These notes refer to the Growth and Infrastructure Act 2013 (c.27) which received Royal Assent on 25 April 2013

GROWTH AND INFRASTRUCTURE ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Promoting growth and facilitating provisions of infrastructure, and related matters

Section1: Option to make planning application directly to the Secretary of State

19. This section amends the Town and Country Planning Act 1990 ("the 1990 Act") by inserting new sections 62A to 62C.

20. Section 62A allows a planning application, an application for reserved matters consent and certain connected applications to be made directly to the Secretary of State where the local planning authority has been designated by him, provided the planning application is for (or the application for reserved matters consent relates to) major development. The "connected applications" can include applications for listed building or conservation area consent and other applications under the planning Acts that the Secretary of State may prescribe in regulations.

21. The conditions which must be satisfied before a planning authority may be designated for this purpose are set out in section 62B: by reference to published criteria the Secretary of State must consider that there are respects in which an authority are not adequately performing their function of determining applications under Part 3 of the 1990 Act. Section 62B also provides that the criteria must be contained in a document which is laid before both Houses of Parliament for a period of forty sitting days, and that they may come into effect only if neither House has voted against the document during this period.

22. Section 62C imposes a duty on the Secretary of State to notify parish councils of any applications submitted directly to him that relate to land in their area (where a parish council have previously asked the relevant local planning authority to be notified of applications submitted to that authority). It also requires a designated planning authority, if requested by the Secretary of State, to let the Secretary of State know which parish councils have asked to be notified in this way.

23. Schedule 1 makes consequential amendments. In particular, it–

- Amends section 2A of the 1990 Act to allow the Mayor of London to continue to "call in" planning applications of strategic significance where they have been submitted directly to the Secretary of State, rather than to a planning authority within Greater London.
- Inserts a new section 76C into the 1990 Act which allows applications submitted directly to the Secretary of State to be subject to the same procedural provisions (set out in a development order) as apply to applications made to a local planning authority.
- Inserts a new section 76D into the 1990 Act which allows for a person to be appointed to determine on the Secretary of State's behalf those applications that are submitted directly to the Secretary of State (in practice, the intention is to allow

the Planning Inspectorate to determine the majority of such decisions on behalf of the Secretary of State).

- Inserts a new section 76E into the 1990 Act which allows the Secretary of State to "recover" for decision any case that would otherwise be determined by an appointed person; the intention being that the Secretary of State should be able, for example, to determine any cases that raise issues of national importance.

- Amends the 1990 Act to give the Secretary of State the power to decline to determine applications of a similar nature to those recently refused, or which are similar to ones currently being considered (mirroring the powers available to local planning authorities).

- Amends the 1990 Act to provide that the right of appeal to the Secretary of State, against non-determination of an application within prescribed time limits, does not apply to applications that are submitted directly to the Secretary of State. Section 78(1) of the 1990 Act already limits the right of appeal against a refusal of permission to applications submitted to a local planning authority. Taken together, these provisions mean that there would be no right of appeal to the Secretary of State where an application is submitted directly to the Secretary of State (but, as a result of the amendment of section 284(3) of the 1990 Act, any decision on the application can be challenged in the High Court).

- Amends the 1990 Act to allow the Secretary of State to make regulations through which a fee may be charged for directly submitted planning applications, or for the provision of pre-application advice (as local planning authorities may do already).

Section 2: Planning proceedings: costs

24. Section 2 broadens the powers of the Secretary of State to award costs between the parties at planning appeals, and to recover the Secretary of State's own costs from the parties. It is an enabling measure that builds on existing powers to ensure that the Secretary of State may recover costs in full or in part, in respect of all appeal procedures, and where an inquiry is arranged but does not take place.

25. In practice, costs powers are usually exercised by Inspectors in the Planning Inspectorate, who are appointed under Schedule 6 to the Town and Country Planning Act 1990 ("the 1990 Act") to determine planning appeals on behalf of the Secretary of State.

26. Subsection (1) clarifies that costs may be recovered in part, as well as in full, following an appeal held at inquiry. It amends section 250(4) of the Local Government Act 1972 as it applies to planning appeals conducted as a local inquiry under section 320 of the 1990 Act. Section 250(4) enables the Secretary of State to recover "the costs incurred by him in relation to the inquiry". This amendment clarifies that a portion of the costs incurred by the Secretary of State may be recovered, not just the whole costs as section 250(4) currently implies.

27. Subsection (2) clarifies that costs may be recovered in part as well as in full following an appeal held by another procedure, such as a hearing or written representations. It amends section 322 of the 1990 Act (which deals with costs awards between parties) to apply section 250(4), with the same amendment as in subsection (1), to planning appeals which are not conducted as an inquiry, i.e. to appeals dealt with at a hearing or by way of written representations. This allows the Secretary of State to recover his own costs, or a portion of those costs, at all planning appeals, not just at inquiries as currently. New subsection (1D) applies section 42 of the Housing and Planning Act 1986 to hearings and written representations. Section 42 currently only applies to inquiries; it sets out the sorts of costs which may be recovered by the Secretary of State.

28. Subsection (3) clarifies that costs may be recovered in full or in part even when the inquiry or hearing does not take place. It makes similar amendments to section 322A

of the 1990 Act (which deals with costs awards between parties) to ensure that the power of the Secretary of State to recover his own costs extends to situations where an inquiry or hearing has been arranged, but does not take place. This power could be used, for example, to recover from the responsible party wasted costs associated with arrangements for an inquiry or hearing which is cancelled at short notice.

29. Subsection (4) ensures that arrangements are in place with regard to appeals in London by amending section 322B of the 1990 Act in a similar way to subsection (1) to clarify that a portion of the Secretary of State's own costs may be recovered at local inquiries in London.

30. Subsection (5) amends an existing power in section 323 of the 1990 Act to make regulations setting out the procedures to be followed at planning appeals conducted by written representations. Section 323 already enables procedures about costs to be made, and the amendment enables those procedures to set out the circumstances in which costs may be awarded between parties or recovered from the parties by the Secretary of State. This power would enable provision to be made about the criteria for awarding or recovering costs – for example, types of behaviour by parties which might result in costs being awarded or recovered.

31. Subsection (6) makes similar amendments to subsection (5), but to an existing power at section 9 of the Tribunals and Inquiries Act 1992 which is used to make procedures for planning appeals conducted as an inquiry or hearing. This power would enable provision to be made about the criteria for awarding or recovering costs, for example, what behaviour or actions by parties might result in costs being awarded or recovered.

