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SCOTTISH STATUTORY INSTRUMENTS

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**2006 No. 269**

**TOWN AND COUNTRY PLANNING**

**The Planning and Compulsory Purchase Act 2004  
(Transitional Provisions) (Scotland) Order 2006**

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| <i>Made</i>                                    | - - - - | <i>19th May 2006</i>  |
| <i>Laid before the Scottish<br/>Parliament</i> | - - - - | <i>22nd May 2006</i>  |
| <i>Coming into force</i>                       | - -     | <i>12th June 2006</i> |

The Scottish Ministers, in exercise of the powers conferred by section 119(2) and section 122(3) of the Planning and Compulsory Purchase Act 2004(1) hereby make the following Order.

**Citation, commencement and extent**

1.—(1) This Order may be cited as the Planning and Compulsory Purchase Act 2004 (Transitional Provisions) (Scotland) Order 2006 and shall come into force on 12th June 2006.

(2) This Order extends to Scotland only.

**Interpretation**

2.—(1) In this Order—

- (a) “the 1997 Act” means the Town and County Planning (Scotland) Act 1997(2);
- (b) “the 2004 Act” means the Planning and Compulsory Purchase (Scotland) Act 2004;
- (c) “the listed buildings Act” means the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997(3);
- (d) “the hazardous substances Act” means the Planning (Hazardous Substances)(Scotland) Act 1997(4);
- (e) “the EIA Regulations” means the Environmental Impact Assessment (Scotland) Regulations 1999(5);
- (f) “EIA development” means development which is either—

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(1) 2004 c. 5.  
(2) 1997 c. 8.  
(3) 1997 c. 9.  
(4) 1997 c. 10.  
(5) S.S.I. 1999/1 amended by S.S.I. 2003/331 and 341.

- (i) Schedule 1 development; or
  - (ii) Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location;
  - (g) “Schedule 1 development” means development, other than exempt development of a description mentioned in Schedule 1 to the EIA Regulations; and
  - (h) “Schedule 2 development” means development, other than exempt development, of a description mentioned in Column 1 of the table in Schedule 2 to the EIA Regulations where—
    - (i) any part of that development is to be carried out in a sensitive area; or
    - (ii) any applicable threshold or criterion in the corresponding part of Column 2 of that table is respectively exceeded or met in relation to that development.
- (2) Words and expressions used in this Order shall have the same meaning as in the 1997 Act, the listed buildings Act and the hazardous substances Act unless the context otherwise requires.

### **Transitional provisions - the 1997 Act**

- 3.—(1) This article applies to development if—
- (a) it is development for which before the relevant date no planning permission is required;
  - (b) it is not development or a description of development for which planning permission is granted by development order; and
  - (c) before the relevant date proposed development notice had been given to the planning authority.
- (2) In this article—
- (a) the relevant date is the date of commencement of section 90(1) of the 2004 Act;
  - (b) “proposed development notice” is notice of a proposal for development given by the developer in pursuance of arrangements made by the Scottish Ministers in relation to development by or on behalf of the Crown; and
  - (c) the developer is the Crown or a person acting on behalf of the Crown.
- (3) If before the relevant date the planning authority have in pursuance of the arrangements kept a register of proposed development notices, the register must be treated as if it is part of the register kept by them in pursuance of section 36 of the 1997 Act.

#### *Acceptable development*

- (4) If before the relevant date either the planning authority or the Scottish Ministers, as the case may be, give notice that they find the proposed development acceptable, planning permission is granted under Part III of the 1997 Act, subject to paragraph (6).
- (5) If the notice is subject to conditions, the conditions have effect as if they are conditions attached to the planning permission.
- (6) If the proposed development is EIA development, consent is not granted unless the requirements of the EIA Regulations have been met in relation to the proposed development in the same way as if planning permission had been required.

