

SCHEDULES

SCHEDULE 1

Section 1

PLANNING APPLICATIONS MADE TO SECRETARY OF STATE: FURTHER AMENDMENTS

Town and Country Planning Act 1990 (c. 8)

- 1 The Town and Country Planning Act 1990 is amended as follows.
- 2 (1) In section 2A (Mayor of London: applications of strategic importance) after subsection (1A) insert—
 - “(1B) Where this section applies to an application for planning permission made to the Secretary of State under section 62A, the Mayor of London may direct—
 - (a) that the application is to be treated as having been made to the local planning authority (and not to the Secretary of State under section 62A), and
 - (b) that the Mayor of London is to be the local planning authority for the purposes of determining the application.”
- (2) In consequence—
 - (a) in section 2A(2) after “(1)” insert “or (1B)”, and
 - (b) in section 2C(1) after “to whom the original application was made” insert “or to whom the original application would have been made had it not been made to the Secretary of State under section 62A”.
- 3 In section 58(1)(b) (planning permission may be granted on application to local planning authority) after “on application to the authority” insert “(or, in the cases provided in this Part, on application to the Secretary of State)”.
- 4 In section 59(2)(b) (development order may provide for planning permission to be granted on application to local planning authority) after “on application to the authority” insert “(or, in the cases provided in the following provisions, on application to the Secretary of State)”.
- 5 After section 76B insert—

“76C Provisions applying to applications made under section 62A

- (1) Sections 62(3) and (4), 65(5), 70 to 70C, 72(1) and (5) and 73A apply, with any necessary modifications, to an application for planning permission made to the Secretary of State under section 62A as they apply to an application for planning permission which is to be determined by the local planning authority.
- (2) Any requirements imposed by a development order by virtue of section 62, 65 or 71 or paragraph 8(6) of Schedule 1 may be applied by a development order, with or without modifications, to an application for planning permission made to the Secretary of State under section 62A.

Status: This is the original version (as it was originally enacted).

- (3) Where an application is made to the Secretary of State under section 62A(3) instead of to the authority to whom it would otherwise have been made, a development order may apply, with or without modifications, to the application any enactment that relates to applications of that kind when made to that authority.

76D Deciding applications made under section 62A

- (1) An application made to the Secretary of State under section 62A (“a direct application”) is to be determined by a person appointed by the Secretary of State for the purpose instead of by the Secretary of State, subject to section 76E.
- (2) Where a person has been appointed under subsection (1) or this subsection to determine a direct application then, at any time before the person has determined the application, the Secretary of State may—
- (a) revoke the person’s appointment; and
 - (b) appoint another person to determine the application instead.
- (3) A person appointed under this section to determine an application for planning permission made to the Secretary of State under section 62A has the same powers and duties that the Secretary of State has under section 76C.
- (4) Where a direct application is determined by a person appointed under this section, the person’s decision is to be treated as that of the Secretary of State.
- (5) Except as provided by Part 12, the validity of that decision is not to be questioned in any proceedings whatsoever.
- (6) It is not a ground of application to the High Court under section 288 that a direct application ought to have been determined by the Secretary of State and not by a person appointed under this section unless the applicant challenges the person’s power to determine the direct application before the person’s decision on the direct application is given.
- (7) Where any enactment (other than this section and section 319A)—
- (a) refers (or is to be read as referring) to the Secretary of State in a context relating to or capable of relating to an application made under section 62A (otherwise than by referring to the application having been made to the Secretary of State), or
 - (b) refers (or is to be read as referring) to anything (other than the making of the application) done or authorised or required to be done by, to or before the Secretary of State in connection with any such application,

then, so far as the context permits, the enactment is to be read, in relation to an application determined or to be determined by a person appointed under this section, as if the reference to the Secretary of State were or included a reference to that person.

