EVEBRIEF

Legal & Parliamentary

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DEVOLVED POWERS

Devolution, be it local or national, seems to be the 'name of the game' in this edition. Our first few items all relate in some way to the Localism Act 2011, much of which comes into effect from 01 April this year. Statutory Instruments are used more and more it seems to provide the detail to any major Act of Parliament. Following devolution Scotland, Northern Ireland and Wales all issue their own versions and whilst Scotland has always had its own legal system an increasing amount of legislation only applies in one part of the "United" Kingdom – and this is only likely to increase and no doubt in some cases cause anomalies in border areas.

At item 23 we report on the London Mayoral Community Infrastructure Levy, another off-shoot of Localism, which gives local authorities a new source of revenue, as the final charges have now been agreed and come into place on 01 April 2012.

At item 24 we report on a 2005 List rating case from the Upper Tribunal. The Valuation Officer argued that the lease provisions – which restricted serviced office use to no more than 30% of the net internal area – were so far removed from the 'hypothetical tenancy' that the rent was of no assistance. The Tribunal decided that the assessment had to reflect the actual use to which the property was put, in accordance with the terms of the lease, and that it did not amount to full office use; the rent payable was therefore better evidence than the tone of values for offices.

Steve Hile
Editor

GERALDEVE

LOCALISM

01 Statutory Instrument

SI 2012/628 The Localism Act 2011 (Commencement No 4 and Transitional, Transitory and Saving Provisions) Order 2012

This order commences various provisions of the Localism Act 2011.

Article 5 brings into force on 01 April 2012: s46 and Part 7 of Schedule 25 (repeal of duty relating to petitions) and s69 and Part 10 of Schedule 25 (non-domestic rates: discretionary relief).

Article 7 brings into force on 1st April 2012: sections 128 to 142 and Schedule 13 (nationally significant infrastructure projects) and s237 and Parts 20 and 21 of Schedule 25 (repeals relating to the Infrastructure Planning Commission and nationally significant infrastructure projects).

Article 8 brings into force on 6th April 2012: s116 and Schedules 9, 10 and 11, except for the purposes of holding a neighbourhood planning referendum; s121 and Schedule 12 (neighbourhood planning consequential amendments); sections 123 to 127 (enforcement); s184 (tenancy deposit scheme); s232 (compensation for compulsory acquisition); and Parts 18, 19, 30 and 34 of Schedule 25 and s237 (partially) (repeals).

http://www.legislation.gov.uk/uksi/2012/628/contents/made

02 Statutory Instrument

SI 2012/635 The Localism Act 2011 (Infrastructure Planning) (Consequential Amendments) Regulations 2012

These regulations make amendments consequential to the provisions of the Localism Act 2011. These amendments relate to the abolition of the Infrastructure Planning Commission and transfer its property, rights and liabilities to the Sec of State and reflect both the transfer of the functions of the Infrastructure Planning Commission to the Sec of State and the other amendments made to the Planning Act 2008.

http://www.legislation.gov.uk/uksi/2012/635/contents/made

03 Statutory Instrument

SI 2012/641 The Localism Act 2011 (Regulation of Social Housing) (Consequential Provisions) Order 2012

This order, which comes into effect on 01.04.12, contains amendments to provisions in secondary legislation that refer to the Office for Tenants and Social Landlords and the Regulator of Social Housing. These amendments are in addition to those in the Localism Act 2011 and are consequential on the coming into force of Part 7 of that Act, which makes provision for the abolition of the Office for Tenants and Social Landlords and the transfer of its functions to the Homes and Communities Agency acting through its Regulation Committee. It revokes references to the Office of Tenants and Social Landlords in secondary legislation replacing them with references to the Homes and Communities Agency where appropriate.

http://www.legislation.gov.uk/uksi/2012/641/contents/made

04 Statutory Instrument

SI 2012/666 The Localism Act 2011 (Housing and Regeneration Functions in Greater London) (Consequential, Transitory, Transitional and Saving Provisions) Order 2012

Section 191(1) of the Localism Act 2011 abolishes the London Development Agency ("the Agency") from the date s191(1) is brought into force, namely 31 March 2012. The Act also makes amendments to, and repeals, primary legislation in consequence of the Agency's abolition.

This order also makes transitory, transitional and saving provisions to ensure continuity between things done by the Agency prior to 31 March and the assumption by the Greater London Authority of its new functions.

http://www.legislation.gov.uk/uksi/2012/666/contents/made

05 Statutory Instrument

SI2012/702 The Localism Act 2011 (Housing and Regeneration Functions in Greater London) (Consequential, Transitional and Saving Provisions) (No 2) Order 2012

Section 189 of the Localism Act 2011 ("the Act"), which is brought into force on 01 April 2012 ("the commencement date"), introduces a definition of England in respect of the Homes and Communities Agency's objects which excludes Greater London. It also makes other amendments to Part 1 of the Housing and Regeneration Act 2008 to exclude Greater London from references to England. The purpose of these changes is to facilitate the transfer of the functions of the Agency, in so far as they relate to Greater London, to the Greater London Authority.

http://www.legislation.gov.uk/uksi/2012/702/contents/made

LANDLORD & TENANT

06 Court of Appeal

Breach of covenant – Exoneration clause

* NEWMAN V FRAMEWOOD MANOR MANAGEMENT CO LTD (2012) PLSCS 36 – Decision given 21.02.12

Facts: N held a long lease of an apartment in a development whose facilities included a swimming pool and gym. The landlord FMM was a company of which the apartment lessees were directors. N brought claims against the respondent in respect of various alleged breaches of the lease covenants, including the blocking of a door to the swimming pool complex, the removal of a jacuzzi, which had been replaced by a sauna, tree root damage to tarmac on the drive and a failure to repair or replace gym equipment. N sought an order for specific performance of the respondent's covenants, requiring it to reinstate the door and remedy the other matters complained of, plus damages for loss of amenity.

FMM relied on an exoneration clause in the lease, to the effect that it would not be liable for any "damage" suffered by appellant through "the neglect or fault or misconduct of any servant agent contractor or workman… employed by… the Company" save to the extent that such liability was covered by its insurance. FMM had no such insurance. In the county court, the judge held that FMM could rely on the exoneration clause since all the relevant decisions had been taken by its management committee, which was an "agent" of the respondent within the meaning of that clause. N appealed.

Point of dispute: Whether N's claim for damages should be allowed. Her claim for specific performance in respect of the door was not pursued, in light of an undertaking by the respondent to unblock it.

Held: The appeal was allowed. On the clear wording of the exoneration clause, that clause did not apply to breaches of the respondent's repairing covenants but applied only where the respondent company was sued in tort on the basis of vicarious liability. The respondent had expressly undertaken certain repairing covenants and it would be odd if, under later provisions of the lease, it was exonerated from liability for breaching those covenants unless it had taken out insurance. Moreover, the word "damage" as used in that clause should be given its narrower meaning, such that it applied only to claims for physical damage and did not include claims for loss of amenity. Damages of £1,000 were awarded for loss of amenity caused by the blocking up of the internal door to the swimming pool. In relation to the jacuzzi, specific performance was refused on the ground that the high cost of installing a new one was excessive and disproportionate when compared to the loss of amenity involved but damages of £2,500 were awarded for loss of amenity.

