DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT

DCLG Circular 02/2006
Department for Communities and Local Government
Eland House, Bressenden Place, London SWIE 5DU

7 June 2006

CROWN APPLICATION OF THE PLANNING ACTS

INTRODUCTION

1. The Memorandum to this Circular provides guidance to local planning authorities in England on the changes to the planning system caused by the implementation of Chapter 1 of Part 7 of the Planning and Compulsory Purchase Act 2004 (the "2004 Act") and the associated subordinate legislation. Part 7 applies the planning Acts to the Crown, which will, in general, have to apply for planning permission for development in a similar manner to other applicants from 7 June 2006.

2. There are some special arrangements, mainly concerned with national security and defence, urgency and enforcement, together with new permitted development rights and use classes.

3. The planning Acts (all as amended) are the Town and Country Planning Act 1990 (the "principal Act"), the Planning (Listed Buildings and Conservation Areas) Act 1990 (the "listed buildings Act") and the Planning (Hazardous Substances) Act 1990 (the "hazardous substances Act").

4. Appendix 1 to this Circular contains a summary of Chapter 1 of Part 7 of the 2004 Act, together with the associated Schedules 3 and 4. Appendix 2 reproduces the Fees Protocol for urgent applications by the Crown.

5. This Circular, together with all other relevant extant planning Circulars and other guidance, is also commended to all Crown bodies that undertake development. In particular, Crown bodies should note that in planning proceedings to which DoE Circular 8/93 applies *Awards of Costs Incurred in Planning and Other (Including Compulsory Purchase Order) Proceedings*, the statutory provisions for awards of costs to or against parties will apply to Crown bodies that are a party as well as local planning authorities and any other parties.

CANCELLATIONS

6. DoE Circular 18/84 (WO 37/84) *Crown Land and Crown Development;* paragraph 3 of Annex 4 (Application of Costs Policy to Third Parties in Proceedings) to DoE Circular 8/93 (WO 23/93) *Awards of Costs Incurred in Planning and Other (Including Compulsory Purchase Order) Proceedings;* Annex 7 (Control of Development on Crown Land) to DETR Circular 10/97 *Enforcing Planning Control: Legislative Provisions and Procedural Requirements*[1]; and paragraph 157 of DETR Circular 02/99 *Environmental Impact Assessment* are cancelled. Paragraphs 2.4 to 2.7 of the Secretary of State's guidance in *Tree Preservation Orders: A Guide to the Law and Good Practice* (March 2000) are also cancelled.

STAFFING AND FINANCIAL IMPLICATIONS

7. Action in accordance with this Circular and Memorandum will have no significant effect on central or local government staffing levels or expenditure. The non-statutory system under DoE Circular 18/84 was designed to follow the statutory development control system, including advertisement of Notices of Proposed Development and their entry in the planning register. The inclusion of the Crown in the statutory system should therefore not add to the workload of local planning authorities. The Crown will now be required to pay fees for planning applications, so local planning authorities will receive income that was not received previously. The cost to the Crown of planning application fees is negligible as a proportion of scheme costs.

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Planning Directorate

The Chief Executive,
County Councils in England
District Councils
London Borough Councils
Metropolitan Borough Councils
Council of the Isles of Scilly

The Town Clerk, City of London

The Chief Executive,
National Park Authorities in England

The Chief Executive, Broads Authority

[1] DETR Circular 10/97 was partially superseded by ODPM Circular 02/2002 *Enforcement Appeals Procedures*, but Annex 7 was not explicitly carried forward. Notwithstanding the effect of ODPM Circular 02/2002, the latest guidance on special enforcement notices under sections 294 and 295 of the principal Act has been in Annex 7 to DETR Circular 10/97.

MEMORANDUM
Crown Application of the Planning Acts

INTRODUCTION

1. From 7 June 2006, the planning Acts will apply to the Crown, subject to certain exceptions. The Crown has hitherto been immune from the planning system, but successive governments have had a policy that immunities enjoyed by the Crown should be removed where they are not necessary. This will put the position of the Crown onto a statutory basis and ensure full compliance with the Environmental Impact Assessment Directive.

2. In addition to the changes to primary legislation made by the 2004 Act, a number of statutory instruments have been made to implement the provisions on Crown application. These include the Town and Country Planning (Application of Subordinate Legislation to the Crown) Order 2006, made mainly under section 88 of the 2004 Act, which applies all relevant existing subordinate legislation to the Crown (with the necessary amendments and modifications), the Planning (Listed Buildings, Conservation Areas and Hazardous Substances) (Amendment) (England) Regulations 2006 which provide for the advertisement of urgent applications for listed buildings consent and transitional provisions for deemed consent under the hazardous substances Act and the Planning (National Security Directions and Appointed Representatives) (England) Rules 2006 (made under section 321(7) of the principal Act and similar provisions in the other planning Acts) which concern national security directions and the role of appointed representatives (referred to in the remainder of this Circular as "special advocates", the name by which they are better known).

3. The rest of the Memorandum is arranged thematically, drawing together information from various provisions of the Act and the subordinate legislation.

BASIC APPLICATION

4. Section 79 amends the planning Acts so that they apply to the Crown (subject to certain provisions and exceptions) – these are explained in the Appendix, as are the provisions of Schedule 3 and paragraph 2 of Schedule 6.

5. In Part 9 of the 2004 Act (Miscellaneous and General), section 111(1) provides that the 2004 Act itself (except Part 8) binds the Crown. Section 112 provides that the planning Acts and the 2004 Act apply to Parliament, notwithstanding any rule of law relating to Parliament or the law and practice of Parliament. Other legislation provides for the Parliamentary estate to be treated as if it were Crown land.

NATIONAL SECURITY

6. When making a planning application, an application for listed building or conservation area consent or an application for planning consent under the hazardous substances Act, the Crown may be prevented on national security grounds from disclosing some of the details of the development in the planning application.

7. As a result of the Crown body having to withhold certain details from its planning application, the local planning authority may consider that it lacks the information needed to make an informed decision and so either refuse to give its consent or fail to determine the application. If the Crown then appeals, the Secretary of State has a power under section 321 of the principal Act to give a direction restricting to particular people the examination of the relevant evidence at the ensuing inquiry. Any of the parties with an interest in the application can ask the Secretary of State to give such a direction, but it will normally be the developing department owning the closed material who are likely to make such a request. The Secretary of State can only give such a direction where satisfied that the giving of evidence, or its disclosure, would be likely to result in the disclosure of information about national security or the security of premises or other property and where he is satisfied that public disclosure of that information would be contrary to the national interest. There are equivalent provisions in the listed buildings Act (for listed building consent) and the hazardous substances Act (for hazardous substances consent).

8. The effect of a section 321 direction is to restrict the hearing or examination of particular evidence to particular people because it would not be in the national interest for such evidence to be disclosed to the general public.

