THE SOCIETY FOR ADVANCED LEGAL STUDIES

THE SIMPLIFICATION OF PLANNING LEGISLATION

PLANNING AND ENVIRONMENT LAW REFORM WORKING GROUP

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The simplification of planning legislation

SUMMARY

Introduction

(a) The legislation controlling the use and development of land in the public interest was devised in its present form around half a century ago. It relied originally on three principal statutes – the Town and Country Planning Act 1947, the National Parks and Access to the Countryside Act 1949, and the Historic Buildings and Ancient Monuments Act 1953. Since then, it has grown to a labyrinthine system involving around ten principal statutes, a number of other minor amending statutes and parts of several more. There are in addition over 100 pieces of secondary legislation relating to land use control.

(b) Part of the reason for this complexity is that there has evolved a multiplicity of different consents, each with its own statutory code of primary and secondary legislation.

(c) This paper describes a proposal to extend the scope of planning permission so as to include virtually any works to listed buildings and scheduled monuments, demolition in a conservation area, and advertising. That would enable the scrapping of the separate statutory codes governing listed building consent, conservation area consent, scheduled monument consent, and consent under the Advertisements Regulations.

(d) The key to this proposal is to recognise that the various controls all overlap; and almost all involve procedures that are needlessly complex. In each case, however, the administrative principles are the same, and the policy tests applying to the determination of the various applications are (or should be) more or less identical; and in practice the relevant local authority committee or central Government inspector usually deals with all the applications together. This is particularly noticeable in the case of works which require both planning permission and listed building or conservation area consent.

(e) There seems to be no good reason, therefore, why these could usefully all be subsumed into a single permission or consent. In practice, the most sophisticated of the above control systems is that relating to "planning permission", which has been the subject of constant refinements since 1947. Rather than invent a wholly new system, therefore, it is proposed to adapt the existing legislation to incorporate all (or as many as possible) of these other systems – which have in any event largely been based on the planning permission system.

(f) The result would be a major simplification of the statutory code.

What is involved

(g) Such a simplification may be attractive conceptually, but whether it would be desirable in practice depends to a large extent on what is actually involved. Annex One to this paper accordingly considers the principal amendments that would be needed to the

Town and Country Planning Act 1990 and to other legislation, to achieve the broad aims of the simplification here envisaged. It is in fact surprising how relatively modest are the amendments that would be required.

(h) It would also seem to be desirable to incorporate at the same time certain other amendments to the 1990 Act to resolve related technical difficulties.

(i) In particular, a replacement is needed for the existing section 55, to set out the extent of the works and activities that are subject to the new regime of unified control. This needs to make it clear that development includes virtually all works to listed buildings and scheduled monuments, all demolition, and advertising.

(j) It should not be forgotten that many minor matters, under all of the above categories, will in practice be "permitted" by a mechanism equivalent to the Town and Country Planning (General Permitted Development) Order 1995.

Other rationalisation and consolidation

(k) It would also be possible to include other types of consent and permission within such a unified system, although the benefits of doing so are less clear.

(l) Once the suggested amendments have been made to the 1990 Act, that would enable the repeal of a number of other provisions – such as, notably, large parts of a number of statutes dealing with the built heritage. Those parts that remain are a somewhat miscellaneous collection, and could sensibly be incorporated, with amendments, into a single consolidating National Heritage Act.

The benefits

(m) The simplification of any legislation is inherently desirable, as law that is impenetrable and obscure is likely to be misunderstood or ignored. More specifically, the unification of the different types of consent into one leads to a major simplification of the bureaucratic process. For any given proposal, there would be just one application, on one form, with one committee report, one decision, and one appeal. If consent is not obtained, there would be just one enforcement notice to be issued.

(n) This is desirable partly from the point of view of those who administer the system but also, more importantly, for the benefit of the public – who generally do not care about the legal niceties, but want a system that operates smoothly and is simple to understand. In addition, the less that decisions are fragmented, as they are currently as a result of the existing procedures, the more that they have to take into account at one time all of the various issues affecting the desirability or otherwise of a particular development proposal.

(o) The proposals that form the heart of this paper have thus been explored in papers presented at various conferences, attended by town planners and conservation officers, and have generally been welcomed. They have also been warmly supported by the Royal Town Planning Institute, and by the UK Environmental Law Association. Local authorities have also indicated their support.

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THE SIMPLIFICATION OF PLANNING LEGISLATION

Report by Society of Advanced Legal Studies Planning and Environment Law Reform Group

INTRODUCTION

1. The legislation controlling the use and development of land in the public interest was devised in its present form around half a century ago. It relied originally on three principal statutes – the Town and Country Planning Act 1947, the National Parks and Access to the Countryside Act 1949, and the Historic Buildings and Ancient Monuments Act 1953. Since then, it has grown to a labyrinthine system involving around ten principal statutes, a number of other minor amending statutes and parts of several more. There are in addition over 100 pieces of secondary legislation relating to land use control.

2. Part of the reason for this complexity is that there has grown up over the period since 1947 a multiplicity of different systems of consent, each with its own statutory code of primary and secondary legislation. These include:

(a) Building and other operations

Planning permission
Listed building consent
Conservation area consent
Consent under the Advertisements Regulations
Scheduled monument consent

(b) Changing the use of land

Planning permission
Hazardous substances consent.

(c) Works to trees, hedges and other flora

Consent under a tree preservation order
Felling licence
Notification of works to a tree in a conservation area
Consent under the Hedgerows Regulations
Notification of proposed works in an SSSI.

It may well be that other consents could be added to this list.

3. This paper describes a proposal to simplify the primary and secondary legislation by bringing together all the consents in the first of the above groups, so that building and other operations always require only planning permission – thus enabling the repeal of all the existing provisions relating to listed building consent, conservation area consent, consent under the Advertisements Regulations, and scheduled monument consent.

4. It may subsequently be possible to extend this approach so as to subsume the other consents listed above.

Overlap of consent systems

5. The key to this proposal is to recognise that the various controls all overlap to a large degree; and almost all involve procedures that are needlessly complex. In each case, however, the principle is the same:

   (a) it is in principle necessary to obtain consent or to notify a public authority before carrying out certain categories of activity;

   (b) certain activities within those categories are exempt from that requirement (usually either because they are trivial or because they are authorised in some other way);

   (c) consent is granted automatically for certain further categories;

   (d) consent must be applied for in all other cases;

   (e) there is a right of appeal to the Secretary of State where consent is refused by a local authority;

   (f) an enforcement notice may be served where consent has not been obtained;

   (g) carrying out of unauthorised activities may (in some cases only) lead liability to criminal prosecution.

6. At present, for example, to insert a new shopfront into a listed building may require planning permission, listed building consent, and consent under the

Advertisement Regulations. To construct a new building on the site of an existing one in a conservation area requires both conservation area consent and planning permission. If the relevant consents are refused, two or more appeals are needed, and, if consent is not sought, two or more enforcement procedures are required. This leads to needless duplication of paperwork and bureaucracy.

7. Furthermore, the policy tests applying to the determination of the various applications are (or should be) more or less identical; and in practice the relevant local authority committee or central Government inspector usually deals with all the applications together. Thus applications for planning permission affecting listed buildings are governed by the provisions of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the Listed Buildings Act"), whereas applications for listed building consent are governed by section 16(2) of that Act – but those two subsections are identical. And applications for planning permission and conservation area consent are both governed by the same subsection (s 72(1) of that Act).

8. Unsurprisingly, research[1] suggests that where two consents are required, in practice either both are refused or both are granted – and often subject to the same conditions.

