

LOCAL GOVERNMENT AMENDMENT (DEVELOPMENT AND BUILDING) ACT 1985

No. 91 of 1985

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LOCAL GOVERNMENT AMENDMENT (DEVELOPMENT AND BUILDING) ACT 1985

No. 91 of 1985

AN ACT to amend the Local Government Act 1962.

[Royal Assent 21 November 1985]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—This Act may be cited as the *Local Government Amendment (Development and Building) Act 1985*. Short title.

2—(1) This section and sections 1, 3, and 21 shall commence on the day on which this Act receives the Royal assent. Commencement.

(2) Sections 4 (2) and 5 shall commence—

(a) if, on the day on which this Act receives the Royal assent, Part V of the *Tasmanian State Service Act 1984* is in operation, on that day; or

(b) if, on that day, that Part is not in operation, on the day of commencement of that Part.

(3) Except as provided by subsections (1) and (2), this Act shall commence on such day as may be fixed by proclamation.

Principal Act.

3—In this Act, the *Local Government Act 1962** is referred to as the Principal Act.

Amendment of section 4 of Principal Act (Interpretation).

4—(1) Section 4 of the Principal Act is amended by inserting after the definition of “boundary road” in subsection (1) the following definition:—

“building surveyor” means—

(a) in a context other than a context referred to in paragraph (b)—a person performing the duties of the office of building surveyor of a municipality, whether as the holder of that office, or the office of city architect, under section 428 or pursuant to an appointment under section 141 or 428A; and

(b) in a context that relates to a municipality or a building situated, or building works executed or to be executed, in the municipal district of a municipality—a person so performing those duties in relation to that municipality;

(2) Section 4 of the Principal Act is amended by inserting after the definition of “county” and “shire” in subsection (1) the following definition:—

“Director” means the person for the time being holding, or acting in, the office of Director of Local Government established by section 5A;

Insertion in Principal Act of new sections 5A and 5B.

5—After section 5 of the Principal Act, the following sections are inserted in Part I:—

Director of Local Government.

5A—(1) Subject to and in accordance with Part V of the *Tasmanian State Service Act 1984*, a person may be appointed as Director of Local Government for the purposes of this Act.

* No. 67 of 1962. For this Act, as amended to 1st July 1980, see the continuing Reprint of Statutes. Subsequently amended by Nos. 19, 44, and 59 of 1980. Nos. 48, 77, and 89 of 1981, Nos. 9, 35, 51, 56, 73, 76, 98 and 99 of 1982. Nos. 88 and 91 of 1983, and Nos. 29, 46, 52, and 83 of 1984, and Nos. 7, 28, 31, 49, and 51 of 1985, and affected by No. 30 of 1981.

(2) The functions of the Director are as follows:—

- (a) subject to the directions of the Minister and to this Act, to undertake the general administration of this Act;
- (b) subject to the directions of the Minister and to this and any other Act, to co-ordinate the administration of local government in Tasmania;
- (c) such other functions as the Minister may, from time to time, determine.

(3) The Director may make arrangements with the Head of an Agency, within the meaning of the *Tasmanian State Service Act* 1984, for such employees employed in that Agency as may be considered necessary to be made available to him to enable him to perform his functions under this Act, and those employees may serve the Director in any capacity in conjunction with their respective positions in the State Service.

5B—(1) The Minister may, by instrument in writing, delegate to the Director all or any of his powers or functions under this Act (except this power of delegation).

Delegation
by Minister
to Director.

(2) A delegation under subsection (1) is revocable at will and does not prevent the exercise of a power or the performance of a function by the Minister.

6—Section 140 of the Principal Act is amended by omitting from paragraphs (e) and (g) of subsection (1) “ sections 143 and 428 ” and substituting “ section 143 ”.

Amendment of
section 140 of
Principal Act
(Appointment
and suspension
of officers and
servants).

7—Section 143 of the Principal Act is amended as follows:—

- (a) by omitting from paragraph (b) of subsection (1) “ or municipal ”;
- (b) by omitting subsections (3) and (4) and substituting the following subsections:—

Amendment of
section 143 of
Principal Act
(Qualifications
of engineers,
architects,
building
surveyors,
and building
inspectors).

