



# Planning Act 2008

## 2008 CHAPTER 29

### PART 6

#### DECIDING APPLICATIONS FOR ORDERS GRANTING DEVELOPMENT CONSENT

### CHAPTER 2

#### THE PANEL PROCEDURE

#### *Panels*

#### **64 Panel for each application to be handled under this Chapter**

- (1) This Chapter applies where—
  - (a) the Commission accepts an application for an order granting development consent, and
  - (b) under section 61(2) or 62(2), it is decided that the application is to be handled by a Panel under this Chapter.
- (2) There is to be a Panel (referred to in this Chapter as “the Panel”) to handle the application.

#### **65 Appointment of members, and lead member, of Panel**

- (1) The person appointed to chair the Commission must appoint—
  - (a) three or more Commissioners to be members of the Panel, and
  - (b) one of those Commissioners to chair the Panel.
- (2) In this Chapter “the lead member” means the person who for the time being is appointed to chair the Panel.
- (3) A person may under subsection (1) make a self-appointment.

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- (4) Before making an appointment under subsection (1), the person making the appointment must consult—
  - (a) the other Commissioners who, for the purpose of responding to consultation about the appointment, are members of the Council,
  - (b) any Commissioner not within paragraph (a) who the person thinks it appropriate to consult, and
  - (c) the chief executive of the Commission.
- (5) In making an appointment under subsection (1), the person making the appointment must have regard to any views expressed—
  - (a) by any of the other Commissioners, or
  - (b) by the chief executive of the Commission,
 about how many or which Commissioners should be appointed to the Panel.

## **66 Ceasing to be member, or lead member, of Panel**

- (1) A person ceases to be a member of the Panel if the person ceases to be a Commissioner, but this is subject to section 67.
- (2) The person appointed to be the lead member ceases to hold that office if the person ceases to be a member of the Panel.
- (3) A person may resign from membership of the Panel by giving notice in writing to the Commission.
- (4) The lead member may resign that office, without also resigning from membership of the Panel, by giving notice in writing to the Commission.
- (5) The person appointed to chair the Commission (“the chair”)—
  - (a) may remove a person (“the Panel member”) from membership of the Panel if the chair is satisfied that the Panel member is unable, unwilling or unfit to perform the duties of Panel membership;
  - (b) may remove the lead member from that office, without also removing the lead member from membership of the Panel, if the chair is satisfied that the lead member is unable, unwilling or unfit to perform the duties of the office.

## **67 Panel member continuing though ceasing to be Commissioner**

- (1) This section applies if—
  - (a) a person (“the ex-Commissioner”) ceases to hold office as a Commissioner (other than by being removed from office under paragraph 4(2) of Schedule 1),
  - (b) immediately before ceasing to hold office, the ex-Commissioner is—
    - (i) a member of the Panel, or
    - (ii) a member of the Panel and the lead member,
  - (c) the Panel is still handling the application at the time the ex-Commissioner ceases to hold office, and
  - (d) before ceasing to hold office, the ex-Commissioner elects to continue acting as a Commissioner in relation to the application.
- (2) For the purpose of the application, the ex-Commissioner is to be treated as continuing to hold office until—

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- (a) the Panel has decided, or (as the case may be) reported to the Secretary of State on, the application, or
  - (b) (if earlier) the ex-Commissioner ceases to be a member of the Panel.
- (3) For the purpose of any proceedings arising out of the application, the ex-Commissioner is to be treated as having continued to hold office until—
  - (a) the Panel had decided, or (as the case may be) reported to the Secretary of State on, the application, or
  - (b) (if earlier) the ex-Commissioner ceased to be a member of the Panel.
- (4) An election under subsection (1)(d) is effective only if made in writing to each of the following—
  - (a) the chief executive of the Commission;
  - (b) the person appointed to chair the Commission, where the ex-Commissioner is not the person appointed to chair the Commission;
  - (c) the lead member of the Panel, where the ex-Commissioner is not the lead member of the Panel.

## **68 Additional appointments to Panel**

- (1) Subsections (2) and (3) apply at any time after the initial members of the Panel have been appointed under section 65(1)(a).
- (2) The person appointed to chair the Commission may appoint a Commissioner to be a member of the Panel.
- (3) If at any time the Panel has only two members or a single member, it is the duty of the person appointed to chair the Commission to ensure that the power under subsection (2) is exercised so as to secure that the Panel again has at least three members.
- (4) A person appointed under subsection (2) becomes a member of the Panel in addition to any person who is otherwise a member of the Panel.
- (5) A person may under subsection (2) make a self-appointment.

## **69 Replacement of lead member of Panel**

- (1) Subsection (2) applies where a person ceases to hold the office of lead member.
- (2) The person appointed to chair the Commission must appoint a member of the Panel to chair the Panel.
- (3) A person may be appointed under subsection (2) even though that person was not a member of the Panel when the vacancy arose.
- (4) A person may under subsection (2) make a self-appointment.

## **70 Membership of Panel where application relates to land in Wales**

- (1) This section applies where the application relates to land in Wales (even if it also relates to land not in Wales).

