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*Status: Point in time view as at 20/02/1999.*

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## SCHEDULES

### SCHEDULE 6

#### PLANNING CONDITIONS

#### PART IV

#### SUPPLEMENTARY

##### *Programming of requests for planning approvals*

- 26 A planning authority shall not be required to entertain a request for approval under Part II or III of this Schedule unless—
- (a) the nominated undertaker has deposited with the authority a document setting out its proposed programme with respect to the making of requests under that Part to the authority, and
  - (b) the request is accompanied by a document explaining how the matters to which the request relates fit into the overall scheme of the works authorised by this Part of this Act.

##### *Consultation*

- 27 (1) Where a planning authority considers that a request for approval under Part II or III of this Schedule relates to matters which may affect—
- (a) nature conservation,
  - (b) the conservation of the natural beauty or amenity of the countryside, or
  - (c) a site of archaeological or historic interest,
- it shall, within 5 days of receiving the request, invite the appropriate body or bodies to make representations.
- (2) Where under sub-paragraph (1) above a planning authority has invited a body to make representations about a request for approval under Part II or III of this Schedule, it shall not make any decision about the request until—
- (a) it has received representations from the body about the request,
  - (b) it has been informed by the body that it does not wish to make any representations about the request, or
  - (c) 21 days have elapsed since the date of the invitation.
- (3) An invitation under sub-paragraph (1) above shall specify the time limit for making representations.
- (4) For the purposes of this paragraph, the following are appropriate bodies in relation to the following matters—

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<b>Matter</b>	<b>Body</b>
Nature conservation.	The Nature Conservancy Council for England.
Conservation of the natural beauty or amenity of the countryside.	The [ <sup>F1</sup> Countryside Agency] .
Sites of archaeological or historic interest.	The Historic Buildings and Monuments Commission for England.

#### **Textual Amendments**

**F1** Words in [Sch. 6 Pt.IV para. 27\(4\)](#) substituted (20.2.1999) by [S.I. 1999/416, art. 3, Sch. 1 para. 18\(2\)](#)

- 28 (1) Where a planning authority considers that a request for approval under Part II or III of this Schedule relates to matters which may affect—
- the conservation of the natural beauty or amenity of inland or coastal waters or land associated with such waters,
  - the conservation of flora or fauna which are dependent on an aquatic environment, or
  - the use of such waters or land for recreational purposes,
- it shall, within 5 days of receiving the request, invite the Environment Agency to make representations.
- (2) Where under sub-paragraph (1) above a planning authority has invited the Environment Agency to make representations about a request for approval under Part II or III of this Schedule, it shall not make any decision about the request until—
- it has received representations from the Agency about the request,
  - it has been informed by the Agency that it does not wish to make any representations about the request, or
  - 21 days have elapsed since the date of the invitation.
- (3) An invitation under sub-paragraph (1) above shall specify the time limit for making representations.
- 29 (1) Where a planning authority considers that a request for approval under Part II or III of this Schedule relates to matters which may affect the Lee Valley Regional Park, it shall, within 5 days of receiving the request, invite the Lee Valley Regional Park Authority to make representations.
- (2) Where under sub-paragraph (1) above a planning authority has invited the Lee Valley Regional Park Authority to make representations about a request for approval under Part II or III of this Schedule, it shall not make any decision about the request until—
- it has received representations from the Authority about the request,
  - it has been informed by the Authority that it does not wish to make any representations about the request, or
  - 21 days have elapsed since the date of the invitation.
- (3) An invitation under sub-paragraph (1) above shall specify the time limit for making representations.

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### *Intervention by Secretary of State*

- 30 (1) The [<sup>F2</sup>Secretary of State] may by directions require a planning authority to refer any request for approval under Part II or III of this Schedule to [<sup>F3</sup>him].
- (2) In determining a request referred to [<sup>F3</sup>him] under this paragraph, the [<sup>F2</sup>Secretary of State] shall have the same powers as the authority making the reference.
- (3) The determination by the [<sup>F2</sup>Secretary of State] of a request referred to [<sup>F3</sup>him] under this paragraph shall be final.
- (4) Directions under this paragraph may—
- be given in relation to a specified request or requests of a specified description, and
  - cancel or vary previous directions under this paragraph.

