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Planning Act 2008

2008 CHAPTER 29

PART 9

CHANGES TO EXISTING PLANNING REGIMES

CHAPTER 2

OTHER CHANGES TO EXISTING PLANNING REGIMES

Regional functions

179 Delegation of functions of regional planning bodies

(1) In Part 1 of PCPA 2004 (regional functions) after section 4 insert—

“4A Delegation of RPB functions to regional development agencies

- (1) The RPB may make arrangements with the regional development agency for its region for the exercise by the agency on behalf of the RPB of any of the RPB's functions.
- (2) Subsection (3) applies if, by virtue of section 2(7), the Secretary of State has power to exercise any functions of the RPB.
- (3) The Secretary of State may make arrangements with the regional development agency for the region of the RPB for the exercise by the agency on behalf of the Secretary of State of any of the RPB's functions.
- (4) Subsection (5) applies if, by virtue of section 10(3), the Secretary of State has power to prepare a draft revision of the RSS because of a failure to comply by the RPB.

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- (5) The Secretary of State may make arrangements with the regional development agency for the region of the RPB for the exercise by the agency on behalf of the Secretary of State of the Secretary of State's function under section 10(3).
 - (6) Arrangements under this section—
 - (a) may be made only if the regional development agency agrees to the making of the arrangements and their terms;
 - (b) may be varied only if the regional development agency agrees to the variation and the terms of the variation.
 - (7) Arrangements under subsection (1) may be brought to an end at any time by the RPB.
 - (8) Arrangements under subsection (3) or (5) may be brought to an end at any time by the Secretary of State.
 - (9) A regional development agency which, by virtue of arrangements under this section, has power, or is required, to exercise a function of the RPB, may do anything which is calculated to facilitate, or is conducive or incidental to, the exercise of the function.
 - (10) Arrangements under subsection (1) for the exercise of a function by a regional development agency do not prevent the RPB from exercising the function.
 - (11) Arrangements under subsection (3) or (5) for the exercise of a function by a regional development agency do not prevent the Secretary of State from exercising the function.
 - (12) “Regional development agency” means a development agency established under section 1 of the Regional Development Agencies Act 1998.”
- (2) The Regional Development Agencies Act 1998 (c. 45) is amended as follows.
 - (3) In section 8 (regional consultation) after subsection (2) insert—
 - “(2A) The reference in subsection (2)(b) to the functions of a regional development agency does not include any function conferred by arrangements under section 4A of the Planning and Compulsory Purchase Act 2004 (delegation of functions of regional planning bodies to regional development agencies).”
 - (4) In section 11 (borrowing) after subsection (4) insert—
 - “(4A) The references in subsections (2) and (4) to the functions of a regional development agency do not include any function conferred by arrangements under section 4A of the Planning and Compulsory Purchase Act 2004 (delegation of functions of regional planning bodies to regional development agencies).”
 - (5) In section 18 (regional accountability) after subsection (1) insert—
 - “(1A) The reference in subsection (1)(c) to the functions of a regional development agency does not include any function conferred by arrangements under section 4A of the Planning and Compulsory Purchase Act 2004 (delegation of functions of regional planning bodies to regional development agencies).”
 - (6) In paragraph 7 of Schedule 2 (delegation of functions by regional development agencies) after sub-paragraph (1) insert—

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“(1A) The reference in sub-paragraph (1) to anything authorised or required to be done under an enactment includes a reference to anything authorised or required to be done under arrangements made under an enactment.”

Commencement Information

II S. 179 in force at 6.4.2009 for E.W. by S.I. 2009/400, art. 3(d)

Local development

180 Local development documents

- (1) PCPA 2004 is amended as follows.
- (2) In section 15(2) (matters which must be specified in local development scheme)—
 - (a) omit paragraph (a);
 - (b) before paragraph (b) insert—
 - “(aa) the local development documents which are to be development plan documents;”;
 - (c) in paragraph (b) for “document” substitute “ development plan document ”;
 - (d) omit paragraph (c);
 - (e) in paragraphs (d) and (f) for “documents” substitute “ development plan documents ”.
- (3) In section 17 (local development documents)—
 - (a) omit subsections (1) and (2);
 - (b) in subsection (3) for “The local development documents” substitute “ The local planning authority's local development documents ”;
 - (c) in subsection (4) for the words before “in relation to development which is a county matter” substitute “ Where a county council is required to prepare a minerals and waste development scheme in respect of an area, the council's local development documents must (taken as a whole) set out the council's policies (however expressed) for that area ”;
 - (d) in subsection (7), before paragraph (a) insert—
 - “(za) which descriptions of documents are, or if prepared are, to be prepared as local development documents;”.
- (4) In section 18 (statements of community involvement)—
 - (a) for subsection (3) substitute—
 - “(3) For the purposes of this Part (except sections 19(2) and 24) the statement of community involvement is a local development document.

