Appendix 1 G.01: NATIONAL PLANNING POLICY FRAMEWORK (NPPF) (2019) DCLG DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT
National Planning Policy Framework
1. Introduction

1. The National Planning Policy Framework sets out the Government's planning policies for England and how these should be applied. It provides a framework within which locally-prepared plans for housing and other development can be produced.

2. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework must be taken into account in preparing the development plan, and is a material consideration in planning decisions. Planning policies and decisions must also reflect relevant international obligations and statutory requirements.

3. The Framework should be read as a whole (including its footnotes and annexes). General references to planning policies in the Framework should be applied in a way that is appropriate to the type of plan being produced, taking into account policy on plan-making in chapter 3.

4. The Framework should be read in conjunction with the Government’s planning policy for traveller sites, and its planning policy for waste. When preparing plans or making decisions on applications for these types of development, regard should also be had to the policies in this Framework, where relevant.

5. The Framework does not contain specific policies for nationally significant infrastructure projects. These are determined in accordance with the decision-making framework in the Planning Act 2008 (as amended) and relevant national policy statements for major infrastructure, as well as any other matters that are relevant (which may include the National Planning Policy Framework). National policy statements form part of the overall framework of national planning policy, and may be a material consideration in preparing plans and making decisions on planning applications.

6. Other statements of government policy may be material when preparing plans or deciding applications, such as relevant Written Ministerial Statements and endorsed recommendations of the National Infrastructure Commission.

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1 This document replaces the first National Planning Policy Framework published in March 2012, and includes minor clarifications to the revised version published in July 2018.

2 This includes local and neighbourhood plans that have been brought into force and any spatial development strategies produced by combined authorities or elected Mayors (see glossary).

3 Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.
2. Achieving sustainable development

7. The purpose of the planning system is to contribute to the achievement of sustainable development. At a very high level, the objective of sustainable development can be summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs⁴.

8. Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):

   a) **an economic objective** – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;

   b) **a social objective** – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and

   c) **an environmental objective** – to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.

9. These objectives should be delivered through the preparation and implementation of plans and the application of the policies in this Framework; they are not criteria against which every decision can or should be judged. Planning policies and decisions should play an active role in guiding development towards sustainable solutions, but in doing so should take local circumstances into account, to reflect the character, needs and opportunities of each area.

10. So that sustainable development is pursued in a positive way, at the heart of the Framework is a **presumption in favour of sustainable development** (paragraph 11).

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⁴ Resolution 42/187 of the United Nations General Assembly.
The presumption in favour of sustainable development

11. Plans and decisions should apply a presumption in favour of sustainable development.

For **plan-making** this means that:

a) plans should positively seek opportunities to meet the development needs of their area, and be sufficiently flexible to adapt to rapid change;

b) strategic policies should, as a minimum, provide for objectively assessed needs for housing and other uses, as well as any needs that cannot be met within neighbouring areas\(^5\), unless:
   i. the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for restricting the overall scale, type or distribution of development in the plan area\(^6\); or
   ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

For **decision-taking** this means:

c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date\(^7\), granting permission unless:
   i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed\(^6\); or
   ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

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\(^5\) As established through statements of common ground (see paragraph 27).

\(^6\) The policies referred to are those in this Framework (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 176) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 63); and areas at risk of flooding or coastal change.

\(^7\) This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 73); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years. Transitional arrangements for the Housing Delivery Test are set out in Annex 1.
12. The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.

13. The application of the presumption has implications for the way communities engage in neighbourhood planning. Neighbourhood plans should support the delivery of strategic policies contained in local plans or spatial development strategies; and should shape and direct development that is outside of these strategic policies.

14. In situations where the presumption (at paragraph 11d) applies to applications involving the provision of housing, the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, provided all of the following apply8:

   a) the neighbourhood plan became part of the development plan two years or less before the date on which the decision is made;
   
   b) the neighbourhood plan contains policies and allocations to meet its identified housing requirement;
   
   c) the local planning authority has at least a three year supply of deliverable housing sites (against its five year housing supply requirement, including the appropriate buffer as set out in paragraph 73); and
   
   d) the local planning authority’s housing delivery was at least 45% of that required9 over the previous three years.

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8 Transitional arrangements are set out in Annex 1.
9 Assessed against the Housing Delivery Test, from November 2018 onwards.
3. Plan-making

15. The planning system should be genuinely plan-led. Succinct and up-to-date plans should provide a positive vision for the future of each area; a framework for addressing housing needs and other economic, social and environmental priorities; and a platform for local people to shape their surroundings.

16. Plans should:

a) be prepared with the objective of contributing to the achievement of sustainable development;\(^\text{10}\);

b) be prepared positively, in a way that is aspirational but deliverable;

c) be shaped by early, proportionate and effective engagement between plan-makers and communities, local organisations, businesses, infrastructure providers and operators and statutory consultees;

d) contain policies that are clearly written and unambiguous, so it is evident how a decision maker should react to development proposals;

e) be accessible through the use of digital tools to assist public involvement and policy presentation; and

f) serve a clear purpose, avoiding unnecessary duplication of policies that apply to a particular area (including policies in this Framework, where relevant).

The plan-making framework

17. The development plan must include strategic policies to address each local planning authority’s priorities for the development and use of land in its area.\(^\text{11}\) These strategic policies can be produced in different ways, depending on the issues and opportunities facing each area. They can be contained in:

a) joint or individual local plans, produced by authorities working together or independently (and which may also contain non-strategic policies); and/or

b) a spatial development strategy produced by an elected Mayor or combined authority, where plan-making powers have been conferred.

18. Policies to address non-strategic matters should be included in local plans that contain both strategic and non-strategic policies, and/or in local or neighbourhood plans that contain just non-strategic policies.

19. The development plan for an area comprises the combination of strategic and non-strategic policies which are in force at a particular time.

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\(^{10}\) This is a legal requirement of local planning authorities exercising their plan-making functions (section 39(2) of the Planning and Compulsory Purchase Act 2004).

\(^{11}\) Section 19(1B-1E) of the Planning and Compulsory Purchase Act 2004.
Strategic policies

20. Strategic policies should set out an overall strategy for the pattern, scale and quality of development, and make sufficient provision\(^\text{12}\) for:

a) housing (including affordable housing), employment, retail, leisure and other commercial development;

b) infrastructure for transport, telecommunications, security, waste management, water supply, wastewater, flood risk and coastal change management, and the provision of minerals and energy (including heat);

c) community facilities (such as health, education and cultural infrastructure); and

d) conservation and enhancement of the natural, built and historic environment, including landscapes and green infrastructure, and planning measures to address climate change mitigation and adaptation.

21. Plans should make explicit which policies are strategic policies\(^\text{13}\). These should be limited to those necessary to address the strategic priorities of the area (and any relevant cross-boundary issues), to provide a clear starting point for any non-strategic policies that are needed. Strategic policies should not extend to detailed matters that are more appropriately dealt with through neighbourhood plans or other non-strategic policies.

22. Strategic policies should look ahead over a minimum 15 year period from adoption\(^\text{14}\), to anticipate and respond to long-term requirements and opportunities, such as those arising from major improvements in infrastructure.

23. Broad locations for development should be indicated on a key diagram, and land-use designations and allocations identified on a policies map. Strategic policies should provide a clear strategy for bringing sufficient land forward, and at a sufficient rate, to address objectively assessed needs over the plan period, in line with the presumption in favour of sustainable development. This should include planning for and allocating sufficient sites to deliver the strategic priorities of the area (except insofar as these needs can be demonstrated to be met more appropriately through other mechanisms, such as brownfield registers or non-strategic policies)\(^\text{15}\).

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\(^{12}\) In line with the presumption in favour of sustainable development.

\(^{13}\) Where a single local plan is prepared the non-strategic policies should be clearly distinguished from the strategic policies.

\(^{14}\) Except in relation to town centre development, as set out in chapter 7.

\(^{15}\) For spatial development strategies, allocations, land use designations and a policies map are needed only where the power to make allocations has been conferred.
Maintaining effective cooperation

24. Local planning authorities and county councils (in two-tier areas) are under a duty to cooperate with each other, and with other prescribed bodies, on strategic matters that cross administrative boundaries.

25. Strategic policy-making authorities should collaborate to identify the relevant strategic matters which they need to address in their plans. They should also engage with their local communities and relevant bodies including Local Enterprise Partnerships, Local Nature Partnerships, the Marine Management Organisation, county councils, infrastructure providers, elected Mayors and combined authorities (in cases where Mayors or combined authorities do not have plan-making powers).

26. Effective and on-going joint working between strategic policy-making authorities and relevant bodies is integral to the production of a positively prepared and justified strategy. In particular, joint working should help to determine where additional infrastructure is necessary, and whether development needs that cannot be met wholly within a particular plan area could be met elsewhere.

27. In order to demonstrate effective and on-going joint working, strategic policy-making authorities should prepare and maintain one or more statements of common ground, documenting the cross-boundary matters being addressed and progress in cooperating to address these. These should be produced using the approach set out in national planning guidance, and be made publicly available throughout the plan-making process to provide transparency.

Non-strategic policies

28. Non-strategic policies should be used by local planning authorities and communities to set out more detailed policies for specific areas, neighbourhoods or types of development. This can include allocating sites, the provision of infrastructure and community facilities at a local level, establishing design principles, conserving and enhancing the natural and historic environment and setting out other development management policies.

29. Neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan. Neighbourhood plans should not promote less development than set out in the strategic policies for the area, or undermine those strategic policies.\footnote{Neighbourhood plans must be in general conformity with the strategic policies contained in any development plan that covers their area.}

30. Once a neighbourhood plan has been brought into force, the policies it contains take precedence over existing non-strategic policies in a local plan covering the neighbourhood area, where they are in conflict; unless they are superseded by strategic or non-strategic policies that are adopted subsequently.
Preparing and reviewing plans

31. The preparation and review of all policies should be underpinned by relevant and up-to-date evidence. This should be adequate and proportionate, focused tightly on supporting and justifying the policies concerned, and take into account relevant market signals.

32. Local plans and spatial development strategies should be informed throughout their preparation by a sustainability appraisal that meets the relevant legal requirements. This should demonstrate how the plan has addressed relevant economic, social and environmental objectives (including opportunities for net gains). Significant adverse impacts on these objectives should be avoided and, wherever possible, alternative options which reduce or eliminate such impacts should be pursued. Where significant adverse impacts are unavoidable, suitable mitigation measures should be proposed (or, where this is not possible, compensatory measures should be considered).

33. Policies in local plans and spatial development strategies should be reviewed to assess whether they need updating at least once every five years, and should then be updated as necessary. Reviews should be completed no later than five years from the adoption date of a plan, and should take into account changing circumstances affecting the area, or any relevant changes in national policy. Relevant strategic policies will need updating at least once every five years if their applicable local housing need figure has changed significantly; and they are likely to require earlier review if local housing need is expected to change significantly in the near future.

Development contributions

34. Plans should set out the contributions expected from development. This should include setting out the levels and types of affordable housing provision required, along with other infrastructure (such as that needed for education, health, transport, flood and water management, green and digital infrastructure). Such policies should not undermine the deliverability of the plan.

Examining plans

35. Local plans and spatial development strategies are examined to assess whether they have been prepared in accordance with legal and procedural requirements, and whether they are sound. Plans are ‘sound’ if they are:

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17 The reference to relevant legal requirements refers to Strategic Environmental Assessment. Neighbourhood plans may require Strategic Environmental Assessment, but only where there are potentially significant environmental effects.

18 Reviews at least every five years are a legal requirement for all local plans (Regulation 10A of the Town and Country Planning (Local Planning) (England) Regulations 2012).
a) **Positively prepared** – providing a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs\(^\text{19}\); and is informed by agreements with other authorities, so that unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development;

b) **Justified** – an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence;

c) **Effective** – deliverable over the plan period, and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground; and

d) **Consistent with national policy** – enabling the delivery of sustainable development in accordance with the policies in this Framework.

36. These tests of soundness will be applied to non-strategic policies\(^\text{20}\) in a proportionate way, taking into account the extent to which they are consistent with relevant strategic policies for the area.

37. Neighbourhood plans must meet certain ‘basic conditions’ and other legal requirements\(^\text{21}\) before they can come into force. These are tested through an independent examination before the neighbourhood plan may proceed to referendum.

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\(^{19}\) Where this relates to housing, such needs should be assessed using a clear and justified method, as set out in paragraph 60 of this Framework.

\(^{20}\) Where these are contained in a local plan.

\(^{21}\) As set out in paragraph 8 of Schedule 4B to the Town and Country Planning Act 1990 (as amended).
4. Decision-making

38. Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.

Pre-application engagement and front-loading

39. Early engagement has significant potential to improve the efficiency and effectiveness of the planning application system for all parties. Good quality pre-application discussion enables better coordination between public and private resources and improved outcomes for the community.

40. Local planning authorities have a key role to play in encouraging other parties to take maximum advantage of the pre-application stage. They cannot require that a developer engages with them before submitting a planning application, but they should encourage take-up of any pre-application services they offer. They should also, where they think this would be beneficial, encourage any applicants who are not already required to do so by law to engage with the local community and, where relevant, with statutory and non-statutory consultees, before submitting their applications.

41. The more issues that can be resolved at pre-application stage, including the need to deliver improvements in infrastructure and affordable housing, the greater the benefits. For their role in the planning system to be effective and positive, statutory planning consultees will need to take the same early, pro-active approach, and provide advice in a timely manner throughout the development process. This assists local planning authorities in issuing timely decisions, helping to ensure that applicants do not experience unnecessary delays and costs.

42. The participation of other consenting bodies in pre-application discussions should enable early consideration of all the fundamental issues relating to whether a particular development will be acceptable in principle, even where other consents relating to how a development is built or operated are needed at a later stage. Wherever possible, parallel processing of other consents should be encouraged to help speed up the process and resolve any issues as early as possible.

43. The right information is crucial to good decision-making, particularly where formal assessments are required (such as Environmental Impact Assessment, Habitats Regulations assessment and flood risk assessment). To avoid delay, applicants should discuss what information is needed with the local planning authority and expert bodies as early as possible.

44. Local planning authorities should publish a list of their information requirements for applications for planning permission. These requirements should be kept to the minimum needed to make decisions, and should be reviewed at least every two
years. Local planning authorities should only request supporting information that is relevant, necessary and material to the application in question.

45. Local planning authorities should consult the appropriate bodies when considering applications for the siting of, or changes to, major hazard sites, installations or pipelines, or for development around them.

46. Applicants and local planning authorities should consider the potential for voluntary planning performance agreements, where this might achieve a faster and more effective application process. Planning performance agreements are likely to be needed for applications that are particularly large or complex to determine.

Determining applications

47. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. Decisions on applications should be made as quickly as possible, and within statutory timescales unless a longer period has been agreed by the applicant in writing.

48. Local planning authorities may give weight to relevant policies in emerging plans according to:
   a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
   b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
   c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)22.

49. However in the context of the Framework – and in particular the presumption in favour of sustainable development – arguments that an application is premature are unlikely to justify a refusal of planning permission other than in the limited circumstances where both:
   a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan; and
   b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.

22 During the transitional period for emerging plans submitted for examination (set out in paragraph 214), consistency should be tested against the previous Framework published in March 2012.
50. Refusal of planning permission on grounds of prematurity will seldom be justified where a draft plan has yet to be submitted for examination; or – in the case of a neighbourhood plan – before the end of the local planning authority publicity period on the draft plan. Where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how granting permission for the development concerned would prejudice the outcome of the plan-making process.

Tailoring planning controls to local circumstances

51. Local planning authorities are encouraged to use Local Development Orders to set the planning framework for particular areas or categories of development where the impacts would be acceptable, and in particular where this would promote economic, social or environmental gains for the area.

52. Communities can use Neighbourhood Development Orders and Community Right to Build Orders to grant planning permission. These require the support of the local community through a referendum. Local planning authorities should take a proactive and positive approach to such proposals, working collaboratively with community organisations to resolve any issues before draft orders are submitted for examination.

53. The use of Article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the well-being of the area (this could include the use of Article 4 directions to require planning permission for the demolition of local facilities). Similarly, planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.

Planning conditions and obligations

54. Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.

55. Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification.

56. Planning obligations must only be sought where they meet all of the following tests:

23 When in force, sections 100ZA(4-6) of the Town and Country Planning Act 1990 will require the applicant’s written agreement to the terms of a pre-commencement condition, unless prescribed circumstances apply.

24 Set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.
a) necessary to make the development acceptable in planning terms;
b) directly related to the development; and
c) fairly and reasonably related in scale and kind to the development.

57. Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force. All viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available.

Enforcement

58. Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.
5. Delivering a sufficient supply of homes

59. To support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.

60. To determine the minimum number of homes needed, strategic policies should be informed by a local housing need assessment, conducted using the standard method in national planning guidance – unless exceptional circumstances justify an alternative approach which also reflects current and future demographic trends and market signals. In addition to the local housing need figure, any needs that cannot be met within neighbouring areas should also be taken into account in establishing the amount of housing to be planned for.

61. Within this context, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies (including, but not limited to, those who require affordable housing, families with children, older people, students, people with disabilities, service families, travellers\(^\text{25}\), people who rent their homes and people wishing to commission or build their own homes\(^\text{26}\)).

62. Where a need for affordable housing is identified, planning policies should specify the type of affordable housing required\(^\text{27}\), and expect it to be met on-site unless:

\begin{itemize}
  \item a) off-site provision or an appropriate financial contribution in lieu can be robustly justified; and
  \item b) the agreed approach contributes to the objective of creating mixed and balanced communities.
\end{itemize}

63. Provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer). To support the re-use of brownfield land, where vacant buildings are being reused or redeveloped, any affordable housing contribution due should be reduced by a proportionate amount\(^\text{28}\).

64. Where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the homes to be available for

\(^{25}\) Planning Policy for Traveller Sites sets out how travellers’ housing needs should be assessed for those covered by the definition in Annex 1 of that document.

\(^{26}\) Under section 1 of the Self Build and Custom Housebuilding Act 2015, local authorities are required to keep a register of those seeking to acquire serviced plots in the area for their own self-build and custom house building. They are also subject to duties under sections 2 and 2A of the Act to have regard to this and to give enough suitable development permissions to meet the identified demand. Self and custom-build properties could provide market or affordable housing.

\(^{27}\) Applying the definition in Annex 2 to this Framework.

\(^{28}\) Equivalent to the existing gross floorspace of the existing buildings. This does not apply to vacant buildings which have been abandoned.
affordable home ownership, unless this would exceed the level of affordable housing required in the area, or significantly prejudice the ability to meet the identified affordable housing needs of specific groups. Exemptions to this 10% requirement should also be made where the site or proposed development:

a) provides solely for Build to Rent homes;

b) provides specialist accommodation for a group of people with specific needs (such as purpose-built accommodation for the elderly or students);

c) is proposed to be developed by people who wish to build or commission their own homes; or

d) is exclusively for affordable housing, an entry-level exception site or a rural exception site.

65. Strategic policy-making authorities should establish a housing requirement figure for their whole area, which shows the extent to which their identified housing need (and any needs that cannot be met within neighbouring areas) can be met over the plan period. Within this overall requirement, strategic policies should also set out a housing requirement for designated neighbourhood areas which reflects the overall strategy for the pattern and scale of development and any relevant allocations. Once the strategic policies have been adopted, these figures should not need re-testing at the neighbourhood plan examination, unless there has been a significant change in circumstances that affects the requirement.

66. Where it is not possible to provide a requirement figure for a neighbourhood area, the local planning authority should provide an indicative figure, if requested to do so by the neighbourhood planning body. This figure should take into account factors such as the latest evidence of local housing need, the population of the neighbourhood area and the most recently available planning strategy of the local planning authority.

Identifying land for homes

67. Strategic policy-making authorities should have a clear understanding of the land available in their area through the preparation of a strategic housing land availability assessment. From this, planning policies should identify a sufficient supply and mix of sites, taking into account their availability, suitability and likely economic viability. Planning policies should identify a supply of:

a) specific, deliverable sites for years one to five of the plan period; and

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29 As part of the overall affordable housing contribution from the site.
30 Except where a Mayoral, combined authority or high-level joint plan is being prepared as a framework for strategic policies at the individual local authority level; in which case it may be most appropriate for the local authority plans to provide the requirement figure.
31 Because a neighbourhood area is designated at a late stage in the strategic policy-making process, or after strategic policies have been adopted; or in instances where strategic policies for housing are out of date.
32 With an appropriate buffer, as set out in paragraph 73. See glossary for definitions of deliverable and developable.
b) specific, developable sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15 of the plan.

68. Small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly. To promote the development of a good mix of sites local planning authorities should:

a) identify, through the development plan and brownfield registers, land to accommodate at least 10% of their housing requirement on sites no larger than one hectare; unless it can be shown, through the preparation of relevant plan policies, that there are strong reasons why this 10% target cannot be achieved;

b) use tools such as area-wide design assessments and Local Development Orders to help bring small and medium sized sites forward;

c) support the development of windfall sites through their policies and decisions – giving great weight to the benefits of using suitable sites within existing settlements for homes; and

d) work with developers to encourage the sub-division of large sites where this could help to speed up the delivery of homes.

69. Neighbourhood planning groups should also consider the opportunities for allocating small and medium-sized sites (of a size consistent with paragraph 68a) suitable for housing in their area.

70. Where an allowance is to be made for windfall sites as part of anticipated supply, there should be compelling evidence that they will provide a reliable source of supply. Any allowance should be realistic having regard to the strategic housing land availability assessment, historic windfall delivery rates and expected future trends. Plans should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area.

71. Local planning authorities should support the development of entry-level exception sites, suitable for first time buyers (or those looking to rent their first home), unless the need for such homes is already being met within the authority’s area. These sites should be on land which is not already allocated for housing and should:

a) comprise of entry-level homes that offer one or more types of affordable housing as defined in Annex 2 of this Framework; and

b) be adjacent to existing settlements, proportionate in size to them, not compromise the protection given to areas or assets of particular importance in this Framework, and comply with any local design policies and standards.

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33 Entry-level exception sites should not be larger than one hectare in size or exceed 5% of the size of the existing settlement.

34 i.e. the areas referred to in footnote 6. Entry-level exception sites should not be permitted in National Parks (or within the Broads Authority), Areas of Outstanding Natural Beauty or land designated as Green Belt.
72. The supply of large numbers of new homes can often be best achieved through planning for larger scale development, such as new settlements or significant extensions to existing villages and towns, provided they are well located and designed, and supported by the necessary infrastructure and facilities. Working with the support of their communities, and with other authorities if appropriate, strategic policy-making authorities should identify suitable locations for such development where this can help to meet identified needs in a sustainable way. In doing so, they should:

a) consider the opportunities presented by existing or planned investment in infrastructure, the area’s economic potential and the scope for net environmental gains;

b) ensure that their size and location will support a sustainable community, with sufficient access to services and employment opportunities within the development itself (without expecting an unrealistic level of self-containment), or in larger towns to which there is good access;

c) set clear expectations for the quality of the development and how this can be maintained (such as by following Garden City principles), and ensure that a variety of homes to meet the needs of different groups in the community will be provided;

d) make a realistic assessment of likely rates of delivery, given the lead-in times for large scale sites, and identify opportunities for supporting rapid implementation (such as through joint ventures or locally-led development corporations)\(^{35}\); and

e) consider whether it is appropriate to establish Green Belt around or adjoining new developments of significant size.

Maintaining supply and delivery

73. Strategic policies should include a trajectory illustrating the expected rate of housing delivery over the plan period, and all plans should consider whether it is appropriate to set out the anticipated rate of development for specific sites. Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years’ worth of housing against their housing requirement set out in adopted strategic policies\(^{36}\), or against their local housing need where the strategic policies are more than five years old\(^{37}\). The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period) of:

\(^{35}\) The delivery of large scale developments may need to extend beyond an individual plan period, and the associated infrastructure requirements may not be capable of being identified fully at the outset. Anticipated rates of delivery and infrastructure requirements should, therefore, be kept under review and reflected as policies are updated.

\(^{36}\) For the avoidance of doubt, a five year supply of deliverable sites for travellers – as defined in Annex 1 to Planning Policy for Traveller Sites – should be assessed separately, in line with the policy in that document.

\(^{37}\) Unless these strategic policies have been reviewed and found not to require updating. Where local housing need is used as the basis for assessing whether a five year supply of specific deliverable sites exists, it should be calculated using the standard method set out in national planning guidance.
a) 5% to ensure choice and competition in the market for land; or

b) 10% where the local planning authority wishes to demonstrate a five year supply of deliverable sites through an annual position statement or recently adopted plan\(^\text{38}\), to account for any fluctuations in the market during that year; or

c) 20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply\(^\text{39}\).

74. A five year supply of deliverable housing sites, with the appropriate buffer, can be demonstrated where it has been established in a recently adopted plan, or in a subsequent annual position statement which:

a) has been produced through engagement with developers and others who have an impact on delivery, and been considered by the Secretary of State; and

b) incorporates the recommendation of the Secretary of State, where the position on specific sites could not be agreed during the engagement process.

75. To maintain the supply of housing, local planning authorities should monitor progress in building out sites which have permission. Where the Housing Delivery Test indicates that delivery has fallen below 95% of the local planning authority’s housing requirement over the previous three years, the authority should prepare an action plan in line with national planning guidance, to assess the causes of under-delivery and identify actions to increase delivery in future years.

76. To help ensure that proposals for housing development are implemented in a timely manner, local planning authorities should consider imposing a planning condition providing that development must begin within a timescale shorter than the relevant default period, where this would expedite the development without threatening its deliverability or viability. For major development involving the provision of housing, local planning authorities should also assess why any earlier grant of planning permission for a similar development on the same site did not start.

Rural housing

77. In rural areas, planning policies and decisions should be responsive to local circumstances and support housing developments that reflect local needs. Local planning authorities should support opportunities to bring forward rural exception sites that will provide affordable housing to meet identified local needs, and consider whether allowing some market housing on these sites would help to facilitate this.

78. To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this

\(^{38}\) For the purposes of paragraphs 73b and 74 a plan adopted between 1 May and 31 October will be considered ‘recently adopted’ until 31 October of the following year; and a plan adopted between 1 November and 30 April will be considered recently adopted until 31 October in the same year.

\(^{39}\) From November 2018, this will be measured against the Housing Delivery Test, where this indicates that delivery was below 85% of the housing requirement.
will support local services. Where there are groups of smaller settlements, development in one village may support services in a village nearby.

79. Planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply:

a) there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside;

b) the development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets;

c) the development would re-use redundant or disused buildings and enhance its immediate setting;

d) the development would involve the subdivision of an existing residential dwelling; or

e) the design is of exceptional quality, in that it:
   - is truly outstanding or innovative, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and
   - would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.
6. Building a strong, competitive economy

80. Planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. The approach taken should allow each area to build on its strengths, counter any weaknesses and address the challenges of the future. This is particularly important where Britain can be a global leader in driving innovation\(^{40}\), and in areas with high levels of productivity, which should be able to capitalise on their performance and potential.

81. Planning policies should:

   a) set out a clear economic vision and strategy which positively and proactively encourages sustainable economic growth, having regard to Local Industrial Strategies and other local policies for economic development and regeneration;

   b) set criteria, or identify strategic sites, for local and inward investment to match the strategy and to meet anticipated needs over the plan period;

   c) seek to address potential barriers to investment, such as inadequate infrastructure, services or housing, or a poor environment; and

   d) be flexible enough to accommodate needs not anticipated in the plan, allow for new and flexible working practices (such as live-work accommodation), and to enable a rapid response to changes in economic circumstances.

82. Planning policies and decisions should recognise and address the specific locational requirements of different sectors. This includes making provision for clusters or networks of knowledge and data-driven, creative or high technology industries; and for storage and distribution operations at a variety of scales and in suitably accessible locations.

Supporting a prosperous rural economy

83. Planning policies and decisions should enable:

   a) the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings;

   b) the development and diversification of agricultural and other land-based rural businesses;

   c) sustainable rural tourism and leisure developments which respect the character of the countryside; and

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\(^{40}\) The Government’s Industrial Strategy sets out a vision to drive productivity improvements across the UK, identifies a number of Grand Challenges facing all nations, and sets out a delivery programme to make the UK a leader in four of these: artificial intelligence and big data; clean growth; future mobility; and catering for an ageing society. HM Government (2017) *Industrial Strategy: Building a Britain fit for the future.*
d) the retention and development of accessible local services and community facilities, such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship.

84. Planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist.
7. Ensuring the vitality of town centres

85. Planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation. Planning policies should:

a) define a network and hierarchy of town centres and promote their long-term vitality and viability – by allowing them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries, allows a suitable mix of uses (including housing) and reflects their distinctive characters;

b) define the extent of town centres and primary shopping areas, and make clear the range of uses permitted in such locations, as part of a positive strategy for the future of each centre;

c) retain and enhance existing markets and, where appropriate, re-introduce or create new ones;

d) allocate a range of suitable sites in town centres to meet the scale and type of development likely to be needed, looking at least ten years ahead. Meeting anticipated needs for retail, leisure, office and other main town centre uses over this period should not be compromised by limited site availability, so town centre boundaries should be kept under review where necessary;

e) where suitable and viable town centre sites are not available for main town centre uses, allocate appropriate edge of centre sites that are well connected to the town centre. If sufficient edge of centre sites cannot be identified, policies should explain how identified needs can be met in other accessible locations that are well connected to the town centre; and

f) recognise that residential development often plays an important role in ensuring the vitality of centres and encourage residential development on appropriate sites.

86. Local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.

87. When considering edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored.

88. This sequential approach should not be applied to applications for small scale rural offices or other small scale rural development.
89. When assessing applications for retail and leisure development outside town centres, which are not in accordance with an up-to-date plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500m² of gross floorspace). This should include assessment of:

a) the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and

b) the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and the wider retail catchment (as applicable to the scale and nature of the scheme).

90. Where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the considerations in paragraph 89, it should be refused.
8. Promoting healthy and safe communities

91. Planning policies and decisions should aim to achieve healthy, inclusive and safe places which:

a) promote social interaction, including opportunities for meetings between people who might not otherwise come into contact with each other – for example through mixed-use developments, strong neighbourhood centres, street layouts that allow for easy pedestrian and cycle connections within and between neighbourhoods, and active street frontages;

b) are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion – for example through the use of clear and legible pedestrian routes, and high quality public space, which encourage the active and continual use of public areas; and

c) enable and support healthy lifestyles, especially where this would address identified local health and well-being needs – for example through the provision of safe and accessible green infrastructure, sports facilities, local shops, access to healthier food, allotments and layouts that encourage walking and cycling.

92. To provide the social, recreational and cultural facilities and services the community needs, planning policies and decisions should:

a) plan positively for the provision and use of shared spaces, community facilities (such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments;

b) take into account and support the delivery of local strategies to improve health, social and cultural well-being for all sections of the community;

c) guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community’s ability to meet its day-to-day needs;

d) ensure that established shops, facilities and services are able to develop and modernise, and are retained for the benefit of the community; and

e) ensure an integrated approach to considering the location of housing, economic uses and community facilities and services.

93. Planning policies and decisions should consider the social, economic and environmental benefits of estate regeneration. Local planning authorities should use their planning powers to help deliver estate regeneration to a high standard.

94. It is important that a sufficient choice of school places is available to meet the needs of existing and new communities. Local planning authorities should take a proactive, positive and collaborative approach to meeting this requirement, and to development that will widen choice in education. They should:
a) give great weight to the need to create, expand or alter schools through the preparation of plans and decisions on applications; and

b) work with schools promoters, delivery partners and statutory bodies to identify and resolve key planning issues before applications are submitted.

95. Planning policies and decisions should promote public safety and take into account wider security and defence requirements by:

a) anticipating and addressing possible malicious threats and natural hazards, especially in locations where large numbers of people are expected to congregate. Policies for relevant areas (such as town centre and regeneration frameworks), and the layout and design of developments, should be informed by the most up-to-date information available from the police and other agencies about the nature of potential threats and their implications. This includes appropriate and proportionate steps that can be taken to reduce vulnerability, increase resilience and ensure public safety and security; and

b) recognising and supporting development required for operational defence and security purposes, and ensuring that operational sites are not affected adversely by the impact of other development proposed in the area.

Open space and recreation

96. Access to a network of high quality open spaces and opportunities for sport and physical activity is important for the health and well-being of communities. Planning policies should be based on robust and up-to-date assessments of the need for open space, sport and recreation facilities (including quantitative or qualitative deficits or surpluses) and opportunities for new provision. Information gained from the assessments should be used to determine what open space, sport and recreational provision is needed, which plans should then seek to accommodate.

97. Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:

a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or

b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or

c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.

98. Planning policies and decisions should protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users, for example by adding links to existing rights of way networks including National Trails.

41 This includes transport hubs, night-time economy venues, cinemas and theatres, sports stadia and arenas, shopping centres, health and education establishments, places of worship, hotels and restaurants, visitor attractions and commercial centres.
99. The designation of land as Local Green Space through local and neighbourhood plans allows communities to identify and protect green areas of particular importance to them. Designating land as Local Green Space should be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services. Local Green Spaces should only be designated when a plan is prepared or updated, and be capable of enduring beyond the end of the plan period.

100. The Local Green Space designation should only be used where the green space is:

a) in reasonably close proximity to the community it serves;

b) demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and

c) local in character and is not an extensive tract of land.

101. Policies for managing development within a Local Green Space should be consistent with those for Green Belts.
9. Promoting sustainable transport

102. Transport issues should be considered from the earliest stages of plan-making and development proposals, so that:

a) the potential impacts of development on transport networks can be addressed;

b) opportunities from existing or proposed transport infrastructure, and changing transport technology and usage, are realised – for example in relation to the scale, location or density of development that can be accommodated;

c) opportunities to promote walking, cycling and public transport use are identified and pursued;

d) the environmental impacts of traffic and transport infrastructure can be identified, assessed and taken into account – including appropriate opportunities for avoiding and mitigating any adverse effects, and for net environmental gains; and

e) patterns of movement, streets, parking and other transport considerations are integral to the design of schemes, and contribute to making high quality places.

103. The planning system should actively manage patterns of growth in support of these objectives. Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. This can help to reduce congestion and emissions, and improve air quality and public health. However, opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making.

104. Planning policies should:

a) support an appropriate mix of uses across an area, and within larger scale sites, to minimise the number and length of journeys needed for employment, shopping, leisure, education and other activities;

b) be prepared with the active involvement of local highways authorities, other transport infrastructure providers and operators and neighbouring councils, so that strategies and investments for supporting sustainable transport and development patterns are aligned;

c) identify and protect, where there is robust evidence, sites and routes which could be critical in developing infrastructure to widen transport choice and realise opportunities for large scale development;

d) provide for high quality walking and cycling networks and supporting facilities such as cycle parking (drawing on Local Cycling and Walking Infrastructure Plans);
e) provide for any large scale transport facilities that need to be located in the area, and the infrastructure and wider development required to support their operation, expansion and contribution to the wider economy. In doing so they should take into account whether such development is likely to be a nationally significant infrastructure project and any relevant national policy statements; and

f) recognise the importance of maintaining a national network of general aviation airfields, and their need to adapt and change over time – taking into account their economic value in serving business, leisure, training and emergency service needs, and the Government’s General Aviation Strategy.

105. If setting local parking standards for residential and non-residential development, policies should take into account:

a) the accessibility of the development;

b) the type, mix and use of development;

c) the availability of and opportunities for public transport;

d) local car ownership levels; and

e) the need to ensure an adequate provision of spaces for charging plug-in and other ultra-low emission vehicles.

106. Maximum parking standards for residential and non-residential development should only be set where there is a clear and compelling justification that they are necessary for managing the local road network, or for optimising the density of development in city and town centres and other locations that are well served by public transport (in accordance with chapter 11 of this Framework). In town centres, local authorities should seek to improve the quality of parking so that it is convenient, safe and secure, alongside measures to promote accessibility for pedestrians and cyclists.

107. Planning policies and decisions should recognise the importance of providing adequate overnight lorry parking facilities, taking into account any local shortages, to reduce the risk of parking in locations that lack proper facilities or could cause a nuisance. Proposals for new or expanded distribution centres should make provision for sufficient lorry parking to cater for their anticipated use.

Considering development proposals

108. In assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that:

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42 Policies for large scale facilities should, where necessary, be developed through collaboration between strategic policy-making authorities and other relevant bodies. Examples of such facilities include ports, airports, interchanges for rail freight, public transport projects and roadside services. The primary function of roadside services should be to support the safety and welfare of the road user (and most such proposals are unlikely to be nationally significant infrastructure projects).

a) appropriate opportunities to promote sustainable transport modes can be – or
have been – taken up, given the type of development and its location;

b) safe and suitable access to the site can be achieved for all users; and

c) any significant impacts from the development on the transport network (in terms
of capacity and congestion), or on highway safety, can be cost effectively
mitigated to an acceptable degree.

109. Development should only be prevented or refused on highways grounds if there
would be an unacceptable impact on highway safety, or the residual cumulative
impacts on the road network would be severe.

110. Within this context, applications for development should:

a) give priority first to pedestrian and cycle movements, both within the scheme
and with neighbouring areas; and second – so far as possible – to facilitating
access to high quality public transport, with layouts that maximise the catchment
area for bus or other public transport services, and appropriate facilities that
encourage public transport use;

b) address the needs of people with disabilities and reduced mobility in relation to
all modes of transport;

c) create places that are safe, secure and attractive – which minimise the scope
for conflicts between pedestrians, cyclists and vehicles, avoid unnecessary
street clutter, and respond to local character and design standards;

d) allow for the efficient delivery of goods, and access by service and emergency
vehicles; and

e) be designed to enable charging of plug-in and other ultra-low emission vehicles
in safe, accessible and convenient locations.

111. All developments that will generate significant amounts of movement should be
required to provide a travel plan, and the application should be supported by a
transport statement or transport assessment so that the likely impacts of the
proposal can be assessed.
10. Supporting high quality communications

112. Advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being. Planning policies and decisions should support the expansion of electronic communications networks, including next generation mobile technology (such as 5G) and full fibre broadband connections. Policies should set out how high quality digital infrastructure, providing access to services from a range of providers, is expected to be delivered and upgraded over time; and should prioritise full fibre connections to existing and new developments (as these connections will, in almost all cases, provide the optimum solution).

113. The number of radio and electronic communications masts, and the sites for such installations, should be kept to a minimum consistent with the needs of consumers, the efficient operation of the network and providing reasonable capacity for future expansion. Use of existing masts, buildings and other structures for new electronic communications capability (including wireless) should be encouraged. Where new sites are required (such as for new 5G networks, or for connected transport and smart city applications), equipment should be sympathetically designed and camouflaged where appropriate.

114. Local planning authorities should not impose a ban on new electronic communications development in certain areas, impose blanket Article 4 directions over a wide area or a wide range of electronic communications development, or insist on minimum distances between new electronic communications development and existing development. They should ensure that:

   a) they have evidence to demonstrate that electronic communications infrastructure is not expected to cause significant and irremediable interference with other electrical equipment, air traffic services or instrumentation operated in the national interest; and

   b) they have considered the possibility of the construction of new buildings or other structures interfering with broadcast and electronic communications services.

115. Applications for electronic communications development (including applications for prior approval under the General Permitted Development Order) should be supported by the necessary evidence to justify the proposed development. This should include:

   a) the outcome of consultations with organisations with an interest in the proposed development, in particular with the relevant body where a mast is to be installed near a school or college, or within a statutory safeguarding zone surrounding an aerodrome, technical site or military explosives storage area; and

   b) for an addition to an existing mast or base station, a statement that self-certifies that the cumulative exposure, when operational, will not exceed International Commission guidelines on non-ionising radiation protection; or

   c) for a new mast or base station, evidence that the applicant has explored the possibility of erecting antennas on an existing building, mast or other structure
and a statement that self-certifies that, when operational, International Commission guidelines will be met.

116. Local planning authorities must determine applications on planning grounds only. They should not seek to prevent competition between different operators, question the need for an electronic communications system, or set health safeguards different from the International Commission guidelines for public exposure.
11. Making effective use of land

117. Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or ‘brownfield’ land.44

118. Planning policies and decisions should:

   a) encourage multiple benefits from both urban and rural land, including through mixed use schemes and taking opportunities to achieve net environmental gains – such as developments that would enable new habitat creation or improve public access to the countryside;

   b) recognise that some undeveloped land can perform many functions, such as for wildlife, recreation, flood risk mitigation, cooling/shading, carbon storage or food production;

   c) give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land;

   d) promote and support the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing where land supply is constrained and available sites could be used more effectively (for example converting space above shops, and building on or above service yards, car parks, lock-ups and railway infrastructure); and

   e) support opportunities to use the airspace above existing residential and commercial premises for new homes. In particular, they should allow upward extensions where the development would be consistent with the prevailing height and form of neighbouring properties and the overall street scene, is well-designed (including complying with any local design policies and standards), and can maintain safe access and egress for occupiers.

119. Local planning authorities, and other plan-making bodies, should take a proactive role in identifying and helping to bring forward land that may be suitable for meeting development needs, including suitable sites on brownfield registers or held in public ownership, using the full range of powers available to them. This should include identifying opportunities to facilitate land assembly, supported where necessary by compulsory purchase powers, where this can help to bring more land forward for meeting development needs and/or secure better development outcomes.

44 Except where this would conflict with other policies in this Framework, including causing harm to designated sites of importance for biodiversity.

45 As part of this approach, plans and decisions should support efforts to identify and bring back into residential use empty homes and other buildings, supported by the use of compulsory purchase powers where appropriate.
120. Planning policies and decisions need to reflect changes in the demand for land. They should be informed by regular reviews of both the land allocated for development in plans, and of land availability. Where the local planning authority considers there to be no reasonable prospect of an application coming forward for the use allocated in a plan:

a) they should, as part of plan updates, reallocate the land for a more deliverable use that can help to address identified needs (or, if appropriate, deallocate a site which is undeveloped); and

b) in the interim, prior to updating the plan, applications for alternative uses on the land should be supported, where the proposed use would contribute to meeting an unmet need for development in the area.

121. Local planning authorities should also take a positive approach to applications for alternative uses of land which is currently developed but not allocated for a specific purpose in plans, where this would help to meet identified development needs. In particular, they should support proposals to:

a) use retail and employment land for homes in areas of high housing demand, provided this would not undermine key economic sectors or sites or the vitality and viability of town centres, and would be compatible with other policies in this Framework; and

b) make more effective use of sites that provide community services such as schools and hospitals, provided this maintains or improves the quality of service provision and access to open space.

Achieving appropriate densities

122. Planning policies and decisions should support development that makes efficient use of land, taking into account:

a) the identified need for different types of housing and other forms of development, and the availability of land suitable for accommodating it;

b) local market conditions and viability;

c) the availability and capacity of infrastructure and services – both existing and proposed – as well as their potential for further improvement and the scope to promote sustainable travel modes that limit future car use;

d) the desirability of maintaining an area’s prevailing character and setting (including residential gardens), or of promoting regeneration and change; and

e) the importance of securing well-designed, attractive and healthy places.

123. Where there is an existing or anticipated shortage of land for meeting identified housing needs, it is especially important that planning policies and decisions avoid homes being built at low densities, and ensure that developments make optimal use of the potential of each site. In these circumstances:
a) plans should contain policies to optimise the use of land in their area and meet as much of the identified need for housing as possible. This will be tested robustly at examination, and should include the use of minimum density standards for city and town centres and other locations that are well served by public transport. These standards should seek a significant uplift in the average density of residential development within these areas, unless it can be shown that there are strong reasons why this would be inappropriate;

b) the use of minimum density standards should also be considered for other parts of the plan area. It may be appropriate to set out a range of densities that reflect the accessibility and potential of different areas, rather than one broad density range; and

c) local planning authorities should refuse applications which they consider fail to make efficient use of land, taking into account the policies in this Framework. In this context, when considering applications for housing, authorities should take a flexible approach in applying policies or guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site (as long as the resulting scheme would provide acceptable living standards).
12. Achieving well-designed places

124. The creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Being clear about design expectations, and how these will be tested, is essential for achieving this. So too is effective engagement between applicants, communities, local planning authorities and other interests throughout the process.

125. Plans should, at the most appropriate level, set out a clear design vision and expectations, so that applicants have as much certainty as possible about what is likely to be acceptable. Design policies should be developed with local communities so they reflect local aspirations, and are grounded in an understanding and evaluation of each area’s defining characteristics. Neighbourhood plans can play an important role in identifying the special qualities of each area and explaining how this should be reflected in development.

126. To provide maximum clarity about design expectations at an early stage, plans or supplementary planning documents should use visual tools such as design guides and codes. These provide a framework for creating distinctive places, with a consistent and high quality standard of design. However their level of detail and degree of prescription should be tailored to the circumstances in each place, and should allow a suitable degree of variety where this would be justified.

127. Planning policies and decisions should ensure that developments:

a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;

b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;

c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);

d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;

e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and
create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

Design quality should be considered throughout the evolution and assessment of individual proposals. Early discussion between applicants, the local planning authority and local community about the design and style of emerging schemes is important for clarifying expectations and reconciling local and commercial interests. Applicants should work closely with those affected by their proposals to evolve designs that take account of the views of the community. Applications that can demonstrate early, proactive and effective engagement with the community should be looked on more favourably than those that cannot.

Local planning authorities should ensure that they have access to, and make appropriate use of, tools and processes for assessing and improving the design of development. These include workshops to engage the local community, design advice and review arrangements, and assessment frameworks such as Building for Life. These are of most benefit if used as early as possible in the evolution of schemes, and are particularly important for significant projects such as large scale housing and mixed use developments. In assessing applications, local planning authorities should have regard to the outcome from these processes, including any recommendations made by design review panels.

Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents. Conversely, where the design of a development accords with clear expectations in plan policies, design should not be used by the decision-maker as a valid reason to object to development. Local planning authorities should also seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (for example through changes to approved details such as the materials used).

In determining applications, great weight should be given to outstanding or innovative designs which promote high levels of sustainability, or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings.

The quality and character of places can suffer when advertisements are poorly sited and designed. A separate consent process within the planning system controls the display of advertisements, which should be operated in a way which is simple, efficient and effective. Advertisements should be subject to control only in the interests of amenity and public safety, taking account of cumulative impacts.

Planning policies for housing should make use of the Government’s optional technical standards for accessible and adaptable housing, where this would address an identified need for such properties. Policies may also make use of the nationally described space standard, where the need for an internal space standard can be justified.

13. Protecting Green Belt land

133. The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.

134. Green Belt serves five purposes:

   a) to check the unrestricted sprawl of large built-up areas;

   b) to prevent neighbouring towns merging into one another;

   c) to assist in safeguarding the countryside from encroachment;

   d) to preserve the setting and special character of historic towns; and

   e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

135. The general extent of Green Belts across the country is already established. New Green Belts should only be established in exceptional circumstances, for example when planning for larger scale development such as new settlements or major urban extensions. Any proposals for new Green Belts should be set out in strategic policies, which should:

   a) demonstrate why normal planning and development management policies would not be adequate;

   b) set out whether any major changes in circumstances have made the adoption of this exceptional measure necessary;

   c) show what the consequences of the proposal would be for sustainable development;

   d) demonstrate the necessity for the Green Belt and its consistency with strategic policies for adjoining areas; and

   e) show how the Green Belt would meet the other objectives of the Framework.

136. Once established, Green Belt boundaries should only be altered where exceptional circumstances are fully evidenced and justified, through the preparation or updating of plans. Strategic policies should establish the need for any changes to Green Belt boundaries, having regard to their intended permanence in the long term, so they can endure beyond the plan period. Where a need for changes to Green Belt boundaries has been established through strategic policies, detailed amendments to those boundaries may be made through non-strategic policies, including neighbourhood plans.
137. Before concluding that exceptional circumstances exist to justify changes to Green Belt boundaries, the strategic policy-making authority should be able to demonstrate that it has examined fully all other reasonable options for meeting its identified need for development. This will be assessed through the examination of its strategic policies, which will take into account the preceding paragraph, and whether the strategy:

a) makes as much use as possible of suitable brownfield sites and underutilised land;

b) optimises the density of development in line with the policies in chapter 11 of this Framework, including whether policies promote a significant uplift in minimum density standards in town and city centres and other locations well served by public transport; and

c) has been informed by discussions with neighbouring authorities about whether they could accommodate some of the identified need for development, as demonstrated through the statement of common ground.

138. When drawing up or reviewing Green Belt boundaries, the need to promote sustainable patterns of development should be taken into account. Strategic policy-making authorities should consider the consequences for sustainable development of channelling development towards urban areas inside the Green Belt boundary, towards towns and villages inset within the Green Belt or towards locations beyond the outer Green Belt boundary. Where it has been concluded that it is necessary to release Green Belt land for development, plans should give first consideration to land which has been previously-developed and/or is well-served by public transport. They should also set out ways in which the impact of removing land from the Green Belt can be offset through compensatory improvements to the environmental quality and accessibility of remaining Green Belt land.

139. When defining Green Belt boundaries, plans should:

a) ensure consistency with the development plan’s strategy for meeting identified requirements for sustainable development;

b) not include land which it is unnecessary to keep permanently open;

c) where necessary, identify areas of safeguarded land between the urban area and the Green Belt, in order to meet longer-term development needs stretching well beyond the plan period;

d) make clear that the safeguarded land is not allocated for development at the present time. Planning permission for the permanent development of safeguarded land should only be granted following an update to a plan which proposes the development;

e) be able to demonstrate that Green Belt boundaries will not need to be altered at the end of the plan period; and

f) define boundaries clearly, using physical features that are readily recognisable and likely to be permanent.
140. If it is necessary to restrict development in a village primarily because of the important contribution which the open character of the village makes to the openness of the Green Belt, the village should be included in the Green Belt. If, however, the character of the village needs to be protected for other reasons, other means should be used, such as conservation area or normal development management policies, and the village should be excluded from the Green Belt.

141. Once Green Belts have been defined, local planning authorities should plan positively to enhance their beneficial use, such as looking for opportunities to provide access; to provide opportunities for outdoor sport and recreation; to retain and enhance landscapes, visual amenity and biodiversity; or to improve damaged and derelict land.

142. The National Forest and Community Forests offer valuable opportunities for improving the environment around towns and cities, by upgrading the landscape and providing for recreation and wildlife. The National Forest Strategy and an approved Community Forest Plan may be a material consideration in preparing development plans and in deciding planning applications. Any development proposals within the National Forest and Community Forests in the Green Belt should be subject to the normal policies for controlling development in Green Belts.

Proposals affecting the Green Belt

143. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

144. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

145. A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are:

a) buildings for agriculture and forestry;

b) the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it;

c) the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;

d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;

e) limited infilling in villages;

f) limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites); and
g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:
   – not have a greater impact on the openness of the Green Belt than the existing development; or
   – not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.

146. Certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These are:

a) mineral extraction;

b) engineering operations;

c) local transport infrastructure which can demonstrate a requirement for a Green Belt location;

d) the re-use of buildings provided that the buildings are of permanent and substantial construction;

e) material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds); and

f) development brought forward under a Community Right to Build Order or Neighbourhood Development Order.

147. When located in the Green Belt, elements of many renewable energy projects will comprise inappropriate development. In such cases developers will need to demonstrate very special circumstances if projects are to proceed. Such very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources.
14. Meeting the challenge of climate change, flooding and coastal change

148. The planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure.

Planning for climate change

149. Plans should take a proactive approach to mitigating and adapting to climate change, taking into account the long-term implications for flood risk, coastal change, water supply, biodiversity and landscapes, and the risk of overheating from rising temperatures\(^{48}\). Policies should support appropriate measures to ensure the future resilience of communities and infrastructure to climate change impacts, such as providing space for physical protection measures, or making provision for the possible future relocation of vulnerable development and infrastructure.

150. New development should be planned for in ways that:

a) avoid increased vulnerability to the range of impacts arising from climate change. When new development is brought forward in areas which are vulnerable, care should be taken to ensure that risks can be managed through suitable adaptation measures, including through the planning of green infrastructure; and

b) can help to reduce greenhouse gas emissions, such as through its location, orientation and design. Any local requirements for the sustainability of buildings should reflect the Government's policy for national technical standards.

151. To help increase the use and supply of renewable and low carbon energy and heat, plans should:

a) provide a positive strategy for energy from these sources, that maximises the potential for suitable development, while ensuring that adverse impacts are addressed satisfactorily (including cumulative landscape and visual impacts);

b) consider identifying suitable areas for renewable and low carbon energy sources, and supporting infrastructure, where this would help secure their development; and

c) identify opportunities for development to draw its energy supply from decentralised, renewable or low carbon energy supply systems and for co-locating potential heat customers and suppliers.

\(^{48}\) In line with the objectives and provisions of the Climate Change Act 2008.
152. Local planning authorities should support community-led initiatives for renewable and low carbon energy, including developments outside areas identified in local plans or other strategic policies that are being taken forward through neighbourhood planning.

153. In determining planning applications, local planning authorities should expect new development to:

a) comply with any development plan policies on local requirements for decentralised energy supply unless it can be demonstrated by the applicant, having regard to the type of development involved and its design, that this is not feasible or viable; and

b) take account of landform, layout, building orientation, massing and landscaping to minimise energy consumption.

154. When determining planning applications for renewable and low carbon development, local planning authorities should:

a) not require applicants to demonstrate the overall need for renewable or low carbon energy, and recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions; and

b) approve the application if its impacts are (or can be made) acceptable. Once suitable areas for renewable and low carbon energy have been identified in plans, local planning authorities should expect subsequent applications for commercial scale projects outside these areas to demonstrate that the proposed location meets the criteria used in identifying suitable areas.

Planning and flood risk

155. Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.

156. Strategic policies should be informed by a strategic flood risk assessment, and should manage flood risk from all sources. They should consider cumulative impacts in, or affecting, local areas susceptible to flooding, and take account of advice from the Environment Agency and other relevant flood risk management authorities, such as lead local flood authorities and internal drainage boards.

157. All plans should apply a sequential, risk-based approach to the location of development – taking into account the current and future impacts of climate change

49 Except for applications for the repowering of existing wind turbines, a proposed wind energy development involving one or more turbines should not be considered acceptable unless it is in an area identified as suitable for wind energy development in the development plan; and, following consultation, it can be demonstrated that the planning impacts identified by the affected local community have been fully addressed and the proposal has their backing.
– so as to avoid, where possible, flood risk to people and property. They should do this, and manage any residual risk, by:

a) applying the sequential test and then, if necessary, the exception test as set out below;

b) safeguarding land from development that is required, or likely to be required, for current or future flood management;

c) using opportunities provided by new development to reduce the causes and impacts of flooding (where appropriate through the use of natural flood management techniques); and

d) where climate change is expected to increase flood risk so that some existing development may not be sustainable in the long-term, seeking opportunities to relocate development, including housing, to more sustainable locations.

158. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The strategic flood risk assessment will provide the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.

159. If it is not possible for development to be located in zones with a lower risk of flooding (taking into account wider sustainable development objectives), the exception test may have to be applied. The need for the exception test will depend on the potential vulnerability of the site and of the development proposed, in line with the Flood Risk Vulnerability Classification set out in national planning guidance.

160. The application of the exception test should be informed by a strategic or site-specific flood risk assessment, depending on whether it is being applied during plan production or at the application stage. For the exception test to be passed it should be demonstrated that:

a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and

b) the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.

161. Both elements of the exception test should be satisfied for development to be allocated or permitted.

162. Where planning applications come forward on sites allocated in the development plan through the sequential test, applicants need not apply the sequential test again. However, the exception test may need to be reapplied if relevant aspects of the proposal had not been considered when the test was applied at the plan-making stage, or if more recent information about existing or potential flood risk should be taken into account.
163. When determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment. Development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable) it can be demonstrated that:

   a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;
   b) the development is appropriately flood resistant and resilient;
   c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;
   d) any residual risk can be safely managed; and
   e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.

164. Applications for some minor development and changes of use should not be subject to the sequential or exception tests but should still meet the requirements for site-specific flood risk assessments set out in footnote 50.

165. Major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate. The systems used should:

   a) take account of advice from the lead local flood authority;
   b) have appropriate proposed minimum operational standards;
   c) have maintenance arrangements in place to ensure an acceptable standard of operation for the lifetime of the development; and
   d) where possible, provide multifunctional benefits.

Coastal change

166. In coastal areas, planning policies and decisions should take account of the UK Marine Policy Statement and marine plans. Integrated Coastal Zone Management should be pursued across local authority and land/sea boundaries, to ensure effective alignment of the terrestrial and marine planning regimes.

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50 A site-specific flood risk assessment should be provided for all development in Flood Zones 2 and 3. In Flood Zone 1, an assessment should accompany all proposals involving: sites of 1 hectare or more; land which has been identified by the Environment Agency as having critical drainage problems; land identified in a strategic flood risk assessment as being at increased flood risk in future; or land that may be subject to other sources of flooding, where its development would introduce a more vulnerable use.

51 This includes householder development, small non-residential extensions (with a footprint of less than 250m²) and changes of use; except for changes of use to a caravan, camping or chalet site, or to a mobile home or park home site, where the sequential and exception tests should be applied as appropriate.
167. Plans should reduce risk from coastal change by avoiding inappropriate
development in vulnerable areas and not exacerbating the impacts of physical
changes to the coast. They should identify as a Coastal Change Management Area
any area likely to be affected by physical changes to the coast, and:

a) be clear as to what development will be appropriate in such areas and in what
circumstances; and

b) make provision for development and infrastructure that needs to be relocated
away from Coastal Change Management Areas.

168. Development in a Coastal Change Management Area will be appropriate only
where it is demonstrated that:

a) it will be safe over its planned lifetime and not have an unacceptable impact on
coastal change;

b) the character of the coast including designations is not compromised;

c) the development provides wider sustainability benefits; and

d) the development does not hinder the creation and maintenance of a continuous
signed and managed route around the coast52.

169. Local planning authorities should limit the planned lifetime of development in a
Coastal Change Management Area through temporary permission and restoration
conditions, where this is necessary to reduce a potentially unacceptable level of
future risk to people and the development.

52 As required by the Marine and Coastal Access Act 2009.
15. Conserving and enhancing the natural environment

170. Planning policies and decisions should contribute to and enhance the natural and local environment by:

a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);

b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland;

c) maintaining the character of the undeveloped coast, while improving public access to it where appropriate;

d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;

e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans; and

f) remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.

171. Plans should: distinguish between the hierarchy of international, national and locally designated sites; allocate land with the least environmental or amenity value, where consistent with other policies in this Framework; take a strategic approach to maintaining and enhancing networks of habitats and green infrastructure; and plan for the enhancement of natural capital at a catchment or landscape scale across local authority boundaries.

172. Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to these issues. The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas, and should be given great weight in National Parks.

53 Where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality.
and the Broads. The scale and extent of development within these designated areas should be limited. Planning permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of:

a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;

b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and

c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

173. Within areas defined as Heritage Coast (and that do not already fall within one of the designated areas mentioned in paragraph 172), planning policies and decisions should be consistent with the special character of the area and the importance of its conservation. Major development within a Heritage Coast is unlikely to be appropriate, unless it is compatible with its special character.

Habitats and biodiversity

174. To protect and enhance biodiversity and geodiversity, plans should:

a) Identify, map and safeguard components of local wildlife-rich habitats and wider ecological networks, including the hierarchy of international, national and locally designated sites of importance for biodiversity; wildlife corridors and stepping stones that connect them; and areas identified by national and local partnerships for habitat management, enhancement, restoration or creation;

b) promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity.

175. When determining planning applications, local planning authorities should apply the following principles:

a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts),

54 English National Parks and the Broads: UK Government Vision and Circular 2010 provides further guidance and information about their statutory purposes, management and other matters.

55 For the purposes of paragraphs 172 and 173, whether a proposal is ‘major development’ is a matter for the decision maker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined.

56 Circular 06/2005 provides further guidance in respect of statutory obligations for biodiversity and geological conservation and their impact within the planning system.

57 Where areas that are part of the Nature Recovery Network are identified in plans, it may be appropriate to specify the types of development that may be suitable within them.
adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;

b) development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest;

c) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons\(^{58}\) and a suitable compensation strategy exists; and

d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.

176. The following should be given the same protection as habitats sites:

a) potential Special Protection Areas and possible Special Areas of Conservation;

b) listed or proposed Ramsar sites\(^{59}\); and

c) sites identified, or required, as compensatory measures for adverse effects on habitats sites, potential Special Protection Areas, possible Special Areas of Conservation, and listed or proposed Ramsar sites.

177. The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.

**Ground conditions and pollution**

178. Planning policies and decisions should ensure that:

a) a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. This includes risks arising from natural hazards or former activities such as mining, and any

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\(^{58}\) For example, infrastructure projects (including nationally significant infrastructure projects, orders under the Transport and Works Act and hybrid bills), where the public benefit would clearly outweigh the loss or deterioration of habitat.

\(^{59}\) Potential Special Protection Areas, possible Special Areas of Conservation and proposed Ramsar sites are sites on which Government has initiated public consultation on the scientific case for designation as a Special Protection Area, candidate Special Area of Conservation or Ramsar site.
proposals for mitigation including land remediation (as well as potential impacts on the natural environment arising from that remediation);

b) after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990; and

c) adequate site investigation information, prepared by a competent person, is available to inform these assessments.

179. Where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner.

180. Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:

a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life60; 

b) identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason; and

b) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.

181. Planning policies and decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and Clean Air Zones, and the cumulative impacts from individual sites in local areas. Opportunities to improve air quality or mitigate impacts should be identified, such as through traffic and travel management, and green infrastructure provision and enhancement. So far as possible these opportunities should be considered at the plan-making stage, to ensure a strategic approach and limit the need for issues to be reconsidered when determining individual applications. Planning decisions should ensure that any new development in Air Quality Management Areas and Clean Air Zones is consistent with the local air quality action plan.

182. Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or ‘agent

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60 See Explanatory Note to the Noise Policy Statement for England (Department for Environment, Food & Rural Affairs, 2010).
of change’) should be required to provide suitable mitigation before the development has been completed.

183. The focus of planning policies and decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively. Equally, where a planning decision has been made on a particular development, the planning issues should not be revisited through the permitting regimes operated by pollution control authorities.
16. Conserving and enhancing the historic environment

184. Heritage assets range from sites and buildings of local historic value to those of the highest significance, such as World Heritage Sites which are internationally recognised to be of Outstanding Universal Value. These assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.

185. Plans should set out a positive strategy for the conservation and enjoyment of the historic environment, including heritage assets most at risk through neglect, decay or other threats. This strategy should take into account:

a) the desirability of sustaining and enhancing the significance of heritage assets, and putting them to viable uses consistent with their conservation;

b) the wider social, cultural, economic and environmental benefits that conservation of the historic environment can bring;

c) the desirability of new development making a positive contribution to local character and distinctiveness; and

d) opportunities to draw on the contribution made by the historic environment to the character of a place.

186. When considering the designation of conservation areas, local planning authorities should ensure that an area justifies such status because of its special architectural or historic interest, and that the concept of conservation is not devalued through the designation of areas that lack special interest.

187. Local planning authorities should maintain or have access to a historic environment record. This should contain up-to-date evidence about the historic environment in their area and be used to:

a) assess the significance of heritage assets and the contribution they make to their environment; and

b) predict the likelihood that currently unidentified heritage assets, particularly sites of historic and archaeological interest, will be discovered in the future.

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61 Some World Heritage Sites are inscribed by UNESCO to be of natural significance rather than cultural significance; and in some cases they are inscribed for both their natural and cultural significance.

62 The policies set out in this chapter relate, as applicable, to the heritage-related consent regimes for which local planning authorities are responsible under the Planning (Listed Buildings and Conservation Areas) Act 1990, as well as to plan-making and decision-making.
188. Local planning authorities should make information about the historic environment, gathered as part of policy-making or development management, publicly accessible.

Proposals affecting heritage assets

189. In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets’ importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.

190. Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset’s conservation and any aspect of the proposal.

191. Where there is evidence of deliberate neglect of, or damage to, a heritage asset, the deteriorated state of the heritage asset should not be taken into account in any decision.

192. In determining applications, local planning authorities should take account of:

   a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;

   b) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and

   c) the desirability of new development making a positive contribution to local character and distinctiveness.

