



THE LAW COMMISSION  
(LAW COM. No. 189)

**TOWN AND COUNTRY PLANNING BILL  
PLANNING (LISTED BUILDINGS AND  
CONSERVATION AREAS) BILL  
PLANNING (HAZARDOUS SUBSTANCES) BILL  
PLANNING (CONSEQUENTIAL PROVISIONS) BILL**

REPORT ON THE CONSOLIDATION OF  
CERTAIN ENACTMENTS RELATING  
TO TOWN AND COUNTRY PLANNING

*Presented to Parliament by the  
Lord High Chancellor by Command of Her Majesty  
February 1990*

LONDON: HMSO  
£5.60 net

Cm 958

The Law Commission was set up by the Law Commissions Act 1965 for the purpose of promoting the reform of the law.

The Law Commissioners are-

The Honourable Mr. Justice Peter Gibson, *Chairman*

Mr. Trevor M. Aldridge

Mr. Jack Beatson

Mr. Richard Buxton Q.C.

Professor Brenda Hoggett Q.C.

The Secretary of the Law Commission is Mr. Michael Collon and its offices are at Conquest House, 37-38 John Street, Theobalds Road, London, WC1N 2BQ.

THE LAW COMMISSION

**TOWN AND COUNTRY PLANNING BILL  
PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) BILL  
PLANNING (HAZARDOUS SUBSTANCES) BILL  
PLANNING (CONSEQUENTIAL PROVISIONS) BILL**

**REPORT ON THE CONSOLIDATION OF CERTAIN  
ENACTMENTS RELATING TO TOWN AND COUNTRY PLANNING**

*To the Right Honourable the Lord Mackay of Clashfern, Lord High Chancellor of Great Britain.*

The Bills which are the subject of this Report consolidate certain enactments relating to town and country planning. In order to produce a satisfactory consolidation recommendations which are set out in the Appendix to this Report are made.

The following government departments and other bodies were consulted in connection with the recommendations: the Ministry of Agriculture, Fisheries and Food, the Department of Education and Science, the Department of Energy, the Department of Trade and Industry, the Department of Transport, the Home Office, the Welsh Office, the Crown Estate Commissioners, the Treasury Solicitor's Office, the Chief Valuer's Office (Inland Revenue), the Department of Health, the Department of Employment, the Health and Safety Executive, the Lord Chancellor's Department, the Association of County Councils, the Association of London Authorities, the Association of District Councils, the Association of District Councils (Wales), the Association of Metropolitan Authorities, the London Boroughs Association, the Welsh Counties Committee, the Encyclopedia of Planning, Law and Practice, the Journal of Planning and Environment Law, the Law Society, the Royal Town Planning Institute, the Royal Institute of Chartered Surveyors, the Town and Country Planning Association, the Local Government and Planning Bar Association, the Confederation of British Industry, the CBI Minerals Committee, the British Property Federation, the Country Landowners Association, the British Railways Board, British Gas plc, the Central Electricity Generating Board, British Telecommunications plc, the Water Authorities Association Ltd, the British Coal Corporation, the British Compressed Gases Association, the Chemical Industries Association Ltd, the Liquefied Petroleum Gas Industry Technical Association (UK), the UK Petroleum Industry Association, the British Ports Federation, the Road Haulage Association Ltd, the Commission for the New Towns, the Council on Tribunals, the Institution of Environmental Health Officers, the Outdoor Advertising Council, the Ancient Monuments Society, the Council for British Archaeology, the Georgian Group, the Historic Buildings and Monuments Commission for England, the Historic Buildings Council for Wales, the Society for the Protection of Ancient Buildings, the Victorian Society, the Civic Trust, the Civic Trust (Wales), the Association of Conservation Officers, the County Planning Officers' Society, the Royal Commission on the Historical Monuments of England, the Royal Commission on Ancient and Historical Monuments in Wales, the Church Commissioners, the Churches Main Committee, the General Synod of the Church of England, the Representative body of the Church in Wales, the National Farmers Union,

the National Farmers Union (Wales), the Farmers Union of Wales, the Royal Institute of British Architects, the Council for the Protection of Rural England, and the Council for the Protection of Rural Wales. Copies of the draft recommendations were also supplied on request to other persons.

The comments received from those consulted have been taken into account in framing the recommendations. There is no outstanding objection to any of our recommendations.

PETER GIBSON, *Chairman, Law Commission*

12 January 1990

## APPENDIX

### ARRANGEMENT OF RECOMMENDATIONS

1. Authorities exercising functions in relation to trees in conservation areas.
2. Extension of supplementary provisions relating to tree preservation to the Broads Authority.
3. Provision of copies of documents concerning unitary development plans to the public.
4. Withdrawal of proposals for alteration or replacement of structure plans.
5. Explanatory memorandum concerning alterations or replacement of joint structure plans.
6. Date of coming into operation of joint proposals for alteration or replacement of local plans.
7. Consideration of representations as to applications for planning permission for mineral workings.
8. Application of certain provisions as respects the failure of authorities to take decisions on applications.
9. Application of s. 276 of the 1971 Act as respects mineral orders.
10. Compensation for orders under s. 51(1C) of the 1971 Act requiring plant or machinery to be removed from land.
11. Application of s. 25 of the War Damage Act 1943 by regulations under s. 162 of the 1971 Act.
12. Effect of compulsory acquisition under ss. 114 and 115 of the 1971 Act by bodies other than local authorities and the Secretary of State on purchase notices.
13. Modifications required by virtue of application of certain provisions relating to purchase notices by sections 188 and 189 of the 1971 Act.
14. Application of s. 68(6) of the Land Compensation Act 1973 and s. 198(1) of the 1971 Act to personal representatives.
15. Grant of conditional planning permission by Secretary of State on appeal against enforcement notice.
16. Application of regime relating to enforcement notices to notices served by the Secretary of State.
17. Recovery of expenses of mineral planning authorities incurred under s. 108 of the 1971 Act.
18. Offences in respect of certificates accompanying applications for established use certificates.
19. Fees and expenses of independent tribunal constituted to hear appeals relating to

advertisement controls.

20. Powers as to other highways where orders made under s. 211 of the 1971 Act.
21. Publication of notices under s. 215 of the 1971 Act on different days.
22. Authorisation of compulsory acquisitions under s. 218 of the 1971 Act.
23. Use of default powers under s. 276 of the 1971 Act to make certain orders relating to operational land of statutory undertakers.
24. Amendment of s. 228 of the 1971 Act to extend that section to orders relating to minerals.
25. Time limit for challenges to certain orders under ss. 244 and 245 of the 1971 Act.
26. Rights of authorities to apply under s. 245(2) of the 1971 Act for certain orders and actions to be quashed.
27. (a) Contributions towards expenses incurred in connection with the alteration or replacement of development plans.  
(b) Contributions to expenses of mineral planning authorities.
28. Amendment of definition of "planning permission" for purposes of the 1971 Act so as to include permission granted by enterprise zone schemes.
29. Consultations before determination of applications for planning permission conflicting with structure plan proposals.
30. Continuation of existing structure and local plans in areas of metropolitan counties and Greater London pending adoption of unitary development plan.
31. Documents which may be required to be supplied to public under regulations concerning making and alteration of simplified planning zone schemes.
32. (a) Effect of proposals for repeal and replacement of a structure plan as respects blight.  
(b) Effect of proposals regarding local plans as respects blight where expedited procedure adopted.  
(c) Effect of proposals for alteration or replacement of unitary development plans as respects blight.
33. Publicity of confirmed highways orders.
34. Deposit of lists of buildings with registering authority.
35. Effect of issue of certificate under s. 54A of the 1971 Act on power of local planning authority to serve building preservation notices.
36. Works not complying with any condition to count as unauthorised works.
37. Local authorities for compensation purposes.
38. Cancellation of listed building purchase notice on quashing of Secretary of State's decision to confirm it.

39. Extended period for service of listed buildings purchase notices served in consequence of decisions to revoke or modify listed building consent where decision as to notice quashed.
40. Default powers as respects listed building enforcement notices and urgent preservation.
41. Application of Acquisition of Land Act 1981 in case of compulsory acquisition by Minister under the 1971 Act.
42. Exercise by joint planning boards of power to give directions under s. 117 of the 1971 Act for minimum compensation.
43. Power to manage amenity land acquired under s. 119(1)(c) of the 1971 Act.
44. Recovery of grants made by local authorities on disposal of property in respect of which grant made.
45. Prevention of excessive recovery under s.10A(8) of the Town and Country Planning (Amendment) Act 1972.
46. Exercise of functions under s. 56B of the 1971 Act by district planning authorities.
47. Amendment of Parts II and VI of Schedule 21 to the 1971 Act so as to include ss.56A and 56B of that Act.
48. Amendment of Schedule 21 to the 1971 Act as respects section 54(12) of that Act.
49. Right of entry in case of offences being committed under s. 57 of the 1971 Act.
50. Contribution by Ministers towards compensation payable as a result of the service of a listed building purchase notice.
51. Inadvertent repeal of s. 287(9) of the 1971 Act.
52. Service of documents concerning appeals on owners who have made representations and their right to be heard.
53. Extension of paragraph 51(1) of Schedule 16 to the 1972 Act to applications for conservation area consent.
54. Hazardous substances authorities in special areas.
55. Application of sections 58D(5) and 58M of the 1971 Act to housing action trusts which are hazardous substances authorities.
56. Limitation on conditions which may be imposed when hazardous substances consent is modified on change of control of land.
57. Appeals against refusal or conditional grant of consent required on grant of hazardous substances consent.
58. The right to challenge decisions relating to hazardous substances consent under s. 245 of the 1971 Act.
59. Inclusion in registers relating to hazardous substances consent of information relating

to all deemed hazardous substances consents.

60. Notification to hazardous substances authorities of certain disposals of Crown land.

61. Rights of entry exercisable by hazardous substances authorities.

62. Contributions to expenses of hazardous substances authorities.

63. Repeal of s. 105(4) and (5) of the Town and Country Planning Act 1968.

64. Repeal of s. 21(7A) and (8) of the 1971 Act.

65. Functions which may be given to urban development corporations.



## RECOMMENDATIONS

In this Appendix the Town and Country Planning Act 1971 (c.78), the Local Government Act 1972 (c.70), the Local Government Planning and Land Act 1980 (c.65), the Local Government Act 1985 (c.51) and the Housing and Planning Act 1986 (c.63) are referred to respectively as "the 1971 Act", "the 1972 Act", "the 1980 Act", "the 1985 Act" and "the 1986 Act".

### *1. Authorities exercising functions in relation to trees in conservation areas*

Section 182(4) to (6) of the 1972 Act makes provision as to the exercise of planning functions in National Parks. The general rule is that in a National Park outside a metropolitan county all functions under the 1971 Act are functions of the county planning authority and no other authority. But this is subject to the exceptions in subsections (5) and (6) of section 182. Under subsection (5) certain functions are exercisable concurrently by the county planning authority and the district planning authority. Those functions include all those exercisable in relation to tree preservation and replacement at the time of the passing of the 1972 Act (i.e. those under sections 60 to 62 and 103 of the 1971 Act).

Section 8 of the Town and Country Amenities Act 1974 (c.32) added section 61A to the 1971 Act which provides a parallel regime for trees in conservation areas. It failed, however, to make any consequential amendment of section 182 as respects the exercise of functions under section 61A in National Parks and hence functions under that section will fall into the general rule and be exercisable only by county planning authorities. It seems that this was probably a slip and it is recommended that functions under section 61A should fall into those mentioned in section 182(5) so that they are exercisable concurrently by county and district planning authorities like the other functions relating to trees.

Effect is given to this recommendation in clause 4(2) of the Town and Country Planning Bill.

### *2. Extension of supplementary provisions relating to tree preservation to the Broads Authority*

Paragraph 48 of Schedule 3 to the Norfolk and Suffolk Broads Act 1988 (c.4) provides that the Broads Authority shall be treated as a local planning authority for the purposes of sections 60, 61, 62 and 103 of the 1971 Act (tree preservation orders). It does not mention other provisions of the Act which relate to such orders and make provision which is supplementary to those provisions, for example, sections 111, 174, 175, 245 and 276. Nor does the 1988 Act amend paragraph 27 of Schedule 16 to the 1972 Act which provides that only the county planning authority or, as the case may be, the district planning authority who make the order under section 60, or are named in such an order which is made by the Secretary of State by virtue of section 276, may exercise further functions in relation to the order. It must therefore be doubtful whether those provisions are to apply to the Broads Authority.

It is recommended that it should be made clear that these provisions do apply to the Broads Authority.

Effect is given to this recommendation in clause 5 of and in paragraph 13 of Schedule 1 to the Town and Country Planning Bill.

*3. Provision of copies of documents concerning unitary development plans to the public where expedited procedure for alterations followed.*

Paragraph 14(1) of Schedule 1 to the 1985 Act begins by giving the Secretary of State a general power to make regulations with respect to various matters concerning unitary development plans and then goes on to describe in more detail in paragraphs (a) to (g) particular ways in which the power may be exercised.

Paragraph (f) provides that the regulations may "require a local planning authority, in such cases as may be prescribed or in such particular cases as the Secretary of State may direct, to provide persons making a request in that behalf with copies of any plan or document which has been made public for the purpose mentioned in paragraphs 3(1)(a) or 12(2)(a) above or has been made available for inspection under paragraph 3(2) above, subject (if the regulations so provide) to the payment of a reasonable charge".

At the time when paragraph 14 was drafted the only obligation to make a plan available for inspection was under paragraph 3(2). Schedule 1 to the 1985 Act was, however, amended by paragraph 4 of Part II of Schedule 10 to the 1986 Act so as to provide an alternative shorter procedure for the making of plans in paragraph 10A to the Schedule and sub-paragraph (2) of that paragraph provides for copies of the altered or new plan to be made available for inspection.