9. A Crown body might also ask for a section 321 direction as an objector to a planning application for a development by a third party that might interfere with a sensitive site. In these circumstances, a special advocate would be appointed to represent the interests of the applicant.

10. Where the applicant body is aware from the outset that the information which it has to withhold would be critical to the consideration of its application, it may see little point in waiting for the local planning authority to refuse or fail to determine the application and instead simply ask the Secretary of State to call the application in for determination. One of the current criteria for call-in is a case which "may involve the interests of national security or of foreign Governments"[2].

11. The decision about whether or not to give a section 321 direction rests with the Secretary of State, with no right of challenge other than by means of judicial review. If the Secretary of State decides not to give such a direction, the owner of the closed material must either allow that material to be inspected or heard in accordance with the normal arrangements or withdraw the application.

12. In accordance with the procedure set out in rule 6 of the Planning (National Security Directions and Appointed Representatives) (England) Rules 2006 (SI 2006/1284), the Secretary of State is required to publicise any request for a section 321 direction. This notification has to state that a request for a direction has been made. It must also specify the date (at least 14 days from the date when the notice is given) by which any representations as to whether a direction should be given have to be made to the Secretary of State[3].

[2] see Parliamentary written answer in House of Commons *Hansard* of 16 June 1999 at col. 138

[3] see Rule 6(8) for the detailed definitions applicable to the publicity arrangements

13. If the request relates to an application for planning permission for development which is an EIA application accompanied by an environmental statement; does not accord with the provisions of the development plan in force in the area in which the land to which the application relates is situated or would affect a right of way to which Part 3 of the Wildlife and Countryside Act 1981 (public rights of way) applies, then the Secretary of State has to give notice in both of the following ways:

    (a) by a site notice in at least one place on or near the land to which the application for planning permission relates for at least 14 days, and

    (b) by local advertisement in a newspaper circulating in the locality (and a website if the Secretary of State maintains one for this purpose).

14. If the request relates to a major development which does not fall within any of the three categories listed in paragraph 13 above, then it has to be publicised by giving notice:

    (a) either by a site notice as described above, or by serving the notice on any adjoining owner or occupier; and

    (b) by local advertisement as described above.

    Major developments are those for minerals, waste development, housing schemes of 10 or more dwellinghouses (or of 0.5 ha if the number of houses is not known), development of a building or buildings with a floorspace of at least 1,000 square metres, or development on a site of at least 1 ha.

15. In any other case, the Secretary of State must publicise the request either by means of a site notice as described above, or by serving the notice on any adjoining owner or occupier.

16. If this publicity elicits objections to the direction, the Secretary of State may consider the objections and decide whether to give the direction. If is in any doubt, the Secretary of State will then forward all openly available documents to the Attorney General with a request to appoint a special advocate to represent all those parties who have objected to the direction (and who have no right of access to the closed information). Once the special advocate has been appointed, the Secretary of State will then forward the closed material to the advocate, but only *after* the advocate has taken instructions from those he or she has been appointed to represent.

17. The special advocate will then submit written representations on the application for a direction to the Secretary of State, who will decide whether to determine the application for direction on the basis of written representations or following a private hearing. The arrangements to be applied to the conduct of any hearing or the assessment of written representations are set out in Rules 8 to 11 of the National Security Directions and Appointed Representatives Rules. Any hearing would be attended only by the special advocate and the body owning the closed material.

18. Once the Secretary of State has decided whether to make a direction, the decision (including a copy of the direction, if given) will be sent to everyone who had made representations or been heard.

19. Once a section 321 direction has been given, the Secretary of State will ask the Attorney General to appoint a special advocate to represent the interests of those prevented by that direction from hearing or inspecting any particular evidence at the local inquiry. Where an advocate had previously been appointed to represent a party during the direction-making process, a different advocate would be appointed for the inquiry so that he or she can take instructions without having prior knowledge of the closed material. The special advocate must take instructions before receiving the closed evidence but may discuss this evidence with the person who supplied it to the Secretary of State or anyone named in the direction. He or she will make submissions to the inspector at the local inquiry on behalf of the person or persons he or she is representing, and cross-examine witnesses to the extent allowed by the inspector under the Inquiries Procedure Rules. The special advocate may also call witnesses to give evidence on land use matters and will also be responsible for returning any closed material to the person who supplied it at the close of the inquiry.

20. The Secretary of State has power to direct any person interested in the inquiry to pay the fees and expenses of the special advocate.

21. The Town and Country Planning (Inquiries Procedure) (England) Rules 2000 have been amended to provide for the conduct of an inquiry where a special advocate has been appointed. These changes are set out in Part 1 of the Schedule to the Rules inserted by Schedule 2 to SI 2006/1282. Similar changes have been made to the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2002, the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002 and the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005 in Schedules 3, 4 and 7 respectively. They include provisions to ensure that closed material is restricted to the inspector, the special advocate and the representatives of the owners of that material. The inspector's discretion enables separate "open" and "closed" sessions to be held. Site visits by the Inspector including consideration of closed material would be accompanied by the representative of the owner of that material and the special advocate representing the excluded persons. The question of ensuring that all those who have access to the closed material have the necessary security clearance is an administrative matter and so is not on the face of the Rules.

22. The Inquiries Procedure Rules (referred to in the previous paragraph) do not apply formally to appeals in relation to hazardous substances consent. However, as indicated in DETR Circular 04/2000[4] it is intended that, where an inquiry is to be held, it should follow the spirit of the Rules.

23. There would be two versions of the Inspector's Report (and any assessor's report) and Secretary of State's decision letter. The "open" version would be sent to all interested parties, but the "closed" version, which discussed the closed material, would only be sent to the owner of the closed material and the special advocate.

[4] see footnote to paragraph A23 of DETR Circular 04/2000 *Planning Controls for Hazardous Substances*

OTHER APPLICATIONS CONTAINING SENSITIVE INFORMATION

24. Both the Crown and other organisations (such as embassies or owners of critical national infrastructure) may make planning applications for sensitive development. These would typically be for new physical security measures which they wish to present to the local planning authority, so they can take a properly informed planning decision. If the application were to be refused, the applicant would probably apply to the Secretary of State for a section 321 direction to protect the information at the local inquiry on the grounds that the security of premises or other property would be compromised by disclosure and that it was in the national interest for it to be withheld (see paragraph 6 above).

25. Although this information must be placed on the Planning Register, it would be helpful if it was not easily available to casual observers. In these cases, the applicant may ask for the application not to be publicised on the authority's website (if that is their practice) and for the sensitive information to be kept separately from the main register, so that it would only be available on specific request. The reason for this is that such applications may expose a weakness in current security arrangements which terrorists or other criminals may wish to exploit before it can be remedied. Authorities are therefore asked to give as much protection as possible (consistent with their statutory obligations) to information which would probably be withheld from the public at a planning inquiry.

