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Circular 14/91
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Circular 44/91
(Welsh Office)

Joint Circular from the
Department of the Environment
2 Marsham Street, London SW1P 3EB

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Cathays Park, Cardiff CF1 3NQ

15 August 1991

PLANNING AND COMPENSATION ACT 1991

1. The Planning and Compensation Bill, which gives effect to the Government's proposals to improve the efficiency of the planning system and make the compensation code fairer, received Royal Assent on 25 July. An explanatory guide to the Act is at Annex 1 of this circular.

2. It is proposed to make a commencement order under which the following provisions of the Act applying to England and Wales come into effect about two months after Royal Assent:—

Part I
- — Section 15 (Assessment of environmental effects)
- — Section 17 (Power of local planning authority to decline to determine applications)
- — Section 18 (Dismissal of appeals in cases of undue delay)
- — Section 21 and Schedule 1 (Mines and waste)
- — Section 22 and Schedule 2 (Old mining permissions)
- — Section 26 (Status of development plans)
- — Section 29 (Functions of Historic Buildings and Monuments Commission)
- — Section 31 and Schedule 6 (Planning compensation repeals, other than those specified in section 84(4) of the Act)
- — Section 32 and Schedule 7 (Planning: minor and consequential amendments) (part only)

Part III
- — Land compensation (sections 62 to 70 and Schedules 14 and 15)

Part V
- — Section 80 and Schedule 18 (Interest on compensation and payments on account)
- — Section 81 (Abolition of new street byelaws).

3. Annex 2 contains more detailed guidance on these provisions (apart from the land compensation provisions in Part III and section 80 on which a separate explanatory circular will be issued shortly).

4. The remaining provisions of Part I of the Act (together with section 83 so far as it applies to England and Wales) will be brought into effect by further orders when the necessary statutory instruments have been made.

C L L BRAUN, *Assistant Secretary*
H R BOLLINGTON, *Assistant Secretary*

The Chief Executive
County Councils
District Councils } In England and Wales

London Borough Councils
Urban Development Corporations
Council of the Isles of Scilly

The Town Clerk, City of London

The National Park Officer
Lake District Special Planning Board
Peak Park Joint Planning Board

The Chief Executive, Residuary Bodies

PLANNING AND COMPENSATION ACT: GUIDE TO THE ACT

1. This guide provides a summary of the Planning and Compensation Act's main provisions; it is not intended to be exhaustive or a definitive interpretation of the law.

2. **Parts I and II** respectively amend the law on town and country planning in England and Wales and in Scotland.

3. **Enforcement.** Sections 1 to 11 for England and Wales and 33 to 43 for Scotland largely implement the main recommendations of the report by Mr Robert Carnwath QC (Enforcing Planning Control—published by HMSO in April 1989). The main provisions include the following **new enforcement powers:**

'Planning contravention notices' (sections 1 and 33)—a discretionary procedure for planning authorities to obtain information about activities on land where a breach of planning control is suspected. It includes provision for an owner's occupier's or other recipients' representations to be considered by the authority. Failure to comply with a planning contravention notice within 21 days is a summary offence.

'Breach of condition notices' (sections 2 and 34)—also discretionary, this procedure enables a planning authority to take enforcement action against a breach of a planning condition, by serving a notice requiring compliance with the condition. Failure to comply with the notice within a time-limit is a summary offence.

'Injunctions' (section 3)—enables a planning authority to seek an injunction in the High Court or County Court against an actual or threatened breach of planning control, including an injunction against a person whose identity is unknown. Section 35 provides a power for Scottish authorities to apply to the Court of Session or the Sheriff for an interdict for similar purposes.

4. **Other enforcement** provisions—sections 4 to 11 (36 to 43 for Scotland) include:—

A new ten-year limit for enforcement action to be taken against most unauthorised material changes of use of land, or most breaches of planning conditions.

Greatly improved enforcement notice and stop notice procedures (including the application of stop notices to residential caravan sites).

Amended grounds of appeal to the Secretary of State against an enforcement notice; and enabling provision for payment also to be made to the local planning authority for the deemed planning application arising on an enforcement appeal.

An increased summary maximum penalty of £20,000 (compared to £2,000 at present) for the main planning enforcement offences, with the same summary maximum for a repetition of the offence.