32. Subsection (7) amends the Secretary of State's power, under Schedule 6 to the 1990 Act, to appoint persons to determine planning appeals and matters connected with planning appeals. This is the power under which Inspectors are appointed. New sub-paragraph (11) enables connected matters, such as costs, to be dealt with directly by the Secretary of State rather than by an Inspector.

Section 3: Compulsory purchase inquires: costs

33. This section broadens the powers of the Secretary of State to award costs between the parties at compulsory purchase order inquiries. These inquiries are generally conducted on behalf of the Secretary of State by Inspectors in the Planning Inspectorate. The section adds a new subsection (4) to section 5 of the Acquisition of Land Act 1981. Section 5 applies section 250(5) of the Local Government Act 1972 ("the 1972 Act") to inquiries set up by Ministers to hear objections to the compulsory purchase of land by public authorities. Section 250(5) allows costs to be awarded between the parties at the inquiry.

34. At present, the terms of section 250(5) suggest that successful objectors to a compulsory purchase order must appear "at the inquiry" in order to be awarded their costs. New subsection (4) of section 5 of the 1981 Act provides that where an inquiry is held as referred to in section 5(3)(a) and (b), section 250(5) of the 1972 Act also applies to allow the Secretary of State to award costs where an inquiry is cancelled, or where a party does not appear at an inquiry. These situations may occur when an acquiring authority does not wish to proceed with the compulsory purchase order, or an objector has reached an agreement with the acquiring authority to exclude their land from the order.

Section 4: Permitted development rights: prior approvals

35. Section 4(1) amends section 60 of the 1990 Act. Section 60(1) provides that planning permission granted by a development order may be granted unconditionally or subject to such conditions or limitations as may be specified in the order. Section 4(1) inserts new subsections (2A) to (2C) into section 60.

36. New subsection (2A) provides that where planning permission is granted for development which is a change of use the order may specify matters that relate to the new use for which the approval of the local planning authority or the Secretary of State may be required. For example, in relation to a change of use which might generate extra traffic and be noisier than the existing use, the local planning authority may be given the opportunity to approve a transport strategy prepared by the developer, and a plan to address noise impacts.

37. The key change made by new subsection (2B) is that, where a development order grants planning permission for development within the curtilage of a dwelling house, the order can include provision enabling the local planning authority to prevent the development going ahead in reliance on the order where: (1) there are objections from neighbours who share a boundary with the property to be developed; and (2) the authority considers that there would be an unacceptable impact on the amenity of adjoining properties

38. Section 4(2) amends section 70A(5) of the 1990 Act to provide that a local planning authority can decline to determine repeat applications for these approvals.

Section 5: Limits on power to require information with planning applications

39. Section 5 introduces a new provision into section 62 of the 1990 Act which introduces limits on local planning authorities' power to require information with planning applications. The limits are defined as: (1) information requests must be reasonable having regard to the nature and scale of the proposed development; and (2) it being reasonable to think that the subject-matter of the information will be a material consideration in the determination of the application in question.

Section 6: Local development orders: repeal of pre-adoption intervention powers

40. Section 6 amends section 61B(1) to (7) of the 1990 Act so that it ceases to have effect in England. This removes powers for the Secretary of State to direct that a local development order be submitted for approval before adoption, to reject an order or part of an order, and to direct that a local development order be modified before it is adopted. Section 6 also inserts a new section 61B(7A) which requires a local planning authority in England to submit a copy of a local development order to the Secretary of State after the order is adopted.

41. The section also removes the Secretary of State's power, under Schedule 4A to the 1990 Act, to prescribe a procedure for submitting local development orders for approval and replaces it with a power to prescribe a procedure for submitting orders to the Secretary of State after adoption. Schedule 4A is further amended to remove the requirement for a local planning authority in England to report on the extent to which a local development order is achieving its purpose.

Section 7: Modification or discharge of affordable housing requirements

42. This section inserts three new sections into the Town and Country Planning Act 1990. *Subsections (4) to (6)* repeal these sections at the end of 30 April 2016 and give the Secretary of State related powers to amend this date by affirmative order and make transitional provisions.

43. **New section 106BA – Modification or discharge of affordable housing requirements**: this new section provides for an application to vary an "affordable housing requirement" contained in a planning obligation, and defines that term for these purposes. Under subsection (14) the Secretary of State has the power to amend that definition by order, subject to the affirmative procedure. Special provision is made in relation to a first application made under section 106BA in subsection (3). If, on a first application, the affordable housing requirement makes development of the site economically unviable, the authority must modify or remove it so as to make the site

viable. The authority can not make the revised obligation more onerous than the original obligation.

44. In relation to a second or subsequent application, the authority has more flexibility in amending the affordable housing requirement under subsection (4). However, they cannot amend the requirement so as to make the relevant development economically unviable.

45. This section makes provision for regulations to prescribe procedural matters linked to these applications, and subsection (8) requires the appropriate authority to have regard to guidance issued by the Secretary of State. Where section 106BB applies, the authority must also have regard to any representations made by the Mayor of London. Under subsection (9) the authority must give the applicant notice of their determination within 28 days, unless a longer period is agreed between them. The Secretary of State can provide for a different determination period in regulations.

46. Under subsection (12) applications and appeals under sections 106BA and 106BC cannot be made in relation to developments which were granted permission on the basis of a rural exception sites policy.

47. **New section 106BB**: this new section introduces a duty for London Boroughs to consult the Mayor of London in relation to applications made under section 106BA that fulfil two criteria. Firstly, that the application relates to development that section 2A of the Town and Country Planning Act 1990 applied to (applications of potential strategic importance relating to land in Greater London). Secondly, that an order under section 2A, or a development order, required the Mayor to be consulted on the original application. The current requirement to notify the Mayor in relation to applications for planning permission is contained in article 5 of the Town and Country Planning (Mayor of London) Order 2008 (S.I. 2008/580).

48. Under subsection (3) the Mayor must notify the Borough within 7 days as to whether he wishes to make representations and under subsection (4) must make those representations within 14 days unless a longer period is agreed with the authority. Subsection (5) extends the default period for notifying the applicant of the outcome of the application under section 106BA(9)(b) to 35 days in relation to these applications.

49. The authority dealing with an application under section 106BA must have regard to any representations made by the Mayor. As a result of section 106BC(6), this also applies to the Secretary of State when determining an appeal under section 106BC.