This is subject to section 17(8).”;
 - (b) after subsection (3) insert—
 - “(3A) The statement of community involvement must not be specified as a development plan document in the local development scheme.”;
 - (c) omit subsections (4) to (6).

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- (5) In section 19 (preparation of local development documents)—
- (a) in subsection (1) for “Local development documents” substitute “Development plan documents”;
 - (b) in subsection (2) after “In preparing a” insert “ development plan document or any other ”;
 - (c) in subsection (3) for “other local development documents” substitute “ local development documents (other than their statement of community involvement) ”;
 - (d) in subsection (5) for “document” substitute “ development plan document ”.
- (6) In section 37 (interpretation of Part 2)—
- (a) in subsection (2) for “section 17” substitute “ sections 17 and 18(3) ”;
 - (b) for subsection (3) substitute—

“(3) A development plan document is a local development document which is specified as a development plan document in the local development scheme.”
- (7) In section 38 (development plan) after subsection (8) insert—
- “(9) Development plan document must be construed in accordance with section 37(3).”

Commencement Information

I2 [S. 180](#) in force at 6.4.2009 for E.W. by [S.I. 2009/400](#), [art. 3\(e\)](#)

Climate change

181 Regional spatial strategies: climate change policies

- (1) Section 1 of PCPA 2004 (regional functions: regional spatial strategies) is amended as follows.
- (2) After subsection (2) insert—
- “(2A) The RSS must include policies designed to secure that the development and use of land in the region contribute to the mitigation of, and adaptation to, climate change.”
- (3) In subsection (3) for “subsection (2)” substitute “ subsections (2) and (2A) ”.

Commencement Information

I3 [S. 181](#) in force at 6.4.2009 for E.W. by [S.I. 2009/400](#), [art. 3\(e\)](#)

182 Development plan documents: climate change policies

In section 19 of PCPA 2004 (preparation of local development documents) after subsection (1) insert—

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“(1A) Development plan documents must (taken as a whole) include policies designed to secure that the development and use of land in the local planning authority's area contribute to the mitigation of, and adaptation to, climate change.”

Commencement Information

I4 S. 182 in force at 6.4.2009 for E.W. by S.I. 2009/400, art. 3(e)

Good design

183 Good design

In section 39 of PCPA 2004 (sustainable development) after subsection (2) insert—

“(2A) For the purposes of subsection (2) the person or body must (in particular) have regard to the desirability of achieving good design.”

Commencement Information

I5 S. 183 in force at 6.4.2009 for E. by S.I. 2009/400, art. 5(a)

Correction of errors

184 Correction of errors in decisions

In section 56(3)(c) of PCPA 2004 (appropriate consent required for correction of errors) at the beginning insert “ in a case where the decision document relates to the exercise of a function in relation to Wales, ”.

Commencement Information

I6 S. 184 in force at 6.4.2009 for E.W. by S.I. 2009/400, art. 3(f)

Validity of strategies, plans and documents

185 Power of High Court to remit strategies, plans and documents

In section 113 of PCPA 2004 (validity of strategies, plans and documents) for subsection (7) substitute—

“(7) The High Court may—

- (a) quash the relevant document;
- (b) remit the relevant document to a person or body with a function relating to its preparation, publication, adoption or approval.

(7A) If the High Court remits the relevant document under subsection (7)(b) it may give directions as to the action to be taken in relation to the document.

(7B) Directions under subsection (7A) may in particular—

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- (a) require the relevant document to be treated (generally or for specified purposes) as not having been approved or adopted;
- (b) require specified steps in the process that has resulted in the approval or adoption of the relevant document to be treated (generally or for specified purposes) as having been taken or as not having been taken;
- (c) require action to be taken by a person or body with a function relating to the preparation, publication, adoption or approval of the document (whether or not the person or body to which the document is remitted);
- (d) require action to be taken by one person or body to depend on what action has been taken by another person or body.

(7C) The High Court's powers under subsections (7) and (7A) are exercisable in relation to the relevant document—

- (a) wholly or in part;
- (b) generally or as it affects the property of the applicant.”

Commencement Information

I7 S. 185 in force at 6.4.2009 for E. by S.I. 2009/400, art. 5(a)

PROSPECTIVE

186 Power of High Court to remit unitary development plans in Wales

(1) Subsection (2) applies in relation to section 287 of TCPA 1990 (proceedings for questioning validity of development plans etc.), as that section continues to have effect by virtue of paragraph (3) of article 3 of the Planning and Compulsory Purchase Act 2004 (Commencement No. 6, Transitional Provisions and Savings) Order 2005 (S.I. 2005/2847) for the purposes of the transitional arrangements mentioned in that paragraph.

(2) In that section, after subsection (3) insert—

“(3A) Subsections (3B) to (3E) apply if—

- (a) an application is made under this section in relation to a unitary development plan, and
- (b) on the application the High Court is satisfied as mentioned in subsection (2)(b).