URGENT APPLICATIONS FOR CROWN DEVELOPMENT

26. A special procedure is set out in section 293A of the principal Act to speed up the process for determining the planning application required where there is an urgent need for the Crown to undertake a particular development. This procedure aims to minimise the overall time taken to consider applications which might, in any case, need to be "called-in" by the Secretary of State. It seeks to balance speed against the need both to ensure fairness to those affected and to allow the local planning authority and other statutory consultees sufficient time to make an effective case. A similar procedure is provided in section 82B of the listed buildings Act for urgent applications for works to listed buildings on Crown land. (This is distinct from emergency works referred to section 82A(3) of the listed buildings Act). There are no urgency provisions under the hazardous substances Act.

27 In order to be able to invoke the special urgency procedure, the Crown body promoting the development must be able to certify both that it is of national importance and that it is required as a matter of urgency. If the developing body is able to do this, it can make a planning application direct to the Secretary of State as an alternative to the normal procedure for making an application to the local planning authority. But before doing so, the developing body must first advertise its intention in at least one newspaper local to the development, including a description of the proposed development.

28. Once the Appropriate Authority has certified that the scheme is of national importance and required urgently (section 293A(1) of the principal Act and section 82B(1) of the listed buildings Act), the application and certification should be sent to the Planning Inspectorate at

MSC Division (Crown Development Applications)
Room 4/04 Kite Wing
Temple Quay House
2 The Square
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and copied to the relevant Government Office for the Region and to the Divisional Manager, Planning Central Casework Division, DCLG, Zone 3/H1, Eland House, Bressenden Place, London SW1E 5DU. Until single application forms are available, the appropriate authority should use the form available on the Planning Portal (http://www.planningportal.gov.uk/). This may be printed off and posted or sent to the Planning Inspectorate electronically from the Planning Portal. The certification should be in writing. Without it, neither section 293A of the principal Act nor section 82B of the listed buildings Act would apply.

29. The Crown has undertaken to pay fees to the Secretary of State for urgent applications under section 293A of the principal Act. The Fees Protocol can be found at Appendix 2 to this Circular.

30. This special urgency procedure may be invoked where it has become clear as a result of pre-application discussions between the Crown body promoting the proposed development and the local planning authority (including discussions on possible conditions) that planning permission is likely to be refused. This could arise, for example, because the urgent need for the proposed development means that it was unforeseen, so that it is a departure from the local development plan. The proposed development may also be controversial. The tone of the inquiry will therefore be akin to that of a recovered appeal.

31. There is nothing to prevent the urgency provisions being applied to an application that is subject to the national security provisions (see paragraphs 6 to 23 above). In such a case, the modifications to the Inquiries Procedure Rules in both Parts 1 and 2 of the new Schedule to those Rules (inserted by Schedule 2 to SI 2006/1282) would apply. The National Security Protocol should also be followed.

32. The application to the Secretary of State has to include a statement of the case for making it, and must be accompanied by an Environmental Impact Assessment (EIA) where this would be required if the application were being made to the local planning authority. The Secretary of State also has a right to request such further information which will enable the application to be determined. The Secretary of State then has to make copies of the statement of case, any EIA and any other further information which has been requested available for public inspection. However, where the Secretary of State has given a direction on national security grounds the closed material does not have to be made available for public inspection. The Planning Inspectorate will ask the relevant local planning authority to act as agents of the Secretary of State in fulfilling (in particular) the requirements of article 8 of the GDPO. This would involve placing local advertisements, putting up and maintaining site notices and notification of the application to adjoining owners and occupiers, as the Inspectorate has no local presence. Local planning authorities are therefore asked to assist as necessary.

33. Before determining the application, the Secretary of State has to consult the local planning authority for the area in which the proposed development is located, as well as the relevant statutory consultees listed in the revised GDPO. The list now includes parish councils for these types of application[5]. The Secretary of State will determine the application in the same way as a local planning authority would – in accordance with the development plan unless material considerations indicate otherwise.

34. It is also the local planning authority's responsibility to enter details of the application onto the Planning Register within 14 days of receiving notification from the Secretary of State of any application made under the urgency provisions.

35. As the special urgency procedure is intended to be analogous to the exercise of the Secretary of State's call-in powers under section 77 of the principal Act, the same provisions apply. In particular, this means that the Secretary of State has to give the applicant and the local planning authority an opportunity to be heard at a local inquiry. It also means that the Secretary of State's decision is final and cannot be the subject of any legal proceedings[6], except as provided in Part 12 of the principal Act.

36. In order to facilitate the right for the applicant and the local planning authority to be heard at a local inquiry, the Town and Country Planning (Inquiries Procedure) (England) Rules 2000 have been extended to apply to inquiries required under the urgency provisions, with some variations from the normal time-periods specified. For example, the period allowed for the lead-up to the inquiry where no pre-inquiry meeting is required is reduced from the normal minimum period of 22 weeks to 14 weeks[7]. Intermediate timescales are shortened proportionately, such as for submitting and commenting on statements of case. The Rules also apply to urgent applications for listed building consent.

37. Once the inquiry has been held, the Inspector will report to the Secretary of State who will then consider that report and issue the decision in line with the normal arrangements for called-in applications.

ENFORCEMENT AND TREES

38. Section 84(1) of the 2004 Act repeals section 296 of the principal Act. If there were no replacement provisions, this would mean that there would no longer be any specific restrictions over a local planning authority's powers to take enforcement action against activities being undertaken on Crown land. However, sections 84(2) to (4) of the 2004 Act insert new sections into the planning Acts to restrict such actions as serving enforcement notices, stop notices, revocation orders and discontinuance orders. Section 84(2) sets out replacement provisions for the principal Act, section 84(3) inserts new arrangements into the listed buildings Act and section 84(4) similarly inserts provisions into the hazardous substances Act.

[5] See new article 10A of the GDPO as inserted by article 17(4) of SI 2006/1282.

[6] section 77(7) and section 284(3)(i) of the principal Act

[7] see Part 2 of the Schedule to the Inquiries Procedure Rules inserted by Schedule 2 to SI 2006/1282 for details.

39. The new arrangements included in all three Acts apply to all land in which a Crown body has any interest. Where a Crown body does have an interest, anything which requires or is permitted to be done by or in relation to the owner of the interest in land must be done by or in relation to the appropriate authority. An interest in land includes an interest only as an occupier of the land.

40. Under the new provisions, a local planning authority can serve a notice or make an order (other than a court order) intended to enforce compliance on Crown land without having to follow any procedures other than those which are already set out in the planning Acts as being generally applicable. There is no requirement to obtain the consent of the Crown body with the interest in the land ("the appropriate authority"[8]) before serving the notice or making the order.

