These notes refer to the Planning Bill as introduced in the House of Commons on 27th November 2007 [Bill 11]

PLANNING BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Planning Bill which was introduced in the House of Commons on 27th November 2007. They have been prepared by the Department for Communities and Local Government in order to assist the reader in understanding the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY

3. Parts 1 to 8 of the Bill 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 need in the public interest.

5. National policy statements will set the framework for decisions by the Commission. The Secretary of State may designate a statement for the purposes of the Bill only if there has been public consultation. The Secretary of State will have a wide discretion as to how prescriptive the policy should be. Provision is made for addressing any blight caused by the publication of a national policy statement.

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6. The Secretary of State will be responsible for determining an application for development consent 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 Commission will have to appoint Panels comprised of three or more Commissioners, or a single Commissioner, to examine the applications submitted to it. The Bill 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 Bill 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 the Commission to take a decision or (as the case may be) make recommendations to the Secretary of State.

9. Part 9 of the Bill 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. Local planning authorities will be required to make arrangements for decisions on certain planning applications to be taken by planning officers, with a right of review by the authority (rather than an appeal to the Secretary of State). Changes are being made to the power of local planning authorities to decline to determine subsequent applications. The right to compensation is being removed where at least 12 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 appeals (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 makes provision for a Community Infrastructure Levy. The Secretary of State is to be given the power to make regulations providing for the imposition of this new levy. The value of land may increase when planning permission is granted for development. The aim of the levy is to ensure that costs incurred in providing infrastructure to support the development of an area can be met, either in part or whole, by land owners who have benefitted in this way.

Part 1

11. 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. Schedule 1 (which is introduced by clause 1) gives details of how Commissioners are to be appointed and their terms and conditions of appointment.

Part 2

12. Part 2 defines a national policy statement for the purposes of the new development consent system and sets out consultation requirements. This Part identifies the opportunities for bringing any legal challenges connected with a national policy statement.

Part 3

13. Part 3 defines a nationally significant infrastructure project. It does this by specifying categories of project and thresholds for a particular type of project to be a nationally significant infrastructure project. The Secretary of State has a limited order making power to amend these categories (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

14. Part 4 imposes a requirement for development consent in respect of the development 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

15. 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 who should decide applications for development consent and that the Commission must keep a register of applications.

16. 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

17. 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 an open floor stage and where necessary other oral hearings. A timetable is set for examining, and reporting on or deciding, an application.

18. Chapter 5 describes the matters to which the Commission and the Secretary of State 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.

19. 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.

20. 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.

Part 7

21. Part 7 describes what provision may be included in an order granting development consent. These include 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.

Part 8

22. 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, 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

23. 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

24. Part 10 empowers the Secretary of State to establish a Community Infrastructure Levy by subordinate legislation.

Part 11

25. This sets out how the provisions of the Bill 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.

BACKGROUND

26. At present development consent for nationally significant infrastructure projects is provided for in various pieces of legislation. Decisions on airports are taken under the town and country planning system, but there are special statutory regimes for particular types of infrastructure, such as power stations and electricity lines, some gas supply infrastructure, pipe-lines, ports (where development extends beyond the shoreline), roads and railways. Except in the case of airports (where applications are made to the local planning authority), applications for the necessary permissions and powers must be made to the relevant Minister.

27. The procedures for determining applications vary, but a local public inquiry is generally conducted by a planning inspector who examines the project in detail and considers objections. Evidence is typically tested by the cross-examination of witnesses. The inspector then writes a report including recommendations which he submits to the Minister. She considers the report and decides whether the project should be granted the consents and powers needed to allow it to proceed. In doing this the Minister must have regard to relevant government policies. It is Government policy that powers to acquire land compulsorily should be granted only where there is a compelling need in the public interest. The legislation provides very little scope for Parliament to be involved in examining applications.

28. In 2006 the Government commissioned Kate Barker to consider how planning policy and procedures could better deliver economic growth and prosperity in a way that is integrated with other sustainable development goals. The Government also asked Rod Eddington, who had been commissioned to advise on the long-term links between transport and the UK's economic productivity, growth and stability, to examine how delivery mechanisms for transport infrastructure might be improved within the context of the Government's commitment to sustainable development.

29. Rod Eddington and Kate Barker published their findings in December 2006 (see *The Eddington Transport Study* and *Review of Land Use Planning*, HMSO). On 21 May 2007 the Government published its response; the White Paper, *Planning for a Sustainable Future*, Cm 7120, and consulted on the proposals for 12 weeks. The White Paper set out proposals to reform the regime for development consent for nationally significant infrastructure, and other measures to change the town and country planning system.

30. Following assessment of consultation responses, the Planning Bill will implement proposals in the Planning White Paper to amend the planning regime, including introducing a single consent regime for major infrastructure projects, establishment of an independent Infrastructure Planning Commission and making changes to the town and country planning system.

STRUCTURE OF THE BILL

31. The Bill consists of eleven parts, set out as follows:

- Part 1: The Infrastructure Planning Commission
- Part 2: National policy statements
- Part 3: Nationally significant infrastructure projects
- Part 4: Requirement for development consent
- Part 5: Applications for orders granting development consent
    - Chapter 1: Applications
    - Chapter 2: Pre-application procedure
    - Chapter 3: Assistance for applicants and others
- Part 6: Deciding applications for orders granting development consent
    - Chapter 1: Handling of application by the Commission
    - Chapter 2: The Panel procedure
    - Chapter 3: The single Commissioner procedure
    - Chapter 4: Examination of applications under chapter 2 or 3
    - Chapter 5: Decisions on applications
    - Chapter 6: Suspension of decision-making process
    - Chapter 7: Intervention by Secretary of State
    - Chapter 8: Grant or refusal of development consent
    - Chapter 9: Legal challenges
- Part 7: Development Consent Orders
    - Chapter 1: Content of development consent orders
    - Chapter 2: General
- Part 8: Enforcement
- Part 9: Changes to existing planning regimes
    - Chapter 1: Changes related to development consent regime
    - Chapter 2: Other changes to existing planning regimes
- Part 10: Community Infrastructure Levy
- Part 11: Final provisions

32. The Bill also contains six Schedules. These are:

- Schedule 1: The Infrastructure Planning Commission
- Schedule 2: Amendments consequential on development consent regime
- Schedule 3: Tree preservation orders: further amendments
- Schedule 4: Use of land: power to override easements and other rights
- Schedule 5: Further provisions as to the procedure for certain appeals
- Schedule 6: Repeals

TERRITORIAL EXTENT

33. This Bill extends to England and Wales. Most of Parts 1 to 8 (with the exception of the clauses listed in clause 187(1)(a) to (d)) and Part 11 also extend to Scotland, but only in the case of the construction of an oil or gas pipe-line which crosses the border into England.

COMMENTARY

PART 1: THE INFRASTRUCTURE PLANNING COMMISSION

Clause 1 and Schedule 1: The Infrastructure Planning Commission

34. Clause 1 provides that there will be a body called the Infrastructure Planning Commission ("the Commission").

35. Clause 1 gives effect to Schedule 1, which describes the structure of the Commission, the process by which Commissioners are appointed, and their terms and conditions of employment.

SCHEDULE 1

Schedule 1, Paragraph 1: Membership, chair and deputies

36. The Secretary of State (in these notes the Secretary of State is referred to as being female) will be responsible for appointing all Commissioners. As proposed on page 92 of the White Paper, it is intended appointments would be made according to the Code of Practice of the Commissioner for Public Appointments.

37. The Secretary of State must appoint one of the Commissioners to chair the Commission and at least two deputies to the chair.

Schedule 1, Paragraph 2: Terms of Appointment

38. The chair, deputies and other Commissioners will hold and vacate office in accordance with the terms of their appointment.

Schedule 1, Paragraphs 3 and 4: Tenure

39. This paragraph describes the tenure of Commissioners. Commissioners must be appointed for a fixed term of between 5 and 8 years. A Commissioner can resign on giving at least 3 months' written notice to the Secretary of State.

40. The Secretary of State can remove a Commissioner from office, but only if the Secretary of State is satisfied that the Commissioner:

a) is unable or unwilling to perform his duties;
b) has been convicted of a criminal offence; or
c) is otherwise unfit to perform his duties.

41. Commissioners may be reappointed at the end of their term of office. The Bill does not place a limit on the number of terms an individual may serve as a Commissioner, but the Code of Practice set out by the Committee on Standards in Public Life recommends ten years as an upper limit on the number of years a person should remain in one post.

Schedule 1, Paragraph 5: Remuneration of Commissioners

42. This paragraph states that the Commission must pay Commissioners such remuneration, allowances and pension as the Secretary of State determines. The Commission may also pay sums in respect of expenses to Commissioners.

Schedule 1, Paragraphs 6 to 9: Council

43. These paragraphs contain provisions relating to a body of Commissioners to be known as the Council. The Council's functions will include deciding applications referred under clause 76 (following the report of a single Commissioner) and responding to consultations.

Schedule 1, Paragraphs 10 to 12: Chief executive and Staff

44. Paragraph 10 provides that the Secretary of State is responsible for appointing the chief executive, who must not be a Commissioner. The chief executive will be a member of the Commissioner's staff. The Secretary of State will determine the chief executive's terms and conditions.

45. By virtue of paragraph 11 the Commission may appoint such other staff as it thinks appropriate, but must obtain the approval of the Secretary of State as to the overall number of staff if proposes to appoint and their terms and conditions. A member of the Commission's staff cannot be a Commissioner.

46. Paragraph 12 provides that the terms and conditions of service of the chief executive and other members of staff may include payment of remuneration, allowances, sums in respect of expenses and pensions.

Schedule 1, Paragraph 13: Arrangements for assistance

47. This paragraph allows the Commission to make arrangements for others to assist it and to pay fees for their assistance.

Schedule 1, Paragraphs 14 and 15: Delegation

48. Paragraph 14 sets out that the Commission may delegate to any one or more Commissioners certain functions relating to the handling of applications for orders granting development consent. Any of the Commission's other functions may be delegated to-

a) any one or more of the Commissioners;
b) the chief executive; or
c) any other member of its staff.

49. Paragraph 15 confers upon the Chief Executive the power to authorise (generally or specifically) any other member of the Commission's staff to do anything which the chief executive is authorised or required to do. An exception is made for

the chief executive's role in relation to the certification of the Commission's annual accounts.

Schedule 1, Paragraphs 16 and 17: Reports

50. The Commission will be accountable to Ministers and Parliament for its overall performance as a public body. The Commission will have to submit a report to the Secretary of State at the end of each financial year relating to the performance of its functions during the year. This annual report on the activities of the Commission should give details of the exercise of its powers to authorise the compulsory acquisition of land and such matters as the Secretary of State directs the Commission to include. This report must be published by the Commission and be laid before Parliament by the Secretary of State. The Secretary of State can also require the Commission to provide him with a report or information about any aspect of the Commission's work.

Schedule 1, Paragraph 18: Funding

51. The Secretary of State can make payments to the Commission out of money provided by Parliament as and when she considers it appropriate and subject to such conditions as the Secretary of State considers appropriate.