07 Administrative Court

Enforcement notice – whether site inspection in appellant's absence giving rise to apparent bias and real risk of prejudice

* R (ON THE APPLICATION OF TAIT) V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT (2012) PLSCS 37 – decision given 17.02.12

Facts: T had carried out development works to the exterior of her property which resulted in the issue of an enforcement notice by the local planning authority alleging a breach of planning control. T appealed against the notice and received a letter from the planning inspector informing her that he would undertake an accompanied site visit, with representatives of both parties, on a specified date. The letter stated that, if either party failed to attend, the inspector would determine the most suitable course of action. That might result in an unaccompanied site visit or the visit being aborted. T said that she had notified the inspector that she would not be available on the specified date and had understood that the site visit would not go ahead in her absence. In fact, the inspector decided to carry out an external inspection in her absence but in the presence of a council representative and subsequently upheld the enforcement notice, subject to a number of variations.

Points of dispute: Whether as T contended: (i) the inspector should not have gone ahead with the site visit when she had said she would not be available to attend; (ii) she had been denied the opportunity of making representations to the inspector during the site visit; (iii) an internal inspection of the property should have been carried out; (iv) the inspector had showed bias towards the appellant, by giving the appearance of being angry about her absence; and (v) the site visit should not have continued in the presence of a council representative when she was absent.

Held: The appeal was allowed

(i) T could not have believed the visit would not take place on the specified date since the letter notifying her of the site visit had expressly warned her that the visit might proceed in her absence if she failed to attend.

(ii) Her contention that she had been denied the opportunity to make representations was wholly misconceived since a site visit was not an opportunity to make representations.

(iii) It was for the inspector to decide whether an internal inspection was required. His decision could only be challenged on the ground that he had failed to exercise his discretion properly. In the present case the works complained of were all external, the matters raised could be dealt with by an external inspection and there was nothing to suggest that the inspector had exercised his discretion incorrectly.

(iv) There was no basis on which the court could conclude that the inspector had been biased since there was no evidence to suggest that he had behaved improperly when notified of T's absence.

(v) However, the clear practice on a site visit was that both parties were represented, as was reflected in the guidance published by the planning inspectorate on its website.

PLANNING

08 Court of Appeal

Material considerations

** R (ON THE APPLICATION OF HINDS) V BLACKPOOL BOROUGH COUNCIL
(2012) PLSCS 41 – Decision given 21.02.12

Facts: In March 2010, BBC resolved to approve an application by H for planning permission for a residential development of up to 584 houses. The scheme conflicted with a local plan policy against residential development in that area but BBC gave greater weight to the regional spatial strategy (RSS), which aimed to secure a five-year supply of building land to meet the shortfall of housing in the region, and to emerging planning policy for Blackpool that favoured development in the area. Planning permission was granted in July 2010, but in May 2010, all local planning authorities were informed by letter of the Government's intention to abolish RSSs as part of its move towards localism. The Sec of State's subsequent purported revocation of all RSSs was quashed in the Cala Homes case on the ground that it was unlawful and ineffective under the existing planning legislation; the Government's continued intention to revoke RSSs by new legislation and its advice to LPAs that they should still have regard in planning decisions to the advice in the May letter was however held to be lawful. H sought judicial review of the grant of planning permission and appealed against the decision in those proceedings.

Point of dispute: Whether BBC should have referred the planning application back to its planning committee in light of the May 2010 letter, which was a material consideration to be taken into account in its decision. The judge in the judicial review hearing had held that the respondents' decision was based on local considerations that would survive the abolition of RSSs and that, accordingly, the May 2010 letter was not material or its materiality was de minimis.

Held: The appeal was dismissed. BBC had not failed to have regard to a material consideration within the meaning of s70(2) Town and Country Planning Act 1990. The change of planning policy represented by the intention to abolish RSSs was not material on the facts of the case in the sense that it could have affected the decision one way or another. So long as the RSS continued to be on the statute book, an LPA would still have to pay regard to it. Although it was not safe to assume that there were no circumstances in which LPAs could ever give any weight to the proposed abolition of RSSs, they would be advised to give clear and cogent reasons why they gave weight to that factor in a particular case.

09 Court of appeal

Whether planning permissions to be taken into account when whether noise from motor sports constituting private nuisance – whether permissions changing character of locality

** LAWRENCE V COVENTRY (T/A RDC PROMOTIONS)
(2012) PLSCS 46 – Decision given 27.02.12

Facts: C organised motor sports events at a stadium and track located on former farmland just outside a village with the benefit of personal planning permissions and a lawful use certificate. In 2006, L purchased a house in the village and subsequently complained to the district council about the noise generated by motor sports at the site. In 2007, the council served abatement notices on C under s80 of the Environmental Protection Act 1990, resulting in works being carried out to reduce the noise escaping from the site. The council was satisfied with those works and took no further action on L's subsequent complaints. L sought an injunction and damages on the ground that the noise generated by the motor sports amounted to a private nuisance. In the court below, the judge held that the noise constituted a nuisance to the occupiers of L's property, for which C were responsible, and awarded damages of £20,850 and granted injunctive relief against the appellants, restricting the times at which noise could be generated and the permissible levels of such noise. C appealed.

Point of dispute: Whether, as contended by C, the planning permissions had changed the nature of the locality and whether this should have been taken into account when assessing whether the noise constituted a nuisance. C also submitted that, if it was a nuisance, they had acquired a right by prescription to cause it.

Held: The appeal was allowed. Although a planning authority could not, by granting planning permission, authorise a nuisance, the grant of permission followed by its implementation might have the effect of changing the character of a locality, with consequential effects on private rights. It would be a question of fact in each case whether the character of the locality had been changed in that way. If it had, then whether particular activities in that locality constituted a nuisance would have to be decided against the background of its changed character. When L acquired their property, various forms of motor sports had been taking place at C's site for 13 years and these noisy activities were therefore an established and indeed dominant feature of the locality. The noise of motor sports emanating from the site was an established part of the character of the locality and could not be left out of account when considering the matters that L claimed to constitute a nuisance. The judge's finding of private nuisance was based on an error of law and could not stand.

10 Administrative Court

Challenge to adoption of Joint Core Strategy – whether the District Council gave adequate reasons for selecting reasonable alternatives.

* HEARD V BROADLAND DISTRICT COUNCIL
(2012) PLSCS 51 – Decision given 24.02.12

Facts: H challenged the adoption by BDC of its Joint Core Strategy (JCS), under s113, Planning and Compulsory Purchase Act 2004, on the grounds that the JCS was not within BDC's powers or that there had been a procedural failing which had prejudiced H. The JCS had to be subject to a strategic environmental assessment by virtue of Council Directive 2001/42.

Point of dispute: Whether, as contended by H, the JCS was unlawful on the grounds that:

i) BDC did not comply with its obligation to explain the reasons for selecting certain reasonable alternatives to the JCS housing strategy and examine them in the same depth as the preferred option;

ii) the strategic environmental assessment had failed to assess the impact of a proposed new highway or alternatives to it.

BDC argued that even if the challenge were to succeed the court should exercise its discretion under s113 as the claimant had not been prejudiced by any procedural failings, his preferred alternative option was unrealistic and BDC had complied substantially with Directive 2001/42.