A new 'lawful development certificate' procedure enabling planning authorities to determine whether development has become

'immune' from enforcement action or whether planning permission is required for an existing or proposed use or operation. The present 'established use certificate' and section 64 determination procedures will eventually cease to operate.

Strengthened 'right of entry' powers, to enable planning authorities' staff to obtain essential information for enforcement purposes at any reasonable hour, but in the case of a dwellinghouse, only where 24 hours' notice has been given to the occupier. The new powers include provision for entry on to land under a warrant issued by a magistrate.

5. The enforcement provisions will be brought into effect as appropriate when the necessary regulations have been made. An explanatory circular and Planning Policy Guidance Note (PPG) on enforcement are in preparation.

6. **Control over development**—sections 12 to 19 (44 to 50 for Scotland) are designed to improve the performance and efficiency of the development control system:

Planning obligations. Section 12 allows developers to enter into a planning obligation either as at present via an agreement with the local planning authority or by making a unilateral undertaking. The section also provides for planning obligations to be modified or discharged, and for such obligations to be entered into in respect of Crown land. Regulations and an explanatory circular are in preparation. (Section 49 makes provision in relation to planning agreements and Crown land in Scotland).

Demolition. Sections 13 and 44 provide that the demolition of a building is development which requires planning permission. However, a direction by the Secretary of State and amendments to the General Development Order (GDO) will have the effect that most types of demolition will not require planning permission. A consultation document on the details of implementation of the new controls was issued recently.

Fish farming. Sections 14 and 45 make clear that placing floating structures for fish farming purposes in inland waters is development which requires planning permission. The Department has announced that it will amend the GDO to ensure that fish farming developments in National Parks in England and Wales receive planning permission only following consideration of a planning application; and has recently issued a consultation paper on permitted development rights for fish farming in England and Wales.

Environmental assessment. Sections 15 and 48 enable the Secretary of State to make regulations to add to the classes of development for which environmental assessment may be required. Such additions will be made only after consultation with those concerned; the consultation paper on fish farming mentioned above includes a proposal to extend environmental assessment requirements to trout farms.

Notice of planning applications. Sections 16 and 46 make provision relating to the notices which must be given to owners and others with

an interest in the land when a planning application is submitted. In particular it is made clear that agricultural tenants must be notified of applications relating to their land. The Government has announced that, following public consultation, the GDO for England and Wales will be amended to require publicity for all applications for planning permission. Similar arrangements already apply in Scotland.

Repeat applications. Sections 17 and 47 enable local planning authorities to decline to determine repetitive planning applications if they are made within two years of an unsuccessful appeal or a refusal following 'call-in' by the Secretary of State.

Summary dismissal of appeals. Sections 18 and 50 provide that the Secretary of State may, after giving the appellant warning, summarily dismiss an appeal where he considers that the appellant is responsible for undue delay.

County applications. Section 19 enables provision to be made by development order for planning applications relating to developments for which the county council is the planning authority to be submitted to the county council direct rather than via the district council. This will affect mainly minerals and waste disposal developments.

7. The provisions relating to environmental assessment, repeat applications, summary dismissal of appeals and county applications will be brought into force about 2 months after Royal Assent.

8. **Controls over particular matters.** Sections 20 to 25 (in Scotland sections 51 to 57) amend the law relating to particular controls within the planning system.

Development by local authorities. Section 20 revises the statutory provisions under which local planning authorities in England and Wales obtain planning permission for their own development and development on their land, and empowers the Secretary of State to make regulations governing the procedures. Regulations to replace the Town and Country Planning General Regulations 1976, associated secondary legislation and an explanatory circular are in preparation.

Mines and waste. Sections 21 and 51 and Schedules 1 and 8 bring up to date the planning provisions relating to the creation and enlargement of mineral deposits, among other things enabling aftercare conditions to be imposed on planning permissions and ensuring that permissions for the depositing of mineral wastes are subject to a time limit on their duration. These provisions will be brought into force about 2 months after Royal Assent.

Old mining permissions (interim development orders). Sections 22 and 52 and Schedules 2 and 9 provide for the registration of permissions granted before 1948 for the extraction of minerals, and for schemes to be drawn up under which such permissions will operate only where they are subject to appropriate conditions. These provisions will be brought into force about 2 months after Royal Assent.