76E Applications under section 62A: determination by Secretary of State

- (1) The Secretary of State may direct that an application made to the Secretary of State under section 62A (“a direct application”) is to be determined by the Secretary of State instead of by a person appointed under section 76D.
- (2) Where a direction is given under subsection (1), the Secretary of State must serve a copy of the direction on—
 - (a) the person, if any, appointed under section 76D to determine the application concerned,
 - (b) the applicant, and
 - (c) the local planning authority.
- (3) Where a direct application is to be determined by the Secretary of State in consequence of a direction under subsection (1)—
 - (a) in determining the application, the Secretary of State may take into account any report made to the Secretary of State by any person previously appointed to determine the application, and
 - (b) subject to that, the provisions of the planning Acts which are relevant to the application apply to it as if section 76D had never applied to it.
- (4) The Secretary of State may by a further direction revoke a direction under subsection (1) at any time before the determination of the direct application concerned.
- (5) Where a direction is given under subsection (4), the Secretary of State must serve a copy of the direction on—
 - (a) the person, if any, previously appointed under section 76D to determine the application concerned,
 - (b) the applicant, and
 - (c) the local planning authority.
- (6) Where a direction is given under subsection (4) in relation to a direct application—
 - (a) anything done by or on behalf of the Secretary of State in connection with the application which might have been done by a person appointed under section 76D to determine the application is, unless the person appointed under section 76D to determine the application directs otherwise, to be treated as having been done by that person, and
 - (b) subject to that, section 76D applies to the application as if no direction under subsection (1) had been given in relation to the application.”

6 In section 70A(2) (power to decline to determine planning application where Secretary of State has refused similar application in previous two years) after “has refused a similar application” insert “made to the Secretary of State under section 62A or”.

7 In section 70B(3) (power to decline to determine planning application where Secretary of State currently considering similar application) after “in pursuance of section” insert “62A,”.

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- 8 In section 78(2) (right to appeal where local planning authority has taken none of the listed steps in relation to an application) after “made such an application” insert “to the local planning authority”.
- 9 In section 284(3) (actions which may be questioned in legal proceedings only so far as provided by Part 12 of the 1990 Act) before paragraph (za) insert—
“(ya) any decision on an application made to the Secretary of State under section 62A;”.
- 10 In section 303 (fees for planning applications etc) as substituted by section 199 of the Planning Act 2008, after subsection (1) insert—
“(1A) The Secretary of State may by regulations make provision for the payment of a fee to the Secretary of State in respect of—
(a) any application made to the Secretary of State under section 62A;
(b) the giving of advice about applying under section 62A for any permission, approval or consent or for anything else for which an application may be made under that section.”
- 11 In section 319A(7) (proceedings for which Secretary of State must determine the procedure) before paragraph (a) insert—
“(za) an application made to the Secretary of State under section 62A;”.

Planning and Compulsory Purchase Act 2004 (c. 5)

- 12 In section 59(2) of the Planning and Compulsory Purchase Act 2004 (correctable errors: meaning of “inspector”) after “to determine appeals instead of the Secretary of State” insert “or appointed under section 76D of the principal Act to determine applications instead of the Secretary of State”.

SCHEDULE 2

Section 7

MODIFICATION OR DISCHARGE OF AFFORDABLE
HOUSING REQUIREMENTS: RELATED AMENDMENTS

- 1 The Town and Country Planning Act 1990 is amended as follows.
- 2 In section 5(3) (provisions for the purposes of which the Broads Authority is the sole district planning authority for the Broads) for “106B” substitute “106BC”.
- 3 (1) Section 106 (planning obligations) is amended as follows.
(2) In subsection (1) (which defines “planning obligation” for the purposes of that section and sections 106A and 106B) for “and 106B” substitute “to 106C”.
(3) In subsection (12) (sections 106 to 106B to be subject to regulations for charging on land of sums payable in connection with planning obligations) for “and 106B” substitute “to 106BC”.
- 4 (1) Section 106A (modification and discharge of planning obligations) is amended as follows.
(2) In subsection (1) (planning obligation to be modified or discharged by agreement or in accordance with sections 106A and 106B)—
(a) after “in accordance with” insert “—(i)”, and