Considering potential impacts

193. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

194. Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Substantial harm to or loss of:
a) grade II listed buildings, or grade II registered parks or gardens, should be exceptional;

b) assets of the highest significance, notably scheduled monuments, protected wreck sites, registered battlefields, grade I and II* listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional\textsuperscript{63}.

195. Where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:

a) the nature of the heritage asset prevents all reasonable uses of the site; and

b) no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and

c) conservation by grant-funding or some form of not for profit, charitable or public ownership is demonstrably not possible; and

d) the harm or loss is outweighed by the benefit of bringing the site back into use.

196. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

197. The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

198. Local planning authorities should not permit the loss of the whole or part of a heritage asset without taking all reasonable steps to ensure the new development will proceed after the loss has occurred.

199. Local planning authorities should require developers to record and advance understanding of the significance of any heritage assets to be lost (wholly or in part) in a manner proportionate to their importance and the impact, and to make this evidence (and any archive generated) publicly accessible\textsuperscript{64}. However, the ability to record evidence of our past should not be a factor in deciding whether such loss should be permitted.

\textsuperscript{63} Non-designated heritage assets of archaeological interest, which are demonstrably of equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets.

\textsuperscript{64} Copies of evidence should be deposited with the relevant historic environment record, and any archives with a local museum or other public depository.
200. Local planning authorities should look for opportunities for new development within Conservation Areas and World Heritage Sites, and within the setting of heritage assets, to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably.

201. Not all elements of a Conservation Area or World Heritage Site will necessarily contribute to its significance. Loss of a building (or other element) which makes a positive contribution to the significance of the Conservation Area or World Heritage Site should be treated either as substantial harm under paragraph 195 or less than substantial harm under paragraph 196, as appropriate, taking into account the relative significance of the element affected and its contribution to the significance of the Conservation Area or World Heritage Site as a whole.

202. Local planning authorities should assess whether the benefits of a proposal for enabling development, which would otherwise conflict with planning policies but which would secure the future conservation of a heritage asset, outweigh the disbenefits of departing from those policies.
17. Facilitating the sustainable use of minerals

203. It is essential that there is a sufficient supply of minerals to provide the infrastructure, buildings, energy and goods that the country needs. Since minerals are a finite natural resource, and can only be worked where they are found, best use needs to be made of them to secure their long-term conservation.

204. Planning policies should:
   
a) provide for the extraction of mineral resources of local and national importance, but not identify new sites or extensions to existing sites for peat extraction;

b) so far as practicable, take account of the contribution that substitute or secondary and recycled materials and minerals waste would make to the supply of materials, before considering extraction of primary materials, whilst aiming to source minerals supplies indigenously;

c) safeguard mineral resources by defining Mineral Safeguarding Areas; and adopt appropriate policies so that known locations of specific minerals resources of local and national importance are not sterilised by non-mineral development where this should be avoided (whilst not creating a presumption that the resources defined will be worked);

d) set out policies to encourage the prior extraction of minerals, where practical and environmentally feasible, if it is necessary for non-mineral development to take place;

e) safeguard existing, planned and potential sites for: the bulk transport, handling and processing of minerals; the manufacture of concrete and concrete products; and the handling, processing and distribution of substitute, recycled and secondary aggregate material;

f) set out criteria or requirements to ensure that permitted and proposed operations do not have unacceptable adverse impacts on the natural and historic environment or human health, taking into account the cumulative effects of multiple impacts from individual sites and/or a number of sites in a locality;

g) when developing noise limits, recognise that some noisy short-term activities, which may otherwise be regarded as unacceptable, are unavoidable to facilitate minerals extraction; and

h) ensure that worked land is reclaimed at the earliest opportunity, taking account of aviation safety, and that high quality restoration and aftercare of mineral sites takes place.
205. When determining planning applications, great weight should be given to the benefits of mineral extraction, including to the economy\(^65\). In considering proposals for mineral extraction, minerals planning authorities should:

a) as far as is practical, provide for the maintenance of landbanks of non-energy minerals from outside National Parks, the Broads, Areas of Outstanding Natural Beauty and World Heritage Sites, scheduled monuments and conservation areas;

b) ensure that there are no unacceptable adverse impacts on the natural and historic environment, human health or aviation safety, and take into account the cumulative effect of multiple impacts from individual sites and/or from a number of sites in a locality;

c) ensure that any unavoidable noise, dust and particle emissions and any blasting vibrations are controlled, mitigated or removed at source\(^66\), and establish appropriate noise limits for extraction in proximity to noise sensitive properties;

d) not grant planning permission for peat extraction from new or extended sites;

e) provide for restoration and aftercare at the earliest opportunity, to be carried out to high environmental standards, through the application of appropriate conditions. Bonds or other financial guarantees to underpin planning conditions should only be sought in exceptional circumstances;

f) consider how to meet any demand for small-scale extraction of building stone at, or close to, relic quarries needed for the repair of heritage assets, taking account of the need to protect designated sites; and

g) recognise the small-scale nature and impact of building and roofing stone quarries, and the need for a flexible approach to the duration of planning permissions reflecting the intermittent or low rate of working at many sites.

206. Local planning authorities should not normally permit other development proposals in Mineral Safeguarding Areas if it might constrain potential future use for mineral working.

Maintaining supply

207. Minerals planning authorities should plan for a steady and adequate supply of aggregates by:

a) preparing an annual Local Aggregate Assessment, either individually or jointly, to forecast future demand, based on a rolling average of 10 years’ sales data and other relevant local information, and an assessment of all supply options (including marine dredged, secondary and recycled sources);

\(^65\) Except in relation to the extraction of coal, where the policy at paragraph 211 of this Framework applies.

\(^66\) National planning guidance on minerals sets out how these policies should be implemented.
b) participating in the operation of an Aggregate Working Party and taking the advice of that party into account when preparing their Local Aggregate Assessment;

c) making provision for the land-won and other elements of their Local Aggregate Assessment in their mineral plans, taking account of the advice of the Aggregate Working Parties and the National Aggregate Co-ordinating Group as appropriate. Such provision should take the form of specific sites, preferred areas and/or areas of search and locational criteria as appropriate;

d) taking account of any published National and Sub National Guidelines on future provision which should be used as a guideline when planning for the future demand for and supply of aggregates;

e) using landbanks of aggregate minerals reserves principally as an indicator of the security of aggregate minerals supply, and to indicate the additional provision that needs to be made for new aggregate extraction and alternative supplies in mineral plans;

f) maintaining landbanks of at least 7 years for sand and gravel and at least 10 years for crushed rock, whilst ensuring that the capacity of operations to supply a wide range of materials is not compromised67;

g) ensuring that large landbanks bound up in very few sites do not stifle competition; and

h) calculating and maintaining separate landbanks for any aggregate materials of a specific type or quality which have a distinct and separate market.

208. Minerals planning authorities should plan for a steady and adequate supply of industrial minerals by:

a) co-operating with neighbouring and more distant authorities to ensure an adequate provision of industrial minerals to support their likely use in industrial and manufacturing processes;

b) encouraging safeguarding or stockpiling so that important minerals remain available for use;

c) maintaining a stock of permitted reserves to support the level of actual and proposed investment required for new or existing plant, and the maintenance and improvement of existing plant and equipment68; and

d) taking account of the need for provision of brick clay from a number of different sources to enable appropriate blends to be made.

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67 Longer periods may be appropriate to take account of the need to supply a range of types of aggregates, locations of permitted reserves relative to markets, and productive capacity of permitted sites.

68 These reserves should be at least 10 years for individual silica sand sites; at least 15 years for cement primary (chalk and limestone) and secondary (clay and shale) materials to maintain an existing plant, and for silica sand sites where significant new capital is required; and at least 25 years for brick clay, and for cement primary and secondary materials to support a new kiln.
Oil, gas and coal exploration and extraction

209. Minerals planning authorities should*:

b) when planning for on-shore oil and gas development, clearly distinguish between, and plan positively for, the three phases of development (exploration, appraisal and production), whilst ensuring appropriate monitoring and site restoration is provided for;

c) encourage underground gas and carbon storage and associated infrastructure if local geological circumstances indicate its feasibility;

d) indicate any areas where coal extraction and the disposal of colliery spoil may be acceptable;

e) encourage the capture and use of methane from coal mines in active and abandoned coalfield areas; and

f) provide for coal producers to extract separately, and if necessary stockpile, fireclay so that it remains available for use.

210. When determining planning applications, minerals planning authorities should ensure that the integrity and safety of underground storage facilities are appropriate, taking into account the maintenance of gas pressure, prevention of leakage of gas and the avoidance of pollution.

211. Planning permission should not be granted for the extraction of coal unless:

a) the proposal is environmentally acceptable, or can be made so by planning conditions or obligations; or

b) if it is not environmentally acceptable, then it provides national, local or community benefits which clearly outweigh its likely impacts (taking all relevant matters into account, including any residual environmental impacts).

* Paragraph 209a has been removed following the decision in R (on the application of Stephenson) v Secretary of State for Housing, Communities and Local Government [2019] EWHC 519 (Admin).
Annex 1: Implementation

212. The policies in this Framework are material considerations which should be taken into account in dealing with applications from the day of its publication. Plans may also need to be revised to reflect policy changes which this replacement Framework has made. This should be progressed as quickly as possible, either through a partial revision or by preparing a new plan.

213. However, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).

214. The policies in the previous Framework published in March 2012 will apply for the purpose of examining plans, where those plans were submitted on or before 24 January 2019. Where such plans are withdrawn or otherwise do not proceed to become part of the development plan, the policies contained in this Framework will apply to any subsequent plan produced for the area concerned.

215. The Housing Delivery Test will apply from the day following the publication of the Housing Delivery Test results in November 2018. For the purpose of footnote 7 in this Framework, delivery of housing which was substantially below the housing requirement means where the Housing Delivery Test results published in:

   a) November 2018 indicate that delivery was below 25% of housing required over the previous three years;

   b) November 2019 indicate that delivery was below 45% of housing required over the previous three years;

   c) November 2020 and in subsequent years indicate that delivery was below 75% of housing required over the previous three years.

216. For the purpose of paragraph 14:

   a) up to and including 11 December 2018, paragraph 14a also includes neighbourhood plans that became part of the development plan more than two years before the date on which the decision is made; and

   b) from November 2018 to November 2019, housing delivery should be at least 25% of that required over the previous three years, as measured by the Housing Delivery Test.

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69 For spatial development strategies, ‘submission’ in this context means the point at which the Mayor sends to the Panel copies of all representations made in accordance with regulation 8(1) of the Town and Country Planning (London Spatial Development Strategy) Regulations 2000, or equivalent. For neighbourhood plans, ‘submission’ in this context means where a qualifying body submits a plan proposal to the local planning authority in accordance with regulation 15 of the Neighbourhood Planning (General) Regulations 2012.
217. The Government will continue to explore with individual areas the potential for planning freedoms and flexibilities, for example where this would facilitate an increase in the amount of housing that can be delivered.
Annex 2: Glossary

**Affordable housing:** housing for sale or rent, for those whose needs are not met by the market (including housing that provides a subsidised route to home ownership and/or is for essential local workers); and which complies with one or more of the following definitions:

a) **Affordable housing for rent:** meets all of the following conditions: (a) the rent is set in accordance with the Government’s rent policy for Social Rent or Affordable Rent, or is at least 20% below local market rents (including service charges where applicable); (b) the landlord is a registered provider, except where it is included as part of a Build to Rent scheme (in which case the landlord need not be a registered provider); and (c) it includes provisions to remain at an affordable price for future eligible households, or for the subsidy to be recycled for alternative affordable housing provision. For Build to Rent schemes affordable housing for rent is expected to be the normal form of affordable housing provision (and, in this context, is known as Affordable Private Rent).

b) **Starter homes:** is as specified in Sections 2 and 3 of the Housing and Planning Act 2016 and any secondary legislation made under these sections. The definition of a starter home should reflect the meaning set out in statute and any such secondary legislation at the time of plan-preparation or decision-making. Where secondary legislation has the effect of limiting a household’s eligibility to purchase a starter home to those with a particular maximum level of household income, those restrictions should be used.

c) **Discounted market sales housing:** is that sold at a discount of at least 20% below local market value. Eligibility is determined with regard to local incomes and local house prices. Provisions should be in place to ensure housing remains at a discount for future eligible households.

d) **Other affordable routes to home ownership:** is housing provided for sale that provides a route to ownership for those who could not achieve home ownership through the market. It includes shared ownership, relevant equity loans, other low cost homes for sale (at a price equivalent to at least 20% below local market value) and rent to buy (which includes a period of intermediate rent). Where public grant funding is provided, there should be provisions for the homes to remain at an affordable price for future eligible households, or for any receipts to be recycled for alternative affordable housing provision, or refunded to Government or the relevant authority specified in the funding agreement.

**Air quality management areas:** Areas designated by local authorities because they are not likely to achieve national air quality objectives by the relevant deadlines.

**Ancient or veteran tree:** A tree which, because of its age, size and condition, is of exceptional biodiversity, cultural or heritage value. All ancient trees are veteran trees. Not all veteran trees are old enough to be ancient, but are old relative to other trees of the same species. Very few trees of any species reach the ancient life-stage.

**Ancient woodland:** An area that has been wooded continuously since at least 1600 AD. It includes ancient semi-natural woodland and plantations on ancient woodland sites (PAWS).
Annual position statement: A document setting out the 5 year housing land supply position on 1st April each year, prepared by the local planning authority in consultation with developers and others who have an impact on delivery.

Archaeological interest: There will be archaeological interest in a heritage asset if it holds, or potentially holds, evidence of past human activity worthy of expert investigation at some point.

Best and most versatile agricultural land: Land in grades 1, 2 and 3a of the Agricultural Land Classification.

Brownfield land: See previously developed land.

Brownfield land registers: Registers of previously developed land that local planning authorities consider to be appropriate for residential development, having regard to criteria in the Town and Country Planning (Brownfield Land Registers) Regulations 2017. Local planning authorities will be able to trigger a grant of permission in principle for residential development on suitable sites in their registers where they follow the required procedures.

Build to Rent: Purpose built housing that is typically 100% rented out. It can form part of a wider multi-tenure development comprising either flats or houses, but should be on the same site and/or contiguous with the main development. Schemes will usually offer longer tenancy agreements of three years or more, and will typically be professionally managed stock in single ownership and management control.

Climate change adaptation: Adjustments made to natural or human systems in response to the actual or anticipated impacts of climate change, to mitigate harm or exploit beneficial opportunities.

Climate change mitigation: Action to reduce the impact of human activity on the climate system, primarily through reducing greenhouse gas emissions.

Coastal change management area: An area identified in plans as likely to be affected by physical change to the shoreline through erosion, coastal landslip, permanent inundation or coastal accretion.

Community forest: An area identified through the England Community Forest Programme to revitalise countryside and green space in and around major conurbations.

Community Right to Build Order: An Order made by the local planning authority (under the Town and Country Planning Act 1990) that grants planning permission for a site-specific development proposal or classes of development.

Competent person (to prepare site investigation information): A person with a recognised relevant qualification, sufficient experience in dealing with the type(s) of pollution or land instability, and membership of a relevant professional organisation.

Conservation (for heritage policy): The process of maintaining and managing change to a heritage asset in a way that sustains and, where appropriate, enhances its significance.
Decentralised energy: Local renewable and local low-carbon energy sources.

Deliverable: To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular:

a) sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans).

b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.

Design code: A set of illustrated design requirements that provide specific, detailed parameters for the physical development of a site or area. The graphic and written components of the code should build upon a design vision, such as a masterplan or other design and development framework for a site or area.

Designated heritage asset: A World Heritage Site, Scheduled Monument, Listed Building, Protected Wreck Site, Registered Park and Garden, Registered Battlefield or Conservation Area designated under the relevant legislation.

Designated rural areas: National Parks, Areas of Outstanding Natural Beauty and areas designated as ‘rural’ under Section 157 of the Housing Act 1985.

Developable: To be considered developable, sites should be in a suitable location for housing development with a reasonable prospect that they will be available and could be viably developed at the point envisaged.

Development plan: Is defined in section 38 of the Planning and Compulsory Purchase Act 2004, and includes adopted local plans, neighbourhood plans that have been made and published spatial development strategies, together with any regional strategy policies that remain in force. Neighbourhood plans that have been approved at referendum are also part of the development plan, unless the local planning authority decides that the neighbourhood plan should not be made.

Edge of centre: For retail purposes, a location that is well connected to, and up to 300 metres from, the primary shopping area. For all other main town centre uses, a location within 300 metres of a town centre boundary. For office development, this includes locations outside the town centre but within 500 metres of a public transport interchange. In determining whether a site falls within the definition of edge of centre, account should be taken of local circumstances.

Entry-level exception site: A site that provides entry-level homes suitable for first time buyers (or equivalent, for those looking to rent), in line with paragraph 71 of this Framework.

Environmental impact assessment: A procedure to be followed for certain types of project to ensure that decisions are made in full knowledge of any likely significant effects
on the environment.

**Essential local workers:** Public sector employees who provide frontline services in areas including health, education and community safety – such as NHS staff, teachers, police, firefighters and military personnel, social care and childcare workers.

**General aviation airfields:** Licenced or unlicenced aerodromes with hard or grass runways, often with extensive areas of open land related to aviation activity.

**Geodiversity:** The range of rocks, minerals, fossils, soils and landforms.

**Green infrastructure:** A network of multi-functional green space, urban and rural, which is capable of delivering a wide range of environmental and quality of life benefits for local communities.

**Habitats site:** Any site which would be included within the definition at regulation 8 of the Conservation of Habitats and Species Regulations 2017 for the purpose of those regulations, including candidate Special Areas of Conservation, Sites of Community Importance, Special Areas of Conservation, Special Protection Areas and any relevant Marine Sites.

**Heritage asset:** A building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest. It includes designated heritage assets and assets identified by the local planning authority (including local listing).

**Heritage coast:** Areas of undeveloped coastline which are managed to conserve their natural beauty and, where appropriate, to improve accessibility for visitors.

**Historic environment:** All aspects of the environment resulting from the interaction between people and places through time, including all surviving physical remains of past human activity, whether visible, buried or submerged, and landscaped and planted or managed flora.

**Historic environment record:** Information services that seek to provide access to comprehensive and dynamic resources relating to the historic environment of a defined geographic area for public benefit and use.

**Housing Delivery Test:** Measures net additional dwellings provided in a local authority area against the homes required, using national statistics and local authority data. The Secretary of State will publish the Housing Delivery Test results for each local authority in England every November.

**International, national and locally designated sites of importance for biodiversity:** All international sites (Special Areas of Conservation, Special Protection Areas, and Ramsar sites), national sites (Sites of Special Scientific Interest) and locally designated sites including Local Wildlife Sites.

**Irreplaceable habitat:** Habitats which would be technically very difficult (or take a very significant time) to restore, recreate or replace once destroyed, taking into account their age, uniqueness, species diversity or rarity. They include ancient woodland, ancient and
veteran trees, blanket bog, limestone pavement, sand dunes, salt marsh and lowland fen.

**Local Development Order:** An Order made by a local planning authority (under the Town and Country Planning Act 1990) that grants planning permission for a specific development proposal or classes of development.

**Local Enterprise Partnership:** A body, designated by the Secretary of State for Housing, Communities and Local Government, established for the purpose of creating or improving the conditions for economic growth in an area.

**Local housing need:** The number of homes identified as being needed through the application of the standard method set out in national planning guidance (or, in the context of preparing strategic policies only, this may be calculated using a justified alternative approach as provided for in paragraph 60 of this Framework).

**Local Nature Partnership:** A body, designated by the Secretary of State for Environment, Food and Rural Affairs, established for the purpose of protecting and improving the natural environment in an area and the benefits derived from it.

**Local planning authority:** The public authority whose duty it is to carry out specific planning functions for a particular area. All references to local planning authority include the district council, London borough council, county council, Broads Authority, National Park Authority, the Mayor of London and a development corporation, to the extent appropriate to their responsibilities.

**Local plan:** A plan for the future development of a local area, drawn up by the local planning authority in consultation with the community. In law this is described as the development plan documents adopted under the Planning and Compulsory Purchase Act 2004. A local plan can consist of either strategic or non-strategic policies, or a combination of the two.

**Main town centre uses:** Retail development (including warehouse clubs and factory outlet centres); leisure, entertainment and more intensive sport and recreation uses (including cinemas, restaurants, drive-through restaurants, bars and pubs, nightclubs, casinos, health and fitness centres, indoor bowling centres and bingo halls); offices; and arts, culture and tourism development (including theatres, museums, galleries and concert halls, hotels and conference facilities).

**Major development**\(^70\): For housing, development where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more. For non-residential development it means additional floorspace of 1,000m\(^2\) or more, or a site of 1 hectare or more, or as otherwise provided in the Town and Country Planning (Development Management Procedure) (England) Order 2015.

**Major hazard sites, installations and pipelines:** Sites and infrastructure, including licensed explosive sites and nuclear installations, around which Health and Safety Executive (and Office for Nuclear Regulation) consultation distances to mitigate the consequences to public safety of major accidents may apply.

\(^70\) Other than for the specific purposes of paragraphs 172 and 173 in this Framework.
Minerals resources of local and national importance: Minerals which are necessary to meet society’s needs, including aggregates, brickclay (especially Etruria Marl and fireclay), silica sand (including high grade silica sands), cement raw materials, gypsum, salt, fluorspar, shallow and deep-mined coal, oil and gas (including conventional and unconventional hydrocarbons), tungsten, kaolin, ball clay, potash, polyhalite and local minerals of importance to heritage assets and local distinctiveness.

Mineral Safeguarding Area: An area designated by minerals planning authorities which covers known deposits of minerals which are desired to be kept safeguarded from unnecessary sterilisation by non-mineral development.

National trails: Long distance routes for walking, cycling and horse riding.

Natural Flood Management: managing flood and coastal erosion risk by protecting, restoring and emulating the natural ‘regulating’ function of catchments, rivers, floodplains and coasts.

Nature Recovery Network: An expanding, increasingly connected, network of wildlife-rich habitats supporting species recovery, alongside wider benefits such as carbon capture, water quality improvements, natural flood risk management and recreation. It includes the existing network of protected sites and other wildlife rich habitats as well as landscape or catchment scale recovery areas where there is coordinated action for species and habitats.

Neighbourhood Development Order: An Order made by a local planning authority (under the Town and Country Planning Act 1990) through which parish councils and neighbourhood forums can grant planning permission for a specific development proposal or classes of development.

Neighbourhood plan: A plan prepared by a parish council or neighbourhood forum for a designated neighbourhood area. In law this is described as a neighbourhood development plan in the Planning and Compulsory Purchase Act 2004.

Non-strategic policies: Policies contained in a neighbourhood plan, or those policies in a local plan that are not strategic policies.

Older people: People over or approaching retirement age, including the active, newly-retired through to the very frail elderly; and whose housing needs can encompass accessible, adaptable general needs housing through to the full range of retirement and specialised housing for those with support or care needs.

Open space: All open space of public value, including not just land, but also areas of water (such as rivers, canals, lakes and reservoirs) which offer important opportunities for sport and recreation and can act as a visual amenity.

Original building: A building as it existed on 1 July 1948 or, if constructed after 1 July 1948, as it was built originally.

Out of centre: A location which is not in or on the edge of a centre but not necessarily outside the urban area.
Out of town: A location out of centre that is outside the existing urban area.

Outstanding universal value: Cultural and/or natural significance which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations. An individual Statement of Outstanding Universal Value is agreed and adopted by the UNESCO World Heritage Committee for each World Heritage Site.

People with disabilities: People have a disability if they have a physical or mental impairment, and that impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. These persons include, but are not limited to, people with ambulatory difficulties, blindness, learning difficulties, autism and mental health needs.

Permission in principle: A form of planning consent which establishes that a site is suitable for a specified amount of housing-led development in principle. Following a grant of permission in principle, the site must receive a grant of technical details consent before development can proceed.

Planning condition: A condition imposed on a grant of planning permission (in accordance with the Town and Country Planning Act 1990) or a condition included in a Local Development Order or Neighbourhood Development Order.

Planning obligation: A legal agreement entered into under section 106 of the Town and Country Planning Act 1990 to mitigate the impacts of a development proposal.


Previously developed land: Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.

Primary shopping area: Defined area where retail development is concentrated.

Priority habitats and species: Species and Habitats of Principal Importance included in the England Biodiversity List published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006.

Ramsar sites: Wetlands of international importance, designated under the 1971 Ramsar Convention.

Renewable and low carbon energy: Includes energy for heating and cooling as well as generating electricity. Renewable energy covers those energy flows that occur naturally
and repeatedly in the environment – from the wind, the fall of water, the movement of the oceans, from the sun and also from biomass and deep geothermal heat. Low carbon technologies are those that can help reduce emissions (compared to conventional use of fossil fuels).

**Rural exception sites:** Small sites used for affordable housing in perpetuity where sites would not normally be used for housing. Rural exception sites seek to address the needs of the local community by accommodating households who are either current residents or have an existing family or employment connection. A proportion of market homes may be allowed on the site at the local planning authority’s discretion, for example where essential to enable the delivery of affordable units without grant funding.

**Safeguarding zone:** An area defined in Circular 01/03: *Safeguarding aerodromes, technical sites and military explosives storage areas*, to which specific safeguarding provisions apply.

**Self-build and custom-build housing:** Housing built by an individual, a group of individuals, or persons working with or for them, to be occupied by that individual. Such housing can be either market or affordable housing. A legal definition, for the purpose of applying the Self-build and Custom Housebuilding Act 2015 (as amended), is contained in section 1(A1) and (A2) of that Act.

**Setting of a heritage asset:** The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.

**Significance (for heritage policy):** The value of a heritage asset to this and future generations because of its heritage interest. The interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset’s physical presence, but also from its setting. For World Heritage Sites, the cultural value described within each site’s Statement of Outstanding Universal Value forms part of its significance.

**Special Areas of Conservation:** Areas defined by regulation 3 of the Conservation of Habitats and Species Regulations 2017 which have been given special protection as important conservation sites.

**Special Protection Areas:** Areas classified under regulation 15 of the Conservation of Habitats and Species Regulations 2017 which have been identified as being of international importance for the breeding, feeding, wintering or the migration of rare and vulnerable species of birds.

**Site investigation information:** Includes a risk assessment of land potentially affected by contamination, or ground stability and slope stability reports, as appropriate. All investigations of land potentially affected by contamination should be carried out in accordance with established procedures (such as BS10175 Investigation of Potentially Contaminated Sites – Code of Practice).

**Site of Special Scientific Interest:** Sites designated by Natural England under the Wildlife and Countryside Act 1981.
**Spatial development strategy:** A plan containing strategic policies prepared by a Mayor or a combined authority. It includes the London Plan (prepared under provisions in the Greater London Authority Act 1999) and plans prepared by combined authorities that have been given equivalent plan-making functions by an order made under the Local Democracy, Economic Development and Construction Act 2009 (as amended).

**Stepping stones:** Pockets of habitat that, while not necessarily connected, facilitate the movement of species across otherwise inhospitable landscapes.

**Strategic environmental assessment:** A procedure (set out in the Environmental Assessment of Plans and Programmes Regulations 2004) which requires the formal environmental assessment of certain plans and programmes which are likely to have significant effects on the environment.

**Strategic policies:** Policies and site allocations which address strategic priorities in line with the requirements of Section 19 (1B-E) of the Planning and Compulsory Purchase Act 2004.

**Strategic policy-making authorities:** Those authorities responsible for producing strategic policies (local planning authorities, and elected Mayors or combined authorities, where this power has been conferred). This definition applies whether the authority is in the process of producing strategic policies or not.

**Supplementary planning documents:** Documents which add further detail to the policies in the development plan. They can be used to provide further guidance for development on specific sites, or on particular issues, such as design. Supplementary planning documents are capable of being a material consideration in planning decisions but are not part of the development plan.

**Sustainable transport modes:** Any efficient, safe and accessible means of transport with overall low impact on the environment, including walking and cycling, low and ultra low emission vehicles, car sharing and public transport.

**Town centre:** Area defined on the local authority’s policies map, including the primary shopping area and areas predominantly occupied by main town centre uses within or adjacent to the primary shopping area. References to town centres or centres apply to city centres, town centres, district centres and local centres but exclude small parades of shops of purely neighbourhood significance. Unless they are identified as centres in the development plan, existing out-of-centre developments, comprising or including main town centre uses, do not constitute town centres.

**Transport assessment:** A comprehensive and systematic process that sets out transport issues relating to a proposed development. It identifies measures required to improve accessibility and safety for all modes of travel, particularly for alternatives to the car such as walking, cycling and public transport, and measures that will be needed deal with the anticipated transport impacts of the development.

**Transport statement:** A simplified version of a transport assessment where it is agreed the transport issues arising from development proposals are limited and a full transport assessment is not required.
**Travel plan:** A long-term management strategy for an organisation or site that seeks to deliver sustainable transport objectives and is regularly reviewed.

**Wildlife corridor:** Areas of habitat connecting wildlife populations.

**Windfall sites:** Sites not specifically identified in the development plan.
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Correction:

On 23 May 2019 the Secretary of State for Housing, Communities and Local Government issued a Written Ministerial Statement to remove paragraph 209a from the revised National Planning Policy Framework following a legal judgment.

In the light of this the following text should not appear: ‘recognise the benefits of on-shore oil and gas development, including unconventional hydrocarbons, for the security of energy supplies and supporting the transition to a low-carbon economy; and put in place policies to facilitate their exploration and extraction;’

The remainder of paragraph 209 is unaffected.

Dd June 2019
Appendix 1 G.02: NATIONAL NETWORKS NATIONAL POLICY STATEMENT (NN NPS) (2014)
National Policy Statement for National Networks

Presented to Parliament pursuant to Section 9(8) and Section 5(4) of the Planning Act 2008

December 2014
National Policy Statement for National Networks

Presented to Parliament pursuant to Section 9(8) and Section 5(4) of the Planning Act 2008

December 2014
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1. Introduction

Purpose and scope

1.1 The National Networks National Policy Statement (NN NPS), hereafter referred to as ‘NPS’, sets out the need for, and Government’s policies to deliver, development of nationally significant infrastructure projects (NSIPs) on the national road and rail networks in England. It provides planning guidance for promoters of nationally significant infrastructure projects on the road and rail networks, and the basis for the examination by the Examining Authority and decisions by the Secretary of State. The thresholds for nationally significant road, rail and strategic rail freight infrastructure projects are defined in the Planning Act 2008 ("the Planning Act") as amended (for highway and railway projects) by The Highway and Railway (Nationally Significant Infrastructure Project) Order 2013 ("the Threshold Order").¹ For the purposes of this NPS these developments are referred to as national road, rail and strategic rail freight interchange developments.

1.2 The Secretary of State will use this NPS as the primary basis for making decisions on development consent applications for national networks nationally significant infrastructure projects in England.² Other NPSs may also be relevant to decisions on national networks nationally significant infrastructure projects.³ Under section 104 of the Planning Act the Secretary of State must decide an application for a national networks nationally significant infrastructure project in accordance with this NPS unless he/she is satisfied that to do so would:

- lead to the UK being in breach of its international obligations;
- be unlawful;
- lead to the Secretary of State being in breach of any duty imposed by or under any legislation;
- result in adverse impacts of the development outweighing its benefits;
- be contrary to legislation about how the decisions are to be taken.⁴

¹ See sections 22, 25, 26 and 35 of the Planning Act and The Highway and Railway (Nationally Significant Infrastructure Project) Order 2013 No.1893 Article 4
² In Scotland, Wales and Northern Ireland, the authorisation of all national networks projects are devolved to the Scottish Government, Welsh Government and Northern Ireland Assembly. Whilst the Government recognises the importance of rail infrastructure development in Wales as well as England, and the UK Government’s responsibility in this area, it is outside of the scope of this document to set out planning proposals for Wales, which are devolved to the Welsh Government.
³ Including the Ports National Policy Statement and other statements produced from time to time.
⁴ Planning Act 2008 Section 104 – Decisions in cases where national policy statement has effect.
1.3 Where a development does not meet the current requirements for a nationally significant infrastructure project set out in the Planning Act (as amended by the Threshold Order), but is considered to be nationally significant, there is a power in the Planning Act for the Secretary of State, on application, to direct that a development should be treated as a nationally significant infrastructure project. In these circumstances any application for development consent would need to be considered in accordance with this NPS. The relevant development plan is also likely to be an important and relevant matter especially in respect of establishing the need for the development.

1.4 In England, this NPS may also be a material consideration in decision making on applications that fall under the Town and Country Planning Act 1990 or any successor legislation. Whether, and to what extent, this NPS is a material consideration, will be judged on a case by case basis.

1.5 The great majority of nationally significant infrastructure projects on the road network are likely to be developments on the Strategic Road Network. Development on other roads will be nationally significant infrastructure projects only if a direction under Section 35 of the Planning Act has been made designating the development as nationally significant. In this NPS the ‘national road network’ refers to the Strategic Road Network and other roads that are designated as nationally significant under Section 35 of the Planning Act.

1.6 The policy set out in this NPS on strategic rail freight interchanges confirms the policy set out in the policy guidance published in 2011. Designation of this NPS means that the 2011 guidance is cancelled.

1.7 This NPS does not cover High Speed Two. The High Speed Two Hybrid Bill will seek the necessary legal powers to enable the construction and operation of Phase One of High Speed Two (HS2), including the powers to acquire the necessary land and undertake the works required. It is planned to use a Hybrid Bill process for Phase Two of HS2. This NPS sets out the Government’s policy for development of the road and rail networks and strategic rail freight interchanges, taking into account the capacity and connectivity that will be delivered through HS2.

1.8 It should be noted that where the NPS refers to other documents, these other documents may be updated or amended over the time span of the NPS, so successor documents should be referred to.

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5 Planning Act 2008 Section 35 – Directions in relation to projects of national significance
6 Planning Act 2008 Section 104 (2) (d)
7 The Strategic Road Network covers trunk roads and motorways in England where the Secretary of State is the traffic authority. Under the Planning Act thresholds (as amended by the Threshold Order), development of local roads will only be NSIPs if an order under Section 35 of the Planning Act has been made designating the development as a NSIP.
8 See Planning Act thresholds (as amended by the Threshold Order)
9 See also DfT, The Strategic Case for HS2 (October 2013)
Sustainability considerations

1.9 The NPS has been subject to an Appraisal of Sustainability. The Appraisal of Sustainability incorporates a Strategic Environmental Assessment (pursuant to Directive 2001/42/EC as transposed by SI 2004/1633).\(^\text{10}\) The Appraisal of Sustainability thoroughly considers reasonable alternatives to the policy set out in this national policy statement. It was undertaken alongside the development of this NPS.

1.10 The Appraisal of Sustainability found no significant adverse effects of the policy set out in this NPS. It acknowledged that the nature of the effects will depend upon the exact locations of development and the sensitivity of the receiving environment.

1.11 The Government has chosen the policy set out in this NPS as it strikes the best balance between the Government’s economic, environment and social objectives.

1.12 The Appraisal of Sustainability has been published alongside this NPS.

Habits considerations

1.13 The NPS has also been assessed under the Habitats and Wild Birds Directive and Regulations.\(^\text{11}\)

1.14 This NPS is setting the high level policy rather than specifying locations for enhanced or new infrastructure, so the Habitats Regulation Assessment (HRA) has been undertaken at a strategic level. The Government carried out an initial screening exercise and concluded that it could not rule out the potential for adverse effects on the integrity of European sites. In line with the requirements set out in Article 6(4) of the Habitats Directive, the Government considered that the alternatives to this NPS addressed as part of the appraisal of sustainability were also appropriate for consideration as part of the HRA and concluded that there were no other strategic alternatives that would better respect the integrity of European sites and deliver the objectives of this NPS.

1.15 Given the high level nature of the HRA, while there is no reason to assume there would be impacts on European (SP1) sites, it has not been possible to eliminate the potential for impacts on these sites from the policy in the NPS. The Government has therefore set out in the assessment a case for Imperative Reasons of Overriding Public Interest (IROPI), which details the rationale for why the NPS should proceed. If a proposed infrastructure project did impact on a European (SP1) scheme, then IROPI at the project level would be the crucial consideration. The Habitats Regulation Assessment has been published alongside this NPS.


Individual projects

1.16 Appropriate levels of assessment under the Environmental Impact Assessment Directive and Habitats Directive will be carried out on individual proposals.

Consistency of NPS with the National Planning Policy Framework

1.17 The overall strategic aims of the National Planning Policy Framework (NPPF) and the NPS are consistent, however, the two have differing but equally important roles to play.

1.18 The NPPF provides a framework upon which local authorities can construct local plans to bring forward developments, and the NPPF would be a material consideration in planning decisions for such developments under the Town and Country Planning Act 1990. An important function of the NPPF is to embed the principles of sustainable development within local plans prepared under it. The NPPF is also likely to be an important and relevant consideration in decisions on nationally significant infrastructure projects, but only to the extent relevant to that project.

1.19 However, the NPPF makes clear that it is not intended to contain specific policies for NSIPs where quite particular considerations can apply. The National Networks NPS will assume that function and provide transport policy which will guide individual development brought under it.

1.20 In addition, the NPS provides guidance and imposes requirements on matters such as good scheme design, as well as the treatment of environmental impacts. So, both documents seek to achieve sustainable development and recognise that different approaches and measures will be necessary to achieve this.

1.21 Sitting alongside the NPS are the investment programmes for the road and rail networks – the Rail Investment Strategy (HLOS) and the Road Investment Strategy (RIS). These, together with the business plans prepared by the relevant delivery bodies, provide detailed articulation of the Government’s funding strategy for the road and rail networks and investment priorities over forthcoming periods. The diagram at Annex D sets out the investment and planning process.
2. The need for development of the national networks and Government's policy

Summary of need

Government's vision and strategic objectives for the national networks

The Government will deliver national networks that meet the country's long-term needs; supporting a prosperous and competitive economy and improving overall quality of life, as part of a wider transport system. This means:

- Networks with the capacity and connectivity and resilience to support national and local economic activity and facilitate growth and create jobs.
- Networks which support and improve journey quality, reliability and safety.
- Networks which support the delivery of environmental goals and the move to a low carbon economy.
- Networks which join up our communities and link effectively to each other.

2.1 The national road and rail networks that connect our cities, regions and international gateways play a significant part in supporting economic growth, as well as existing economic activity and productivity and in facilitating passenger, business and leisure journeys across the country. Well-connected and high-performing networks with sufficient capacity are vital to meet the country's long-term needs and support a prosperous economy.\(^{12}\)

2.2 There is a critical need to improve the national networks to address road congestion and crowding on the railways to provide safe, expeditious and resilient networks that better support social and economic activity; and to provide a transport network that is capable of stimulating and supporting economic growth. Improvements may also be required to address the

\(^{12}\) The Eddington Transport Study: The Case for Action 2006
impact of the national networks on quality of life and environmental factors.

2.3 On the road network, it is estimated that around 16% of all travel time in 2010 was spent delayed in traffic\textsuperscript{13}. On the rail network, overall crowding on London and South East rail services across the morning and afternoon peaks on a typical weekday in autumn 2013 was 3.1\%, with the worst performing operator’s services experiencing 9.2\% of passengers in excess of capacity.\textsuperscript{14}

2.4 The pressure on our networks is expected to increase even further as the long term drivers for demand to travel – GDP and population – are forecast to increase substantially over coming years\textsuperscript{15}. Under central forecasts, road traffic is forecast to increase by 30\% and rail journeys by 40\%, rail freight has the potential to nearly double by 2030.\textsuperscript{16}

2.5 Whilst advances in mobile technology are important and will influence travel demand, it is difficult to predict by how much. We expect technology, both from better information and data, and in vehicles (e.g. autonomous cars) to have a significant effect on how the network performs. However, we do not expect this to remove the need for development of the networks. In recent years advances in mobile IT, teleconferencing, email, the internet and social media have occurred alongside growth in travel demand on the national networks.

2.6 There is also a need for development on the national networks to support national and local economic growth and regeneration, particularly in the most disadvantaged areas. Improved and new transport links can facilitate economic growth by bringing businesses closer to their workers, their markets and each other. This can help rebalance the economy.

2.7 In some cases there may be a need for development to improve resilience on the networks to adapt to climate change and extreme weather events rather than just tackling a congestion problem.

2.8 There is also a need to improve the integration between the transport modes, including the linkages to ports and airports. Improved integration can reduce end-to-end journey times and provide users of the networks with a wider range of transport choices.

2.9 Broader environment, safety and accessibility goals will also generate requirements for development. In particular, development will be needed to address safety problems, enhance the environment or enhance accessibility for non-motorised users. In their current state, without

\textsuperscript{13} Based on forecast figures from the National Transport Model for all England roads.

\textsuperscript{14} Rail passenger numbers and crowding on weekdays in major cities in England and Wales 2013

\textsuperscript{15} On current projections real GDP is expected to increase by 50\% over the period 2014/15 to 2030/31 (inclusive) (Office of Budget Responsibility, 2014, Fiscal Sustainability Report). Under the central projection from the Office of National Statistics, the UK population is expected to grow by 10 million people from 2012 to 2037 (Office of National Statistics).

\textsuperscript{16} Road traffic forecast figures from the National Transport Model, Autumn 2014. Rail passenger forecasts from the Network Modelling Framework, October 2014 Rail freight forecasts from Network Rail.
development, the national networks will act as a constraint to sustainable economic growth, quality of life and wider environmental objectives.

2.10 The Government has therefore concluded that at a strategic level there is a compelling need for development of the national networks – both as individual networks and as an integrated system. The Examining Authority and the Secretary of State should therefore start their assessment of applications for infrastructure covered by this NPS on that basis.

2.11 The following sections set out more detail on some of the specific drivers of the need for development across the modes, in particular congestion on the road network and pressures on the rail network.

The need for development of the national road network

Importance of the national road network

2.12 Roads are the most heavily used mode of transport in England and a crucial part of the transport network. By volume roads account for 90% of passenger miles and two thirds of freight.\textsuperscript{17} Every year road users travel more than 431 billion miles by road in Great Britain.\textsuperscript{18}

2.13 The Strategic Road Network\textsuperscript{19} provides critical links between cities, joins up communities, connects our major ports, airports and rail terminals. It provides a vital role in people's journeys, and drives prosperity by supporting new and existing development, encouraging trade and attracting investment. A well-functioning Strategic Road Network is critical in enabling safe and reliable journeys and the movement of goods in support of the national and regional economies.

2.14 The Strategic Road Network, although only making up 2% of roads in England, carries a third of all road traffic and two thirds of freight traffic.\textsuperscript{20} Some 85% of the public use the network as drivers or passengers in any 12-month period.\textsuperscript{21} Even those that never drive on the Strategic Road Network are reliant on it to deliver many of the goods that they need.

\textsuperscript{17} Transport Statistics Great Britain Table TSGB0101 and TSGB0101
\textsuperscript{18} Transport Statistics Great Britain Table TSGB0101
\textsuperscript{19} The Strategic Road Network comprises of motorways and major trunk roads managed by the Highways Agency (or equivalent new company)
\textsuperscript{20} Transport Statistics Great Britain: Tables TRA4104 and TRA4105
\textsuperscript{21} National Road User Satisfaction Survey
Drivers of need for development of the national road network

2.15 The full range of drivers of the need for development of the national road network are set out in the Summary of Need in paragraphs 2.1 - 2.11. This section provides more detail on the evidence on current and forecast congestion on the national road network.

2.16 Traffic congestion constrains the economy and impacts negatively on quality of life by: 22

- constraining existing economic activity as well as economic growth, by increasing costs to businesses, damaging their competitiveness and making it harder for them to access export markets. Businesses regularly consider access to good roads and other transport connections as key criteria in making decisions about where to locate.
- leading to a marked deterioration in the experience of road users. For some, particularly those with time-pressured journeys, congestion can cause frustration and stress, as well as inconvenience, reducing quality of life. 23
- constraining job opportunities as workers have more difficulty accessing labour markets.
- causing more environmental problems, with more emissions per vehicle and greater problems of blight and intrusion for people nearby. This is especially true where traffic is routed through small communities or sensitive environmental areas.

2.17 The national road network is already under significant pressure. It is estimated that around 16% of all travel time in 2010 was spent delayed in traffic, and that congestion has significant economic costs: in 2010 the direct costs of congestion on the Strategic Road Network in England were estimated at £1.9 billion per annum.

2.18 The pressure on the road network is forecast to increase with economic growth, substantial increases in population and a fall in the cost of car travel from fuel efficiency improvements. Under the Department’s 2014 estimates, it is forecast that a quarter of travel time will be spent delayed in traffic by 2040, with direct costs rising to £9.8 billion per annum by 2040 on the Strategic Road Network in England, without any intervention. 24 Under our low and high demand scenarios, the proportion of travel time spent delayed in traffic could range between 12.1% and 21.8% on the Strategic Road Network. When considering all the roads within England, our central estimates would amount to:

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22 National Road User Satisfaction Survey (NRUSS) Annual Report 2011/12
23 National Road User Satisfaction Survey (NRUSS) Annual Report 2011/12
24 Based on forecast figures from DfT National Transport Model. Although it would not be realistic or cost effective to eliminate congestion completely as the costs of building new infrastructure would outweigh the time savings benefits to travellers, these figures illustrate that the cost of not responding to transport pressures can be substantial.
2.19 Annex A demonstrates the current and forecast pressures on the road network in more detail. The maps in Annex A show that in general, pressure is likely to be greatest in and around areas of high population density and along key inter-urban corridors with high traffic volumes that support personal, commuting, business and freight movements. The maps are intended to illustrate congestion pressures across the Strategic Road Network, rather than provide exact locations of where development will be brought forward. Congestion is forecast to grow fastest on the Strategic Road Network.

2.20 Annex B sets out the Department’s latest road traffic forecasts for all roads and the Strategic Road Network. Traffic forecasts are not a policy goal and do not in themselves generate a need for development – the need for development arises from the pressures created by increases in traffic. Increased traffic without sufficient capacity will result in more congestion, greater delays and more unpredictable journeys. As with the congestion forecasts, these traffic forecasts will change over time as our understanding improves and circumstances change. Updated forecasts will be published, generally on an annual basis. Local forecasts will be used for the assessment of any specific road scheme being assessed under the NNPS.

Government’s policy for addressing need

2.21 There is a range of options to address the identified need. These options are described in more detail in Table 1. However, relying solely on alternatives (or a combination of alternatives as set out in Table 1) is not viable or desirable as a means of managing need.

<table>
<thead>
<tr>
<th>Table 1: Options for addressing need</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maintenance and asset management</td>
</tr>
</tbody>
</table>

25 Based on forecast figures from the National Transport Model for all England roads, 2010 and 2040, central scenario, Autumn 2014.

26 Based on forecast figures from the National Transport Model, Autumn 2014.
### Demand management

Non-fiscal measures to influence the use of the national road network for journeys, including provision of information and traffic management are important. New technologies can also help improve and make more efficient use of capacity. However, demand management and technology can only make a contribution to alleviating the damaging effects of congestion across the network. Some areas have undertaken significant demand constraint measures or used smarter choices to reduce car use, which has resulted in reductions in urban traffic. However, this has not translated into significantly less pressure on the Strategic Road Network. The Government has ruled out the introduction of national road pricing to manage demand on the Strategic Road Network on deliverability and public acceptability grounds.

### Modal Shift

Across Government, policies are being implemented and considered which encourage sustainable transport modes including public transport, significant improvements to rail capacity and quality, cycling and walking. However, it is not realistic for public transport, walking or cycling to represent a viable alternative to the private car for all journeys, particularly in rural areas and for some longer or multi-leg journeys. In general, the nature of some journeys on the Strategic Road Network means that there will tend to be less scope for the use of alternative transport modes. If rail use was to increase by 50% (in terms of passenger kilometres) this would only be equivalent to a reduction of 5% in all road use. If freight carried by rail was to increase by 50% (in terms of tonne kilometres) this would only be equivalent to a reduction of around 7% in goods carried by road.

#### 2.22

Without improving the road network, including its performance, it will be difficult to support further economic development, employment and housing and this will impede economic growth and reduce people’s quality of life. The Government has therefore concluded that at a

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27 For example, The Effects of Smarter Choice Programmes in the Sustainable Travel Towns: Summary Report found that the percentage reduction in longer road trips was significantly lower than for shorter road trips. Car driver trips for journeys of 10-50km reduced by 3% and there was little or no reduction in car driver trips over 50km.

28 See Transport Statistics Great Britain 2013 for modal comparisons
strategic level there is a compelling need for development of the national road network.

2.23 The Government’s wider policy is to bring forward improvements and enhancements to the existing Strategic Road Network to address the needs set out earlier. Enhancements to the existing national road network will include:

- junction improvements, new slip roads and upgraded technology to address congestion and improve performance and resilience at junctions, which are a major source of congestion;
- implementing “smart motorways” (also known as “managed motorways”) to increase capacity and improve performance;\(^{29}\)
- improvements to trunk roads, in particular dualling of single carriageway strategic trunk roads and additional lanes on existing dual carriageways to increase capacity and to improve performance and resilience.

2.24 The Government’s policy on development of the Strategic Road Network is not that of predicting traffic growth and then providing for that growth regardless. Individual schemes will be brought forward to tackle specific issues, including those of safety, rather than to meet unconstrained traffic growth (i.e. ‘predict and provide’).

2.25 On the road network different approaches and measures will be appropriate for different places. This reflects differences in local preferences and choices and differing scope for alternatives to road travel. The network must also offer a coherent mode of transport for national journeys and must combine to form a single, usable network. In general, the nature of some journeys on the Strategic Road Network mean that there will tend to be less scope for the use of alternative transport modes.

2.26 As stated above, measures to influence the use of the national road network for journeys - including provision of information and traffic management – can play an important part in the delivery of policy objectives, but the effectiveness will vary depending on location. Also, in most cases such measures will not by themselves be a total solution to transport problems on the Strategic Road Network. Widespread demand constraint, involving further costs to motorists, is not current Government policy.

2.27 In some cases, to meet the need set out in section 2.1 to 2.11, it will not be sufficient to simply expand capacity on the existing network. In those circumstances new road alignments and corresponding links, including

\(^{29}\) Where smart motorways are implemented the hard shoulder is transformed into a permanent additional running lane and traffic flow is moderated by the use of variable speed limits. This improves capacity and reduces congestion without taking additional land and generally has fewer environmental implications than other forms of development. Emergency refuge areas are provided at periodic intervals and variable message signs display variable speed limits and other important information. Traffic congestion is managed automatically.
alignments which cross a river or estuary, may be needed to support increased capacity and connectivity.

The need for development of the national rail network

Importance of the national rail network

2.28 Railways are a vital part of the country’s transport infrastructure. In 2013/14, the rail network in Great Britain consisted of 15,753 km (9,788 miles) of route open to traffic and 2,550 stations. A total of 60 billion kilometres and 1.6 billion journeys were undertaken by rail passengers on the network in 2013/14. Around 60% of these journeys were for business and commuting/education purposes. Approximately 9% of 'freight kilometres' in Great Britain are carried by rail and the amount of freight moved by rail in 2013/14 was 23 billion net tonne kilometres.

2.29 In the context of the Government's vision for the transport system as a driver of economic growth and social development, the railway must:

- offer a safe and reliable route to work;
- facilitate increases in both business and leisure travel;
- support regional and local public transport to connect communities with public services, with workplaces and with each other, and
- provide for the transport of freight across the country, and to and from ports, in order to help meet environmental goals and improve quality of life.

Drivers of need for development of the national rail network

2.30 The full range of drivers of the need for development of the national rail network are set out in the Summary of Need in paragraphs 2.1 to 2.11. This section provides more detail on the pressures on the rail network, including forecast demand growth and the environmental benefits of rail development.

Pressures on the rail network

2.31 Demand for passenger rail travel has risen strongly in recent years. Between 1994/95 and 2013/14, total passenger kilometres travelled more

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30 Office of Rail Regulation, Total Length of Route/Number of Passenger Stations
31 Office of Rail Regulation, Passenger rail usage statistics
32 2013 National Travel Survey
33 Source: DfT, Transport Statistics Great Britain 2012, Table TSGB0403
34 Office of Rail Regulation, Freight rail usage statistics,
than doubled from 29 billion to 60 billion. The fastest growth over this period has been in demand in London and the South East, although there has been a high level of growth across all regions.

2.32 Overall crowding on London and South East rail services across the morning and afternoon peaks on a typical weekday in autumn 2013 was 3.1%, with the worst performing operator’s services experiencing 9.2% of passengers in excess of capacity.\(^\text{35}\)

2.33 Passenger demand is predicted to continue to grow significantly.\(^\text{36}\) Estimates for demand growth by 2033, based on current GDP trend forecasts and fares policy, are set out in Table 2 and are split by the three main passenger rail sectors. Forecasts suggest that growth in long distance rail passenger travel will be around 14 percentage points greater than the average growth in total passenger kilometres travelled (see Table 2). These forecasts will change over time as our understanding improves and circumstances change, but it demonstrates the scale of pressure facing the rail network.

<table>
<thead>
<tr>
<th>Year</th>
<th>2020</th>
<th>2026</th>
<th>2033</th>
</tr>
</thead>
<tbody>
<tr>
<td>London &amp; South East</td>
<td>20.4%</td>
<td>31.2%</td>
<td>46.1%</td>
</tr>
<tr>
<td>Long distance</td>
<td>12.9%</td>
<td>36.8%</td>
<td>63.8%</td>
</tr>
<tr>
<td>Regional</td>
<td>8.7%</td>
<td>16.5%</td>
<td>32.8%</td>
</tr>
<tr>
<td>Total (average)</td>
<td>15.3%</td>
<td>30.5%</td>
<td>50.1%</td>
</tr>
</tbody>
</table>

Source: Network Modelling Framework (NMF) – estimates based on model runs conducted in October 2014. HS2 forecasts have been supplied by HS2 Ltd modelling team and incorporated as overlays to the NMF numbers.

\(^{35}\) Rail passenger numbers and crowding on weekdays in major cities in England and Wales 2013

\(^{36}\) Forecasts are best estimates of likely future demand, based on strategic modelling work. They involve considerable uncertainty, but the central forecasts presented are indicative of the broad direction of travel for the three main rail sectors. The modelling work has been based on the latest intelligence on parameters and assumptions for modelling changes on the rail network as at October 2014. The forecasts incorporate HS2 Phase 1 demand growth, added to DfT-modelled demand forecasts as overlays. This explains the large step change in demand from 2026.
2.34 Rail freight transports over 100 million tonnes of goods per year. The amount of freight moved has expanded by 75% since 1994/95. Total tonne kilometres are forecast to grow by 3% annually to 2043, the same rate as the growth seen in the mid-1990s. Rail freight delivers nearly all the coal for the nation’s electricity generation and over a quarter of containerised food, clothes and white goods. Rail freight is therefore of strategic importance, is already playing an increasingly significant role in logistics and, is an increasingly important driver of economic growth, particularly as it increases its market share of container traffic. The industry estimates that it contributes £1.5 billion per year to the UK’s economy.

Environment

2.35 Rail transport has a crucial role to play in delivering significant reductions in pollution and congestion. Tonne for tonne, rail freight produces 70% less CO2 than road freight, up to fifteen times lower NOx emissions and nearly 90% lower PM10 emissions. It also has de-congestion benefits – depending on its load, each freight train can remove between 43 and 77 HGVs from the road.

Conclusion

2.36 The Government has therefore concluded that at a strategic level there is a compelling need for development of the national rail network to meet the need set out in paragraphs 2.28 and 2.29.

Government’s policy for addressing need

Economic growth and user satisfaction

2.37 In the short to medium term, the Government’s policy is to improve the capacity, capability, reliability and resilience of the rail network at key locations for both passenger and freight movements to reflect growth in demand, reduce crowding, improve journey times, maintain or improve operational performance and facilitate modal shift from road to rail. The rail network is predominantly a mixed traffic network and the provision of capacity for both freight and passenger services is core to the network. Some of this growth can be accommodated by making more efficient use of the existing railway infrastructure and rolling stock, such as by running more or longer trains or encouraging passengers to travel at less congested times of the day. Signalling and power supply improvements, and more modern electric rolling stock, as well as providing a more comfortable and reliable passenger experience, can also reduce journey times and offer opportunities to increase service frequencies and reduce crowding. Relatively modest infrastructure interventions can often deliver significant capacity benefits by removing pinch points and blockages.

37 Network Rail Freight Market Study (October 2013)
38 Keeping the Lights on and the Traffic Moving, Rail Delivery Group, May 2014
40 Network Rail: The Value and Importance of Rail Freight
2.38 As demand pressures rise, this incremental approach will no longer be sufficient to maintain the desired levels of service in the longer term. Substantial investment in infrastructure capacity – particularly on inter-urban routes between our key cities, London & South East routes and major city commuter routes – will be needed. The maintenance of a competitive and sustainable economy against a background of continued economic globalisation will mean that there is a need to support measures that deliver step change improvements in capacity and connectivity between key centres, by speeding up journey times and encouraging further modal shift to rail. The Government will therefore consider new or re-opened alignments to improve capacity, speed, connectivity and reliability. Rail is a safer, greener and faster mode of transport for large passenger volumes and for long distances, including inter-city journeys.

2.39 Where major new inter-urban alignments are required, high speed rail alignments are expected to offer the most effective way to provide a step change in inter-city capacity and connectivity, as well as helping to deliver long term sustainable economic growth. High speed rail would offer the opportunity for a shift to rail from air and road, by delivering improved connectivity between major conurbations and economic centres through improved journey times and reliability that upgrades to the conventional rail network could not match. Transferring many inter-city services to a high speed railway would also release capacity on the conventional network, increasing opportunities for additional commuter, regional and freight services. Given these potential benefits, where major new rail alignments are required, high speed rail will be considered.

Environment

2.40 Modal shift from road and aviation to rail can help reduce transport’s carbon emissions, as well as providing wider transport and economic benefits. For these reasons, the Government seeks to accommodate an increase in rail travel and rail freight where it is practical and affordable by providing for extra capacity.

2.41 The Government’s strategy is to provide for increasing use of efficient and sustainable electric trains for both passenger and freight services. The environmental performance of the railway will be improved by continuing to roll out a programme of rail electrification.

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41 2025 and beyond
The need for development of strategic rail freight interchanges

Importance of strategic rail freight interchanges

2.42 The logistics industry, which directly employs over two million people across more than 190,000 companies generating over £90 billion annually, underpins the efficient operation of most sectors of the wider national economy. Over recent years, rail freight has started to play an increasingly significant role in logistics and has become an important driver of economic growth.

2.43 For many freight movements rail is unable to undertake a full end-to-end journey for the goods concerned. Rail freight interchanges (RFI) enable freight to be transferred between transport modes, thus allowing rail to be used to best effect to undertake the long-haul primary trunk journey, with other modes (usually road) providing the secondary (final delivery) leg of the journey.

2.44 The aim of a strategic rail freight interchange (SRFI) is to optimise the use of rail in the freight journey by maximising rail trunk haul and minimising some elements of the secondary distribution leg by road, through co-location of other distribution and freight activities. SRFIs are a key element in reducing the cost to users of moving freight by rail and are important in facilitating the transfer of freight from road to rail, thereby reducing trip mileage of freight movements on both the national and local road networks.

2.45 The logistics industry provides warehousing and distribution networks for UK manufacturers, importers and retailers - currently this is predominantly a road based industry. However, the users and buyers of warehousing and distribution services are increasingly looking to integrate rail freight into their transport operations with rail freight options sometimes specified in procurement contracts. This requires the logistics industry to develop new facilities that need to be located alongside the major rail routes, close to major trunk roads as well as near to the conurbations that consume the goods. In addition, the nature of that commercial development is such that some degree of flexibility is needed when schemes are being developed, in order to allow the development to respond to market requirements as they arise.

Drivers of need for strategic rail freight interchanges

2.46 The full range of drivers of the need for development of the national networks are set out in the Summary of Need in paragraphs 2.1 to 2.11.

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42 A strategic rail freight interchange (SRFI) is a large multi-purpose rail freight interchange and distribution centre linked into both the rail and trunk road system. It has rail-served warehousing and container handling facilities and may also include manufacturing and processing activities. Further details at http://www.legislation.gov.uk/ukpga/2008/29/section/26

43 Great Britain figures – Skills for Logistics
This section provides more detail on the drivers of the need for development of SRFIs

The changing needs of the logistics sector

2.47 A network of SRFIs is a key element in aiding the transfer of freight from road to rail, supporting sustainable distribution and rail freight growth and meeting the changing needs of the logistics industry, especially the ports and retail sector. SRFIs also play an important role in reducing trip mileage of freight movements on the national and local road networks. The siting of many existing rail freight interchanges in traditional urban locations means that there is no opportunity to expand, that they lack warehousing and they are not conveniently located for the modern logistics and supply chain industry.

Rail freight growth

2.48 The development of additional capacity at Felixstowe North Terminal and the construction of London Gateway will lead to a significant increase in logistics operations. This will increase the need for SRFI development to reduce the dependence on road haulage to serve the major markets.

2.49 The industry, working with Network Rail, has produced unconstrained rail freight forecasts to 2023 and 2033. The results are summarised in the table below. These forecasts, and the method used to produce them, are considered robust and the Government has accepted them for planning purposes. These forecasts will change over time as our understanding improves and circumstances change, but the table below demonstrates the scale of pressure.

2.50 While the forecasts in themselves, do not provide sufficient granularity to allow site-specific need cases to be demonstrated, they confirm the need for an expanded network of large SRFIs across the regions to accommodate the long-term growth in rail freight. They also indicate that new rail freight interchanges, especially in areas poorly served by such facilities at present, are likely to attract substantial business, generally new to rail.

<table>
<thead>
<tr>
<th>Table 3: Rail freight forecasts to 2023 and 2033: tonne km (Great Britain)</th>
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<tbody>
<tr>
<td>Billion tonne km</td>
</tr>
<tr>
<td>Solid fuels</td>
</tr>
<tr>
<td>Construction materials</td>
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<tr>
<td>Metals and ore</td>
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<td>Ports: Intermodal</td>
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<tr>
<td>Domestic: Intermodal</td>
</tr>
<tr>
<td>Other</td>
</tr>
<tr>
<td>Total</td>
</tr>
</tbody>
</table>

Source: Network Rail, Freight Market Study, published 31 October 2013
Environmental

2.51 The environmental advantages of rail freight have already been noted at paragraph 2.40 and 2.41. Nevertheless, for developments such as SRFIs, it is likely that there will be local impacts in terms of land use and increased road and rail movements, and it is important for the environmental impacts at these locations to be minimised.

UK economy, national and local benefits – jobs and growth

2.52 SRFIs can provide considerable benefits for the local economy. For example, because many of the on-site functions of major distribution operations are relatively labour-intensive this can create many new job opportunities and contribute to the enhancement of people’s skills and use of technology, with wider longer term benefits to the economy. The availability of a suitable workforce will therefore be an important consideration.

Government’s policy for addressing need for SRFIs

2.53 The Government’s vision for transport is for a low carbon sustainable transport system that is an engine for economic growth, but is also safer and improves the quality of life in our communities. The Government therefore believes it is important to facilitate the development of the intermodal rail freight industry. The transfer of freight from road to rail has an important part to play in a low carbon economy and in helping to address climate change.

2.54 To facilitate this modal transfer, a network of SRFIs is needed across the regions, to serve regional, sub-regional and cross-regional markets. In all cases it is essential that these have good connectivity with both the road and rail networks, in particular the strategic rail freight network (see maps at Annex C). The enhanced connectivity provided by a network of SRFIs should, in turn, provide improved trading links with our European neighbours and improved international connectivity and enhanced port growth.

2.55 There are a range of options to address need as, set out in Table 4, but these are neither viable nor desirable.

<table>
<thead>
<tr>
<th>Table 4: Options to address need</th>
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<tr>
<td><strong>Reliance on the existing rail freight interchanges to manage demand</strong></td>
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</table>
the efficient inland movement of the forecast growth in the volume of sea freight trade, causing port congestion and unacceptable costs and delays for shippers. This would constitute a constraint on economic growth, private sector investment and job creation.

**Reliance on road-based logistics**  
Even with significant future improvements and enhancements to the Strategic Road Network, the forecast growth in freight demand would lead to increasing congestion both on the road network and at our ports, together with a continued increase in transport carbon emissions. Modal shift to rail therefore needs to be encouraged. This will require sustained investment in the capability of the national rail network and the terminals and interchange facilities which serve it.