Trees, listed buildings, conservation areas and hazardous substances. Sections 23 and 25 and Schedule 3 (together with sections 54 and 57 and Schedule 10 for Scotland) amend the enforcement provisions relating to tree preservation orders, listed building and conservation area consents and hazardous substances consents in line with the provisions in sections 1 to 11. The changes will be explained in the circular and PPG mentioned in paragraph 5 above.

Advertisement control. Sections 24 and 55 amend the statutory definition of 'advertisement' to include certain modern forms of advertisement. Section 56 introduces powers for Scottish planning authorities to control fly-posting; authorities in England and Wales already have such powers. Amended Control of Advertisements Regulations, a PPG and a circular are in preparation.

9. **Development plans and simplified planning zones**—sections 26 to 28 with Schedules 4 and 5 (together with sections 58 and 59 and Schedule 11 in Scotland) give effect to the Government's proposals for a more effective, plan-led land use planning system.

Sections 26 and 58 require relevant planning decisions (for example, on planning applications) to accord with the development plan unless material considerations indicate otherwise. This will ensure a positive role for development plans in decisions by local authorities and the Secretary of State. This provision will be brought into effect about 2 months after Royal Assent.

Section 27 and Schedule 4 provide in England and Wales for:—

— structure plans to be prepared and adopted by county councils without referring them to the Secretary of State for approval. There will, however, be powers for the Secretary of State to intervene where necessary;

— minerals local plans and (in England) waste local plans are also to be prepared by county councils; in Wales, policies on waste will be incorporated in districts' local plans;

— district-wide local plans to be prepared by the non-metropolitan district councils. National Park authorities will be required to prepare park-wide local plans and will also be responsible for policies for minerals and waste;

— streamlined procedures for the preparation and adoption of plans while continuing to provide for appropriate consultation;

— all development plans to include policies in respect of the conservation of the natural beauty and amenity of the land.

Sections 28 and 59 and Schedules 5 and 11 provide streamlined procedures for designating Simplified Planning Zones (SPZs).

10. Regulations, a circular and revised PPGs on development plans and SPZs are in preparation.

11. **Miscellaneous provisions**

Section 29 extends the powers of the Historic Buildings and Monuments Commission for England (English Heritage) to prosecute offences under heritage legislation. This provision will be brought into force about two months after Royal Assent.

Section 30 will enable the Secretary of State to award the abortive costs of other appeal parties against a principal appeal party who unreasonably causes an inquiry or hearing to be cancelled.

Sections 31 and 60 and Schedules 6 and 12 repeal some outdated planning compensation provisions. The repeals of section 114 and Part II of Schedule 3 of the Principal Act 1990, section 27 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and sections 158 and 160 of the Town and Country Planning (Scotland) Act 1972, were brought into force by the Act as from Royal Assent and take effect in relation to planning applications lodged on or after 16 November 1990. The remainder of these provisions will be brought into force about 2 months after Royal Assent.

Sections 32 and 61 and Schedules 7 and 13 make minor and consequential planning amendments.

12. **Parts III and IV** improve the land compensation code and compulsory purchase procedures. These provisions—summarised below—will be brought into force about two months after Royal Assent. An explanatory circular is in preparation.

13. **Acquisition of land.**

Sections 62 and 76 extend the powers of authorities responsible for constructing highways and other public works to acquire land which will be seriously affected by those works.

Sections 63 and 73 provide for claimants to receive accrued interest when an advance payment of compensation is made and then at annual intervals until the claim is settled.

Sections 64 and 74 provide that in the assessment of compensation for compulsory purchase of land acquired for a road scheme, and in granting a certificate of appropriate alternative development in respect of such land, possible alternatives to that scheme shall be disregarded.

Sections 65 and 75 modify and extend the scope of the procedure for certifying appropriate alternative development on land to be acquired by an authority possessing compulsory purchase powers.

Sections 66 and 77 and Schedules 14 and 16 provide for additional compensation to be paid to former owners of land acquired by an authority possessing compulsory purchase powers in the event of its value increasing in consequence of a planning decision made within 10 years of the acquisition.

Sections 67 and 78 limit the period during which a notice to treat has effect.

14. **Home loss payments.**

Sections 68 and 71 provide for home loss payments to owner-occupiers to be 10 per cent of market value, subject to an upper limit of £15,000. They also reduce the qualifying period of residence for all claims for home loss payments to 1 year and make other amendments to the provisions relating to home loss payments. These provisions apply for claimants displaced from their homes on or after 16 November 1990.