Held: The claim was allowed. Whilst the preferred option for the housing strategy, and a number of alternatives, had been properly assessed it was not clear how BDC had answered H's contention that reasons for selecting alternatives at any particular stage had not been clearly given. The aim of Directive 2001/42 was that there should be an equal examination of the alternatives and the preferred option. The process required a fair and public analysis of what the planning authority regarded as reasonable alternatives but, in this case, there was an absence of reasons for not selecting any alternatives as reasonable. The planning and promotion of the new highway was not within the remit of the JCS and was outside BDC's legal competence; in any case, it was not the function of the JCS to remedy deficiencies in an earlier environmental assessment such as that to which the proposed road had already been subject. Accordingly, that ground of challenge failed. The court was satisfied that it should not exercise its discretion against the grant of any relief from the challenge; there had been a series of failings in relation to the obligations of Directive 2001/42 and it could not therefore be said that there had been substantial compliance with it. BDC was ordered to carry out a strategic environmental assessment which would include consideration of possible alternatives to the existing housing plan.

11 Administrative Court

Housing development – Planning permission – Decision letter – Claimant appealing against refusal of planning permission

* FOX STRATEGIC LAND AND PROPERTY LTD V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT (2012) PLSCS 56 – Decision given 02.03.12

Facts: FSLP applied under s288, Town and Country Planning Act 1990, for an order quashing the Sec of State's decision letter refusing planning permission, on appeal, for development of 280 dwellings on agricultural land. The Sec of State had concluded that, although the development would accord with the regional spatial strategy and PPS3 in helping to meet the housing, and affordable housing shortfall in the area and achieving a good mix of housing on a sustainable site, these benefits were outweighed by conflict with policies relating to settlement boundaries, restriction on development in the countryside and the loss of "best and most versatile" agricultural land unless absolutely unavoidable. The Sec of State had however granted permission on appeal to another developer, R, for 269 dwellings on another greenfield site in the area but had refused to consider the two appeals together and decided that his decision on R's appeal carried no weight in respect of FSLP's appeal.

Point of dispute: Whether the Sec of State had erred in law in reaching conclusions in the decision letter on R's appeal which could not be reconciled with his FSLP decision letter without giving reasons, and whether he had misunderstood the provisions of PPS7 relating to loss of agricultural land.

Held: The decision letter should be quashed. The Sec of State could not, without clear reasons, determine one appeal in a way which was contradictory to the other; further, if he had run both appeals together the risk of such problems arising again would be much reduced. In applying PPS3 it was necessary, if there were a shortfall in housing land supply, to consider planning applications for housing favourably having regard to the policies in PPS3 including the consideration in paragraph 69. Furthermore the Sec of State's conclusion on the application of PPS7 did not fall within the range of reasonable interpretations of the policy – he had misunderstood his own policy and failed to apply it without giving any reasons for departing from it.

12 Upper Tribunal: Lands Chamber

Blight notice – whether efforts to sell required where CPO made

** HARRIS V HIGHWAYS AGENCY (2012) PLSCS 44 – Decision given 06.02.12

Facts: H was the freehold owner of two adjoining units on an industrial park plus land to the rear. HA made a draft compulsory purchase order (CPO) under which it proposed to acquire nearly one third of H's land. In May 2010, H served a blight notice on the respondent, under s150(1) Town and Country Planning Act 1990, requiring it to purchase the property. HA served a counter notice on the grounds that the conditions in s150(1)(b) and (c) of the 1990 Act were not met. These required H to show that reasonable endeavours were made by H to sell his interest but that, in consequence of the blight, he had been unable to do so except at a price substantially lower than might otherwise reasonably have been expected. The matter was referred to the Upper Tribunal for determination and H contended that he did not have to fulfil the s150(1) conditions since the land fell within para 22 of Schedule 13 to the Act, which applied where there was a CPO in force providing for the acquisition of a right over the land. As extended by the notes thereto, para 22 also covered land in respect of which: (a) a CPO had been prepared in draft by a minister; or (b) a notice had been published under para 3(1)(a) of Schedule 1 to the Acquisition of Land Act 1981 or any corresponding enactment applicable to it. HA contended that, as the CPO had not been confirmed, the land could fall within para 22 only by reason of the notes, and that, where that was so, the s150(1) conditions still had to be met.

Point of dispute: Whether the requirements of s150 had to be fulfilled.

Held: Section 150(1)(b) required H to have made reasonable endeavours to sell unless the land fell within para 22 of Schedule 13, disregarding the notes. Without the notes, para 22 did not apply since the CPO had not been confirmed, notwithstanding that it remained in existence in draft form. Therefore H had to discharge the burden of proof that he had made reasonable endeavours to sell. No evidence had been produced to support the contention that the premises or the business had been 'blighted'. Accordingly, the objections in HA's counter notice were well founded and the blight notice was not valid or effective.

13 Statutory Instrument

SI 2012/535 The Urban Development Corporations (Planning Functions) Order 2012

Article 2 of this order revokes the following planning functions orders:

(a) the Thurrock Development Corporation (Planning Functions) Order 2005;

(b) the West Northamptonshire Development Corporation (Planning Functions) Order 2006; and

(c) the West Northamptonshire Development Corporation (Planning Functions) (Amendment) Order 2011.

The effect of revoking the orders is that the development corporations cease to be the local planning authorities, in relation to the kinds of development and for the purposes specified in those orders, for their areas. The planning functions concerned revert to the local planning authorities which, but for the orders, would be the local planning authorities.

The order makes transitional provisions in connection with the transfer of planning functions and planning applications from those urban development corporations to local authorities and the payment of compensation (articles 3, 4 and 5).

http://www.legislation.gov.uk/uksi/2012/535/contents/made

14 Statutory instrument

SI 2012/601 The Planning Act 2008 (Commencement No 2) (England) Order 2012

This order, which comes in to effect on 06.04.12, brings into force in relation to England the provisions of ss192, 193 and 238 and Schedules 8 and 13 of the 2008 Act, which relate to tree preservation orders.

http://www.legislation.gov.uk/uksi/2012/601/contents/made

15 Statutory instrument

SI 2012/605 The Town and Country Planning (Tree Preservation) (England) Regulations 2012

These regulations, which came into effect on 28.02.12, apply only in relation to England and substantially revoke and replace the Town and Country Planning (Trees) Regulations 1999 and also revoke the Town and Country Planning (Trees) (Amendments) (England) Regulations 2008 and the Amendments No 2 Regulations 2008. They prescribe the form of, and procedure for, making, varying and revoking tree preservation orders. They also set out prohibited activities in relation to protected trees and procedures for applications for consent and making and determination of appeals, and make provision for compensation for loss or damage incurred as a consequence of a refusal to grant consent.

http://www.legislation.gov.uk/uksi/2012/605/contents/made

16 Statutory Instrument

SI 2012/630 The Environmental Permitting (England and Wales) Amendment (Regulations 2012)

These regulations come into force on 06 April 2012 and amend the Environmental Permitting (England and Wales) Regulations 2010 relating to various waste operations.

http://www.legislation.gov.uk/uksi/2012/630/contents/made

17 Statutory Instrument

SI 2012/636 The Town and Country Planning (Development Management Procedure) (England) (Amendment) Order 2012

The Town and Country Planning (Development Management Procedure) (England) Order 2010 (SI 2010/2184) ("the DMPO") specifies procedures connected with planning applications and other matters in England. This Order amends the DMPO wef 06.04.12.

