, or to impose a penalty or disability, in the event of any such person failing to comply with that covenant.”.

- (5) The above amendments apply to covenants entered into before as well as after the commencement of this paragraph.

*Acquisition of dwelling-house subject to statutory tenancy*

- 2 In Part IV of the Housing Act 1985 (secure tenancies), before section 110 under the heading "Supplementary provisions" insert—

**“109A Acquisition of dwelling-house subject to statutory tenancy.**

Where an authority or body within section 80 (the landlord condition for secure tenancies) becomes the landlord of a dwelling-house subject to a statutory tenancy, the tenancy shall be treated for all purposes as if it were a contractual tenancy on the same terms, and the provisions of this Part apply accordingly.”.

*Landlord's notice to mention any structural defect*

- 3 In section 125 of the Housing Act 1985 (exercise of right to buy: landlord's notice of purchase price and certain other matters), after subsection (4) insert—

“(4A) The notice shall contain a description of any structural defect known to the landlord affecting the dwelling-house or the building in which it is situated or any other building over which the tenant will have rights under the conveyance or lease.”.

*Re-service of notices, etc. on change of landlord in course of exercise of right to buy*

- 4 (1) Section 137 of the Housing Act 1985 (change of landlord after notice claiming right to buy or right to a mortgage) is amended as follows.

- (2) Make the existing provision subsection (1) and in it after " all parties shall" insert " , subject to subsection (2), ".

- (3) After that subsection insert—

“(2) If the circumstances after the disposal differ in any material respect, as for example where—

- (a) the interest of the donee in the dwelling-house after the disposal differs from that of the donor before the disposal, or
- (b) the right to a mortgage becomes exercisable against the Housing Corporation rather than the landlord, or vice versa, or
- (c) any of the provisions of Schedule 5 (exceptions to the right to buy) becomes or ceases to be applicable,

all those concerned shall, as soon as practicable after the disposal, take all such steps (whether by way of amending or withdrawing and re-serving any notice or extending any period or otherwise) as may be requisite for the purpose of securing that all parties are, as nearly as may be, in the same

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position as they would have been if those circumstances had obtained before the disposal.”.

*Deferment of completion in pursuance of right to buy*

- 5 (1) In sections 140(3)(c) and 152(3) of the Housing Act 1985 (period before notice to complete can be served where tenant entitled to defer completion) for " two years" substitute " three years ".
- (2) In sections 142(1)(c), (2) and (5) and 151(3) of that Act for " £100 " (the amount which the tenant must deposit in order to be entitled to defer completion) substitute " £150 ".
- (3) The above amendments apply where notice under section 142(1) of that Act claiming to be entitled to defer completion is served after the commencement of this paragraph.
- (4) The above amendments to sections 140(3)(c), 142(5), 151(3) and 152(3) also apply where notice under section 142(1) of that Act claiming to be entitled to defer completion was served before the commencement of this paragraph if the tenant—
- (a) serves a further notice on the landlord claiming the benefit of the longer period, and
  - (b) at the same time deposits with the landlord an additional £50;
- and section 142(5) applies to the sum so deposited as if it had been deposited in pursuance of a notice under that section.
- (5) No such further notice may be served if the landlord has already served a notice under section 140 or 152 of the Housing Act 1985 (landlord's first notice to complete).
- (6) The following provisions of the Housing Act 1985 apply, as to provisions of Part V of that Act, to the provisions of this paragraph relating to a further notice or deposit—
- section 170 (assistance in connection with legal proceedings),
  - section 176 (form and service of notices),
  - section 177 (errors and omissions in notices),
  - section 180 (statutory declarations),
  - section 181 (jurisdiction of county court).

*Penalty for voting on certain housing matters*

- 6 (1) In section 618(4) of the Housing Act 1985 (penalty for member of Common Council or committee voting on housing matter relating to land in which he is interested), for "level 2 on the standard scale " substitute " level 4 on the standard scale ".
- (2) The above amendment does not apply to offences committed before the commencement of this paragraph.

*Grounds for withholding consent to assignment of secure tenancy*

- 7 In Schedule 3 to the Housing Act 1985 (grounds for withholding consent to assignment by way of exchange), after Ground 9 add—

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*“Ground 10*

The dwelling-house is the subject of a management agreement under which the manager is a housing association of which at least half the members are tenants of dwelling-houses subject to the agreement, at least half the tenants of the dwelling-houses are members of the association and the proposed assignee is not, and is not willing to become, a member of the association.”.

*Grants for affording tax relief to housing associations*

- 8 (1) In section 62 of the Housing Associations Act 1985 (grants for affording relief from tax), after subsection (1) insert—
- “(1A) In subsection (1)(a) 'letting' includes—
- (a) in England and Wales, the grant of a shared ownership lease ;
  - (b) in Scotland, disposal under a shared ownership agreement.”.

(2) In section 73 of the Housing Associations Act 1985 (the index to Part II), at the appropriate place insert—

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“shared ownership agreement (in Scotland) section 106.”

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*Service charges in respect of the cost of grant-aided works*

- 9 (1) In the Landlord and Tenant Act 1985, after section 20 insert—
- “20A Limitation of service charges: grant-aided works.**
- Where relevant costs are incurred or to be incurred on the carrying out of works in respect of which a grant has been or is to be paid under Part XV of the Housing Act 1985 (grants for works of improvement, repair or conversion), the amount of the grant shall be deducted from the costs and the amount of the service charge payable shall be reduced accordingly.”.
- (2) In section 21 of the Landlord and Tenant Act 1985 (request or summary of relevant costs), in subsection (5) (contents of summary) after " shall" insert " state whether any of the costs relate to works in respect of which a grant has been or is to be paid under Part XV of the Housing Act 1985 (grants for works of improvement, repair or conversion) and ".
- (3) In section 47 of the Housing Act 1985 (limitation on service charges payable after disposal of house by public sector authority), after subsection (3) add—
- “(4) Where relevant costs are incurred or to be incurred on the carrying out of works in respect of which a grant has been or is to be paid under Part XV (grants for works of improvement, repair or conversion), the amount of the grant shall be deducted from the costs and the amount of the service charge payable shall be reduced accordingly.”.
- (4) In section 48 of the Housing Act 1985 (request for summary of relevant costs), after subsection (3) (contents of summary) insert—

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“(3A) The summary shall also state whether any of the costs relate to works in respect of which a grant has been or is to be paid under Part XV (grants for works of improvement, repair or conversion).”.

*Miscellaneous corrections*

- 10 (1) In section 73(5) of the Land Compensation Act 1973—
- (a) in paragraph (a) for " Part I of Schedule 24 to the Housing Act 1985 " substitute " Schedule 23 to the Housing Act 1985 " ;
  - (b) in paragraph (b) for " Part II of that Schedule " substitute " Schedule 24 to that Act " ; and
  - (c) in the closing words for " that Schedule " substitute " those Schedules " .
- (2) In sections 207 and 322 of the Housing Act 1985, in the definition of " person having control" for " house" substitute " premises " .
- (3) In section 251(5)(fc) of the Housing Act 1985 after " housing action " insert " area " .
- (4) In section 256(4)(ft) of the Housing Act 1985 for " to the local planning authority" substitute " of the local planning authority " .
- (5) In paragraph 1(2)(c) of Part I of Schedule 24 to the Housing Act 1985 for " demolished in pursuance of an undertaking given in accordance with section 264 " substitute " vacated in pursuance of an undertaking for its demolition " .
- (6) In section 10(2)(b) of the Housing Associations Act 1985, for " Schedule 3 to the Housing Act 1985 " substitute " Schedule 1 to the Housing Act 1985 " .
- (7) In paragraph 27 of Schedule 2 to the Housing (Consequential Provisions) Act 1985 for " (4) " , in both places where it occurs, substitute " (6) " .
- (8) In Schedule 3 to the Housing (Consequential Provisions) Act 1985, after paragraph 2 insert—
- “2A Any order made under section 115(11) of the Housing Act 1974 (form of notice of compensation where land in clearance area deemed appropriated for provision of housing) which was in force immediately before the repeal of that section by this Act may be revoked or amended by regulations under section 614 of the Housing Act 1985 (general power to prescribe forms, etc. by regulations).”.
- (9) The above amendments have effect from 1st April 1986.
- 11 (1) In sections 80(1)(a) and 81(1)(a), (3)(b) and (4)(b) of the Building Act 1984 (service of notices in respect of proposed demolition), after " demolition order" insert " or obstructive building order " .
- (2) The above amendment to section 80 of the Building Act 1984 has effect from 1st April 1986.
- 12 In paragraph 14(2) of Schedule 11 and paragraph 8(2) of Schedule 22 to the Housing Act 1985 (procedure after compulsory purchase order has become operative), for " a copy of the notice " substitute " a copy of the order " .
- 13 In Part II of the Housing Associations Act 1985 (housing association finance)—

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- (a) in section 67(1) (loans by Public Works Loan Commissioners : England and Wales), and
  - (b) in section 68(1) (loans by Public Works Loan Commissioners: Scotland),
- for " housing association " substitute " registered housing association ".

## PART II

### CONSEQUENTIAL AMENDMENTS

#### *Housing Rents and Subsidies (Scotland) Act 1975*

- 14 In section 5 of the Housing Rents and Subsidies (Scotland) Act 1975 (agreements for exercise by housing co-operatives of certain local authority housing functions), omit subsection (6).

#### *Rent Act 1977*

- 15 In section 16 of the Rent Act 1977 (tenancy not protected if interest of landlord belongs to housing co-operative) for the words from " within the meaning of section 27 " to the end substitute " within the meaning of section 27B of the Housing Act 1985 (agreements with housing co-operatives under certain superseded provisions) and the dwelling-house is comprised in a housing cooperative agreement within the meaning of that section ".
- 16 (1) Schedule 12 to the Rent Act 1977 (procedure on application for certificate of fair rent) is amended as follows.
- (2) In paragraph (1)(c)—
- (a) after " section 69(1)(a) " insert " or (1A)(6) " ;
  - (b) after " improvement " insert " or repair " ;
  - (c) after " regulated " insert " or secure ".
- (3) In paragraph 3, after " If," insert—
- “in the case of—
- (a) an application under section 69(1) of this Act where the dwelling-house is not subject to a regulated tenancy, or
  - (b) an application under section 69(1A) of this Act where the dwelling-house is not subject to a secure tenancy;”

and omit " unless the dwelling-house is subject to a regulated tenancy, ".

(4) In paragraph 4, for the words from " an application " to " regulated tenancy " substitute “—

    - (a) an application under section 69(1) of this Act where the dwelling-house is not subject to a regulated tenancy and which does not fall within paragraph 3 above, or
    - (b) an application under section 69(1A) of this Act and which does not fall within paragraph 3 above and where the dwelling-house is not subject to a secure tenancy;”.

(5) In paragraph 5(1), for " Where the dwelling-house is subject to a regulated tenancy " substitute " In the case of—

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- (a) an application under section 69(1) of this Act where the dwelling-house is subject to a regulated tenancy, or
- (b) an application under section 69(1A) of this Act where the dwelling-house is subject to a secure tenancy,".

(6) In paragraphs 8(2) and 11, after "regulated" insert " or secure ".

(7) After paragraph 11 add—

“12 In this Schedule ' secure tenancy' has the same meaning as in Part IV of the Housing Act 1985, but does not include such a tenancy where the landlord is the Housing Corporation, a housing association or a housing trust which is a charity.

In this paragraph ' housing association', ' housing trust' and ' charity' have the same meaning as in Part IV of the Housing Act 1985.”.

*Tenants' Rights, &c. (Scotland) Act 1980*

- 17 In section 1(10) of the Tenants' Rights, &c. (Scotland) Act 1980 (landlords relevant to qualifying period for right to purchase and discount) in paragraph (e) for " section 27 of the Housing Act 1985 " substitute " section 27B of the Housing Act 1985 ".

*Finance Act 1981*

- 18 In section 107 of the Finance Act 1981 (stamp duty payable on disposal of dwelling-house at a discount by certain authorities), after subsection (3A) insert—

“(3B) This section also applies to a conveyance or transfer on sale (including the grant of a lease) by a person against whom the right to buy under Part V of the Housing Act 1985 is exercisable by virtue of section 171A of that Act (preservation of right to buy on disposal to private sector landlord) to a person who is the qualifying person for the purposes of the preserved right to buy and in relation to whom that dwelling-house is the qualifying dwelling-house.”

*Local Government Act 1985*

- 19 In paragraph 22 of Schedule 13 to the Local Government Act 1985 (provisions of Housing Act 1985 applying to residuary bodies) after " 444," insert 450A to 450C,".

*Housing Act 1985*

- 20 In section 4(c) of the Housing Act 1985 (general definition of " local authority " for the Act) for " 444(4), 452(2), 453(2)" substitute " 458 ".

- 21 In section 20 of the Housing Act 1985 (houses of local authority to which management provisions apply), for " down to section 26 " substitute " down to section 27B ".

- 22 In section 21 of the Housing Act 1985 (management powers to be exercised by local housing authority), in subsection (2) (general proposition subject to section 27), for (agreements for exercise of housing management functions by co-operative)" substitute " (management agreements) ".



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- 23 In section 30 of the Housing Act 1985 (application of housing management provisions to new town corporations and the Development Board for Rural Wales), omit subsection (2) (which relates to section 27: management agreements).
- 24 Omit section 46 of the Housing Act 1985 (definition of " service charge " for the purposes of certain provisions of Part II).
- 25 In section 57 of the Housing Act 1985 (the index to Part II), in the entries relating to the expressions " payee and payer", " relevant costs " and " service charge " for " section 46 " substitute " section 621A ".
- 26 In section 80 of the Housing Act 1985 (the landlord condition for secure tenancies), for subsection (4) (housing co-operatives to which the section applies) substitute—
- “(4) This section applies to a housing co-operative within the meaning of section 27B (agreements under certain superseded provisions) where the dwelling-house is comprised in a housing co-operative agreement within the meaning of that section.”.
- 27 In section 117 of the Housing Act 1985 (the index to Part IV) at the appropriate places insert—
- |                                     |                                  |  |
|-------------------------------------|----------------------------------|--|
| “consent (in Schedule 3A)           | paragraph 2(3) of that Schedule” |  |
| “landlord (in Part V of Schedule 2) | paragraph 5 of that Part”        |  |
| “management agreement and manager   | sections 27(2) and 27B(4)”.      |  |
- 28 In section 127(1) of the Housing Act 1985, omit the word " and " at the end of paragraph (a).
- 29 In section 130 of the Housing Act 1985 (reduction of discount where previous discount given), in subsection (2) (meaning of " previous discount") in paragraph (a) after " 7 " insert " or 7A " and after that paragraph insert—
- “(aa) on conveyance of the freehold, or a grant or assignment of a long lease of a dwelling-house by a person against whom the right to buy was exercisable by virtue of section 171A (preservation of right to buy on disposal to private sector landlord) to a person who was a qualifying person for the purposes of the preserved right to buy and in relation to whom that dwelling-house was the qualifying dwelling-house, or”.
- 30 (1) Section 187 of the Housing Act 1985 (minor definitions for purposes of Part V (the right to' buy)) is amended as follows.
- (2) In the definition of " improvement"—
- (a) after " means " insert " , in relation to a dwelling-house, ",
- (b) for " a dwelling-house", in both places, substitute " the dwelling-house ", and
- (c) at the end (full-out after paragraph (c)) insert " and shall be similarly construed in relation to any other building or land ; ".
- (3) At the appropriate place insert—
- “'improvement contribution' means an amount payable by a tenant of a flat in respect of improvements to the flat, the building in which it is situated or any other building or land, other than works carried out in discharge of

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any such obligations as are referred to in paragraph 16A(1) of Schedule 6 (obligations to repair, reinstate, etc.) ;”.

- 31 In section 188 of the Housing Act 1985 (the index to Part V) at the appropriate places insert—

“disposal and instrument effecting disposal (in Schedule 9A)	paragraph 10 of that Schedule”
“former landlord and former secure tenant (in relation to a qualifying disposal)	section 171A(2)(c)”
“improvement contribution	section 187”
“preserved right to buy	section 171A(2)(a)”
“qualifying disposal (in relation to the preserved right to buy)	section 171A(2)(6)”
“qualifying dwelling-house and qualifying person (in relation to the preserved right to buy)	section 171B(1)”
“reference period (for purposes of S.125A or 125B)	section 125C”
“service charge	section 621A”.

- 32 In Part XIII of the Housing Act 1985 (general financial provisions), after section 427 insert—

**“427A Entitlement to subsidy in case of land subject to management agreement.**

The fact that a local housing authority or other body has entered into a management agreement, and any letting of land in connection with such an agreement—

- (a) shall be disregarded in determining that authority or body's reckonable income or expenditure for the purposes of housing subsidy, and
- (b) shall not be regarded as a ground for recovering, withholding or reducing any sum under section 427 (recoupment of housing subsidy).”.

- 33 In section 434 of the Housing Act 1985 (the index to Part XIII) at the appropriate place insert—

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“management agreement	sections 27(2) and 27B(4)”.
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- 34 In section 444(4) of the Housing Act 1985 (advances relevant to certain powers of local authority to give assistance), for the words from " by " to the end substitute " a housing authority ".
- 35 In section 452 of the Housing Act 1985 (vesting of house in authority entitled to exercise power of sale), in subsection (2) omit the definition of " housing authority ".
- 36 In section 453 of the Housing Act 1985 (power of authority which has granted shared ownership lease to make further advances), omit subsection (2) (which defines " housing authority ").
- 37 In section 458 of the Housing Act 1985 (minor definitions), at the appropriate place insert—
- “ housing authority' includes any local authority, an urban development corporation, the Housing Corporation and a registered housing association ;”.
- 38 In section 459 of the Housing Act 1985 (the index to Part XIV), at the appropriate places insert—
- |                    |                        |
|--------------------|------------------------|
| “housing authority | sections 4(a) and 458” |
| “service charge    | section 621 A”.        |
- 39 After section 621 of the Housing Act 1985 insert—
- “621A Meaning of ~ service charge™ and related expressions.**
- (1) In this Act ' service charge' means an amount payable by a purchaser or lessee of premises!—
- (a) which is payable, directly or indirectly, for services, repairs, maintenance or insurance or the vendor's or lessor's costs of management, and
- (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the payee, or (in the case of a lease) a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose—
- (a) ' costs ' includes overheads, and
- (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.
- (4) In relation to a service charge—
- (a) the 'payee' means the person entitled to enforce payment of the charge, and
- (b) the ' payer' means the person liable to pay it”.
- 40 (1) Schedule 4 to the Housing Act 1985 (the qualifying period for the right to buy) is amended as follows.

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*Status: This is the original version (as it was originally enacted).*

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(2) After paragraph 5 insert—

*“Periods during which right to buy is preserved*

5A A period qualifies under this paragraph if it is a period during which, before the relevant time—

- (a) the secure tenant, or
- (b) his spouse (if they are living together at the relevant time), or
- (c) a deceased spouse of his (if they were living together at the time of the death),

was a qualifying person for the purposes of the preserved right to buy or was the spouse of such a person and occupied the qualifying dwelling-house as his only or principal home.”.

(3) In paragraph 7 (the landlord condition for qualifying period)—

- (a) in sub-paragraph (1), in the opening words, after " subject to " insert " paragraph 7A and to ", and omit the words from " a housing co-operative " to " management functions) ";
- (b) in sub-paragraph (2), omit the words from " a housing cooperative " to " 1975 ".

(4) After paragraph 7 insert—

“7A (1) The landlord condition shall be treated as having been satisfied in the case of a dwelling-house comprised in a housing co-operative agreement made—

- (a) in England and Wales, by a local housing authority, new town corporation or the Development Board for Rural Wales, or
  - (b) in Scotland, by an islands or district council,
- if the interest of the landlord belonged to the housing cooperative.

(2) In sub-paragraph (1) " housing co-operative agreement" and " housing co-operative "—

- (a) as regards England and Wales have the same meaning as in section 27B (agreements with housing co-operatives under superseded provisions), and
- (b) as regards Scotland mean an agreement made under section 5 of the Housing Rents and Subsidies (Scotland) Act 1975 and a housing co-operative within the meaning of that section.”.

41 (1) Paragraph 14 of Schedule 6 to the Housing Act 1985 (terms of lease granted in pursuance of right to buy: implied covenants by landlord) is amended as follows.

(2) In sub-paragraph (2), omit the words following paragraph (c).

(3) In sub-paragraph (3), for the words from the beginning to " requirement" insert " There is an implied covenant ".

(4) After sub-paragraph (3) insert—

“(3A) Sub-paragraphs (2) and (3) have effect subject to paragraph 15(3) (certain obligations not to be imposed, where landlord's title is leasehold, by reason of provisions of superior lease).”.

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*Status: This is the original version (as it was originally enacted).*

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*Housing Associations Act 1985*

- 42 In Part II of the Housing Associations Act 1985 (financial provisions), after section 69 insert—

**“69A Land subject to housing management agreement.**

A housing association is not entitled to a housing association grant, revenue deficit grant or hostel deficit grant in respect of land comprised in—

- (a) a management agreement within the meaning of the Housing Act 1985 (see sections 27(2) and 27B(4) of that Act: delegation of housing management functions by certain authorities), or
- (b) an agreement to which section 5 of the Housing Rents and Subsidies (Scotland) Act 1975 applies (agreements for exercise by housing cooperatives of certain local authority housing functions).”.

SCHEDULE 6

Sections 25(2), (3), 26(2), (3).

SIMPLIFIED PLANNING ZONES : FURTHER PROVISIONS

**PART I**

SCHEDULE TO BE INSERTED IN THE TOWN AND COUNTRY PLANNING ACT 1971

“SCHEDULE 8A

SIMPLIFIED PLANNING ZONES

*General*

- 1** A simplified planning zone scheme shall consist of a map and a written statement, and such diagrams, illustrations and descriptive matter as the local planning authority think appropriate for explaining or illustrating the provisions of the scheme, and shall specify—
- (a) the development or classes of development permitted by the scheme,
  - (b) the land in relation to which permission is granted, and
  - (c) any conditions, limitations or exceptions subject to which it is granted;
- and shall contain such other matters as may be prescribed.

*Proposals to make or alter scheme*

- 2** (1) A local planning authority may at any time decide to make a simplified planning zone scheme or to alter a scheme adopted by them or, with the consent of the Secretary of State, to alter a scheme approved by him.
- (2) An authority who decide to make or alter a simplified planning zone scheme shall—
- (a) notify the Secretary of State of their decision as soon as practicable, and
  - (b) determine the date on which they will begin to prepare the scheme or the alterations.