Schedule 1, Paragraph 19: Accounts

52. The Commission, in accordance with the normal accounting practice for public sector bodies, is required to keep accounts in such form as the Secretary of State directs. The Commission must prepare annual accounts for each financial year and send a copy to the Secretary of State and the Comptroller and Auditor General. The Secretary of State must lay a copy of the annual accounts and the Comptroller and Auditor General's report before Parliament each year.

Schedule 1, Paragraph 20: Status

53. The Commission and its staff are not to be regarded as servants or agents of the Crown.

Schedule 1, Paragraph 21: validity of proceedings

54. The validity of the Commission's work is not affected by a defect in the appointment of a Commissioner (including the chair or deputy chair), nor if there is a vacancy amongst any of the Commissioners.

Schedule 1, Paragraph 22: Application of seal and proof of instruments

55. The signature of a Commissioner or an authorised member of the Commission's staff is required to authenticate the Commission's seal. The Commission may enter into contract without the use of a seal, in the same circumstances as an individual, provided that the person acting on behalf of the Commission has been authorised by the Commission to do this.

Schedule 1, Paragraph 23: Parliamentary Commissioner

56. The Commission is to be added to the list of bodies which are subject to investigation by the Parliamentary Commissioner for Administration in the event of maladministration.

Schedule 1, Paragraphs 24 and 25: Disqualification/Public records

57. Paragraph 24 provides that Commissioners are disqualified from membership of the House of Commons and the Northern Ireland Assembly. The effect of paragraph 25 is to make the administrative records of the Commission public records for the purposes of the Public Records Act 1958.

Schedule 1, Paragraph 26: Freedom of information

58. By virtue of paragraph 26 the Commission is added to the list of bodies which are subject to the requirements of the Freedom of Information Act 2000 (and therefore also the requirements of the Environmental Information Regulations 2004, SI 2004/3391).

Clause 2: Code of conduct

59. This clause provides that the Commission must issue a code of conduct for its Commissioners, which should include a requirement for Commissioners to disclose all relevant interests, including financial information. The code of conduct and the register of interests must be published. The code of conduct should be reviewed regularly, and may from time to time be amended. A failure by a Commissioner to observe the Code will not in itself make a Commissioner liable to criminal or civil proceedings.

Clause 3: Register of Commissioners' interests

60. The Commission must establish a procedure for the disclosure and registration of financial and other interests by Commissioner and arrange for a register of entries to be published.

Clause 4: Fees

61. This clause provides that the Secretary of State may make regulations to allow the Commission to charge fees for the performance of any of its functions and non-exhaustively lists matters that may be covered by any regulations, for example, the amount which may be charged, who is liable to pay a fee to be charged and when the fee is payable.

PART 2: NATIONAL POLICY STATEMENTS

Clause 5: National Policy Statements

62. Subsection (2) of this clause defines what is meant by the term "national policy statement".

63. Subsections (3) and (4) provide that a national policy statement can be designated only if the Secretary of State has first carried out an appraisal of the sustainability of the policy and complied with the consultation requirements mentioned in clause 7.

64. Subsection (5) describes examples of what types of policy may be contained in a national policy statement. These examples include setting out criteria to be applied in deciding whether a location is suitable for a particular description of development, and identifying a location as suitable (or potentially suitable) for development.

65. Subsection (6) provides that a national policy statement should include reasons for the policy in the statement.

66. Subsection (7) requires the Secretary of State to arrange for a national policy statement to be published.

Clause 6: Review

67. This clause requires the Secretary of State to keep national policy statements under review. Provision is made for further appraisal of the sustainability of, and consultation on, proposed amendments and publication if the statement is amended.

Clauses 7 and 8: Consultation and publicity / Consultation on publicity requirements

68. Where the Secretary of State proposes to designate a statement to be a national policy statement, or amend a national policy statement, the Secretary of State must carry out such consultation and arrange for associated publicity as she thinks appropriate. The Secretary of State must also consult such persons as are prescribed.

69. If the new or amended proposals refer to a particular location as being suitable (or potentially suitable) for a specified type of development, the Secretary of State must ensure that there is suitable publicity for the proposal in that location. Clause 8 sets out that in deciding what publicity is appropriate for this purpose the Secretary of State must consult the local authority in which the land is located and adjoining local authorities. If the location concerned is in Greater London, the Secretary of State must also consult the GLA.

Clause 9: Sustainable development

70. This clause provides that where the Secretary of State is either designating or reviewing a national policy statement, she must do so with the objective of contributing to sustainable development.

Clause 10: Suspension pending review

71. This clause provides that the Secretary of State may suspend the operation of part or all of a national policy statement if she decides that since the national policy statement was issued or reviewed there has been a significant change in circumstances which was not anticipated. Suspension by the Secretary of State is possible only where she thinks that if the change had been anticipated any of the policy included in the statement would have been materially different.

Clause 11: Pre-commencement statements of policy, consultation etc

72. This clause provides that the Secretary of State may designate a statement as a national policy statement even if it was issued by the Secretary of State before clause 5 comes into force, or if it refers to other such statements issued before this date. An

example of a statement to which this clause would apply is *The Future of Air Transport*, December 2003 (Cm6046).

73. Similarly, the Secretary of State may treat any sustainability appraisal of a policy statement as meeting the requirements of subsection (3) of clause 5 even if it was carried out before that provision comes into force.

74. Subsection (4) sets out that the Secretary of State may take account of any consultation or publicity carried out before clause 5 comes into force when complying with the requirements set out in clause 7.

Clause 12: Legal challenges relating to national policy statements

75. This clause provides that legal challenges in connection with national policy statements can be brought only by judicial review and only during a specified six-week period.

PART 3: NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECTS

Clause 13: Nationally significant infrastructure projects: general

76. Subsection (1) lists the categories of project which are "nationally significant infrastructure projects" for the purposes of the Bill. Further details of these categories are given in the immediately following clauses.

77. Subsection (3) enables the Secretary of State to make an order which amends the categories of nationally significant infrastructure project, subject to the limitation in subsection (5) that new types of project may be added only if they are in the fields of energy, transport, water, waste water or waste.

Clause 14: Generating stations

78. Subsection (1) provides that the construction or extension of a generating station is a nationally significant infrastructure project only if it comes within subsection (2) or (3). Generating station has the same meaning as in section 36 of the Electricity Act 1989.

79. Subsection (4) defines what is meant by an "offshore" generating station.

Clause 15: Electric lines

80. This clause describes the circumstances in which the installation of an electric line above ground will be considered a nationally significant infrastructure project.

Clause 16: Underground gas storage

81. This clause states that development relating to the underground storage of gas is a nationally significant infrastructure project only if it comes within subsection (2) or (3). Underground gas storage has the same meaning as in section 4 of the Gas Act 1965, which makes it compulsory for a gas transporter to obtain consent from the Secretary of State for such operations.

82. Development of underground gas storage by persons other than gas transporters is currently regulated under the Town and Country Planning Act 1990. This clause therefore ensures that work being done in Wales by persons other than gas transporters is decided by Welsh Ministers in accordance with the devolution settlement.

Clause 17: Pipe-lines

83. This clause sets out the circumstances in which the construction of a pipe-line is a nationally significant infrastructure project. The definition of a pipe-line in clause 17 is based on the definition of a cross-country pipe-line in section 1 of the Pipe-lines Act 1962, which is a pipeline over 10 miles (16.093km) long on land, along with associated apparatus and works. This clause sets out that pipe-lines which fall within the definition of section 1 of the Pipe-lines Act 1962 will henceforth be classed as nationally significant infrastructure projects and so will require development consent. The clause avoids disturbing the devolution settlement under which pipe-lines wholly situated within Scotland require consent from Scottish Ministers under section 1 of the Pipe-lines Act.

Clause 18: Highways

84. This clause sets out the circumstances in which the construction of a highway is a nationally significant infrastructure project. The terms "trunk road" and "special road" have the same meanings as in the Highways Act 1980. This clause has the effect that the construction in England of a road which forms part of the strategic road network (including motorways), where the Secretary of State is the highway authority, will be a nationally significant infrastructure project.

Clause 19: Airports

85. This clause sets out the circumstances in which the construction or extension of an airport is a nationally significant infrastructure project. Currently, planning permission under the Town and Country Planning Act 1990 is needed for developments. To avoid disturbing the devolution settlement, Welsh Ministers will retain their existing powers to determine applications for new airports or extensions in their territory, while applications relating to nationally significant airport projects in England will be determined under the new regime.

Clause 20: Harbour facilities

86. This clause sets out the circumstances in which the construction or extension of harbour facilities is a nationally significant infrastructure project.

Clauses 21 and 22: Railways and Rail Freight interchanges

87. These clauses set out the circumstances in which the construction of a railway or a rail freight interchange is a nationally significant infrastructure project. Only railways which would be situated wholly in England are included.

Clauses 23 and 24: Dams and reservoirs and Transfer of water resources

88. These clauses set out the circumstances in which the construction or extension of a dam or reservoir or development relating to the transfer of water resources is a nationally significant infrastructure project. Only projects in England are included.

Clause 25: Waste water treatment plants

89. This clause sets out the circumstances in which the construction of a waste water treatment plant is a nationally significant infrastructure project. Only projects in England are included.

Clause 26: Hazardous waste facilities

90. This clause sets out the circumstances in which the construction of a hazardous waste facility is a nationally significant infrastructure project. Only projects in England are included.

PART 4: REQUIREMENT FOR DEVELOPMENT CONSENT

Clause 27: When development consent is required

91. Subsection (1) imposes a requirement of development consent for development which is, or forms part of, a nationally significant infrastructure project.

92. Subsection (2) provides that where there is doubt as to whether a particular project does or does not require development consent, then the Commission will decide the question.

Clause 28: Meaning of "development"

93. This clause defines what constitutes "development" of a nationally-significant infrastructure project. It provides that "development" has the same meaning as "development" in section 55 of the Town and Country Planning Act 1990 subject to subsections (2) and (3).

94. The effect of subsection (2) is that the conversion of a generating station to enable it to use gas or petroleum as a fuel source and starting to use strata underground for the purposes of gas storage count as "development" for the purposes of the Bill. This replicates the position under section 14 of the Energy Act 1976, which gives the Secretary of State the power to direct that such conversions should not take place. Likewise, starting to use natural porous strata underground for the purposes of gas storage currently requires the consent of the Secretary of State under section 4 of the Gas Act 1965.

95. Subsection (3) replicates provisions in the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Ancient Monuments and Archaeological Areas Act 1979 and makes it clear that where the promoter of a nationally significant infrastructure project wishes to conduct these types of works to heritage assets, this would constitute development and, therefore, need to be the subject of an application for an order granting development consent to the Commission.

Clause 29: Effect of requirement for development consent on other consent regimes

96. This clause provides that where a project requires development consent under this Act, it will no longer require certain other consents under certain existing consent regimes. These consent regimes are listed in subsection (1), and include:

- planning permission under Part 3 of the Town and Country Planning Act 1990 (or, in relation to the Scottish part of a cross-border oil or gas pipe-line, planning permission under Part 3 of the Town and Country Planning (Scotland) Act 1997);
- listed building consent under section 8 of the Planning (Listed Buildings and Conservation Areas) Act 1990;
- conservation area consent under section 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990;
- scheduled monument consent in England and Wales under section 2 of the Ancient Monuments and Archaeological Areas Act 1979.