9. Further, applications for listed building consent, conservation area consent, advertisements consent and scheduled monument consent are in practice usually determined by reference to policies in the development plan – notwithstanding the view of the Secretary of State (expressed in, for example, PPG 15, paragraph 2.4) that such policies are, strictly speaking, relevant only to applications for planning permission.

10. It is perhaps noteworthy that in the Republic of Ireland there is no separate system of listed building consent, conservation area consent, advertisements consent and scheduled monument consent.

11. There seems to be no good reason, therefore, why these could usefully all be subsumed into a single permission or consent. Because a new unified consent would be different to, and more extensive than, the existing planning permission, it might seem more logical that it should have a new name, such as "development consent" – which incidentally would bring the British system in line with the terminology of "development consent" used in European legislation. However, that would involve a much more wide-ranging statutory amendment, since the phrase "planning permission", albeit somewhat unsatisfactory, occurs in many other statutes – and seems to be now too deeply ingrained in the general vocabulary for change to be worthwhile.

12. This paper accordingly suggests that the scope of planning permission be enlarged so as to subsume the separate codes of listed building consent, conservation area consent, scheduled monument consent and consent under the Advertisements Regulations. The legislation relating to those codes could then be repealed.

[1] Research by Alan Williams, at Oxford Brookes University, based on survey of 60 local planning authorities (of which 43 responded).

LEGISLATIVE AMENDMENTS REQUIRED TO INTRODUCE A UNIFIED SYSTEM OF CONSENT

13. Such a rationalisation may be attractive conceptually, but whether it would be desirable in practice depends also on what is actually involved. Annex One to this paper accordingly sets out the principal amendments that would be needed to primary legislation, to achieve the broad aims of the simplification here envisaged, as well as certain other related amendments which would seem to be desirable to incorporate at the same time. The great bulk of the changes would be to the Town and Country Planning Act 1990 ("the Planning Act"). For simplicity, the Annex has been drafted entirely by reference to legislation applying in England and Wales, although it would obviously be possible to achieve the same result in Scotland.

14. Annex Two outlines the principal changes that would be required to secondary legislation (again, in relation to England and Wales); and Annex Three those to Government guidance (in relation to England).

15. The remainder of this section of the paper outlines what would be required by way of amendments to primary and secondary legislation. In essence, the procedures relating to the new, enhanced planning permission would be virtually identical to the present procedures relating to each of the various consents, save that the opportunity should be taken to simplify and improve those procedures wherever possible. Thus, whatever needs consent now would still require consent – but only one consent, rather than two or three. The surprise is perhaps that the exercise is relatively straightforward; and the net result would be a major improvement of the statutory code and the operation of the planning system.

The redefinition of development: section 55

16. Firstly, then, an amendment is needed to section 55 of the Planning Act, to set out the extent of the works and activities that are subject to the new regime of unified control. This needs to make it clear that, in addition to those matters referred to in the existing statutory definition, development includes:

    (a) virtually all works to listed buildings and scheduled monuments; and

    (b) advertising.

17. It should not be forgotten that many minor matters will in practice be "permitted" by the Town and Country Planning (General Permitted Development) Order 1995 – which would need to be expanded to include the classes of works that are currently permitted automatically under the Control of Advertisements Regulations and the Scheduled Monuments (Class Consents) Regulations.

18. The requirement for planning permission for any works to a listed building that affects its character (new subsection (1B)) enables the repeal of sections 10 to 46, 62 to 65, 74, 75 and 84 of the Listed Buildings Act, which relate to the mechanics of listed building consent and conservation area consent.

19. The new subsection (1C) similarly brings in control over works to scheduled monuments, which currently require scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979 ("the Ancient Monuments Act"). That enables sections 3, 4, 7 to 9, and 27 of that Act to be repealed, as well as section 61 of the Listed Buildings Act. Applications for consent are currently made to the Secretary of State, although the need for that has been questioned by the Secretary of State in the green paper. It would be possible for all planning applications for works in s 55A(3) to be automatically called in under s 77.

20. One of the more unsatisfactory features of the current legislative code is that part of it governing demolition. At present, subsection 55(2)(g) – inserted by the Planning and Compensation Act 1991 as a hurried response to the decision of the Court of Appeal in *Cambridge City Council v Secretary of State and Milton park Developments* [1992] JPL 644 – enables the Secretary of State by order to remove particular categories of demolition from the definition of "development". That provision should be repealed, along with the orders made under the power thus conferred. Instead, there should be inserted into the Permitted Development Order a new Class 31, permitting the demolition of any building where planning permission has been granted and a contract signed for the construction of its replacement – which would of course cover the great majority of instances where demolition is proposed.

21. Class 31 should not apply, however, so as to permit the demolition of a building that is listed, scheduled or within a conservation area. There would then be no need for any separate control (such as exists at present, in the form of listed building consent etc) over the demolition of such buildings. The wording of the new subsections 55(1B)(a) and 55 (1C)(a) would make clear that the changes to the legislation do not indicate any weakening in the concern to protect the heritage.

22. The replacement subsection 55(5) ensures that control is retained over advertising. It enables the making of regulations along the lines of Schedule 2 to the Advertisements Regulations 1992, to avoid the need for consent to be obtained for trivia. And automatic consent could be given to other classes of advertising, equivalent to those in Schedule 3 to the 1992 Regulations, along with other categories of "permitted development". It may be noted, incidentally, that this mechanism is already in place in the Republic of Ireland.

23. The form of these provisions is different to those that exist at present, but the only change of substance is to bring within a single form of control all forms of development.

Procedures

24. The provisions of the Planning Act relating to development orders (see section 60) could usefully be amended so as to limit the permitted development rights relating to listed buildings and scheduled monuments. There are in fact already very few such rights, but this would clarify the position. There would also need to be new classes added to the TCP (General Permitted Development) Order, equivalent to those in the existing Ancient Monuments (Class Consents) Order and the deemed consent classes in Schedule 3 to the Advertisements Regulations.

25. A further provision would also be required (new section 61A) to enable the service by local planning authorities of notices discontinuing advertising displayed with the benefit of permitted development – the present basis in primary legislation for the service of such notices under the Advertisements Regulations is far from clear.

26. The provisions relating to the submission of planning applications (section 62) could usefully be tightened up to make it clear that all the mechanics of applications can be dealt with in one set of regulations, rather than (as at present) partly in regulations and partly in a development order. Those new regulations would then provide for consultation in appropriate cases with those bodies who are currently notified of applications relating to listed buildings etc. (see new section 65A(2)). The publicity requirements should also be rationalised (section 65A(1)).

27. The policy requirements relating to listed buildings and conservation areas, currently in the Listed Buildings Act (see above), should be incorporated into the Planning Act (see new subsections (4) and (5) of section 70) – as should those relating to advertising, currently in the Advertisements Regulations. It would be logical to include also a similar duty relating to applications affecting scheduled monuments.

28. The specific types of condition appropriate to applications affecting listed buildings, scheduled monuments and advertisements could be incorporated into an amended conditions section (see new subsections (4C) to (4E) of section 72). In many cases these could usefully be extended so as to be applicable in appropriate cases to other planning applications. There is also no reason to separate out conditions relating to five specific types of reserved matters as a separate category of "outline permission" – the same principles apply whenever a condition reserves some detail for subsequent approval. Appropriate amendments would therefore be needed to make this clearer (see new section 62A and replacement section 92.