**Reliance on a larger number of smaller rail freight interchange terminals**  
The increasing performance and efficiency required of our logistics system would not allow reliance on an expanded network of smaller terminals. While there is a place for local terminals, these cannot provide the scale economies, operating efficiencies and benefits of the related business facilities and linkages offered by SRFIs.

2.56 The Government has concluded that there is a compelling need for an expanded network of SRFIs. It is important that SRFIs are located near the business markets they will serve – major urban centres, or groups of centres – and are linked to key supply chain routes. Given the locational requirements and the need for effective connections for both rail and road, the number of locations suitable for SRFIs will be limited, which will restrict the scope for developers to identify viable alternative sites.

2.57 Existing operational SRFIs and other intermodal RFIs are situated predominantly in the Midlands and the North. Conversely, in London and the South East, away from the deep-sea ports, most intermodal RFI and rail-connected warehousing is on a small scale and/or poorly located in relation to the main urban areas.

2.58 This means that SRFI capacity needs to be provided at a wide range of locations, to provide the flexibility needed to match the changing demands of the market, possibly with traffic moving from existing RFI to new larger facilities. There is a particular challenge in expanding rail freight interchanges serving London and the South East.
3. Wider Government policy on the national networks

Overview

3.1 The need for development of the national networks, and the Government's policy for addressing that need, must be seen in the context of the Government's wider policies on economic performance, environment, safety, technology, sustainable transport and accessibility, as well as journey reliability and the experience of road/rail users. This section sets out the Government's wider policies, both as they relate to projects for the national networks that are nationally significant infrastructure projects and more generally.

Environment and social impacts

3.2 The Government recognises that for development of the national road and rail networks to be sustainable these should be designed to minimise social and environmental impacts and improve quality of life.

3.3 In delivering new schemes, the Government expects applicants to avoid and mitigate environmental and social impacts in line with the principles set out in the NPPF and the Government's planning guidance. Applicants should also provide evidence that they have considered reasonable opportunities to deliver environmental and social benefits as part of schemes. The Government's detailed policy on environmental mitigations for developments is set out in Chapter 5 of this document.

3.4 The Appraisal of Sustainability accompanying this NPS recognises that some developments will have some adverse local impacts on noise, emissions, landscape/visual amenity, biodiversity, cultural heritage and water resources. The significance of these effects and the effectiveness of mitigation is uncertain at the strategic and non-locationaly specific level of this NPS. Therefore, whilst applicants should deliver developments in accordance with Government policy and in an environmentally sensitive way, including considering opportunities to deliver environmental benefits, some adverse local effects of development may remain.

3.5 Outside the nationally significant infrastructure project regime, Government policy is to bring forward targeted works to address existing environmental problems on the Strategic Road Network and improve the
performance of the network. This includes reconnecting habitats and ecosystems, enhancing the settings of historic and cultural heritage features, respecting and enhancing landscape character, improving water quality and reducing flood risk, avoiding significant adverse impacts from noise and vibration and addressing areas of poor air quality.

Emissions

3.6 Transport will play an important part in meeting the Government’s legally binding carbon targets and other environmental targets. As part of this there is a need to shift to greener technologies and fuels, and to promote lower carbon transport choices. Over the next decade, the biggest reduction in emissions from domestic transport is likely to come from efficiency improvements in conventional vehicles, specifically cars and vans, driven primarily by EU targets for new vehicle CO\textsubscript{2} performance. Electrification of the railway will also support reductions in carbon.

3.7 As technology develops, ultra-low emission vehicles (ULEVs), including pure electric vehicles, plug-in hybrids and fuel cell electric vehicles, will play an increasing role in the way we travel. These vehicles are now starting to come onto the market in significant numbers, and in the coming decade we will move towards the mass market roll-out of ULEVs. The Government is committed to supporting the switch to the latest ultra-low emission vehicles.

3.8 The impact of road development on aggregate levels of emissions is likely to be very small. Impacts of road development need to be seen against significant projected reductions in carbon emissions and improvements in air quality as a result of current and future policies to meet the Government’s legally binding carbon budgets and the European Union’s air quality limit values. For example:

- Carbon – the annual CO\textsubscript{2} impacts from delivering a programme of investment on the Strategic Road Network of the scale envisaged in *Investing in Britain’s Future* amount to well below 0.1% of average annual carbon emissions allowed in the fourth carbon budget.\(^{44}\) This would be outweighed by additional support for ULEVs also identified as overall policy.

- Air quality – aggregate air quality impacts from delivering a programme of investment on the Strategic Road Network of the scale envisaged in *Investing in Britain’s Future* are small. Total PM10 and NO\textsubscript{x} might be expected to increase slightly, but this needs to be seen in the context of projected reductions in emissions over time. PM10 and NO\textsubscript{x} are expected to decrease over the next decade or so as a result of tighter vehicle emission standards, then flatten, with further

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\(^{44}\) This is based on a roads programme of the scale envisaged in *Investing in Britain’s Future*, over a 10 to 15 year period.
falls over time due to greater levels of electric and other ultra-low emission vehicles.

Safety

Roads

3.9 The UK’s roads are amongst the safest in the world, and there have been significant improvements over past decades. Compared to the 2005-2009 average, fatalities and serious injuries have decreased 25% to 2013 from the average. Nonetheless, road deaths and injuries are a tragedy for all affected, and accidents also have a major economic cost, estimated at over £14.7 billion a year. Incidents on the network also lead to increased unreliability and delay for other users.

3.10 The Government’s overall vision and approach on road safety is set out in the Strategic Framework for Road Safety. It is a vision in which Britain remains a world leader in road safety; where highway authorities are empowered to take informed decisions within their area; where driver and rider training gives learners the skills they need to be safe on our roads; and where tough measures are taken against the minority of offenders who deliberately choose to drive dangerously. As set out in paragraphs 4.60 to 4.66, scheme promoters are expected to take opportunities to improve road safety, including introducing the most modern and effective safety measures where proportionate.

Rail

3.11 The UK’s railways are amongst the safest in the world and safety performance continues to improve. The frequency of train accidents with passenger or workforce fatalities is now at a lowest level ever and this has been achieved against a backdrop of a significant rise in the number of passengers and rail kilometres travelled. The introduction of new technologies and risk management techniques have been key drivers in these improvements and the challenge for the industry is to maintain and, where possible, improve safety performance in a more efficient and cost-effective way.

3.12 It is the Government’s policy, supported by legislation, to ensure that the risks of passenger and workforce accidents are reduced so far as reasonably practicable. Rail schemes should take account of this and seek to further improve safety where the opportunity exists and where there is value for money in doing so by focussing domestic efforts on the achievement of the European Common Safety Targets.

45 Reported Road Casualties Great Britain 2013, KSI rates compared to 2005-2009 average
46 A valuation of road accidents and casualties in Great Britain in 2013 in Reported Road Casualties Great Britain 2011
Technology

3.13 New and emerging technologies have the potential to make a significant difference both to the travel choices and behaviours of individuals, and to the way in which we travel. This is evident from improvements and innovations in travel data and information systems, intelligent traffic management and increasing levels of vehicle automation.

3.14 Innovative transport technologies have the potential to revolutionise the way we travel, improving the safety and reliability of journeys, while reducing costs and environmental impacts. The Government will continue to monitor the potential benefits and risks associated with new and emerging technologies, working with industry to enable innovation and support new technologies that have the potential to improve transport as these developments come forward. Whilst advances in technology are important, they are not expected, in the foreseeable future, to have a significant impact on the need for development of the national networks. We need to address current congestion pressures and this will include utilising current technology. However future uncertainty means it is difficult to predict exactly how much of an impact new technology will have over the coming decades.

Sustainable transport

3.15 The Government is committed to providing people with options to choose sustainable modes and making door-to-door journeys by sustainable means an attractive and convenient option. This is essential to reducing carbon emissions from transport.47

3.16 As part of the Government's commitment to sustainable travel it is investing in developing a high-quality cycling and walking environment to bring about a step change in cycling and walking across the country.

3.17 There is a direct role for the national road network to play in helping pedestrians and cyclists. The Government expects applicants to use reasonable endeavours to address the needs of cyclists and pedestrians in the design of new schemes. The Government also expects applicants to identify opportunities to invest in infrastructure in locations where the national road network severs communities and acts as a barrier to cycling and walking, by correcting historic problems, retrofitting the latest solutions and ensuring that it is easy and safe for cyclists to use junctions.

3.18 On the rail network, Station Travel Plans are a means of engaging with station users and community organisations to facilitate improvements that will encourage them to change the way they travel to the station. Train operators will also be asked to consider the door-to-door journey in

47 See, for example, Door to Door: A strategy for improving sustainable transport integration and successor documents.
new franchise specifications that will aim to facilitate enhanced integration between sustainable transport modes.

**Accessibility**

3.19 The Government is committed to creating a more accessible and inclusive transport network that provides a range of opportunities and choices for people to connect with jobs, services and friends and family.

3.20 The Government’s strategy for improving accessibility for disabled people is set out in *Transport for Everyone: an action plan to improve accessibility for all*. In particular:

- The Government will continue to work to ensure that the bus and train fleets comply with modern access standards by 2020, and to improve rail station access for passengers with reduced mobility. The private car will continue to play an important role, providing disabled people with independence where other forms of transport are not accessible or available.

- The Government expects applicants to improve access, wherever possible, on and around the national networks by designing and delivering schemes that take account of the accessibility requirements of all those who use, or are affected by, national networks infrastructure, including disabled users. All reasonable opportunities to deliver improvements in accessibility on and to the existing national road network should also be taken wherever appropriate.

3.21 Applicants are reminded of their duty to promote equality and to consider the needs of disabled people as part of their normal practice. Applicants are expected to comply with any obligations under the Equalities Act 2010.

3.22 Severance can be a problem in some locations. Where appropriate applicants should seek to deliver improvements that reduce community severance and improve accessibility.

**Road tolling and charging**

**Government policy**

**Strategic Road Network**

3.23 The Government’s policy is not to introduce national road pricing to manage demand on the Strategic Road Network, comprising the motorways and key trunk roads for which the Secretary of State is responsible.
3.24 The Government will consider tolling as a means of funding new road capacity on the Strategic Road Network. New road capacity would include entirely new roads and existing roads where they are transformed by an improvement scheme.

3.25 River and estuarial crossings will normally be funded by tolls or road user charges.

Other roads

3.26 Proposals for tolling or user charging to fund new capacity and/or manage demand on roads or proposed roads that do not form part of the Government’s Strategic Road Network are a matter for local and other traffic authorities.

3.27 Where tolls or road user charges are proposed as part of a highways project that is the subject of a direction given under section 35 of the Planning Act 2008, the Government will expect the applicant to demonstrate that the proposals are consistent with this NPS, the relevant development plan and relevant statutory transport strategies and plans.
4. Assessment principles

General principles of assessment

4.1 The statutory framework for deciding applications for development consent under the Planning Act 2008 is set out in paragraph 1.2 of this NPS. This part of the NPS sets out general policies in accordance with which applications relating to national networks infrastructure are to be decided.

4.2 Subject to the detailed policies and protections in this NPS, and the legal constraints set out in the Planning Act, there is a presumption in favour of granting development consent for national networks NSIPs that fall within the need for infrastructure established in this NPS. The statutory framework for deciding NSIP applications where there is a relevant designated NPS is set out in Section 104 of the Planning Act.

4.3 In considering any proposed development, and in particular, when weighing its adverse impacts against its benefits, the Examining Authority and the Secretary of State should take into account:

- its potential benefits, including the facilitation of economic development, including job creation, housing and environmental improvement, and any long-term or wider benefits;
- its potential adverse impacts, including any longer-term and cumulative adverse impacts, as well as any measures to avoid, reduce or compensate for any adverse impacts.

4.4 In this context, environmental, safety, social and economic benefits and adverse impacts, should be considered at national, regional and local levels. These may be identified in this NPS, or elsewhere.

4.5 Applications for road and rail projects (with the exception of those for SRFIs, for which the position is covered in paragraph 4.8 below) will normally be supported by a business case prepared in accordance with Treasury Green Book principles. This business case provides the basis for investment decisions on road and rail projects. The business case will normally be developed based on the Department’s Transport Business Case guidance and WebTAG guidance. The economic case prepared for a transport business case will assess the economic, environmental and social impacts of a development. The information provided will be proportionate to the development. This information will be important for the Examining Authority and the Secretary of State’s consideration of the adverse impacts and benefits of a proposed development. It is expected that NSIP schemes brought forward through
the development consent order process by virtue of Section 35 of the Planning Act 2008, should also meet this requirement.

4.6 Applications for road and rail projects should usually be supported by a local transport model to provide sufficiently accurate detail of the impacts of a project. The modelling will usually include national level factors around the key drivers of transport demand such as economic growth, demographic change, travel costs and labour market participation, as well as local factors. The Examining Authority and the Secretary of State do not need to be concerned with the national methodology and national assumptions around the key drivers of transport demand. We do encourage an assessment of the benefits and costs of schemes under high and low growth scenarios, in addition to the core case. The modelling should be proportionate to the scale of the scheme and include appropriate sensitivity analysis to consider the impact of uncertainty on project impacts.

4.7 The Department’s WebTAG guidance is updated regularly. This is to allow the evidence used to inform decision-making to be up-to-date. Where updates are made during the course of preparing analytical work, the updated guidance is only expected to be used where it would be material to the investment decision and in proportion to the scale of the investment and its impacts.48

4.8 In the case of strategic rail freight interchanges, a judgement of viability will be made within the market framework, and taking account of Government interventions such as, for instance, investment in the strategic rail freight network.

4.9 The Examining Authority should only recommend, and the Secretary of State should only impose, requirements in relation to a development consent, that are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects.49 Guidance on the use of planning conditions or any successor to it, should be taken into account where requirements are proposed.

4.10 Planning obligations should only be sought where they are necessary to make the development acceptable in planning terms, directly related to the proposed development and fairly and reasonably related in scale and kind to the development.50

48 See also WebTAG guidance on The Proportionate Update Process
49 As defined in section 120 of the Planning Act 2008
50 Where the words “planning obligations” are used in this NPS they refer to “development consent obligations” under section 106 of the Town & Country Planning Act 1990 as amended by section 174 of the Planning Act 2008. See paragraphs 203-206 of the Planning Act 2008.
Linear infrastructure

4.11 This NPS deals predominantly with linear infrastructure – road and rail development. These differ from some of the other types of infrastructure covered by the Planning Act for several reasons:

- These networks are designed to link together separate points. Consequently, benefits are heavily dependent on both the location of the network and the improvement to it.
- Linear infrastructure is connected to a wider network, and any impacts from the development will have an effect on pre-existing sections of the network.
- Improvements to infrastructure are often connected to pre-existing sections of the network. Where relevant, this may minimise the total impact of development, but may place some limits on the opportunity for alternatives.  

4.12 In considering applications for linear infrastructure, decision-makers will need to bear in mind the specific conditions under which such developments must be designed. The generic impacts section of this NPS has been written to take these differences into account.

4.13 This NPS does not identify locations at which development of the road and rail networks should be brought forward. However, the road and rail networks provide access for people, business and goods between places and so the location of development will usually be determined by economic activity and population and the location of existing transport networks.

4.14 Paragraphs 4.11 to 4.13 do not apply to strategic rail freight interchanges.

Environmental Impact Assessment

4.15 All proposals for projects that are subject to the European Union’s Environmental Impact Assessment Directive and are likely to have significant effects on the environment, must be accompanied by an environmental statement (ES), describing the aspects of the environment likely to be significantly affected by the project. The Directive specifically requires an environmental impact assessment to identify, describe and assess effects on human beings, fauna and flora, soil, water, air, climate, the landscape, material assets and cultural heritage, and the interaction between them. Schedule 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 sets out the information that should be included in the environmental statement.

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51 See also paragraphs 4.26 to 4.27 on alternatives.
53 The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (SI 2009/2263)
54 The effects on human beings includes effects on health.
including a description of the likely significant effects of the proposed project on the environment, covering the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the project, and also the measures envisaged for avoiding or mitigating significant adverse effects. Further guidance can be found in the online planning portal. When examining a proposal, the Examining Authority should ensure that likely significant effects at all stages of the project have been adequately assessed. Any requests for environmental information not included in the original environmental statement should be proportionate and focus only on significant effects. In this NPS, the terms ‘effects’, ‘impacts’ or ‘benefits’ should accordingly be understood to mean likely significant effects, impacts or benefits.

4.16 When considering significant cumulative effects, any environmental statement should provide information on how the effects of the applicant’s proposal would combine and interact with the effects of other development (including projects for which consent has been granted, as well as those already in existence). The Examining Authority may also have other evidence before it, for example from a Transport Business Case, appraisals of sustainability of relevant NPSs or development plans, on such effects and potential interactions. Any such information may assist the Secretary of State in reaching decisions on proposals and on mitigation measures that may be required.

4.17 The Examining Authority should consider how significant cumulative effects and the interrelationship between effects might as a whole affect the environment, even though they may be acceptable when considered on an individual basis with mitigation measures in place.

4.18 In some instances it may not be possible at the time of the application for development consent for all aspects of the proposal to have been settled in precise detail. Where this is the case, the applicant should explain in its application which elements of the proposal have yet to be finalised, and the reasons why this is the case.

4.19 Where some details are still to be finalised, applicants are advised to set out in the environmental statement, to the best of their knowledge, what the maximum extent of the proposed development may be (for example in terms of site area) and assess the potential adverse effects which the project could have to ensure that the impacts of the project as it may be constructed have been properly assessed.

4.20 Should the Secretary of State decide to grant development consent for an application where details are still to be finalised, this will need to be reflected in appropriate development consent requirements in the development consent order. If development consent is granted for a proposal and at a later stage the applicant wishes for technical or commercial reasons to construct it in such a way that it is outside the terms of what has been consented, for example because its extent will be greater than has been provided for in terms of the consent, it will be necessary to apply for a change to be made to the development consent.
The application to change the consent may need to be accompanied by environmental information to supplement that which was included in the original environmental statement.

4.21 In cases where the EIA Directive does not apply to a project, and an environmental statement is not therefore required, the applicant should instead provide information proportionate to the project on the likely environmental, social and economic effects.55

Habitats Regulations Assessment

4.22 Prior to granting a Development Consent Order, the Secretary of State must, under the Habitats Regulations,56 consider whether it is possible that the project could have a significant effect on the objectives of a European site,57 or on any site to which the same protection58 is applied as a matter of policy, either alone or in combination with other plans or projects.59 Applicants should also refer to paragraphs 5.20 to 5.38 of this national policy statement on biodiversity and geological conservation and to paragraphs 5.3 to 5.15 on air quality. The applicant should seek the advice of Natural England and, where appropriate, for cross-boundary impacts, Natural Resources Wales and Scottish Natural Heritage to ensure that impacts on European sites in Wales and Scotland are adequately considered.

4.23 Applicants are required to provide sufficient information with their applications for development consent to enable the Secretary of State to carry out an Appropriate Assessment if required. This information should include details of any measures that are proposed to minimise or avoid any likely significant effects on a European site. The information provided may also assist the Secretary of State in concluding that an appropriate assessment is not required because significant effects on European sites are sufficiently unlikely that they can be excluded.

4.24 If a proposed national network development makes it impossible to rule out an adverse effect on the integrity of a European site, it is possible to apply for derogation from the Habitats Directive, subject to the proposal meeting three tests. These tests are that no feasible, less-damaging alternatives should exist, that there are imperative reasons of overriding public interest for the proposal going ahead, and that adequate and

55 See also paragraphs 4.2 to 4.4 above.
56 The Conservation of Habitats and Species Regulations 2010 and the Offshore Marine Conservation (Natural Habitats &c) Regulations 2007 (as amended)
57 This includes candidate Special Areas of Conservation, Sites of Community Importance, Special Areas of Conservation and Special Protection Areas, and is defined in regulation 8 of the Conservation of Habitats and Species Regulations 2010. See the Government Circular referred to in the introduction above for further information on the requirements of the Habitats Regulations
58 Para 118 of the National Planning Policy Framework
59 Further guidance on the requirements of the Habitats Regulations can be found in Government Circular: Biodiversity and Geological Conservation — Statutory Obligations and their impact within the Planning System (ODPM 06/2005, Defra 01/2005)). It should be noted that this document does not cover more recent legislative requirements. Where this circular has been superseded, reference should be made to the latest successor document. For road developments HD 44/09 Assessment of Implications (of Highways and/or Roads Projects) on European Sites (Including Appropriate Assessment) is also relevant.
timely compensation measures will be put in place to ensure the overall coherence of the network of protected sites is maintained.\footnote{Further information will be available in guidance to be published shortly by Defra.}

4.25 Where a development may negatively affect any priority habitat or species on a site for which they are a protected feature, any Imperative Reasons of Overriding Public Interest (IROPI) case would need to be established solely on one or more of the grounds relating to human health, public safety or beneficial consequences of primary importance to the environment.

Alternatives

4.26 Applicants should comply with all legal requirements and any policy requirements set out in this NPS on the assessment of alternatives. In particular:

- The EIA Directive requires projects with significant environmental effects to include an outline of the main alternatives studied by the applicant and an indication of the main reasons for the applicant’s choice, taking into account the environmental effects.

- There may also be other specific legal requirements for the consideration of alternatives, for example, under the Habitats and Water Framework Directives.

- There may also be policy requirements in this NPS, for example the flood risk sequential test and the assessment of alternatives for developments in National Parks, the Broads and Areas of Outstanding Natural Beauty (AONB).

4.27 All projects should be subject to an options appraisal. The appraisal should consider viable modal alternatives and may also consider other options (in light of the paragraphs 3.23 to 3.27 of this NPS). Where projects have been subject to full options appraisal in achieving their status within Road or Rail Investment Strategies or other appropriate policies or investment plans, option testing need not be considered by the examining authority or the decision maker. For national road and rail schemes, proportionate option consideration of alternatives will have been undertaken as part of the investment decision making process.\footnote{Investment decisions on strategic rail freight interchanges will be made in the context of a commercial framework.} It is not necessary for the Examining Authority and the decision maker to reconsider this process, but they should be satisfied that this assessment has been undertaken.
Criteria for “good design” for national network infrastructure

4.28 Applicants should include design as an integral consideration from the outset of a proposal.

4.29 Visual appearance should be a key factor in considering the design of new infrastructure, as well as functionality, fitness for purpose, sustainability and cost. Applying “good design” to national network projects should therefore produce sustainable infrastructure sensitive to place, efficient in the use of natural resources and energy used in their construction, matched by an appearance that demonstrates good aesthetics as far as possible.

4.30 It is acknowledged however, that given the nature of much national network infrastructure development, particularly SRFIs, there may be a limit on the extent to which it can contribute to the enhancement of the quality of the area.

4.31 A good design should meet the principal objectives of the scheme by eliminating or substantially mitigating the identified problems by improving operational conditions and simultaneously minimising adverse impacts. It should also mitigate any existing adverse impacts wherever possible, for example, in relation to safety or the environment. A good design will also be one that sustains the improvements to operational efficiency for as many years as is practicable, taking into account capital cost, economics and environmental impacts.

4.32 Scheme design will be a material consideration in decision making. The Secretary of State needs to be satisfied that national networks infrastructure projects are sustainable and as aesthetically sensitive, durable, adaptable and resilient as they can reasonably be (having regard to regulatory and other constraints and including accounting for natural hazards such as flooding).62

4.33 The applicant should therefore take into account, as far as possible, both functionality (including fitness for purpose and sustainability) and aesthetics (including the scheme’s contribution to the quality of the area in which it would be located). Applicants will want to consider the role of technology in delivering new national networks projects. The use of professional, independent advice on the design aspects of a proposal63 should be considered, to ensure good design principles are embedded into infrastructure proposals.

4.34 Whilst the applicant may only have limited choice in the physical appearance of some national networks infrastructure, there may be

62 Government policy on the infrastructure resilience is set out in Cabinet Office, Keeping the Country Running, and successor documents.  
63 Applicants can use the Design Council who can provide support for and encourage design review for nationally significant schemes.
opportunities for the applicant to demonstrate good design in terms of siting and design measures relative to existing landscape and historical character and function, landscape permeability, landform and vegetation.

4.35 Applicants should be able to demonstrate in their application how the design process was conducted and how the proposed design evolved. Where a number of different designs were considered, applicants should set out the reasons why the favoured choice has been selected. The Examining Authority and Secretary of State should take into account the ultimate purpose of the infrastructure and bear in mind the operational, safety and security requirements which the design has to satisfy.

Climate change adaptation

4.36 Section 10(3)(a) of the Planning Act requires the Secretary of State to have regard to the desirability of mitigating, and adapting to, climate change in designating an NPS.

4.37 This section sets out how the NPS puts Government policy on climate change adaptation into practice, and in particular how applicants and the Secretary of State should take the effects of climate change into account when developing and consenting infrastructure. Climate change mitigation is essential to minimise the most dangerous impacts of climate change, as previous global greenhouse gas emissions have already committed us to some degree of continued climate change for at least the next 30 years. Climate change is likely to mean that the UK will experience hotter, drier summers and warmer, wetter winters. There is an increased risk of flooding, drought, heatwaves, intense rainfall events and other extreme events such as storms and wildfires, as well as rising sea levels.

4.38 Adaptation is therefore necessary to deal with the potential impacts of these changes that are already happening. New development should be planned to avoid increased vulnerability to the range of impacts arising from climate change. When new development is brought forward in areas which are vulnerable, care should be taken to ensure that risks can be managed through suitable adaptation measures, including through the provision of green infrastructure.

4.39 The Government has published a set of UK Climate Projections and has developed a statutory National Adaptation Programme.64 In addition, the Government’s Adaptation Reporting Power65 will invite reporting authorities (a defined list of public bodies and statutory undertakers, including Highways Agency, Network Rail and the Office of Rail

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64 s.58 of the Climate Change Act 2008.
65 s.62 of the Climate Change Act 2008.
Regulation) to build on their climate change risk assessments and report on progress implementing adaptation actions.

4.40 New national networks infrastructure will be typically long-term investments which will need to remain operational over many decades, in the face of a changing climate. Consequently, applicants must consider the impacts of climate change when planning location, design, build and operation. Any accompanying environment statement should set out how the proposal will take account of the projected impacts of climate change.

4.41 Where transport infrastructure has safety-critical elements and the design life of the asset is 60 years or greater, the applicant should apply the UK Climate Projections 2009 (UKCP09) high emissions scenario (high impact, low likelihood) against the 2080 projections at the 50% probability level.

4.42 The applicant should take into account the potential impacts of climate change using the latest UK Climate Projections available at the time and ensure any environment statement that is prepared identifies appropriate mitigation or adaptation measures. This should cover the estimated lifetime of the new infrastructure. Should a new set of UK Climate Projections become available after the preparation of any environment statement, the Examining Authority should consider whether they need to request additional information from the applicant.

4.43 The applicant should demonstrate that there are no critical features of the design of new national networks infrastructure which may be seriously affected by more radical changes to the climate beyond that projected in the latest set of UK climate projections. Any potential critical features should be assessed taking account of the latest credible scientific evidence on, for example, sea level rise (e.g. by referring to additional maximum credible scenarios such as from the Intergovernmental Panel on Climate Change or Environment Agency) and on the basis that necessary action can be taken to ensure the operation of the infrastructure over its estimated lifetime through potential further mitigation or adaptation.

4.44 Any adaptation measures should be based on the latest set of UK Climate Projections, the Government’s national Climate Change Risk Assessment and consultation with statutory consultation bodies. Any adaptation measures must themselves also be assessed as part of any environmental impact assessment and included in the environment statement, which should set out how and where such measures are proposed to be secured.

4.45 If any proposed adaptation measures themselves give rise to consequential impacts the Secretary of State should consider the impact in relation to the application as a whole and the impacts guidance set out in this part of this NPS (e.g. on flooding, water resources, biodiversity, landscape and coastal change).
Adaptation measures can be required to be implemented at the time of construction where necessary and appropriate to do so.

Where adaptation measures are necessary to deal with the impact of climate change, and that measure would have an adverse effect on other aspects of the project and/or surrounding environment (e.g. coastal processes), the Secretary of State may consider requiring the applicant to ensure that the adaptation measure could be implemented should the need arise, rather than at the outset of the development (e.g. reserving land for future extension, increasing the height of an existing sea wall, or requiring a new sea wall).

Pollution control and other environmental protection regimes

Issues relating to discharges or emissions from a proposed project which affect air quality, water quality, land quality and the marine environment, or which include noise and vibration, may be subject to separate regulation under the pollution control framework or other consenting and licensing regimes. Relevant permissions will need to be obtained for any activities within the development that are regulated under those regimes before the activities can be operated.

The planning and pollution control systems are separate but complementary. The planning system controls the development and use of land in the public interest. It plays a key role in protecting and improving the natural environment, public health and safety, and amenity, for example by attaching requirements to allow developments which would otherwise not be environmentally acceptable to proceed, and preventing harmful development which cannot be made acceptable even through requirements. Pollution control is concerned with preventing pollution through the use of measures to prohibit or limit the releases of substances to the environment from different sources to the lowest practicable level. It also ensures that ambient air and water quality meet standards that guard against impacts to the environment or human health. Environmental Permits cannot control impacts from sources outside the facility’s boundary.66

In deciding an application, the Examining Authority and the Secretary of State should focus on whether the development itself is an acceptable use of the land, and on the impacts of that use, rather than the control of processes, emissions or discharges themselves. They should assess the potential impacts of processes, emissions or discharges to inform decision making, but should work on the assumption that in terms of the control and enforcement, the relevant pollution control regime will be properly applied and enforced. Decisions under the Planning Act should

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66 More information on Environmental Permits can be found on Defra’s website: and the Environment Agency’s website:
complement but not duplicate those taken under the relevant pollution control regime.

4.51 These considerations apply in an analogous way to other environmental regulatory regimes, including those on land drainage and flood defence and biodiversity.

4.52 There is a statutory duty on applicants to consult the Marine Management Organisation (MMO) on nationally significant projects which would affect, or would be likely to affect, any relevant marine areas as defined in the Planning Act (as amended by section 23 of the Marine and Coastal Access Act 2009). The Secretary of State’s consent may include a deemed marine licence and the MMO will advise on what conditions should apply to the deemed marine licence. Where appropriate, the MMO should actively participate in examinations, and Examining Authorities engage with such matters, to help ensure that nationally significant infrastructure projects are licensed in accordance with environmental legislation, including European directives.

4.53 When an applicant applies for an Environmental Permit, the relevant regulator (the Environment Agency) requires that the application demonstrates that processes are in place to meet all relevant Environmental Permit requirements. In examining the impacts of the project, the Examining Authority may wish to seek the views of the regulator on the scope of the permit or consent and any management plans (such as any produced for noise) that would be included in an Environmental Permit application.

4.54 Applicants are encouraged to begin pre-application discussions with the Environment Agency as early as possible. It is however expected that an applicant will have first thought through the requirements as a starting point for discussion. Some consents require a significant amount of preparation; as an example, the Environment Agency suggests that applicants should start work towards submitting the permit application at least 6 months prior to the submission of an application for a Development Consent Order, where they wish to parallel track the applications. This will help ensure that applications take account of all relevant environmental considerations and that the relevant regulators are able to provide timely advice and assurance to the Examining Authority.

4.55 The Secretary of State should be satisfied that development consent can be granted taking full account of environmental impacts. This will require close cooperation with the Environment Agency and/or the pollution control authority, and other relevant bodies, such as the MMO, Natural England, Drainage Boards, and water and sewerage undertakers, to ensure that in the case of potentially polluting developments:

- the relevant pollution control authority is satisfied that potential releases can be adequately regulated under the pollution control framework; and
• the effects of existing sources of pollution in and around the project are not such that the cumulative effects of pollution when the proposed development is added would make that development unacceptable, particularly in relation to statutory environmental quality limits.

4.56 The Secretary of State should not refuse consent on the basis of regulated impacts unless there is good reason to believe that any relevant necessary operational pollution control permits or licences or other consents will not subsequently be granted.

Common law nuisance and statutory nuisance

4.57 Section 158 of the Planning Act provides a defence of statutory authority in civil or criminal proceedings for nuisance. Such a defence is also available in respect of anything else authorised by an order granting development consent. The defence does not extinguish the local authority’s duties under Part III of the Environmental Protection Act 1990 ("the 1990 Act") to inspect its area and take reasonable steps to investigate complaints of statutory nuisance and to serve an abatement notice where satisfied of its existence, likely occurrence or recurrence.

4.58 It is very important that during the examination of a nationally significant infrastructure project, possible sources of nuisance under section 79(1) of the 1990 Act, and how they may be mitigated or limited are considered by the Examining Authority so they can recommend appropriate requirements that the Secretary of State might include in any subsequent order granting development consent. More information on the consideration of possible sources of nuisance is at paragraphs 5.81-5.89.

4.59 The defence of statutory authority is subject to any contrary provision made by the Secretary of State in any particular case by an order granting development consent (section 158(3) of the Planning Act).

Safety

Road safety

4.60 New highways developments provide an opportunity to make significant safety improvements. Some developments may have safety as a key objective, but even where safety is not the main driver of a development the opportunity should be taken to improve safety, including introducing the most modern and effective safety measures where proportionate. Highway developments can potentially generate significant accident reduction benefits when they are well designed.

4.61 The applicant should undertake an objective assessment of the impact of the proposed development on safety including the impact of any
mitigation measures. This should use the methodology outlined in the guidance from DfT (WebTAG) and from the Highways Agency.

4.62 They should also put in place arrangements for undertaking the road safety audit process. Road safety audits are a mandatory requirement for all trunk road highway improvement schemes in the UK (including motorways).

4.63 Road safety audits are intended to ensure that operational road safety experience is applied during the design and construction process so that the number and severity of collisions is as low as is reasonably practicable.

4.64 The applicant should be able to demonstrate that their scheme is consistent with the Highways Agency's Safety Framework for the Strategic Road Network and with the national Strategic Framework for Road Safety. Applicants will wish to show that they have taken all steps that are reasonably required to:
   - minimise the risk of death and injury arising from their development;
   - contribute to an overall reduction in road casualties;
   - contribute to an overall reduction in the number of unplanned incidents; and
   - contribute to improvements in road safety for walkers and cyclists.

4.65 They will also wish to demonstrate that:
   - they have considered the safety implications of their project from the outset; and
   - they are putting in place rigorous processes for monitoring and evaluating safety.

4.66 The Secretary of State should not grant development consent unless satisfied that all reasonable steps have been taken and will be taken to:
   - minimise the risk of road casualties arising from the scheme; and
   - contribute to an overall improvement in the safety of the Strategic Road Network.

Safety on the railways

4.67 Since the railways are one of the safest forms of transport, safety is unlikely to be the main driver for development. However, the opportunity should usually be taken to introduce the most modern and effective safety measures.

4.68 The rail industry is required by law to consider the impact on safety of any proposed changes to the rail network, through rigorous risk assessment. The principle of "so far as is reasonably practicable" (SFAIRP) is applied through the Railways and Other Guided Transport
4.69 For significant developments, the rail industry is also required by EU legislation to comply with Common Safety Methods published in the Official Journal of the European Union.

4.70 The Secretary of State should expect the applicant to have complied with all relevant regulations, industry guidance and regulatory guidance from the ORR.

4.71 The Secretary of State should expect the safety assessment to have considered the safety implications during the construction, commissioning and operational phases of the development.

4.72 The Secretary of State should not grant development consent unless satisfied that all reasonable steps have been taken, and will be taken to:
   - minimise the risk of deaths or injury arising from the scheme; and
   - contribute to an overall improvement in societal safety levels;
   - noting that railway developments can influence risk levels both on and off the railway networks.

4.73 The Secretary of State should not consent to development which would lead to a disproportionate increase in the risk of death or injury.

Security considerations

4.74 National security considerations apply across all national infrastructure sectors. The Department for Transport acts as the Sector Sponsor Department for the national networks and in this capacity has lead responsibility for security matters in that sector and for directing the security approach to be taken. The Department works closely with Government agencies including the Centre for the Protection of National Infrastructure (CPNI) to reduce the vulnerability of the most ‘critical’ infrastructure assets in the sector to terrorism and other national security threats.

4.75 Government policy is to ensure that, where possible, proportionate protective security measures are designed into new infrastructure projects at an early stage in the project development. Where applications for development consent for infrastructure covered by this NPS relate to potentially ‘critical’ infrastructure, there may be national security considerations.

67 Guidance on ROGS can be found on the ORR website
4.76 Where national security implications have been identified, the applicant should consult with relevant security experts from CPNI and the Department for Transport, to ensure that physical, procedural and personnel security measures have been adequately considered in the design process and that adequate consideration has been given to the management of security risks. If CPNI and the Department for Transport (as appropriate) are satisfied that security issues have been adequately addressed in the project when the application is submitted, they will provide confirmation of this to the Secretary of State, and the Examining Authority should not need to give any further consideration to the details of the security measures during the examination.

4.77 The applicant should only include such information in the application as is necessary to enable the Examining Authority to examine the development consent issues and make a properly informed recommendation on the application.

4.78 In exceptional cases, where examination of an application would involve public disclosure of information about defence or national security which would not be in the national interest, the Secretary of State can intervene and may appoint an examiner to consider evidence in closed session.

Health

4.79 National road and rail networks and strategic rail freight interchanges have the potential to affect the health, well-being and quality of life of the population. They can have direct impacts on health because of traffic, noise, vibration, air quality and emissions, light pollution, community severance, dust, odour, polluting water, hazardous waste and pests.

4.80 New or enhanced national network infrastructure may have indirect health impacts; for example if they affect access to key public services, local transport, opportunities for cycling and walking or the use of open space for recreation and physical activity.

4.81 As described in the relevant sections of this NPS, where the proposed project has likely significant environmental impacts that would have an effect on human beings, any environmental statement should identify and set out the assessment of any likely significant adverse health impacts.

4.82 The applicant should identify measures to avoid, reduce or compensate for adverse health impacts as appropriate. These impacts may affect people simultaneously, so the applicant, and the Secretary of State (in determining an application for development consent) should consider the cumulative impact on health.
Strategic rail freight interchanges

Rail freight interchange function

4.83 Rail freight interchanges are not only locations for freight access to the railway but also locations for businesses, capable now or in the future, of supporting their commercial activities by rail. Therefore, from the outset, a rail freight interchange (RFI) should be developed in a form that can accommodate both rail and non-rail activities.

Transport links and location requirements

4.84 Given the strategic nature of large rail freight interchanges it is important that new SRFIs or proposed extensions to RFIs upgrading them to SRFIs, are appropriately located relative to the markets they will serve, which will focus largely on major urban centres, or groups of centres, and key supply chain routes. Because the vast majority of freight in the UK is moved by road, proposed new rail freight interchanges should have good road access as this will allow rail to effectively compete with, and work alongside, road freight to achieve a modal shift to rail. Due to these requirements, it may be that countryside locations are required for SRFIs.

4.85 Adequate links to the rail and road networks are essential. Rail access will vary between rail lines, both in the number of services that can be accommodated, and the physical characteristics such as the train length and, for intermodal services, the size of intermodal units that can be carried (the ‘loading gauge’). As a minimum a SRFI should ideally be located on a route with a gauge capability of W8 or more, or capable of enhancement to a suitable gauge. For road links, the Government’s policy is set out in Circular 02/2013 The Strategic Road Network and the delivery of sustainable development.

4.86 SRFIs tend to be large scale commercial operations, which are most likely to need continuous working arrangements (up to 24 hours). By necessity they involve large structures, buildings and the operation of heavy machinery. In terms of location therefore, they often may not be considered suitable adjacent to residential areas or environmentally sensitive areas such as National Parks, the Broads and AONBs, which may be sensitive to the impact of noise and movements. However, depending on the particular circumstances involved, appropriate mitigation measures may be available to limit the impacts of noise and light.

4.87 SRFIs can provide many benefits for the local economy. For example because many of the on-site functions of major distribution operations are relatively labour intensive, this can create many new job opportunities. The existence of an available and economic local workforce will therefore be an important consideration for the applicant.
Scale and design

4.88 Applications for a proposed SRFI should provide for a number of rail connected or rail accessible buildings for initial take up, plus rail infrastructure to allow more extensive rail connection within the site in the longer term. The initial stages of the development must provide an operational rail network connection and areas for intermodal handling and container storage. It is not essential for all buildings on the site to be rail connected from the outset, but a significant element should be.

4.89 As a minimum, a SRFI should be capable of handling four trains per day and, where possible, be capable of increasing the number of trains handled. SRFIs should, where possible, have the capability to handle 775 metre trains with appropriately configured on-site infrastructure and layout. This should seek to minimise the need for on-site rail shunting and provide for a configuration which, ideally, will allow main line access for trains from either direction.
5. Generic impacts

Overview

5.1 Some impacts will be relevant to any national networks infrastructure, whatever the type. The following sections set out how these impacts should be considered. While the NPS covers developments in England only, assessments of impacts should take account of any impacts this type of infrastructure may have in the devolved administrations. Where projects affect cross-border links, scheme promoters should work with the devolved administrations. The Government’s planning guidance, which is referred to in this chapter, is likely to be a useful source of guidance on generic impacts.

5.2 Sufficient relevant information is crucial to good decision-taking, particularly where formal assessments are required (such as Environmental Impact Assessment, Habitats Regulations Assessment and Flood Risk Assessment). To avoid delay, applicants should discuss what information is needed with statutory environmental bodies as early as possible.

Air quality

Introduction

5.3 Increases in emissions of pollutants during the construction or operation phases of projects on the national networks can result in the worsening of local air quality (though they can also have beneficial effects on air quality, for example through reduced congestion). Increased emissions can contribute to adverse impacts on human health, on protected species and habitats. Impacts on protected species and habitats are covered in later paragraphs.

5.4 Current UK legislation sets out health-based ambient air quality objectives. In addition, the European Union has established common, health-based and eco-system based ambient concentration limit values (LVs) for the main pollutants in the Ambient Air Quality Directive (2008/50/EU) (‘the Air Quality Directive’), which Member States are required to meet by various dates.

5.5 The geographical extent and distribution of these effects can cover a large area, well beyond an individual scheme. Air quality impacts are generated by all types of infrastructure development to varying extents.
Development on the national networks in general and road schemes in particular, creates complex challenges with regards to air quality, given the very wide geographical area over which impacts (positive and negative) can potentially be felt. The guidance below provides additional clarity (when compared to other NPS guidance) given the complex nature of impacts created by national network development.

**Applicant’s assessment**

5.6 Where the impacts of the project (both on and off-scheme) are likely to have significant air quality effects in relation to meeting EIA requirements and / or affect the UKs ability to comply with the Air Quality Directive, the applicant should undertake an assessment of the impacts of the proposed project as part of the environmental statement.

5.7 The environmental statement should describe:

- existing air quality levels;
- forecasts of air quality at the time of opening, assuming that the scheme is not built (the future baseline) and taking account of the impact of the scheme; and
- any significant air quality effects, their mitigation and any residual effects, distinguishing between the construction and operation stages and taking account of the impact of road traffic generated by the project.

5.8 Defra publishes future national projections of air quality based on evidence of future emissions, traffic and vehicle fleets. Projections are updated as the evidence base changes. Applicant’s assessment should be consistent with this but may include more detailed modelling to demonstrate local impacts.

5.9 In addition to information on the likely significant effects of a project in relation to EIA, the Secretary of State must be provided with a judgement on the risk as to whether the project would affect the UK’s ability to comply with the Air Quality Directive.

**Decision making**

5.10 The Secretary of State should consider air quality impacts over the wider area likely to be affected, as well as in the near vicinity of the scheme. In all cases the Secretary of State must take account of relevant statutory air quality thresholds set out in domestic and European legislation. Where a project is likely to lead to a breach of the air quality thresholds, the applicant should work with the relevant authorities to secure appropriate mitigation measures with a view to ensuring so far as possible that those thresholds are not breached.

5.11 Air quality considerations are likely to be particularly relevant where schemes are proposed:
• within or adjacent to Air Quality Management Areas (AQMAs);
  roads identified as being above Limit Values or nature conservation
  sites (including Natura 2000 sites and SSSIs, including those
  outside England); and

• where changes are sufficient to bring about the need for a new
  AQMA or change the size of an existing AQMA; or bring about
  changes to exceedences of the Limit Values, or where they may
  have the potential to impact on nature conservation sites.

5.12 The Secretary of State must give air quality considerations substantial
  weight where, after taking into account mitigation, a project would lead to
  a significant air quality impact in relation to EIA and / or where they lead
  to a deterioration in air quality in a zone/agglomeration.

5.13 The Secretary of State should refuse consent where, after taking into
  account mitigation, the air quality impacts of the scheme will:

  • result in a zone/agglomeration which is currently reported as being
    compliant with the Air Quality Directive becoming non-compliant; or

  • affect the ability of a non-compliant area to achieve compliance
    within the most recent timescales reported to the European
    Commission at the time of the decision.

Mitigation

5.14 The Secretary of State should consider whether mitigation measures put
  forward by the applicant are acceptable. A management plan may help
  codify mitigation at this stage. The proposed mitigation measures should
  ensure that the net impact of a project does not delay the point at which
  a zone will meet compliance timescales.

5.15 Mitigation measures may affect the project design, layout, construction,
  operation and/or may comprise measures to improve air quality in
  pollution hotspots beyond the immediate locality of the scheme.
  Measures could include, but are not limited to, changes to the route of
  the new scheme, changes to the proximity of vehicles to local receptors
  in the existing route, physical means including barriers to trap or better
  disperse emissions, and speed control. The implementation of mitigation
  measures may require working with partners to support their delivery.

Carbon emissions

Introduction

5.16 The Government has a legally binding framework to cut greenhouse gas
  emissions by at least 80% by 2050. As stated above, the impact of road
  development on aggregate levels of emissions is likely to be very small.

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68 The United Kingdom is split into 43 zones and agglomerations for the purpose of reporting air quality
  within those zones to the European Commission under the Air Quality Directive.
Emission reductions will be delivered through a system of five year carbon budgets that set a trajectory to 2050\(^{69}\). Carbon budgets and plans will include policies to reduce transport emissions, taking into account the impact of the Government’s overall programme of new infrastructure as part of that.

**Applicant’s assessment**

5.17 Carbon impacts will be considered as part of the appraisal of scheme options (in the business case), \(^{70}\) prior to the submission of an application for DCO. Where the development is subject to EIA, any Environmental Statement will need to describe an assessment of any likely significant climate factors in accordance with the requirements in the EIA Directive. It is very unlikely that the impact of a road project will, in isolation, affect the ability of Government to meet its carbon reduction plan targets. However, for road projects applicants should provide evidence of the carbon impact of the project and an assessment against the Government’s carbon budgets.

**Decision making**

5.18 The Government has an overarching national carbon reduction strategy (as set out in the Carbon Plan 2011) which is a credible plan for meeting carbon budgets. It includes a range of non-planning policies which will, subject to the occurrence of the very unlikely event described above, ensure that any carbon increases from road development do not compromise its overall carbon reduction commitments. The Government is legally required to meet this plan. Therefore, any increase in carbon emissions is not a reason to refuse development consent, unless the increase in carbon emissions resulting from the proposed scheme are so significant that it would have a material impact on the ability of Government to meet its carbon reduction targets.

**Mitigation**

5.19 Evidence of appropriate mitigation measures (incorporating engineering plans on configuration and layout, and use of materials) in both design and construction should be presented. The Secretary of State will consider the effectiveness of such mitigation measures in order to ensure that, in relation to design and construction, the carbon footprint is not unnecessarily high. The Secretary of State’s view of the adequacy of the mitigation measures relating to design and construction will be a material factor in the decision making process.

\(^{69}\) The Carbon Plan – reducing greenhouse gas emissions (December 2011) and successor documents.

\(^{70}\) See paragraphs 4.5 to 4.7
Biodiversity and ecological conservation

Introduction

5.20 Biodiversity is the variety of life in all its forms and encompasses all species of plants and animals and the complex ecosystems of which they are a part. Government policy for the natural environment is set out in the Natural Environment White Paper (NEWP). The NEWP sets out a vision of moving progressively from net biodiversity loss to net gain, by supporting healthy, well-functioning ecosystems and establishing more coherent ecological networks that are more resilient to current and future pressures. Geological conservation relates to the sites that are designated for their geology and/or their geomorphological importance.  

5.21 The wide range of legislative provisions at the international and national level that can impact on planning decisions affecting biodiversity and geological conservation issues are set out in a Government Circular.  

Applicant's assessment

5.22 Where the project is subject to EIA the applicant should ensure that the environmental statement clearly sets out any likely significant effects on internationally, nationally and locally designated sites of ecological or geological conservation importance (including those outside England) on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity and that the statement considers the full range of potential impacts on ecosystems.  

5.23 The applicant should show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests.  

Decision making

5.24 The Government’s biodiversity strategy is set out in Biodiversity 2020: A Strategy for England’s wildlife and ecosystem services. Its aim is to halt overall biodiversity loss, support healthy well-functioning ecosystems and establish coherent ecological networks, with more and better places for nature for the benefit of wildlife and people. This aim needs to be viewed in the context of the challenge of climate change:

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71 A list of designated sites (including marine sites) is included in the Geological Conservation Review held by the Joint Nature Conservation Committee (JNCC).

72 Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System (ODPM 06/2005, Defra 01/2005) – It should be noted that this document does not cover more recent legislative requirements, such as the Marine Strategy Framework Directive. Where this circular has been superseded, reference should be made to the latest successor document.

73 See, for example, the biodiversity planning toolkit created by the Association of Local Government Ecologists in partnership with NGOs, Defra, SNCB and the Environment Agency. See also the Design Manual for Roads and Bridges – Volume 11, Section 3 Part 4 Ecology and Nature Conservation.

74 Strategy for England; similar strategies apply in Wales, Scotland and Northern Ireland.
failure to address this challenge will result in significant impact on biodiversity.

5.25 As a general principle, and subject to the specific policies below, development should avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives. The applicant may also wish to make use of biodiversity offsetting\(^{75}\) in devising compensation proposals to counteract any impacts on biodiversity which cannot be avoided or mitigated. Where significant harm cannot be avoided or mitigated, as a last resort, appropriate compensation measures should be sought.

5.26 In taking decisions, the Secretary of State should ensure that appropriate weight is attached to designated sites of international, national and local importance, protected species, habitats and other species of principal importance for the conservation of biodiversity, and to biodiversity and geological interests within the wider environment.

*International sites*

5.27 The most important sites for biodiversity are those identified through international conventions and European Directives. The Habitats Regulations provide statutory protection for European sites\(^^{76}\) (see also paragraphs 4.22 to 4.25). The National Planning Policy Framework states that the following wildlife sites should have the same protection as European sites:

- potential Special Protection Areas and possible Special Areas of Conservation;
- listed or proposed Ramsar sites;\(^{77}\) and
- sites identified, or required, as compensatory measures for adverse effects on European sites, potential Special Protection Areas, possible Special Areas of Conservation and listed or proposed Ramsar sites.

*Sites of Special Scientific Interest*

5.28 Many Sites of Special Scientific Interest (SSSIs) are also designated as sites of international importance and will be protected accordingly. Those that are not, or those features of SSSIs not covered by an

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\(^{75}\) Biodiversity offsets are measurable conservation outcomes resulting from actions designed to compensate for residual adverse biodiversity impacts arising from a development after mitigating measures have been taken. The goal of biodiversity offsets is to achieve no net loss and preferably a net gain of biodiversity.

\(^{76}\) This includes candidate Special Areas of Conservation, Sites of Community Importance, Special Areas of Conservation and Special Protection Areas, and is defined in regulation 8 of the Conservation of Habitats and Species Regulations 2010. See the Government Circular referred to in the introduction above for further information on the requirements of the Habitats Regulations.

\(^{77}\) Potential Special Protection Areas, possible Special Areas of Conservation and proposed Ramsar sites are sites on which Government has initiated public consultation on the scientific case for designation as a Special Protection Area, candidate Special Area of Conservation or Ramsar site.
international designation, should be given a high degree of protection. All National Nature Reserves are notified as SSSIs.

5.29 Where a proposed development on land within or outside a SSSI is likely to have an adverse effect on an SSSI (either individually or in combination with other developments), development consent should not normally be granted. Where an adverse effect on the site’s notified special interest features is likely, an exception should be made only where the benefits of the development at this site clearly outweigh both the impacts that it is likely to have on the features of the site that make it of special scientific interest, and any broader impacts on the national network of SSSIs. The Secretary of State should ensure that the applicant’s proposals to mitigate the harmful aspects of the development and, where possible, to ensure the conservation and enhancement of the site’s biodiversity or geological interest, are acceptable. Where necessary, requirements and/or planning obligations should be used to ensure these proposals are delivered.

Marine Conservation Zones

5.30 Marine Conservation Zones (MCZs), introduced under the Marine and Coastal Access Act 2009, are areas that have been designated for the purpose of conserving marine flora or fauna, marine habitat or types of marine habitat or features of geological or geomorphological interest. The protected feature or features and the conservation objectives for the MCZ are stated in the designation order for the MCZ, which provides statutory protection for these areas. Measures to restrict damaging activities will be implemented by the Marine Management Organisation (MMO) and other relevant organisations. As a public authority, the Secretary of State is bound by the duties in relation to MCZs imposed by sections 125 and 126 of the Marine and Coastal Access Act 2009.

Regional and Local Sites

5.31 Sites of regional and local biodiversity and geological interest (which include Local Geological Sites, Local Nature Reserves and Local Wildlife Sites and Nature Improvement Areas) have a fundamental role to play in meeting overall national biodiversity targets, in contributing to the quality of life and the well-being of the community, and in supporting research and education. The Secretary of State should give due consideration to such regional or local designations. However, given the need for new infrastructure, these designations should not be used in themselves to refuse development consent.

Irreplaceable habitats including ancient woodland and veteran trees

5.32 Ancient woodland is a valuable biodiversity resource both for its diversity of species and for its longevity as woodland. Once lost it cannot be

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78 In line with the principle above, the term “harm” should be understood to mean significant harm.
recreated. The Secretary of State should not grant development consent for any development that would result in the loss or deterioration of irreplaceable habitats including ancient woodland and the loss of aged or veteran trees found outside ancient woodland, unless the national need for and benefits of the development, in that location, clearly outweigh the loss. Aged or veteran trees found outside ancient woodland are also particularly valuable for biodiversity and their loss should be avoided.79 Where such trees would be affected by development proposals, the applicant should set out proposals for their conservation or, where their loss is unavoidable, the reasons for this.

*Biodiversity within and around developments*

5.33 Development proposals potentially provide many opportunities for building in beneficial biodiversity or geological features as part of good design.80 When considering proposals, the Secretary of State should consider whether the applicant has maximised such opportunities in and around developments. The Secretary of State may use requirements or planning obligations where appropriate in order to ensure that such beneficial features are delivered.

*Protection of other habitats and species*

5.34 Many individual wildlife species receive statutory protection under a range of legislative provisions.81

5.35 Other species and habitats have been identified as being of principal importance for the conservation of biodiversity in England and Wales82 and therefore requiring conservation action. The Secretary of State should ensure that applicants have taken measures to ensure these species and habitats are protected from the adverse effects of development. Where appropriate, requirements or planning obligations may be used in order to deliver this protection. The Secretary of State should refuse consent where harm to the habitats or species and their habitats would result, unless the benefits of the development (including need) clearly outweigh that harm.

*Mitigation*

5.36 Applicants should include appropriate mitigation measures as an integral part of their proposed development, including identifying where and how

79 This does not prevent the loss of such trees where the decision-maker is satisfied that their loss is unavoidable
80 The *Natural Environment White Paper* 2011 identifies opportunities for transport to contribute to the creation of coherent and resilient ecological networks.
81 Certain plant and animal species, including all wild birds, are protected under the Wildlife and Countryside Act 1981. European plant and animal species are protected under the Conservation of Habitats and Species Regulations 2010 (as amended). Some other animals are protected under their own legislation, for example Protection of Badgers Act 1992.
82 Lists of habitats and species of principal importance for the conservation of biological diversity in England published in response to Section 41 of the Natural Environment and Rural Communities Act 2006 are available from the Biodiversity Action Reporting System website.
these will be secured. In particular, the applicant should demonstrate that:

- during construction, they will seek to ensure that activities will be confined to the minimum areas required for the works;
- during construction and operation, best practice will be followed to ensure that risk of disturbance or damage to species or habitats is minimised (including as a consequence of transport access arrangements);
- habitats will, where practicable, be restored after construction works have finished;
- developments will be designed and landscaped to provide green corridors and minimise habitat fragmentation where reasonable;
- opportunities will be taken to enhance existing habitats and, where practicable, to create new habitats of value within the site landscaping proposals, for example through techniques such as the 'greening' of existing network crossing points, the use of green bridges and the habitat improvement of the network verge.

5.37 The Secretary of State should consider what appropriate requirements should be attached to any consent and/or in any planning obligations entered into in order to ensure that mitigation measures are delivered.

5.38 The Secretary of State will need to take account of what mitigation measures may have been agreed between the applicant and Natural England and/or the MMO, and whether Natural England and/or or the MMO has granted or refused, or intends to grant or refuse, any relevant licences, including protected species mitigation licences.

Waste management

Introduction

5.39 Government policy on hazardous and non-hazardous waste is intended to protect human health and the environment by producing less waste and by using it as a resource wherever possible. Where this is not possible, waste management regulation ensures that waste is disposed of in a way that is least damaging to the environment and to human health.

5.40 Sustainable waste management is implemented through the "waste hierarchy":

- prevention;
- preparing for reuse;
- recycling;
- other recovery, including energy recovery; and
Large infrastructure projects may generate hazardous and non-hazardous waste during the construction and operation. The Environment Agency's environmental permitting regime incorporates operational waste management requirements for certain activities. When an applicant applies to the Environment Agency for an environmental permit, the Agency will require the application to demonstrate that processes are in place to meet all relevant permit requirements.

**Applicant's assessment**

The applicant should set out the arrangements that are proposed for managing any waste produced. The arrangements described should include information on the proposed waste recovery and disposal system for all waste generated by the development. The applicant should seek to minimise the volume of waste produced and the volume of waste sent for disposal unless it can be demonstrated that the alternative is the best overall environmental outcome.

**Decision making**

The Secretary of State should consider the extent to which the applicant has proposed an effective process that will be followed to ensure effective management of hazardous and non-hazardous waste arising from the construction and operation of the proposed development. The Secretary of State should be satisfied that the process sets out:

- any such waste will be properly managed, both on-site and off-site;
- the waste from the proposed facility can be dealt with appropriately by the waste infrastructure which is, or is likely to be, available. Such waste arisings should not have an adverse effect on the capacity of existing waste management facilities to deal with other waste arisings in the area; and
- adequate steps have been taken to minimise the volume of waste arisings, and of the volume of waste arisings sent to disposal, except where an alternative is the most sustainable outcome overall.

Where necessary, the Secretary of State should use requirements or planning obligations to ensure that appropriate measures for waste management are applied.

Where the project will be subject to the Environment Agency’s environmental permitting regime, waste management arrangements during operations will be covered by the permit and the considerations set out in paragraphs 4.48 to 4.56 will apply.
Civil and military aviation and defence interests

Introduction

5.46 Civil and military aerodromes, aviation technical sites, and other types of defence interests (both onshore and offshore) can be affected by new national networks infrastructure development.

Aviation

5.47 UK airspace is important for both civilian and military aviation interests. It is essential that the safety of UK aerodromes, aircraft and airspace is not adversely affected by new national networks infrastructure. Similarly, aerodromes can have important economic and social benefits, particularly at the regional and local level. Commercial civil aviation is largely confined to designated corridors of controlled airspace and set approaches to airports. However, civilian leisure and military aircraft may often fly outside of ‘controlled air space’. The approaches and flight patterns to aerodromes are not necessarily routine and can be irregular owing to a variety of factors including the performance characteristics of the aircraft concerned and the prevailing meteorological conditions.

5.48 Certain civil aerodromes, and aviation technical sites, selected on the basis of their importance to the national air transport system, are officially safeguarded in order to ensure that their operation is not inhibited by new development. A similar official safeguarding system applies to certain military aerodromes and defence assets, selected on the basis of their strategic importance. Areas of airspace around aerodromes used by aircraft taking off or on approach and landing are described as “obstacle limitation surfaces” (OLS) and defined according to criteria set out in relevant Civil Aviation Authority (CAA) guidance.83 Aerodromes that are officially safeguarded will have CAA certified Safeguarding maps showing the OLS.

5.49 The certified safeguarding maps depicting the OLS and other criteria (e.g. to minimise “birdstrike” hazards) are deposited with the relevant local planning authorities. Circular 1/200384 provides advice to planning authorities on the official safeguarding of aerodromes and includes a list of the aerodromes which are officially safeguarded. The Circular and CAA guidance also recommends that the operators of aerodromes which are not officially safeguarded should take steps to protect their aerodrome from the effects of possible adverse development by establishing an agreed consultation procedure between themselves and the local planning authority or authorities.

5.50 There are also “Public Safety Zones” at the end of runways of the busiest airports in the UK, within which development is restricted to

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83 CAA (2011) CAP 168: Licensing of Aerodromes
84 DfT/ODPM Circular 01/2003: Safeguarding, Aerodromes, Technical Sites and Military Explosives Storage Areas
minimise risks to people on the ground in the event of an aircraft accident on take-off or landing. Advice is provided on Public Safety Zones in Circular 01/2002.85

5.51 The military Low Flying system covers the whole of the UK and enables low flying activities as low as 75m (mean separation distance). A considerable amount of military flying for training purposes is conducted at as low as 30m in designated Tactical Training Areas (TTAs) in mid Wales, Cumbria, the Scottish Border region and in the Electronic Warfare Range in the Scottish Border area. New national networks infrastructure may cause obstructions in Ministry of Defence (MoD) low flying areas.

5.52 Safe and efficient operations within UK airspace is dependent upon communications, navigation and surveillance (CNS) infrastructure, including radar (often referred to as ‘technical sites’). National Networks infrastructure development may interfere with the operation of radar by limiting the capacity to handle air traffic, and aircraft landing systems. It may also act as a reflector or diffractor of radio signals on which navigational aids rely (an effect which is particularly likely to arise when large structures are located close to radar installations).

Other defence interests

5.53 The MoD operates military training areas, military danger zones (offshore Danger and Exercise areas), military explosives storage areas and TTAs. There are extensive Danger and Exercise Areas across the UK Continental Shelf Area (UKCS) for military firing that are essential for national defence.

5.54 Other operational defence assets may be affected by new development, e.g. the maritime acoustic facilities used to test and calibrate noise emissions from naval vessels, such as at Portland Harbour. The MoD also operates Air Defence radars and Meteorological radars which have wide coverage over the UK (onshore and offshore). It is important that new national networks infrastructure does not significantly impede or compromise the safe and effective use of any defence assets.

Applicant's assessment

5.55 Where the proposed development may have an effect on civil or military aviation and/or other defence assets, an assessment of potential effects should be carried out.

5.56 The applicant should consult the MoD, CAA, National Air Traffic Services (NATS) and any aerodrome – licensed or otherwise – likely to be affected by the proposed development in preparing an assessment of the proposal on aviation or other defence interests.

85 DfT/ODPM Circular 01/2002: Control of Development in Airport Safety Zones
Any assessment on aviation or other defence interests should include potential impacts during construction and operation of the project upon the operation of CNS infrastructure, flight patterns (both civil and military), other defence assets and aerodrome operational procedures.

If any relevant changes are made to proposals for an NSIP during the pre-application period or before the end of the examination of an application, it is the responsibility of the applicant to ensure that the relevant aviation and defence consultees are informed as soon as reasonably possible.

**Decision making**

The Secretary of State should be satisfied that effects on civil and military aviation and other defence assets have been addressed by the applicant and that any necessary assessment of the proposal on aviation or defence interests has been carried out. In particular, it should be satisfied that the proposal has been designed to minimise adverse impacts on the operation and safety of aerodromes and that reasonable mitigation is carried out. It may also be appropriate to expect operators of the aerodrome to consider making reasonable changes to operational procedures. The Secretary of State will have regard to the necessity, acceptability and reasonableness of operational changes to aerodromes, and the risks or harm of such changes when taking decisions. When making such a judgement in the case of military aerodromes, the Secretary of State should have regard to interests of defence and national security.

If there are conflicts between the Government’s national networks policies and military interests in relation to the application, the Secretary of State expects the relevant parties to have made appropriate efforts to work together to identify realistic and pragmatic solutions to the conflicts. In so doing, the parties should seek to protect the aims and interests of the other parties as far as possible.