41. Article 11 of the Application of Subordinate Legislation to the Crown Order applies the Town and Country Planning (Control of Advertisements) Regulations 1992 to the Crown except for regulation 27 (contravention of Regulations). Although the Crown itself cannot be prosecuted under these Regulations, regulation 27 will still apply to non-Crown occupiers of Crown land.

42. However, the new provisions do not allow a local planning authority to enter land for any purposes connected with the making or enforcing of any such notice or order without first securing the consent of the relevant Crown body. And, in granting such consent, the appropriate authority may impose such conditions as it considers appropriate. This might mean, for example, that any site visit by the local planning authority has to be accompanied, to take place at a pre-arranged time and/or to exclude certain parts of the site.

43. The local planning authority is also required to secure the consent of the appropriate authority before taking any action to enforce the notice or order. This includes bringing proceedings or making an application to the courts.

44. New sections 296A and 296B should be viewed in the context of the repeals of sections 294, 295 and 296 of the principal Act. Sections 294 and 295 dealt with special enforcement notices which were required to deal with those situations where unauthorised development took place on Crown land (eg a refreshment kiosk in a trunk road lay-by or by tenants who had not secured permission from the appropriate authority). These have become redundant now that normal enforcement notices can be served on Crown land. It should be noted that trespassers, who might have received a special enforcement notice against which they could appeal, will not be able to appeal against enforcement notices issued under section 172 of the principal Act, even if copies are served on them, because they would not have an interest in the land or be "relevant occupiers" as defined. The provisions dealing with the exercise of coercive enforcement powers (against private interests in Crown land) now have effect through section 84 of the 2004 Act.

45. Under section 211 of the principal Act, the Crown must notify local planning authorities of proposals to carry out tree works in conservation areas. In relation to sites

[8] see section 293(2) of the principal Act (as amended by paragraph 6 of Schedule 3 to the 2004 Act) for the definition of "appropriate authority".

which are subject to good tree management where large numbers of trees are maintained on a regular basis, such as public parks and gardens, a significant increase in paperwork for Crown bodies and local planning authorities could arise. On such sites, the relevant parties are advised to seek administrative ways of reducing the submission and processing of disproportionate numbers of notices under section 211. They are encouraged, where appropriate, to agree a programme of works which might form the basis of just one section 211 notice over a specified period of time, such as one or two years. A programme of works would not, in the Secretary of State's view, need to include a detailed specification of all anticipated works to each tree on the site. It would be sufficient for the programme of works to include particulars sufficient to identify the trees in question, and describe in general terms the classes of works which are likely as a matter of routine maintenance to be carried out on the site during the specified period, which the local planning authority are prepared to authorise on the basis that the site is under good management. Programmes of works which make provision for the felling of trees should, where appropriate, cater for the planting of replacement trees.

46. In conservation areas, cases may arise where a local planning authority are concerned about some proposed works on a site which they nevertheless consider is generally subject to good tree management. In such cases, the authority are encouraged to raise their concerns informally with the Crown body before resorting to the making of a tree preservation order. Informal discussion may resolve the authority's concerns and avoid the need for tree preservation orders on sites which are under good management.

47. The effect of section 85 (Tree preservation orders: Forestry Commissioners) and section 86 (Trees in conservation areas: acts of the Crown) are set out in the Appendix to this Circular.

48. Article 23 of the Application of Subordinate Legislation to the Crown Order applies the Town and Country Planning (Trees) Regulations 1999 to the Crown with modifications. The modification to the Schedule (Form of tree preservation order) set out in article 23(3) adds a new provision to article 5(1) of the Schedule as paragraph (aa), that works to a tree to enable the implementation of a highway order or scheme made or confirmed by the Secretary of State for Transport are exempt.

49. It also adds new paragraph (ab) so that works to a tree are also exempt if they are urgently necessary for national security purposes.

50. In considering whether it is expedient in the interests of amenity to make tree preservation orders in respect of Crown land, local planning authorities should have regard to the Secretary of State's advice in *Tree Preservation Orders: A Guide to the Law and Good Practice*[9]. In particular, this indicates that tree preservation orders should be used selectively, to protect trees and woodlands where removal would have a significant impact on the local environment and its enjoyment by the public. It also suggests that it is unlikely to be expedient to make a tree preservation order in respect of trees which are under good management. In the Secretary of State's view, the mere fact that the

[9] ISBN 1 85112 361 X. See paragraphs 3.1 to 3.5.

planning Acts now apply to the Crown, does not make it expedient to make tree preservation orders in respect of Crown land.

OLD MINING PERMISSIONS

51. Part 7 also removes Crown Immunity from the provisions of the Planning and Compensation Act 1991 (the "1991 Act") relating to the registration and review of Interim Development Order mining permissions granted between 1943 and 1948. Section 22 of, and Schedule 2 to, the 1991 Act required holders of such permissions, within specified time limits, to apply to the mineral planning authority for registration of the permission, and subsequently to apply for the determination of conditions to which the old mining permission would then be subject. Schedule 14 to the Environment Act 1995 (the "1995 Act") requires periodic reviews, at 15 year intervals, of all mineral permissions, including those registered and reviewed under the 1991 Act.

52. Enquiries made during the passage of what became the 2004 Act revealed no information about old mining permissions on Crown land. Nevertheless, there does remain a remote but finite possibility that there are old mining permissions on Crown land that have never been registered or made subject to applications for new working conditions under the 1991 Act, or have been incorrectly registered or reviewed in ignorance of the Crown Immunity that applied to it. Section 87 of the 2004 Act gives Crown bodies which might hold old mining permissions the opportunity to register them with the relevant mineral planning authority and apply for the determination of new conditions, on the same terms that applied to all other old mining permissions when the 1991 Act was implemented. The new legislation does not create any opportunity to register other old permissions after the expiry of their relevant registration dates.

53. Section 87 requires Crown bodies to apply to have an old mining permission registered within 6 months from 7 June 2006 or the permission will cease to have effect. If a mineral planning authority receives such an application then it should follow the detailed procedural guidance on the operation of the 1991 Act provisions contained in *Minerals Planning Guidance 8: Planning and Compensation Act 1991: Interim Development Order Permissions (IDOs)-Statutory Provisions and Procedures* (September 1991). In brief, the validity of the application should be considered and the application determined within three months, unless a longer period has been agreed with the applicant. An application for the determination of new conditions for active sites covered by an old mining permission must be made within 12 months from the date of registration. There is no time limit for an application for determination of conditions for dormant sites covered by an old mining permission but such a permission cannot come into effect unless new conditions have been finally determined. Any application for new conditions following registration in accordance with section 87 will be subject to consideration in accordance with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (as amended).