29. Appropriate amendments would also be needed to some other provisions in the Planning Act relating to procedures. Section 77 (call-in powers) will need to be amended to ensure that the Secretary of State has power to direct that he automatically deals with applications relating to necessitated by Transport and Works Act orders relating to listed buildings. The provisions relating to appeals will need to be adjusted to reflect the particular circumstances of applications affecting listed buildings; and to introduce similar provisions relating to monuments (see the amendments to section 78 and the new section 79A). The provisions relating to the revocation and modification of permission could be tightened up to enable a planning authority to serve an order that comes into effect immediately (as proposed by the Secretary of State in 1989) – see new sections 97A and 107A.

30. Section 60 of the Listed Buildings Act (the ecclesiastical exemption) would also need to be brought into the Planning Act (as section 318A), although the scope of the exemption would as a result be simplified and clarified.

31. None of these amendments are particularly major, but they would lead to a significant improvement in the way applications are processed and dealt with.

Unauthorised works

32. An inevitable consequence of bringing within the scope of development all works to listed buildings and demolition in conservation areas is that the enforcement provisions currently in the Listed Buildings Act would be entirely otiose, since they would be automatically subsumed within the mainstream planning enforcement provisions within the Planning Act. The latter would need to be marginally amended so as to recognise the specific provisions of the listed buildings and conservation areas code; and to incorporate also equivalent provisions relating to scheduled monuments. One incidental advantage of this exercise would be to introduce uniform time limits for enforcement action.

33. There are at present provisions imposing criminal liability for

(a) unauthorised works to listed buildings and in conservation areas (currently in sections 7 to 9 and 74 of the Listed Buildings Act);

(b) unauthorised works to monuments (in section 2 of the Ancient Monuments Act);

(c) unauthorised advertising (in section 224 of the Planning Act);

(d) unauthorised works to protected trees (in section 210 of that Act); and

(e) non-compliance with an enforcement notice that has come into force (Part VII of that Act).

34. Those would remain in principle, although the first three would need to be slightly amended so as to refer to the carrying out of works etc without planning permission, rather than without the various other consents. No doubt, as part of some future consolidation exercise, all of those provisions could then more sensibly be incorporated within what is now Part VII of the Planning Act (enforcement).

35. It might be appropriate to considering adding to this list the carrying out of unauthorised demolition generally – since this is irreversible, and thus generally not capable of being controlled by normal enforcement procedures. It would

also in practice only lead to a very slight increase in criminal liability, since the great bulk of demolition (other than in the case of listed buildings etc) would be permitted automatically (see above) and thus not unauthorised.

Other amendments

36. It would be appropriate to take this opportunity to tighten up the definition of "listed building" (in section 1 of the Listed Buildings Act); to clarify the scope of the conservation area duty (in section 71); and to introduce similar duties in relation to listed buildings and scheduled monuments (see new section 6A of that Act and section 1B of the Ancient Monuments Act).

OTHER TYPES OF CONSENT

37. As noted at paragraph 2 above, there are other types of consent relating to the use and development of land, as well as those considered above. It may well be argued that the approach outlined above in relation to listed buildings, conservation areas, scheduled monuments and advertising could be extended to incorporate at least some of those other consents. For simplicity, this paper has not explored that possibility in detail, but the Government may wish to do so.

Changes of use and hazardous substances

38. It would thus be possible to redefine a material change of use of land so as to include any increase in the amount of hazardous substances stored on that land. That would then enable the code of hazardous substances consent, currently contained within an entirely separate code of primary and secondary legislation, to be brought within the planning permission system. The only significant change needed would be to ensure that the notification and consultation requirements were drafted accordingly.

Trees, hedges and flora

39. The third group of consents referred to in paragraph 2, relating to trees, hedges, and SSSIs, at first sight involve a number of rather different issues of principle.

40. The legislation relating to trees was considered in a report submitted in 1989 to the Secretary of State by Mr James Batho. The Government has committed itself to adopting most of the recommendations in that report – most recently in the consultation paper on tree preservation orders. In the meanwhile, the relevant legislation remains an unlovely muddle, which could usefully be sorted out at the same time as a larger simplification exercise. The statutory code is in any event based on the provisions relating to planning permission.

41. The most logical approach would perhaps be to provide that the carrying out of any works to a tree would be development, requiring consent, but that most works would be permitted automatically – except where the tree is subject to a tree preservation order or in a conservation area, or where the works are on such a scale that they currently require a felling licence.

42. The Government is also considering amending the recently introduced Hedgerows Regulations, and is looking at the possibility of introducing new legislation to curb excessively tall boundary hedges. The system of notification of works to hedgerows should be replaced with a simple consent system, as seems to have been preferred by the House of Commons Environment Sub-committee which recently reviewed this area of law. The problem of boundary hedges could best be dealt with by a relatively minor amendment to the existing wasteland notices provisions.

43. In addition, there is the system whereby notification has to be given to English Nature of proposed works in an SSSI. This could easily be incorporated into a unified system of development consent.

44. It is of course possible that the construction of a building may involve the loss of a tree that is subject to a preservation order or in a conservation area. At present, it is not necessary to obtain consent or notify the authority where a tree is to be removed in order to carry out development.. There is therefore to that extent effectively a unified consent procedure already; and it is difficult to see many other circumstances in which a consent in group (c) in paragraph 3 above would be required as well as one in group (a) or (b).

45. It might therefore be considered that this is not the right time to incorporate these various forms of consent into a unified system of development consent; although it would seem to be a lost opportunity not at least to consider the possibility of bringing these forms of consent within a new unified system.

Other consents

46. There are also a number of other consent systems, under legislation primarily relating to other matters, that should at least be investigated in association with the exercise envisaged above.

47. The carrying out of development sometimes involves the stopping-up of a path or highway. In practice, the desirability of the proposed works and that of the proposed stopping-up or diversion are frequently closely related, and it may be that it would be desirable to integrate these procedures as part of this exercise.

48. Similarly, the licensing and control of caravan sites is currently the subject of Part I of the Caravan Sites and Control of Development Act 1960. That control regime overlaps to some extent with general planning control, but is more concerned with internal arrangements of sites. It would not therefore seem sensible to incorporate this control.

49. Other consent systems that could be looked at as part of this exercise include:

(a) the disposal of waste, which requires a licence under Part II of the Environmental Protection Act 1990;

(b) the construction of electricity generating stations and overhead lines, which requires authorisation under sections 36 and 37 of the Electricity Act 1989;

(c) the construction of pipe-lines, which requires authorisation under the Pipelines Act 1962; and

(d) street trading.

50. In each case, there are arrangements to ensure that the controls do not unnecessarily overlap with planning control, but it would be sensible at least to consider whether some, if any, of these should be brought within a unified consent system.

Building Act consents and notifications

51. One other type of consent that might, at first sight, seem appropriate for inclusion in such an exercise is that required under the Building Act – both consent under the Building Regulations and notification of proposed demolition.

52. It is not however proposed that these should be incorporated, at least not at this stage, as those control mechanisms are under completely separate legislation, and involve somewhat different procedures (with "approved documents" etc) and different staff. They are also conceptually quite different – the "planning" consents relate to whether proposed development is in concept appropriate; that under the Building Act relates to technical matters only.

53. It may be, however, that the approach indicated here could be extended to include these at a later stage.

Transport and Works Act 1992

54. Finally, it should be noted that this paper does not at this stage propose including the relatively recently introduced system of orders under the Transport and Works Act 1992 within a unified system of consent. This is because the schemes involved are usually on such a large scale that they raise issues of a broadly different character to those which are the subject of most normal planning applications. If the reforms suggested in this paper were to be adopted, however, it would still assist the processing of such larger schemes, as it would lessen the number of other consents involved, and simplify some of the paperwork.