(3) A person shall not be appointed to an office of city or municipal engineer or city architect unless—

(a) where that person is a natural person, that person—

(i) holds the relevant certificate of competency under this section;

or

(ii) has previously held a similar office in Tasmania; or

(b) where that person is a company or firm, not less than 2 directors of the company or members of the firm, as the case requires, are natural persons each of whom is qualified, in accordance with paragraph (a), for appointment to that office.

(3A) In subsection (3), “similar office” means—

(a) in relation to an office of city engineer—an office of city engineer;

(b) in relation to an office of municipal engineer—an office of city engineer or municipal engineer; and

(c) in relation to an office of city architect—an office of city architect.

(4) A person shall not be appointed to an office of building surveyor unless that person is a natural person who—

(a) holds a certificate of competency under this section as a city architect or a building surveyor; or

(b) has previously held an office of city architect, municipal architect, or building surveyor in Tasmania.

Amendment of section 424 of Principal Act (Interpretation).

8—Section 424 of the Principal Act is amended by omitting from subsection (1) the definition of “the surveyor”.

Amendment of section 425 of Principal Act (The Building Regulations).

9—Section 425 of the Principal Act is amended as follows:—

(a) by omitting subparagraph (ii) of paragraph (c) of subsection (4) and substituting the following subparagraph:—

- (ii) any part of a publication on building of a prescribed organization; and
- (b) by omitting subparagraph (i) of paragraph (d) of subsection (4) and substituting the following subparagraph:—
 - (i) the approval of a building surveyor; or

10—Section 426 of the Principal Act is amended as follows:—

Amendment of
section 426 of
Principal Act
(New methods).

- (a) by omitting from subsection (2) “ municipal architect ” and substituting “ building surveyor ”;
- (b) by omitting paragraph (b) of subsection (2) and substituting the following paragraph:—
 - (b) that he is satisfied, on the basis of evidence provided, either specially or by publication, by a prescribed organization, that the objects of the Building Regulations will be achieved in a building so designed or constructed.
- (c) by omitting subsection (6).

11—Section 428 of the Principal Act is amended as follows:—

Amendment of
section 428 of
Principal Act
(City architects
and building
surveyors).

- (a) by omitting subsections (1) and (2) and substituting the following subsections:—
 - (1) For the purposes of this Part, there shall be—
 - (a) in relation to each municipality that is a city—a city architect; and
 - (b) in relation to each municipality (including a municipality that is a city)—a building surveyor.

(2) The city architect or building surveyor of a municipality shall be a person qualified in that behalf in accordance with section 143 and shall, subject to section 428A, be appointed in the name of the corporation by resolution of the council.

- (b) by omitting from subsection (3) “ and municipal architects ”;

(c) by omitting subsections (4) and (5) and substituting the following subsections:—

(4) The city architect of a city shall, subject to the resolutions of the council of the city—

(a) direct the planning and development of buildings and structures required by the council for civic and community purposes; and

(b) direct the preparation of by-laws and planning requirements with respect to the design and siting of buildings and structures in the municipal district of that city.

(5) Subject to this and any other Act, to any regulations and by-laws in force under those Acts, and to the resolutions of the council of the city, the city architect of a city may, in the discharge of the duties imposed on him by subsection (4), require the building surveyor of the city to exercise the powers of a building surveyor under this Act or the Building Regulations to grant or withhold, or grant subject to conditions, approval in respect of any proposed building or structure in such manner as the city architect directs.

(d) by omitting from subsection (6) “ or municipal architect ”;

(e) by omitting subsection (8).

Insertion in
Principal Act
of new
section 428A.

12—After section 428 of the Principal Act, the following section is inserted:—

Default
appointments of
city architects
and building
surveyors.

428A—(1) If a corporation fails for 3 months to appoint a city architect or a building surveyor under section 428 or to appoint an acting city architect or an acting building surveyor under section 141, the Director may, by notice in writing published in the *Gazette*, make the required appointment upon such terms, not inconsistent with any law or award in force in Tasmania, as are set out in the notice.

