

PLANNING ACT 2008

EXPLANATORY NOTES

SUMMARY

3. [Parts 1 to 8](#) of the Act create a new system of development consent for nationally significant infrastructure projects. The new system covers certain types of energy, transport, water, waste water and waste projects. The number of applications and permits required for such projects is being reduced, compared with the position under current legislation.
4. A major role in the new system is to be played by a new independent body to be called the Infrastructure Planning Commission ('the Commission'). The Commission will be responsible for examining applications for development consent for nationally significant infrastructure projects. The Commission will also be responsible for deciding any such application when there is in force a relevant national policy statement. Development consent will be given in the form of an order which may also confer upon developers certain rights for the purpose of facilitating the project. These rights may include the compulsory acquisition of land where there is a compelling case in the public interest.
5. National policy statements will set the framework for decisions by the Commission. The Secretary of State will have a wide discretion as to how prescriptive the policy should be. However, the Secretary of State may designate a statement for the purposes of the Act only if there has been public consultation, an appraisal of sustainability has been carried out and parliamentary requirements have been met. Provision is made for addressing any blight caused by the publication of a national policy statement.
6. The Secretary of State (in these notes referred to as being female) will be responsible for determining an application for development consent herself where she has chosen not to designate (or keep in place) a national policy statement covering the relevant type of infrastructure. The Secretary of State will receive recommendations from the Commission and will have order making powers to facilitate developments which are similar to the powers of the Commission where it is the decision maker.
7. The Chair of the Commission will have to appoint Panels comprising three or more Commissioners, or a single Commissioner, to examine the applications submitted. The Act sets out the procedures for examination of an application. It is intended that in examining applications greater use is made of written representations with less reliance on oral representations; and restrictions are being placed on the use of cross examination by interested parties at a hearing.
8. The Act sets a timetable for examination of applications and decisions. A deadline of six months is stipulated for carrying out the examination procedure and a further three months is allowed for a Council (consisting of between five and nine Commissioners), a Panel or the Secretary of State to take a decision.
9. [Part 9](#) of the Act makes various alterations to the existing town and country planning regime (which will continue to apply to other types of development). Changes are being made in relation to the development plan. Changes are being made to the

power of local planning authorities to decline to determine subsequent applications. The right to compensation is being removed in certain circumstances where at least twelve months' notice is given of withdrawal of planning permission by a development order. Authorities are being given express power to make non-material changes to planning permissions. The Secretary of State is to be required to determine the appropriate procedure for certain proceedings (that is, local inquiry, hearing or written representations). Provisions are included concerning fees for planning applications and a power is created to enable fees to be imposed in connection with planning appeals.

10. **Part 10** adds certain matters within the field of town and country planning to the legislative competence of the National Assembly for Wales and confers upon Welsh Ministers additional powers to make orders on planning matters. This Part also makes provision relating to protection from blight.
11. **Part 11** empowers the Secretary of State to establish a Community Infrastructure Levy by regulations ("CIL regulations"). This is subject to the approval of a draft of the regulations by the House of Commons and the consent of the Treasury.

Part 1

12. **Part 1** establishes the Infrastructure Planning Commission. The Commission must issue a code of conduct and maintain a register of Commissioners' interests and may charge a fee for carrying out any of its functions. Schedule 1 (which is introduced by section 1) gives details of how Commissioners are to be appointed and their terms and conditions of appointment.

Part 2

13. **Part 2** defines a national policy statement for the purposes of the new development consent system, and sets out the requirements for consultation and parliamentary scrutiny before a national policy statement can be designated as such. This Part identifies the opportunities for bringing any legal challenges connected with a national policy statement.

Part 3

14. **Part 3** defines a nationally significant infrastructure project. The categories of project specified are within one of the following fields: energy, transport, water, waste water and waste. The Secretary of State has a limited order making power to amend the categories of project specified (she also has a power of direction under Part 4 which can be used to bring individual developments within the development consent regime).

Part 4

15. **Part 4** imposes a requirement for development consent in respect of development which is or forms part of a nationally significant infrastructure project. Where development consent is required there is no need to obtain consents under a variety of existing statutory regimes.

Part 5

16. **Part 5** sets out the requirements for an application to the Commission for an order granting development consent. The Secretary of State may issue model provisions for incorporation in a draft order to accompany an application. This Part specifies that the Commission must keep a register of applications.
17. This Part also contains provisions in respect of the pre-application consultation process which an applicant must undertake, and the giving of advice to the applicant or others by the Commission. It also contains powers for the Commission to authorise the serving

of a notice requesting information about interests in land and to authorise entry on land in specified circumstances.

Part 6

18. **Part 6** describes the process by which an application for an order granting development consent will be handled by the Commission. This Part is divided into chapters that specify the processes which will apply when an application is to be examined and decided by a Panel comprising several Commissioners (Chapter 2) or examined by a single Commissioner (Chapter 3). The examination of an application will be conducted primarily through written representations, but there will be an open floor stage and where necessary other oral hearings. A timetable is set for examining, and reporting on or deciding, an application.
19. **Chapter 5** describes the matters to which the Commission must have regard in deciding an application for an order granting development consent. Other than in specified exceptional circumstances decisions by the Commission must be taken in accordance with the relevant national policy statement. The matters to which the Secretary of State must have regard when she decides applications are also specified.
20. **Chapter 6** provides that the Secretary of State may direct the Commission to suspend consideration of an application while she reviews the relevant national policy statement. Chapter 7 gives the Secretary of State a power to intervene and direct that an application for an order granting development consent be referred to her in specified circumstances.
21. **Chapter 8** contains provisions relating to the grant or refusal of development consent and Chapter 9 identifies the opportunities for bringing any legal challenges in connection with applications for development consent. Chapter 10 sets out the mechanisms by which the decision-maker can make corrections to a decision, where this contains a minor clerical error.

Part 7

22. **Part 7** describes what provision may be included in an order granting development consent. This includes requirements corresponding to conditions under the current legislation, matters ancillary to the development, the authorisation of the compulsory acquisition of land and the application, exclusion or modification of legislation. In respect of the authorisation of compulsory acquisition this Part sets out additional provisions which apply, for example, regarding certain types of land.
23. **Part 7** sets out the mechanisms for the subsequent modification or revocation of development consent orders, including setting out who can apply for this and in what circumstances. It also sets out circumstances in which compensation might be due for loss caused by a modification or revocation of a development consent order.

Part 8

24. **Part 8** sets out the enforcement provisions for the new development consent regime. There is a new offence of carrying out development for which development consent is required at a time when no development consent is in force in respect of the development, as well as an offence of breaching the terms of an order granting development consent. There are provisions enabling local planning authorities to enter land, require information and seek injunctions.

Part 9

25. **Part 9** provides for compensation where land is blighted by a national policy statement or in connection with an application for development consent. It makes a number of other changes to the existing town and country planning regime.

Part 10

26. **Part 10** adds certain matters within the field of town and country planning to the legislative competence of the National Assembly for Wales. The Welsh Ministers are given order making powers to give effect in Wales to provisions in Part 9 which would otherwise have effect only in England. Part 10 also makes transitional provision relating to any blight caused by structure plans, local plans and unitary development plans.

Part 11

27. **Part 11** empowers the Secretary of State to establish a Community Infrastructure Levy by subordinate legislation.

Part 12

28. This sets out how the provisions of the Act apply to the Crown. It contains provision in respect of the service of documents, the procedure for making orders and regulations, interpretation, extent and commencement.