CONSEQUENTIAL CONSOLIDATION OF PRIMARY LEGISLATION

Heritage legislation

55. The above proposals involve the repeal of a substantial amount of the existing legislation relating to the built heritage. In the absence of any further suggestions, what remains would be following (excluding miscellaneous and supplemental provisions):

(a) Historic Buildings and Ancient Monuments Act 1953

ss 2, 3	Historic Buildings Councils
ss 3A-8B	Grants for and acquisition of historic buildings etc
s 8C	Registered gardens

(b) Civic Amenities Act 1967

s 4	Loans for historic buildings

(c) Redundant Churches and Other Religious Buildings Act 1969

s 1	Grants for historic churches
ss 4, 5	Transfer of historic churches to Secretary of State

(d) Ancient Monuments and Archaeological Areas Act 1979

ss 1,1A	Schedule of monuments
ss 10-21	Acquisition and guardianship of monuments
s 17	Agreements concerning monuments
ss 22,23	Ancient Monuments Boards

(e) National Heritage Act 1983

ss 32-39	English Heritage

(f) Planning (Listed Buildings and Conservation Areas)Act 1990:

ss 1-6	Listing of special buildings
ss 47-58	Prevention of deterioration and damage
ss 69-71	Designation of conservation areas
ss 76-81	Grants etc in conservation areas

This assumes that, as has already been suggested, sections 7 to 9 and 74 of the Listed Buildings Act and section 2 of the Ancient Monuments Act (all of which relate criminal offences) should in due course be brought into the Town and Country Planning Act.

56. This a somewhat miscellaneous selection of provisions, that could then usefully be consolidated with amendments, to form a simplified National Heritage Act. The provisions relating to the acquisition of historic buildings and monuments, and grants for their maintenance, for example, are absurdly over-elaborate.

57. Such a new statute could also include for the first time a statutory reference to world heritage sites.

Wildlife and countryside legislation

58. Similarly, the remaining legislation relating to the countryside could usefully be consolidated into a single statute – either as part of this exercise or as a subsequent initiative.

THE BENEFITS OF THIS EXERCISE

59. The simplification of legislation is inherently desirable, as law that is impenetrable and obscure is likely to be misunderstood or ignored. More specifically, the unification of the different types of consent into one leads to a major simplification of the bureaucratic process. For any given proposal, there would be just one application, on one form, with one committee report, one decision, and one appeal. If consent is not obtained, there would be just one enforcement notice to be issued.

60. This is desirable partly from the point of view of those who administer the system but also, more importantly, for the benefit of the public – who generally do not care about the legal niceties, but want a system that operates smoothly and is simple to understand. It is noteworthy that many at present refer to each of the various different types of consent as "planning permission" anyway.

61. Any change of this kind would have consequential effects for other legislation, as well as for Government policy statements and so on. It would therefore need to be thought through carefully. But that is not an argument against such change. The consolidation of planning legislation, which occurs every so often, is obviously an inconvenience to all involved, but it is generally welcomed as a necessary evil. The proposal described here is in essence no more than a slightly more ambitious form of consolidation; its benefits would thus in many ways be similar.

62. Those who might appear to be most affected by this proposal are the heritage lobby – the national and local amenity societies and conservation officers in local authorities. However, the proposed changes to the legislation preserve the special status accorded to the built heritage, and ensure that decision making regarding listed buildings and monuments is brought into the mainstream of planning control, rather than being marginalised.

63. The proposals that form the heart of this paper have thus been explored in papers presented at various conferences, attended by town planners, conservation officers, and those in the advertising industry, and have generally been welcomed. They have also been warmly supported by the Royal Town Planning Institute, by the UK Environmental Law Association, and by the Outdoor Advertising Council. Local authorities have also indicated their support[2].

64. In addition, the less that decisions are fragmented, as they are currently as a result of the existing procedures, the more that they have to take into account at one time all of the various issues affecting the desirability or otherwise of a particular proposal. The scope of policies in the development plan, for example, should increasingly be seen to cover all land use topics – and not, as at present, exclude those relating to listed buildings and trees. No issue should be always marginalised; none should be given undue prominence.

65. Finally, the simpler that legislation becomes, the less it would be prone to loopholes and anomalies – which inevitably occur when there are different codes, that are not all updated together. A simpler code also makes any future changes a great deal easier for those who are considering amendments.

[2] Williams, op cit.

CONCLUSION

66. The various systems of control have simply grown over the years, with no particular rationale. To bring them together into one system would seem to be entirely feasible. and would significantly improve the operation of the procedures and policies.

ANNEX ONE

PRINCIPAL AMENDMENTS TO PRIMARY LEGISLATION

PART ONE. TOWN AND COUNTRY PLANNING ACT 1990

The meaning of "development"

1. Section 55 of the Act (meaning of development) shall be amended as follows –

(a) after subsection (1A) shall be inserted:

"(1B) The carrying out of any works for the alteration or extension of a listed building shall be taken to involve development if –

(a) they involve the demolition of all or part of the building;

(b) they affect the external appearance of all or part of the building in such a manner as to affect its character as a building of special architectural or historic interest, or

(c) they affect the interior of a principal listed building, within the meaning of section 1(5)(a) of the Planning (Listed Buildings and Conservation Areas) Act 1990, in such a manner as to affect its character as a building of special architectural or historic interest.

(1C) The carrying out of any of the following operations shall be taken to involve development of the land:

(a) any works resulting in the demolition or destruction of or any damage to a scheduled monument;

(b) any works for the purpose of removing or repairing a scheduled monument or any part of it or making any alterations or additions to it;

(c) any flooding or tipping operations on land in, on or under which there is a scheduled monument."

(b) the words "Subject to subsections (1B) and (1C)," shall be inserted at the start of subsection (2), and paragraph (g) of that subsection shall be omitted.

(c) for subsection (5) shall be substituted –

"(5) Subject to subsection (7), the display of an advertisement on any land, including any building not normally used for that purpose, shall be taken to involve the development of land, except where the advertisement is in a class prescribed by regulations made under this section."

Development permitted by development order

2. (1) In section 59 (development orders: general), for subsections (1) and (2) shall be substituted –

"(1) The Secretary of State may provide for the granting of planning permission by a development order which grants planning permission for development specified in it, or for development of any class so specified.

(1A) Subject to subsection (2), the classes of development for which planning permission may be granted by a development order shall include the carrying out of works for the demolition of a building where planning permission has been granted and a contract signed for works for the redevelopment of its site.

(2) Planning permission shall not be granted by a development order for development if it involves:

(a) the demolition, alteration, extension of all or any part of a listed building;

(b) any operations within the curtilage of a listed building;

(c) any operations specified in subsection (1C) of section 55;

(d) the erection, construction, maintenance, improvement, alteration or demolition of a gate, fence, wall or other means of enclosure bounding the curtilage of a listed building or scheduled monument."

(2) After section 61 shall be inserted –

"*Discontinuance of advertising permitted by development order*

61A. The Secretary of State may by regulations under this section provide for:

(a) the service by local planning authorities of notices requiring the discontinuance of advertisements being displayed with the benefit of planning permission granted by a development order;

(b) appeals to the Secretary of State against such notices; and

(c) the payment of compensation in respect of the cost of carrying out the works necessary to give effect to such notices."

Planning applications

3. For section 62 (form and content of applications for planning permission) shall be substituted –

"*Form and content of planning applications*

62 (1) In respect of development for which planning permission is not granted by a development order, regulations may provide for the granting of planning permission by the local planning authority (or, in the cases provided in the following provisions, by the Secretary of State) on application to the authority in accordance with the provisions of the regulations.