97. The Highways Act 1980 gives the Secretary of State the ability to make or confirm orders about a variety of matters to do with highways, including the construction of new highways. Subsection (3) provides that where construction of the highway requires development consent, the Secretary of State may not make or confirm such orders until after the highway has been opened.

Clause 30: Directions in relation to projects of national significance

98. This clause provides that the Secretary of State may direct that an application made to the relevant authority for a consent or authorisation mentioned in clause 29(1) or (2) should be referred to the Commission, which will then treat it as an application for development consent. The Secretary of State can make such a direction only if the development is or forms part of a project in one of the fields mentioned in subsection (5) of clause 13, the development would be wholly in England and she considers that the project is of national significance. The Secretary of State must give reasons for making such a direction.

99. If the Secretary of State is considering making such a direction, she may direct the relevant authority to take no further action until she has reached her decision.

Clause 31 and Schedule 2: Amendments consequential on development consent regime

100. This clause and the Schedule make consequential amendments to existing consent regimes. In the most part, these consequential amendments clarify that where development consent is required for a project under this Bill, requirements for other consents no longer apply.

a) Green Belt (London and Home Counties) Act 1938: restrictions on the erection of buildings no longer apply where the project requires development consent under this Bill.
b) Coast Protection Act 1949: consent is no longer required from the Secretary of State for works detrimental to navigation where the project requires development consent under this Bill.

c) Pipe-lines Act 1962: authorisation is no longer required from the Secretary of State in order to construct a cross-country pipe-line where the project requires development consent under this Bill. A diversion of a pipe-line is to be treated as an extension for the purposes of this Bill.

d) Harbours Act 1964: it will no longer be possible to make harbour revision orders or harbour empowerment orders where the project requires development consent under this Bill.

e) Gas Act 1965: it will no longer be possible to make storage authorisation orders where the project requires development consent under this Bill. Where an underground gas storage is covered by an order granting development consent, the Secretary of State will no longer be able to prevent mining and other operations in the vicinity of the underground gas storage, set safety conditions or order works to remedy a breach of a protective area.

f) Energy Act 1976: it will no longer be necessary to seek permission for a conversion of a power station to gas or petroleum fuel from the Secretary of State under the 1976 Act, where the project requires development consent under this Bill.

g) Ancient Monuments and Archaeological Areas Act 1979: scheduled monument authorisation is no longer required from the Secretary of State for works affecting scheduled monuments where the project requires development consent under this Bill.

h) Highways Act 1980: it will no longer be possible for the Secretary of State to make orders or construct highways under the provisions of the Highways Act 1980, where the project requires development consent under this Bill.

i) Electricity Act 1989: consent is no longer required from the Secretary of State to construct a generating station (see section 36 of the 1989 Act) or overhead electricity lines (see section 37 of the 1989 Act), where the project requires development consent under this Bill.

j) Town and Country Planning Act 1990: planning permission under section 57 is no longer required for a project that constitutes a nationally significant infrastructure project. Projects which require development consent will be exempted from the provisions in respect of tree preservation orders and the preservation of trees in conservation areas.

k) Planning (Listed Buildings and Conservation Areas) Act 1990: listed building consent is no longer required from the Secretary of State for works affecting listed buildings where the project requires development consent under this Bill, and in the case of such a project conservation area consent is no longer required for works involving demolition of buildings in a conservation area.

l) Planning (Hazardous Substances) Act 1990: as part of an order granting development consent, the authority determining an application for consent may deem that the project has received hazardous substances consent. A hazardous substances authority may subsequently revoke or modify a hazardous substances consent so deemed.

m) New Roads and Street Works Act 1991: it will no longer be possible for the Secretary of State to make a toll order where the project requires development consent under this Bill.

n) Water Industry Act 1991: it will no longer be possible for the Secretary of State to make a compulsory works order where the project requires development consent under this Bill.

o) Transport and Works Act 1992: it will no longer be possible for the Secretary of State to make an order under section 1 or 3 of the 1992 Act where the project requires development consent under this Bill.

PART 5: APPLICATIONS FOR ORDERS GRANTING DEVELOPMENT CONSENT

Part 5, Chapter 1: Applications

Clause 32: Applications for order granting development consent

101. This clause sets out that where development consent is required under the new single consents regime, promoters of nationally significant infrastructure projects will need to submit an application to the Commission. The application must be in the prescribed form, and accompanied by the community involvement statement and such other documents and information as are prescribed. The Commission has the power to give guidance in connection with applications.

102. In prescribed types of case, applications may be made only if an agreement as to execution of works under section 278 of the Highways Act 1980 is in force in connection with the proposed development.

Clauses 33: Model provisions

103. This clause allows the Secretary of State to prescribe model provisions that developers may use if required to prepare a draft order to accompany an application for an order granting development consent. The Commission must have regard to any model provisions when making an order granting development consent. A similar power to issue model clauses already exists in section 8 of the Transport and Works Act 1992 (see the Transport and Works (Model Clauses for Railways and Tramways) Regulations 2006, SI 2006/1954), and model clauses are used extensively by promoters.

Clause 34: Register of applications

104. The clause requires the Commission to maintain a register of applications for orders granting development consent and to publish this register or make arrangements for its inspection by the public.

Clause 35: Applications by the Crown for orders granting development consent

105. This clause allows the Secretary of State by regulations to modify or exclude certain statutory provisions in relation to applications made by the Crown for an order granting development consent. Regulations may relate to:

a) the procedure to be followed before such applications are made;
b) the making of such applications;
c) the decision-making process.

Part 5, Chapter 2: Pre-application procedure

Clause 36: Chapter applies before application is made
106. This clause applies Chapter 2 to a proposed application for an order granting development consent and defines some of the terms used in the Chapter.

Clauses 37 to 39: Duty to consult
107. These clauses require the applicant to consult certain people and categories of people about the proposed application. The consultees are certain local authorities and persons with rights over land and other prescribed persons.

Clause 40: Timetable for consultation under clause 37
108. This clause provides that the applicant must give each consultee a deadline for responding to the consultation, but this must not be earlier than 28 days after receipt of the consultation documents.

Clause 41: Duty to notify Commission of proposed application
109. This clause provides that the applicant must give the Commission a copy of the consultation documents on or before commencing consultation under clause 37.

Clause 42: Duty to consult local community
110. This clause requires the applicant to prepare and publish a statement setting out how he proposes to consult local people about the proposed development. The consultation must be carried out in the manner set out in the statement.

Clause 43: Duty to publicise
111. This clause provides that the applicant must publicise the proposed application in the prescribed manner. Regulations must require publicity to specify a deadline for responses.

Clause 44: Duty to take account of responses to consultation and publicity
112. This clause provides that, the applicant must consider any relevant responses he has received to the consultation and publicity, and take these into account before submitting an actual application to the Commission.

Part 5, Chapter 3: Assistance for applicants and others

Clause 45: Advice for potential applicants and others
113. The clause provides that the Commission may give advice to an applicant, a potential applicant or others about applying for an order granting development consent or making representations about an application or proposed application. Any such advice cannot relate to the merits of any particular application or proposed application. The Secretary of State may make regulations about giving advice, for the purpose of securing propriety. In particular, these regulations may provide for the disclosure of requests for advice and any advice by the Commission.

Clause 46: Obtaining information about interests in land

114. This clause provides that the Commission may authorise an applicant or proposed applicant to serve a notice on a person falling within one of the categories specified in subsection (3), requiring the person to give to the applicant the names and addresses of people who have an interest in the land to which the application relates. If the person fails to comply with such a notice, or wilfully gives misleading information, the person will commit an offence, and be liable to pay a fine up to level 5 on the standard scale (currently £5,000).

Clauses 47 and 48: Rights of entry and the Crown

115. Clause 47 provides that the Commission may authorise a person to enter a particular piece of land, in order to survey or take levels in connection with:

- an application for an order granting development consent, which has been accepted by the Commission; or
- an order granting development consent that includes authorisation for the compulsory purchase of land.

116. The Commission may also authorise a person to enter a particular piece of land in connection with a proposed application for an order granting development consent, but only if the proposed applicant:

a) is considering a distinct project of real substance requiring entry on to the land;
b) is likely to seek authority to compulsorily acquire the land; and
c) has complied with the consultation requirements in clause 37.

117. Subsection (5) of clause 47 makes it an offence wilfully to obstruct an authorised person who is exercising a right of entry.

118. Subsection (7) of clause 47 provides that the person entering land under this clause is liable to pay compensation for any damage caused.

119. Clause 48 modifies the rights of entry in relation to Crown land.

PART 6: DECIDING APPLICATIONS FOR ORDERS GRANTING DEVELOPMENT CONSENT

Part 6, Chapter 1: Handling of application by the Commission

Clause 49: Acceptance of applications

120. This clause provides that when the Commission receives an application for an order granting development consent, the Commission must decide whether or not to accept it. The Commission can only accept the application if it complies with the requirements set out in the Bill at clause 32. It must notify the applicant of its decision.

Clauses 50 and 51: Notifying persons of accepted application/Categories for purposes of section 50(2)(d)

121. These clauses describe the persons who must be notified of an application for an order granting development consent, which the Commission has accepted. The persons to be consulted are certain local authorities, any persons prescribed by regulations and any people in the categories set out in clause 51. The people in those categories include any owner, lessee, tenant or occupier of the land, anyone with the power to sell or release the land, anyone who has an interest in the land and anyone who may be able to make a "relevant claim" for compensation.

122. The form and content of the notice, and the manner in which it is to be given, may be prescribed in regulations by the Secretary of State. The applicant must inform the person of any deadline by which they should respond to the Commission; this deadline should not be less than 28 days.

123. Subsections (7) and (8) of clause 50 require the applicant to publicise the application in the manner set out by the Secretary of State. Any publicity must include a deadline by which people should notify the Commission of their interest or objection to the application.

Clause 52: Certifying compliance with clause 50

124. This clause provides that the applicant must certify to the Commission that he has complied with clause 50. If the applicant issues a certificate containing false or misleading information, he may be guilty of an offence and be liable to a fine.

Clause 53: Initial choice of Panel or single Commissioner

125. This clause provides that when the Commission accepts an application for an order granting development consent, the chair must decide whether the application should be handled by a Panel or by a single Commissioner. In making this decision, the chair must have regard to guidance issued by the Secretary of State and to the views of any of the other Commissioners and the chief executive of the Commission.

Clause 54: Switching from single Commissioner to Panel

126. This clause provides that, where an application for an order granting development consent is being handled by a single Commissioner, the chair can decide that it should instead be handled by a Panel. In making this decision, the chair must have regard to guidance issued by the Secretary of State and to the views of other Commissioners and the chief executive of the Commission.

Clause 55: Delegation of functions by person appointed to chair Commission

127. This clause gives the chair the power to delegate any of his functions under Part 6 of the Bill to one of the deputy chairs, subject to the limitations in subsections (5) to (10).

Part 6, Chapter 2: The Panel Procedure

Clause 56: Panel for each application to be handled under this Chapter

128. This clause provides that when the Commission has accepted an application and the chair has decided that it should be handled by a Panel, the provisions in Chapter 2 will apply.

