

## SCHEDULE

Article 8

Transitional provisions in relation to functions exercised by borough planning authorities prior to the commencement date

### **Transitional provisions in connection with planning functions**

1.—(1) Subject to paragraphs 2 to 9, this paragraph applies as respects any functions which are transferred to the Corporation by virtue of this Order and in respect of which a borough planning authority ceases to be the local planning authority responsible for exercising those functions.

(2) Anything which before the commencement date was in the process of being done by, to or in relation to the borough planning authority in connection with any of the functions mentioned in sub-paragraph (1) may be continued after that date by, to or in relation to the Corporation and, if continued, must be treated as having been done by, to or in relation to the Corporation.

(3) Nothing in sub-paragraph (2) requires the Corporation to continue with any step mentioned in that paragraph.

### **Transitional arrangements: planning applications**

2.—(1) This paragraph applies as respects any application for planning permission or for a consent, approval or determination under the 1990 Act, or the Listed Buildings Act, or under any order or regulation made or having effect under those Acts which—

- (a) relates in whole or in part to any land in the development area;
- (b) was made before the commencement date to a borough planning authority; and
- (c) has not been determined by that date.

(2) The borough planning authority must transmit any application referred to in sub-paragraph (1) to the Corporation for determination.

(3) Where the borough planning authority transmits an application to the Corporation for determination, the borough planning authority must notify the applicant that the Corporation is to be the local planning authority for the application.

(4) Where the borough planning authority transmits an application to the Corporation for determination, the application must be accompanied by a copy of any representations received by the borough planning authority concerning the application.

(5) Where any planning document has been, or is in the process of being, issued by the borough planning authority in relation to an application before the day on which it is transmitted to the Corporation, no further planning document is required to be issued by the Corporation solely because the application has been transmitted.

### **Transitional provision: enforcement action**

3.—(1) This paragraph applies where a borough planning authority has before the commencement date in relation to any land in the development area—

- (a) issued an enforcement notice under section 172 of the 1990 Act<sup>(1)</sup>;
- (b) served a stop notice under section 173 of the 1990 Act<sup>(2)</sup>;
- (c) served a breach of condition notice under section 187A of the 1990 Act<sup>(3)</sup>; or

(1) 1990 c. 8. Section 172 was substituted by section 5(1) of the Planning and Compensation Act 1991 (c. 34).

(2) 1990 c. 8. Section 183 was amended by section 9(1) of the Planning and Compensation Act 1991 (c. 34).

(3) 1990 c. 8. Section 187A was inserted by section 2 of the Planning and Compensation Act 1991 (c. 34). There are other amendments to section 187A which are not relevant to this Order.

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- (d) served a discontinuance notice under regulation 8 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007(4).
- (2) The borough planning authority continues to be the local planning authority for the purposes of the notice—
  - (a) in the case of an enforcement notice, until the end of the period for compliance with the notice (construed in accordance with section 173(9) of the 1990 Act(5));
  - (b) in the case of a stop notice, until the notice ceases to have effect (construed in accordance with section 174(4) or 174(5) of the 1990 Act(6));
  - (c) in the case of a breach of condition notice, until the end of the period for compliance with the notice (construed in accordance with section 187A(7) of the 1990 Act);
  - (d) in the case of a discontinuance notice, until the end of the period within which the display or the use of the site, as the case may be, is to be discontinued.
- (3) The borough planning authority must transmit a copy of the notice to the Corporation.

**Transitional provision: planning appeals**

- 4.—(1) This paragraph applies where an appeal is made to the Secretary of State under—
- (a) section 78, 106BC, 174 or 208(1) of the 1990 Act(7);
  - (b) section 20 of the Listed Buildings Act(8);
  - (c) section 21 of the Planning (Hazardous Substances) Act 1990(9); or
  - (d) regulation 19(1) of the Tree Preservation Regulations,
- in respect of a decision or notice, or failure to make a decision or give notice by a borough planning authority in relation to any land in the development area before the commencement date.
- (2) The borough planning authority—
- (a) continues to be the local planning authority for the purposes of the appeal;
  - (b) must notify the Corporation of the appeal; and
  - (c) must transmit to the Secretary of State any representation received from the Corporation.

**Transitional provision: compensation in connection with planning functions**

- 5.—(1) Where a right to compensation arises under section 107, 108, 115 or 186 of the 1990 Act(10), section 28 or 29 of the Listed Buildings Act or regulation 24 of the Tree Preservation Regulations in consequence of action taken in relation to land within the development area by a borough planning authority, the liability to pay compensation lies with that authority.
- (2) Where—
- (a) the Secretary of State makes a determination—
    - (i) of an appeal against action taken by a borough planning authority as is mentioned in sub-paragraph (1); or

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(4) [S.I. 2007/783](#).

(5) [1990 c. 8](#). Section 173 was substituted by section 5(1) of the Planning and Compensation Act [1991 \(c. 34\)](#).

(6) [1990 c. 8](#). Sections 174(4) and 174(5) were amended by paragraph 28 of Schedule 7 to the Planning and Compensation Act [1991 \(c. 34\)](#).

(7) [1990 c. 8](#). Section 106BC was inserted by section 7(1) of the Growth and Infrastructure Act [2013 \(c. 27\)](#). There are other amendments to sections 78, 174 and 208 which are not relevant to this Order.

(8) [1990 c. 9](#). Section 20 was substituted by section 43(4) of the 2004 Act. There are amendments to section 20(4) made by section 196(4) of, and paragraphs 15 and 17 of Schedule 10 to, the Planning Act [2008 \(c. 29\)](#) which are not yet in force.

(9) [1990 c. 10](#). By virtue of section 3(4) of that Act, as amended by paragraph 38 of Schedule 22 to the Localism Act [2011 \(c. 20\)](#), the Corporation is, subject to this transitional provision, the hazardous substances authority for the development area.