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- (2) A person exercising power under section 65(1)(a) or 68(2) must do so with a view to securing that, if reasonably practicable, at least one of the members of the Panel is—
  - (a) a Commissioner who was nominated for appointment as a Commissioner by the Welsh Ministers, or
  - (b) a Commissioner who is within subsection (3).
- (3) A Commissioner is within this subsection if, when appointed to be a member of the Panel, the Commissioner is one notified to the Commission by the Welsh Ministers as being a Commissioner who should be treated for the purposes of this section as being a Commissioner within subsection (2)(a).

## **71 Supplementary provision where Panel replaces single Commissioner**

- (1) Subsections (2) and (3) apply where this Chapter applies as the result of a decision under section 62(2).
- (2) A Commissioner who has handled the application under Chapter 3—
  - (a) may be appointed under section 65(1)(a) or 68(2) as a member of the Panel, and
  - (b) if a member of the Panel, may be appointed under section 65(1)(b) or 69(2) to chair the Panel.
- (3) The Panel may, so far as it thinks appropriate, decide to treat things done by or in relation to a Commissioner in proceedings under Chapter 3 on the application as done by or in relation to the Panel.
- (4) Where the Panel makes a decision under subsection (3), the lead member is under a duty to ensure that the membership of the Panel has the necessary knowledge of the proceedings under Chapter 3 on the application.

## **72 Panel ceasing to have any members**

- (1) If the Panel ceases to have any members, a new Panel must be constituted under section 65(1).
- (2) At times after the new Panel has been constituted (but subject to the further application of this subsection in the event that the new Panel ceases to have any members), references in this Chapter to the Panel are to be read as references to the new Panel.
- (3) The new Panel may, so far as it thinks appropriate, decide to treat things—
  - (a) done by or in relation to a previous Panel appointed to handle the application, or
  - (b) treated under section 71(3) as done by or in relation to a previous Panel appointed to handle the application,
 as done by or in relation to the new Panel.
- (4) Where the Panel makes a decision under subsection (3), the lead member is under a duty to ensure that the membership of the Panel has the necessary knowledge of the proceedings on the application up until the reconstitution of the Panel.
- (5) The power under section 68(2) is not exercisable at times when the Panel has no members.

### **73 Consequences of changes in Panel**

- (1) The Panel's continuing identity is to be taken not to be affected by—
  - (a) any change in the membership of the Panel;
  - (b) the Panel's coming to have only two members or a single member;
  - (c) any change in the lead member;
  - (d) a vacancy in that office.
- (2) When there is a change in the membership of the Panel, the lead member is under a duty to ensure that the membership of the Panel after the change has the necessary knowledge of the proceedings on the application up until the change.
- (3) Subsection (2) does not apply where the change occurs as a result of the Panel being reconstituted as required by section 72(1).

#### *Panel's role in relation to application*

### **74 Panel to decide, or make recommendation in respect of, application**

- (1) Where a national policy statement has effect in relation to development of the description to which the application relates, the Panel has the functions of—
  - (a) examining the application, and
  - (b) deciding the application.
- (2) In any other case, the Panel has the functions of—
  - (a) examining the application, and
  - (b) making a report to the Secretary of State on the application setting out—
    - (i) the Panel's findings and conclusions in respect of the application, and
    - (ii) the Panel's recommendation as to the decision to be made on the application.
- (3) The Panel's functions under this section are to be carried out in accordance with Chapter 4.
- (4) The staff of the Commission have the function of providing or procuring support for members of the Panel undertaking the Panel's functions under this section.

### **75 Decision-making by the Panel**

- (1) The making of a decision by the Panel requires the agreement of a majority of its members.
- (2) The lead member has a second (or casting) vote in the event that the number of members of the Panel agreeing to a proposed decision is the same as the number of members not so agreeing.

### **76 Allocation within Panel of Panel's functions**

- (1) This section applies in relation to the Panel's examination of the application.
- (2) The Panel, as an alternative to itself undertaking a part of the examination, may allocate the undertaking of that part to any one or more of the members of the Panel.

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- (3) Where there is an allocation under subsection (2)—
  - (a) anything that under Chapter 4 is required or authorised to be done by or to the Panel in connection with the allocated part of the examination may be done by or to the member or members concerned (or by or to the Panel), and
  - (b) findings and conclusions of the member or members concerned in respect of the matters allocated are to be taken to be the Panel's.
- (4) Subsection (3)(b) has effect subject to any decision of the Panel, made on the occasion of making the allocation or earlier, as to the status of any such findings or conclusions.
- (5) Where there is an allocation under subsection (2) to two or more of the members of the Panel, the making of a decision by the members concerned requires the agreement of all of them.

## **77 Exercise of Panel's powers for examining application**

- (1) In this section “procedural power” means any power conferred on the Panel for the purposes of its examination of the application.
- (2) A procedural power, as well as being exercisable by the Panel itself, is also (subject to subsection (3)) exercisable by any one or more of the members of the Panel.
- (3) The Panel may decide to restrict or prohibit the exercise of a procedural power otherwise than by the Panel itself.
- (4) Subsection (2)—
  - (a) applies whether or not there is an allocation under section 76(2), and
  - (b) where there is such an allocation, is in addition to section 76(3)(a).
- (5) Subsection (3) does not authorise curtailment of a power conferred by section 76(3)(a).