

SCHEDULES

SCHEDULE 1

Section 1

THE INFRASTRUCTURE PLANNING COMMISSION

Membership, chair and deputies

- 1 (1) The members of the Commission (“Commissioners”) are to be—
- (a) a person appointed by the Secretary of State to chair the Commission (“the chair”),
 - (b) at least two persons appointed by the Secretary of State as deputies to the chair (“deputies”), and
 - (c) other Commissioners appointed by the Secretary of State.
- (2) In appointing Commissioners, the Secretary of State must have regard to the desirability of securing that the Commission is able to perform its functions effectively and efficiently.

Terms of appointment

- 2 Subject to the other provisions of this Schedule, the chair, deputies and other Commissioners hold and vacate office as such in accordance with the terms of their appointments.

Tenure

- 3 (1) The chair, or a deputy or other Commissioner, must be appointed for a fixed period.
- (2) The fixed period must not be less than 5 years or more than 8 years.
- 4 (1) A person may resign as the chair, or as a deputy or other Commissioner, by giving at least 3 months' notice in writing to the Secretary of State.
- (2) The Secretary of State may remove a person from office as the chair, or as a deputy or other Commissioner, if the Secretary of State is satisfied that—
- (a) the person is unable or unwilling to perform the duties of the office,
 - (b) the person has been convicted of a criminal offence, or
 - (c) the person is otherwise unfit to perform the duties of the office.
- (3) In deciding whether a Commissioner is unfit to perform the duties of the Commissioner's office, the Secretary of State must have regard to the provisions of the code of conduct issued under section 2.
- (4) A person who holds or has held an office of one of the descriptions set out in subparagraph (6) may be re-appointed as a Commissioner, whether or not to an office of the same description.

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- (5) If a person who holds an office of one of those descriptions (“the first office”) becomes the holder of an office of another of those descriptions, the person ceases to hold the first office.
- (6) The descriptions are—
 - (a) office as the chair;
 - (b) office as a deputy;
 - (c) office as one of the other Commissioners.

Remuneration etc. of Commissioners

- 5 (1) The Commission must pay the Commissioners such remuneration and allowances as the Secretary of State may determine.
- (2) The Commission must—
 - (a) pay to or in respect of the Commissioners such pensions as the Secretary of State may determine, and
 - (b) pay such sums as the Secretary of State may determine in respect of the provision of pensions to or in respect of the Commissioners.
- (3) The Commission may pay sums to the Commissioners in respect of expenses.
- (4) Sub-paragraph (5) applies if—
 - (a) a person ceases to hold office as a Commissioner, and
 - (b) the Secretary of State thinks that there are special circumstances that make it right for the person to receive compensation.
- (5) The Commission must pay the person such compensation as the Secretary of State may determine.

Council

- 6 (1) There is to be a body of Commissioners to be known as the Commission’s Council (“the Council”).
- (2) The members of the Council may be different for different purposes.
- (3) Those purposes include (in particular)—
 - (a) the purpose of deciding a particular application referred under section 84;
 - (b) the purpose of responding to consultation about a matter.
- (4) The members of the Council for any particular purpose are—
 - (a) the chair,
 - (b) each deputy, and
 - (c) the Commissioners appointed under paragraph 7 to be ordinary members of the Council for that purpose.
- (5) The chair has the function of chairing the Council.
- (6) The staff of the Commission have the function of providing or procuring support for members of the Council undertaking functions of the Council.
- 7 (1) The chair may appoint a Commissioner not within paragraph 6(4)(a) or (b) to be an ordinary member of the Council—

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- (a) for a particular purpose or for particular purposes,
 - (b) for all purposes, or
 - (c) for all purposes other than any specified on making the appointment.
 - (2) The chair may at any time end a person's appointment as an ordinary member of the Council.
 - (3) A person may resign from being an ordinary member of the Council by giving notice in writing to the Commission.
 - (4) The power under sub-paragraph (2) may be exercised, and a person may under sub-paragraph (3) resign, in relation to all, or some one or more, of the purposes for which the person is an ordinary member of the Council.
 - (5) A person ceases to be an ordinary member of the Council if the person ceases to be a Commissioner.
 - (6) The power under sub-paragraph (1) is to be exercised so as to secure that the Council has for any particular purpose at least 5, but no more than 9, members in total.
 - (7) The Council's continuing identity for any particular purpose is to be taken not to be affected by—
 - (a) a person ceasing to be a member of the Council for that purpose, so long as there continue to be at least 5 people who are members of the Council for that purpose;
 - (b) any change in the person chairing the Council.
- 8
- (1) Sub-paragraphs (2) and (3) apply to any function conferred or imposed on the chair by paragraph 6(5) or 7.
 - (2) The chair may delegate the function to a deputy.
 - (3) If at any time there is (apart from this sub-paragraph) no-one who is able and available to carry the function, each deputy may carry out the function.
 - (4) A function delegated under sub-paragraph (2) may be delegated to such extent and on such terms as the chair determines.
- 9
- (1) Before making or ending an appointment under paragraph 7, the person doing so must consult—
 - (a) the other Commissioners who, for the purpose of responding to consultation about the matter, are members of the Council,
 - (b) any Commissioner not within paragraph (a) who the person thinks it appropriate to consult, and
 - (c) the chief executive of the Commission.
 - (2) In making or ending an appointment under paragraph 7, the person doing so must have regard to any views expressed about the matter—
 - (a) by any of the other Commissioners, or
 - (b) by the chief executive of the Commission.
- 10
- (1) This paragraph applies where an application referred to the Council under section 84 relates to land in Wales (even if the application also relates to land not in Wales).
 - (2) A person appointing Commissioners under paragraph 7(1) as ordinary members of the Council for the purpose of deciding the application must do so with a view to

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securing that, if reasonably practicable, at least one of the members of the Council for that purpose is—

- (a) a Commissioner who was nominated for appointment as a Commissioner by the Welsh Ministers, or
 - (b) a Commissioner who is within sub-paragraph (3).
- (3) A Commissioner is within this sub-paragraph if, when appointed to be a member of the Council, the Commissioner is one notified to the Commission by the Welsh Ministers as being a Commissioner who should be treated for the purposes of this paragraph as being a Commissioner within sub-paragraph (2)(a).

Chief executive and staff

- 11 (1) The Secretary of State must appoint a person as the chief executive of the Commission.
- (2) The chief executive—
- (a) is not to be a Commissioner, and
 - (b) is to be a member of the Commission’s staff.
- (3) The chief executive’s terms and conditions of service are to be determined by the Secretary of State.
- 12 (1) The Commission may appoint such other staff as it thinks appropriate.
- (2) A member of the Commission’s staff is not to be a Commissioner.
- (3) Before the Commission appoints any staff, it must obtain the approval of the Secretary of State to the overall number of staff it proposes to appoint.
- (4) The Commission must also obtain the approval of the Secretary of State to the terms and conditions of service of any staff it proposes to appoint.
- 13 The terms and conditions of service of the chief executive and any other member of staff may include provision—
- (a) for the payment of remuneration, allowances and sums in respect of expenses,
 - (b) for the payment to or in respect of the person of pensions or sums in respect of the provision of pensions, and
 - (c) for the payment to or in respect of the person of compensation for loss of employment or reduction of remuneration.

Arrangements for assistance

- 14 (1) The Commission may make arrangements with such persons as it thinks appropriate for assistance to be provided to it.
- (2) The arrangements may include provision for the payment of fees.

Delegation

- 15 (1) The Commission may delegate, to any one or more of the Commissioners, any of its functions under any of the following provisions—
- section 37(4) or (5);
 - section 50;

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section 52;
section 53;
section 55;
section 109(4);
section 136(5);
in Schedule 3, paragraph 1(2);
in Schedule 4, paragraphs 1 and 2(1);
in Schedule 6, paragraphs 2, 3 and 4.

- (2) The Commission may delegate any of its other functions to—
- (a) any one or more of the Commissioners,
 - (b) the chief executive, or
 - (c) any other member of its staff.
- (3) Functions delegated under sub-paragraph (1) or (2) may be delegated to such extent and on such terms as the Commission determines.
- (4) References in this Act or any other enactment to the Commission, in connection with the exercise of any function of the Commission, are to be read, so far as necessary, as references to a person or body to whom the Commission has delegated the function under sub-paragraph (1) or (2).
- 16 (1) The chief executive may authorise (generally or specifically) any other member of the Commission’s staff to do anything authorised or required to be done by the chief executive.
- (2) But sub-paragraph (1) does not apply to anything authorised or required to be done by the chief executive in relation to the certification of the annual accounts of the Commission.

Reports

- 17 (1) In respect of each financial year the Commission must prepare a report relating to its performance of its functions during the year.
- (2) The report must—
- (a) give details of any orders granting development consent made by the Commission during the year which have included provision authorising the compulsory acquisition of land or of an interest in or right over land, and
 - (b) deal with such matters as the Secretary of State may direct.
- (3) The Commission must send the Secretary of State copies of the report as soon as practicable after the end of the financial year.
- (4) The Commission must arrange for the report to be published in the manner it thinks appropriate.
- (5) The Secretary of State must lay before Parliament a copy of every report sent under sub-paragraph (3).
- (6) “Financial year” means—
- (a) the period beginning with the day on which the Commission is established and ending with the following 31 March, and
 - (b) each successive period of 12 months.

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- 18 (1) Sub-paragraph (2) applies if the Secretary of State asks the Commission to provide a report or information relating to an aspect of the Commission's performance of its functions.
- (2) The Commission must provide the Secretary of State with the report or information.

Funding

- 19 (1) The Secretary of State may make such payments to the Commission as the Secretary of State thinks appropriate for the purpose of enabling the Commission to meet its expenses.
- (2) Payments under sub-paragraph (1) are to be made out of money provided by Parliament.
- (3) Payments under sub-paragraph (1) are to be made at such times and subject to such conditions (if any) as the Secretary of State thinks appropriate.

Accounts

- 20 (1) The Commission must keep accounts in such form as the Secretary of State directs.
- (2) The Commission must prepare annual accounts in respect of each financial year in such form as the Secretary of State directs.
- (3) Before the end of such period following each financial year as the Secretary of State directs, the Commission must send a copy of the annual accounts for the year—
- (a) to the Secretary of State, and
 - (b) to the Comptroller and Auditor General.
- (4) The Comptroller and Auditor General must—
- (a) examine, certify and report on the annual accounts, and
 - (b) give a copy of the Comptroller and Auditor General's report to the Secretary of State.
- (5) In respect of each financial year, the Secretary of State must lay before Parliament a document consisting of—
- (a) a copy of the annual accounts for the year, and
 - (b) a copy of the Comptroller and Auditor General's report on the annual accounts.
- (6) "Financial year" means—
- (a) the period beginning with the day on which the Commission is established and ending with the following 31 March, and
 - (b) each successive period of 12 months.

Status

- 21 (1) The Commission is not to be regarded—
- (a) as the servant or agent of the Crown, or
 - (b) as enjoying any status, immunity or privilege of the Crown.
- (2) The Commission's property is not to be regarded as property of or held on behalf of the Crown.

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- (3) The Commission’s staff are not to be regarded as servants or agents of the Crown or as enjoying any status, immunity or privilege of the Crown.

Validity of proceedings

- 22 The validity of proceedings of the Commission or the Council is not affected by—
- (a) a defect in the appointment of the chair, or a deputy, or any other Commissioner, or
 - (b) a vacancy in the office of the chair or a deputy or amongst the other Commissioners.

Application of seal and proof of instruments

- 23 (1) The application of the Commission’s seal is authenticated by the signature of a Commissioner, or a member of the Commission’s staff, who has been authorised (generally or specifically) by the Commission for the purpose.
- (2) A document purporting to be duly executed under the seal of the Commission or to be signed on its behalf—
- (a) is to be received in evidence, and
 - (b) is to be taken to be executed or signed in that way, unless the contrary is proved.

Parliamentary Commissioner

- 24 In Schedule 2 to the Parliamentary Commissioner Act 1967 (c. 13) (departments etc. subject to investigation) at the appropriate place insert—
- “Infrastructure Planning Commission.”