54. No equivalent amendments apply to the registration and initial review of old mineral permissions (granted between 1948 and 1982) under Schedule 13 to the 1995 Act since that Act has never been subject to Crown Immunity. However, there could conceivably be a case where it transpires that, through the mistaken use of the 1991 Act provisions, an old mining permission on Crown land has already been registered, but no application for determination of conditions has been made. For old mining permissions on Crown land the first review date under Schedule 14 to the 1995 Act depends on the date of

the initial determination of conditions under the new 2004 Act provisions. If any old mining permissions on Crown land were incorrectly registered under the 1991 Act, but new conditions have not yet been determined, then the review provisions in Schedule 14 cannot apply. New paragraph 3A of Schedule 14 (inserted by paragraph 19 of Schedule 7 to the 2004 Act) allows this situation to be dealt with. It enables the Secretary of State, by order, to require periodic reviews of conditions to be conducted where this may not otherwise be possible or at a date other than set at an initial review.

55. We do not expect that there will be many, if any, permissions which may require an order to be made under these powers to deal with the contingencies outlined above. Mineral planning authorities are asked to contact the Planning – Resources and Environment Policy Division of the Department if they become aware of such permissions. Mineral planning authorities should also consult Planning – Resources and Environment Policy Division in the unlikely event that an old mining permission relating to an active mineral operation on Crown land was both registered and made subject to modern conditions under the 1991 Act.

56. Where, subject to two criteria, no mineral development has taken place at a mining site on Crown land which is the subject of an old mining permission, mineral planning authorities are encouraged to consider issuing a prohibition order. The two criteria are that no mineral development has taken place to any substantial extent for at least two years and that, on the evidence available to the authority, resumption of development to any substantial extent seems unlikely. Prohibition orders establish without doubt that development has ceased, ensure that development cannot resume without a fresh grant of planning permission and secure restoration of the land. Further advice on prohibition and other orders available to mineral planning authorities to alter mineral planning permissions is contained in *Minerals Planning Guidance 4: Revocation, Modification, Discontinuance, Prohibition and Suspension Orders,* (August 1997).

PERMITTED DEVELOPMENT RIGHTS

57. The Town and Country (General Permitted Development) Order 1995 (SI 1995/418) (the "GPDO") grants planning permission for certain classes of development without any requirement for the submission of a planning application. Schedule 2 to the GPDO sets out the classes of permitted development rights along with various restrictions and qualifications. Some permitted development rights are restricted to certain classes of users, for example Part 12 of the GPDO (Local authorities) and Part 17 (Statutory Undertakers).

58. Permitted development rights are given as it would be unreasonable and inefficient to require planning permission for a range of small scale developments. Development that goes beyond what is permitted by the GPDO requires planning permission and development requiring environmental assessment does not benefit from permitted development rights.

Use of Existing Permitted Development Rights by Crown Bodies

59. The Application of Subordinate Legislation to the Crown Order applies, with certain modifications, the GPDO to the Crown and so Crown bodies are able to use many of the existing permitted development rights set out in the GPDO that are not user-specific. Examples include Part 1 (Dwellinghouses), Part 2 (Minor operations), Part 4

(Temporary buildings and uses) and Part 31(Demolition) on land that it owns or manages. Crown bodies that operate as private or income-generating organisations through property ownership and development, such as Her Majesty's private estates, the Crown Estate and the Duchies of Lancaster and Cornwall are likely to use other parts of the GPDO, for example, Part 3 (Change of use), Part 6 (Agricultural buildings and operations), Part 7 (Forestry) and Part 8 (Industrial and warehouse development).

Permitted Development Rights Specific to Crown Bodies

60. Certain Crown bodies own or manage land and buildings that are used or held for operational purposes. Operational Crown land, defined in article 1(2) of the GPDO (as amended by article 16 of the Application of Subordinate Legislation to the Crown Order), is Crown land which is used or held for operational purposes. These purposes relate to the carrying out of the functions of the Crown body. This definition of operational Crown land is similar to the definition of the operational land of statutory undertakers given in section 263 of the principal Act. Examples of Crown bodies that have operational land include the Highways Agency of the Department for Transport that has responsibilities for the building, improvement and maintenance of trunk roads and motorways. An addition has therefore been made to Part 13 of the GPDO (Development by Highway Authorities) granting permitted development rights for the carrying out by the Secretary of State for Transport of works related to his functions under the Highways Act 1980. The Secretary of State will also be able to make use of the existing Part 13 (now Part 13 Class A) permitted development rights currently available to local highway authorities.

61. Other Crown bodies that own or manage operational land include the Home Office that has responsibility for prisons and other detention and accommodation facilities, and the Ministry of Defence that has responsibility for a wide range of bases, training and research facilities. The Department for Constitutional Affairs has responsibility for court facilities. The Department for Culture, Media and Sport is responsible for the management of the occupied Royal Palaces and the Royal Parks, and for the unoccupied Royal Palaces, the management of which it has contracted out to Historic Royal Palaces. The parts of the Palace of Westminster mentioned in section 293(2)(f) and (g) of the principal Act are Crown land: the remainder, including both Houses of Parliament are treated as if they were Crown land by means of the Planning (Application to the Houses of Parliament) Order 2006. Crown bodies have therefore been given, in Part 34 of Schedule 2 to the GPDO (Development by the Crown), additional permitted development rights to enable them to undertake certain development on their operational land without requiring planning permission. They have also been given permitted development rights in relation to aviation in Part 35 of the GPDO and in relation to railway, dockyard and lighthouse development in Part 36 of the GPDO. Further, Part 37 of the GPDO grants permitted development rights for emergency development and Part 38 grants permitted development rights for national security purposes.

62. The general principle underlying the granting of these additional permitted development rights is that those Crown bodies that own and manage land used for operational purposes should be on a similar footing to other bodies such as local authorities (Part 12 of the GPDO) and statutory undertakers (Parts 17 and 18 of the GPDO) who have permitted development rights to enable them to undertake certain works on their operational land or for the purposes of their functions.

Application of the Crown Permitted Development Rights

63. The permitted development rights granted by Parts 34, 35 and 36 of the GPDO only apply to operational Crown land and to buildings on operational Crown land rather than to land or buildings on land which is comparable to land in general, for example buildings used as offices. Moreover, Crown land that is effectively domestic land or private sector commercial land, for example Her Majesty's private estates, land of the Duchies of Lancaster and Cornwall and the Crown Estate do not form part of operational Crown land and so do not benefit from these permitted development rights. Parts 37 and 38 of the GPDO, however, apply to all Crown land (including Her Majesty's private estates, the Duchies and the Crown Estate). All land owned by the Security and Intelligence Agencies (comprising the Secret Intelligence Service (SIS), the Security Service and the Government Communications Headquarters (GCHQ)) is considered by the Secretary of State to be operational land. Some Ministry of Defence buildings will also fall into this category. The Ministry of Defence also has clearly operational land such as military bases and some "general" land such as recruitment offices.

