

**Executive Note**  
**The Planning and Compulsory Purchase Act 2004 (Transitional Provisions) (Scotland)**  
**Order 2006 SSI/2006/269**

The above instrument is made in exercise of powers conferred by section 119(2) and section 122(3) of the Planning and Compulsory Purchase Act 2004.

**Policy Objectives**

This order relates to the removal of Crown immunity from planning control so that in future Crown development would be subject to statutory planning controls.

The Town and Country Planning Acts currently do not apply to the Crown. As a result Crown bodies are not subject to planning control for development which they propose to carry out. Instead, government departments and other Crown bodies wishing to carry out development in Scotland have undertaken to comply with the non-statutory arrangements in Part IV of the Memorandum to Scottish Development Department Circular 21/84. Similar arrangements apply to such development in England and Wales.

The UK Government and the Scottish Executive sought to rectify this anomaly. Provisions to remove Crown immunity from planning controls were therefore included in the Planning and Compulsory Purchase Act 2004. This will mean that, once the proposed powers are brought into force, all Crown bodies will in future need to, for example, seek planning permission or listed building consent. The statutory requirements of the devolved planning regime will thereby be extended. This approach to the removal of Crown Immunity from planning control in the UK will, among other things, put the requirements of the European Directive on Environmental Impact Assessment in relation to Crown development on a statutory footing.

This order relates to transitional arrangements to deal with the move from administrative arrangements for processing proposals for Crown development to statutory planning controls in relation to applications for planning permission and for listed building consent. The order also has transitional provisions in relation to hazardous substances consent, for which there are currently no administrative arrangements in relation to the Crown.

Article 3 of the Order begins by identifying the proposals in question, namely Crown developments subject to the administrative arrangements under Circular 21/84 which reflect planning application procedures. Sub paragraphs (4)-(6) grant planning permission where the planning authority has given notice the proposal is acceptable and any conditions included in the notice apply as if they were conditions attached to a grant of planning permission. The grant of planning permission does not apply where the development would have required environmental impact assessment had it been subject to a planning application, unless all the planning related requirements of the Environmental Impact Assessment (Scotland) Regulations 1999 were fully complied with.

Sub-paragraph (7) of article 3 allows that where the planning authority have given notice that they do not find the development acceptable or have indicated it is acceptable subject to conditions, the developer has a right of appeal against the decision as an applicant for planning permission would have.

Sub-paragraph (8) of article 3 deals with situations where cases are being processed under administrative arrangements and have been referred to the Scottish Ministers but have not been decided. Such cases will in effect become a statutory planning appeal.

Sub-paragraph (9) of article 3 allows that where cases are before the planning authority and not decided then they simply become statutory planning applications upon the removal of Crown immunity.

Article 4 makes similar provisions as article 3 but in relation to cases decided or being processed under the administrative arrangements reflecting procedures for obtaining listed building consent – granting consents on acceptable cases, making conditions binding, allowing for appeals and making undecided administrative applications into statutory applications or appeals, depending on what stage in processing they have reached.

Article 5 introduces a transitional arrangement regarding hazardous substances consent. It amends the Planning (Hazardous Substances) (Scotland) Act 1997 to allow a deemed hazardous substances consent to be claimed where hazardous substances in quantities above the thresholds in the Planning (Hazardous Substances) (Scotland) Regulations 1993 have been present throughout the 12 months prior to the removal of Crown immunity. In claiming a deemed consent, standard conditions are applied to the keeping of the hazardous substances present. The transitional arrangements here tie in with related amendments to the above mentioned 1993 Regulations set out in the Town and Country planning (Application of Subordinate Legislation to the Crown) (Scotland) Order 2006, which accompanies this and other Scottish Statutory Instruments relating to the removal of Crown immunity from Planning control.

This provision is similar to the transitional arrangements previously used in relation to the private sector when the hazardous substances regulations were introduced in 1993. It allows those who were legitimately carrying out their activities prior to the introduction of controls to be brought within the system of statutory control without unduly disturbing their business by withholding permission.

While we do not anticipate there will be many such installations in relation to Crown land which would be covered by the hazardous substances legislation, if there are any they will benefit from the same transitional arrangements as the private sector when controls on hazardous substances were brought to bear on their established activities.

## **Consultation**

The question of the removal of Crown immunity from planning controls in Scotland was the subject of public consultation in the early 1990s. It is only in recent years that a suitable legislative opportunity arose to make the necessary provisions in planning legislation. While a number of Crown bodies have been consulted on aspects of the secondary legislation, we have not carried out a full public consultation on the secondary legislation. In light of the European infraction proceedings in relation to applying the requirements of the European Directive on environmental impact assessment to Crown development we have pressed ahead with the laying of Scottish Statutory Instruments.

## **Financial Effects**

This instrument should have no financial effects other than very minor administrative costs to the planning authority with re-designating cases being processed under administrative arrangements when Crown immunity is removed. The purpose of this order is to smooth the transition to statutory procedures and remove the need for repeating processes which should already have been carried out under the administrative arrangements for Crown development.

The Scottish Executive Development Department  
May 2006