Disqualification

- 25 (1) In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (bodies of which all members are disqualified) at the appropriate place insert—
- “The Infrastructure Planning Commission.”
- (2) In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c. 25) (bodies of which all members are disqualified) at the appropriate place insert—
- “The Infrastructure Planning Commission.”

Public records

- 26 In Schedule 1 to the Public Records Act 1958 (c. 51) (definition of public records) in Part 2 of the Table at the end of paragraph 3 at the appropriate place insert—
- “Infrastructure Planning Commission.”

Freedom of information

- 27 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (c. 36) (other public bodies and offices: general) at the appropriate place insert—
- “The Infrastructure Planning Commission.”

SCHEDULE 2

Section 36

AMENDMENTS CONSEQUENTIAL ON DEVELOPMENT CONSENT REGIME

Green Belt (London and Home Counties) Act 1938 (c. xciii)

- 1 The Green Belt (London and Home Counties) Act 1938 is amended as follows.
- 2 In section 10 (restriction on erection of buildings) after subsection (1) insert—
- “(1A) Subsection (1) of this section is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required).”
- 3 In section 11 (saving for lines, pipes, sewers etc.) after subsection (1) insert—
- “(1A) The proviso to subsection (1) of this section is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required).”
- 4 In section 12 (erection of buildings for certain statutory purposes) after subsection (1) insert—
- “(1A) Subsection (1) of this section is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required).”

Pipe-lines Act 1962 (c. 58)

- 5 The Pipe-lines Act 1962 is amended as follows.
- 6 (1) Section 1 (cross-country pipe-lines not to be constructed without authorisation) is amended as follows.
- (2) After subsection (1) insert—
- “(1ZA) Subsection (1) is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required).”
- (3) In subsection (1A)(b) for “pipe-line which is the subject of a pipe-line construction authorisation” substitute “nationally significant pipe-line”.
- (4) After subsection (1A) insert—
- “(1B) For the purposes of subsection (1A), a pipe-line is a nationally significant pipe-line if—
- (a) its construction has been authorised by a pipe-line construction authorisation, or

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- (b) development consent under the Planning Act 2008 is required for its construction by virtue of section 14(1)(g) of that Act, and has been granted.”
- 7 In section 66(1) (general interpretation provisions) in the definition of “diversion”—
- (a) after paragraph (a) insert—
 - “(aa) if no such authorisation is required, beyond the limits of lateral diversion permitted by development consent under the Planning Act 2008 relating to that pipe-line, or”;
 - (b) in paragraph (b) after “no such authorisation” insert “or consent”.

Harbours Act 1964 (c. 40)

- 8 The Harbours Act 1964 is amended as follows.
- 9 In section 14 (harbour revision orders) after subsection (1) insert—
- “(1A) Subsection (1) is subject to—
 - (a) section 33(2) of the Planning Act 2008 (exclusion of powers to authorise development);
 - (b) section 120(9) of that Act (exclusion of power to include ancillary provision in orders).”
- 10 In section 16 (harbour empowerment orders) after subsection (3) insert—
- “(3A) Subsections (1) to (3) are subject to—
 - (a) section 33(2) of the Planning Act 2008 (exclusion of powers to authorise development);
 - (b) section 120(9) of that Act (exclusion of power to include ancillary provision in orders).”

Gas Act 1965 (c. 36)

- 11 The Gas Act 1965 is amended as follows.
- 12 In section 4 (storage authorisation orders) after subsection (2) insert—
- “(2A) So far as relating to development within section 17(2), (3) or (5) of the Planning Act 2008—
 - (a) subsection (1) is subject to section 33(2) of that Act (exclusion of powers to authorise development for which development consent required), and
 - (b) subsection (2) is subject to section 33(1) of that Act (exclusion of requirement for other consents for development for which development consent required).
 - (2B) So far as relating to the use of strata for the storage of gas, subsections (1) and (2) are subject to section 120(9) of the Planning Act 2008 (exclusion of power to include ancillary provision in orders).”
- 13 In section 5 (control of mining and other operations in gas storage area and protective area) after subsection (2) insert—

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“(2A) Subsection (2) does not apply so far as the controlled operations are authorised by an order granting development consent under the Planning Act 2008.”

14 (1) Section 6 (controlled operations: carrying out of works to remedy a default) is amended as follows.

(2) In subsection (1)—

- (a) for “without the consent of the Minister” substitute “in breach of section 5(2)”,
- (b) for “failure to comply with any conditions subject to which the Minister’s consent to the carrying out of any controlled operations has been granted” substitute “relevant failure to comply”, and
- (c) after “foregoing section” insert “or in circumstances involving a relevant failure to comply”.

(3) In subsection (5) for the words from “failed” to the end substitute “was responsible for the relevant failure to comply.”

(4) After subsection (8) insert—

“(9) In this section “relevant failure to comply” means—

- (a) in a case where the Minister’s consent to the carrying out of controlled operations has been obtained under section 5, a failure to comply with any conditions subject to which the Minister’s consent was granted;
- (b) in a case where the carrying out of controlled operations has been authorised by an order granting development consent under the Planning Act 2008, a breach of the terms of the order or other failure to comply with the terms of the order.”

Energy Act 1976 (c. 76)

15 In section 14 of the Energy Act 1976 (fuelling of new and converted power stations) after subsection (1) insert—

“(1A) Subsection (1) is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for notice to be given of development for which development consent required).”

Ancient Monuments and Archaeological Areas Act 1979 (c. 46)

16 The Ancient Monuments and Archaeological Areas Act 1979 is amended as follows.

17 In section 2(1) (offence of executing works affecting scheduled monuments without authorisation) after “authorised under this Part of this Act” insert “or by development consent”.

18 In section 28(2) (offence of damaging ancient monuments: exception for authorised works) after “order under section 3)” insert “or for which development consent has been granted”.

19 In section 37 (exemptions from offence under section 35) after subsection (1) insert—

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“(1A) Section 35 does not apply to the carrying out of any operations for which development consent has been granted.”

20 In section 61(1) (interpretation of Act) at the appropriate place insert—

““development consent” means development consent under the Planning Act 2008;”.

Highways Act 1980 (c. 66)

21 The Highways Act 1980 is amended as follows.

22 In section 10 (general provision as to trunk roads) after subsection (2) insert—

“(2A) Subsection (2) is subject to section 33(4) of the Planning Act 2008 (exclusion of powers to make or confirm orders in relation to highways for which development consent required).”

23 In section 14 (powers as respects roads that cross or join trunk roads etc.) after subsection (1) insert—

“(1A) Subsection (1) is subject to section 33(4) of the Planning Act 2008 (exclusion of powers to make or confirm orders in relation to highways for which development consent required).”

24 In section 16 (general provision as to special roads) after subsection (3) insert—

“(3A) Subsection (3) is subject to section 33(4) of the Planning Act 2008 (exclusion of powers to make or confirm schemes in relation to highways for which development consent required).”

25 In section 18 (supplementary orders relating to special roads) after subsection (1) insert—

“(1A) Subsection (1) is subject to section 33(4) of the Planning Act 2008 (exclusion of powers to make or confirm orders in relation to highways for which development consent required).”

26 In section 106 (orders and schemes providing for construction of bridges over or tunnels under navigable waters) after subsection (4) insert—

“(4A) Subsections (1) and (3) are subject to section 33(4) of the Planning Act 2008 (exclusion of powers to make or confirm orders or schemes in relation to highways for which development consent required).”

27 In section 108 (power to divert navigable watercourses) after subsection (1) insert—

“(1A) Subsection (1) is subject to section 33(4) of the Planning Act 2008 (exclusion of powers to make or confirm orders in relation to highways for which development consent required).”

28 In section 110 (power to divert non-navigable watercourses and to carry out other works) after subsection (1) insert—

“(1A) Subsection (1) is subject to section 33(4) of the Planning Act 2008 (exclusion of powers to make or confirm orders in relation to highways for which development consent required).”

29 (1) Section 329(1) (further provision as to interpretation of Act) is amended as follows.

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- (2) In the definition of “special road” after “section 16 above” insert “or by virtue of an order granting development consent under the Planning Act 2008”.
- (3) In the definition of “trunk road” after “section 10 above” insert “or an order granting development consent under the Planning Act 2008,”.
- 30 For section 337 (saving for obligation to obtain planning permission) substitute—

“337 Saving for obligation to obtain planning permission or development consent

Nothing in this Act authorises—

- (a) the carrying out of any development of land for which permission is required by virtue of section 57 of the Town and Country Planning Act 1990 and which is not authorised by permission granted or deemed to be granted under or for the purposes of Part 3 of that Act; or
- (b) the carrying out of any development for which development consent is required under the Planning Act 2008 and for which development consent has not been granted under that Act.”

Electricity Act 1989 (c. 29)

- 31 The Electricity Act 1989 is amended as follows.
- 32 (1) Section 36 (consent for construction etc. of generating stations) is amended as follows.
- (2) In subsection (1) after “subsections” insert “(1A) to”.
- (3) After subsection (1) insert—
- “(1A) So far as relating to the construction or extension of a generating station, subsection (1) is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required).
- (1B) So far as relating to the operation of a generating station, subsection (1) does not apply if the operation is authorised by an order granting development consent under the Planning Act 2008.”
- 33 (1) Section 37 (consent for overhead lines) is amended as follows.
- (2) In subsection (1) for “subsection (2)” substitute “subsections (1A) to (2)”.
- (3) After subsection (1) insert—
- “(1A) So far as relating to the installation of an electric line, subsection (1) is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required).
- (1B) So far as relating to keeping an electric line installed, subsection (1) does not apply if keeping the line installed is authorised by an order granting development consent under the Planning Act 2008.”

Town and Country Planning Act 1990 (c. 8)

- 34 TCPA 1990 is amended as follows.
- 35 In section 57 (planning permission required for development) after subsection (1) insert—
- “(1A) Subsection (1) is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for planning permission etc. for development for which development consent required).”
- 36 (1) Section 211 (preservation of trees in conservation areas) is amended as follows.
- (2) After subsection (1) insert—
- “(1A) Subsection (1) does not apply so far as the act in question is authorised by an order granting development consent.”
- (3) After subsection (5) insert—
- “(5A) Subsection (5) does not apply so far as the act in question is authorised by an order granting development consent.”
- 37 In section 336(1) (interpretation) at the appropriate place insert—
- ““development consent” means development consent under the Planning Act 2008;”.

Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9)

- 38 The Listed Buildings Act is amended as follows.
- 39 (1) Section 7 (restriction on works affecting listed buildings) is amended as follows.
- (2) At the beginning insert “(1)”.
- (3) After “authorised” insert “under section 8”.
- (4) At the end insert—
- “(2) Subsection (1) is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required).”
- 40 In section 59(3) (offence relating to acts causing or likely to result in damage to listed building: exceptions) after paragraph (b) insert “; or
- (c) of works for which development consent has been granted under the Planning Act 2008.”
- 41 In section 74 (control of demolition in conservation areas) after subsection (1) insert—
- “(1A) Subsection (1) is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required).”

Planning (Hazardous Substances) Act 1990 (c. 10)

- 42 The Hazardous Substances Act is amended as follows.

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- 43 In section 9(2)(c) (determination of applications for hazardous substances consent: material considerations) after “planning permission” insert “or development consent”.
- 44 In section 10(1) (conditions on grant of hazardous substances consent) after “planning permission” insert “or development consent”.
- 45 (1) Section 12 (deemed hazardous substances consent: government authorisation) is amended as follows.
- (2) After subsection (2A) insert—
- “(2B) On making an order granting development consent in respect of development that would involve the presence of a hazardous substance in circumstances requiring hazardous substances consent, the person making the order may direct that hazardous substances consent shall be deemed to be granted, subject to such conditions (if any) as may be specified in the direction.”
- (3) For subsection (3) substitute—
- “(3) Before giving a direction under any of subsections (1) to (2B), the person having power to give the direction must consult the Health and Safety Commission.”
- (4) In subsection (6)—
- (a) for “government department or the Secretary of State” substitute “person”, and
- (b) after “directions” insert “given by the person”.
- 46 In section 14(2)(b) (power to revoke or modify hazardous substances consent)—
- (a) after “planning permission” insert “or development consent”;
- (b) after “the permission” insert “or development consent”.
- 47 In section 39(1) (interpretation) at the appropriate place insert—
- ““development consent” means development consent under the Planning Act 2008;”.

