

EXPLANATORY MEMORANDUM TO
THE TOWN AND COUNTRY PLANNING (APPLICATION OF SUBORDINATE
LEGISLATION TO THE CROWN) ORDER 2006

2006 No. 1282

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 Part 7 of the Planning and Compulsory Purchase Act 2004 applies the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Planning (Hazardous Substances) Act 1990 to the Crown. This Order applies existing planning subordinate legislation to the Crown with certain modifications.

3. Matters of special interest to the Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 Part 7 of the Planning and Compulsory Purchase Act 2004 applies the Town and Country Planning Act 1990 (“the 1990 Act”), the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Planning (Hazardous Substances) Act 1990 to the Crown. These Acts are referred to as “the planning Acts”. As well as applying the planning Acts to the Crown, Part 7 makes provision for applications which involve national security, urgent Crown development, enforcement, preservation of trees and old mining permissions.

4.2 Section 88(1) of the Planning and Compulsory Purchase Act 2004 provides that the Secretary of State may, by order, provide that relevant subordinate legislation applies to the Crown with or without modification. “Relevant” is defined as existing subordinate legislation which is made under, or for the purposes of, any of the planning Acts. This Order applies relevant subordinate legislation with modifications to take account of the new provisions on applications for planning permission for urgent Crown development¹ and urgent works by the Crown to listed buildings², and modifications to various inquiry procedure rules to take account of cases where a national security direction is given restricting public access to a planning inquiry.

¹ Section 293A of the 1990 Act.

² Section 82B of the Planning (Listed Buildings and Conservation Areas) Act 1990.

4.3 Section 55 of the 1990 Act defines “development”. Section 55(2)(f) provides that the change of use of buildings specified by the Secretary of State by order does not constitute development. This Order adds a new class of development to the Town and Country Planning (Use Classes) Order 1987 - “secure residential institutions”. Change of use within that class does not constitute development for the purposes of the 1990 Act.

4.4 Sections 59, 60 and 61 of the 1990 Act provide for the granting of planning permission for certain types of development by order (known as a development order). This Order amends the Town and Country Planning (General Permitted Development) Order 1995. Part 13 is amended to give the Secretary of State planning permission in relation to certain works carried out under the Highways Act 1980 and adds new Parts 34 to 38 to give the Crown planning permission for certain forms of development.

4.5 Section 293A of the 1990 Act provides that the Crown may apply to the Secretary of State for planning permission for development of national importance which is urgent. Section 293A(8) and (9) require the application to be advertised and consulted on in accordance with the requirements set out in a development order. This Order amends the Town and Country Planning (General Development Procedure) Order 1995 by specifying the requirements for publicity and consultation.

4.6 This Order is linked with the Planning and Compulsory Purchase Act 2004 (Commencement No.9 and Consequential Provisions) Order 2006 No.1281(C.43) the Planning (National Security Directions and Appointed Representatives) (England) Rules 2006 No.1284 and the Planning (Listed Buildings, Conservation Areas and Hazardous Substances) (Amendment) (England) Regulations 2006 No.1283

5. Extent

5.1 This instrument applies to England and Wales, except for articles 5(2) and (3), 16(2) to (6) and 17(2) to (7) which apply in relation to England only. Similar amendments will be made in relation to Wales by the National Assembly for Wales.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 In order for the system to work when the planning Acts apply to the Crown it is essential that the existing body of planning subordinate legislation also applies to the Crown. The powers in section 88 of the 2004 Act are necessary because legislation made before commencement, and hence before the Crown was part of the system, would not so apply.

7.2 Much of the existing subordinate legislation can be applied without, or with only minor, modification. The new class of development in the Town and Country Planning (Use Classes) Order 1987 - “secure residential institutions” - is required

because such institutions (prisons and other detention facilities) are mainly operated by the Crown, so has not been needed before. They all have a similar land use impact and it is reasonable to allow changes between these types of premises without requiring planning permission for a change of use. The new class includes similar non-Crown uses, such as secure hospitals and local authority secure accommodation, to provide a coherent use class.

7.3 New permitted development rights for the Crown (see paragraph 4.4 above) are required because the Crown owns several types of operational land, both general and specialised, which are not reflected in the Town and Country Planning (General Permitted Development) Order 1995. Without these rights, the Crown would be at a disadvantage compared to local authorities and statutory undertakers, who have permitted development rights for a wide range of activities. Local planning authorities would also have had to deal with a significant number of applications for small-scale development. These new rights have been based on existing ones, with modifications to take account of special circumstances, such as national security in Part 38 of Schedule 2 to the 1995 Order (as inserted by Part 2 of Schedule 1 to this Order).

7.4 Various changes have been made to put the policy behind urgent applications under section 293A of the principal Act into effect. Section 293A provides for applications to be made direct to the Secretary of State. This by itself would not speed up the procedures as the same result to be obtained by the Secretary of State calling-in the application for her own decision under section 77 of the principal Act. In order to speed up the procedure, the interval between the “start date” and a public inquiry has been reduced from 22 weeks to 14 weeks, with consequential changes to the timetable for intermediate stages. The amendments to the Town and Country Planning (Inquiries Procedure) (England) Rules 2000 and the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003 are in Part 2 of the Schedules to those Rules inserted by Schedules 2 and 5 to this Order respectively.

7.5 A public consultation exercise took place between September and December 2005 on this Order, the Planning (Listed Buildings, Conservation Areas and Hazardous Substances) (Amendment) (England) Regulations 2006, and the Planning (National Security Directions and Appointed Representatives) (England) Rules, together with a draft Circular. The consultation paper can be viewed at <http://www.odpm.gov.uk/index.asp?id=1164257> or hard copies are available. The Office received 32 responses to the consultation paper, of which eighteen commented on this Order. Although the substance is largely unchanged, some minor amendments were made as a result of the consultation and further discussions within government. The instruments that apply only in Wales were also added after consultation - the consultation paper noted in paragraph 2 that only English provisions were included.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

Robert Segall at the Department for Communities and Local Government Tel: 020 7944 3913 or e-mail: robert.segall@odpm.gsi.gov.uk can answer any queries regarding the instrument.