(2) Where the Director makes an appointment under subsection (1)—

- (a) the remuneration of the person appointed shall be paid by the corporation; and
- (b) the appointment shall not be terminated, and its terms shall not be altered, except by the Director.

13—Section 429 of the Principal Act is repealed and the following section is substituted:—

Substitution of section 429 of Principal Act.

429—(1) Where a person, being the holder of an office of city architect, building surveyor, or building inspector under this Act, while acting otherwise than in the performance of the duties of that office, carries out, superintends, or assists in the execution of any works in relation to which, but for this section, he would be required to perform any of the duties of that office—

Disclosure of interest, &c., by building supervisor, &c.

- (a) he shall notify the clerk in writing accordingly and shall not perform any of those duties in relation to those works; and
- (b) the council shall, as soon as is practicable, by resolution, appoint another person eligible for appointment to that office to perform those duties in relation to those works.

(2) Where—

- (a) the holder of an office (in this subsection referred to as “the officer”), being a salaried member of the staff of a council, is disqualified by subsection (1) (a) from performing the duties of that office in relation to any works;
- (b) by reason of making an appointment under subsection (1) (b) in relation to those works, the council is put to expense in excess of that to which it would have been put if the officer had not been so disqualified; and
- (c) the officer receives, or is entitled to receive, remuneration in respect of his carrying out, superintending, or assisting in the execution of those works,

the officer shall be accountable to the council for the amount of the excess referred to in paragraph (b), which shall be recoverable as a debt due to the council in any court of competent jurisdiction.

Amendment of section 444 of Principal Act (Orders and requirements to do work).

14—Section 444 of the Principal Act is amended as follows:—

(a) by inserting before “ surveyor ” (twice occurring) in subsection (1) “ building ”;

(b) by inserting before “ surveyor ” in subsections (3) and (4) “ building ”.

Amendment of section 445 of Principal Act (Demolition of buildings).

15—Section 445 of the Principal Act is amended by inserting before “ surveyor ” in subsection (1) “ building ”.

Amendment of section 446 of Principal Act (Stopping illegal works).

16—Section 446 of the Principal Act is amended by inserting before “ surveyor ” in subsection (1) and paragraph (a) of subsection (3) “ building ”.

Amendment of section 448 of Principal Act (Limitation of time for rectification of contraventions of Act).

17—Section 448 of the Principal Act is amended by inserting before “ surveyor ” (twice occurring) “ building ”.

Amendment of section 459 of Principal Act (Municipal works).

18—Section 459 of the Principal Act is amended by omitting from paragraph (b) “ section 428 ” and substituting “ section 429 ”.

Amendment of section 459A of Principal Act (Building by marine boards).

19—Section 459A of the Principal Act is amended by omitting from paragraph (b) of subsection (4) “, whether or not he is certified under subsection (6) of that section ”.

Amendment of section 635 of Principal Act (Regulations).

20—Section 635 of the Principal Act is amended by omitting from paragraph (c) of subsection (5) “ municipal architect qualified to give certificates for the purposes of section 426 ” and substituting “ building surveyor ”.

Amendment of section 674A of Principal Act (Interpretation).

21—Section 674A of the Principal Act is amended by omitting “ or Kingborough ” from the definition of “ prescribed municipality ” and substituting “, Kingborough, New Norfolk, Brighton, Green Ponds, Richmond, or Sorell ”.

22—Section 697 of the Principal Act is amended by omitting from paragraph (d) of subsection (1) “municipal architect” and substituting “building surveyor”.

Amendment of section 697 of Principal Act (Special urban powers).

23—Section 724 of the Principal Act is amended by omitting from subsection (2) “submitted” and substituting “approved in accordance with section 726”.

Amendment of section 724 of Principal Act (Power of municipality to submit scheme).

24—Section 726 of the Principal Act is amended by inserting after “shall” (second occurring) “, not later than 12 months after the passing of that resolution,”.

Amendment of section 726 of Principal Act (Planning schemes to be submitted to Commissioner for approval).

25—Section 728 of the Principal Act is amended as follows:—

Amendment of section 728 of Principal Act (Objections to be submitted to Commissioner).