Sections 69 and 72 extend the right to claim home loss payments to spouses who are occupying a home under the Matrimonial Homes Act 1983 or the Matrimonial Homes (Family Protection) (Scotland) Act 1981.

15. **General.** Sections 70 and 79, Schedule 15 and Schedule 17 make further amendments to the law relating to compulsory purchase and compensation.

16. **Part V: Miscellaneous and General.**

Interest on compensation. Section 80 provides for simple interest to be payable in respect of unpaid compensation under the provisions listed in Schedule 18, and enables authorities to make payments on account of compensation and to pay interest on compensation under those provisions. This provision will be brought into force at the same time as Parts III and IV.

New street byelaws. Section 81 repeals Part X of the Highways Act 1980 and certain related provisions concerning new street and separate drainage byelaws. This section will be brought into force about two months after Royal Assent.

Home loss payments: Northern Ireland. Section 82 provides that an Order in Council to enable home loss payments in Northern Ireland to be paid on the same basis as provided for in the Act for England, Wales and Scotland shall be subject to annulment in pursuance of a resolution of either House of Parliament. This will expedite the adoption of an appropriate Order in Council which is in preparation.

Taxes Acts. Section 83 makes amendments in section 91A of the Income and Corporation Taxes Act 1988 consequential on section 12.

Short title etc. Section 84 provides for the Act to come into force on such day or days as the Secretary of State may by order appoint. It also introduces Schedule 19 which lists repeals made by the Act.

PLANNING AND COMPENSATION ACT: PROVISIONS TO BE INCLUDED IN FIRST COMMENCEMENT ORDER

PART I – PLANNING IN ENGLAND AND WALES

Assessment of Environmental Effects

1. **Section 15** provides a power for the Secretary of State to make regulations requiring environmental assessment (EA) of classes of development before planning permission is granted. The Town and Country Planning (Assessment of Environmental Effects) Regulations 1988, which came into effect on 15 July 1988, already fully implement the requirements of European Community Directive No. 85/337 on the assessment of the effects of certain public and private projects on the environment, so far as it applies to projects which require planning permission. Circular 15/88 (Welsh Office 23/88) explains the provisions of the 1988 Regulations and gives advice on their implementation.

2. The 1988 Regulations list at Schedule 1 (based on Annex I to the Directive) those categories of project for which EA is required in every case and at Schedule 2 (based on Annex II to the Directive) those categories of project for which EA is required where the particular development proposed is likely to have significant effects on the environment by virtue of factors such as its nature, size or location. These lists of projects cannot be extended by amending the 1988 Regulations which, because they are made under the European Communities Act 1972, cannot go beyond what is required by Community law.

3. The Government will consult all those concerned before making regulations under section 15 in relation to any class of development and will notify authorities as appropriate of any such regulations. (DOE enquiry point 071 276 3865).

Repetitive Planning Applications

4. **Section 17** of the Act inserts a new section 70A in the 1990 Act. This provides that, where an application has been refused by the Secretary of State on appeal or following call-in, a local planning authority may decline to determine any similar application received within the following two years unless there has been a significant change in any material consideration. This two year period runs from the date of the Secretary of State's decision irrespective of any unresolved challenge in the Courts.

"Similar" applications

5. Section 70A(2) defines applications as "similar" if they relate to development and land which are, in the opinion of the local planning authority, the same or substantially the same. The Government's intention in introducing this section was to allow authorities to prevent repetitive planning applications from being used to wear down the resistance of local communities. Authorities should use the power only where they believe that the applicant is intending to exert pressure by submitting repeated similar applications. If an application has been revised in a genuine attempt to take

account of objections to an earlier proposal, it should not be regarded as "similar" for the purposes of this section.

"Significant change"

6. A change in the development plan or another material consideration will be "significant" for the purposes of this section if it might be expected significantly to alter the weight of any planning consideration of importance in the decisions taken by the local planning authority and/or the Secretary of State. If the weight of the evidence was such that the decision taken by the authority and/or the Secretary of State was only marginally inclined towards refusing the proposal, the amount of change which will significantly alter the weight will be less than if the original decision(s) had been clear-cut.

