



Planning and Compensation Act 1991

1991 CHAPTER 34

PART I

TOWN AND COUNTRY PLANNING: ENGLAND AND WALES

Control over development

12 Planning obligations.

- (1) For section 106 of the principal Act (agreements regulating development or use of land) there is substituted—

“106 Planning obligations.

- (1) Any person interested in land in the area of a local planning authority may, by agreement or otherwise, enter into an obligation (referred to in this section and sections 106A and 106B as “a planning obligation”), enforceable to the extent mentioned in subsection (3)—
- (a) restricting the development or use of the land in any specified way;
 - (b) requiring specified operations or activities to be carried out in, on, under or over the land;
 - (c) requiring the land to be used in any specified way; or
 - (d) requiring a sum or sums to be paid to the authority on a specified date or dates or periodically.
- (2) A planning obligation may—
- (a) be unconditional or subject to conditions;
 - (b) impose any restriction or requirement mentioned in subsection (1) (a) to (c) either indefinitely or for such period or periods as may be specified; and
 - (c) if it requires a sum or sums to be paid, require the payment of a specified amount or an amount determined in accordance with the instrument by which the obligation is entered into and, if it requires

*Changes to legislation: There are currently no known outstanding effects for the
 Planning and Compensation Act 1991, Section 12. (See end of Document for details)*

the payment of periodical sums, require them to be paid indefinitely or for a specified period.

- (3) Subject to subsection (4) a planning obligation is enforceable by the authority identified in accordance with subsection (9)(d)—
 - (a) against the person entering into the obligation; and
 - (b) against any person deriving title from that person.
- (4) The instrument by which a planning obligation is entered into may provide that a person shall not be bound by the obligation in respect of any period during which he no longer has an interest in the land.
- (5) A restriction or requirement imposed under a planning obligation is enforceable by injunction.
- (6) Without prejudice to subsection (5), if there is a breach of a requirement in a planning obligation to carry out any operations in, on, under or over the land to which the obligation relates, the authority by whom the obligation is enforceable may—
 - (a) enter the land and carry out the operations; and
 - (b) recover from the person or persons against whom the obligation is enforceable any expenses reasonably incurred by them in doing so.
- (7) Before an authority exercise their power under subsection (6)(a) they shall give not less than twenty-one days' notice of their intention to do so to any person against whom the planning obligation is enforceable.
- (8) Any person who wilfully obstructs a person acting in the exercise of a power under subsection (6)(a) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (9) A planning obligation may not be entered into except by an instrument executed as a deed which—
 - (a) states that the obligation is a planning obligation for the purposes of this section;
 - (b) identifies the land in which the person entering into the obligation is interested;
 - (c) identifies the person entering into the obligation and states what his interest in the land is; and
 - (d) identifies the local planning authority by whom the obligation is enforceable.
- (10) A copy of any such instrument shall be given to the authority so identified.
- (11) A planning obligation shall be a local land charge and for the purposes of the ^{M1}Local Land Charges Act 1975 the authority by whom the obligation is enforceable shall be treated as the originating authority as respects such a charge.
- (12) Regulations may provide for the charging on the land of—
 - (a) any sum or sums required to be paid under a planning obligation; and
 - (b) any expenses recoverable by a local planning authority under subsection (6)(b),

Changes to legislation: There are currently no known outstanding effects for the Planning and Compensation Act 1991, Section 12. (See end of Document for details)

and this section and sections 106A and 106B shall have effect subject to any such regulations.

- (13) In this section “specified” means specified in the instrument by which the planning obligation is entered into and in this section and section 106A “land” has the same meaning as in the ^{M2}Local Land Charges Act 1975.

106A Modification and discharge of planning obligations.

- (1) A planning obligation may not be modified or discharged except—
- (a) by agreement between the authority by whom the obligation is enforceable and the person or persons against whom the obligation is enforceable; or
 - (b) in accordance with this section and section 106B.
- (2) An agreement falling within subsection (1)(a) shall not be entered into except by an instrument executed as a deed.
- (3) A person against whom a planning obligation is enforceable may, at any time after the expiry of the relevant period, apply to the local planning authority by whom the obligation is enforceable for the obligation—
- (a) to have effect subject to such modifications as may be specified in the application; or
 - (b) to be discharged.
- (4) In subsection (3) “the relevant period” means—
- (a) such period as may be prescribed; or
 - (b) if no period is prescribed, the period of five years beginning with the date on which the obligation is entered into.
- (5) An application under subsection (3) for the modification of a planning obligation may not specify a modification imposing an obligation on any other person against whom the obligation is enforceable.
- (6) Where an application is made to an authority under subsection (3), the authority may determine—
- (a) that the planning obligation shall continue to have effect without modification;
 - (b) if the obligation no longer serves a useful purpose, that it shall be discharged; or
 - (c) if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.
- (7) The authority shall give notice of their determination to the applicant within such period as may be prescribed.
- (8) Where an authority determine that a planning obligation shall have effect subject to modifications specified in the application, the obligation as modified shall be enforceable as if it had been entered into on the date on which notice of the determination was given to the applicant.
- (9) Regulations may make provision with respect to—