Clause 57: Appointment of members, and lead member, of Panel

129. This clause concerns the appointment of the Panel. Subsection (1) provides that the chair of the Commission will be responsible for appointing to the Panel three or more Commissioners and appointing one of these Commissioners to chair the Panel. Before doing this the chair of the Commission must consult the other Commissioners and the chief executive of the Commission and have regard to their views.

130. Subsection (3) provides that the chair (or deputy chair) of the Commission may appoint himself to be a member of a Panel.

Clause 58: Ceasing to be member, or lead member, of Panel

131. This clause describes the circumstances in which a person ceases to be a member of the Panel. Subsection (1) provides that the person will cease to be a member of the Panel if he ceases to be a Commissioner, subject to clause 59.

132. Subsection (3) provides that a person may resign from membership of the Panel by giving notice in writing to the Commission.

133. Subsection (5) sets out the circumstances in which the chair may remove a person from membership of the Panel or remove the lead member from that office. The chair must be satisfied that the member or lead member is unable, unwilling or unfit to perform his duties.

Clause 59: Panel member continuing though ceasing to be Commissioner

134. This clause provides that if, immediately before ceasing to be a Commissioner, a Commissioner was serving on a Panel which has not yet concluded its business, the Commissioner may decide to continue as a Panel member until the Panel completes its work, unless the reason that he is no longer a Commissioner is because the Secretary of State has removed him from office because he was unable, unwilling or unfit to perform the duties of his office.

Clauses 60: Additional appointments to Panel

135. This requires the chair to the Commission to appoint another Commissioner to membership of the Panel if at any time the Panel has fewer than three members. The chair (or a deputy chair) may appoint himself.

Clause 61: Replacement of lead member of Panel

136. This clause provides that if the lead member of the Panel ceases to hold that office, the chair to the Commission must appoint another member of the Panel to chair the Panel. This person need not have been a member of the Panel before the vacancy arose. The chair (or a deputy chair) to the Commission may appoint himself.

Clause 62: Membership of Panel where application relates to land in Wales

137. This clause concerns applications for orders granting development consent, which relate to land in Wales. The clause requires a Panel that considers an application relating to land in Wales to include, if reasonably practicable, a Commissioner who was nominated for appointment as a Commissioner by the Welsh Ministers or any other Commissioner notified to the Commission by the Welsh Minsters as being a Commissioner who should be treated as a Welsh Commissioner nominated by them.

Clause 63: Supplementary provision where Panel replaces single Commissioner

138. This clause provides that if the chair of the Commission decides that an application which was being considered by a single Commissioner should instead be considered by a Panel, the single Commissioner who has considered the case may become a member of the Panel. Subsection (3) provides that the Panel may decide to treat anything done by a Single Commissioner as done by the Panel. If the Panel decides to do this, the lead member of the Panel must ensure that the Panel acquires the necessary knowledge of the previous work undertaken.

Clause 64: Panel ceasing to have any members

139. This clause provides that if the Panel ceases to have any members, a new Panel must be constituted. If this happens, the new Panel may decide to treat anything done by a former Panel as done by the new Panel. If it is decided to do this, the lead member of the Panel must ensure that the Panel acquires the necessary knowledge of the previous work undertaken.

Clause 65: Consequences of changes in Panel

140. This clause provides that the identity of the Panel will not be affected by changes to the membership of the Panel or the lead member, or any vacancies.

Clause 66: Panel to decide, or make recommendation in respect of, application

141. This clause sets out the Panel's role in making decisions on applications. Where it is the Commission's responsibility to decide an application, the Panel will examine and decide the application. Where it is the Secretary of State's responsibility to decide on an application, the Panel will examine the application, and then make a report to the Secretary of State which sets out its findings and conclusions and makes a recommendation about the decision to be made by the Secretary of State.

Clause 67: Decision-making by the Panel

142. This clause provides that a decision of the Panel will require the agreement of a majority of its members and that the lead member has a second (or casting) vote.

Clauses 68: Allocation within Panel of Panel's functions

143. This clause provides that during the examination of an application the Panel may allocate part of the examination to any one or more of its members. Where this is done the member or members may do anything the Panel as a whole could have done and their findings and conclusions will, in respect of the matters allocated, be taken to be the Panel's.

Clauses 69: Exercise of Panel's powers for examining application

144. This clause concerns the exercise of the Panel's powers for examining an application. Any such power may, unless the Panel decides otherwise, be exercised by any one or more of the Panel's members.

Part 6, Chapter 3: The single Commissioner Procedure

Clause 70: Single Commissioner to handle application

145. This clause states that the provisions of this Chapter apply where it has been decided that an application should be handled by a single Commissioner.

Clause 71: Appointment of single Commissioner

146. This clause states that the chair (or a deputy chair) to the Commission must appoint a Commissioner to handle the application and that he may make a self-appointment. The chair is required to consult, and take account of the views expressed by any other Commissioner or the chief executive.

Clause 72: Ceasing to be the single Commissioner

147. This clause describes how a person can cease to be a single Commissioner. For example if a Commissioner stops being a Commissioner, he will cease to be a single Commissioner, subject to the provisions of clause 73.

Clause 73: Single Commissioner continuing though ceasing to be Commissioner

148. This clause provides that in certain circumstances a person can continue to act as a single Commissioner although he is no longer a Commissioner. The clause makes provision corresponding to that made for Panel membership by clause 59.

Clause 74: Appointment of replacement single Commissioner

149. This clause provides that when a person ceases to be a single Commissioner a replacement Commissioner must be appointed. When this happens, the replacement Single Commissioner may decide to treat any work carried out by his predecessor as his own work. If this happens, the replacement Single Commissioner must ensure he acquires the necessary knowledge of the previous work undertaken.

Clauses 75 and 76: Single Commissioner to examine and report on application/Report from single Commissioner to be referred to Council

150. These clauses provide that the single Commissioner is responsible for examining the application and then making a report, to the authority responsible for determining the application. In the report the single Commissioner should set out his findings and conclusions and make a recommendation as to how the application should be determined. When the Commission is responsible for determining the

application, it must refer the application to the Council (see paragraphs 6 to 9 of Schedule 1 to the Bill).

Clause 77: Decisions made by the Council on the application

151. This clause provides that at least five members of the Council must participate in any decision which requires majority agreement. The chair of the Council has a second (casting) vote.

Part 6, Chapter 4: Examination of applications under Chapter 2 or 3

Clause 78: Chapter applies to examination by Panel or single Commissioner

152. This clause applies the provisions of this Chapter to the examination of an application by a Panel or by a single Commissioner. Where an application is to be examined by a Panel, the Panel is the Examining authority. Where an application is to be examined by a single Commissioner, the single Commissioner is the Examining authority.

Clause 79: Examining authority to control examination of application

153. This clause provides that it is for the Examining authority to decide how to examine an application. When doing this the examining authority must comply with the provisions of this Chapter and any procedural rules made by the Lord Chancellor and must have regard to any guidance given by the Secretary of State and the Commission.

154. Subsection (3) provides that the examining authority may disregard representations which it considers are frivolous or relate to the merits of a policy set out in a national policy statement or to the compensation for the compulsory acquisition of the land.

Clause 80 Initial assessment of issues, and preliminary meeting

155. This clause requires the Examining authority to make an initial assessment of the principal issues arising on an application. When it has done this it should hold a preliminary meeting with the applicant and each other interested party. The purpose of this meeting is to enable those present to make representations as to how the application should be examined and to discuss any other matter the Examining authority wishes.

Clause 81: Examining authority's decisions about how application is to be examined

156. This clause requires the Examining authority, in the light of the discussion at the preliminary meeting, to make procedural decisions in respect of the examination of the application. Theses decisions can be made at or after the meeting. The Examining authority must inform every interested party of its decisions.

Clause 82: Written representations

157. This clause provides that the Examining authority's examination of the application should take the form of the consideration of written representations subject to any requirements in clause 83 or 84 to cause a hearing to be held and any decision of the Examining Authority to undertake something (e.g. a site visit) that

is neither a hearing nor consideration of written representations. The Lord Chancellor may make procedural rules about which written representations are to be considered.

Clause 83: Hearings about specific issues

158. This clause provides that the Examining authority must arrange a hearing when it decides that it is necessary for its examination of an issue to receive oral representations, either to ensure the adequate examination of an issue, or so that an interested party has a fair chance to put their case. Each interested party will be entitled to make oral representations about the issue. Concurrent hearings may be held where a Panel of Commissioners is the examining authority.

Clause 84: Open-floor hearings

159. This clause provides that the Examining authority must arrange an open-floor hearing if at least one interested party informs the Examining authority of a wish to be heard within the specified deadline. Each interested party is entitled to make oral representations at an open-floor hearing.

Clause 85: Hearings: general provisions

160. This clause contains general provisions in respect of issue specific and open floor hearings. It provides that these should be in public and presided over by at least one member of the Panel or the single Commissioner. The Examining authority will decide how a hearing is to be conducted.

161. In particular, the Examining authority can decide if a person making an oral representation can be questioned by an interested party, and the duration of an oral representation and/or questioning. When making decisions about these matters, the Examining authority must apply the principle that it should undertake any oral questioning unless it is necessary to allow an interested party to do this in order to ensure adequate testing of any representations or that an interested party has a fair chance to put its case.

162. Subsection (8) provides that an Examining authority may refuse to allow a representation if it considers it:

a) is irrelevant or frivolous;
b) relates to the merits of policy set out in a national policy statement;
c) repeats other representations already made; or
d) relates to the compensation payable on the compulsory acquisition of land.

Clause 86: Hearings: disruption, supervision and costs

163. This clause provides that the Examining authority may exclude a person from a hearing if he behaves in a disruptive manner.

164. Subsection (2) defines what is meant by a "hearing" for these purposes.

165. Subsection (3) provides that the Examining authority's examination of an application is a statutory inquiry for the purposes of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007 and therefore is subject to supervision by the Administrative Justice and Tribunals Council.

Clause 87: Representations not made orally may be made in writing

166. This clause states that where a person has asked to make an oral representation at a hearing, but has not done so, he can make a written representation. The Examining Authority must consider this as part of its examination of an application, if the written representation is received before it completes its examination of the application.

Clause 88: Procedure rules

167. This clause enables the Lord Chancellor to make procedural rules for the examination of applications. Subsections (1) and (3) are based on the general rule-making powers conferred by section 9 of the Tribunals and Inquiries Act 1992. Subsection (2) is included to enable rules to make provision about site visits, including site visits where the applicant is neither the owner nor occupier of the land concerned. Subsection (6) follows the 1992 Act by providing for the rules to be subject to the negative resolution procedure in Parliament.

Clause 89: Timetable for examining, and deciding or reporting on, application

168. This clause imposes a duty on the Examining authority to complete its examination of an application within six months of the last day of the preliminary meeting held pursuant to clause 80. The Examining authority must decide the application or (where the Secretary of State or the Commission's Council is responsible for taking the decision) report to the Secretary of State or the Commission within nine months of this date.

169. Subsection (4) gives the chair (or a deputy chair) of the Commission the power to extend these deadlines at any time. If the deadlines are extended, he must inform the Secretary of State of this decision, along with his justification for doing so. Any such change of date must be included in the Commission's Annual Report with an explanation of why the decision was taken.