There are statutory requirements concerning lighting to tall structures. Where lighting is requested on structures that go beyond statutory requirements by any of the relevant aviation and defence consultees, the Secretary of State should be satisfied of the necessity of such lighting taking into account the case put forward by the consultees. The effect of such lighting on the landscape, local residents and ecology may be a relevant consideration, depending on the particular circumstances be a relevant consideration.

Where, after reasonable mitigation, operational changes and planning obligations and requirements have been proposed, development consent should not be granted if the Secretary of State considers that:

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86 Articles 133 and 134 Air Navigation Order 2005
• a development would prevent a licensed aerodrome from maintaining its licence;
• the benefits of the proposed development are outweighed by the harm to aerodromes serving business, training or emergency service needs; or
• the development would significantly impede or compromise the safe and effective use of defence assets or significantly limit military training.

Mitigation

5.63 Where a proposed national networks infrastructure project would significantly impede or compromise the safe and effective use of civil or military aviation or defence assets and or significantly limit military training, the Secretary of State may consider the use of ‘Grampian conditions’ or other forms of requirement which relate to the use of future technological solutions to mitigate impacts. Where technological solutions have not yet been developed or proven, the Secretary of State will need to consider the likelihood of a solution becoming available within the time limit for implementation of the development consent.

5.64 Mitigation for infringement of OLS may include:

• amendments to layout or scale of infrastructure to reduce the height, provided that it does not result in an unreasonable reduction of capacity or unreasonable constraints on the operation of the proposed national networks infrastructure;
• changes to operational procedures of the aerodromes in accordance with relevant guidance, provided that safety assurances can be provided by the operator that are acceptable to the CAA where the changes are proposed to a civilian aerodrome (and provided that it does not result in an unreasonable reduction of capacity or unreasonable constraints on the operation of the aerodrome); and
• upgrading of installation of obstacle lighting and/or by notification in Aeronautical Information Service publications.

5.65 For CNS infrastructure, the UK military Low Flying system (including TTAs) and designated air traffic routes, mitigation may include:

• lighting; and
• upgrading of existing CNS infrastructure, the cost of which the applicant may reasonably be required to contribute in part or in full.

5.66 Mitigation for effects on radar and navigational systems may include reducing the scale of a project, although in some cases it is likely to be unreasonable to require mitigation by way of a reduction in the scale of

87 A negative condition that prevents the start of a development until specific actions, mitigation or other development have been completed.
development, for example where this would result in a material reduction in capacity or where operations would be severely constrained. However, there may be exceptional circumstances where a small reduction in capacity or other small change to a project will result in proportionately greater mitigation. In these cases, the Secretary of State may consider that the benefits of the mitigation outweigh the marginal loss, for example, of capacity.

Coastal change

Introduction

5.67 Where infrastructure projects are proposed on the coast, coastal change is a key consideration. This section is concerned both with the impacts which national networks infrastructure can have as a driver of coastal change and with how to ensure that developments are resilient to ongoing and potential future coastal change. The aim of the Government’s planning policy is to reduce risk from coastal change by avoiding inappropriate development in vulnerable areas, or adding to the impacts of physical changes to the coast.

5.68 The construction of national networks infrastructure on the coast may involve, for example, dredging, dredge spoil deposition, marine landing facility construction, and flood and coastal protection measures which could result in direct effects on the coastline, seabed, marine ecology and biodiversity, and the historic environment.

5.69 Additionally indirect changes to the coastline and seabed might arise as a result of a hydrodynamic response to some of these direct changes. This could lead to localised or more widespread coastal erosion or accretion and changes to offshore features such as submerged banks and ridges, marine biodiversity and the historic environment.

5.70 This section only applies to national networks infrastructure projects situated on or near the coast. The sections on biodiversity and geological conservation, flood risk, the historic environment and climate change adaptation, including the increased risk of coastal erosion, are also relevant, as is advice on access to coastal recreation sites and features in the section on land use.

Applicant’s assessment

5.71 Applications for development in a Coastal Change Management Area (CCMA) should make it clear why there is a need for it to be located in a CCMA. For developments in a CCMA, applicants should undertake an assessment of the vulnerability of the proposed development to coastal change (physical change to the shoreline through erosion, coastal landslip, permanent inundation or coastal accretion).

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88 CCMAs are areas identified in Local Plans as likely to be affected by coastal change (physical change to the shoreline through erosion, coastal landslip, permanent inundation or coastal accretion).
change, taking account of climate change, during the project’s operational life.

5.72 For any projects involving dredging or disposal into the sea, the applicant should consult the Marine Management Organisation (MMO), and where appropriate, for cross-boundary impacts, Natural Resource Wales and Scottish Natural Heritage, at an early stage. The applicant should also consult the MMO on projects which could impact on coastal change, since the MMO may also be involved in considering other projects which may have related coastal impacts.

5.73 The applicant should examine the broader context of coastal protection around the proposed project, and the influence in both directions, i.e. coast on project, and project on coast. 89

5.74 The applicant should be particularly careful to identify any effects of physical changes on the integrity and special features of Marine Conservation Zones, candidate marine Special Areas of Conservation (SACs), coastal SACs and candidate coastal SACs, coastal Special Protection Areas (SPAs) and potential coastal SPAs, Ramsar sites, Sites of Community Importance (SCIs) and potential SCIs and sites of Special Scientific Interest. For any projects affecting the above marine protected areas, the applicant should consult Natural England and, where appropriate, for cross-boundary impacts, Natural Resource Wales and Scottish Natural Heritage, at an early stage.

**Decision making**

5.75 When assessing applications in a CCMA, the Secretary of State should not grant development consent unless it is demonstrated that the development:

- will be safe over its planned lifetime and will not have an unacceptable impact on coastal change;
- will not compromise the character of the coast covered by designations;
- provides wider sustainability benefits; and
- does not hinder the creation and maintenance of a continuous signed and managed route around the coast.

5.76 Essential infrastructure may be granted development consent in a CCMA, provided there are clear plans to manage the impacts of coastal change on it, and it will not have an adverse impact on rates of coastal change elsewhere.

5.77 The Marine and Coastal Access Act 2009 provides for the preparation of a Marine Policy Statement (MPS) and a number of marine plans. The Secretary of State must have regard to the MPS and applicable marine plans in taking any decision which relates to the exercise of any function

89 The relevant information will include Shoreline Management Plans.
capable of affecting any part of the UK marine area. In the event of a conflict between any of these marine planning documents and this NPS, the NPS prevails for the purposes of decision making given the national significance of the infrastructure.

5.78 Substantial weight should be attached to the risks of flooding and coastal erosion. The applicant must demonstrate that full account has been taken of the policy on assessment and mitigation in paragraphs 5.91-5.114 of this NPS, taking account of the potential effects of climate change on these risks.

Mitigation

5.79 Applicants should propose appropriate mitigation measures to address adverse physical changes to the coast in consultation with the MMO, the Environment Agency, Natural England, Natural Resource Wales, Scottish Natural Heritage, Local Planning Authorities, other statutory consultees, Coastal Partnerships and other coastal groups, as it considers appropriate. The Secretary of State should consider whether the mitigation requirements put forward by an applicant are acceptable and will be delivered and whether requirements should be attached to any grant of development consent in order to secure their delivery.

5.80 The Secretary of State should also ensure development granted consent in a CCMA is not impacted by coastal change – if necessary by limiting the planned life-time of the proposed development and including restoration requirements where these are necessary to reduce the risk to people and the development.

Dust, odour, artificial light, smoke, steam

Introduction

5.81 As well as noise and vibration (paragraphs 5.186 to 5.200) the construction and operation of national networks infrastructure has the potential to create a range of emissions such as odour, dust, steam, smoke and artificial light. All have the potential to have a detrimental impact on amenity or cause a common law nuisance or statutory nuisance under Part III, Environmental Protection Act 1990. Note that pollution impacts from some of these emissions (e.g. dust, smoke) are covered in the section on air emissions and that these and others (e.g. odour) may also be covered by pollution control or other environmental consenting regimes so that paragraphs 4.48 to 4.56 and 5.3 to 5.15 will apply.

5.82 Because of the potential effects of these emissions and in view of the availability of the defence of statutory authority against nuisance claims

90 s.104 of the Planning Act 2008
described previously, it is important that the potential for these impacts is considered by the applicant in their application, by the Examining Authority in examining applications and by the Secretary of State in taking decisions on development consents.

5.83 For nationally significant infrastructure projects of the type covered by this NPS, some impact on amenity for local communities is likely to be unavoidable. Impacts should be kept to a minimum and should be at a level that is acceptable.

Applicant's assessment

5.84 Where the development is subject to an Environmental Impact Assessment, the applicant should assess any likely significant effects on amenity from emissions of odour, dust, steam, smoke and artificial light and describe these in the Environmental Statement.

5.85 In particular, the assessment provided by the applicant should describe:

- the type and quantity of emissions;
- aspects of the development which may give rise to emissions during construction, operation and decommissioning;
- premises or locations that may be affected by the emissions;
- effects of the emission on identified premises or locations; and
- measures to be employed in preventing or mitigating the emissions.

5.86 The applicant is advised to consult the relevant local planning authority and, where appropriate, the Environment Agency about the scope and methodology of the assessment.

Decision making

5.87 The Secretary of State should be satisfied that all reasonable steps have been taken, and will be taken, to minimise any detrimental impact on amenity from emissions of odour, dust, steam, smoke and artificial light. This includes the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.

5.88 If development consent is granted for a project, the Secretary of State should consider whether there is a justification for all of the authorised project (including any associated development) being covered by a defence of statutory authority against nuisance claims. If the Secretary of State cannot conclude that this is justified, then the defence should be disapplied, in whole or in part, through a provision in the Development Consent Order.

Mitigation

5.89 The Secretary of State should ensure the applicant has provided sufficient information to show that any necessary mitigation will be put
into place. In particular, the Secretary of State should consider whether to require the applicant to abide by a scheme of management and mitigation concerning emissions of odour, dust, steam, smoke, artificial light from the development to reduce any loss to amenity which might arise during the construction and operation of the development. A construction management plan may help codify mitigation.

Flood risk

Introduction

5.90 Climate change over the next few decades is likely to mean milder wetter winters and hotter drier summers in the UK, while sea levels will continue to rise. Within the lifetime of nationally significant infrastructure projects, these factors will lead to increased flood risks in areas susceptible to flooding, and to an increased risk of flooding in some areas which are not currently thought of as being at risk. The applicant, the Examining Authority and the Secretary of State (in taking decisions) should take account of the policy on climate change adaptation in paragraphs 4.36 to 4.47.

5.91 The National Planning Policy Framework (paragraphs 100 to 104) makes clear that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. But where development is necessary, it should be made safe without increasing flood risk elsewhere. The guidance supporting the National Planning Policy Framework explains that essential transport infrastructure (including mass evacuation routes), which has to cross the area at risk, is permissible in areas of high flood risk, subject to the requirements of the Exception Test.

Applicant's assessment

5.92 Applications for projects in the following locations should be accompanied by a flood risk assessment (FRA):

- Flood Zones 2 and 3, medium and high probability of river and sea flooding;
- Flood Zone 1 (low probability of river and sea flooding) for projects of 1 hectare or greater, projects which may be subject to other sources of flooding (local watercourses, surface water, groundwater or reservoirs), or where the Environment Agency has notified the local planning authority that there are critical drainage problems.

5.93 This should identify and assess the risks of all forms of flooding to and from the project and demonstrate how these flood risks will be managed, taking climate change into account.
5.94 In preparing an FRA the applicant should:

- consider the risk of all forms of flooding arising from the project (including in adjacent parts of the United Kingdom), in addition to the risk of flooding to the project, and demonstrate how these risks will be managed and, where relevant, mitigated, so that the development remains safe throughout its lifetime;\(^{91}\)
- take the impacts of climate change into account, clearly stating the development lifetime over which the assessment has been made;
- consider the vulnerability of those using the infrastructure including arrangements for safe access and exit;
- include the assessment of the remaining (known as ‘residual’) risk after risk reduction measures have been taken into account and demonstrate that this is acceptable for the particular project;
- consider if there is a need to remain operational during a worst case flood event over the development’s lifetime;
- provide the evidence for the Secretary of State to apply the Sequential Test and Exception Test, as appropriate.

5.95 Further guidance can be found in the Government’s planning guidance supporting the *National Planning Policy Framework* issued by the Government.

5.96 Applicants for projects which may be affected by, or may add to, flood risk are advised to seek sufficiently early pre-application discussions with the Environment Agency, and, where relevant, other flood risk management bodies such as lead local flood authorities, Internal Drainage Boards, sewerage undertakers, highways authorities and reservoir owners and operators. Such discussions can be used to identify the likelihood and possible extent and nature of the flood risk, to help scope the FRA, and identify the information that will be required by the Secretary of State to reach a decision on the application once it has been submitted and examined. If the Environment Agency has concerns about the proposal on flood risk grounds, the applicant is encouraged to discuss these concerns with the Environment Agency and look to agree ways in which the proposal might be amended, or additional information provided, which would satisfy the Environment Agency’s concerns, preferably before the application for development consent is submitted.

5.97 For local flood risk (surface water, groundwater and ordinary watercourse flooding), local flood risk management strategies and surface water management plans provide useful sources of information for consideration in Flood Risk Assessments. Surface water flood issues need to be understood and then account of these issues can be taken, for example flow routes should be clearly identified and managed.

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\(^{91}\) Updated flood maps for rivers, the sea, surface water and reservoirs are available on the Environment Agency’s website.
Decision making

5.98 Where flood risk is a factor in determining an application for development consent, the Secretary of State should be satisfied that, where relevant:

- the application is supported by an appropriate FRA;
- the Sequential Test (see the National Planning Policy Framework) has been applied as part of site selection and, if required, the Exception Test (see the National Planning Policy Framework).

5.99 When determining an application the Secretary of State should be satisfied that flood risk will not be increased elsewhere and only consider development appropriate in areas at risk of flooding where (informed by a flood risk assessment, following the Sequential Test and, if required, the Exception Test), it can be demonstrated that:

- within the site, the most vulnerable development is located in areas of lowest flood risk unless there are overriding reasons to prefer a different location; and
- development is appropriately flood resilient and resistant, including safe access and escape routes where required, and that any residual risk can be safely managed, including by emergency planning; and priority is given to the use of sustainable drainage systems.

5.100 For construction work which has drainage implications, approval for the project’s drainage system will form part of any development consent issued by the Secretary of State. The Secretary of State will therefore need to be satisfied that the proposed drainage system complies with any National Standards published by Ministers under Paragraph 5(1) of Schedule 3 to the Flood and Water Management Act 2010. In addition, the development consent order, or any associated planning obligations, will need to make provision for the adoption and maintenance of any Sustainable Drainage Systems (SuDS), including any necessary access rights to property. The Secretary of State, should be satisfied that the most appropriate body is being given the responsibility for maintaining any SuDS, taking into account the nature and security of the infrastructure on the proposed site. The responsible body could include, for example, the applicant, the landowner, the relevant local authority, or another body such as the Internal Drainage Board.

5.101 If the Environment Agency continues to have concerns and objects to the grant of development consent on the grounds of flood risk, the

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92 As defined in paragraph 7(2) of Schedule 3 to the Flood and Water Management Act 2010. Certain organisations may be exempt from any National Standards under Schedule 3 to the Flood and Water Management Act 2010 and associated secondary instruments.

93 The National Standards set out requirements for the design, construction, operation and maintenance of SuDS and may include guidance to which the Secretary of State should have regard.
Secretary of State can grant consent, but would need to be satisfied before deciding whether or not to do so that all reasonable steps have been taken by the applicant and the Environment Agency to try and resolve the concerns.

5.102 The Secretary of State should expect that reasonable steps have been taken to avoid, limit and reduce the risk of flooding to the proposed infrastructure and others. However, the nature of linear infrastructure means that there will be cases where:

- upgrades are made to existing infrastructure in an area at risk of flooding;
- infrastructure in a flood risk area is being replaced;
- infrastructure is being provided to serve a flood risk area; and
- infrastructure is being provided connecting two points that are not in flood risk areas, but where the most viable route between the two passes through such an area.

5.103 The design of linear infrastructure and the use of embankments in particular, may mean that linear infrastructure can reduce the risk of flooding for the surrounding area. In such cases the Secretary of State should take account of any positive benefit to placing linear infrastructure in a flood-risk area.

5.104 Where linear infrastructure has been proposed in a flood risk area, the Secretary of State should expect reasonable mitigation measures to have been made, to ensure that the infrastructure remains functional in the event of predicted flooding.

The Sequential Test

5.105 Preference should be given to locating projects in Flood Zone 1. If there is no reasonably available site\(^{34}\) in Flood Zone 1, then projects can be located in Flood Zone 2. If there is no reasonably available site in Flood Zones 1 or 2, then national networks infrastructure projects can be located in Flood Zone 3, subject to the Exception Test. If the development is not essential transport infrastructure that has to cross the area at risk, it is not appropriate in Flood Zone 3b, the functional floodplain where water has to flow and be stored in times of flood.

The Exception Test

5.106 If, following application of the Sequential Test, it is not possible, consistent with wider sustainability objectives, for the project to be located in zones of lower probability of flooding than Flood Zone 3a, the

\(^{34}\)Guidance on interpreting the term “reasonably available site” in this test can be found in Flood Risk & Coastal Change PPG or its successor document. The applicant should justify with evidence to the Examining Authority what area of search has been used in examining whether there are reasonably available sites. This will allow the Examining Authority to consider whether the sequential test has been made as part of site selection.
Exception Test can be applied. The test provides a method of managing flood risk while still allowing necessary development to occur.

5.107 The Exception Test is only appropriate for use where the Sequential Test alone cannot deliver an acceptable site, taking into account the need for national networks infrastructure to remain operational during floods.

5.108 Both elements of the test will have to be passed for development to be consented. For the Exception Test to be passed:

- it must be demonstrated that the project provides wider sustainability benefits to the community\(^{95}\) that outweigh flood risk; and
- a FRA must demonstrate that the project will be safe for its lifetime, without increasing flood risk elsewhere and, where possible, will reduce flood risk overall.

5.109 In addition, any project that is classified as ‘essential infrastructure’ and proposed to be located in Flood Zone 3a or b should be designed and constructed to remain operational and safe for users in times of flood; and any project in Zone 3b should result in no net loss of floodplain storage and not impede water flows.

Mitigation

5.110 To satisfactorily manage flood risk and the impact of the natural water cycle on people, property and ecosystems, good design and infrastructure may need to be secured using requirements or planning obligations. This may include the use of sustainable drainage systems but could also include vegetation to help to slow runoff, hold back peak flows and make landscapes more able to absorb the impact of severe weather events.

5.111 In this document the term Sustainable Drainage Systems (SuDS) is frequently used and taken to cover the whole range of sustainable approaches to surface water drainage management including:

- source control measures including rainwater recycling and drainage;
- infiltration devices to allow water to soak into the ground, that can include individual soakaways and communal facilities;
- filter strips and swales, which are vegetated features that hold and drain water downhill mimicking natural drainage patterns;
- filter drains and porous pavements to allow rainwater and run-off to infiltrate into permeable material below ground and provide storage if needed;

\(^{95}\) These would include the benefits (including need) for the infrastructure set out in Chapter 2.
basins and ponds to hold excess water after rain and allow controlled discharge that avoids flooding; and

• flood routes to carry and direct excess water through developments to minimise the impact of severe rainfall flooding.

5.112 Site layout and surface water drainage systems should cope with events that exceed the design capacity of the system, so that excess water can be safely stored on or conveyed from the site without adverse impacts.

5.113 The surface water drainage arrangements for any project should be such that the volumes and peak flow rates of surface water leaving the site are no greater than the rates prior to the proposed project, unless specific off-site arrangements are made and result in the same net effect.

5.114 It may be necessary to provide surface water storage and infiltration to limit and reduce both the peak rate of discharge from the site and the total volume discharged from the site. There may be circumstances where it is appropriate for infiltration attenuation storage to be provided outside the project site, if necessary through the use of a planning obligation.

5.115 The sequential approach should be applied to the layout and design of the project. Vulnerable uses should be located on parts of the site at lower probability and residual risk of flooding. Applicants should seek opportunities to use open space for multiple purposes such as amenity, wildlife habitat and flood storage uses. Opportunities can be taken to lower flood risk by improving flow routes, flood storage capacity and using SuDS.

Land instability

Introduction

5.116 The effects of land instability may result in landslides, subsidence or ground heave. Failing to deal with this issue could cause harm to human health, local property and associated infrastructure, and the wider environment. They occur in different circumstances for different reasons and vary in their predictability and in their effect on development.

Applicant’s assessment

5.117 Where necessary, land stability should be considered in respect of new development, as set out in the National Planning Policy Framework and supporting planning guidance. Specifically, proposals should be appropriate for the location, including preventing unacceptable risks from land instability. If land stability could be an issue, applicants should seek appropriate technical and environmental expert advice to assess the likely consequences of proposed developments on sites where
subsidence, landslides and ground compression is known or suspected. Applicants should liaise with the Coal Authority if necessary.

5.118 A preliminary assessment of ground instability should be carried out at the earliest possible stage before a detailed application for development consent is prepared. Applicants should ensure that any necessary investigations are undertaken to ascertain that their sites are and will remain stable or can be made so as part of the development. The site needs to be assessed in context of surrounding areas where subsidence, landslides and land compression could threaten the development during its anticipated life or damage neighbouring land or property. This could be in the form of a land stability or slope stability risk assessment report.

Mitigation

5.119 Applicants have a range of mechanisms available to mitigate and minimise risks of land instability. These include:

- Establishing the principle and layout of new development, for example avoiding mine entries and other hazards.

- Ensuring proper design of structures to cope with any movement expected, and other hazards such as mine and/or ground gases; or

- Requiring ground improvement techniques, usually involving the removal of poor material and its replacement with suitable inert and stable material. For development on land previously affected by mining activity, this may mean prior extraction of any remaining mineral resource.

The historic environment

Introduction

5.120 The construction and operation of national networks infrastructure has the potential to result in adverse impacts on the historic environment.

5.121 The historic environment includes all aspects of the environment resulting from the interaction between people and places through time, including all surviving physical remains of past human activity, whether visible, buried or submerged, and landscaped and planted or managed flora.

5.122 Those elements of the historic environment that hold value to this and future generations because of their historic, archaeological, architectural or artistic interest are called ‘heritage assets’. Heritage assets may be buildings, monuments, sites, places, areas or landscapes. The sum of the heritage interests that a heritage asset holds is referred to as its
significance. Significance derives not only from a heritage asset’s physical presence, but also from its setting.\textsuperscript{96}

5.123 Some heritage assets have a level of significance that justifies official designation. Categories of designated heritage assets are: World Heritage Sites; Scheduled Monuments; Listed Buildings; Protected Wreck Sites; Protected Military Remains; Registered Parks and Gardens; and Registered Battlefields; Conservation Areas.\textsuperscript{97}

5.124 Non-designated heritage assets of archaeological interest\textsuperscript{98} that are demonstrably of equivalent significance to Scheduled Monuments, should be considered subject to the policies for designated heritage assets. The absence of designation for such heritage assets does not indicate lower significance.

5.125 The Secretary of State should also consider the impacts on other non-designated heritage assets (as identified either through the development plan process by local authorities, including ‘local listing’, or through the nationally significant infrastructure project examination and decision making process) on the basis of clear evidence that the assets have a significance that merit consideration in that process, even though those assets are of lesser value than designated heritage assets.

Applicant’s assessment

5.126 Where the development is subject to EIA the applicant should undertake an assessment of any likely significant heritage impacts of the proposed project as part of the Environmental Impact Assessment and describe these in the environmental statement.

5.127 The applicant should describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the asset’s importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant Historic Environment Record\textsuperscript{99} should have been consulted and the heritage assets assessed using appropriate expertise. Where a site on which development is

\textsuperscript{96} Setting of a heritage asset is the surroundings in which it is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.

\textsuperscript{97} Designated heritage assets in Wales also include heritage landscapes. The issuing of licenses to undertake works on Protected Wreck Sites in English waters is the responsibility of the Secretary of State for Culture, Media and Sport and does not form part of development consent orders. The issuing of licences for Protected Military Remains is the responsibility of the Secretary of State for Defence.

\textsuperscript{98} There will be archaeological interest in a heritage asset if it holds, or potentially may hold, evidence of past human activity worthy of expert investigation at some point. Heritage assets with archaeological interest are the primary source of evidence about the substance and evolution of places, and of the people and cultures that made them.

\textsuperscript{99} Historic Environment Records (HERs) are information services maintained by local authorities and National Park Authorities with a view to providing access to comprehensive and dynamic resources relating to the historic environment of an area for public benefit and use. Details of HERs in England are available from the Heritage Gateway website. English Heritage should also be consulted, where relevant.
proposed includes or has the potential to include heritage assets with archaeological interest, the applicant should include an appropriate desk-based assessment and, where necessary, a field evaluation.

Decision making

5.128 In determining applications, the Secretary of State should seek to identify and assess the particular significance of any heritage asset that may be affected by the proposed development (including by development affecting the setting of a heritage asset), taking account of the available evidence and any necessary expertise from:

- relevant information provided with the application and, where applicable, relevant information submitted during examination of the application;
- any designation records;
- the relevant Historic Environment Record(s), and similar sources of information;\(^\text{100}\)
- representations made by interested parties during the examination; and
- expert advice, where appropriate, and when the need to understand the significance of the heritage asset demands it.

5.129 In considering the impact of a proposed development on any heritage assets, the Secretary of State should take into account the particular nature of the significance of the heritage asset and the value that they hold for this and future generations. This understanding should be used to avoid or minimise conflict between their conservation and any aspect of the proposal.

5.130 The Secretary of State should take into account the desirability of sustaining and, where appropriate, enhancing the significance of heritage assets, the contribution of their settings and the positive contribution that their conservation can make to sustainable communities – including their economic vitality. The Secretary of State should also take into account the desirability of new development making a positive contribution to the character and local distinctiveness of the historic environment. The consideration of design should include scale, height, massing, alignment, materials, use and landscaping (for example, screen planting).

5.131 When considering the impact of a proposed development on the significance of a designated heritage asset, the Secretary of State should give great weight to the asset’s conservation. The more important the asset, the greater the weight should be. Once lost, heritage assets cannot be replaced and their loss has a cultural, environmental,

\(^{100}\) Guidance on the available sources of information can be found in English Heritage guidance PPS5 Planning for the Historic Environment: Historic Environment Planning Practice Guide (or any successor document).
economic and social impact. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. Given that heritage assets are irreplaceable, harm or loss affecting any designated heritage asset should require clear and convincing justification. Substantial harm to or loss of a grade II Listed Building or a grade II Registered Park or Garden should be exceptional. Substantial harm to or loss of designated assets of the highest significance, including World Heritage Sites, Scheduled Monuments, grade I and II* Listed Buildings, Registered Battlefields, and grade I and II* Registered Parks and Gardens should be wholly exceptional.

5.132 Any harmful impact on the significance of a designated heritage asset should be weighed against the public benefit of development, recognising that the greater the harm to the significance of the heritage asset, the greater the justification that will be needed for any loss.

5.133 Where the proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, the Secretary of State should refuse consent unless it can be demonstrated that the substantial harm or loss of significance is necessary in order to deliver substantial public benefits that outweigh that loss or harm, or alternatively that all of the following apply:

- the nature of the heritage asset prevents all reasonable uses of the site; and
- no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and
- conservation by grant-funding or some form of charitable or public ownership is demonstrably not possible; and
- the harm or loss is outweighed by the benefit of bringing the site back into use.

5.134 Where the proposed development will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.

5.135 Not all elements of a World Heritage Site or Conservation Area will necessarily contribute to its significance. The Secretary of State should treat the loss of a building (or other element) that makes a positive contribution to the site’s significance either as substantial harm or less than substantial harm, as appropriate, taking into account the relative significance of the elements affected and their contribution to the significance of the Conservation Area or World Heritage Site as a whole.

5.136 Where the loss of significance of any heritage asset has been justified by the applicant based on the merits of the new development and the significance of the asset in question, the Secretary of State should consider imposing a requirement that the applicant will prevent the loss
occurring until the relevant development or part of development has commenced.

5.137 Applicants should look for opportunities for new development within Conservation Areas and World Heritage Sites, and within the setting of heritage assets, to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to or better reveal the significance of the asset should be treated favourably.

5.138 Where there is evidence of deliberate neglect of or damage to a heritage asset the Secretary of State should not take its deteriorated state into account in any decision.

Recording

5.139 A documentary record of our past is not as valuable as retaining the heritage asset and therefore the ability to record evidence of the asset should not be a factor in deciding whether consent should be given.

5.140 Where the loss of the whole or part of a heritage asset’s significance is justified, the Secretary of State should require the applicant to record and advance understanding of the significance of the heritage asset before it is lost (wholly or in part). The extent of the requirement should be proportionate to the importance and the impact. Applicants should be required to deposit copies of the reports with the relevant Historic Environment Record. They should also be required to deposit the archive generated in a local museum or other public depository willing to receive it.

5.141 The Secretary of State may add requirements to the development consent order to ensure that this is undertaken in a timely manner in accordance with a written scheme of investigation that meets the requirements of this section and has been agreed in writing with the relevant Local Authority (or, where the development is in English waters, with the Marine Management Organisation and English Heritage) and that the completion of the exercise is properly secured.101

5.142 Where there is a high probability that a development site may include as yet undiscovered heritage assets with archaeological interest, the Secretary of State should consider requirements to ensure that appropriate procedures are in place for the identification and treatment of such assets discovered during construction.

Landscape and visual impacts

Introduction

5.143 The landscape and visual effects of proposed projects will vary on a case by case basis according to the type of development, its location

101 Guidance on the contents of a written scheme of investigation is set out in the English Heritage guidance PPS5 Practice Guide (or any successor to it).
and the landscape setting of the proposed development. In this context, references to landscape should be taken as covering seascape and townscape, where appropriate.

Applicant's assessment

5.144 Where the development is subject to EIA the applicant should undertake an assessment of any likely significant landscape and visual impacts in the environmental impact assessment and describe these in the environmental assessment. A number of guides have been produced to assist in addressing landscape issues. The landscape and visual assessment should include reference to any landscape character assessment and associated studies, as a means of assessing landscape impacts relevant to the proposed project. The applicant’s assessment should also take account of any relevant policies based on these assessments in local development documents in England.

5.145 The applicant’s assessment should include any significant effects during construction of the project and/or the significant effects of the completed development and its operation on landscape components and landscape character (including historic landscape characterisation).

5.146 The assessment should include the visibility and conspicuousness of the project during construction and of the presence and operation of the project and potential impacts on views and visual amenity. This should include any noise and light pollution effects, including on local amenity, tranquillity and nature conservation.

5.147 Any statutory undertaker commissioning or undertaking works in relation to, or so as to affect land in a National Park or Areas of Outstanding Natural Beauty, would need to comply with the respective duties in section 11A of the National Parks and Access to Countryside Act 1949 and section 85 of the Countryside and Rights of Way Act 2000.

5.148 For significant road widening or the building of new roads in National Parks and the Broads applicants also need to fulfil the requirements set out in Defra’s English national parks and the broads: UK government vision and circular 2010 or successor documents. These requirements should also be complied with for significant road widening or the building of new roads in Areas of Outstanding Natural Beauty.

Decision making

Landscape impact

5.149 Landscape effects depend on the nature of the existing landscape likely to be affected and nature of the effect likely to occur. Both of these

factors need to be considered in judging the impact of a project on landscape. Projects need to be designed carefully, taking account of the potential impact on the landscape. Having regard to siting, operational and other relevant constraints, the aim should be to avoid or minimise harm to the landscape, providing reasonable mitigation where possible and appropriate.

Development proposed within nationally designated areas

5.150 Great weight should be given to conserving landscape and scenic beauty in nationally designated areas. National Parks, the Broads and Areas of Outstanding Natural Beauty have the highest status of protection in relation to landscape and scenic beauty. Each of these designated areas has specific statutory purposes which help ensure their continued protection and which the Secretary of State has a statutory duty to have regard to in decisions.103

5.151 The Secretary of State should refuse development consent in these areas except in exceptional circumstances and where it can be demonstrated that it is in the public interest. Consideration of such applications should include an assessment of:

- the need for the development, including in terms of any national considerations, and the impact of consenting, or not consenting it, upon the local economy;
- the cost of, and scope for, developing elsewhere, outside the designated area, or meeting the need for it in some other way; and
- any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

5.152 There is a strong presumption against any significant road widening or the building of new roads and strategic rail freight interchanges in a National Park, the Broads and Areas of Outstanding Natural Beauty, unless it can be shown there are compelling reasons for the new or enhanced capacity and with any benefits outweighing the costs very significantly. Planning of the Strategic Road Network should encourage routes that avoid National Parks, the Broads and Areas of Outstanding Natural Beauty.

5.153 Where consent is given in these areas, the Secretary of State should be satisfied that the applicant has ensured that the project will be carried out to high environmental standards and where possible includes measures to enhance other aspects of the environment. Where necessary, the Secretary of State should consider the imposition of appropriate requirements to ensure these standards are delivered.

103 For an explanation of the statutory purposes and of the duties which will apply, see Duties on relevant authorities to have regard to the purposes of National Parks, AONBs and the Norfolk and Suffolk Broads.
Developments outside nationally designated areas which might affect them

5.154 The duty to have regard to the purposes of nationally designated areas also applies when considering applications for projects outside the boundaries of these areas which may have impacts within them. The aim should be to avoid compromising the purposes of designation and such projects should be designed sensitively given the various siting, operational, and other relevant constraints. This should include projects in England which may have impacts on designated areas in Wales or on National Scenic Areas in Scotland.

5.155 The fact that a proposed project will be visible from within a designated area should not in itself be a reason for refusing consent.

Developments in other areas

5.156 Outside nationally designated areas, there are local landscapes that may be highly valued locally and protected by local designation. Where a local development document in England has policies based on landscape character assessment, these should be given particular consideration. However, local landscape designations should not be used in themselves as reasons to refuse consent, as this may unduly restrict acceptable development.

5.157 In taking decisions, the Secretary of State should consider whether the project has been designed carefully, taking account of environmental effects on the landscape and siting, operational and other relevant constraints, to avoid adverse effects on landscape or to minimise harm to the landscape, including by reasonable mitigation.

Visual impact

5.158 The Secretary of State will have to judge whether the visual effects on sensitive receptors, such as local residents, and other receptors, such as visitors to the local area, outweigh the benefits of the development. Coastal areas are particularly vulnerable to visual intrusion because of the potential high visibility of development on the foreshore, on the skyline and affecting views along stretches of undeveloped coast, especially those defined as Heritage Coast.  

Mitigation

5.159 Reducing the scale of a project or making changes to its operation can help to avoid or mitigate the visual and landscape effects of a proposed project. However, reducing the scale or otherwise amending the design or changing the operation of a proposed development may result in a significant operational constraint and reduction in function. There may, be exceptional circumstances, where mitigation could have a very

104 See paragraph 114 of the National Planning Policy Framework.
significant benefit and warrant a small reduction in scale or function. In these circumstances, the Secretary of State may decide that the benefits of the mitigation to reduce the landscape effects outweigh the marginal loss of scale or function.

5.160 Adverse landscape and visual effects may be minimised through appropriate siting of infrastructure, design (including choice of materials), and landscaping schemes, depending on the size and type of proposed project. Materials and designs for infrastructure should always be given careful consideration.

5.161 Depending on the topography of the surrounding terrain and areas of population it may be appropriate to undertake landscaping off site, although if such landscaping was proposed to be consented by the development consent order, it would have to be included within the order limits for that application. For example, filling in gaps in existing tree and hedge lines would mitigate the impact when viewed from a more distant vista.

Land use including open space, green infrastructure and Green Belt

Introduction

5.162 Access to high quality open spaces and the countryside\textsuperscript{105} and opportunities for sport and recreation can be a means of providing necessary mitigation and/or compensation requirements. Green infrastructure can also enable developments to provide positive environmental and economic benefits.

5.163 The re-use of previously developed land for new development can make a major contribution to sustainable development by reducing the amount of countryside and undeveloped greenfield land that needs to be used. However, this may not be possible for some forms of infrastructure, particularly linear infrastructure such as roads and railway lines. Similarly for SRFIs, brownfield land may not be economically or commercially feasible.

5.164 Green Belts, defined in a development plan, are situated around certain cities and large built-up areas. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. For further information on the purposes and protection of Green Belt see the National Planning Policy Framework.

\textsuperscript{105} All open space of public value, including not just land, but also areas of water (such as rivers, canals, lakes and reservoirs) which offer important opportunities for sport and recreation and can act as a visual amenity.
Applicant’s assessment

5.165 The applicant should identify existing and proposed106 land uses near the project, any effects of replacing an existing development or use of the site with the proposed project or preventing a development or use on a neighbouring site from continuing. Applicants should also assess any effects of precluding a new development or use proposed in the development plan. The assessment should be proportionate.

5.166 Existing open space, sports and recreational buildings and land should not be developed unless the land is surplus to requirements or the loss would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location. Applicants considering proposals which would involve developing such land should have regard to any local authority’s assessment of need for such types of land and buildings.

5.167 During any pre-application discussions with the applicant, the local planning authority should identify any concerns it has about the impacts of the application on land-use, having regard to the development plan and relevant applications, and including, where relevant, whether it agrees with any independent assessment that the land is surplus to requirements. These are also matters that local authorities may wish to include in their Local Impact Report which can be submitted after an application for development consent has been accepted.

5.168 Applicants should take into account the economic and other benefits of the best and most versatile agricultural land (defined as land in grades 1, 2 and 3a of the Agricultural Land Classification). Where significant development of agricultural land is demonstrated to be necessary, applicants should seek to use areas of poorer quality land in preference to that of a higher quality. Applicants should also identify any effects, and seek to minimise impacts, on soil quality, taking into account any mitigation measures proposed. Where possible, developments should be on previously developed (brownfield) sites provided that it is not of high environmental value. For developments on previously developed land, applicants should ensure that they have considered the risk posed by land contamination and how it is proposed to address this.107

5.169 Applicants should safeguard any mineral resources on the proposed site as far as possible.

5.170 The general policies controlling development in the countryside apply with equal force in Green Belts but there is, in addition, a general presumption against inappropriate development within them. Such development should not be approved except in very special circumstances. Applicants should therefore determine whether their proposal, or any part of it, is within an established Green Belt and, if so, whether their proposal may be considered inappropriate development.

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106 For example, where a planning application has been submitted.
107 For further guidance see Model Procedures for Management of Land Contamination (CLR11) which sets out procedures for risk assessment, deciding on remedial options and implementing remediation.
within the meaning of Green Belt policy. Metropolitan Open Land, and land designated as Local Green Space in a local or neighbourhood plan, are subject to the same policies of protection as Green Belt, and inappropriate development should not be approved except in very special circumstances.

5.171 Linear infrastructure linking an area near a Green Belt with other locations will often have to pass through Green Belt land. The identification of a policy need for linear infrastructure will take account of the fact that there will be an impact on the Green Belt and as far as possible, of the need to contribute to the achievement of the objectives for the use of land in Green Belts.

5.172 Promoters of strategic rail freight interchanges may find that the only viable sites for meeting the need for regional strategic rail freight interchanges are on Green Belt land. Promoters need to recognise the special protection given to Green Belt land. The Secretary of State would have to be convinced, and promoters would need to demonstrate, very special circumstances to justify planning consent for inappropriate development in the Green Belt (see 5.178).

Decision making

5.173 Where the project conflicts with a proposal in a development plan, the Secretary of State should take account of the stage which the development plan document has reached in deciding what weight to give to the plan for the purposes of determining the planning significance of what is replaced, prevented or precluded. The closer the development plan document is to being adopted by the local plan, the greater the weight which can be attached to the impact of the proposal on the plan108.

5.174 The Secretary of State should not grant consent for development on existing open space, sports and recreational buildings and land, including playing fields, unless an assessment has been undertaken either by the local authority or independently, which has shown the open space or the buildings and land to be surplus to requirements, or the Secretary of State determines that the benefits of the project (including need) outweigh the potential loss of such facilities, taking into account any positive proposals made by the applicant to provide new, improved or compensatory land or facilities.

5.175 Where networks of green infrastructure have been identified in development plans, they should normally be protected from development, and, where possible, strengthened by or integrated within it. The value of linear infrastructure and its footprint in supporting biodiversity and ecosystems should also be taken into account when assessing the impact on green infrastructure.

108 See the NPPF for national policy on the weight to be given to policies in emerging plans.
5.176 The decision-maker should take into account the economic and other benefits of the best and most versatile agricultural land. The decision-maker should give little weight to the loss of agricultural land in grades 3b, 4 and 5, except in areas (such as uplands) where particular agricultural practices may themselves contribute to the quality and character of the environment or the local economy.

5.177 In considering the impact on maintaining coastal recreation sites and features, the Secretary of State should expect applicants to have taken advantage of opportunities to maintain and enhance access to the coast. In doing so the Secretary of State should consider the implications for development of the creation of a continuous signed and managed route around the coast, as proposed in the Marine and Coastal Access Act 2009.

5.178 When located in the Green Belt national networks infrastructure projects may comprise inappropriate development. Inappropriate development is by definition harmful to the Green Belt and there is a presumption against it except in very special circumstances. The Secretary of State will need to assess whether there are very special circumstances to justify inappropriate development. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. In view of the presumption against inappropriate development, the Secretary of State will attach substantial weight to the harm to the Green Belt, when considering any application for such development.

Mitigation

5.179 Applicants can minimise the direct effects of a project on the existing use of the proposed site, or proposed uses near the site by the application of good design principles, including the layout of the project and the protection of soils during construction.

5.180 Where green infrastructure is affected, applicants should aim to ensure the functionality and connectivity of the green infrastructure network is maintained and any necessary works are undertaken, where possible, to mitigate any adverse impact and, where appropriate, to improve that network and other areas of open space, including appropriate access to new coastal access routes, National Trails and other public rights of way.

5.181 The Secretary of State should also consider whether mitigation of any adverse effects on green infrastructure or open space is adequately provided for by means of any planning obligations, for example, to provide exchange land and provide for appropriate management and maintenance agreements. Any exchange land should be at least as

109 See National Planning Policy Framework.
110 For more info see Defra, Code of Practice for the Sustainable Use of Soils on Construction Sites.
good in terms of size, usefulness, attractiveness, quality and accessibility. Alternatively, where Sections 131 and 132 of the Planning Act 2008 apply, any replacement land provided under those sections will need to conform to the requirements of those sections.

5.182 Where a proposed development has an impact on a Mineral Safeguarding Area (MSA), the Secretary of State should ensure that the applicant has put forward appropriate mitigation measures to safeguard mineral resources.

5.183 Where a project has a sterilising effect on land use there may be scope for this to be mitigated through, for example, using the land for nature conservation or wildlife corridors or for parking and storage in employment areas.

5.184 Public rights of way, National Trails, and other rights of access to land (e.g. open access land) are important recreational facilities for walkers, cyclists and equestrians. Applicants are expected to take appropriate mitigation measures to address adverse effects on coastal access, National Trails, other public rights of way and open access land and, where appropriate, to consider what opportunities there may be to improve access. In considering revisions to an existing right of way consideration needs to be given to the use, character, attractiveness and convenience of the right of way. The Secretary of State should consider whether the mitigation measures put forward by an applicant are acceptable and whether requirements in respect of these measures might be attached to any grant of development consent.

5.185 Public rights of way can be extinguished under Section 136 of the Act if the Secretary of State is satisfied that an alternative has been or will be provided or is not required.

Noise and vibration

Introduction

5.186 Excessive noise can have wide-ranging impacts on the quality of human life and health (e.g. owing to annoyance or sleep disturbance), use and enjoyment of areas of value (such as quiet places) and areas with high landscape quality. The Government’s policy is set out in the Noise Policy Statement for England. It promotes good health and good quality of life through effective noise management. Similar considerations apply to vibration, which can also cause damage to buildings. In this section, in line with current legislation, references below to “noise” apply equally to assessment of impacts of vibration.

5.187 Noise resulting from a proposed development can also have adverse impacts on wildlife and biodiversity. Noise effects of the proposed development on ecological receptors should be assessed in accordance with the Biodiversity and Geological Conservation section of this NPS.
5.188 Factors that will determine the likely noise impact include:

- construction noise and the inherent operational noise from the proposed development and its characteristics;
- the proximity of the proposed development to noise sensitive premises (including residential properties, schools and hospitals) and noise sensitive areas (including certain parks and open spaces);
- the proximity of the proposed development to quiet places and other areas that are particularly valued for their tranquility, acoustic environment or landscape quality such as National Parks, the Broads or Areas of Outstanding Natural Beauty; and
- the proximity of the proposed development to designated sites where noise may have an adverse impact on the special features of interest, protected species or other wildlife.

Applicant’s assessment

5.189 Where a development is subject to EIA and significant noise impacts are likely to arise from the proposed development, the applicant should include the following in the noise assessment, which should form part of the environment statement:

- a description of the noise sources including likely usage in terms of number of movements, fleet mix and diurnal pattern. For any associated fixed structures, such as ventilation fans for tunnels, information about the noise sources including the identification of any distinctive tonal, impulsive or low frequency characteristics of the noise.
- identification of noise sensitive premises and noise sensitive areas that may be affected.
- the characteristics of the existing noise environment.
- a prediction on how the noise environment will change with the proposed development:
  - in the shorter term such as during the construction period;
  - in the longer term during the operating life of the infrastructure;
  - at particular times of the day, evening and night as appropriate.
- an assessment of the effect of predicted changes in the noise environment on any noise sensitive premises and noise sensitive areas.
- measures to be employed in mitigating the effects of noise. Applicants should consider using best available techniques to reduce noise impacts.
the nature and extent of the noise assessment should be proportionate to the likely noise impact.

5.190 The potential noise impact elsewhere that is directly associated with the development, such as changes in road and rail traffic movements elsewhere on the national networks, should be considered as appropriate.

5.191 Operational noise, with respect to human receptors, should be assessed using the principles of the relevant British Standards and other guidance. The prediction of road traffic noise should be based on the method described in *Calculation of Road Traffic Noise*. The prediction of noise from new railways should be based on the method described in *Calculation of Railway Noise*. For the prediction, assessment and management of construction noise, reference should be made to any relevant British Standards and other guidance which also give examples of mitigation strategies.

5.192 The applicant should consult Natural England with regard to assessment of noise on designated nature conservation sites, protected landscapes, protected species or other wildlife. The results of any noise surveys and predictions may inform the ecological assessment. The seasonality of potentially affected species in nearby sites may also need to be taken into account.

Decision making

5.193 Developments must be undertaken in accordance with statutory requirements for noise. Due regard must have been given to the relevant sections of the *Noise Policy Statement for England*, *National Planning Policy Framework* and the Government's associated planning guidance on noise.

5.194 The project should demonstrate good design through optimisation of scheme layout to minimise noise emissions and, where possible, the use of landscaping, bunds or noise barriers to reduce noise transmission. The project should also consider the need for the mitigation of impacts elsewhere on the road and rail networks that have been identified as arising from the development, according to Government policy.

5.195 The Secretary of State should not grant development consent unless satisfied that the proposals will meet, the following aims, within the context of Government policy on sustainable development:

- avoid significant adverse impacts on health and quality of life from noise as a result of the new development;
- mitigate and minimise other adverse impacts on health and quality of life from the new development; and
- contribute to improvements to health and quality of life through the effective management and control of noise, where possible.
5.196 In determining an application, the Secretary of State should consider whether requirements are needed which specify that the mitigation measures put forward by the applicant are put in place to ensure that the noise levels from the project do not exceed those described in the assessment or any other estimates on which the decision was based.

Mitigation

5.197 The Examining Authority and the Secretary of State should consider whether mitigation measures are needed both for operational and construction noise over and above any which may form part of the project application. The Secretary of State may wish to impose requirements to ensure delivery of all mitigation measures.

5.198 Mitigation measures for the project should be proportionate and reasonable and may include one or more of the following:

- engineering: containment of noise generated;
- materials: use of materials that reduce noise, (for example low noise road surfacing);
- lay-out: adequate distance between source and noise-sensitive receptors; incorporating good design to minimise noise transmission through screening by natural or purpose built barriers;
- administration: specifying acceptable noise limits or times of use (e.g., in the case of railway station PA systems).

5.199 For most national network projects, the relevant Noise Insulation Regulations will apply. These place a duty on and provide powers to the relevant authority to offer noise mitigation through improved sound insulation to dwellings, with associated ventilation to deal with both construction and operational noise. An indication of the likely eligibility for such compensation should be included in the assessment. In extreme cases, the applicant may consider it appropriate to provide noise mitigation through the compulsory acquisition of affected properties in order to gain consent for what might otherwise be unacceptable development. Where mitigation is proposed to be dealt with through compulsory acquisition, such properties would have to be included within the development consent order land in relation to which compulsory acquisition powers are being sought.

5.200 Applicants should consider opportunities to address the noise issues associated with the Important Areas as identified through the noise action planning process.
Impacts on transport networks

Introduction

5.201 This section deals with the impacts of a scheme on wider transport networks and of construction sites on the networks whilst a scheme is being developed.

5.202 Development of national networks can have a variety of impacts on the surrounding transport infrastructure including connecting transport networks. Impacts may include economic, social and environmental effects. The consideration and mitigation of transport impacts is an essential part of Government’s wider policy objectives for sustainable development.

Applicant’s assessment

5.203 Applicants should have regard to the policies set out in local plans, for example, policies on demand management being undertaken at the local level.

5.204 Applicants should consult the relevant highway authority, and local planning authority, as appropriate, on the assessment of transport impacts.

5.205 Applicants should consider reasonable opportunities to support other transport modes in developing infrastructure. As part of this, consistent with paragraph 3.19-3.22 above, the applicant should provide evidence that as part of the project they have used reasonable endeavours to address any existing severance issues that act as a barrier to non-motorised users.

Road and rail developments

5.206 For road and rail developments, if a development is subject to EIA and is likely to have significant environmental impacts arising from impacts on transport networks, the applicant’s environmental statement should describe those impacts and mitigating commitments. In all other cases the applicant’s assessment should include a proportionate assessment of the transport impacts on other networks as part of the application.

Strategic rail freight interchange developments

5.207 If a project is likely to have significant transport impacts it should include a Transport Assessment, using the WebTAG methodology stipulated in Department for Transport guidance, or any successor to such methodology. If a development is subject to EIA and is likely to have significant environmental impacts arising from impacts on transport networks, the applicant’s environmental statement should describe those impacts.
Where appropriate, the applicant should prepare a travel plan including management measures to mitigate transport impacts. The applicant should also provide details of proposed measures to improve access by public transport and sustainable modes where relevant, to reduce the need for any parking associated with the proposal and to mitigate transport impacts.

For schemes impacting on the Strategic Road Network, applicants should have regard to DfT Circular 02/2013 *The Strategic Road Network and the delivery of sustainable development* (or prevailing policy) which sets out the way in which the highway authority for the Strategic Road Network, will engage with communities and the development industry to deliver sustainable development and, thus, economic growth, whilst safeguarding the primary function and purpose of the Strategic Road Network.

If new transport infrastructure is proposed, applicants should discuss with network providers the possibility of co-funding by Government for any third-party benefits. Guidance has been issued in England which explains the circumstances where this may be possible. The Government cannot guarantee in advance that funding will be available for any given uncommitted scheme at any specified time, and cannot provide financial support to a scheme that solely mitigates the impacts of a specific development. Any decisions on co-funded transport infrastructure will need to be taken in the context of the Government’s wider policy of transport improvements.

**Decision making**

The Examining Authority and the Secretary of State should give due consideration to impacts on local transport networks and policies set out in local plans, for example, policies on demand management being undertaken at the local level.

**Road and rail developments**

Schemes should be developed and options considered in the light of relevant local policies and local plans, taking into account local models where appropriate, however the scheme must be decided in accordance with the NPS except to the extent that one or more of sub-sections 104(4) to 104(8) of the Planning Act 2008 applies.

**Strategic Rail Freight Interchanges**

Projects may give rise to impacts on the surrounding transport infrastructure including connecting transport networks. The Secretary of State should therefore ensure that the applicant has taken reasonable steps to mitigate these impacts. Where the proposed mitigation measures are insufficient to reduce the impact on the transport infrastructure to acceptable levels, the Secretary of State should expect applicants to accept requirements and/or obligations for funding
infrastructure and otherwise mitigating adverse impacts on transport networks, as set out below.

5.214 Provided that the applicant is willing to commit to transport planning obligations and, to mitigate transport impacts identified in the WebTAG transport assessment (including environment and social impacts), with attribution of costs calculated in accordance with the Department's guidance, then development consent should not be withheld. Appropriately limited weight should be applied to residual effects on the surrounding transport infrastructure.

Mitigation

5.215 Mitigation measures for schemes should be proportionate and reasonable, focussed on promoting sustainable development.

5.216 Where development would worsen accessibility such impacts should be mitigated so far as reasonably possible. There is a very strong expectation that impacts on accessibility for non-motorised users should be mitigated.

Road and rail developments

5.217 Mitigation measures may relate to the design, lay-out or operation of the scheme.

Strategic rail freight interchange developments

5.218 For strategic rail freight interchanges, travel planning should be undertaken for all major developments which generate significant amounts of transport movement. There may be circumstances where the implementation of travel plan measures alone would not be sufficient to reduce the traffic demand of a project to acceptable levels. In such instances, the applicant should work with the relevant local planning and highway authorities to determine whether the implementation of traffic management measures is appropriate, and if so how those might best be delivered.

Water quality and resources

Introduction

5.219 Infrastructure development can have adverse effects on the water environment, including groundwater, inland surface water, transitional waters\(^{111}\) and coastal waters. During the construction and operation, it can lead to increased demand for water, involve discharges to water and

\(^{111}\) As defined in the Water Framework Directive (2000/60/EC), transitional waters are bodies of surface water in the vicinity of river mouths which are partly saline in character as a result of their proximity to coastal waters but which are substantially influenced by freshwater flows.
cause adverse ecological effects resulting from physical modifications to the water environment. There may also be an increased risk of spills and leaks of pollutants to the water environment. These effects could lead to adverse impacts on health or on protected species and habitats (see Section paragraphs 5.20 to 5.38 on biodiversity and geological conservation), and could, in particular, result in surface waters, groundwaters or protected areas failing to meet environmental objectives established under the Water Framework Directive.

5.220 The Government’s planning policies make clear that the planning system should contribute to and enhance the natural and local environment by, amongst other things, preventing both new and existing development from contributing to, or being put at unacceptable risk from, or being adversely affected by, water pollution. The Government has issued guidance on water supply, wastewater and water quality considerations in the planning system. Where applicable, an application for a development consent order has to contain a plan with accompanying information identifying water bodies in a River Basin Management Plan.

Applicant’s assessment

5.221 Applicants should make early contact with the relevant regulators, including the Environment Agency, for abstraction licensing and with water supply companies likely to supply the water. Where a development is subject to EIA and the development is likely to have significant adverse effects on the water environment, the applicant should ascertain the existing status of, and carry out an assessment of the impacts of the proposed project on water quality, water resources and physical characteristics as part of the environmental statement.

5.222 For those projects that are improvements to the existing infrastructure, such as road widening, opportunities should be taken, where feasible, to improve upon the quality of existing discharges where these are identified and shown to contribute towards Water Framework Directive commitments.

5.223 Any environmental statement should describe:

- the existing quality of waters affected by the proposed project;
- existing water resources affected by the proposed project and the impacts of the proposed project on water resources;
- existing physical characteristics of the water environment (including quantity and dynamics of flow) affected by the proposed project;

---

112 Protected areas are areas which have been designated as requiring special protection under specific Community legislation for the protection of their surface water and groundwater or for the conservation of habitats and species directly depending on water.

113 Available on the planning guidance portal.

114 The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, s5(2)(l)(iii))
project, and any impact of physical modifications to these characteristics;

- any impacts of the proposed project on water bodies or protected areas under the Water Framework Directive and source protection zones (SPZs) around potable groundwater abstractions; and
- any cumulative effects.

### Decision making

5.224 Activities that discharge to the water environment are subject to pollution control. The considerations set out in paragraphs 4.48-4.56 on the interface between planning and pollution control therefore apply. These considerations will also apply in an analogous way to the abstraction licensing regime regulating activities that take water from the water environment, and to the control regimes relating to works to, and structures in, on, or under a controlled water.

5.225 The Secretary of State will generally need to give impacts on the water environment more weight where a project would have adverse effects on the achievement of the environmental objectives established under the Water Framework Directive.

5.226 The Secretary of State should be satisfied that a proposal has had regard to the River Basin Management Plans and the requirements of the Water Framework Directive (including Article 4.7) and its daughter directives, including those on priority substances and groundwater. The specific objectives for particular river basins are set out in River Basin Management Plans. In terms of Water Framework Directive compliance, the overall aim of projects should be no deterioration of ecological status in watercourses, ensuring that Article 4.7 of the Water Framework Directive Regulations does not need to be applied. The Secretary of State should also consider the interactions of the proposed project with other plans such as Water Resources Management Plans, Shoreline/Estuary Management Plans and Marine Plans.

5.227 The Examining Authority and the Secretary of State should consider proposals put forward by the applicant to mitigate adverse effects on the water environment and whether appropriate requirements should be attached to any development consent and/or planning obligations. If the Environment Agency continues to have concerns and objects to the grant of development consent on the grounds of impacts on water quality/resources, the Secretary of State can grant consent, but will need to be satisfied before deciding whether or not to do so that all reasonable steps have been taken by the applicant and the Environment Agency to try to resolve the concerns, and that the Environment Agency is satisfied with the outcome.
Mitigation

5.228 The impact on local water resources can be minimised through planning and design for the efficient use of water, including water recycling.

5.229 The Secretary of State should consider whether the mitigation measures put forward by the applicant which are needed for operation and construction (and which are over and above any which may form part of the project application) are acceptable. A construction management plan may help codify mitigation.

5.230 The project should adhere to any National Standards for sustainable drainage systems (SuDs). The National SuDs Standards will introduce a hierarchical approach to drainage design that promotes the most sustainable approach but recognises feasibility, and use of conventional drainage systems as part of a sustainable solution for any given site given its constraints.\textsuperscript{115}

5.231 The risk of impacts on the water environment can be reduced through careful design to facilitate adherence to good pollution control practice. For example, designated areas for storage and unloading, with appropriate drainage facilities, should be marked clearly.

\textsuperscript{115} See paragraphs 5.92 and 5.107.
Annex A: Congestion on the Strategic Road Network

<table>
<thead>
<tr>
<th>Year</th>
<th>Low demand forecast</th>
<th>Central traffic forecasts</th>
<th>High demand forecast</th>
</tr>
</thead>
<tbody>
<tr>
<td>2020</td>
<td>8%</td>
<td>17%</td>
<td>29%</td>
</tr>
<tr>
<td>2030</td>
<td>23%</td>
<td>40%</td>
<td>62%</td>
</tr>
<tr>
<td>2040</td>
<td>38%</td>
<td>62%</td>
<td>90%</td>
</tr>
</tbody>
</table>

Change in congestion on Strategic Road Network (from 2010)

<table>
<thead>
<tr>
<th>Year</th>
<th>Low demand forecast</th>
<th>Central traffic forecasts</th>
<th>High demand forecast</th>
</tr>
</thead>
<tbody>
<tr>
<td>2020</td>
<td>8%</td>
<td>26%</td>
<td>50%</td>
</tr>
<tr>
<td>2030</td>
<td>32%</td>
<td>72%</td>
<td>123%</td>
</tr>
<tr>
<td>2040</td>
<td>60%</td>
<td>121%</td>
<td>204%</td>
</tr>
</tbody>
</table>

116 Congestion is measured as change in lost seconds per vehicle mile from 2010 for England
117 Based on scenario 1 traffic forecast described in Annex B
Congestion on the Strategic Road Network in 2010
Congestion on the Strategic Road Network in 2040

Source: National Transport Model; TASD Division; DfT
Annex B: Road traffic forecasts

The Department’s Road Traffic Forecasts (RFTs) were previously published in 2013. This section sets out the updated forecasts to better reflect capacity and speeds on the London road network and to incorporate new GDP, fuel price and fuel efficiency forecasts.

As before, we have produced sensitivity analyses of the impact of different outcomes for key inputs into the model (specifically GDP per capita and fuel price) to demonstrate the impact on road traffic of different outcomes.

In addition, to better reflect the increasing uncertainty over how traditional relationships may have changed (for example between income and car ownership), and the role that other factors may be playing, we have produced a wider range of traffic forecasts. There are a range of factors that could affect traffic growth in the future which ultimately will affect the number of trips people make, the distance they travel and whether they are likely to make a trip by car.

The scenarios produced are:

- The relationship between income (as measured by GDP per capita) and car travel falls to zero (scenario 2). In RTF13 the relationship was estimated as a 10% increase in GDP per capita results in a 2-3% increase in car miles travelled;

- The number of trips made per person declines in the future (scenario 3).

The outcome is a number of forecasts that allow us to understand the potential for a range of outcomes for road demand. The range of forecasts is growth 17% to 55% over the period from 2013 outturn data to 2040 for all roads in England and 27% to 57% on the Strategic Road Network. This equates to forecast annual average growth rate for all roads of between 0.6% and 1.6%
In 2013 there were 258bn vehicle miles travelled on all roads in England\(^{119}\). Forecast scenario 1 is based on the same assumptions that were used in Road Traffic Forecast 2013 (RTF 13), but with the updates outlined above. In particular this assumes that car ownership, choice of mode and distance travelled all change in response to changing demographics, income and costs, based on the relationships in the model. Income, fuel costs and population growth are all based on external forecasts produced by The Office for Budget Responsibility (OBR), the Office for National Statistics (ONS), and the Department for Energy and Climate Change (DECC).

In scenario 1 the forecast is for a 43% increase to 2040 on all roads (an average annual increase of 1.3%), very similar to that published in RTF13. Growth on the Strategic Road Network is also forecast to be 43% over the same period.

\(^{119}\) Road Traffic Estimates 2013, table TRA0206 – (excludes motorcycles to be consistent with NTM outputs)
Forecast scenario 1 (high) and scenario 1 (low) are based on the same assumptions above, but with OBR high and low productivity GDP forecasts (+/- 0.5%pa) and high and low DECC oil price forecasts. These approaches produce a forecast range of 29% to 55% on all roads in England (1.0% to 1.6% annual average) and thus predict reasonably strong traffic growth even in the low sensitivity, demonstrating the impact of population growth on demand.

Forecast scenario 2 shows what would happen to traffic if the link between income and car ownership and car travel was removed. In this scenario, trip rates remain constant, and GDP, population, demographics, and fuel costs are assumed to change as in scenario 1, but it is assumed that car ownership and distance travelled do not grow in line with income. Under this scenario, traffic is still forecast to grow by 34% between 2013 and 2040. Growth on the Strategic Road Network in scenario 2 is also forecast at 34%. This scenario demonstrates that the impact of income on the traffic forecast is important, but that other factors such as population and fuel cost have a more significant impact.
Forecast scenario 3 is based on a decline in aggregate trip rates, which has been observed and estimated from travel data for the period 2003 – 2010, continuing into the future, rather than remaining constant as in the other scenarios. This results in much lower growth than the other scenarios, with traffic growing on all roads by 17% between 2013 and 2040. Traffic growth on the Strategic Road Network under this scenario is 34% to 2040 from 2013 levels. The growth forecast in this scenario is due to the impact of population and income on trips but also because the trip purposes that are exhibiting the largest decline tend to be shorter distance trips.