(a) by omitting “As soon as practicable after the receipt of any objections under section 727, the municipality shall forward them” and substituting “(1) Where a municipality has received objections under section 727, it shall, not later than 3 months, or such longer period as the Commissioner, by notice in writing given at any time to the municipality, allows in relation to those objections, after the expiration of the period of 3 months referred to in subsection (4) of that section, forward them”;

(b) by adding as subsection (2) the following subsection:—

(2) Where at the expiration of the period of 3 months referred to in subsection (4) of section 727, a municipality has received no objections under that section, it shall, not later than 7 days after the expiration of that period, forward to the Commissioner a report in writing to that effect.

26—Section 729A of the Principal Act is amended as follows:—

Amendment of section 729A of Principal Act (Effect of substantial modification).

(a) by inserting after “prepared” in subsection (2) “within the time specified in the requirement”;

(b) by inserting after “prepared” in subsection (3) “within the time specified in the direction”.

Amendment of
section 730 of
Principal Act
(Final approval
of scheme).

27—Section 730 of the Principal Act is amended by inserting after subsection (1) the following subsections:—

(1A) The final approval of a scheme under subsection (1) shall be given by the Commissioner not later than the expiration of—

(a) the day that is the first anniversary of the day that is, under section 728, the last day for the forwarding by the municipality to the Commissioner of—

(i) notices of objection received by the municipality under section 727 in relation to the scheme; or

(ii) the report referred to in section 728 (2) in relation to the scheme,

as the case requires; or

(b) such later day as is specified by the Minister for the purposes of this paragraph in a notice in writing given by him to the Commissioner either before or after the expiration of the day first referred to in paragraph (a).

(1B) Where, under section 729A, the Commissioner directs that a specified part of a scheme be done again, the references in subsection (1A) (a) (i) and (ii) to the scheme shall be read as references to the work, or the latest work, in relation to that scheme that is new work of the kind referred to in section 729A (3).

Amendment of
section 732 of
Principal Act
(Approved
scheme may be
modified, &c.,
with
approval of
Commissioner).

28—Section 732 of the Principal Act is amended as follows:—

(a) by omitting from subsection (2) “ The ” and substituting “ Subject to subsection (2A), the ”;

(b) by inserting after subsection (2) the following subsection:—

(2A) Where the Commissioner certifies that a modification or alteration of a scheme to which he has given his approval under subsection (1) is not substantial, the reference in subsection (4) of section 727 to a period of 3 months shall be taken, for the purposes of the application of that subsection, by virtue of subsection (2) of this section, in relation to that modification or alteration, to be a reference to a period of 21 days.

- (c) by omitting from subsection (3) “ subsection (2)” and substituting “ subsections (2) and (2A)”;
- (d) by inserting after “ scheme ” in subsection (3) “, or his certification that a modification or alteration is not substantial,”.

29—After section 732A of the Principal Act the following section is inserted:—

Insertion in
Principal Act
of new
section 732B.

732B—(1) In this section—

Quinquennial
review of
approved
schemes.

“ approved scheme ” means a planning scheme that is in force, with or without modifications or alterations, under section 730;

“ relevant day ”, in relation to an approved scheme (including an approved scheme substituted for an earlier approved scheme), means—

(a) the day on which that scheme was sealed under section 730 (2); or

(b) where, on a later day, a proposal under subsection (3) for the modification or alteration of that scheme or the continuation of that scheme without modification or alteration has been sealed in accordance with section 732 (4), that later day.

(2) The Commissioner shall, in relation to each approved scheme, not later than 4 years after the relevant day, give notice in writing to the municipality to the municipal district of which, or to the municipalities to the municipal districts of which, that approved scheme relates requiring that municipality, or those municipalities, to undertake a review of that approved scheme in accordance with the directions, being directions not inconsistent with this or any other Act, set out in the notice.

(3) The municipality, or municipalities, to which a notice is given under subsection (2) shall, not later than 5 years after the relevant day—

(a) undertake a review of the approved scheme in accordance with the notice; and

(b) in the light of the review, prepare and submit to the Commissioner for approval a proposal for—

- (i) the modification or alteration of the approved scheme;
- (ii) the substitution of a planning scheme for the approved scheme; or
- (iii) the continuation of the approved scheme without modification or alteration.