#### *Unacceptable development or development with conditions*

- (7) If before the relevant date—
- (a) the planning authority have notified the developer in pursuance of the arrangements that they do not find the development acceptable; or

(b) the planning authority have notified the developer in pursuance of the arrangements that they find the development acceptable subject to conditions,  
section 47 of the 1997 Act shall apply to the proposal as it applies to an application for planning permission.

*Referred proposals*

- (8) If before the relevant date—
- (a) the planning authority have notified the developer in pursuance of the arrangements that they do not find the development acceptable; or
  - (b) the planning authority have notified the developer in pursuance of the arrangements that they find the development acceptable subject to conditions; or
  - (c) the planning authority have not given notice of their decision on a proposal to the developer,

and the matter has been referred to but not decided by the Scottish Ministers, the Scottish Ministers must deal with the proposal as if it is an appeal by an applicant for planning permission under section 47 of the 1997 Act.

*Pending proposals*

- (9) If before the relevant date—
- (a) proposed development notice has been given; and
  - (b) the planning authority have not given notice of their decision on a proposal to the developer,

and the matter has not been referred to the Scottish Ministers, the 1997 Act applies as if the proposal is an application for planning permission made under Part III of that Act.

**Transitional provisions - the listed buildings Act**

- 4.—(1) This article applies to works if—
- (a) they are works for which before the relevant date no listed building consent is required; and
  - (b) before the relevant date proposed works notice had been given to the planning authority.
- (2) In this article—
- (a) the relevant date is the date of commencement of section 90(2) of the 2004 Act;
  - (b) “proposed works notice” is notice of a proposal for works given by the person proposing to carry out the works (“the developer”) in pursuance of arrangements made by the Scottish Ministers in relation to development by or on behalf of the Crown;
  - (c) the developer is the Crown or a person acting on behalf of the Crown.

(3) If before the relevant date the planning authority have in pursuance of the arrangements kept a register of proposed notice works, the register must be treated as if it is part of the register kept by them in pursuance of the listed buildings Act.

*Acceptable works*

- (4) If before the relevant date in pursuance of the arrangements either the planning authority or the Scottish Ministers, as the case may be, have given notice that they find the proposed works acceptable—
- (a) the notice must be treated as if it is listed building consent granted under the listed buildings Act; and

- (b) if the notice is subject to conditions, the conditions have effect as if they are conditions attached to the consent.

*Unacceptable works or works with conditions*

- (5) If before the relevant date—
  - (a) the planning authority have notified the developer in pursuance of the arrangements that they do not find the proposed works acceptable; or
  - (b) the planning authority have notified the developer in pursuance of the arrangements that they find the proposed works acceptable subject to conditions,

section 18 of the listed buildings Act shall apply to the proposed works as it applies to an application for listed building consent.

*Referred proposals*

- (6) If before the relevant date—
  - (a) the planning authority have notified the developer in pursuance of the arrangements that they do not find the works acceptable; or
  - (b) the planning authority have notified the developer in pursuance of the arrangements that they find the works acceptable subject to conditions,

and the matter has been referred to but not decided by the Scottish Ministers, the Scottish Ministers must deal with the proposal as if it is an appeal by an applicant for listed building consent under section 18 of the listed buildings Act.

*Pending proposals*

- (7) If before the relevant date—
  - (a) proposed works notice has been given; and
  - (b) the planning authority have not given notice to the developer,

and the matter has not yet been referred to the Scottish Ministers, the listed buildings Act applies as if the proposal is an application for listed buildings consent made under that Act.

**Transitional provision- the hazardous substances Act**

5.—(1) The hazardous substances Act is amended as follows.

- (2) In section 4(1)(b) (hazardous substances: general), for “10 or 10A”, substitute “10, 10A or 30D”
- (3) In section 27(1)(c) (registers etc.), for “10 or 10A” substitute “10, 10A or 30D,”.
- (4) After section 30C insert—

**“Crown application: transitional**

**30D.**—(1) This section applies if at any time during the establishment period a hazardous substance was present on, over or under Crown land.

