

*Status: Point in time view as at 30/08/1995.*

*Changes to legislation: There are currently no known outstanding effects for the Planning and Compensation Act 1991, Part III. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 4

#### DEVELOPMENT PLANS

#### PART III

#### TRANSITIONAL PROVISIONS

##### *Interpretation*

- 40 In this Part of this Schedule—
- “commencement” means the commencement of Part I of this Schedule;
  - “the old law” means the principal Act in the form in which it was in force immediately before commencement;
  - “the new law” means the principal Act as amended by this Act;
  - “prescribed” means prescribed by regulations made by the Secretary of State;
  - “winning and working of minerals”, “depositing of mineral waste”, “policies” in relation to such winning and working or depositing, and “waste policies” have the same meaning as they have under the new law.

##### **Subordinate Legislation Made**

- P1** Sch. 4 para. 40: Sch. 4 paras. 40, 41(2), 45(1), 46(1) and 47(7) power exercised (10.12.1991) by S.I.1991/2794

##### **Commencement Information**

- II** Sch. 4 para. 40 wholly in force: Sch. 4 para.40 in force for certain purposes at 25.11.1991, see s. 84(2) (3) and S.I. 1991/2728, **art. 2**; Sch. 4 para. 40 in force at 10.2.1992 so far as not already in force by S.I. 1991/2905, **art. 4**

##### *Unitary development plans*

- 41 (1) Where a local planning authority have, under section 13(3) of the old law, made available copies of proposals for the making, alteration or replacement of a unitary development plan but the proposals are not adopted or approved before commencement—
- (a) the proposals shall be treated on and after commencement as if made available under section 13(2) of the the new law; and
  - (b) any other step taken before commencement for the purpose of complying with any requirement of the old law with respect to such making, alteration or replacement may be treated on and after commencement as having been

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taken for the purpose of complying with any similar requirement imposed by or under the new law.

- (2) Sub-paragraph (3) below applies where, at any time within the period of two years beginning with the date of commencement—
- (a) a unitary development plan is in operation which by virtue of paragraph 4 of Part I or paragraph 17 of Part II of Schedule 2 to the old law includes a local plan (whether subject to alteration or otherwise);
  - (b) proposals are made for the alteration or replacement of the unitary development plan;
  - (c) the local planning authority who are making those proposals have published in the prescribed manner a statement in the prescribed form identifying a policy included in the plan as an existing policy; and
  - (d) a local inquiry or other hearing is held for the purpose of considering an objection to the proposals.
- (3) Where this sub-paragraph applies, the person holding the inquiry or other hearing need not allow an objector to appear if he is satisfied that—
- (a) the objection is to a policy identified in the statement published under sub-paragraph (2)(c) above;
  - (b) the policy so identified is an existing policy; and
  - (c) there has been no significant change in circumstances affecting the existing policy since it was included in the unitary development plan.
- (4) In this paragraph “existing policy” means a policy or proposal the substance of which (however expressed) was contained in a plan included as mentioned in sub-paragraph (2)(a) above.

#### Subordinate Legislation Made

**P2** Sch. 4 para. 41(2): Sch. 4 paras. 40, 41(2), 45(1), 46(1) and 47(7) power exercised (10. 12. 1991) by S.I. 1991/2794.

#### Commencement Information

**I2** Sch. 4 para. 41 wholly in force: Sch. 4 para. 41 in force for certain purposes at 25.11.1991, see s. 84(2) (3) and S.I. 1991/2728, art. 2; Sch. 4 para. 41 in force at 10.2.1992 so far as not already in force by S.I. 1991/2905, art. 4

#### Structure plans

- 42 (1) Where a local planning authority have, under section 32(3) of the old law, submitted to the Secretary of State copies of proposals for the alteration or repeal and replacement of a structure plan but the proposals are not approved before commencement—
- (a) the submission of the proposals shall on and after commencement be treated for the purposes of the new law as the sending of the copy under section 33(2) (b) of that law; and
  - (b) any other step taken before commencement for the purpose of complying with any requirement of the old law with respect to such alteration or repeal and replacement may on and after commencement be treated as having been

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taken for the purpose of complying with any similar requirement imposed by or under Part II of the new law.