(2) Any application to a local planning authority for planning permission –

(a) shall be made in such manner as may prescribed by regulations an order under this section,

(b) shall include sufficient particulars, including a plan, to identify the building or other land to which it relates,

(c) subject to the following provisions of this section, shall include such other plans, drawings or other illustrative material as are necessary to describe the proposed development that is the subject of the application; and

(d) shall include such other particulars and be verified by such evidence as may be required by the order or by directions given by the local planning authority under it.

(3) Regulations under this section may be made either –

(a) applicable, except so far as they otherwise provide, to all land, or

(b) applicable only to such land or descriptions of land as may be specified in them.

Applications without full details of proposed development

62A. (1) Except as provided in the following provisions of this section, an applicant for planning permission may request the local planning authority or, as the case may be, the Secretary of State, to reserve certain aspects of the proposed development for subsequent approval.

(2) Subsection (1) shall not apply to an application for planning permission –

(a) for development of a kind specified in subsection (2) of section 59; or

(b) for the development of land in or immediately adjacent to a conservation area.

(c) in relation to which there is in force a direction under subsection (3).

(3) A local planning authority may direct that subsection (1) shall not apply to a particular application, and the Secretary of State may direct that that subsection shall not apply either to a particular application or to any description of applications specified in the direction.

(4) In a case to which subsection (3) does not apply, a local planning authority or the Secretary of State on receiving a request under subsection (1) may, if it or he considers it appropriate in the light of the development plan and any other material considerations, decline to reserve one or more aspects of the development for subsequent approval, and may require the applicant to submit details of that aspect or those aspects along with the application."

Publicity for applications

4. After section 65 shall be inserted –

"*Publicity for applications*

65A. (1) This section applies where an application for planning permission (other than permission under section 73A) for any development of land is made to a local planning authority and the development would, in the opinion of the authority, affect –

(a) a listed building or its setting;

(b) a scheduled monument or its setting; or

(c) the character or appearance of a conservation area.

(2) The local planning authority shall –

(a) publish in a local newspaper circulating in the locality in which the land is situated;

(b) post on the internet; and

(c) for not less than seven days display on or near the land,

a notice indicating the nature of the development in question and naming a place within the locality where a copy of the application, and of all plans and other documents associated with it, will be open to inspection by the public at all reasonable hours during the period of 21 days beginning with the date of publication of the notice under paragraph (a) or, if later, the posting of the notice under paragraph (b).

(3) Regulations under section 62 may make provision in relation to applications to which this section applies or to particular categories of such applications –

(a) requiring local planning authorities to notify some or all applications to the Secretary of State, to English Heritage or to other persons as may be so specified, by sending to them such details as may be specified;

(b) specifying a period or periods starting with the date of such notification within which authorities are not to grant permission;

(c) requiring authorities to send to those who were notified of applications the decision taken by the authorities on those applications; and

(d) requiring English Heritage to notify some or all applications to the Secretary of State.

Determination of applications

5. For subsection (3) of section 70 shall be substituted –

"(3) They shall also have regard to any representations received as a result of the application being notified to any person or advertised under section 65 or 65A of this Act or under the provisions of any regulations under this Act, or under section 15 of the Health Services Act 1976.

(4) In considering whether to grant planning permission for development which affects a listed building or a scheduled monument or the setting of a listed building or a scheduled monument, the local planning authority shall have special regard to the desirability of preserving or enhancing the building or, as the case may be, the monument, or its setting or any features of special architectural, historic or archaeological interest which it possesses.

(5) In considering whether to grant planning permission for development which affects a conservation area, the authority shall have special regard to the desirability of preserving or enhancing the character or appearance of the area.

(6) In considering whether to grant planning permission for development which consists of or includes the display of an advertisement, the authority shall have special regard to the effect of the display on amenity and public safety."

Grant of planning permission subject to conditions

6. (1) After subsection (4) of section 72 of the Act shall be inserted –

"(4A) Whether or not an application for planning permission for the carrying out of development is accompanied by a request under subsection (1) of section 62A, planning permission may be granted subject to a condition requiring specified details of the proposed development (referred to in this Act as "reserved matters") to be approved subsequently by the local planning authority or, in the case of permission granted by the Secretary of State, specifying whether such details are to be approved by the local planning authority or by him.

(4B) Where:

(a) an application for planning permission is accompanied by a request under subsection (1) of section 62A,

(b) neither the local planning authority nor the Secretary of State have exercised their powers under subsection (4) of that section so as to require all aspects of the development to be submitted along with the application, and

(c) planning permission is granted for that development,

that permission shall be granted subject to a condition under subsection (4A) specifying which details of the proposed development remain to be approved subsequently.

(4C) Planning permission may be granted subject to conditions with respect to –

(a) the preservation of particular features of a building or monument, either as part of it or after severance from it;

(b) the making good, after the works are completed, of any damage to amenity caused by the works; or

(c) the reconstruction of the building or any part of it following the execution of the works, with the use of original materials so far as practicable and with such alterations to the interior as may be specified in the conditions.

(4D) Planning permission for development including the demolition of all or part of any building may be granted subject to a condition that it shall not be demolished before –

(a) a contract has been made for the carrying out of works for the redevelopment of the site, or for other specified works; and

(b) planning permission has been granted for those works

(4E) Planning permission for development of the kind specified in subsection (1C) of section 55 (which relates to works affecting a scheduled monument) may be granted subject to a condition requiring that a person authorised by the local planning authority, by the Secretary of State or (in relation to land in England) English Heritage be afforded an opportunity, before any works authorised by the permission are begun, to examine the monument and its site and carry out such excavations as appear to be desirable for the purposes of archaeological excavation."

(2) In section 91 (duration of planning permission) –

(a) in subsection (4), paragraph (g) and the word "or" at the end of paragraph (f) shall be omitted; and

(b) after that subsection shall be inserted:

"(5) Where planning permission is granted subject to conditions such as are mentioned in subsections (2) and (3) of section 92 (relating to the subsequent approval of reserved matters), this section shall have effect subject to the provisions of section 92."

(3) For section 92 (outline planning permission) shall be substituted –

"*Permission subject to subsequent approval of details*

92. (1) This section applies where planning permission is granted subject to a condition such as is mentioned in subsection (4A) of section 72 (requiring reserved matters to be approved subsequently).

(2) A planning permission to which this section applies may be granted subject to a condition to the effect that, in the case of any reserved matter, application for approval must be made by a specified date not later than five years after the date of the permission; and where there are more than one reserved matters, such conditions may specify different periods in relation to different reserved matters.

(3) A planning permission to which this section applies may be granted subject to a condition to the effect that the development to which the permission relates must be begun not later than –

(a) the expiration of five years from the date of the permission, or

(b) if later, the expiration of a specified period after the final approval of one or more specified reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

(4) If permission is granted subject to a condition specified in subsection (2), but without a condition specified in subsection (3), it shall be deemed to have been granted subject to a condition as specified in subsection (3) with the period referred to in subsection (b) being two years.

(5) The authority concerned with the terms of a planning permission to which this section applies may, in applying paragraph (a) of subsection (3), substitute, or direct that there be substituted, for the period of five years such other period (whether longer or shorter) as they consider appropriate.

(6) They may also specify, or direct that there be specified, separate periods in conditions under subsection (2) in relation to separate parts of the development to which the planning permission relates; and if they do so, a condition under subsection (3)

shall be framed by reference to those parts, instead of by reference to the development as a whole.

(7) In considering whether to exercise their powers under subsections (5) and (6), the authority shall have regard to the provisions of the development plan and to any other material considerations."

(4) In subsection (1) of section 93 (provisions supplementary to sections 91 and 92), for "92(4)" shall be substituted "92(5)".