GPDO, Part 34, Development by the Crown

64. There are four classes in Part 34 of the GPDO. Class A is similar to Part 12 of the GPDO for local authorities and allows the construction, maintenance, improvement or alteration of small ancillary buildings and for works or equipment required for operational purposes, such as lamp standards, shelters and barriers for the control of people or vehicles.

65. Part 34 Class B grants permitted development rights similar to those granted by Part 8 Class A of the GPDO (Industrial and Warehouse development) and allows for the extension or alteration of an operational Crown building for the purposes of the Crown by up to 25% of the original building on most land, and by up to 10% of the original building on article 1(5) land. Article 1(5) land includes national Parks, AONBs, conservation areas, areas of the countryside designated for their natural beauty and amenity and the Broads. For the purposes of Part 34 and the other new Crown permitted development rights, the original building is the building as existing on 7 June 2006 or as built if constructed after this date. However, the exclusions set out in Part 8 Class A.1 (b) (i) and (ii) which prevent development of the building or warehouse if is not to be used for the carrying out of an industrial process or for storage or for the provision of employment facilities, and the related conditions dealing with industrial buildings, warehouses and employee facilities, specified in Part 8 Class A2, are not included in Part 34.

66. Part 34 Class C is similar to Part 8 Class B but relates to development, including the installation of plant and machinery, carried out on Crown land for operational purposes rather than development carried out on industrial land for the purposes of an industrial process.

67. Part 34 Class D is similar to Part 8 Class C and permits the provision of a hard surface within the curtilage of a building on operational Crown land for operational purposes.

GPDO, Part 35, Aviation development by the Crown

68. Part 35 of the GPDO grants permitted development rights for aviation development by the Crown. Most aviation development by the Crown is undertaken by the Ministry of Defence, but aviation development is also undertaken in relation to search and rescue facilities by the Maritime and Coastguard Agency. Classes A to H of Part 35 correspond to Classes A to I (simplified) in Part 18 of the GPDO. Part 18 applies to airports covered by Part 5 of the Airports Act 1986. However, Part 35 applies to "airbases" which are defined in Class I as the aggregate of land, buildings and works comprised in a Government aerodrome within the meaning of Article 155 of the Air Navigation Order 2005[10].

GPDO, Part 36, Crown Railway, Dockyard, Lighthouse development

69. Part 36 of the GPDO concerns permitted development of Crown railways, dockyards and lighthouses. Class A relates to development by the Crown on operational Crown land in connection with the movement of traffic by rail. These permitted development rights are similar to those granted to railway undertakers by Part 17 Class A of the GPDO.

70. Class B deals with development on operational Crown land by the Crown or its lessees in respect of shipping (and certain other activities at a dock, pier, pontoon or harbour). These permitted development rights are similar to those granted to statutory undertakers by Part 17 Class B of the GPDO.

71. Part 36 Class C deals with the spreading of dredged material on any land by the Crown. These permitted development rights are similar to those granted to statutory undertakers by Part 17 Class D of the GPDO.

72. Part 36 Class D deals with development by the Crown on operational Crown land in respect of lighthouses. The permitted development includes the erection, alteration or removal of a lighthouse, buoy or beacon. This is expressed rather differently from Part 17 Class I, as it describes the permitted development directly, rather than by reference to the functions of local lighthouse authorities.

GPDO, Part 37, Emergency development by the Crown

73. Part 37 of the GPDO deals with development by the Crown on any Crown land for the purposes of preventing an emergency or in response to an emergency. An "emergency" is defined in Class A.2 as an event or situation which threatens serious damage to human welfare (in a place), the environment (of a place) or the security of the United Kingdom. It applies to all Crown land, mainly to ensure that all the residences of the Sovereign and Her heirs are covered. It is also possible that the Crown Estate for example, as owners of the foreshore, may have to deal with an environmental

[10] 'Government aerodrome' means any aerodrome in the United Kingdom which is in the occupation of any Government Department or visiting force; and
'Aerodrome' means any area of land or water designed, equipped, set apart or commonly used for affording facilities for the landing and departure of aircraft and includes any area or space, whether on the ground, on the roof of a building or elsewhere, which is designed, equipped or set apart for affording facilities for the landing and departure of aircraft capable of descending or climbing vertically, but shall not include any area the use of which for affording facilities for the landing and departure of aircraft has been abandoned and has not been resumed.

emergency. The developer must notify the local planning authority as soon as practicable after starting the development and the development must cease and the land be restored to its original or an agreed condition within six months. If the Crown wishes the development to be permanent, it should submit a planning application as soon as possible.

GPDO, Part 38, development for national security purposes

74. Part 38 of the GPDO concerns development for national security purposes. Class A deals with the erection, construction, maintenance or alteration of a gate, fence, wall or other means of enclosure by the Crown on any Crown land. The structure installed must not exceed 4.5 m above ground level.

75. Part 38 Class B deals with development by the Crown for closed circuit television cameras and associated lighting. These permitted development rights go beyond those granted by Part 33 Class A of the GPDO by removing the restrictions on numbers and allowing free-standing cameras. The provision of lighting is a new permitted development right for the Crown, but only a low level of lighting, which must not exceed 10 lux measured at ground level, is permitted.

76. Part 38 Class C deals with development by the Crown for electronic communications apparatus. These permitted development rights are based on those granted by Part 24 Class A of the GPDO (Development by Electronic Communications Code Operators). However, classes C.1(b) to C.1(h) also permit like-for-like replacement which allows the replacement equipment to exceed the size limits imposed on the installation of new equipment provided that the size of the replacement equipment does not exceed that of the original. In addition, the restrictions on the installation of equipment on a wall or sloping roof within 20m of a public highway have been relaxed to permit the installation of equipment for essential operational purposes.

77. Unlike Part 24, Part 38 does not include a prior approval procedure so the Crown does not have to submit proposals to the local planning authority in advance. However, the Crown will have to give notice, before commencing development, to the owner or tenants on the land and to relevant authorities if installing a mast within 3km of an aerodrome. In the absence of a prior approval mechanism, development is subject to restrictions on intensification in Class C.3.