50. **New section 106BC**: this new section provides for an appeal to the Secretary of State in relation to applications made under section 106BA. An appeal can be made if the appropriate authority does not modify the planning obligation as requested, or fails to make a determination within a specified time. Such appeals are generally to be handled by the Planning Inspectorate on behalf of the Secretary of State.

51. The special provision in section 106BA in relation to first applications also applies in relation to appeals on a first application. Subsection (8) ensures that it does not apply to an appeal in relation to a second or subsequent application, whether or not it is the first appeal. Subsection (6) applies other aspects of section 106BA applications to appeals under section 106BC.

52. Where an appeal made under this section is successful, the modifications made by the Secretary of State only last for three years under subsections (11), (12) and (13). The modified planning obligation must contain provision to ensure that if development is to continue past that time, the original affordable housing requirements are reverted to. In this context, the original affordable housing requirements are those contained in the planning obligation before the first application under section 106BA was made in relation to it. The Secretary of State must vary the original requirements to ensure that they will not apply to that part of the development that is commenced in the three year period, and may make such variations as are necessary to ensure their effectiveness.

53. Subsection (14) ensures that this reversion provision can be reconsidered through applications and appeals under sections 106BA and 106BC. Under subsection (15), if it is removed on appeal under section 106BC, it must be replaced with a new reversion provision along the same lines.

54. As with section 106BA, this section provides for regulations to prescribe procedural matters linked to appeals. Subsections (3) and (4) contain a default provision that appeals must be made within 6 months if no regulations have been made about the time limit for appeals.

Schedule 2: Modification or discharge of affordable housing requirements: related amendments

55. Schedule 2 makes related and consequential amendments. These include:

- Amendment to section 5(3) of the 1990 Act to make the Broads Authority the sole district planning authority for these purposes.
- Consequential amendments to sections 106 to 106C of the 1990 Act.
- Amendments to section 106C of the 1990 Act to provide for a legal challenge where decisions are made under section 106BA by the Secretary of State. In particular, the amendments provide for legal challenge where a planning obligation is modified otherwise than in accordance with the application.
- Amendment to section 319A of the 1990 Act to give the Secretary of State the power to determine the procedure used to consider appeals under section 106BC.
- Amendments to Schedule 6 to the 1990 Act to ensure that appeals made under section 106BC can be determined by the Planning Inspectorate on behalf of the Secretary of State.

Section 8: Disposals of land held for planning purposes

56. This section amends section 233 of the 1990 Act (disposal by local authorities of land held for planning purposes) by providing for the Secretary of State to grant general consent for disposals as well as specific consent upon receipt of an application from a local authority.

57. Subsection (2) enables the Secretary of State to give consent generally for the disposal of land at less than the best consideration reasonably obtainable. Such consent may be granted by reference to:

- any particular disposal or disposals, or in relation to a particular class of disposals;
- local authorities generally, or local authorities of a particular class, or to any particular local authority or authorities, and
- either unconditionally or subject to conditions (either generally or in relation to any particular disposal or disposals or class of disposals).

58. Subsection (3) applies the protection for purchasers in respect of certain land transactions contained in section 128(2) of the Local Government Act 1972 to all purchasers of land disposed of by local authorities under section 233 of the 1990 Act. Such transactions will not be void where a local authority has failed to obtain the relevant consent and a prospective purchaser will not have to enquire whether the disposing local authority has obtained the necessary consent. Section 29 of the Town and Country Planning Act 1959, which also provides protection to purchasers of land from local authorities in certain circumstances, has therefore been disapplied.

Section 9: Electronic communications code: the need to promote growth

59. Section 109(1) of the Communications Act 2003 ("2003 Act") gives the Secretary of State the power to make regulations imposing conditions and restrictions on the application of the electronic communications code (as defined in section 106) to network operators. Section 109(2) sets out a list of considerations to which the Secretary of State must have regard in exercising the power to make regulations under section 109(1). Subsection (1) of the section adds to that list the need to promote economic growth.

60. Subsection (2) of the section, as respects the making of regulations under section 109 of the 2003 Act, deems any duties owed under the provisions at (a) to (e) below to have been complied with if the Secretary of State has complied with section 109(2)(b) of the 2003 Act (duty to have regard to the need to protect the environment and, in particular, to conserve the natural beauty and amenity of the countryside):

a) section 85 of the Countryside and Rights of Way Act 2000 (relating to areas of outstanding natural beauty in England and Wales),

b) section 11A of the National Parks and Access to the Countryside Act 1949 (relating to National Parks in England and Wales),

c) section 17A of the Norfolk and Suffolk Broads Act 1988 (relating to the Broads),

d) Article 4 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985 (relating to areas of outstanding natural beauty in Northern Ireland), and

e) section 14 of the National Parks (Scotland) Act 2000 (relating to National Parks in Scotland)

61. Subsection (3) deems the meaning of "statutory undertakers" in the Norfolk and Suffolk Broads Act 1988 to be read so that electronic code operators will not be subject to the duty in section 17A of that Act to have regards to Broads purposes when exercising their function so as to affect land in the Broads.

62. The provisions in section 9(2) and (3) are subject to a sunset date of 6 April 2018.

Section 10 and Schedule 3: Periodic review of mineral planning permissions

63. This section of the Act together with Schedule 3 changes the current regime of reviews of mineral planning permissions to give mineral planning authorities in England greater local discretion over whether reviews are required and when they take place.

64. Schedule 14 to the Environment Act 1995 (“the 1995 Act”) requires mineral planning authorities in England and Wales to cause periodic reviews of the mineral permissions relating to mining sites in their areas to be carried out. Schedule 14 makes separate provision for the first periodic review (paragraph 3) and any second or subsequent periodic review (paragraph 12). In each case, the review date is the date falling 15 years after the conditions to which the site’s mineral permissions are subject were last determined.

65. This section of the Act gives effect to Schedule 3, which amends Schedule 14 to the 1995 Act. The amendments give mineral planning authorities in England discretion as to whether to cause a periodic review to be carried out in any case and to set a review date. The review date may not be earlier than the date found under paragraph 3 of Schedule 14 to the 1995 Act (in the case of a first periodic review) or paragraph 12 (in the case of a second or subsequent periodic review). These changes do not apply to Wales.

Section 11: Stopping up and diversion of highways

66. This section amends section 253 of the Town and Country Planning Act 1990 ("the 1990 Act"). A stopping up order extinguishes the public right to pass and re-pass over the land in question. This enables development to be carried out on the land. A diversion generally also involves a stopping up together with the creation of a new highway. The effect of the section is to enable a draft order for stopping up or diversion of highways to be published at the planning application stage. At present, in the majority of cases, the applicant must wait until planning permission has been granted before they can apply for a stopping up or diversion order. This section applies to England only and retains the current provisions for Wales.