- (b) after “section 106B” insert “, or
(ii) sections 106BA and 106BC.”
- (3) In subsection (8) (effect of determination that planning obligation is to have effect subject to modifications), after “determine” insert “under this section”.
- 5 (1) Section 106B (appeals in relation to applications under section 106A) is amended as follows.
- (2) In the heading, after “Appeals” insert “in relation to applications under section 106A”.
- (3) In subsection (1)(b) (application of section) after “determine” insert “under section 106A”.
- 6 (1) Section 106C (legal challenges relating to development consent obligations) is amended as follows.
- (2) In subsection (1) (challenges to Secretary of State’s failure to give notice under section 106A(7)), after “106A(7)” in both places insert “or 106BA(9)”.
- (3) After subsection (1) insert—
- “(1A) If no period is prescribed under section 106BA(9), the period of 6 weeks referred to in subsection (1)(b) that applies in relation to proceedings for failure to give notice as mentioned in subsection (9) of section 106BA begins with the expiry of the period mentioned in that subsection that applies in the applicant’s case.”
- (4) In subsection (2) (challenges to Secretary of State’s determination that planning obligation is to continue to have effect without modification), in paragraph (b), after “106A(7)” insert “or 106BA(9)”.
- (5) After subsection (2) insert—
- “(3) A court may entertain proceedings for questioning a determination by the Secretary of State on an application under section 106BA that a planning obligation shall be modified otherwise than in accordance with the application only if—
- (a) the proceedings are brought by a claim for judicial review, and
- (b) the claim form is filed during the period of 6 weeks beginning with the day on which notice of the determination is given under section 106BA(9).”
- 7 In section 319A (determination by Secretary of State of procedure by which certain types of proceedings are to be considered), in subsection (7) (proceedings to which the section applies), after paragraph (b) insert—
- “(ba) an appeal under section 106BC (appeals in relation to applications for modification or discharge of affordable housing requirements);”.
- 8 (1) Section 333 (regulations and orders) is amended as follows.
- (2) In subsection (4) (power to make orders under Act exercisable by statutory instrument), after “87,” insert “106BA(14),”.
- (3) After subsection (5) insert—

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

- “(5ZA) No order may be made under section 106BA(14) unless a draft of the instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament.”
- 9 (1) Schedule 6 (determination of certain appeals by person appointed by Secretary of State) is amended as follows.
- (2) In paragraph 1—
- (a) in sub-paragraph (1) (power of Secretary of State to prescribe classes of appeals under specified provisions to be determined by person appointed), after “106B,” insert “106BC,” and
- (b) after sub-paragraph (2) insert—
- “(2A) If no classes of appeals under section 106BC are prescribed by regulations under sub-paragraph (1), all appeals under that section are to be determined by a person appointed by the Secretary of State for the purpose instead of by the Secretary of State.”
- (3) In paragraph 2(1)(aa) (person appointed in relation to appeals under section 106B to have the same powers and duties as Secretary of State under that section), after “106B” insert “or 106BC”.
- 10 In Part 1 of Schedule 16 (provisions of the Planning Acts to which sections 314 to 319 apply), in the entry for Sections 106 to 106B, for “106B” substitute “106BC”.

SCHEDULE 3

Section 10

PERIODIC REVIEW OF MINERAL PLANNING PERMISSIONS

- 1 Schedule 14 to the Environment Act 1995 (periodic review of mineral planning permissions) is amended as follows.
- 2 Before paragraph 1 insert—
- “*Power to carry out periodic reviews*
- A1 The mineral planning authority for an area in England may, in accordance with the provisions of this Schedule, cause one or more periodic reviews to be carried out of the mineral permissions relating to a mining site.”
- 3 In paragraph 1 (duty to carry out periodic reviews), after “The mineral planning authority” insert “for an area in Wales”.
- 4 In paragraph 2(1) (interpretation), for the definition of “first review date” substitute—
- ““first review date”—
- (a) in relation to a mineral planning authority for an area in England, has the meaning given by paragraph 2A below, and
- (b) in relation to a mineral planning authority for an area in Wales, has the meaning given by paragraph 2B below;”.
- 5 After paragraph 2 insert—

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

“The first review date: mineral planning authorities in England

- 2A (1) In the application of this Schedule in relation to a mineral planning authority for an area in England, “first review date” means the date set by the authority in accordance with sub-paragraph (2) below as the first review date for the purposes of the first periodic review of the mineral permissions relating to a mining site.
- (2) That date may not be earlier than the relevant date found under paragraph 3 below in relation to the site.
- (3) This paragraph is subject to paragraphs 3A and 5 below (power to specify different relevant date, and postponement of first review date).