It appears to have been a slip that the 1986 Act did not amend paragraph 14(1)(f) so that it referred to both provisions under which inspection can take place. (It did amend section 18(1)(f) of the 1971 Act which contains the corresponding power to make regulations about local plans so that there is a reference to the short form of procedure it introduced for local plans: see paragraph 15 of Schedule 11 to the 1986 Act.) It is arguable that the general power is sufficient, but once the provision has been re-enacted the fact that one inspection provision is referred to and not the other might be regarded as indicating an intention that that other is not to be covered by the regulations, especially when the companion provision relating to local plans refers to both. Accordingly, it is recommended that a reference to paragraph 10A(2) of Schedule 1 to the 1985 Act be added to paragraph 14(1)(f).

Effect is given to this recommendation in clause 26(2)(f) of the Town and Country Planning Bill.

*4. Withdrawal of proposals for alteration or replacement of structure plans*

Section 10B of the 1971 Act provides that a structure plan submitted to the Secretary of State for his approval may be withdrawn at any time before it is approved and that, if it is, any steps taken for publicising it and opportunities given for the making of representations may be taken into account on the submission of a subsequent plan.

Most of the regime connected with the preparation of structure plans is applied to the making of proposals for the alteration or repeal and replacement of structure plans by s.10(7) of the 1971 Act. But section 10(7) appears to have been overlooked when section 10B was added by the Town and Country Planning (Amendment) Act 1972 (c.42).

There seems no reason why it should not be possible for proposals for the alteration or replacement of structure plans to be withdrawn if the original plans could be, and it is interesting to note in this context that paragraph 10(2) of Schedule 1 to the 1985 Act (which is represented by clause 21(2) of the Town and Country Planning Bill) does provide for the provisions relating to withdrawal in paragraph 4 of that

Schedule (clause 14 of the Bill) to apply to proposals for the alteration or replacement of unitary development plans.

It is therefore recommended that section 10B should apply to proposals for the alteration or repeal and replacement of structure plans.

Effect is given to this recommendation in clause 34 of the Town and Country Planning Bill.

*5. Explanatory memorandum concerning alteration or replacement of joint structure plans*

Section 10(7) of the 1971 Act applies the provisions of sections 8 and 9 of that Act and paragraph 8 of Schedule 16 to the 1972 Act relating to the preparation of structure plans to their alteration or repeal and replacement under section 10. Paragraph 8 of Schedule 16 to the 1972 Act makes provision about which authorities exercise functions in relation to jointly prepared structure plans. Under sub-paragraph (4) of paragraph 8 each of the county planning authorities by whom a joint plan has been prepared have the duty imposed by section 8(2) of the 1971 Act of making copies of the plan available for inspection. The result of the application of paragraph 8 by section 10(7) therefore is that each of the authorities by whom proposals for alteration have been prepared have the duty under section 8(2) of making copies of the proposals available.

Schedule 14 to the 1980 Act amended sections 7, 8 and 10 of the 1971 Act so that the structure plan and any amendments of it were to be accompanied by an explanatory memorandum copies of which were to be made available under section 8(2) along with the proposals for the plan or alterations. Unfortunately, these changes were not reflected in consequential amendments of Schedule 16. There seems no reason, however, why paragraph 8(4) of that Schedule should not apply equally to the duty of making copies of the explanatory memorandum available under section 8(2) and it is recommended that the corresponding provisions of the consolidation should make this change.

Effect is given to this recommendation in clause 50(4) of the Town and Country Planning Bill.

*6. Date of coming into operation of joint proposals for alteration or replacement of local plans*

Paragraph 13 of Schedule 16 to the 1972 Act provides-

"13. The date appointed under section 18(4) [of the 1971 Act] for the coming into operation of a local plan prepared jointly by two or more local planning authorities or for the alteration, repeal or replacement of a local plan in pursuance of proposals so prepared shall be one jointly agreed by those authorities and be specified in their respective resolutions adopting the plan."

This paragraph is defective in that the resolution adopting the plan can hardly specify the date on which alterations or replacements of it are to come into force. It is therefore recommended that it be corrected so as to refer to the resolution adopting the proposals in this case.

Effect is given to this recommendation in clause 50(9) and in paragraph 16 of Part II of Schedule 2 to the Town and Country Planning Bill.

*7. Consideration of representations as to applications for planning permission for mineral workings*

Section 27(4) of the 1971 Act provides-

"(4) Where an application for planning permission is accompanied by such a certificate as is mentioned in subsection (1)(b), (c) or (d) of this section, or by a certificate containing a statement in accordance with subsection (3)(b) of this section, the local planning authority shall not determine the application before the end of the period of 21 days beginning with the date appearing from the certificate to be the latest of the dates of service of notices as mentioned in the certificate, or the date of publication of a notice as mentioned in the certificate, whichever is the later."

The certificates mentioned in section 27(1)(b), (c) and (d) are the ones which have to accompany applications for planning permission when the applicant is not the only owner of all the land to which the application relates. They involve the giving of notice to the owners of the land and, in the case of paragraphs (c) and (d) of section 27(1), the publication in a local newspaper of a notice about the application. (Subsection (3)(b) requires all certificates under the section to state that notice has been given to agricultural tenants of the land where there are such tenants.)

The Town and Country Planning (Minerals) Act 1981 (c.36) amended section 27(1) by adding a new paragraph (cc) describing a certificate which could accompany an application for permission for development consisting of the winning and working of minerals by underground mining operations. This enables a developer to give notice only to those owners he knows of and to post a notice of the application in at least one place in each parish or community where a part of the land is situated.

The 1981 Act omitted to amend section 27(4) so that there is no requirement in the case of a paragraph (cc) certificate for the authority to wait to consider the application until the period of 21 days from the latest service or publication of a notice has elapsed. Nor did it amend section 29(3) which requires the authority where there is a certificate under (1)(b), (c) or (d) to consider representations made in that period before determining the application.

It is considered, however, that this was an unfortunate omission since the only purpose of giving notice to interested persons in the way provided by all these certificates is to enable representations to be made as to the proposed development and these will not be effectual unless the authority is required to consider them. Therefore it is recommended that section 27(4) and section 29(3) be extended so as to cover certificates under section 27(1)(cc).

Effect is given to this recommendation in subsection (11) of clause 67 and subsection (2) of clause 71 of the Town and Country Planning Bill.

*8. Application of certain provisions as respects the failure of authorities to take decisions on applications*

Section 36 of the 1971 Act gives a right to appeal to the Secretary of State against the refusal or conditional grant of planning permission by a local planning authority. By virtue of section 37 an appeal under section 36 can also be made where the local planning authority have failed to take any decision on an application for planning permission within a prescribed period of its being made. Sections 53(2) and 58E(1) and 58J(10) of the 1971 Act apply sections 36 and 37 respectively to applications for determinations whether planning permission is required and to applications for hazardous substances consent and applications for the continuation of such consent. Similar

provision to sections 36 and 37 is also made in sections 94(5) and 95(2) of the 1971 Act as respects appeals on applications for established use certificates and in paragraphs 8 and 9 of Schedule 11 to the 1971 Act as respects appeals against the refusal or conditional grant of listed building consent.

In a number of contexts in the 1971 Act it is assumed that an appeal will be from a decision, even though this is not the case where the appeal is brought on a failure to take a decision and this has anomalous results.

(a) If the local authority to whom the original application was made are a local planning authority in London, then they will have a right to challenge the Secretary of State's decision on the appeal under section 245 of the 1971 Act because they will fall within the definition of the authority directly concerned in the decision in section 245(7)(b), but if they are an authority outside London, they will not fall within the relevant definition in section 245(7)(c) because they will not have "made the decision" to which the appeal relates, and so they will have no such right.

(It is interesting to note that the original section 245(7) definition did not present this difficulty. It only arose when section 245(7) was amended in 1972 although it seems clear that the purpose of the amendment was only to identify which of the now several possible local planning authorities was the right one and the case of appeals in default of decision was not in mind.)

It is therefore recommended that in the case of such appeals section 245 should apply as if the authority had decided to refuse the application so that authorities who fail to take any decision are given the rights of challenge available under section 245.

Effect is given to this recommendation in clauses 78(5) and 195(5) of the Town and Country Planning Bill, in clause 20(4) of the Planning (Listed Buildings and Conservation Areas) Bill and in clause 21(2) of the Planning (Hazardous Substances) Bill.

(b) A similar point arises in relation to the reference to decisions in section 247(2) of the 1971 Act (appeals to the High Court against decisions on appeals from the decision of a local planning authority under section 53) and it is recommended that such a right should exist whether the appeal is in respect of a decision or on a failure to take a decision.

Effect is given to this recommendation in clause 290(2) of the Town and Country Planning Bill.

(c) A similar point also arises in relation to the reference to decisions in section 225(1)(b) of the 1971 Act. That section provides that certain applications and appeals made by statutory undertakers should be determined by the Secretary of State and the appropriate Minister (as defined in section 224). Under subsection (1)(b) this provision applies to appeals made to the Secretary of State under Part III from *the decision on an application for planning permission*. In the case of an appeal by virtue of section 37, the local planning authority will not have made any decision and therefore the wording of subsection (1)(b) does not cover those appeals. It is considered that there is no reason why the different kinds of appeal should be differently treated and that this difference was an inadvertent result of the reference to a decision. It is therefore recommended that, for the purposes of section 225, appeals made under section 36 of the 1971 Act by virtue of section 37 should be treated in the same way as other appeals under section 36 and effect is given to this recommendation also in clause 78(5) of the Town and Country Planning Bill.

(d) The same problem appears in section 216(2)(c) of the 1971 Act (procedure for making highway orders in anticipation of planning permission) and the same recommendation is made which is also given effect to in clause 78(5) of the Town and Country Planning Bill.

*9. Application of section 276 of the 1971 Act as respects mineral orders*

Section 276(1), (2)(a), (b), (ba) and (bb), (3) and (4) of the 1971 Act (as amended by paragraph 10 of the Schedule to the Town and Country Planning (Minerals) Act 1981) enables the Secretary of State to make certain orders where the authority which has the power to make them fails to do so.

When section 276 was originally enacted the orders covered by it were all orders which would normally be made by the local planning authority. In 1981, however, the Town and Country Planning (Minerals) Act 1981 extended section 276 so that it also applies to orders requiring the discontinuance of use for mineral working under section 51 of the 1975 Act and other orders relating to mineral working under sections 51A and 51B of the Act. All these orders are made by the mineral planning authority rather than the local planning authority. The 1981 Act also amended section 45 of the 1971 Act so that orders under that section revoking planning permission for the winning and working of minerals are made by the mineral planning authority (see section 45(5)).

Unfortunately, however, the 1981 Act failed to make any consequential amendments to section 276 changing the references to the local planning authority in that section to references to the mineral planning authority, so that, for example, subsection (1) still provides in relation to these mineral orders that where the Secretary of State makes them under section 276 they have effect as if made by the local planning authority.

It is recommended that section 276 should be amended so that, in relation to orders which may only be made by the mineral planning authority, the references to the local planning authority be taken as references to the mineral planning authority.

Effect is given effect to this recommendation in clause 100(8) of and paragraph 11 of Schedule 9 to the Town and Country Planning Bill.

*10. Compensation for orders under section 51(1C) of the 1971 Act requiring plant or machinery to be removed from land*

Section 51 of the 1971 Act enables orders to be made by the local planning authority requiring that any use of land should be discontinued or that any buildings or works should be altered or removed. Section 170 of the 1971 Act has effect for enabling claims for compensation to be made where such an order is made.

Section 51 was amended by the Town and Country Planning (Minerals) Act 1981 (c.36), by virtue of which development consisting of the winning and working of minerals was to be treated as a use of the land for the purposes of the section. In relation to such development the mineral planning authority was to take the place of the local planning authority and in relation to such an authority subsection (1) of the section was to have effect as enabling plant or machinery, as well as buildings or works, to be altered or removed.

The 1981 Act also made some amendments of Part VIII of the 1971 Act relating to compensation. It made section 170 subject to a new provision, section 170B, which was inserted by the 1981 Act. Under section 170B where certain requirements (mineral compensation requirements) are satisfied in relation to an order under section 51, section 170 is to have effect subject to certain modifications ("mineral compensation

modifications") which have effect under section 178A of the 1971 Act.

Under subsection (2)(a)(ii) of section 170B mineral planning requirements are satisfied in relation to an order under section 51 if it "requires that any buildings or works or plant or machinery used for the winning and working of minerals shall be altered or removed" and the conditions mentioned in section 170B(5) are satisfied. The terms of section 170(1) were not, however, modified in 1981 to take account of the changes in section 51 so that section 170 still only applies where an order under section 51 requires buildings or works (not plant or machinery) to be altered or removed. Nor is it clear that there is any power to modify section 170 under section 178A so as to make it apply to such cases because, although subsection (1) of section 178A provides that regulations under it may provide that section 170 shall have effect subject to such modifications as may be specified, the general tenor of section 178A is that the regulations will cut down the circumstances in which compensation may be payable under section 170 and the basis on which the compensation will be paid. It seems probable that the failure to amend section 170(1) so as to take into account the possibility of an order being made under section 51 requiring plant or machinery to be altered or removed was a mistake and it is recommended that section 170 should apply to such orders.

Effect is given to this recommendation in clause 115(5) and (6) of the Town and Country Planning Bill.

*11. Application of section 25 of the War Damage Act 1943 by regulations under section 162 of the 1971 Act*

Section 162 of the 1971 Act provides that regulations may make provision concerning the exercise of rights to claim compensation under Part VII of the Act. Subsection (2) of section 162 provides that where by virtue of any such regulations compensation is to be paid to the owner of a rentcharge, the regulations may apply all or any of the provisions of section 25 of the War Damage Act 1943 (rights of owners of rentcharges as to payments for war damage) but subject to such adaptations and modifications as are made in the regulations. The 1943 Act was repealed by the Statute Law (Repeals) Act 1981 (c.19) without replacement but no amendment of section 162(2) was made in consequence. The extent to which such regulations may make provision applying the section is therefore in doubt. We consider that the omission of any saving for section 162(2) in the 1981 repealing Act was a mistake and it is recommended that the provision corresponding to section 162(2) in the consolidation should enable similar provision to that made by section 25 of the 1943 Act to be made again subject to such adaptations etc. as the regulations prescribe.