The forecasts are based on a range of assumptions about the drivers of travel demand. The range could be increased to produce higher or lower forecasts by making different assumptions or combining assumptions into the same forecast. We believe the range presented here represents a reasonable view of traffic demand and the sensitivity around it.
Annex C: Maps of strategic rail freight network

The Strategic Freight Network

Key

- Proposed routes*
- Core trunk routes: gauge cleared to at least W12
- Diversionary routes: gauge cleared to at least W12
- Core trunk and diversionary routes, lesser gauge

Dotted lines denote reopened routes

* Note: Under review by Rail Industry
Key Strategic Freight Routes – interaction with passenger traffic
Annex D: Overview of Development Process

Road and rail networks that drive economic growth, improve quality of life and improve environmental performance

**Strategy/Policy**
- Investing in Britain’s Future
- Transport an Engine for Growth
- Action for Roads
- Rail Command Paper
- HS2 Command Papers
- Road Safety Strategic Framework
- Ports and Maritime Strategies
- RIS: Strategic Vision

**Investment planning and decision-making**
- Evidence
  - Route Strategies
  - Rail Utilisation Strategies
  - Strategic Economic Plans
- Decisions
  - Road Investment Strategy
  - Performance Specification & Investment Plan
  - Rail Investment Strategy
  - Local Strategic Investment Priorities

**Planning decisions on schemes**
- NSIPs
  - NNNPS sets out Government’s planning policies for decisions on NSIPs
- Non NSIPs
  - NPPF provides policies for LAs developing local plans and is the basis for decisions in the absence of a local plan

**Scheme delivery**
- Highways Agency – licence agreement with DfT (new company?)
- Network Rail
- Local Authorities
- Commercial Developers

**Evaluation**
- POPE
- DfT Evaluation Strategy
- HMT Green Book and DfT Business Case guidance on Management and Commercial Cases and evaluation

Some rail/light rail projects
- Transport and Works Act 1992 – orders can provide planning powers
Appendix 1 G.03: GUIDANCE ON COMPULSORY PURCHASE PROCESS AND THE CRICHEL DOWN RULES
Guidance on

Compulsory purchase process

and

The Crichel Down Rules

This compulsory purchase guidance updates the previous version published in February 2018. It applies only to England.

(The guidance contains internal hyperlinks to navigate within the document. You may need to install command icons on your toolbar to allow you to do this. This can be done by downloading the document then opening it as a PDF. Go to View, then Page Navigation and select Previous view/Next view. Once you click on a hyperlink, you can use the Previous arrow to take you back to your original place in the document.)
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Section 19: compulsory purchase of new rights and other interests
Section 20: compulsory purchase of Crown land
Section 21: certificates of appropriate alternative development
Section 22: protected assets certificate
Section 23: objection to division of land (material detriment)
Section 24: overriding easements and other rights

Separate but related guidance

Purchase notices

The Crichel Down Rules

Appendix A (see paragraph 18 of the Rules)
Appendix B (see paragraph 25 of the Rules)
Annex (see paragraph 1 of the Rules)
Compulsory purchase guidance

Tier 1: compulsory purchase overview

Guidance relevant to all compulsory purchase orders
This tier contains guidance on:

- General overview
- The compulsory purchase process:
  - Stage 1: choosing the right compulsory purchase power
  - Stage 2: justifying a compulsory purchase order
  - Stage 3: preparing and making a compulsory purchase order
  - Stage 4: consideration of the compulsory purchase order
  - Stage 5: implementing a compulsory purchase order
  - Stage 6: compensation
General overview

1. What are compulsory purchase powers?

These are powers which enable (‘enabling powers’) public bodies on which they are conferred to acquire land compulsorily. Compulsory purchase of land requires the approval of a confirming minister.

Compulsory purchase powers are an important tool to use as a means of assembling the land needed to help deliver social, environmental and economic change. Used properly, they can contribute towards effective and efficient urban and rural regeneration, essential infrastructure, the revitalisation of communities, and the promotion of business – leading to improvements in quality of life.

2. When should compulsory purchase powers be used?

Acquiring authorities should use compulsory purchase powers where it is expedient to do so. However, a compulsory purchase order should only be made where there is a compelling case in the public interest.

The confirming authority will expect the acquiring authority to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement. Where acquiring authorities decide to/arrange to acquire land by agreement, they will pay compensation as if it had been compulsorily purchased, unless the land was already on offer on the open market.

Compulsory purchase is intended as a last resort to secure the assembly of all the land needed for the implementation of projects. However, if an acquiring authority waits for negotiations to break down before starting the compulsory purchase process, valuable time will be lost. Therefore, depending on when the land is required, it may often be sensible, given the amount of time required to complete the compulsory purchase process, for the acquiring authority to:

- plan a compulsory purchase timetable as a contingency measure; and
- initiate formal procedures

This will also help to make the seriousness of the authority’s intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations.

When making and confirming an order, acquiring authorities and authorising authorities should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected. The officers’ report seeking authorisation for the compulsory purchase order should address human rights issues. Further guidance on human rights issues can be found on the Equality and Human Rights Commission’s website.
3. What should acquiring authorities consider when offering financial compensation in advance of a compulsory purchase order?

When offering financial compensation for land in advance of a compulsory purchase order, public sector organisations should, as is the norm, consider value for money in terms of the Exchequer as a whole in order to avoid any repercussive cost impacts or pressures on both the scheme in question and other publicly-funded schemes.

Acquiring authorities can consider all of the costs involved in the compulsory purchase process when assessing the appropriate payments for purchase of land in advance of compulsory purchase. For instance, the early acquisition may avoid some of the following costs being incurred:

- legal fees (both for the order making process as a whole and for dealing with individual objectors within a wider order, including compensation claims)
- wider compulsory purchase order process costs (for example, staff resources)
- the overall cost of project delay (for example, caused by delay in gaining entry to the land)
- any other reasonable linked costs (for example, potential for objectors to create further costs through satellite litigation on planning permissions and other orders)

In order to reach early settlements, public sector organisations should make reasonable initial offers, and be prepared to engage constructively with claimants about relocation issues and mitigation and accommodation works where relevant.

4. Who has compulsory purchase powers?

Many public bodies with statutory powers have compulsory purchase powers, including:

- local authorities (which include for some purposes national park authorities)
- statutory undertakers
- some executive agencies, including Homes England1
- health service bodies

Government ministers also have compulsory purchase powers, but departments that use them will have their own internal guidance on how to proceed.

5. How is a compulsory purchase order made?

Detailed guidance on the compulsory purchase process is provided in the section on [the compulsory purchase order process](#).

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1 Homes England is the trading name for the Homes and Communities Agency (HCA) and operates under the powers given to the HCA in the Housing and Regeneration Act 2008.
6. How should the Public Sector Equality Duty be taken into account in the compulsory purchase regime?

All public sector acquiring authorities are bound by the Public Sector Equality Duty as set out in section 149 of the Equality Act 2010. Throughout the compulsory purchase process acquiring authorities must have due regard to the need to: (a) eliminate unlawful discrimination, harassment, victimisation; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. In performing their public functions, acquiring authorities must have due regard to the need to meet these three aims of the Equality Act 2010.

For example, an important use of compulsory purchase powers is to help regenerate run-down areas. Although low income is not a protected characteristic, it is not uncommon for people from ethnic minorities, the elderly or people with a disability to be over-represented in low income groups. As part of the Public Sector Equality Duty, acquiring authorities must have due regard to the need to promote equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. This might mean that the acquiring authority devises a process which promotes equality of opportunity by addressing particular problems that people with certain protected characteristics might have (eg making sure that documents are accessible for people with sight problems or learning difficulties and that people have access to advocates or advice).

7. Can anyone else initiate compulsory purchase?

In certain circumstances an owner may also initiate a compulsory purchase process. An owner may initiate the process by serving:

- a purchase notice under section 137 of the Town and Country Planning Act 1990 and section 32 Planning (Listed Buildings and Conservation Areas) Act 1990 - served by landowners following an adverse planning or listed building consent decision where, in specified circumstances, they consider that the land has become incapable of reasonable beneficial use in its existing state; or

- a blight notice under section 150 of the Town and Country Planning 1990 Act - served by landowners where they have made reasonable endeavours to sell their land but, because of blight caused by planning proposals affecting the land, they have not been able to do so, except at a substantially lower price than might reasonably have been expected. Blight notices can only be served in the circumstances listed in schedule 13 to the Town and Country Planning Act 1990

8. Are there any other ways to compulsorily acquire land?

Other powers of compulsory purchase include:

- a Transport and Works Act order under the Transport and Works Act 1992 - guidance on Transport and Works Act orders is available from the Department for Transport

- a development consent order under the Planning Act 2008 for a Nationally
Significant Infrastructure Project - guidance is available here

- a hybrid act of Parliament, such as the Crossrail Act 2008, which is one promoted by the government but in relation to specified land rather than the UK as a whole

- a harbour revision order and a harbour empowerment order under the Harbours Act 1964 – guidance is available here

This guidance relates to the use of compulsory purchase powers to make a compulsory purchase order that is provided by a specific act of Parliament and requires the approval of a confirming minister.
The compulsory purchase order process

9. What is the process for making a compulsory purchase order?

There are six key stages in the process:

- **Stage 1: choosing the right compulsory purchase power**
- **Stage 2: justifying a compulsory purchase order**
- **Stage 3: preparing and making a compulsory purchase order**
- **Stage 4: consideration of the compulsory purchase order**
- **Stage 5: implementing a compulsory purchase order**
- **Stage 6: compensation**
Stage 1: choosing the right compulsory purchase power

10. When can an acquiring authority use its compulsory purchase powers?

There are a large number of enabling powers, each of which specifies the bodies that are acquiring authorities for the purposes of the power and the purposes for which the land can be acquired. The purpose for which an acquiring authority seeks to acquire land will determine the statutory power under which compulsory purchase is sought. This in turn will influence the factors which the confirming minister will want to take into account in deciding whether to confirm a compulsory purchase order.

Most acts containing enabling powers specify that the procedures in the Acquisition of Land Act 1981 apply to orders made under those powers. Where this is the case, an acquiring authority must follow those procedures.

11. Which power should an acquiring authority use to make a compulsory purchase order?

Acquiring authorities should look to use the most specific power available for the purpose in mind, and only use a general power when a specific power is not available. The authority should have regard to any guidance relating to the use of the power and adhere to any legislative requirements relating to its use.

Specific guidance is available for:

- local authorities for planning purposes
- local authorities in conjunction with other powers or where land is required for more than one function
- Homes England
- urban development corporations
- new town development corporations
- local housing authorities for housing purposes
- to improve the appearance or condition of land
- for educational purposes
- for public libraries and museums
- for airport Public Safety Zones
- for listed buildings in need of repair
Stage 2: justifying a compulsory purchase order

12. How does an acquiring authority justify a compulsory purchase order?

It is the acquiring authority that must decide how best to justify its proposal to compulsorily acquire land under a particular act. The acquiring authority will need to be ready to defend the proposal at any inquiry or through written representations and, if necessary, in the courts.

There are certain fundamental principles that a confirming minister should consider when deciding whether or not to confirm a compulsory purchase order (see How will the Confirming minister consider the acquiring authority's justification for a compulsory purchase order?). Acquiring authorities may find it useful to take account of these in preparing their justification.

A compulsory purchase order should only be made where there is a compelling case in the public interest.

An acquiring authority should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected. Particular consideration should be given to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention.

13. How will the confirming minister consider the acquiring authority's justification for a compulsory purchase order?

The minister confirming the order has to be able to take a balanced view between the intentions of the acquiring authority and the concerns of those with an interest in the land that it is proposing to acquire compulsorily and the wider public interest. The more comprehensive the justification which the acquiring authority can present, the stronger its case is likely to be.

However, the confirming minister will consider each case on its own merits and this guidance is not intended to imply that the confirming minister will require any particular degree of justification for any specific order. It is not essential to show that land is required immediately to secure the purpose for which it is to be acquired, but a confirming minister will need to understand, and the acquiring authority must be able to demonstrate, that there are sufficiently compelling reasons for the powers to be sought at this time.

If an acquiring authority does not:

- have a clear idea of how it intends to use the land which it is proposing to acquire; and
- cannot show that all the necessary resources are likely to be available to achieve that end within a reasonable time-scale.
it will be difficult to show conclusively that the compulsory acquisition of the land included in the order is justified in the public interest, at any rate at the time of its making.

See also Section 1: advice on section 226 of the Town and Country Planning Act 1990 for further information in relation to orders under that power.

14. What information about the resource implications of the proposed scheme does an acquiring authority need to provide?

In preparing its justification, the acquiring authority should address:

a) **sources of funding** - the acquiring authority should provide substantive information as to the sources of funding available for both acquiring the land and implementing the scheme for which the land is required. If the scheme is not intended to be independently financially viable, or that the details cannot be finalised until there is certainty that the necessary land will be required, the acquiring authority should provide an indication of how any potential shortfalls are intended to be met. This should include:

- the degree to which other bodies (including the private sector) have agreed to make financial contributions or underwrite the scheme; and

- the basis on which the contributions or underwriting is to be made

b) **timing of that funding** - funding should generally be available now or early in the process. Failing that, the confirming minister would expect funding to be available to complete the compulsory acquisition within the statutory period (see section 4 of the Compulsory Purchase Act 1965) following the operative date, and only in exceptional circumstances would it be reasonable to acquire land with little prospect of the scheme being implemented for a number of years.

Evidence should also be provided to show that sufficient funding could be made available immediately to cope with any acquisition resulting from a **blight notice**.

15. How does the acquiring authority address whether there are any other impediments to the scheme going ahead?

The acquiring authority will also need to be able to show that the scheme is unlikely to be blocked by any physical or legal impediments to implementation. These include:

- the programming of any infrastructure accommodation works or remedial work which may be required; and

- any need for planning permission or other consent or licence

Where planning permission will be required for the scheme, and permission has yet to be granted, the acquiring authority should demonstrate to the confirming minister that there are no obvious reasons why it might be withheld. Irrespective of the legislative powers under which the actual acquisition is being proposed, if planning permission is
required for the scheme, then, under section 38(6) of the Planning and Compulsory Purchase Act 2004, the planning application will be determined in accordance with the development plan for the area, unless material considerations indicate otherwise. Such material considerations might include, for example, a local authority's supplementary planning documents and national planning policy, including the National Planning Policy Framework.
Stage 3: preparing and making a compulsory purchase order

16. Can acquiring authorities enter land before deciding whether to include it in a compulsory purchase order?

In most cases, acquiring authorities have the right to enter and survey or value land in connection with a proposal to acquire an interest in or a right over land under powers in sections 172-179 of, and Schedule 14 to, the Housing and Planning Act 2016.

A minimum of 14 days’ notice of entry must be given to owners and occupiers of the land concerned and compensation is payable by acquiring authorities for any damage arising as a result of the exercise of the power. Acquiring authorities may apply to a justice of the peace for a warrant to exercise the power if necessary. A justice of the peace may only issue a warrant authorising a person to use force if satisfied that another person has prevented or is likely to prevent entry, and that it is reasonable to use force.

17. What are the benefits of undertaking negotiations in parallel with preparing and making a compulsory purchase order?

Undertaking negotiations in parallel with preparing and making a compulsory purchase order can help to build a good working relationship with those whose interests are affected by showing that the authority is willing to be open and to treat their concerns with respect. This includes statutory undertakers and similar bodies as well as private individuals and businesses. Such negotiations can then help to save time at the formal objection stage by minimising the fear that can arise from misunderstandings.

Talking to landowners will also assist the acquiring authority to understand more about the land it seeks to acquire and any physical or legal impediments to development that may exist. It may also help in identifying what measures can be taken to mitigate the effects of the scheme on landowners and neighbours, thereby reducing the cost of a scheme.

Acquiring authorities are expected to provide evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted, save for lands where land ownership is unknown or in question.

18. Can alternative dispute resolution techniques be used to address concerns about a compulsory purchase order?

In the interests of speed and fostering good will, acquiring authorities are urged to consider offering those with concerns about a compulsory purchase order full access to alternative dispute resolution techniques. These should involve a suitably qualified independent third party and should be available wherever appropriate throughout the whole of the compulsory purchase process, from the planning and preparation stage to agreeing the compensation payable for the acquired properties.

The use of alternative dispute resolution techniques can save time and money for both parties, while its relative speed and informality may also help to reduce the stress which the process inevitably places on those whose properties are affected. For example, mediation might help to clarify concerns relating to the principle of compulsorily acquiring the land, while other techniques such as early neutral evaluation might help to relieve worries at an early stage about the potential level of compensation eventually payable if
19. What other steps should be considered to help those affected by a compulsory purchase order?

Compulsory purchase proposals will inevitably lead to a period of uncertainty and anxiety for the owners and occupiers of the affected land. Acquiring authorities should therefore consider:

- providing full information from the outset about what the compulsory purchase process involves, the rights and duties of those affected and an indicative timetable of events; information should be in a format accessible to all those affected

- appointing a specified case manager during the preparatory stage to whom those with concerns about the proposed acquisition can have easy and direct access

- keeping any delay to a minimum by completing the statutory process as quickly as possible and taking every care to ensure that the compulsory purchase order is made correctly and under the terms of the most appropriate enabling power

- offering to alleviate concerns about future compensation entitlement by entering into agreements about the minimum level of compensation which would be payable if the acquisition goes ahead (not excluding the claimant’s future right to refer the matter to the Upper Tribunal (Lands Chamber))

- offering advice and assistance to affected occupiers in respect of their relocation and providing details of available relocation properties where appropriate

- providing a 'not before' date, confirming that acquisition will not take place before a certain time

- where appropriate, give consideration to funding landowners' reasonable costs of negotiation or other costs and expenses likely to be incurred in advance of the process of acquisition

20. Why is it important to make sure that a compulsory purchase order is made correctly?

The confirming minister has to be satisfied that the statutory procedures have been followed correctly, whether the compulsory purchase order is opposed or not. This means that the confirming department has to check that no one has been or will be substantially prejudiced as a result of:

- a defect in the compulsory purchase order; or

- by a failure to follow the correct procedures, such as the service of additional or amended personal notices

Where the procedures set out in the Acquisition of Land Act 1981 apply, acquiring authorities must prepare compulsory purchase orders in conformity with the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004 and are urged to take every possible care in doing so, including recording the names and addresses of those with
an interest in the land to be acquired. (See also Can acquiring authorities seek advice from the confirming department?)

Advice on how to complete the forms of orders to which the Compulsory Purchase of Land (Prescribed Forms) Regulations 2004 apply is available here.

21. Are there any other important matters that may require consideration when making a compulsory purchase order?

Where relevant, acquiring authorities should also have regard to advice available on:

- the need to justify the extent of the scheme to be disregarded at the outset
- the protection afforded to special kinds of land
- compulsory purchase of new rights and other interests - for example, in the compulsory creation of a right of access
- restrictions on the compulsory purchase of Crown land

22. Which parties should be notified of a compulsory purchase order?

The parties who must be notified of a compulsory purchase order are referred to as qualifying persons. A qualifying person includes:

- an owner
- an occupier
- a tenant (whatever the period of the tenancy)
- a person to whom the acquiring authority would be required to give notice to treat if it was proceeding under section 5(1) of the Compulsory Purchase Act 1965
- a person the acquiring authority thinks is likely to be entitled to make a claim for compensation under section 10 of the 1965 act (compensation for injurious affection) if the order is confirmed and the compulsory purchase takes place, so far as he is known to the acquiring authority after making diligent inquiry; this relates mainly, but not exclusively, to easements and restrictive covenants

When serving notice of an order on qualifying persons, the acquiring authority is also expected to send to each one a copy of the authority’s statement of reasons for making the order. A copy of this statement should also be sent, where appropriate, to any applicant for planning permission in respect of the land. This statement of reasons, although non-statutory, should be as comprehensive as possible.

The general public will also be notified through newspaper notices and site notices.

23. Can objections be made to a compulsory purchase order?

There are statutory requirements for compulsory purchase orders that are about to be submitted to be advertised in newspapers and through site notices. These invite the
submission of objections to the relevant government minister. Objections can be made by owners, other qualifying persons and third parties, including members of the public. Objections must arrive with the minister within the period specified in the notice. This must be a minimum of 21 days. See here for further information on the requirements for grounds of objection and objectors’ statements of case in relation to an inquiry. It is important to make objections as relevant as possible to the matters which fall for consideration, in order for the objection to have an effect.

Under rule 14 of the Compulsory Purchase (Inquiries Procedure) Rules 2007, third parties have no right to be heard at an inquiry, although the inspector may permit them to appear at his discretion (although permission is not to be unreasonably withheld).

Objections should be sent to the confirming department at the address provided.

24. Can acquiring authorities seek advice from the confirming department?

Acquiring authorities are expected to seek their own legal and professional advice when preparing and making compulsory purchase orders. Where an authority has taken advice but still retains doubts about particular technical points concerning the form of a proposed compulsory purchase order, it may seek informal written comments from the confirming department by submitting a draft for technical examination.

Experience suggests that technical examination by the confirming department can assist significantly in avoiding delays caused by drafting defects in orders submitted for confirmation. The role of the confirming department at this stage is confined to giving the draft compulsory purchase order a technical examination to check that it complies with the requirements on form and content in the statutes and the Compulsory Purchase of Land (Prescribed Forms) Regulations 2004, without prejudice to the consideration of its merits or demerits.

25. What documents should accompany a compulsory purchase order which is submitted for confirmation?

Below is a checklist of the documents to be submitted to the confirming minister with a compulsory purchase order:

- one copy of the sealed compulsory purchase order and two copies of the sealed map
- two copies each of the unsealed compulsory purchase order and unsealed map - follow the link for further guidance on order maps
- one copy of the general certificate in support of order submission including (where appropriate) confirmation that the proper notices have been correctly served in relation to: (a) an order made on behalf of a parish council; (b) Church of England property; or (c) a listed building in need of repair
- one copy of the protected assets certificate giving a nil return or a positive statement for each category of assets protection referred to in What information needs to be included in a positive statement? in section 16 (except for orders under section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990)
two copies of the statement of reasons and, wherever practicable, any other documents referred to therein. A statement of reasons must include a statement concerning the planning permission (see How does the acquiring authority address whether there are any other impediments to the scheme going ahead?).

Compulsory purchase orders for listed buildings in need of repair will also require:

one copy of the repairs notice served in accordance with section 48, where the order is made under section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990) - follow the link for further information on Compulsory purchase orders for listed buildings in need of repair

Additional guidance on the preparation, drafting and submission of compulsory purchase orders for highway schemes and car parks is set out in Department for Transport Local Authority Circular 2/97: Notes on the preparation, drafting and submission of compulsory purchase orders for highway schemes and car parks for which the Secretary of State is the confirming authority.
Stage 4: consideration of the compulsory purchase order

26. Who will take the decision to confirm or not a compulsory purchase order?

The ‘confirming authority’ under the Acquisition of Land Act 1981 is the minister having the power to authorise the acquiring authority to purchase the land compulsorily.

However, under new section 14D of the Acquisition of Land Act 1981 a ‘confirming authority’ can appoint an inspector to act instead of it in relation to the confirmation of a compulsory purchase order to which section 13A of the Acquisition of Land Act 1981 applies (ie a non-ministerial order where there is a remaining objection).

Where the Secretary of State for Housing, Communities and Local Government is the confirming authority for such an order, he will carefully consider the suitability of ‘delegating’ the confirmation decision to an inspector in line with the criteria set out in this guidance. The Secretary of State for Housing, Communities and Local Government will assess the suitability of each compulsory purchase order for delegation on its individual merits.

27. What criteria will the Secretary of State for Housing, Communities and Local Government consider in deciding whether to delegate a decision on a compulsory purchase order?

The Secretary of State for Housing, Communities and Local Government will carefully consider the suitability of all compulsory purchase orders to be delegated to an inspector but will generally delegate the decision on confirmation of a compulsory purchase order where, in his opinion, it appears unlikely to:

- conflict with national policies on important matters
- raise novel issues
- give rise to significant controversy
- have impacts which extend beyond the local area

However, the Secretary of State for Housing, Communities and Local Government will assess the suitability of each compulsory purchase order for delegation on its individual merits.

28. If a compulsory purchase order is delegated to an inspector and new issues/evidence emerge, can the Secretary of State revisit his decision to appoint an inspector to take the confirmation decision?

Section 14D of the Acquisition of Land Act 1981 enables a confirming authority to cancel the appointment of an inspector acting instead of him in relation to the confirmation of a

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2 The power to delegate a decision on a compulsory purchase order to an inspector was inserted by section 181 of the Housing and Planning Act 2016 and applies to compulsory purchase orders submitted to a confirming authority for confirmation on or after 6 April 2018.
compulsory purchase order. The appointment may be cancelled at any time before the inspector has made the confirmation decision.

While each compulsory purchase order will be considered on its individual merits, if, at any time until a decision is made by the appointed inspector, the Secretary of State for Housing, Communities and Local Government considers, in his opinion, that the compulsory purchase order now raises issues which should be considered by him, he may decide that the appointment of the inspector should be cancelled. In this instance, the inspector will be asked to submit a report and recommendation to the Secretary of State for Housing, Communities and Local Government who will make the confirmation decision.

If a confirming authority decides to cancel the appointment of an inspector (and does not appoint another inspector to take the decision instead), it must give its reasons for doing so to the inspector, acquiring authority and every person who has made a remaining objection (see section 14D(7) of the Acquisition of Land Act 1981).

29. What happens if no objections are made?

If no objections are made to a compulsory purchase order and the confirming minister is satisfied that the proper procedure for serving and publishing notices has been observed, he will consider the case on its merits. The minister can then confirm, modify or reject the compulsory purchase order without the need for any form of hearing. If the order can be confirmed without modification and does not include statutory undertakers’ land or special kinds of land, the Secretary of State may remit the case back to the acquiring authority for confirmation. Go to Can the confirming minister modify an order? for more information.

30. What happens if there are objections and these are not withdrawn?

If objections are received and not withdrawn, the confirming minister will either arrange for a public local inquiry to be held or – where all the remaining objectors and the acquiring authority agree to it – arrange for the objections to be considered through the written representations procedure.

31. What are the different types of objection?

A ‘relevant objection’ is one made by a person who is an owner, lessee, tenant or occupier of the land or a person to whom the acquiring authority would be required to give a notice to treat.

It may also be an objection made by a person who might be able to make a claim for injurious affection under section 10 of the Compulsory Purchase Act 1965, but only if the acquiring authority think that he is likely to be entitled to make such a claim if the order is confirmed and the compulsory purchase takes place, so far as that person is known to the acquiring authority after making diligent inquiry.

A ‘remaining objection’ is a relevant objection that has not been withdrawn or disregarded (for example because it relates solely to compensation).

Other objections can be made by persons who are not a relevant objector, for example, by a third party, community group or special interest organisation.

32. Does an objection need to be in writing?
Section 13(3) of the Acquisition of Land Act 1981 enables the confirming minister to require every person who makes a relevant objection to state the grounds of objection in writing.

33. When might an objector’s statement of case be required?

A confirming authority can also require remaining objectors, and others who intend to appear at inquiry, to provide a statement of case. This is a useful device for minimising the need to adjourn inquiries as a result of new information. This is most likely where commercial concerns are objecting to large or complex schemes. Under Rule 7(5) of the Compulsory Purchase (Inquiries Procedure) Rules 2007, a person may be required to provide further information about matters contained in any such statement of case.

Objectors may wish to prepare a statement of case even when not asked to do so because it may be helpful for themselves and the inquiry.

34. How are objections considered?

Although all remaining objectors have a right to be heard at an inquiry, acquiring authorities are encouraged to continue to negotiate with both remaining and other objectors after submitting an order for confirmation, with a view to securing the withdrawal of objections. In line with the advice on alternative dispute resolution, this should include employing such alternative dispute resolution techniques as may be agreed between the parties.

The Compulsory Purchase of Land (Written Representations Procedure) (Ministers) Regulations 2004 prescribe a procedure by which objections to an order can be considered in writing if all the remaining objectors agree and the confirming minister deems it appropriate, as an alternative to holding an inquiry. (In summary, these regulations provide that, once the confirming minister has indicated that the written representations procedure will be followed, the acquiring authority have 15 working days to make additional representations in support of the case it has already made for the order in its statement of reasons. Once these representations have been copied to the objectors, they will also have 15 working days to make representations to the confirming minister. These in turn are copied to the acquiring authority who then has a final opportunity to comment on the objectors’ representations but cannot raise new issues.)

The Secretary of State for Housing, Communities and Local Government’s practice is to offer the written representations procedure to objectors except where it is clear from the outset that the scale or complexity of the order makes it unlikely that the procedure would be acceptable or appropriate. In such cases an inquiry will be called in the normal way. The practice of other Secretaries of State may vary.

35. What procedures are followed for inquiries into compulsory purchase orders under Acquisition of Land Act 1981?

The Compulsory Purchase (Inquiries Procedure) Rules 20073 (‘2007 Rules’) apply to:

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3 The Compulsory Purchase (Inquiries Procedure) Rules 2007 were amended by the Compulsory Purchase (Inquiries Procedure) (Miscellaneous Amendments and Electronic Communications) Rules 2018 with effect from 6 April 2018.
• all inquiries into compulsory purchase orders made under the Acquisition of Land Act 1981, both ministerial and non-ministerial, and to compulsory rights orders (see rule 2 of the Rules and section 29 of, and paragraph 11 of schedule 4 to, the 1981 act)

• rule 2A provides that where a person is appointed under section 14D of the Acquisition of Land Act 198 the 2007 Rules shall have effect subject to certain modifications as set out in the schedule

• rule 3 provides for written notice from the authorising authority of its intention to cause an inquiry to be held which commences the procedure

• rules 4 to 6 deal with pre-inquiry meetings

• rule 7 deals with statements of case

• rules 8 to 14 deal with the inquiry timetable, appointment of assessor, the date and public notification of the inquiry and appearances at the inquiry including the representation of a minister or government department at inquiry

• rule 15 deals with the handling of evidence at inquiry

• rules 16 to 19 deal with procedure at the inquiry, site inspections and post-inquiry procedures (including notice of decisions) – in particular rule 18(A1) imposes a requirement on the authorising authority to inform certain persons of the expected date of its decision as to whether to confirm the compulsory purchase order.

• rule 19A sets out the procedure to be followed where a decision notified under rule 19(1) is quashed in proceedings before any court

• rule 20 deals with the power to extend time

• rule 21 deals with sending notices or documents by post or by using electronic communications

• rule 21A provides for how a person may withdraw their consent to use of electronic communications

36. What information should an authority’s statement of case contain?

It should be possible for the acquiring authority to use the non-statutory statement of reasons as the basis for the statement of case which is required to be served under rule 7 of the Compulsory Purchase (Inquiries Procedure) Rules 2007 where an inquiry is to be held. The acquiring authority’s statement of case should set out a detailed response to the objections made to the compulsory purchase order.

37. What supplementary information may be required?

When considering the acquiring authority’s order submission, the confirming department may, if necessary, request clarification of particular points. These may arise both before
the inquiry has been held or after the inquiry.

Such clarification will often relate to statutory procedural matters, such as confirmation that the authority has complied with the requirements relating to the service of notices. This information may be needed before the inquiry can be arranged. But it may also relate to matters raised by objectors, such as the ability of the authority or a developer to meet development costs.

Where further information is needed, the confirming minister’s department will write to the acquiring authority setting out the points of difficulty and the further information or statutory action required. The department will copy its side of any such correspondence to remaining objectors, and requests that the acquiring authority should do the same.

38. Should a programme officer be appointed?

Acquiring authorities may wish to consider appointing a programme officer to assist the inspector in organising administrative arrangements for larger compulsory purchase order inquiries. A programme officer might undertake tasks such as assisting with preparing and running of any pre-inquiry meetings, preparing a draft programme for the inquiry, managing the public inquiry document library and, if requested by the inspector, arranging accompanied site inspections. A programme officer would also be able to respond to enquiries about the running of the inquiry during its course.

39. When will an inquiry be held?

Practice may vary between departments but, once the need for an inquiry has been established, it will normally be arranged by the Planning Inspectorate in consultation with the acquiring authority for the earliest date on which an appropriate inspector is available. Having regard to the minimum time required to check the orders and arrange the inquiry, this will typically be held around six months after submission. It is important to ensure that adequate notification is given to objectors of the inquiry dates, so that they have sufficient time to prepare evidence for the inquiry. This will also assist in the efficient conduct of the inquiry.

Once the date of the inquiry has been fixed it will be changed only for exceptional reasons. A confirming department will not normally agree to cancel an inquiry unless all statutory objectors withdraw their objections or the acquiring authority indicates formally that it no longer wishes to pursue the order, in sufficient time for notice of cancellation of the inquiry to be published. As a general rule, the inquiry date will not be changed because the authority or an objector needs more time to prepare its evidence. The authority should have prepared its case sufficiently rigorously before making the order to make such a postponement unnecessary. Nor would the inquiry date normally be changed because a particular advocate is unavailable on the specified date.

40. What scope is there for joint or concurrent inquiries?

It is important to identify at the earliest possible stage any application or appeal associated with, or related to, the order which may require approval or decision by the same, or a different, minister. This is to allow the appropriateness of arranging a joint inquiry or concurrent inquiries to be considered. Such actions might include, for example, an application for an order stopping up a public highway (when it is to be determined by a minister) or an appeal against the refusal of planning permission.
Any such arrangements cannot be settled until the full range of proposals and the objections or grounds of appeal are known. The acquiring authority should ensure that any relevant statutory procedures for which it is responsible (including actually making the relevant compulsory purchase order) are carried out at the right time to enable any related applications or appeals to be processed in step.

41. What advice is available about costs awards?

Advice on the inquiry costs for statutory objectors is given in Award of costs incurred in planning and other proceedings. The principles of this advice also apply to written representations procedure costs.

When notifying successful objectors of the decision on the order under the Compulsory Purchase (Inquiries Procedure) Rules 2007 or the Compulsory Purchase of Land (Written Representations Procedure)(Ministers) Regulations 2004, the Secretary of State for Housing, Communities and Local Government will tell them that they may be entitled to claim inquiry or written representations procedure costs and invite them to submit an application for an award of costs. The practice of other ministers may vary.

42. Are acquiring authorities normally required to meet the costs associated with an inquiry or written representations?

Acquiring authorities will be required to meet the administrative costs of an inquiry and the expenses incurred by the inspector in holding it. Likewise, the acquiring authority will be required to meet the inspector’s costs associated with the consideration of written representations. Other administrative costs associated with the written representations procedure are, however, likely to be minor, and a confirming minister will decide on a case by case basis whether or not to recoup them from the acquiring authority under section 13B of the Acquisition of Land Act 1981. The daily amount of costs which may be recovered where an inquiry is held to which section 250(4) of the Local Government Act 1972 applies, or where the written representations procedure is used, is £630 per day as prescribed in The Fees for Inquiries (Standard Daily Amount) (England) Regulations 2000.

Further information on the award of costs is available in planning guidance: Award of costs incurred in planning and other proceedings.

43. What happens if there are legal difficulties with an order?

Whilst only the courts can rule on the validity of a compulsory purchase order, the confirming minister would not think it right to confirm an order if it appeared to be invalid, even if there had been no objections to it. Where this is the case, the relevant minister will issue a formal, reasoned decision refusing to confirm the order. The decision letter will be copied to all those who were entitled to be served with notice of the making and effect of the order and to any other person who made a representation.

44. Can the confirming minister modify an order?

The confirming minister may confirm a compulsory purchase order with or without modifications. Section 14 of the Acquisition of Land Act 1981 imposes limitations on the minister’s power to modify the order. This provides that an order can only be
modified to include any additional land if all the people who are affected give their consent.

There is no scope for the confirming minister to add to, or substitute, the statutory purpose (or purposes) for which the order was made. The power of modification is used sparingly and not to rewrite orders extensively. While some minor slips can be corrected, there is no need to modify an order solely to show a change of ownership where the acquiring authority has acquired a relevant interest or interests after submitting the order.

If it becomes apparent to an acquiring authority that it may wish the confirming minister to substantially amend the order by modification at the time of any confirmation, the authority should write as soon as possible, setting out the proposed modification. This letter should be copied to each remaining objector, any other person who may be entitled to appear at the inquiry (such as any person required by the confirming authority to provide a statement of case) and to any other interested persons who seem to be directly affected by the matters that might be subject to modification. Where such potential modifications have been identified before the inquiry is held, the inspector will normally wish to provide an opportunity for them to be debated.

45. Can a compulsory purchase order be confirmed in stages?

In cases where the Acquisition of Land Act 1981 applies to a compulsory purchase order, section 13C of that act provides a general power for the order to be confirmed in stages, at the discretion of the confirming minister. This power is intended to make it possible for part of a scheme to be able to proceed earlier than might otherwise be the case, although its practical application is likely to be limited. It is not a device to enable the land required for more than one project or scheme to be included in a single order.

The decision to confirm in part must be accompanied by a direction postponing consideration of the remaining part until a specified date. The notices of confirmation of the confirmed part of the order must include a statement indicating the effect of that direction and be published, displayed and served in accordance with section 15 of the Acquisition of Land Act 1981.

46. When might an order be confirmed in stages?

The power to confirm an order in stages may be used when the minister is satisfied that an order should be confirmed for part of the land covered by the order but is not yet able to decide whether the order should be confirmed in relation to other parts of the order land. This could be, for example, because further investigations are required to establish the extent, if any, of alleged contaminated land. Where an order is confirmed in part under this power, the remaining undecided part is then treated as if it were a separate order.

To confirm in part, the confirming minister will need to be satisfied that:

- the proposed scheme or schemes underlying the need for the order can be independently implemented over that part of the order land to be confirmed, regardless of whether the remainder of the order is ever confirmed;

- the statutory requirements for the service and publication of notices have been followed; and
• there are no remaining objections relating to the part to be confirmed (if the minister wishes to confirm part of an order prior to holding a public inquiry or following the written representations procedure)

If the confirming minister were to be satisfied on the basis of the evidence already available to him that a part of the order land should be excluded, he may exercise his discretion to refuse to confirm the order or, in confirming the order, he may modify it to exclude the areas of uncertainty.

47. When can a compulsory purchase order be confirmed by the acquiring authority?

Section 14A of the Acquisition of Land Act 1981 provides a discretionary power for a confirming authority to give the acquiring authority responsibility for deciding an order which has been submitted for confirmation if certain specified conditions are met. The confirming minister must be satisfied that:

• there are no outstanding objections to the order

• all the statutory requirements as to the service and publication of notices have been complied with; and

• the order is capable of being confirmed without modification

The power of the confirming minister to issue such notice is excluded in cases where:

• the land to be acquired includes land acquired by a statutory undertaker for the purposes of its undertaking, that statutory undertaker has made representations to the minister responsible for sponsoring its business and he is satisfied that the land to be taken is used for the purposes of the undertaking; or

• the land to be acquired forms part of a common, open space, or fuel or field garden allotment

as confirmation of an order in these circumstances is contingent on other ministerial decisions.

The acquiring authority's power to confirm a compulsory purchase order does not extend to being able to modify the order or to confirm the order in stages. If the acquiring authority considers that there is a need for a modification, for example, to rectify drafting errors, it will have to ask the confirming minister to revoke the notice given under these provisions.

48. What should the confirming authority do if it decides to give an acquiring authority the power to confirm an order?

To exercise its discretionary power under section 14A of the Acquisition of Land Act 1981, the confirming authority serves a notice on the acquiring authority giving it the power to confirm the compulsory purchase order. The sealed order and one sealed map (or sets of sealed maps) will be returned with the notice. The notice should:

• indicate that if the acquiring authority decides to confirm the order, it should be endorsed as confirmed with the endorsement authenticated by a person...
having authority to do so

- suggest a form of words for the endorsement
- refer to the statutory requirement to serve notice of confirmation under section 15 of the 1981 act as amended by section 34 of the Neighbourhood Planning Act 2017; and
- require that the relevant Secretary of State should be informed of the decision on the order as soon as possible with (where applicable) a copy of the endorsed order

49. What should the acquiring authority do if it decides to confirm its own order?

If the acquiring authority decides to confirm its own order, it should return the notice of confirmation to the confirming authority. The form of the notice of confirmation is set out in Forms 9A and 11 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004 as amended The Compulsory Purchase of Land (Prescribed Forms) (Ministers) (Amendment) Regulations 2017.

An acquiring authority exercising the power to confirm must notify the confirming authority as soon as reasonably practicable of its decision. Until such notification is received, the confirming minister can revoke the acquiring authority's power to confirm. This might be necessary, for example, if the confirming minister received a late objection which raised important issues, or if the acquiring authority were to fail to decide whether to confirm within a reasonable timescale.

Acquiring authorities are asked to ensure that in all cases the confirming department is notified without delay of the date when notice of confirmation of the order is first published in the press in accordance with the provisions of the Acquisition of Land Act 1981. This is important as the six weeks' period allowed by virtue of section 23 of the 1981 act for an application to the High Court to be made begins on this date. Similarly, and for the same reason, where the Secretary of State has given a certificate under section 19 of, or paragraph 6 of schedule 3 to, the 1981 act, the department giving the certificate should be notified straight away of the date when notice is first published.

50. Are there timetables for confirmation of compulsory purchase orders?

Section 14B of the Acquisition of Land Act 1981 requires the Secretary of State to publish one or more timetables for confirmation of compulsory purchase orders. The timescales are set out in this guidance. The target timescales will apply to all confirming authorities other than the Welsh Ministers (who have the power to publish their own timetables under section 14C of the Acquisition of Land Act 1981 in relation to compulsory purchase orders to be confirmed by them).

51. How long will it take to get a decision on a compulsory purchase order which is

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4 The requirement for the Secretary of State to publish one or more timetables setting out the steps to be taken by confirming authorities in confirming a compulsory purchase order was inserted by section 180 of the Housing and Planning Act 2016 and applies to orders which are submitted to a confirming authority for confirmation on or after 6 April 2018.
delegated to an inspector and subject to the written representation process?

Where a compulsory purchase order is delegated to an inspector and subject to the written representation procedure, there is a statutory requirement for a site visit, where necessary, to be conducted within 15 weeks of the starting date letter (see regulation 8(1) of the Compulsory Purchase of Land (Written Representations Procedure) (Ministers) Regulations 2004 as amended by the Compulsory Purchase of Land (Written Representations Procedure) (Ministers) (Miscellaneous Amendments and Electronic Communications) Regulations 2018).

A decision should be issued within 4 weeks of the site visit date in 80% of cases delegated by the Secretary of State for Housing, Communities and Local Government; with 100% of cases being decided within 8 weeks of the site visit date.

In cases where there has not been a site visit, the timescales for decision will be taken from the final exchange of representations under Regulation 5 of the Compulsory Purchase of Land (Written Representations Procedure) (Ministers) Regulations 2004.

52. How long will it take to get a decision on a compulsory purchase order which is delegated to an inspector and subject to the public inquiry procedure?

Where a compulsory purchase order is delegated to an inspector and subject to the public inquiry procedure, the parties will be notified within 10 working days beginning with the day after the inquiry closes of the expected date on which a decision will be issued (see the modified version of rule 18 in Schedule 1 to the Compulsory Purchase (Inquiries Procedure) Rules 2007 as amended by the Compulsory Purchase (Inquiries Procedure) (Miscellaneous Amendments and Electronic Communications) Rules 2018).

A decision on the compulsory purchase order should be issued by the inspector within 8 weeks of the close of the Inquiry in 80% of cases delegated by the Secretary of State for Housing, Communities and Local Government; with 100% of cases being decided within 12 weeks.

53. How long will it take to get a decision on a compulsory purchase order which is decided by a Secretary of State and subject to the written representation process?

Where a compulsory purchase order is subject to the written representation procedure, there is a statutory requirement for a site visit, where necessary, to be conducted within 15 weeks of the starting date letter (see regulation 8(1) of the Compulsory Purchase of Land (Written Representations Procedure) (Ministers) Regulations 2004 as amended by the Compulsory Purchase of Land (Written Representations Procedure) (Ministers) (Miscellaneous Amendments and Electronic Communications) Regulations 2018.

The relevant Secretary of State should issue 80% of compulsory purchase decisions on written representation cases within 8 weeks of the site visit. The remaining 20% of cases should be decided within 12 weeks of the site visit.

In cases where there has not been a site visit, the timescales for decision will be taken from the final exchange of representations under Regulation 5 of the Compulsory Purchase of Land (Written Representations Procedure) (Ministers) Regulations 2004.
54. How long will it take to get a decision on a compulsory purchase order which is decided by a Secretary of State and subject to the public inquiry process?

Where a compulsory purchase order is to be decided by the Secretary of State and subject to the public inquiry procedure, the parties will be notified within 10 working days beginning with the day after the inquiry closes of the expected date of the Secretary of State’s decision (see rule 18(A1) of the Compulsory Purchase (Inquiries Procedure) Rules 2007 as amended by the Compulsory Purchase (Inquiries Procedure) (Miscellaneous Amendments and Electronic Communications) Rules 2018).

In addition, there is a target that 80% of cases should be decided by the relevant Secretary of State within 20 weeks of the close of the public inquiry – with the remaining cases decided within 24 weeks.

55. What happens if the Secretary of State or an inspector fails to issue a decision in accordance with the published timescales?

The Secretary of State must issue an annual report to Parliament showing the extent to which confirming authorities have complied with the published timescales.

The validity of a compulsory purchase order is not, however, affected by any failure to comply with a timetable (see section 14B(4) of the Acquisition of Land Act 1981).

56. Can a compulsory purchase order be challenged through the courts after it has been confirmed?

Any person aggrieved who wishes to dispute the validity of a compulsory purchase order, or any of its provisions, can challenge the order through an application to the High Court under section 23 of the Acquisition of Land Act 1981 (‘the 1981 act’) on the grounds that:

- the authorisation of the order is not empowered to be granted under the 1981 act or an enactment mentioned in section 1(1) of that act; or

- a ‘relevant requirement’ has not been complied with

A ‘relevant requirement’ is any requirement under the 1981 act, of any regulations made under it, or the Tribunals and Inquiries Act 1992 or of regulations made under that act.

Any such application must be made within 6 weeks of the date specified in section 23(4) of the 1981 act.

57. What powers does the court have on an application under section 23 of the Acquisition of Land Act 1981?

Section 24 of the 1981 act sets out the powers of the court on an application under section 23 of the 1981 act. First, the court has the discretionary power to grant interim relief suspending the operation of the order or certificate pending the final determination of the court proceedings (section 24(1)). Second, where a challenge under section 23 of the 1981 act is successful, the court has the discretionary power to quash:
• the decision to confirm the compulsory purchase order (section 24(3)) (NB: this does not apply in relation to an application under section 23 which was made before 13 July 2016); or

• the whole or any part of an order (section 24(2))

58. Is the time period for implementing a compulsory purchase order extended where it is the subject of a legal challenge?

Under section 4A of the Compulsory Purchase Act 1965 (for notice to treat process) and section 5B of the Compulsory Purchase (Vesting Declarations) Act 1981 (for general vesting declaration process) the normal three year period for implementing a compulsory purchase order is extended for:

• a period equivalent to the period from the date an application challenging the order is made until it is withdrawn or finally determined; or

• one year

whichever is the shorter. NB: The extended time period does not apply to an application made in respect of a compulsory purchase order which became operative before 13 July 2016.

An application to challenge an order is finally determined after the normal time for submitting an appeal has elapsed or, where an appeal has been submitted, it is either withdrawn or finally determined.

59. Can a decision not to confirm a compulsory purchase order be challenged through the courts?

A decision not to confirm a compulsory purchase order can be challenged through the courts by means of an application for judicial review under Part 54 of the Civil Procedure Rules 1998.
Stage 5: implementing a compulsory purchase order

60. When does an order become operative?

Unless it is subject to special parliamentary procedure (for example, in the case of certain special kinds of land), a compulsory purchase order which has been confirmed becomes operative on the date on which the notice of its confirmation is first published.

The method of publication and the information which must be included in a notice is set out in section 15 of the Acquisition of Land Act 1981. Confirmation notices must also contain:

- a prescribed statement about the effect of Parts 2 and 3 of the Compulsory Purchase (Vesting Declarations) Act 1981; and

- invite any person who would be entitled to claim compensation if a declaration were executed under section 4 of that act to give the acquiring authority information about the person's name, address and interest in land, using a prescribed form

Acquiring authorities must issue the confirmation notices within 6 weeks of the date of the order being confirmed or such longer period as may be agreed between the acquiring authority and the confirming authority (section 15(3A) of the Acquisition of Land Act 1981). Where an acquiring authority fails to do so, the confirming authority may take the necessary steps itself and recover its reasonable costs of doing so from the acquiring authority.

The acquiring authority may then exercise the compulsory purchase power (unless the operation of the compulsory purchase order is suspended by the High Court). The actual acquisition process will proceed by one of two routes - either by the acquiring authority serving a notice to treat or by executing a general vesting declaration.

61. How do I register a confirmation notice as a local land charge?

Section 15(6) of the Acquisition of Land Act 1981 provides that a confirmation notice should be sent by the acquiring authority to the Chief Land Register and that it shall be a local land charge. Where land in the order is situated in an area for which the local authority remains the registering authority for local land charges (ie where the changes made by Parts 1 and 3 of Schedule 5 to the Infraestructure Act 2015 have not yet taken effect in that local authority area), the acquiring authority should comply with the steps required by section 5 of the Local Land Charges Act 1975 (prior to it being amended by the Infrastructure Act 2015) to ensure that the charge is registered by the local authority as the registering authority.

62. What is a notice to treat?

There is no prescribed form for a notice to treat but the document must:

- describe the land to which it relates

- demand particulars of the interest in the land
• demand particulars of the compensation claim of the recipient and
• state that the acquiring authority is willing to treat for the purchase of the land and for compensation for any damage caused by the execution of the works

Possession cannot normally be taken until the acquiring authority has served a notice of entry and the minimum period specified in that notice has expired.

Title to the land is subsequently transferred by a normal conveyance.

63. When should a notice to treat be served?

A notice to treat may not be served after the end of the period of three years beginning with the date on which the compulsory purchase order becomes operative, under section 4 of the Compulsory Purchase Act 1965. The notice to treat then remains effective for a further three years, under section 5(2A) of that act.

It can be very stressful for those directly affected to know that a compulsory purchase order has been confirmed on their property. The prospect of a period of up to six years before the acquiring authority actually takes possession can be daunting. Acquiring authorities are therefore urged to keep such people fully informed about the various processes involved and of their likely timing, as well as keeping open the possibility of earlier acquisition where requested by an owner.

64. What period of notice should be given before taking possession under the notice to treat process?

Once the crucial stage of actually taking possession is reached, the acquiring authority is required by section 11 of the Compulsory Purchase Act 1965 to serve a notice of its intention to gain entry. In respect of a compulsory purchase order which is confirmed on or after 3 February 2017, the notice period will be not less than 3 months beginning with the date of service of the notice, except in either of the following circumstances:

• where it is a notice to which section 11A(4) of the 1965 act applies (ie where it is being served on a ‘newly identified person’ under section 11A(1)(b) and that person is not an occupier, or the acquiring authority was unaware of the person because they received misleading information in response to their inquiries under section 5(1) of the 1965 act. In these circumstances, section 11A(4) provides for a shorter minimum notice period

• where it is a notice to which paragraph 13 of Schedule 2A to the 1965 act applies (ie where under the material detriment provisions in that schedule, an acquiring authority is permitted to serve a further notice of entry, after the initial notice of entry ceased to have effect under paragraph 6, in respect of the land proposed to be acquired)

Although it is necessary for a notice to treat to have been served, this can be done at the same time as serving the notice of entry.

A notice of entry cannot be served after a notice to treat has ceased to be effective. A notice to treat can only be withdrawn in limited circumstances.
Acquiring authorities are encouraged to negotiate a mutually convenient date of entry with the claimant. It is good practice for the acquiring authority to:

- give owners an indication of the approximate date when possession will be taken when serving the notice to treat
- consider the steps which those being dispossessed will need to take to vacate their properties before deciding on the timing of actually taking possession

Authorities should also be aware that:

- agricultural landowners or tenants may need to know the date for the notice of entry earlier than others because of crop cycles and the need to find alternative premises
- short notice often results in higher compensation claims
- until there is an actual or deemed notice to treat an occupier is at risk that any costs they incur in anticipation of receiving such a notice may not be claimable; acquiring authorities would be advised to analyse how long it will take most occupiers to relocate and if the notice of entry is inadequate then they should consider giving an earlier commitment to pay certain costs such as their reasonable costs in identifying suitable alternative accommodation

It is usually important to make an accurate record of the physical condition of the land at the valuation date.

65. What happens if the acquiring authority does not take possession at the time specified in the notice of entry?

Where a compulsory purchase of land has been authorised on or after 3 February 2017 (ie where the order was confirmed on or after that date), section 11B of the Compulsory Purchase Act 1965 allows occupiers with an interest in the land to serve a counter-notice on an acquiring authority to require entry on a specified date which must not be earlier than the date specified in the notice of entry. The occupier must give at least 28 days notice of the date they want entry to be taken.

66. What is a general vesting declaration?

A general vesting declaration can be used as an alternative to the notice to treat procedure. It replaces the notice to treat, notice of entry and the conveyance with one procedure which automatically vests title in the land with the acquiring authority on a certain date.

General vesting declarations are made under the Compulsory Purchase (Vesting Declarations) Act 1981 and in accordance with the Compulsory Purchase of Land (Vesting Declarations) (England) Regulations 2017.

67. When might a general vesting declaration be used?

An acquiring authority may prefer to proceed by general vesting declaration as this
enables the authority to obtain title to the land without having first to be satisfied as to the vendor’s title or to settle the amount of compensation (subject to any special procedures such as in relation to purchase of commoners’ rights: see Compulsory Purchase Act 1965, section 21 and schedule 4). It can therefore be particularly useful where:

- some of the owners are unknown; or
- the authority wishes to obtain title with minimum delay (for example, to dispose of the land to developers)

A general vesting declaration may be made for any part or all of the land included in the compulsory purchase order except where an acquiring authority has already served (and not withdrawn) a notice to treat in respect of that land.

Section 4(1B) of the Compulsory Purchase (Vesting Declarations) Act 1981 makes clear that the above exception does not apply to deemed notices to treat that may, for example, arise from a blight notice or purchase notice.

For minor tenancies and long tenancies which are about to expire, a general vesting declaration will also not be effective. However, there is a special procedure set out in section 9 of the Compulsory Purchase (Vesting Declarations) Act 1981 for dealing with them.

Where unregistered land is acquired by general vesting declaration, acquiring authorities are recommended to voluntarily apply for first registration under section 3 of the Land Registration Act 2002.

68. When should a general vesting declaration be served?

For compulsory purchase orders which become operative on or after 13 July 2016, section 5A of the Compulsory Purchase (Vesting Declarations) Act 1981 makes clear that a general vesting declaration may not be executed after the end of the period of 3 years beginning with the day on which the compulsory purchase order becomes operative.

69. What period of notice should be given before taking possession under the general vesting declaration process?

For a compulsory purchase of land authorised on or after 3 February 2017, the acquiring authority must give at least three months’ notice before taking possession (as this is the minimum vesting period which must be given in a general vesting declaration under section 4(1) of the Compulsory Purchase (Vesting Declarations) Act 1981). Acquiring authorities should consider how long it will take occupiers to reasonably relocate and if 3 months is considered insufficient, consider increasing the vesting period (and therefore the notice period).

70. How does the acquiring authority make a general vesting declaration if the owner, lessee or occupier is unknown?

If it is not possible (after reasonable enquiry) to ascertain the name or address of an owner, lessee or occupier of land, the acquiring authority should comply with section

71. How can Charity Trustees convey land to a public authority?

If acquiring land from a charity, acquiring authorities should be aware of the provisions in Part 7 of the Charities Act 2011 and may need to consult the Charity Commission.
Stage 6: compensation

72. What is the basis of compensation?

Compensation payable for the compulsory acquisition of an interest in land is based on the principle that the owner should be paid neither less nor more than their loss. This is known as the ‘equivalence principle’.

73. What are the elements of compensation where land is taken?

While the compensation payable is a single global figure, in practice, the assessment of compensation will involve various elements.

Broadly, the elements of compensation where land is taken are:

- the **market value of the interest in the land taken**
- ‘**disturbance’ payments** for losses caused by reason of losing possession of the land and other losses not directly based on the value of land
- **loss payments** for the distress and inconvenience of being required to sell and/or relocate from your property at a time not of your choosing
- ‘**severance/injurious affection’ payments** for the loss of value caused to retained land by reason of it being severed from the land taken, or caused as a result of the use to which the land is put

74. What are the elements of compensation where no land is taken?

Broadly, the elements of compensation where no land is taken are:

- **injurious affection**
- **Part 1 Land Compensation Act 1973 claims**

75. What is the market value of the interest in the land taken?

Compensation payable for the compulsory acquisition of an interest in land is based on the ‘equivalence principle’ (ie that the owner should be paid neither less nor more than their loss). The value of land taken is the amount which it might be expected to realise if sold on the open market by a willing seller (**Land Compensation Act 1961, section 5, rule 2**), disregarding any effect on value of the scheme of the acquiring authority (known as the ‘no scheme’ principle); **Certificates of Appropriate Alternative Development** may be used to indicate the planning permissions that could have been obtained, which will affect any development value of the land.

Alternatively, where the property is used for a purpose for which there is no general demand or market (eg a church) and the owner intends to reinstate elsewhere, he may be awarded compensation on the basis of the reasonable cost of equivalent reinstatement.
(see Land Compensation Act 1961, section 5, rule 5).

76. How should the value of the land be assessed in light of the ‘no scheme principle’?

Sections 6A to 6E of the Land Compensation Act 1961, inserted by section 32 of the Neighbourhood Planning Act 2017\(^5\), set out how the value of the land should be assessed applying the ‘no scheme principle’.

Section 6A sets out the ‘no scheme principle’ that any increases or decreases in value caused by the scheme or the prospect of the scheme must be disregarded and then lists the 5 ‘no scheme rules’ to be followed when applying the ‘no-scheme principle’.

Section 6B provides that any increases in the value of the claimant’s other land, which is contiguous or adjacent to the land taken, is deducted from the compensation payable. This is known as ‘betterment’.

Section 6C provides that where a claimant is compensated for injurious affection for other land when land is taken for a scheme, and then that other land is subsequently subject to compulsory purchase for the purposes of the scheme, the compensation for the acquisition of the other land is to be reduced by the amount received for injurious affection.

Section 6D defines the ‘scheme’ for the purposes of establishing the no-scheme world. The default case, set out in subsection (1), is that the ‘scheme’ to be disregarded is the scheme of development underlying the compulsory acquisition. Subsection (2) makes special provision for new towns, urban development corporations and mayoral development corporations. Where land is acquired in connection with these areas, the ‘scheme’ is the development of any land for the purposes for which the area is or was designated.

Section 6D(3) and (4) also makes special provision. It provides that where land is acquired for regeneration or redevelopment which is facilitated or made possible by a ‘relevant transport project’ (defined in section 6D(4)(a)) ‘the scheme’ includes the relevant transport project.

77. Why is special provision made for relevant transport projects?

New transport projects often raise land values in the vicinity of stations or hubs, which can facilitate regeneration and redevelopment schemes. Where land is acquired for regeneration or redevelopment which is facilitated or made possible by a relevant transport project, the effect of Section 6D(3) is that the scheme to be disregarded includes the relevant transport project - subject to the qualifying conditions and safeguards in section 6E. The intention of this special provision is to ensure that an acquiring authority should not pay for land it is acquiring at values that are inflated by its own or others’ public investment in the relevant transport project. Where it applies, the land in question will be valued as if the transport project as well as the regeneration scheme had been cancelled on the relevant valuation date (defined in section 5A). The qualifying conditions and safeguards in section 6E(2) are, in summary that:

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\(^5\) The amendments made by section 32 of the Neighbourhood Planning Act 2017 apply to a compulsory purchase of land which is authorised on or after 22 September 2017.
- regeneration or redevelopment was part of the published justification for the relevant transport project

- the instrument authorising the compulsory purchase of the land acquired for regeneration or redevelopment was made or prepared in draft on or after 22 September 2017

- the regeneration or redevelopment land must be in the vicinity of land comprised in the relevant transport project

- the works comprised in the relevant transport project are first opened for use no earlier than 22 September 2022

- the compulsory purchase of the land acquired for regeneration or redevelopment must be authorised within 5 years of the works comprised in the relevant transport project first opening for use; and

- if the owner acquired the land after plans for the relevant transport project were announced but before 8 September 2016 ‘the scheme’ will not be treated as if it included the relevant transport project

78. What is the specific safeguard in section 6E(3)?

Section 6E(3) provides a specific safeguard for persons who acquired land in the vicinity of a relevant transport project after plans for the relevant transport project were announced, but before 8 September 2016 (the day after the Neighbourhood Planning Bill was printed). The specific safeguard is intended to provide protection in circumstances where land was purchased:

- on the basis of a public announcement whose effect was to provide a reasonable degree of certainty about the delivery of a relevant transport project at a particular location

- before the Government introduced legislation that made special provision for relevant transport projects

Where the specific safeguard applies, the ‘scheme’ will not be treated as if it included the relevant transport project in assessing the compensation payable in respect of the compulsory acquisition of that land. In such circumstances, any increase or decrease in the value of the owner’s land caused by the relevant transport project does not have to be disregarded.

79. When is a relevant transport project announced for the purposes of the specific safeguard in section 6E(3)?

Whether and/or when such a project is ‘announced’ is a question of fact in each case to be determined by the Upper Tribunal (Lands Chamber) in the event of disagreement. The evidence put before the Upper Tribunal (Lands Chamber) could include, among other things, the following matters:
the inclusion of the relevant transport project, at or near a particular location, in an approved or adopted development plan document

the inclusion of the relevant transport project in an application for a development consent order or in a compulsory purchase order

the inclusion of the relevant transport project in a proposal contained in an application for, or in a draft, Transport and Works Act Order for the purposes of the Transport and Works Act 1992

the inclusion of the relevant transport project in any Bill put before Parliament

a decision announced by a Minister of, or of approval for, a relevant transport project at a particular location

80. What if the definition of the ‘scheme’ is disputed?

Section 6D(5) provides that if there is disagreement between parties as to the definition of the ‘scheme’ to be disregarded that this can be determined by the Upper Tribunal as a question of fact subject as follows. First, the ‘scheme’ is to be taken by the Upper Tribunal to be the underlying scheme provided for by the act, or other authorising instrument unless it is shown that the ‘scheme’ is a scheme larger than, but including, the scheme provided for by that authorising instrument. Second, except by agreement or in special circumstances, the Upper Tribunal may only permit the acquiring authority to advance evidence of a larger scheme if that larger scheme was identified in the authorising instrument and any documents made available with it read together.

81. What is the relevant valuation date?

Section 5A of the Land Compensation Act 1961 establishes the date at which land compulsorily acquired is to be valued for compensation purposes (the ‘relevant valuation date’). It also establishes that such a valuation is to be based on the market values prevailing at the valuation date and on the condition of the relevant land and any structures on it on that date.

The relevant valuation date is:

- the date of entry and taking possession if the acquiring authority have served a notice to treat and notice of entry; or

- the vesting date if the acquiring authority has executed a general vesting declaration; or

- the date on which the Upper Tribunal (Lands Chamber) has determined compensation if earlier

A claimant can agree compensation with the acquiring authority at any time in accordance with the provisions of section 3 of the Compulsory Purchase Act 1965.

The relevant valuation date for the whole of the land included in any single notice of entry is the date on which the acquiring authority first takes possession of any part of that area
of land (under section 5A(5) of the Land Compensation Act 1961). This means that compensation becomes payable to the claimant for the whole site covered by that notice of entry from that date. The claimant also has the right to receive interest on the compensation due to him in respect of the value of the whole site covered by that notice of entry from that date until full payment is actually made (under section 5A(6) of the 1961 act).

Under the terms of section 11 of the Compulsory Purchase Act 1965, simple interest is payable at the prescribed rate from the date on which the authority enters and takes possession until the outstanding compensation is paid. Interest is not compounded as, neither section 32 nor regulations made under it, confer any power to pay interest on interest, and neither refers to frequency of calculation nor provides for periodic rests, which would be essential to any calculation of interest on a compound basis. It is therefore important that the date of entry is properly recorded by the acquiring authority.

82. Is an advance payment of compensation available?

If requested, and subject to sufficient information being made available by the claimant, the acquiring authority must make an advance payment on account of any compensation which is due for the acquisition of any interest in land, under section 52 of the Land Compensation Act 1973 as amended by sections 194 and 195 of the Housing and Planning Act 2016 and section 38 of the Neighbourhood Planning Act 2017. Advance payments must be registered as local land charges to ensure that payments are not duplicated.