The first review date: mineral planning authorities in Wales

- 2B (1) In the application of this Schedule in relation to a mineral planning authority for an area in Wales, “first review date” in relation to a mining site means the relevant date found under paragraph 3 below in relation to the site.
- (2) This paragraph is subject to paragraphs 3A and 5 below (power to specify different relevant date, and postponement of first review date).”

- 6 (1) Paragraph 3 (the first review date) is amended as follows.
- (2) Before sub-paragraph (1) insert—
- “(A1) This paragraph has effect for the purposes of paragraphs 2A and 2B above.”
- (3) For “first review date” in each place substitute “relevant date”.
- (4) For the italic heading immediately before that paragraph substitute “The relevant date for the purposes of a first periodic review”.
- 7 In paragraph 3A (power to specify a first review date by order), for “first review date” in each place substitute “relevant date”.
- 8 (1) Paragraph 4 (service of notice of first periodic review) is amended as follows.
- (2) Before sub-paragraph (1) insert—
- “(A1) This paragraph applies—
- (a) where a mineral planning authority for an area in England determines that it will carry out a periodic review of the mineral permissions relating to a mining site, and that periodic review is the first periodic review of the permissions relating to that site, and
- (b) in relation to the first periodic review by a mineral planning authority for an area in Wales of the mineral permissions relating to a mining site.”
- (3) In sub-paragraph (1)—
- (a) omit “of the mineral permissions relating to a mining site”, and
- (b) for “that site” substitute “the site to which the review relates”.

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

- 9 (1) Paragraph 12 (second and subsequent periodic reviews) is amended as follows.
- (2) Before sub-paragraph (1) insert—
- “(A1) This paragraph applies—
- (a) where a mineral planning authority for an area in England determines that it will carry out a periodic review of the mineral permissions relating to a mining site, and that periodic review is the second or a subsequent periodic review of the permissions relating to that site, and
- (b) in relation to the second or any subsequent periodic review by a mineral planning authority for an area in Wales of the mineral permissions relating to a mining site.
- (A2) In the application of this paragraph in relation to a mineral planning authority for an area in England “the review date” means the date set by the authority as the review date for the purposes of the periodic review.
- (A3) That date may not be earlier than the relevant date found under sub-paragraph (1) below in relation to the site.
- (A4) In the application of this paragraph in relation to a mineral planning authority for an area in Wales “the review date” means the relevant date found under sub-paragraph (1) below in relation to the site.”
- (3) In sub-paragraph (1), for ““review date”” substitute ““relevant date””.
- (4) In sub-paragraph (2)—
- (a) omit the “and” at the end of paragraph (a), and
- (b) at the end of paragraph (b) insert “, and
- (c) paragraph 4(A1) were omitted.”

SCHEDULE 4

Section 16

NEW SCHEDULE 1A TO THE COMMONS ACT 2006

In the Commons Act 2006, after Schedule 1 insert—

“SCHEDULE 1A

Section 15C

EXCLUSION OF RIGHT UNDER SECTION 15

<i>Trigger events</i>	<i>Terminating events</i>
1. An application for planning permission in relation to the land which would be determined under section 70 of the 1990 Act is first publicised in accordance with requirements imposed by a development order by virtue of section 65(1) of that Act.	(a) The application is withdrawn. (b) A decision to decline to determine the application is made under section 70A of the 1990 Act. (c) In circumstances where planning permission is refused, all means of challenging the refusal in legal proceedings in the United Kingdom are exhausted and the decision is upheld.