(3B) The High Court may remit the plan to a person or body with a function relating to its preparation, publication, adoption or approval.

(3C) If the High Court remits the plan under subsection (3B) it may give directions as to the action to be taken in relation to the plan.

(3D) Directions under subsection (3B) may in particular—

- (a) require the plan to be treated (generally or for specified purposes) as not having been approved or adopted;
- (b) require specified steps in the process that has resulted in the approval or adoption of the plan to be treated (generally or for specified purposes) as having been taken or as not having been taken;

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- (c) require action to be taken by a person or body with a function relating to the preparation, publication, adoption or approval of the plan (whether or not the person or body to which it is remitted);
 - (d) require action to be taken by one person or body to depend on what action has been taken by another person or body.
- (3E) The High Court's powers under subsections (3B) and (3C) are exercisable in relation to the plan—
- (a) wholly or in part;
 - (b) generally or as it affects the property of the applicant.”

Determination of applications

187 Power to decline to determine applications: amendments

Schedule 7 (power to decline to determine applications: amendments) has effect.

Commencement Information

18 S. 187 in force at 6.4.2009 for E. by S.I. 2009/400, art. 5(b)

Planning permission

188 Local development orders: removal of requirement to implement policies

- (1) Section 61A of TCPA 1990 (local development orders) is amended as set out in subsections (2) and (3).
- (2) Omit subsection (1) (requirement to implement policies).
- (3) In subsection (2) for “A local development order may” substitute “ A local planning authority may by order (a local development order) ”.
- (4) In paragraph 2 of Schedule 4A to TCPA 1990 (revision of local development orders) omit sub-paragraphs (4) and (5).

Commencement Information

19 S. 188 in force at 23.6.2009 for E. by S.I. 2009/1303, art. 2(a)

VALID FROM 06/04/2010

189 Compensation where development order or local development order withdrawn

- (1) Section 108 of TCPA 1990 (compensation for refusal or conditional grant of planning permission formerly granted by development order or local development order) is amended as follows.

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(2) After subsection (2) insert—

“(2A) Where—

- (a) planning permission granted by a development order for development in England of a prescribed description is withdrawn by the issue of directions under powers conferred by the order, or
- (b) planning permission granted by a local development order for development in England is withdrawn by the issue of directions under powers conferred by the order,

this section applies only if the application referred to in subsection (1)(b) is made before the end of the period of 12 months beginning with the date on which the directions took effect.”

(3) After subsection (3A) insert—

“(3B) This section does not apply if—

- (a) in the case of planning permission granted by a development order, the condition in subsection (3C) is met;
- (b) in the case of planning permission granted by a local development order, the condition in subsection (3D) is met.

(3C) The condition referred to in subsection (3B)(a) is that—

- (a) the planning permission is granted for development in England of a prescribed description,
- (b) the planning permission is withdrawn in the prescribed manner,
- (c) notice of the withdrawal was published in the prescribed manner not less than 12 months or more than the prescribed period before the withdrawal took effect, and
- (d) either—
 - (i) the development authorised by the development order had not started before the notice was published, or
 - (ii) the development order includes provision in pursuance of section 61D permitting the development to be completed after the permission is withdrawn.

(3D) The condition referred to in subsection (3B)(b) is that—

- (a) the planning permission is granted for development in England,
- (b) the planning permission is withdrawn by the revocation or amendment of the local development order, or by the issue of directions under powers conferred by the local development order,
- (c) notice of the revocation, amendment or directions was published in the prescribed manner not less than 12 months or more than the prescribed period before the revocation, amendment or directions (as the case may be) took effect, and
- (d) either—
 - (i) the development authorised by the local development order had not started before the notice was published, or
 - (ii) the local development order includes provision in pursuance of section 61D permitting the development to be completed after the permission is withdrawn.”

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(4) After subsection (4) insert—

“(5) Regulations under this section prescribing a description of development may (in particular) do so by reference to one or more classes or descriptions of development specified in a development order.

(6) In this section “prescribed” means prescribed by regulations made by the Secretary of State.”

VALID FROM 01/10/2009

190 Power to make non-material changes to planning permission

(1) TCPA 1990 is amended as follows.

(2) After section 96 insert—

“Non-material changes to planning permission

96A Power to make non-material changes to planning permission

(1) A local planning authority in England may make a change to any planning permission relating to land in their area if they are satisfied that the change is not material.

(2) In deciding whether a change is material, a local planning authority must have regard to the effect of the change, together with any previous changes made under this section, on the planning permission as originally granted.

(3) The power conferred by subsection (1) includes power—

- (a) to impose new conditions;
- (b) to remove or alter existing conditions.

(4) The power conferred by subsection (1) may be exercised only on an application made by or on behalf of a person with an interest in the land to which the planning permission relates.

(5) An application under subsection (4) must be made in the form and manner prescribed by development order.