The amount payable in advance is:

- 90% of the agreed sum for the compensation; or
- 90% of the acquiring authority’s estimate of the compensation due, if the acquiring authority takes possession before compensation has been agreed

83. Is an advance payment available for a mortgage?

In certain circumstances, a claimant can require the acquiring authority to make advance payments of compensation direct to his mortgage lender. Advance payments relating to the amount owing to the mortgage lender can be made:

- direct to the mortgage lender only with their consent
- to more than one mortgage lender, if the interest of any other mortgage lender whose interest has priority has been released

Section 52ZA of the Land Compensation Act 1973 as amended by section 195 of the Housing and Planning Act 2016 enables an acquiring authority to make an advance payment to a claimant’s mortgage lender where the total amount outstanding under the mortgage does not exceed 90% of the estimated total compensation due to the claimant. Alternatively, section 52ZB as amended by section 195 of the Housing and Planning Act

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6 The amendments made by section 194(1) to (3) and section 195 of the Housing and Planning Act 2016 and section 38 of the Neighbourhood Planning Act 2017 apply to a compulsory purchase of land which is authorised on or after 6 April 2018.
2016 applies where the total amount exceeds 90% of the total estimated compensation due to the claimant.

The conditions relating to both types of payments are complex and, in order to protect the interests of all parties, it will be advisable for an acquiring authority to work closely with both the claimant and his mortgage lender(s) in determining the amount of the advance payment payable.

84. What information should a claimant provide when requesting an advance payment of compensation?

As the amount payable is 90% of the acquiring authority’s estimate of the compensation due, it is in the interests of claimants to provide early and full information to the authority to ensure that the estimate is as robust as possible.

Acquiring authorities should encourage claimants to seek professional advice in relation to their compensation claim. They should also provide claimants with information as to the kinds of evidence they may be expected to provide in support of their compensation claim including, for example:

- detailed records of losses sustained and costs incurred in connection with the acquisition of their property
- all relevant supporting documentary evidence such as receipts, invoices and fee quotes
- business accounts for at least 3 years prior to the acquisition and continuing to the date of the claim
- a record of the amount of time they have spent on matters relating to the compulsory purchase of their property

Sections 52(2) and (2A) and 52ZC(2) of the Land Compensation Act 1973 as amended by section 194 of the Housing and Planning Act 2016 set out what information the claimant must provide and give the acquiring authority 28 days to request further information. The Secretary of State has published a model claim form which claimants are strongly encouraged to use when making a claim for an advance payment.

85. Is there a deadline for making and paying an advance payment?7

Section 52(1) of the Land Compensation Act 1973 as amended by section 195 of the Housing and Planning Act 2016 allows a claim for an advance payment to be made and paid at any time after the compulsory acquisition has been authorised. However, an acquiring authority must make an advance payment within 2 months of receipt of the claim or any further information requested under subsection 52(2A)(b) or 52ZC(2), or the date the notice of entry was issued or general vesting declaration was executed, whichever is the later.

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7 The amendments made by section 195 of the Housing and Planning Act 2016 and section 38 of the Neighbourhood Planning Act 2017 apply to a compulsory purchase of land which is authorised on or after 6 April 2018
There is special provision, under subsections (1A) and (4) of section 52 of the 1973 act, where the compulsory acquisition is one to which the Lands Clauses Consolidation Act 1845 applies. In these cases, the acquiring authority may not make an advance payment if they have not taken possession of the land, but must do so if they have. The payment must be made before the end of the day on which possession is taken, or, if later, before the end of the period of two months beginning with the day on which the authority received the request for the payment or any further information required under section 52(2A)(b).

Acquiring authorities should make prompt and adequate advance payments as this can:

- reduce the amount of the interest ultimately payable by the authority on any outstanding compensation; and
- help claimants to have sufficient liquidity to be able to make satisfactory arrangements for their relocation

Acquiring authorities are urged to adopt a sympathetic approach and take advantage of the flexibility offered by section 52(1) of the 1973 act where possible.

86. What happens if an advance payment is made but the compulsory purchase does not go ahead?8

Section 52AZA of the Land Compensation Act 1973 as amended by section 197 of the Housing and Planning Act 2016 requires a claimant to repay any advance payment if the notice to treat is withdrawn or ceases to have effect after the advance payment is made. If another person has since acquired the whole of the claimant's interest in the land, the successor will be required to repay the advance payment (provided it was registered as a local land charge in accordance with section 52(8A) of the 1973 act).

Section 52ZE of the Land Compensation Act 1973 as amended by section 198 of the Housing and Planning Act 2016 provides for the recovery of an advance payment to a mortgage lender if the notice to treat has been withdrawn or ceases to have effect. In these circumstances, the claimant must repay the advance payment unless someone else has acquired the claimant’s interest in the land. In this case, the successor to the claimant must make the repayment.

87. What is compensation for disturbance?

One element of compensation payable to a claimant is in respect of losses caused as a result of being disturbed from possession of the land taken and other losses caused by the compulsory purchase. This is known as ‘disturbance’ compensation. The right to compensation for disturbance is set out in the Land Compensation Act 1961, section 5, rule 6. Disturbance payments may include, for example, the costs and expenses of vacating the property and moving to a replacement property such as legal costs, other fees and losses, conveyancing costs and other professional fees.

There are also specific provisions for disturbance payments relating to different interests in land as follows:

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8 The amendments made by section 197 and section 198 of the Housing and Planning Act 2016 apply to a compulsory purchase of land which is authorised on or after 6 April 2018.
88. Does the ‘Bishopsgate principle’ still apply to compensation for disturbance?

Prior to measures in the Neighbourhood Planning Act 2017, case law (Bishopsgate Space Management v London Underground [2004] 2 EGLR 175) held that for disturbance compensation purposes where the interest in the land to be acquired was a minor tenancy (a tenancy with less than a year left to run, or a tenancy from year to year) or an unprotected tenancy (a tenancy without the protection of Part 2 of the Landlord and Tenant Act 1954), the acquiring authority should assume that the landlord terminates the tenant’s interest at the first available opportunity following notice to treat, whether that would happen in reality or not.

This was to be contrasted with the position for compensation for disturbance for occupiers of business premises with no interest in the land (payable under section 37 of the Land Compensation Act 1973) which was not subject to this artificial assumption.

Section 35 of the Neighbourhood Planning Act 2017 inserts a new section 47 into the Land Compensation Act 1973 bringing the assessment of compensation for disturbance for minor and unprotected tenancies into line with that for licensees and protected tenancies (a tenancy with the protection of Part 2 of the Landlord and Tenant Act 1954). Regard should be had to the likelihood of either continuation or renewal of the tenancy, the total period for which the tenancy might reasonably have been expected to continue, and the likely terms and conditions on which any continuation or renewal would be granted. For protected tenancies, the right of a tenant to apply for a new tenancy is also to be taken into account.

89. What are loss payments?

Loss payments are intended to compensate for the claimant’s distress and inconvenience of being required to sell and/or relocate from their property at a time not of their choosing (see sections 29-36 of the Land Compensation Act 1973). There are three main types of loss payment:

- home loss payments – see sections 29-33 of the Land Compensation Act 1973

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9 The amendments made by section 35 of the Neighbourhood Planning Act 2017 apply to a compulsory purchase of land which is authorised on or after 22 September 2017
• basic loss payment – see 33A of the Land Compensation Act 1973
• occupier’s loss payment - sections 33B and 33C of the Land Compensation Act 1973

90. What are severance and injurious affection?

Severance occurs when the land acquired contributes to the value of the land which is retained, so that when severed from it, the retained land loses value. For example, if a new road is built across a field it may no longer be possible to have access by vehicle to part of the field, rendering it less valuable.

Injurious affection is the depreciation in value of the retained land as a result of the proposed construction on, and use of, the land acquired by the acquiring authority for the scheme. For example, even though only a small part of a farm holding may be acquired for a new road, the impact of the use of the road may reduce the value of the farm.

The principle of compensation for severance is set out in section 7 of the Compulsory Purchase Act 1965.

91. What is injurious affection where no land is taken?

Injurious affection where no land is taken refers to the right to compensation in certain circumstances where the value of an interest in land has been reduced as a result of the execution of works authorised by statute.

The principle of compensation for injurious affection where no land is taken is set out in section 10 of the Compulsory Purchase Act 1965.

92. What are Part 1 claims?

In certain circumstances compensation is payable to landowners in respect of depreciation of the value of their land by certain physical factors (noise, vibration, smell, fumes, smoke, artificial lighting, discharge on the land of a liquid or solid substance) caused by the use of a new or altered highway, aerodrome or other public works (see Part 1 of the Land Compensation Act 1973).
Tier 2: enabling powers

It is likely that only one of the following enabling powers will be relevant in an individual case

93. Where can further information on the powers of acquisition be found?

Further information can be found here:

- Section 1: advice on section 226 of the Town and Country Planning Act 1990
- Section 2: advice on section 121 of the Local Government Act 1972
- Section 3: Homes England
- Section 4: urban development corporations
- Section 5: New Town Development Corporations
- Section 6: local housing authorities for housing purposes and listed buildings in slum clearance
- Section 7: to improve the appearance or condition of land
- Section 8: for educational purposes
- Section 9: for public libraries and museums
- Section 10: for airport Public Safety Zones
- Section 11: for listed buildings in need of repair
Section 1: advice on section 226 of the Town and Country Planning Act 1990

94. Can local authorities compulsorily acquire land for development and other planning purposes?

Under section 226 of the Town and Country Planning Act 1990 the following bodies (which are local authorities for the purposes of that section):

- county, district or London borough councils (section 226(8))
- joint planning boards (section 244(1)); or
- national park authorities (section 244A)

can acquire land compulsorily for development and other planning purposes as defined in section 246(1).

95. What is the purpose of this power?

This power is intended to provide a positive tool to help acquiring authorities with planning powers to assemble land where this is necessary to implement proposals in their Local Plan or where strong planning justifications for the use of the power exist. It is expressed in wide terms and can therefore be used to assemble land for regeneration and other schemes where the range of activities or purposes proposed mean that no other single specific compulsory purchase power would be appropriate.

96. Can this power be used in place of other more appropriate enabling powers?

This power should not be used in place of other more appropriate enabling powers. The statement of reasons accompanying the order should make clear the justification for the use of this specific power. In particular, the Secretary of State may refuse to confirm an order if he considers that this general power is or is to be used in a way intended to frustrate or overturn the intention of Parliament by attempting to acquire land for a purpose which had been explicitly excluded from a specific power.

97. What can the power be used for?

The power can be used as follows:

- section 226(1)(a) enables acquiring authorities with planning powers to acquire land if they think that it will facilitate the carrying out of development (as defined in section 55 of Town and Country Planning Act 1990), redevelopment or improvement on, or in relation to, the land being acquired and it is not certain that they will be able to acquire it by agreement - further guidance on use of the power under section 226(1)(a) can be found here

- section 226(1)(b) allows an authority, if authorised, to acquire land in their area which is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated. The potential scope of
this power is broad. It is intended to be used primarily to acquire land which is not required for development, redevelopment or improvement, or as part of such a scheme.

- section 226(3) provides that an order made under either section 226(1)(a) or (b) may also provide for the compulsory purchase of:
  
  a) any adjoining land which is required for the purpose of executing works for facilitating the development or use of the primary land; or
  
  b) land to give in exchange for any of the primary land which forms part of a common or open space or fuel or field garden allotment.

An authority intending to acquire land for either of these purposes in connection with the acquisition of land under subsection (1) must therefore specify in the same order, the appropriate subsection (3) acquisition power and purpose.

98. Does an order have to specify which paragraph of section 226(1) it is made under?

The Secretary of State takes the view that an order made under section 226(1) should be expressed in terms of either paragraph (a) or paragraph (b) of that subsection. As these are expressed as alternatives in the legislation, the order should clearly indicate which is being exercised, quoting the wording of paragraph (a) or (b) as appropriate as part of the description of what is proposed.

99. Can the powers in section 226(1) or 226(3)(a) be used only if the purpose or activity specified in the order is to be taken forward by the authority itself?

Section 226(4) provides that it is immaterial by whom the authority propose that any activity or purpose mentioned in section 226(1) or 226(3)(a) should be undertaken or achieved. In particular, the authority does not need to undertake an activity or achieve a purpose themselves.

100. In deciding whether to confirm orders made under section 226, does the Secretary of State need to take into account all objections?

Section 245(1) of the Town and Country Planning Act 1990 provides the Secretary of State with the right to disregard objections to orders made under section 226 which, in his opinion, amount to an objection to the provisions of the Local Plan.

101. Can Crown land be compulsorily purchased?

Sections 293 and 226(2A) of the Town and Country Planning Act 1990 apply where an acquiring authority with planning powers proposes to acquire land compulsorily under section 226 in which the Crown has an interest. The Crown’s interest cannot be acquired compulsorily under section 226, but an interest in land held otherwise than by or on behalf of the Crown may be acquired with the agreement of the appropriate body. This might arise, for example, where a government department which holds the freehold interest in certain land may agree that a lesser interest, perhaps a lease or a right of way may be acquired compulsorily and that that interest may, therefore, be included in the order. Further advice about the purchase of interests in Crown land is here.
Section 226(1)(a)

102. Does the development, redevelopment or improvement scheme need to be taking place on the land to be acquired?

The scheme of development, redevelopment or improvement for which the land needs to be acquired does not necessarily have to be taking place on that land so long as its acquisition can be shown to be essential to the successful implementation of the scheme. This could be relevant, for example, in an area of low housing demand where property might be being removed to facilitate replacement housing elsewhere within the same neighbourhood.

103. Are there any limitations on the use of this power?

The wide power in section 226(1)(a) is subject to the restriction under section 226(1A). This provides that the acquiring authority must not exercise the power unless they think that the proposed development, redevelopment or improvement is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of the area for which the acquiring authority has administrative responsibility.

The benefit to be derived from exercising the power is not restricted to the area subject to the compulsory purchase order, as the concept is applied to the wellbeing of the whole (or any part) of the acquiring authority’s area.

104. What justification is needed to support an order to acquire land compulsorily under section 226(1)(a)?

Any programme of land assembly needs to be set within a clear strategic framework, and this will be particularly important when demonstrating the justification for acquiring land compulsorily under section 226(1)(a). Such a framework will need to be founded on an appropriate evidence base, and to have been subjected to consultation processes, including those whose property is directly affected.

The planning framework providing the justification for an order should be as detailed as possible in order to demonstrate that there are no planning or other impediments to the implementation of the scheme. Where the justification for a scheme is linked to proposals identified in a development plan document which has been through the consultation processes but has either not yet been examined or is awaiting the recommendations of the inspector, this will be given due weight.

Where the Local Plan is out of date, it may well be appropriate to take account of more detailed proposals being prepared on a non-statutory basis with the intention that they will be incorporated into the Local Plan at the appropriate time. Where such proposals are being used to provide additional justification and support for a particular order, there should be clear evidence that all those who might have objections to the underlying proposals in the supporting non-statutory plan have had an opportunity to have them taken into account by the body promoting that plan, whether or not that is the authority making the order. In addition, the National Planning Policy Framework is a material consideration in all planning decisions and should be taken into account.
105. Do full details of a scheme need to be worked up before an acquiring authority can proceed with an order?

It may not always be feasible or sensible to wait until the full details of the scheme have been worked up, and planning permission obtained, before proceeding with the order. Furthermore, in cases where the proposed acquisitions form part of a longer-term strategy which needs to be able to cope with changing circumstances, it may not always be possible to demonstrate with absolute clarity or certainty the precise nature of the end use proposed. In all such cases the responsibility will lie with the acquiring authority to put forward a compelling case for acquisition in advance of resolving all the uncertainties.

106. What factors will the Secretary of State take into account in deciding whether to confirm an order under section 226(1)(a)?

Any decision about whether to confirm an order made under section 226(1)(a) will be made on its own merits, but the factors which the Secretary of State can be expected to consider include:

- whether the purpose for which the land is being acquired fits in with the adopted Local Plan for the area or, where no such up to date Local Plan exists, with the draft Local Plan and the National Planning Policy Framework

- the extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social or environmental wellbeing of the area

- whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means. This may include considering the appropriateness of any alternative proposals put forward by the owners of the land, or any other persons, for its reuse. It may also involve examining the suitability of any alternative locations for the purpose for which the land is being acquired

- the potential financial viability of the scheme for which the land is being acquired. A general indication of funding intentions, and of any commitment from third parties, will usually suffice to reassure the Secretary of State that there is a reasonable prospect that the scheme will proceed. The greater the uncertainty about the financial viability of the scheme, however, the more compelling the other grounds for undertaking the compulsory purchase will need to be. The timing of any available funding may also be important. For example, a strict time limit on the availability of the necessary funding may be an argument put forward by the acquiring authority to justify proceeding with the order before finalising the details of the replacement scheme and/or the statutory planning position
Section 2: advice on Section 121 of Local Government Act 1972

107. What can the general compulsory purchase powers for local authorities be used for?

The general power of compulsory purchase at section 121 of the Local Government Act 1972 can (subject to certain constraints) be used by local authorities in conjunction with other enabling powers to acquire land compulsorily for the stated purpose. It may also be used where land is required for more than one function and no precise boundaries between uses are defined.

Section 121 can also be used to achieve compulsory purchase in conjunction with section 120 of the Local Government Act 1972. Section 120 provides a general power for a principal council ie a county, district or London borough council to acquire land by agreement for a statutory function in respect of which there is no specific land acquisition power or where land is intended to be used for more than one function.

Some of the enabling powers in legislation (in the enabling act) for local authorities to acquire land by agreement for a specific purpose do not include an accompanying power of compulsory purchase, for example:

- public walks and pleasure grounds - section 164, Public Health Act 1875
- public conveniences – section 87, Public Health Act 1936
- cemeteries and crematoria – section 214, Local Government Act 1972
- refuse disposal sites – section 51, Environmental Protection Act 1990; and
- land drainage – section 62(2), Land Drainage Act 1991

In addition, section 125 contains a general power for a district council to acquire land compulsorily (subject to certain restrictions) on behalf of a parish council which is unable to purchase by agreement land needed for the purpose of a statutory function.

108. What considerations apply in relation to making and submitting an order under Part 7 of the Local Government Act 1972?

The normal considerations in relation to making and submission of a compulsory purchase order, as described in Section 13: preparing and serving the order and its notices, would apply to orders relying upon section 121 or section 125. These include the requirement that compulsory purchase should only be used where there is a compelling case in the public interest.
109. **Who is the confirming authority for orders under Part 7 of the Local Government Act 1972?**

The confirming authority for orders under Part 7 of the 1972 act is the Secretary of State for Housing, Communities and Local Government.

110. **What information should be included in orders under sections 121 or 125 about the acquisition power?**

Paragraph 1 of the order should cite the relevant acquisition power (section 121 or 125) and state the purpose of the order, by reference to the enabling act under which the purpose may be achieved.

Where practicable, the words of the relevant section(s) of the enabling act(s) should be inserted into the prescribed form of the order (see Note (f) to Forms 1 to 3 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) Regulations 2004). For example:

‘…. the acquiring authority is under section 121 [125] of the Local Government Act 1972 hereby authorised to purchase compulsorily [on behalf of the parish council of ............] the land described in paragraph 2 for the purpose of providing premises for use as a recreation/community centre under section 19 of the Local Government (Miscellaneous Provisions) Act 1976.’

111. **What restrictions are there to the use of the powers under sections 121 and 125?**

Section 121(2) sets out certain purposes for which principal councils may not purchase land compulsorily under section 121 as follows:

a) for the purposes specified in section 120(1)(b), ie the benefit, improvement or development of their area. Councils may consider using their acquisition powers under the Town and Country Planning Act 1990 for these purposes

b) for the purposes of their functions under the Local Authorities (Land) Act 1963; or

c) for any purpose for which their power of acquisition is expressly limited to acquisition by agreement only, eg section 9(a) of the Open Spaces Act 1906

There are similar limitations in section 125(1) for orders made by district councils on behalf of parish councils.

112. **What should a district council consider in deciding whether to make an order on behalf of a parish council?**

The district council should have regard to the representations made to them by the parish council in seeking to get them to make such an order and to all the other matters set out in section 125.

113. **What restrictions are there on a district council’s power to make an order on behalf of a parish council?**
A district council may not acquire land compulsorily on behalf of a parish council for a purpose for which a parish council is not, or may not be, authorised to acquire land, eg section 226 of the Town and Country Planning Act 1990 (see subsections (1) and (8)).

Section 125 also does not apply where the purpose of the order is to provide allotments under the Smallholdings and Allotments Act 1908. In such a case, by virtue of section 39(7) of the 1908 act, the district council should purchase the land compulsorily, on behalf of the parish council, under section 25 of that act.

114. What happens if a district council refuses to make an order on behalf of a parish council or does not make one within required time period?

If a district council refuses to make an order under section 125, or does not make one within 8 weeks of the parish council’s representations or within such an extended period as may be agreed between the two councils, the parish council may petition the Secretary of State, who may make the order.

Where an order is made by the Secretary of State in such circumstances, section 125 and the Acquisition of Land Act 1981 apply as if the order had been made by the district council and confirmed by the Secretary of State.

115. Can a single order be made by more than one authority and covering mixed purposes, and if so, how is it confirmed?

A single order may be made under section 121 of the Local Government Act 1972 by more than one council and for more than one purpose.

Where this would involve more than one confirming authority, the order may be submitted to one Secretary of State but it has to be processed through all the relevant government departments, involving concerted action by them.

Where an inquiry is required or is considered to be appropriate, the inspector’s report will be submitted to each of the departments simultaneously and the decision will be given by the relevant ministers acting together.

116. Can a district council make an order on behalf of more than one parish council?

A district council may also make an order on behalf of more than one parish council. Such an order might, for example, be made under section 125, for the purposes of section 214, on behalf of several parish councils which form a joint burial committee in the area of the district council.

117. What does a parish council need to consider before asking a district council to make an order on its behalf?

A parish council should consider very carefully whether it has the necessary resources to carry out a compulsory purchase of land. A district council which makes an order on behalf of a parish council may (and, in the case of an order made under the Allotments Act 1908, shall) recover from the parish council the expenses which it has incurred. This includes:

- the administrative expenses and costs of the inquiry
• the inquiry costs awarded to successful statutory objectors, should the order not be confirmed, or confirmed in part

• statutory compensation including, where appropriate, any additional disturbance, home loss, or other loss payments, to which the dispossessed owners may be entitled; or

• any compensation for injurious affection payable to adjoining owners who may be entitled to claim

When considering whether to confirm or make an order, the Secretary of State will have regard to questions concerning the ability of the parish council to meet the costs of purchasing the land at market value and to carry forward the scheme for which the order has been or would be made.
Section 3: Homes England

118. What compulsory purchase powers does Homes England have?

Homes England has compulsory purchase powers to acquire land and new rights over land under subsections (2) and (3) of section 9 of the Housing and Regeneration Act 2008.

119. When can Homes England use its compulsory purchase powers?

Homes England can use its compulsory purchase powers to make a compulsory purchase order to facilitate the achievement of its objects set out in section 2 of the Housing and Regeneration Act 2008 (as amended). These are:

- to improve the supply and quality of housing in England
- to secure the regeneration or development of land or infrastructure in England
- to support in other ways the creation, regeneration or development of communities in England or their continued wellbeing
- and to contribute to the achievement of sustainable development and good design in England

with a view to meeting the needs of people living in England.

The made order would then be submitted to the Secretary of State for confirmation in the way set out in Tier 3 of this guidance.

The Localism Act 2011 amended the Greater London Authority Act 1999 so that Homes England's activities in London are now the responsibility of the Mayor to undertake.

120. Why does Homes England have compulsory purchase powers?

Homes England is tasked with supporting private and public sector bodies to deliver housing and regeneration priorities throughout England by providing land, funding and expertise. Powers to compulsorily acquire land can, subject to the normal strong safeguards, ensure that development and regeneration can take place in the right place at the right time.

121. How does Homes England justify the use of its compulsory purchase powers?

Homes England must demonstrate that the proposed acquisition is:

- for the purposes (or ‘objects’) set out in section 2 of the Housing and Regeneration Act 2008), in addition to any other valid reasons
- in the public interest
- and consistent with the policies in the National Planning Policy Framework and the relevant Local Plan
The justification should be included in the statement of reasons for the compulsory purchase order and preferably be backed up by a more detailed development framework.

122. **What is Homes England expected to do when using its compulsory purchase powers?**

Before making the compulsory purchase order, Homes England is normally expected to:

- have resolved any major planning difficulties (where practicable); or
- demonstrate that there are no planning or other impediments to the proposed scheme

If, for example, rapid action is essential, it may not always be feasible or sensible (particularly for schemes of strategic or national importance) to wait for planning permission for the replacement scheme or complete all statutory procedures before making the order.

Where the land is required for a defined end use or to provide essential infrastructure (such as roads and sewers) to facilitate regeneration or economic development, Homes England will also normally be expected to have:

- reasonably firm proposals; or
- a long-term strategic need for the land in place

When preparing and making a compulsory purchase order, Homes England should have regard to the general advice available here.

Homes England should submit orders for confirmation to the Planning Casework Unit, Birmingham.

123. **Can Homes England compulsorily acquire land even if it has no specific development proposals in place?**

It may sometimes be appropriate for Homes England to compulsorily acquire land which is in need of development or regeneration even though there are no specific detailed development proposals in place. Homes England does not usually undertake extensive building development itself. Instead, it often provides assistance for a scheme by stimulating as much private sector investment as possible. Therefore in some circumstances, it may be counterproductive for Homes England to predetermine what private sector development should take place once the land has been assembled. Land will often be suitable for a variety of developments and the market may change rapidly as implementation proceeds.

Nevertheless, when using its compulsory purchase powers, Homes England will still need to provide adequate justification and show that the compulsory acquisition is:

- supported by reasonably firm proposals or a long-term strategic need for the land
- for a clearly defined and deliverable objective; and
- in the public interest
124. **How does the Secretary of State decide whether to confirm Homes England’s compulsory purchase order?**

To reach a decision about whether to confirm a compulsory purchase order made under section 9 of the Housing and Regeneration Act 2008, the Secretary of State will keep the following in mind:

- the statutory purposes (objects) of Homes England
- the general considerations identified in the process of confirming a compulsory purchase order
- any guidance and directions which may be given under section 46 and/or section 47 of the 2008 act or otherwise issued by the Secretary of State
- whether the compulsory purchase of the land supports the activities described in Homes England’s statement of reasons
- whether Homes England has demonstrated (where appropriate) that the land is in need of housing development and/or regeneration

The Secretary of State will also take other factors into consideration, depending on whether Homes England has specific proposals for the development or regeneration of the land or it wishes to acquire the land to stimulate private sector investment:

a) if **Homes England has specific proposals for the land**

If Homes England has proposals for the development or regeneration of the land that it wishes to acquire through compulsory purchase, the Secretary of State will also consider:

- any alternative proposals that may have been put forward by the owners of the land or by other persons for the use or reuse of the land and:
  - whether they are likely to be, or are capable of being, implemented (including consideration of the experience and capability of the landowner or developer and any previous track record of delivery) what planning applications have been submitted and/or determined and the extent to which the proposals advocated by the other parties may conflict with Homes England’s proposals (ie the timing and nature of any housing development and/or regeneration of the wider area concerned)

- whether the proposal is, on balance, more likely to be achieved if the land is acquired by Homes England, including the effect on the surrounding area that the purchase of the land by Homes England will have in terms of stimulating and/or maintaining the regeneration of the area

- and if Homes England intends to carry out direct development, whether this would displace or disadvantage private sector development or investment without proper justification and that the objects of Homes England cannot be achieved by any other means
• the quality of both Homes England’s proposals for the land and any alternative proposals and the timetable for completing each

b) if Homes England does not have specific proposals for the land

If Homes England proposes to acquire the land for the purpose of stimulating private sector investment, the Secretary of State will also have regard to the fact that it will not always be possible or desirable to have specific proposals for the land concerned (beyond any broad indications in its Corporate Plan, or any justification given in Homes England’s statement of reasons). However, the Secretary of State will still want to be reassured that:

• there is a realistic prospect of the land being brought into beneficial use within a reasonable timeframe; and

• Home England can show that the use of its compulsory purchase powers is clearly in the public interest.
Section 4: urban development corporations

125. What is the purpose of an urban development corporation?

An urban development corporation is set up under section 135 of the Local Government, Planning and Land Act 1980 (‘the act’) with the object, as set out in section 136(1), of securing the regeneration of the relevant urban development area. Under section 134(1), an area of land may be designated as an urban development area if the Secretary of State is satisfied that it is expedient in the national interest to do so. An urban development area is likely to have been designated because it contains significant areas of land not in effective use, suffered extensive dereliction and be unattractive to existing or potential developers, investors and residents. The acquisition of land and buildings by compulsory purchase is one of the main ways in which an urban development corporation can take effective steps to secure its statutory objectives.

126. How can regeneration be achieved?

Section 136(2) of the act indicates that regeneration can be achieved particularly by

- bringing land and buildings into effective use
- encouraging the development of existing and new industry and commerce
- creating an attractive environment; and
- ensuring that housing and social facilities are available to encourage people to live and work in the area

127. What powers does an urban development corporation have under the 1980 act?

Subject to any limitations imposed under section 137 or 138, section 136(3) of the act an urban development corporation can acquire, hold, manage, reclaim and dispose of land, and carry out a variety of incidental activities. The compulsory purchase powers are set out in section 142. They cover both land and ‘new rights’ over land (as defined in section 142(4)) and, in the circumstances described in section 142(1)(b) and (c), their exercise may extend outside the urban development corporation’s area.

128. What compulsory purchase powers are available to urban development corporations?

It is for an urban development corporation to decide how best to use its land acquisition powers, having regard to this guidance. The compulsory purchase powers available to urban development corporations to assist with urban regeneration are expressed in broad terms. While an urban development corporation should acquire land by agreement wherever possible, it is recognised that this may not always be practicable and it may sometimes be necessary to use its compulsory purchase power to make an order at the same time as attempting to purchase by agreement.

129. Do urban development corporations have to predetermine what development will take place on land before it is acquired?
To achieve its objectives, it may sometimes be necessary for an urban development corporation to assemble land for which it has no specific development proposals. Urban development corporations are expected to achieve their objectives largely by stimulating and attracting greater private sector investment and do not usually carry out extensive building development themselves, as it may be counterproductive to decide what private sector development should take place. Land may be suitable for a variety of development and the market can change rapidly as regeneration proceeds. Urban development corporation ownership of land can stimulate confidence that regeneration will take place, and help to secure investment. Urban development corporations can often bring about regeneration by assembling land and providing infrastructure over a wide area to secure or encourage its development by others.

130. **What is the urban development corporation expected to do where an existing user is affected by an urban development corporation compulsory purchase order?**

Where existing users are affected by a compulsory purchase order relating to their premises, the urban development corporation will be expected to indicate how it proposes to assist these users to relocate to a site either within or outside the urban development area. Section 146(2) of the act encourages urban development corporations, where possible, to assist persons or businesses whose property has been acquired, to relocate to land owned by the urban development corporation.

131. **What happens where an urban development corporation generates receipts in excess of the total cost of assembled land?**

When assembling land for redevelopment, an urban development corporation may need to compulsorily acquire a site as part of a project to realise the development potential of a larger area. The Secretary of State recognises that the eventual sale of the assembled site will in many cases generate receipts in excess of the cost of the land to the urban development corporation. In such cases, the receipts generated can make an important contribution to reclamation costs incurred by the urban development corporation.

132. **What does the Secretary of State need to consider when reaching a decision on whether to confirm a section 142 order to acquisition land?**

In reaching a decision on whether to confirm a section 142 order, the Secretary of State will take into account the statutory objectives of the urban development corporation set out in paragraph 119 above and consider:

i. whether the urban development corporation has demonstrated that the land is in need of regeneration

ii. what alternative proposals (if any) have been put forward by the owners of the land or other persons for regeneration

iii. whether regeneration is on balance more likely to be achieved if the land is acquired by the urban development corporation

iv. the recent history and state of the land

v. whether the land is in an area for which the urban development corporation has a
comprehensive regeneration scheme; and the quality and timescale of both the urban development corporation’s regeneration proposals and any alternative proposals

133. What level of detail do urban development corporations need to provide when seeking an order?

The Secretary of State recognises that given their specific duty to regenerate their areas, it will not always be possible or desirable for urban development corporations to have specific proposals for the land concerned beyond their general framework for the regeneration of the area, and detailed land use planning and other factors will not necessarily have been resolved before making an order. In cases where there is a defined end use, or provision of strategic infrastructure to facilitate regeneration, an urban development corporation will normally have reasonably firm proposals, and will have resolved as far as practicable any major planning impediments, before submitting the order for confirmation. Depending on the circumstances however, the Secretary of State accepts that it will not always be feasible for such developments to have received full planning permission, nor for all other statutory procedures necessarily to have been completed at the time of submission of the order.

134. Where detailed proposals are not provided what information is an urban development corporation expected to provide?

Where an urban development corporation does not provide detailed proposals for redevelopment, it will still be expected to demonstrate the case for acquisition in the context of its development strategy. The urban development corporation needs to be able to show that using compulsory purchase powers is in the public interest and that there is a real prospect of the land being brought into beneficial use within a reasonable timeframe. The Secretary of State will expect the statement of reasons accompanying the submission of the order to include a summary of the framework for the regeneration of the urban development area, and that the urban development corporation will be in a position to present evidence at the public inquiry to support its case for compulsory acquisition.

135. What does the Secretary of State have to consider where there are other proposals for the use of land contained within an order?

Where the owners of land or other parties have their own proposals for the use or development of land contained within an order, it will be necessary for the Secretary of State to consider whether these are capable of being or likely to be, implemented, taking into account the planning position, how long the land has been unused, and how the alternative proposals may conflict with those of the urban development corporation.
Section 5: new town development corporations

136. What is the purpose of a new town development corporation?
A new town development corporation can be established under Section 3 of the New Towns Act 1981 ('the 1981 act') for the purposes of developing a new town. The objects of a new town development corporation, as set out in Section 4(1) of the 1981 act, are to secure the laying out and development of the new town in accordance with proposals approved under the 1981 act. In pursuing those objects, new town development corporations must aim to contribute to the achievement of sustainable development, having particular regard to the desirability of good design (see Sections 4(1A) and (1B) of the 1981 act).

An area can be designated as the site of a proposed new town under Section 1 of the 1981 act where the Secretary of State is satisfied, after consulting with any local authorities who appear to him to be concerned, that it is expedient in the national interest for that area to be developed as a new town by a new town development corporation.

The development of new towns has traditionally been overseen by the Secretary of State. However, under Section 1A of the 1981 act the Secretary of State may appoint one or more local authorities (an 'oversight authority') to oversee the development of the area as a 'locally-led' new town. Where an oversight authority is appointed a number of functions that would otherwise be exercisable by the Secretary of State are instead exercisable by the oversight authority – as provided for by the New Towns Act 1981 (Local Authority Oversight) Regulations 2018.

The Government has published separate guidance on the process for designating a new town and establishing locally-led new town development corporations.

137. What powers does a new town development corporation have under the 1981 act?
Subject to any restrictions imposed under Section 5 of the 1981 act, Section 4(2) gives new town development corporations the power, among other things, to acquire, hold, manage and dispose of land and other property, and generally to do anything necessary or expedient for the purposes or incidental purposes of the new town.

138. What powers does a new town development corporation have to acquire land?
The powers of new town development corporations to acquire land are set out in Section 10 of the 1981 act. They provide for a new town development corporation to acquire (whether by agreement or by compulsion):

- any land within the area of the new town, whether or not it is proposed to develop that land
- any land adjacent to that area which they require for purposes connected with the development of the new town
- any land, whether adjacent to that area or not, which they require for the provision of services for the purposes of the new town

The compulsory purchase powers provided for by Section 10 of the 1981 act apply to all new town development corporations – including in the case of locally-led new towns. Compulsory
purchase orders made by new town development corporations (regardless of whether the new town is nationally or locally-led) are subject to confirmation by the Secretary of State.

For nationally-led new towns the new town development corporation must obtain consent from the Secretary of State to acquire land by agreement. For locally-led new towns the new town development corporation must obtain consent to acquire land by agreement from the oversight authority, as provided by the New Towns Act 1981 (Local Authority Oversight) Regulations 2018.

139. What is the procedure for a new town development corporation acquiring land compulsorily by a compulsory purchase order?
The procedure for making a compulsory purchase order under the 1981 act is set out in schedule 4 to that Act.

140. In what circumstances can new town development corporations use their compulsory purchase powers?
It is for new town development corporations to decide how best to use their land acquisition powers, having regard to this guidance. The compulsory purchase powers available to a new town development corporation in section 10 of the 1981 act are expressed in broad terms, and are intended to assist with land assembly that is necessary to carry out its statutory objects of securing the laying out and development of a new town.

The Secretary of State will expect new town development corporations to demonstrate that they have taken reasonable steps to acquire the land included in a compulsory purchase order by agreement. Depending on when the land is required, it may be necessary for new town development corporations to initiate the compulsory purchase process in parallel with negotiations to acquire the land by agreement.

New town development corporation ownership of land early in the development process may assist with the proper planning for, infrastructure provision in and sustainable development of, a new town – in pursuit of its statutory objects under sections 4(1), (1A) and (1B) of the 1981 act. Specifically, it may help to ensure that developments brought forward using these powers are planned, designed and delivered in a sustainable and holistic way, in which the provision of infrastructure and community facilities are coordinated with the provision of new homes. New town development corporation ownership of land may also provide greater certainty of delivery: helping to stimulate confidence that the new town will proceed, helping to secure infrastructure investment, and thereby helping to promote development.

141. Can new town development corporations acquire land even if they have no specific development proposals in place?
Section 10(1) of the 1981 act enables new town development corporations to acquire land (compulsorily or by agreement) within the area of the new town whether or not it is proposed to be developed. The Secretary of State recognises that to achieve its statutory objects, it may be justified for a new town development corporation to acquire land for which it has no specific development proposals in place.

142. What level of detail do new town development corporations need to provide when seeking an order?
Given their scale, new towns are likely to be developed over an extended period of time, during which market conditions may change. In this context, the Secretary of State recognises that it will not always be possible or desirable for new town development
corporations to have fully worked up, and secured approval for, detailed development proposals prior to proceeding with a compulsory purchase order. While the Secretary of State will need to be reassured that there is a reasonable prospect of the scheme being funded and the development proceeding, it is also recognised that funding and delivery details will not necessarily have been fully worked up at that stage.

Where a new town development corporation does not have detailed proposals for the order lands, it will still be expected to demonstrate a compelling case for acquisition in the context of the planning framework that will guide development of the new town. The new town development corporation needs to be able to show that using compulsory purchase powers is necessary in the public interest and that the acquisition will support investment in and development of the new town.

The Secretary of State will expect the statement of reasons accompanying the submission of the compulsory purchase order to include a summary of the planning framework for the development of the new town and the justification for the timing of the acquisition, and that the new town development corporation will be in a position to present evidence at inquiry to support its case for compulsory acquisition.

While confirmation of a compulsory purchase order is a separate and distinct process from designating a new town, the Secretary of State acknowledges that evidence used to support the case for designation in the national interest may also be relevant to justifying the use of compulsory purchase powers in the public interest under section 10 of the 1981 act.

143. What factors will the Secretary of State take into account in deciding whether to confirm a compulsory purchase order under section 10 of the 1981 act?

Any decision about whether or not to confirm a compulsory purchase order will be made on its individual merits, but the factors which the Secretary of State can be expected to consider include:

- the statutory objects of the new town development corporation
- whether the purpose(s) for which the order lands are being acquired by the new town development corporation fits in with the planning framework for the new town area
- whether the new town development corporation has satisfactorily demonstrated that the order lands are needed to support the overall development of the new town
- the appropriateness of alternative proposals (if any) put forward by the owners of the land or other persons

144. What does the Secretary of State have to consider where there are other proposals for the use of land contained within a compulsory purchase order?

Where objectors put forward alternative proposals for the use or development of land contained within a compulsory purchase order, factors that the Secretary of State can be expected to consider include:

- whether these alternative proposals are likely to be implemented, taking into account the planning position and their promoter’s track record of delivering large-scale housing development
- how the alternative proposals may conflict with those of the new town development corporation
- how the alternative proposals may, if implemented, affect:
  - the delivery of a new town on land designated for that purpose; and
the new town development corporation’s ability to fulfil its statutory objects (including in relation to achieving sustainable development and good design), and/or the purposes for which it was established.

145. How can new town development corporations dispose of the acquired land?
New town development corporations may dispose of land in such a manner as they deem expedient for securing the development of the new town or for purposes connected with the development of the new town (see section 17 of the New Towns Act 1981).

Section 18 of the 1981 act sets out certain requirements in respect of persons who were previously living or carrying on a business on land acquired by the new town development corporation. If such persons wish to obtain accommodation on land belonging to the new town development corporation and are willing to comply with any requirements of the corporation as to its development and use, section 18 requires the corporation, 'so far as practicable,' to give them the opportunity to do so.
Section 6: powers of local housing authorities for housing purposes and listed buildings in slum clearances

**Housing Act 1985: Part 2, Provision of housing accommodation**

146. **What can the power under Part 2 of the Housing Act 1985 be used for?**

Section 17 of the Housing Act 1985 empowers local housing authorities to acquire land, houses or other properties by compulsion for the provision of housing accommodation. Acquisition must achieve a quantitative or qualitative housing gain.

The main uses of this power have been to assemble land for housing and ancillary development, including the provision of access roads; to bring empty properties into housing use; and to improve substandard or defective properties. Current practice is for authorities acquiring land or property compulsorily to dispose of it to the private sector, housing associations or owner-occupiers.

147. **What information should be included with applications for confirmation of orders under section 17?**

When applying for the confirmation of a compulsory purchase order made under Part 2 of the Housing Act 1985 the authority should include in its statement of reasons information regarding needs for the provision of further housing accommodation in its area. This information should normally include:

- the total number of dwellings in the district
- the total number of substandard dwellings (i.e. the quantity of housing with Category 1 hazards as defined in section 2 of the Housing Act 2004)
- the total number of households and the number for which, in the authority’s view, provision needs to be made
- details of the authority’s housing stock by type, particularly where the case for compulsory purchase turns on need to provide housing of particular type
- where a compulsory purchase order is made with a view to meeting special housing needs, e.g., of the elderly, specific information about those needs
- where the authority proposes to dispose of the land or property concerned, details of the prospective purchaser, their proposals for the provision of housing accommodation and when this will materialise, and details of any other statutory consents required
- where it is not possible to identify a prospective purchaser at the time a compulsory purchase order is made, details of the authority’s proposals to dispose of the land or property, its grounds for considering that this will achieve the provision of housing accommodation and when the provision will materialise
where the authority has alternative proposals, it will need to demonstrate that each alternative is preferable to any proposals advanced by the existing owner

148. When does development on land to be acquired for housing development under section 17 need to be completed?

Section 17(4) of the Housing Act 1985 provides that the Secretary of State may not confirm a compulsory purchase order unless he is satisfied that the land is likely to be required within 10 years of the date the order is confirmed.

149. Will the Secretary of State refuse to confirm an order made under housing powers if it could have been made under planning powers instead?

Where an authority has a choice between the use of housing or planning compulsory purchase powers the Secretary of State will not refuse to confirm a compulsory purchase order solely on the grounds that it could have been made under another power.

Where land is being assembled under planning powers for housing development, the Secretary of State will have regard to the policies set out in this section.

150. When is the acquisition of empty properties for housing use justified?

Compulsory purchase of empty properties may be justified as a last resort in situations where there appears to be no other prospect of a suitable property being brought back into residential use. Authorities will first wish to encourage the owner to restore the property to full occupation. However, cases may arise where the owner cannot be traced and therefore use of compulsory purchase powers may be the only way forward.

When considering whether to confirm such an order the Secretary of State will normally wish to know:

- how long the property has been vacant
- what steps the authority has taken to encourage the owner to bring it into acceptable use and the outcome; and
- what works have been carried out by the owner towards its reuse for housing purposes

151. When is the acquisition of substandard properties justified?

Compulsory purchase of substandard properties may be justified as a last resort in cases where:

- a clear housing gain will be obtained
- the owner of the property has failed to maintain it or bring it to an acceptable standard; and
- other statutory measures, such as the service of statutory notices, have not achieved the authority’s objective of securing the provision of acceptable housing accommodation
However, the Secretary of State would not expect an owner-occupied house, other than a house in multiple occupation, to be included in a compulsory purchase order unless the defects in the property adversely affected other housing accommodation.

In considering whether to confirm such a compulsory purchase order the Secretary of State will wish to know:

- what the alleged defects in the order property are
- what other steps the authority has taken to remedy matters and the outcome
- the extent and nature of any works carried out by the owner to secure the improvement and repair of the property.
- the Secretary of State will also wish to know the authority’s proposals regarding any existing tenants of the property

152. Are there any limitations on the use of the power under Part 2 of the Housing Act 1985 to acquire property for the purpose of providing housing accommodation?

The powers do not extend to the acquisition of property for the purpose of improving the management of housing accommodation. A qualitative or quantitative housing gain must be achieved.

Following the judgment in the case of R v Secretary of State for the Environment ex parte Royal Borough of Kensington and Chelsea (1987) it may, however, be possible for authorities to resort to compulsory purchase under Part 2 where harassment or other grave conduct of a landlord has been such that proper housing accommodation could not be said to exist at the time when the authority resolved to make the compulsory purchase order. Such an order could be justified as achieving a housing gain.

153. Is consent required for the onward disposal of tenanted properties?

Consent may be required for the onward disposal of tenanted properties which have been compulsorily purchased. Before a local authority can dispose of housing occupied by secure tenants to a private landlord it must consult the tenants in accordance with section 106A of the Housing Act 1985.

The Secretary of State cannot give consent for the disposal if it appears to him that a majority of the tenants are opposed. An authority contemplating onward sale should, therefore, ensure in advance that it has the tenants’ support.

154. Can the Secretary of State confirm an order where an acquiring authority has given an undertaking that it will not implement the order if the owner subsequently agrees to improve the property?

Such undertakings are a matter between the acquiring authority and owner, and the Secretary of State has no involvement. A compulsory purchase order which is the subject of such an agreement will be considered by the Secretary of State on its individual merits. The Secretary of State has no powers to confirm an order subject to conditions.
Housing Act 1985: Part 9, Slum clearance

155. What information needs to be submitted with an application for confirmation of a clearance area compulsory purchase order?

In addition to the general requirements, an authority submitting an order under section 290 of Part 9 of the Housing Act 1985 should only do so after considering all possible options for the area and will be expected to deal with the following matters in their statement of reasons:

- the declaration of the clearance area and its justification including a statement that all other possible options to maintain the clearance area have been considered

- the standard of buildings in the clearance area: incorporating a statement of the authority’s principal grounds for being satisfied that the buildings are substandard the justification for acquiring any added lands included in the order

- proposals for rehousing and for relocating commercial and industrial premises affected by clearance

- the proposed after use of the cleared site

- where it is not practicable to table evidence of planning permission, the authority should demonstrate that their proposals are acceptable in planning terms and that there appear to be no grounds for thinking that planning permission will not materialise

- how they have fully considered the economic aspect of clearance and that they have responded to any submissions made by objectors regarding that

General guidance on clearance areas can be found in Housing health and safety rating system enforcement guidance.

Further information on listed buildings and unlisted buildings in conservation areas which are included in clearance compulsory purchase orders.

Local Government and Housing Act 1989: Part 7, Renewal Areas

156. What can the powers under Part 7 of the Local Government and Housing Act 1989 be used for?

Section 93(2) of the Local Government and Housing Act 1989 can be used by authorities:

- to acquire by agreement or compulsorily premises consisting of, or including, housing accommodation to achieve or secure their improvement or repair

- for their proper and effective management and use; or
• for the wellbeing of residents in the area

They may provide housing accommodation on land so acquired.

Authorities acquiring properties compulsorily should consider subsequently disposing of them to owner occupiers, housing associations or other private sector interests in line with their strategy for the Renewal Area. Where property in need of renovation is acquired, work should be completed as quickly as possible in order not to blight the area and undermine public confidence in the overall Renewal Area strategy. In exercising their powers of acquisition authorities will need to bear in mind the financial and other (eg manpower) resources available to them and to other bodies concerned.

Section 93(4) of the Local Government and Housing Act 1989 can be used by authorities to acquire by agreement or compulsorily land and buildings for the purpose of improving the amenities in a Renewal Area. This power also extends to acquisition where other persons will carry out the scheme. Examples might include the provision of public open space or community centres either by the authority or by a housing association or other development partner. Demolition of properties should be considered as a last resort only after all other possible options have been considered. In these exceptional cases regard should be had to any adverse effects on industrial or commercial concerns.

The powers in sections 93(2) and 93(4) of the Local Government and Housing Act 1989 are additional powers and are without prejudice to other powers available to local housing authorities to acquire land which might also be used in Renewal Areas.

The extent to which acquisitions will form part of an authority’s programme will depend on the particular area. In some cases strategic acquisitions of land for amenity purposes will form an important element of the programme. However, as a general principle, the Secretary of State would not expect to see authorities acquiring compulsorily in order to secure improvement except where this cannot be achieved in any other way. Where acquisition is considered to be essential by an authority, they should first attempt to do so by agreement.

Where an authority submit a compulsory purchase order under section 93(2) or 93(4) of the Local Government and Housing Act 1989, their statement of reasons for making the order should demonstrate compulsory purchase is considered necessary in order to secure the objectives of the Renewal Area. It should also set out the relationship of the proposals for which the order is required to their overall strategy for the Renewal Area; their intentions regarding disposal of the property; and their financial ability, or that of the purchaser, to carry out the proposals for which the order has been made.

Other housing powers

157. Are there any other housing powers under which local authorities can make compulsory purchase orders?

Compulsory purchase orders can also be made by local authorities under sections 29 and 300 of the Housing Act 1985 and section 34 of the Housing Associations Act 1985. These orders will be considered on their merits in the light of the general requirement that there should be a compelling case for compulsory purchase in the public interest. The Secretary of State will also have regard to the policies set out in this section where applicable.
Listed buildings in slum clearance

158. If a building included in a clearance compulsory purchase order under section 290 of the Housing Act 1985 is subsequently listed will the clearance go ahead?

This is a matter for the local planning authority concerned. It will need to decide urgently whether the building should be retained because of its special interest, or whether it should proceed with the clearance proposals.

If the authority favours clearance, it must apply to the Secretary of State for listed building consent within three months of the date of listing (section 305 of the Housing Act 1985).

159. What happens if the building is listed after the order has been submitted to the Secretary of State for confirmation but before a decision is reached?

If a building in a clearance compulsory purchase order is listed after the order has been submitted to the Secretary of State for confirmation, but before he has reached a decision on it, the authority should inform the Secretary of State urgently how it wishes to proceed in the light of listing.

If it favours retaining the building, the authority should request that the building be withdrawn from the order.

If the authority applies for listed building consent to demolish, the Secretary of State will normally hold a joint local public inquiry at which the compulsory purchase order and the application for listed building consent will be considered together.

160. What happens if the building is listed after the order has been confirmed by the Secretary of State?

If listed building consent is applied for and granted, acquisition, if not completed, can proceed and demolition can follow.

If listed building consent is refused, or if no application is made within the three month period, subsequent action depends on whether or not notice to treat has been served and, if it has, whether the building is vested in the authority:

- if notice to treat has not been served, section 305(2) of the Housing Act 1985 prohibits the authority from serving it unless and until the Secretary of State gives listed building consent. Refusal of listed building consent or failure to apply for it within the specified period will effectively release the building from the compulsory purchase order and, where applicable, from the clearance area. In the latter event, the authority must then consider other appropriate action for dealing with unfitness under the housing acts

- if notice to treat has been served before the listing, but acquisition has not been completed before listed building consent is refused or the expiry of the three month period, compulsory acquisition may continue, but this will be under the powers contained in Part 2 of the Housing Act 1985 for residential buildings or Part 9 of the
Town and Country Planning Act 1990 for other buildings

- if the building is already vested in the authority, it will be appropriated to Part 2 of the 1985 act or Part 9 of the Town and Country Planning Act 1990 as the case may be

Local authorities are reminded that Housing health and safety rating system enforcement guidance advises that listed buildings and buildings subject to a building preservation notice should only be included in clearance areas in exceptional circumstances and only where listed building consent has been given.

161. What happens if the building was purchase by agreement under Part 9 of the Housing Act 1985, or under some other power and now held under Part 9 and is subsequently listed?

Under section 306 of the Housing Act 1985 the authority may apply for listed building consent if it still favours demolition. If consent is refused or not applied for within the specified period of three months from the date of listing, the authority is no longer subject to the duty to demolish the building imposed by Part 9 of the Housing Act 1985 and must appropriate it to Part 2 of the Housing Act 1985 or Part 9 of the Town and Country Planning Act 1990 as the case may be.

162. Is planning permission required to demolish an unlisted building in a conservation area where the building is included in a clearance compulsory purchase order?

In these circumstances demolition is permitted development (subject to article 4 directions and any Environmental Impact Assessment requirements) so an application for planning permission is not required – see ‘What permissions/prior approvals are required for demolition in a conservation area?’ in planning guidance for further information.

Where a submitted clearance compulsory purchase order includes buildings within a conservation area, the Secretary of State will wish to have regard to the conservation area aspect in reaching his decision on the order.
Section 7: to improve the appearance or condition of land

163. Can a local authority compulsorily acquire land to improve its appearance or condition?

In some circumstances a local authority can compulsorily acquire land to improve its appearance or condition. For instance, a local authority can use their compulsory purchase powers under section 89(5) of the National Parks and Access to the Countryside Act 1949 specifically for this purpose.

If the local authority is unsure whether to use these specific powers or if various uses are proposed for the land, the authority may consider using the powers granted by section 226 of the Town and Country Planning Act 1990 instead.

There are also various other compulsory purchase powers that local authorities may use to acquire and develop land that is derelict, neglected or unsightly for particular purposes such as housing or public open space.

164. When can a local authority use their powers under section 89 of the National Parks and Access to the Countryside 1949 Act to compulsorily purchase land?

A local authority can use their powers under section 89(5) of the National Parks and Access to the Countryside Act 1949 to compulsorily purchase land to plant trees to preserve or enhance the natural beauty of the land. The local authority can also use this power to carry out works to reclaim, improve or bring back into use land in their area that the authority believes to be:

- derelict, neglected or unsightly; or

- likely to become derelict, neglected or unsightly because the authority anticipate that the surface may collapse as a result of underground mining operations (other than coal mining)

165. Can a local authority still consider land to be ‘derelict, neglected or unsightly’ even if it is in use?

A local authority may still consider land to be ‘derelict’ or ‘neglected’ even if it is being put to some slight use when its condition is compared to the potential use of the land. However, it is not the purpose of these powers to enable a local authority to carry out works or acquire land solely because they believe that they can provide a better use than the present one.

166. Who decides whether to confirm an order to compulsorily purchase land under section 89 of the National Parks and Access to the Countryside Act 1949?

The Secretary of State for Environment, Food and Rural Affairs decides whether to confirm an order under section 89(5) of the National Parks and Access to the Countryside Act 1949.

167. What does the phrase ‘derelict, neglected or unsightly’ mean in connection with these compulsory purchase powers?
There are no statutory definitions so the natural, common sense meaning of the words should be taken. If possible, it is also preferable to consider the three words taken together as there is considerable overlap between each. For instance, the untidy or ‘unsightly’ appearance of the land may also be relevant in considering whether it is ‘derelict’ or ‘neglected’, or land might be considered ‘neglected’ but not ‘derelict’ if no building works, dumping or excavation have taken place.

The authority may wish to obtain the views of the Secretary of State for Environment, Food and Rural Affairs on the meaning of these words when considering whether to make a section 89(5) order.
Section 8: for educational purposes

168. What powers does a local authority have to make a compulsory purchase order for educational purposes?

A local authority can make a compulsory purchase order for educational purposes using its powers under section 530 of the Education Act 1996, as amended, with the confirmation of the Secretary of State for Education. These powers can be used to acquire land which is required for the purposes of its educational functions, including the purposes of:

- any local authority maintained or assisted school or institution; or
- an academy (whether established or to be established)

169. How does a local authority make a compulsory purchase order for educational purposes?

When making an order a compulsory purchase order under section 530 of the Education Act 1996, the authority should have due regard to statutory requirements from the Department for Education. The local authority may also seek guidance, if necessary, from that department on the form of draft orders where there is doubt about a particular point.

The local authority submits the order and other required documents for confirmation to the Secretary of State for Education at the following address:

   Education Funding
   Agency Schools
   Assets Team
   Mowden Hall,
   Staindrop
   Road,
   Darlington,
   Co. Durham DL3 9BG

If the compulsory purchase order is for a voluntary aided school, the local authority will need to submit certain additional documents with the order, as well as the standard documents required.

170. What additional documents are required to make a compulsory purchase order for voluntary aided schools?

In addition to the standard list of documents required to make a compulsory purchase order, an order for a voluntary aided school will require the following documents:

a) completed copy of the Site Acquisition form (form SB1), available from the Department for Education; and

b) a qualified valuer’s report

These additional documents should accompany, or be submitted as soon as possible after, the order.
171. Can a local authority make a compulsory purchase order in connection with a proposal for changes in school provision?

A local authority may make a compulsory purchase order (under section 530 of the Education Act 1996) in connection with certain proposals for changes in school provision. A proposal could involve:

- the establishment of a new school for children of compulsory school age (under Part 2 of the Education and Inspections Act 2006); or
- a prescribed alteration to an existing maintained school (under Part 2 of the Education and Inspections Act 2006)

172. How does the Secretary of State consider a compulsory purchase order for educational purposes if it is accompanied by a statutory proposal?

The Secretary of State considers a compulsory purchase order made under section 530 of the Education Act 1996 separately to any accompanying statutory proposal for changes in school provision (made under Part 2 of the Education and Inspections Act 2006).

173. When can the Secretary of State for Education compulsorily purchase land that is required by an academy?

The Secretary of State for Education can compulsorily purchase land that is required by an academy using the powers granted by Paragraphs 5 and 7 of schedule 1 to the Academies Act 2010. The Secretary of State can use these powers if a local authority has either:

- disposed of land; or
- made an appropriation of land (that they hold a freehold or leasehold interest in) under section 122 of the Local Government Act 1972

without the consent of the Secretary of State, and if the land in question has been used wholly or mainly for the purposes of a school or a 16 to 19 academy at any time in the period of eight years ending with the day on which this disposal or appropriation was made.

174. What happens once the Secretary of State has completed the compulsory purchase of the land?

Once the Secretary of State has completed the compulsory purchase, the land must be transferred to a person concerned with the running of the academy. The Secretary of State is entitled to recover from the local authority any compensation awarded (and any interest) in relation to the compulsory purchase, together with costs and expenses incurred in connection with the making of the compulsory purchase order.

Arrangements for publishing/seeking proposals for a change in school provision that requires a compulsory purchase order

175. What can a local authority do, if it wishes to compulsorily purchase land to establish a new school for children of compulsory school age?
When a local authority decides that it needs a new school in its area for children of compulsory school age, it is required by section 6A of the Education and Inspections Act 2006 to seek proposals to establish an academy. If the local authority requires land to be compulsorily acquired for this purpose, it should publish the notice seeking proposals before making a compulsory purchase order.

The local authority is also expected to notify the Department for Education of their plan to seek proposals as soon as the need for a new school has been decided upon.

A local authority can only publish its own proposals in the limited circumstances set out in Part 2 of that act, for example if the new school is to replace one or more maintained schools. Further information is available from the Department for Education.

176. What can a local authority do, if it wishes to compulsorily purchase land to make a prescribed alteration to a school?

If a local authority wishes to make a prescribed alteration under Part 2 of the Education and Inspections Act 2006, the local authority should publish their proposals before making a compulsory purchase order.

177. What can an appropriate authority do if their proposal to restructure school sixth form education requires the compulsory purchase of land?

The appropriate authority (the Skills Funding Agency or the Education Funding Agency) should publish their proposal to restructure school sixth form education before the relevant local authority makes a compulsory purchase order.

Section 72 of the Education Act 2002 sets out arrangements for the publication of proposals to restructure sixth form education.

Deciding an application for approval for a change in school provision that accompanies a compulsory purchase order

178. How is a proposal for a change in school provision considered, if it relies on the approval of a compulsory purchase order?

Depending on the nature of the proposal, an application for approval is considered as follows:

a) Proposals to establish a new academy

The Secretary of State for Education makes the final decision on whether to approve a proposal to establish a new academy.

When considering the proposal, the Secretary of State takes into account the need for a compulsory purchase order and any decision to approve the proposal is then conditional on the local authority acquiring the site. The local authority is then informed of the decision on the proposal so that it may make and submit the compulsory purchase order.
b) **Proposals to make a prescribed alteration to an existing maintained school**

The relevant local authority or schools adjudicator decides whether to approve a proposal to make a prescribed alteration to an existing maintained school.

The relevant local authority or schools adjudicator considers the application for approval of a proposal for a prescribed alteration. Consideration is given on the merits of the proposal and independently from the Secretary of State’s consideration of the compulsory purchase order.

Approval can only be given on the condition that the relevant site is acquired under regulation 16(2)(b) of the School Organisation (Establishment and Discontinuance of Schools) Regulations 2013. The local authority will then be informed of the decision so that it may make and submit the compulsory purchase order.

179. **What happens if the proposal for a change in school provision is rejected?**

If the decision is to reject the proposal for a change in school provision, the local authority is advised not make the order since, in these circumstances it would be inappropriate for the Secretary of State to confirm it.

180. **What happens once the Secretary of State has decided whether or not to confirm the compulsory purchase order?**

If the Secretary of State decides to confirm the compulsory purchase order the order will be sealed and returned to the local authority. When the local authority has purchased the site, the condition of the approval is met and the approval of the proposal becomes final with no further action required.

If the Secretary of State decides not to confirm the order, the proposal falls as the condition is not met.
Section 9: for public libraries and museums

181. Who has compulsory purchase powers to acquire land for public libraries and museums?

A local authority can compulsorily acquire land for public libraries and museums under section 121 of the Local Government Act 1972, using an appropriate enabling power (such as section 7 or 12 of the Public Libraries and Museums Act 1964).

182. How does a local authority make a compulsory purchase order for public libraries and museums?

When making a compulsory purchase order for public libraries and museums the local authority should have due regard to statutory requirements.

The order should be accompanied by each of the following additional documents:

- a completed copy of form CP/AL1 (obtainable from the Department for Digital, Culture, Media & Sport, Libraries Division)
- a qualified valuer’s report

The order and accompanying documents are submitted to the Secretary of State for Digital, Culture, Media & Sport for confirmation at the address below:

Department for Digital, Culture, Media & Sport
100 Parliament Street
London
SW1A 2BQ
Section 10: for airport Public Safety Zones

183. Can an airport operator compulsorily purchase property that is located near an airport?

An airport operator can compulsorily purchase whole or part of a property if it is located within the 1 in 10,000 individual risk contour of an airport and if the property, or the relevant part of it, is:

- an occupied residential property
- a commercial or industrial property that is occupied as an all-day workplace

However, a compulsory purchase order should only be made as a last resort, if the airport authority is unable to purchase the property by agreement.

184. What should the airport operator do if a property falls into the categories described above?

If a property falls into the categories described above, the airport operator is expected to offer to purchase the property by agreement, with compensation being payable under the Compensation Code.

If purchase by agreement is not possible, the Secretary of State will be prepared to consider applications for compulsory purchase by airport operators with powers under section 59 of the Airports Act 1986.

To make a compulsory purchase order, the airport operator will need to demonstrate that the property falls within the categories described and that it has not been possible to purchase the property by agreement. The compulsory purchase order should be sent to the Secretary of State for Transport at:

Airports Policy Division
Zone 1/26, Great Minster House
33 Horseferry Road
London
SW1P 4DR

Once the property has been acquired, the airport operator will be expected to demolish any buildings and to clear the land.

185. What is the ‘1 in 10,000 individual risk contour’ of an airport and why is property within this area significant?

The ‘1 in 10,000 individual risk contour’ is an area of land within the Public Safety Zone of an airport where individual third party risk of being killed as a result of an aircraft accident is greater than 1 in 10,000 per year.

The level of risk in the ‘1 in 10,000 individual risk contour’ is much higher than in other areas of the Public Safety Zone and at some airports, this contour extends beyond the airport boundary. As a result, it is the Secretary of State for Transport's policy that
there should be no occupied residential properties or all day workplaces within this area.

Further information can be found on the Department for Transport website (see circular 1/10).
Section 11: for listed buildings in need of repair

186. Who has compulsory purchase powers for listed buildings in need of repair?

Section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990 gives an appropriate authority compulsory purchase powers to acquire a listed building in need of repair with the authorisation of the Secretary of State. The appropriate authority may be:

- the relevant local planning authority
- Historic England, if the listed building is located in Greater London
- the Secretary of State for Digital, Culture, Media & Sport

It is the Secretary of State’s policy to only use this power in exceptional circumstances.