Effect is given to this recommendation in clause 135(2) of the Town and Country Planning Bill.

*12. Effect of acquisition under ss.114 and 115 of the 1971 Act by bodies other than local authorities or Secretary of State.*

Section 180(5) and (6) of the 1971 Act provides that where a repairs notice has been served on a person in respect of a building, he shall not be entitled to serve a purchase notice in respect of it until the expiration of three months beginning with the date of the service of the repairs notice or, if during that period the council or the Secretary of State start the compulsory acquisition of the building under section 114, unless and until the compulsory acquisition is discontinued. For these purposes a compulsory acquisition is started when the council serve the notice required by section 12 of the Acquisition of Land Act 1981 (c.67) and is discontinued, in the case of acquisition by a council, when they withdraw the compulsory purchase order or the Secretary of State decides not to confirm it and, in the case of acquisition by the

Secretary of State, when he decides not to make the compulsory purchase order.

Section 180(5) and (6) also apply by virtue of section 190(4) as respects listed building purchase notices.

It will be noted that these provisions assume that only the council or the Secretary of State may start the compulsory acquisition of a building under section 114, whereas the powers under sections 114 and 115 of the 1971 Act are also exercisable outside London by the joint planning board for the area in which the building is situated, in London by the Historic Buildings and Monuments Commission and in the Broads by the Broads Authority, by virtue of paragraph 31 of Schedule 16 to the 1972 Act, paragraph 1 of Schedule 2 to the 1985 Act and paragraphs 15 and 16 of Schedule 3 to the Norfolk and Suffolk Broads Act 1988 (c.4) respectively.

It is therefore recommended that the limitation on the service of purchase notices should be framed so as to take into account the possibility that the compulsory acquisition is by one of those authorities.

Effect is given to this recommendation in clause 137(6) and (7) of the Town and Country Planning Bill and in clause 48(5) and (6) of the Planning (Listed Buildings and Conservation Areas) Bill.

*13. Modifications required by virtue of application of certain provisions relating to purchase notices by sections 188 and 189 of the 1971 Act.*

Section 180 of the 1971 Act enables an owner of land in respect of which planning permission is refused or granted conditionally to serve a purchase notice. Section 188 of the 1971 Act enables an owner of land in respect of which planning permission has been revoked or modified to serve a purchase notice. Section 189 of the 1971 Act enables "any person entitled to an interest in land" in respect of which an order has been made under section 51 of the Act to serve a purchase notice.

Sections 188 and 189 apply a number of provisions in Part IX of the Act which apply to purchase notices served under section 180 of the Act. Some modifications of these provisions are made to ease the application but these are not so extensive as they need to be to make the applied provisions work properly in the case of notices under sections 188 and 189.

(a) Section 189(3)(a) modifies section 183(1) (which provides that where the Secretary of State is satisfied that the conditions mentioned in section 180(1) are satisfied in relation to a purchase notice he must confirm the notice) by substituting for the reference to the conditions mentioned in 180(1) (which are the appropriate ones for an order to be served under that section) a reference to the conditions under section 189(1) which are the ones necessary for the service of a notice under section 189. No similar substitution is made, however, by section 188 in relation to orders under that section, although it too applies section 183. Since the conditions mentioned in section 180(1) are not apt for the circumstances of the service of a notice under section 188, this must be a mistake and it is recommended that it be corrected.

Effect is given to this recommendation in clause 141(1) of the Town and Country Planning Bill.

(b) Sections 188 and 189 both apply section 184 without any modification. That section gives the Secretary of State power to refuse to confirm a purchase notice in cases where planning permission is refused or granted subject to conditions and the land in question already has a restricted use by virtue of a previous planning permission. The



references to the refusal or conditional grant of planning permission do not fit the section 188 or section 189 cases and it is recommended that section 184 should apply also in the circumstances in which purchase notices may be served under sections 188 and 189.

Effect is given to this recommendation in clause 142 of the Town and Country Planning Bill.

(c) Under section 180 of the Act a purchase notice may be served by "any owner of the land" where planning permission has been refused or is granted subject to conditions and certain other conditions are satisfied. Section 189(2) applies section 181 (action by council on whom purchase notice served), section 184 and section 186 (the effect of the Secretary of State's action in relation to a purchase notice). These sections contain references to the "owner" of the land in question, but although section 189 contains several modifications of the applied provisions, it does not modify these references to the owner of the land so that in relation to notices served under section 189 they are taken as references to a person entitled to an interest in the land which may include persons who are not within the definition of "owner" in section 290 of the 1971 Act.

This omission should be corrected and accordingly it is recommended that in relation to notices under section 189 references to the owner of the land in the provisions applied by section 189 should unless the context otherwise requires be taken to be references to any person entitled to an interest in the land who has served a notice under that section.

Effect is given to this recommendation in clause 148(2) of the Town and Country Planning Bill.

*14. Application of section 68(6) of the Land Compensation Act 1973 and section 198(1) of the 1971 Act to personal representatives*

Section 200 of the 1971 Act makes provision for the case where the claimant under a blight notice dies after serving the notice. It provides that his personal representatives step into his shoes for the purposes of section 194(1) (service on claimant of counter-notice), section 195(1) (right of claimant to require objection in counter-notice to be referred to Lands Tribunal) and section 196(3) (right of claimant to accept proposal in counter-notice and withdraw original claim) of the 1971 Act.

There are, however, other places in the relevant provisions where powers are given to the "claimant" which are not mentioned in section 200 and where therefore it is at the least doubtful whether a personal representative may act as if he were the deceased. These are section 68(6) of the Land Compensation Act 1973 (c.26) (service of substitute counter-notice on claimant) and section 198(1) of the 1971 Act (period within which the person who served the blight notice may withdraw it).

It seems probable that section 68(6) was forgotten because of being a provision which originated in the 1973 Act and that section 198(1) was overlooked because it does not use the expression "claimant" but "person by whom a blight notice has been served". There seems no reason why the personal representatives of a deceased claimant should have less rights than the deceased in these circumstances, and therefore it is recommended that "claimant" should be read as meaning personal representatives in these cases also.

Effect is given to this recommendation in clause 161(1) of the Town and Country Planning Bill.

*15. Grant of conditional planning permission by Secretary of State on appeal against enforcement notice*

Section 88B(1) of the 1971 Act provides that on an appeal against an enforcement notice the Secretary of State may grant planning permission for the development to which the enforcement notice relates. Subsection (2)(b) of section 88B provides that any planning permission so granted by the Secretary of State may be granted subject to such conditions as the Secretary of State thinks fit. Nothing further is provided, however, about the nature of the conditions which may be imposed on such a grant of permission and this contrasts with sections 35(4) and 36(5) of the 1971 Act which provide for various provisions of Part III including sections 30(1) and 30A (which contain more detail about the conditions which may be imposed) to apply in the case of applications which are referred to the Secretary of State under section 35 or appeals to him under section 36.

It is considered that the omission of the application of these provisions leaves some uncertainty as to whether these provisions, which are framed in terms of the local planning authority or the mineral planning authority, do apply in the case of the grant of permission by the Secretary of State under section 88B. It is therefore recommended that these provisions should be expressly applied.

Effect is given to this recommendation in the ending words of clause 177(3) of the Town and Country Planning Bill.

*16. Application of regime relating to enforcement notices to notices served by the Secretary of State*

Section 276(5A) of the 1971 Act gives the Secretary of State power to serve enforcement notices if he thinks it expedient. The main power to serve such notices is given by section 87 of the 1971 Act and is vested in local planning authorities. The default power under section 276(5A) has never yet been exercised. Section 276(5B) provides that in relation to an enforcement notice issued by the Secretary of State, sections 89 and 91 to 93 of the 1971 Act (provisions relating to enforcement notices served under section 87) shall apply as if for any reference in those sections to the local planning authority there were substituted a reference to the Secretary of State.

It is not clear whether the intention behind section 276(5B) was that more or less the whole regime relating to enforcement notices was to apply to notices served by the Secretary of State and the conversion of the references to the local planning authority in the named sections was only meant to ease the application in places where it was obvious that the Secretary of State should stand in the authority's shoes, or whether the intention was that only the named sections should apply to such notices and no others relating to enforcement notices.

The fact that one of the sections mentioned, section 92, does not contain any reference to a local planning authority on which the part of subsection (5B) converting references could operate suggests that the subsection was meant to have a wider effect. On the other hand, section 276(5A) empowers the Secretary of State to issue "an enforcement notice" and it seems obvious that at the very least some of the provisions in section 87 about the circumstances in which notices can be issued and their contents must apply to notices issued by the Secretary of State. The better view therefore seems to be that the provisions about enforcement orders will apply to notices issued by the Secretary of State and thus it is recommended that section 276(5B) be amended so that it only refers to those provisions which do in fact contain references to a local planning authority which need to be converted into references to the Secretary of State.

There are, however, two further problems about determining which provisions should be mentioned in subsection (5B).

First, the reference in section 276(5B) to sections 91 to 93 of the 1971 Act now takes in section 92A which was inserted by the Local Government and Planning (Amendment) Act 1981 (c.41) and imposes duties on district planning authorities and the councils of metropolitan districts and London boroughs to keep a register of enforcement notices "which relate to land in their area". The terms of this section appear wide enough for the registers to include notices by whomever served and no doubt the inclusive reference in section 276(5B) was overlooked when section 92A was added. No purpose would seem to be served by making the Secretary of State keep a register of notices served by him and indeed the references in section 92A to notices "relating to land in their area" would not be appropriate for him. It is therefore recommended that section 276(5B) should be amended so that section 92A is excluded so that no obligation to keep such a register is imposed on the Secretary of State.

Secondly, section 111 of the 1971 Act does not feature amongst the provisions mentioned in section 276(5B). Section 111 is one of the supplementary provisions relating to a number of provisions in Part V of the Act and provides that where by virtue of the provisions of that Part any expenses are recoverable by a local planning authority, those expenses shall be recoverable as a simple contract debt in any court of competent jurisdiction. As section 111 is not mentioned in section 276(5B) it is not clear whether it is intended that the Secretary of State should have the advantage of it when recovering costs incurred by him in executing works where the person on whom the notice is served fails to do so. We do not consider that there is any reason why he should be treated any differently as respects such debts from a local planning authority and we recommend that section 111 should be extended to cover this case.

Effect is given to these recommendations in clause 182(4) of the Town and Country Planning Bill.

*17. Recovery of expenses of mineral planning authorities incurred under section 108 of the 1971 Act*

Subsection (4) of section 108 of the 1971 Act (as substituted by the Town and Country Planning (Minerals) Act 1981) enables local planning authorities to take the steps required by orders under sections 51 and 51A of the 1971 Act where the owner of the land fails to do so himself, and to recover their expenses in doing so from the owner. Section 111 of the 1971 Act provides that any expenses recoverable by a local planning authority under Part V (which includes section 108) are recoverable as a simple contract debt in any court of competent jurisdiction. Under subsection (5) of section 108 references in subsection (4) to the local planning authority are to be taken as references to the mineral planning authority where the order to be enforced is one in respect of mineral working. Section 111 contains no similar gloss, however, and therefore it is uncertain whether it applies to expenses recoverable under section 108 by such authorities. It is considered that there is no reason why section 111 should apply differently to expenses incurred by mineral planning authorities. Therefore it is recommended that it should apply as respects all expenses incurred under section 108.

Effect is given to this recommendation in clause 190(4) of the Town and Country Planning Bill.

18. *Offences in respect of certificates accompanying applications for established use certificates*

Sub-paragraph (1) of paragraph 3 of Schedule 14 to the 1971 Act enables a development order to provide that an application for an established use certificate shall not be entertained unless it is accompanied by a certificate corresponding to one of those described in section 27(1)(a) to (d) of that Act. (These are the certificates concerning ownership of land and notification of owners which are required to accompany applications for planning permission.)

It also provides that such a development order may also include "requirements corresponding to section 27(2), (3) and (4) and section 29(3) of [the 1971 Act]". (These relate to statements to be included in particular certificates.)

Paragraph 3(2) of Schedule 14 provides-

"(2) If any person issues a certificate which purports to comply with any provision of a development order made by virtue of sub-paragraph (1) above and contains a statement which he knows to be false or misleading in a material particular, or recklessly issues a certificate which purports to comply with those requirements and contains a statement which is false or misleading in a material particular, he shall be guilty of an offence..."

It is unfortunately unclear whether the words "those requirements" are meant to refer to all the requirements which may be imposed by a development order under paragraph 3(1), that is to say both the requirement that an application should not be entertained unless it is accompanied by a certificate and the requirements corresponding to section 27(2), (3) and (4) and section 29(3) of the 1971 Act, or just to those latter requirements.

If the latter narrower meaning is adopted, this has some anomalous results. Suppose, for instance, that no such requirements corresponding with those in section 27(2)(3) and (4) and section 29(3) are imposed by the development order which only provides, as mentioned in paragraph 3(1), that the application should not be entertained without a certificate. If in such a case the applicant issues a certificate corresponding with a section 27(1)(a) certificate wrongly stating that on the date of the application he is the only owner of the land, he is guilty of an offence if he knows that statement to be false but not if he is only reckless in issuing the certificate. If, however, the development order had also imposed a requirement corresponding with that in section 27(3) (statements to be included in certificates as to whether land forms part of an agricultural holding), he would be guilty of an offence if the certificate wrongly stated that the land did not constitute or form part of an agricultural holding. Thus he would not be liable to be punished for a misstatement in relation to his ownership and the general publicity he had given to the application, the matter of primary concern, but only for one in relation to the subsidiary provision designed to ensure notification of agricultural tenants of the land.