- (2) Where sub-paragraph (1) above applies the proposals may be adopted or approved under the new law as if they had been prepared after commencement.

**Commencement Information**

- I3** Sch. 4 para. 42 wholly in force: Sch. 4 para. 42 in force for certain purposes at 25.11.1991, see s. 84(2) (3) and S.I. 1991/2728, art. 2; Sch. 4 para. 42 in force at 10.2.1992 so far as not already in force by S.I. 1991/2905, art. 4

*Local plans*

- 43 Where a local planning authority have made available under section 39(5) or 40(2) of the old law copies of proposals for the making, alteration, repeal or replacement of a local plan but the proposals are not adopted or approved before commencement, the proposals may after commencement be adopted or as the case may be, approved as if the old law were still in force.

**Commencement Information**

- I4** Sch. 4 para.43 wholly in force: Sch. 4 para. 43 in force for certain purposes at 25.11.1991, see s. 84(2) (3) and S.I. 1991/2728, art. 2; Sch. 4 para. 43 in force at 10.2.1992 so far as not already in force by S.I. 1991/2905, art. 4

- 44 (1) A local plan which—
- (a) immediately before commencement is in operation in the area of a local planning authority, or
  - (b) is brought into operation after commencement by virtue of paragraph 43 above,
- (in this Schedule referred to as “a saved local plan”) shall, subject to the following provisions of this paragraph, continue in operation.
- (2) Where a saved local plan—
- (a) complies with section 36 of the new law and was prepared by the authority who are entitled to prepare the plan required by that section, or
  - (b) contains only those policies required or permitted to be included in a minerals local plan or a waste local plan in accordance with sections 36 to 38 of the new law and was made by the authority who are entitled to prepare a minerals local plan or, as the case may be, a waste local plan,
- it shall be treated as if it were a local plan, a minerals local plan or, as the case may be, a waste local plan which had been adopted or, as the case may be, approved under the new law (and accordingly may be altered or replaced under the new law).
- (3) In sub-paragraphs (4) to (8) below the references to saved local plans do not include a reference to saved local plans treated, by virtue of sub-paragraph (2) above, as if adopted or approved under the new law.
- (4) Any saved local plan shall have effect subject to a local plan, minerals local plan or waste local plan which is adopted or approved under the new law and shall not be

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treated as mentioned in sub-paragraph (2) above (and accordingly may not be altered or replaced under the new law).

- (5) Where the last of the plans, or the plan, required to be prepared for an area under sections 36 to 38 of the new law is prepared for that area—
- (a) any saved local plan, and
  - (b) any old development plan,
- shall cease to have effect in relation to that area.
- (6) If the Secretary of State so directs, any specified provisions of a saved local plan shall continue in operation—
- (a) for such period as may be specified or determined in accordance with the direction;
  - (b) in relation to the area or any specified part of the area to which the saved local plan relates.
- (7) The Secretary of State may revoke any direction given under sub-paragraph (6) above.
- (8) Before giving or revoking any such direction the Secretary of State shall consult any local planning authority for the area in which the plan is in operation.
- (9) A saved local plan shall, while it continues in operation, be treated for the purposes of the new law, any other enactment relating to town and country planning, the<sup>M1</sup>Land Compensation Act 1961 and the<sup>M2</sup>Highways Act 1980 as being comprised in the development plan in respect of the area in question.
- (10) In this paragraph—
- “old development plan” has the same meaning as in Part III of Schedule 2 to the principal Act; and
- “specified” means specified in the direction.