Reference of applications to Secretary of State

7. In section 77 (reference of applications to Secretary of State), after subsection (2) shall be inserted –

"(2A) Without prejudice to the generality of subsection (2), a direction under that subsection may require applications for planning permission to be referred to the Secretary of State instead of being dealt with by the local planning authority –

(a) in any case where the permission is required for works of the kind referred to in subsection (1B) of section 55 in consequence of proposals included in an application for an order under section 1 or 3 of the Transport and Works Act 1992; and

(b) in any case where the permission is required for works of the kind referred to in subsection (1C) of section 55.

Appeals

8. (1) In section 78 (right to appeal against planning decisions etc), after subsection (4) shall be inserted –

"(4A) In the case of an appeal which relates to:

(a) a listed building; or

(b) a building that is for the time being subject to a building preservation order under section 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990,

the appellant may include as the ground or one of the grounds of appeal a claim that the building is not of special architectural or historic interest and ought to be removed from any list compiled or approved by the Secretary of State under section 1 of that Act or, as the case may be, should not be included in such a list.

(4B) In the case of an appeal which relates to a monument that is included in a schedule compiled and maintained by the Secretary of State under section 1 of the Ancient Monuments and Archaeological Areas Act 1979, the appellant may include as the ground or one of the grounds of appeal a claim that the monument is not of national importance and ought to be removed from the schedule."

(2) After section 79 shall be inserted –

"*Determination of appeals: supplementary*

79A. (1) In the case of an appeal such as is mentioned in section 78(4A)(a), the Secretary of State may exercise his power under section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to amend any list compiled or approved under that section by removing from it the building to which the appeal relates.

(2) In the case of an appeal such as is mentioned in section 78(4A)(b), the Secretary of State may exercise –

(a) his power under section 1 of that Act to amend the list compiled or approved under that section by including in it the building to which the appeal relates, or

(b) his power under section 3 of that Act to notify the local planning authority that he does not proposes to include that building in that list.

(3) In the case of an appeal such as is mentioned in section 78(4B), the Secretary of State may exercise his power under section 1 of the Ancient Monuments and Archaeological Areas Act 1979 to exclude from the schedule compiled under that section the monument to which the appeal relates."

Revocation and modification of permission

9. (1) At the end of section 97 (power to revoke or modify planning permission) shall be inserted –

"(7) Except as provided in section 99, an order under this section shall not take effect unless it is confirmed by the Secretary of State."

(2) After that section shall be inserted –

"*Revocation or modification of permission: listed buildings, monuments and conservation areas*

97A. (1) If it appears to the local planning authority that it is expedient to revoke or modify any permission granted on an application under this Part to carry out:

(a) any works such as are mentioned in subsection (1B) of section 55 (listed buildings);

(b) any operations such as are mentioned in subsection (1C) of that section (scheduled monuments); or

(c) any works for the demolition of a building in a conservation area that is not a listed building,

the authority may revoke or modify the permission to such an extent as they consider expedient by a provisional order made under this section.

(2) Subsections (2) to (4) of section 97 shall apply to the making of a provisional order under this section as they apply to the making of an order under that section.

(3) A provisional order under this section shall come into force as soon as notice has been served under section 98 on both the owner and occupier of the building.

(4) Such an order shall cease to be in force as soon as the Secretary of State notifies the local planning authority in writing that he does not intend to confirm it; and the authority shall immediately give notice of that decision to all those who were notified of the making of the order."

(3) For subsection (1) of section 98 (procedure for section 97 orders: opposed cases) shall be substituted –

"(1) This section applies to an order made under section 97 and to a provisional order made under section 97A."

(4) In subsection (1)(a) of section 99 (unopposed cases), after the words "section 97" shall be inserted "or a provisional order under section 97A".

(5) In section 100 (revocation etc by the Secretary of State) –

(a) in subsection (1), after the words "section 97" shall be inserted "or a provisional order under section 97A"; and

(b) in subsection (7), after the words "section 97" shall be inserted "or 97A".

(6) After section 107 shall be inserted –

"Compensation for orders under section 97A

107A. (1) Where –

(a) a local planning authority makes a provisional order under section 97A, and

(b) the Secretary of State decides not to confirm it under section 98, or decides to confirm it subject to modifications,

compensation may be payable under this section to a person who, when the order was first served, had an interest in or occupied the land.

(2) If in a case to which this section applies it is shown that as a result of the making of the order such a person –

(a) has incurred expenditure in carrying out work which is rendered abortive; or

(b) has otherwise sustained any loss or damage,

then, on a claim made to the local planning authority within the prescribed time and in the prescribed manner, the authority shall pay that person compensation in respect of that expenditure, loss or damage.

(3) Subsections (2) to (4) of section 107 apply to a claim for compensation under this section as they apply to a claim under that section."

Enforcement

10. (1) In section 173 (contents and effect of enforcement notices), for subsection (12) shall be substituted –

"(12) Where –

(a) an enforcement notice requires steps to be taken which amount to or include development for which planning permission would otherwise be required; and

(b) all the requirements of the notice with regard to those steps have been complied with,

planning permission shall be treated as having been granted by virtue of section 73A in respect of that development.

(2) In section 174 (appeal against enforcement notice), after subsection (2) shall be inserted –

"(2A) In the case of an appeal against a notice which relates to:

(a) a listed building; or

(b) a building that is for the time being subject to a building preservation order under section 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990,

the appellant may include as the ground or one of the grounds of appeal a claim that the building is not of special architectural or historic interest and ought to be removed from any list compiled or approved by the Secretary of State under section 1 of that Act or, as the case may be, should not be included in such a list.

(2B) In the case of an appeal against a notice which relates to a monument that is included in a schedule compiled and maintained by the Secretary of State under section 1 of the Ancient Monuments and Archaeological Areas Act 1979, the appellant may include as the ground or one of the grounds of appeal a claim that the monument is not of national importance and ought to be removed from the schedule.

(2C) In the case of an appeal against a notice which relates to works to a building in a conservation area, the appellant may include as the ground or one of the grounds of appeal a claim that the restoration of the building to the condition in which it was prior to the carrying out of the works, or that the carrying out of the works required by the notice, is not necessary in the interests of the preservation or enhancement of the character and appearance of the area.

(3) After subsection (2A) of section 176 (determination of appeals) shall be inserted –

(2B) In the case of an appeal such as is mentioned in section 174(2A)(a), the Secretary of State may exercise his power under section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to amend any list compiled or approved under that section by removing from it the building to which the appeal relates.

(2) In the case of an appeal such as is mentioned in section 174(2A)(b), the Secretary of State may exercise –

(a) his power under section 1 of that Act to amend the list compiled or approved under that section by including in it the building to which the appeal relates, or

(b) his power under section 3 of that Act to notify the local planning authority that he does not proposes to include that building in that list.

(3) In the case of an appeal such as is mentioned in section 174(2B), the Secretary of State may exercise his power under section 1 of the Ancient Monuments and Archaeological Areas Act 1979 to exclude from the schedule compiled under that section the monument to which the appeal relates."

(4) After section 187B shall be inserted –

"Enforcement by English Heritage

English Heritage to have concurrent enforcement functions

187C. English Heritage shall have the functions of a local planning authority under sections 171C to 181, 183 to 186, 187A and 187B concurrently with that authority in respect of any breach of planning control relating to a listed building or scheduled monument in England, and references to the local planning authority in those provisions shall be construed accordingly."

Advertisements

11. (1) Sections 220 to 223 (advertisements regulations) shall be repealed.

(2) In section 224 (enforcement of control as to advertisements) –

(a) for subsections (1) and (2) shall be substituted –

"(1) In this section and section 225, an unauthorised advertisement, placard or poster means one that is being displayed without planning permission for it having been obtained in response to an application under Part III of this Act or granted by regulations under that Part."