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*Status: This is the original version (as it was originally enacted).*

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*Power of Secretary of State to direct making or alteration of scheme*

- 3** (1) If a person requests a local planning authority to make or alter a simplified planning zone scheme but the authority—
- (a) refuse to do so, or
  - (b) do not within the period of three months from the date of the request decide to do so,
- he may, subject to sub-paragraph (2), require them to refer the matter to the Secretary of State.
- (2) A person may not require the reference of the matter to the Secretary of State if—
- (a) in the case of a request to make a scheme, a simplified planning zone scheme relating to the whole or part of the land specified in the request has been adopted or approved within the twelve months preceding his request;
  - (b) in the case of a request to alter a scheme, the scheme to which the request relates was adopted or approved, or any alteration to it has been adopted or approved, within that period.
- (3) The Secretary of State shall, as soon as practicable after a matter is referred to him—
- (a) send the authority a copy of any representations made to him by the applicant which have not been made to the authority, and
  - (b) notify the authority that if they wish to make any representations in the matter they should do so, in writing, within 28 days.
- (4) The Secretary of State may, after—
- (a) considering the matter and any written representations made by the applicant or the authority, and
  - (b) carrying out such consultations with such persons as he thinks fit,
- give the authority a simplified planning zone direction.
- (5) The Secretary of State shall notify the applicant and the authority of his decision and of his reasons for it.
- 4** (1) A simplified planning zone direction is—
- (a) if the request was for the making of a scheme, a direction to make a scheme which the Secretary of State considers appropriate; and
  - (b) if the request was for the alteration of a scheme, a direction to alter it in such manner as he considers appropriate.
- (2) In either case the direction may extend to—
- (a) the land specified in the request to the authority,
  - (b) any part of the land so specified, or
  - (c) land which includes the whole or part of the land so specified ;
- and, accordingly, may direct that land shall be added to or excluded from an existing simplified planning zone.

*Publicity and consultation: general*

- 5** (1) A local planning authority who propose to make or alter a simplified planning zone scheme shall proceed in accordance with this paragraph, unless paragraph 6 applies (short procedure for certain alterations).
- (2) They shall take such steps as will in their opinion secure—

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*Status: This is the original version (as it was originally enacted).*

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- (a) that adequate publicity for their proposals is given in the area to which the scheme relates,
  - (b) that persons who may be expected to wish to make representations about the proposals are made aware that they are entitled to do so, and
  - (c) that such persons are given an adequate opportunity of making such representations ;
- and they shall consider any representations made to them within the prescribed period.
- (3) They shall then, having prepared the relevant documents, that is, the proposed scheme or alterations—
    - (a) make copies of the documents available for inspection at their office, and
    - (b) send a copy of them to the Secretary of State.
  - (4) Each copy of the documents made available for inspection shall be accompanied by a statement of the time within which objections may be made.
  - (5) The local planning authority shall before preparing the proposed scheme or alterations consult the Secretary of State having responsibility for highways as to the effect of their proposals on existing or future highways; and when they have prepared the proposed scheme or alterations they shall send him a copy.
  - (6) A district planning authority in a non-metropolitan county shall also, before preparing the proposed scheme or alterations, consult the county council as planning authority and as to the effect of their proposals on existing or future highways; and when they have prepared the scheme or alterations they shall send the county council a copy.

*Publicity and consultation: short procedure for certain alterations*

- 6 (1) Where a local planning authority propose to alter a simplified planning zone scheme and it appears to them that the issues involved are not of sufficient importance to warrant the full procedure set out in paragraph 5, they may proceed instead in accordance with this section.
- (2) They shall prepare the proposed alterations and shall—
    - (a) make copies of them available for inspection at their office, and
    - (b) send a copy of them to the Secretary of State.
  - (3) Each copy of the documents made available for inspection shall be accompanied by a statement of the time within which representations or objections may be made.
  - (4) They shall then take such steps as may be prescribed for the purpose of—
    - (a) advertising the fact that the proposed alterations are available for inspection and the places and times at which, and the period during which, they may be inspected, and
    - (b) inviting the making of representations or objections in accordance with regulations ;and they shall consider any representations made to them within the prescribed period.
  - (5) The local planning authority shall send a copy of the proposed alterations to the Secretary of State having responsibility for highways.
  - (6) A district planning authority in a non-metropolitan county shall also send a copy of the proposed alterations to the county council.

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*Status: This is the original version (as it was originally enacted).*

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*Powers of Secretary of State to secure adequate publicity and consultation*

- 7 (1) The documents sent by the local planning authority to the Secretary of State under paragraph 5(3) shall be accompanied by a statement—
- (a) of the steps which the authority have taken to comply with paragraph 5(2), and
  - (b) of the authority's consultations with other persons and their consideration of the views of those persons.
- (2) The documents sent by the local planning authority to the Secretary of State under paragraph 6(2) shall be accompanied by a statement of the steps which the authority are taking to comply with paragraph 6(4).
- (3) If, on considering the statement and the proposals and any other information provided by the local planning authority, the Secretary of State is not satisfied with the steps taken by the authority, he may, within 21 days of the receipt of the statement, direct the authority not to take further steps for the adoption of the proposals without—
- (a) if they have proceeded in accordance with paragraph 6, proceeding instead in accordance with paragraph 5, or
  - (b) in any case, taking such further steps as he may specify, and satisfying him that they have done so.
- (4) A local planning authority who are given directions by the Secretary of State shall—
- (a) forthwith withdraw the copies of the documents made available for inspection as required by paragraph 5(3)(a) or 6(2)(a), and
  - (b) notify any person by whom objections to the proposals have been made to the authority that the Secretary of State has given such directions.

*Objections: local inquiry or other hearing*

- 8 (1) The local planning authority may cause a local inquiry or other hearing to be held for the purpose of considering objections to their proposals for the making or alteration of a simplified planning zone scheme.
- (2) They shall hold such a local inquiry or other hearing in the case of objections made in accordance with regulations unless all the persons who have made such objections have indicated in writing that they do not wish to appear.
- (3) A local inquiry or other hearing shall be held by a person appointed by the Secretary of State or, in such cases as may be prescribed, by the authority themselves.
- (4) Regulations may—
- (a) make provision with respect to the appointment, and qualifications for appointment, of persons to hold a local inquiry or other hearing;
  - (b) include provision enabling the Secretary of State to direct a local planning authority to appoint a particular person, or one of a specified list or class of persons ;
  - (c) make provision with respect to the remuneration and allowances of the person appointed.
- (5) Subsections (2) and (3) of section 250 of the Local Government Act 1972 (power to summon and examine witnesses) apply to an inquiry held under this paragraph.
- (6) The Tribunals and Inquiries Act 1971 applies to a local inquiry or other hearing held under this paragraph as it applies to a statutory inquiry held by the Secretary of



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State, with the substitution in section 12(1) (statement of reasons for decision) for the references to a decision taken by the Secretary of State of references to a decision taken by a local authority.

*Adoption of proposals by local planning authority*

- 9** (1) After the expiry of the period afforded for making objections to proposals for the making or alteration of a simplified planning zone scheme or, if such objections were duly made within that period, after considering the objections so made, the local planning authority may, subject to the following provisions of this paragraph and to paragraph 10 (calling in of proposals by Secretary of State), by resolution adopt the proposals.
- (2) They may adopt the proposals as originally prepared or as modified so as to take account of—
- (a) any such objections as are mentioned in sub-paragraph (1) or any other objections to the proposals, or
  - (b) any other considerations which appear to the authority to be material.
- (3) After copies of the proposals have been sent to the Secretary of State and before they have been adopted by the local planning authority, the Secretary of State may, if it appears to him that the proposals are unsatisfactory, direct the authority to consider modifying the proposals in such respects as are indicated in the direction.
- (4) An authority to whom a direction is given shall not adopt the proposals unless they satisfy the Secretary of State that they have made the modifications necessary to conform with the direction or the direction is withdrawn.

*Calling in of proposals for approval by Secretary of State*

- 10** (1) After copies of proposals have been sent to the Secretary of State and before they have been adopted by the local planning authority, the Secretary of State may direct that the proposals shall be submitted to him for his approval.
- (2) In that event—
- (a) the authority shall not take any further steps for the adoption of the proposals, and in particular shall not hold or proceed with a local inquiry or other hearing in respect of the proposals under paragraph 8 ; and
  - (b) the proposals shall not have effect unless approved by the Secretary of State and shall not require adoption by the authority.

*Approval of proposals by Secretary of State*

- 11** (1) The Secretary of State may after considering proposals submitted to him under paragraph 10 either approve them, in whole or in part and with or without modifications, or reject them.
- (2) In considering the proposals he may take into account any matters he thinks are relevant, whether or not they were taken into account in the proposals as submitted to him.
- (3) Where on taking the proposals into consideration the Secretary of State does not determine then to reject them, he shall, before determining whether or not to approve them—
- (a) consider any objections to them made in accordance with regulations,

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*Status: This is the original version (as it was originally enacted).*

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- (b) afford to any person who made such an objection which has not been withdrawn an opportunity of appearing before and being heard by a person appointed by him for the purpose, and
  - (c) if a local inquiry or other hearing is held, also afford such an opportunity to the authority and such other persons as he thinks fit,
- except so far as objections have already been considered, or a local inquiry or other hearing into the objections has already been held, by the authority.
- (4) In considering the proposals the Secretary of State may consult with, or consider the views of, any local planning authority or any other person; but he is under no obligation to do so, or to afford an opportunity for the making of representations or objections, or to cause a local inquiry or other hearing to be held, except as provided by sub-paragraph (3).

#### *Default powers*

- 12** (1) Where by virtue of any of the preceding provisions of this Schedule—
- (a) a simplified planning zone scheme or proposals for the alteration of such a scheme are required to be prepared, or
  - (b) steps are required to be taken for the adoption of any such scheme or proposals,
- then, if the Secretary of State is satisfied, after holding a local inquiry or other hearing, that the local planning authority are not taking the steps necessary to enable them to prepare or adopt such a scheme or proposals within a reasonable period, he may make the scheme or the alterations, as he thinks fit.
- (2) Where under this paragraph anything which ought to have been done by a local planning authority is done by the Secretary of State, the preceding provisions of this Schedule apply, so far as practicable, with any necessary modifications, in relation to the doing of that thing by the Secretary of State and the thing so done.
- (3) Where the Secretary of State incurs expenses under this paragraph in connection with the doing of anything which should have been done by a local planning authority, so much of those expenses as may be certified by the Secretary of State to have been incurred in the performance of functions of that authority shall on demand be repaid by the authority to the Secretary of State.

#### *Regulations and directions*

- 13** (1) Without prejudice to the preceding provisions of this Schedule, the Secretary of State may make regulations with respect to the form and content of simplified planning zone schemes and with respect to the procedure to be followed in connection with their preparation, withdrawal, adoption, submission, approval, making or alteration.
- (2) Any such regulations may in particular—
- (a) provide for the notice to be given of, or the publicity to be given to, matters included or proposed to be included in a simplified planning zone scheme and the adoption or approval of such a scheme, or of any alteration of it, or any other prescribed procedural step, and for publicity to be given to the procedure to be followed in these respects ;
  - (b) make provision with respect to the making and consideration of representations as to matters to be included in, or objections to, any such scheme or proposals for its alteration ;

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- (c) without prejudice to paragraph (6), provide for notice to be given to particular persons of the adoption or approval of a simplified planning zone scheme, or an alteration to such a scheme, if they have objected to the proposals and have notified the local planning authority of their wish to receive notice, subject (if the regulations so provide) to the payment of a reasonable charge ;
  - (d) require or authorise a local planning authority to consult with, or consider the views of, other persons before taking any prescribed procedural step ;
  - (e) require a local planning authority, in such cases as may be prescribed or in such particular cases as the Secretary of State may direct, to provide persons making a request in that behalf with copies of any document which has been made public for the purpose mentioned in paragraph 5(2) or 6(3) or has been made available for inspection under paragraph 5(3) or 6(2), subject (if the regulations so provide) to the payment of a reasonable charge;
  - (f) provide for the publication and inspection of a simplified planning zone scheme which has been adopted or approved, or any document adopted or approved altering such a scheme, and for copies of any such scheme or document to be made available on sale.
- (3) Regulations under this paragraph may extend throughout England and Wales or to specified areas only and may make different provision for different cases.
- (4) Subject to the preceding provisions of this Schedule and to any regulations under this paragraph, the Secretary of State may give directions to any local planning authority or to local planning authorities generally—
- (a) for formulating the procedure for the carrying out of their functions under this Schedule ;
  - (b) for requiring them to give him such information as he may require for carrying out any of his functions under this Schedule.”

## PART II

### CONSEQUENTIAL AMENDMENTS—ENGLAND AND WALES

- 1 In section 34(1) of the Town and Country Planning Act 1971 (registers to be kept by local planning authorities) at the end add " and also containing such information as may be so prescribed with respect to simplified planning zone schemes relating to zones in the authority's area ".
- 2 In section 41 of the Town and Country Planning Act 1971 (limit of duration of planning permission), in subsection (3) (exceptions) after paragraph (aa) insert—  
“(ab) to any planning permission granted by a simplified planning zone scheme ;”.
- 3 In section 53(1) of the Town and Country Planning Act 1971 (application to determine whether planning permission required) after " scheme " insert" or simplified planning zone scheme ".
- 4 In section 242(1) of the Town and Country Planning Act 1971 (validity of certain instruments to be questioned under that Act and not otherwise), after paragraph (a) insert—  
“(aa) a simplified planning zone scheme or an alteration of such a scheme whether before or after the adoption or approval of the scheme or alteration;”.

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*Status: This is the original version (as it was originally enacted).*

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- 5 In section 244 of the Town and Country Planning Act 1971 (procedure for questioning certain instruments), after subsection (6) insert—
- “(7) Subsections (1) and (2) of this section apply to a simplified planning zone scheme or an alteration of such a scheme as they apply to a structure plan and an alteration of such a plan, with the following modifications—
- (a) for the references to Part II of this Act substitute references to Part LTI of this Act, and
- (b) for the reference to regulations under section 18(1) of this Act substitute a reference to regulations under paragraph 13 of Schedule 8 A to this Act,
- and with any other necessary modifications.”.
- 6 In section 287 of the Town and Country Planning Act 1971 (general provisions as to regulations and orders)—
- (a) in subsection (4) (orders to be made by statutory instrument) after " 24," insert " 24E, ", and
- (b) in subsection (5)(a) (orders subject to negative resolution procedure), after " section " insert " 24E, ".
- 7 In section 290(1) of the Town and Country Planning Act 1971 (interpretation), at the appropriate place insert—
- “simplified planning zone” and “simplified planning zone scheme ” shall be construed in accordance with section 24A of this Act;”.

### PART III

SCHEDULE TO BE INSERTED IN THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1972

#### “SCHEDULE 6A

#### SIMPLIFIED PLANNING ZONE SCHEMES

##### *General*

- 1 A simplified planning zone scheme shall consist of a map and a written statement, and such diagrams, illustrations and descriptive matter as the planning authority think appropriate for explaining or illustrating the provisions of the scheme, and shall specify—
- (a) the development or classes of development permitted by the scheme,
- (b) the land in relation to which permission is granted ; and
- (c) any conditions, limitations or exceptions subject to which it is granted ;
- and shall contain such other matters as may be prescribed.

##### *Proposals to make or alter scheme*

- 2 (1) A planning authority may at any time decide to make a simplified planning zone scheme or to alter a scheme adopted by them or, with the consent of the Secretary of State, to alter a scheme approved by him.
- (2) An authority who decide to make or alter a simplified planning zone scheme shall—

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*Status: This is the original version (as it was originally enacted).*

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- (a) notify the Secretary of State of their decision as soon as practicable, and
- (b) determine the date on which they will begin to prepare the scheme or the alterations.

*Power of Secretary of State to direct making or alteration of scheme*

- 3 (1) If a person requests a planning authority to make or alter a simplified planning zone scheme but the authority—
- (a) refuse to do so, or
  - (b) do not within the period of three months from the date of the request decide to do so
- he may, subject to sub-paragraph (2), require them to refer the matter to the Secretary of State.
- (2) A person may not require the reference of the matter to the Secretary of State if—
- (a) in the case of a request to make a scheme, a simplified planning zone scheme relating to the whole or part of the land specified in the request has been adopted or approved within the twelve months preceding his request;
  - (b) in the case of a request to alter a scheme, the scheme to which the request relates was adopted or approved, or any alteration to it has been adopted or approved, within that period.
- (3) The Secretary of State shall, as soon as practicable after a matter is referred to him—
- (a) send the authority a copy of any representations made to him by the applicant which have not been made to the authority, and
  - (b) notify the authority that if they wish to make any representations in the matter they should do so, in writing, within 28 days.
- (4) The Secretary of State may, after—
- (a) considering the matter and any written representations made by the applicant or the authority, and
  - (b) carrying out such consultations with such persons as he thinks fit,
- give the authority a simplified planning zone direction.
- (5) The Secretary of State shall notify the applicant and the authority of his decision and of his reasons for it.
- 4 (1) A simplified planning zone direction is—
- (a) if the request was for the making of a scheme, a direction to make a scheme which the Secretary of State considers appropriate ; and
  - (b) if the request was for the alteration of a scheme, a direction to alter it in such manner as he considers appropriate.
- (2) In either case the direction may extend to—
- (a) the land specified in the request to the authority,
  - (b) any part of the land so specified, or
  - (c) land which includes the whole or part of the land so specified ;
- and, accordingly, may direct that land shall be added to or excluded from an existing simplified planning zone.

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*Status: This is the original version (as it was originally enacted).*

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*Publicity and consultation: general*

- 5 (1) A planning authority who propose to make or alter a simplified planning zone scheme shall proceed in accordance with this paragraph.
- (2) Subject to paragraph 6(2) below, they shall take such steps as Will in their opinion secure—
- (a) that adequate publicity for their proposals is given in the area to which the scheme relates,
  - (b) that persons who may be expected to wish to make representations about the proposals are made aware that they are entitled to do so, and
  - (c) that such persons are given an adequate opportunity of making such representations;
- and they shall consider any representations made to them within the prescribed period.
- (3) They shall then, having prepared the relevant documents, that is, the proposed scheme or alterations—
- (a) make copies of the documents available for inspection at their office, and
  - (b) send a copy of them to the Secretary of State.
- (4) Each copy of the documents made available for inspection shall be accompanied by a statement of the time within which objections may be made.
- (5) The planning authority shall before preparing the proposed scheme or alterations consult the Secretary of State and any local roads authority in whose district the proposed zone or any part of it lies as to the effect of their proposals on existing or future roads; and when they have prepared the proposed scheme or alterations they shall send a copy to the Secretary of State and any such local roads authority.

*Publicity and consultation: expedited procedure*

- 6 (1) The documents sent by the planning authority to the Secretary of State under paragraph 5(3) shall be accompanied by a statement—
- (a) of the steps which the authority have taken to comply with paragraph 5(2), and
  - (b) of the authority's consultations with other persons and their consideration of the views of those persons.
- (2) Where a planning authority do not consider it appropriate to take the steps required by paragraph 5(2) of this Schedule in relation to proposals made by them under sub-paragraph (1) of that paragraph for the alteration of a simplified planning zone scheme, they may instead include, with the copies of those proposals made available for inspection and with the copy sent to the Secretary of State under paragraph (3) of that paragraph, a statement of their reasons for not taking such steps.

*Objections: local inquiry or other hearing*

- 7 (1) The planning authority may cause a local inquiry or other hearing to be held for the purpose of considering objections to their proposals for the making or alteration of a simplified planning zone scheme.

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*Status: This is the original version (as it was originally enacted).*

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- (2) They shall hold such a local inquiry or other hearing in the case of objections made in accordance with regulations unless all the persons who have made such objections have indicated in writing that they do not wish to appear.
- (3) A local inquiry or other hearing shall be held by a person appointed by the Secretary of State or, in such cases as may be prescribed, by the authority themselves.
- (4) Regulations may—
  - (a) make provision with respect to the appointment, and qualifications for appointment, of persons to hold a local inquiry or other hearing;
  - (b) include provision enabling the Secretary of State to direct a planning authority to appoint a particular person, or one of a specified list or class of persons ;
  - (c) make provision with respect to the remuneration and allowances of the person appointed.
- (5) The Tribunals and Inquiries Act 1971 applies to a local inquiry or other hearing held under this paragraph as it applies to a statutory inquiry held by the Secretary of State, with the substitution in section 12(1) (statement of reasons for decision) for the references to a decision taken by the Secretary of State of references to a decision taken by a planning authority.

*Adoption of proposals by planning authority*

- 8 (1) After the expiry of the period afforded for making objections to proposals for the making or alteration of a simplified planning zone scheme or, if such objections were duly made within that period, after considering the objections so made, the planning authority may, subject to the following provisions of this paragraph and to paragraph 9 (calling in of proposals by Secretary of State), by resolution adopt the proposals.
- (2) They may adopt the proposals as originally prepared or as modified so as to take account of—
  - (a) any such objections as are mentioned in sub-paragraph (1) any other objections to the proposals, or
  - (b) any other considerations which appear to the authority to be material.
- (3) After copies of the proposals have been sent to the Secretary of State and before they have been adopted by the planning authority, the Secretary of State may, if it appears to him that the proposals are unsatisfactory, direct the authority to consider modifying the proposals in such respects as are indicated in the direction.
- (4) An authority to whom a direction is given shall not adopt the proposals unless they satisfy the Secretary of State that they have made the modification necessary to conform with the direction or the direction is withdrawn.

*Calling in of proposals for approval by Secretary of State*

- 9 (1) After copies of proposals have been sent to the Secretary of State and before they have been adopted by the planning authority, the Secretary of State may direct that the proposals shall be submitted to him for his approval.
- (2) In that event—

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*Status: This is the original version (as it was originally enacted).*

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- (a) the authority shall not take any further steps for the adoption of the proposals, and in particular shall not hold or proceed with a local inquiry or other hearing in respect of the proposals under paragraph 7 ; and
- (b) the proposals shall not have effect unless approved by the Secretary of State and shall not require adoption by the authority.