Section 12: Stopping up and diversion of public paths

67. This section amends section 257 of the 1990 Act. Section 257 currently enables an order authorising the stopping up or diversion of footpaths (and certain other paths) where this is necessary in order to enable development to be carried out in accordance with planning permission (or by a Government department). The amendment enables an order stopping up or diverting a public path to be made in anticipation of planning permission. The section also amends section 259 of the 1990 Act so that the competent authority or Secretary of State may not confirm a stopping up or diversion order until planning permission has actually been granted. It also amends section 259 so that the competent authority or Secretary of State may not confirm an order unless satisfied that it is necessary to enable the development to be carried out. This section applies to England only.

Section 13: Declarations negativing intention to dedicate way as highway

68. Section 31(6) of the Highways Act 1980 allows for a landowner to deposit a map and statement with the highway authority, showing admitted public paths, and a declaration that the landowner has no intention to allow any other part of the land to become subject to a public right of way.

69. This section amends section 31 to allow the Secretary of State to make regulations prescribing: (i) the form of such statements, maps and declarations with the aim of minimising the administrative burden on landowners who wish to make such statements at the same time as statements are made to protect land from registration as a town or village green under section 15 of the Commons Act 2006; and (ii) fees to be levied in relation to the deposit of a map and statement and the lodging of a declaration (including for a fee payable under the regulations to be determined by the appropriate council).

70. Section 13, by amending section 31 of the Highways Act 1980, allows the Secretary of State to prescribe in regulations the steps an appropriate council must take in relation to a map, statement, or declaration deposited with it, as well as the manner and period in which such steps must be completed. Section 13 also amends section 31 of that Act to extend the period for renewing declarations from ten to twenty years. Section 13 contains a restatement of the existing law applicable to Wales. It does not amend the law applicable to Wales.

Section 14: Registration of town or village green: reduction of section 15(3)(c) period

71. Section 14 amends section 15(3)(c) of the Commons Act 2006 ("the 2006 Act") in relation to land in England so as to reduce the period within which a town or village green application can be made (after the requisite 20 years of recreational use "as of right" has ceased) from two years to one year.

72. Section 14 contains a restatement of the existing law applicable to Wales. It does not amend the law applicable to Wales.

Section 15: Registration of town or village green: statement by owner

73. Applications can be made under section 15(1) of the 2006 Act to register land as a town or village green, broadly, where the land has been used "as of right" for lawful sports and pastimes by a significant number of people in the local community for at least twenty years. Use "as of right" means without force, secrecy or permission, the rationale being that a landowner must be in a position to know that a right is being asserted and acquiesce in the assertion of the right.

74. This section inserts a new section 15A into the 2006 Act which allows an owner of land in England (as defined in section 61(3) of the 2006 Act) to deposit a statement and map with the commons registration authority, the effect of which is to bring to an end any period of use as of right for lawful sports and pastimes on the land to which the statement relates. The form of the statement and map will be prescribed by regulations which can provide for the statement to be combined with a statement or declaration made to counter rights of way claims under section 31(6) of the Highways Act 1980. Regulations may provide for the statement to refer to a map deposited under section 31(6) of the Highways Act 1980. The aim is to reduce the administrative burden on landowners who, for example, wish to make statements or declarations for both purposes at the same time.

75. Where the requisite period of twenty years' use as of right has already accrued by the time the deposit of the statement and map takes place, an application for registration of the land as a town or village green can still be made within the relevant period from the date of the deposit in reliance on section 15(3) of the 2006 Act. In relation to land in England, the relevant period specified in section 15(3)(c) of the 2006 Act is (by virtue of section 14 of this Act) reduced from two years to one year.

76. The deposit of the statement and map will not prevent commencement of a new period of recreational use as of right, but an owner of land may deposit subsequent statements in order to interrupt future periods of use.

77. The Secretary of State has the power to prescribe in regulations the steps a commons registration authority must take in relation to a statement and map deposited with it, as well as the manner and period within which such steps must be completed. An example of how this power may be used is to require a commons registration authority to give notice of the deposit of a statement and map, in order to make the local community aware that any recreational use of the land as of right has been interrupted, triggering the operation of the grace period for an application to be made in reliance on section 15(3) of the 2006 Act (in cases where the criteria for registration have been satisfied).

78. Subsection (5) of new section 15A allows a landowner to make a statement referring to a map which accompanied an earlier statement, whether the landowner is the same person that deposited the earlier statement or not. For example a successor in title may wish to treat a map provided with a statement deposited by the previous landowner as accompanying his later statement.

79. The Secretary of State may make regulations prescribing the fees payable in relation to the depositing of a statement and when a statement is to be regarded as having been deposited with the commons registration authority.

80. Any straddling agreement made under section 4(3) of the 2006 Act or section 2(2) of the Commons Registration Act 1965 which has the effect of requiring an owner of land in England to deposit a statement with a registration authority in Wales, is disregarded to avoid imposing new burdens on Welsh registration authorities.

81. This section also inserts a new section 15B in the 2006 Act which requires each commons registration authority to keep a register containing prescribed information about statements and maps deposited with that authority. Such information may be included in a register maintained by the authority under section 31A of the Highways

Act 1980 and regulations may make provision for the creation of a new part in such registers for that purpose.

Section 16: Restrictions on right to register land as town or village green

82. This section inserts new section 15C into the 2006 Act, the effect of which is to exclude the right to apply under section 15(1) of the 2006 Act for registration of land in England to which Part 1 of the Act applies as a town or village green if any of the events ("trigger events") specified in the first column of the Table set out in the new Schedule 1A to the 2006 Act occur (the new Schedule 1A is set out at Schedule 4 to this Act). The right to apply under section 15(1) becomes exercisable again in respect of that land only if one of the terminating events specified in the second column of the Table set out in Schedule 1A which corresponds to that trigger event occurs. The exclusion of the right to apply for registration of a green does not affect the accrual of any period of user as of right or prevent any such user ceasing to be as of right.

83. The Secretary of State may by order make provision as to when a trigger event or terminating event is to be treated as having occurred for the purposes of the exclusion under section 15C(1) and may define circumstances in which the exclusion will not apply. The Secretary of State may also by virtue of an order under section 15C(5), subject to the affirmative procedure, insert additional trigger or terminating events, or amend or omit any trigger or terminating events for the time being specified in Schedule 1A. Where the Secretary of State makes an order under section 15C(5)(a) specifying an additional trigger or terminating event, provision may be made for the provisions of section 15C to apply where an event has occurred before the date on which the order is made or comes into force. Any additional trigger or terminating event specified must be an event related to the development (whether past, present or future) of the land.