It is recommended that the doubt about the expression "those requirements" should be resolved in favour of its wider meaning so that making misstatements as to matters included by virtue of the general requirement as to certificates constitutes an offence, whether they are made knowingly or recklessly.

Effect is given to this recommendation in clause 193(4) of the Town and Country Planning Bill.

*19. Fees and expenses of independent tribunal constituted to hear appeals relating to advertisement controls*

Section 63(7) of the 1971 Act provides that regulations under section 63 providing for the control of advertisements may provide that any appeal from the decision of a local planning authority, on an application for their consent to the display of advertisements, should be to an independent tribunal constituted in accordance with the regulations, instead of being an appeal to the Secretary of State. Section 63(7) goes on to provide that section 50(2) of the 1971 Act shall apply to any tribunal so constituted as it applies to any tribunal constituted in accordance with section 50(1).

Section 50 of the 1971 Act was repealed by Part X of Schedule 34 to the 1980 Act without any consequential amendment being made by that Act of section 63 of the 1971 Act.

Section 50 used to provide power for provision to be made by development order for appeals relating to external design matters to lie to an independent appeal tribunal. Subsection (2) of that section provided:-

"If any tribunal is constituted in accordance with subsection (1) of this section, the Secretary of State may pay to the chairman and the members of the tribunal such remuneration, whether by way of salaries or by way of fees, and such reasonable allowances in respect of expenses properly incurred in the performance of their duties, as the Minister for the Civil Service may determine."

Following the repeal of section 50(2), the effect of the part of section 63(7) which applies it must at the least be uncertain and it may be argued that, since section 50(2) does not apply any more to tribunals constituted under section 50, it certainly does not apply to those constituted under section 63. The Department of the Environment still wish the former power to pay remuneration and allowances to be available and it is recommended that it should continue to be available. Since the functions of the Minister for the Civil Service as respects remuneration, expenses and allowances were transferred to the Treasury by the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981 (S.I.1981 No.1670), it is recommended that section 50(2) be amended so that in place of the determination of that Minister the discretion is left with the Secretary of State subject to the consent of the Treasury.

Effect is given to this recommendation in clause 220(5) of the Town and Country Planning Bill.

*20. Powers as to other highways where orders made under section 211 of the 1971 Act*

Section 211 of the 1971 Act applies where planning permission is granted for constructing or improving a highway ("the main highway") or the Secretary of State proposes to construct or improve that highway, and another highway crosses or enters the route of the main highway or is, or will be, otherwise affected by the construction or improvement of the main highway. The section enables the Secretary of State by order to authorise the stopping up or diversion of "the other highway".

Subsection (2) of section 211 applies subsections (2) to (5) of section 209 to orders under section 211 as they apply to orders under that section. Section 209(1) enables orders to be made for the stopping up or diversion of a highway and subsections (2) to (5) of that section contain supplementary provisions enabling the order to provide for "any other highway" to be provided or improved and for its maintenance etc. Here of course the reference to "any other highway" means any highway other than that which is being stopped up or diverted.

When subsections (2) to (5) of section 209 are read following on from section 211, however, the reference in subsection (2) to "any other highway" may arguably be read as meaning any highway other than that which is being constructed or improved, rather than any highway other than that which is being stopped up or diverted under the order.

This would clearly be an unintentional result of the application of these subsections and it is recommended that it be made clear that in the case of section 211 orders subsections (2) to (5) of section 209 apply as if the reference to the other highway were a reference to any highway other than that which is being stopped up or diverted and so that the powers under those subsections may be exercised in relation to the highway being constructed or improved.

Effect is given to this recommendation in clause 248(3) of the Town and Country Planning Bill.

#### *21. Publication of notices under section 215 of the 1971 Act on different days*

Subsection (1) of section 215 of the 1971 Act provides for the Secretary of State to publish a notice stating the effect of certain highways orders and giving details about rights of inspection of documents relating to the order and of objections to it to be published in the London Gazette and in one or more local papers. Further provisions in the clause are worded by reference to "the date on which the notice is so published", regardless of the fact that the papers may have appeared on different days from the Gazette and different days from each other.

It is recommended section 215 should be amended so that it refers to the last day on which publication in accordance with the section has taken place rather than "the date of publication".

Effect is given to this recommendation in clause 252(7) of the Town and Country Planning Bill.

#### *22. Authorisation of compulsory acquisitions under section 218 of the 1971 Act*

Section 218 of the 1971 Act provides that the Secretary of State or a local highway authority may be authorised to acquire land compulsorily for certain purposes incidental to the making of orders under sections 209, 211, 212 or 214 and that the Acquisition of Land Act 1981 applies to acquisitions under the section. Section 218 is silent as to who is to authorise the acquisition of land under it and this lacuna especially causes difficulty when it comes to applying the 1981 Act to acquisitions by a local highway authority.

Under section 2(2) of the 1981 Act a compulsory purchase order authorising a compulsory purchase by an authority other than a Minister is to be made by the authority and then submitted to and confirmed by the confirming authority in accordance with Part II of that Act. The "confirming authority" is defined by section 7(1) as the Minister having power to authorise the acquiring authority to purchase the land compulsorily.

It is recommended that the reference in section 218 to authorising should be omitted as respects acquisitions by the Secretary of State and that the gap as respects acquisitions by other authorities should be filled by specifically empowering the Secretary of State to authorise them so that he will then be the confirming authority for the purposes of the 1981 Act.

Effect is given to this recommendation in clause 254(1) of the Town and Country Planning Bill.

*23. Use of default powers under section 276 of the 1971 Act to make certain orders relating to operational land of statutory undertakers*

Section 276(1) of the 1971 Act provides that if he thinks it expedient the Secretary of State may make orders under section 45 of the 1971 Act revoking or modifying planning permission or orders under sections 51, 51A or 51B relating to the discontinuance of a use of land or of mineral working. It goes on to provide that any order so made shall have effect as if it had been made by the local planning authority and confirmed by the Secretary of State under Part III.

Sections 227 and 228 of the 1971 Act provide that in relation to the operational land of statutory undertakers the provisions of Part III of the Act relating to the revocation or modification of planning permission or orders under section 51 have effect as if for any reference to the Secretary of State there were substituted a reference to the Secretary of State and the appropriate Minister within the meaning of section 224. (Under recommendation 24 it is recommended that the orders to which section 228 applies should be extended.)

It is not clear how section 276 is intended to operate in relation to orders to which section 227 or 228 applies. It is considered that this hiatus should be filled by providing in the provisions of the consolidation corresponding to these sections that the default powers are to be exercised by the Secretary of State and the appropriate Minister in these cases and the orders should have effect as if confirmed by both.

Effect is given to this recommendation in clauses 269 and 270 of the Town and Country Planning Bill.

*24. Amendment of section 228 of the 1971 Act to extend that section to orders relating to minerals*

Section 228 of the 1971 Act is in the following terms:-

"The provisions of Part III of this Act with respect to the making of orders requiring the discontinuance of any use of land or imposing conditions on the continuance thereof, or requiring buildings or works on land to be altered or removed, shall have effect, in relation to operational land of statutory undertakers, as if, for any reference therein to the Secretary of State, there were substituted a reference to the Secretary of State and the appropriate Minister."

The expression "the appropriate Minister" is defined in section 224 in relation to the different kinds of statutory undertakers.

Section 228 was drafted so as to cover the terms of section 51 of the 1971 Act as originally enacted. That section was, however, substantially amended by the Town and Country Planning (Minerals) Act 1981 which enabled orders to be made where land was used for the winning and working of minerals and enabled orders in respect of such use to make wider provision. For example, such an order may require that any plant or machinery used for winning and working minerals should be altered or removed and may impose a number of special conditions relating to mineral working and the restoration of the land afterwards.

The 1981 Act also inserted sections 51A to 51F in the 1971 Act, which enable orders to be made prohibiting the resumption of the winning and working of minerals and for the protection of the environment once mineral working has ceased. The conditions which may be imposed are the same as those which may be imposed by an order under section 51 in relation to mineral working.

The terms of section 228 are wide enough to cover an order under section 51 relating to mineral use and the conditions which may be imposed by such an order. They are not wide enough to cover requirements that plant and machinery be altered or removed and it must be very doubtful whether they are wide enough to cover orders prohibiting the resumption of the winning and working of minerals or orders after the suspension of such working under sections 51A and 51B and conditions imposed by such orders.

There appears no reason to distinguish between orders under section 51 requiring buildings or works to be altered or removed and such orders requiring plant or machinery to be removed, nor any reason to distinguish between orders under section 51 as respects mineral working and orders under section 51A or section 51B. It is therefore recommended that section 228 be amended so as to cover these other orders.

Effect is given to this recommendation in clause 270 of the Town and Country Planning Bill.

*25. Time limit for challenges to certain orders under sections 244 and 245 of the 1971 Act*

(a) Section 244 of the 1971 Act provides for challenges to be made as to the validity of development plans etc.

In section 244 the challenge procedure for structure and local plans and alterations, repeals or replacements of them is set out first in subsections (1) and (2) and then subsections (3) to (7) go on to apply the provisions of subsections (1) and (2) to certain orders and (as a result of later amendments) to unitary development plans and simplified planning zone schemes, *as they apply to structure plans* but with the necessary modifications some of which are spelled out in section 244.

The specific modifications which are made by section 244 relate to the time limit for the making of applications under the section. But the modification of the time limit is not spelled out in the case of challenges to orders under section 235 of the 1971 Act, leaving the "necessary modification" to be inferred. It is recommended that this case be brought into line with the others by specifying the applicable time limit, and that this should be six weeks from the date on which the notice required by subsection (5) of that section is first published. This is the date when such an order normally becomes operative under subsection (6) of that section and that is the date chosen for the other cases for this purpose.

Effect is given to this recommendation in 287(5)(e) of the Town and Country Planning Bill.

(b) Section 245 of the 1971 Act provides for challenges to be made as to the validity of certain orders which are specified in section 242. The time limit for these challenges is six weeks after the confirmation of the orders, but this ignores the possibility that certain orders may come into effect without confirmation. These are orders revoking or modifying planning permission, which may come into effect under section 46 of the 1971 Act, and the parallel orders under Part II of Schedule 11 revoking or modifying listed building consent, which may take effect under paragraph 12. It is



recommended that this lacuna should be filled by specifying a suitable time limit for these orders, and that this should be six weeks from the date on which they take effect without confirmation.

Effect is given to this recommendation in clause 288(3) of the Town and Country Planning Bill and in clause 63(3) of the Planning (Listed Buildings and Conservation Areas) Bill.

*26. Rights of authorities to apply under section 245(2) of 1971 Act for certain orders and actions to be quashed*

Section 245(1) of the 1971 Act gives the right for persons aggrieved by specified orders and actions to apply to the High Court for them to be quashed. Subsection (2) of section 245 also gives a right to apply to the authority directly concerned with the order or action and this expression is defined in subsection (7) as -

- (a) in relation to any such decision as is mentioned in section 242(3)(i) or (j), the council on whom the notice in question was served and, in a case where the Secretary of State has modified such a notice, wholly or in part, by substituting another local authority or statutory undertakers for that council, that local authority or those statutory undertakers;
- (b) in any other case in Greater London, the local planning authority; and
- (c) in any other case outside Greater London, the local planning authority who made the order in question or made the decision or served the notice to which the proceedings in question relate, or who referred the matter to the Secretary of State, or, where the order or notice in question was made or served by him, the authority named in the order or notice.

The original section 245(7) defined the authority directly concerned in cases not covered by paragraph (a) simply as the local planning authority. The division between London and elsewhere was introduced when section 245(7) was amended by paragraph 46 of the 1972 Act following the reorganisation of local government by that Act, and it seems clear that the purpose of the amendment was only to identify which of the now several possible local planning authorities was the right one.

Paragraphs (b) and (c) of the definition are now defective because they have never been amended to take into account that in the metropolitan counties as in London there is now only one authority which is the local planning authority, or that in the case of orders under section 45 of the 1971 Act (revoking planning permission) or orders under section 51 of the Act (ordering discontinuance of a use) the order may have been made by the mineral planning authority.

It is recommended that these defects be resolved and the drafting simplified by combining paragraphs (b) and (c) of subsection (7) of section 245 and merely referring to the authority who made the order, etc.

Effect is given to this recommendation in clause 288(10) of the Town and Country Planning Bill and in clause 63(7) of the Planning (Listed Buildings and Conservation Areas) Bill.

27. (a) *Contributions towards expenses incurred in connection with the alteration or replacement of development plans*

Section 255(2)(a) of the 1971 Act enables any local authority and any statutory undertakers to contribute towards any expenses incurred by a local planning authority in or in connection with the carrying out of a survey or the preparation of a structure plan or a local plan under Part II of that Act or of a unitary development plan under Part I of Schedule 1 to the 1985 Act. It is doubtful whether this provision would enable contributions to be made towards expenses incurred in connection with the alteration or replacement of these plans. There seems no reason, however, why these should not be included especially since the provision is already obsolete as respects structure plans, (following the approval of such plans for the whole of England and Wales), and will be obsolete as respects unitary development and local plans when such plans have been approved everywhere. It is therefore recommended that section 255(2)(a) should be amended so as to resolve this doubt.

Effect is given to this recommendation in clause 306(2)(a) of the Town and Country Planning Bill.

(b) *Contributions to expenses of mineral planning authorities*

Subsection (2) of section 255 of the 1971 Act enables any local authority or statutory undertakers to contribute towards any expenses incurred by a local planning authority in exercising their functions under Part III of the Act. By virtue of the Town and Country Planning (Minerals) Act 1981 some functions relating to mineral working are exercisable under Part III by mineral planning authorities, but the 1981 Act failed to amend section 255 by inserting references to mineral planning authorities as respects the exercise of these functions and it is not clear whether they are included. There seems no reason, however, for any difference in the treatment of these expenses and accordingly it is recommended that section 255(2) should have effect as respects such functions as if references to such authorities were included. (Recommendation 62 makes a similar recommendation as respects hazardous substances authorities).