Article 3 deletes the reference to regional development agencies from the list of consultees on local development and substitutes Natural England in place of the Sec of State for the Environment, Food and Rural Affairs in relation to the loss of agricultural land.

Neighbourhood development orders ("NDOs") under s61E of the Town and Country Planning Act 1990 ("the 1990 Act") grant planning permission for the development or class of development specified in the order. Article 4 of this Order inserts new article 37A into the DMPO. This provides that matters relating to NDOs (including those known as 'community right to build orders': see Schedule 4C to the 1990 Act) must be kept on the planning register maintained by the local planning authority in relation to their area. It introduces a new Part 4 of the register which must be in two sections: one for draft NDOs and one for NDOs that have been made.

http://www.legislation.gov.uk/uksi/2012/636/contents/made

18 Statutory Instrument

SI 2012/637 The Neighbourhood Planning (General) Regulations 2012

The Localism Act 2011 provided a new statutory regime for neighbourhood planning. These Regulations make provision in relation to that new regime.

Part 2 of the Regulations makes provision in relation to the procedure for designating a neighbourhood area, including the content of the application and what the local planning authority must do to publicise such an application. Part 3 makes provision in relation to the procedure for designating an organisation or body as a neighbourhood forum, which authorises them to act in relation to the related neighbourhood area. Part 5 makes provision in relation to procedure for making neighbourhood development plans. These are plans which the parish council or neighbourhood forum propose and, following a referendum, the local planning authority makes. Part 6 makes provision in relation to neighbourhood development orders (and community right to build orders, which are a particular type of neighbourhood development order). These orders grant planning permission in the area, they are proposed by the parish council or neighbourhood forum and, following a referendum, are made by the local planning authority. Part 7 makes provision in relation to the exclusion of enfranchisement rights in relation to particular properties or types of properties in an area covered by a community right to build order.

http://www.legislation.gov.uk/uksi/2012/637/contents/made

19 Consultation

Planning for Sustainability – The presumption in favour of sustainable development

The Welsh assembly is seeking views on our proposed changes to national planning policy to strengthen and clarify the presumption in favour of sustainable development.

Start of consultation: 02/03/2012

End of consultation: 25/05/2012

http://new.wales.gov.uk/consultations/planning/planforsusconsultation/?lang=en

20 Statistics

Code for Sustainable Homes and Energy Performance of Buildings: Cumulative and Quarterly Data up to end of December 2011

The latest official statistics on the Code for Sustainable Homes and Average Energy Efficiency (SAP ratings) were released on 22 February 2012.

Statistics in this release relating to the Code for Sustainable Homes show the number of dwellings that have been certified to the standards set out in the Code Technical Guide.

http://www.communities.gov.uk/publications/corporate/statistics/codesustainablesapq42011

21 Policy Guidance

Land for Industry and Transport SPG

This draft document sets out proposed guidance to supplement the policies in the 2011 London Plan (LP) relating to land for industrial type activities and transport. The SPG provides advice on how to implement these policies, in particular LP Policy 2.17 on Strategic Industrial Locations, Policy 4.4 on Managing Industrial Land and Premises, and Policy 6.2 on Providing Public Transport Capacity and Safeguarding Land for Transport.

http://www.london.gov.uk/publication/land-industry-and-transport-spg

22 Guidance on Planning Propriety Issues

Following the commencement of the predetermination provision in the Localism Act 2011, an updated version of the planning propriety guidance has been published. This guidance relates to the Sec of State's planning decision making functions. The guidance aims to ensure that decisions are taken properly. This replaces the Guidance on Planning Propriety Issues published on 6 October 2008.

http://www.communities.gov.uk/publications/planningandbuilding/guidanceplanningpropriety

23 Consultation

Neighbourhood planning in London

The Government wants the Localism Act to give people genuine power at a local level to shape how their neighbourhoods develop, beyond just responding to consultations on planning applications. This is supported by the GLA Planning and Housing Committee in its' report "Beyond consultation" which includes evidence from a range of stakeholders including neighbourhood forums, community groups, ward councillors and the Mayor's planning team.

The report identifies three particular issues that neighbourhood planners need to address – legitimacy, resources and support

http://www.london.gov.uk/publication/neighbourhood-planning-london

24 GLA Publication

The London Mayoral Community Infrastructure Levy (CIL) 2012

On 29 February 2012, London's Mayor agreed his CIL charging schedule, accepting the recommendation of an independent examiner. The levy will apply to developments consented on or after 01 April 2012, and will be collected by London boroughs once development commences. The levy will apply to most new developments and extensions proposing a net increase in floorspace of over 100 sq m but will exclude affordable housing and development wholly or mainly for the provision of any medical or health services or the provision of education.

http://www.london.gov.uk/publication/mayoral-community-infrastructure-levy

RATING

25 Upper Tribunal (Lands Chamber)

Valuation – airport business centre – lease containing restrictions on use to meet requirements of airport operator landlord – whether use as business centre in same category or mode of use as office use

** IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE WEST SUSSEX VALUATION TRIBUNAL by Andrew Mouland (VO) RA/15/2009 – Decision given 30.01.12

Facts: The tenant at the date of appeal occupied the seventh floor of a 1960s office building in the centre of the South Terminal of Gatwick Airport. It was held for the airport authority on a lease with a number of unusual covenants including a permitted use as a "high quality conference centre providing meeting rooms, conference rooms, training rooms and touchdown facilities (including executive lounge facilities)…"

Point of dispute: Whether the VO's appeal against the VT decision should be allowed on the basis that the actual rent should be ignored as it reflected restrictions imposed by the landlord as to its use.

Held: The appeal was dismissed. Although some of the actual uses might be found in office premises, taken overall, and particularly having regard to the executive lounge facilities, the premises were not in the same mode or category of use as offices. The assessment was determined having regard to the actual rent.

http://www.landstribunal.gov.uk/aspx/view.aspx?id=827

26 Statutory Instrument

S1 2012/537 The Non-Domestic Rating (Cancellation of Backdated Liabilities) Regulations 2012

These regulations come into force on 31 March 2012. Section 49A of the Local Government Finance Act 1988 allows the Sec of State to make provision for the cancellation of certain backdated non-domestic liabilities in relation to hereditaments shown in a non-domestic rating list compiled on 01 April 2010, and which are shown for that day as the result of an alteration of the list made after the list was compiled. These regulations prescribe the cases to which the cancellation applies.

http://www.legislation.gov.uk/uksi/2012/537/contents/made

27 Statutory Instrument

S1 2012/664 The Non-Domestic Rating Contributions (England) (Amendment) Regulations 2012

These regulations come into force on 31 March 2012 and amend the Non-Domestic Rating Contributions (England) Regulations 1992 for the calculation of non-domestic rating contributions to be paid by billing authorities into the national non-domestic rating pool held by the Sec of State. They amend deductions relating to discretionary relief for hereditaments located in areas designated by Government as new Enterprise Zones and correct an error in the 1992 Regulations relating to the rateable value limit for rural rates relief.