Clause 90: Completion of examining authority's examination of application

170. This clause provides that the Examining authority must tell each interested party once it has completed its examination of the application.

Clause 91: Assessors

171. This gives the chair (or a deputy chair) of the Commission, at the Examining authority's request, the power to appoint an assessor to help it examine an application, providing the assessor is considered to have the relevant expertise.

Clauses 92: Interpretation of Chapter 4: "interested party" and other expressions

172. This clause defines "interested party" and "representation" for the purposes of Chapter 4 of Part 6 of the Bill.

Part 6, Chapter 5: Decisions on applications

Clause 93: Cases where Secretary of State is, and meaning of, decision-maker

173. This clause explains the circumstances in which the Secretary of State has the function of deciding an application for an order granting development consent and defines the express "decision-maker" in relation to such an application for the purposes of the Bill.

Clause 94: Decisions of Panel and Council

174. This clause provides that where the Commission is responsible for deciding an application for an order granting development consent, it must have regard to:

a) any relevant national policy statement;
b) any matters prescribed in relation to development of that description; and
c) any other matters which the Commission considers are both important and relevant to its decision.

175. Sub-section (3) provides that the Commission must decide the application in accordance with any relevant national policy statement, except to the extent that one of the exceptions in sub-sections (4) to (8) applies.

Clause 95: Decisions of Secretary of State

176. This clause provides that where it is the Secretary of State who decides an application for an order granting development consent, she must have regard to any matters prescribed and any other matters which the Secretary of State thinks are both important and relevant to her decision.

Clause 96: Matters that may be disregarded when deciding application

177. This clause provides that a person deciding an application for an order granting development consent may disregard a representation that he considers frivolous or relates to the merits of policy set out in a national policy statement or to the compensation payable on the compulsory acquisition of land.

Part 6, Chapter 6: Suspension of decision-making process

Clause 97: Suspension during review of national policy statement

178. This clause states that if the Secretary of State considers it necessary to review a relevant national policy statement before an application for an order granting development consent is decided, she may direct that the examination of the application is suspended by the Commission until the review of the national policy statement has been completed.

Part 6, Chapter 7: Intervention by Secretary of State

Clauses 98 and 99: When power to intervene arises / Power of Secretary of State to intervene

179. These clauses provide that a Secretary of State may intervene and decide an application in place of the Commission in certain circumstances.

180. The Secretary of State may intervene if she considers that this would be in the interests of defence or national security.

181. The Secretary of State may also intervene if she is satisfied that the condition set out in clause 98(3) is met. There must have been a significant change in the circumstances on the basis of which the policy in a relevant national policy statement was decided. This change must not have been anticipated at that time. If it had been anticipated it would have meant that the policy would have been materially different; and the change would be likely to have had a material effect on the Commission's decision on the application. There must be an urgent need in the national interest for the application to be decided before the national policy statement can be reviewed.

182. When deciding whether that condition is met, the Secretary of State must have regard to the views of the Commission and must make a direction, setting out her reasons for intervention, within four weeks of the end of the meeting held under clause 80(2). If the Secretary of State considers there to be exceptional circumstances, the direction may be given later.

Clause 100: Effect of intervention by Secretary of State

183. This clause provides that, where the Secretary of State intervenes, the application must be referred to her. The Commission must conduct an examination of the application as directed by the Secretary of State and make a report setting out its findings and conclusions. The Commission must complete this within a timescale set by the Secretary of State. The Secretary of State must decide the application within three months of receiving the Commission's report.

Part 6, Chapter 8: Grant or refusal

Clauses 101 to 103: Grant or refusal of development consent, reasons for decision and formalities for orders

184. Clause 101 provides that at the conclusion of consideration of an application for an order granting development consent, the decision-maker must either make an order granting development consent or refuse it. Subsection (2) provides that an order may grant development consent not only for development where consent is required but also for development which is associated with that development. Subsection (2) only applies in the case of development in England. In determining what associated development is, the authority must have regard to statutory guidance. Reasons must be given to interested parties and published (clause 102) and certain formalities observed in relation to the order (clause 103).

Part 6, Chapter 9: Legal challenges

Clause 104: Legal challenges relating to applications for orders granting development consent

185. This clause provides that an order granting development consent, a refusal of development consent, or anything else done by the Commission or the Secretary of State in respect of an application for an order granting development consent can only be challenged by means of a claim for judicial review made in accordance with the provisions of this clause. These provide that a challenge to an order granting

development consent must be made within six weeks of the order being published and a challenge to a refusal of development consent must be made within six weeks of the date when the Commission issues the statement of reasons for the refusal. A challenge to a decision of the Commission not to accept an application must be made within six weeks of the day on which the Commission notifies the applicant of its decision.

PART 7: DEVELOPMENT CONSENT ORDERS

Part 7, Chapter 1: Content of development consent orders

Clause 105: What may be included in order granting development consent

186. This clause specifies what may be included in an order granting development consent.

187. Subsections (1) and (2) provide that an order granting development consent may impose requirements in connection with the development for which consent is granted. The types of requirements which may be imposed include those that can be imposed under the consent regimes which currently apply to nationally significant infrastructure projects (see section 31(1)).

188. Subsection (3) provides that an order granting development consent may also make provision for ancillary matters. Subsection (4) gives examples of types of provisions which may be included in an order. These include provisions authorising the compulsory acquisition of land, the creation, suspension and extinguishment of rights over land, the stopping up of highways, the charging of tolls and for the payment of contributions and compensation. Subsection (5) provides that these subsections are subject to the following provisions of this Chapter.

189. The power to authorise the compulsory acquisition of land is restricted by the provisions of subsequent clauses.

190. Subsection (6) provides that an order granting development consent may apply, modify or exclude statutory provisions and may amend, repeal or revoke the provisions of a local Act, in the circumstances described. An order may also include such provisions as are necessary or expedient in order to give full effect to its provisions.

Clause 106: Exercise of powers in relation to legislation

191. This clause provides that before the Commission can exercise its legislation powers under clause 105(6)(a) and (b) it must send a draft of the proposed order granting development consent to the Secretary of State. If the Secretary of State considers that the provisions in the draft order would contravene Community law or Convention rights, she may direct the Commission to make specified changes to the order for the purpose of preventing the contravention arising. The Secretary of State must make any such direction within 28 days of receiving the draft order.

Clause 107: Purpose for which compulsory acquisition may be authorised

192. This clause specifies the purposes for which an order granting development consent can authorise the compulsory acquisition of land. The Commission or the Secretary of State, as the case may be, must be satisfied that the land:

a) is required for the development to which the development consent relates;
b) is required to facilitate or is incidental to that development; or
c) is replacement land (see clauses 114 and 115), and that there is a compelling need in the public interest for the land to be acquired compulsorily.

Clause 108: Guidance about authorisation of compulsory acquisition

193. This clause allows the Secretary of State to issue guidance about the authorisation of the compulsory acquisition of land in an order granting development consent. Where the Commission wishes to include in an order authorisation to purchase land compulsorily, it must have regard to this guidance.

Clause 109: Compensation for compulsory acquisition

194. This clause places restrictions on the provision which may be made in a development consent order regarding compensation for the compulsory acquisition of land. Existing provisions in other Acts about compensation may be applied, but not otherwise modified or excluded.

Clause 110: Statutory undertakers' land

195. The clause specifies the conditions which must be satisfied for an order granting development consent to authorise the compulsory purchase of land belonging to statutory undertakers.

196. If the statutory undertaker has acquired the land for the purpose of its undertaking and a representation has been made in the circumstances set out in the clause, an order granting development consent can authorise its compulsory purchase only if the Secretary of State is satisfied that:

a) the land can be acquired and not replaced without serious detriment to the statutory undertaker's undertaking; or
b) it can be replaced with other land without serious detriment to the statutory undertaker's undertaking.

197. Likewise an order granting development consent may include a provision authorising the compulsory purchase of a right over land belonging to a statutory undertaker only if the Secretary of State is satisfied that:

a) the right can be purchased without serious detriment to the undertaking; or
b) any detriment can be remedied by the statutory undertaker's being able to use other land.

Clauses 111 and 112: Local authority land and statutory undertakers' land: general and Local authority and statutory undertakers' land: acquisition by public body

198. Clause 111 specifies the circumstances in which an order granting development consent that authorises the compulsory purchase of land belonging to a local authority or statutory undertakers, or the compulsory acquisition of a relevant right over such land, is to be subject to special parliamentary procedure. If a representation has been made by the local authority or statutory undertakers about an application for an order granting development consent and this has not been withdrawn, any order allowing compulsory acquisition would be subject to special Parliamentary procedure, unless the promoter is a public body listed in clause 112.

Clause 113: National Trust land

199. This clause relates to land which is held inalienably by the National Trust. It provides that in certain circumstances an order granting development consent which authorises the compulsory purchase of such land or certain rights over such land, will be subject to special Parliamentary procedure. This is the case if the National Trust has made a representation about an application for an order granting development consent and this has not been withdrawn. The special Parliamentary procedure and the system which governs it is largely contained in the Statutory Orders (Special Procedure) Act 1945.

Clause 114: Commons, open spaces etc: compulsory acquisition of land

200. This clause provides that an order granting development consent which authorises the compulsory purchase of land forming part of a common, open space or fuel or field garden allotment will be subject to special Parliamentary procedure unless the Secretary of State is satisfied either that:

a) replacement land has been or will be given in exchange and that it will be subject to the same rights, trusts and incidents;
b) the land is being acquired in order to secure its preservation or improve its management; or
c) the land being acquired does not exceed 209.03 square metres, or is required for, or partly for, the widening or drainage of an existing highway, and the giving of land in exchange for it is unnecessary.

Any replacement land must be no less in area than the land being compulsorily acquired and must be equally advantageous.

Clause 115: Commons, open spaces etc: compulsory acquisition of rights over land

201. This clause contains similar provisions to the preceding clause in respect of the authorisation of the compulsory acquisition of a right over land forming part of a common, open space or fuel or field garden allotment. It provides that an order granting development consent, which authorises the compulsory acquisition of a right over land forming part of a common, open space or fuel or field garden allotment, will be subject to special Parliamentary procedure unless the Secretary of State is satisfied either that:

a) the land will be no less advantageous when burdened with the right;
b) replacement land will be given in exchange and will be subject to the same rights, trusts and incidents;
c) the right is being acquired in order to secure the preservation or improve the management of the land; or
d) the land over which the right is being acquired does not exceed 209.03 square metres, or the right is required in connection, or partly in connection, with the widening or drainage of an existing highway, and the giving of land in exchange for it is unnecessary.

Clause 116: Crown land

202. This clause provides that an order granting development consent can authorise the compulsory purchase of an interest in Crown land only if the interest is for the time being held otherwise than by or on behalf of the Crown, and the appropriate Crown authority consents to the acquisition.

Clause 117: Notice of authorisation of compulsory acquisition

203. This clause requires a person (the prospective purchaser) who has been authorised to acquire land compulsorily by an order granting development consent to serve notice of this on persons with certain interests in that land. This notice is referred to as a compulsory acquisition notice. The prospective purchaser must also fix such a notice onto a prominent place near the land to be acquired for 6 weeks, publish it in one or more local newspapers and make it available for inspection.