(6) Subsection (7) applies in relation to an application under subsection (4) made by or on behalf of a person with an interest in some, but not all, of the land to which the planning permission relates.

(7) The application may be made only in respect of so much of the planning permission as affects the land in which the person has an interest.

(8) A local planning authority must comply with such requirements as may be prescribed by development order as to consultation and publicity in relation to the exercise of the power conferred by subsection (1).”

(3) In section 5(3) (purposes for which Broads Authority is the sole local district planning authority) for “97” substitute “ 96A ”.

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- (4) In section 69(1) (register of applications etc)—
- (a) after paragraph (a) insert—
 - “(aa) applications for non-material changes to planning permission under section 96A;”,
 - (b) in subsection (2)(a) after “(1)(a)” insert “ and (aa) ”, and
 - (c) in subsection (4) after “(1)(a)” insert “, (aa) ”.
- (5) In section 286(1) (challenges to validity on ground of authority's powers) after paragraph (a) insert—
- “(aa) an application for non-material changes to planning permission under section 96A;”.
- (6) In Schedule 1 (local planning authorities: distribution of functions), in paragraph 3(1), after paragraph (a) insert—
- “(aa) applications for non-material changes to planning permission under section 96A;”.

Validity of planning decisions

191 Validity of orders, decisions and directions

- (1) Section 284(3) of TCPA 1990 (validity of certain actions on the part of the Secretary of State) is amended as follows.
- (2) Before paragraph (a) insert—
 - “(za) any decision on an application referred to the Secretary of State under section 76A;”.
- (3) In paragraph (a) omit “for planning permission”.

Commencement Information

I10 S. 191(1)(3) in force at 6.4.2009 for E. by S.I. 2009/400, **art. 5(c)** (with **art. 6(1)**)

I11 S. 191(2) in force at 6.4.2009 for E.W. by S.I. 2009/400, **art. 3(g)** (with **art. 6(1)**)

VALID FROM 06/04/2012

Trees

192 Tree preservation orders

- (1) Chapter 1 of Part 8 of TCPA 1990 (special controls: trees) is amended as follows.
- (2) In section 198 (power to make tree preservation orders) omit—
 - (a) subsections (3) and (4) (provision that may be made by tree preservation orders),
 - (b) subsection (6) (matters to which tree preservation orders do not apply), and

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- (c) subsections (8) and (9) (power to make provision about application for consent under tree preservation order).
- (3) Omit section 199 (form of and procedure applicable to tree preservation orders).
- (4) Omit section 201 (provisional tree preservation orders).
- (5) In section 202 (power for Secretary of State or Welsh Ministers to make tree preservation orders), omit subsection (3) (procedure applicable to orders made by Secretary of State or Welsh Ministers).
- (6) Omit sections 203 to 205 (compensation in connection with tree preservation orders).
- (7) After section 202 insert—

“202A Tree preservation regulations: general

- (1) The appropriate national authority may by regulations make provision in connection with tree preservation orders.
- (2) Sections 202B to 202G make further provision about what may, in particular, be contained in regulations under subsection (1).
- (3) In this section and those sections “tree preservation order” includes an order under section 202(1).
- (4) In this Act “tree preservation regulations” means regulations under subsection (1).
- (5) In subsection (1) “the appropriate national authority”—
 - (a) in relation to England means the Secretary of State, and
 - (b) in relation to Wales means the Welsh Ministers.
- (6) Section 333(3) does not apply in relation to tree preservation regulations made by the Welsh Ministers.
- (7) Tree preservation regulations made by the Welsh Ministers are subject to annulment in pursuance of a resolution of the National Assembly for Wales.

202B Tree preservation regulations: making of tree preservation orders

- (1) Tree preservation regulations may make provision about—
 - (a) the form of tree preservation orders;
 - (b) the procedure to be followed in connection with the making of tree preservation orders;
 - (c) when a tree preservation order takes effect.
- (2) If tree preservation regulations make provision for tree preservation orders not to take effect until confirmed, tree preservation regulations may—
 - (a) make provision for tree preservation orders to take effect provisionally until confirmed;
 - (b) make provision about who is to confirm a tree preservation order;
 - (c) make provision about the procedure to be followed in connection with confirmation of tree preservation orders.

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202C Tree preservation regulations: prohibited activities

- (1) Tree preservation regulations may make provision for prohibiting all or any of the following—
 - (a) cutting down of trees;
 - (b) topping of trees;
 - (c) lopping of trees;
 - (d) uprooting of trees;
 - (e) wilful damage of trees;
 - (f) wilful destruction of trees.
- (2) A prohibition imposed on a person may (in particular) relate to things whose doing the person causes or permits (as well as to things the person does).
- (3) A prohibition may be imposed subject to exceptions.
- (4) In particular, provision may be made for a prohibition not to apply to things done with consent.
- (5) In this section “tree” means a tree in respect of which a tree preservation order is in force.