http://www.legislation.gov.uk/uksi/2012/664/contents/made

28 Communities and Local Government – Guidance Note

Cancellation of Certain Backdated Business Rates Liability

This guidance note sets out how certain backdated liabilities relating to the 2005 rating list will be cancelled. The cancellation applies to those rate payers who are liable to pay backdated rates liabilities which meet the "Schedule of Payments" criteria and who also incurred those backdated liabilities as a result of the hereditament being "split" from the assessment of a predecessor hereditament. The Schedule of Payments scheme introduced in 2009 allowed rate payers that met certain criteria to repay eligible backdated liabilities over a period of eight years.

http://www.communities.gov.uk/publications/localgovernment/businessratesliabilitiesguide

COMPENSATION

29 Statutory instrument

SI2012/634 The Land Compensation Development (England) Order 2012

This order which came into force on 01.03.12 revokes, in relation to England, the Land Compensation Development Order 1974 and sets out the revised procedure for applying for and issuing certificates of appropriate alternative development under s17, Land Compensation Act 1961. Planning permission is assumed to be in force, for the purpose of assessing compensation for compulsory purchase of land, for development certified in accordance with s17.

http://www.legislation.gov.uk/uksi/2012/634/contents/made

LEASEHOLD ENFRANCHISEMENT

30 Upper Tribunal (Lands Chamber)

Leasehold Reform Act 1967 – s9(1) – lease extension – whether valuation approach correct

APPEAL AGAINST LVT DECISION BY CLARISE PROPERTIES LIMITED [2012] UKUT 4 (LC) – Decision given 17.01.12

Facts: The LVT determined a lease extension claim by the tenants using a two stage valuation: by arriving at the s15 rent and then capitalising it into perpetuity. The decision contained errors, including incorrectly stating the capitalisation rate had been agreed, applying a deferment rate of 6.5% instead of the agreed rate of 5.5% and using the wrong multiplier. The LVT then issued a correction certificate, applying a deferment rate of 5.75% instead of 5.5%.

The tenants were unrepresented at the Upper Tribunal hearing.

Points of dispute: Whether the LVT should have adopted a three stage approach to the valuation, applying a Haresign addition to represent the present value of the standing house at the termination of the 50-year lease extension, and whether the the LVT had been entitled to use regulation 18(3) to issue a correction certificate adopting a different deferment rate from that which the parties had agreed.

Held: Appeal allowed.

The two stage valuation approach had previously been endorsed as the standard valuation practice – the Haresign addition being treated as an exception. However, as a result of substantial increases in real terms of house prices and the lower deferment rates following Sportelli, there is a much greater likelihood that the ultimate reversion will have a significant value. Accordingly the three stage approach should be preferred. As a matter of good valuation practice, where a price has to be determined, every element of value should in general be separately assessed unless there is good reason not to do so.

It was confirmed that correction certificates only have limited scope (analogous to correcting a slip) and could not be used to rewrite substantive parts of a decision, having had further thoughts about their correctness – in this case by applying a wholly different deferment rate, which had not been contended for, or agreed, by the parties.

In addition to the issues in dispute, the Tribunal considered the deduction the freeholder's valuer had made of 1.75% to the value of the standing house in 78.5 years' time, to reflect the fact that the tenant is assumed at the end of the tenancy to have the right to remain in possession under an assured tenancy. Although this is by no means a certainty and contrary to the views put before it, the Tribunal determined the risk of not obtaining vacant possession by reducing the reversionary value by 20%.

HOUSING

31 Statutory Instrument

SI 2012/695 The Flexible Tenancies (Review Procedures) Regulations 2012

Part IV of the Housing Act 1985 provides for a regime of flexible tenancies. If the landlord offers a flexible tenancy and the length of the term does not, in the opinion of the prospective tenant, accord with the landlord's policy as to the length of terms of the flexible tenancies it grants, the tenant may request a review. These regulations, effective from 01.04.12, make provision about the procedure to be followed in conducting such reviews. They also make provision about the procedure to be followed in conducting reviews where the landlord decides not to grant another tenancy on the expiry of a flexible tenancy.

http://www.legislation.gov.uk/uksi/2012/695/contents/made

32 Statutory Instrument

SI 2012/696 The Transfer of Tenancies and Right to Acquire (Exclusion) Regulations 2012

The regulations, which come into effect on 01.04.12, set out descriptions of assured shorthold tenancies excluded from tenancy transfer under s158 of the Localism Act 2011 and the right to acquire under sections 180 to 185 of the Housing and Regeneration Act 2008.

http://www.legislation.gov.uk/uksi/2012/696/contents/made

33 Housing Market Bulletin 2012

This bulletin provides HCA staff with the latest information on housing market trends, the economy and the house building industry. In February the picture of house price change over the past month is mixed, with some suggestion of a rush to complete sales prior to the ending of the Stamp Duty holiday for first time buyers. London continues to have the strongest housing market over the year. The number and value of loans advanced for house purchase is rising, albeit at a very slow rate. UK growth remains shallow, and forecasts for growth in the UK and Eurozone are slight. The UK Bank Rate remained at 0.5%. CPI and RPI inflation have moderated, but remain well above target levels. Unemployment remains high.

Nationwide says house prices fell by -0.2% in January, but were up by +0.6% over the previous 12 months. Halifax says House prices in the three months to January were -0.9% lower than the preceding three months, and -1.8% lower than at the same time last year.

http://www.homesandcommunities.co.uk/ourwork/market-context

34 RICS Publication

RICS Residential Lettings Survey GB – January 2012

The survey reports that rents are continuing to rise due to continuing strong demand from tenants and that further increases are expected although the rate of growth has moderated further in the three months to January 2012. Rents have risen at the greatest pace in the South East but have stabilised in the South West and the North.

http://www.rics.org/site/scripts/download_info.aspx?downloadID=8448&fileID=11550

35 RICS Report

RICS European Housing Review 2012

This report provides information on 13 individual countries and comparative housing market analysis across the European Union. For most countries house price changes in 2011 were broadly similar to those in 2010, lying between plus and minus 5% on an annualised basis

http://www.rics.org/site/scripts/download_info.aspx?downloadID=8394&fileID=11351

36 GLA report

Service charges in London

This report, "Highly Charged", by the Assembly's Planning and Housing Committee, sets out a number of actions that would make the present service charges regime that more than half a million leaseholders in the capital are subject to operate more equitably.

The report makes a number of recommendations, including:

- Landlords/managing agents to make contract procurement/bills more transparent, with key stakeholders like ARMA and RICS setting an example of good practice.
- Companies that promote their services as 100% transparent seem to be boosting confidence in the way leaseholders can access all the information they need to know about how their services are procured and charged for. These best practice principles should be adopted across the sector.
- Private sector landlords should learn from their public sector counterparts as they tend to have more comprehensive consultation processes.
- The Leasehold Valuation Tribunal (LVT) is asked to review their processes to rule out any unfairness associated with leaseholders conducting their own cases.
- The LVT, in conjunction with LEASE, should set out plans for providing an expanded service offering mediation, pre-application advice and assistance as a cost effective method of improving the dispute resolution process.
- The Government should look at making mediation a compulsory first step of the dispute resolution process to help leaseholders avoid costly court cases altogether.
- Conveyancing solicitors should provide leaseholders with more information up front, the way public sector landlords like local authorities have to.

http://www.london.gov.uk/publication/service-charges-london

REAL PROPERTY

37 Court of Appeal

Open land registered as town or village green – application by land owner to rectify register and cancel registration – s22(1)(c) Commons Registration Act 1965.