- (2) The appropriate authority must make a claim in the prescribed form before the end of the transitional period.
- (3) The claim must contain the prescribed information as to—
  - (a) the presence of the substance during the establishment period; and
  - (b) how and where the substance was kept and used.

(4) Unless subsection (5) or (7) applies, the hazardous substances authority is deemed to have granted the hazardous substances consent claimed in pursuance of subsection (2).

(5) This subsection applies if the hazardous substances authority think that a claim does not comply with subsection (3).

(6) If subsection (5) applies, the hazardous substances authority must, before the end of the period of two weeks starting with the date they received the claim—

- (a) notify the claimant that they think the claim is invalid; and
- (b) give their reasons.

(7) This subsection applies if at no time during the establishment period was the aggregate quantity of the substance equal to or greater than the controlled quantity.

(8) Hazardous substances consent which is deemed to be granted under this section is subject—

- (a) to the condition that the maximum aggregate quantity of the substance that may be present for the purposes of this subsection at any one time must not exceed the established quantity; and
  - (b) to such other conditions (if any) as are prescribed for the purposes of this section and are applicable in the case of consent.
- (9) A substance is present for the purposes of subsection 8(a) if—
- (a) it is on, over or under land to which the claim for consent relates;
  - (b) it is on, over or under land which is within 500 metres of it and is controlled by the Crown; or
  - (c) it is in or on a structure controlled by the Crown any part of which is within 500 metres of it,

and in calculating whether the established quantity is exceeded a quantity of a substance which falls within more than one of paragraphs (a) to (c) must be counted only once.

(10) The establishment period is the period of 12 months ending on the day before the date of commencement of section 90(3) of the Planning and Compulsory Purchase Act 2004.

(11) The transitional period is the period of six months starting on the date of commencement of that section.

(12) The established quantity in relation to any land is the maximum quantity which was present on, over or under the land at any one time within the establishment period.”.

St Andrew's House,  
Edinburgh  
19th May 2006

*MALCOLM CHISHOLM*  
A member of the Scottish Executive

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

Section 90 of the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”) provides that the Scottish planning Acts bind the Crown. Section 119(2) of the 2004 Act enables the Scottish Ministers to make transitional provision for those proposed developments by the Crown previously dealt with by way of non-statutory arrangements.

Article 3 makes transitional provisions to apply the Town and Country Planning (Scotland) Act 1997 (“the 1997 Act”) in terms of proposals for development by the Crown in progress on the relevant date, as defined in Article 3(2).

Article 3(4) provides for developments which have been notified by the planning authority or the Scottish Ministers as acceptable under the informal arrangements in place before 12th June 2006, to be treated as if planning permission were granted under the 1997 Act, unless the proposed development comes with Schedule I or II of the Environmental Impact Assessment (Scotland) Regulations 1999.

In those cases, article 3(6) provides that planning permission is not granted, unless the requirements of the regulations had been complied with as if an application for planning permission had been made in respect of the proposed development.

Under article 3(5), if a notice was subject to conditions, these are to have effect as if they were conditions attached to a planning permission under article 3(5).

Article 3(7) applies section 47 (appeals) to enable an appeal to the Scottish Ministers where the planning authority has notified the developer that a proposed development is not acceptable or acceptable subject to conditions.

Article 3(8) requires the Scottish Ministers to treat the proposal as an appeal where it has been referred to them but not yet decided.

Article 3(9) requires an application for planning permission to be made for proposals for development where on the relevant date the planning authority has not given notice and the matter is not referred to the Scottish Ministers.

Article 4 makes similar transitional provisions to apply the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 in respect of proposals for listed building works by the Crown in progress on the relevant date as defined in article 4(2).

Article 5 inserts a new section 30D into the Planning (Hazardous Substances) (Scotland) Act 1997 to make provision for the application of the Crown for deemed hazardous substances consents during the transitional periods where such substances had been present on site at or above controlled quantities in the 12 months prior to the application to the Crown of the Planning (Hazardous Substances) (Scotland) Act 1997.