New Roads and Street Works Act 1991 (c. 22)

- 48 The New Roads and Street Works Act 1991 is amended as follows.
- 49 In section 6 (toll orders) after subsection (1) insert—
- “(1A) Subsection (1) is subject to section 33(4) of the Planning Act 2008 (exclusion of powers to make or confirm orders in relation to highways for which development consent required).”

Water Industry Act 1991 (c. 56)

- 50 In section 167(1) of the Water Industry Act 1991 (compulsory works orders)—
- (a) after “water undertaker” insert “whose area is wholly or partly in Wales”, and
- (b) after “functions” insert “in relation to an area in Wales”.

Transport and Works Act 1992 (c. 42)

- 51 The Transport and Works Act 1992 is amended as follows.
- 52 In section 1 (orders as to railways, tramways etc.) after subsection (1) insert—
- “(1A) Subsection (1) is subject to—
- (a) section 33(2) of the Planning Act 2008 (exclusion of powers to authorise development);
 - (b) section 120(9) of that Act (exclusion of power to include ancillary provision in orders).”
- 53 In section 3 (orders as to inland waterways etc.) after subsection (1) insert—
- “(1A) Subsection (1) is subject to—
- (a) section 33(2) of the Planning Act 2008 (exclusion of powers to authorise development);
 - (b) section 120(9) of that Act (exclusion of power to include ancillary provision in orders).”

Town and Country Planning (Scotland) Act 1997 (c. 8)

- 54 The Town and Country Planning (Scotland) Act 1997 is amended as follows.
- 55 In section 28 (planning permission required for development) after subsection (1) insert—
- “(1A) Subsection (1) is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for planning permission etc. for development for which development consent required).”
- 56 In section 160(6) (tree preservation orders: exemptions) after paragraph (b) insert—
- “(ba) it is authorised by an order granting development consent.”
- 57 (1) Section 172 (preservation of trees in conservation areas) is amended as follows.
- (2) After subsection (1) insert—
- “(1A) Subsection (1) does not apply so far as the act in question is authorised by an order granting development consent.”
- (3) After subsection (5) insert—
- “(5A) Subsection (5) does not apply so far as the act in question is authorised by an order granting development consent.”
- 58 In section 277(1) (interpretation) at the appropriate place insert—
- ““development consent” means development consent under the Planning Act 2008;”.

Planning (Hazardous Substances) (Scotland) Act 1997 (c. 10)

- 59 The Planning (Hazardous Substances) (Scotland) Act 1997 is amended as follows.
- 60 In section 7(2)(c) (determination of applications for hazardous substances consent: material considerations) after “planning permission” insert “or development consent”.

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- 61 In section 8(1) (conditions on grant of hazardous substances consent) after “planning permission” insert “or development consent”.
- 62 (1) Section 10 (deemed hazardous substances consent: government authorisation) is amended as follows.
- (2) After subsection (2A) insert—
- “(2B) On making an order granting development consent in respect of development that would involve the presence of a hazardous substance in circumstances requiring hazardous substances consent, the person making the order may direct that hazardous substances consent shall be deemed to be granted, subject to such conditions (if any) as may be specified in the direction.”
- (3) For subsection (3) substitute—
- “(3) Before giving a direction under any of subsections (1) to (2B), the person having power to give the direction must consult the Health and Safety Commission.”
- (4) In subsection (6)—
- (a) for the words from “government” to “Ministers” substitute “person”, and
- (b) after “directions” insert “given by the person”.
- 63 In section 12(2)(b) (power to revoke or modify hazardous substances consent)—
- (a) after “planning permission” insert “or development consent”, and
- (b) after “the permission” insert “or development consent”.
- 64 In section 38(1) (interpretation) at the appropriate place insert—
- ““development consent” means development consent under the Planning Act 2008.”.

Housing and Regeneration Act 2008 (c. 17)

- 65 In section 13(5) of the Housing and Regeneration Act 2008 (power of Secretary of State to make designation orders) in the definition of “permitted purposes” at the end insert “, and
- (d) Part 8 of the Planning Act 2008.”.

Crossrail Act 2008 (c. 18)

- 66 (1) Section 48 of the Crossrail Act 2008 (application of Act to extensions) is amended as follows.
- (2) Before subsection (1) insert—
- “(A1) Development consent under the Planning Act 2008 is not required for—
- (a) an extension of Crossrail, or
- (b) the provision, otherwise than as part of an extension of Crossrail, of a railway facility for use for the purposes of or in connection with Crossrail.”
- (3) In subsection (1) for paragraphs (a) and (b) substitute “a matter mentioned in subsection (A1)(a) or (b).”

(4) In subsection (2) for “(1)” substitute “(A1)”.

(5) In subsection (5) for “(1)” substitute “(A1)”.

SCHEDULE 3

Section 113

EXAMINATION OF APPLICATIONS BY SECRETARY OF STATE

Examination of matters by Commission: procedure

- 1 (1) This paragraph applies if—
 - (a) the Secretary of State gives a direction under section 112(1) in relation to an application, and
 - (b) for the purpose of the examination of the application under section 113(2)(a), the Secretary of State gives a direction under section 113(3)(a) for specified matters to be examined by the Commission.
- (2) The Commission must secure that—
 - (a) an examination of the specified matters is conducted by a Panel or a single Commissioner, and
 - (b) a report is made by the Panel or Commissioner to the Secretary of State setting out the Panel or Commissioner’s findings and conclusions on those matters.
- (3) The Panel or single Commissioner must—
 - (a) complete the examination under sub-paragraph (2)(a) by the end of the period specified by the Secretary of State, and
 - (b) report under sub-paragraph (2)(b) by the end of the period specified by the Secretary of State.
- (4) The Secretary of State may direct that things done in connection with the examination of the application under Chapter 2 or 3 of Part 6 are to be treated as done in connection with the examination under sub-paragraph (2)(a).
- (5) The following provisions of Part 6 apply in relation to the specified matters as if for references to an application for an order granting development consent there were substituted references to the specified matters —
 - (a) in Chapter 1, sections 61(2) to (5), 62 and 63;
 - (b) in Chapter 2, sections 64 (except subsection (1)(a)), 65 to 73, 74(2) to (4) and 75 to 77;
 - (c) in Chapter 3, sections 78 (except subsection (1)(a)), 79 to 82 and 83 (except subsection (2)(a));
 - (d) in Chapter 4, sections 86 to 97 and 99 to 102.
- (6) As applied by sub-paragraph (5), those provisions apply—
 - (a) with any necessary modifications, and
 - (b) with such other modifications as may be prescribed.

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

Examination of matters by Secretary of State: procedure

- 2 (1) This paragraph applies if—
- (a) the Secretary of State gives a direction under section 112(1) in relation to an application, and
 - (b) for the purpose of the examination of the application under section 113(2)(a), the Secretary of State is to conduct an examination of any matters under section 113(3)(b).
- (2) It is for the Secretary of State to decide how to conduct the examination under section 113(3)(b).
- (3) The Secretary of State may in particular decide that all or part of the examination is to take the form of—
- (a) consideration of written representations;
 - (b) consideration of oral representations at a hearing.
- (4) The Secretary of State may treat things done in connection with the examination of the application under Chapter 2 or 3 of Part 6 as done in connection with the examination under section 113(3)(b).
- (5) Sub-paragraph (6) applies if—
- (a) the direction under section 112(1) is given by virtue of section 110,
 - (b) the Secretary of State has decided that all or part of the examination is to take the form of consideration of oral representations at a hearing, and
 - (c) the Secretary of State is satisfied that—
 - (i) the making of particular representations at the hearing would be likely to result in the disclosure of information as to defence or national security, and
 - (ii) the public disclosure of that information would be contrary to the national interest.
- (6) The Secretary of State may direct that representations of a specified description may be made only to persons of a specified description (instead of being made in public).
- (7) “Specified” means specified in the direction.
- (8) The Secretary of State’s powers under sub-paragraphs (2) to (4) are subject to—
- (a) sub-paragraphs (5) to (7), and
 - (b) any rules made under paragraph 3.
- (9) In this paragraph “representation” includes evidence.

Rules

- 3 (1) The Lord Chancellor or (if sub-paragraph (2) applies) the Secretary of State, after consultation with the Administrative Justice and Tribunals Council, may make rules regulating the procedure to be followed in connection with the Secretary of State’s examination of an application under section 113.
- (2) This sub-paragraph applies if the development to which the application relates (or part of the development) is the construction (other than by a gas transporter) of an oil or gas cross-country pipe-line—
- (a) one end of which is in England or Wales, and

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- (b) the other end of which is in Scotland.
- (3) Rules under sub-paragraph (1) may make provision for or in connection with authorising the Secretary of State, alone or with others, to enter onto land, including land owned or occupied otherwise than by the applicant, for the purpose of inspecting the land as part of the Secretary of State's examination.
- (4) Rules under sub-paragraph (1) may regulate procedure in connection with matters preparatory to the Secretary of State's examination, and in connection with matters subsequent to the examination, as well as in connection with the conduct of the examination.
- (5) Power under this paragraph to make rules includes power to make different provision for different purposes.
- (6) Power under this paragraph to make rules is exercisable by statutory instrument.
- (7) A statutory instrument containing rules under this paragraph is subject to annulment pursuant to a resolution of either House of Parliament.

Appointed representatives

- 4 (1) Sub-paragraph (2) applies if the Secretary of State gives a direction under paragraph 2(6) for representations of a specified description to be made only to persons of a specified description (instead of being made in public).
- (2) The Attorney General or (where the representations are to be made in Scotland) the Advocate General for Scotland may appoint a person (an "appointed representative") to represent the interests of an interested party who (by virtue of the direction) is prevented from being present when the representations are made.
- (3) "Interested party" means a person who is an interested party in relation to the application for the purposes of Chapter 4 of Part 6 (see section 102).
- (4) Rules under paragraph 3 may make provision as to the functions of an appointed representative.
- (5) The Secretary of State may direct a person (a "responsible person") to pay the fees and expenses of an appointed representative, if the Secretary of State thinks that the responsible person is interested in the hearing in relation to any representations that are the subject of the direction under paragraph 2(6).
- (6) If the Secretary of State gives a direction under sub-paragraph (5) and the appointed representative and the responsible person are unable to agree the amount of the fees and expenses, the amount must be determined by the Secretary of State.
- (7) The Secretary of State must cause the amount agreed between the appointed representative and the responsible person, or determined by the Secretary of State, to be certified.
- (8) An amount so certified is recoverable from the responsible person as a civil debt.

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SCHEDULE 4

Section 119

CORRECTION OF ERRORS IN DEVELOPMENT CONSENT DECISIONS

Correction of errors

- 1 (1) This paragraph applies if—
- (a) the decision-maker makes an order granting development consent, or refuses development consent, and
 - (b) the decision document contains a correctable error.
- (2) The decision document is—
- (a) in the case of an order granting development consent, the order;
 - (b) in the case of a refusal of development consent, the document recording the refusal.
- (3) A correctable error is an error or omission which—
- (a) is in a part of the decision document which records the decision, and
 - (b) is not part of the statement of reasons for the decision.
- (4) The appropriate authority may correct the error or omission if (but only if) the conditions in sub-paragraphs (5) and (7) are met.
- This is subject to sub-paragraph (11).
- (5) The condition is that, before the end of the relevant period—
- (a) the appropriate authority receives a written request to correct the error or omission from any person, or
 - (b) the appropriate authority sends a statement in writing to the applicant which explains the error or omission and states that the appropriate authority is considering making the correction.
- (6) The relevant period is—
- (a) if the decision document is an order granting development consent, the period specified in section 118(1)(b);
 - (b) if the decision document is the document recording a refusal of development consent, the period specified in section 118(2)(b).
- (7) The condition is that the appropriate authority informs each relevant local planning authority that the request mentioned in sub-paragraph (5)(a) has been received or the statement mentioned in sub-paragraph (5)(b) has been sent (as the case may be).
- (8) If—
- (a) the decision document is an order granting development consent, and
 - (b) the order was required to be contained in a statutory instrument,
- the power conferred by sub-paragraph (4) may be exercised only by order contained in a statutory instrument.
- (9) If the instrument containing the order is made by the Commission, the Statutory Instruments Act 1946 (c. 36) applies in relation to the instrument as if it had been made by a Minister of the Crown.
- (10) As soon as practicable after the instrument is made, the appropriate authority must deposit a copy of it in the office of the Clerk of the Parliaments.