#### **Textual Amendments**

- F2** Words in Sch. 6 para. 30 substituted (26.1.1998) by S.I. 1997/2971, art. 6(1), Sch. paras. 25, 32(c)(i)
- F3** Words in Sch. 6 para. 30 substituted (26.1.1998) by S.I. 1997/2971, art. 6(1), Sch. paras. 25, 32(c)(ii)

- 31 (1) The [<sup>F4</sup>Secretary of State] may by directions restrict a planning authority's powers in relation to the grant of approval under Part II or III of this Schedule.
- (2) Directions under this paragraph may—
- be given in relation to a specified approval or approvals of a specified description,
  - be expressed to have effect without limit of time or during a specified period, and
  - cancel or vary previous directions under this paragraph.

#### **Textual Amendments**

- F4** Words in Sch. 6 para. 31(1) substituted (26.1.1998) by S.I. 1997/2971, art. 6(1), Sch. paras. 25, 32(d)

### *Appeals*

- 32 (1) Where the nominated undertaker is aggrieved by a decision of a planning authority on a request for approval under Part II or III of this Schedule (including a decision under sub-paragraph (2) of paragraph 5, 6, 14, 15, 21 or 22 above), it may appeal to the [<sup>F5</sup>Secretary of State] by giving notice of the appeal in the prescribed form to [<sup>F6</sup>him] and the authority whose decision is appealed against within 28 days of notification of the decision.
- (2) On an appeal under this paragraph, the [<sup>F5</sup>Secretary of State] may allow or dismiss the appeal or vary the decision of the authority whose decision is appealed against, but may only make a determination involving the refusal of, or imposition of conditions on, approval on grounds open to that authority.
- (3) Where, following receipt by a planning authority of a request by the nominated undertaker for relevant approval, the authority does not notify the undertaker within the appropriate period—

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- (a) of its decision on the request, or
- (b) that the request has been referred to the <sup>F5</sup>Secretary of State] in accordance with directions under paragraph 30 above,
- this paragraph shall apply as if the authority had refused the request and notified the undertaker of its decision on the last day of the appropriate period.
- (4) For the purposes of sub-paragraph (3) above, the appropriate period is the period of 8 weeks beginning with the date on which the request was received by the planning authority or such extended period as may at any time be agreed upon in writing between the authority and the nominated undertaker.
- (5) The <sup>F5</sup>Secretary of State] may by regulations make provision for the extension of the appropriate period for the purposes of sub-paragraph (3) above in connection with the payment of fees by means of cheque.
- (6) The power to make regulations under sub-paragraph (5) above shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this paragraph, “prescribed” means prescribed by regulations made by the <sup>F5</sup>Secretary of State].

#### Textual Amendments

- F5** Words in Sch. 6 para. 32(1)(2)(3)(b)(5)(7) substituted (26.1.1998) by S.I. 1997/2971, art. 6(1), Sch. paras. 25, 32(e)(i)
- F6** Words in Sch. 6 para. 32(1) substituted (26.1.1998) by S.I. 1997/2971, art. 6(1), Sch. paras. 25, 32(e)(ii)

- 33 No appeal under section 78 of the <sup>M1</sup>Town and Country Planning Act 1990 (right to appeal against planning decisions and failure to take such decisions) may be made against a decision, or failure to notify a decision, in relation to which a right of appeal arises under paragraph 32 above.

#### Marginal Citations

- M1** 1990 c. 8.

- 34 (1) Unless the <sup>F7</sup>Secretary of State][<sup>F8</sup>directs] otherwise, <sup>F8</sup>his] functions in relation to the determination of an appeal under paragraph 32 above shall, instead of being carried out by <sup>F8</sup>him], be carried out by a person appointed by <sup>F8</sup>him] for the purpose.
- (2) The <sup>F7</sup>Secretary of State] may by a further direction revoke a direction under sub-paragraph (1) above at any time before the determination of the appeal.
- (3) A direction under sub-paragraph (1) or (2) above shall be served on the nominated undertaker and the planning authority whose decision is appealed against.
- (4) At any time before the determination of an appeal by a person appointed for the purpose under this paragraph, the <sup>F7</sup>Secretary of State] may revoke his appointment and appoint another person to determine the appeal instead.