*Approval of proposals by Secretary of State*

- 10 (1) The Secretary of State may after considering proposals submitted to him under paragraph 9 either approve them, in whole or in part and with or without modifications, or reject them.
- (2) In considering the proposals he may take into account any matters he thinks are relevant, whether or not they were taken into account in the proposals as submitted to him.
- (3) Where on taking the proposals into consideration the Secretary of State does not determine then to reject them, he shall, before determining whether or not to approve them—
- (a) consider any objections to them in accordance with regulations,
  - (b) afford to any person who made such an objection which has not been withdrawn an opportunity of appearing before and being heard by a person appointed by him for the purpose, and
  - (c) if a local inquiry or other hearing is held, also afford such an opportunity to the authority and such other persons as he thinks fit,
- except so far as objections have already been considered, or a local inquiry or other hearing into the objections has already been held, by the authority.
- (4) In considering the proposals the Secretary of State may consult with, or consider the views of, any planning authority or any other person; but he is under no obligation to do so, or to afford an opportunity for the making of representations or objections, or to cause a local inquiry or other hearing to be held, except as provided by sub-paragraph (3).

*Default powers*

- 11 (1) Where by virtue of any of the preceding provisions of this Schedule—
- (a) a simplified planning zone scheme or proposals for the alteration of such a scheme are required to be prepared, or
  - (b) steps are required to be taken for the adoption of any such scheme or proposals,
- then, if the Secretary of State is satisfied, after holding a local inquiry or other hearing, that the planning authority are not taking the steps necessary to enable them to prepare or adopt such a scheme or proposals within a reasonable period, he may make the scheme, or the alterations, as he thinks fit.
- (2) Where under this paragraph anything which ought to have been done by a planning authority is done by the Secretary of State, the preceding provisions of this Schedule apply, so far as practicable, with any necessary modifications in relation to the doing of that thing by the Secretary of State and the thing so done.
- (3) Where the Secretary of State incurs expenses under this paragraph in connection with the doing of anything which should have been done by a planning authority,



so much of those expenses as may be certified by the Secretary of State to have been incurred in the performance of functions of that authority shall on demand be repaid by the authority to the Secretary of State.

*Regulations and directions*

- 12 (1) Without prejudice to the preceding provisions of this Schedule, the Secretary of State may make regulations with respect to the form and content of simplified planning zone schemes and with respect to the procedure to be followed in connection with their preparation, withdrawal, adoption, submission, approval, making or alteration.
- (2) Any such regulations may in particular—
- (a) provide for the notice to be given of, or the publicity to be given to, matters included or proposed to be included in a simplified planning zone scheme and the adoption or approval of such a scheme, or of any alteration of it, or any other prescribed procedural step, and for publicity to be given to the procedure to be followed in these respects ;
  - (b) make provision with respect to the making and consideration of representations as to matters to be included in, or objections to, any such scheme or proposals for its alteration;
  - (c) without prejudice to paragraph (b), provide for notice to be given to particular persons of the adoption or approval of a simplified planning zone scheme, or an alteration to such a scheme, if they have objected to the proposals and have notified the planning authority of their wish to receive notice, subject (if the regulations so provide) to the payment of a reasonable charge ;
  - (d) require or authorise a planning authority to consult with, or consider the views of, other persons before taking any prescribed procedural step;
  - (e) require a planning authority, in such cases as may be prescribed or in such particular cases as the Secretary of State may direct, to provide persons making a request in that behalf with copies of any document which has been made public for the purpose mentioned in paragraph 5(2) or has been made available for inspection under paragraph 5(3), subject (if the regulations so provide) to the payment of a reasonable charge ;
  - (f) provide for the publication and inspection of a simplified planning zone scheme which has been adopted or approved, or any document adopted or approved altering such a scheme, and for copies of any such scheme or document to be made available on sale.
- (3) Regulations under this paragraph may extend throughout Scotland or to specified areas only and may make different provision for different cases.
- (4) Subject to the preceding provisions of this Schedule and to any regulations under this paragraph, the Secretary of State may give directions to any planning authority or to planning authorities generally—
- (a) for formulating the procedure for the carrying out of their functions under this Schedule ;
  - (b) for requiring them to give him such information as he may require for carrying out any of his functions under this Schedule.”

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*Status: This is the original version (as it was originally enacted).*

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## PART IV

### CONSEQUENTIAL AMENDMENTS—SCOTLAND

- 1       At the end of subsection (2) of section 31 of the Town and Country Planning (Scotland) Act 1972 (registers) insert " and also containing such information as may be so prescribed with respect to simplified planning zone schemes relating to zones in the authority's area ".
  
- 2       In section 38 of the Town and Country Planning (Scotland) Act 1972 (limit of duration of planning permission), in subsection (3) (exceptions) after paragraph (ad) insert—
  - “(ab) to any planning permission granted by a simplified planning zone scheme ;”.
  
- 3       In section 51(1) of the Town and Country Planning (Scotland) Act 1972 (applications to determine whether planning permission required) after the word " scheme " insert " or simplified planning zone scheme ".
  
- 4       After subsection (1)(a) of section 231 of the Town and Country Planning (Scotland) Act 1972 (validity of plans, &c.) insert—
  - “(aa) a simplified planning zone scheme or any alteration of any such scheme whether before or after the adoption or approval of the scheme or alteration ; or”.
  
- 5       In section 232 of the Town and Country Planning (Scotland) Act 1972 (proceedings for questioning plans, &c), after subsection (3) insert—
  - “(4) Subsections (1) and (2) of this section apply to a simplified planning zone scheme or an alteration of such a scheme as they apply to a structure plan and an alteration of such a plan, with the following modifications—
    - (a) for the references to Part II of this Act substitute references to Part III of this Act, and
    - (b) for the reference to regulations under section 16(1) of this Act substitute a reference to regulations under paragraph 12 of Schedule 6A to this Act,
 and with any other necessary modifications.”.
  
- 6       In section 273 of the Town and Country Planning (Scotland) Act 1972 (orders)—
  - (a) in subsection (4), after " 21," insert " 21E, ", and
  - (b) in subsection (5), after " 1(3)," insert " 21E, ".
  
- 7       In section 275(1) of the Town and Country Planning (Scotland) Act 1972 after the definition of " road " insert—
  - “'simplified planning zone' and 'simplified planning zone scheme' shall be construed in accordance with section 21A of this Act;”.

SCHEDULE 7

Sections 33 and 37.

HAZARDOUS SUBSTANCES : CONSEQUENTIAL AMENDMENTS

PART I

ENGLAND AND WALES

*Radioactive Substances Act 1960 (c.34)*

1 The following paragraph shall be inserted after paragraph 8A of Schedule 1 to the Radioactive Substances Act 1960 (duty of public and local authorities not to take account of any radioactivity in performing their functions)—

“8AA Sections 58B to 58M and 101B of the Town and Country Planning Act 1971.”.

*Town and Country Planning Act 1971 (c.78)*

2 In subsection (3) (action on the part of the Secretary of State that may be questioned in legal proceedings) of section 242 of the Town and Country Planning Act 1971, the following paragraph shall be inserted after paragraph (d)—

“(dd) any decision by the Secretary of State relating to an application for hazardous substances consent;”.

3 In subsection (2)(a) of section 266 of that Act (orders which, in relation to Crown land, may only be made with consent of appropriate authority)—

(a) after " 5 IB " there shall be inserted " 58H " ; and

(b) for " or 96 " there shall be substituted " 96 or 101B "

4 Section 269 of that Act (application to Isles of Scilly) shall have effect as if sections 58B to 58N and 101B were included among the provisions specified in Part III of Schedule 21 (provisions that may be applied to Isles as if they were a district).

5 The following section shall be inserted after section 271 of that Act—

**“271A Application to certain hazardous substances authorities of provisions as to hazardous substances control.**

(1) The provisions of this Act relating to hazardous substances shall have effect subject to such exceptions and modifications as may be prescribed in relation to granting hazardous substances consent for authorities who are hazardous substances authorities by virtue of section 1A of this Act.

(2) Subject to the provisions of section 58F of this Act, any such regulations may in particular provide for securing—

(a) that any application by such an authority for hazardous substances consent in respect of the presence of a hazardous substance on, over, or under land shall be made to the Secretary of State and not to the hazardous substances authority ;

(b) that any order or notice authorised to be made, issued or served under those provisions shall be made, issued or served by the Secretary of State and not by the hazardous substances authority.”

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*Status: This is the original version (as it was originally enacted).*

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- 6 In section 280 of that Act (rights of entry)—
- (a) the following subsection shall be inserted after subsection (1) —
 

“(1A) Any person duly authorised in writing by the Secretary of State or by a hazardous substances authority may at any reasonable time enter any land for the purpose of surveying it in connection with—

    - (a) any application for hazardous substances consent ;
    - (b) any proposal to issue a hazardous substances contravention notice.”;
  - (b) at the end of subsection (4) there shall be added the words " and any person duly authorised in writing by the Secretary of State or by a hazardous substances authority may at any reasonable time enter any land for the purpose of ascertaining whether an offence appears to have been committed under section 58K of this Act. " ;
  - (c) the following subsection shall be inserted after subsection (6) —
 

“(6A) Subsection (6) above shall have effect for the purposes of a claim for compensation made by virtue of section 58H(8) or 58J(12) of this Act as if a reference to a local planning authority were a reference to a hazardous substances authority.”; and
  - (d) in subsection (8), after the word " section " there shall be inserted the words " or a hazardous substances contravention notice has been issued ".
- 7 In section 290(1) of that Act (Interpretation)—
- (a) the following shall be inserted after the definition of " conservation area " —
 

“" contravention of hazardous substances control " has the meaning assigned to it by section 58K(2) of this Act;”;
  - (b) the following shall be inserted after the definition of " the Greater London development plan " —
 

“" hazardous substances authority " is to be construed in accordance with sections 1A and 1B of this Act;”

“" hazardous substances consent" means consent required by section 58B of this Act;”

“" hazardous substances contravention notice " has the meaning assigned to it by section 101B(3) of this Act;”; and
  - (c) the following shall be inserted after the definition of " tree preservation order " —
 

“" urban development area " and " urban development corporation " have the same meaning as in Part XVI of the Local Government, Planning and Land Act 1980 ;”.
- Town and Country Planning Act 1984 (c.10)*
- 8 In section 1 of the Town and Country Planning Act 1984 (applications in anticipation of disposal of Crown interest)—
- (a) in subsection (1)(a), after the words "listed building consent " there shall be inserted the words " , hazardous substances consent " ; and
  - (b) the following subsection shall be inserted after subsection (3)—
 

“(3A) Any hazardous substances consent granted by virtue of this section shall apply only—

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- (a) to the presence of the substance to which the consent relates after the land in question has ceased to be Crown land ; and
- (b) so long as that land continues to be Crown land, to the presence of the substance by virtue of a private interest in the land.”.

*Gas Act 1986 (c.44.)*

- 9 In sub-paragraph (1)(xxiv) of paragraph 2 of Schedule 7 to the Gas Act 1986 (enactments for the purposes of which a public gas supplier is deemed to be a statutory undertaker and his undertaking a statutory undertaking)—
- (a) after " sections " there shall be inserted " 1B, " ; and
  - (b) after " 49," there shall be inserted " 58F, ".

**PART II**

SCOTLAND

*Radioactive Substances Act 1960 (c.34)*

- 1 The following paragraph shall be inserted after the entry relating to the Sewerage (Scotland) Act 1968 in Part II of the first Schedule to the Radioactive Substances Act 1960 (duty of public and local authorities not to take account of any radioactivity in performing their functions)—
- “17A Sections 56A to 56N and 97B of the Town and Country Planning (Scotland) Act 1972.”.

*Town and Country Planning (Scotland) Act 1972 (c.52)*

- 2 In subsection (3) (action on the part of the Secretary of State that may be questioned in legal proceedings) of section 231 of the Town and Country Planning (Scotland) Act 1972, the following paragraph shall be inserted after paragraph (d)—
- “(dd) any decision by the Secretary of State relating to an application for hazardous substances consent;”.
- 3 In subsection (2)(a) of section 253 of that Act (orders which, in relation to Crown land, may only be made with consent of appropriate authority)—
- (a) after " 49B " there shall be inserted " 56J " ; and
  - (b) for " or 92 " there shall be substituted " 92 or 97B ".
- 4 The following section shall be inserted after section 257 of that Act—

**“257A Application to planning authorities of provisions as to hazardous substances control.**

- (1) The provisions of this Act relating to hazardous substances shall have effect subject to such exceptions and modifications as may be prescribed in relation to hazardous substances consent for planning authorities.

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*Status: This is the original version (as it was originally enacted).*

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- (2) Subject to the provisions of section 56G of this Act, any such regulations may in particular provide for securing—
- (a) that any application by such an authority for hazardous substances consent in respect of the presence of a hazardous substance on, over or under such land shall be made to the Secretary of State and not to the planning authority ;
  - (b) that any order or notice authorised to be made, issued or served under those provisions shall be made, issued or served by the Secretary of State and not by the planning authority.”.
- 5 In section 265 of that Act (rights of entry)— (a) the following subsection shall be inserted after subsection (1)
- “(1A) Any person duly authorised in writing by the Secretary of State or by a planning authority may at any reasonable time enter any land for the purpose of surveying it in connection with—
- (a) any application for hazardous substances consent ;
  - (b) any proposal to issue a hazardous substances contravention notice.”;
- (b) the following subsection shall be inserted after subsection (4)—
- “(4A) Any person duly authorised in writing by the Secretary of State or by a planning authority may at any reasonable time enter any land for the purpose of ascertaining whether an offence appears to have been committed under section 56L of this Act.”; and
- (c) the following subsection shall be inserted after subsection(7) —
- “(7A) Any person duly authorised in writing by the Secretary of State or a planning authority may at any reasonable time enter any land in respect of which a hazardous substances contravention notice has been served for the purpose of ascertaining whether the notice has been complied with.”.
- 6 In section 275(1) of that Act (interpretation)—
- (a) the following shall be inserted after the definition of " conservation area " —
 

“"contravention of hazardous substances control" has the meaning assigned to it by section 56L(2) of this Act;”;
  - (b) the following shall be inserted after the definition of " government department " —
 

“" hazardous substances consent" means consent required by section 56C of this Act;

"hazardous substances contravention notice" has the meaning assigned to it by section 97B(3) of this Act;”; and
  - (c) the following shall be inserted after the definition of " tree preservation order " —
 

“" urban development area " and " urban development corporation " have the same meaning as in Part XVI of the Local Government, Planning and Land Act 1980 ;”.

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*Status: This is the original version (as it was originally enacted).*

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*Town and Country Planning Act 1984 (c.10)*

- 7 In section 1 of the Town and Country Planning Act 1984 (applications in anticipation of disposal of Crown interests)—
- (a) in subsection (1)(a), after the words " listed building consent" there shall be inserted the words " , hazardous substances consent "; and
  - (b) the following subsection shall be inserted after subsection (3) —
    - “(3A) Any hazardous substances consent granted by virtue of this section shall apply only—
    - (a) to the presence of the substance to which the consent relates after the land in question has ceased to be Crown land ; and
    - (b) so long as that land continues to be Crown land to the presence of the substance by virtue of a private interest in the land.”.

*Gas Act 1986 (c.44)*

- 8 In sub-paragraph (1)(xxv) of paragraph 2 of Schedule 7 to the Gas Act 1986 after " 46 ", there shall be inserted " 56B, 56G, ".

SCHEDULE 8

Section 39(3).

OPENCAST COAL — MISCELLANEOUS AMENDMENTS

**PART I**

THE 1958 ACT

- 1 The following section shall be substituted for section 3—

**“3 Preservation of amenity.**

- (1) Where the Board are formulating any proposals as to the working of coal by opencast operations or the carrying out of operations incidental to such working, the Board, having regard to the desirability of preserving natural beauty, of conserving flora, fauna, and geological or physiographical features of special interests, and of protecting buildings and other objects of architectural or historic interest, shall take into account any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, buildings, or objects.
  - (2) The provisions of the preceding subsection shall also apply, with the necessary modifications, where the Board are formulating any proposals as to the restoration of land affected by the working of coal by opencast operations or by operations incidental to such working.”.
- 2 (1) In section 4(1), for the words " the land comprised in an authorisation under section 1 of this Act" there shall be substituted the words " any land on which they desire to work coal by such operations or to carry out operations incidental to such working ".

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*Status: This is the original version (as it was originally enacted).*

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- (2) The following subsections shall be substituted for section 4(6)—
- “(6) A compulsory rights order may only be made if opencast planning permission has been applied for or granted in respect of the land comprised in the order or is deemed to have been granted in respect of it.
- (6A) Where a compulsory rights order is made before opencast planning permission has been granted in respect of the land comprised in the order, the Secretary of State shall not confirm it unless such permission in respect of that land has first been granted.
- (6B) Where a compulsory rights order is made in a case where opencast planning permission has been granted or is deemed to have been granted, the order, as from the time when it is made, shall include a reference to the permission.
- (6C) If opencast planning permission is granted in respect of land comprised in a compulsory rights order and the Secretary of State subsequently confirms the order, the order as confirmed shall include a reference to the permission.
- (6D) No compulsory rights order, as confirmed, shall extend to any land which is not comprised in the permission or deemed permission referred to in the order.”.
- 3 In section 5(5)—
- (a) for the word " authorisation " there shall be substituted the words " opencast planning permission "; and
- (b) for the words " fulfilment of the authorised purposes " there shall be substituted the words " permitted activities ".
- 4 In section 13, the words " in respect of which opencast planning permission has been granted " shall be substituted—
- (a) in subsection (1)—
- (i) for the words from "which", in the second place where it occurs, to " Act", in the second place where it occurs; and
- (ii) for the words from " comprised", in the second place where it occurs, to " Act", in the third place where it occurs;
- (b) in subsection (2), for the words from " which " to " Act" ;
- (c) in subsection (4)—
- (i) for the words from " which " to " Act" ; and
- (ii) for the words "comprised in such an authorisation " ; and
- (d) in subsection (5), for the words from "which", in the second place where it occurs, to the end of the subsection.
- 5 The following sections shall be substituted for section 14—
- “14 Provisions as to agricultural tenancies in England and Wales.**
- (1) Without prejudice to the provisions of Part III of this Act as to matters arising between landlords and tenants in consequence of compulsory rights orders, the provisions of this section shall have effect where—
- (a) opencast planning permission has been granted subject to a restoration condition and to an aftercare condition in which the use specified is use for agriculture or use for forestry, and



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- (b) immediately before that permission is granted, any of the land comprised therein consists of an agricultural holding or part of an agricultural holding,  
whether any of that land is comprised in a compulsory rights order or not.
- (2) For the purposes of the Agricultural Holdings Act 1986 (in this Act referred to as " the Act of 1986 ")—
- (a) the holding shall not be taken to have ceased to be an agricultural holding ; and
- (b) where only part of the holding is comprised in opencast planning permission, that part shall not be taken to have ceased to form part of an agricultural holding,  
by reason only that, while occupied or used for the permitted activities, the land is not being used for agriculture within the meaning of that Act.
- (3) For the purposes of the Act of 1986, the tenant of the holding shall not be taken to have failed to fulfill his responsibilities to farm in accordance with the rules of good husbandry—
- (a) by reason of his having permitted any of the land comprised in the opencast planning permission to be occupied for the purpose of carrying on any of the permitted activities, or by reason of any other thing done or omitted by him for facilitating the use of any of that land for that purpose ;
- (b) where any of that land is comprised in a compulsory rights order, by reason of the occupation or use of any of that land in the exercise of rights conferred by the order, in so far as that occupation or use was not permitted or facilitated by the tenant as mentioned in the preceding paragraph.
- (4) For the purposes of the Act of 1986 nothing done or omitted by the tenant or by the landlord of the holding by way of permitting any of the land in respect of which opencast planning permission has been granted to be occupied for the purpose of carrying on any of the permitted activities, or by way of facilitating the use of any of that land for that purpose, shall be taken to be a breach of any term or condition of the tenancy, either on the part of the tenant or on the part of the landlord.
- (5) For the purposes of subsections (1) to (3) of section 27 of the Act of 1986 (Agricultural Land Tribunal's consent to operation of notice to quit) the condition specified in paragraph (f) of subsection (3) of that section shall not be treated as satisfied if the use for the purpose for which the landlord proposes to terminate the tenancy is the use of the land for carrying on any of the permitted activities.
- (6) On a reference to arbitration under section 12 of the Act of 1986 with respect to the rent which should be properly payable for the holding, in respect of any period for which the Board are in occupation of the holding, or of any part thereof, for the purpose of carrying on any of the permitted activities, the arbitrator shall not take into account any increase or diminution in the rental value of the holding in so far as that increase or diminution is attributable to the occupation of the holding, or of that part of the holding, by the Board for the purpose of carrying on any of the permitted activities.

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*Status: This is the original version (as it was originally enacted).*

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- (7) For the purpose of the operation of section 13 of the Act of 1986 (increases of rent for landlord's improvements) in relation to improvements carried out on the holding, in a case where the improvements have been affected by anything done for the purpose of carrying on any of the permitted activities, the increase (if any) of the rental value of the holding attributable to the carrying out of the improvements shall be assessed as if it had not been done.
- (8) This section does not extend to Scotland.

#### **14A Provisions as to agricultural tenancies in Scotland.**

- (1) Without prejudice to the provisions of Part LTI of this Act as to matters arising between landlords and tenants in consequence of compulsory rights orders, the provisions of this section shall have effect in Scotland where—
- (a) opencast planning permission has been granted subject to a restoration condition and to an aftercare condition in which the use specified is use for agriculture, and
  - (b) immediately before that permission is granted, any of the land comprised therein consists of an agricultural holding or part of an agricultural holding,
- whether any of that land is comprised in a compulsory rights order or not.
- (2) In this section—
- " aftercare condition " means a condition requiring that such steps shall be taken as may be necessary to bring land to the standard required for use for agriculture ; and
- " restoration condition " has the meaning given to it in section 27A(2) of the Town and Country Planning (Scotland) Act 1972.
- (3) For the purposes of the Agricultural Holdings (Scotland) Act 1949 (in this Act referred to as " the Scottish Act of 1949 ")—
- (a) the holding shall not be taken to have ceased to be an agricultural holding ; and
  - (b) where only part of the holding is comprised in the opencast planning permission, that part shall not be taken to have ceased to form part of an agricultural holding,
- by reason only that, while occupied or used for the permitted activities, the land is not being used for agriculture within the meaning of that Act.
- (4) For the purposes of the Scottish Act of 1949, the tenant of the holding shall not be taken to have failed to fulfil his responsibilities to farm in accordance with the rules of good husbandry—
- (a) by reason of his having permitted any of the land comprised in the opencast planning permission to be occupied for the purpose of carrying on any of the permitted activities, or by reason of any other thing done or omitted by him for facilitating the use of any of that land for that purpose;
  - (b) where any of that land is comprised in a compulsory rights order, by reason of the occupation or use of any of that land in the exercise of rights conferred by the order, in so far as that occupation or use

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was not permitted or facilitated by the tenant as mentioned in the preceding paragraph.