84. If an application for registration of land as a town or village green is made in reliance on section 15(3) of the 2006 Act (i.e. in circumstances where use of the land as of right ceased before the application was submitted), any period during which the exclusion in new section 15C applies is disregarded for the purpose of calculating the period in section 15(3)(c) within which an application must be made. The operation of this period is suspended while the exclusion is in place. In relation to land in England, the period specified in section 15(3)(c) of the 2006 Act (by virtue of section 14 of this Act) is to be reduced from two years to one year.

85. For the purposes of the exclusion of the right to apply for registration of a town or village green in new section 15C(1) it does not matter whether a trigger event occurred before or after the commencement of section 16. However, under section 16, the exclusion in new section 15C does not apply in relation to an application for registration of a green which is sent before the day on which section 16 comes into force. Where an application pertains to a site which is partly subject to the exclusion and partly not, the commons registration authority should proceed to determine the application in respect of the part which is not subject to the exclusion.

Section 17: Applications to amend registers: modification of power to provide for fees

86. This section amends in relation to England the power in section 24(2)(d) of the Commons Act 2006 ("the 2006 Act") to charge fees for applications made under Part 1 of that Act to amend a register of common land or a register of town or village greens. The revised power allows the Secretary of State to make provision in regulations for fees to be payable in relation to an application, in particular provision for a fee payable to be determined by the person to whom an application is made or (if different) the person by whom the application is to be determined. The aim of this section is to allow for greater flexibility and targeting of fees – subject to secondary legislation and Parliamentary scrutiny – for example in circumstances where an application is made to the commons

registration authority but referred to the Planning Inspectorate. The power as it applies to Wales is restated but is unchanged.

Other infrastructure provisions

Section 18: Power stations: repeal of requirements to give notice

87. Section 18 repeals section 14 of the Energy Act 1976 ("the 1976 Act") and has the effect of revoking the two orders made under it, namely the Electricity Generating Stations (Fuel Control) Order 1987 (S.I. 1987/2175) and the Electricity Generating Stations (Gas Contracts) Order 1995 (S.I. 1995/2450). Section 14 of the 1976 Act implemented European Council Directive 75/404/EEC of 13 February 1975 on the restriction on the use of natural gas in power stations and Council Directive 75/405/EEC of 14 April 1975 concerning the restriction on the use of petroleum products in power stations.

88. Both Directives have since been repealed (EC/75/404 in 1991 and EC/75/405 in 1997) and the policy objectives behind section 14 (arising in response to market conditions for gas and petroleum products in the 1970s) no longer exist. Generating stations of 50 megawatts or greater are exempt from the requirements of section 14(1) by section 33(1)(e) of the Planning Act 2008. Section 14 of the 1976 Act and the two orders (referred to above) no longer have practical application.

Section 19: Conditions of licences under Gas Act 1986: payments to other licence-holders

89. Section 19 amends section 7B of the Gas Act 1986 ("the 1986 Act"), specifically subsection (5)(b)(ii). Section 7B was inserted by the Gas Act 1995, and has subsequently been amended by the Utilities Act 2000. The purpose of section 19 is to clarify that conditions included in a licence granted under section 7 of the 1986 Act may require such a licensee to increase his charges for the conveyance of gas and to pay the amounts so raised to holders of any licences under the 1986 Act (not just gas shippers or suppliers).

90. The legislation as currently drafted lacks transparency, as section 7B(5)(b)(ii) (prior to amendment) states that such licence conditions may require the licensee to increase his charges for the conveyance of gas and to pay the amounts so raised to holders of licences under section 7A of the 1986 Act (gas shippers or suppliers), although this is expressed to be without prejudice to the Authority's general power to include licence conditions under section 7B(4) of the 1986 Act.

91. The amendment in section 19 puts the issue beyond doubt and allows for the proposed gas Network Innovation Competition, and other policies requiring gas transporters to pay monies raised to other licensees other than gas shippers or suppliers, to proceed on a clear statutory footing.

Section 20: Variation of consents under Electricity Act 1989

92. Under section 36 of the Electricity Act 1989, consent is required for the construction, operation or extension of certain electricity generating stations (although the scope of this requirement is now limited to those projects which do not require development consent under the Planning Act 2008). Depending on the location of the proposed development, these consents are granted by the Secretary of State, the Marine Management Organisation, or Scottish Ministers. At present, if the developer's plans regarding aspects of their proposals which have been specifically referenced in the section 36 consent change, they may find themselves unable to proceed. Because it has not previously been possible to vary section 36 consents, this can lead to a situation where the terms of the consent prevent construction from proceeding, even along lines which may be more efficient or environmentally beneficial. Section 20 provides the Secretary of State, Scottish Ministers and the Marine Management Organisation with a power to vary section 36 consents.

93. The provision is intended to put holders of section 36 consents in a position similar to that of those who have the benefit of development consent orders made under the Planning Act 2008, to which changes can be made by the relevant Secretaries of State to take account of, for example, changes in technology and design.

94. Section 20 inserts a new section 36C into the Electricity Act 1989. The power to vary section 36 consents, exercisable on the application of the person for the time being entitled to the benefit of such a consent, is set out in subsection (4) of new section 36C along with the matters that the authority exercising the power must have regard to before exercising it. Subsections (2), (3) and (5) of new section 36C set out the scope of regulations which the Secretary of State and Scottish Ministers may make about the procedural aspects of applications for variation. The definition of "the appropriate authority" in subsection (6) of new section 36C sets out in which cases the powers will be exercisable by each of the authorities concerned.

Section 21: Consents under Electricity Act 1989: deemed planning permission

95. When a consent is granted under section 36 of the Electricity Act 1989 ("the 1989 Act") by the Secretary of State, section 90(2) of the Town and Country Planning Act 1990 ("the 1990 Act") enables the Secretary of State to direct that planning permission be deemed to be granted in respect of any operation or change of use in respect of which the consent is granted (or any ancillary development) and which constitutes development within the meaning of the 1990 Act. This relieves the developer of the need to make a separate application for planning permission to the relevant local planning authority. Deemed planning permission may also be granted on the same basis in respect of electric lines above ground to which consent is given under section 37 of the 1989 Act. Similar provision is made in section 57(2) of the Town and Country Planning (Scotland) Act 1997 for Scotland.