Clause 118: Public rights of way

204. This clause specifies that no order granting development consent can be made that extinguishes any public right of way over land unless the authority making it is satisfied that an alternative right of way has been or will be provided, or that such an alternative right of way is not required.

Clause 119: Excavation, mining, quarrying and boring operations

205. This clause states that an order granting development consent which authorises excavation, mining, quarrying or boring operations can be made only where the development to which the order relates to is or includes an underground gas storage facility.

Clause 120: Operation of generating stations

206. This clause states that an order granting development consent which authorises the operation of a generating station can be made only if the development to which the order relates is for or includes the construction or extension of a new generating station.

Clause 121: Keeping electric lines installed above ground

207. This clause states that an order granting development consent which authorises the installation of overhead electric lines can be made only if the development to which the order relates is or includes the installation of such lines.

Clause 122: Diversion of watercourses
208. This clause states that an order granting development consent which authorises the diversion of a navigable watercourse can be made only if the new length of watercourse is easily navigable by vessels using the existing watercourse. Such an order is also taken to authorise the diversion of any tow-path adjacent to the part of the watercourse which is to be diverted.

Clause 123: Highways
209. This clause states that an order granting development consent may authorise the charging of tolls in relation to a highway only if this was included in the application for the order. The clause also makes provision about when an order granting development consent may authorise the appropriation of a highway by a person or the transfer of a highway to a person.

Clause 124: Discharge of water
210. This clause relates to an order granting development consent which authorises the discharge of water into inland waters or underground strata. The person to whom the order is granted does not acquire the power to take water or require discharges to be made from the source of water mentioned in the order.

Clause 125: Development of Green Belt land
211. Where an order granting development consent includes the provisions specified in this clause in relation to Green Belt land, the Commission or the Secretary of State must notify the Secretary of State and relevant local authorities of the provision made by the order. This matches existing provisions in the Green Belt (London and Home Counties) Act 1938.

Part 7, Chapter 2: General

Clause 126: Duration of development consent order
212. This clause provides that after a development consent order is granted the development must be begun before the end of the period prescribed by the Secretary of State or such other (shorter or longer) period as is specified in the order. Failure to begin development within this timescale leads to the order ceasing to have effect.

Clause 127: When development begins
213. This clause replicates the definition of when development is deemed to have begun that exists in the Town and Country Planning Act 1990.

Clause 128: Benefit of development consent order
214. This clause explains that the development consent will generally have effect for the benefit of the land mentioned in an order even if the ownership of the land is subsequently transferred. It is possible for the order to make provision to the contrary.

Clause 129: Use of buildings in respect of which development consent granted
215. This clause clarifies that where an order granting development consent includes provisions for the construction of certain buildings, it may also make provisions for the subsequent use of these buildings.

PART 8: ENFORCEMENT

Clause 130: Offence: development without development consent
216. This clause provides that a person commits an offence if he carries out development for which development consent is required without development consent. A person who is found guilty of this offence is liable to a fine. The maximum fine which may be imposed varies depending on whether the case is tried in the Magistrates' court or the Crown Court.

Clause 131: Offence: breach of terms of order granting development consent
217. This clause provides that a person commits an offence if without reasonable excuse he carries out development in breach of the terms of an order granting development consent or if he does not comply with the terms of such a consent. A person who is found guilty of this offence is liable to a fine. The provisions regarding the level of the fine match those under clause 130.

Clause 132: Time limits
218. This provision sets out time limits for bringing charges in relation to the offences created by clauses 130 and 131. A person may not be charged with an offence under clause 130 if four years have elapsed since the date on which the development was substantially completed. A person may not be charged with an offence under clause 131 if four years have elapsed since the later of the following dates: the date on which the development was substantially completed and the date on which the breach or failure to comply occurred. These provisions do not prevent a person from being charged with an offence under clause 130 or 131 if during the preceding four years an information notice has been served under clause 137 or an injunction applied for under clause 141.

Clause 133: Right to enter without warrant
219. This clause gives a local planning authority the power to authorise a person to enter land, if it has reasonable grounds to suspect an offence is being, or has been, committed under clauses 130 or 131. Subsection (3) provides that where the property to be entered is a building used as a dwelling house 24 hours' notice of entry must be given to the occupier of the building.

Clause 134: Right to enter under warrant
220. This clause provides that a justice of the peace may issue a warrant authorising a person, authorised by the local planning authority, to enter land. The conditions of this are:

a) there are reasonable grounds for suspecting that an offence is being, or has been, committed under clause 130 or 131; and
b) either entry has been, or is likely to be, refused or this is an urgent case.

221. The warrant will authorise entry on one occasion only. The entry must take place within one month of the date of issue of the warrant and at a reasonable hour, unless the case is one of urgency.

Clause 135: Rights of entry: supplementary provisions

222. This clause requires an authorised person entering land under section 133 or 134 to produce evidence, if requested, of the authority and purpose for entry before entering the land. It also allows an authorised person to take other persons as necessary and, if when the authorised person leaves, the owner or occupier is not present, the clause requires the authorised person to take steps to ensure the land is left as effectively secured against trespassers as it was found.

223. This clause provides that an offence is committed if someone wilfully obstructs a person authorised to enter land under clause 133 or 134. Compensation for damage caused by an authorised person on the land may be recovered from the authority that authorised the right of entry.

Clause 136: Rights of entry: the Crown

224. This clause specifies that the rights of entry powers at clauses 133 and 134 do not apply to Crown land.

Clause 137: Power to require information

225. This clause enables a local planning authority to serve an information notice on the owner/occupier of land or anyone carrying out work on land or using it for any purpose. The power may be exercised where the authority suspects an offence under clause 130 or 131 may have been committed in respect of the land. The information notice may require the recipient to provide information about work being carried out, the use of the land and any other activities. The notice may also require details about any development consent order applying to the land. Subsection (4) requires the notice to set out the likely consequences of failing to respond. The recipient must send the information required in writing to the local planning authority.

Clause 138: Offences relating to information notices

226. This clause provides that a person commits an offence if, without reasonable excuse, he fails to comply with any requirement of an information notice, within a period of twenty one days beginning on the day the notice is served. The offence is punishable with a fine. In addition, a person commits an offence if he makes a statement in response to the notice that he knows to be false or misleading or is reckless as to whether it is true or false. This offence is also punishable by a fine.

Clause 139: Notice of unauthorised development

227. Subsection (2) of this clause applies where a person has been found guilty of an offence under clause 130. In such a case, the local planning authority may serve an unauthorised development notice requiring the person to remove the unauthorised development and return the land to its previous condition. Subsection (4) of this clause applies where a person has been found guilty of an offence under clause 131. In such a case the local planning authority may serve an unauthorised development notice requiring the person to remedy the breach or failure to comply. The notice

must specify the period within which these steps must be taken, and different periods may be specified for different steps.

Clause 140: Execution of works required by unauthorised development notice
228. This clause applies where steps have not been taken to comply with an unauthorised development notice within the period for compliance set out in the notice. In such a case, the local planning authority may enter the relevant land and carry out the works required in the notice and recover any expenses reasonably incurred in doing so from the owner of the land. This clause provides for such expenses and other amounts to be deemed to be incurred or paid for the use and at the request of the person found guilty of the offence under clause 130 or 131. The clause contains a power to apply certain provisions of the Public Health Acts 1936. It also provides that a person commits an offence if the person wilfully obstructs a person acting under powers conferred by the clause.

Clause 141: Injunctions
229. This provision enables a local planning authority to apply to the County Court or to the High Court for an injunction when it considers it necessary or expedient to prevent an actual or anticipated offence under clause 130 or 131. The Court may grant such an injunction as it thinks fit for the purpose of restraining the activity which constitutes the offence.

Clause 142: Isles of Scilly
230. This clause allows the Secretary of State to make an Order enabling the Council of the Isles of Scilly to carry out any functions set out in Part 8 that are exercisable by a local planning authority. The Secretary of State must consult the Council of the Isles of Scilly before making such an Order.

PART 9: CHANGES TO EXISTING PLANNING REGIMES

Clauses 143: Planning obligations
231. This clause allows the promoter of a nationally significant infrastructure project to enter into agreements with local authorities, in the same way as a developer seeking planning permission under the Town and Country Planning Act 1990.

232. Only the Commission or (as the case may be) the Secretary of State will be able subsequently to modify or discharge a planning obligation entered into in connection with an application (or proposed application) for an order granting development consent. It will be for the local planning authority to enforce the obligation. Provision is made concerning legal challenges against the Commission or the Secretary of State in connection with planning obligations.

Clauses 144 and 145: Blighted land

233. A national policy statement identifying a location as a suitable (or potentially suitable) location for a nationally significant infrastructure project may create blight at that location, reducing land values and making it hard to sell the land. Blight may also result from an application being made for an order granting development consent authorising the compulsory acquisition of land.

234. Clause 144 amends section 169 of, and Schedule 13 to, the Town and Country Planning Act 1990 (which extends to England and Wales), so as to allow owner occupiers adversely affected in this way to have the benefit of the existing statutory provisions relating to blight. Subsection (3) states that the "appropriate authority" (who should receive the blight notice) is in the case of blight caused by a national policy statement the Secretary of State.

235. Clause 145 makes provision for blight caused in Scotland by a national policy statement identifying a location as a suitable (or potentially suitable) location for an oil or gas cross-country pipe-line, and for blight caused in Scotland by a proposal to compulsorily acquire land for such a pipe-line.

Clause 146: Local development documents

236. Clause 146 amends the Planning and Compulsory Purchase Act 2004 ("PCPA 2004") with regard to supplementary planning documents and statements of community involvement. In these notes on this clause, "supplementary planning document" means a document that for the purposes of PCPA 2004 is a local development document but is not a development plan document.

237. Subsection (2) provides for amendments such that local planning authorities will no longer need to list supplementary planning documents in their local development schemes. Subsection (5)(a) removes the requirement for supplementary planning documents to be produced in accordance with the local development scheme. The result will be that supplementary planning documents can be produced by local planning authorities without the agreement of the Secretary of State although they will continue to have the status of local development documents (and the Secretary of State will still be able to require pre-adoption modification of supplementary planning documents that the Secretary of State considers unsatisfactory). Subsection (5)(d) removes the requirement to carry out and report on a sustainability appraisal of the proposals in a supplementary planning document.

238. Subsection (3)(a) removes the requirement for the statement of community involvement to be specified in the local development scheme and subsection (4)(c) removes the requirement for an independent examination of the statement of community involvement.

Clause 147: Development plan documents: climate change policies

239. Clause 147 places a duty on local planning authorities when preparing their development plan documents to include policies in relation to the development and use of land which take action on mitigating and adapting to climate change.

240. The duty is set within the context of section 19(2) of the PCPA 2004 which states that in preparing a local development document local planning authorities must have regard to national policies and advice contained in guidance issued by the Secretary of State. In practice this will be the Planning Policy Statement on Climate Change.

241. The duty will not apply to those plans in an advanced state of preparation or to completed plans before they can be revised. The intention is to achieve this by use of the commencement power.