#### Commencement Information

**I5** Sch. 4 para. 44 wholly in force: Sch. 4 para. 44 in force for certain purposes at 25.11.1991, see s. 84(2) (3) and S.I. 1991/2728, art. 2; Sch. 4 para. 44 in force at 10.2.1992 so far as not already in force by S.I. 1991/2905, art. 4

#### Marginal Citations

**M1** 1961 c. 33.  
**M2** 1980 c. 66.

- 45 (1) Sub-paragraph (2) below applies where after commencement—
- (a) there is in operation in the area of a local planning authority a saved local plan which does not fall within paragraph 44(2)(a) above;
  - (b) proposals are made in pursuance of the new law for the making, alteration or replacement of a local plan for that area;
  - (c) the local planning authority who are making those proposals have published in the prescribed manner a statement in the prescribed form identifying a policy included in the plan as an existing policy; and
  - (d) a local inquiry or other hearing is held for the purpose of considering any objection to the proposals.

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- (2) Where this sub-paragraph applies, the person holding the inquiry or other hearing need not allow an objector to appear if he is satisfied that—
- (a) the objection is to a policy identified in the statement published under sub-paragraph (1)(c) above;
  - (b) the policy so identified is an existing policy; and
  - (c) there has been no significant change in circumstances affecting the existing policy since it first formed part of the saved local plan.
- (3) In this paragraph “existing policy” means a policy or proposal the substance of which (however expressed) was contained in the saved local plan falling within sub-paragraph (1)(a) above.

#### **Subordinate Legislation Made**

**P3** Sch. 4 para. 45(1): Sch. 4 paras. 40, 41(2), 45(1), 46(1) and 47(7) power exercised (10. 12. 1991) by S.I. 1991/2794

#### **Commencement Information**

**I6** Sch. 4 para. 45 wholly in force: Sch. 4 para.45 in force for certain purposes at 25.11.1991, see s. 84(2) (3) and S.I. 1991/2728, art. 2; Sch. 4 para. 45 in force at 10.2.1992 so far as not already in force by S.I. 1991/2905, art. 4

#### *Minerals and waste local plans*

- 46 (1) Sub-paragraph (2) below applies where after commencement—
- (a) there is in operation in the area of a local planning authority a saved local plan which does not fall within paragraph 44(2)(b) above and which contains—
    - (i) any detailed policies for development consisting of the winning and working of minerals or involving the depositing of mineral waste; or
    - (ii) any waste policies;
  - (b) proposals are made in pursuance of the new law for the making, alteration or replacement of a minerals local plan or a waste local plan for that area;
  - (c) the local planning authority who are making those proposals have published in the prescribed manner a statement in the prescribed form identifying a policy included in the plan as an existing policy; and
  - (d) a local inquiry or other hearing is held for the purpose of considering any objection to the proposals.
- (2) Where this sub-paragraph applies, the person holding the inquiry or other hearing need not allow an objector to appear if he is satisfied that—
- (a) the objection is to a policy identified in the statement published under sub-paragraph (1)(c) above;
  - (b) the policy so identified is an existing policy; and
  - (c) there has been no significant change in circumstances affecting the existing policy since it first formed part of the saved local plan.
- (3) In this paragraph “existing policy” means any policy falling within sub-paragraph (1) (a) above the substance of which (however expressed) was contained in the saved local plan falling within that sub-paragraph.

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#### Subordinate Legislation Made

**P4** Sch. 4 para. 46(1): Sch. 4 paras. 40, 41(2), 45(1), 46(1) and 47(7) power exercised (10. 12. 1991) by S.I.1991/2794.