- (5) For the purposes of the Scottish Act of 1949 nothing done or omitted by the tenant or by the landlord of the holding by way of permitting any of the land in respect of which opencast planning permission has been granted to be occupied for the purpose of carrying on any of the permitted activities, or by way of facilitating the use of any of that land for that purpose, shall be taken to be a breach of any term or condition of the tenancy, either on the part of the tenant or on the part of the landlord.
- (6) For the purposes of section 25(2) of the Scottish Act of 1949, no account is to be taken of permission granted as mentioned in paragraph (c) of that subsection if the permission—
  - (a) is granted on an application by the National Coal Board; and
  - (b) relates to the working of coal by opencast operations ; and
  - (c) is granted subject to a restoration condition and an aftercare condition.
- (7) For the purposes of section 26 of the Scottish Act of 1949 (in which subsection (1) specifies conditions for the giving of consent under section 25 of that Act to the operation of a notice to quit) the condition specified in paragraph (e) of subsection (1) shall not be treated as satisfied if the use for the purpose of which the landlord proposes to terminate the tenancy is the use of the land for carrying on any of the permitted activities.
- (8) On a reference to arbitration under section 7 of the Scottish Act of 1949 with respect to the rent which should be properly payable for the holding, in respect of any period for which the Board are in occupation of the holding, or of any part thereof, for the purpose of carrying on any of the permitted activities, the arbiter shall not take into account any increase or diminution in the rental value of the holding in so far as that increase or diminution is attributable to the occupation of the holding, or of that part of the holding, by the Board for the purpose of carrying on any of the permitted activities.
- (9) For the purpose of the operation of section 8 of the Scottish Act of 1949 (which relates to increases of rent for improvements carried out by the landlord) in relation to an improvement carried out on the holding, in a case where the improvement has been affected by anything done for the purpose of carrying on any of the permitted activities, the increase (if any) of the rental value of the holding attributable to the carrying out of the improvement shall be assessed as if the improvement had not been so affected.
- (10) The use of land for the working of coal by opencast operations shall not be a use for the purposes of which a landlord shall be entitled to resume the land.”.

6 The following sections shall be substituted for section 15—

**“15 Suspension of certain public rights of ways.**

- (1) Where-
  - (a) the Board apply for opencast planning permission ; and

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- (b) over any part of the land to which the application relates there subsists a public right of way, not being a right enjoyed by vehicular traffic,
- the Board may also apply to the Secretary of State for an order suspending the public right of way.
- (2) The Secretary of State shall not make such an order unless—
- (a) opencast planning permission is granted ; and
  - (b) he is satisfied—
    - (i) that a suitable alternative way will be made available by the Board (whether on land comprised in the opencast planning permission or on other land) for use by the public during the period for which the order remains in force; or
    - (ii) that the provision of such an alternative way is not required.
- (3) An order under this section shall specify the date, which shall not be earlier than the making of the order, with effect from which the right of way is suspended.
- (4) Where an order has been made under this section the Secretary of State shall revoke it—
- (a) it—
    - (i) no permitted activities have been carried on pursuant to the opencast planning permission on the land over which the right of way subsisted; and
    - (ii) he is satisfied that there is no early prospect of such activities being so carried on; or
  - (b) as soon after such permitted activities have been so carried on as he is satisfied that it is no longer necessary for the purpose of carrying on such permitted activities that the right of way should be suspended.
- (5) An order under this section shall include such provisions as may appear to the Secretary of State to be appropriate for securing the reconstruction of the way on the restoration of the land over which the right of way subsisted immediately before the order was made.
- (6) Where an order is made under this section then, in connection with the provision of such a suitable alternative way as is referred to in subsection (2) above.—
- (a) the order under this section may provide that, in so far as the carrying out of any operations, or any change in the use of land, involved in making the alternative way available or in permitting it to be used by the public, constitutes development within the meaning of the Act of 1971, permission for that development shall be deemed to be granted under Part III of that Act subject to such conditions (if any) as may be specified in the order;
  - (b) where the order under this section includes provisions in accordance with paragraph (a) above,, the Act of 1971 shall have effect as if they were conditions subject to which the opencast planning permission was granted;

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- (c) if a compulsory rights order referring to the open cast planning permission is made, then, in the application to that order of section 5(5) above, the permitted activities shall be taken to include making an alternative way available for use by the public, and the right exercisable in accordance with that subsection, as against all persons directly concerned, shall include the right to permit the public to use any way so made available; and
  - (d) if the land on which the alternative way is to be made available is specified in the order under this section and is land which does not form part of, but it contiguous with, the land to which the opencast planning permission relates, a compulsory rights order referring to the opencast planning permission may include that land as if it were part of the land comprised in the permission.
- (7) In the application of this section to Scotland, it shall be read as if for " the Act of 1971" there were substituted " the Town and, Country Planning (Scotland) Act 1972 " .

#### **15A Suspension of public rights of way— supplementary.**

- (1) Before submitting to the Secretary of State an application for an order under section 15 of this Act, the Board shall publish a notice in the prescribed form identifying the right of way and stating—
  - (a) that the Board are proposing to apply for an order suspending it in connection with the working of coal by opencast operations;
  - (b) that opencast planning permission has been applied for, or, as the case may be, has been granted; and
  - (c) that objections to the application for the order may be made in writing to the Secretary of State within such time, not being less than 28 days from the publication of the notice, as may be specified.
- (2) The duty to publish a notice imposed by subsection (1) above is a duty to publish it—
  - (a) in two successive weeks in one or more local newspapers circulating in the locality in which the land over which the right of way subsists is situated ; and
  - (b) in the same or any other two successive weeks, in the appropriate Gazette.
- (3) The period within which objections may be made expires when the period specified in the last publication of the notice expires; and any period specified in earlier publications is to be treated as extended accordingly.
- (4) A notice under subsection (1) above shall name a place in the locality where a copy of the application and of a map showing the right of way can be inspected.
- (5) The Board shall also, before submitting such an application to the Secretary of State.—
  - (a) inform—
    - (i) in England and Wales, the district council and, except in the case of a metropolitan district, the county council, and any parish or community council or parish meeting ; and

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- (ii) in Scotland, every local authority in whose area any part of the land over which the right of way subsists is situated of the right to object conferred by subsection (1) above;
  - (b) send them a map showing the right of way and a copy of their notice under subsection (1) above; and
  - (c) affix to some conspicuous object at either end of the right of way a notice giving in the prescribed form the prescribed particulars of their proposed application concerning it and of the right to object.
- (6) If no objection is made by any such authority, other than a parish or community council or parish meeting, as is mentioned in subsection (5) (a) above, or if all objections which are made by any such authority are withdrawn, the Secretary of State, upon being satisfied that the Board have complied with subsections (1) to (5) above, may if he thinks fit make the order.
- (7) The Secretary of State may, if he thinks fit, cause a public local inquiry to be held before determining whether to make an order, and shall cause such an inquiry to be held if an objection is made by any such authority and is not withdrawn.
- (8) If the Secretary of State causes such an inquiry to be held, he shall consider all objections to the application which are duly made by any person and not withdrawn and the report of the person who held the inquiry before determining whether to make the order.
- (9) An order under section 15 of this Act may be made either in accordance with the Board's application or subject to such modifications as the Secretary of State may determine.
- (10) If the Secretary of State makes an order, the Board, as soon as may be after the order is made, shall publish a notice in the prescribed form that the order has been made, describing the right of way which is suspended, stating the date on which the order comes into operation and naming a place in the locality where a copy of the order and of any map to which it refers can be inspected at all reasonable hours, and shall serve a like notice and a copy of the order on any body required under this section to be informed of the application for the order.
- (11) The duty to publish a notice imposed by subsection (10) above is a duty to publish it—
- (a) in one or more local newspapers such as are mentioned in subsection (1) above ; and
  - (b) in the appropriate Gazette.
- (12) In this section " the appropriate Gazette " means—
- (a) the London Gazette in a case where the land over which the right of way subsists is situated in England or Wales ; and
  - (b) the Edinburgh Gazette in a case where it is situated in Scotland.”.

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In section 16—

- (a) in subsections (1) and (2), for the words from " which " to " Act" there shall be substituted the words " in respect of which opencast planning permission has been granted " ;

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- (b) in subsection (3), for the words from " comprised " to " Act" there shall be substituted the words " in respect of which the permission was granted " .
- 8 In sections 18(3)(a) and 19(4)(a)—
- (a) for the word "authorisation", in the first place where it occurs, there shall be substituted the words " opencast planning permission "; and
- (b) for the words " an authorisation " there shall be substituted the word " permission " .
- 9 In section 38—
- (a) in paragraph (a)—
- (i) for the words from " which " to " Act" there shall be substituted the words " in respect of which opencast planning permission has been granted "; and
- (ii) for the words " authorised purposes" there shall be substituted the words " purpose of carrying on the permitted activities " ;
- (b) in paragraph (b), for the words " comprised in the authorisation" there shall be substituted the words " in respect of which the permission was granted and "; and
- (c) for the words from "fulfilment" to the end of the subsection there shall be substituted the words " permitted activities "
- 10 In section 39(3)—
- (a) in paragraph (a), for the words " an authorisation under section one of this Act" there shall be substituted the words " opencast planning permission " ;
- (b) in paragraph (b)—
- (i) for the words from " an " to " Act", in the first place where it occurs, there shall be substituted the words " opencast planning permission "; and
- (ii) for the words " out of any authorised operations " there shall be substituted the words " on of any of the permitted activities "; and
- (c) in paragraph (d), for the words " any of the provisions of the First" there shall be substituted the words " section 15A(4)(c) or any of the provisions of the " .
- 11 In the proviso to section 39(5), for the words "any of the provisions of the First" there shall be substituted the words " section 15A(4)(c) or any of the provisions of the " .
- 12 In section 45(2)—
- (a) for the words from " an " to " Act" there shall be substituted the words " opencast planning permission has been granted "; and
- (b) for the words " authorised operations", there shall be substituted the words " permitted activities " .
- 13 In section 51(1)—
- (a) the following definition shall be inserted after the definition of " National Trust " —
- “" opencast planning permission " means planning permission which permits the Board to work coal by opencast operations or to carry out operations incidental to such working ;”;
- (b) the following definition shall be inserted after the definition of " period of occupation " —

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- “permitted activities ” means—
- (a) the working of coal by opencast operations pursuant to opencast planning permission and the carrying out of operations incidental to such working; and
  - (b) the carrying out of any conditions subject to which opencast planning permission has been granted ;”;
- (c) the following definition shall be inserted after the definition of " persons directly concerned " —
- “" planning permission " means planning permission under Part III of the Act of 1971;”.
- 14 In section 52(2), the following definition shall be inserted after the definition of " owner " —
- “" planning permission " means planning permission under Part I of the Act of 1972 ;”.
- 15 In paragraph 5(1) of Part I of Schedule 2 (compulsory rights orders)—
- (a) for the words " an authorisation under section one of this Act" there shall be substituted the words " opencast planning permission "; and
  - (b) for the words from " an authorisation ", in the second place where those words occur, to " operations " there shall be substituted the words " opencast planning permission should be granted or should have been granted. ".
- 16 In Schedule 6, in paragraph 18(2)(c), for the words from " purposes ", in the first place where it occurs, to the end there shall be substituted the words " activities which, in relation to the opencast planning permission referred to in the order, constitute the permitted activities ".
- 17 In Schedule 7, in paragraph 24(3)(a)—
- (a) for the word " authorisation", in the first place where it occurs, there shall be substituted the words " opencast planning permission "; and
  - (b) for the words " had been made for such an authorisation " there shall be substituted the words " for opencast planning permission had been made ".

## PART II

### ACQUISITION OF LAND ACT 1981 (c.67)

- 18 In section 29—
- (a) in subsection (6)—
    - (i) for the words "an authorisation under section 1 of the Opencast Coal Act 1958 " there shall be substituted the words " opencast planning permission "; and
    - (ii) for the words from "an authorisation", in the second place where they occur, to "operations" there shall be substituted the words " opencast planning permission should be granted or should have been granted "; and
  - (b) the following subsection shall be substituted for subsection (11)—
 

“(11) In this section " opencast planning permission " and " persons directly concerned " have the same meanings as in the Opencast Coal Act 1958.”.



## SCHEDULE 9

Sections 40 and 50.

### LISTED BUILDINGS AND CONSERVATION AREAS

#### PART I

##### ENGLAND AND WALES

###### *Free-standing objects and structures within curtilage of listed building*

- 1 (1) In section 54(9) of the Town and Country Planning Act 1971 (definition of " listed building "), for the words from " and for the purposes " to the end substitute—

“and, for the purposes of the provisions of this Act relating to listed buildings and building preservation notices, the following shall be treated as part of the building—

- (a) any object or structure fixed to the building ;
- (b) any object of 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 1st July 1948.”.

- (2) Where by virtue of this paragraph an object or structure ceases to be treated as part of a listed building—

- (a) liabilities incurred before the commencement of this paragraph by reason of the object or structure being so treated cease to have effect, and
- (b) a condition attached to a listed building consent ceases to have effect if, or to the extent that, it could not have been attached if this paragraph had been in force ;

except for the purposes of criminal proceedings begun before the commencement of this paragraph.

###### *Scope of exception for urgent works*

- 2 (1) In section 55 of the Town and Country Planning Act 1971 (control of works for demolition, alteration or extension of listed buildings), for subsection (6) (exception for certain urgent works) substitute—

“(6) In proceedings for an offence under this section it shall be a defence to prove the following matters—

- (a) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building,
- (b) that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter,
- (c) that the works carried out were limited to the minimum measures immediately necessary, and
- (d) that notice in writing justifying in detail the carrying out of the works was given to the local planning authority as soon as reasonably practicable.”.

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- (2) In section 97 of the Town and Country Planning Act 1971 (appeal against listed building enforcement notice) in subsection (1) (grounds of appeal), for paragraph (d) substitute—

“(d) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building, that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter, and that the works carried out were limited to the minimum measures immediately necessary ;”.

*Grant of listed building consent subject to. subsequent approval of detail*

- 3 (1) In section 56 of the Town and Country Planning Act 1971 (supplementary provisions with respect to listed building consent), after subsection (4A) insert—

“(4B) Listed building consent may be granted subject to a condition reserving specified details of the works (whether or not set out in the application) for subsequent approval by the local planning authority or, in the case of consent granted by the Secretary of State, specifying whether the reserved details are to be approved by the local planning authority or by him.”.

- (2) In paragraph 8(1) of Schedule 11 to the Town and Country Planning Act 1971 (listed building consent: appeal against decision), for the words from the beginning to "and the consent is refused" substitute—

“Where an application is made to the local planning authority—

- (a) for listed building consent, or
- (b) for approval of the authority required by a condition imposed on the granting of listed building consent with respect to details of the works,

and the consent or approval is refused”.

- (3) Renumber paragraph 9 of Schedule 11 to the Town and Country Planning Act 1971 (appeal in default of decision) as sub-paragraph (1) of that paragraph and after it insert—

“(2) Sub-paragraph (1) of this paragraph applies to an application to the local planning authority for approval by the authority required by a condition imposed on the granting of listed building consent with respect to details of the works as it applies to an application for listed building consent, with the following modifications—

- (a) for references to the prescribed period substitute references to the period of eight weeks from the date of the receipt of the application, and
- (b) omit paragraph (b) and the word ' or' preceding it.”.

*Application to modify or discharge conditions attached to listed building consent*

- 4 After section 56A of the Town and Country Planning Act 1971 insert—

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**“56B Application for variation or discharge of conditions.**

- (1) Any person interested in a listed building with respect to which listed building consent has been granted Subject to conditions may apply to the local planning authority for the variation or discharge of the conditions.
- (2) The application shall indicate what variation or discharge of conditions is applied for and the provisions of Part I of Schedule 11 to this Act apply to such an application as they apply to an application for listed building consent.
- (3) On such an application the local planning authority or, as the case may be, the Secretary of State may vary or discharge the conditions attached to the consent, and may add new conditions consequential upon the variation or discharge, as they or he thinks fit.”.

*Extent of exemption accorded to ecclesiastical buildings*

- 5 (1) After section 58A of the Town and Country Planning Act 1971 insert—

**“58AA Power to restrict exemption of certain ecclesiastical buildings.**

- (1) The Secretary of State may by order provide for restricting or excluding in such cases as may be specified in the order the operation in relation to ecclesiastical buildings of sections 56(1) and 58(2) of this Act (buildings excepted from provisions relating to listed buildings and building preservation notices).
- (2) An order under this section may—
  - (a) make provision for buildings generally, for descriptions of building or for particular buildings;
  - (b) make different provision for buildings in different areas, for buildings of different religious faiths or denominations or according to the use made of the building;
  - (c) make such provision in relation to a part of a building (including, in particular, an object or structure falling to be treated as part of the building by virtue of section 54(9) of this Act) as may be made in relation to a building and make different provision for different parts of the same building;
  - (d) make different provision with respect to works of different descriptions or according to the extent of the works ;
  - (e) make such consequential adaptations or modifications of the operation of any other provision of this Act, or of any instrument made under this Act, as appear to the Secretary of State to be appropriate.”.
- (2) In section 287 of the Town and Country Planning Act 1971 (regulations and orders)  
—
  - (a) in subsection (4) (orders to be made by statutory instrument), after " 55(3)" insert " 58AA " ;
  - (b) in subsection (5) (orders subject to negative resolution), after "section " insert " 58AA " ;

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- (c) in subsection (9) (power to include supplementary and incidental provisions), after " section " insert " 58AA ".

*Dangerous structure orders in respect of listed buildings*

- 6 (1) In the Town and Country Planning Act 1971, after the section inserted by paragraph 4 above insert—

**“56C Dangerous structure orders in respect of listed buildings.**

- (1) Before taking any steps with a view to the making of a dangerous structure order in respect of a listed building, a local planning authority shall consider whether they should instead exercise their powers under—
- (a) section 101 of this Act (power to carry out urgent works for preservation of building), or
  - (b) sections 114 and 115 of this Act (power to acquire building in need of repair).
- (2) In this section " dangerous structure order " means an order or notice under section 77(1)(a) or 79(1) of the Building Act 1984 or section 62(2), 65 or 69(1) of the London Building Acts (Amendment) Act 1939.”.
- (2) In sections 77 and 79 of the Building Act 1984 and in sections 62, 65 and 69 of the London Building Acts (Amendment) Act 1939 insert as the final subsection—

“This section has effect subject to the provisions of the Town and Country Planning Act 1971 relating to listed buildings, buildings subject to building preservation orders and buildings in conservation areas.”.

*Works for preservation of buildings*

- 7 For section 101 of the Town and Country Planning Act 1971 (urgent works for preservation of unoccupied buildings) substitute—

**“101 Urgent works to preserve building.**

- (1) Where it appears to the local authority or the Secretary of State that works are urgently necessary for the preservation of—
- (a) a listed building, or
  - (b) a building in respect of which a direction has been given by the Secretary of State that this section shall apply,
- they or he may, subject to the following provisions of this section, execute the works, which may consist of or include works for affording temporary support or shelter for the building.
- (2) The ground on which the Secretary of State may give a direction that this section shall apply to a building is that the building is in a conservation area and it appears to him that its preservation is important for maintaining the character or appearance of the conservation area.
- (3) If the building is occupied works may be carried out only to those parts which are not in use; and no action may be taken in respect of an excepted building within the meaning of section 58(2) of this Act

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- (4) The owner of the building shall be given not less than seven days' notice in writing of the intention to carry out the works and the notice shall describe the works proposed to be carried out.
- (5) The Historic Buildings and Monuments Commission for England have the following functions under this section—
  - (a) as respects buildings in Greater London the Commission have concurrently with the relevant London borough council the functions of a local authority;
  - (b) the Secretary of State shall consult the Commission before giving a direction under subsection (1)(b) in respect of a building in England ; and
  - (c) if it appears to the Secretary of State in accordance with subsection (1) that works are required for the preservation of a building in England, he shall not himself carry out the works but shall instead authorise the Commission to do so, specifying the works in the authorisation, and it shall be for the Commission to give notice to the owner under subsection (4).

#### **101A Recovery of expenses of works under s. 101.**

- (1) This section has effect for enabling the expenses of works executed under section 101 of this Act to be recovered by the authority who carried out the works, that is, the local authority, the Historic Buildings and Monuments Commission for England or the Secretary of State or, in the case of works carried out by the Historic Buildings and Monuments Commission for England on behalf of the Secretary of State, by the Secretary of State.
- (2) The authority or, as the case may be, the Secretary of State may give notice to the owner of the building requiring him to pay the expenses of the works.
- (3) Where the works consist of or include works for affording temporary support or shelter for the building—
  - (a) the expenses which may be recovered include any continuing expenses involved in making available the apparatus or materials used, and
  - (b) notices under subsection (2) in respect of any such continuing expenses may be given from time to time.
- (4) The owner may within 28 days of the service of the notice represent to the Secretary of State—
  - (a) that some or all of the works were unnecessary for the preservation of the building,
  - (b) in the case of works for affording temporary support or shelter, that the temporary arrangements have continued for an unreasonable length of time, or
  - (c) that the amount specified in the notice is unreasonable or that the recovery of it would cause him hardship,and the Secretary of State shall determine to what extent the representations are justified.

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- (5) The Secretary of State shall give notice of his determination, the reasons for it and the amount recoverable—
- (a) to the owner of the building, and
  - (b) to the local authority or the Historic Buildings and Monuments Commission for England, if they carried out the works.”.