Effect is given to this recommendation in clause 306(2)(b) of the Town and Country Planning Bill.

28. *Amendment of definition of "planning permission" for purposes of 1971 Act so as to include permission granted by enterprise zone schemes.*

Section 290(1) of the 1971 Act contains a definition of planning permission as permission granted under Part III of that Act. Since the enactment of that Act it has also become possible for planning permission to be granted by an enterprise zone scheme made under Schedule 32 to the 1980 Act. But the 1980 Act failed to amend the definition of planning permission in section 290(1) so as to include such permission. It is considered, however, that no distinction was intended to be drawn between permission granted by enterprise zone schemes and permission under Part III of the 1971 Act (which does include the very similar sort of permission granted by simplified planning zone schemes) and that there is no reason why such permission should be treated differently from permission granted under Part III of the 1971 Act.

It is therefore recommended that the definition of planning permission in the 1971 Act should include permission granted under Schedule 32 to the 1980 Act and suitable consequential amendments be made in other provisions referring to permission granted under Part III of the 1971 Act.

Effect is given to this recommendation in clause 336(1) of the Town and Country Planning Bill and Schedule 2 to the Planning (Consequential Provisions) Bill.

*29. Consultations before determination of applications for planning permission conflicting with structure plan proposals*

Paragraph 19(2)(a) of Schedule 16 to the 1972 Act obliges a district planning authority to consult with the county planning authority before determining an application for planning permission for the carrying out of development which will materially conflict with or prejudice the implementation-

- "(i) of any policy or general proposal contained in a structure plan which has been approved by the Secretary of State;
- (ii) of any policy or general proposal contained in a structure plan which has been submitted to the Secretary of State for approval;
- (iii) of any proposal to include in a structure plan any matter to which the county planning authority have given publicity under section 8 [of the 1971 Act]..."

Now that structure plans have been approved for the whole of England and Wales paragraphs (ii) and (iii) are spent (except in so far as they are capable of being interpreted as including proposals for the alteration or repeal and replacement of structure plans) since the policies and proposals covered by these provisions will have been included in the approved plan or will have lapsed. The wording of paragraph (ii) is hardly apt for proposals for alterations to a plan, but it is considered that there is no reason for these provisions not to apply to proposals for alterations and replacements of plans as they applied to original plans. Accordingly, it is recommended that the corresponding provisions of the consolidation should so extend.

Effect is given to this recommendation in paragraph 7(3)(a) of Schedule 1 to the Town and Country Planning Bill.

*30. Continuation of existing structure and local plans in areas of metropolitan counties and Greater London pending adoption of unitary development plan*

Paragraph 18 of Schedule 1 to the 1985 Act provides for the continuation in metropolitan counties of the existing structure and local plans during the period before there is a unitary development plan in force in the area. Under sub-paragraph (2) of that paragraph these existing plans are to be treated as being or being comprised in the development plan for the area.

Paragraph 20 of Schedule 1 to the 1985 Act (as amended by paragraph 27(4) of Schedule 11 to the 1986 Act) provides for the continuation in those areas during that period of provisions relating to the preparation and alteration of local plans so that metropolitan district councils may still make proposals at any time for the preparation of such plans.

Unfortunately, it was overlooked in 1985 and in 1986 that these new plans would not be covered by paragraph 18 of Schedule 1 and therefore there was no provision for them to continue in force only until the unitary development plan for the area in question came into operation nor for them to be treated meanwhile as being comprised in the development plan for the area.

It is recommended that this should be remedied by extending paragraph 18 to such new local plans and effect is given to this recommendation in paragraph 3(5) of Part I

and paragraph 3(5) of Part II of Schedule 2 to the Town and Country Planning Bill.

*31. Documents which may be required to be supplied to public under regulations concerning making and alteration of simplified planning zone schemes*

Paragraph 13 of Schedule 8A to the 1971 Act as inserted by section 25(2) of the 1986 Act enables regulations to be made with respect to the form and content of simplified planning zone schemes, and the procedure to be followed in connection with their preparation, withdrawal, adoption, submission, approval, making or alteration. Sub-paragraph (2)(e) of paragraph 13 provides for those regulations to "require a local planning authority, in such cases as may be prescribed or in such particular cases as the Secretary of State may direct, to provide on request copies of any document which has been made public *for the purpose mentioned in paragraph 5(2) or 6(3)* or has been made available for inspection under paragraph 5(3) or 6(2), subject (if the regulations so provide) to the payment of a reasonable charge".

Paragraphs 5 and 6 of Schedule 8A lay down the procedure to be followed by a local planning authority proposing to make or alter a simplified planning zone scheme for ensuring adequate publicity and consultation. Paragraph 5 sets out a full procedure and paragraph 6 an abbreviated procedure to be followed where the issues involved are less important.

The difference between the two procedures is that in the paragraph 5 case under sub-paragraph (2) of that paragraph the authority must "take such steps as will in their opinion secure-

- (a) that adequate publicity for their proposals is given in the area to which the scheme relates,
- (b) that persons who may be expected to wish to make representations about the proposals are made aware that they are entitled to do so, and
- (c) that such persons are given an adequate opportunity of making such representations".

They must then consider any representations made to them within the prescribed period and only then must they prepare the documents for the proposed scheme or alterations and make them available for inspection and objection etc.

If paragraph 6 applies, the authority are not obliged to go through the preliminary publicity laid down under sub-paragraph (2) of paragraph 5 but proceed immediately with preparing the documents for the scheme or alterations and making them available for inspection etc.

Paragraphs 5(2) and 6(3) of Schedule 8A to the 1971 Act are in identical terms to paragraphs 5(2) and 6(3) of Schedule 7 to the Bill. It will be seen that paragraph 5(2) mentions in paragraph (a) the purpose of securing that adequate publicity for proposals to make a simplified planning zone scheme is given in the area to which the scheme relates. Paragraph 6(3) mentions no purpose at all, however, but is in the following terms:-

"(3) Each copy of the documents made available for inspection shall be accompanied by a statement of the time within which representations or objections may be made."

The reference in paragraph 13(2)(e) of Schedule 8A to paragraph 6(3) of that Schedule was therefore clearly a mistake.

Since there is no parallel with the purpose mentioned in paragraph 5(2) in the case of the paragraph 6 procedure, it is recommended that the reference in paragraph 13(2)(e) to paragraph 6(3) be omitted. (The regulations made under paragraph 13, the Town and Country Planning (Simplified Planning Zones) Regulations 1987 (S.I. 1987/1750), do not in fact include any such provision as is mentioned in paragraph 13(2)(e).)

Effect is given to this recommendation in paragraph 13(2)(e) of Schedule 7 to the Town and Country Planning Bill.

*32. Effect of certain proposals concerning development plans as respects blight*

*(a) Effect of proposals for repeal and replacement of a structure plan as respects blight*

Section 192(1) of the 1971 Act sets out the classes of land which are blighted land for the purposes of the Act and are therefore classes of land in respect of which a blight notice may be served requiring the appropriate authority to purchase the land.

Section 192(1)(a) refers to land indicated in a structure plan as land which may be required for certain purposes. Section 68(1) of the Land Compensation Act 1973 (c.26) provides that the reference in section 192(1)(a) to a structure plan is also to include-

- (a) a structure plan which has been submitted to the Secretary of State under section 10 of the 1971 Act;
- (b) proposals for alterations to a structure plan which have been submitted to the Secretary of State under that section; and
- (c) modifications proposed to be made by the Secretary of State in any such plan or proposals as are mentioned in paragraph (a) or (b), being modifications of which he has given notice in accordance with regulations under Part II of the 1971 Act.

But under section 68(4) land subject to such proposals ceases to be blighted land if the proposals are withdrawn.

Paragraph 5 of Schedule 14 to the 1980 Act substituted a new section for section 10 of the 1971 Act under which structure plans may be repealed and replaced as well as being simply altered. No amendment of section 68 of the 1973 Act was made in consequence of this change but there seems no reason why proposals for the repeal and replacement of a plan should be treated differently from proposals for the original plan or alterations of it and it is recommended that section 68 of the 1973 Act should be amended accordingly so as to extend to such proposals and their withdrawal.

Effect is given to this recommendation in Notes (1) and (2) to paragraph 1 of Schedule 13 to the Town and Country Planning Bill.

*(b) Effect of proposals respecting local plans as respects blight where expedited procedure adopted*

By virtue of section 192(1)(b) of the 1971 Act certain land allocated for certain functions by a local plan is among the classes of land which are blighted land for the purposes of the Act and are therefore classes of land in respect of which a blight notice may be served requiring the appropriate authority to purchase the land.

Section 68(2) of the Land Compensation Act 1973 provides that the reference in section 192(1)(b) to a local plan is also to include-

- (a) a local plan of which copies have been made available for inspection under section 12(2) of the 1971 Act;
- (b) proposals for alterations to a local plan of which copies have been made available for inspection under section 15(3) of that Act; and
- (c) modifications proposed to be made by the local planning authority or the Secretary of State in any such plan or proposals as are mentioned in paragraph (a) or (b), being modifications of which notice has been given by the authority or the Secretary of State in accordance with regulations under Part II of that Act.

But under section 68(4) land subject to such proposals ceases to be blighted land if the proposals are withdrawn.

Section 88 of the 1980 Act and then Schedule 10 to the 1986 Act substituted a new alternative expedited procedure for certain alterations to local plans and their withdrawal, but no amendment of section 68 of the 1973 Act was made in consequence of this change. There seems no reason why section 68 should not apply equally where this procedure is adopted and it is recommended that section 68 should be amended accordingly.

Effect is given to this recommendation in Notes (1) and (2) to paragraph 2 of Schedule 13 to the Town and Country Planning Bill.

*(c) Effect of proposals for alteration or replacement of unitary development plans as respects blight where expedited procedure for alterations adopted*

By virtue of section 192(1)(bb) of the 1971 Act as inserted by paragraph 16 of Schedule 1 to the 1985 Act land indicated in a unitary development plan as land which may be required for certain functions is among the classes of land which are blighted land for the purposes of the Act and are therefore classes of land in respect of which a blight notice may be served requiring the appropriate authority to purchase the land.

By virtue of paragraph 17 of that Schedule the reference in section 192(1)(bb) to a unitary development plan is also to include-

- (a) a unitary development plan of which copies have been made available for inspection under paragraph 3(2) of that Schedule;
- (b) proposals for the alteration or replacement of a unitary development plan of which copies have been made available for inspection under that provision as applied by paragraph 10(2) of that Schedule; and
- (c) modifications proposed to be made by the local planning authority or the Secretary of State to any such plan or proposals as are mentioned in paragraph (a) or (b), being modifications of which notice has been given in accordance with regulations under that Schedule.

Schedule 10 to the 1986 Act added a new paragraph 10A to Schedule 1 to the 1985 Act (represented by clause 22 of the Town and Country Planning Bill) which provides a new alternative expedited procedure for certain alterations to unitary plans but no

amendment of paragraph 17 of Schedule 1 to the 1985 Act was made in consequence of this change. There seems no reason why paragraph 17 should not apply equally where this procedure is adopted and it is recommended that it should be amended accordingly.

Effect is given to this recommendation in Note (1) to paragraphs 3 and 4 of Schedule 13 to the Town and Country Planning Bill.

### *33. Publicity of confirmed highways orders*

Paragraph 6(1) of Schedule 20 to the 1971 Act provides for publicity to be given to orders under sections 210 and 214(1)(b) after their confirmation by the Secretary of State. It provides for publication, by the authority making an order, of a notice which, among other things, must name a place where a copy of the order as confirmed may be inspected. In general the paragraph 6 procedure is parallel to that under paragraph 1(1) of the Schedule which lays down the publicity to be given to proposed orders before they are submitted for confirmation, but the place to be named in a notice under paragraph 1 is to be one "in the area in which the land to which the order relates is situated" and it is recommended that this requirement should apply in the case of notices under paragraph 6(1) also.

Effect is given to this recommendation in paragraph 7 of Schedule 14 to the Town and Country Planning Bill.

### *34. Deposit of lists of buildings with registering authority*

Section 54(4) of the 1971 Act originally provided for copies of the lists of buildings to be deposited with the *clerk* of the local authority in question and section 54(6) provided for the proper officer of the authority to register the copy in the local land charges register. Paragraph 28 of Schedule 16 to the 1972 Act amended section 54(4) so that it referred to the proper officer of the authority instead of the clerk. The expression "proper officer" was to be construed, in accordance with section 212(4) of the 1972 Act, as the person who, by virtue of section 19 of the Land Charges Act 1925 (c.22), was the proper officer to act as local registrar.

Section 212 of the 1972 Act was repealed by the Local Land Charges Act 1975 (c.76). Schedule 1 to that Act amended section 54(6) so as to remove the reference in that section to the proper officer and refer instead to the council with whom the copy list is deposited and similar amendments of other enactments are included in that Schedule, but no corresponding amendment was made in section 54(4). Therefore it continues to refer to the proper officer of the authority without any definition being given for that expression. (The definition of "proper officer" in section 270(3) of the 1972 Act as the officer appointed for the purpose in question only applies to references in that Act or which are to be construed as references to the proper officer by virtue of that Act and is therefore not applicable to section 54(4).)

It is considered that the failure to amend section 54(4) in 1975 by substituting a simple reference to the registering authority was a mistake and it is recommended that this be rectified.

Effect is given to this recommendation in clause 2(1) and (5) of the Planning (Listed Buildings and Conservation Areas) Bill.

### *35. Effect of issue of certificate under section 54A of the 1971 Act on power of local planning authority to serve building preservation notices.*

Subsection (2) of section 54A of the 1971 Act provides as follows:-

"(2) The effect of the issue under subsection (1) of this section of a certificate stating that the Secretary of State does not intend to list a building is to preclude him *for a period of 5 years from the date of issue of the certificate* from exercising in relation to that building any of the powers conferred on him by section 54 of this Act, and to preclude the local planning authority from serving a notice in relation to it under section 58."