#### Commencement Information

**I7** Sch. 4 para. 46 wholly in force: Sch. 4 para. 46 in force for certain purposes at 25.11.1991, see s. 84(2) (3) and S.I. 1991/2728, art. 2; Sch. 4 para. 46 in force at 10.2.1992 so far as not already in force by S.I. 1991/2905, art. 4

*Duty of structure plan authority to notify authorities responsible for saved local plans etc.*

- 47 (1) In this paragraph the references to saved local plans do not include a reference to saved local plans treated, by virtue of paragraph 44(2) above, as if adopted or approved under the new law.
- (2) Where at any time after commencement any proposals for the alteration or replacement of a structure plan are adopted or approved, the authority concerned shall—
- (a) notify any local planning authority in their area that the proposals have been adopted or approved;
  - (b) supply that authority with a statement that any saved local plan in operation in that authority's area is or, as the case may be, is not in general conformity with the altered or new structure plan.
- (3) A statement that a saved local plan is not in general conformity with a structure plan shall specify the respects in which it is not in such conformity.
- (4) Where at any time after commencement any proposals for the alteration or replacement of a structure plan are withdrawn, the authority concerned shall notify any authority who prepared any saved local plan which is in operation in their area that the proposals have been withdrawn.
- (5) Nothing in this paragraph requires an authority to notify or supply a statement to themselves.
- (6) The provisions of a saved local plan shall prevail for all purposes over any conflicting provisions in the relevant structure plan unless the saved local plan is one stated under sub-paragraph (2) above not to be in general conformity with the structure plan.
- (7) Sub-paragraph (6) above is subject to any regulations made by the Secretary of State with respect to conflict between plans.

#### Subordinate Legislation Made

**P5** Sch. 4 para. 47(7): Sch. 4 paras. 40, 41(2), 45(1), 46(1) and 47(7) power exercised (10. 12. 1991) by 1991/2794

#### Commencement Information

**I8** Sch. 4 para. 47 wholly in force: Sch. 4 para. 47 in force for certain purposes at 25.11.1991, see s. 84(2) (3) and S.I. 1991/2728, art. 2; Sch. 4 para. 47 in force at 10.2.1992 so far as not already in force by S.I. 1991/2905, art. 4

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### *Consultation*

- 48 Any consultation undertaken before commencement for the purposes of any provision contained in or made under Part II of the old law shall be as effective for the purposes of any similar provision contained in or made under Part II of the new law as if undertaken after commencement.

#### **Commencement Information**

- 19** Sch. 4 para. 48 wholly in force: Sch. 4 para. 48 in force for certain purposes at 25.11.1991, see s. 84(2) (3) and S.I. 1991/2728, art. 2; Sch. 4 para. 48 in force at 10.2.1992 so far as not already in force by S.I. 1991/2905, art. 4

### *Joint plans*

- 49 (1) The Secretary of State may give directions applying with modifications the provisions of this part of this Schedule to cases where—
- (a) any plan has been or is being jointly prepared; or
  - (b) any proposals for the alteration, repeal or replacement of such a plan have been or are being jointly prepared.
- (2) Any such directions may be of a general or particular character.

#### **Commencement Information**

- 110** Sch. 4 para. 49 wholly in force: Sch. 4 para. 49 in force for certain purposes at 25.11.1991, see s. 84(2) (3) and S.I. 1991/2728, art. 2; Sch. 4 para. 49 in force at 10.2.1992 so far as not already in force by S.I. 1991/2905, art. 4

### *Proceedings for questioning validity of development plans*

- 50 An application may be made after commencement under and in accordance with section 287 of the old law with respect to any plan adopted, altered, repealed or replaced under the old law.

#### **Commencement Information**

- 111** Sch. 4 para. 50 wholly in force: Sch. 4 para. 50 in force for certain purposes at 25.11.1991, see s. 84(2) (3) and S.I. 1991/2728, art. 2; Sch. 4 para. 50 in force at 10.2.1992 so far as not already in force by S.I. 1991/2905, art. 4

### *The Isles of Scilly*

- 51 An order under section 319 of the new law may make transitional provision in connection with any development plan in force in the Isles of Scilly.

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#### **Commencement Information**

**I12** Sch. 4 para. 51 wholly in force: Sch. 4 para. 51 in force for certain purposes at 25.11.1991, see s. 84(2) (3) and S.I. 1991/2728, **art. 2**; Sch. 4 para. 51 in force at 10.2.1992 so far as not already in force by S.I. 1991/2905, **art. 4**



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