(4) Section 732 and the sections referred to in subsection (2) of that section apply in relation to a proposal under subsection (3) (b) of this section (including a proposal for the continuation of an approved scheme without modification or alteration) as if that proposal were a proposal for modification, alteration, or substitution under that section.

Amendment of section 733A of Principal Act (Interpretation).

30—Section 733A of the Principal Act is amended as follows:—

- (a) by inserting after “ planning scheme ” (first occurring) “ or interim order ”;
- (b) by omitting “ constituted under section 734 (19) ” from the definition of “ Appeal Board ” and substituting “ established by section 733G ”;
- (c) by inserting after the definition of “ Appeal Board ” the following definitions:—
 - “ Chairman ” means the person for the time being holding, or acting in, the office of Chairman of the Appeal Board;
 - “ compulsory conference ” means a conference of the kind referred to in section 733D (3);
 - “ Deputy Chairman ” means a person for the time being holding, or acting in, an office of Deputy Chairman of the Appeal Board;
- (d) by omitting “ the planning scheme, is treated as development for the purposes of the scheme ” from paragraph (d) of the definition of “ development ” and substituting “ a planning scheme or interim order, is deemed to be development for the purposes of that planning scheme or interim order ”;
- (e) by inserting after the definition of “ development ” the following definitions:—
 - “ interim order ” means an interim order in force under section 734;

“ member ” means a person for the time being holding, or acting in, an office of member of the Appeal Board;

- (f) by omitting “ the planning scheme ” from the definition of “ planning approval ” and substituting “ a planning scheme or interim order ”;
- (g) by omitting “ land subject to the scheme.” from the definition of “ planning approval ” and substituting “ land;”;
- (h) by inserting after the definition of “ planning approval ” the following definition:—

“ planning scheme ” means a planning scheme in force under section 730.

31—Section 733B of the Principal Act is amended as follows:—

Amendment of section 733B of Principal Act (Notice of applications for planning approval).

- (a) by omitting paragraph (b) of subsection (1) and substituting the following paragraph:—

(b) planning approvals of any kind that a corporation may grant only in pursuance of a power conferred on the corporation to relax or modify the provisions of a planning scheme or interim order in their application to any land;

- (b) by omitting from paragraph (c) of subsection (1) “ under the planning scheme the corporation ” and substituting “, under a planning scheme or interim order, a corporation ”;
- (c) by omitting from subsection (2) “ a scheme ” and substituting “ a planning scheme or interim order ”;
- (d) by omitting from paragraph (a) of subsection (3) “ local newspaper circulating ” and substituting “ daily newspaper published in Tasmania and circulating generally ”;
- (e) by omitting paragraph (b) of subsection (3) and substituting the following paragraph:—

(b) shall be determined by the corporation—

- (i) not earlier than the expiration of the period of 14 days beginning on the relevant date; and

- (ii) not later than the expiration of the period of 42 days beginning on the day on which the corporation was furnished, in accordance with paragraph (a), with the copy notice, the prescribed form, and evidence referred to in that paragraph, or such further periods as is agreed to, in writing, by the corporation and the applicant.
- (f) by omitting from subsection (6) “ subsection (5)” and substituting “ subsections (3) and (5),”;
- (g) by omitting subsection (8) and substituting the following subsection:—
- (8) Where a corporation, on an application for a planning approval to which this section applies, grants or refuses a planning approval, it shall—
- (a) serve notice of its decision on the applicant;
and
- (b) where representations have been made in relation to the application in accordance with this section, publish notice of the decision in a daily newspaper published in Tasmania and circulating generally in the locality in which the land to which the application relates is situated.
- (h) by omitting from subsection (9) “ subsection (8) (a)” and substituting “ subsection (8) (b)”;
- (i) by inserting after subsection (9) the following subsection:—
- (10) The failure of a corporation to determine an application for a planning approval to which this section applies before the expiration of the period, or, where applicable, the further period, referred to in subsection (3) (b) (ii) shall be taken, for the purposes of sections 733C and 733D, to constitute a decision of the corporation to refuse to grant that planning approval.