- (11) The power conferred by sub-paragraph (4) may not be exercised in relation to provision included in an order granting development consent by virtue of any of paragraphs 27 to 30 of Schedule 5 (deemed consent under Coast Protection Act 1949 (c. 74) and deemed licences under Food and Environment Protection Act 1985 (c. 48)).

Correction notice

- 2 (1) If paragraph 1(5)(a) or (b) applies the appropriate authority must issue a notice in writing (a “correction notice”) which—
- (a) specifies the correction of the error or omission, or
 - (b) gives notice of the decision not to correct the error or omission.
- (2) The appropriate authority must issue the correction notice as soon as practicable after making the correction or deciding not to make the correction.
- (3) The appropriate authority must give the correction notice to—
- (a) the applicant,
 - (b) each relevant local planning authority, and
 - (c) if the correction was requested by any other person, that person.
- (4) The Secretary of State may by order specify any other person or description of person to whom a correction notice must be given.

Effect of a correction

- 3 (1) If a correction is made in pursuance of paragraph 1—
- (a) the original decision and the decision document containing it continue in force, and
 - (b) the decision document is treated as corrected as specified in the correction notice issued under paragraph 2 with effect from the date the correction notice is issued, or, if the correction is required to be made by order contained in a statutory instrument, the date specified in the order.
- (2) If a correction is not made—
- (a) the original decision continues to have full force and effect, and
 - (b) nothing in this Schedule affects anything done in pursuance of or in respect of the original decision.
- (3) “The original decision” means the decision to—
- (a) make an order granting development consent, or
 - (b) refuse development consent.

Interpretation

- 4 In this Schedule—
- “the applicant” means the person who made the application to which the decision relates;
 - “the appropriate authority” means—
 - (a) the Commission where the decision-maker is a Panel or the Council;

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(b) the Secretary of State where the decision-maker is the Secretary of State;

“a relevant local planning authority” means a local planning authority for all or any part of the area in which the land to which the decision relates is situated.

SCHEDULE 5

Section 120

PROVISION RELATING TO, OR TO MATTERS ANCILLARY TO, DEVELOPMENT

PART 1

THE MATTERS

- 1 The acquisition of land, compulsorily or by agreement.
- 2 The creation, suspension or extinguishment of, or interference with, interests in or rights over land (including rights of navigation over water), compulsorily or by agreement.
- 3 The abrogation or modification of agreements relating to land.
- 4 Carrying out specified excavation, mining, quarrying or boring operations in a specified area.
- 5 The operation of a generating station.
- 6 Keeping electric lines installed above ground.
- 7 The use of underground gas storage facilities.
- 8 The sale, exchange or appropriation of Green Belt land.
- 9 Freeing land from any restriction imposed on it by or under the [Green Belt \(London and Home Counties\) Act 1938 \(c. xciii\)](#), or by a covenant or other agreement entered into for the purposes of that Act.
- 10 The protection of the property or interests of any person.
- 11 The imposition or exclusion of obligations or liability in respect of acts or omissions.
- 12 Carrying out surveys or taking soil samples.
- 13 Cutting down, uprooting, topping or lopping trees or shrubs or cutting back their roots.
- 14 The removal, disposal or re-siting of apparatus.
- 15 Carrying out civil engineering or other works.
- 16 The diversion of navigable or non-navigable watercourses.
- 17 The stopping up or diversion of highways.
- 18 Charging tolls, fares and other charges.
- 19 The designation of a highway as a trunk road or special road.

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- 20 The specification of the classes of traffic authorised to use a highway.
- 21 The appropriation of a highway for which the person proposing to construct or improve a highway is the highway authority.
- 22 The transfer to the person proposing to construct or improve a highway of a highway for which that person is not the highway authority.
- 23 The specification of the highway authority for a highway.
- 24 The operation and maintenance of a transport system.
- 25 Entering into an agreement for the provision of police services.
- 26 The discharge of water into inland waters or underground strata.
- 27 Deeming consent under section 34 of the Coast Protection Act 1949 (c. 74) to have been given by the Secretary of State for operations specified in the order and subject to such conditions as may be specified in the order.
- 28 Deeming any such conditions to have been imposed by the Secretary of State under that section.
- 29 Deeming a licence under Part 2 of the Food and Environment Protection Act 1985 (c. 48) to have been issued by a specified licensing authority for operations specified in the order and subject to such provisions as may be specified in the order.
- 30 Deeming any such provisions to have been included in the licence by the specified licensing authority by virtue of that Act.
- 31 The creation of a harbour authority.
- 32 Changing the powers and duties of a harbour authority.
- 33 The transfer of property, rights, liabilities, or functions.
- 34 The transfer, leasing, suspension, discontinuance and revival of undertakings.
- 35 The payment of contributions.
- 36 The payment of compensation.
- 37 The submission of disputes to arbitration.
- 38 The alteration of borrowing limits.

PART 2

INTERPRETATION

- 39 (1) This paragraph applies for the purposes of this Schedule.
- (2) “Transport system” means any of the following—
 - (a) a railway,
 - (b) a tramway,
 - (c) a trolley vehicle system,
 - (d) a system using a mode of guided transport prescribed by order under section 2 of the Transport and Works Act 1992 (c. 42).
- (3) “Maintenance”, in relation to a transport system, includes the inspection, repair, adjustment, alteration, removal, reconstruction or replacement of the system.

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- (4) The following terms have the meanings given by section 67(1) (interpretation) of the Transport and Works Act 1992 (c. 42)—
- “guided transport”,
 - “tramway”,
 - “trolley vehicle system”.

SCHEDULE 6

Section 153

CHANGES TO, AND REVOCATION OF, ORDERS GRANTING DEVELOPMENT CONSENT

Preliminary

- 1 (1) This paragraph applies for the purposes of this Schedule.
- (2) “The applicant”, in relation to a development consent order, means the person who applied for the order.
- (3) “A successor in title of the applicant” means a person who—
- (a) derives title to the land from the applicant (whether directly or indirectly), and
 - (b) has an interest in the land.
- (4) “The appropriate authority” means—
- (a) in a case where a Panel or the Council made the order granting development consent, the Commission;
 - (b) in a case where the Secretary of State made the order, the Secretary of State.
- (5) “Development consent order” means an order granting development consent.
- (6) “The land”, in relation to a development consent order, means the land to which the order relates or any part of that land.

Non-material changes

- 2 (1) The appropriate authority may make a change to a development consent order if it is satisfied that the change is not material.
- This is subject to sub-paragraph (13).
- (2) In deciding whether a change is material, the appropriate authority must have regard to the effect of the change, together with any previous changes made under this paragraph, on the development consent order as originally made.
- (3) The power conferred by sub-paragraph (1) includes power—
- (a) to impose new requirements in connection with the development for which consent is granted by the development consent order;
 - (b) to remove or alter existing requirements.
- (4) The power conferred by sub-paragraph (1) may be exercised only on an application made to the Commission by or on behalf of—
- (a) the applicant or a successor in title of the applicant,

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- (b) a person with an interest in the land, or
 - (c) any other person for whose benefit the development consent order has effect.
- (5) An application under sub-paragraph (4) must be made in the prescribed form and manner.
- (6) Sub-paragraph (7) applies in relation to an application under sub-paragraph (4) made by or on behalf of a person with an interest in some, but not all, of the land to which the development consent order relates.
- (7) The application may be made only in respect of so much of the order as affects the land in which the person has an interest.
- (8) The appropriate authority must comply with such requirements as may be prescribed as to consultation and publicity in relation to the exercise of the power conferred by sub-paragraph (1).
- This is subject to sub-paragraphs (9) to (11).
- (9) If the development consent order was required to be contained in a statutory instrument, the power conferred by sub-paragraph (1) may be exercised only by order contained in a statutory instrument.
- (10) If the instrument containing the order is made by the Commission, the Statutory Instruments Act 1946 (c. 36) applies in relation to the instrument as if it had been made by a Minister of the Crown.
- (11) As soon as practicable after the instrument is made, the appropriate authority must deposit a copy of it in the office of the Clerk of the Parliaments.
- (12) If a change is made to a development consent order under the power conferred by sub-paragraph (1)—
- (a) the order continues in force,
 - (b) the appropriate authority must give notice of the change to the order to such persons as may be prescribed, and
 - (c) the change to the order takes effect from the date on which the notice is issued, or, if the change to the order is required to be made by order contained in a statutory instrument, the date specified in the order making the change.
- (13) The power conferred by sub-paragraph (1) may not be exercised in relation to provision included in an order granting development consent by virtue of any of paragraphs 27 to 30 of Schedule 5 (deemed consent under Coast Protection Act 1949 (c. 74) and deemed licences under Food and Environment Protection Act 1985 (c. 48)).

Changes to, and revocation of, orders granting development consent

- 3 (1) The appropriate authority may by order make a change to, or revoke, a development consent order.
- (2) The power conferred by sub-paragraph (1) may be exercised only in accordance with—
- (a) the following provisions of this paragraph, and
 - (b) paragraphs 4 and 5.

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- (3) The power may be exercised without an application being made if the appropriate authority is satisfied that—
- (a) the development consent order contains a significant error, and
 - (b) it would not be appropriate for the error to be corrected by means of the power conferred by paragraph 1 of Schedule 4 or paragraph 2 of this Schedule.
- (4) The power may be exercised on an application made by or on behalf of—
- (a) the applicant or a successor in title of the applicant,
 - (b) a person with an interest in the land, or
 - (c) any other person for whose benefit the development consent order has effect.
- (5) The power may be exercised on an application made by a local planning authority if the appropriate authority is satisfied that—
- (a) the development consent order grants development consent for development on land all or part of which is in the local planning authority’s area,
 - (b) the development has begun but has been abandoned, and
 - (c) the amenity of other land in the local planning authority’s area or an adjoining area is adversely affected by the condition of the land.
- (6) Where the appropriate authority is the Commission, the power may be exercised on an application made by the Secretary of State if the Commission is satisfied that—
- (a) if the development were carried out in accordance with the development consent order, there would be a contravention of Community law or any of the Convention rights, or
 - (b) there are other exceptional circumstances that make it appropriate to exercise the power.
- (7) Where the appropriate authority is the Secretary of State, the power may be exercised without an application being made if the Secretary of State is satisfied that—
- (a) if the development were carried out in accordance with the development consent order, there would be a contravention of Community law or any of the Convention rights, or
 - (b) there are other exceptional circumstances that make it appropriate to exercise the power.
- (8) In this paragraph—
- “Community law” means—
 - (a) all the rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Community Treaties, and
 - (b) all the remedies and procedures from time to time provided for by or under the Community Treaties;
 - “the Convention rights” has the same meaning as in the Human Rights Act 1998 (c. 42).

Changes to, and revocation of, orders: supplementary

- 4 (1) An application under paragraph 3 must be—
- (a) made in the prescribed form and manner, and
 - (b) accompanied by information of a prescribed description.