Appeal

7. An application which a local planning authority declines to determine under section 70A should be returned to the applicant and should then be regarded by the authority as withdrawn. Under section 17(2) the applicant has no right of appeal against non-determination of his application if the authority has notified him that they have exercised their power under section 70A to decline to determine the application. Nor is there any right of appeal to the Secretary of State against a decision to decline to determine an application. An applicant may, however, apply for judicial review of an authority's decision to exercise their power under section 70A.

Doubtful cases

8. In considering whether to exercise their power under section 70A, authorities will sometimes be faced with doubtful cases. In general, authorities should give the benefit of that doubt to an applicant and determine the application. No conclusion about the likely success of an application should be drawn from the decision by a local planning authority not to exercise their powers under section 70A.

Date of implementation

9. An authority may decline to determine an application meeting the criteria set out in section 17 which is received on or after the date on which that section takes effect, even if the previous proposal was refused or dismissed by the Secretary of State before that date. (DOE enquiry point 071 276 3910).

Dismissal of Unduly Delayed Appeals

10. **Section 18** inserts a new section 79(6A) into the 1990 Act. This provides that the Secretary of State may, after issuing a warning notice, dismiss an appeal if it appears to him that the appellant is responsible for undue delay in its progress.

11. It is envisaged that use of this power would be considered if, at any stage of the appeal procedure, an appellant refuses to co-operate with the Planning Inspectorate in processing the appeal, or otherwise obstructs that process. The power would not be used if the appellant could show reasonable grounds for

his or her behaviour. The progress of negotiations with the local authority on a similar planning application will not necessarily be regarded as reasonable grounds.

12. A request from the Planning Inspectorate to the appellant for action or information will not constitute a warning notice for the purposes of section 18. (DOE enquiry point 071 276 3910).

Mines and Waste

13. **Section 21 and Schedule 1** provide for the application to the creation or enlargement of mineral working deposits of provisions which presently apply to the winning and working of minerals. This will enable aftercare conditions to be imposed on planning permissions, revocation orders and discontinuance orders involving the depositing of mineral waste, and orders suspending or prohibiting the resumption of the depositing of mineral waste in certain circumstances. It will also ensure that existing and future permissions for the depositing of mineral waste are subject to a time limit on their duration, ie 60 years from 22 February 1982 in the case of permissions granted before that date, or in any other case 60 years from the date of permission or such other period as is specified in the permission, and that sites involving the depositing of mineral waste are subject to the statutory reviews of minerals operations required under section 105 of the principal Act. Existing advice on the planning controls applying to mineral working, which in general terms is equally applicable to the deposit of mineral waste, is given in MPGs 1, 2, 4, 5 and 7. More detailed guidance will be given in a revision of MPG1 on which it is planned to consult in the Autumn.

14. Schedule 1 also amends section 105 of the principal Act to provide a power for the Secretary of State to prescribe by order the periods in which mineral planning authorities (mpas) must carry out their duty to review sites and the matters to be covered in such reviews; and removes the existing restrictions in Schedule 11 to the principal Act on the circumstances in which, and the amount by which, compensation may be abated following orders updating mineral working sites to modern standards. A new section 116 in the Act sets out a single order making power to provide for the abatement of compensation by such amounts and in such circumstances as are prescribed in the regulations themselves.

15. The new power will enable the Secretary of State to make regulations modifying the basis on which compensation is calculated in respect of modification, revocation, discontinuance, prohibition and suspension orders in respect of development consisting of the winning and working of minerals or involving the depositing of mineral waste. The existing regulations made under Schedule 11 (which provide for the abatement of compensation following orders in respect of the winning and working of minerals) remain in force until new regulations are made under new section 116 of the principal Act.

16. New regulations will not be made under section 116 until after full consultation with bodies representing the minerals industry, mpas and land owners. Public consultation will follow the Department's general review of the planning controls and compensation arrangements applying to minerals working announced in the Environment White Paper. (DOE enquiry point 071 276 4002).

17. Schedule 1 also extends the power to impose aftercare conditions on planning permissions, revocation orders and discontinuance orders to development involving the depositing of any types of refuse or waste materials. Existing advice on restoration and aftercare as it applies to mineral workings is given in MPG7. Specific advice on such matters as they relate to waste disposal sites will be included in a forthcoming PPG on Planning and Pollution Control on which it is intended to consult later in the year. (DOE enquiry point 071 276 3845.)