32—Section 733D of the Principal Act is amended as follows:— Amendment of section 733D of Principal Act (Procedure on appeals).

- (a) by inserting after “ notice of appeal ” in subsection (1) “, as prescribed,”;
- (b) by omitting from subsection (2) “ 21 ” and substituting “ 14 ”;
- (c) by omitting from paragraph (a) of subsection (2) “ section 733B (8) (a)” and substituting “ section 733B (8) (b)”;
- (d) by omitting subsection (3) and substituting the following subsections:—

(3) As soon as practicable after the lodging of a planning appeal, the Chairman shall examine the notice of appeal and, if the nature of the appeal and the number and nature of the representations made in relation to the subject-matter of the appeal appear to him to be such as to justify the following of such a course, he may, by notice in writing given to each party to the appeal, direct the attendance at a conference before the Appeal Board, at such time and place as are specified in the notice, of all parties to the appeal for the purpose of—

- (a) ascertaining the substance of the appeal; and
- (b) obtaining the agreement of the parties on as many matters as possible relating to the appeal with a view to—
 - (i) determining the appeal without recourse to a hearing; or
 - (ii) reducing to a minimum the number of matters in issue at a subsequent hearing of the appeal.

(3A) Subject to this Division, a compulsory conference shall be conducted in such manner as the member constituting the Appeal Board for the purposes of the compulsory conference thinks fit.

(3B) Where a person to whom a notice to attend a compulsory conference has been given under subsection (3) does not attend that compulsory conference, the Appeal Board may proceed with the compulsory conference in his absence.

(3c) Upon the completion of a compulsory conference—

(a) the Appeal Board shall record—

- (i) the names of the parties in attendance at the compulsory conference;
- (ii) the matters (if any) on which agreement was reached at the compulsory conference; and
- (iii) the matters on which agreement was not reached at the compulsory conference; and

(b) the planning appeal shall—

- (i) in a case in which agreement was reached at the compulsory conference on all matters in dispute, be deemed to have been determined by the Appeal Board accordingly; or
- (ii) in any other case, proceed to a hearing by the Appeal Board subject to the Appeal Board and all parties to the appeal (whether present at the compulsory conference or not) being bound by the agreements (if any) reached at the compulsory conference.

(3D) At a hearing of an appeal in accordance with subsection (3c) (b) (ii), no matter disclosed by any party at the compulsory conference other than the matters recorded in accordance with subsection (3c) (a) shall be admissible for consideration by the Appeal Board.

(e) by omitting subsection (6) and substituting the following subsection:—

(6) Where a person who is entitled to be heard by the Appeal Board on a planning appeal does not, after being notified by the clerk to the Commissioner of the

time and place of the hearing, appear to be heard, the Appeal Board may proceed with the hearing in his absence.

- (f) by omitting “ On ” from subsection (7) and substituting “ Subject to this Division, on the hearing of ”;
- (g) by omitting from subsection (7) “, subject to this Division,”;
- (h) by inserting after “ conduct ” in subsection (8) “(including conduct of the kind referred to in subsection (9) (a))”;
- (i) by inserting after subsection (8) the following subsection:—

(9) Where—

- (a) the person by whom a planning appeal was instituted withdraws the appeal after the commencement of the period of 7 days immediately preceding the day fixed for the hearing of the appeal;
- (b) expenses have been incurred by the State in connection with the holding of that hearing; and
- (c) those expenses would not have been incurred if that appeal had been withdrawn before the commencement of that period of 7 days,

the Appeal Board may order the person who instituted the appeal to pay to the State such sum, not exceeding the amount of those expenses, by way of costs as it may fix, and any sum so ordered to be paid may be recovered as a debt due to the Crown in any court of competent jurisdiction.

33—Section 733E of the Principal Act is amended as follows:—

- (a) by inserting after “ planning scheme ” in subsection (1) “ or interim order ”;
- (b) by omitting from subsection (1) “ a scheme ” and substituting “ a planning scheme or interim order ”;
- (c) by inserting after “ planning scheme ” in subsection (2) “ or interim order ”.

Amendment of section 733E of Principal Act (Effect of appeal provisions on certain planning schemes).

Insertion in
Principal Act
of new
section 733G.