202D Tree preservation regulations: consent for prohibited activities

- (1) This section applies if tree preservation regulations make provision under section 202C(4).
- (2) Tree preservation regulations may make provision—
 - (a) about who may give consent;
 - (b) for the giving of consent subject to conditions;
 - (c) about the procedure to be followed in connection with obtaining consent.
- (3) The conditions for which provision may be made under subsection (2)(b) include—
 - (a) conditions as to planting of trees;
 - (b) conditions requiring approvals to be obtained from the person giving the consent;
 - (c) conditions limiting the duration of the consent.
- (4) The conditions mentioned in subsection (3)(a) include—
 - (a) conditions requiring trees to be planted;
 - (b) conditions about the planting of any trees required to be planted by conditions within paragraph (a), including conditions about how, where or when planting is to be done;
 - (c) conditions requiring things to be done, or installed, for the protection of any trees planted in pursuance of conditions within paragraph (a).
- (5) In relation to any tree planted in pursuance of a condition within subsection (4)(a), tree preservation regulations may make provision —
 - (a) for the tree preservation order concerned to apply to the tree;

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- (b) authorising the person imposing the condition to specify that the tree preservation order concerned is not to apply to the tree.
- (6) “The tree preservation order concerned” is the order in force in relation to the tree in respect of which consent is given under tree preservation regulations.
- (7) The provision that may be made under subsection (2)(c) includes provision about applications for consent, including provision as to—
 - (a) the form or manner in which an application is to be made;
 - (b) what is to be in, or is to accompany, an application.
- (8) Tree preservation regulations may make provision for appeals—
 - (a) against refusal of consent;
 - (b) where there is a failure to decide an application for consent;
 - (c) against conditions subject to which consent is given;
 - (d) against refusal of an approval required by a condition;
 - (e) where there is a failure to decide an application for such an approval.
- (9) Tree preservation regulations may make provision in connection with appeals under provision made under subsection (8), including—
 - (a) provision imposing time limits;
 - (b) provision for further appeals;
 - (c) provision in connection with the procedure to be followed on an appeal (or further appeal);
 - (d) provision about who is to decide an appeal (or further appeal);
 - (e) provision imposing duties, or conferring powers, on a person deciding an appeal (or further appeal).

202E Tree preservation regulations: compensation

- (1) Tree preservation regulations may make provision for the payment of compensation—
 - (a) where any consent required under tree preservation regulations is refused;
 - (b) where any such consent is given subject to conditions;
 - (c) where any approval required under such a condition is refused.
- (2) Tree preservation regulations may provide for entitlement conferred under subsection (1) to apply only in, or to apply except in, cases specified in tree preservation regulations.
- (3) Tree preservation regulations may provide for entitlement conferred by provision under subsection (1) to be subject to conditions, including conditions as to time limits.
- (4) Tree preservation regulations may, in relation to compensation under provision under subsection (1), make provision about—
 - (a) who is to pay the compensation;
 - (b) who is entitled to the compensation;
 - (c) what the compensation is to be paid in respect of;
 - (d) the amount, or calculation of, the compensation.

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- (5) Tree preservation regulations may make provision about the procedure to be followed in connection with claiming any entitlement conferred by provision under subsection (1).
- (6) Tree preservation regulations may make provision for the determination of disputes about entitlement conferred by provision under subsection (1), including provision for and in connection with the referral of any such disputes to, and their determination by, ^{F1}...the First-tier Tribunal or the Upper Tribunal.

202F Tree preservation regulations: registers

Tree preservation regulations may make provision for the keeping of, and public access to, registers containing information related to tree preservation orders.

202G Tree preservation regulations: supplementary

- (1) Tree preservation regulations may provide for the application (with or without modifications) of, or make provision comparable to, any provision of this Act mentioned in subsection (2).
- (2) The provisions are any provision of Part 3 relating to planning permission or applications for planning permission, except sections 56, 62, 65, 69(3) and (4), 71, 91 to 96, 100 and 101 and Schedule 8.
- (3) Tree preservation regulations may make provision comparable to—
 - (a) any provision made by the Town and Country Planning (Tree Preservation Order) Regulations 1969 or the Town and Country Planning (Trees) Regulations 1999;
 - (b) any provision that could have been made under section 199(2) and (3).
- (4) Tree preservation regulations may contain incidental, supplementary, consequential, transitional and transitory provision and savings.”
- (8) Schedule 8 makes further amendments in connection with tree preservation orders.

Textual Amendments

- F1** Words in s. 192(7) omitted (1.6.2009) by virtue of [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 295** (with Sch. 5)

193 Existing tree preservation orders: transitional provision

- (1) This section applies to a tree preservation order made before the appointed day.
- (2) With effect from the beginning of the appointed day, a tree preservation order to which this section applies shall have effect with the omission of all of its provisions other than any that have effect for the purpose of identifying the order or for the

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purpose of identifying the trees, groups of trees or woodlands in respect of which the order—

- (a) is in force, or
- (b) may at any later time be in force.