Clause 148: Power of High Court to remit strategies, plans and documents

242. The provisions of Clause 148 amend section 113 of the PCPA 2004. Section 113 provides that certain development-related strategies, plans and documents may be challenged only by way of High Court proceedings under section 113. At present, if the Court upholds a challenge, its only power is to quash the whole or part of the document concerned. Preparation of the document has then to begin again. The amendments mean that the Court may instead: direct that a strategy, plan or document be treated as still being an unapproved/unadopted draft; send a strategy, plan or document back to any stage in its production process by specifying which steps in the process can be considered as having being taken satisfactorily; and give directions as to the action to be taken relating to its preparation, publication, adoption or approval. Section 113 as amended applies to all strategies, plans and documents in England and Wales listed in section 113(1).

Clause 149: Power of High Court to remit unitary development plans in Wales

243. Clause 149 makes the same provision in relation to unitary development plans in Wales that are the subject of current transitional provisions. The intention of these arrangements is to enable certain local planning authorities in Wales to complete unitary development plans under the Town and Country Planning Act 1990 ("the 1990 Act") before embarking on the local development plans required by the PCPA 2004.

Clause 150: Determination of planning applications by officers

244. Clause 150 inserts new sections 75A, 75B, 75C, 75D and 78ZA into the 1990 Act. Its purpose is to introduce, in relation to certain types of development, a requirement for local planning authorities to make arrangements for certain planning applications to be determined by officers of the authority. For these applications, it establishes a right of review of the officer's decision by the local planning authority and restricts the right of appeal to the Secretary of State under section 78 of the 1990 Act.

245. New section 75A requires local planning authorities in England to specify the types of planning applications which will be determined by an officer of the authority and which would be reviewable by the local planning authority following refusal, or the granting of permission subject to conditions.

246. Regulations may specify descriptions of planning applications which must and must not be subject to arrangements made under this section and may make provision about officers who are to determine applications.

247. The purpose of subsection (6) is to allow the local planning authority, or a committee or sub-committee of the authority, to choose to determine an application that would normally be determined by an officer under arrangements made under this section. Subsection (7) provides that arrangements made under this section will not prejudice the power of the local panning authority to delegate the determination of planning applications not of a type specified under this section.

248. Subsection (8) sets out the definition of "planning application" for the purposes of this clause. This includes:

- an application under section 73 of the 1990 Act (application for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted); and
- an application for the consent, agreement or approval of a local planning authority required by a condition imposed on a planning permission.

249. But, in both cases, only where the previous planning permission was granted either by an officer acting under arrangements made under this section or a local planning authority acting under arrangements made under new sections 75C or 75D.

250. New section 75B allows existing provisions of the 1990 Act (or regulations made under it) on the determination of planning applications to be applied to determinations by officers under section 75A.

251. New section 75C provides for a review by the local planning authority of an application which has been determined by an officer under section 75A. It applies where the officer has either refused the application or granted it subject to conditions. Subsection (6) prohibits the delegation to an officer of a local planning authority's review functions under this section.

252. New section 75D caters for circumstances where the local planning authority has failed to give notice of a decision on an application to which arrangements under section 75A apply. In such circumstances the local planning authority must determine the application if asked to do so by the applicant if the request is made in the prescribed form and before the end of the prescribed period. The purpose of subsection (6) is to allow existing provisions of the 1990 Act (or regulations made under it) on the determination of planning applications to be applied to determinations by a local planning authority under this section. The local planning authority cannot delegate its functions under this section to an officer.

253. New section 78ZA restricts the right of appeal to the Secretary of State in circumstances where arrangements made pursuant to section 75A provide for the application to be determined by an officer. An appeal may only be brought under the existing section 78(1) where a local planning authority has failed to complete a review of the case under section 75C by the end of the prescribed period. An appeal may

be brought under section 78(2) only where the local planning authority or a committee or sub-committee of the authority have decided to determine the application themselves or the authority have been required to determine the application under section 75D because they have failed to give notice of a decision.

Clause 151: Determination of applications for certificates of lawful use or development by officers

254. Clause 151 inserts new sections 193A, 193B, 193C, 193D, and 195A into the 1990 Act. These new sections apply similar provisions to those set out above for planning applications (clause 150) to applications for certificates of lawful use or development.

Clause 152: Validity of decisions made on reviews

255. Clause 152 amends section 284 of the 1990 Act and inserts a new section 286A. The purpose of the amendment to section 284 is to provide that the only means of challenge to a decision on a review of a case by a local planning authority under section 75C or section 193C is via an application to the High Court under the new section 286A. New section 286A provides that a person aggrieved by a decision on a review by a local planning authority may make an application to the High Court within 6 weeks of the date of decision. The High Court has the power to quash the decision on the grounds set out in subsection (4).

Clause 153: Determination of listed building applications by officers

256. Clause 153 inserts new sections 19A, 19B, 19C, 19D and 20ZA into the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the Listed Buildings Act"). These new sections make provision for listed buildings applications similar to that set out above for planning applications (clause 150).

Clause 154: Power to decline to determine subsequent application

257. Clause 154 amends section 70A of the 1990 Act and section 81A of the Listed Buildings Act. The sections in these two Acts provide powers for local planning authorities to decline to determine an application for planning permission, listed building consent or conservation area consent: if it is the same or substantially the same as an application which, within the previous two years, the Secretary of State has called in and refused, or dismissed on appeal; or if the local planning authority has refused two similar applications in that period and there has been no appeal. This amendment ensures that a local planning authority is not prevented from exercising its powers under section 70A of the 1990 Act or 81A of the Listed Buildings Act to decline to determine an application by the fact that an appeal has been made but has been either withdrawn or abandoned before being determined.

Clause 155: Removal of right to compensation where notice given of withdrawal of planning permission

258. Clause 155 inserts a new subsection (3B) into section 108 of the 1990 Act. Section 107 of the 1990 Act sets out the entitlement to compensation where planning permission is revoked or modified. Section 108 extends this entitlement to compensation to circumstances where planning permission granted by a development order or a local development order is withdrawn. The effect of new subsection (3B) is that there will be no entitlement to compensation where at least 12 months prior to

planning permission granted by development order or local development order being withdrawn, notice was given of the intention to do so.

Clause 156: Power to make non-material changes to planning permission

259. Clause 156 inserts a new section 96A into the 1990 Act. Its purpose is to introduce express power for a local planning authority to be able to make a change to a planning permission if they are satisfied that that change is not material. In determining whether a change is material, a local planning authority must have regard to the effect of the change and any previous changes made under section 96A to the original planning permission: see new section 96A(2).

Clause 157 and Schedule 3: Tree preservation orders

260. Clause 157 amends the tree preservation order provisions of the Town and Country Planning Act 1990. In short, it provides for the transfer of provisions from tree preservation orders into regulations.

261. Subsections (2) to (6) repeal various provisions of the 1990 Act which set out provision that may be included in tree preservation orders, including: (1) provision prohibiting works to trees without the consent of the local planning authority; (2) exemptions which allow works to protected trees without consent; (3) provision regulating applications for consent to carry out works to trees, and appeals; (4) provision for the payment of compensation for loss or damage caused by tree preservation orders.

262. Subsection (7) enables these deleted provisions of the 1990 Act to be replaced by provision included in regulations ("tree preservation regulations"). For this purpose it inserts seven new sections to the Act. New section 202A makes general provision about the regulations, which would be subject to negative resolution procedure. New section 202B to 202G contain additional details about the sort of provision that may be contained in the regulations. In particular, the regulations may include provision about: the form of tree preservation orders; the procedures to be followed where tree preservation orders are to be confirmed; the prohibited activities in relation to trees; applications for consent to carry out works to trees; powers to give consent to works subject to conditions; appeals against decisions to refuse consent; entitlement to compensation following decisions on applications for consent; and the keeping of public registers containing information on tree preservation orders.

263. Schedule 3 makes further amendments needed to give effect to the transfer of provisions from tree preservation orders to regulations.

Clause 158: Existing tree preservation orders: transitional provisions

264. Clause 158 makes transitional provisions about tree preservation orders made before these clauses come into force.

265. Subsection (2) has the effect that, when the clause comes into force, the regime set out in tree preservation regulations will apply to trees covered by an existing order in place of the particular regime set out in the order. The order will continue to have effect, however, for the purposes of identifying the trees, groups of trees or woodlands to which it applies.

Clause 159 and Schedule 4: Use of land: power to override easements and other rights

266. This clause introduces this Schedule which amends section 237 of the 1990 Act so as to authorise a local authority in England to override easements and other rights restricting the use of land which it has acquired or appropriated for planning purposes. The local authority can only do this if the use is in accordance with planning permission. Under section 237 it is already possible for a local authority, in these circumstances, to override easements and other rights restricting the execution of works on land.

267. Compensation will be payable for an interference or breach of an easement or other rights under this provision. Schedule 3 also amends the equivalent provisions in other legislation.

Clause 160 and Schedule 5: Determination of procedure for certain appeals

268. The purpose of clause 160 is to require the Secretary of State to determine the procedure by which certain appeals made under the 1990 Act, the Listed Buildings Act and the Hazardous Substances Act should be considered. The procedure could be a local inquiry, a hearing or written representations, depending on whichever the Secretary of State considers appropriate. The Secretary of State must make the determination within the required period, notify the appellant and local planning authority of which procedure has been selected, and publish the criteria that are to be applied in determining the appeal method.

269. Schedule 5 contains amendments to the 1990 Act, the Listed Buildings Act and the Hazardous Substances Act that are consequential on the new provisions inserted by clause 160.

Clause 161: Fees for planning applications

270. Clause 161 substitutes section 303 of the 1990 Act. The new elements are in subsections (2) and (4) of the substituted section. There are also new supplementary provisions in subsections (5)(a) and (f) and (6) of the substituted section.

271. Subsection (2) enables the appropriate authority (being the Secretary of State in England or the Welsh Ministers in Wales) to make provision in regulations for the whole of the fee which is payable when an applicant appeals under section 177(5) of the 1990 Act against an enforcement notice to be paid to either the local planning authority, the appropriate authority, or both the local planning authority and the appropriate authority. The previous section 303(3)(a) had only allowed the Secretary of State/Welsh Ministers to prescribe that the fee should be paid to her/them and the local planning authority.

272. Section 293A of the 1990 Act (Urgent Crown Development: application) provides for the appropriate authority (that is, the "appropriate authority" as defined in section 293 of the 1990 Act) to make a planning application direct to the Secretary of State (in England) or the Welsh Ministers (in Wales) instead of to the local planning authority. Subsection (4) of the substituted section 303 enables the Secretary of State (in England) and the Welsh Ministers (in Wales) to make provision in regulations for an application under section 293A to be accompanied by a fee payable to the Minister/s to whom the application is made.

273. Subsection (8) provides that regulations made under section 303 should continue to be subject to the affirmative resolution procedure.

Clause 162: Fees for appeals

274. Clause 162 inserts a new section 303ZA into the 1990 Act which allows the Secretary of State or Welsh Ministers to make provision, by way of regulations, for the payment of a fee for appeals made under the 1990 Act and the Listed Buildings Act. The fee is to be payable by the appellant and the regulations may set out, in particular, when the fee should be paid, how the fee should be calculated and by whom, the circumstances under which an appeal fee may be refunded, and the effect of either paying or not paying the fee.