The italicised words cannot naturally be read as applying both to the exercise by the Secretary of State of his powers and the local planning authority of its power to serve a building preservation notice because the repetition of the word "preclude" prevents the reader from reading into the subsequent words the qualifications following it in the first place it occurs. It would clearly be anomalous, however, if the building may be permanently listed by the Secretary of State under section 54 after the expiry of the 5 year period but not protected temporarily by a listed building preservation notice.

It is therefore recommended that the 5 year limitation should apply in respect of all the powers affected by the certificate so that it will cease to have any effect after that period.

Effect is given to the recommendation in clause 6(2) of the Planning (Listed Buildings and Conservation Areas) Bill.

#### *36. Works not complying with any condition to count as unauthorised works*

Section 55(2) of the 1971 Act describes when works are authorised for the purposes of the Act. This is relevant in determining whether an offence has been committed under the general offence provision in section 55(1) by the execution of unauthorised works on a listed building. The first condition under section 55(2) is that the local planning authority or the Secretary of State have granted written consent for the execution of the works and the works are executed in accordance with the terms of the consent and of any conditions attached to the consent under section 56 of the 1971 Act.

Originally, conditions could only be imposed under section 56, but it is now possible for conditions to be imposed under sections 56A and 56B also.

Section 55(4) of the 1971 Act provides that, without prejudice to the general offence in section 55(1), it shall be an offence for a person to execute works to a listed building without complying with any condition attached to the consent. Originally, section 55(4) like section 55(2) referred to "any condition attached to the consent under section 56", but the words "under section 56" in section 55(4) were repealed by paragraph 19 of Schedule 11 to the Housing and Planning Act 1986. It appears to have been a mistake that the corresponding amendment was not made also in section 55(2)(a) so that any condition was included there too and it is recommended that section 55(2)(a) should extend to cover all conditions. This is really only a matter of consistency on the face of the Act, since breach of any condition will be an offence under section 55(4) whether it is or is not under section 55(1), and breach of either section 55(1) or section 55(4) is a ground for the service of a listed building enforcement notice under section 96 of the 1971 Act.

Effect is given to this recommendation in clause 8(1) and (2) of the Planning (Listed Buildings and Conservation Areas) Bill.



37. *Local authorities for compensation purposes.*

Paragraph 34 of Schedule 16 to the 1972 Act contains provisions as to which local planning authorities exercise functions in relation to compensation under the 1971 Act. Where a claim arises as a result of the exercise by the Secretary of State of his default powers under section 276 of the 1971 Act, this is to be "the appropriate authority" as defined in paragraph 34(2).

Paragraph 34(2) makes provision as to who is to be the appropriate authority for these purposes in a number of cases, including two which cannot arise since the Secretary of State does not actually have power *under section 276* to make orders under paragraph 10 of Schedule 11 to the 1971 Act modifying or revoking listed building consent or to serve building preservation notices under section 58 of the 1971 Act, so that compensation cannot be payable under section 172 or 173 of the 1971 Act as a result of his doing so.

Moreover, paragraph 34(2) fails to make provision for the case where the Secretary of State exercises the special default power in paragraph 11 of Schedule 11 to the 1971 Act to make an order modifying or revoking listed building consent and hence compensation becomes payable under section 172.

It is recommended that this lacuna be filled and that the appropriate authority in the case of the exercise of such default powers is the authority who are treated under paragraph 11 of Schedule 11 to the 1971 Act as having made the order under that paragraph.

Effect is given to this recommendation in clause 30(1)(b) of the Planning (Listed Buildings and Conservation Areas) Bill.

38. *Cancellation of listed building purchase notice on quashing of Secretary of State's decision to confirm it*

Paragraph 3(4) of Schedule 19 to the 1971 Act provides-

"(4) Where the Secretary of State has notified the owner by whom a listed building purchase notice has been served of his decision to confirm or not to confirm the notice (including any decision to confirm the notice only in respect of part of the land, or to give any direction as to the granting of listed building consent) and that decision is quashed under the provisions of Part XII of this Act, the purchase notice shall be treated as cancelled, but the owner may serve a further listed building purchase notice in its place."

It is considered that this provision is defective in two respects. First, the words in parenthesis expressly bring in decisions to give directions under paragraph 2(5) as to the granting of listed building consent but do not refer to the decision to give a direction under paragraph 2(6) as to the granting of planning permission, although the decision to give either sort of direction precludes confirmation of the listed building purchase notice. There seems to be no reason for this omission and it is recommended that it is made clear that this is included.

Secondly, there is no reason why cancellation of the notice should depend on the Secretary of State's decision being notified to the owner: the only material factor is that the notice has been quashed. It is therefore recommended that the provision in the consolidation corresponding to paragraph 3(4) of Schedule 19 should be framed so as to refer only to the quashing of the decision.

Effect is given to these recommendations in clause 36(7) of the Planning (Listed Buildings and Conservation Areas) Bill.

*39. Extended period for service of listed building purchase notices served in consequence of decisions to revoke or modify listed building consent where decision as to notice quashed.*

Paragraph 3(5) of Schedule 19 to the 1971 Act provides as follows:-

"(5) For the purposes of any regulations made under this Act as to the time within which a listed building purchase notice may be served, the service of a listed building purchase notice under sub-paragraph (4) of this paragraph shall not be treated as out of time if the notice is served within the period which would be applicable in accordance with those regulations if the decision to refuse listed building consent or grant it subject to conditions (being the decision in consequence of which the notice is served) had been made on the date on which the decision of the Secretary of State was quashed as mentioned in sub-paragraph (4) of this paragraph."

There is a lacuna in sub-paragraph (5) because the decision in consequence of which the notice is served may be a decision to revoke or modify listed building consent (cf section 190(1) of the 1971 Act) but sub-paragraph (5) refers only to a decision to refuse listed building consent or grant it subject to conditions.

It is recommended that this lacuna should be filled by making provision similar to sub-paragraph (5) in relation to all the relevant decisions.

Effect is given to this recommendation in clause 36(8) of the Planning (Listed Buildings and Conservation Areas) Bill.

*40. Default powers as respects listed building enforcement notices and urgent preservation.*

Sections 100 and 276(5A)(b) and (5B) of the 1971 Act duplicate each other, both providing for the Secretary of State to issue listed building enforcement notices.

Section 276(5B) provides that in relation to a listed building enforcement notice issued by the Secretary of State, sections 98 and 99 shall apply as if for any reference in those sections to the local planning authority there were substituted a reference to the Secretary of State. Section 100(2) makes similar provision as respects section 99 alone. Section 111 of the 1971 Act, one of the supplementary provisions relating to a number of provisions in Part V of the Act, provides that where by virtue of section 99 any expenses are recoverable *by a local planning authority*, those expenses shall be recoverable as a simple contract debt in any court of competent jurisdiction. Section 111 is not mentioned in section 276(5B) or section 100(2) and so the Secretary of State does not at present have the advantage of it when recovering costs incurred by him in executing works where the person on whom the notice is served fails to do so, but there seems no reason why he should be treated any differently as respects such debts from a local planning authority and it is recommended that section 111 should be extended to cover the recovery by the Secretary of State of expenses.

Effect is given to this recommendation in clauses 46(4) and 55(6) of the Planning (Listed Buildings and Conservation Areas) Bill.

*41. Application of Acquisition of Land Act 1981 in case of compulsory acquisition by Minister under 1971 Act*

Sections 114, 115 and 117 of the 1971 Act relate to compulsory acquisition of

listed buildings. Section 114(6), 115(4) and 117(3) and (5) all refer to the notice required to be served by section 12 of the Acquisition of Land Act 1981 (c.67) and section 180(6)(a) contains a similar reference. These references were substituted by paragraph 21 of Schedule 4 to the 1981 Act for the original references to paragraph 3(1)(b) of Schedule 1 to the Acquisition of Land (Authorisation Procedure) Act 1946 (c.49), but section 12 is only appropriate for acquisitions by local authorities etc. and does not apply where a Minister is the acquiring authority (see section 10 of the 1981 Act). On an acquisition by a Minister the procedure set out in Schedule 1 to the 1981 Act applies and a notice falls to be served under paragraph 3 of that Schedule.

It is recommended that a reference to paragraph 3 of Schedule 1 to the 1981 Act should be inserted beside the references to section 12 in these provisions.

Effect is given to this recommendation in clause 137(7) of the Town and Country Planning Bill and clauses 47(4), 48(6) and 50(3) of the Planning (Listed Buildings and Conservation Areas) Bill.

*42. Exercise by joint planning boards of power to give directions under section 117 of 1971 Act.*

Section 117 of the 1971 Act provides for purchase orders served under section 114 to include a direction for minimum compensation if the acquiring authority is satisfied that the listed building in question was deliberately allowed to fall into disrepair to justify its demolition. The section was originally framed in terms of the council or the Secretary of State proposing to acquire the building and was amended by paragraph 1 of Schedule 2 to the 1985 Act to take account of the extension of the powers under section 114 to the Historic Buildings and Monuments Commission and by Schedule 3 to the Norfolk and Suffolk Broads Act 1988 (c.4) as respects the Broads Authority's powers under that section. The powers under section 114 are, however, by virtue of paragraph 31 of Schedule 16 to the 1972 Act, also exercisable by the joint planning board for the area and it is not apparent why that Act did not also give such boards the power to make minimum compensation directions under section 117. It is recommended that they should now be given the power to make such directions.

Effect is given to this recommendation in clause 50 of the Planning (Listed Buildings and Conservation Areas) Bill.

*43. Power to manage amenity land acquired under section 119(1)(c) of the 1971 Act.*

Section 126 of the 1971 Act enables the authorities who have acquired buildings or land under that Act to manage it. Section 126(1) refers to "any building or other land" acquired under section 114(1) or 119(1)(b) of the 1971 Act. The power of acquisition under section 114(1) includes contiguous or adjacent land, whereas section 119(1)(b) is confined to the building itself, contiguous and adjacent land being covered by section 119(1)(c).

The omission from section 126(1) of a reference to amenity land acquired under section 119(1)(c) appears to have been a mistake which arose when section 71(1) of the Town and Country Planning Act 1962 (c.38) (from which section 119(1) of the 1971 Act is derived) was amended by the Town and Country Planning Act 1968 (c.72). Section 71(1)(b) originally referred to "any building in respect of which a building preservation order could be made... and any land comprising or contiguous..", but was amended to read-

"(b) any building appearing to them to be of special architectural or historic interest; and

(c) any land comprising or contiguous.."

Section 8(1) of the Civic Amenities Act 1967 (c.69) from which section 126 of the 1971 Act was derived refers to section 71(1)(b) of the 1962 Act and was not amended by the 1968 Act so as to refer to the new section 71(1)(c) when the amendment dividing the former section 71(1)(b) was made. It is arguable that section 8(1) should have been taken as referring to both section 71(1)(b) and (c) by virtue of the Interpretation Act 1889 but the point was not noticed when the 1971 consolidation was prepared.

This change in the law appears to have been accidental and it is recommended that such amenity land be brought within the powers of management given by section 126 of the 1971 Act so that its position is the same as that of amenity land acquired under section 114(1).-

Effect is given to this recommendation in clause 53(1) of the Planning (Listed Buildings and Conservation Areas) Bill.

*44. Recovery of grants made by local authorities on disposal of property in respect of which grant made.*

There are several provisions concerning the payment of grants by local authorities of grants towards listed buildings and conservation areas which it seems desirable to include in the Planning (Listed Buildings and Conservation Areas) Bill. These are sections 10, 10A and 10B of the Town and Country Planning (Amendment) Act 1972 (c.42) and section 1 of the Local Authorities (Historic Buildings) Act 1962 (c.36).

Sections 10 and 10A provide a self-contained set of provisions for the making of grants for the preservation and enhancement of conservation areas and their recovery in the case of the disposal of the property in respect of which the grant was made and sections 1 and 2 of the 1962 Act provide a similar set of provisions for contributions by grant or loan towards the repair or maintenance of listed buildings and other buildings of architectural or historic interest.

Section 10B provides for the making of grants for buildings in town scheme agreements which are in conservation areas and of architectural or historic interest. Section 10B does not contain its own provisions as to the recovery of such grants but instead subsection (10) of the section applies the provisions of section 2 of the 1962 Act concerning the recovery of grants made by local authorities on the disposal of the property concerned within three years of the making of the grant. That section is substantially identical to section 10A of the Town and Country Planning (Amendment) Act 1972 except that it does not contain anything corresponding to subsection (3) of section 10A. (That subsection provides for the recovery of the whole or part of a grant if a condition subject to which it was given is broken.)

It is considered that there is no reason for the discrepancy between the recovery provisions in section 2 of the Act of 1962 and section 10A(3) of the Act of 1972 and it is therefore recommended that the recovery provisions of section 10A(3) should apply in the case of grants under all these provisions, subject to a saving that, only grants made after the new provisions come into force should be affected by the amendment so that it is only in the case of such loans that breach of conditions attaching to a grant will trigger recovery.

Effect is given to this recommendation in clauses 58(4) and 80(7) of the Planning (Listed Buildings and Conservation Areas) Bill and in paragraph 17 of Schedule 3 of the Planning (Consequential Provisions) Bill.

*45. Prevention of excessive recovery under section 10A(8) of the Town and Country Planning (Amendment) Act 1972*

Section 10A of the Town and Country Planning (Amendment) Act 1972 (c.42) enables grants to be made towards the preservation and enhancement of conservation areas. Subsection (8) of that section provides that nothing in that section entitles a grantor to recover (by virtue of a breach of more than one condition or disposals of several parts of an interest in the grant property) amounts in the aggregate exceeding the amount of the grant. The words in parenthesis do not, however, provide an exhaustive description of the circumstances in which amounts in the aggregate exceeding the amount of the grant may be recovered since this could also occur if there were one breach of a condition and one part disposal.

It is recommended that subsection (8) be amended so that there may never be an excessive recovery through any circumstances.

Effect is given to this recommendation in clauses 58(5) and 78(8) of the Planning (Listed Buildings and Conservation Areas) Bill.