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- (2) Sub-paragraph (3) applies in relation to an application under paragraph 3(4) made by or on behalf of a person with an interest in some, but not all, of the land to which the development consent order relates.
 - (3) The application may be made only in respect of so much of the order as affects the land in which the person has an interest.
 - (4) The Secretary of State may by regulations make provision about—
 - (a) the procedure to be followed before an application under paragraph 3 is made;
 - (b) the making of such an application;
 - (c) the decision-making process in relation to the exercise of the power conferred by paragraph 3(1);
 - (d) the making of the decision as to whether to exercise that power;
 - (e) the effect of a decision to exercise that power.
 - (5) Paragraphs (c) to (e) of sub-paragraph (4) apply in relation to the exercise of the power conferred by paragraph 3(1)—
 - (a) on an application under paragraph 3, or
 - (b) on the initiative of the appropriate authority under paragraph 3(3) or (7).
 - (6) If a development consent order is changed or revoked in the exercise of the power conferred by paragraph 3(1), the appropriate authority must give notice of the change or revocation to such persons as may be prescribed.
 - (7) If a development consent order was required to be contained in a statutory instrument, an order changing or revoking the development consent order made in the exercise of the power conferred by paragraph 3(1) must also be contained in a statutory instrument.
 - (8) If the instrument containing the order is made by the Commission, the Statutory Instruments Act 1946 (c. 36) applies in relation to the instrument as if it had been made by a Minister of the Crown.
 - (9) As soon as practicable after the instrument is made, the appropriate authority must deposit a copy of it in the office of the Clerk of the Parliaments.
- 5
- (1) This paragraph applies in relation to the power conferred by paragraph 3(1) to make a change to, or revoke, a development consent order.
 - (2) The power may not be exercised after the end of the period of 4 years beginning with the date on which the relevant development was substantially completed.
 - (3) Sub-paragraph (2) does not prevent the exercise of the power—
 - (a) in relation to requirements imposed by the development consent order in connection with the relevant development, or
 - (b) to revoke the development consent order.
 - (4) The power includes power—
 - (a) to require the removal or alteration of buildings or works;
 - (b) to require the discontinuance of a use of land;
 - (c) to impose specified requirements in connection with the continuance of a use of land;
 - (d) to impose new requirements in connection with the relevant development;

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- (e) to remove or alter existing requirements.
- (5) Subject to sub-paragraph (4)(a), the exercise of the power does not affect any building or other operations carried out in pursuance of the development consent order before the power is exercised.
- (6) The power may not be exercised in relation to provision included in an order granting development consent by virtue of any of paragraphs 27 to 30 of Schedule 5 (deemed consent under Coast Protection Act 1949 (c. 74) and deemed licences under Food and Environment Protection Act 1985 (c. 48)).
- (7) “The relevant development” is the development for which consent is granted by the development consent order.

Compensation

- 6 (1) This paragraph applies if—
- (a) in exercise of the power conferred by paragraph 3, the appropriate authority makes a change to, or revokes, a development consent order,
 - (b) the case in which the power is exercised is one falling within sub-paragraph (3), (6) or (7) of that paragraph,
 - (c) on a claim for compensation under this paragraph it is shown that a person with an interest in the land, or for whose benefit the development consent order has effect—
 - (i) has incurred expenditure in carrying out work which is rendered abortive by the change or revocation, or
 - (ii) has otherwise sustained loss or damage which is directly attributable to the change or revocation, and
 - (d) the claim is made to the appropriate authority in the prescribed manner and before the end of the prescribed period.
- (2) Compensation in respect of the expenditure, loss or damage is payable to the person by—
- (a) the appropriate authority, if the change or revocation is made in a case falling within paragraph 3(3);
 - (b) the Secretary of State, if the change or revocation is made in a case falling within paragraph 3(6) or (7).
- (3) The reference in sub-paragraph (1)(c)(i) to expenditure incurred in carrying out any work includes a reference to expenditure incurred —
- (a) in the preparation of plans for the purposes of the work, or
 - (b) on other similar matters preparatory to carrying out the work.
- (4) Subject to sub-paragraph (3), no compensation is to be paid under this paragraph—
- (a) in respect of any work carried out before the development consent order was made, or
 - (b) in respect of any other loss or damage arising out of anything done or omitted to be done before the development consent order was made (other than loss or damage consisting of depreciation of the value of an interest in land).
- (5) The Secretary of State may by regulations make provision about the assessment of compensation payable under this paragraph.

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- (6) The regulations may in particular include provision—
- (a) for the reference of disputes about compensation for depreciation to, and the determination of such disputes by, the Lands Tribunal, the Lands Tribunal for Scotland, the First-tier Tribunal or the Upper Tribunal;
 - (b) applying, with or without modifications, a provision of or made under an Act.
- 7 (1) In this paragraph “compensation for depreciation” means compensation payable under paragraph 6 in respect of loss or damage consisting of depreciation of the value of an interest in land.
- (2) The Secretary of State may by regulations make provision about the apportionment of compensation for depreciation between different parts of the land to which the claim for the compensation relates.
- (3) The regulations may in particular include provision about—
- (a) who is to make an apportionment;
 - (b) the persons to whom notice of an apportionment is to be given;
 - (c) how an apportionment is to be made;
 - (d) the reference of disputes about an apportionment to, and the determination of such disputes by, the Lands Tribunal, the Lands Tribunal for Scotland, the First-tier Tribunal or the Upper Tribunal.
- (4) The Secretary of State may by regulations make provision for, and in connection with, the giving of notice of compensation for depreciation.
- (5) The regulations may in particular include provision about—
- (a) the persons to whom notice of compensation for depreciation is to be given;
 - (b) the status of such a notice;
 - (c) the registration of such a notice.

SCHEDULE 7

Section 187

POWER TO DECLINE TO DETERMINE APPLICATIONS: AMENDMENTS

Town and Country Planning Act 1990 (c. 8)

- 1 TCPA 1990 is amended as follows.
- 2 (1) Section 70A (power of local planning authority to decline to determine subsequent application) is amended as follows.
- (2) At the end of subsection (4)(b) insert “or, if there has been such an appeal, it has been withdrawn”.
- (3) After subsection (4) insert—
- “(4A) A local planning authority in England may also decline to determine a relevant application if—
- (a) the condition in subsection (4B) is satisfied, and
 - (b) the authority think there has been no significant change in the relevant considerations since the relevant event.

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

- (4B) The condition is that—
- (a) in the period of two years ending with the date on which the application mentioned in subsection (4A) is received the Secretary of State has refused a similar application,
 - (b) the similar application was an application deemed to have been made by section 177(5), and
 - (c) the land to which the application mentioned in subsection (4A) and the similar application relate is in England.”
- (4) In subsection (7)(a) for “and (4)” substitute “, (4) and (4B)”.
- 3 (1) Section 70B (power of local planning authority to decline to determine overlapping application) is amended as follows.
- (2) In subsection (1) after “which is” insert “—
- (a) made on the same day as a similar application, or
 - (b)”.
- (3) After subsection (4) insert—
- “(4A) A local planning authority in England may also decline to determine an application for planning permission for the development of any land in England which is made at a time when the condition in subsection (4B) applies in relation to a similar application.
- (4B) The condition is that—
- (a) a similar application is under consideration by the Secretary of State,
 - (b) the similar application is an application deemed to have been made by section 177(5), and
 - (c) the Secretary of State has not issued his decision.”
- (4) After subsection (6) insert—
- “(7) If a local planning authority exercise their power under subsection (1)(a) to decline to determine an application made on the same day as a similar application, they may not also exercise that power to decline to determine the similar application.”

Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9)

- 4 The Listed Buildings Act is amended as follows.
- 5 In section 81A (power of local planning authority to decline to determine subsequent application) at the end of subsection (4)(b) insert “or, if there has been such an appeal, it has been withdrawn”.
- 6 (1) Section 81B (power of local planning authority to decline to determine overlapping application) is amended as follows.
- (2) In subsection (1) after “which is” insert “—
- (a) made on the same day as a similar application, or
 - (b)”.
- (3) After subsection (4) insert—

“(4A) If a local planning authority exercise their power under subsection (1)(a) to decline to determine an application made on the same day as a similar application, they may not also exercise that power to decline to determine the similar application.”

Planning and Compulsory Purchase Act 2004 (c. 5)

7 In section 121 of PCPA 2004 (commencement) after subsection (3) insert—

“(3A) Subsections (1) and (2) are subject to subsection (3B).

(3B) Section 43 (power to decline to determine applications) (so far as not in force on the day on which paragraph 7 of Schedule 7 of the Planning Act 2008 comes into force) comes into force on such day as may be appointed by order made by—

- (a) the Secretary of State in relation to England;
- (b) the Welsh Ministers in relation to Wales.”

SCHEDULE 8

Section 192

TREE PRESERVATION ORDERS: FURTHER AMENDMENTS

Forestry Act 1967 (c. 10)

1 The Forestry Act 1967 is amended as follows.

2 (1) Section 15 (trees subject to preservation orders under Planning Acts) is amended as follows.

(2) In subsection (1) for “consent under the order” substitute “relevant consent”.

(3) After subsection (1) insert—

“(1A) In subsection (1) “relevant consent” means—

- (a) in the case of trees in England and Wales, consent under tree preservation regulations;
- (b) in the case of trees in Scotland, consent under the tree preservation order.”

(4) In subsection (5) for the words from “application” to “thereunder” substitute “relevant application shall be entertained”.

(5) After subsection (5) insert—

“(5A) In subsection (5) “relevant application” means—

- (a) in the case of trees in England and Wales, an application under tree preservation regulations for consent under the regulations;
- (b) in the case of trees in Scotland, an application under a tree preservation order for consent under the order.”

3 In section 18 (felling directions), in subsection (5) for the words from “shall” to the end substitute “shall be sufficient authority for the felling, notwithstanding anything in—

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

- (a) tree preservation regulations, in the case of trees in England or Wales;
 - (b) the tree preservation order, in the case of trees in Scotland.
- 4 In section 21 (courses open to person adversely affected by felling direction), in subsection (7), after “a tree preservation order” insert “, or under tree preservation regulations.”.
- 5 In section 35 (interpretation of Part 2) at the appropriate place insert—
- ““tree preservation regulations” means regulations made under section 202A(1) of the Town and Country Planning Act 1990;”.
- 6 (1) Schedule 3 (proceedings under Town and Country Planning Acts in relation to tree preservation orders) is amended as follows.
- (2) In paragraph 2—
- (a) for “under the said Acts” substitute “under the Town and Country Planning (Scotland) Act 1997”,
 - (b) omit the words from “section 77” to “(for Scotland)”,
 - (c) for “provisions of the said Acts” substitute “provisions of that Act”, and
 - (d) omit “the said section 77 or (for Scotland)”.
- (3) After paragraph 2 insert—
- “2A (1) Where under section 15(2)(a) an application, on being referred to the appropriate national authority, falls to be dealt with under the Town and Country Planning Act 1990, the appropriate national authority must decide the application as if it were an application for consent for the felling of trees made under tree preservation regulations.
- (2) In this paragraph, “the appropriate national authority” means—
- (a) the Secretary of State in relation to England;
 - (b) the Welsh Ministers in relation to Wales.”.
- (4) In paragraph 3—
- (a) for “the Town and Country Planning Acts” substitute “the Town and Country Planning (Scotland) Act 1997”, and
 - (b) for “the Town and Country Planning Act 1990 or (for Scotland) the Town and Country Planning (Scotland) Act 1997” substitute “that Act”.
- (5) After paragraph 3 insert—
- “3A Where under section 15(3)(a) an application, on being referred to an authority who have made a tree preservation order, falls to be dealt with under the Town and Country Planning Act 1990, the authority must decide the application as if it were an application for consent for the felling of trees made under tree preservation regulations.”.

Town and Country Planning Act 1990 (c. 8)

- 7 TCPA 1990 is amended as follows.
- 8 In section 198(7) (provisions subject to which section has effect), for “This section” substitute “Tree preservation regulations”.