34—After section 733F of the Principal Act, the following section is inserted:—

Planning
Appeal
Board.

733G—(1) For the purposes of this Division, there is hereby established a Planning Appeal Board consisting of the following members:—

- (a) a Chairman;
- (b) 2 Deputy Chairmen;
- (c) not less than 6 other members.

(2) Subject to this section, a member shall be appointed by the Governor on such terms and conditions, including terms and conditions as to remuneration, as are specified in the instrument of his appointment.

(3) A person shall not be appointed as the Chairman or as a Deputy Chairman unless that person is a legal practitioner, or a barrister, within the meaning of the *Legal Practitioners Act 1959*.

(4) Not less than two-thirds of the total number of the members referred to in subsection (1) (c) shall be persons who are qualified and experienced in town and country planning.

(5) Subject to subsection (6), for the purposes of the discharge of its functions under this Division, the Appeal Board shall be constituted, in accordance with the directions of the Chairman, as follows:—

- (a) in a case other than a case referred to in paragraph (b) or (c), by—
 - (i) the Chairman or a Deputy Chairman; and
 - (ii) 2 other members, at least one of whom is a person qualified and experienced in town and country planning;
- (b) in the case of an appeal that, in the opinion of the Chairman, may properly be heard by the Appeal Board constituted in accordance with this paragraph, by the Chairman, a Deputy Chairman or a member who is a person qualified and experienced in town and country planning;
- (c) in the case of a compulsory conference, by any member.

(6) A member who constituted the Appeal Board for the purposes of the holding of a compulsory conference is disqualified from taking part in the hearing (if any) of the planning appeal in respect of which that compulsory conference was held.

(7) Where a vacancy occurs in the office of Chairman, the functions of the Chairman shall, until a person is appointed to that office or is appointed to act in that office, be performed by such of the Deputy Chairmen as is so directed by the Minister, and any act or thing done by a Deputy Chairman in pursuance of such a direction shall be deemed, for the purposes of this Act, to have been done by the Chairman.

35—Section 734 of the Principal Act is amended as follows:—

(a) by omitting from subsection (1) “ subsections (2) and (4)” and substituting “ subsection (2)”;

(b) by omitting subsection (2) and substituting the following subsection:—

(2) For the purposes of subsections (1) and (4), a municipality may—

(a) subject to subsection (2A), make orders, to be called “ interim orders ”, providing for the regulation, with respect to the matters specified in Schedule 7, of the development of any land in the area to be subject to the scheme, including, in particular and without limiting the generality of the foregoing provisions of this paragraph, the control, management, restriction, and prohibition of any aspect of the development of that land that relates to any of those matters; and

(b) issue dispensations, absolute or conditional, from its interim orders in such cases as it thinks proper.

(c) by inserting after subsection (2) the following subsection:—

(2A) An interim order shall be made by resolution of the council and shall not be effective unless it is—

Amendment of section 734 of Principal Act (Regulation of building, &c., pending approval of scheme).

- (a) approved, in writing, by the Commissioner;
and
- (b) published, together with that approval, by the corporation by public notice.
- (d) by omitting subsections (4) to (20), inclusive, and substituting the following subsections:—

(4) After the expiration of 6 months from the commencement of this subsection, a municipality shall not, in the exercise of any of its powers under this Part, refuse, or grant conditionally, its consent to, or prohibit, the undertaking of any development in its municipal district otherwise than in pursuance of a planning scheme in force under section 730 or of an interim order in force under this section.

(5) Subject to subsection (6), an interim order shall cease to have effect at the expiration of the period of 3 years commencing on the date on which it is published in accordance with subsection (2A) (b).

(6) A municipality may, not later than the expiration of the period referred to in subsection (5), with the approval in writing of the Commissioner, by public notice incorporating that approval, extend that period by such further period as is specified in that notice.

(7) Subject to any provision to the contrary in an interim order, a person shall not undertake any development of any land to which that interim order relates unless that person has obtained planning approval in relation to that development.

Amendment of section 735 of Principal Act (Rights of persons affected to claim compensation).