Interim Development Orders

18. **Section 22 and Schedule 2** introduce arrangements for dealing with Interim Development Order (IDO) minerals permissions, by providing that:—

a. holders of IDO permissions who wish to apply to have their permissions registered must do so within 6 months of commencement of the provisions of section 22 and Schedule 2, or the permission for mineral extraction will cease to have effect. Disputes over the validity of permissions will be determined by the Secretary of State;
b. in the case of dormant sites (ie sites where there had been no working to any substantial extent for a period of 2 years preceding 1 May 1991) working cannot re-commence until the permission has been registered and a scheme of operating and restoration conditions has been submitted to, and approved by, the mpa or Secretary of State on appeal;
c. in any other case, within 12 months of the date of registration of the permission (of such longer period as may be agreed in writing with the mpa), the holder must submit a scheme of operating and restoration conditions for the mpa's approval or the permission will cease to have effect.

19. Consultations are already taking place with representatives of the industry and mpas on the form of detailed guidance on the operation of these provisions and will be incorporated in two new MPGs, one on registration procedures, the other on conditions. Consultations on the draft MPG on conditions is already underway. (DOE enquiry point 071 276 4002).

Status of Development Plans

20. **Section 26.** The Government has for some time emphasised the importance of a plan-led system. So, in following the current advice in PPGs and elsewhere, local authorities are likely already to be acting in accordance with the spirit of this section. Section 26 has the effect of bringing that policy onto the face of the 1990 Act. It makes clear what having regard to the development plan means, not just in section 70(2), but in all places where the planning Acts require regard to be had to the development plan. In future it will mean that the determination is to be in accordance with the plan, unless other considerations indicate otherwise. This makes clear to local planning authorities and others how to go about making the decision. The starting point is to be the development plan. If the development plan has something to say on a particular application, the plan should be followed unless the weight of the other considerations tell against it. This will still allow appropriate weight to be given to all other material considerations. The Department will consult shortly on a revised PPG1 (General Policy and Principles)

incorporating policy advice on the new provision. (DOE enquiry point 071 276 3888).

Functions of Historic Buildings and Monuments Commission

21. **Section 29** introduces a new subsection (2A) to section 33 of the National Heritage Act 1983 which gives express powers to the Historic Buildings and Monuments Commission for England (a) to prosecute any offence under Part I of the Ancient Monuments and Archaeological Areas Act 1979 or under Chapter 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and (b) to institute in their own name proceedings for an injunction to restrain any contravention of this legislation. Section 29 also inserts a new subsection (3) to section 89 of the Town and Country Planning Act 1990 to provide that, in the application of section 330 of that Act (power to require information as to interest in land), the Commission will have the same powers as a local authority. (DOE enquiry point 071 276 3747).

Planning Compensation Repeals

22. **Section 31** repeals three provisions of the planning Acts under which compensation could be claimed in respect of adverse decisions restricting certain forms of development.

23. *Section 31(1)* repeals Part V of and Schedule 12 to the Town and Country Planning Act 1990 under which compensation was payable by the Secretary of State where planning permission was refused or granted subject to conditions for specified new development on land which had an unexpended balance of established development value. Part V also allowed the Secretary of State to recover the amounts of compensation paid if planning permission was granted subsequently. By virtue of section 31(5), only those claims for compensation under Part V which are received by the Secretary of State before the date on which the repeal comes into force will be processed. By virtue of section 31(6), the Secretary of State will not be able to recover any amounts of compensation paid by him previously under these provisions, if they are still outstanding when the repeal comes into force, whatever stage the recovery process may have reached. Subsection (6) also provides for the discharge of any security given by claimants whom the Secretary of State may have directed to repay compensation by instalments.

24. Attention is drawn to the fact that entries placed in local land charges registers by virtue of sections 28 and 57 of the Town and Country Planning Act 1954, section 112 of the Town and Country Planning Act 1962, section 158 of the Town and Country Planning Act 1971 or section 132 of the Town and Country Planning Act 1990, relating to the payment of compensation under these provisions, will cease to be valid upon the coming into force of section 31(1) and (6), and no new entry need be made when outstanding claims are finalised in accordance with subsection (5).

25. *Section 31(2)* repeals section 114 of the 1990 Act under which compensation was payable by the local planning authority where planning permission was refused or granted subject to conditions by the Secretary of State (whether the application was referred for his own decision initially or was the subject of an appeal to him) for the classes of development defined in Part II of Schedule 3 to that Act; Part II of Schedule 3 is also repealed (see below). Section 31(7) applies the repeal of section 114 retrospectively to

applications for planning permission made on or after 16 November 1990, where they are subsequently decided by the Secretary of State as described above.