*Control of demolition in conservation areas*

- 8 (1) Section 277A of the Town and Country Planning Act 1971 (control of demolition in conservation areas) is amended as follows.
- (2) For subsection (8) (application of provisions relating to listed buildings) substitute—
- “(8) The following provisions of this Act have effect in relation to buildings to which this section applies as they have effect in relation to listed buildings, subject to such exceptions and modifications as may be prescribed by regulations—
- sections 55 to 56C and 58AA and Parts I and II of Schedule 11 (requirement of consent to works: application for and revocation of consent),
  - sections 96 to 100 (enforcement),
  - section 172 (compensation where consent revoked or modified),
  - section 190 and Schedule 19 (purchase notice on refusal of consent),
  - sections 242, 243, 245 and 246 (validity of orders, proceedings for review and appeals),
  - section 255 (contributions by local authorities and statutory undertakers);
  - section 266(1)(t), (4) and (5) (application to Crown land), and
  - section 271 and Part VI of Schedule 21 (application of provisions to works by local planning authority).”.
- (3) In subsection (11) (authorities exercising functions of local planning authority), in paragraph (c) (non-metropolitan counties, excluding areas in National Parks) omit "the county planning authority and ".

*Form of application for listed building consent*

- 9 For paragraph 1(1) of Schedule 11 to the Town and Country Planning Act 1971 (regulations as to form and manner of application for listed building consent) substitute—
- “(1) An application for listed building consent shall be made in such form as the local planning authority may require and shall contain—
- (a) sufficient particulars to identify the building to which it relates, including a plan, and
  - (b) such other plans and drawings as are necessary to describe the works which are the subject of the application,
- and such other particulars as may be required by the local planning authority.
- (1A) Provision may be made by regulations under this Act with respect to the manner in which applications for listed building consent are to be made,

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the manner in which such applications are to be advertised and the time within which they are to be dealt with by local planning authorities or, as the case may be, by the Secretary of State.”.

*Listed building consent: consideration whether to call in application*

- 10 (1) In paragraph 5(2) of Schedule 11 to the Town and Country Planning Act 1971 (notice to local planning authority that Secretary of State requires further time to consider whether to call in an application for listed building consent), for the words from " and sub-paragraph (1)" to the end substitute " ; and if he gives such a notice the authority shall not grant the listed building consent until he has notified them that he does not intend to require the reference of the application. ".
- (2) In paragraph 6(4) of Schedule 11 to the Town and Country Planning Act 1971 (notice to Historic Buildings and Monuments Commission that Secretary of State requires further time to consider whether to call in an application for listed building consent), for the words from " and sub-paragraph (3)" to the end substitute " ; and if he gives such a notice the Commission shall not authorise the local planning authority as mentioned in sub-paragraph (2)(a) of this paragraph, nor under sub-paragraph (2)(6) of this paragraph direct them to grant listed building consent, until he has notified them that he does not intend to require the reference of the application. ".
- (3) In paragraph 6(6) of Schedule 11 to the Town and Country Planning Act 1971 (notice to local planning authority that Secretary of State requires further time to consider whether to call in application for listed building consent which the Historic Buildings and Monuments Commission have directed the authority to refuse), for the words from " and sub-paragraph (5)(a) " to the end substitute " ; and if he gives such a notice the authority shall not give effect to the Commission's direction until he has notified them that he does not intend to require the reference of the application. ".

*Listed building consent: directions as to which applications need not be notified to the Secretary of State*

- 11 (1) Paragraph 7 of Schedule 11 to the Town and Country Planning Act 1971 (directions as to which applications need not be notified to Secretary of State) is amended as follows.
- (2) In paragraph 7(1) (power to direct that certain descriptions of application need not be notified) omit, " other than such consent for the demolition of a building " and after that sub-paragraph insert—
- “(1A) Before giving a direction under sub-paragraph (1) of this paragraph in respect of any description of application for consent to the demolition of a building in England, the Secretary of State shall consult the Historic Buildings and Monuments Commission for England.”.
- (3) For paragraph 7(1A) and (1B) (power to except applications from direction under sub-paragraph (1)) substitute—
- “(1B) Where a direction is in force under sub-paragraph (1) of this paragraph, the Secretary of State may give to a local planning authority a direction that paragraph 5 or (as the case may be) paragraph 6 of this Schedule shall nevertheless apply—
- (a) to a particular application for listed building consent, or

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(b) to such descriptions of application for listed building consent as are specified in the direction ;

and such a direction has effect in relation to any such application which has not been disposed of by the authority by their granting or refusing consent.”.

(4) At the end of the paragraph add—

“(3) Directions under sub-paragraph (1) or (2) of this paragraph may be given to authorities generally or to particular authorities or descriptions of authority.”.

*Application to local planning authorities of provisions relating to listed buildings*

- 12 In Part VI of Schedule 21 to the Town and Country Planning Act 1971 (provisions of Act applying to applications by local planning authorities with respect to listed buildings), at the appropriate place insert " Sections 242, 243, 245 and 246. ".

## PART II

### SCOTLAND

*Free-standing objects and structures within curtilage of listed building*

- 13 (1) In section 52(7) of the Town and Country Planning (Scotland) Act 1972 (definition of " listed building "), for the words from " and for the purposes " to the end substitute—

“and, for the purposes of the provisions of this Act relating to listed buildings and building preservation notices, the following shall be treated as part of the building—

- (a) any object or structure fixed to the building ;  
 (b) 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 much before 1st July 1948.”.

(2) Where by virtue of this paragraph an object or structure ceases to be treated as part of a listed building—

- (a) liabilities incurred before the commencement of this paragraph by reason of the object or structure being so treated cease to have effect, and  
 (b) a condition attached to listed building consent ceases to have effect if, or to the extent that, it could not have been attached if this paragraph had been in force ;

except for the purposes of criminal proceedings begun before the commencement of this paragraph.

*Late application for listed building consent*

- 14 (1) In subsection (1) of section 53 (control of works for demolition, alteration or extension of listed buildings) of the Town and Country Planning (Scotland) Act 1972, for the words " this Part of this Act" where they appear for the second time, substitute " subsection (2) of this section ".



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(2) After subsection (2) of the said section 53 insert—

“(2A) If written consent is granted by the planning authority or the Secretary of State for the retention of works for the demolition, alteration or extension of a listed building which have been executed without consent under subsection (2) of this section, the works are authorised under this Part of this Act from the grant of the consent under this subsection.”

(3) After subsection (3) of the said section insert—

“(3A) Consent under subsection (2) or (2A) of this section is referred to in this Part of this Act as " listed building consent ".”.

(4) At the end of section 54A (limit on duration of listed building consent) of the Town and Country Planning (Scotland) Act 1972 there shall be added—

“(5) Nothing in this section applies to any consent to the retention of works granted under section 53(2A) of this Act.”.

*Defence to proceedings under section 53*

15 (1) In section 53 of the Town and Country Planning (Scotland) Act 1972 (control of works for demolition, alteration or extension of listed buildings), for subsection (6) (exception for certain urgent works) substitute—

“(6) In proceedings for an offence under this section it shall be a defence to prove the following matters—

- (a) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building;
- (b) that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter;
- (c) that the works carried out were limited to the minimum measures immediately necessary, and
- (d) that notice in writing justifying in detail the carrying out of the works was given to the planning authority as soon as reasonably practicable.”.

(2) In section 93 of the Town and Country Planning (Scotland) Act 1972 (appeal against listed building enforcement notice), in subsection (1) (grounds of appeal), for paragraph (c) substitute—

“(c) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building, that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter, and that the works carried out were limited to the minimum measures immediately necessary ;”.

*Grant of listed building consent subject to subsequent approval of detail*

16 (1) In section 54 of the Town and Country Planning (Scotland) Act 1972 (supplementary provisions with respect to listed building consent), after subsection (4) insert—

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- “(4A) Listed building consent may be granted subject to a condition reserving specified details of the works (whether or not set out in the application) for subsequent approval by the planning authority or, in the case of consent granted by the Secretary of State, specifying whether the reserved details are to be approved by the planning authority or by him.”.
- (2) In paragraph 7(1) of the said Schedule 10 to the 1972 Act (listed building consent: appeal against decision), for the words from the beginning to " and the consent is refused " substitute—
- “Where an application is made to the planning authority—
- (a) for listed building consent, or
- (b) for approval of the authority required by a condition imposed on the granting of listed building consent with respect to details of the works,
- and the consent or approval is refused”.
- (3) Renumber paragraph 8 of that Schedule (appeal in default of decision) as sub-paragraph (1) of that paragraph and after it insert—
- “(2) Sub-paragraph (1) of this paragraph applies to an application to the planning authority for approval by the authority required by a condition imposed on the granting of listed building consent with respect to details of the works as it applies to an application for listed building consent, with the following modifications—
- (a) for references to the prescribed period substitute references to the period of two months from the date of the receipt of the application, and
- (b) omit paragraph (b) and the word ' or ' preceding it.”.

*Application to modify or discharge conditions attached to listed building consent*

17 After section 54C of the Town and Country Planning (Scotland) Act 1972 insert—

**“54D Application for variation or discharge of conditions.**

- (1) Any person interested in a listed building with respect to which listed building consent has been granted subject to conditions may apply to the planning authority for the variation or discharge of the conditions.
- (2) The application shall indicate what variation or discharge of conditions is applied for and the provisions of Part I of Schedule 10 to this Act apply to such an application as they apply to an application for listed building consent.
- (3) On such an application the planning authority or, as the case may be, the Secretary of State may vary or discharge the conditions attached to the consent, and may add new conditions consequential upon the variation or discharge, as they or he think fit.”.

*Extent of exemption accorded to ecclesiastical buildings*

18 (1) After section 56 of the Town and Country Planning (Scotland) Act 1972 insert—

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**“56AA Power to restrict exemption of certain ecclesiastical buildings.**

- (1) The Secretary of State may by order provide for restricting or excluding in such cases as may be specified in the order the operation in relation to ecclesiastical buildings of sections 54(1) and 56(2) of this Act (buildings excepted from provisions relating to listed buildings and building preservation notices).
  - (2) An order under this section may-
    - (a) make provision for buildings generally, for descriptions of building or for particular buildings ;
    - (b) make different provision for buildings in different areas, for buildings of different religious faiths or denominations or according to the use made of the building;
    - (c) make such provision in relation to a part of a building (including, in particular, an object or structure falling to be treated as part of the building by virtue of section 52(7) of this Act) as may be made in relation to a building and make different provision for different parts of the same building;
    - (d) make different provision with respect to works of different descriptions or according to the extent of the works ;
    - (e) make such consequential adaptations or modifications of the operation of any other provision of this Act, or of any instrument made under this Act, as appear to the Secretary of State to be appropriate.
  - (3) This section is without prejudice to the Church of Scotland Act 1921.”.
- (2) In section 273 (regulations and orders) of the Town and Country Planning (Scotland) Act 1972—
- (a) in subsection (4) (orders to be made by statutory instrument), after " 53(3)" insert " 56AA " ;
  - (b) in subsection (5) (orders subject to negative resolution), after " 1(3)" insert " 56AA";
  - (c) in subsection (9) (power to include supplementary and incidental provision), after " section " insert " 56AA ".

*Effect of listed building enforcement notice*

19 After section 95 of the Town and Country Planning (Scotland) Act 1972 insert—

**“95A Effect of listed building consent on listed building enforcement notice.**

- (1) If, after the issue of a listed building enforcement notice, consent is granted under section 53(2A) of this Act for the retention of any work to which the listed building enforcement notice relates, the notice shall cease to have effect in so far as it requires steps to be taken which would involve the works not being retained in accordance with the consent.
- (2) If the consent is granted so as to permit the retention of works without complying with some condition subject to which a previous listed building consent was granted, the listed building enforcement notice shall cease to

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have effect in so far as it requires steps to be taken for complying with that condition.

- (3) The preceding provisions of this section shall be without prejudice to the liability of any person for an offence in respect of a failure to comply with the listed building enforcement notice before the relevant provisions of that notice ceased to have effect.”

*Works for preservation of buildings*

20 For section 97 of the Town and Country Planning (Scotland) Act 1972 (urgent works for preservation of unoccupied buildings) substitute—

**“97 Urgent works to preserve building.**

- (1) Where it appears to the planning authority or the Secretary of State that works are urgently necessary for the preservation of—
- (a) a listed building, or
  - (b) a building in respect of which a direction has been given by the Secretary of State that this section shall apply,
- they or he may, subject to the following provisions of this section, execute the works, which may consist of or include works for affording temporary support or shelter for the building.
- (2) The ground on which the Secretary of State may give a direction that this section shall apply to a building is that the building is in a conservation area and it appears to him that its preservation is important for maintaining the character or appearance of the conservation area.
- (3) If the building is occupied works may be carried out only to those parts which are not in use; and no action may be taken in respect of an excepted building within the meaning of section 56(2) of this Act
- (4) The owner of the building shall be given not less than 7 days' notice in writing of the intention to carry out the works and the notice shall describe the works proposed to be carried out.

**97A Recovery of expenses of works under s. 97.**

- (1) This section has effect for enabling the expenses of works executed under section 97 of this Act to be recovered.
- (2) The planning authority or, as the case may be, the Secretary of State may give notice to the owner of the building requiring him to pay the expenses of the works.
- (3) Where the works consist of or include works for affording temporary support or shelter for the building—
- (a) the expenses which may be recovered include any continuing expenses involved in making available the apparatus or materials used, and
  - (b) notices under subsection (2) in respect of any such continuing expenses may be given from time to time.

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- (4) The owner may within 28 days of the service of the notice represent to the Secretary of State—
- (a) that some or all of the works were unnecessary for the preservation of the building,
  - (b) in the case of works for affording temporary support or shelter, that the temporary arrangements have continued for an unreasonable length of time, or
  - (c) that the amount specified in the notice is unreasonable or that the recovery of it would cause him hardship,
- and the Secretary of State shall determine to what extent the representations are justified.
- (5) The Secretary of State shall give notice of his determination, the reasons for it and the amount recoverable—
- (a) to the owner of the building, and
  - (b) to the planning authority, if they carried out the works.”.

*Control of demolition in conservation areas*

- 21 Section 262A(8) of the Town and Country Planning (Scotland) Act 1972 (application to buildings in conservation areas of provisions relating to listed buildings) is amended as follows—
- (a) for the words from " section 53 " to " section 54C " substitute " sections 53 to 54D and 56AA " ;
  - (b) for " sections 92 to 95 " substitute " sections 92 to 96 " ;
  - (c) after "section 179" insert " sections 231 and 233, section 242 " ;
  - (d) after " section 253(1)(2> " insert " , (4) and (5), section 257 " ;
  - (e) after " Schedule 17 " insert " Part IV of Schedule 19 " .

*Form of application for listed building consent*

- 22 For paragraph 1(1) of Schedule 10 of the Town and Country Planning (Scotland) Act 1972 (regulations as to form and manner of application for listed building consent) substitute—
- “(1) An application for listed building consent shall be made in such form as the planning authority may require and shall contain—
- (a) sufficient particulars to identify the building to which it relates, including a plan, and
  - (b) such other plans and drawings as are necessary to describe the works which are the subject of the application.
- and such other particulars as may be required by the planning authority.
- (1A) Provision may be made by regulations under this Act with respect to the manner in which applications for listed building consent are to be made, the manner in which such applications are to be advertised and the time within which they are to be dealt with by planning authorities or, as the case may be, by the Secretary of State.”.

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*Calling in of application for listed building consent*

- 23 In paragraph 5(2) of Schedule 10 to the Town and Country Planning (Scotland) Act 1972 (notice to planning authority that Secretary of State requires further time to consider whether to call in application for listed building consent), for the words from " and sub-paragraph (1)" to the end substitute " ; and if he gives such a notice the authority shall not grant the listed building consent until he has notified them that he does not intend to require the reference of the application. "

*Application to planning authorities of provisions relating to listed buildings*

- 24 In Part IV of Schedule 19 to the Town and Country Planning (Scotland) Act 1972 (provisions of Act applying to applications by planning authorities with respect to listed buildings), at the appropriate place insert " Sections 231 and 233 ".

SCHEDULE 10

Section 41(1) and (3).

LOCAL PLANS AND UNITARY DEVELOPMENT PLANS

**PART I**

SECTIONS 11 TO 15B OF [THE TOWN AND COUNTRY PLANNING ACT 1971 \(C.78\)](#), AS SUBSTITUTED

“ARRANGEMENT OF SECTIONS

*Local Plans*

- 11 Local plans
- 11A Local plan schemes
- 11B Power of Secretary of State to direct making of local plan, &c
- 12 Publicity and consultation: general
- 12A Publicity and consultation: short procedure for certain alterations, &c
- 12B Powers of Secretary of State to secure adequate publicity and consultation
- 13 Objections: local inquiry or other hearing
- 14 Adoption of proposals
- 14A Calling in of proposals for approval by Secretary of State
- 14B Approval of proposals by Secretary of State
- 15 Conformity between plans: certificate of conformity. 15A. Conformity between plans: alteration of structure plan. 15B. Conformity between plans: local plan prevails
- 15A Conformity between plans: alteration of structure plan
- 15B Conformity between plans: local plan prevails

## *Local plans*

### **11 Local plans.**

- (1) A local plan shall consist of—
  - (a) a written statement formulating in such detail as the local planning authority think appropriate their proposals for the development or other use of land in their area, or for any description of development or other use of such land, including such measures as the authority think fit for the improvement of the physical environment and the management of traffic;
  - (b) a map showing those proposals; and
  - (c) such diagrams, illustrations or other descriptive matter as the authority think appropriate to explain or illustrate the proposals in the plan, or as may be prescribed.
- (2) Different local plans may be prepared for different purposes for the same area.
- (3) In formulating their proposals in a local plan the local planning authority shall have regard to any information and any other considerations which appear to them to be relevant or which may be prescribed or which the Secretary of State may in any particular case direct them to take into account.
- (4) The proposals in a local plan shall be in general conformity with the structure plan.
- (5) A local planning authority may prepare a local plan for a part of their area (an "action area") which they have selected for the commencement during a prescribed period of comprehensive treatment, by development, redevelopment or improvement of the whole or part of the area selected, or partly by one method and partly by another; and a local plan prepared for such an action area shall indicate the nature of the treatment selected for the area.
- (6) For the purpose of discharging their functions with respect to local plans a district planning authority may, in so far as it appears to them necessary to do so having regard to the survey made by the county planning authority under section 6 of this Act, examine the matters mentioned in subsections (1) and (3) of that section so far as relevant to their area.
- (7) In preparing a local plan a local planning authority shall take into account the provisions of any scheme under paragraph 3 of Schedule 32 to the Local Government, Planning and Land Act 1980 relating to land in their area which has been designated under that Schedule as an enterprise zone.

### **11A Local plan schemes**

- (1) A local plan scheme for each county shall be maintained in accordance with this section setting out a programme for the making, alteration, repeal or replacement of local plans for areas in the county, except any part of the county included in a National Park.
- (2) The scheme shall, as regards each local plan for which it provides—
  - (a) specify the title and nature of the plan and the area to which it is to apply and give an indication of its scope,
  - (b) indicate where appropriate its relationship with the other local plans provided for by the scheme, and

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- (c) designate the local planning authority, whether county or district, responsible for the plan ;  
 and may contain any appropriate incidental, consequential, transitional and supplementary provisions.
- (3) The district planning authorities shall keep under review the need for, and adequacy of, local plans for their area and may make recommendations to the county planning authority for incorporation into the local plan scheme.
- (4) The county planning authority shall, in the light of the recommendations of the district planning authorities and in consultation with those authorities, make and thereafter keep under review and from time to time amend the local plan scheme.
- (5) As soon as practicable after making or amending a local plan scheme the county planning authority shall send a copy of the scheme, or the scheme as amended, to the Secretary of State.
- (6) If a district planning authority make representations to the Secretary of State that they are dissatisfied with a local plan scheme, the Secretary of State may amend the scheme.
- (7) A local planning authority may prepare proposals for the making, alteration, repeal or replacement of a local plan—
- (a) in any case, except in the case of proposals relating only to land in a National Park, only where authorised to do so by the local plan scheme, and
  - (b) in the case of proposals for the alteration, repeal or replacement of a local plan approved by the Secretary of State, only with the consent of the Secretary of State ;
- but subject to any direction of the Secretary of State under section 11B.

### **11B Power of Secretary of State to direct making of local plan, &c**

- (1) The Secretary of State may, after consulting a local planning authority, direct them to make, alter, repeal or replace a local plan with respect to their area or part of it.
- (2) A direction for the making, alteration or replacement of a local plan shall specify the nature of the plan or, as the case may be, the nature of the alteration required.
- (3) The authority shall comply with the direction as soon as possible.
- (4) The county planning authority shall make such amendments of the relevant local plan scheme as appear to them appropriate in consequence of the direction.

### **12 Publicity and consultation: general**

- (1) A local planning authority who propose to make, alter, repeal or replace a local plan shall proceed in accordance with this section, unless section 12A applies (short procedure for certain alterations, &c.).
- (2) They shall take such steps as will in their opinion secure—
  - (a) that adequate publicity is given to the proposals in the area to which the plan relates,
  - (b) that persons who may be expected to wish to make representations about the proposals are made aware that they are entitled to do so, and



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- (c) that such persons are given an adequate opportunity of making such representations;
- and they shall consider any representations made to them within the prescribed period.
- (3) They shall consult the county planning authority or, as the case may be, the district planning authority with respect to their proposals, shall afford that authority a reasonable opportunity to express their views and shall take those views into consideration.
- (4) They shall then, having prepared the relevant documents, that is, the proposed plan, alterations, instrument of repeal or replacement plan, as the case may be, and having obtained any certificate required by section 15 (certificate of conformity with structure plan)—
- (a) make copies of the documents available for inspection at their office,
  - (b) send a copy of them to the Secretary of State, and
  - (c) send a copy of them to the district or county planning authority, as the case may require.
- (5) Each copy of the documents made available for inspection shall be accompanied by a statement of the time within which objections may be made.

#### **12A Publicity and consultation: short procedure for certain alterations, &c**

- (1) Where a local planning authority propose to alter, repeal or replace a local plan and it appears to them that the issues involved are not of sufficient importance to warrant the full procedure set out in section 12, they may proceed instead in accordance with this section.
- (2) They shall prepare the relevant documents, that is, the proposed alterations, instrument of repeal or replacement plan, as the case may be, and, having obtained any certificate required by section 15 (certificate of conformity with structure plan) shall—
- (a) make copies of the documents available for inspection at their office,
  - (b) send a copy of them to the Secretary of State, and
  - (c) send a copy of them to the county or district planning authority, as the case may require.
- (3) Each copy of the documents made available for inspection shall be accompanied by a statement of the time within which representation or objections may be made.
- (4) They shall then take such steps as may be prescribed for the purpose of—
- (a) advertising the fact that the documents are available for inspection and the places and times at which, and period during which, they may be inspected, and
  - (b) inviting the making of representations or objections in accordance with regulations;
- and they shall consider any representations made to them within the prescribed period.