96. Section 21 inserts a new section 90(2) and (2ZA) into the 1990 Act, allowing the Secretary of State to make directions in relation to deemed planning permission when either the new power to vary section 36 consents under new section 36C of the 1989 Act or the existing power to vary section 37 consents (see section 37(3)(b)) is exercised. This power is exercisable in respect of England and Wales (as defined in new section 90(6), inserted by subsection (3), to include certain offshore areas). The directions can either vary an existing deemed planning permission or deem a new planning permission to be granted. In addition, a direction can be given for an approval given under an existing deemed planning permission to be treated as given under a new or varied planning permission. Subsections (4) to (6) amend section 57 of the Town and Country Planning (Scotland) Act 1997 to give Scottish Ministers powers equivalent to those conferred on the Secretary of State in relation to England and Wales in the amended section 90.

Section 22: Variation and replacement of pre-Planning Act 2008 consents

97. Section 22 inserts a new section, section 237A, into the Planning Act 2008 ("the 2008 Act"). Article 6 of the Planning Act 2008 (Commencement No 4 and Saving) Order 2010 (S.I. 2010/101) states: "[t]he provisions of the Act brought into force by this Order shall have no effect in relation to an application made before 1st March 2010 for any such consent or authorisation as is mentioned in section 33 of the Act." The aim of this saving provision is to ensure that a number of projects which were the subject of applications under pre-2008 Act consent regimes could continue to be considered under the relevant pre-2008 Act legislation, and, if appropriate, granted consent under that legislation, without the need to go through a separate and additional process of applying for consent under the 2008 Act.

98. However, the way that it is expressed has been taken by some to mean that if a developer applied for a consent under pre-existing legislation prior to 1 March 2010, but the consent was subsequently varied, or replaced by a new consent, and the application that gave rise to that variation or replacement was made after 1 March 2010, the variation/

replacement would fall outside the scope of the saving provision, meaning that the change to the project would require development consent under the 2008 Act. This would, amongst other things, be contrary to the intent of sections 20 and 21 above, and was not what was intended at the time. Section 22 aims to clarify the position as regards projects with pre-planning Act consent that have been varied or replaced.

99. Subsection (1) of section 22 inserts new section 237A into the 2008 Act. Subsections (1) and (5) of section 237A set out that section 237A applies in relation to consents of the various types listed in section 33 of the 2008 Act, which were originally applied for before 1 March 2010 ("section 33 consents"). Subsection (3) contains the main operative provision of new section 237A. The types of "replacement" consents that benefit from the transitional provision are defined in subsection (4).

100. Subsection (2) of section 22 provides that new section 237A has retrospective effect, in order to ensure that developments whose section 33 consents were varied or replaced between 1 March 2010 and the coming into force of new section 237A have the benefit of the new transitional provision.

Section 23: Removal of Planning Act 2008 consent and certification requirements

101. Section 23 removes three separate certification and consent procedures under the 2008 Act. The issues dealt with under these procedures can be dealt with as part of the examination process for an application for development consent.

102. Subsection (2) removes the requirement in section 127 of the 2008 Act for the Secretary of State to issue a certificate, in certain prescribed circumstances, before a development consent order can authorise the compulsory acquisition of statutory undertakers' land or rights over their land. The amended section requires the Secretary of State to be satisfied about certain matters before making a development consent order in these circumstances.

103. Subsection (3) removes the requirement in section 137 of the 2008 Act for the consent of the statutory undertaker or operator where the development consent order provides for the acquisition of land, and which authorises the extinguishment or diversion of a public right of way for non-vehicular traffic over land on which there is statutory undertakers' apparatus or electronic communications apparatus.

104. Subsection (4) removes the requirement in section 138 of the 2008 Act for the Secretary of State to provide his consent where a development consent order authorises the acquisition of land falling into one or more of two categories: land on which a statutory undertaker has erected apparatus or where electronic communications apparatus is installed; and land in respect of which a statutory undertaker or electronic communications code network operator has a right of way, or a right of laying down, erecting, continuing or maintaining apparatus. The amended section enables a development consent order to remove such apparatus or extinguish such rights only where the Secretary of State is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development.

Section 24: Special parliamentary procedure in cases under the Planning Act 2008

105. Section 24 repeals sections 128 and 129 of the Planning Act 2008 ("the 2008 Act"). Section 128 requires that in specified circumstances an order granting development consent which authorised the compulsory acquisition of land of a local authority or statutory undertaker would be subject to special parliamentary procedure. Section 129 disapplies section 128 where the authority compulsorily acquiring land was one of a number of specified bodies.

106. The section amends sections 131 and 132 of the 2008 Act. These sections currently make provision for special parliamentary procedure to apply to an order authorising the compulsory acquisition of land, or rights over land, forming part of a common, open

space, or fuel or field garden allotment. Where the Secretary of State is satisfied that one of a number of prescribed circumstances apply, the Secretary of State may issue a certificate disapplying this requirement. If the Secretary of State proposes to issue such a certificate, he must give notice of this proposal (or direct the applicant to do so) and give interested persons an opportunity to make representations, and may cause a public local inquiry to be held.

107. If the Secretary of State issues a certificate, he must publish a notice of this in a local newspaper or direct the applicant to do so. The section removes the requirement for the Secretary of State to issue a certificate when satisfied that one of the circumstances prescribed in either section is applicable, and removes the accompanying procedural requirements. Instead, if the Secretary of State is satisfied that one of these circumstances applies, this fact must be recorded in the development consent order itself or in any instrument or other document containing the order.

108. The section also amends sections 131 and 132 of the 2008 Act to insert additional circumstances in which the Secretary of State can provide that an order granting development consent shall not be subject to special parliamentary procedure where open space land or a right over such land is compulsorily acquired. Where land or a right over land which is an open space is compulsory acquired, the Secretary of State will be able to provide that the relevant order will not be subject to special parliamentary procedure where exchange land is not available or is available only at a prohibitive cost, and it is strongly in the public interest for the development to proceed sooner than would be likely if special parliamentary procedure were to apply. The Secretary of State will also be able to provide that an order authorising the acquisition of land or rights over land which is an open space will not be subject to special parliamentary procedure if that land or right is acquired for a temporary (although possibly long-lived) purpose.