187. How does an appropriate authority make a compulsory purchase order for a listed building in need of repair?

To make a compulsory purchase order for a listed building in need of repair under section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990, the appropriate authority is required to:

- serve a repairs notice under section 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990 on the owner (see section 31(2) of Planning (Listed Buildings and Conservation Areas) Act 1990/section 336 of the Town and Country Planning Act 1990) of the listed building at least two months before making the compulsory purchase order
- prepare and serve the compulsory purchase order and its associated notices, if the repairs notice has not been complied with within two months of service
- submit the compulsory purchase order, a copy of the repairs notice and all supporting documents to the Secretary of State for Digital, Culture, Media & Sport

188. What if the owner has deliberately allowed the listed building to fall into disrepair to justify its demolition?

If there is clear evidence that the owner of a listed building has deliberately allowed the building to fall into disrepair to justify its demolition and the development of the site (or an adjoining site), the acquiring authority can include a direction for minimum compensation within the compulsory purchase order. Provisions for minimum compensation are given in section 50 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

The terms for a minimum compensation direction are set out in optional paragraph 4 of Form 1 in the schedule to the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004.
Follow the link for advice on how to include a direction for minimum compensation within a compulsory purchase order.

189. What should a local authority do if an application is made to a magistrates’ court to contest a direction for minimum compensation?

As soon as a local authority becomes aware of any application to a magistrates’ court:

- to stay further proceedings on the compulsory purchase order, under section 47(4) of the Planning (Listed Buildings and Conservation Areas) Act 1990; or
- for an order that a direction for minimum compensation is not included in the compulsory purchase order, under section 50(6) of the Planning (Listed Buildings and Conservation Areas) Act 1990

they should notify the Secretary of State for Digital, Culture, Media & Sport immediately. Depending on the circumstances, it may be necessary to hold the order in abeyance (ie suspend the order) until the court has considered the application.

Repairs notices

190. When might an appropriate authority serve a repairs notice?

An appropriate authority may consider issuing a repairs notice (under section 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990) if a listed building is at risk because its owner has failed to keep the building in reasonable repair for an extended period of time. A repairs notice is not the same as a notice for urgent works and can be served whether the listed building is occupied or not.

Further information on repairs notices and notices for urgent works are available from the Historic England website.

191. What information should the repairs notice include?

The repairs notice must:

- specify the works which the authority considers reasonably necessary for the proper preservation of the building; and
- explain the effect of sections 47-50 of the Planning (Listed Buildings and Conservation Areas) Act 1990

192. What works might be specified in the repairs notice?

The works specified in the repairs notice will always relate to the circumstances of the individual case and will involve judgments about what is considered reasonable to preserve (rather than restore) the listed building.

Other considerations may be used as a basis for determining the scope of works required. For example, the condition of the building when it was listed may be taken into account if the building has suffered damage or disrepair since being listed. In this case, the repairs
notice may include works to secure the building’s preservation as at the date of listing, but should not be used to restore other features.

Alternatively, the notice may specify works that are necessary to preserve the rest of the building, such as repairs to a defective roof, whether or not the particular defect was present at the time of listing.

The form of the compulsory purchase order and its associated notices

193. How are the compulsory purchase order and associated notices prepared?

General guidance on the format of compulsory purchase orders is available here.

For compulsory purchase orders for listed buildings in need of repair, there are additional provisions set out in regulation 4 of the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004. These require additional paragraphs from the schedule to the regulations to be inserted into the relevant forms, as described below.

When preparing any personal notices:

- include additional paragraphs 3 and 5 of Form 8; and
- if a direction for minimum compensation is included within the order insert additional paragraph 4 of Form 8; and
- include an explanation of the meaning of the direction, as required by section 50(3) of the Planning (Listed Buildings and Conservation Areas) Act 1990. This should normally include the text of subsections (4) and (5) of section 50 of that act

When preparing the compulsory purchase order:

- if a direction for minimum compensation is included within the order, include optional paragraph 4 of Form 1 in orders drafted using Form 1
Tier 3: procedural issues

194. Where can guidance on common procedural issues be found?

Guidance can be found here:

- Section 12: preparing statement of reasons
- Section 13: general certificate
- Section 14: preparing and serving the order and notices
- Section 15: order maps
- Section 16: addresses

195. Where can further information on other procedural issues which will only apply in certain cases be found?

Further information can be found here:

- Section 17: for community assets (at the request of the community)
- Section 18: special kinds of land
- Section 19: compulsory purchase of new rights and other interests
- Section 20: compulsory purchase of Crown land
- Section 21: certificates of appropriate alternative development (under the Land Compensation Act 1961)
- Section 22: protected assets certificate
- Section 23: objection to division of land (material detriment)
- Section 24: overriding easements and other rights
Common procedural issues

Section 12: preparing statement of reasons

196. What information should be included in the statement of reasons?

The statement of reasons should include the following information:

(i) a brief description of the order land and its location, topographical features and present use

(ii) an explanation of the use of the particular enabling power

(iii) an outline of the authority’s purpose in seeking to acquire the land

(iv) a statement of the authority’s justification for compulsory purchase, with regard to Article 1 of the First Protocol to the European Convention on Human Rights, and Article 8 if appropriate

(v) a statement justifying the extent of the scheme to be disregarded for the purposes of assessing compensation in the ‘no-scheme world’

(vi) a description of the proposals for the use or development of the land

(vii) a statement about the planning position of the order site. See also Section 1: advice on section 226 of the Town and Country Planning Act 1990 for planning orders.

(viii) information required in the light of government policy statements where orders are made in certain circumstances eg as stated in Section 5: local housing authorities for housing purposes where orders are made under the Housing Acts (including a statement as to unfitness where unfit buildings are being acquired under Part 9 of the Housing Act 1985)

(ix) any special considerations affecting the order site eg ancient monument, listed building, conservation area, special category land, consecrated land, renewal area, etc

(x) if the mining code has been included, reasons for doing so

(xi) details of how the acquiring authority seeks to overcome any obstacle or prior consent needed before the order scheme can be implemented eg need for a waste management licence

(xii) details of any views which may have been expressed by a government department about the proposed development of the order site

(xiii) what steps the authority has taken to negotiate for the acquisition of the land by agreement
(xiv) any other information which would be of interest to persons affected by the order eg proposals for rehousing displaced residents or for relocation of businesses

(xv) details of any related order, application or appeal which may require a co-ordinated decision by the confirming minister eg an order made under other powers, a planning appeal/application, road closure, listed building; and

(xvi) if, in the event of an inquiry, the authority would intend to refer to or put in evidence any documents, including maps and plans, it would be helpful if the authority could provide a list of such documents, or at least a notice to explain that documents may be inspected at a stated time and place
Section 13: general certificate

197. **What is the purpose of a general certificate in support of an order submission?**

A general certificate has no statutory status, but is intended to provide reassurance to the confirming authority that the acquiring authority has followed the proper statutory procedures.

198. **What form should a general certificate in support of an order submission take?**

The certificate should be submitted in the following form:

THE …………. COMPULSORY PURCHASE ORDER 20...

I hereby certify that:

1. A notice in the Form numbered…….in the Compulsory Purchase of Land (Prescribed Forms)(Ministers) Regulations 2004 (SI 2004 No. 2595) was published in two issues of the ……………………………………….. dated ………………… 20…. and ……………………………………….. 20....(being one or more local newspapers circulating in the locality). The time allowed for objections was not less than 21 days from the date of the first publication of the notice and the last date for them is/was………………. 20.... A notice in the same Form addressed to persons occupying or having an interest in the land was affixed to a conspicuous object or objects on or near the land comprised in the order on ……………….. 20.... and from that date remained in place for a period of at least 21 days which was the period allowed for objections, the last date being ………… 20....

2. Notices in the Form numbered ……. in the said Regulations were duly served on
   (i) every owner, lessee, tenant and occupier of all land to which the order relates;
   (ii) every person to whom the acquiring authority would, if proceeding under section 5(1) of the Compulsory Purchase Act 1965, be required to give a notice to treat; and
   (iii) every person the acquiring authority thinks is likely to be entitled to make a claim for compensation under section 10 of the 1965 Act if the order is confirmed and the compulsory purchase takes place, so far as such a person is known to the acquiring authority after making diligent inquiry. (NB: For an order made under section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990, the notice must include additional paragraphs in accordance with regulation 4 of the 2004 Prescribed Forms Regulations.)

   The time allowed for objections in each of the notices was not less than 21 days and the last date for them is/was …………………… 20.... The notices were served by one or more of the methods described in section 6(1) of the 1981 Act.

3. [Where the order includes land in unknown ownership] Notices in the Form
numbered …………….. in the said Regulations were duly served by one or more of the methods described in section 6(4) of the 1981 Act. The time allowed for objections in each of the notices was not less than 21 days and the last date is/was …………………………………. 20.... .

4. A copy of the order and of the map were deposited at ……………………….. on ………………………………….. 20.... and will remain/remained available for inspection until ………………………………….. .

5. (1) A copy of the authority’s statement of reasons for making the order has been sent to:

   (a) all persons referred to in paragraph 2(i), (ii) and (iii) above (see Which parties should be notified of a compulsory purchase order?)

   (b) as far as is practicable, other persons resident on the order lands, and any applicant for planning permission in respect of the land

   (2) Two copies of the statement of reasons are herewith forwarded to the Secretary of State.

6. [Where the order includes ecclesiastical property] Notice of the effect of the order has been served on the Church Commissioners (section 12(3) of the 1981 Act).]

NB. The Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950 (SI 1950 No. 792) apply where it is proposed to use for other purposes consecrated land and burial grounds which here acquired compulsorily under any enactment, or acquired by agreement under the Town and Country Planning Acts, or which were appropriated to planning purposes. Subject to sections 238 to 240 of the 1990 Act, permission (a ‘faculty’) is required for material alteration to consecrated land. (See Faculty Jurisdiction Measure 1964; Care of Churches and Ecclesiastical Jurisdiction Measure 1991.)
Section 14: preparing and serving the order and notices

199. **What format should an order adopt?**

The order and associated schedule should comply with the relevant form as prescribed by regulation 3 of, and the schedule to, the *Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004* (SI 2004 No. 2595).

In accordance with the notes to the prescribed forms, the title and year of the act authorising compulsory purchase must be inserted. Each acquisition power must be cited and its purpose clearly stated in paragraph 1 of the order. For orders made under section 17 of the Housing Act 1985, the purpose of the order may be described as ‘the provision of housing accommodation’. Where there are separate compulsory acquisition and enabling powers, each should be identified and its purpose stated. In some cases, a collective title may be sufficient to identify two or more acts. (See Section 1: advice on section 226 of the *Town and Country Planning Act 1990* and Section 18: compulsory purchase of new rights and other interests for examples of how orders made under certain powers may be set out. Section 2: advice on section 121 of the *Local Government Act 1972* contains guidance on orders where the acquisition power is section 121 or section 125 of the Local Government Act 1972 and on orders for mixed purposes.)

200. **Where should the order maps be deposited?**

A certified copy of the order map should be deposited for inspection at an appropriate place within the locality eg the local authority offices. It should be within reasonably easy reach of persons living in the area affected. The two sealed order maps should be forwarded to the offices of the confirming authority.

201. **Can the ‘the mining code’ be incorporated into an order?**

Parts 2 and 3 of *schedule 2 to the Acquisition of Land Act 1981*, relating to mines (‘the mining code’), may be incorporated in a compulsory purchase order made under powers to which the act applies. The incorporation of both parts does not, of itself, prevent the working of minerals within a specified distance of the surface of the land acquired under the order; but it does enable the acquiring authority, if the order becomes operative, to serve a counter-notice stopping the working of minerals, subject to the payment of compensation. Since this may result in the sterilisation of minerals (including coal reserves), the mining code should not be incorporated automatically or indiscriminately.

Therefore, authorities are asked to consider the matter carefully before including the code, and to omit it where existing statutory rights to compensation or repair of damage might be expected to provide an adequate remedy in the event of damage to land, buildings or works occasioned by mining subsidence.

The advice of the Valuation Office Agency’s regional mineral valuers is available to authorities when considering the incorporation of the code.
202. Who should authorities notify if they make an order incorporating the mining code?

In areas of coal working notified to the local planning authority by the Coal Authority under article 16 of, and paragraph (o), schedule 4 to, the Town and Country Planning (Development Management Procedure) (England) Order 2015, authorities are asked to notify the Coal Authority and relevant licensed coal mine operator if they make an order which incorporates the mining code.

203. What information about the land to be acquired should be included in an order?

The prescribed order formats set out in the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004 require, subject to the flexibility to adapt them permitted by Regulation 2, that the extent of the land should be stated. Therefore, the area of each plot, eg in square metres, should normally be shown. This information will be particularly important where any potential exists for dispute about the boundary of the land included in the order, because section 14 of the Acquisition of Land Act 1981 prohibits the modification of an order on confirmation to include land which would not otherwise have been covered. It may not always be necessary for a measurement of the plot to be quoted, if the extent and boundaries can be readily ascertained without dispute. For instance, the giving of a postal address for a flat may be sufficient.

Each plot should be described in terms readily understood by a layman, and it is particularly important that local people can identify the land described. The Regulations require that the details about the extent, description and situation of the land should be sufficient to tell the reader approximately where the land is situated without reference to the map (see notes to prescribed Forms 1 to 6 in the regulations).

Simple descriptions in ordinary language are to be preferred. For example, where the land is agricultural it should be described as ‘pasture land’ or ‘arable land’; agricultural and non-agricultural afforested areas may be described as ‘woodland’ etc; and, if necessary, be related to some well known local landmark, eg ‘situated to the north of School Lane about 1 km west of George’s Copse’.

Where the description includes a reference to Ordnance Survey field numbers the description should also state or refer to the sheet numbers of the Ordnance Survey maps on which these field numbers appear. The Ordnance Survey map reference should quote the edition of the map.

Property, especially in urban areas, should be described by name or number in relation to the road or locality and where part of a property has a separate postal address this should be given. Particular care is necessary where the street numbers do not follow a regular sequence, or where individual properties are known by more than one name or number. The description should be amplified as necessary in such cases to avoid any possibility of mistaken identity. If the order when read with the order map fails to clearly identify the extent of the land to be acquired, the confirming authority may refuse to confirm the order even though it is unopposed.
204. **What information should be included in the order where the authority already owns an interest in the land to be acquired?**

Except for orders made under highway land acquisition powers in Part 12 of the Highways Act 1980, to which section 260 of that act applies, where the acquiring authority already own an interest or interests in land but wish to acquire the remaining interest or interests in the same land, usually to ensure full legal title, they should include a description of the land in column 2 of the Schedule in the usual way but qualify the description as follows; ‘all interests in [describe the land] except those owned by the acquiring authority’. The remaining columns should be completed as described in *What information should be included in the order schedule?*. This principle should be extended to other interests in the land which the acquiring authority does not wish to acquire, eg Homes England might decide it wishes to exclude its own interests and local authority interests from an order.

Compulsory purchase should not be used merely to resolve conveyancing difficulties. It is accepted, however, that it may only be possible to achieve satisfactory title to certain interests by the use of compulsory powers, perhaps followed by a general vesting declaration (see *Stage 5: implementing a compulsory purchase order*). Accordingly, acquiring authorities will be expected to explain and justify the inclusion of such interests. The explanation may be either in their preliminary statement of reasons or in subsequent correspondence, which may have to be copied to the parties. If no explanation is given or if the reasons are unsatisfactory, the confirming minister may modify an order to exclude interests which the acquiring authority already own, on the basis that compulsory powers are unnecessary.

A similar form of words to that described above may be appropriate where the acquiring authority wish to include in the order schedule an interest in Crown land which is held otherwise than by or on behalf of the Crown. (In most cases, the Crown’s own interests cannot be acquired compulsorily.) Further guidance on this subject is given in *Section 19: compulsory purchase of Crown land*.

205. **Who is the acquiring authority required to serve notice of the making of the order?**

The schedule to the order should include the names and addresses of every qualifying person as defined in *section 12(2), 12(2A) and 12(2B) of the Acquisition of Land Act 1981* and upon whom the acquiring authority is required to serve notice of the making of the order. A qualifying person is:

(i) every owner, lessee, tenant, and occupier (section 12(2)(a) of the act)

(ii) every person to whom the acquiring authority would, if proceeding under *section 5(1) of the Compulsory Purchase Act 1965*, be required to give a notice to treat (section 12(2A) of the act); and

(iii) every person the acquiring authority thinks is likely to be entitled to make a claim for compensation under section 10 of the Compulsory Purchase Act 1965 if the order is confirmed and compulsory purchase takes place, so far as such a person is known to the acquiring authority after making *diligent inquiry* under *section 12(2B) of the act*
206. Should the order schedule include persons who may have a valid claim to be owners or lessees?

The schedule should include persons who may have a valid claim to be owners or lessees for the purposes of the Acquisition of Land Act 1981, eg persons who have entered into a contract to purchase a freehold or lease.

207. How should partnerships be dealt with?

The acquiring authority should ask the partnership to nominate a person for service. This avoids having to include the names of all partners in a partnership in the schedule and ensuring all partners are personally served. Notice served upon the partner who habitually acts in the partnership business is probably valid (see section 16 of the Partnership Act 1890), especially if that partner has control and management of the partnership premises, but the position is not certain.

208. How should corporate bodies be dealt with?

Service should be effected on the secretary or clerk at the registered or principal office of a corporate body, which should be shown in the appropriate column, ie as owner, lessee etc. (section 6(2) and (3) of the Acquisition of Land Act 1981). NB: under Company Law requirements, notices served on a company should be addressed to the secretary of the company at its principal or registered office. It is good practice to send copies to the actual contact who has been dealing with negotiations.

209. How should Trusts be dealt with?

Individual trustees should be named and served.

210. How should unincorporated bodies be dealt with?

In the case of unincorporated bodies, such as clubs, chapels and charities, the names of the individual trustees should be shown and each trustee should be served as well as the secretary. NB: The land may be vested in the trustees and not the secretary, but the trustees may be somewhat remote from the running of the club etc; and since communications should normally be addressed to its secretary, it is considered to be reasonable that the secretary should also be served. However, service solely on the secretary of such a body is not sufficient unless it can be shown that the secretary has been authorised by the trustees, or has power under the trust instrument, to accept order notices on behalf of the trustees.

211. How should charitable trusts be dealt with?

In the case of land owned by a charitable trust it is advisable for notice of the making of the order to be served on the Charity Commissioners at their headquarters address as well as on the trustees. See Part 7 of the Charities Act 2011.

212. How should land which is ecclesiastical property be dealt with?

Where land is ecclesiastical property, ie owned by the Church of England, notice of the making of the order must be served on the Church Commissioners as well as on the owners etc of the property (see section 12(3) of the Acquisition of Land Act 1981).
213. **How should ancient monuments be dealt with?**

Where it appears that land is or may be an ancient monument, or forms the site of an ancient monument or other object of archaeological interest, authorities should, at an early stage and with sufficient details to identify the site, contact the Historic Buildings and Monuments Commission for England (otherwise known as Historic England), or the County Archaeologist, according to the circumstances shown below:

- in respect of a scheduled ancient monument – Historic England; or
- in respect of an unscheduled ancient monument or other object of archaeological interest – the County Archaeologist

This approach need not delay other action on the order or its submission for confirmation, but the authority should refer to it in the letter covering their submission.

214. **How should land in a national park be dealt with?**

Where orders include land in a national park, acquiring authorities are asked to notify the National Park Authority. Similarly, where land falls within a designated Area of Outstanding Natural Beauty or a Site of Special Scientific Interest, they should notify Natural England.

215. **How should land which is being used for sport of physical recreation be dealt with?**

When an order relates to land being used for the purposes of sport or physical recreation, Sport England should be notified of the making of the order.

216. **Can notice be served at a person’s accommodation address?**

Notice can be served at an accommodation address, or where service is effected on solicitors etc, provided the acquiring authority has made sure that the person to be served has furnished this address or has authorised service in this way; where known, the served person’s home or current address should also be shown.

217. **What information should be included in the order schedule?**

- **about the owner or reputed owner** - where known, the name and address of the owner or reputed owner of the property should be shown. If there is doubt whether someone is an owner, he or she should be named in the column and a notice served on him/her. Likewise, if there is doubt as to which of two (or more) persons is the owner, both (or all) persons should be named in the sub-column and a notice served on each. Questions of title can be resolved later. If the owner of a property cannot be traced the word ‘unknown’ should be entered in the column. An order should include those covenants or restrictions which amount to interests in land that the authority wish to acquire or extinguish. Where land owned by the authority is subject to such an encumbrance (for example, an easement, such as a private right of way), they may wish to make an order to discharge the land from it. In any such circumstances, the owner or occupier of the land and the person benefiting from the right should appear in the relevant table of the schedule. The statement of reasons should explain that authority is being sought to acquire or extinguish the relevant interest.
Where the encumbrance affects land in which the acquiring authority have a legal interest, the description in the schedule should refer to the right etc and be qualified by the words ‘all interests in, on, over or under [the land] except those already owned by the acquiring authority’. This should avoid giving the impression that the authority has no interest to acquire.

- **about lessees, tenants, or reputed lessees or tenants** - where there are no lessees, tenants or reputed lessees or tenants a dash should be inserted, otherwise names and addresses should be shown

- **about occupiers** - where a named owner, lessee, or tenant is the occupier, the word ‘owner’, ‘lessee’ or ‘tenant’ should be inserted or the relevant name given. Where the property is unoccupied the column should be endorsed accordingly

218. **What information about qualifying persons under sections 12(2A) and 12(2B) found by diligent enquiries should be included in the order schedule?**

Although most qualifying persons will be owners, lessees, tenants or occupiers, the possibility of there being **anyone falling within one of the categories in sections 12(2A) and (2B)** should not be ignored. The name and address of a person who is a qualifying person under section 12(2A) who is not included in column (3) of the order schedule should be inserted in column (5) together with a short description of the interest to be acquired. An example of a person who might fall within this category is the owner of land adjoining the order land who has the benefit of a private right of way across the order land, which the acquiring authority have under their enabling power a right to acquire which they are seeking to exercise. (An example of this is section 18(1) of the National Parks and Access to the Countryside Act 1949 which empowers the Natural England to acquire an ‘interest in land’ compulsorily which is defined in section 114(1) to include any right over land.)

Similarly the name and address of a person who is a qualifying person under section 12(2B) who is not included in columns (3) and (5) of the order schedule should be inserted in column (6), together with a description of the land in respect of which a compensation claim is likely to be made and a summary of the reasons for the claim. An example of such a potential claim might be where there could be interference with a private right of access across the land included in the order as a result of implementing the acquiring authority’s proposals.

219. **What is meant by ‘diligent enquiries’?**

In determining the extent to which it should make ‘diligent’ enquiries, an authority will wish to have regard to the fact that case law has established that, for the purposes of section 5(1) of the Compulsory Purchase Act 1965, ‘after making diligent inquiry’ requires some degree of diligence, but does not involve a very great inquiry (see Popplewell J. in R v Secretary of State for Transport ex parte Blackett [1992] JPL 1041).

Acquiring authorities are encouraged to serve formal notices seeking information on all interests they have identified to find out if there any additional interests they are not aware of if a landowner has been served with a notice and fails to respond.

An acquiring authority does not have any statutory power under section 5A of the Acquisition of Land Act 1981 act to requisition information about land other than that which
it is actually proposing to acquire. However, the site notice procedure in section 11(3) and (4) of the 1981 act provides an additional means of alerting people who might feel that they have grounds for inclusion in column (6) and who can then identify themselves.

220. How should special category land be recorded in the order?

Special category land ie land to which sections 17, 18 and 19 of the Acquisition of Land Act 1981 apply, (or paragraphs 4, 5 and 6 of schedule 3 to the act in the case of acquisition of a new right over such land) should be shown both in the order schedule and in the list at the end of the schedule, in accordance with the relevant notes. But in the case of section 17 of the act (or, for new rights, schedule 3, paragraph 4) it is only necessary to show land twice if the acquiring authority is not mentioned in section 17(3) or paragraph 4(3) of schedule 3 (see also Section 17: Special kinds of land). If an order erroneously fails to state in accordance with the prescribed form that land to be acquired is special category, then the confirming minister may need to consider whether confirmation should be refused as a result.

221. What information should be recorded in the order schedule where the land is common, open space etc?

An order may provide for special category land to which section 19 of the Acquisition of Land Act 1981 applies ('order land') to be discharged from rights, trusts and incidents to which it was previously subject; and for vesting in the owners of the order land, other land which the acquiring authority propose to give in exchange ('exchange land'). Such orders must be made in accordance with the appropriate prescribed form (Forms 2, 3, 5 or 6) adapted, in compliance with the notes, to suit the particular circumstances.

The order land and, where it is being acquired compulsorily, the exchange land, should be delineated and shown as stated in paragraph 1 of the order. Therefore, exchange land which is being acquired compulsorily and is to be vested in the owner(s) of the order land, other land which the acquiring authority propose to give in exchange ('exchange land'). Such orders must be made in accordance with the appropriate prescribed form (Forms 2, 3, 5 or 6) adapted, in compliance with the notes, to suit the particular circumstances.

When an authority make an order in accordance with Form 2, if the exchange land is also acquired compulsorily, the order should include paragraph 2(ii), adapted as necessary, and cite the relevant acquisition power, if different from the power cited in respect of the order land. Paragraph 2(ii) of the Form also provides for the acquisition of land for the purpose of giving it in part exchange, eg where the acquiring authority already own some of the exchange land.

In Form 2, there are different versions of paragraphs 5 and 6(2) (see Note (s)). Paragraph 5 of Form 2 defines the order land by reference to Schedule 1 and either:

a) where the order land is only part of the land being acquired, the specific, ‘numbered’ plots; or

b) where the order land is all the land being acquired, the land which is ‘described’

But if the acquiring authority seek a certificate under paragraph 6(1)(b) of schedule 3 to the 1981 act, because they propose to provide additional land in respect of new rights being acquired (over ‘rights land’), the order should include paragraph 6(1) and the appropriate
paragraph 6(2) of the Form (see Note (s)). Paragraph 6 becomes paragraph 5 if only new rights are to be acquired compulsorily. (See Section 18: compulsory purchase of new rights and other interests) in relation to additional land being given in exchange for a new right.)

Where Form 2 is used, the order land, including rights land, must always be described in Schedule 1 to the order. Exchange and additional land should be described in Schedule 2 to the order where it is being acquired compulsorily; in Schedule 3 to the order where the acquiring authority do not need to acquire it compulsorily; or both schedules may apply, eg the authority may only own part of the exchange and/or additional land. Schedule 3 becomes Schedule 2 if no exchange or additional land is being acquired compulsorily. Exchange or additional land which is not being acquired compulsorily should be delineated and shown on the map so as to clearly distinguish it from land which is being acquired compulsorily.

Paragraph 5 of Form 3 should identify the order land, by referring to either:

a) paragraph 2, where the order land is all the land being acquired; or

b) specific numbered plots in the schedule, where the order land is only part of the land being acquired

This form may also be used if new rights are to be acquired but additional land is not being provided. An order in this form will discharge the order land, or land over which new rights are acquired, from the rights, trusts and incidents to which it was previously subject (in the case of land over which new rights are acquired, only so far as the continuance of those rights, trusts and incidents would be inconsistent with the exercise of the new rights).

An order may not discharge land from rights etc if the acquiring authority seek a certificate in terms of section 19(1)(aa) of or paragraph 6(1)(aa) of schedule 3 to the 1981 act. (See also In what circumstances might an application for a certificate under section 19(1)(aa) of the Acquisition of Land Act 1981 be appropriate? and In which circumstances may a certificate be given?). Note that the extinguishment of rights of common over land acquired compulsorily may require consent under section 22 of the Commons Act 1899.

222. What is the procedure for sealing, signing and dating orders?

All orders should be made under seal, duly authenticated and dated at the end (after the schedule). They should never be dated before they are sealed and signed, and should be sealed, signed and dated on the same day. The order map(s) should similarly be sealed, signed and dated on the same day as the order. Some authorities may wish to consider whether they ought to amend their standing orders or delegations to ensure that this is achieved.
223.  What information should order maps provide?

Order maps should provide details of the land proposed to be acquired, land over which a
new right would subsist and exchange land in accordance with the requirements set out in
the notes to the forms eg paragraph (g) of the notes that accompany both forms 1 and 2.

The heading of the map (or maps) should agree in all respects with the description of the
map headings stated in the body of the order. The words ‘map referred to in [order title]
should be included in the actual heading or title of the map(s).

Land may be identified on order maps by colouring or any other method (see Note (g)
Forms 1, 2 and 3 and, in relation to exchange land, Note (q) to Form 5 in the 2004
Prescribed Forms Regulations) at the discretion of the acquiring authority. Where it is
decided to use colouring, the longstanding convention (without statutory basis) is that land
proposed to be acquired is shown pink, land over which a new right would subsist is shown
blue, and exchange land is shown green. Where black-and-white copies are used they
must still provide clear identification of the order or exchange land.

The use of a sufficiently large scale, Ordnance Survey based map is most important and it
should not generally be less than 1/1250 (1/2500 in rural areas). Where the map includes
land in a densely populated urban area, experience suggests that the scale should be at
least 1/500, and preferably larger. Where the order involves the acquisition of a
considerable number of small plots, the use of insets on a larger scale is often helpful. If
more than one map is required, the maps should be bound together and a key or master
‘location plan’ should indicate how the various sheets are interrelated.

Care should be taken to ensure that where it is necessary to have more than one order
map, there are appropriate references in the text of the order to all of them, so that there is
no doubt that they are all order maps. If it is necessary to include a location plan, then it
should be purely for the purpose of enabling a speedy identification of the whereabouts of
the area to which the order relates. It should be the order map and not the location plan
which identifies the boundaries of the land to be acquired. Therefore whilst the order map
would be marked ‘Map referred to in... ‘in accordance with the prescribed form’ (as in Form
1), a location map might be marked ‘Location plan for the Map referred to in...’ Such a
location plan would not form part of the order and order map, but be merely a supporting
document.

It is also important that the order map should show such details as are necessary to relate
it to the description of each parcel of land in the order schedule or schedules. This may
involve marking on the map the names of roads and places or local landmarks not
otherwise shown.

The boundaries between plots should be clearly delineated and each plot separately
numbered to correspond with the order schedule(s). (For orders which include new rights,
see section on Schedule and map.) Land which is delineated on the map, but which is not
being acquired compulsorily should be clearly distinguishable from land which is being
acquired compulsorily.

There should be no discrepancy between the order schedule(s) and the map or maps, and
no room for doubt on anyone’s part as to the precise areas of land which are included in the order. Where there is a minor discrepancy between the order and map confirming, the authority may be prepared to proceed on the basis that the boundaries to the relevant plot or plots are correctly delineated on the map. Where uncertainty over the true extent of the land to be acquired causes or may cause difficulties, the confirming authority may refuse to confirm all or part of the order.
## Section 16: addresses

### 224. Where should orders, applications and objections be sent?

<table>
<thead>
<tr>
<th>Department</th>
<th>Type of order or application</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministry of Housing, Communities and Local Government</td>
<td>Most orders for which the Secretary of State for Housing, Communities and Local Government is confirming authority</td>
<td>Secretary of State for Housing, Communities and Local Government Planning Casework Unit 5 St Philip’s Place Colmore Row Birmingham B3 2PW Email: <a href="mailto:pcu@communities.gsi.gov.uk">pcu@communities.gsi.gov.uk</a></td>
</tr>
<tr>
<td>Ministry of Housing, Communities and Local Government</td>
<td>Applications for certificates relating to open space under section 19 of, or paragraph 6 of Schedule 3 to, the Acquisition of Land Act 1981</td>
<td>Secretary of State for Housing, Communities and Local Government Planning Casework Unit 5 St Philip’s Place Colmore Row Birmingham B3 2PW Email:<a href="mailto:pcu@communities.gsi.gov.uk">pcu@communities.gsi.gov.uk</a></td>
</tr>
<tr>
<td>Department for Environment, Food and Rural Affairs</td>
<td>Applications for certificates relating to common land, town or village greens under section 19 of, or paragraph 6 of Schedule 3 to, the Acquisition of Land Act 1981</td>
<td>Common Land Casework The Planning Inspectorate 3F Hawk Wing Temple Quay House The Planning Inspectorate 2 The Square Bristol BS1 6PN Email: Common Land Tel: 0303 444 5408</td>
</tr>
</tbody>
</table>
| Department for Environment, Food and Rural Affairs | Orders for *waste disposal* purposes | Secretary of State for Environment, Food and Rural Affairs  
Waste Strategy & Management  
Nobel House  
17 Smith Square  
London  
SW1P 3JR |
|--------------------------------------------------|-----------------------------------|------------------------------------------------------|
| Department for Environment, Food and Rural Affairs | Orders made by *water or sewerage* undertakers | Secretary of State for Environment, Food and Rural Affairs  
Water Programme  
Nobel House  
17 Smith Square  
London  
SW1P 3JR |
| Department for Environment, Food and Rural Affairs | Orders made under section 62(2) of the Land Drainage Act 1991, relating to sewerage or flood defence (land drainage) functions by a local authority, and orders made by internal drainage boards under section 62(1)(b) of that Act | Secretary of State for Environment, Food and Rural Affairs  
Water and Flood Risk Management  
Nobel House  
17 Smith Square  
London  
SW1P 3JR |
| Department for Environment, Food and Rural Affairs | Orders made by the Environment Agency in relation to its flood defence functions, or by local authorities under Part I of the Coast Protection Act 1949 relating to coast protection work | Secretary of State for Environment, Food and Rural Affairs  
Water and Flood Risk Management  
Nobel House  
17 Smith Square  
London  
SW1P 3JR |
| Department for Transport | Orders made under the Highways Act 1980 or the Road Traffic Regulation Act 1984 | Secretary of State for Transport  
National Transport Casework Team  
Department for Transport  
Tyneside House  
Skinnerburn Road  
Newcastle upon Tyne NE4 7AR |
<table>
<thead>
<tr>
<th>Department for Transport</th>
<th>Airports, and airport Public Safety Zones orders</th>
<th>Secretary of State for Transport Aviation Policy &amp; Reform Zone 1/25, Great Minster House 33 Horseferry Road London SW1P 4DR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department for Transport</td>
<td>Civil aviation orders under the Civil Aviation Act 2012 and the Airports Act 1986</td>
<td>Secretary of State for Transport Aviation Policy &amp; Security Reform, Department for Transport Zone 1/25, Great Minster House 33 Horseferry Road London SW1P 4DR</td>
</tr>
</tbody>
</table>

**OTHER CONFIRMING AUTHORITIES** - for other confirming authorities the correspondence should be addressed to the appropriate Secretary of State. The following addresses may be helpful.

<table>
<thead>
<tr>
<th>Department for Education</th>
<th>Real Estate Team Education and Skills Funding Agency Bishopsgate House Darlington DL1 5QE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of Health</td>
<td>Richmond House 79 Whitehall London SW1A 2NS</td>
</tr>
<tr>
<td>Home Office</td>
<td>2 Marsham Street London SW1P 4DF</td>
</tr>
<tr>
<td>Department for Digital, Culture, Media &amp; Sport</td>
<td>Orders relating to listed buildings 100 Parliament Street London SW1A 2BQ</td>
</tr>
<tr>
<td>Department for Work and Pensions for Benefits Agency</td>
<td>BA Estates 1 Trevelyan Square Boar Lane Leeds LS1 6AB</td>
</tr>
<tr>
<td>Department for Business, Energy and Industrial Strategy</td>
<td>Electricity and gas undertakings Onshore Electricity Development Consents Licensing and Consents Unit 3 Whitehall Place London SW1A 2AW</td>
</tr>
</tbody>
</table>
Procedural issues applying to some compulsory purchase orders

Section 17: for community assets (at the request of the community or a local body)

225. What requests can be made to a local authority?

Authorities can receive requests from the community or local bodies to use their compulsory purchase powers to acquire community assets, which may have been designated as Assets of Community Value, that are in danger of being lost where the owner of the asset is unwilling to sell or vacant commercial properties that are detracting from the vitality of an area.

226. What considerations need to be made when receiving a request?

Local authorities should consider all requests from third parties, but particularly voluntary and community organisations, and commercial groupings like Business Improvement District bodies, which put forward a scheme for a particular asset which would require compulsory purchase to take forward, and provide a formal response.

Local authorities must be able to finance the cost of the scheme (including the compensation to the owner) and the compulsory purchase order process either from their own resources, or with a partial or full contribution from those making the request.

Local authorities should, for example, ascertain the value of the asset to the community, or the effect of bringing it back into use; the perceived threat to the asset; the future use of the asset and who would manage it (including a business plan where appropriate); any planning issues; and how the acquisition would be financed.
Section 18: special kinds of land

227. What are ‘special kinds of land’?

Certain special kinds of land are afforded some protection against compulsory acquisition (including compulsory acquisition of new rights across them) by providing that the confirmation of a compulsory purchase order including such land may be subject to special parliamentary procedure. The ‘special kinds of land’ are set out in Part 3 of, and schedule 3 to, the Acquisition of Land Act 1981 and are:

a) land acquired by a statutory undertaker for the purposes of their undertaking (section 16 and schedule 3, paragraph 3) (see What protection is given by section 16 of the Acquisition of Land Act 1981?)

b) local authority owned land; or land acquired by any body except a local authority who are, or are deemed to be, statutory undertakers for the purposes of their undertaking (section 17 and schedule 3, paragraph 4) (see What protection is given by section 17 of the Acquisition of Land Act 1981?)

c) land held by the National Trust inalienably (section 18 and schedule 3, paragraph 5) (see What protection is given by section 18 of the Acquisition of Land Act 1981?); and

d) land forming part of a common, open space, or fuel or field garden allotment (section 19 and schedule 3, paragraph 6) (see What protection is given by section 19 of the Acquisition of Land Act 1981?)

228. Which bodies are defined as statutory undertakers under the Acquisition of Land Act 1981?

Section 8(1) of the Acquisition of Land Act 1981 defines ‘statutory undertakers’ for the general purposes of the act. These include:

- transport undertakings (rail, road, water transport)
- docks, harbours, lighthouses
- Civil Aviation Authority and National Air Traffic Services
- Universal postal service providers

British Telecom is not a statutory undertaker for the purposes of the act. Private bus operators, other road transport operators, taxi and car hire firms which are authorised by licence are not statutory undertakers for the purposes of the act. Where their operations are carried out under the specific authority of an act, however, such operators will fall within the definition in section 8(1) of the act.

In addition, other bodies may be defined as, or deemed to be, statutory undertakers for the purposes of section 16 of the act (various health service bodies) or section 17 of the act (eg Homes England) (see What protection is given by section 17 of the Acquisition of Land Act 1981?).
229. **What protection is there for statutory undertakers’ land?**

Sections 16 and 17 of the Acquisition of Land Act 1981 provide protection for statutory undertakers’ land.

In both cases, the land must have been acquired for the purposes of the undertaking. The provisions do not apply if the land was acquired for other purposes which are not directly connected to the undertakers’ statutory functions. Before making a representation to the appropriate minister under section 16, or an objection in respect of land to which they think section 17 applies, undertakers should take particular care over the status of the land which the acquiring authority propose to acquire, have regard to the provisions of the relevant act, and seek their own legal advice as may be necessary. For example, whilst a gas transporter qualifies as a statutory undertaker, the protection under sections 16 and 17 would not apply in relation to non-operational land held by one, eg their administrative offices. In the circumstances, the land is not held for the purpose of the statutory provision: namely, the conveyance of gas through pipes to any premises or to a pipeline system operated by a gas transporter.

230. **What protection is given by section 16 of the Acquisition of Land Act 1981?**

Under section 16 of the Acquisition of Land Act 1981, statutory undertakers who wish to object to the inclusion in a compulsory purchase order of land which they have acquired for the purposes of their undertaking, may make representations to ‘the appropriate minister’. This is the minister operationally responsible for the undertaker, eg in the case of a gas transporter or electricity licence holder, the Secretary of State for Business, Energy and Industrial Strategy. Such representations must be made within the period stated in the public and personal notices, ie not less than twenty-one days, as specified in the act.

A representation made by statutory undertakers under section 16 is quite separate from an objection made within the same period to the confirming authority (‘the usual minister’). Where the appropriate minister is also the confirming authority the intention of the statutory undertakers should be clearly stated, particularly where it is intended that a single letter should constitute both a section 16 representation and an objection. The appropriate minister would also be the confirming authority where, for example, an airport operator under Part 5 of the Airports Act 1986 makes a section 16 representation to the Secretary of State for Transport about an order made under section 239 of the Highways Act 1980.

231. **Can an order be confirmed where a representation under section 16 of the Acquisition of Land Act 1981 is not withdrawn?**

Generally, where a representation under section 16 of the Acquisition of Land Act 1981 is not withdrawn, the order to which it relates may not be confirmed (or made, where the acquiring authority is a minister) so as to include the interest owned by the statutory undertakers unless the appropriate minister gives a certificate in the terms stated in section 16(2). These are either that:

- the land can be taken without serious detriment to the carrying on of the undertaking (section 16(2)(a)); or
- if taken it can be replaced by other land without serious detriment to the undertaking.
However, by virtue of section 31(2) of the act, an order made under any of the powers referred to in section 31(1) may still be confirmed where:

- a representation has been made under section 16(1) without an application for a section 16(2) certificate, or where such an application is refused; and
- the confirmation is undertaken jointly by the appropriate minister and the usual minister

232. **What protection is given by section 17 of the Acquisition of Land Act 1981?**

Section 17(2) of the Acquisition of Land Act 1981 provides that for an order acquiring land owned by a local authority or statutory undertaker, if that authority or undertaker objects, any confirmation would be subject to special parliamentary procedure. However, section 17(3) excludes the application of section 17(2) if the acquiring authority is one of the bodies referred to in section 17(3) which include a local authority and statutory undertaker as defined in section 17(4). The application of section 17(2) will therefore, be very limited.

The Secretary of State may by order under section 17(4)(b) of the act extend the definition of statutory undertaker for the purposes of section 17(3) to include any other authority, body or undertaker. Also, some authorities have been defined as statutory undertakers for the purposes of section 17(3) by primary legislation. Examples of such provisions are:

a) a housing action trust – Housing Act 1988, section 78 and schedule 10, paragraph 3; and

b) Homes England – Housing and Regeneration Act 2008, section 9(6) and schedule 2, paragraph 1(2)

233. **What protection is given by section 18 of the Acquisition of Land Act 1981?**

Where an order seeks to authorise the compulsory purchase of land belonging to and held inalienably by the National Trust (as defined in section 18(3) of the Acquisition of Land Act 1981), it will be subject to special parliamentary procedure if the Trust has made, and not withdrawn, an objection in respect of the land so held.

234. **What protection is given by section 19 of the Acquisition of Land Act 1981?**

Compulsory purchase orders may sometimes include land or rights over land which is, or forms part of, a common, open space, or fuel or field garden allotment. Under the Acquisition of Land Act 1981:

- ‘common’ includes any land subject to be enclosed under the Inclosure Acts 1845 to 1882, and any town or village green; the definition therefore includes, but may go wider than, land registered under the Commons Registration Act 1965

- ‘open space’ means any land laid out as a public garden, or used for the purposes of public recreation, or land being a disused burial ground; and
• ‘fuel or field garden allotment’ means any allotment set out as a fuel allotment, or field garden allotment, under an Inclosure Act

An order which authorises purchase of any such land will be subject to special parliamentary procedure unless the relevant Secretary of State (see Who should an acquiring authority apply to for a certificate under section 19 of the Acquisition of Land Act 1981?) gives a certificate under section 19 of the Acquisition of Land Act 1981 indicating his satisfaction that either:

• exchange land is being given which is no less in area and equally advantageous as the land taken (section 19(1)(a)); or

• that the land is being purchased to ensure its preservation or improve its management (section 19(1)(aa)); or

• that the land is 250 sq. yards (209 square metres) or less in area or is for the widening and/or drainage of an existing highway and that the giving of exchange land is unnecessary (section 19(1)(b))

Likewise, an order which authorises the purchase of new rights over such land will be subject to special parliamentary procedure unless the relevant Secretary of State gives a certificate under schedule 3, paragraph 6 (see also section of guidance on Compulsory purchase of new rights and other interests).

235. Who should an acquiring authority apply to for a certificate under section 19 of and/or schedule 3 to the Acquisition of Land Act 1981?

An acquiring authority requiring a certificate from the relevant Secretary of State under section 19 and/or schedule 3, paragraph 6 of the Acquisition of Land Act 1981, should apply as follows:

• common land – the Secretary of State for Environment, Food and Rural Affairs

• open space – Secretary of State for Housing, Communities and Local Government

• fuel or field garden allotments – Secretary of State for Housing, Communities and Local Government

Contact details can be found in Section15: addresses.

236. When should acquiring authority apply for a certificate under section 19 of and/or schedule 3 to the Acquisition of Land Act 1981?

Applications for certificates should be made when the order is submitted for confirmation or, in the case of an order prepared in draft by a minister, when notice is published and served in accordance with paragraphs 2 and 3 of schedule 1 to the act.

237. What information should be provided when applying for a certificate under section 19 of and/or Schedule 3 to the Acquisition of Land Act 1981?

The land, including any new rights, should be described in detail, by reference to the
compulsory purchase order, and all the land clearly identified on an accompanying map.

This should show the common/open space/fuel or field garden allotment plots to be acquired in the context of the common/open space/fuel or field garden allotment space as a whole, and in relation to any proposed exchange land.

The acquiring authority should also provide copies of the order, including the schedules, and order map. For a particularly large order, they may provide:

a) copies of the order and relevant parts or sheets of the map; and

b) a copy, or copies, of the relevant extract or extracts from the order schedule or schedules, which include the following:

(i) the plot(s) of common, open space etc which they propose to acquire or over which they propose to acquire a new right (‘the order land’); and

(ii) any land which they propose to give in exchange (‘the exchange land’)  

(Where schedule 3, paragraph 6(1)(b) applies and additional land is being given in exchange for a new right, substitute ‘the rights land’ and ‘the additional land’ for the definitions given in (i) and (ii) above, respectively.)

When drafting an order, careful attention should be given to the discharging and vesting provisions of section 19(3) of the 1981 act or of paragraph 6(4) of schedule 3 to that act.

It must be specified under which subsection(s) an application for a certificate is made eg section 19(1)(a), (aa) or (b), and/or paragraph 6(1)(a), (aa), (b) or (c). Where an application is under more than one subsection, this should be stated, specifying those plots that each part of the application is intended to cover. Where an application is under section 19(1)(b), it should be stated whether it is made on the basis that the land does not exceed 209 square metres (250 square yards) or under the highway widening or drainage criterion.

In writing, careful attention should be given to the particular criteria in section 19 and/or paragraph 6 that the Secretary of State will be considering. The information provided should include:

- the name of the common or green involved (including CL/VG number)
- the plots numbers and their areas, in square metres
- details of any rights of common registered, or rights of public access, and the extent to which they are exercised
- the purpose of the acquisition
- details of any special provisions or restrictions affecting any of the land in the application; and
- any further information which supports the case for a certificate
238. How will the Secretary of State decide whether to grant a certificate under section 19 of and/or schedule 3 to the Acquisition of Land Act 1981?

In most cases, arrangements will be made for the order/rights land to be inspected and, if applicable, for a preliminary appraisal of the merits of any proposed exchange/additional land. If, at this stage, the relevant Secretary of State is satisfied that a certificate could, in principle, be given, he will direct the acquiring authority to publish notice of his intention to give a certificate, with details of the address to which any representations and objections may be submitted. In most cases where there are objections, the matter will be considered by the inspector at the inquiry into the compulsory purchase order.

Where an inquiry has been held into the application for a certificate (including, where applicable, the merits of any proposed exchange/additional land), the inspector will summarise the evidence in his or her report and make a recommendation. The relevant Secretary of State’s consideration of and response to the inspector’s recommendation are subject to the statutory inquiry procedure rules which apply to the compulsory purchase order. Where there is no inquiry, the relevant Secretary of State’s decision on the certificate will be made having regard to an appraisal by an inspector or a professionally qualified planner, and after taking into account the written representations from any objectors and from the acquiring authority.

239. When must a certificate under section 19 of and/or schedule 3 to the Acquisition of Land Act 1981 be declined by the Secretary of State?

The Secretary of State must decline to give a certificate if he is not satisfied that the requirements of the section have been complied with. Where exchange land is to be provided for land used by the public for recreation, the relevant Secretary of State will have regard (in particular) to the case of LB Greenwich and others v Secretary of State for the Environment, and Secretary of State for Transport (East London River Crossing: Oxleas Wood)[[1994] J.P.L. 607].

240. What matters does the Secretary of State take into account when considering a certificate for ‘exchange land’ under section 19(1)(a) of the Acquisition of Land Act 1981?

Where a certificate would be in terms of section 19(1)(a) of the Acquisition of Land Act 1981, the exchange land must be:

- no less in area than the order land; and
- equally advantageous to any persons entitled to rights of common or to other rights, and to the public

Depending on the particular facts and circumstances, the relevant Secretary of State may have regard to such matters as relative size and proximity of the exchange land when compared with the order land. The date upon which equality of advantage is to be assessed is the date of exchange. (See paragraphs 5 and 6 of Form 2 in the schedule to the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004.) But the relevant Secretary of State may have regard to any prospects of improvement to the exchange land which exists at that date.
Other issues may arise about the respective merits of an order and exchange land. The latter may not possess the same character and features as the order land, and it may not offer the same advantages, yet the advantages offered may be sufficient to provide an overall equality of advantage. But land which is already subject to rights of common or to other rights, or used by the public, even informally, for recreation, cannot usually be given as exchange land, since this would reduce the amount of such land, which would be disadvantageous to the persons concerned. There may be some cases, where a current use of proposed exchange land is temporary, eg ending development. In such circumstances it may be reasonable to give the land in exchange, since its current use can thereby be safeguarded for the future. The relevant Secretary of State will examine any such case with particular care.

241. What is the definition of ‘the public’ in regard to exchange land?

With regard to exchange land included in an order, the Secretary of State takes the view that ‘the public’ means principally the section of the public which has hitherto benefited from the order land and, more generally, the public at large. But circumstances differ. For example, in the case of open space, a relatively small recreation ground may be used predominantly by local people, perhaps from a particular housing estate. In such circumstances, the Secretary of State would normally expect exchange land to be equally accessible to residents of that estate. On the other hand, open space which may be used as a local recreational facility by some people living close to it, but which is also used by a wider cross-section of the public may not need to be replaced by exchange land in the immediate area. One example of such a case might be land forming part of a regional park.

242. In what circumstances might an application for a certificate under section 19(1)(aa) of the Acquisition of Land Act 1981 be appropriate?

In some cases, the acquiring authority may wish to acquire land to which section 19 applies, eg open space, but do not propose to provide exchange land because, after it is vested in them, the land will continue to be used as open space. Typical examples might be where open space which is privately owned may be subject to development proposals resulting in a loss to the public of the open space; or where the local authority wish to acquire part or all of a privately owned common in order to secure its proper management.

Such a purpose might be ‘improvement’ within the sense of section 226(1)(a) of the Town and Country Planning Act 1990, or a purpose necessary in the interests of proper planning (section 226(1)(b)). The land might be neglected or unsightly (see Section 6: to improve the appearance or condition of land), perhaps because the owner is unknown, and the authority may wish to provide, or to enable provision of, proper facilities. Therefore, the acquisition or enabling powers and the specific purposes may vary. In such circumstances, ie where the reason for making the order is to secure preservation or improve management of land to which section 19 applies, a certificate may be given in the terms of section 19(1)(aa).

NB: Where the acquiring authority seek a certificate in terms of section 19(1)(aa), section 19(3)(b) cannot apply and the order may not discharge the land purchased from all rights, trusts and incidents to which it was previously subject. See also Section 13: preparing and serving the order and notices.
243. What factors does the Secretary of State have to consider when giving a certificate under section 19(1)(b) of the Acquisition of Land Act 1981?

A certificate can only be given in terms of section 19(1)(b) of the Acquisition of Land Act where the Secretary of State concerned is persuaded that the land is 250 square yards (209 square metres) or less in area or is for the widening and/or drainage of an existing highway and that the giving of exchange land is unnecessary. He will have regard to the overall extent of common land, open space land or fuel or field garden allotment land being acquired compulsorily. Where all or a large part of such land would be lost, he may be reluctant to certify in terms of section 19(1)(b). Should he refuse such a certificate, it would remain open to the acquiring authority to consider providing exchange land and seeking a certificate in terms of section 19(1)(a).

244. What is special parliamentary procedure?

If an order includes land whose acquisition is subject to special parliamentary procedure, any confirmation of the order by the confirming authority would be made subject to that procedure. This means that if the order is being confirmed so as to include the special category land, the acquiring authority will not be able to publish and serve notice of confirmation in the usual way. The order will, instead, be governed by the procedures set out in the Statutory Orders (Special Procedure) Acts 1945 and 1965 as amended by the Growth and Infrastructure Act 2013. The confirming authority will give full instructions at the appropriate time.

In brief, the special parliamentary procedure is:

- following the confirming authority’s decision to confirm, after giving 3 days’ notice in the London Gazette, the order is laid before Parliament

- if a petition against the special authorisation is lodged within a 21 day period, it will be referred to a Joint Committee of both Houses to consider and report to Parliament as to whether to approve

- if no petition is lodged, the confirmation is usually approved without such referral
Section 19: compulsory purchase of new rights and other interests

245. Is it possible to compulsorily acquire rights and other interests over land, without acquiring full land ownership?

There are powers available which provide for the compulsory acquisition of new rights over land where full land ownership is not required eg the compulsory creation of a right of access.

246. How can compulsory acquisition of rights over land be achieved?

The creation of new rights can only be achieved using a specific statutory power, known as an ‘enabling power’. Powers include (with the bodies by whom they may be exercised) the following:

(i) Local Government (Miscellaneous Provisions) Act 1976, section 13 (local authorities)

(ii) Highways Act 1980, section 250 (all highway authorities) - guidance on the use of these powers is given in Department of Transport Local Authority Circular 2/97

(iii) Water Industry Act 1991, section 155(2) (water and sewerage undertakers)


(v) Housing and Regeneration Act 2008, section 9(2) (Homes England)

(vi) Electricity Act 1989, schedule 3 (electricity undertakings); and

(vii) Gas Act 1986, schedule 3 (gas transporter undertakings)

The acquiring authority should take into account any special requirements which may apply to the use of any particular power.

Orders solely for new rights (no other interests in land to be purchased outright)

247. What should the order describe?

The order heading should mention the appropriate enabling power, together with the Acquisition of Land Act 1981.

Paragraph 1 of the order should describe the purpose for which the rights are required, eg ‘for the purpose of providing an access to a community centre which the council are authorised to provide under section 19 of the Local Government (Miscellaneous Provisions) Act 1976.'
Orders for new rights and other interests

248. What should an order describe where it relates to the purchase of new rights and of other interests in land under different powers?

The order heading should refer to the appropriate enabling act, any other act(s), and the Acquisition of Land Act 1981, as required by the regulations. See Note (b) to Forms 1, 2 and 3 in the schedule to the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004.

Paragraph 1 of the prescribed form of the order should describe all the relevant powers and purposes.

249. What if the purpose is the same for both new rights and other interests?

This should be relatively straightforward. The order should mention, eg:

‘. . . . . . . . the acquiring authority is hereby authorised to compulsorily purchase

(a) under section 121 of the Local Government Act 1972 the land described in paragraph 2(1) below for the purpose of providing a community centre under section 19 of the Local Government (Miscellaneous Provisions) Act 1976; and

(b) under section 13 of the said act of 1976, the new rights which are described in paragraph 2(2) below for the same purpose

[etc, as in Form 1 of the schedule to the regulations.]

250. What if the purpose is not the same for the new rights and other interests?

Paragraph 1 of the prescribed form of the order should describe all of the relevant powers under, and purposes for which, the order has been made, eg:

‘. . . . . . . . the acquiring authority is hereby authorised to compulsorily purchase

(a) under section 89 of the National Parks and Access to the Countryside Act 1949 the derelict, neglected or unsightly land which is described in paragraph 2(1) below for the purpose of carrying out such works on the land as appear to them expedient for enabling it to be brought into use; and

(b) under section 13 of the Local Government (Miscellaneous Provisions) Act 1976, the new rights which are described in paragraph 2(2) below for the purpose of providing an access to the abovementioned land for [the authority] and persons using the land, being a purpose which it is necessary to achieve in the interests of the proper planning of an area, in accordance with section 226(1)(b) of the Town and Country Planning Act 1990.’
251. **What should the acquiring authority's statements of reasons and case explain?**

They should explain the need for the new rights, give details of their nature and extent, and provide any further relevant information. Where an order includes new rights, the acquiring authority is also asked to bring that fact to the attention of the confirming authority in the letter covering their submission.

**Schedule and map**

252. **What should the order schedule show?**

The land over which each new right is sought needs to be shown as a separate plot in the order schedule.

253. **What level of detail does this require?**

The nature and extent of each new right should be described and where new rights are being taken for the benefit of a plot or plots, that fact should be stated in the description of the rights plots. It would be helpful if new rights could be described immediately before or after any plot to which they relate; or, if this is not practicable, eg where there are a number of new rights, they could be shown together in the schedule with appropriate cross-referencing between the related plots.

254. **What does the order map need to show?**

The order map should clearly distinguish between land over which new rights would subsist and land in which it is proposed to acquire other interests. (See note (g) to Forms 1, 2 and 3 or Note (d) to Forms 4, 5 and 6.)

**Special kinds of land (commons, open space and fuel or field garden allotment)** (see also Section 17: Special kinds of land and Section 13: Preparing and serving the order and notices)

255. **Which part of the Acquisition of Land Act 1981 applies where a new right over special kind of land is being acquired compulsorily?**

Paragraph 6 of schedule 3 to the Acquisition of Land Act 1981 applies (in the same way that section 19 applies to the compulsory purchase of any land forming part of a common, open space etc). The order will be subject to special parliamentary procedure unless the relevant Secretary of State gives a certificate, in the relevant terms, under paragraph 6(1) and (2).

256. **In which circumstances may a certificate be given?**

A certificate may be given by the Secretary of State in the following circumstances:

- the land burdened with the right will be no less advantageous than before to those persons in whom it is vested and other persons, if any, entitled to rights of common or other rights, and to the public (paragraph 6(1)(a) of schedule 3 to the Acquisition of Land Act 1981); or
• paragraph 6(1)(aa) – the right is being acquired in order to secure the preservation or improve the management of the land. Where an acquiring authority propose to apply for a certificate in terms of paragraph 6(1)(aa), they should note that the order cannot, in that case, discharge the land over which the right is to be acquired from all rights, trusts and incidents to which it has previously been subject. See also Section 13: preparing and serving the order and notices and Section 17: special kinds of land; or

• paragraph 6(1)(b) – additional land will be given in exchange for the right which will be adequate to compensate the persons mentioned in relation to paragraph 6(1)(a) above for the disadvantages resulting from the acquisition of the right and will be vested in accordance with the act. Where an authority seek a certificate in terms of paragraph 6(1)(b) because they propose to give land (‘the additional land’) in exchange for the right, the order should include paragraph 4(1) and the appropriate paragraph 4(2) of Form 2 in the schedule to the 2004 Prescribed Forms Regulations (see Note (s)). The land over which the right is being acquired (‘the rights land’) and, where it is being acquired compulsorily, the additional land, should be delineated and shown as stated in paragraph 2 of the order. Paragraph 2 (ii) should be adapted as necessary. (See also Section 13: preparing and serving the order and notices and Section 17: special kinds of land); or

• paragraph 6(1)(c)

  (i) the land affected by the right to be acquired does not exceed 209 square metres (250 square yards); or

  (ii) in the case of an order made under the Highways Act 1980, the right is required in connection with the widening or drainage, or partly with the widening and partly with the drainage, of an existing highway

and it is unnecessary, in the interests of persons, if any, entitled to rights of common or other rights or in the interests of the public, to give other land in exchange

The same order may authorise the purchase of land forming part of a common, open space etc and the acquisition of a new right over a different area of such land, and a certificate may be given in respect of each. The acquiring authority must always specify the type of certificate for which they are applying.

257. What other details needs to be shown where additional land, which is not being acquired compulsorily, is to be vested in the owners of the rights land?

The additional land should be delineated and shown on the order map (so as to clearly distinguish it from any land being acquired compulsorily) and described in schedule 3 to the order. Schedule 3 becomes schedule 2 if no other additional or exchange land is being acquired compulsorily.

258. What information has to be provided where and order, which does not provide for the vesting of additional land, but provides for discharging the rights land from all rights, trusts and incidents to which it has previously been subject (so far as their continuance would be inconsistent with the exercise of the right(s) to be acquired)?
The order needs to comply with Form 3 and should include the reference in paragraph 4(3) of that Form (or, if appropriate, as adapted for paragraph 4(2) of Form 6) to land over which the new right is acquired. (See also In which circumstances may a certificate be given?)
Section 20: compulsory purchase of Crown land

259. **What is Crown land?**

Crown land is defined in section 293(1) of the Town and Country Planning Act 1990, section 82C of the Planning (Listed Buildings and Conservation Areas) Act 1990 and section 31 of the Planning (Hazardous Substances) Act 1990 (as amended), as any land in which the Crown (including the Duchies of Lancaster and Cornwall) has a legal interest is 'Crown land'.

260. **Who is the ‘appropriate authority’?**

As appropriate, the government department having management of the land, the Crown Estate Commissioners, the Chancellor of the Duchy of Lancaster, or a person appointed by the Duke of Cornwall or by the possessor, for the time being, of the Duchy.

261. **Can Crown land be compulsorily purchased?**

As a general rule, Crown land cannot be compulsorily acquired, as legislation does not bind the Crown unless it states to the contrary.

262. **Are there any exceptions to this?**

Specific compulsory purchase enabling powers can make provision for their application to Crown land, for example:

- **section 327 of the Highways Act 1980** provides for a highway authority and the appropriate Crown authority to specify in an agreement that certain provisions of the 1980 act – including the compulsory purchase powers – shall apply to the Crown

- **section 32 of the Coast Protection Act 1949** enables the compulsory purchase powers under Part I of that act to apply to Crown land with the consent of the 'appropriate authority'

The enactments listed below (which is not an exhaustive list) also provide that interests in Crown land which are not held by or on behalf of the Crown may be acquired compulsorily if the appropriate authority agrees:

- **section 226(2A) of the Town and Country Planning Act 1990**

- **section 47(6A) of the Planning (Listed Buildings and Conservation Areas) Act 1990**

- **section 25 of the Transport and Works Act 1992;** and


**Issues for consideration**

263. **What issues should be considered?**
Where the order is made under a power to which the provisions mentioned in Are there any exceptions to this? relate, or under any other enactment which provides for compulsory acquisition of interests in Crown land, Crown land should only be included where the acquiring authority has obtained (or is, at least, seeking) agreement from the appropriate authority. The confirming authority will have no power to authorise compulsory acquisition of the relevant interest or interests without such agreement.

Where an order is made under powers other than the Highways Act 1980, however, the acquiring authority should identify the relevant Crown body in the appropriate column of the order schedule and describe the interest(s) to be acquired. If the acquiring authority wish to acquire all interests other than those of the Crown, column two of the order schedule should specify that ‘all interests’ in [describe the land] except those held by or on behalf of the Crown’ are being acquired. (See also Section 13: preparing and serving the order and notices).
Section 21: certificates of appropriate alternative development

264. What are the planning assumptions?

Part 2 of the Land Compensation Act 1961 as amended by Part 9 of the Localism Act 2011 provides that compensation for the compulsory purchase of land is on a market value basis. In addition to existing planning permissions, section 14 of the 1961 act provides for certain assumptions as to what planning permissions might be granted to be taken into account in determining market value.

Section 14 is about assessing compensation for compulsory purchase in accordance with rule (2) of section 5 of the 1961 act (open market value). The planning assumptions are as follows:

- subsection (2): account may be taken of (a) any planning permission in force for the development of the relevant land or other land at the relevant valuation date; and (b) the prospect (on the assumptions in subsection (5)) in the circumstances known to the market on the relevant valuation date of planning permission being granted, other than for development for which planning permission is already in force or appropriate alternative development

- subsection (3): it may also be assumed that planning permission for appropriate alternative development (as described in subsection (4)) is either in force at the relevant valuation date or it is certain that planning permission would have been granted at a later date

- subsection (4): defines appropriate alternative development as development, other than that for which planning permission is in force, that would, on the assumptions in subsection (5) but otherwise in the circumstances known to the market at the relevant valuation date, reasonably have been expected to receive planning permission on that date or a later date. Appropriate alternative development may be on the relevant land alone or on the relevant land together with other land.