#### **12B Powers of Secretary of State to secure adequate publicity and consultation**

- (1) The documents sent by the local planning authority to the Secretary of State under section 12 shall be accompanied by a statement—
- (a) of the steps which the authority have taken to comply with subsection (2) of that section, and

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- (b) of the authority's consultations with other persons and their consideration of the views of those persons.
- (2) The documents sent by the local planning authority to the Secretary of State under section 12A shall be accompanied by a statement of the steps which the authority are taking to comply with subsection (4) of that section.
- (3) If, on considering the statement and the proposals and any other information provided by the local planning authority, the Secretary of State is not satisfied with the steps taken by the authority, he may, within 21 days of the receipt of the statement, direct the authority not to take further steps for the adoption of the proposals without—
  - (a) if they have proceeded in accordance with section 12A, proceeding instead in accordance with section 12, or
  - (b) in any case, taking such further steps as he may specify, and satisfying him that they have done so.
- (4) A local planning authority who are given directions by the Secretary of State shall—
  - (a) forthwith withdraw the copies of the documents made available for inspection as required by section 12(4) or 12A(2). and
  - (b) notify any person by whom objections to the proposals have been made to the authority that the Secretary of State has given such directions.

### **13 Objections: local inquiry or other hearing**

- (1) The local planning authority may cause a local inquiry or other hearing to be held for the purpose of considering objections to their proposals for the making, alteration, repeal or replacement of a local plan.
- (2) They shall hold such a local inquiry or other hearing in the case of objections made in accordance with regulations unless all the persons who have made such objections have indicated in writing that they do not wish to appear.
- (3) A local inquiry or other hearing shall be held by a person appointed by the Secretary of State or, in such cases as may be prescribed, by the authority themselves.
- (4) Regulations may—
  - (a) make provision with respect to the appointment, and qualifications for appointment, of persons to hold a local inquiry or other hearing;
  - (b) include provision enabling the Secretary of State to direct a local planning authority to appoint a particular person, or one of a specified list or class of persons ;
  - (c) make provision with respect to the remuneration and allowances of the person appointed.
- (5) Subsections (2) and (3) of section 250 of the Local Government Act 1972 (power to summon and examine witnesses) apply to an inquiry held under this section.
- (6) The Tribunals and Inquiries Act 1971 applies to a local inquiry or other hearing under this section as it applies to a statutory inquiry held by the Secretary of State, with the substitution in section 12(1) (statement of reasons for decision) for the references to a decision taken by the Secretary of State of references to a decision taken by a local authority.

## **14 Adoption of proposals**

- (1) After the expiry of the period afforded for making objections to proposals for the making, alteration, repeal or replacement of a local plan or, if such objections were duly made within that period, after considering the objections so made, the local planning authority may, subject to the following provisions of this section and to section 14A (calling in of proposals by Secretary of State), by resolution adopt the proposals.
- (2) They may adopt the proposals as originally prepared or as modified so as to take account of—
  - (a) any such objections as are mentioned in subsection (1) or any other objections to the proposals, or
  - (b) any other considerations which appear to the authority to be material
- (3) The authority shall not adopt any proposals which do not conform generally to the structure plan.
- (4) After copies of the proposals have been sent to the Secretary of State and before they have been adopted by the local planning authority, the Secretary of State may, if it appears to him that the proposals are unsatisfactory, direct the authority to consider modifying the proposals in such respects as are indicated in the direction.
- (5) An authority to whom a direction is given shall not adopt the proposals unless they satisfy the Secretary of State that they have made the modifications necessary to conform with the direction or the direction is withdrawn.
- (6) Where an objection to the proposals has been made by the Minister of Agriculture, Fisheries and Food and the local planning authority do not propose to modify their proposals to take account of the objection—
  - (a) the authority shall send particulars of the objection to the Secretary of State, together with a statement of their reasons for not modifying their proposals to take account of it, and
  - (b) they shall not adopt the proposals unless the Secretary of State authorises them to do so.

### **14A Calling in of proposals for approval by Secretary of State**

- (1) After copies of proposals have been sent to the Secretary of State and before they have been adopted by the local planning authority, the Secretary of State may direct that the proposals shall be submitted to him for his approval.
- (2) In that event—
  - (a) the authority shall not take any further steps for the adoption of the proposals, and in particular shall not hold or proceed with a local inquiry or other hearing in respect of the proposals under section 13 ; and
  - (b) the proposals shall not have effect unless approved by the Secretary of State and shall not require adoption by the authority.
- (3) Where particulars of an objection made by the Minister of Agriculture, Fisheries and Food have been sent to the Secretary of State under section 14(6), then, unless the Secretary of State is satisfied that that Minister no longer objects to the proposals, he shall give a direction in respect of the proposals under this section.

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#### **14B Approval of proposals by Secretary of State**

- (1) The Secretary of State may after considering proposals submitted to him under section 14A either approve them, in whole or in part and with or without modifications or reservations, or reject them.
- (2) In considering the proposals he may take into account any matters he thinks are relevant, whether or not they were taken into account in the proposals as submitted to him.
- (3) Where on taking the proposals into consideration the Secretary of State does not determine then to reject them, he shall, before determining whether or not to approve them—
  - (a) consider any objections to them made in accordance with regulations,
  - (b) afford to any person who made such an objection which has not been withdrawn an opportunity of appearing before and being heard by a person appointed by him for the purpose, and
  - (c) if a local inquiry or other hearing is held, also afford such an opportunity to the authority and such other persons as he thinks fit,except so far as the objections have already been considered, or a local inquiry or other hearing into the objections has already been held, by the authority.
- (4) In considering the proposals the Secretary of State may consult with, or consider the views of, any local planning authority or any other person; but he is under no obligation to do so, or to afford an opportunity for the making of representations or objections, or to cause a local inquiry or other hearing to be held, except as provided by subsection (3).

#### **15 Conformity between plans: certificate of conformity**

- (1) A district planning authority who have prepared proposals for the making, alteration, repeal or replacement of a local plan shall not take the steps mentioned in section 12(4) or 12A(2) (deposit of documents for inspection, &c.) unless a certificate that the proposals conform generally to the structure plan has been issued in accordance with this section.
- (2) The district planning authority shall request the county planning authority to certify that their proposals so conform and that authority shall, within a month of receiving the request, or such longer period as may be agreed between the authorities, consider the matter and, if satisfied that the proposals do so conform, issue a certificate to that effect.
- (3) If it appears to the county planning authority that the proposals do not so conform in any respect, they shall, during or as soon as possible after the end of that period, refer the question whether they so conform in that respect to the Secretary of State to be determined by him.
- (4) The Secretary of State may in any case by direction to a county planning authority reserve for his own determination the question whether proposals for the making, alteration, repeal or replacement of a local plan conform generally to the structure plan.
- (5) On determining a question so referred to or reserved for him, the Secretary of State—
  - (a) if he is of opinion that the proposals do so conform, may issue, or direct the county planning authority to issue, a certificate to that effect, and
  - (b) if he is of the contrary opinion, may direct the district planning authority to revise their proposals in such respects as he thinks appropriate so that they will so conform.

### **15A Conformity between plans: alteration of structure plan**

- (1) Where proposals for the alteration or replacement of a structure plan have been prepared and submitted to the Secretary of State, he may, on the application of a local planning authority proposing to make, alter, repeal or replace a local plan, direct that it shall be assumed for that purpose that the structure plan proposals have been approved by him, subject to such modifications as may from time to time be proposed by him and notified to the county planning authority.
- (2) A direction ceases to have effect if the Secretary of State rejects the proposals for the alteration or replacement of the structure plan.
- (3) Before giving a direction the Secretary of State shall consult—
  - (a) in the case of an application by a county planning authority, any district planning authority whose area is affected by the relevant local plan proposals;
  - (b) in the case of an application by a district planning authority, the county planning authority.
- (4) A county planning authority shall, on the approval of proposals for the alteration or replacement of a structure plan, consider whether the local plans for areas affected conform generally to the structure plan as altered or to the new plan, as the case may be.
- (5) Within the period of one month from the date on which they receive notice of the Secretary of State's approval of the proposals, the county planning authority shall send—
  - (a) to the Secretary of State, and
  - (b) to every district planning authority responsible for such a local plan,lists of the local plans so affected which, in their opinion, do and do not so conform.

### **15B Conformity between plans: local plan prevails**

- (1) Where there is a conflict between any of the provisions of a local plan in force for an area and the provisions of the relevant structure plan, the provisions of the local plan shall be taken to prevail for all purposes.
- (2) Where the structure plan is altered or replaced and the local plan is specified in a list under section 15A(5) as a plan which does not conform to the structure plan as altered or replaced, subsection (1) above does not apply until a proposal for the alteration of the local plan, or for its repeal and replacement, has been adopted or approved by the Secretary of State and the alteration, or replacement plan, has come into force.”

## **PART II**

### **UNITARY DEVELOPMENT PLANS**

- 1 Part I of Schedule 1 to the Local Government Act 1985 (unitary development plans) is amended as follows.
- 2 After paragraph 6 insert—

#### *“Direction to reconsider proposals*

- 6A (1) After a copy of a unitary development plan has been sent to the Secretary of State and before it is adopted by the local planning authority, the

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Secretary of State may, if it appears to him that the plan is unsatisfactory, direct the authority to consider modifying the proposals in such respects as are indicated in the direction.

- (2) An authority to whom a direction is given shall not adopt the plan unless they satisfy the Secretary of State that they have made the modifications necessary to conform with the direction or the direction is withdrawn.”.

3 In paragraph 10(2) (provisions applicable to making of unitary development plan also apply to alteration or replacement of plan), at the beginning insert " Subject to paragraph 10A below, ".

4 After paragraph 10 insert—

*“Short procedure for certain alterations*

- 10A (1) Where a local planning authority propose to alter or replace a unitary development plan and it appears to them that the issues involved are not of sufficient importance to warrant the full procedure set out in paragraph 3(1) and (2), they may instead proceed as follows.
- (2) They shall prepare the relevant documents, that is, the proposed alterations or replacement plan, and shall make a copy of them available for inspection at their office and at such other places as may be prescribed and send a copy to the Secretary of State.
- (3) Each copy of the documents made available for inspection shall be accompanied by a statement of the time within which representations or objections may be made.
- (4) They shall then take such steps as may be prescribed for the purpose of—
- (a) advertising the fact that the documents are available for inspection, and the places and times at which and period during which they may be inspected, and
  - (b) inviting the making of representations or objections in accordance with regulations;
- and they shall consider any representations made to them within the prescribed period.
- (5) The documents sent by the local planning authority to the Secretary of State under sub-paragraph (2) above shall be accompanied by a statement of the steps which the authority are taking to comply with sub-paragraph (4) above.
- (6) If, on considering the statement submitted with and the matters contained in the documents sent to him under sub-paragraph (2) above and any other information provided by the local planning authority, the Secretary of State is not satisfied with the steps taken by the authority he may, within twenty-one days of the receipt of the statement, direct the authority not to take further steps for the adoption of their proposals without—
- (a) proceeding in accordance with paragraph 3(1) and (2) above, or
  - (b) taking such further action as he may specify,
- and satisfying him that they have done so.

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- (7) A local planning authority who are given directions by the Secretary of State under sub-paragraph (6) above shall—
- (a) forthwith withdraw the copies of documents made available for inspection as required by sub-paragraph (2) above ; and
  - (b) notify any person by whom objections to the proposals have been made to the authority that Secretary of State has given such directions as aforesaid.
- (8) Where a local planning authority proceed in accordance with this paragraph, the references in paragraphs 4(2)(a) and (4) and 7(1) to copies made available or sent to the Secretary of State under paragraph 3(2) shall be construed as references to copies made available or sent to the Secretary of State under sub-paragraph (2) of this paragraph.”.

## SCHEDULE 11

Sections 49 and 53.

### PLANNING : MINOR AND CONSEQUENTIAL AMENDMENTS

#### PART I

##### ENGLAND AND WALES

###### *Operation of Use Classes Order on subdivision of planning unit*

- 1 In section 22(2) of the Town and Country Planning Act 1971 (operations and changes of use not amounting to development), in paragraph (f) (use of same prescribed class as existing use) for " the use thereof " substitute " the use of the buildings or other land or, subject to the provisions of the order, of any part thereof ".

###### *Development orders*

- 2 (1) In section 24 of the Town and Country Planning Act 1971 (development orders), for subsection (3) (general and special orders) substitute—
- “(3) A development order may be made either—
- (a) as a general order applicable, except so far as the order otherwise provides, to all land, but which may make different provision with respect to different descriptions of land, or
  - (b) as a special order applicable only to such land or descriptions of land as may be specified in the order.”.

(2) In paragraph 17 of Schedule 16 to the Local Government Act 1972 (inclusion of provision in development orders empowering local highway authority to impose restrictions on grant of planning permission in certain cases) for " shall include in a development order under section 24 provision" substitute " may include in a development order under section 24 such provision as he thinks fit ".

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*Disabled persons: construction of references to certain documents*

- 3 (1) In section 29A of the Town and Country Planning Act 1971 (duty to draw attention to certain provisions for the benefit of the disabled: public buildings and places of work), in subsection (1) for paragraph (ii) substitute—
- “(ii) the Code of Practice for Access of the Disabled to Buildings (British Standards Institution code of practice BS 5810: 1979) or any prescribed document replacing that code.”.
- (2) In section 29B of the Town and Country Planning Act 1971 (duty to draw attention to certain provisions for the benefit of the disabled: educational buildings), in subsection (1) for paragraph (ii) substitute—
- “(ii) to Design Note 18 ' Access for Disabled People to Educational Buildings ' published in 1984 on behalf of the Secretary of State, or any prescribed document replacing that Note.”.

*Applications to vary or revoke conditions attached to planning permission*

- 4 After section 31 of the Town and Country Planning Act 1971 insert—

**“31A Permission to develop land without compliance with conditions previously attached.**

- (1) This section applies to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.
- (2) Special provision may be made with respect to such applications—
- (a) by regulations under section 25 of this Act as regards the form and content of the application, and
- (b) by a development order as regards the procedure to be followed in connection with the application.
- (3) On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—
- (a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and
- (b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.
- (4) This section does not apply where the application is made after the previous planning permission has become time-expired, that is to say, the previous permission having been granted subject to a condition as to the time within which the development to which it related was to be begun, that time has expired without the development having been begun.”.



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*Status: This is the original version (as it was originally enacted).*

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*Purchase notices : transmission of documents to Secretary of State*

- 5 (1) In section 181 of the Town and Country Planning Act 1971 (action by council on whom purchase notice is served)—
- (a) in subsection (1)(c) (notice of unwillingness to comply with purchase notice: contents of notice) for the words from "and that they have transmitted" to the end substitute " and that they have transmitted to the Secretary of State a copy of the purchase notice and of the notice under this subsection " ;
  - (b) in subsection (3) (duty of council to transmit documents to Secretary of State) for the words from " they shall transmit" to the end substitute " then, before they take steps to serve that notice, they shall transmit to the Secretary of State a copy of the purchase notice together with a copy of the notice which they propose to serve ".
- (2) In paragraph 1 of Schedule 19 to the Town and Country Planning Act 1971 (action by council on whom listed building purchase notice is served)—
- (a) in sub-paragraph (1)(c) (notice of unwillingness to comply with purchase notice: contents of notice) for the words from " and that they have transmitted " to the end substitute " and that they have transmitted to the Secretary of State a copy of the purchase notice and of the notice under this subparagraph " ;
  - (b) in sub-paragraph (3) (duty of council to transmit documents to Secretary of State) for the words from " they shall transmit " to " reasons " substitute " then, before they take steps to serve that notice, they shall transmit to the Secretary of State a copy of the purchase notice together with a copy of the notice which they propose to serve under subparagraph (1)(c) ".

*Purchase notice relating to land where use  
restricted by virtue of previous planning permission*

- 6 In section 184 of the Town and Country Planning Act 1971 (power to refuse to confirm purchase notice where land has restricted use by virtue of previous planning permission)—
- (a) in subsection (1) (cases to which the section applies) for " land which has a restricted use" substitute " land which consists in whole or in part of land which has a restricted use " ; and
  - (b) in subsection (3) (power of Secretary of State to refuse to confirm purchase notice), for the words "the land ought, in accordance with the previous planning permission ", substitute " the land having a restricted use by virtue of a previous planning permission ought, in accordance with that permission, ",

*Consideration of purchase notice concurrently with related planning appeal*

- 7 (1) In section 186(3) of the Town and Country Planning Act 1971 (relevant period at end of which purchase notice is deemed to have been confirmed) after " relevant period is" insert " , subject to subsection (3A) of this section, ", and after that subsection insert—
- “(3A) The relevant period does not run if the Secretary of State has before him at the same time both a copy of the purchase notice transmitted to him under section 181(3) of this Act and an appeal notice under any of the following

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provisions of this Act relating to any of the land to which the purchase notice relates—

section 36 (appeal against refusal of planning permission, &c),  
 section 88 (appeal against enforcement notice), section 95 (appeal against refusal of established use certificate),  
 section 97 (appeal against listed building enforcement notice), or  
 paragraph 8 or 9 of Schedule 11 (appeal against refusal of listed building consent, &c.).”

- (2) In paragraph 3(3)(b) of Schedule 19 to the Town and Country Planning Act 1971 (relevant period at end of which listed building purchase notice is deemed to have been confirmed) after " 'the relevant period' is" insert " , subject to sub-paragraph (3A) of this paragraph, ", and after that sub-paragraph insert—

“(3A) The relevant period does not run if the Secretary of State has before him at the same time both a copy of the listed building purchase notice transmitted to him under paragraph 1(3) of this Schedule and an appeal notice under any of the following provisions of this Act relating to any of the land to which the purchase notice relates—

section 97 (appeal against listed building enforcement notice), or  
 paragraph 8 or 9 of Schedule 11 (appeal against refusal of listed building consent, &c.).”

*Local inquiries: application of general provisions of Local Government Act*

- 8 (1) In section 282 of the Town and Country Planning Act 1971 (local inquiries held by Secretary of State), for subsection (2) substitute—

“(2) The provisions of subsections (2) to (5) of section 250 of the Local Government Act 1972 (local inquiries: evidence and costs) apply to an inquiry held by virtue of this section.”

- (2) In Schedule 9 to the Town and Country Planning Act 1971 (determination of certain appeals by person appointed by the Secretary of State), in paragraph 5 (local inquiries and hearings held by appointed person) for sub-paragraph (3) substitute—

“(3) The provisions of subsections (2) to (5) of section 250 of the Local Government Act 1972 (local inquiries: evidence and costs) apply to an inquiry held by virtue of this paragraph, with the following adaptations—

- (a) for the references in subsection (4) (recovery of costs of holding the inquiry) to the Minister causing the inquiry to be held, substitute the Secretary of State; and  
 (b) for the reference in subsection (5) (orders as to the costs of the parties) to the Minister causing the inquiry to be held, substitute a reference to the person appointed to determine the appeal or the Secretary of State.”

*Orders as to costs of parties where no local inquiry held*

- 9 (1) After section 282 of the Town and Country Planning Act 1971 (local inquiries: application of general provisions of Local Government Act) insert—

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*Status: This is the original version (as it was originally enacted).*

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**“282A Orders as to costs of parties where no local inquiry held.**

- (1) The Secretary of State has the same power to make orders under section 250(5) of the Local Government Act 1972 (orders with respect to the costs of the parties) in relation to proceedings to which this section applies which do not give rise to a local inquiry as he has in relation to a local inquiry.
  - (2) This section applies to proceedings under this Act where the Secretary of State is required, before reaching a decision, to afford any person an opportunity of appearing before and being heard by a person appointed by him.”.
- (2) In Schedule 9 to the Town and Country Planning Act 1971 (determination of certain appeals by persons appointed by the Secretary of State), in paragraph 5 (local inquiries and hearings held by appointed person) at the end add—
- “(4) The person appointed to determine the appeal or the Secretary of State has the same power to make orders under section 250(5) of the Local Government Act 1972 (orders with respect to the costs of the parties) in relation to proceedings under this Schedule which do not give rise to an inquiry under this paragraph as he has in relation to such an inquiry.”.

*Procedure on applications and appeals disposed of without inquiry or hearing*

10           After section 282A of the Town and Country Planning Act 1971 insert—

**“282B Procedure on certain appeals and applications.**

- (1) The Secretary of State may by regulations prescribe the procedure to be followed in connection with proceedings under this Act where he is required, before reaching a decision, to afford any person an opportunity of appearing before and being heard by a person appointed by him and which are to be disposed of without an inquiry or hearing to which rules under section 11 of the Tribunals and Inquiries Act 1971 apply.
- (2) The regulations may in particular make provision as to the procedure to be followed—
  - (a) where steps have been taken with a view to the holding of such an inquiry or hearing which does not take place, or
  - (b) where steps have been taken with a view to the determination of any matter by a person appointed by the Secretary of State and the proceedings are the subject of a direction that the matter shall instead be determined by the Secretary of State, or
  - (c) where steps have been taken in pursuance of such a direction and a further direction is made revoking that direction,and may provide that such steps shall be treated as compliance, in whole or in part, with the requirements of the regulations.
- (3) The regulations may also—
  - (a) provide for a time limit within which any party to the proceedings must submit representations in writing and any supporting documents;

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- (b) prescribe the time limit (which may be different for different classes of proceedings) or enable the Secretary of State to give directions setting the time limit in a particular case or class of case ;
- (c) empower the Secretary of State to proceed to a decision taking into account only such written representations and supporting documents as were submitted within the time limit; and
- (d) empower the Secretary of State after giving the parties written notice of his intention to do so, to proceed to a decision notwithstanding that no written representations were made within the time limit, if it appears to him that he has sufficient material before him to enable him to reach a decision on the merits of the case.”.