*46. Exercise of functions under section 56B of the 1971 Act by district planning authorities*

Schedule 16 to the 1972 Act contains a number of provisions concerning the exercise of functions under the 1971 Act by different sorts of local planning authorities, but there has been a tendency to forget about it when the 1971 Act has been amended in ways which involve the conferring of new functions on local planning authorities.

Paragraph 25 of the Schedule provides that the functions of a local planning authority under sections 55, 56, 96 and 99 and Schedule 11 to the 1971 Act are to be exercised by the district planning authority. In 1972 these represented most of those functions relating to the granting of listed building consent and the enforcement of the listed building control system. Paragraph 4 of Schedule 9 to the 1986 Act added a new section 56B to the 1971 Act under which an application can be made to the local planning authority for the variation or discharge of conditions subject to which a listed building consent has previously been granted. Subsection (2) of section 56B applies Part I of Schedule 11 to such applications as it applies to applications for listed building consent. Since an original application for listed building consent will be made to the district planning authority and the functions under Part I of Schedule 11 are exercisable by a district planning authority (by virtue of that Part of that Schedule being introduced by section 56(6) which is mentioned in paragraph 25 of Schedule 16), there appears to be no reason for applications under section 56B to be dealt with by any other authority. Accordingly, it is recommended that the functions under section 56B should also be exercised by district planning authorities.

Effect is given to this recommendation in clauses 19(1) and 81 of and paragraph 2 of Schedule 4 to the Planning (Listed Buildings and Conservation Areas) Bill.

*47. Amendment of Parts II and VI of Schedule 21 to the 1971 Act so as to include sections 56A and 56B of that Act*

Schedule 21 to the 1971 Act consists of seven Parts which list provisions of the 1971 Act which are referred to in particular sections of that Act. Section 56 of the 1971 Act which relates to conditions attaching to listed building consent is mentioned in Parts II and VI of the Schedule, but those references to that section appear to have been overlooked when sections 56A and 56B were added to the 1971 Act, although those sections are supplementary to section 56 since they relate respectively to conditions as

to the duration of such consent and to applications for the variation or discharge of conditions attaching to such consent. The result is that sections 263(1) (county council expenses), 269(1) (application of provisions to Isles of Scilly) and 271 (application to local planning authorities of provisions as to listed buildings) which refer to the relevant Parts of Schedule 21 apply differently as respects sections 56A and 56B from section 56 itself to which they are related. It is considered that there is no reason for such a distinction and it is recommended that sections 263(1), 269(1) and 271 should apply as if sections 56A and 56B were included in Parts II and VI of Schedule 21.

Effect is given to this recommendation in clauses 82(3), 90(6)(b) and 92(2)(b) of the Planning (Listed Buildings and Conservation Areas) Bill.

*48. Amendment of Schedule 21 to the 1971 Act as respects section 54(12) of that Act.*

Section 54(10) and (11) of the 1971 Act (which relate to buildings which are deemed to be listed buildings by virtue of being subject to listed building preservation orders immediately before 1st January 1969) is referred to in Parts I, II, V and VI of Schedule 21 to the 1971 Act. Section 54(11) was, however, disapplied in relation to buildings in England by an extra subsection ((12)) added to section 54 by paragraph 16(5) of the National Heritage Act 1983 (c. 47). This subsection provides for the Secretary of State to consult with the Commission before giving a direction de-listing a relevant building and for the Commission in turn to consult with the persons mentioned in section 54(11). The references in Schedule 21 to section 54(9) to (11) appear to have been overlooked when subsection (12) was added to section 54 and it is recommended that this omission should now be corrected.

Effect is given to this recommendation in clauses 82(3), 85(1), 90(6)(b) and 92(2)(b) of the Planning (Listed Buildings and Conservation Areas) Bill.

*49. Right of entry in case of offences being committed under section 57 of 1971 Act.*

Section 280(4)(a) of the 1971 Act confers power for any person duly authorised in writing by the Secretary of State or a local authority to enter any land for the purpose of ascertaining whether an offence appears to have been committed under section 57 of the 1971 Act (damage to listed buildings). The wording of section 280(4)(a) contrasts with that of section 280(3) under which a power of entry is given for the purpose of ascertaining whether an offence *has been or is being committed* with respect to any building on the land under sections 55 and 98 and paragraph 2 of Schedule 11.

It is considered that the small discrepancies between these provisions have only arisen as a result of historical accident and are not justified especially since the offence under section 57 can be a continuing offence. It is therefore recommended that the power in relation to section 57 offences should be brought into line with that in relation to the other offences so that it enables entry to be made where the offence is in the process of being committed.

Effect is given to this recommendation in clause 88(3)(a) of the Planning (Listed Buildings and Conservation Areas) Bill.

*50. Contribution by Ministers towards compensation payable as a result of the service of a listed building purchase notice.*

Section 254 of the 1971 Act provides that where compensation is payable by a local authority under that Act in consequence of any decision given or order made under certain provisions of it and that decision or order was given or made wholly or partly in the interest of a service which is provided by a government department and the cost of

which is defrayed out of money provided by Parliament, the Minister responsible for the administration of that service may pay that authority a contribution towards the compensation. Paragraph (c) of section 254 mentions the provisions of Part IX of the 1971 relating to purchase notices but listed building purchase notices are not specifically mentioned. (Notices under section 180 are by virtue of section 180(7) known as "purchase notices" and those under section 190 are by virtue of section 190(5) known as "listed building purchase notices".) There seems to be no reason for any difference in treatment between these two sorts of notice in this respect and it is recommended that the provisions of Part IX relating to listed building purchase notices should be included amongst those mentioned in section 254.

Effect is given to this recommendation in clause 90(1) of the Planning (Listed Buildings and Conservation Areas) Bill.

*51. Inadvertent repeal of section 287(9) of the 1971 Act*

Section 287(9) of the 1971 Act is in the following terms-

"(9) Any order under section 58AA, 69, 73(6), 74(4) or 75(8) of this Act may contain such supplementary and incidental provisions as may appear to the Secretary of State to be appropriate."

The only provision mentioned in this section which has not been repealed is section 58AA. The reference to section 58AA was added by the 1986 Act but that Act contains a repeal of section 287(9). This appears to have been an oversight, the insertion of the reference to section 58AA having been overlooked. Consequently, the repeal of section 287(9) has never been brought into force.

It is recommended that the repeal of section 287(9) should be ignored so far as it affects section 58AA.

Effect is given to this recommendation in clause 93(6) of the Planning (Listed Buildings and Conservation Areas) Bill.

*52. Service of documents concerning appeals on owners who have made representations and their right to be heard*

Schedule 9 to the 1971 Act relates to the determination of certain appeals under that Act by a person appointed by the Secretary of State. Paragraph 3 of Schedule 9 provides that the Secretary of State may direct that he himself shall determine an appeal which would otherwise fall to be determined by an appointed person under the Schedule. By paragraph 3(2) such a direction must be served on the appointed person (if any), the appellant, the local planning authority and any person who has made representations which the local planning authority are required to take into account under section 29(3)(a).

Section 29(3)(a) as applied by section 36(5) of the 1971 Act obliges the Secretary of State when determining appeals against the refusal of applications for planning permission made by persons who are not the owners of the land to take into account representations made by the owners concerning the application. Therefore it is not directly relevant to applications for listed building consent or hazardous substances consent. But paragraph 2(1)(a) of Schedule 11 to the 1971 Act and section 58C(2) of that Act do provide for regulations to be made relating to such applications which may include requirements corresponding to those in section 29(3) and this has been done as respects listed building consent applications by Regulation 6(4) of the Town and Country Planning (Listed Buildings and Buildings in Conservation Areas) Regulations 1987

(S.I.1987/349).

It is therefore recommended that copies of a direction under paragraph 3(2) should also be served on owners who have made representations which the local planning authority must take into account under such regulations and that such owners should also be given an opportunity of appearing before a person appointed under paragraph 3(4) in the circumstances mentioned in paragraph 3(4)(a) (where the reasons for the direction raise matters with respect to which the owners have not made representations).

A direction under paragraph 3 may be revoked under paragraph 3A and paragraph 3A(2) is in similar terms as paragraph 3(2) as respects the persons to whom notice must be given of the revocation.

It is recommended that owners who have made such representations should also be informed of revocations of directions under paragraph 3A.

Effect is given to these recommendations in paragraphs 3 and 4 of Schedule 3 to the Planning (Listed Buildings and Conservation Areas) Bill and in paragraphs 3 and 4 of the Schedule to the Planning (Hazardous Substances) Bill.

*53. Extension of paragraph 51(1) of Schedule 16 to the 1972 Act to applications for conservation area consent*

Schedule 16 to the 1972 Act allocates various planning functions between different planning authorities. Under paragraph 51(1) of that Schedule the validity of any consent or determination granted or made or purported to be granted or made by a local planning authority in respect of such an application as mentioned in paragraph 15 or 16 of the Schedule shall not be called in question in any proceedings on the ground that the consent or determination should have been granted or made by some other local planning authority. The applications mentioned in those paragraphs include applications for listed building consent, but these provisions appear to have been overlooked when the concept of conservation area consent was introduced by the Town and Country Amenities Act 1974 (c. 32). They were not amended then to include such consent and it is not clear whether applications for such consent should be regarded as included by virtue of the general application of the provisions concerning listed building consent to conservation area consents by section 277A(8) of the 1971 Act or whether the absence of any mention of Schedule 16 in that provision means that such applications are not included.

It is considered that there is no reason why paragraph 51(1) should not apply to applications for conservation area consent as it applies to applications for listed building consent and it is recommended that it should do so.

Effect is given to this recommendation in paragraph 6 of Schedule 4 to the Planning (Listed Buildings and Conservation Areas) Bill.

*54. Hazardous substances authorities in special areas*

Subsection (1) of section 1A of the 1971 Act (as inserted by section 30 of the 1986 Act) provides that as a general rule the district council or in a London borough its council is to be the hazardous substances authority for its area. Subsections (2) to (4) of section 1A make provision as to which authorities are hazardous substances authorities in relation to certain special areas. In general, in the cases where an area may fall within more than one of the cases described, section 1A makes it clear which of its provisions takes priority. For example, when land is in a National Park subsection (2) applies so as to make the county council the hazardous substances authority, but subsection (2) of section 1A is made subject to subsection (3), so that it is clear that if there is a joint



planning board or special planning board for the Park (which is not always the case), then the board are the authority for the Park instead.

Unfortunately, section 1A does not resolve some possible overlaps.

One of these is where land falls both within subsection (2) of section 1A (cases in which the county council is the hazardous substances authority) and within subsection (4) of that section or section 67(6) of the Housing Act 1988 (c.50) (urban development corporation or housing action trust to be the hazardous substances authority in its area). This overlap might occur, for example, where land in England which is used for refuse disposal falls within the area of an urban development corporation or housing action trust.

Another possible overlap is where land falls within subsection (3A) (which was added by paragraph 9 of Schedule 3 to the Norfolk and Suffolk Broads Act 1988 and provides for the Broads Authority to be the hazardous substances authority for the Broads) and also within subsection (2) or (3). This might occur, for example, where land in the Broads is used for mineral working.

It is recommended that these lacunae should be filled by providing that subsections (2) and (3) of section 1A should have priority over subsections (3A) and (4) of that section and section 67(6) of the Housing Act 1988, so that the county council or the National Park authority are the hazardous substances authority rather than the Broads Authority or the urban development corporation or housing action trust.

Effect is given to this recommendation in clause 3 of the Planning (Hazardous Substances) Bill.

*55. Application of sections 58D(5) and 58M of the 1971 Act to housing action trusts which are hazardous substances authorities.*

Two provisions of the 1971 Act differentiate between hazardous substances authorities who are Ministers and those who are not. These are section 58D(5) (under which non-ministerial hazardous substances authorities may only impose certain conditions on the grant of consent if the Health and Safety Executive have agreed) and section 58M (keeping of registers of information concerning consents). These provisions appear to have been overlooked when the Housing Act 1988 was passed and accordingly they apply to housing action trusts which are hazardous substances authorities by virtue of that Act as if they were Ministers rather than non-ministerial hazardous substances authorities. It is recommended that such trusts should be equated with the other non-ministerial hazardous substances authorities for the purposes of these provisions.

Effect is given to this recommendation in clauses 10 and 28 of the Planning (Hazardous Substances) Bill.

*56. Limitation on conditions which may be imposed when hazardous substances consent is modified on change of control of land*

Under section 58J of the 1971 Act (as inserted by section 31 of the 1986 Act) hazardous substances consent is revoked on a change of control of the land to which it relates unless an application for its continuation has been made before the change. Subsection (4) of section 58J gives the hazardous substances authority a general power to modify the consent when such an application is made to them and under subsection (9) they may in particular make the consent subject to conditions with respect to any of the matters mentioned in section 58D(5). These are conditions with respect to any of the following-

- (a) how and where any hazardous substance to which the consent relates is to be kept or used;
- (b) the times between which any such substance may be present;
- (c) the permanent removal of any such substance-
  - (i) on or before a date specified in the consent; or
  - (ii) before the end of a period specified in it and commencing on the date on which it is granted.

Under section 58D(5) an authority who are a hazardous substances authority by virtue of section 1A of the 1971 Act may only grant consent subject to conditions as to how a hazardous substance is to be kept or used if the conditions are conditions to which the Health and Safety Executive have advised the authority that any consent they might grant should be subject. But since the imposition of conditions under section 58J does not occur on the grant of consent this limitation does not apply. It is considered that there is no reason for it to apply in the case of a grant of consent but not in the case of such a modification which is really equivalent to a new grant and it is recommended that it should do so.

Effect is given to this recommendation in clause 18(6) of the Planning (Hazardous Substances) Bill.