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- (5) Where the function of determining an appeal under paragraph 32 above is transferred from one person to another, the person to whom the function is transferred shall consider the matter afresh, but the fact that the function is transferred shall not entitle any person to make fresh representations or to modify or withdraw any representations already made.
- (6) If the [<sup>F7</sup>Secretary of State][<sup>F9</sup>determines] an appeal which another person was previously appointed to determine, [<sup>F9</sup>he] may, in determining it, take into account any report made to [<sup>F9</sup>him] by that person.

#### Textual Amendments

- F7** Words in Sch. 6 para. 34(1)(2)(4)(6) substituted (26.1.1998) by S.I. 1997/2971, art. 6(1), Sch. paras. 25, 32(f)(i)
- F8** Words in Sch. 6 para. 34(1) substituted (26.1.1998) by S.I. 1997/2971, art. 6(1), Sch. paras. 25, 32(f)(ii)-(iv)
- F9** Words in Sch. 6 para. 34(6) substituted (26.1.1998) by S.I. 1997/2971, art. 6(1), Sch. paras. 25, 32(f)(v)-(vii)

- 35 The decision of the person appointed under paragraph 34 above, or, as the case may be, of the [<sup>F10</sup>Secretary of State], on an appeal under paragraph 32 above shall be final.

#### Textual Amendments

- F10** Words in Sch. 6 para. 35 substituted (26.1.1998) by S.I. 1997/2971, art. 6(1), Sch. paras. 25, 32(g)

- 36 (1) An appeal under paragraph 32 above shall be dealt with on the basis of written representations, unless the person deciding the appeal directs otherwise.
- (2) Subject to that, the [<sup>F11</sup>Secretary of State] may by regulations make such provision as [<sup>F12</sup>he thinks] fit about procedure in relation to appeals under paragraph 32 above.
- (3) Regulations under sub-paragraph (2) above may, in particular—
- (a) make provision for a time limit within which any person entitled to make representations must submit them in writing and any supporting documents,
  - (b) empower the person deciding an appeal to proceed to a decision taking into account only such written representations and supporting documents as were submitted within the time limit, and
  - (c) empower the person deciding an appeal, after giving written notice of his intention to do so to the nominated undertaker and the planning authority whose decision is appealed against, to proceed to a decision notwithstanding that no written representations were made within the time limit, if it appears to him that he has sufficient material before him to enable him to reach a decision on the merits of the case.
- (4) Regulations under sub-paragraph (2) above may, in relation to such a time limit as is mentioned in sub-paragraph (3)(a) above—
- (a) prescribe the time limit in the regulations, or
  - (b) enable the [Secretary of State] to give directions setting the time limit in a particular case or class of case.

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**Textual Amendments**

- F11** Words in Sch. 6 para. 36(2)(4)(b) substituted (26.1.1998) by S.I. 1997/2971, art. 6(1), Sch. paras. 25, 32(h)(i)
- F12** Words in Sch. 6 para. 36(2) substituted (26.1.1998) by S.I. 1997/2971, art. 6(1), Sch. paras. 25, 32(h)(ii)

- 37 (1) Regulations under paragraph 32 or 36 above may make different provision for different cases.
- (2) The power to make regulations under paragraph 32 or 36 above shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

*Interpretation*

- 38 (1) In this Schedule—
- “building” includes any structure, other than—
    - (a) anything in the nature of plant or machinery,
    - (b) any gate, fence, wall or other means of enclosure, or
    - (c) any tunnel, earthwork or railway track bed,

but does not include anything temporary or, except where forming part of a station and intended for public use, anything underground;

“deemed planning permission” means the planning permission deemed by section 9 above to be granted;

“development” has the same meaning as in the <sup>M2</sup>Town and Country Planning Act 1990; and

“permitted development” means development to which the deemed planning permission relates.
- (2) In this Schedule—
- <sup>F13</sup>(a) .....
  - (b) references to land within the relevant limits are to land within the limits of deviation for the scheduled works or within the limits of land to be acquired or used.
- (3) For the purposes of this Schedule, spoil or top soil is surplus if it is not used for the purposes of any of the works authorised by this Part of this Act.

**Textual Amendments**

- F13** Sch. 6 para. 38(2)(a) repealed (26.1.1998) by S.I. 1997/2971, art. 6(1), Sch. paras. 25, 32(j)

**Marginal Citations**

- M2** 1990 c. 8.

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