109. The section ensures that an order granting development consent made under section 114 of the 2008 Act will be subject to special parliamentary procedure if this is required by either section 130 of that Act (where the order authorises acquisition of land held inalienably by the National Trust), or section 131 or 132 (where the order authorises the acquisition of land, or rights over land, forming part of a common, open space or fuel or field garden allotment). This would ensure that where a development consent order authorises acquisition of land held inalienably by the National Trust, and the Trust has made a representation containing an objection to this acquisition which it has not withdrawn, the order would still be subject to special parliamentary procedure whether or not this is also required under section 131 or 132. It also ensures that if an order would be subject to sSpecial parliamentary procedure as a result of section 131 or 132 of the 2008 Act, then the order would still be subject to special parliamentary procedure whether or not this is also required under section 130 relating to land held inalienably by the National Trust.

110. Any amendment or repeal made by section 24 applies to any order granting development consent made after the amendment or repeal comes into force. This is subject to any transitional provisions set out in the order that commences this section.

Section 25: Modifications of special parliamentary procedure in certain cases

111. Section 25 removes an inconsistency between the 2008 Act and the Statutory Orders (Special Procedure) Act 1945 ("the 1945 Act"), and similar inconsistencies between certain other provisions providing for the compulsory acquisition of land and the 1945 Act. It amends the 1945 Act to ensure that in circumstances where an order is subject to special parliamentary procedure under one of the specified provisions only to the extent that it authorises the compulsory acquisition of land of a particular classification ("special land"), the order can only be the subject of petitions and be considered by Parliament insofar as it authorises the acquisition of that land.

112. The section then modifies the effect of the 1945 Act in respect of special acquisition provisions. Where an order is subject to special parliamentary procedure under a special

acquisition provision, new subsection 1A of that Act provides that insofar as the order authorises the compulsory acquisition of special land it is to be known as a "special authorisation".

113. Section 3 of the 1945 Act, which provides for the examination of petitions against an order by the Lord Chairman of Committees and the Chairman of Ways and Means ("the Chairmen"), is then modified so that references to petitions against an order are to be construed as references to petitions against a special authorisation. This has the effect that only petitions against the elements of the order authorising the compulsory acquisition of special land may be certified as being proper to be received by the Chairmen.

114. Under the modified provisions, the Chairmen may therefore certify either that a petition is one of amendment to a special authorisation, or, if it is against the special authorisation generally, that it is a petition of general objection. In the case of orders under the Transport and Works Act 1992, the 1945 Act is amended to provide that where a petition is a petition of general objection against the special authorisation, the petition shall not be certified as proper to be received if the Chairmen are of the opinion that the removal of the special authorisation would be inconsistent with proposals which have been approved by each House of Parliament

115. Section 4 of the 1945 Act, which makes provision for proceedings subsequent to the report of the Chairmen laid before both Houses of Parliament under section 3, is modified so that in the 21 day period beginning with the date on which the report is laid either House may resolve to annul the special authorisation. The section also provides that if either House resolves to annul a special authorisation, the relevant Minister may either withdraw the order to which that special authorisation relates or cause the order to be submitted to Parliament for further consideration by means of an Act.

116. If neither House resolves to annul the special authorisation, at the end of the 21 day period any petitions against the special authorisation certified by the Chairmen as proper to be received shall stand referred to a joint committee of both Houses, or if there are none the order to which the special authorisation relates will come into operation. Where a petition against a special authorisation is one of general objection then either House may resolve that it should not be referred to the joint committee.

117. Section 5 of the 1945 Act, which makes provision in respect of the powers of a joint committee where a petition against an order is referred to them under the preceding sections of the Act, is then modified so that references to an order are to be read as references to a special authorisation. The effect of this is that the joint committee will be able to report the special authorisation with or without amendment, or where a petition of general objection has been received may report that the special authorisation should not be approved.

118. Section 6 of the 1945 Act, which makes provision for the operation of orders following the report of a joint committee, is also modified. Where a special authorisation is reported by a joint committee without amendments, the order to which that special authorisation relates will come into operation on a specified date. Where a special authorisation is reported by a joint committee with amendments, then the order to which that special authorisation relates will come into force as amended on a date determined by the relevant Minister. Where the Minister considers it is inexpedient for an order to take effect with the amendments to the special authorisation, then the Minister may either withdraw the relevant order or cause it to be submitted to Parliament for further consideration by means of an Act. Where the special authorisation is reported such that it should not be approved, the order to which that special authorisation relates will not take effect unless confirmed by an Act of Parliament.

119. Section 7 of the 1945 Act, which makes provision in respect of petitioners' costs, is modified to refer to a special authorisation instead of to an order. The section also makes

consequential provision in respect of Standing Orders of a House of Parliament where the modified provisions of the 1945 Act are applicable.

120. The new sections 1A and 9A of the 1945 Act will apply to any development consent order made after the amendment comes into force, subject to any transitional provision set out in the order that commences this section. This would include orders granting development consent made in respect of applications lodged before commencement of section 25, but not to other orders authorising compulsory purchase of land, as it is not the intention to apply the modifications in respect of such other orders where proceedings have begun prior to commencement.

Section 26: Bringing business and commercial projects within Planning Act 2008 regime

121. Section 26 replaces section 35 of the Planning Act 2008 ("the 2008 Act") and inserts new section 35ZA.

122. The substituted section 35 enables the Secretary of State to direct that certain commercial and business development requires consent under the nationally significant infrastructure regime contained in the 2008 Act, as well as retaining the existing power of the Secretary of State to direct that development in the fields of energy, transport, water, waste water or waste requires consent under the 2008 Act.

123. In relation to commercial and business development, the development must be in England or adjacent waters (but only in Greater London with the Mayor of London's consent) and be, or form part of, a prescribed business or commercial project. Prescribed projects will be set out in regulations made by the Secretary of State but those regulations may not contain projects that consist of dwellings. Following receipt of a written request for a direction under section 35(1) the Secretary of State must conclude, before making a direction, that the project is of national significance either by itself or when considered together with another prescribed business or commercial project or proposed project.

124. Section 35ZA contains procedures relating to directions under section 35. The procedures relating to section 35 directions were previously contained in subsections (4A) to (10) of section 35. Section 35ZA(2) provides that a direction relating to business or commercial development can only be made if a qualifying request is made by a person who proposes to carry out the development, or a person who has applied or proposes to apply for a consent mentioned in section 33(1) or (2) of the 2008 Act, or a person who proposes to apply for a development consent order.

125. If the Secretary of State issues a direction under section 35(1) he must give reasons for the decision.

126. Section 26 also amends section 232 of the 2008 Act so regulations made under section 35(2)(a)(ii) will be subject to the affirmative procedure. It also amends references in section 35A to reflect the insertion of new section 35ZA.