** BETTERMENT PROPERTIES (WEYMOUTH) LIMITED V DORSET COUNTY COUNCIL (2012) PLSCS 53 – Decision given 07.03.12

Facts: BP(W) owned an area of open land crossed by two footpaths subject to a public right of way. For many years, local residents had walked on the land without keeping to the footpaths and a nearby resident had successfully applied for the land to be registered, under s13, Commons Registration Act 1965, as a town or village green. Following rulings by the Court of Appeal on two preliminary points, the High Court allowed a claim by BP(W) for the register to be rectified by cancellation of the registration on the grounds that the necessary 20 years' use of the land by the public could not be established; previous owners had taken all reasonable proportionate action to prevent such use, including maintaining fences and signs in the face of continuing vandalism and breakage. DCC appealed against the High Court decision.

Point of Dispute: Whether the appeal against the High Court decision to rectify the register, notwithstanding a delay of many years in challenging the registration, should be allowed.

Held: The appeal was dismissed. Registration was dependent on showing 20 or more years' use without force, secrecy or permission. A display of the landowner's opposition to use of its land by a suitably worded sign visible to and actually seen by local residents would defeat the requirement for use to be without force. The test was whether the landowner had done everything reasonable to prevent or contest the use and it was sufficient that the landowner's opposition had been brought to the attention of any reasonable user of the land, whether or not the users were aware of it. The action taken had only to be proportionate to the use that the landowner wished to prevent; in this case the previous owners had continually erected and re-erected sufficiently visible and clearly worded signs to indicate that they wished people to keep to the footpaths, and it followed that the user had not been as of right for the necessary 20-year period. Maintenance of the register would therefore amount to unjustified interference with the landowner's legal rights.

TAXATION

38 Council tax – Administrative Court

Whether permanently moored vessel used as dwelling constituted a hereditament to be included in the valuation list.

** REEVES (LISTING OFFICER) v NORTHROP (2012) PLSCS 52 – Decision given 06.03.12

Facts: N had lived since 2001 in a former tugboat converted to provide normal domestic accommodation. From December 2008 the vessel had been secured front and back to the riverbank and rested on a mud berth at low tide. The Listing Officer entered the vessel into the council tax valuation list with effect from December 2008; N appealed to the Valuation Tribunal which determined that the entry should be deleted on the grounds that the occupation was transient having regard to the nature of the vessel and the overall circumstances of the mooring arrangements.

Point of dispute: Whether the appeal against the decision to delete the vessel from the valuation list should be allowed on the grounds that the decision as to whether or not the occupation was "not too transient" or "had a sufficient degree of permanency" to qualify as rateable occupation should be based on duration of occupation alone.

Held: The appeal was allowed. Duration was not the only criterion by which permanency of occupation was to be judged; whilst the correct legal position was that it would always be an important factor, other factors would not necessarily be irrelevant in every case. It was apparent however that the Tribunal had not attributed proper significance to the duration of occupation; the vessel had remained in a fixed position for just over two years by the time of the Tribunal's hearing and such a period was consistent only with the conclusion that the length of occupation was "not too transient" or "sufficiently permanent".

39 Statutory Instrument

SI 2012/538 The Council Tax and Non-Domestic Rating (Demand Notices) (England) (Amendment) Regulations 2012

These regulations amend the Council Tax and Non-Domestic Rating (Demand Notices) (England) Regulations 2003 ("the 2003 Regulations") in relation to non-domestic rating demand notices only.

Schedule 2 to the 2003 Regulations sets out the matters which must be included in a non-domestic rating demand notice. Part 1 of that Schedule applies to a demand notice sent by a billing authority other than a rural settlement authority (to which Part 2 of Schedule 2 applies) and a special authority (to which Part 3 of Schedule 2 applies). The term "special authority" is defined in s144(6) of the Local Government Finance Act 1988 ("the 1988 Act"). The term "rural settlement authority" is defined in the 2003 Regulations as a billing authority which has, in respect of the relevant year, identified one or more rural settlements for that year in a list compiled under s42A(2) of the 1988 Act. The explanatory notes which are required by each Part give the recipient of a rates bill information about the bill and the reliefs that are available.

http://www.legislation.gov.uk/uksi/2012/538/contents/made

40 Statutory Instrument

SI 2012/672 The Council Tax (Administration and Enforcement) (Amendment) (England) Regulations 2012

These regulations amend wef 01.04.12 the Council Tax (Administration and Enforcement) Regulations 1992 by introducing a new regulation 21A and 21B into those Regulations. The amendment is consequential on the introduction of council tax referendums in England under the Localism Act 2011.

Where a local authority sets an excessive relevant basic amount of council tax for a financial year a referendum must be held. If the excessive amount is not approved in a referendum, or if no referendum is held or a referendum is held to be void, a substitute non-excessive amount takes effect. Regulation 21A makes provision in these circumstances.

Where an authority's excessive relevant basic amount of council tax is not approved in a referendum, its substitute calculations have effect. However, an election court may subsequently overturn the result on the basis that it is not in accordance with the votes cast. Regulation 21B makes provision for these circumstances.

http://www.legislation.gov.uk/uksi/2012/672/contents/made

ENVIRONMENT

41 Consultation

Adapting to the Changing Climate: Consultation on the Environmental Impacts of Adaptation: Post Adoption Strategic Environmental Assessment Statement 2011

The SEA Post Adoption Statement sets out how the findings of the SEA have been considered and how views expressed during the consultation period have informed the Sector Action Plans.

The SEA focussed first on whether the action plans were delivering sufficient measures for adaptation; and if these actions were likely to generate any significant environmental effects. Secondly it commented on the environmental performance of each of the adaptation plans. The findings of the assessment were set out in the Environmental Report.

Many of the responses were generally supportive of the SEA and its findings. A number of respondents raised a range of issues which have been taken into account as the Policy has been finalised.

The Post Adoption Statement documents responses to the recommendations of the SEA for each of the 12 sectors through the consultation process.

http://www.scotland.gov.uk/Publications/2012/02/3568

CONSTRUCTION

42 Technology and Construction Court

Building dispute – whether claim should be heard by Technology and Construction Court

* WEST COUNTRY RENOVATIONS LTD V MCDOWELL AND ANOTHER
(2012) PLSCS 48 – decision given 23.02.12

Facts: WCR, a small building company, was engaged by McD to carry out work to the latter's London flat. McD contended that payments for the work were subject to a cap of £140,931 in accordance with a prior estimate; WCR asserted that a signed contract entitled it to payment on a 'cost plus' basis and that, whilst a total of £161,542 had been paid a further £104,473 was due and unpaid.

Point of dispute: The extent and circumstances in which relatively low value claims of this sort could be dealt with within the Technology and Construction Court (TCC) as High Court judge business.