(3) In this section—

“the appointed day”—

- (a) in relation to England means the day on which subsection (1) comes fully into force in relation to England, and
- (b) in relation to Wales means the day on which subsection (1) comes fully into force in relation to Wales;

“tree preservation order” means an order made under, or an order having effect as if made under, section 198(1) of TCPA 1990.

Use of land

194 Use of land: power to override easements and other rights

- (1) Schedule 9 (use of land: power to override easements and other rights when use is in accordance with planning permission) has effect.
- (2) The Welsh Ministers may by order amend Schedule 4 to the Welsh Development Agency Act 1975 (c. 70) for the purpose of authorising the use in accordance with planning permission of land acquired under section 21A of that Act, even if the use involves—
 - (a) interference with an interest or right to which paragraph 6 of that Schedule applies, or
 - (b) a breach of a restriction as to the user of land arising by virtue of a contract.
- (3) The power to make an order under subsection (2) is exercisable by statutory instrument.
- (4) The power includes—
 - (a) power to make different provision for different purposes (including different areas);
 - (b) power to make incidental, consequential, supplementary, transitional or transitory provision or savings.
- (5) No order may be made under subsection (2) unless a draft of the instrument containing the order has been laid before, and approved by resolution of, the National Assembly for Wales.

Commencement Information

I12 S. 194 partly in force; s. 194(2)-(5) in force at 26.1.2009 see s. 241

I13 S. 194(1) in force at 6.4.2009 for E.W. by S.I. 2009/400, art. 3(h)

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Statutory undertakers

195 Applications and appeals by statutory undertakers

In section 266 of TCPA 1990 (applications for planning permission by statutory undertakers), after subsection (1) insert—

“(1A) Subsection (1) has effect in relation to an application or appeal relating to land in England only if the Secretary of State or the appropriate Minister has given a direction for it to have effect in relation to the application or appeal (and the direction has not been revoked).”

Commencement Information

I14 S. 195 in force at 6.4.2009 for E.W. by S.I. 2009/400, art. 3(i)

Determination of procedure

196 Determination of procedure for certain proceedings

(1) After section 319 of TCPA 1990 insert—

“Determination of procedure

319A Determination of procedure for certain proceedings

- (1) The Secretary of State must make a determination as to the procedure by which proceedings to which this section applies are to be considered.
- (2) A determination under subsection (1) must provide for the proceedings to be considered in whichever of the following ways appears to the Secretary of State to be most appropriate—
 - (a) at a local inquiry;
 - (b) at a hearing;
 - (c) on the basis of representations in writing.
- (3) The Secretary of State must make a determination under subsection (1) in respect of proceedings to which this section applies before the end of the prescribed period.
- (4) A determination under subsection (1) may be varied by a subsequent determination under that subsection at any time before the proceedings are determined.
- (5) The Secretary of State must notify the appellant or applicant (as the case may be) and the local planning authority of any determination made under subsection (1).
- (6) The Secretary of State must publish the criteria that are to be applied in making determinations under subsection (1).
- (7) This section applies to—

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- (a) an application referred to the Secretary of State under section 77 instead of being dealt with by a local planning authority in England;
 - (b) an appeal under section 78 against a decision of a local planning authority in England;
 - (c) an appeal under section 174 against an enforcement notice issued by a local planning authority in England;
 - (d) an appeal under section 195 against a decision of a local planning authority in England; and
 - (e) an appeal under section 208 against a notice under section 207(1) issued by a local planning authority in England.
- (8) But this section does not apply to proceedings if they are referred to a Planning Inquiry Commission under section 101; and on proceedings being so referred, any determination made in relation to the proceedings under subsection (1) of this section ceases to have effect.
- (9) The Secretary of State may by order amend subsection (7) to—
- (a) add proceedings to, or remove proceedings from, the list of proceedings to which this section applies, or
 - (b) otherwise modify the descriptions of proceedings to which this section applies.
- (10) An order under subsection (9) may—
- (a) contain incidental, supplementary, consequential, transitional and transitory provision and savings;
 - (b) amend, repeal or revoke any provision made by or under this Act or by or under any other Act.”
- (2) After section 88C of the Listed Buildings Act insert—

“88D Determination of procedure for certain proceedings

- (1) The Secretary of State must make a determination as to the procedure by which proceedings to which this section applies are to be considered.
- (2) A determination under subsection (1) must provide for the proceedings to be considered in whichever of the following ways appears to the Secretary of State to be most appropriate—
 - (a) at a local inquiry;
 - (b) at a hearing;
 - (c) on the basis of representations in writing.
- (3) The Secretary of State must make a determination under subsection (1) in respect of proceedings to which this section applies before the end of the prescribed period.
- (4) A determination under subsection (1) may be varied by a subsequent determination under that subsection at any time before the proceedings are determined.
- (5) The Secretary of State must notify the appellant or applicant (as the case may be) and the local planning authority of any determination made under subsection (1).