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

- 9 In section 200(1) (tree preservation orders do not affect things done or approved by Forestry Commissioners), for “A tree preservation order does not” substitute “Tree preservation regulations do not”.
- 10 In section 202(2) (effect of order made by Secretary of State or Welsh Ministers), for the words from “have the same effect” to the end substitute “, once it has taken effect in accordance with tree preservation regulations, have the same effect as if it had been made by the local planning authority under section 198(1).”
- 11 In section 206(1) (duty to plant replacement tree)—
- (a) in paragraph (a), for “the order” substitute “tree preservation regulations”, and
 - (b) in paragraph (b), for the words from “at a time” to the end of the paragraph substitute “at a prescribed time,”.
- 12 In section 207(1) (enforcement of duties to replace trees), in paragraph (b), for “a tree preservation order” substitute “tree preservation regulations”.
- 13 (1) Section 210 (penalties for non-compliance with tree preservation order) is amended as follows.
- (2) In subsection (1)—
- (a) for “a tree preservation order” substitute “tree preservation regulations”,
 - (b) in paragraph (a) omit the “or” at the end, and
 - (c) after paragraph (b) insert—
- “or
- (c) causes or permits the carrying out of any of the activities in paragraph (a) or (b),”.
- (3) In subsection (4), for “a tree preservation order” substitute “tree preservation regulations”.
- (4) In the side-note, for “order” substitute “regulations”.
- 14 In section 211 (preservation of trees in conservation areas)—
- (a) in subsection (1), for “which might by virtue of section 198(3)(a) be prohibited by a tree preservation order” substitute “which might by virtue of section 202C be prohibited by tree preservation regulations”, and
 - (b) in subsection (4), for “a tree preservation order” substitute “tree preservation regulations”.
- 15 In section 212 (power to disapply section 211) omit subsection (4).
- 16 In section 213(1)(b) (duty to plant replacement tree in conservation area), for the words from “at a time” to the end of the paragraph substitute “at a prescribed time,”.
- 17 In section 284(3)(h)(i) (decision relating to an application for consent under a tree preservation order is an action to which the section applies), for “a tree preservation order” substitute “tree preservation regulations”.
- 18 In section 329(3B)(i) (section 329(1)(cc) does not apply to things done in connection with tree preservation orders), for “regulations under section 199” substitute “tree preservation regulations”.
- 19 In section 336(1) (interpretation) at the appropriate place insert—
- ““tree preservation regulations” means regulations under section 202A(1);”.

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

Planning and Compensation Act 1991 (c. 34)

- 20 (1) Part 1 of Schedule 18 to the Planning and Compensation Act 1991 (compensation provisions that do not provide for interest) is amended as follows.
- (2) After the entry for section 186 of the Town and Country Planning Act 1990 (c. 8) insert—

“Section 202E of that Act

Date—

- (a) any consent required by tree preservation regulations is refused,
 - (b) any such consent is granted subject to conditions, or
 - (c) any approval required under such a condition is refused.”
-

- (3) Omit the entries for sections 203 and 204 of the Town and Country Planning Act 1990.

SCHEDULE 9

Section 194

USE OF LAND: POWER TO OVERRIDE EASEMENTS AND OTHER RIGHTS

Local Government, Planning and Land Act 1980 (c. 65)

- 1 (1) Paragraph 6 of Schedule 28 to the Local Government, Planning and Land Act 1980 (urban development corporations: power to override easements) is amended as follows.
- (2) After sub-paragraph (1) insert—
- “(1A) The use of any land in England which has been vested in or acquired by an urban development corporation or local highway authority for the purposes of this Part of this Act, whether the use is by the corporation or authority or by any other person, is authorised by virtue of this paragraph if it is in accordance with planning permission even if the use involves—
- (a) interference with an interest or right to which this paragraph applies, or
 - (b) a breach of a restriction as to the user of land arising by virtue of a contract.”
- (3) In sub-paragraph (2) after “sub-paragraph (1)” insert “or (1A)”.
- (4) In sub-paragraph (4)—
- (a) after “sub-paragraph (1)” insert “or (1A)”, and
 - (b) after “works on” insert “, or use of,”.
- (5) In sub-paragraph (7) after “sub-paragraph (1)” insert “or (1A)”.

New Towns Act 1981 (c. 64)

- 2 (1) Section 19 of the New Towns Act 1981 (power to override easements and other rights) is amended as follows.
- (2) After subsection (1) insert—
- “(1A) Subject to subsection (3), the use of any land in England which has been acquired by a development corporation or local highway authority for the purposes of this Act, whether the use is by the corporation or authority or by any other person, is authorised by virtue of this section if it is in accordance with planning permission even if the use involves—
- (a) interference with an interest or right to which this section applies, or
- (b) a breach of a restriction as to the user of land arising by virtue of a contract.”
- (3) In subsection (2) after “subsection (1)” insert “or (1A)”.
- (4) In subsection (4)—
- (a) after “subsection (1)” insert “or (1A)”, and
- (b) in paragraph (b) after “works on” insert “, or use of,”.
- (5) In subsection (7) after “subsection (1)” insert “or (1A)”.

Housing Act 1988 (c. 50)

- 3 (1) Paragraph 5 of Schedule 10 to the Housing Act 1988 (power to override easements) is amended as follows.
- (2) After sub-paragraph (1) insert—
- “(1A) The use of any land in England which has been vested in or acquired by a housing action trust for the purposes of Part 3 of this Act, whether the use is by the trust or by any other person, is authorised by virtue of this paragraph if it is in accordance with planning permission even if the use involves—
- (a) interference with an interest or right to which this paragraph applies, or
- (b) a breach of a restriction as to the user of land arising by virtue of a contract.”
- (3) In sub-paragraph (2) after “sub-paragraph (1)” insert “or (1A)”.
- (4) In sub-paragraph (4)—
- (a) after “sub-paragraph (1)” insert “or (1A)”, and
- (b) after “works on” insert “, or use of,”.
- (5) In sub-paragraph (7) after “sub-paragraph (1)” insert “or (1A)”.

Town and Country Planning Act 1990 (c. 8)

- 4 (1) Section 237 of TCPA 1990 (power to override easements and other rights) is amended as follows.
- (2) After subsection (1) insert—

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

“(1A) Subject to subsection (3), the use of any land in England which has been acquired or appropriated by a local authority for planning purposes (whether the use is by the local authority or by a person deriving title under them) is authorised by virtue of this section if it is in accordance with planning permission even if the use involves—

- (a) interference with an interest or right to which this section applies, or
- (b) a breach of a restriction as to the user of land arising by virtue of a contract.”

(3) In subsection (4)—

- (a) after “subsection (1)” insert “or (1A)”, and
- (b) in paragraph (b)(ii) after “works on” insert “, or use of,”.

(4) In subsection (7) after “subsection (1)” insert “or (1A)”.

Leasehold Reform, Housing and Urban Development Act 1993 (c. 28)

5 (1) Paragraph 5 of Schedule 20 to the Leasehold Reform, Housing and Urban Development Act 1993 (the Agency: power to override easements) is amended as follows.

(2) After sub-paragraph (1) insert—

“(1A) The use of any land in England which has been vested in or acquired by the Agency under this Part of this Act, whether the use is by the Agency or by any other person, is authorised by virtue of this paragraph if it is in accordance with planning permission even if the use involves—

- (a) interference with an interest or right to which this paragraph applies, or
- (b) a breach of a restriction as to the user of land arising by virtue of a contract.”

(3) In sub-paragraph (2) after “sub-paragraph (1)” insert “or (1A)”.

(4) In sub-paragraph (4)—

- (a) after “sub-paragraph (1)” insert “or (1A)”, and
- (b) after “works on” insert “, or use of,”.

(5) In sub-paragraph (7) after “sub-paragraph (1)” insert “or (1A)”.

Regional Development Agencies Act 1998 (c. 45)

6 (1) Paragraph 2 of Schedule 6 to the Regional Development Agencies Act 1998 (vesting and acquisition of land: power to override easements) is amended as follows.

(2) After sub-paragraph (1) insert—

“(1A) The use of any land in England which has been vested in or acquired by a regional development agency under this Act, whether the use is by the agency or by any other person, is authorised by virtue of this paragraph if it is in accordance with planning permission even if the use involves—

- (a) interference with an interest or right to which this paragraph applies, or

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

- (b) a breach of a restriction as to the user of land arising by virtue of a contract.”
- (3) In sub-paragraph (2) after “sub-paragraph (1)” insert “or (1A)”.
- (4) In sub-paragraph (4)—
 - (a) after “sub-paragraph (1)” insert “or (1A)”, and
 - (b) after “works on” insert “, or use of,”.
- (5) In sub-paragraph (7) after “sub-paragraph (1)” insert “or (1A)”.

SCHEDULE 10

Section 196

FURTHER PROVISIONS AS TO THE PROCEDURE FOR CERTAIN PROCEEDINGS

Town and Country Planning Act 1990 (c. 8)

- 1 TCPA 1990 is amended as follows.
- 2 In section 77 (reference of applications to Secretary of State) for subsection (6) substitute—
 - “(6) Subsection (5) does not apply to—
 - (a) an application for planning permission referred to a Planning Inquiry Commission under section 101; or
 - (b) an application referred to the Secretary of State under this section instead of being dealt with by a local planning authority in England.”
- 3 In section 78(5) (appeals against failure to take planning decisions)—
 - (a) for “79(1)” substitute “79(1) and (3)”, and
 - (b) for “and 288(10)(b)” substitute “, 288(10)(b) and 319A(7)(b)”.
- 4 In section 79 (determination of appeals under section 78) for subsection (3) substitute—
 - “(3) Subsection (2) does not apply to—
 - (a) an appeal referred to a Planning Inquiry Commission under section 101; or
 - (b) an appeal against a decision of a local planning authority in England.”
- 5 In section 175 (supplementary provisions about appeals against enforcement notices) after subsection (3) insert—
 - “(3A) Subsection (3) does not apply to an appeal against an enforcement notice issued by a local planning authority in England.”
- 6 In section 176(4) (determination of appeals: disapplication of section 175(3))—
 - (a) after “If” insert “section 175(3) would otherwise apply and”, and
 - (b) after “subsection (3)” insert “of this section”.
- 7 In section 195(5) (appeals against failure to give decision on application under section 191 or 192) for “section 288(10)(b)” substitute “sections 196(1A), 288(10)(b) and 319A(7)(d)”.

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

- 8 (1) Amend section 196 (further provision as to appeals to Secretary of State under section 195) as follows.
- (2) After subsection (1) insert—
- “(1A) Subsection (1) does not apply to an appeal against a decision of a local planning authority in England.”
- (3) In subsection (2) for “such an appeal” substitute “an appeal under section 195(1)”.
- 9 (1) Amend section 208 (appeals against notices under section 207) as follows.
- (2) After subsection (5) insert—
- “(5A) Subsection (5) does not apply to an appeal against a notice issued by a local planning authority in England.”
- (3) In subsection (6) for “such an appeal is brought” substitute “an appeal is brought under subsection (1)”.
- 10 In section 322 (orders as to costs of parties where no local inquiry held) after subsection (1) insert—
- “(1A) This section also applies to proceedings under this Act to which section 319A applies.”
- 11 In section 322A (orders as to costs: supplementary) after subsection (1) insert—
- “(1A) This section also applies where—
- (a) arrangements are made for a local inquiry or a hearing to be held pursuant to a determination under section 319A;
- (b) the inquiry or hearing does not take place; and
- (c) if it had taken place, the Secretary of State or a person appointed by the Secretary of State would have had power to make an order under section 250(5) of the Local Government Act 1972 requiring any party to pay any costs of any other party.”
- 12 (1) Amend section 323 (procedure on certain appeals and applications) as follows.
- (2) After subsection (1) insert—
- “(1A) The Secretary of State may by regulations prescribe the procedure to be followed in connection with proceedings under this Act which, pursuant to a determination under section 319A, are to be considered on the basis of representations in writing.”
- (3) In subsections (2) and (3) for “The regulations may” substitute “Regulations under this section may”.
- (4) In subsection (2)(a) for “such an inquiry or hearing” substitute “an inquiry or hearing to which rules under section 9 of the Tribunals and Inquiries Act 1992 would apply”.
- 13 (1) Amend section 333 (regulations and orders) as follows.
- (2) In subsection (4) for “and 319” substitute “, 319 and 319A(9)”.
- (3) After subsection (5) insert—

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

“(5A) No order may be made under section 319A(9) unless a draft of the instrument containing the order has been laid before, and approved by resolution of, each House of Parliament.”

14 (1) Amend Schedule 6 (determination of certain appeals by person appointed by Secretary of State) as follows.