Held: The case should be transferred to the County Court. There was a real risk that efficiency of the TCC established over the last few years could be impacted by its having to handle an excessive number of low value claims. As a general rule, claims for less than £250,000 should be commenced in County Courts or other High Court centres outside London which had TCC designated judges, although a list of possible exceptions was set out.

http://www.legislation.gov.uk/nia/2012/1/contents/enacted

GENERAL

43 RICS Publication

RICS Rural Market Survey

The latest RICS Rural Land Market Survey shows prices reached record highs in the second half of 2011 and highlights the growing disconnect between the flagging residential farmland sector and booming commercial arena with price rises being driven almost entirely by commercial farmers.

The survey's 'transaction' based measure of farmland prices – which includes a residential component – increased by 11% in the second half of 2011. The survey's 'opinion' based measure increased by 7% (taking the annual gain on this measure to 11%).

http://www.rics.org/rms

44 RICS Report

Corporate Real Estate: Investment and Global Cities

This RICS paper sets out the key findings from global discussion forums held with RICS members and other professionals and is intended to be a platform for further research, policy, and best practice for the RICS worldwide. The discussions in the forums were all based on the same set of topics including in particular:

- why the participants choose to locate in that specific city or region;
- their city's relationship with the rest of the country and region;
- whether there were any real market constraints to locating in the city; and
- existing or emerging best practice in the way that real estate service providers were working with occupiers in that location.

http://www.rics.org/site/scripts/download_info.aspx?downloadID=8450

45 London Assembly Publication

London World Heritage Sites – Guidance on Settings

The London Plan 2011 sets out policies to conserve and enhance London's World Heritage Sites and their settings, and states that the Mayor will produce guidance on defining the settings of London's World Heritage Sites.

There are four World Heritage Sites and one potential site on the Tentative List in London:

- Palace of Westminster and Westminster Abbey, including St Margaret's Church
- Tower of London
- Maritime Greenwich
- Royal Botanic Gardens, Kew
- Darwin Landscape Laboratory (Tentative List)

http://www.london.gov.uk/publication/world-heritage-sites-spg

46 English Heritage Guidance

New Work in Historic Places of Worship

This guidance sets out the issues English Heritage believes need consideration when new work is proposed for places of worship and indicates its general views on those issues. It considers such work should:

- be based on an understanding of the building's cultural and heritage significance;
- minimise harm to the special historic, archaeological, architectural and artistic interest of the building, its contents and setting;
- bring public benefits, such as securing the long-term use of the building, which outweigh any harm to its significance; and
- achieve high standards of design, craftsmanship and materials.

http://www.helm.org.uk/server/show/category.19703

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THE SUNDAY TIMES 100 BEST COMPANIES TO WORK FOR 2012

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Evebrief has been established for more than 30 years. It is a summary of the latest statutory and legal cases affecting the property industry and is widely regarded in the industry as the most comprehensive document of its type.

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Abbreviations
The following abbreviations are used in evebrief:

BLD	Lexis Nexis Butterworths (internal abbreviation)
EG	Estates Gazette
EGLR	Estates Gazette Law Reports
EWCA	England & Wales Court of Appeal
EWHC	England & Wales High Court
P&CR	Property, Planning and Compensation Reports
PLSCS	Property Law Service Case Summaries

The star system
Cases are marked with one, two or three stars as follows:

*** Essential reading on the point of law or valuation with which the case is concerned, because it adds to, or clarifies or changes, the law.

** Noteworthy case which does not significantly alter the law or which relates to a relatively obscure point.

* Interesting but non-essential reading.

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EVEBRIEF

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SCOTLAND

LANDLORD & TENANT

01 Consultation Paper

The Tenancy Deposit Schemes (Scotland) Regulations 2011

Consultation on the terms of a tenancy deposit scheme proposed by Mydeposits Scotland.

The purpose of this paper is to consult on the terms of a tenancy deposit scheme that has been proposed to the Scottish Ministers by Mydeposits Scotland.

The Scottish Government has undertaken an evaluation of the proposed scheme against the conditions set out in the Tenancy Deposit Schemes (Scotland) Regulations 2011 (Scottish Statutory Instruments No. 2011/176), and is considering the suitability of the scheme.

The terms of the proposed scheme set out the framework for how it will operate, if approved, and how tenants and landlords can access the services provided by the scheme.

The consultation paper includes a questionnaire designed to seek views on the terms of the proposed scheme in relation to the regulations. Comments are invited by 08.04.12.

http://www.scotland.gov.uk/Publications/2012/02/6734

02 Consultation

Introduction of a Tenant Information Pack in the Private Rented Sector

The consultation seeks views on what information should be contained within a tenant information pack, what the pack should look like and how it will work in practice.

Responses must be received by 21 May 2012.

http://www.scotland.gov.uk/Publications/2012/02/4519

GERALDEVE

RATING

03 Statutory Instrument

SSI 2012/48 The Non-Domestic Rates (Enterprise Areas) (Scotland) Regulations 2012

These regulations provide relief for business rates in four enterprise areas.

Regulations 3 and 4 provide that business rates relief is available in those areas for new businesses carrying out an activity listed in the relevant part of the Schedule. It is also available for businesses set up in vacant premises if they carry out one of the listed activities. Regulation 5 sets out a sliding scale of the amount of relief available.

Regulation 6 deals with applications for business rates relief.

http://www.legislation.gov.uk/ssi/2012/48/contents/made

WALES

RATING

04 Statutory Instrument

WSI 2012/267e Non-Domestic Rating (Demand Notices) (Wales) (Amendment) Regulations 2012

The Non-Domestic Rating (Demand Notices) (Wales) Regulations 1993 (SI 1993/252) provide for the contents of rate demand notices, which are issued by billing authorities (borough and county councils) in Wales, and for the information to be supplied when such notices are served by those authorities.

These regulations, which apply in relation to Wales, amend the 1993 Regulations by revising the information to be supplied, and apply only in relation to rates payable after 31 March 2012.

http://www.legislation.gov.uk/wsi/2012/467/contents/made

05 Statutory Instrument

WSI 2012/466 The Non-Domestic Rating (Deferred Payments) (Wales) Regulations 2012

These regulations amend the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 (SI 1989/1058) and the Non-Domestic Rating (Collection and Enforcement) (Central Lists) Regulations 1989 (SI 1989/2260) to make provision for deferred payments. They also make consequential modifications to the Non-Domestic Rating (Demand Notices) (Wales) Regulations 1993.

The Local Lists Regulations and the Central Lists Regulations provide for annual rates liability to be discharged in instalments. Until 2009 the instalments were payable in the financial year to which the demand for payment related. The Non-Domestic Rating (Deferred Payments) (Wales) Regulations 2009 (SI 2009/2154 (W 179)) made special provision for the collection of non-domestic rates payable in respect of the financial year beginning on 01 April 2009.

The 2009 Regulations inserted a new Schedule 1D into the Local Lists Regulations and a new Schedule 1B into the Central Lists Regulations to provide that where a ratepayer who was subject to non-domestic rates in respect of the financial year 2009/10 satisfied certain conditions, they could defer payment of a specified proportion of that liability to the financial years beginning on 01 April 2010 and 01 April 2011.

http://www.legislation.gov.uk/wsi/2012/466/contents/made

06 Statutory Instrument

WSI 2012/465 The Non-Domestic Rating (Small Business Relief) (Wales) (Amendment) Order 2012

This order comes into force on 16 March 2012.