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- (6) The Secretary of State must publish the criteria that are to be applied in making determinations under subsection (1).
 - (7) This section applies to—
 - (a) an application referred to the Secretary of State under section 12 instead of being dealt with by a local planning authority in England;
 - (b) an appeal under section 20 against a decision of a local planning authority in England; and
 - (c) an appeal under section 39 against a listed building enforcement notice issued by a local planning authority in England.
 - (8) The Secretary of State may by order amend subsection (7) to—
 - (a) add proceedings under this Act to, or remove proceedings under this Act from, the list of proceedings to which this section applies, or
 - (b) otherwise modify the descriptions of proceedings under this Act to which this section applies.
 - (9) An order under subsection (8) may—
 - (a) contain incidental, supplementary, consequential, transitional and transitory provision and savings;
 - (b) amend, repeal or revoke any provision made by or under this Act or by or under any other Act.”
- (3) After section 21 of the Hazardous Substances Act insert—

“21A Determination by Secretary of State of procedure for certain proceedings

- (1) The Secretary of State must make a determination as to the procedure by which proceedings to which this section applies are to be considered.
- (2) A determination under subsection (1) must provide for the proceedings to be considered in whichever of the following ways appears to the Secretary of State to be most appropriate—
 - (a) at a local inquiry;
 - (b) at a hearing;
 - (c) on the basis of representations in writing.
- (3) The Secretary of State must make a determination under subsection (1) in respect of proceedings to which this section applies before the end of the prescribed period.
- (4) A determination under subsection (1) may be varied by a subsequent determination under that subsection at any time before the proceedings are determined.
- (5) The Secretary of State must notify the appellant or applicant (as the case may be) and the hazardous substances authority of any determination made under subsection (1).
- (6) The Secretary of State must publish the criteria that are to be applied in making determinations under subsection (1).
- (7) This section applies to—

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- (a) an application referred to the Secretary of State under section 20 instead of being dealt with by a hazardous substances authority in England;
 - (b) an appeal under section 21 against a decision of a hazardous substances authority in England.
- (8) The Secretary of State may by order amend subsection (7) to—
- (a) add proceedings under this Act to, or remove proceedings under this Act from, the list of proceedings to which this section applies, or
 - (b) otherwise modify the descriptions of proceedings under this Act to which this section applies.
- (9) An order under subsection (8) may—
- (a) contain incidental, supplementary, consequential, transitional and transitory provision and savings;
 - (b) amend, repeal or revoke any provision made by or under this Act or by or under any other Act.
- (10) The power to make an order under subsection (8) is exercisable by statutory instrument.
- (11) No order may be made under subsection (8) unless a draft of the instrument containing the order has been laid before, and approved by resolution of, each House of Parliament.”
- (4) Schedule 10 (further provisions as to the procedure for certain proceedings) has effect.

Commencement Information

I15 S. 196 in force at 6.4.2009 for specified purposes for E.W. by S.I. 2009/400, art. 3(j) (with art. 6(2))

Appeals

197 Appeals: miscellaneous amendments

Schedule 11 (appeals: miscellaneous amendments) has effect.

Commencement Information

I16 S. 197 in force at 6.4.2009 for E. by S.I. 2009/400, art. 5(d)

198 Appeals relating to old mining permissions

- (1) Schedule 6 to TCPA 1990 (determination of certain appeals by person appointed by Secretary of State) is amended as set out in subsections (2) and (3).
- (2) In paragraph 1—
 - (a) in sub-paragraph (1) after “208” insert “ of this Act, paragraph 5 of Schedule 2 to the Planning and Compensation Act 1991 ”, and
 - (b) in sub-paragraph (4) for “any instrument made under it” substitute “ any other Act or any instrument made under this Act or any other Act ”.

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- (3) In paragraph 2—
- (a) after sub-paragraph (1)(d) insert—
 - “(e) in relation to an appeal under paragraph 5 of Schedule 2 to the Planning and Compensation Act 1991, as the Secretary of State has under paragraph 6(1) and (3) of that Schedule.”, and
 - (b) in sub-paragraph (2) after “208(5)” insert “ of this Act and paragraph 6(2) of Schedule 2 to the Planning and Compensation Act 1991 ”.
- (4) In paragraph 5 of Schedule 2 to the Planning and Compensation Act 1991 (c. 34) (registration of old mining permissions: right of appeal) after sub-paragraph (8) insert—
- “(9) Schedule 6 to the principal Act (determination of appeals by persons appointed by Secretary of State) applies to appeals under this paragraph.”

Commencement Information

I17 S. 198 in force at 6.4.2009 for E. by S.I. 2009/400, art. 5(e)

Fees

199 Fees for planning applications

For section 303 of TCPA 1990 substitute—

“303 Fees for planning applications etc.