*Power to return appeal for determination by inspector*

11 In Schedule 9 to the Town and Country Planning Act 1971 (determination of certain appeals by persons appointed by the Secretary of State), after paragraph 3 (power of Secretary of State to direct that appeal should be determined by him) insert—

- “3A (1) The Secretary of State may by a further direction revoke a direction under paragraph 3 of this Schedule at any time before the determination of the appeal.
- (2) A direction under this paragraph shall state the reasons for which it is given and shall be served on the person, if any, previously appointed to determine the appeal, the applicant or appellant, the local planning authority and any person who has made representations relating to the subject matter of the appeal which the authority are required to take into account under section 29(3)(a) of this Act
- (3) Where a direction under this paragraph has been given, the provisions of this Schedule relevant to the appeal shall apply, subject to sub-paragraph (4), as if no direction under paragraph 3 had been given.
- (4) Anything done by or on behalf of the Secretary of State in connection with the appeal which might have been done by the person appointed to determine the appeal (including any arrangements made for the holding of a hearing or local inquiry) shall, unless that person directs otherwise, be treated as having been done by him.”.

*Appointment of assessors*

12 In Schedule 9 to the Town and Country Planning Act 1971 (determination of certain appeals by persons appointed by the Secretary of State), in paragraph 5 (local inquiries and hearings) after sub-paragraph (1) insert—

- “(1A) Where a person appointed under this Schedule to determine an appeal—
- (a) holds a hearing by virtue of paragraph 2(2)(b) of this Schedule, or
  - (b) holds an inquiry by virtue of this paragraph,
- an assessor may be appointed by the Secretary of State to sit with the appointed person at the hearing or inquiry to advise him on any matters arising notwithstanding that the appointed person is to determine the appeal.”.

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*Increase of daily penalties for offences*

- 13 (1) In the provisions of the Town and Country Planning Act 1971 listed in column 1 of the following Table, which impose daily penalties for certain offences whose general nature is indicated in column 2, for the amount shown in column 3 substitute the amount shown in column 4.

TABLE

<i>Provision of 1971 Act</i>	<i>Nature of offence</i>	<i>Present maximum daily fine</i>	<i>New maximum daily fine</i>
Section 57(3)	Damage to listed building.	£20	£40
Section 89(4)	Non-compliance with enforcement notice.	£100	£200
Section 89(5)	Use of land in contravention of enforcement notice.	£100	£200
Section 90(7)	Non-compliance with stop notice.	£100	£200
Section 98(4)	Failure to secure compliance with listed building enforcement notice.	£100	£200
Section 104(7)	Failure to secure compliance with notice as to condition of land.	£20	£40
Section 109(2)	Contravention of advertisement control regulations.	£20	£40

- (2) The increased amounts applicable by virtue of sub-paragraph (1) apply to every day after the commencement of this paragraph, notwithstanding that the offence began before.

*Consequential amendments of the Town and Country Planning Act 1971*

- 14 In section 1 of the Town and Country Planning Act 1971 for subsection (2A) substitute—
- “(2A) References in this Act to a local planning authority in relation to a non-metropolitan county shall be construed, subject to any express provision to the contrary as references to both the county planning authority and the district planning authorities.”.
- 15 In section 18(1)(f) of that Act, except as respects Greater London—
- (a) for "section 12(1)(a)" substitute " section 12(2)(a) ", and
  - (b) for " section 12(2)" substitute " section 12(4) or 12A(2) ".

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- 16 In section 29(1)(a) of that Act for " sections 41, 42, 70 and 77 to 80 " substitute  
 " sections 41 and 42 ".
- 17 In sections 35(4) and 36(5) of that Act for " and 30A " substitute " , 30A and 31A ".
- 18 In sections 36(7) of that Act for " sections 29(1), 30(1), 67 and 74 " substitute "  
 sections 29(1) and 30(1) ".
- 19 In section 55(4) of that Act omit " under section 56 of this Act ".
- 20 In section 105 of that Act-
- (a) in paragraph (a) for " seriously injure " substitute " adversary affect ",
- (b) omit paragraph (c), and
- (c) in paragraph (a) for " seriously injuring " substitute " adversely affecting ".
- 21 In Schedule 21, in Parts I and V for "Sections 63 to 68" substitute " Sections 63  
 to 65 ".

*Consequential amendments of other enactments*

- 22 In section 182(5) of the Local Government Act 1972 (functions exercisable in  
 National Park concurrently by county planning authority and district planning  
 authority), for the words " (waste land) ", which describe the subject-matter of  
 section 65 of the Town and Country Planning Act 1971, substitute " (power to  
 require proper maintenance of land) ".
- 23 (1) Part I of Schedule 16 to the Local Government Act 1972 (functions under and  
 modification of Town and Country Planning Act 1971) is amended as follows.
- (2) For paragraphs 10 to 12 (joint local plans) substitute, except as respects Greater  
 London—
- “10 (1) This paragraph applies where two or more local planning authorities  
 jointly prepare proposals for the making, alteration, repeal or  
 replacement of a local plan.
- (2) The local planning authorities are jointly responsible for taking the  
 steps required by section 12 or 12A, except that they each have  
 the duty imposed by section 12(4)(a) or 12A(2)(a) of making copies  
 of the relevant documents available for inspection and objections  
 to the proposals may be made to any of those authorities and the  
 statement required by section 12(5) or 12A(3) to accompany the relevant  
 documents shall state that objections may be so made.
- (3) It shall be for each of the local planning authorities to adopt the proposals  
 under section 14(1) and they may do so as respects any part of their area  
 to which the proposals relate, but any modifications subject to which the  
 proposals are adopted must have the agreement of all those authorities.
- 11 Where in a non-metropolitan county—
- (a) a structure plan has been jointly prepared by two or more county  
 planning authorities, or
- (b) a local plan has been jointly prepared by two or more district  
 planning authorities,
- a request for a certificate under section 15 that the local plan conforms  
 generally to the structure plan shall be made by each district planning  
 authority to the county planning authority for the area comprising the

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- district planning authority's area and it shall be for that county planning authority to deal with the request.
- 12 Where a local plan has been made jointly, the power of making proposals for its alteration, repeal or replacement may be exercised as respects their respective areas by any of the authorities by whom it was made, in accordance with the provisions of the relevant local plan scheme, and the Secretary of State may under section 11B direct any of them to make proposals as respects their respective areas.”.
- (3) In paragraph 19(2) (planning applications subject to duty to consult county planning authority)—
- (a) in sub-paragraph (vi), for the words from " section 12 " to the end substitute " section 12 or 12A (publicity and consultation regarding local plans) ", and
  - (b) in sub-paragraph (vii), for the words from " the said section 12 " to the end substitute " section 12 or 12A (publicity and consultation regarding local plans) ".
- 24 In section 8(3) of the Refuse Disposal (Amenity) Act 1978 (application of general provisions of Town and Country Planning Act 1971 relating to local inquiries and service of notices) for " to 284 " substitute " 283 and 284 ".
- 25 (1) The Industrial Development Act 1982 is amended as follows.
- (2) In section 14 (power of Secretary of State to provide premises and sites), in subsection (2) (restriction on acquisition of buildings) for " section 66 of the Town and Country Planning Act 1971 " substitute " section 14A of this Act ".
- (3) After that section insert—

**“14A Meaning of industrial buildings'.**

- (1) In section 14(2) of this Act "industrial building " means a building which is used or designed for use for carrying on, in the course of a trade or business, a process for or incidental to any of the following purposes—
- (a) the making of any article or part of any article,
  - (b) the altering, repairing, ornamenting, finishing, cleaning, washing, freezing, packing or canning, or adapting for sale, or breaking up or demolition, of any article, or
  - (c) the getting, dressing or preparation for sale of minerals or the extraction or preparation for sale of oil or brine,
- or which is used or designed for use for carrying on, in the course of a trade or business, scientific research.
- (2) For the purposes of subsection (1) premises which—
- (a) are used or designed for use for providing services or facilities ancillary to the use of other premises for the carrying on of any such process or research as is mentioned in that subsection, and
  - (b) are or are to be comprised in the same building or the same curtilage as those other premises,
- shall themselves be treated as used or designed for use for the carrying on of such a process or, as the case may be, of such research.
- (3) In this section—

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' article' means an article of any description, including a ship or vessel;

' building' includes part of a building ;

' minerals' includes all minerals and substances in or under land of a kind ordinarily worked for removal by underground or surface working, except that it does not include peat cut for purposes other than sale ;

' scientific research' means any activity in the fields of natural or applied science for the extension of knowledge.”.

26 In Part I of Schedule 1 to the Local Government Act 1985 (unitary development plans), in paragraph 12 (John plans), for subparagraph (7) substitute—

“(7) In relation to any proposals made jointly under paragraph 10 above, the references—

(a) in sub-paragraph (2) of that paragraph to paragraphs 2 to 9 above, and

(b) in paragraph 10A(1) above to paragraph 3(1) above,

shall include a reference to sub-paragraph (2) above.

(7A) In relation to such joint proposals the references in paragraph 10A above to the local planning authority shall be construed as references to the authorities acting jointly, except that—

(a) each of the authorities shall have the duty under subparagraph (2) of making copies of the relevant documents available for inspection, and

(b) representations or objections may be made to any of the authorities, and the statement required by sub-paragraph (3) of that paragraph shall state that objections may be so made.”

27 (1) In Part II of Schedule 1 to the Local Government Act 1985 (transitional provisions), paragraph 20 (local plans between abolition date and commencement of unitary planning provisions) is amended as follows.

(2) In sub-paragraph (2) (application of provisions of Part II of Town and Country Planning Act 1971) omit the words from " and in respect of those matters " to the end.

(3) After that sub-paragraph insert—

“(2A) In respect of the matters referred to in sub-paragraph (2) the following provisions (which relate to county planning authorities) do not apply to metropolitan district councils, namely, sections 11 A, 11B(4), 12(3) and (4)(c), 12A(2)(c), 15, 15A and 15B(2).”.

(4) For sub-paragraph (3) substitute—

“(3) In section 15(1) and (2) (alteration of local plans), as applying in Greater London, the reference to a local plan adopted by a local planning authority includes, in the case of a London borough council, a local plan adopted by the Greater London Council and in force in respect of the area of that authority on the abolition date.

(3A) A metropolitan district council may at any time—

(a) make proposals for the preparation, alteration, repeal or replacement of a local plan adopted by them or adopted by the



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metropolitan county council and in force in the area of that authority on the abolition date;

- (b) with the consent of the Secretary of State, make proposals for the alteration, repeal or replacement of a local plan approved by him.”.

## PART II

### SCOTLAND

#### *Directions as to modifications of local plans*

- 28 (1) After subsection (2) of section 12 of the Town and Country Planning (Scotland) Act 1972 (adoption and approval of local plans) insert—

“(2A) After copies of a local plan have been sent to the Secretary of State and before it has been adopted by the planning authority, the Secretary of State may, if it appears to him that any part of it is unsatisfactory, and without prejudice to his power to make a direction under subsection (3) below, direct the authority to consider modifying the plan in such respects as are indicated in the direction.

(2B) An authority to whom a direction is given shall not adopt the plan unless they satisfy the Secretary of State that they have made the modifications necessary to confirm with the direction or the direction is withdrawn.”.

- (2) In subsection (1) of that section for the words " (2) and (3)" substitute " (2), (2A), (2B) and (3) ".

#### *Operation of Use Classes Order on subdivision of planning unit*

- 29 In section 19(2) of the Town and Country Planning (Scotland) Act 1972 (operations and changes of use not amounting to development), in paragraph (f) (use of same prescribed class as existing use) for " the use thereof" substitute " the use of the buildings or other land or, subject to the provisions of the order, of any part thereof" .

#### *Development orders*

- 30 In section 21 of the Town and Country Planning (Scotland) Act 1972 (development orders), for subsection (3) (general and special orders) substitute—

“(3) A development order may be made either—

- (a) as a general order applicable, except so far as the order otherwise provides, to all land, but which may make different provision with respect to different descriptions of land, or
- (b) as a special order applicable only to such land or descriptions of land as may be specified in the order.”.

#### *Applications to vary or revoke conditions attached to planning permission*

- 31 After section 28 of the Town and Country Planning (Scotland) Act 1972 insert—

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**“28A Permission to develop land without compliance with conditions previously attached.**

- (1) This section applies to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.
- (2) Special provision may be made with respect to such applications—
  - (a) by regulations under section 22 of this Act as regards the form and content of the application, and
  - (b) by a development order as regards the procedure to be followed in connection with the application.
- (3) On such an application the planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—
  - (a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and
  - (b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.
- (4) This section does not apply where the application is made after the previous planning permission has become time-expired, that is to say, the previous permission having been granted subject to a condition as to the time within which the development to which it related was to have begun, that time has expired without the development having been begun.”.

*Land adversely affecting amenity of neighbourhood*

- 32 (1) For subsection (1) of section 63 of the Town and Country Planning (Scotland) Act 1972 (proper maintenance of waste land) substitute—
 

“(1) If it appears to a planning authority that the amenity of any part of their district, or an adjoining district, is adversely affected by the condition of any land in their district, they may serve on the owner, lessee and occupier of the land a notice under this section requiring such steps for abating the adverse effect as may be specified in the notice to be taken within such period as may be so specified.”.
- (2) In subsections (1B) and (1C) of the said section, for the words " waste land notice " substitute " notice under this section ".
- 33 (1) In subsections (1) and (5) of section 63A (appeals against waste land notices) of the Town and Country Planning (Scotland) Act 1972, for the words " waste land notice " substitute " notice under section 63 of this Act ".
- (2) For paragraph (a) of the said subsection (1) substitute—
 

“(a) that neither the amenity of any part of the planning authority's district nor that of any adjoining district has been adversely affected;”.

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- (3) In paragraph (b) of the said subsection (1), for the word " injury " substitute " adverse effect " .

*Appeals against notices under section 63A*

- 34 (1) After subsection (6) of section 63A insert—
- “(7) Subject to section 279 of this Act, Schedule 7 to this Act applies to appeals under this section.”.
- (2) After sub-paragraph (1)(d) of paragraph 2 of Schedule 7 (determination of appeals by person appointed by Secretary of State) to the Town and Country Planning (Scotland) Act 1972, insert—
- “(aa) in relation to appeals under section 63A, subsections (4) and (6);”.

*Purchase notices: transmission of documents to the Secretary of State*

- 35 (1) In section 170 of the Town and Country Planning (Scotland) Act 1972 (action by planning authority on whom purchase notice is served)—
- (a) in subsection (1)(c) (notice of unwillingness to comply with purchase notice: contents of notice) for the words from " and that they have transmitted " to the end substitute " and that they have transmitted to the Secretary of State a copy of the purchase notice and of the notice under this subsection " ;
- (b) in subsection (3) (duty of planning authority to transmit documents to Secretary of State) for the words from " they shall transmit " to the end substitute " then, before they take steps to serve that notice, they shall transmit to the Secretary of State a copy of the purchase notice together with a copy of the notice which they propose to serve " .
- (2) In paragraph 1 of Schedule 17 to the Town and Country Planning (Scotland) Act 1972 (action by planning authority on whom listed building purchase notice is served)—
- (a) in sub-paragraph (1)(c) (notice of unwillingness to comply with purchase notice: contents of notice) for the words from " and that they have transmitted " to the end substitute " and that they have transmitted to the Secretary of State a copy of the purchase notice and of the notice under this sub-paragraph. " ;
- (b) in sub-paragraph (3) (duty of planning authority to transmit documents to Secretary of State) for the words from " they shall transmit " to " reasons " substitute " then, before they take steps to serve that notice, they shall transmit to the Secretary of State a copy of the purchase notice together with a copy of the notice which they propose to serve under subparagraph (1)(c) " .

*Purchase notice relating to land where use  
restricted by virtue of previous planning permission*

- 36 In section 173 of the Town and Country Planning (Scotland) Act 1972 (power to refuse to confirm purchase notice where land has restricted use by virtue of previous planning permission)—
- (a) in subsection (1) (cases to which the section applies) for " land which has a restricted use " substitute " land which consists in whole or in part of land which has a restricted use " ; and

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- (b) in subsection (3) (power of Secretary of State to refuse to confirm purchase notice), for the words " the land ought, in accordance with the previous planning permission," substitute " the land having a restricted use by virtue of a previous planning permission ought, in accordance with that permission, ".

*Consideration of purchase notice concurrently with related planning appeal*

- 37 (1) In section 175(3) of the Town and Country Planning (Scotland) Act 1972 (relevant period at end of which purchase notice is deemed to have been confirmed) after " relevant period is" insert " , subject to subsection (3A) of this section, ", and after that subsection insert—

“(3A) The relevant period does not run if the Secretary of State has before him at the same time both a copy of the purchase notice transmitted to him under section 170(3) of this Act and an appeal notice under any of the following provisions of this Act relating to any of the land to which the purchase notice relates—

section 33 (appeal against refusal of planning permission, &c),  
 section 85 (appeal against enforcement notice),  
 section 91 (appeal against refusal of established use certificate),  
 section 93 (appeal against listed building enforcement notice), or  
 paragraph 7 or 8 of Schedule 10 (appeal against refusal of listed building consent, &c.).”.

- (2) In paragraph 3(3)(b) of Schedule 17 to the Town and Country Planning (Scotland) Act 1972 (relevant period at end of which listed building purchase notice is deemed to have been confirmed) after " " the relevant period " is " insert " , subject to sub-paragraph (3A) of this paragraph, ", and after that sub-paragraph insert—

“(3A) The relevant period does not run if the Secretary of State has before him at the same time both a copy of the listed building purchase notice transmitted to him under paragraph 1(3) of this Schedule and an appeal notice under any of the following provisions of this Act relating to any of the land to which the purchase notice relates—

section 93 (appeal against listed building enforcement notice), or  
 paragraph 7 or 8 of Schedule 10 (appeal against refusal of listed building consent, &c.).”.

*National Scenic Areas*

- 38 After section 262B of the Town and Country Planning (Scotland) Act 1972 insert—

“**262C National Scenic Areas.**

- (1) Where it appears to the Secretary of State, after such consultation with the Countryside Commission for Scotland and such other persons or bodies as he thinks fit, that an area is of outstanding scenic value and beauty in a national context, and that special protection measures are appropriate for it, he may designate the area by a direction under this section as a National Scenic Area ; and any such designation may be varied or cancelled by a subsequent direction.

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- (2) Notice of any such designation, variation, or cancellation as is mentioned in subsection (1) above shall be published in the Edinburgh Gazette and in at least one newspaper circulating in the vicinity of the Area by the Secretary of State.
- (3) Every planning authority shall compile and make available for inspection free of charge at reasonable hours and at a convenient place a list containing such particulars as the Secretary of State may determine of any area in their district which has been designated as a National Scenic Area.
- (4) Where any area is for the time being designated as a National Scenic Area, special attention shall be paid to the desirability of preserving or enhancing its character or appearance in the exercise, with respect to any land in that area, of any powers under this Act.”

*Recovery of expenses of local inquiry*

- 39 (1) For subsection (7) of section 267 (local inquiries) of the Town and Country Planning (Scotland) Act 1972 and subsections (7) and (8) of section 210 (power to direct inquiries) of the Local Government (Scotland) Act 1973 substitute—

“(7) The Minister may make orders as to the expenses incurred—

(a) by the Minister in relation to—

(i) the inquiry;

(ii) arrangements made for an inquiry which does not take place ; and

(b) by the parties to the inquiry,

and as to the parties by whom any of the expenses mentioned in paragraphs (a) and (b) above shall be paid.

(7A) What may be recovered by the Minister is the entire administrative expense of the inquiry, so that, in particular—

(a) there shall be treated as expenses incurred in relation to the inquiry such reasonable sum as the Minister may determine in respect of the general staff expenses and overheads of his department, and

(b) there shall be treated as expenses incurred by the Minister holding the inquiry any expenses incurred in relation to the inquiry by any other Minister or Government department and, where appropriate, such reasonable sum as that Minister or department may determine in respect of general staff expenses and overheads.

(7B) The Minister may by regulations prescribe for any description of inquiry a standard daily amount and where an inquiry of that description does take place what may be recovered is—

(a) the prescribed standard amount in respect of each day (or an appropriate proportion of that amount in respect of a part of a day) on which the inquiry sits or the person appointed to hold the inquiry is otherwise engaged on work connected with the inquiry,

(b) expenses actually incurred in connection with the inquiry on travelling or subsistence allowances or the provision of accommodation or other facilities for the inquiry, and

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- (c) any expenses attributable to the appointment of an assessor to assist the person appointed to hold the inquiry, and
  - (d) any legal expenses or disbursements incurred or made by or on behalf of the Minister in connection with the inquiry.”.
- (2) After subsection (7B) of the said section 210 of the Local Government (Scotland) Act 1973 insert—
- “(8) Where the Minister has made an order under subsection (7) of this section requiring any party to pay expenses to him he shall certify the amount of the expenses, and any amount so certified shall be a debt due by that party to the Crown and shall be recoverable accordingly.”.
- (3) In subsection (1) of section 233 of the Local Government (Scotland) Act 1973 (orders, rules and regulations), after " 104(1)" insert " 210(7) ".
- (4) After section 210 of the Local Government (Scotland) Act 1973 insert—

**“210A Recovery of expenses of local inquiry.**

- (1) The following provisions of this section apply where a Minister is authorised under or by virtue of any of the following statutory provisions to recover expenses incurred by him in relation to an inquiry—
- section 129(1)(d) of the Road Traffic Regulation Act 1984 (expenses of inquiry under that Act),
  - any other statutory provision to which this section is applied by order of the Minister.
- (2) What may be recovered by the Minister is the entire administrative expense of the inquiry, so that, in particular—
- (a) there shall be treated as expenses incurred in relation to the inquiry such reasonable sum as the Minister may determine in respect of the general staff expenses and overheads of his department, and
  - (b) there shall be treated as expenses incurred by the Minister holding the inquiry any expenses incurred in relation to the inquiry by any other Minister or Government department and, where appropriate, such reasonable sum as that Minister or department may determine in respect of general staff expenses and overheads.
- (3) The expense of an inquiry which does not take place may be recovered by the Minister from any person who would have been a party to the inquiry to the same extent, and in the same way, as the expense of an inquiry which does take place.
- (4) The Minister may by regulations prescribe for any description of inquiry a standard daily amount and where an inquiry of that description does take place what may be recovered is—
- (a) the prescribed standard amount in respect of each day (or an appropriate proportion of that amount in respect of a part of a day) on which the inquiry sits or the person appointed to hold the inquiry is otherwise engaged on work connected with the inquiry.
  - (b) expenses actually incurred in connection with the inquiry on travelling or subsistence allowances or the provision of accommodation or other facilities for the inquiry,

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- (c) any expenses attributable to the appointment of an assessor to assist the person appointed to hold the inquiry, and
  - (d) any legal expenses or disbursements incurred or made by or on behalf of the Minister in connection with the inquiry.
- (5) An order or regulation under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) An order applying this section to a statutory provision may provide for the consequential repeal of so much of that provision, or any other provision, as restricts the sum recoverable by the Minister in respect of the services of any officer engaged in the inquiry or is otherwise inconsistent with the application of the provisions of this section.”.

