

# **ENTERPRISE AND REGULATORY REFORM ACT 2013**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 5: Reduction of Legislative Burdens**

##### **Heritage planning etc.**

##### *Section 63 and Schedule 17: Heritage planning regulation*

##### **Conservation area consent in England**

430. Currently, certain buildings in a conservation area must not be demolished without conservation area consent from the local planning authority. Under Schedule 17, the requirement to have such consent would cease to apply to those buildings situated in England. Instead of having a separate system of conservation area consent, proposals to demolish certain buildings in a conservation area would be considered by the local planning authority as part of the application for planning permission.
431. Paragraph 12 of this Schedule amends section 74 of the P(LBCA)A 1990 to remove the system of conservation area consent as it applies to buildings in conservation areas in England. Planning permission will instead be required under the TCPA 1990. The TCPA 1990 already provides that demolition of buildings requires planning permission under Part 3 of that Act (see section 55), so it is not necessary to make changes to the TCPA 1990 to apply the planning regime to the demolition of buildings in conservation areas. It will be necessary however to amend the Town and Country Planning (General Permitted Development) Order 1995 (“GPDO 1995”) which currently provides that the demolition of a building is, subject to certain conditions, permitted development. The GPDO 1995 will be amended by secondary legislation and, in effect, the amendments will provide that the demolition of certain buildings in a conservation area in England is not permitted development and, therefore, requires planning permission.
432. Paragraphs 3 to 6 of this Schedule amend the TCPA 1990 so that the planning regime offers the same level of protection as the current system of conservation area consent. Paragraph 3 amends section 108 of the TCPA 1990 so that the compensation provisions that apply to the withdrawal of permitted development rights do not apply to development that would previously have required conservation area consent. Paragraph 4 amends section 171B of the TCPA 1990 to provide that there is no time limit on when enforcement action may be taken in relation to a breach of planning control with respect to “relevant demolition”, that is the demolition of certain buildings in a conservation area as defined in section 196D(3). Paragraph 5 amends section 174 of the TCPA 1990 to insert a new ground of appeal against an enforcement notice. This replicates the ground of appeal currently in section 39(1)(d) of the P(LBCA)A 1990 in relation to listed building enforcement notices (so far as relevant to the total demolition of a building). This reflects the defence to the new offence in section 196D (described below) except that it is not necessary under section 174 for the person

appealing the enforcement notice to prove that they notified the local planning authority of the relevant demolition, unlike in section 196D(4).

433. Paragraph 6 inserts new section 196D into the TCPA 1990 to create an offence of failing to obtain planning permission for the demolition of certain buildings in a conservation area in England. Where planning permission is obtained for such demolition, it is also an offence to fail to comply with any condition or limitation subject to which the permission was granted. The effect of 196D(3)(b) is that the offences do not apply to listed buildings, certain ecclesiastical buildings being used for ecclesiastical purposes, scheduled monuments (within the meaning of the Ancient Monuments and Archaeological Areas Act 1979) and other buildings described in a direction of the Secretary of State under section 75 of the P(LBCA)A 1990. These buildings are not currently subject to the requirement to obtain conservation area consent. In each case these buildings are either protected by other procedures or are trivial and do not justify additional control.
434. It would be a defence for a person accused of an offence under new section 196D to prove that:
- a) the demolition was urgently necessary in the interests of safety or health;
  - b) it was not practicable to secure safety or health by works of repair or works for affording temporary support or shelter;
  - c) the demolition was the minimum measure necessary; and
  - d) notice in writing of the demolition was given to the local planning authority as soon as reasonably practicable.
435. This defence replicates the defence to unauthorised works affecting a listed building (section 9(3)(a) to (d) of the P(LBCA)A 1990) but modifies the defence so it is relevant to unauthorised demolition in a conservation area. A person guilty of an offence under section 196D is liable to the penalties set out in section 196D(5).
436. Paragraph 1 of this Schedule provides English Heritage with equivalent powers to those that it currently has in relation to conservation area consent under P(LBCA)A 1990. This is achieved by amending section 33 of the National Heritage Act 1983 to provide English Heritage (referred to in that Act as the “Commission”) with the power to bring a prosecution for an offence under section 196D of the TCPA 1990 and to apply to the court for an injunction under section 187B of that Act if it considers it necessary or expedient in relation to an actual or apprehended unauthorised demolition.

### **Listing of buildings of special architectural or historic interest in England**

437. Paragraph 8 of this Schedule amends section 1 of the P(LBCA)A 1990, which deals with the listing of buildings of special architectural or historic interest. Section 1(5) of the P(LBCA)A 1990 provides that a listed building includes any object or structure fixed to the building or within the curtilage of the building, which although not fixed to the building, forms part of the land and has done so since before 1 July 1948. Paragraph 8 of this Schedule inserts new subsection (5A) into section 1 of the P(LBCA)A 1990 which allows the list, for buildings situated in England, to provide that such objects or structures are not to be treated as part of the listed building. It also allows the list, again for buildings situated in England, to state definitively that a particular part or feature of the building is not of special architectural or historic interest.

### **Certificates of immunity from listing**

438. Paragraph 9 of this Schedule amends section 6 of the P(LBCA)A 1990. Section 6 of the P(LBCA)A 1990 currently provides a system of certificates of immunity from listing (“COIs”). A COI is a legal guarantee, in England issued by the Secretary of State, that a building will not be listed for 5 years from the date of issue. COIs are a useful tool where

*These notes refer to the Enterprise and Regulatory Reform Act  
2013 (c.24) which received Royal Assent on 25 April 2013*

development is intended that would impact on a building that may be eligible for listing. They give certainty to developers and owners by removing the risk of a building being listed at a late stage in the preparation of planning proposals, thereby causing delay or even the abandonment of redevelopment schemes. Currently a person can apply for a COI for a building only where an application has been made for planning permission, or planning permission has been granted, for any development involving the alteration, extension or demolition of the building. Paragraph 9 of this Schedule amends section 6 to remove that restriction so that a COI can be applied for at any time for a building situated in England.