Section 27: Authorisation of road user charging under Planning Act 2008

127. Section 27 adds new subsections (2A) and (2B) to section 144 of the 2008 Act and removes subsection (3) from that section. Section 144 deals with development consent orders for nationally significant highways projects under the 2008 Act. Section 144(2) provides for a development consent order that authorises the charging of tolls to be treated as a "toll order" for the purposes of the New Roads and Street Works Act 1991, so that the procedural provisions of that Act apply. The new subsections clarify that subsection (2) does not apply to a development consent order if (as well as authorising the charging of tolls) it also authorises other road user charging The repeal of subsection (3) removes an existing limitation on the ability of development consent orders under the 2008 Act to provide for the transfer and appropriation of roads.

Section 28: Delegation of planning functions by Mayor of London

128. Section 28 inserts two new subsections into section 38 of the Greater London Authority Act 1999 ("the 1999 Act"): sections 38(2B) and (2C). These new subsections give the Mayor of London the power to delegate his decisions on whether to 'call-in' applications of potential strategic importance for his own determination; and similarly to delegate decisions on whether to grant permission in cases where an application has been called-in. The new subsections limit the persons to whom such decisions may be delegated to the Deputy Mayor and to members of staff of the Greater London Authority appointed under section 67(1) of the 1999 Act (these are the Mayor's personal appointments of up to two political advisers and up to ten other members of staff; in practice most of these posts are occupied by the various deputy mayors).

Economic measures

Section 29: Postponement of compilation of rating lists to 2017

129. Section 29 amends sections 41 and 52 of the Local Government Finance Act 1988 to postpone the date on which new non-domestic rating lists in England should be compiled from 1 April 2015 to 1 April 2017 and to ensure that new lists must then be compiled every five years thereafter.

Section 30: Power to postpone compilation of Welsh rating lists

130. Section 30 amends the Local Government Finance Act 1988 by inserting new section 54A which allows the Welsh Ministers to make an order postponing the date on which the new non-domestic rating lists in Wales should be compiled from 1 April 2015 to 1 April in 2016, 2017, 2018, 2019 or 2020 and ensures that new lists must then be compiled every five years thereafter.

Section 31: Employee Shareholders

131. Section 31 amends the Employment Rights Act 1996 ("ERA 1996") to create the employment status of employee shareholder.

132. *Subsection (1)* inserts new section 205A into the ERA 1996. Under new section 205A(1) an employee shareholder agrees to have different employment rights to employees and receives fully paid up shares of a minimum value of £2,000 in the employing company or its parent company. The company is required to give the employee shareholder a written statement of particulars which must contain the details set out in new section 205A(5). An individual must give no consideration for the shares other than agreeing to become an employee shareholder.

133. New section 205A(2) to (4) provide that an employee shareholder does not have:

- a general unfair dismissal right (new sections 205A(9) and (10) state which unfair dismissal rights are retained);
- the right to statutory redundancy pay;
- the statutory right to request flexible working (but new section 205A(8) provides an exception in respect of a return from parental leave); and
- certain statutory rights in relation to requesting time off for training.

134. Employee shareholders must give 16 weeks' notice before returning early from maternity leave, adoption leave or additional paternity leave.

135. New section 205A(5) sets out the employment and shares information that the statement of particulars must contain.

136. New section 205A(6) prevents an employee shareholder agreement between a company and an individual from taking legal effect unless the individual has received advice from a relevant independent adviser about the terms and effect of the proposed agreement, and until seven days have elapsed since the day on which the individual received that advice.

137. New section 205A(7) states that the company must pay any reasonable costs incurred by the individual in obtaining legal advice, irrespective of whether the individual takes up the job or not.

138. New section 205A(8) gives an employee shareholder returning from parental leave a period of 2 weeks from the date of the return to make a statutory request for flexible working.

139. New section 205A(9) and (10) limit the exclusion of unfair dismissal rights so that an employee shareholder will still have the right not to be unfairly dismissed for automatically unfair reasons, on the grounds of discrimination, and in relation to suspension on health and safety grounds.

140. New section 205A(11) and (12) give the Secretary of State power to make:

- an order to increase the minimum value of the shares to be offered as part of the employee shareholder status; and
- regulations relating to the buyback of shares given to the employee shareholder as part of that employment status.

141. New section 205A(13) defines terms used in the section. The definition of 'company' means that the employee shareholder status can be used by share capital companies registered under the Companies Act 2006, Societas Europaeas and overseas companies.

142. New section 205A(14) defines what 'value' means in relation to the shares to be offered to the employee shareholder.

143. *Subsections (2) and (3)* insert new section 47G into the ERA 1996 and amend section 48(1) of the ERA 1996 to give an employee a right not to suffer a detriment as a result of refusing to accept an employee shareholder contract. There is no qualifying period for this right.

144. *Subsection (4)* inserts new section 104G into the ERA 1996 to give an employee the right not to be unfairly dismissed as a result of refusing to accept an employee shareholder contract. The amendment made by *subsection (5)* to section 108(3) of the ERA 1996 has the effect that there is no qualifying period for this right.

145. *Subsection (6)* amends section 236(3) of the ERA 1996 to provide that the power to make secondary legislation in new section 205A(11) and (12) is subject to the affirmative resolution procedure.

Sections 32 to 36: General provisions

146. Sections 32 to 36 make general provision for the Act.

147. Section 32 makes general provision for orders made under the Act and sets out the procedure which is to apply in respect of the powers conferred by the Act. It states that these powers include the power to make different provision for different cases and to make incidental, consequential, supplementary or transitory provision or savings. Section 33 confers upon the Secretary of State an order-making power to amend, repeal, revoke or otherwise modify any provision made by or under an enactment where appropriate in consequence of this Act.

Section 35: Commencement

148. Section 35 makes provision about commencement. Section 1(1) in part, sections 4, 7, 9, 16, 19, 26, 32, 33, 35 and 36, and Schedules 2 and 4, come into force on the day on which the Act is passed. Sections 11, 12, 17, 18, 29 and 30 come into force two months after the Act is passed. Otherwise, the Act is to be brought into force by order made by the Secretary of State, except that the amendments to Scots planning law are to be brought into force by order made by the Scottish Ministers.

149. The Secretary of State can make transitional, transitory or saving provisions by order in relation to the coming into force of any provision within the Act, but in relation to the amendments of Scots planning law this power is given to the Scottish Ministers.