(10) [1990 c. 8](#). There are amendments to sections 107, 108 and 186 which are not relevant to this Order.

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(ii) on a reference made to the Secretary of State by such an authority; and  
(b) that determination gives rise to a right to compensation,  
that authority is liable to pay compensation.

(3) Where, on or after the commencement date, the Secretary of State makes an order or serves a notice, as the case may be, under section 100, 104, 185 or 202 of, or paragraph 11 of Schedule 9 to, the 1990 Act<sup>(11)</sup> in respect of a matter arising before that date, which relates to land within the development area, the borough planning authority which was the local planning authority in relation to that land when the matter arose is liable to pay any compensation arising from the order or notice.

#### **Transitional provision: section 106 planning obligations**

6. A planning obligation entered into before the commencement date by agreement or otherwise under section 106 of the 1990 Act<sup>(12)</sup> in relation to any land in the development area which identifies a borough planning authority as the local planning authority by whom the obligation is enforceable is also enforceable by the Corporation.

#### **Transitional provision: local development documents**

7.—(1) Any local development document or joint local development document (“the document”) adopted by a borough planning authority under section 23 of the 2004 Act<sup>(13)</sup> before the commencement date has effect on and after that date as if it had been adopted—

- (a) in relation to such of the development area as corresponds to the area, or part of the area, to which the document relates, by the Corporation; and
- (b) in relation to such of its area outside the development area as corresponds to the area, or part of the area, to which the document relates, by the borough planning authority.

(2) Nothing in sub-paragraph (1) affects any power of the Corporation or the borough planning authority to request that a local development document to which sub-paragraph (1) relates is revoked.

(3) Where before the commencement date a borough planning authority has taken or started any step in relation to the preparation of a local development document or joint local development document (“the draft document”) under sections 19, 20, 26 or 28 of the 2004 Act<sup>(14)</sup> or under any order or regulation made or having effect under that Act, sub-paragraph (4) shall apply.

(4) Any step mentioned in sub-paragraph (3) must be treated on and after the commencement date as a step taken or started—

- (a) in relation to such of the development area as corresponds to the area, or part of the area, to which the draft document relates, by the Corporation; and
- (b) in relation to such of its area outside of the development area as corresponds to the area, or part of the area, to which the draft document relates, by the borough planning authority.

(5) Where sub-paragraph (4)(a) applies to a draft document the borough planning authority must send a copy of any representations received concerning the draft document to the Corporation.

(6) Where any planning document which has been, or is in the process of being, issued by the borough planning authority in relation to a draft document referred to in sub-paragraph (3) before the commencement date, no further planning document is required to be issued by the Corporation solely as a result of the transfer of functions to the Corporation by this Order.

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<sup>(11)</sup> 1990 c. 8. There are amendments to sections 100 and 202 which are not relevant to this Order.

<sup>(12)</sup> 1990 c. 8. Section 106 was substituted by section 12(1) of the Planning and Compensation Act 1991 (c. 34). There are other amendments to section 106 which are not relevant to this Order.

<sup>(13)</sup> 2004 c. 5. There are amendments to section 23 which are not relevant to this Order.

<sup>(14)</sup> 2004 c. 5. There are amendments to sections 19, 20 and 26, and prospective amendments to section 28, which are not relevant to this Order.

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(7) Where a draft document referred to in sub-paragraph (3) which is a development plan document (within the meaning of section 37(3) of the 2004 Act<sup>(15)</sup>) has been submitted for examination under section 20 of the 2004 Act before the commencement date and the person appointed to carry out that examination has not at that date made their recommendations—

- (a) nothing in this Order prevents that person from deciding that the document complies with the matters set out in section 20(5) of that Act; and
- (b) that person must send their recommendations when made to both the Corporation and the borough planning authority.

### **Transitional provision: neighbourhood planning**

**8.—**(1) This paragraph applies as respects any application for designation of a neighbourhood forum or neighbourhood area made under section 61F or 61G of the 1990 Act<sup>(16)</sup> which—

- (a) relates in whole or in part to any land in the development area;
- (b) was made before the commencement date to a borough planning authority; and
- (c) has not been determined by that date.

(2) The application referred to in sub-paragraph (1) must be treated as if it had been made—

- (a) in relation to such of the development area as corresponds to the area, or part of the area, to which the application relates, to the Corporation; and
- (b) in relation to such of its area outside of the development area as corresponds to the area, or part of the area, to which the application relates, to the borough planning authority.

(3) The borough planning authority must transmit any application referred to in sub-paragraph (1) to the Corporation for determination.

**9.—**(1) Any step taken or started before the commencement date by a borough planning authority in relation to an application transmitted to the Corporation under paragraph 8(3) must be treated on and after that date as a step taken or started—

- (a) in relation to the development area, or part of the development area, as corresponds to the area, or part of the area, to which the application relates, by the Corporation; and
- (b) in relation to such of its area outside of the development area as corresponds to the area, or part of the area, to which the application relates, by the borough planning authority.

(2) Where the borough planning authority transmits an application to the Corporation for determination under paragraph 8(3), the application must be accompanied by a copy of any representations received by the borough planning authority concerning the application.

(3) Where any planning document has been, or is in the process of being, issued by the borough planning authority in relation to an application before the day on which it is transmitted to the Corporation under paragraph 8(3), no further planning document is required to be issued by the Corporation solely because the application has been transmitted.

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<sup>(15)</sup> 2004 c. 5. Section 37(3) was substituted by section 180(6)(b) of the Planning Act 2008 (c. 29).

<sup>(16)</sup> 1990 c. 8. Sections 61F and 61G were inserted by Part 1 of Schedule 9 to the Localism Act 2011 (c. 20).