78. Part 38 Class C.3 deals with the intensification of installation of electronic communications apparatus on Crown land. Where there is existing development on a site on the "relevant day"[11], Class C.3 allows for extra pieces of "small apparatus" to be installed in addition to the piece of apparatus permitted under Class C.(a). Class C.3(2) permits one piece of small apparatus to be installed for every four pieces of apparatus on the site on the relevant day. Class C.3(3) defines "small apparatus". For ground based equipment, these are 7 metres in height, with up to 5 metres in diameter for dish antennae and up to 7 metres in diameter for ground works. For apparatus on buildings, the limits are 3 metres in height, with up to 1.3 metres in diameter for dish antennae,

[11] The "relevant day" is defined in Class C.6 as 7th June 2006; or where apparatus is installed pursuant to planning permission granted on or after 7th June 2006, the date when that apparatus is finally installed pursuant to that permission, whichever is later.

and for equipment housing, the limits are 3 metres in height with a ground area of up to 9 square metres. Class C.2 permits development on article 1(5) land only where it consists of the installation of additional equipment on a site developed on the relevant day and that site is Crown land on the relevant day. The following tables summarise the intensification provisions in a convenient form:

On non-article 1(5) land

Pieces of existing apparatus	Number of pieces of standard (C.(a)) apparatus that may be installed	Number of pieces of "small apparatus" that may also be installed
0 – 3	1	0
4 – 7	1	1
8 – 11	1	2
12 – 15	1	3 etc

On article 1(5) land

Pieces of existing apparatus	Number of pieces of standard (C.(a)) apparatus that may be installed	Number of pieces of "small apparatus" that may also be installed
0	0	0
1 – 3	1	0
4 – 7	1	1
8 – 11	1	2
12 – 15	1	3 etc

79. The Part 38 rights are available to all Crown bodies in order to cover the physical protection of the sovereign and Her heirs, which is a matter of national security.

Publicity arrangements for permitted development undertaken by Crown bodies

80. Although Crown bodies when exercising their permitted development rights are not governed by statutory provisions for publicity they should follow the guidance issued to statutory undertakers in DoE Circulars 15/92 and 9/95 and inform the local planning authority and the public of developments likely to have a significant effect on amenity and environment well in advance of work starting. This includes development proposals which are likely to be of special concern (eg if there is a substantial effect on a conservation area or a significant planning impact beyond the Department's site). However, these arrangements do not apply where a Crown body is exercising its permitted development rights granted by Part 37 of the GPDO (Emergency development by the Crown) or Part 38 of the GPDO (development for national security purposes).

GPDO Article 4 Directions

81. Following notification, a local planning authority may, in exceptional cases, consider that normal planning control should apply to the proposed development. In these cases it will be open to it to make a direction under article 4 of the GPDO. However, such a direction will not apply to development permitted by Part 13 Class B (development carried out by the Secretary of State in exercise of his functions under the Highways Act 1980), as this development has already been subject to a statutory procedure equivalent to that under the planning system (Article 4(3)(aa)). And in line with article 4(3)(ab) of the GPDO, such a direction will not apply to any permitted development undertaken by the Crown permitted by Part 37 of the GPDO, (emergency development by the Crown) or by Part 38 of the GPDO (development for national security).

USE CLASSES ORDER

82. The Town and Country Planning (Use Classes) Order 1987 has been amended by article 5 of SI 2006/1282. There is a new use class C2A for secure residential institutions, which enables changes between similar types of premises (but with different uses) to be made without requiring planning permission for a change of use.

83. The list of institutions falling within the C2A class is not exhaustive. However, the class should include all the various categories of secure facilities in the criminal justice and immigration estates. Two non-Crown uses have been included (secure local authority accommodation and secure hospitals) because they share the land use characteristics and impacts of some of the Crown uses. The list contains two types of institution: the first type is those uses already described, where security is concerned with preventing the residents from leaving. The second type is military barracks, where security is concerned with preventing unauthorised entry, but where the planning impacts are similar to some of the other uses in the list. For example, it might be possible to convert a disused military barracks to a low-category prison without major perimeter works.

84. A new C2A development such as a prison, secure hospital or immigration detention centre will require a planning application. These types of development require a large area of ground. Such uses need good road links for staff, visitors and deliveries and space for car-parking as well as good public transport links. They also provide a significant number of long-term jobs for local people. For these reasons such institutions may not easily be accommodated within existing residential land allocations. The Secretary of State considers that the physical requirements and employment-generating aspects of these schemes are an important consideration and that despite their residential classification, location on land allocated for employment uses is appropriate.

85. The second amendment to the Use Classes Order is adding use as a law court to Class D1 (non-residential institutions). Law courts have similar planning impacts to other D1 uses, such as art galleries, museums and exhibition halls, where people come and go throughout the day.

86. Other uses by the Crown are expected to fall into existing use classes and so do not need to be mentioned specifically. One issue that has arisen in the non-statutory system for Crown development under DoE Circular 18/84 is the treatment of Home Office Reporting Centres used by asylum and immigration applicants. These centres are normally in office-type buildings and are visited by applicants (and their advisers) by

appointment. Although Home Office Reporting Centres have significant numbers of members of the public visiting them, this activity is not normally at a level that would exclude them from a B1 use class.

REMAINING SECONDARY LEGISLATION

87. Most of the articles in the Town and Country Planning (Application of Subordinate Legislation to the Crown) Order 2006 apply such legislation to the Crown without modification. The only provision in which there are substantive amendments not already mentioned is the Planning (Hazardous Substances) Regulations 1992. Article 10 introduces an exemption from hazardous substances consent for military establishments. This implements the relevant exemption from the Control of Major Accident Hazards ("Seveso II") Directive (96/82/EC). Amendments to regulations 14, 15 and Form 8 in Schedule 2 of the 1992 Regulations have been made by regulation 3 of the Planning (Listed Buildings, Conservation Areas and Hazardous Substances) (Amendment) (England) Regulations 2006 (SI 2006/1283). These provide for transitional arrangements for deemed consents required by section 30B of the hazardous substances Act (as inserted by section 79(3) of the 2004 Act).

88. All other changes not specifically referred to in previous sections are consequential on the introduction of either the urgency provisions or the national security procedures, including those in articles 28, 34 and 46, together with Schedules 3, 4 and 7, which reproduce the provisions of article 24 and Part 1 of the Schedule inserted by Schedule 2. The articles and Schedules dealing with instruments specific to Wales (articles 19 and 35 to 43 and Schedules 5 and 6) are not described in this Circular.

TRANSITIONAL PROVISIONS

89. The provisions which govern the transition between the non-statutory system for Crown development in DoE Circular 18/84 (WO 37/84) are set out in Schedule 4 to the 2004 Act. These are described in detail in the Appendix. In summary, any Crown development which has been agreed or determined by the Secretary of State following a Notice of Proposed Development will be treated as if it had planning permission (or listed building consent as appropriate). Developments for which Notices have been submitted, but have not yet been agreed or determined will be treated as if they are planning applications (or applications for listed building consent) and the procedure will revert to the statutory equivalent.

90. For example, if the Notice was submitted less than eight weeks before commencement, the local planning authority may grant planning permission or refuse it. If refused, the developer would be able to appeal under the statutory provisions. Similarly, if a dispute on a Notice had been referred to the Secretary of State for his determination, any subsequent inquiry would be a recovered appeal, governed by the Inquiries Procedure Rules.