- subsection (5): contains the basic assumptions that (a) the scheme underlying the acquisition had been cancelled on the launch date; (b) that no action has been taken by the acquiring authority for the purposes of the scheme; (c) that there is no prospect of the same or similar scheme being taken forward by the exercise of a statutory power or by compulsory purchase; and (d) that if the scheme is for a highway, no other highway would be constructed to meet the same need as the scheme

- subsection (6): defines the ‘launch date’ as (a) for a compulsory purchase order, the publication date of the notice required under section 11 of or paragraph 2 of schedule 1 to the Acquisition of Land Act 1981; (b) for any other order (such as under the Transport and Works Act 1992 or a development consent order under the Planning Act 2008) the date of first publication or service of the relevant notice; or (c) for a special enactment, the date of first publication of the first notice required in connection with the acquisition under section 15, planning permission is also to be
265. **On what date are the planning assumptions assessed?**

The main feature of the arrangements is that the planning assumptions are assessed on the relevant valuation date (as defined in section 5A of the Land Compensation Act 1961) rather than the launch date (even though the scheme is still assumed to have been cancelled on the launch date). This will avoid the need to reconstruct the planning regime that existed on the launch date, including old development plans, national planning policy and guidance. Also that the planning assumptions are based on ‘the circumstances known to the market at the relevant valuation date’, which would include the provisions of the development plan. This removes the need for the specific references to the development plan which were contained in the previous section 16 that had become out of date.

266. **What is a certificate of appropriate alternative development?**

Where existing permissions and assumptions are not sufficient to indicate properly the development value which would have existed were it not for the scheme underlying the compulsory purchase, Part 3 of the Land Compensation Act 1961 as amended by Part 9 of the Localism Act provides a mechanism for indicating the descriptions of development (if any) for which planning permission can be assumed by means of a ‘certificate of appropriate alternative development’. The permissions indicated in a certificate can briefly be described as those with which an owner might reasonably have expected to sell his land in the open market if it had not been publicly acquired.

267. **Who can apply for a certificate of appropriate alternative development?**

Section 17(1) of the Land Compensation Act 1961 provides that either the owner of the interest to be acquired or the acquiring authority may apply to the local planning authority for a certificate. Where an application is made for development of the relevant land together with other land it is important that the certificate sought relates only to the land in which the applicant is a directly interested party. The description(s) of development specified in the application (and where appropriate the certificate issued in response) should clearly identify where other land is included and the location and extent of such other land.

268. **In what circumstances might a certificate be helpful?**

Circumstances in which certificates may be helpful include where:

a) there is no adopted development plan covering the land to be acquired

b) the adopted development plan indicates a ‘green belt’ or leaves the site without specific allocation; and

c) the site is allocated in the adopted development plan specifically for some public purpose, eg a new school or open space

d) the amount of development which would be allowed is uncertain

e) the extent and nature of planning obligations and conditions is uncertain
269. **When does the right to apply for a certificate arise?**

The right to apply for a certificate arises at the date when the interest in land is proposed to be acquired by the acquiring authority. Section 22(2) of the Land Compensation Act 1961 describes the circumstances where this is the position. These include the launch date as defined in section 14(6) for acquisitions by compulsory purchase order, other orders or by private or hybrid Bill. For acquisition by blight notice or a purchase notice it will be the date on which ‘notice to treat’ is deemed to have been served; or for acquisition by agreement it will be the date of the written offer by the acquiring authority to negotiate for the purchase of the land.

Once a compulsory purchase order comes into operation the acquiring authority should be prepared to indicate the date of entry so that a certificate can sensibly be applied for.

Thereafter application may be made at any time, except that after a notice to treat has been served or agreement has been reached for the sale of the interest and a case has been referred to the Upper Tribunal, an application may not be made unless both parties agree in writing, or the Tribunal gives leave. It will assist compensation negotiations if an application is made as soon as possible.

Acquiring authorities should ensure, when serving notice to treat in cases where a certificate could be applied for, that owners are made aware of their rights in the matter. In some cases, acquiring authorities may find it convenient themselves to apply for a certificate as soon as they make a compulsory purchase order or make an offer to negotiate so that the position is clarified quickly.

It may sometimes happen that, when proceedings are begun for acquisition of the land, the owner has already applied for planning permission for some development. If the local planning authority refuse planning permission or grant it subject to restrictive conditions and are aware of the proposal for acquisition, they should draw the attention of the owner to his right to apply for a certificate, as a refusal or restrictive conditions in response to an actual application (ie in the ‘scheme world’) do not prevent a positive certificate being granted (which would relate to the ‘no scheme world’).

270. **How should applications for a certificate be made and dealt with?**

The manner in which applications for a certificate are to be made and dealt with has been prescribed in articles 3, 4, 5 and 6 of the Land Compensation Development (England) Order 2012.

Article 3(3) of the order requires that if a certificate is issued otherwise than for the development applied for, or contrary to representations made by the party directly concerned, it must include a statement of the authority’s reasons and of the right of appeal under section 18 of the 1961 act. From 6 April 2012, this has been to the Upper Tribunal. Article 4 requires the local planning authority (unless a unitary authority) to send a copy of any certificate to the county planning authority concerned if it specifies development related to a county matter or, if the case is one which has been referred to the county planning authority, to the relevant district planning authority. Where the certificate is issued by a London borough or the Common Council of the City of London, they must send a copy of the certificate to the Mayor of London if a planning application for such development would have to be referred to him.
Article 4 should be read with paragraph 55 of schedule 16 to the Local Government Act 1972, which provides that all applications for certificates must be made to the district planning authority in the first instance: if the application is for development that is a county matter, then the district must send it to the county for determination. This paragraph also deals with consultation between district and county authorities where the application contains some elements relating to matters normally dealt with by the other authority. Where this occurs, the authority issuing the certificate must notify the other of the terms of the certificate.

Article 5 of the order requires the local planning authority, if requested to do so by the owner of an interest in the land, to inform him whether an application for a certificate has been made, and if so by whom, and to supply a copy of any certificate that has been issued. Article 6 provides for applications and requests for information to be made electronically.

271. **What information should be contained in an application for a certificate?**

In an application under section 17, the applicant may seek a certificate to the effect that there either is any development that is appropriate alternative development for the purposes of section 14 (a positive certificate) or that there is no such development (a nil certificate).

If the application is for a positive certificate the applicant must specify each description of development that he considers that permission would have been granted for and his reasons for holding that opinion. The onus is therefore on the applicant to substantiate the reasons why he considers that there is development that is appropriate alternative development.

Acquiring authorities applying for a ‘nil’ certificate must set out the full reasons why they consider that there is no appropriate alternative development in respect of the subject land or property.

The phrase ‘description of development’ is intended to include the type and form of development. Section 17(3)(b) requires the descriptions of development to be ‘specified’, which requires a degree of precision in the description of development.

The purpose of a certificate is to assist in the assessment of the open market value of the land. Applicants should therefore consider carefully for what descriptions of development they wish to apply for certificates. There is no practical benefit to be gained from making applications in respect of descriptions of development which do not maximise the value of the land. Applicants should focus on the description or descriptions of development which will most assist in determining the open market value of the land.

An application under section 17 is not a planning application and applicants do not need to provide the kind of detailed information which would normally be submitted with a planning application. However, it is in applicants’ interests to give as specific a description of development as possible in the circumstances, in order to ensure that any certificate granted is of practical assistance in the valuation exercise.

Applicants should normally set out a clear explanation of the type and scale of development that is sought in the certificate and a clear justification for this. This could be set out in a form of planning statement which might usefully cover the following matters:
• confirmation of the valuation date at which the prospects of securing planning permission need to be assessed

• the type or range of uses that it considers should be included in the certificate including uses to be included in any mixed use development which is envisaged as being included in the certificate

• where appropriate, an indication of the quantum and/or density of development envisaged with each category of land

• where appropriate an indication of the extent of built envelope of the development which would be required to accommodate the quantum of development envisaged

• a description of the main constraints on development which could be influenced by a planning permission and affect the value of the land, including matters on site such as ecological resources or contamination, and matters off site such as the existing character of the surrounding area and development

• an indication of what planning conditions or planning obligations the applicant considers would have been attached to any planning permission granted for such a development had a planning application been made at the valuation date

• a clear justification for its view that such a permission would have been forthcoming having regard to the planning policies and guidance in place at the relevant date; the location, setting and character of the site or property concerned; the planning history of the site and any other matters it considers relevant

Detailed plans are not required in connection with a section 17 application but drawings or other illustrative material may be of assistance in indicating assumed access arrangements and site layout and in indicating the scale and massing of the assumed built envelope. An indication of building heights and assumed method of construction may also assist the local planning authority in considering whether planning permission would have been granted at the relevant date.

272. Is there a fee for submitting an application for a certificate of appropriate development?

A fee is payable for an application for a certificate of appropriate alternative development. Details are set out in Regulation 18 of the The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (as amended).

273. What should a certificate contain?

The local planning authority is required to respond to an application by issuing a certificate of appropriate alternative development, saying what planning permissions would have been granted if the land were not to be compulsorily acquired. Section 17(1) requires the certificate to state either that:

a) there is appropriate alternative development for the purposes of section 14 (a
‘positive’ certificate); or

b) there is no development that is appropriate alternative development for the purposes of section 14 (a ‘nil’ or ‘negative’ certificate)

Section 17(4) of the Land Compensation Act 1961 requires the local planning authority to issue a certificate, but not before the end of 22 days from the date that the applicant has, or has stated that he or she will, serve a copy of his or her application on the other party directly concerned (unless otherwise agreed).

Section 17(5) requires (a) that a positive certificate must specify all the development that (in the local planning authority’s opinion) is appropriate alternative development, even if it is not specified in the application and (b) give a general indication of any reasonable conditions; when permission would reasonably have been granted (if after the relevant valuation date); and any reasonable pre-condition, such as a planning obligation, that could reasonably have been expected.

Section 17(6) provides that for positive certificates, only that development specified in the certificate can be assumed to be appropriate alternative development for the purposes of section 14 and that the conditions etc apply to the planning permission assumed to be in force under section 14(3).

Local planning authorities should note that an application made under s17 is not a planning application. The authority should seek to come to a view, based on its assessment of the information contained within the application and of the policy context applicable at the relevant valuation date, the character of the site and its surroundings, as to whether such a development would have been acceptable to the Authority. As the development included in the certificate is not intended to be built the local planning authority does not need to concern itself with whether or not the granting of a certificate would create any precedent for the determination of future planning applications.

If giving a positive certificate, the local planning authority must give a general indication of the conditions and obligations to which planning permission would have been subject. As such the general indication of conditions and obligations to which the planning permission could reasonably be expected to be granted should focus on those matters which affect the value of the land. Conditions relating to detailed matters such approval of external materials or landscaping would not normally need to be indicated. However, clear indications should be given for matters which do affect the value of the land, wherever the authority is able to do so.

Such matters would include, for example, the proportion and type of affordable housing required within a development, limitations on height or density of development, requirements for the remediation of contamination or compensation for ecological impacts, and significant restrictions on use, as well as financial contributions and site-related works such as the construction of accesses and the provision of community facilities. The clearer the indication of such conditions and obligations can be, the more helpful the certificate will be in the valuation process.

274. Should a certificate be taken into account in assessing compensation?

A certificate once issued must be taken into account in assessing compensation for the
compulsory acquisition of an interest in land, even though it may have been issued on the application of the owner of a different interest in the land. But it cannot be applied for by a person (other than the acquiring authority) who has no interest in the land.

275. Should informal advice be given on open market value?

Applicants seeking a section 17 certificate should seek their own planning advice if this is felt to be required in framing their application.

In order that the valuers acting on either side may be able to assess the open market value of the land to be acquired they will often need information from the local planning authority about such matters as existing permissions; the development plan and proposals to alter or review the plan. The provision of factual information when requested should present no problems to the authority or their officers. But sometimes officers will in addition be asked for informal opinions by one side or the other to the negotiations. It is for authorities to decide how far informal expressions of opinion should be permitted with a view to assisting the parties to an acquisition to reach agreement. Where they do give it, the Secretary of State suggests that the authority should:

a) give any such advice to both parties to the negotiation

b) make clear that the advice is informal and does not commit them if a formal certificate or planning permission is sought

It is important that authorities do not do anything which prejudices their subsequent consideration of an application.

276. How are appeals against certificates made?

The right of appeal against a certificate under section 18 of the Land Compensation Act 1961, exercisable by both the acquiring authority and the person having an interest in the land who has applied for the certificate, is to the Upper Tribunal (Lands Chamber). It may confirm, vary or cancel it and issue a different certificate in its place, as it considers appropriate.

Rule 28(7) of the Upper Tribunal Rules, as amended, requires that written notice of an appeal (in the form of a reference to the Upper Tribunal) must be given within one month of receipt of the certificate by the planning authority. If the local planning authority fail to issue a certificate, notice of appeal must be given within one month of the date when the authority should have issued it (that date is either two months from receipt of the application by the planning authority, or two months from the expiry of any extended period agreed between the parties to the transaction and the authority) and the appeal proceeds on the assumption that a ‘nil’ or ‘negative’ certificate had been issued.

The reference to the Tribunal must include (in particular) a copy of the application to the planning authority, a copy of the certificate issued (if any) and a summary of the reasons for seeking the determination of the Tribunal and whether he or she wants the reference to be determined without a hearing. The Upper Tribunal does have the power to extend this period (under Rule 5), even if it receives the request to do so after it expires. Appeals against the Upper Tribunal’s decision on a point of law may be made to the Court of Appeal in the normal way.
More information on how to make an appeal can be found on the Upper Tribunal’s website. Also available on the website is a form you will need to make an appeal and information on the fees payable. If you do not have access to the internet you can request a copy of the information leaflets and a form by telephoning 020 7612 9710 or by writing to:

Upper Tribunal (Lands Chamber)
5th floor, Rolls Building
7 Rolls Buildings
Fetter Lane
London
EC4A 1NL
Section 22: protected assets certificate

277. What are protected assets and protected assets certificates?

For the purposes of compulsory purchase protected assets are those set out below in What information needs to be included in a positive statement?. Listing them in a certificate allows the confirming authority to know which assets will be affected by the scheme and will therefore inform the decision as to whether to confirm the compulsory purchase order.

278. What information do authorities need to ensure is included in or accompanies the order?

Confirming authorities need to ensure that the circumstances of any protection applying to buildings and certain other assets on order lands are included in its consideration of the order.

Every order submitted for confirmation (except orders made under section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990) should therefore be accompanied by a protected assets certificate.

A protected asset certificate should include, for each category of building or asset protected, either a positive statement with specific additional information or a nil return.

279. What information needs to be included in a positive statement?

a) listed buildings

The proposals in the order will involve the demolition/alteration/extension* of the following building(s) which has/have been* listed under section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

b) buildings subject to building preservation notices

The proposals in the order will involve the demolition/alteration/extension* of the following building(s) which is/are* the subject(s)* of (a) building preservation notice(s) made by the…… [insert name of authority] …..on…….[insert date(s) of notice(s)].

c) other buildings which may be of a quality to be listed

The proposals in the order will involve the demolition/alteration/extension* of the following building(s) which may qualify for inclusion in the statutory list under the criteria in The Principles of Selection for Listing Buildings (March 2010).

d) buildings within a conservation area

The proposals in the order will involve the demolition of the following building(s) which is/are* included in a conservation area designated under section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (or, as the case may be, section 70) and which require planning permission for demolition.
e) scheduled monuments

The proposals in the order will involve the demolition/alteration/extension* of the following monument(s) which are scheduled under section 1 of the Ancient Monuments and Archaeological Areas Act 1979. An application for scheduled monument consent has been/will be* submitted to Historic England.

f) registered parks/gardens/historic battlefields

The proposal in the order will involve the demolition/alteration/extension* of the following park(s)/garden(s)/historic battlefield(s)* which is/are* registered under section 8C of the Historic Buildings and Ancient Monuments Act 1953.

280. What additional information must accompany a positive statement?

The following additional information is required to accompany a positive statement:

- particulars of the asset or assets
- any action already taken, or action which the acquiring authority proposes to take, in connection with the category of protection, eg consent which has been, or will be, sought; and
- a copy of any consent or application for consent, or an undertaking to forward such a copy as soon as the consent or application is available

281. What happens if a submitted order entails demolition of a building which is subsequently included in conservation area?

Where a submitted order entails demolition of any building which is subsequently included in a conservation area the confirming authority should be notified as soon as possible.
Section 23: objection to division of land (material detriment)

282. **What happens where an owner objects to the division of land because it would cause material detriment to their retained land?**

Where an acquiring authority proposes to acquire only part of a house (or park or garden belonging to a house), building or factory, the owner can serve a counter-notice on the acquiring authority requesting that it purchases the entire property.

On receipt of a counter-notice, the acquiring authority can either withdraw, decide to take all the land or refer the matter to the Upper Tribunal (Lands Chamber) for determination.

The Upper Tribunal will determine whether the severance of the land proposed to be acquired would in the case of a house, building or factory, cause material detriment to the house, building or factory (ie cause it to be less useful or less valuable to some significant degree), or in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

283. **What is the procedure for serving a counter-notice?**

In respect of a compulsory purchase order which is confirmed on or after 3 February 2017, the procedure for serving a counter-notice is set out in Schedule 2A to the Compulsory Purchase Act 1965 (where the notice to treat process is followed) and Schedule A1 to the Compulsory Purchase (Vesting Declarations) Act 1981 (‘the CP(VD)A 1981’) (where the general vesting declaration process is followed). The procedure is broadly the same in both cases.

284. **What is the effect of a counter-notice on a notice of entry which has already been served on the owner?**

Under Part 1 of Schedule 2A to the 1965 act, if the owner serves a counter-notice, any notice of entry under section 11(1) of the 1965 act that has already been served on the owner in respect of the land proposed to be acquired ceases to have effect (see paragraph 6 of Schedule 2A). The acquiring authority may not serve a further notice of entry on the owner under section 11(1) in respect of that land unless they are permitted to do so by paragraph 11 or 12 of Schedule 2A to the 1965 act.

285. **Under the general vesting declaration procedure, what is the effect of a counter-notice on the vesting date of the owner’s land specified in the declaration?**

If a counter-notice is served under paragraph 2 of Schedule A1 to the CP(VD)A 1981 within the vesting period specified in the declaration in accordance with section 4(1) of the CP(VD)A 1981, the ‘vesting date’ for the land proposed to be acquired from the owner (i.e. the land actually specified in the declaration) will be the day determined as the vesting date for that land in accordance with Schedule A1 (see section 4(3)(b) of the CP(VD)A 1981).

286. **Can an acquiring authority enter the land it proposed to acquire from the owner where a counter-notice has been referred to the Upper Tribunal (Lands Chamber)?**
Under Schedule 2A to the 1965 act and Schedule A1 to the CP(VD)A 1981, an acquiring authority is permitted to enter the land it proposed to acquire from the owner (ie the land included in its notice to treat / general vesting declaration) where a counter-notice has been referred to the Upper Tribunal.

Paragraph 12 of Schedule 2A to the 1965 act provides that, where a counter-notice has been referred to the Upper Tribunal, an acquiring authority may serve a notice of entry on the owner in respect of the land proposed to be acquired. If the authority had already served a notice of entry in respect of the land (ie a notice which ceased to have effect under paragraph 6(a) of Schedule 2A), the normal minimum three month notice period will not apply to the new notice in respect of that land (see section 11(1B) of the 1965 act). The period specified in any new notice must be a period that ends no earlier than the end of the period in the last notice of entry (see paragraph 13 of Schedule 2A).

Similarly, under the general vesting declaration procedure, if an acquiring authority refers a counter-notice (served before the original vesting date) to the Upper Tribunal, the authority may serve a notice on the owner specifying a new vesting date for the land proposed to be acquired (see paragraph 12 of Schedule A1 to the CP(VD)A 1981). This is intended to allow for the vesting of this land before the Upper Tribunal has determined the material detriment dispute.

However, if an acquiring authority enters, or vests in itself, the land it proposed to acquire in advance of the Upper Tribunal’s determination and the Tribunal subsequently finds in favour of the owner (ie the Tribunal requires the authority to take additional land from the owner):

a) the authority will not have the option of withdrawing its notice to treat under paragraph 29 of Schedule 2A to the 1965 act or paragraph 17 of Schedule A1 to the CP(VD)A 1981, and so will be compelled to take the additional land; and

b) the Tribunal will be able to award the owner compensation for any losses caused by the temporary severance of the land proposed to be acquired from the additional land which is required to be taken (see paragraph 28(5) of schedule 2A to the 1965 Act and paragraph 16(4) of Schedule A1 to the CP(VD)A 1981).

287. Do the material detriment provisions in Schedule 2A to the 1965 act and Schedule A1 to the CP(VD)A 1981 apply in all cases?

An acquiring authority may, in a compulsory purchase order, disapply the material detriment provisions for specified land which is nine metres or more below the surface (see section 2A of the Acquisition of Land Act 1981). This is intended to prevent spurious claims for material detriment from owners of land above tunnels where the works will have no discernible effect on their land.

288. Are the material detriment provisions the same where a blight notice is served?

The material detriment provisions in relation to blight notices are set out in the Town and Country Planning Act 1990 (see, in particular, sections 151(4)(c), 153(4A) to (7) and 154(4) to (6)).
Section 24: overriding easements and other rights

289. Do acquiring authorities have power to override easements and other rights affecting the acquired land?

Prior to July 2016, only some acquiring authorities had the power to override easements and other rights on land they had acquired. However, provisions in section 203 of the Housing and Planning Act 2016 extended this power to all bodies with compulsory purchase powers and in section 37 of the Neighbourhood Planning Act 2017 to a company or body through which the Greater London Authority exercises functions in relation to housing or regeneration or to a company or body through which Transport for London exercises any of its functions.

290. Are there any restrictions on the use of the power to override easements and other rights?

There are several conditions/limitations on the use of the power to override easements and other rights. These are that:

- there must be planning consent for the building or maintenance work/use of the land
- the acquiring authority must have the necessary enabling powers in legislation to acquire the land compulsorily for the purpose of the building or maintenance work / the purpose of erecting or constructing any building, or carrying out any works, for the use
- the development must be related to the purposes for which the land was acquired or appropriated
- the land must have become vested in or acquired by an acquiring authority or been appropriated for planning purposes by a local authority on or after 13 July 2016 or be ‘other qualifying land’ (as defined in section 205(1))
- the power is not available in respect of a ‘protected right’ (as defined in section 205(1))
- the National Trust is subject to the protections in section 203(10)

291. Are owners of overridden easements and other rights entitled to compensation?

Under section 204 of the Housing and Planning Act 2016, owners of easements or other rights which are overridden are entitled to compensation calculated on the same basis as for injurious affection under sections 7 and 10 of the Compulsory Purchase Act 1965. Any dispute about compensation may be referred to the Upper Tribunal (Lands Chamber) for determination.
Separate but related guidance

292. What about related procedures?

See separate guidance on:

- Purchase notices
- The Crichel Down Rules

Purchase notices

293. What are the statutory provisions for the service of a purchase notice?

A purchase notice may be based upon:

- a refusal or conditional grant of planning permission or listed building consent
- a revocation or modification order
- a discontinuance, alteration or removal order

The statutory provisions enabling the service of a purchase notice are in section 137 of the Town and Country Planning Act 1990 and section 32 Planning (Listed Buildings and Conservation Areas) Act 1990.

The service of a purchase notice may not be based upon:

- a failure of the local planning authority to give notice of their decision on an application for planning permission (or listed building consent) within the requisite period
- a refusal of an application for approval of details or of reserved matters
- a refusal of an application for express consent for an advertisement display

294. What is the time for service of a purchase notice?

The time for service of a purchase notice is 12 months from the date of:

- the relevant decision for notices served under section 137 of the Town and Country Planning Act 1990 and section 32 Planning (Listed Buildings and Conservation Areas) Act 1990
- the Secretary of State’s confirmation of the relevant order under section 137 Town and Country Planning Act 1990

Areas) Regulations 1990.

The Secretary of State has power to extend this time limit and is normally prepared to do so where the service of a notice is delayed for good reasons. Councils have no power to extend the period for the service of a purchase notice.

295. Who should a purchase notice be served on?

A purchase notice must be served on the council of the district or London borough in which the land is situated. It cannot be served on a county council or government department.

296. What form should a purchase notice take?

There is no official form required for a purchase notice. A letter addressed to the council is enough if it:

- states that the relevant conditions in section 137 Town and Country Planning Act 1990 are fulfilled
- requires the council to purchase the interest(s) in the land, giving the names of the owners
- refers to the relevant planning application and decision
- identifies accurately the land concerned by reference to a plan
- provides the name and address of the owners

It should, if possible, be signed by the owners and state that it is a purchase notice.

297. Is there a right to amend a purchase notice once served?

It has been established that there is no right to amend a purchase notice once served, although an owner can serve more than one notice.

298. What happens where a purchase is accepted by the council or confirmed by the Secretary of State?

Where a purchase is accepted by the council or confirmed by the Secretary of State the council is deemed to have compulsory purchase powers and to have served notice to treat, so the price to be paid for the land is determined as if it were being compulsorily acquired.

299. What land can be included in a purchase notice?

Except in the case of a listed building purchase notice (see below), the land to which a purchase notice relates must be the identical area of land which was the subject of the relevant decision or order. If the notice relates to more land, it is invalid.

300. Who can serve a purchase notice?

A purchase notice may be served only by an ‘owner’ of the land, as defined in section.
336(1) of the Town and Country Planning Act 1990. That means a person, at the time of service of the purchase notice, other than a mortgagee not in possession, who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the land or, where the land is not let at a rack rent, would be so entitled if it were so let.

The only exception is under section 137(2)(b) Town and Country Planning Act 1990 where in relation to a discontinuance notice under section 102 of the Town and Country Planning Act 1990 any person entitled to an interest in land in respect of which the order is made can serve a purchase notice.

301. Can a purchase notice be served in relation to Crown land?


302. Can a purchase notice cover parcels of land in different ownership?

Where land comprises parcels in different ownerships, the owners of those parcels may combine to serve a purchase notice relating to their separate interests, provided that the notice relates to the whole of the land covered by the planning decision or the order.

Where there is more than one site, each the subject of a separate planning decision or order, a separate purchase notice should be served for each individual site.

For listed buildings, section 32(1) Planning (Listed Buildings and Conservation Areas) Act 1990 applies to the building and any land comprising the building, or contiguous or adjacent to it, and owned with it, where the use of the land is substantially inseparable from that of the building, such that it ought to be treated, together with the building, as a single holding. The relevant application site and the listed building purchase notice site need not necessarily be identical.

303. Is the land ‘incapable of ‘reasonably beneficial use’?

The question to be considered in every case is whether the land in its existing state, taking into account operations and uses for which planning permission (or listed building consent) is not required, is ‘incapable of reasonably beneficial use’. The onus is on the person serving the notice to show this.

The potential of the land is to be taken into account rather than just its existing state, including if it is necessary to undertake work to realise that potential. No account is taken of any prospective use which would involve the carrying out of development other than any development specified in paragraph 1 or 2 of schedule 3 Town and Country Planning Act 1990 (development not constituting new development) or, in the case of a purchase notice served in consequence of a refusal or conditional grant of planning permission, if it would contravene the condition set out in schedule 10 to the Town and Country Planning Act 1990 (amount of gross floor space).

In the case of a listed building purchase notice, no account is taken of any prospective use of the land which would involve the carrying out of new development or of any works which require listed building consent, other than works for which the local planning authority or the
Secretary of State have undertaken to grant such consent.

In considering what capacity for use the land has, relevant factors include the physical state of the land, its size, shape and surroundings, and the general pattern of land uses in the area. A use of relatively low value may be regarded as reasonably beneficial if such a use is common for similar land in the vicinity.

It may sometimes be possible for an area of land to be rendered capable of reasonably beneficial use by being used in conjunction with neighbouring or adjoining land, provided that a sufficient interest in that land is held by the person serving the notice, or by a prospective owner of the purchase notice land. Whether it is or not would depend on the circumstances of the case. Use by a prospective owner cannot be taken into account unless there is a reasonably firm indication that there is in fact a prospective owner of the purchase notice site.

Profit may be a useful comparison in certain circumstances, but the absence of profit (however calculated) is not necessarily material. The concept of reasonably beneficial use is not synonymous with profit.

Where the use of land would mean it had some marketable value the land would be capable of reasonably beneficial use. Any reasonably beneficial use would suffice.

In determining whether the land has become incapable of reasonably beneficial use in its existing state, it may be relevant, where appropriate, to consider the difference (if any) between the annual value of the land in its existing state and the annual value of the land if development of a class specified in schedule 3 to the Town and Country Planning Act 1990 were carried out on the land. Development of any such class must not be taken into account.

The remedy by way of a purchase notice is not intended to be available where the owner shows merely that he is unable to realise the full development value of his land.

For the purposes of section 137(3)(c) Town and Country Planning Act 1990 or section 32(2)(c) Planning (Listed Buildings and Conservation Areas) Act 1990, any permission (or consent) granted, or deemed to be granted, and undertakings given up to the date of the Secretary of State’s determination of the purchase notice, may be taken into account. To be capable of being taken into account, an undertaking should be in unequivocal language, and so worded as to be binding on the local planning authority. The Secretary of State would not regard a promise ‘to give favourable consideration’ to an application for permission to develop, as a binding undertaking. If no undertaking has been given, and the council consider that development of a kind not included in the original application ought to be permitted, and that the carrying out of such development would render the land capable of reasonably beneficial use, their proper course is to suggest that the Secretary of State should issue a direction under section 141(3) of the Town and Country Planning Act 1990 or section 35(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

304. How will the Secretary of State satisfy himself that the land is ‘incapable of reasonably beneficial use’?

The Secretary of State considers that, in seeking to satisfy himself whether conditions (a) to (c) in section 137(3) of the Town and Country Planning Act 1990 have been fulfilled, he may take into account, among other things, whether there is a reasonable prospect of the
Where an owner of land claims that his land has become incapable of reasonably beneficial use, he is regarded as making that claim in respect of the whole of the land in question. Therefore, if a part of the land is found to be capable of reasonably beneficial use, the condition in section 137(3)(a) will not be fulfilled in respect of the whole of the land.

In section 137(3)(a) Town and Country Planning Act 1990 the phrase ‘has become’ is taken to mean ‘is’ in the context of purchase notices. The Secretary of State is only required to consider whether the land is incapable of reasonably beneficial use in its existing state. He is not required to compare the present state of the land with its state at some earlier time, since there is no period for comparison laid down within the provisions of the act. The only circumstances in which the Secretary of State would be concerned with what brought about the existing state of the land are where that state is due to activities having been carried out on it in breach of planning or listed building control.

When considering whether a listed building has reasonably beneficial use, a relevant factor to be taken into account may be the estimated cost of any renovations believed to be necessary. It is therefore helpful (but not conclusive) if estimated figures for such renovations, and an indication of the likely return on the relevant expenditure, can be provided. If no reasonable person would undertake the works because the benefits would not outweigh the costs then the building would not have a reasonably beneficial use.

305. What is the effect of a purchase notice?

A purchase notice does not require the council to purchase the land, unless (a) they state a willingness to comply with it, (b) it is confirmed by the Secretary of State or (c) it is deemed to have been confirmed under section 143 Town and Country Planning Act 1990. It is also possible that the council will find another authority or body willing to comply with the purchase notice in their place, or that the Secretary of State will confirm the notice on an alternative authority.

306. What should the council on whom notice is served do?

The council should first consider the validity of the notice. An invalid notice should not be sent to the Secretary of State. Instead, the council should inform the person serving the notice that in their view, for reasons stated, the purchase notice is invalid and they do not propose to take any further action on it.

If the purchase notice appears valid, the council should consider whether the conditions in section 137(3) Town and Country Planning Act 1990 or section 32(3) Planning (Listed Buildings and Conservation Areas) Act 1990 are satisfied. If the council regard the purchase notice as valid they must serve a counter-notice within three months from the date of service of the purchase notice (section139(2) Town and Country Planning Act 1990 or section 33(2) Planning (Listed Buildings and Conservation Areas) Act 1990).
307. What should the council do if they conclude the land has become incapable of reasonably beneficial use?

If the council conclude that the land has become incapable of reasonably beneficial use in its existing state, they may properly accept the purchase notice. If so, the council must serve, on the owner by whom the purchase notice was served, a response notice stating that they are willing to comply with the purchase notice (section 139(1)(a) of the Town and Country Planning Act 1990 or section 33(1)(a) Planning (Listed Buildings and Conservation Areas) Act 1990).

If the council intend to seek a contribution from government under section 305 of the Town and Country Planning Act 1990 it is advisable to consult the relevant department at once and in any case before a response notice is served.

308. Can another local authority or a statutory undertaker comply with the notice instead?

Another local authority or a statutory undertaker may be willing to comply with the notice in place of the council on which it is served, for example because permission to develop the land was refused because it was required for their purposes. If so, the council should serve a notice to that effect on the owner by whom the purchase notice was served, giving the name of the other authority or body concerned (section 139(1)(a) of the Town and Country Planning Act 1990 or section 33(1)(a) Planning (Listed Buildings and Conservation Areas) Act 1990). That other authority or body will then be deemed to have served notice to treat on the owner concerned.

The advice given in What should the council do if they conclude the land has become incapable of reasonably beneficial use? in relation to seeking a contribution under section 305 of the Town and Country Planning Act 1990 applies to a local authority specified in a response notice as it does to the council on which the purchase notice was served.

309. What happens if neither the council nor another local authority or statutory undertaker are willing to comply with a notice?

If neither the council on which the purchase notice was served nor another local authority or statutory undertaker are willing to comply with the purchase notice, the council are required to serve on the owner by whom the purchase notice was served, a response notice to that effect. The response notice must specify the council’s reasons for not being willing to comply and state that they have sent a copy to the Secretary of State.

The specified reasons should be one or more of the following:

- that the requirements of section 137(3)(a) to (c) of the Town and Country Planning Act 1990 (or section 32(2)(a) to (c) of the Planning (Listed Buildings and Conservation Areas) Act 1990) are not fulfilled, in which case the council should specify the use to which, in their view, the land in its existing state could be put

- that, notwithstanding that the council are satisfied that the land has become incapable of reasonably beneficial use, it appears to them that the land ought, in accordance with a previous planning permission, to remain undeveloped, or be preserved or laid out as amenity land in relation to the larger area for which that planning permission was granted
• that another local authority or statutory undertaker which has not expressed willingness to comply with the notice should be submitted as acquiring authority for all or part of the land

• that, instead of confirming the notice, the Secretary of State should:
  
  o grant the planning permission or listed building consent sought by the application which gave rise to the purchase notice or revoke or amend specified conditions that were imposed; or
  
  o direct the grant of planning permission, or listed building consent, in relation to all or part of the land for some other form of development or works which would render the land capable of reasonably beneficial use within a reasonable time; or
  
  o in the case of a purchase notice served under section 137(1)(b) or (c), cancel or revoke the order or amend it so far as is necessary to render the land capable of reasonably beneficial use

310. What should a council’s statement of reasons for not complying with the purchase notice include?

It is not sufficient for a council just to state that the site has a reasonably beneficial use. A council’s statement of reasons should be full and clear. The reasons should explain fully, for example, why the land is capable of reasonably beneficial use, or why they regard the grant of planning permission (or listed building consent) or the cancellation, revocation or modification of the order (as the case may be) as desirable, or specify the likely ultimate use of the land which would justify the substitution of another local authority or statutory undertaker.

311. What information should be sent with the purchase notice to Secretary of State?

It is important that a council who have decided to send a purchase notice to the Secretary of State should quickly send him the information and documents he requires to deal with the notice. He cannot begin consideration of a notice without copies of the purchase notice, any accompanying plan, the response notice, the planning application with plans, and the decision on which the purchase notice was based. Other documents may also be necessary in particular cases. The documents should, if possible, accompany the notice but sending the notice should not be delayed because all the information cannot be provided at the same time. Any information not immediately available should be sent as soon as possible afterwards.

Failure to supply all the relevant information within a reasonable time could lead to deemed confirmation of the notice if, as a result of delay, the Secretary of State is unable to complete his action within the statutory time limit.

Additional particulars and documents are also required as follows:

  • copies of any planning permissions relevant to section 142 of the Town and Country Planning Act 1990 and accompanying plans
• copies of any orders made under section 97, section 100 or section 102 of the Town and Country Planning Act 1990 or section 23 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and accompanying plans

• details of the location and condition of the land to which the notice relates and the nature of the surrounding land

• particulars of any permission or undertaking relevant to section 137(3)(c) of the Town and Country Planning Act 1990 or section 32(2)(c) of the Planning (Listed Buildings and Conservation Areas) Act 1990

• copies of relevant policies and allocations from the statutory development plan

• statements whether the land, or any part of it, falls within an area which is the subject of a compulsory purchase order or the subject of a direction which restricts permitted development or restricts the grant of planning permission

• the nature of the local planning authority’s intentions for the land and the probable timing of any development involved

Copies of the documents submitted to the Secretary of State should be sent to both the person serving the notice and any county council. The Secretary of State should be told that this has been done.

312. What action should the Secretary of State take on receiving a purchase notice?

Under section 140 of the Town and Country Planning Act 1990 the Secretary of State must give notice of his proposed action on the purchase notice, and to specify a period (not less than 28 days) within which the parties may ask for an opportunity of being heard by a person (normally a planning inspector) appointed by the Secretary of State before any final determination is made. The period cannot be extended once it has been specified in the formal notification.

It is important to note that, where a hearing has been held, the Secretary of State may depart from his previously stated proposal and reach a different decision on the notice. An Inspector conducting a hearing will therefore be prepared to hear, and report, representations made by the parties on any alternative course of action open to the Secretary of State. If there is no request by either party to be heard, the Secretary of State must issue his formal decision in accordance with the proposed course of action previously notified.

The Secretary of State must consider whether to confirm the notice or to take other action under section 141 Town and Country Planning Act 1990. If, on the evidence before him, the Secretary of State is not satisfied that the relevant statutory conditions are fulfilled, he will not confirm the purchase notice. If he is satisfied that those conditions are fulfilled, he will either confirm the notice or, dependent upon the evidence before him, take such other action as may be appropriate under section 141.

Under section142 of the Town and Country Planning Act 1990 the Secretary of State is not required to confirm a purchase notice if it appears to him that, even though the land
has become incapable of reasonably beneficial use in its existing state, it ought, in accordance with a previous planning permission, to remain undeveloped or be preserved or laid out as amenity land in relation to the remainder of the larger area for which that planning permission was granted. This provision is considered to have effect only when the whole of the purchase notice site is comprised in the area required to be left undeveloped in the previous planning permission.

313. Are the Secretary of State’s powers in regard to listed building purchase notices different?

The Secretary of State’s powers in regard to listed building purchase notices are in section 35 of the Planning (Listed Buildings and Conservation Areas) Act 1990. In contrast to the powers available to him in respect of purchase notices served under the Town and Country Planning Act, the Secretary of State:

- is required to confirm a listed building purchase notice only in respect of part of the land to which it relates, if he is satisfied that the relevant conditions are fulfilled only in regard to that part of the land; and

- may not confirm a listed building purchase notice unless he is satisfied that the land covered by the notice comprises such land as is required for preserving the building or its amenities, or for affording access to it, or for its proper control or management.

If it falls to be considered whether another local authority or a statutory undertaker should acquire the land, in place of the council on whom the purchase notice was served, the Secretary of State must have regard to the ‘probable ultimate use’ of the land or building or site of the building (as the case may be). He will accordingly exercise his power of substitution only where it is shown that the land or building is to be used in the reasonably near future for purposes related to the exercise of the functions of the other authority or body, e.g., where the land is needed for the building of a school, he will require the county council to acquire the land.

The Secretary of State will not (as he is sometimes asked to do) require another local planning authority to acquire land solely on the grounds that they refused permission for development in the normal exercise of their planning powers. There is no provision for confirmation of a purchase notice on a government department.

314. Is a hearing or local inquiry always held?

It is usual to hold a local inquiry or a hearing which interested members of the public may attend in light of the alternatives open to the Secretary of State under section 141 Town and Country Planning Act 1990. If a request to be heard is made, the department will follow the relevant procedural rules for an inquiry or a hearing as far as practicable although they do not formally apply. The parties will also be expected to observe the spirit of the rules. Because of the statutory time limits for determining purchase notices, it will not normally be possible to adhere to the timescales set out for normal planning appeals. Statements of case should be provided by the parties as soon as possible.

315. Can an owner lodge an appeal against refusal of planning permission and serve a purchase notice?

There is nothing to prevent an owner from lodging an appeal against a refusal of planning
permission as well as serving a purchase notice. It is, however, sensible to leave serving a purchase notice until the result of the appeal is known, if this is practicable, because, by virtue of section 336(5) of the Town and Country Planning Act 1990, any decision by the Secretary of State to grant planning permission for the development which is the subject of the appeal dates from the time when the original planning decision was taken by the local planning authority. Since the granting of planning permission would normally be regarded as rendering the land capable of reasonably beneficial use, it is unlikely that the landowner could substantiate a claim that the conditions set out in section 137(3) of the Town and Country Planning Act 1990 are fulfilled. In considering whether to appeal as well as to serve a purchase notice, an aggrieved applicant for planning permission should bear in mind the advice given above on the timing of the service of purchase notices. The Secretary of State’s attention should be drawn to any appeal which has been made to him, or any other matter which is before him for determination, relating to the purchase notice site or any part of it.

316. Is there a right of appeal against the Secretary of State's decision on a purchase notice?

Once the Secretary of State has issued his decision on the purchase notice, he has no further jurisdiction in the matter. Appeal against his decision is to the High Court under section 288 of the Town and Country Planning Act 1990. If the purchase notice has been confirmed, he has no power to compel either of the parties to conclude the transfer of the land. Matters related to the transfer of the land are for the parties themselves to settle.

317. How is compensation calculated?

When a purchase notice takes effect a notice to treat is deemed to have been served and the parties proceed to negotiate for the acquisition of the land as if the land had been the subject of compulsory purchase. If the parties are unable to agree the amount of compensation then either party may refer the matter to the Upper Tribunal (Lands Chamber) for determination. Where land is acknowledged to be incapable of reasonably beneficial use in its existing state, it will in most cases have little value and the landowner may simply wish to sell land which may be a liability for him. A person on whom a purchase notice is served may wish to take advice on the value of the land so that it does not spend a disproportionate amount of time disputing a notice about land which has no value.

For the purposes of calculating the compensation payable the valuation date is now fixed by section 5A of the Land Compensation Act 1961 being the earlier of (i) the date the authority enters on and takes possession of the land or (ii) the date when the assessment is made, either by agreement or by the Tribunal.

The nature of the interest to be valued is the interest which existed on the date the notice to treat is deemed to have been served. The normal rules of compensation which apply in compulsory purchase cases will apply in the case of purchase notices except in some cases there will be no scheme of the authority which has to be disregarded.

A purchase notice is normally used in two circumstances. First: where the physical characteristics of the land make it impossible to derive any beneficial use. In such circumstances the land is likely to have no value. Second, however, land may not be capable of a beneficial use in its existing state but may be rendered capable of a beneficial
use if developed, but for reasons of blight, planning permission will not be granted. In these circumstances it is possible to consider what planning permission may have been obtained absent the constraint and compensation will be payable on this basis. In this respect, these provisions complement the blight notice provisions in so far as they provide recompense to a landowner who is unable to secure any return from his land due to the blighting nature of public sector proposals.
The Crichel Down Rules

Rules and procedures

1. This section sets out the revised non statutory arrangements (‘Crichel Down Rules’) under which surplus government land which was acquired by, or under a threat of, compulsion (see paragraph 7 and the annex to this section below) should be offered back to former owners, their successors, or to sitting tenants (see paragraphs 13, 14, 17 and 18 below). For the sake of brevity, in this section all bodies to whom any one or more of the Rules apply or are commended are referred to as ‘departments’, whether they are government departments, including Executive Agencies, other non-departmental public bodies, local authorities or other statutory bodies. See paragraphs 3 and 4 below. The annex provides further guidance on the Rules including a list of those bodies to which, in the opinion of the department, the Rules apply in a mandatory manner.


3. General guidance on asset management, which includes land and buildings is set out in annex 4.15 of Managing Public Money (Asset Management).

4. So far as local authorities and statutory bodies in England are concerned, it is recommended that they follow the Rules. They are also recommended to those bodies in Wales who seek to dispose of land acquired under an enabling power which remains capable of being confirmed by a UK Secretary of State for land in Wales. The Rules are also commended to bodies in the private sector to which public land holdings have been transferred, for example on privatisation.

5. It is the view of the government that where land is to be transferred to another body which is to take over some or all of the functions or obligations of the department that currently owns the land, the transfer itself does not constitute a disposal for the purpose of the Rules. Disposals for the purposes of Private Finance Initiative/Private Public Partnership projects do not fall within the Rules and the position of any land surplus once the project has been completed would be subject to the Private Finance Initiative/Private Public Partnership contract.

6. The Rules are not relevant to land transferred to the National Rivers Authority (now the Environment Agency) or to land acquired compulsorily by the Environment Agency or to the water and sewerage service companies in consequence of the Water Act 1989.
or subsequently acquired by them compulsorily. Such land is governed by a special set of statutory restrictions on disposal under section 157 of the Water Resources Act 1991, as amended by the Environment Act 1995, and section 156 of the Water Industry Act 1991 and the consents or authorisations given by the Secretary of State for Environment, Food and Rural Affairs under those provisions.

The land to which the rules apply

7. The Rules apply to all land if it was acquired by or under threat of compulsion. A threat of compulsion will be assumed in the case of a voluntary sale if power to acquire the land compulsorily existed at the time unless the land was publicly or privately offered for sale immediately before the negotiations for acquisition.

8. The Rules also apply to land acquired under the statutory blight provisions (currently set out in Chapter 2 in Part 6 of, and schedule 13 to, the Town and Country Planning Act 1990). The Rules do not apply to land acquired by agreement in advance of any liability under these provisions.

9. The Rules apply to all freehold disposals and to the creation and disposal of a lease of more than seven years.

The general rules

10. Where a department wishes to dispose of land to which the Rules apply, former owners will, as a general rule, be given a first opportunity to repurchase the land previously in their ownership, provided that its character has not materially changed since acquisition. The character of the land may be considered to have 'materially changed' where, for example, dwellings or offices have been erected on open land, mainly open land has been afforested, or where substantial works to an existing building have effectively altered its character. The erection of temporary buildings on land, however, is not necessarily a material change. When deciding whether any works have materially altered the character of the land, the disposing department should consider the likely cost of restoring the land to its original use.

11. Where only part of the land for disposal has been materially changed in character, the general obligation to offer back will apply only to the part that has not been changed.

Interests qualifying for offer back

12. Land will normally be offered back to the former freeholder. If the land was, at the time of acquisition, subject to a long lease and more than 21 years of the term would have remained unexpired at the time of disposal, departments may, at their discretion, offer the freehold to the former leaseholder if the freeholder is not interested in buying back the land.

13. In these Rules ‘former owner’ may, according to the circumstances, mean former freeholder or former long leaseholder, and his or her successor. ‘Successor’ means the person on whom the property, had it not been acquired, would clearly have devolved under the former owner’s will or intestacy; and may include any person who has succeeded, otherwise than by purchase, to adjoining land from which the land was severed by that acquisition.
**Time horizon for obligation to offer back**

14. The general obligation to offer back will not apply to the following types of land:

1) agricultural land acquired before 1 January 1935

2) agricultural land acquired on and after 30 October 1992 which becomes surplus, and available for disposal more than 25 years after the date of acquisition

3) non-agricultural land which becomes surplus, and available for disposal more than 25 years after the date of acquisition

The date of acquisition is the date of the conveyance, transfer or vesting declaration.

**Exceptions from the obligation to offer back**

15. The following are exceptions to the general obligation to offer back:

1) where it is decided on specific ministerial authority that the land is needed by another department (ie that it is not, in a wider sense, surplus to government requirements)

2) where it is decided on specific ministerial authority that for reasons of public interest the land should be disposed of as soon as practicable to a local authority or other body with compulsory purchase powers. However, transfers of land between bodies with compulsory purchase powers will not be regarded as exceptions unless at the time of transfer the receiving body could have bought the land compulsorily if it had been in private ownership. Appropriations of land within bodies such as local authorities for purposes different to that for which the land was acquired are exceptions if the body has compulsory purchase powers to acquire land for the new purpose

3) where, in the opinion of the disposing body, the area of land is so small that its sale would not be commercially worthwhile

4) where it would be mutually advantageous to the department and an adjoining owner to effect minor adjustments in boundaries through an exchange of land

5) where it would be inconsistent with the purpose of the original acquisition to offer the land back; as, for example, in the case of:

   (i) land acquired under sections 16, 84 or 85 of the Agriculture Act 1947

   (ii) land which was acquired under the Distribution of Industry Acts or the Local Employment Acts, or under any legislation amending or replacing those acts, and which is resold for private industrial use

   (iii) where dwellings are bought for onward sale to a private registered provider of social housing or Registered Social Landlord in Wales

   (iv) sites purchased for redevelopment by the former English Partnerships or
former regional development agencies or Homes England

6) where a disposal is in respect of either:

   (i) a site for development or redevelopment which has not materially changed since acquisition and which comprises two or more previous land holdings; or

   (ii) a site which consists partly of land which has been materially changed in character and part which has not

and there is a risk of a fragmented sale of such a site realising substantially less than the best price that can reasonably be obtained for the site as a whole (ie its market value). In such cases, consideration will be given to offering a right of first refusal of the property, or part of the property, to any former owner who has remained in continuous occupation of the whole or part of his or her former property (by virtue of tenancy or licence). In the case of land to which (i) applies, consideration will be given to a consortium of former owners who have indicated a wish to purchase the land collectively. However, if there are competing bids for a site, it will be disposed of on the open market.

7) where the market value of land is so uncertain that clawback provisions would be insufficient to safeguard the public purse and where competitive sale is advised by the department’s professionally qualified valuer and specifically agreed by the responsible minister.

16. Where it is decided that a site does fall within any of the exceptions in Rule 15 or the general exception relating to material change (see rule 10) the former owner will be notified of this decision using the same procedures for contacting former owners as indicated in paragraphs 20-22 below.

17. In the case of a tenanted dwelling, any pre-emptive right of the former owner is subject to the prior right of the sitting tenant. See paragraph 18 below.

Dwelling tenancies

18. Where a dwelling, whether acquired compulsorily or under statutory blight provisions, has a sitting tenant (as defined in Appendix A to this section) at the time of the proposed disposal, the freehold should first be offered to the tenant. If the tenant declines to purchase the freehold, it should then be offered to the former owner, although this may be subject to the tenant’s continued occupation. This paragraph does not apply where a dwelling with associated land is being sold as an agricultural unit; or where a dwelling was acquired with associated agricultural land but is being sold in advance of that land.

Procedures for disposal

19. Where it is decided that property to be disposed of is, by virtue of these Rules, subject to the obligation to offer back, departments should follow the appropriate procedures described in paragraphs 20-25 below.
Where former owner’s address is known

20. Where the address of a former owner is known, a recorded delivery letter should be sent by or on behalf of the disposing department, inviting the former owner to buy the property at the valuation made by the department’s professionally qualified valuer. The former owner will be given two months from the date of that letter to indicate an intention to purchase. Where there is no response or the former owner does not wish to purchase the property, it will be sold on the open market and the former owner will be informed by a recorded delivery letter that this step is being taken. If the former owner wishes to purchase the land there will be a further period of two months to agree terms, other than value, from the date of an invitation made by or on behalf of the disposing department. After these terms are agreed, there will be six weeks to negotiate the price. If the price or other terms cannot be agreed within these periods, or within such extended periods as may reasonably be allowed (for example, to negotiate appropriate clawback provisions), the property will be disposed of on the open market.

Where address is unknown

21. Where the former owner is not readily traceable, the disposing department will contact the solicitor or agent who acted for him or her in the original transaction. If a present address is then ascertained, the procedure described in paragraph 20 above should be followed. If the address is not ascertained, however, the department will attempt to contact the former owner by advertisement, as set out in paragraph 22 below, informing the solicitor or agent that this has been done.

22. Advertisements inviting the former owner to contact the disposing department will be placed as follows:

a) for all land (including dwellings), in the London Gazette, in the Estates Gazette, in not less than two issues of at least one local newspaper and on the disposing department’s web site

b) in addition, for agricultural land, advertisements will be placed in the Farmer’s Weekly

Site notices announcing the disposal of the land will be displayed on or near the site and owners of the adjacent land will also receive notification of the proposed disposal.

Responses to invitation to purchase where address is unknown

23. Where no intention to purchase is indicated by or on behalf of a former owner within two months of the date of the latest advertisement which is published as described in paragraph 22 above, the land will be disposed of on the open market.

24. Where an intention to purchase is expressed by or on behalf of a former owner within two months of the date of the latest advertisement, he or she will be invited to negotiate terms and agree a price within the further periods, as may reasonably be extended, which are described in paragraph 20 above. If there is no agreement, the property will be disposed of on the open market.

Special procedures where boundaries of agricultural land have been obliterated
25. The procedures described in **Appendix B to these Rules** should be followed where changes, such as the obliteration of boundaries, prevent land which is still predominantly agricultural in character from being sold back as agricultural land in its original parcels.

**Terms of resale**

26. Disposals to former owners under these arrangements will be at current market value, as determined by the disposing department’s professionally qualified valuer. There can be no common practice in relation to sales to sitting tenants because of the diversity of interests for which housing is held. Departments will, nonetheless, have regard to the terms set out in the Housing Act 1985, as amended, under which local authorities are obliged to sell dwelling-houses to tenants with the right to buy.

27. As a general rule, departments should obtain planning consent before disposing of properties which have potential for development. Where it would not be practicable or appropriate for departments to take action to establish the planning position at the time of disposal, or where it seems that the likelihood of obtaining planning permission (including a more valuable permission) is not adequately reflected in the current market value, the terms of sale should include clawback provisions in order to fulfil the government’s or public body’s obligation to the taxpayer to obtain the best price. The precise terms of clawback will be a matter for negotiation in each case.

**Recording of disposals**

28. Disposing departments will maintain a central record or file of all transactions covered by the Rules, including those cases that fall within Rules 10 and 15.
Appendix A (see paragraph 18 of the Rules)

Sitting tenants

1. In the context of the Rules, the expression ‘sitting tenant’ was generally intended to apply to tenants with indefinite or long-term security of tenure. A tenant for the time being of residential property which is to be sold as surplus to a department’s requirements is not, as a tenant of the Crown, in occupation by virtue of a statutory form of tenancy under the Rent Act 1977 or the Housing Act 1988. However, when deciding whether a person is a sitting tenant for the purposes of paragraph 18 of the Rules, the department concerned will have regard to the terms of tenancy and act according to the spirit of the legislation.

2. In practice, this will generally mean that a person may be regarded as a sitting tenant for the purposes of paragraph 18 of the Rules if the tenancy is analogous to either:

   a) a regulated tenancy under the Rent Act 1977, (ie a tenancy commenced before 15 January 1989, but excluding a protected shorthold tenancy); or

   b) an assured tenancy under the Housing Act 1988, (ie a tenancy begun on or after that date, but excluding an assured shorthold tenancy)

3. Without prejudice to paragraph 15(6) of the Rules, therefore, paragraph 18 of the Rules does not apply to a licensee or to a person in occupation under a tenancy the terms of which are analogous to:

   a) a protected shorthold tenancy under the Housing Act 1980, including any case where a person who held such a tenancy, or his or her successor, was granted a regulated tenancy of the same dwelling immediately after the end of the protected shorthold tenancy; or

   b) an assured shorthold tenancy under the Housing Act 1988

4. It is recognised, however, that some tenants who fall within paragraph 3 above, may have occupied the property over a number of years and may well have carried out improvements to the property. Where the former owner or successor does not wish to purchase the property, or cannot be traced, the department may wish to consider sympathetically any offer from such a tenant, of not less than two years, to purchase the freehold.
Appendix B (see paragraph 25 of the Rules)

Special procedures where boundaries of agricultural land have been obliterated

(a) Each former owner will be asked whether he or she wishes to acquire any land.

(b) Where former owners express interest in doing so, disposing departments will, subject to what is stated in (c) to (e) below, make every effort to offer them parcels which correspond, as nearly as is reasonably practicable, in size and situation to their former land.

(c) In large and complex cases, or where there is little or no room for choice between different methods of dividing the land into lots, it may be necessary to show former owners a plan indicating definite lots. This might be appropriate where, for example, the character of the land has altered; where there are existing tenancies; or where departments might otherwise be left with unsaleable lots.

(d) Where more than one former owner is interested in the same parcel of land it may be necessary to give priority to the person who owned most of the parcel or, in a case of near equality, to ask for tenders from interested former owners. Departments should, however, make every effort to offer each interested former owner at least one lot.

(e) If attempts to come to a satisfactory solution by dealing with former owners end in complete deadlock, departments will sell the land by public auction in the most convenient parcels and will inform the former owners of the date of the auction sale.
Annex (see paragraph 1 of the Rules)

Guidance for departments

Bodies to which these rules apply (Rule 2)

1. These Rules apply to all government departments, executive agencies and non-departmental public bodies in England and other organisations in England (such as health service bodies) which are subject to a power of direction by a minister. They also apply to land in Wales acquired and still owned by a UK government department.

Application of the rules by local authorities and statutory bodies (Rule 4)

2. Local authorities and other statutory bodies which are not subject to a ministerial power of direction (for example, statutory undertakers) but who have powers of compulsory purchase, or who hold land which has been compulsorily purchased, are recommended to follow the Rules. Such authorities and bodies include those holding land in Wales acquired under an enabling power which remains capable of being confirmed by a UK minister, such as the Secretary of State for Business, Energy and Industrial Strategy. The previous practice amongst such authorities has been very variable, but the government would like there to be a high level of compliance. Former owners of surplus land will be likely to see as inequitable a system which requires government departments and others to offer back surplus land but not local authorities. A typical example would be on road schemes, where those who had lost land to a trunk road scheme would have surplus land offered back, while those who had lost land to a county road scheme might not.

3. The approach of these bodies when disposing of surplus land must, however, depend on their particular functions and circumstances. For example, in the case of exceptions to the Rules which depend upon ministerial authority (Rules 15(1), 15(2) and 15(7)) local authorities will have to rely on the decision of the political head of the authority. For other statutory bodies the decision will rest with the chairman. For disposals at the end of Private Finance Initiative/Private Public Partnership agreements, departments may wish to seek legal advice in order to take account of the Rules.

Transfer to the private sector (Rule 5)

4. This rule makes it clear that land transferred to another body for the same functions is not surplus.

The threat of compulsion (Rule 7)

5. A ‘threat of compulsion’ should be assumed in the case of a voluntary sale if the power to acquire the land compulsorily existed at the time. This means that the acquiring department did not need to have instituted compulsory purchase procedures or even to have actively ‘threatened’ to use them for this Rule to apply.

It is enough for the acquiring authority to have statutory powers available if it wished to invoke them. For example, land acquired by a highway authority for the purposes of building a road is acquired under the threat of compulsion because such an authority...
could use its powers under the Highways Act 1980 to make a compulsory purchase order. The only exception is where the land was publicly or privately offered for sale immediately before the negotiations for acquisition.

**What constitutes a disposal? (Rule 9)**

6. In addition to freehold disposals, any proposal to create and dispose of a leasehold interest of more than 7 years or capable of being extended to more than 7 years by virtue of contract or statute or where the total period of successive leases amounts to more than 7 years will be subject to the Rules. Disposals for the purposes of granting Private Finance Initiative/Private Public Partnership projects do not fall within the Rules, see Rule 5.

**What is a material change of character? (Rule 10)**

7. The Rules refer to a ‘material change in character’ to the land available for disposal. In the original Commons debate on the Crichel Down case in 1954, ‘material change’ was envisaged as relating to agricultural land and was illustrated by the example of an airfield having been built with concrete runways and buildings and where the original ownership boundaries have been lost. However, other examples of a material change of character could include the erection of buildings on bare, open land (although it should be noted that the erection of temporary buildings is not necessarily a material change); the afforestation of open land; or the undertaking of substantial works to an existing building, the demolition of a building or the installation of underground infrastructure or services to a site.

**Land subject to a long lease (Rule 12)**

8. If neither the former freeholder nor former leaseholder are identifiable or interested in buying the land back then the freehold freed from any lease can be disposed of on the open market.

**Who is a successor? (Rule 13)**

9. A successor under a will includes those who would have succeeded by means of a second or subsequent will or intestacy. The qualification ‘otherwise than by purchase’ may be relaxed if the successor to adjoining land acquired it by means of transfer within a family trust, including a transfer for monetary consideration.

**When is the date of acquisition? (Rule 14)**

10. Rule 14 says that the date of acquisition is the date of the conveyance, transfer or vesting declaration. Problems may arise where land has been requisitioned several (sometimes 10 or more) years before the title has transferred. Difficulties can be caused where the two dates straddle a time horizon, so that a disposal would fall within the Rules if the date of transfer was used, but not if the date of requisition was. To avoid these difficulties the date of acquisition is therefore taken to be the date of conveyance, transfer or vesting declaration.
What are ‘reasons of public interest’? (Rule 15(2))

11. The courts have held that rule 15(2) (formerly 14(2)) does not require these to be matters where life or limb are at risk. In practice, this exception may be invoked where the body to which the land is to be sold could have made a compulsory purchase order to obtain it had it been owned by a third party (See R-v-Secretary of State for the Environment, Transport and the Regions ex p. Wheeler, The Times 4 August 2000).

Small areas of land (Rule 15(3))

12. This exception provides departments with discretion as to whether to offer land back when the administrative costs in seeking to offer land back are out of proportion to the value of the land. It will also cover cases where there is a disposal of a small area of land without a sale.

When is it inconsistent with the purpose of the original acquisition to offer land back? (Rule 15(5))

13. The sections of the Agriculture Act 1947 referred to in this Rule deal with the dispossession of owners or occupiers on grounds of bad estate management (section 16) and the acquisition and retention of land to ensure the full and efficient use of the land for agriculture (sections 84 and 85). In addition to the statutory examples quoted, the general rule is that land purchased with the intention of passing it on to another body for a specific purpose is not surplus and therefore not subject to the Rules. Typical examples would be sites of special scientific interest (SSSIs) purchased for management reasons; a listed building purchased for restorations; properties purchased by a local authority for redevelopment which are sold to a private developer partner; or land purchased by the former English Partnerships or a former regional development agency (now Homes England) and sold for reclamation and redevelopment. This exception will apply to disposals by statutory bodies with specific primary rather than incidental functions to develop or redevelop land, and to disposals by their successor bodies. In such cases, land would only be subject to the Rules where it was without development potential and, therefore, genuinely surplus in relation to the purpose for which it was originally acquired.

Dwelling tenancies (Rule 18)

14. For the purposes of the Rules a ‘dwelling’ includes a flat.

Procedures for disposal (Rules 19-24)

15. The Rules specify various time limits in the procedures for disposal. However, to assist in the speedy disposal of sites, departments are encouraged to discuss with the former owner all aspects of the sale from the outset of negotiations.

Market value and the date of valuation (Rule 26)

16. For the purposes of the Rules, ‘market value’ means ‘the best price reasonably obtainable for the property’. This is equivalent to the definition of ‘market value’ in the
Royal Institution of Chartered Surveyors' Appraisal and Valuation Manual (the ‘Red Book’), but including any ‘Special Value’ (ie any additional amount which is or might reasonably be expected to be available from a purchaser with a special interest like a former owner). ‘Current market value’ means the market value on the date of the receipt by the disposing department of the notification of the former owner’s intention to purchase.

Maintenance of records (Rule 28)

17. In order to make it possible for the operation of these revised Rules to be monitored, disposing departments should include on each disposal file a note of its consideration of the Rules, including whether they applied (and if not, why not), the subsequent action taken and whether it was possible to sell to the former owner. It would also be very helpful if a copy of each of these notes (cross-referenced to the disposal file) could be held by the relevant department on a central (or regional) file, so that the information would be readily available for any future monitoring exercise.