(2) In paragraph 2 for sub-paragraph (5) substitute—

“(5) Sub-paragraph (2) does not apply—

- (a) in the case of an appeal to which section 319A applies; or
- (b) in the case of an appeal under section 78 if the appeal is referred to a Planning Inquiry Commission under section 101.”

(3) After sub-paragraph (9) of that paragraph insert—

“(10) Sub-paragraph (9) does not apply to references to the Secretary of State in section 319A (powers and duties of the Secretary of State in relation to the determination of procedure for certain proceedings).”

(4) In paragraph 3 for sub-paragraph (5) substitute—

“(5) Sub-paragraph (4) does not apply—

- (a) in the case of an appeal to which section 319A applies; or
- (b) in the case of an appeal under section 78 if the appeal is referred to a Planning Inquiry Commission under section 101.

(5A) In the case of an appeal to which section 319A applies, the Secretary of State must give the appellant, the local planning authority and any person who has made any representations mentioned in sub-paragraph (2) an opportunity to make further representations if the reasons for the direction raise matters with respect to which any of those persons have not made representations.”

(5) In sub-paragraph (6) of that paragraph after “(4)” insert “or (5A)”.

(6) In paragraph 6 after sub-paragraph (1) insert—

“(1A) Sub-paragraph (1) does not apply in the case of an appeal to which section 319A applies; but an appointed person may hold a hearing or local inquiry in connection with such an appeal pursuant to a determination under that section.”

(7) In sub-paragraph (2)(a) of that paragraph after “2(4)” insert “or this paragraph”.

Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9)

15 The Listed Buildings Act is amended as follows.

16 In section 12 (reference of applications to Secretary of State) after subsection (4) insert—

“(4A) Subsection (4) does not apply to an application referred to the Secretary of State under this section instead of being dealt with by a local planning authority in England.”

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

- 17 In section 20(4) (right of appeal in case of failure to give notice of decision) for “22(1) and 63(7)(b)” substitute “22(1) and (2A), 63(7)(b) and 88D(7)(b)”.
- 18 (1) Amend section 22 (determination of appeals under section 20) as follows.
- (2) After subsection (2) insert—
- “(2A) Subsection (2) does not apply to an appeal against a decision of a local planning authority in England.”
- (3) In subsection (3) for “the appeal” substitute “an appeal under section 20”.
- 19 In section 40 (supplementary provisions about appeals against listed building enforcement notices) after subsection (2) insert—
- “(2A) Subsection (2) does not apply to an appeal against a listed building enforcement notice issued by a local planning authority in England.”
- 20 In section 41(4) (determination of appeals: disapplication of section 40(2))—
- (a) after “If” insert “section 40(2) would otherwise apply and”, and
- (b) after “subsection (3)” insert “of this section”.
- 21 In section 74(3) (application of certain provisions in relation to buildings in conservation areas) after “82D” insert “, 88D”.
- 22 In section 89 (application of certain general provisions of TCPA 1990) after subsection (1) insert—
- “(1ZA) In the application of sections 322, 322A and 323 of that Act by virtue of this section, references to section 319A of that Act shall have effect as references to section 88D of this Act.”
- 23 (1) Amend section 93 (regulations and orders) as follows.
- (2) In subsection (4) after “75(7)” insert “, 88D(8)”.
- (3) After subsection (5) insert—
- “(5A) No order may be made under section 88D(8) unless a draft of the instrument containing the order has been laid before, and approved by resolution of, each House of Parliament.”
- 24 (1) Amend Schedule 3 (determination of certain appeals by person appointed by Secretary of State) as follows.
- (2) In paragraph 2 after sub-paragraph (4) insert—
- “(4A) Sub-paragraph (2) does not apply in the case of an appeal to which section 88D applies.”
- (3) After sub-paragraph (8) of that paragraph insert—
- “(9) Sub-paragraph (8) does not apply to references to the Secretary of State in section 88D (powers and duties of the Secretary of State in relation to the determination of procedure for certain proceedings).”
- (4) In paragraph 3 after sub-paragraph (4) insert—
- “(4A) Sub-paragraph (4) does not apply in the case of an appeal to which section 88D applies.”

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

(4B) In the case of an appeal to which section 88D applies, the Secretary of State must give the appellant, the local planning authority and any person who has made any representations mentioned in sub-paragraph (2) an opportunity to make further representations if the reasons for the direction raise matters with respect to which any of those persons have not made representations.”

(5) In sub-paragraph (5) of that paragraph after “(4)” insert “or (4B)”.

(6) In paragraph 6 after sub-paragraph (1) insert—

“(1A) Sub-paragraph (1) does not apply in the case of an appeal to which section 88D applies; but an appointed person may hold a hearing or local inquiry in connection with such an appeal pursuant to a determination under that section.”

(7) In sub-paragraph (2)(a) of that paragraph after “2(4)” insert “or this paragraph”.

Planning (Hazardous Substances) Act 1990 (c. 10)

25 The Hazardous Substances Act is amended as follows.

26 In section 20 (reference of applications to Secretary of State) after subsection (4) insert—

“(4A) Subsection (4) does not apply to an application referred to the Secretary of State under this section instead of being dealt with by a hazardous substances authority in England.”

27 In section 21 (appeals against decisions or failure to take decisions relating to hazardous substances) after subsection (5) insert—

“(5A) Subsection (5) does not apply to an appeal against a decision of a hazardous substances authority in England.”

28 In section 25(1) (appeals against hazardous substances contravention notices)—

(a) in paragraph (b)(v) after “principal Act” insert “and section 21A of this Act”, and

(b) in paragraph (c) for “that Act” substitute “the principal Act”.

29 In section 37 (application of certain general provisions of TCPA 1990) after subsection (2) insert—

“(3) In the application of sections 322, 322A and 323 of that Act by virtue of this section, references to section 319A of that Act shall have effect as references to section 21A of this Act.”

30 (1) Amend the Schedule (determination of appeals by person appointed by Secretary of State) as follows.

(2) In paragraph 2 after sub-paragraph (4) insert—

“(4A) Sub-paragraph (2) does not apply to an appeal against a decision of a hazardous substances authority in England.”

(3) After sub-paragraph (8) of that paragraph insert—

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

“(9) Sub-paragraph (8) does not apply to references to the Secretary of State in section 21A (powers and duties of the Secretary of State in relation to the determination of procedure for certain proceedings).”

(4) In paragraph 3 after sub-paragraph (4) insert—

“(4A) Sub-paragraph (4) does not apply in the case of an appeal against a decision of a hazardous substances authority in England.

(4B) In the case of an appeal to which section 21A applies, the Secretary of State must give the appellant, the hazardous substances authority and any person who has made any representations mentioned in sub-paragraph (2) an opportunity to make further representations if the reasons for the direction raise matters with respect to which any of those persons have not made representations.”

(5) In sub-paragraph (5) of that paragraph after “(4)” insert “or (4B)”.

(6) In paragraph 6 after sub-paragraph (1) insert—

“(1A) Sub-paragraph (1) does not apply in the case of an appeal against a decision of a hazardous substances authority in England; but an appointed person may hold a hearing or a local inquiry in connection with such an appeal pursuant to a determination under section 21A.”

(7) In sub-paragraphs (2)(a) and (3)(a) of that paragraph after “2(4)” insert “or this paragraph”.

SCHEDULE 11

Section 197

APPEALS: MISCELLANEOUS AMENDMENTS

Town and Country Planning Act 1990 (c. 8)

1 TCPA 1990 is amended as follows.

2 In section 78 (appeals against planning decisions and failure to take planning decisions) after subsection (4) insert—

“(4A) A notice of appeal under this section must be accompanied by such information as may be prescribed by a development order.

(4B) The power to make a development order under subsection (4A) is exercisable by—

- (a) the Secretary of State, in relation to England;
- (b) the Welsh Ministers, in relation to Wales.

(4C) Section 333(5) does not apply in relation to a development order under subsection (4A) made by the Welsh Ministers.

(4D) A development order under subsection (4A) made by the Welsh Ministers is subject to annulment in pursuance of a resolution of the National Assembly for Wales.”

- 3 In section 195 (appeals against refusal or failure to give decision on application under section 191 or 192) before subsection (2) insert—
- “(1B) A notice of appeal under this section must be—
- (a) served within such time and in such manner as may be prescribed by a development order;
 - (b) accompanied by such information as may be prescribed by such an order.
- (1C) The time prescribed for the service of a notice of appeal under this section must not be less than—
- (a) 28 days from the date of notification of the decision on the application; or
 - (b) in the case of an appeal under subsection (1)(b), 28 days from—
 - (i) the end of the period prescribed as mentioned in subsection (1)(b), or
 - (ii) as the case may be, the extended period mentioned in subsection (1)(b).
- (1D) The power to make a development order under subsection (1B) is exercisable by—
- (a) the Secretary of State, in relation to England;
 - (b) the Welsh Ministers, in relation to Wales.
- (1E) Section 333(5) does not apply in relation to a development order under subsection (1B) made by the Welsh Ministers.
- (1F) A development order under subsection (1B) made by the Welsh Ministers is subject to annulment in pursuance of a resolution of the National Assembly for Wales.”
- 4 (1) Section 208 (appeals against notices under section 207) is amended as follows.
- (2) For subsection (4) substitute—
- “(4) The notice shall—
- (a) indicate the grounds of the appeal,
 - (b) state the facts on which the appeal is based, and
 - (c) be accompanied by such information as may be prescribed.
- (4A) The power to make regulations under subsection (4)(c) is exercisable by—
- (a) the Secretary of State, in relation to England;
 - (b) the Welsh Ministers, in relation to Wales.
- (4B) Section 333(3) does not apply in relation to regulations under subsection (4)(c) made by the Welsh Ministers.
- (4C) Regulations under subsection (4)(c) made by the Welsh Ministers are subject to annulment in pursuance of a resolution of the National Assembly for Wales.”
- (3) In subsection (5) for “any such appeal” substitute “an appeal under subsection (1)”.

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Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9)

- 5 In section 21 of the Listed Buildings Act (appeals: supplementary provisions) after subsection (7) insert—
- “(8) Regulations under this Act may provide for an appeal under section 20 to be accompanied by such other information as may be prescribed.
- (9) The power to make regulations under subsection (8) is exercisable by—
- (a) the Secretary of State, in relation to England;
- (b) the Welsh Ministers, in relation to Wales.
- (10) Section 93(3) does not apply in relation to regulations under subsection (8) made by the Welsh Ministers.
- (11) Regulations under subsection (8) made by the Welsh Ministers are subject to annulment in pursuance of a resolution of the National Assembly for Wales.”

Planning (Hazardous Substances) Act 1990 (c. 10)

- 6 In section 21 of the Hazardous Substances Act (appeals against decisions and failure to take decisions relating to hazardous substances) after subsection (3) insert—
- “(3A) A notice of appeal under this section must be accompanied by such information as may be prescribed.
- (3B) The power to make regulations under subsection (3A) is exercisable by—
- (a) the Secretary of State, in relation to England;
- (b) the Welsh Ministers, in relation to Wales.
- (3C) Section 40(3) does not apply in relation to regulations under subsection (3A) made by the Welsh Ministers.
- (3D) Regulations under subsection (3A) made by the Welsh Ministers are subject to annulment in pursuance of a resolution of the National Assembly for Wales.”