36—Section 735 of the Principal Act is amended as follows:—

- (a) by omitting from paragraph (d) of subsection (2) “roads;” and substituting “roads; or”;
- (b) by omitting from paragraph (e) of subsection (2) “section 730;” and substituting “section 730.”;
- (c) by omitting paragraphs (f) and (g) of subsection (2).

Amendment of section 758 of Principal Act (Appeal in case of delay).

37—Section 758 of the Principal Act is amended by omitting subsection (3) and substituting the following subsections:—

- (3) An appeal under this section shall be instituted by lodging a notice of appeal with the clerk to the Commissioner.

(4) The clerk to the Commissioner shall, in such manner as the Commissioner may direct, notify all persons entitled to be heard in the proceedings on an appeal under this section of the time and place at which the appeal will be heard.

(5) Where a person who is entitled to be heard by the Commissioner on an appeal under this section does not, after being notified by the clerk to the Commissioner of the time and place of the hearing, appear to be heard, the Commissioner may proceed with the hearing in his absence.

(6) On an appeal under this section, the Commissioner may inform himself on the matter the subject of the appeal in such manner as he thinks fit and the procedure on the appeal shall be as the Commissioner may direct.

(7) On an appeal under this section, the Commissioner may allow or dismiss the appeal, or may reverse or vary any part of the decision of the corporation, whether the appeal relates to that part of the decision or not, so that the effect of the decision is that which, in the opinion of the Commissioner, should have been the decision of the corporation on the application to which the appeal relates.

(8) The Commissioner's determination of an appeal under this section shall be given effect to by the corporation.

38—After section 829A of the Principal Act, the following section is inserted in Division 1 of Part XXII:—

Insertion of
new section
829B in
Principal Act.

829B—(1) A prosecution for an offence against this Act may be instituted in the name of the Director.

Institution of
proceedings
by Director.

(2) Nothing in subsection (1) shall be taken to prevent the institution by a person other than the Director of a prosecution for an offence against this Act, but an offender is not liable to be punished more than once for the same offence.

39—(1) In this section, “commencing day” means the day fixed by proclamation under section 2 (3). Transitional.

(2) If, on the commencing day, sections 4 (2) and 5 are not in force, a reference in the Principal Act as amended by this Act (other than those sections) to the Director shall, until the commencement of those sections, be read as a reference to the person for the time being holding, or acting in, the office of Director of Local Government.

(3) A person who, immediately before the commencement of sections 4 (2) and 5, held the office of Director of Local Government shall, upon the commencement of those sections, be deemed to have been appointed under section 5A of the Principal Act as amended by this Act.

(4) Subject to the Principal Act as amended by this Act, a person who, immediately before the commencing day, was the holder of the office of city architect or building surveyor of a municipality shall be deemed, for the purposes of the Principal Act as amended by this Act, to have been appointed under section 428 of that Act as so amended.

(5) For the purposes of section 726 of the Principal Act as amended by this Act, a planning scheme that, before the commencing day, had been provisionally approved by resolution of a council but had not been submitted to the Commissioner for Town and Country Planning for approval shall be deemed to have been provisionally approved by that council on the commencing day.

(6) Notwithstanding the amendments of section 734 of the Principal Act effected by section 35 of this Act—

(a) a municipality that, but for those amendments, would be entitled to exercise the powers set forth in section 734 (4) of the Principal Act continues, during the period of 6 months referred to in section 734 (4) of the Principal Act as amended by this Act, to be entitled to exercise those powers;

(b) a person injuriously affected by the exercise by a municipality of those powers (including the exercise of those powers by virtue of this subsection) continues, during the period of 21 days immediately following that period of 6 months to be entitled to appeal against that exercise of those powers; and

(c) an appeal instituted under section 734 (6) of the Principal Act before the date of commencement of this section and not heard and determined before that date shall proceed,

as if the first-mentioned amendments had not been made.

(7) A person who, immediately before the commencing day, held office as the Chairman, or as a member, of the Planning Appeal Board under section 734 (19) of the Principal Act shall be deemed, for the purposes of the Principal Act as amended by this Act, to have been appointed to that office under section 733G of that Act as so amended.

40—This Act shall expire on 1st July 1987.

Expiry of Act.