275. Regulations made under the new section 303ZA are subject to the affirmative resolution procedure.

PART 10: COMMUNITY INFRASTRUCTURE LEVY

Clause 163: The levy

276. This clause enables the Secretary of State to establish a Community Infrastructure Levy by regulation and sets out the overall purpose of the levy. The value of land increases when planning permission is granted for development. The aim of the charge is to ensure that costs incurred in providing infrastructure to support the development of an area are partly met by land owners who have benefitted in this way.

Clause 164: Charging authorities

277. This clause provides that the regulations must specify which authorities are empowered to charge the Community Infrastructure Levy including local planning authorities, the Mayor of London and the Secretary of State.

Clause 165: Liability

278. This clause provides that the regulations must specify the basis on which liability to pay CIL is incurred. The clause provides that liability is incurred when development takes place in reliance on planning permission and attached to the land owner at the point when CIL becomes payable. Liability is determined at or by reference to when planning permission first permits the development.

Clause 166: Amount
279. This clause provides that the regulations must specify how the amount of CIL is determined. The regulations may set out procedures on how the amount of CIL is to be determined and methods of calculation. The clause provides appeals on questions of fact related to how the amount of CIL to be paid is calculated.

Clause 167: Application
280. This clause provides that the regulations must require authorities collecting CIL to apply it to funding infrastructure. The regulations may specify what constitutes infrastructure, the areas in which it may be funded and how it may be funded. The regulations may specify procedures for identifying the infrastructure on which CIL may be used and include provision for CIL to be used for reimbursement of expenditure already incurred, loans, guarantees and indemnities, and make provision for the use of CIL should projects no longer require funding. The regulations may make provision for accounting, and monitoring and reporting of CIL and permit money to be applied outside an authority's area, passed to another body or spent by a body.

Clause 168: Collection
281. This clause provides that the regulations shall include provision about the collection of CIL and its repayment, with interest, in cases of overpayment. The regulations may make provision for payments to varying timescales and payments in forms other than money. The regulations may require one authority to collect CIL charged by another and may replicate or apply enactments relating to the collection of tax.

Clause 169: Enforcement
282. This clause provides that the regulations must include provisions on the enforcement of CIL including the consequences of late payment or failure to pay. The regulations may make provision for a range related measures including creation of criminal offences and may replicate or apply enactments relating to the collection of tax.

Clause 170: Secretary of State
283. This clause provides that the regulations may confer powers on the Secretary of State to control the imposition, collection and application of CIL including to set maximum amounts and directing the application of money received through CIL. The regulations may set out the procedures by which the Secretary of State will use such powers and in what circumstances. The clause provides that the Secretary of State may give guidance on any matter connected with CIL to which an authority must have regard.

Clause 171: CIL regulations: general
284. This clause provides that the regulations shall be made by statutory instrument and shall not be made unless a draft has been laid before and approved by resolution of the House of Commons.

Clause 172: Relationship with other powers

285. This clause provides that the regulations may include provision on the use of section 106 of the Town and Country Planning Act 1990 and section 278 of the Highways Act 1980. The clause enables the Secretary of State to give guidance on how these powers are to be exercised to which authorities must have regard.

PART 11: FINAL PROVISIONS

Clause 173: Application to the Crown

286. This clause applies the Bill to the Crown, subject to the exceptions set out in subsections (2) and (3).

Clause 174: Expressions relating to the Crown

287. This clause sets out how the Bill should be interpreted when references are made to the "Crown" e.g. Crown land, Crown interest, Duchy interest, Crown authority.

Clause 175: Enforcement in relation to Crown

288. This clause provides that the offences in the Bill do not apply to the Crown.

Clause 176: Service of notices: general

289. This clause contains provision in respect of how notices and other documents should be served.

Clause 177: Service of documents to persons interested in or occupying premises

290. This clause specifies sets out the conditions which must be satisfied in order to show that a notice, served under provisions of the Bill to a person interested in or occupying premises, has been duly served.

Clause 178: Service of notices on the Crown

291. This clause specifies that any notice required under the Bill to be served on the Crown must be served on the appropriate Crown authority.

Clauses 179 to 189

292. The remainder of Part 11 contains supplementary provisions. Clauses 179 and 180 contain general provision for orders, regulations and directions under the Bill. Clause 179 also sets out the procedure which is to apply in respect of regulations and orders (which are to be made by statutory instrument), and states that power to make them includes power to make different provision for different cases and to make incidental, consequential, supplementary, transitional or transitory provision or savings. Clauses 181 and 182 deal with abbreviations and interpretation. Clause 183 contains modifications to the Bill in relation to Scotland. Clause 184 confers upon the Secretary of State an order making power which may be used to make supplementary and consequential provision. Clauses 185, 187, 188 and 189 make provision as to repeals, extent, commencement and the short title of the Bill.

CONCLUDING SECTIONS

Financial Effects

293. Implementation of the measures in the Bill will mean some costs for the public sector. A one-off transitional cost of setting up the Commission is expected to be approximately £5m, with an annual average running cost forecast at £8m per annum.

294. Estimates suggest the new regime should yield large net savings, in the region of £3.8 - £4.8 billion in total between 2008 and 2030. These savings arise primarily through reducing the existing delays in the construction of nationally significant energy and aviation infrastructure, but also through reduced administrative costs for promoters of NSIPs. More details as to how these savings have been calculated can be found in of the impact assessment of the Bill's provisions (Part A - Nationally Significant Infrastructure Projects), which can be found on the DCLG website, www.communities.gov.uk.

Public Service Manpower

295. We anticipate a reduction in the number of central Government staff engaged on work related to consents for nationally significant infrastructure projects. The Commission will be a non-departmental public body, therefore establishing it will increase public sector manpower. It is envisaged that the Commission will be comprised of 35 Board members and 75 Secretariat staff.

The Regulatory Impact Assessment

296. A regulatory impact assessment (RIA) of the Bill's provisions has been published alongside this Bill, and sets out where there will be an impact on business. Estimates suggest that the annual administrative burden on business will be reduced by approximately £20 million. The RIA is available for Members in the Vote Office and can also be read on the DCLG website at: www.communities.gov.uk.

European Convention on Human Rights

297. Under section 19 of the Human Rights Act 1998, the Minister in charge of a Bill is required to make a statement before Second Reading about the compatibility of the provisions of the Bill with the European Convention on Human Rights. The Right Hon Hazel Blears MP, Secretary of State for Communities and Local Government has made the following statement: "In my view the provisions of the Planning Bill are compatible with the Convention rights."

298. The Bill engages several rights under the Convention, including the right to a fair hearing (Article 6), and right to respect for homes and the protection of property (Article 8 and Article 1 of the First Protocol). The main issues are set out below.

299. It is considered that the proposal for decisions to be made by the Infrastructure Planning Commission in place of ministers is compatible with Article 6. It is not considered that political involvement in decision-making is a necessary element of Article 6.

300. The procedures to be adopted by the Commission in considering applications raise Article 6 issues. Although there will be no automatic right to a public hearing

about specified issues, such a hearing will take place where the Commission considers that it is necessary to ensure the proper consideration of an application. The Commission will be a relevant public authority for the purposes of section 6 of the Human Rights Act 1998 and will therefore be required to exercise this function compatibly with Convention rights. If a hearing is held, interested parties will be given the right be heard. An interested party includes those directly affected by the application and anyone who makes a relevant representation on an application. Parties will only be allowed to cross-examine where this is necessary to prevent their case from being prejudiced. It is considered that the procedure for considering applications would be compatible with Article 6.

301. The provisions on legal challenges to the decisions on development consents raise Article 6 issues. The proposed 6 week time limit is similar to that which exists under the Town and Country Planning Act 1990, which has been found by the courts to be compatible with the ECHR, in that it pursues a legitimate aim to ensure legal certainty and finality and to protect the property rights of others. The provisions will also defer, but not exclude, the possibility of challenge until a decision is made. In the circumstances it is considered that the proposals are compatible.

302. A national policy statement identifying a suitable location for a nationally significant infrastructure project might create blight, reducing land values and making land hard to sell. National policy statements will be subject to public consultation and there will be a right to challenge their adoption in the courts (again with a restricted time for challenge). Those adversely affected by the statement will have the benefit of the existing statutory provisions relating to blight. Article 8 and Article 1 of the First Protocol would be engaged but it is considered that any interference would be necessary in the wider public interest and proportionate.

303. An order for development consent may authorise compulsory acquisition of land. In authorising this, the Commission would be required to be satisfied that there was a compelling need in the public interest for the land to be acquired compulsorily. Owners will be able to claim compensation on the same basis as currently applies under the Land Compensation Act 1961, the Compulsory Purchase Act 1965 and case law. Together these constitute the compensation code and this has been held to comply with Article 8 and Article 1. It is considered that any interference with rights under Article 8 or Article 1 as a result of blight would be necessary and proportionate.

304. The proposals to require local planning authorities to make arrangements for certain planning applications to be determined by officers, with a review by members but no appeal to the Secretary of State raises Article 6 issues. It is considered that, in the light of the *Alconbury* and *Begum* cases, the right of review coupled with the power of the High Court to review the legality of the decision is sufficient to satisfy Article 6.

305. The Bill makes provision for the removal of the right to insist on an oral hearing at a planning appeal and instead empowers the Secretary of State to determine the most appropriate appeal method by applying approved criteria. The courts have held that a fair hearing does not necessarily require an oral hearing – it will depend on the circumstances, including the nature of the claimant's interest, the seriousness of

the matter being decided and the nature of any matters in dispute. It is considered that the use of published criteria together with review by the High Court is sufficient to satisfy Article 6.

306. The Bill also provides for the removal of the right to compensation where notice is given of the withdrawal of planning permission granted by a development order (clause 155). Section 108(1) of the 1990 Act currently provides for compensation to be payable if planning permission granted by development order is withdrawn, and within 12 months an application for planning permission is made which is refused or granted subject to conditions by the LPA. These clauses amend the compensation provisions of the 1990 Act so as to provide an optional route whereby local planning authorities can elect to provide a period of 12 months' notice before a change to permitted development is brought into effect, during which time development can go ahead without the need to apply for planning permission. No compensation would be payable where the 12 months' notice period is given. Protection for the rights of the individual is provided by the 12 months' notice period before any restrictive change to permitted development comes into effect, during which time development can go ahead without the need to apply for planning permission. It is considered that this proposal is compatible with Article 1 of the First Protocol.

307. The Bill also includes provisions on fees for application and appeals, rights of entry, offences and a Community Infrastructure Levy. Although these raise ECHR issues, it is considered that they are all serve a legitimate aim and are compatible with the ECHR.

Sewel Convention

308. Because the Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament, if there are amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will be sought for them.

Commencement Date

309. Clause 188 makes provision about commencement. In general the provisions of the Bill will be brought into force by order made by the Secretary of State. Certain provisions of the Bill will come into force on the day on which the Act is passed; these are set out in subsection (1) of clause 188. Certain provisions will be brought into force in relation to Wales by order made by the Welsh Ministers; these are set out in subsections (3) and (4) of clause 188.

PLANNING BILL

EXPLANATORY NOTES

These notes refer to the Planning Bill
as introduced in the House of Commons on 27th November 2007 [Bill 11]

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