SCHEDULE 12

Section 236

APPLICATION OF ACT TO SCOTLAND: MODIFICATIONS

- 1 Section 5(10) applies as if the reference to Part 11 of TCPA 1990 were a reference to Part 10 of the Town and Country Planning (Scotland) Act 1997 (c. 8).
- 2 Section 14 applies as if—
- (a) in subsection (1)—
- (i) the words “any of the following” were omitted, and
- (ii) paragraphs (a) to (f) and (h) to (p) were omitted, and
- (b) in subsection (2) for “sections 15 to 30” there were substituted “section 21”.
- 3 Section 32 applies as if—
- (a) in subsection (1)—
- (i) the reference to TCPA 1990 were a reference to section 26 of the Town and Country Planning (Scotland) Act 1997, and

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- (ii) the words “This is subject to subsections (2) and (3).” were omitted, and
 - (b) subsections (2) to (4) were omitted.
- 4 Section 33 applies as if—
- (a) in subsection (1)—
 - (i) for “none” there were substituted “neither”, and
 - (ii) paragraphs (b) and (d) to (j) were omitted, and
 - (b) subsections (2) to (4) were omitted.
- 5 Section 44 applies as if—
- (a) in subsection (2)(b), the words from “or” to the end were omitted,
 - (b) in subsection (3), references to section 5(1) of the Compulsory Purchase Act 1965 (c. 56) were references to section 17 of the Lands Clauses Consolidation (Scotland) Act 1845 (c. 19), and
 - (c) in subsection (6)—
 - (i) for paragraph (a) there were substituted—
 - “(a) a claim arising by virtue of paragraph 1 of the Second Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42)”, and
 - (ii) in paragraph (b), the reference to Part 1 of the Land Compensation Act 1973 (c. 26) were a reference to Part 1 of the Land Compensation (Scotland) Act 1973 (c. 56).
- 6 Section 52 applies as if—
- (a) in subsection (2)(c), the words from “or” to the end were omitted,
 - (b) in subsection (3)(b)—
 - (i) the reference to a freeholder were a reference to an owner, and
 - (ii) the reference to a mortgagee were a reference to a heritable creditor, and
 - (c) in subsection (11), references to section 5(1) of the Compulsory Purchase Act 1965 (c. 56) were references to section 17 of the Lands Clauses Consolidation (Scotland) Act 1845 (c. 19).
- 7 Section 53 applies as if—
- (a) in subsection (7), the reference to chattels were a reference to moveable property,
 - (b) in subsection (8), the reference to the Lands Tribunal were a reference to the Lands Tribunal for Scotland, and
 - (c) in subsection (11), in the definition of “statutory undertakers”, the reference to Part 11 of TCPA 1990 were a reference to Part 10 of the Town and Country Planning (Scotland) Act 1997 (c. 8).
- 8 Section 57 applies as if—
- (a) in subsection (2)(b), the words from “or” to the end were omitted,
 - (b) in subsection (3), references to section 5(1) of the Compulsory Purchase Act 1965 were references to section 17 of the Lands Clauses Consolidation (Scotland) Act 1845, and
 - (c) in subsection (6)—
 - (i) for paragraph (a) there were substituted—

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- “(a) a claim arising by virtue of paragraph 1 of the Second Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42)”, and
- (ii) in paragraph (b), the reference to Part 1 of the Land Compensation Act 1973 (c. 26) were a reference to Part 1 of the Land Compensation (Scotland) Act 1973 (c. 56).
- 9 Section 58 applies as if—
- (a) for subsection (6) there were substituted—
- “(6) Summary proceedings relating to an offence under this section may be commenced regardless of when the contravention occurred.”, and
- (b) in subsection (7), the reference to section 127 of the Magistrates' Courts Act 1980 (c. 43) were a reference to section 136 of the Criminal Procedure (Scotland) Act 1995 (c. 46).
- 10 Section 120(6) applies as if the references to an Act included references to an Act of the Scottish Parliament.
- 11 Section 127(8) applies as if, for the definition of “statutory undertakers” there were substituted—
- ““statutory undertakers” has the meaning given by section 214 of the Town and Country Planning (Scotland) Act 1997 and also includes the undertakers—
- (a) which are deemed to be statutory undertakers for the purposes of that Act, by virtue of another enactment;
- (b) which are statutory undertakers for the purposes of paragraphs 9 and 10 of the First Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42) (see paragraph 10A of that Schedule).”
- 12 Section 128(5) applies as if—
- (a) in the definition of “local authority”, the reference to section 7(1) of the Acquisition of Land Act 1981 (c. 67) were a reference to section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39), and
- (b) for the definition of “statutory undertakers” there were substituted—
- ““statutory undertakers” has the meaning given by section 214 of the Town and Country Planning (Scotland) Act 1997 (c. 8) and also includes the undertakers—
- (a) which are deemed to be statutory undertakers for the purposes of that Act, by virtue of another enactment;
- (b) which are statutory undertakers for the purposes of paragraphs 9 and 10 of the First Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (see paragraph 10A of that Schedule);”.
- 13 Section 129(2) applies as if—
- (a) in the definition of “local authority”, the reference to section 17(4) of the Acquisition of Land Act 1981 were a reference to section 2 of the Local Government etc. (Scotland) Act 1994, and

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- (b) for the definition of “statutory undertakers” there were substituted—
- ““statutory undertakers” has the meaning given by section 214 of the Town and Country Planning (Scotland) Act 1997 and also includes the undertakers which are deemed to be statutory undertakers for the purposes of that Act, by virtue of another enactment;”.
- 14 Section 130 applies as if—
- (a) in subsection (4), the references to section 21 of the [National Trust Act 1907 \(c. cxxxvi\)](#) and section 8 of the [National Trust Act 1939 \(c. lxxxvi\)](#) were references to section 22 of the Order confirmed by the [National Trust for Scotland Order Confirmation Act 1935 \(c. ii\)](#), and
- (b) in subsection (5), for the definition of “the National Trust” there were substituted—
- ““the National Trust” means the National Trust for Scotland for Places of Historic Interest or Natural Beauty incorporated by the Order confirmed by the [National Trust for Scotland Order Confirmation Act 1935 \(c. ii\)](#)”.
- 15 Section 131 applies as if—
- (a) in subsection (1), for “, open space or fuel or field garden allotment” there were substituted “or open space”, and
- (b) in subsection (12), for the words from “common” to “1981” there were substituted—
- “common” includes any town or village green;
“open space” means any land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground;”.
- 16 Section 132 applies as if—
- (a) in subsection (1), for “, open space or fuel or field garden allotment” there were substituted “or open space”, and
- (b) in subsection (12), for the words from “common” to “1981” there were substituted—
- “common” and “open space” have the same meanings as in section 131 (as modified by paragraph 15 of Schedule 12);”.
- 17 Section 134 applies as if—
- (a) for subsection (4) there were substituted—
- “(4) This subsection applies to—
- (a) an owner, lessee, tenant (whatever the tenancy period) or occupier of the order land,
- (b) a person known by the prospective purchaser (after diligent inquiry)—
- (i) to be interested in the order land, or
- (ii) to have power to sell and convey the order land,
- (c) a person who, if the order were fully implemented, the prospective purchaser thinks would or might be entitled—
- (i) as a result of the implementing of the order,

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- (ii) as a result of the order’s having been implemented, or
 - (iii) as a result of use of the order land once the order has been implemented,
- to make a relevant claim.
- (4A) In subsection (4)(c) “relevant claim” means a claim arising by virtue of paragraph 1 of the Second Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42).
- (4B) An expression that appears in subsection (4)(b) of this section and also in section 17 of the Lands Clauses Consolidation (Scotland) Act 1845 (c. 19) has in subsection (4)(b) the meaning that it has in section 17 of that Act.”, and
- (b) in subsection (7)(d) the words “only in accordance with section 118” were omitted.
- 18 Section 137(7) applies as if the reference to Part 11 of TCPA 1990 were a reference to Part 10 of the Town and Country Planning (Scotland) Act 1997 (c. 8).
- 19 Section 151 applies as if—
- (a) for paragraph (c), there were substituted—
 - “(c) section 10 of the Water (Scotland) Act 1980 (compensation for damage resulting from exercise of statutory powers)”, and
 - (b) paragraph (d) were omitted.
- 20 Section 152 applies as if—
- (a) in subsection (4), the reference to the Lands Tribunal were a reference to the Lands Tribunal for Scotland,
 - (b) for subsections (5) and (6) there were substituted—
 - “(5) Section 6 of the Railway Clauses Consolidation (Scotland) Act 1845 (which makes the construction of the railway subject to that Act and the Lands Clauses Consolidation (Scotland) Act 1845) applies in relation to authorised works as it applies in relation to the construction of a railway.
 - (6) Any rule or principle applied to the construction of section 6 of the Railway Clauses Consolidation (Scotland) Act 1845 must be applied to the construction of subsection (3) of this section (with any necessary modifications).”, and
 - (c) in subsection (7)—
 - (i) the reference to Part 1 of the Land Compensation Act 1973 were a reference to Part 1 of the Land Compensation (Scotland) Act 1973, and
 - (ii) in paragraph (c), for “17” there were substituted “15”.
- 21 Section 164 applies as if the references to a justice of the peace were references to a sheriff.
- 22 Section 165 applies as if—
- (a) in subsection (4), the reference to chattels were a reference to moveable property,

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- (b) in subsection (5), the reference to the Lands Tribunal were a reference to the Lands Tribunal for Scotland, and
 - (c) in subsection (6), the reference to sections 2 and 4 of the Land Compensation Act 1961 (c. 33) were a reference to sections 9 and 11 of the Land Compensation (Scotland) Act 1963 (c. 51).
- 23 Section 170 applies as if—
 - (a) in subsection (3)—
 - (i) for the words from “the”, where it first occurs, to “(c.49)” there were substituted “subsections (5) to (9) of section 135 of the Town and Country Planning (Scotland) Act 1997 (c. 8) (which relate to the execution and cost of certain works)”, and
 - (ii) the words from “section 276” to the end were omitted,
 - (b) in subsection (4), for “section 289” there were substituted “subsection (5) of section 135”, and
 - (c) subsection (5) were omitted.
- 24 Section 171 applies as if—
 - (a) the references to an injunction were references to an interdict, and
 - (b) in subsection (4), the references to the High Court and a county court were references to the Court of Session and the sheriff.
- 25 Section 229(5) applies as if the reference to section 233 of the Local Government Act 1972 (c. 70) were a reference to section 192 of the Local Government (Scotland) Act 1973 (c. 65).
- 26 Section 235 applies as if—
 - (a) for the definition of “building” there were substituted—

““building” has the meaning given by section 277(1) of the Town and Country Planning (Scotland) Act 1997 (c. 8);”,
 - (b) for the definition of “land” there were substituted—

““land” includes land covered with water and any building (as defined in section 277(1) of the Town and Country Planning (Scotland) Act 1997) and in relation to Part 7 must be read in accordance with section 159;”,
 - (c) for the definition of “local planning authority” there were substituted—

““local planning authority” means a planning authority within the meaning of section 1 of the Town and Country Planning (Scotland) Act 1997;”,
 - (d) in the definition of “planning permission”, the reference to Part 3 of TCPA 1990 were a reference to Part 3 of the Town and Country Planning (Scotland) Act 1997, and
 - (e) in the definition of “use”, the reference to section 336(1) of TCPA 1990 were a reference to section 277(1) of the Town and Country Planning (Scotland) Act 1997.
- 27 Part 1 of Schedule 5 applies as if paragraphs 4 to 6, 8, 9, 16 to 32 and 38 were omitted.

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SCHEDULE 13

Section 238

REPEALS

<i>Reference</i>	<i>Extent of repeal</i>
Forestry Act 1967 (c. 10)	In paragraph 2 of Schedule 3— (a) the words from “section 77” to “(for Scotland)”, and (b) “the said section 77 or (for Scotland)”.
Town and Country Planning Act 1990 (c. 8)	Section 61A(1). Section 198(3), (4), (6), (8) and (9). Section 199. Section 201. Section 202(3). Sections 203 to 205. Section 212(4). In section 284(3)(a), “for planning permission”. In Schedule 1, paragraph 17. In Schedule 1A, paragraph 9. In Schedule 4A, paragraph 2(4) and (5).
Environmental Protection Act 1990 (c. 43)	In Schedule 13, paragraph 10.
Planning and Compensation Act 1991 (c. 34)	Section 6(6). In Schedule 18, in Part 1, the entries for sections 203 and 204 of the Town and Country Planning Act 1990.
Planning and Compulsory Purchase Act 2004 (c. 5)	Section 15(2)(a) and (c). Section 17(1) and (2). Section 18(4) to (6). Section 42(3). Sections 46 to 48. Section 53. Section 122(5)(a). In section 122(6), “(a)”, In Schedule 6, paragraph 5.
Greater London Authority Act 2007 (c. 24)	Section 36.