*Orders as to expenses of parties where no local inquiry held*

- 40 (1) After the said section 267 of the Town and Country Planning (Scotland) Act 1972 insert—

**“267A Orders as to expenses of parties where no local inquiry held.**

- (1) The Secretary of State has the same power to make orders under section 267(7) above in relation to proceedings to which this section applies which do not give rise to a local inquiry as he has in relation to a local inquiry.
  - (2) This section applies to proceedings under this Act where the Secretary of State is required, before reaching a decision, to afford any person an opportunity of appearing before and being heard by a person appointed by him.”.
- (2) In Schedule 7 to the Town and Country Planning (Scotland) Act 1972 (determination of certain appeals by person appointed by the Secretary of State), in paragraph 5 (local inquiries and hearings)—
- (a) in sub-paragraph (3) after the word " shall" insert " subject to sub-paragraph (4) below ".
  - (b) after sub-paragraph (3) insert—
- “(4) The person appointed to determine the appeal has the same power to make orders under section 267(7) of this Act in relation to proceedings under this Schedule which do not give rise to an inquiry as he has in relation to such an inquiry.
  - (5) For the purposes of this paragraph, references to the Minister in subsections (7) and (8) of section 267 shall be read as references to the person appointed by the Secretary of State to determine the appeal.”.

*Procedure on applications and appeals disposed of without inquiry or hearing*

- 41 After section 267A of the Town and Country Planning (Scotland) Act 1972 insert—

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**“267B Procedure on certain appeals and applications.**

- (1) The Secretary of State may by regulations prescribe the procedure to be followed in connection with proceedings under this Act where he is required, before reaching a decision, to afford any person an opportunity of appearing before and being heard by a person appointed by him and which are to be disposed of without an inquiry or hearing to which rules under section 11 of the Tribunals and Inquiries Act 1971 apply.
- (2) The regulations may in particular make provision as to the procedure to be followed—
  - (a) where steps have been taken with a view to the holding of such an inquiry or hearing which does not take place, or
  - (b) where steps have been taken with a view to the determination of any matter by a person appointed by the Secretary of State and the proceedings are the subject of a direction that the matter shall instead be determined by the Secretary of State, or
  - (c) where steps have been taken in pursuance of such a direction and a further direction is made revoking that direction,
 and may provide that such steps shall be treated as compliance, in whole or in part, with the requirements of the regulations.
- (3) The regulations may also—
  - (a) provide for a time limit within which any party to the proceedings must lodge written submissions and any supporting documents;
  - (b) prescribe the time limit (which may be different for different classes of proceedings) or enable the Secretary of State to give directions setting the time limit in a particular case or class of case;
  - (c) empower the Secretary of State to proceed to a decision taking into account only such written submissions and supporting documents as were lodged within the time limit; and
  - (d) empower the Secretary of State, after giving the parties written notice of his intention to do so, to proceed to a decision notwithstanding that no written submissions were lodged within the time limit, if it appears to him that he has sufficient material before him to enable him to reach a decision on the merits of the case.”.

*Power to return appeal for determination by appointed person*

42 In Schedule 7 to the Town and Country Planning (Scotland) Act 1972 (determination of certain appeals by persons appointed by the Secretary of State), after paragraph 3 (power of Secretary of State to direct that appeal should be determined by him) insert—

- “3A (1) The Secretary of State may by a further direction revoke a direction under paragraph 3 of this Schedule at any time before the determination of the appeal.
- (2) A direction under this paragraph shall state the reasons for which it is given and shall be served on the person, if any, previously appointed to determine the appeal, the applicant or appellant, the planning authority and any person who has made representations relating to the subject



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matter of the appeal which the authority are required to take into account under section 26(3)(a) of this Act.

- (3) Where a direction under this paragraph has been given, the provisions of this Schedule relevant to the appeal shall apply, subject to sub-paragraph (4), as if no direction under paragraph 3 had been given.
- (4) Anything done by or on behalf of the Secretary of State in connection with the appeal which might have been done by the person appointed to determine the appeal (including any arrangements made for the holding of a hearing or local inquiry) shall, unless that person directs otherwise, be treated as having been done by him.”.

*Appointment of assessors*

- 43 In Schedule 7 to the Town and Country Planning (Scotland) Act 1972 (determination of certain appeals by persons appointed by the Secretary of State), in paragraph 5 (local inquiries and hearings), after sub-paragraph (1) insert—

“(1A) Where a person appointed under this Schedule to determine an appeal—  
 (a) holds a hearing by virtue of paragraph 2(2)(b) of this Schedule, or  
 (b) holds an inquiry by virtue of this paragraph,  
 an assessor may be appointed by the Secretary of State to sit with the appointed person at the hearing or inquiry to advise him on any matters arising notwithstanding that the appointed person is to determine the appeal.”

*Increase of daily penalties for offences*

- 44 (1) In the provisions of the Town and Country Planning (Scotland) Act 1972 listed in column 1 of the following Table, which imposes daily penalties for certain offences whose general nature is indicated in column 2, for the amount shown in column 3 substitute the amount shown in column 4.

TABLE

<i>Provision of 1972 Act</i>	<i>Nature of offence</i>	<i>Present maximum daily fine</i>	<i>New maximum daily fine</i>
Section 55(3)	Damage to listed building.	£20	£40
Section 86.	Non-compliance with enforcement notice.	£100	£200
Section 87(8)(6).	Non-compliance with stop notice.	£100	£200
Section 94(2)(a).	Failure to secure compliance with listed building enforcement notice.	£100	£200

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<i>Provision of 1972 Act</i>	<i>Nature of offence</i>	<i>Present maximum daily fine</i>	<i>New maximum daily fine</i>
Section 98(3).	Failure to secure compliance with tree preservation order.	£50	£100
Section 100(1)(c).	Non-compliance with discontinuance order.	£100	£200
Section 101(2).	Contravention of advertisement control regulations.	£20	£40

(2) The increased amounts applicable by virtue of sub-paragraph (1) apply to every day after the commencement of this paragraph, notwithstanding that the offence began before.

*Other minor amendments of the Town and Country Planning (Scotland) Act 1972*

- 45 In section 84(7) of the Town and Country Planning (Scotland) Act 1972 (power to serve enforcement notice) after " place " insert " or, (according to the particular circumstances of the breach) to secure compliance with the conditions or limitations subject to which planning permission was granted ".
- 46 In section 99 (enforcement of duties as to replacement of trees) of the Town and Country Planning (Scotland) Act 1972, in subsection (3), after " 85(2)" insert " to (2D) ".
- 47 In section 158(6)(b) of the Town and Country Planning (Scotland) Act 1972 (compensation for planning decisions restricting development other than new development) for the word " 7 " there shall be substituted the word " 8 ".
- 48 In section 205(3)(a) and 205A(3)(a) of the Town and Country Planning (Scotland) Act 1972 (procedure in anticipation of planning permission, &c.) after " authority " insert " or ".
- 49 In section 205(5) of the Town and Country Planning (Scotland) Act 1972 for " 204(5)" substitute " 204(4) ".
- 50 In section 231 of the Town and Country Planning (Scotland) Act 1972 (validity of development plans and certain orders, decision and directions)—
- (a) at the end of subsection (2)(a) insert " or as applied under section 181 of the Local Government (Scotland) Act 1973 ", and
  - (b) at the end of subsection (2)(&) insert " or under the provisions of that section as applied by or under any other provision of this Act or as applied under section 181 of the Local Government (Scotland) Act 1973. ".
- 51 In section 260 of the Town and Country Planning (Scotland) Act 1972 (default powers of the Secretary of State), at the end of subsection (1) insert " or, in the case of a tree preservation order under section 58 of this Act, as if it had been made and confirmed by the planning authority ".
- 52 In section 270 of the Town and Country Planning (Scotland) Act 1972 (power to require information as to interest in land) insert—
- “(d) the time when that use began ;,

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- (e) the name and address of any person known to the person on whom the notice is served as having used the premises for those purposes;
- (f) the time when any activities being carried out on the premises began.”.

53 In sub-paragraph 2(2) of Schedule 7 (determination of certain appeals by person appointed by Secretary of State) of the Town and Country (Scotland) Act 1972, for " 85(2) " substitute " 85(2D) ".

*Consequential amendments of the Town and Country Planning (Scotland) Act 1972*

54 In section 26(1)(a) of the Town and Country Planning (Scotland) Act 1972, for the words " sections 38, 39, 68 and 75 to 78 " there shall be substituted the words " sections 38 and 39 ".

55 In sections 32(4) and 33(5) of the Town and Country Planning (Scotland) Act 1972 for the words " and 27A " substitute " 27A and 28A ".

56 In section 33(7) of the Town and Country Planning (Scotland) Act 1972 for the words ", 27(1) and 65 " there shall be substituted the words " and 27(1) ".

57 In section 53(4) of the Town and Country Planning (Scotland) Act 1972 omit " under section 54 of this Act ".

58 In section 267 (local inquiries) of the Town and Country Planning (Scotland) Act 1972, in subsection (9), after " section" insert " , except where the context otherwise requires ".

59 In section 275(1) of the Town and Country Planning (Scotland) Act 1972 (interpretation) the following shall be inserted after the definition of " Minister "—  
“ National Scenic Area ' has the meaning assigned to it by section 262C of this Act.”.

60 In Parts I and III of Schedule 19 to the Town and Country Planning (Scotland) Act 1972 for "Sections 61 to 66" substitute " Sections 61 to 63A ".

*Consequential amendments of other enactments*

61 In subsection (5) of section 179 (reference of applications to regional planning authority) of the Local Government (Scotland) Act 1973, after " 27A " insert " 28A, ".

62 In subsection 8(4) of the Refuse Disposal (Amenity) Act 1978 (application of general provisions of the Town and Country Planning (Scotland) Act 1972 relating to local inquiries and services of notices) for " to 270 " substitute " and 268 to 270 ".

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## SCHEDULE 12

Sections 24(3), 39(4), 49(2) and 53(2).

## REPEALS

## PART I

## HOUSING

## REPEALS COMING INTO FORCE ON PASSING OF ACT

Chapter	Short title	Extent of Repeal
1985 c. 71.	Housing (Consequential Provisions) Act 1985.	In Schedule 2, in paragraph 24(8)— (a) in sub-paragraph (d), the words from " for ' section 60" to " 1985' and "; (b) in sub-paragraph (e), the words from " for the " to "Schedule' and "; (c) sub-paragraph (f).

## REPEALS COMING INTO FORCE ON APPOINTED DAY

Chapter	Short title	Extent of Repeal
1975 c. 28.	Housing Rents and Subsidies (Scotland) Act 1975.	Section 5(6).
1977 c. 42.	Rent Act 1977.	In section 69(1), the words " (to be known as a certificate of fair rent)". In section 70(1), the word " and " before paragraph (b). In Schedule 12, in paragraph 3, the words " unless the dwelling-house is subject to a regulated tenancy ".
1980 c. 51.	Housing Act 1980.	Section 56(3). Section 140.
1980 c. 65.	Local Government, Planning and Land Act 1980.	Section 156(3).
1981 c. 64.	New Towns Act 1981.	Section 43(3) and (4). Section 49(b) and (c).
1985 c. 51.	Local Government Act 1985.	In Schedule 13, in paragraph 14, sub-paragraph (d) and the word " and " preceding it.

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Chapter	Short title	Extent of Repeal
1985 c. 68.	Housing Act 1985.	In Schedule 14, paragraph 58(e). Section 30(2). Section 46. In section 127, the word " and " at the end of paragraph (a). In section 452(2), the definition of " housing authority ". Section 453(2). In Schedule 4, in paragraph 7(1), the words from "a housing co-operative" to " management functions)". In Schedule 6, in paragraph 14(2), the words following paragraph (c).
1985 c. 71.	Housing (Consequential Provisions) Act 1985.	In Schedule 2, paragraphs 27, 35(3), 44(3), and 45(2).

## PART II

### OPENCAST COAL

Chapter	Short title	Extent of Repeal
6 & 7 Eliz. 2 c. 69.	Opencast Coal Act 1958.	Sections 1 and 2. Section 9(2). In section 18(2), the words "(apart from this Act)". In section 39(10), the words " First or ". Section 46(2). Section 48. In section 51, in subsection (1), the definitions of " the authorised purposes " and " authorised operations ". Section 53(2). Schedule 1.

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Chapter	Short title	Extent of Repeal
1971 c. 78.	Town and Country Planning Act 1971.	In Schedule 9, in paragraph 3(2), the words "under the First Schedule to this Act, or". Schedule 10. Section 60(10)(a).
1972 c. 52.	Town and Country Planning (Scotland) Act 1972.	In section 216(3), in paragraph (a), the words "or the National Coal Board " and in paragraph (b), the words from " or " to " 1958 ". Section 58(10)(a). In section 205(3) and 205A(3), in paragraph (a) the words "or the National Coal Board" and in paragraph (b) the words from " or " to " 1958 ".
1975 c. 56.	Coal Industry Act 1975.	Section 5. In Schedule 3, paragraphs 3 and 11. Schedule 4.
1981 c. 67.	Acquisition of Land Act 1981.	In Schedule 4, paragraph 11(5).
1986 c. 5.	Agricultural Holdings Act 1986.	In Schedule 14, paragraph 25.

### PART III

#### MISCELLANEOUS (ENGLAND AND WALES)

Chapter	Short title	Extent of Repeal
62 & 63 Vict, c. 19.	Electric Lighting (Clauses) Act 1899.	In the Schedule, in section 10(6), the words "and the express consent of the local authority also ".
16 & 17 Geo. 5 c. 51.	Electricity (Supply) Act 1926.	In Schedule 6, the entry relating to section 21 of the Electricity (Supply) Act 1919.
8 & 9 Geo. 6 c. 43.	Requisitioned Land and War Works Act 1945.	Section 52.

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Chapter	Short title	Extent of Repeal
10 & 11 Geo. 6 c. 51.	Town and Country Planning Act 1947.	In Schedule 8, the entry relating to section 21 of the Electricity (Supply) Act 1919.
10 & 11 Geo. 6 c. 54.	Electricity Act 1947.	In Part I of Schedule 4, the entry relating to section 21 of the Electricity (Supply) Act 1919.
11 & 12 Geo. 6 c. 17.	Requisitioned Land and War Works Act 1948.	In the Schedule, paragraph 10.
5 & 6 Eliz. 2 c. 48.	Electricity Act 1957.	In section 33(3), the words " and the next following ".
1968 c. 14.	Public Expenditure and Receipts Act 1968.	In Schedule 3, in paragraph 6, the entry relating to section 290(4) of the Local Government Act 1933.
1971 c. 78.	Town and Country Planning Act 1971.	<p>In section 29A—</p> <ul style="list-style-type: none"><li>(a) in subsection (2), the definition of " the Code of Practice for Access of the Disabled to Buildings ";</li><li>(b) subsection (3).</li></ul> <p>Section 29B(2) and (3).</p> <p>In section 32(2), in the proviso, the words " of sections 66 to 86 ".</p> <p>In section 55(4), the words " under section 56 of this Act ".</p> <p>Sections 66 to 86.</p> <p>Section 88B(4).</p> <p>Section 105(1)(c).</p> <p>Section 110(1).</p> <p>In section 147(3), the words from " or in respect of " to the end.</p> <p>Section 151.</p> <p>Section 165(4).</p> <p>In section 169—</p> <ul style="list-style-type: none"><li>(a) subsection (5);</li><li>(b) in subsection (7), the words from " and no</li></ul>

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Chapter	Short title	Extent of Repeal
		<p>compensation" to the end.</p> <p>In section 180(4), the words from "and no account" to the end.</p> <p>Section 185.</p> <p>Section 191(2).</p> <p>In section 237(5), the words from " and no compensation " to the end.</p> <p>Sections 250 to 252.</p> <p>In section 260(1)(d), the words " grants in accordance with regulations made under section 250 of this Act or ".</p> <p>In section 287—</p> <ul style="list-style-type: none"> <li>(a) in subsection (4), the words " 69, 73(6), 74(4), 75(8)";</li> <li>(b) in subsection (5)(6), the words "69,73(6), 75(8) or" and the words from " or an order under section 74(4)" to the end;</li> <li>(c) subsection (7);</li> <li>(d) subsection (9).</li> </ul> <p>In section 290(1)—</p> <ul style="list-style-type: none"> <li>(a) in the definition of "building ", the words in parenthesis;</li> <li>(b) the definition of " industrial development certificate ".</li> </ul> <p>Schedules 12 and 13.</p> <p>In Schedule 21—</p> <ul style="list-style-type: none"> <li>(a) in Part I, the references to sections 250, 251(1) and 252;</li> <li>(b) in Part II, the references to sections 79 to 81;</li> <li>(c) in Part III, the references to sections 72 and 251(2) to (5);</li> </ul>



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Chapter	Short title	Extent of Repeal
1972 c. 42.	Town and Country Planning (Amendment) Act 1972.	(d) in Part V, the references to sections 72 and 73 to 86. In Schedule 24, paragraphs 20A, 26 to 30 and 70. Sections 5 and 6.
1972 c. 70.	Local Government Act 1972.	In section 182(1), the words from "(2A)" to the end. Section 183(2). In section 250(4), the words from "(including" to "in the inquiry)". In Schedule 16, paragraphs 1 to 3.
1974 c. 7.	Local Government Act 1974.	In Schedule 6, paragraph 25(4).
1974 c. 32.	Town and Country Amenities Act 1974.	Section 3(1). Section 5.
1976 c. 70.	Land Drainage Act 1976.	In section 96(5), the words from "including" to "in the inquiry)".
1977 c. 40.	Control of Office Development Act 1977.	The whole Act.
1980 c. 65.	Local Government, Planning and Land Act 1980.	Section 88. In section 134— (a) in subsection (1), the words " Subject to subsection (2) below,"; (b) subsection (2). In Schedule 14, paragraphs 6 to 8. In Schedule 15, paragraphs 1 and 16. In Part I of Schedule 29, in the entry relating to section 65, the word " waste "
1981 c. 67.	Acquisition of Land Act 1981.	In Schedule 4, in paragraph 1, in the entry relating to the Local Government Act 1972, the words " section 125(4) and (7)".

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Chapter	Short title	Extent of Repeal
1982 c. 30.	Local Government (Miscellaneous Provisions) Act 1982.	In Schedule 6, in the Table in paragraph 7(b) the entries relating to ss. 15 and 15A of the Town and Country Planning Act 1971.
1982 c. 52.	Industrial Development Act 1982.	Section 15(1)(6). In Part II of Schedule 2, paragraph 7(1).
1983 c. 47.	National Heritage Act 1983.	In Schedule 4, paragraph 18. Schedule 5, paragraph 6.
1984 c. 27.	Road Traffic Regulation Act 1984.	In section 129(1)(d), the words from " (including" to " in the inquiry)".
1985 c. 51.	Local Government Act 1985.	Section 3(2). In Schedule 2, paragraph 1(8).

#### PART IV

##### MISCELLANEOUS (SCOTLAND)

Chapter	Short title	Extent of Repeal
1968 c. 14.	Public Expenditure and Receipts Act 1968.	In Schedule 3, in paragraph, the entry relating to section 355(8) of the Local Government (Scotland) Act 1947.
1972 c. 52.	Town and Country Planning (Scotland) Act 1972.	In section 29(2), in the proviso, the words " of sections 64 to 83 ". In section 53(2), the word " only " and the words "* (in this Act referred to as listed building consent) "*. In section 53(4) the words "under section 54 of this Act,". In section 63(1 A), the words from " ; and references " to " construed ". Sections 64 to 83. Section 85(8).

*Status: This is the original version (as it was originally enacted).*

Chapter	Short title	Extent of Repeal
		<p>In section 136(3) the words from " or in respect of" to the end.</p> <p>Section 140.</p> <p>Section 154(4).</p> <p>In section 158—</p> <ul style="list-style-type: none"><li>(a) Subsection (5).</li><li>(b) In subsection (7) the words from "and no compensation " to the end.</li></ul> <p>In section 169(4) the words from " and no account " to the end.</p> <p>Section 174.</p> <p>Section 180(2).</p> <p>In section 226(5) the words from " and no compensation" to the end.</p> <p>Section 231(2)(e).</p> <p>In section 233(3), the words "(other than an order under section 203(1)(a) of this Act)".</p> <p>Sections 237 to 239.</p> <p>In section 247(1)(d), the words from " in accordance " to " grants ".</p> <p>In section 273—</p> <ul style="list-style-type: none"><li>(a) In subsection (4), the words "67, 71(6), 72(4), 73(8)".</li><li>(b) In subsection (5) the words " 67, 71(6), 73(8)".</li><li>(c) Subsections (7) to (9).</li></ul> <p>In section 275(1)—</p> <ul style="list-style-type: none"><li>(a) In the definition of "building", the words except in sections 71 to 83 of this Act,".</li><li>(b) the definition of " industrial development certificate ".</li></ul>

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*Status: This is the original version (as it was originally enacted).*

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Chapter	Short title	Extent of Repeal
1974 c. 32.	Town and Country Amenities Act 1974.	<p>In Schedule 19—</p> <p>(a) in Part I, the reference to sections 237, 238(1) and 239;</p> <p>(b) in Part II, the references to sections 77 to 79 and 83;</p> <p>(c) in Part III, the reference to section 70.</p> <p>In Schedule 22, paragraphs 22 to 25 and 60.</p>
1980 c. 65.	Local Government, Planning and Land Act 1980.	<p>Section 5.</p> <p>In section 134(1) the words " Subject to subsection (2) below, ".</p> <p>In Part I of Schedule 30, in the entry relating to section 63, the word " waste ".</p>
1982 c. 52.	Industrial Development Act 1982.	<p>Section 15(1)(b).</p> <p>Paragraph 10 of Part II of Schedule 2.</p>
1984 c. 27.	Road Traffic Regulation Act 1984.	<p>In section 129(1)(d) the words from " (including " to " in the inquiry)".</p>