- (1) The appropriate authority may by regulations make provision for the payment of a fee or charge to a local planning authority in respect of—
 - (a) the performance by the local planning authority of any function they have;
 - (b) anything done by them which is calculated to facilitate or is conducive or incidental to the performance of any such function.
- (2) The appropriate authority may by regulations make provision for the payment of a fee to the appropriate authority or the local planning authority (or of fees to both the appropriate authority and the local planning authority) in respect of any application for planning permission deemed to be made under section 177(5).
- (3) The appropriate authority may by regulations make provision for the payment of a fee to the appropriate authority in respect of any application for planning permission which is deemed to be made to the appropriate authority under—
 - (a) any provision of this Act other than section 177(5), or
 - (b) any order or regulations made under this Act.
- (4) The appropriate authority may by regulations make provision for the payment of a fee to the appropriate authority in respect of an application for planning permission made under section 293A (urgent Crown development).
- (5) Regulations under this section may in particular—

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- (a) make provision as to when a fee or charge payable under the regulations is to be paid;
 - (b) make provision as to who is to pay a fee or charge payable under the regulations;
 - (c) make provision as to how a fee or charge payable under the regulations is to be calculated (including who is to make the calculation);
 - (d) prescribe circumstances in which a fee or charge payable under the regulations is to be remitted or refunded (wholly or in part);
 - (e) prescribe circumstances in which no fee or charge is to be paid;
 - (f) make provision as to the effect of paying or failing to pay a fee or charge in accordance with the regulations;
 - (g) prescribe circumstances in which a fee or charge payable under the regulations to one local planning authority is to be transferred to another local planning authority.
- (6) Regulations under this section may—
- (a) contain incidental, supplementary, consequential, transitional and transitory provision and savings;
 - (b) in the case of regulations made by virtue of subsection (5)(f) or paragraph (a) of this subsection, amend, repeal or revoke any provision made by or under this Act or by or under any other Act.
- (7) In this section “the appropriate authority” means—
- (a) the Secretary of State in relation to England;
 - (b) the Welsh Ministers in relation to Wales.
- (8) No regulations shall be made under this section unless a draft of the regulations has been laid before and approved by resolution of—
- (a) each House of Parliament, in the case of regulations made by the Secretary of State;
 - (b) the National Assembly for Wales, in the case of regulations made by the Welsh Ministers.
- (9) Section 333(3) does not apply in relation to regulations made under this section by the Welsh Ministers.
- (10) If a local planning authority calculate the amount of fees or charges in pursuance of provision made by regulations under subsection (1) the authority must secure that, taking one financial year with another, the income from the fees or charges does not exceed the cost of performing the function or doing the thing (as the case may be).
- (11) A financial year is the period of 12 months beginning with 1 April.”

Commencement Information

I18 S. 199 in force at 6.4.2009 for E. by S.I. 2009/400, art. 5(e)

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VALID FROM 01/10/2009

200 Fees for appeals

In TCPA 1990 after section 303 insert—

“303ZA Fees for appeals

- (1) The appropriate authority may by regulations make provision for the payment of a fee to the appropriate authority in respect of an appeal to the appropriate authority under any provision made by or under—
 - (a) this Act;
 - (b) the Planning (Listed Buildings and Conservation Areas) Act 1990.
- (2) The regulations may in particular—
 - (a) make provision as to when a fee payable under the regulations is to be paid;
 - (b) make provision as to how such a fee is to be calculated (including who is to make the calculation);
 - (c) prescribe circumstances in which such a fee is to be remitted or refunded (wholly or in part);
 - (d) prescribe circumstances in which no fee is to be paid;
 - (e) make provision as to the effect of paying or failing to pay a fee in accordance with the regulations.
- (3) A fee payable to the appropriate authority under regulations made under this section is payable—
 - (a) by the appellant;
 - (b) in addition to any fee payable to the appropriate authority under regulations made under section 303.
- (4) Regulations under this section may—
 - (a) contain incidental, supplementary, consequential, transitional and transitory provision and savings;
 - (b) in the case of regulations made by virtue of subsection (2)(e) or paragraph (a) of this subsection, amend, repeal or revoke any provision made by or under this Act or by or under any other Act.
- (5) In this section “the appropriate authority” means—
 - (a) the Secretary of State in relation to England;
 - (b) the Welsh Ministers in relation to Wales.
- (6) No regulations shall be made under this section unless a draft of the regulations has been laid before and approved by resolution of—
 - (a) each House of Parliament, in the case of regulations made by the Secretary of State;
 - (b) the National Assembly for Wales, in the case of regulations made by the Welsh Ministers.

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(7) Section 333(3) does not apply in relation to regulations made under this section by the Welsh Ministers.”

Meaning of “local authority”

201 Meaning of “local authority” in planning Acts

In section 336(1) of TCPA 1990 (interpretation) in the definition of “local authority” after paragraph (aa) insert—

“(ab) the London Fire and Emergency Planning Authority;”.

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