*57. Appeals against refusal or conditional grant of consent required on grant of hazardous substances consent*

Sections 58E(1) and 58J(10) of the 1971 Act (as inserted by section 31 of the 1986 Act) apply sections 36 and 37 of the Act (appeals and appeals in default of decision) in relation to applications for hazardous substances consent and applications for the continuation of such consents on a change in control of the land respectively. These sections are in similar terms and provide that sections 36 and 37 shall have effect in relation to these sorts of applications and to decisions on these applications as though they were applications for planning permission, but with certain modifications.

Section 36(1) provides-

"(1) Where an application is made to a local planning authority-

- (a) for planning permission to develop land; or
- (b) for any consent, agreement or approval of that authority required by a condition imposed on a grant of planning permission; or
- (c) for any approval of that authority required under a development order,

and that permission, consent, agreement or approval is refused or is granted by them subject to conditions, the applicant, if he is aggrieved by their decision, may by notice under this section appeal to the Secretary of State."

It is not clear from the words applying section 36(1) whether it is intended that the right of appeal exists solely in the case corresponding to paragraph (a) (i.e. a refusal or conditional grant of the application in question) or whether the reference in sections 58E(1) and 58J(10) to decisions on the applications in question is also intended to bring

in the case corresponding to paragraph (b) (i.e. the refusal or conditional grant of applications for any consent, agreement or approval of the hazardous substances authority required by them on a grant of hazardous substances consent).

It is considered that it would be anomalous for a right of appeal to exist in the case of refusal or conditional grant of consent, agreement or approval required on the grant of planning permission but not in the case of such a refusal or conditional grant of a consent, agreement or approval required on the grant of hazardous substances consent. Moreover, it seems likely that this right would have been conferred if the rights of appeal in the case of such consents had been set out in full rather than being expressed by reference to the rights applicable in the case of planning permission. It is therefore recommended that a right equivalent to that conferred by section 36(1)(b) should be given in this case. If such applications for consents, agreements and approvals are brought within section 36(1), it follows that the provisions of section 37 as to appeals in default of decision and the provisions of sections 242 and 245 relating to challenges on such appeals should also apply to them.

Effect is given to this recommendation in clauses 21 and 22 of the Planning (Hazardous Substances) Bill.

*58. The right to challenge decisions relating to hazardous substances consent under section 245 of the 1971 Act*

Section 245 of the 1971 Act enables certain action on the part of the Secretary of State which is described in section 242(2) of the 1971 Act to be challenged in the High Court. Section 242(2) and (3) contains a list of decisions and actions which may be challenged. The decisions mentioned in section 242(3) include-

- "(a) any decision of the Secretary of State on an application for planning permission referred to him under section 35 of this Act;
- (b) any decision of the Secretary of State on an appeal under section 36 of this Act; ...
- (dd) any decision by the Secretary of State relating to an application for hazardous substances consent;"

Paragraph (dd) was added by paragraph 2 of Schedule 7 to the 1986 Act.

Sections 242 and 245 raise several problems in relation to the hazardous substances control system.

Sections 58E(1) and 58J(10) of the 1971 Act apply sections 35 to 37 (which give the Secretary of State power to call in and to determine appeals relating to applications for planning permission) to applications for hazardous substances consent and applications for the continuation of such consent on a change of control of the land. Decisions by the Secretary of State relating to applications for hazardous substances consent made under these sections as so applied will fall within paragraph (dd) of section 242(3). Paragraph (b) of section 242(3), which is simply in terms of "an appeal under section 36" will also bring decisions on appeals relating to applications for the continuation of hazardous substances consent within the challenge procedure. But it must at the least be uncertain whether decisions on such applications which are made by the Secretary of State on being referred to him under section 35 as applied by section 58J come within any category of decision mentioned in section 242(3).

It is considered that there is no reason to exclude such decisions from the

challenge procedure and accordingly it is recommended that they be included.

Effect is given to this recommendation in clause 22(1) of the Planning (Hazardous Substances) Bill.

Subsection (2) of section 245 gives a specific right to "the authority directly concerned with the decision". That expression is explained in subsection (7) of section 245 as amended by paragraph 46 of Schedule 16 to the 1972 Act (although only paragraphs (b) and (c) are relevant to this recommendation).

Because in 1972 the matters as respects which there could be a challenge were general planning matters within the competence of the local planning authority, subsection (7)(b) and (c) of section 245 are in terms of local planning authorities, but of course in the case of a decision relating to hazardous substances consent it will be the hazardous substances authority rather than the local planning authority who were involved in the relevant decision. It is therefore recommended that it should be they rather than the local planning authority who should be the authority directly concerned with the decision for the purposes of challenges relating to such decisions and hence have the benefit of the special right of challenge under subsection (2) of section 245.

Effect is given to this recommendation in clause 22(2) of the Planning (Hazardous Substances) Bill.

*59. Inclusion in registers relating to hazardous substances consent of information relating to all deemed hazardous substances consents.*

Under section 58M of the 1971 Act (as inserted by section 31 of the 1986 Act) hazardous substances authorities are obliged to keep registers relating to applications for hazardous substances consent made to them and, by virtue of subsection (1)(b), consent deemed to have been granted under "section 23" of the 1986 Act. (The note on clause 28 of the Planning (Hazardous Substances) Bill explains why it is thought that this should refer to section 34 of the 1986 Act.)

It is considered that information in respect of consents deemed to be granted under section 58F of the 1971 Act or paragraph 7 of Schedule 8 to the Electricity Act 1989 (c. 29), by virtue of a direction given by a government department or the Secretary of State when granting an authorisation required for related development, should also be included in registers kept under section 58M so that those registers contain information about all sorts of consents and it is recommended that that section be extended accordingly.

Effect is given to this recommendation in clause 28(1)(b) of the Planning (Hazardous Substances) Bill.

*60. Notification to hazardous substances authorities of certain disposals of Crown land*

Section 1 of the Town and Country Planning Act 1984 (c.10), as amended by paragraph 8 of Schedule 7 to the 1986 Act, enables applications to be made for planning permission, listed building consent or hazardous substances consent in respect of land in which the Crown has an interest so that the land may be disposed of with the benefit of that permission or consent. The amendments made by the 1986 Act inserted references to provisions relating to the hazardous substances regime and references to hazardous substances consent in provisions which previously applied generally to the planning regime and to planning permission.

Subsection (5) of section 1 of the 1984 Act provides that the Secretary of State may by regulations modify or exclude any of the statutory provisions applied by subsection (2) of the section and any other statutory provisions in their application to consents granted by virtue of the section, make provision for requiring a local planning authority to be notified of any disposal of, or of an interest in, any Crown land in respect of which an application has been made by virtue of the section, and make such other provision in relation to the making and determination of applications by virtue of the section as he thinks necessary or expedient.

It will be seen that the reference to notification of the local planning authority, whilst being quite suitable for the general planning regime, does not fit the hazardous substances control system so aptly and it is recommended that in so far as regulations are made under subsection (5) of section 1 of the 1984 Act in respect of the application of that system the requirement should be for the hazardous substances authority to be informed of the relevant disposals.

This does not in fact alter the powers conferred by the section greatly, since the general power under subsection (5)(c) to make such other provision as the Secretary of State considers necessary or expedient would enable him in any case to require such disposals to be notified to the hazardous substances authority. Conversely, if a reference to that authority is substituted for the purposes of the application of the section to the hazardous substances control system, the general power enables separate provision to be made requiring the local planning authority to be notified. The change is therefore largely a matter of emphasis.

Effect is given to this recommendation in clause 32(4)(b) of the Planning (Hazardous Substances) Bill.

#### *61. Rights of entry exercisable by hazardous substances authorities*

Section 280 of the 1971 Act confers certain rights of entry on authorities in connection with the exercise of their functions under the Act. Subsections (1)(c) and (1A) of that section are in the following terms-

"(1) Any person duly authorised in writing by the Secretary of State or by a local planning authority may at any reasonable time enter any land for the purpose of surveying it in connection with-

.....

(c) any proposal by the local planning authority or by the Secretary of State to make, issue or serve any order or notice under Part III (other than section 44), Part IV or Part V of this Act, or under any order or regulations made thereunder or any notice under section 115 of this Act.

(1A) Any person duly authorised in writing by the Secretary of State or by a hazardous substances authority may at any reasonable time enter any land for the purpose of surveying it in connection with-

(a) any application for hazardous substances consent;

(b) any proposal to issue a hazardous substances contravention notice."

It will be seen that subsection (1A)(b) duplicates subsection (1) except in so far as a hazardous substances authority may be different from the local planning authority. When subsection (1A) was inserted by the 1986 Act it appears to have been overlooked

that a proposal to issue a hazardous substances contravention notice would be a proposal to issue a notice under Part V of the 1971 Act and would therefore fall within subsection (1)(c) of section 280. It appears to us that it would be inappropriate for a local planning authority who were not the hazardous substances authority to exercise powers of entry in connection with hazardous substances contravention notices.

The power to authorise a Valuation Officer to enter and survey or estimate the value of land under subsection (6) of section 280 is by virtue of subsection (6A) of the section exercisable by the hazardous substances authority rather than the local planning authority where the entry is connected with compensation under section 58H(8) or 58J(12) (which are part of the hazardous substances control scheme) but, although subsection (8) of section 280 was amended to enable authorised persons to enter land to see if a hazardous substances contravention notice had been complied with, no amendment was made to convert the reference to local planning authorities in that subsection to a reference to hazardous substances authorities.

It is therefore recommended that the particular power of entry relating to hazardous substances in subsection (1A) of section 280 should be regarded as impliedly excluding the general power of entry under subsection (1) and that the power to authorise a person to enter land under subsection (8) of section 280 ought in the case of a hazardous substances contravention notice to be exercisable by the hazardous substances authority.

Effect is given to this recommendation in clause 36 of the Planning (Hazardous Substances) Bill.

#### *62. Contributions to expenses of hazardous substances authorities*

Subsection (2) of section 255 of the 1971 Act enables any local authority or statutory undertakers to contribute towards any expenses incurred by a local planning authority in exercising their functions under Part IV of the Act. The functions relating to hazardous substances are exercisable under Part IV but the 1986 Act failed to amend section 255 by inserting references to hazardous substances authorities as respects the exercise of these functions. There seems no reason, however, for any difference in the treatment of these expenses and accordingly it is recommended that section 255(2) should have effect as respects functions exercisable under Part IV of the 1971 Act by hazardous substances authorities which are local planning authorities as if references to such authorities were included. (Recommendation 27(b) makes a similar recommendation as respects mineral planning authorities).

Effect is given to this recommendation in clause 38(2) of the Planning (Hazardous Substances) Bill.

#### *63. Repeal of s. 105(4) and (5) of the Town and Country Planning Act 1968.*

Section 105 of the Town and Country Planning Act 1968 (c.72) provides for that Act to be brought into force by orders which may be made so as to bring different provisions into force on different days in different areas. Under subsections (4) and (5) the responsible Ministers are to maintain registers showing the current position in relation to different areas. The whole of the 1968 Act has been in force for many years in all areas and it is therefore considered that these subsections have ceased to be of any practical utility and should be repealed.

Effect is given to this recommendation in clause 3 of and Schedule 1 to the Planning (Consequential Provisions) Bill, which repeals the whole of the Town and Country Planning Act 1968.

*64. Repeal of section 21(7A) and (8) of the 1971 Act*

Section 21(7A) and (8) of the 1971 Act impose an obligation on the Secretary of State for the Environment and the Secretary of State for Wales to prepare and maintain registers indicating in which areas the structure and local plan regime of Part II of the 1971 Act has come into force. The provisions as to development plans in Part II of the 1971 Act were brought into force by orders made on a selective basis area by area, finally coming into operation for all areas in August 1974. The registers also recorded the orders bringing into force section 20 and certain provisions in Part I of Schedule 23 to the 1971 Act when a structure plan for an area was approved and came into force, but there have been structure plans in force for the whole of England and Wales since November 1980. It is considered that these provisions were therefore of transitory value only and that now that orders have been made for all the areas to which this regime may apply, it is recommended that these provisions should be repealed as serving no further useful purpose.

Effect is given to this recommendation in Schedule 1 to the Planning (Consequential Provisions) Bill.

*65. Functions which may be given to urban development corporations*

Under section 149 of the 1980 Act urban development corporations may be the local planning authority for their area if it is so provided by order and such an order may give them functions under the provisions mentioned in Part I of Schedule 29 to that Act. Those provisions include sections 87 and 90 of the 1971 Act which give power to serve enforcement and stop notices and many of the supplementary provisions about those matters, but do not include section 92A which was inserted by the Local Government and Planning (Amendment) Act 1981 and imposes duties on district planning authorities and the councils of metropolitan districts and London boroughs to keep a register of enforcement notices which relate to land in their area. Section 92A was not inserted until after the 1980 Act had been passed.

There seems no reason why urban development corporations with enforcement functions should not also have the function of keeping the associated registers and in fact the urban development corporations have found it necessary to keep unofficial registers of enforcement notices. It is therefore recommended that the law be brought into line with practice by including functions under section 92A amongst those which can be given to them.

Effect is given to this recommendation in the amendment of Part I of Schedule 29 in Schedule 2 to the Planning (Consequential Provisions) Bill.



HMSO publications are available from:

**HMSO Publications Centre**

(Mail and telephone orders only)

PO Box 276, London SW8 5DT

Telephone orders 01-873 9090

General enquiries 01-873 0011

(queuing system in operation for both numbers)

**HMSO Bookshops**

49 High Holborn, London, WC1V 6HB 01-873 0011 (Counter service only)

258 Broad Street, Birmingham, B1 2HE 021-643 3740

Southey House, 33 Wine Street, Bristol, BS1 2BQ (0272) 264306

9-21 Princess Street, Manchester, M60 8AS 061-834 7201

80 Chichester Street, Belfast, BT1 4JY (0232) 238451

71 Lothian Road, Edinburgh, EH3 9AZ 031-228 4181

**HMSO's Accredited Agents**

(see Yellow Pages)

*and through good booksellers*

From 6th May 1990 the London telephone numbers above carry the prefix '071' instead of '01'