26. *Section 31(3)* repeals section 27 of the Planning (Listed Buildings and Conservation Areas) Act 1990 under which compensation was payable by the local planning authority where the Secretary of State refused listed building consent or granted it subject to conditions (whether the application was referred for his own decision initially or was the subject of an appeal to him) for the alteration or extension of a listed building where the works did not require specific planning permission. Section 31(8) applies the repeal of section 27 retrospectively to any relevant applications for listed building consent made on or after 16 November 1990, where they were subsequently decided by the Secretary of State as described above.

27. *Section 31(4)* gives effect to Schedule 6 which makes a series of minor and consequential amendments related to these repeals. In particular, paragraph 40(1) in association with the relevant entry in Part II of Schedule 19, provides for the repeal of Part II of Schedule 3 to the Town and Country Planning Act 1990, which lists the classes of development in respect of which compensation is payable if planning permission is refused or granted subject to conditions by the Secretary of State. Paragraphs 1 and 5 of the Schedule make minor amendments to the Land Compensation Acts of 1961 and 1973, in line with the repeal of Part II of Schedule 3 to the 1990 Act. Paragraph 13 amends section 107 of the 1990 Act (compensation where planning permission modified or revoked). The Schedule provides for the amendments at paragraphs 1, 5 and 13 to take effect by reference to the date of 16 November 1990, in line with the repeal of section 114 of the 1990 Act.

28. It should be noted that, by virtue of section 84(4) of the Act, the repeals of section 114 of the principal Act and section 27 of the Planning (Listed Buildings and Conservation Areas) Act 1990, as well as paragraphs 1, 5 and 13 of Schedule 6 and the related repeals came into force on 25 July 1991. (DOE enquiry point 071 276 3861).

Planning: Minor and Consequential Amendments

29. **Section 32 and Schedule 7** make amendments to planning and other legislation consequential on provisions elsewhere in the Act. The Schedule also includes some other corrections of planning law, mostly of a minor nature. The following paragraphs of Schedule 7 will be brought into force on the first appointed day:

- paragraph 9(2)(c) which is consequential on the repeal of Part V of the 1990 Act by section 31;
- paragraph 10(1) which puts right an error in the 1990 consolidation legislation;
- paragraph 51 which makes clear that local planning authorities' power to serve notices under section 329 of the 1990 Act does not prejudice their general power of service under section 233 of the Local Government Act 1972;
- paragraph 54(3)(a) which is consequential on section 18;
- paragraph 56 which corrects an error in the 1990 consolidation legislation relating to blight notices;
- paragraph 57(2)(b) which is consequential on section 17.

Abolition of New Street Byelaws

30. **Section 81** repeals Part X of the Highways Act 1980 (new street byelaws). Control, by new street byelaws, of the layout and construction of new streets was suspended by the Town and Country Planning General Development (Amendment) Order 1974, SI 1974 No. 418. But the Byelaws have been retained as a basis for certain consequential powers, mainly the power to make new street orders under section 188 of the Highways Act 1980. The use of this power has declined, with some counties requesting the Secretary of State not to extend the life of their byelaws.

31. No further new street orders can be made. Those in existence when section 81 of the new Act comes into force remain valid, and all Part X powers of local authorities are retained in relation to them. Except in cases where it is necessary to safeguard land required for highway improvement, because of the existence of an outline planning permission, local authorities are expected to revoke new street orders as soon as possible. Following revocation, local authorities are reminded of the need to remove the entries from local land charges registers.

32. DOE Circular 94/77 (121/77 Welsh Office) advised planning and highway authorities to agree standards for the layout and construction of residential roads. The use of such standards helps secure consistency between the requirements for planning approval and for the adoption of new roads. Such standards can be made the subject of planning conditions: general guidance on the use of conditions is given in DOE Circular 1/85 (1/85 Welsh Office).

33. Those authorities that have not published such local guidance are urged to do so. When preparing guidance, or amending existing guidance, authorities should take into account the information and advice contained in the forthcoming second edition of Design Bulletin 32 "Residential Roads and Footpaths". (DOE enquiry point 071 276 3957).

First published 1991

Printed in the United Kingdom for HMSO
Dd 0293047 C60 8/91 824011

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