(b) in subsection (3), for the words "Without prejudice to any provisions included in such regulations by virtue of subsection (1) or (2), if any person displays an advertisement in contravention of the regulations" shall be substituted "If any person displays an unauthorised advertisement".

(c) in subsection (5), for the word "consent" shall be substituted "that he had done everything that he could be expected to do to secure its removal".

(3) In subsection (1) of section 225 (power to obliterate placards and posters), for the words after "obliterate any" shall be substituted "unauthorised placard or poster which is being displayed in their area".

Ecclesiastical buildings

12. (1) Before section 318 shall be inserted:

"Exceptions for certain ecclesiastical buildings

317A. (1) Subject to the following provisions of this section, planning permission is not required for the carrying out of development if it affects only the

interior of an ecclesiastical building which is for the time being used for ecclesiastical purposes.

(2) For the purposes of subsection (1) –

(a) a building shall be taken to be used for the time being for ecclesiastical purposes if it would be so used but for the carrying out of the development in question; and

(b) a building used or available for use by a minister of religion wholly or mainly as a residence from which to perform the duties of his office shall be treated as not being an ecclesiastical building.

(3) The Secretary of State may by regulations provide that subsection (1) shall only apply in such cases as may be specified, and such regulations may –

(a) make provision for buildings generally, for descriptions of buildings or for particular buildings;

(b) make different provision for buildings in different areas, for buildings of different religious faiths or denominations or buildings in different uses;

(c) make such provision in relation to part of a building as may be made in relation to a building, and may make different provision for different parts of the same building;

(d) make different provision with respect to works of different descriptions or according to the extent of the works.

(4) Regulations under this section may contain such supplementary and incidental provisions, including consequential adaptations or modifications of the operation of any provision of this Act, or of any instrument made under this Act, as may appear to the Secretary of State appropriate."

(2) In subsection (7) of section 57 (planning permission required for development), after the words "subject to" shall be inserted "the provisions of section 317A (which relate to ecclesiastical buildings) and those of".

PART TWO.

PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990

Meaning of "listed building"

13. (1) In section 1 (listing of buildings of special architectural or historic interest), the words ", and may amend any list so compiled or approved" in subsection (1) and the words "or amending" in subsection (4) shall be omitted.

(2) For subsection (5) of that section shall be substituted –

"(5) In this Act and in the planning Acts, subject to the provisions of this section, "listed building" means –

(a) a building which is for the time being included in a list compiled or approved by the Secretary of State under section 1 (referred to in this section as a "principal listed building"), and

(b) any object or structure –

(i) that is by its nature, location and function ancillary to a principal listed building, and has been so since before the date on which that building was first included in the list, and

(ii) that is one to which within subsection (2) applies.

(6) An object or structure is one to which this subsection applies if –

(a) it is not fixed to a principal listed building but –

(i) is within its curtilage, and has been so since before the date on which it was first included in the list, and

(ii) forms part of the land, and has done so since before 1 July 1948; or

(b) it is fixed either to a principal listed building or to a building that is one to which paragraph (a) applies, and has been continuously so fixed since before the date on which the principal listed building was included in the list.

(7) Each principal listed building shall be identified in the list by means of a description, and shall be assigned a grade.

(8) The description of a building in the list shall be only for the purpose of enabling its identification, and it shall not be assumed that any object, structure or feature mentioned in that description is necessarily itself of special architectural or historic interest or that any object, structure or feature not so mentioned is necessarily not of any such interest.

(9) The Secretary of State may amend any list compiled or approved under this section 1, and such an amendment may consist of:

(a) the inclusion of a building in a list;

(b) the exclusion of a building from a list; or

(c) the amendment of the description identifying a building in a list or of the grade assigned to it.

(10) In considering whether to make any such amendment, the Secretary of State shall take into account the matters mentioned in subsection (3)."

General duty as respects listed buildings

14. After section 6 shall be inserted:

"*General duty as respects listed buildings*

6A. (1) This section applies where any powers under any enactment are exercised with respect to –

(a) a listed building; or

(b) any land that forms part of the setting of a listed building.

(2) In any case to which this section applies, special attention shall be paid to the desirability of preserving and enhancing the building, its setting and any features of special architectural or historic interest which it possesses."

Authorisation of works affecting listed buildings

15. (1) In section 8 (listed building consent) –

(a) in paragraph (a) of subsection (1), for "written consent" shall be substituted "planning permission";

(b) in paragraph (b) of that subsection, and in subsections (2) and (3), for "consent" shall be substituted "permission"; and

(c) subsection (7) shall be omitted.

(2) In subsection (2) of section 9 (offences),

(a) for "under a listed building consent" shall be substituted "that have been authorised by a grant of planning permission"; and

(b) for "consent" in the second place where it occurs shall be substituted "permission".

(3) The following provisions shall be repealed:

(a) sections 10 to 26 (listed building consent);

(b) sections 28 and 30(1)(b) (compensation);

(c) sections 32 to 37 (listed building purchase notices);

(d) sections 38 to 46 (enforcement);

(e) sections 60 and 61 (exceptions for churches and ancient monuments);

(f) sections 62 to 65 (validity of decisions);

(g) sections 66 to 68 (special considerations affecting planning fuctions);

(h) section 83(2)(a), (3) and (4) and 84 (Crown land).

General duty as respects conservation areas

16. (1) For section 71 shall be substituted:

"*General duty as respects conservation areas*

71. (1) This section applies where any powers under any enactment are exercised with respect to any buildings or other land in or in the immediate vicinity of a conservation area.

(2) In any case to which this section applies, special attention shall be paid to the desirability of preserving and enhancing the character and appearance of the relevant area.

(3) The "relevant area" referred to in subsection (2) is –

(a) the conservation area containing the buildings or other land with respect to which the powers referred to in subsection (1) are to be exercised;

(b) the part of that conservation area containing those buildings or that land;

(c) any other conservation area whose character or appearance will be affected by the exercise of those powers; and

(d) any part of any conservation area mentioned in paragraph (c) whose character or appearance will be affected by the exercise of those powers."

(2) Section 73 (publicity for applications affecting conservation areas) shall be repealed.

Authorisation of demolition in conservation areas

17. For sections 74 and 75 (control of demolition in conservation areas) shall be substituted –

"*Control of demolition in conservation areas*

74. (1) `Subject to the following provisions of this Act, no person shall carry out any unauthorised works for the demolition of a building that is at the time of those works in a conservation area.

(2) Works for the demolition of a building in a conservation area are authorised if –

(a) they are carried out after planning permission for them has been obtained in response to an application under Part III of this Act or has been granted by regulations under that Part, or

(b) the works are carried out in accordance with the terms of any such permission and of any conditions attached to it.

(3) If a person contravenes subsection (1), he shall be guilty of an offence, and subsections (2) to (5) of section 9 apply to an offence under this section as they apply to an offence under that section."

PART THREE.

ANCIENT MONUMENTS AND ARCHAEOLOGICAL AREAS ACT 1979

General duty as respects scheduled monuments

18. After section 1A shall be inserted:

"*General duty as respects scheduled monuments*

1B. (1) This section applies where any powers under any enactment are exercised with respect to –

(a) a scheduled monument; or

(b) any land that forms part of the setting of a scheduled monument.

(2) In any case to which this section applies, special attention shall be paid to the desirability of preserving and enhancing the monument, its setting and any features of special historic, architectural traditional, artistic or archaeological interest which it possesses."

Authorisation of works affecting scheduled monuments

19. (1) Section 2 of the Ancient Monuments and Archaeological Areas Act 1979 (control of works affecting scheduled monuments) shall be amended as follows.