*Changes to legislation: There are currently no known outstanding effects for the
 Planning and Compensation Act 1991, Section 12. (See end of Document for details)*

- (a) the form and content of applications under subsection (3);
 - (b) the publication of notices of such applications;
 - (c) the procedures for considering any representations made with respect to such applications; and
 - (d) the notices to be given to applicants of determinations under subsection (6).
- (10) Section 84 of the ^{M3}Law of Property Act 1925 (power to discharge or modify restrictive covenants affecting land) does not apply to a planning obligation.

106B Appeals.

- (1) Where a local planning authority—
 - (a) fail to give notice as mentioned in section 106A(7); or
 - (b) determine that a planning obligation shall continue to have effect without modification,
 the applicant may appeal to the Secretary of State.
 - (2) For the purposes of an appeal under subsection (1)(a), it shall be assumed that the authority have determined that the planning obligation shall continue to have effect without modification.
 - (3) An appeal under this section shall be made by notice served within such period and in such manner as may be prescribed.
 - (4) Subsections (6) to (9) of section 106A apply in relation to appeals to the Secretary of State under this section as they apply in relation to applications to authorities under that section.
 - (5) Before determining the appeal the Secretary of State shall, if either the applicant or the authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
 - (6) The determination of an appeal by the Secretary of State under this section shall be final.
 - (7) Schedule 6 applies to appeals under this section.”
- (2) In section 296(2) of that Act (exercise of powers in relation to Crown land) after “authority-” there is inserted—
- “(aa) in relation to land which for the time being is Crown land—
 - (i) a planning obligation shall not be enforced by injunction; and
 - (ii) the power to enter land conferred by section 106(6) shall not be exercised;”.
- (3) After section 299 of that Act there is inserted—

“299A Crown planning obligations.

- (1) The appropriate authority in relation to any Crown interest or Duchy interest in land in the area of a local planning authority may enter into an obligation falling within any of paragraphs (a) to (d) of section 106(1) (in this section

Changes to legislation: There are currently no known outstanding effects for the Planning and Compensation Act 1991, Section 12. (See end of Document for details)

referred to as a “planning obligation”) enforceable to the extent mentioned in subsection (3).

- (2) A planning obligation may not be entered into except by an instrument executed as a deed which—
- (a) states that the obligation is a planning obligation for the purposes of this section;
 - (b) identifies the land in relation to which the obligation is entered into;
 - (c) identifies the appropriate authority who are entering into the obligation and states what the Crown or Duchy interest in the land is; and
 - (d) identifies the local planning authority by whom the obligation is enforceable.
- (3) A planning obligation entered into under this section is enforceable—
- (a) against any person with a private interest deriving from the Crown or Duchy interest stated in accordance with subsection (2)(c);
 - (b) by the authority identified in accordance with subsection (2)(d).
- (4) Subject to subsection (5), subsections (2), (4) to (8) and (10) to (13) of section 106 and sections 106A and 106B apply to a planning obligation entered into under this section as they apply to a planning obligation entered into under that section.
- (5) The consent of the appropriate authority must be obtained to—
- (a) the enforcement by injunction of a planning obligation against a person in respect of land which is Crown land; and
 - (b) the exercise, in relation to Crown land, of the power to enter land conferred by section 106(6) (as applied by subsection (4)).”

Commencement Information

II S. 12 wholly in force; s. 12 not in force at Royal Assent see s. 84(2); s. 12(1) in force to a certain extent at 25.10.1991 by S.I. 1991/2272, art. 3(1)(a); s. 12(1) in force for certain purposes at 25.11.1991 (so far as it is not already in force) by S.I. 1991/2728, art. 2; s.12(2)(3) wholly in force at 25.10.1991 by S.I. 1991/2272, art. 3(1)(b); s. 12(1) in force at 9.11.1992 in so far as not already in force by S.I. 1992/2831, art.2.

Marginal Citations

M1 1975 c. 76.
M2 1975 c. 76.
M3 1925 c. 20.

Changes to legislation:

There are currently no known outstanding effects for the Planning and Compensation Act 1991, Section 12.