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

<i>Trigger events</i>	<i>Terminating events</i>
<p>2. An application for planning permission made in relation to the land under section 293A of the 1990 Act is first publicised in accordance with subsection (8) of that section.</p>	<p>(d) In circumstances where planning permission is granted, the period within which the development to which the permission relates must be begun expires without the development having been begun.</p> <p>(a) The application is withdrawn.</p> <p>(b) In circumstances where planning permission is refused, all means of challenging the refusal in legal proceedings in the United Kingdom are exhausted and the decision is upheld.</p> <p>(c) In circumstances where planning permission is granted, the period within which the development to which the permission relates must be begun expires without the development having been begun.</p>
<p>3. A draft of a development plan document which identifies the land for potential development is published for consultation in accordance with regulations under section 17(7) of the 2004 Act.</p>	<p>(a) The document is withdrawn under section 22(1) of the 2004 Act.</p> <p>(b) The document is adopted under section 23(2) or (3) of that Act (but see paragraph 4 of this Table).</p>
<p>4. A development plan document which identifies the land for potential development is adopted under section 23(2) or (3) of the 2004 Act.</p>	<p>(a) The document is revoked under section 25 of the 2004 Act.</p> <p>(b) A policy contained in the document which relates to the development of the land in question is superseded by another policy by virtue of section 38(5) of that Act.</p>
<p>5. A proposal for a neighbourhood development plan which identifies the land for potential development is published by a local planning authority for consultation in accordance with regulations under paragraph 4(1) of Schedule 4B to the 1990 Act as it applies by virtue of section 38A(3) of the 2004 Act.</p>	<p>(a) The proposal is withdrawn under paragraph 2(1) of Schedule 4B to the 1990 Act (as it applies by virtue of section 38A(3) of the 2004 Act).</p> <p>(b) The plan is made under section 38A of the 2004 Act (but see paragraph 6 of this Table).</p>
<p>6. A neighbourhood development plan which identifies the land for potential development is made under section 38A of the 2004 Act.</p>	<p>(a) The plan ceases to have effect.</p> <p>(b) The plan is revoked under section 61M of the 1990 Act (as it applies by virtue of section 38C(2) of the 2004 Act).</p> <p>(c) A policy contained in the plan which relates to the development of the land in question is superseded by another policy by virtue of section 38(5) of the 2004 Act.</p>
<p>7. A development plan for the purposes of section 27 or 54 of the 1990 Act, or anything treated as contained in such a</p>	<p>The plan ceases to have effect by virtue of paragraph 1 of Schedule 8 to the 2004 Act.</p>

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

<i>Trigger events</i>	<i>Terminating events</i>
<p>plan by virtue of Schedule 8 to the 2004 Act, continues to have effect (by virtue of that Schedule) on the commencement of section 16 of the Growth and Infrastructure Act 2013 and identifies the land for potential development.</p> <p>8. A proposed application for an order granting development consent under section 114 of the 2008 Act in relation to the land is first publicised in accordance with section 48 of that Act.</p> <p>9. An application for such an order in relation to the land is first publicised in accordance with section 56(7) of the 2008 Act.</p>	<p>(a) The period of two years beginning with the day of publication expires.</p> <p>(b) The application is publicised under section 56(7) of the 2008 Act (but see paragraph 9 of this Table).</p> <p>(a) The application is withdrawn.</p> <p>(b) In circumstances where the application is refused, all means of challenging the refusal in legal proceedings in the United Kingdom are exhausted and the decision is upheld.</p> <p>(c) In circumstances where an order granting development consent in relation to the land is made, the period within which the development to which the consent relates must be begun expires without the development having been begun.</p>

Interpretation

In this Schedule—

“the 1990 Act” means the Town and Country Planning Act 1990;

“the 2004 Act” means the Planning and Compulsory Purchase Act 2004;

“the 2008 Act” means the Planning Act 2008.

Notes

- 1 For the purposes of this Schedule, all means of challenging a decision in legal proceedings in the United Kingdom are to be treated as exhausted and the decision is to be treated as upheld if, at any stage in the proceedings, the time normally allowed for the making of an appeal or further appeal or the taking of any other step to challenge the decision expires without the appeal having been made or (as the case may be) the other step having been taken.
- 2 Paragraph 7 of the first column of the Table does not apply in relation to a part of a development plan for the purposes of section 27 or 54 of the 1990 Act which consists of—
 - (a) Part 1 of a unitary development plan or alterations to such a Part, or
 - (b) a structure plan or alterations to such a plan.”