This order amends the Non-Domestic Rating (Small Business Relief) (Wales) Order 2008 by extending the provision for an increase in the level of small business rate relief to 31 March 2013. The extension of relief only applies to certain categories of ratepayer covered by the 2008 Order.

This Order also makes an amendment consequential on the passing of the Children and Families (Wales) Measure 2010.

http://www.legislation.gov.uk/wsi/2012/465/contents/made

COMPENSATION

07 The Planning Permission (Withdrawal of Development Order or Local Development Order) (Compensation) (Wales) Order 2012

Section 107 of the Town and Country Planning Act 1990 provides for compensation to be payable where planning permission granted by a local planning authority is subsequently revoked or modified. Section 108 of the Act extends this entitlement to compensation to circumstances where planning permission granted by a development order or a local development order is withdrawn.This order, effective from 31.01.12, amends s108 as it applies to Wales.

http://www.legislation.gov.uk/wsi/2012/210/contents/made

ENVIRONMENT

08 Statutory Instrument

WSI 2012/283 The Contaminated Land (Wales) (Amendment) Regulations 2012

These regulations, which apply in relation to Wales, amend from 06.04.12 the Contaminated Land (Wales) Regulations 2006 (SI 2006/2989 (W 278)) ("The 2006 Regulations").

Regulation 2(2) amends the circumstances set out in regulation 3(b) (pollution of controlled waters) of the 2006 Regulations in which contaminated land affecting controlled waters is required to be designated as a special site. The amendment takes account of protected areas under Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy (OJ No L327, 22.12.00, p1).

Regulation 2(2) also amends regulation 3(c) (pollution of controlled waters) of the 2006 Regulations to take account of the updated definition of "controlled waters" in s78A(9) of the Environmental Protection Act 1990 (c43).

Regulation 2(3) limits the application of regulation 11 (modification of a remediation notice) of the 2006 Regulations to appeals commenced prior to 06 April 2012. In relation to those appeals, Regulation 11 provides that, prior to the Welsh Ministers modifying a remediation notice in a way which would be less favourable to the appellant or any other person on whom that notice was served, the Welsh Ministers are required to notify those persons, and to permit them to make representations and to be heard in relation to the proposed modification.

Regulation 2(4) amends Schedule 2 to the 2006 Regulations to reflect the changes brought about by the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (SI 2009/1307), which transferred the functions of the Lands Tribunal to the Upper Tribunal and abolished the Lands Tribunal. Regulation 2(4) also amends paragraph 6(4) of Schedule 2 to the 2006 Regulations to remove references to the repealed s2 of the and Compensation Act 1961 (c. 33) and to provide for the appropriate application of particular references.

http://www.legislation.gov.uk/wsi/2012/283/contents/made

NORTHERN IRELAND

PLANNING

09 The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2012

These regulations consolidate with amendments the provisions of the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999 ("The 1999 Regulations") and subsequent amending regulations. The 1999 Regulations consolidated and updated earlier on the assessment of the effects of certain public and private projects on the environment.

These regulations include provisions regarding the application of these regulations to the Crown, which are similar to the provisions in Article 9 of the Planning (Application of Subordinate Legislation to the Crown) Order (Northern Ireland) 2006 (SR 2006 No 218) ("The 2006 Order"), which applied the 1999 Regulations to the Crown. Article 9 of the 2006 Order is consequently revoked.

The main changes to the 1999 Regulations are:

(a) a requirement for the reasons for negative screening decisions to be made available on request (Regulation 7(9));

(b) a limitation to the requirement for subsequent applications to be subject to the screening process to those cases where the development in question is likely to have significant effects on the environment which were not identified at the time that the initial planning permission was granted (Regulation 11);

(c) an amendment to the provisions for publicity for further information or any other information received for the purposes of a public inquiry (Regulation 19);

(d) Schedules 1 and 2 are amended to include sites for the storage of carbon dioxide (Schedule 1 paragraphs 23 and 24), installations for the capture of carbon dioxide streams for the purposes of geological storage and pipelines for the transport of carbon dioxide streams for such purposes (Schedule 2 paragraphs 3(k).and 10(k)). These amendments are required by the Directive on the Geological Storage of Carbon Dioxide (Directive 2009/31/EC); and

(e) an amendment to the provisions relating to changes or extensions to existing development, so that the effects of the development as a whole once modified are considered (Schedule 2 paragraphs 13(a) and (b)).

http://www.legislation.gov.uk/nisr/2012/59/contents/made

RATING

10 Statutory Instrument

NISR 2012/47 The Rates (Microgeneration) Order (Northern Ireland) 2012

Paragraph 3 of Part III of Schedule 12 to the Rates (Northern Ireland) Order 1977 lists the classes of plant and machinery which are deemed to be part of a hereditament for the purposes of valuation for rating. This order amends paragraph 3 of Part III of Schedule 12 in respect of the various classes of plant and machinery listed therein to provide that to the extent that the plant or machinery has microgeneration capacity (as defined in the Order) that capacity is not taken into account in a valuation for rating purposes.

http://www.legislation.gov.uk/nisr/2012/47/contents/made

11 Statutory Instrument

NISR 2012/46 The Rates (Regional Rates) Order (Northern Ireland) 2012

This order fixes the amounts of the regional rates for the year ending 31 March 2013 at 32.15 pence in the pound on the rateable net annual values of hereditaments ("non-domestic regional rate") and 0.3780 pence in the pound on the rateable capital values of hereditaments ("domestic regional rate"). The non-domestic regional rate and domestic regional rate are both increased by 2.2%.

Hereditaments which are dwelling-houses, private garages and private storage premises have a rateable capital value. Hereditaments which are used partly for the purposes of a private dwelling have a rateable capital value and a rateable net annual value. All other hereditaments have a rateable net annual value.

http://www.legislation.gov.uk/nisr/2012/46/contents/made

12 Statutory Instrument

NISR 2012/59 The Rates (Amendment) Act (Northern Ireland) 2012

This Act amends the Rates (Northern Ireland) Order 1977. Amendments include an additional rate in respect of large retail hereditaments for the rating years ending 2013, 2014 and 2015, temporary rebates for certain previously unoccupied hereditaments etc, restriction on the 'same state and circumstances' assumption for new NAV lists and the repeal in relation to a new valuation list of the special provision where net annual value is fixed having regard to volume of trade.

http://www.legislation.gov.uk/nia/2012/1/contents/enacted

13 Statutory Instrument

NISR 2012/79 The Rates (Social Sector Value) (Amendment) Regulations (Northern Ireland) 2012

These regulations come into operation on 01 April 2012 and amend the list of housing associations in Schedule 1 to the 2007 Regulations, which provide for payment of rates in respect of domestic properties owned by housing associations listed in the schedule by reference to "social sector value" rather than the property's rateable capital value.

http://www.legislation.gov.uk/nisr/2012/79/contents/made

HOUSING

14 Department of the Environment Report

Housing Land Availability 2011

This report shows housing land availability and the extent of housing development for settlements, as designated in Development Plans, across Northern Ireland. Its purpose is to:

- monitor the course of housing development in settlements with regard to the Regional Development Strategy (RDS);
- monitor progress of housing development in settlements;
- inform the preparation of Development Plans; and
- provide information on the available potential for further housing development in settlements.

http://www.planningni.gov.uk/index/policy/dev_plans/policy_housing_availability.htm