(a) in subsection (3), after the word "if" shall be inserted –

"(a) the monument is in England or Wales and

(i) the works are carried out after planning permission for them has been obtained in response to an application under Part III of this Act or has been granted by regulations under that Part; and

(ii) they are carried out in accordance with the terms of any such permission and of any conditions attached to it; or

(b) the monument is in Scotland and

(i) the Secretary of State has granted written consent (referred to in this Act as "scheduled monument consent" for the execution of the works; and

(ii) they are carried out in accordance with the terms of any such consent permission and of any conditions attached to it."

(b) subsections (4) and (5) shall be omitted;

(c) in subsection (6), after the words "works to which", shall be inserted "a planning permission or, as the case may be,"; and for the words "the consent" shall be substituted "it";

(d) for subsections (8) to (11) shall be substituted –

"(8) In proceedings for an offence under this section, it shall be a defence to prove all of the following matters –

(a) that works to the monument were urgently necessary in the interests of safety or health or for the preservation of the monument;

(b) that it was not practicable to secure safety or health or, as the case may be, the preservation of the monument by works affording temporary support or shelter;

(c) that the works carried out were limited to the minimum measures immediately necessary; and

(d) that notice in writing justifying in detail the carrying out of the works was given either to the local planning authority or (in Scotland) to the Secretary of State as soon as reasonably practicable.

(9) Where works to which this section applies are executed without first having been authorised, and –

(a) planning permission is subsequently granted by the local planning authority or the Secretary of State under section 73A of the Town and Country Planning Act 1990, or

(b) scheduled monument consent is subsequently granted by the Secretary of State under section 2A of this Act,

that grant of permission or consent shall not effect the liability of any person to be prosecuted for an offence under this section.

(10) A person guilty of an offence under this section shall be liable –

(a) on summary conviction or, in Scotland, on conviction before a court of summary jurisdiction, to imprisonment for a term not exceeding six months or a fine not exceeding £20,000 or both; or

(b) on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

(11) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or which appears likely to accrue to him in consequence of the offence, or which at the time the offence was committed appeared likely to accrue to him in consequence of it."

(2) After section 2 of that Act shall be inserted –

"*Scheduled monument consent*

2A. (1) Scheduled monument consent may be granted either unconditionally or subject to conditions.

(2) Without prejudice to the generality of subsection (1), conditions attached to a scheduled monument consent may include

(a) conditions with respect to the manner in which or the persons by whom the works or any of the works are to be exercised.; and

(b) a condition requiring that the Secretary of State or a person authorised by him be afforded an opportunity, before any works authorised by the permission are begun, to examine the monument and its site and carry out such excavations as appear to be desirable for the purposes of archaeological excavation.

(3) Part I of Schedule 1 to this Act shall have effect with respect to applications for, and the effect of, scheduled monument consent.

(4) This section, sections 3 and 4, 7 to 9 and 27, and Schedule 1 apply only in Scotland."

(3) The following provisions of that Act shall be omitted –

(a) in section 3, the second sentence of subsections (1) and (3);

(b) in section 4, the second sentence of subsection (3);

(c) in section 7, the words "or (where the monument is situated in England, the Commission" in subsection (1);

(d) in section 8, paragraphs (a) and (c) of subsection (2A), the words "or (as the case may be) has been repaid to the Commission or secured to their satisfaction", and subsection (6);

(e) in section 9, the words "or (where the monument in question is situated in England, the Commission)";

(f) in section 27, the words "the rules set out in section 5 of the Land Compensation Act 1961 or, in relation to land in Scotland,"; and

(g) in Schedule 1, paragraph 2A, and sub-paragraphs 3(3)(c), 4(1), 5(1A), and 9(1),(2).

Areas of archaeological importance

20. Part II of and Schedule 2 to the Ancient Monuments and Archaeological Areas Act 1979 shall be repealed.

ANNEX TWO

PRINCIPAL AMENDMENTS TO SECONDARY LEGISLATION

Ancient Monuments (Applications for Scheduled Monument Consent) Regulations 1981 (SI 1301)

Cancelled.

Areas of Archaeological Importance (Forms of Notice etc) Regulations 1984 (SI 1286)

Cancelled

Town and Country Planning (Applications) Regulations 1988 (SI 1812)

Cancelled (see below).

Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989 (SI 193)

Amended to exclude applications relating to minor works to listed buildings and scheduled monuments.

Planning (Listed Buildings and Conservation Areas) Regulations 1990 (SI 1519)

Repealed except for regulations 1, 2 and 14 and Sched 4 (notices relating to listing); also 1990 SI 1147 (Welsh forms).

Ancient Monuments (Claims for Compensation) Regulations 1991 (SIs 2512 and 2647)

Amended to remove references to sections 7 and 9 of the 1979 Act

Town and Country Planning (Control of Advertisements) Regulations 1992 (SI 666; also 1994 / 2351, 1996 / 396, 1996 / 1810, 1999/1810)

Replaced by new Regulations equivalent to the following current provisions:

- regulations 1, 2, 20, 23, 24, 28
- regulation 3 and Sched 2 (amended to refer to planning permission not being required, by section 55(5)).
- regulation 7 and Sched 3 (amended to refer to class of advertisements permitted by regulations under section 59),

- regulation 8, and Pt IV of Sched 4 (amended to refer to section discontinuance notices under 61A of the 1990 Act), and
- Sched 1.

Transport and Works Applications (Listed Buildings [etc] Procedure Regulations 1992 (SI 3138)

Replaced by new regulations referring to planning permission rather than listed building consent, conservation area consent and scheduled monument consent.

Town and Country Planning (Inquiries Procedure) Rules 1991 (SIs 1903, 2038, 2039)

Amended to remove references to listed building and conservation area appeals and enforcement notices. Conflated into one set of Rules.

Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994 (SI 1771)

Replaced by new regulations under section 317A, referring to planning permission rather than listed building etc consent.

Ancient Monuments (Class Consents) Order 1994 (SI 1381)

Cancelled (see below).

Value Added Tax (Protected Buildings) Order 1995 (SI 283)

Definition of "approved alterations" in note (6) amended to refer to planning permission.

Town and Country Planning (General Permitted Development) Order 1995 (SI 418; also 1996 / 528, 1998 / 462)

Replaced by new regulations under section 59; incorporating new classes of permitted development from ancient monuments class consents order 1994 (see above), and omitting Part 31 (demolition).

Town and Country Planning (General Development Procedure) Order 1995 (SI 419)

Replaced by new regulations under section 59; also incorporating existing Applications Regulations 1988, and any still relevant provisions of listed buildings regulations 1990 and scheduled monument consent regulations 1981, as well as special notification requirements.

ANNEX THREE

PRINCIPAL AMENDMENTS TO DEPARTMENTAL GUIDANCE

DOE 5/92 (Town and Country Planning (Control of Advertisements Regulations 1992; also 15/94)

Updated

DOE 20/92 (DNH 1/92) (Responsibility for Conservation Casework)

Amended

DOE 9/95 (General Development Order consolidation)

Cancelled

DOE 10/95 (Planning Controls over Demolition.

Cancelled

DETR 14/97 (Planning and the Historic Environment – Notification and Directions)

Cancelled

PPG 15 (Planning and the Historic Environment (1994))

Replaced (along with 14/97), to reflect new system

PPG 16 (Archaeology and Planning (1990)

Updated, to reflect new system

PPG 19 (Outdoor Advertisement Control)

Updated, to reflect new system

New Circular

TCP (Planning Applications) Regulations

New Circular

TCP (Permitted Development) Regulations