91. In the Department's opinion, the validity of Notices approved before commencement, but not yet implemented, will be affected by section 91 of the principal Act as amended by section 51 of the 2004 Act. The validity of planning permissions granted for applications received after 24 August 2005[12] has been reduced from five years to three

[12] The commencement date for section 51 of the 2004 Act. See section 51(6) and SI 2005/2081.

years. Similarly, Notices received by local planning authorities after 24 August 2005 and approved before 7 June 2006 will, having been converted into planning permissions by virtue of Schedule 4 to the 2004 Act, also only be valid for three years (in the absence of any specific condition setting a different period).

ANCIENT MONUMENTS AND ARCHAEOLOGICAL SITES

92. The new legislation only removes the Crown's immunity from the planning Acts. The Crown therefore remains immune from the provisions of the Ancient Monuments and Archaeological Areas Act 1979.

93. Therefore, where proposed Crown development would affect a scheduled ancient monument or one held in Departmental care under the provisions of the Ancient Monuments and Archaeological Areas Act 1979 or any known archaeological remains, the developing Crown body will notify the Department for Culture, Media and Sport (Architecture and Historic Environment Division). It will also consult the Historic Buildings and Monuments Commission for England (English Heritage). Works affecting a scheduled ancient monument should not commence until the Department for Culture, Media and Sport has issued a letter to the developing Crown body granting scheduled monument clearance.

APPENDIX 1
The Planning and Compulsory Purchase Act 2004

Summary of provisions applying the Planning Acts to the Crown in England and Wales

INTRODUCTION

1. Part 7 Chapter 1 of the 2004 Act came into force on 7 June 2006[13], and it applies the planning Acts to the Crown in England and Wales. Part 7 Chapter 2 applies the Scottish planning Acts to the Crown in Scotland and is not covered by this Circular. The effect of Part 7 is that, other than in exceptional circumstances, Crown bodies will have to comply with statutory planning controls. This means that government departments and other Crown Bodies will normally need to seek planning permission in the same way as private individuals.

2. This Appendix only seeks to summarise those provisions set out in the 2004 Act which apply the planning Acts to the Crown. Further guidance on the operation of those provisions, including the secondary legislation needed to give effect to many of them, is set out in the Memorandum attached to this Circular. The matters covered in the summary are:

    - basic application of the planning Acts to the Crown (section 79, Schedule 3 and Schedule 6 (paragraph 2);
    - special provisions relating to national security (sections 80 and 81);
    - urgent Crown development and urgent works relating to listed buildings owned by the Crown (sections 82 and 83);
    - enforcement action in relation to Crown land (section 84);
    - trees (Forestry Commission and conservation areas) (sections 85 and 86);
    - old mining permissions (section 87 and Schedule 7 (paragraph 19));
    - subordinate legislation (section 88); and
    - transitional provisions (section 89 and Schedule 4).

CROWN APPLICATION OF THE PLANNING ACTS (SECTION 79 AND SCHEDULE 3)

3. Subject to certain stated provisions and exceptions, section 79 amends the planning Acts to expressly bind the Crown to each of them. This means that the Crown is normally required to apply to the local planning authority for planning permission, listed building consent, conservation area consent and hazardous substances consent.

[13] SI 2006/1281

4. Section 79(1) inserts new section 292A into the principal Act to bind the Crown subject to express provision made by Part 13 of the Act.

5. Section 79(2) inserts new section 82A into the listed buildings Act to bind the Crown except in the circumstances listed in section 82A(2). These exceptions cover offences, entry to land, injunctions, urgent works by local planning authorities to listed buildings and recovery of expenses, and warrants to enter land. Section 82A(3) further qualifies the application of section 9 of the listed buildings Act, which deals with offences. This is necessary because section 9 contains a defence from prosecution for not obtaining listed building consent if urgent remedial works are required, and so would not apply to the Crown because the Crown is immune from prosecution. That would mean that the Crown would have no lawful means of undertaking such works, and so section 82A(3) gives the Crown the same freedom of action as other owners of listed buildings.

6. Section 79(3) inserts new sections 30A and 30B into the hazardous substances Act. Section 30A(1) binds the Crown except in the circumstances listed in section 30A(2). These cover offences, injunctions and warrants to enter land. Section 30B contains transitional arrangements for the Crown to claim deemed hazardous substances consent within six months of the commencement of the 2004 Act.

7. Section 79(4) introduces **Schedule 3**, which provides for further amendments to the planning Acts.

8. Paragraphs 1 and 2 of Schedule 3 deal with the application of **purchase notices** to Crown land. New section 137A of the principal Act specifies the circumstances under which an owner of a private interest in Crown land can serve a purchase notice. It preserves the effect of sections 296(1)(c), (3) and (4) of the principal Act, and so these are repealed by Schedule 9. Similarly, new section 32A of the listed buildings Act specifies the circumstances under which an owner of a private interest in Crown land can serve a listed building purchase notice. This preserves the effect of section 83(4) of the listed buildings Act which is therefore also repealed by Schedule 9.

9. Paragraphs 3, 4 and 5 cover the **compulsory acquisition** of an interest in Crown land which is held otherwise than by and on behalf of the Crown. Paragraph 3 amends the powers to acquire land for development and other planning purposes in section 226 of the principal Act and, as it preserves the effect of sections 296(1)(b) and (2)(b) of the principal Act these are repealed by Schedule 9. Paragraph 4 makes equivalent amendments to section 228 of the principal Act for cases where the land is being acquired by the Secretary of State. Paragraph 5 amends section 47 of the listed buildings Act, which provides for the compulsory acquisition of listed buildings in need of repair, by inserting new subsection (6A). This preserves the effect of section 83(2)(b) of the listed buildings Act, which is therefore repealed by Schedule 9.

10. Paragraphs 6, 7 and 8 are concerned with **definitions**:

- paragraph 6 makes the following changes to the definitions in section 293 of the principal Act:
  - the redefinition of "Crown interest" in section 293(1) to include Her Majesty's private interests and any other interest which the Secretary of State may specify by order. This includes a power for the Secretary of State

to specify other interests by means of an order made in accordance with the provisions of new section 293(5) and (6);

– insertion of new subsections (ba), (f) and (g) into section 293(2) to define the appropriate authority for Her Majesty's private interests and for Her interests in the Palace of Westminster;

– the insertion of new section 293(2A) to define the person who makes the application as "the appropriate authority" where the Crown applies for planning permission on land in which it has no interest;

– new section 293(3A) and (3B) to cover matters of interpretation.

- paragraph 7 inserts new section 82C (Expressions relating to the Crown) into the listed buildings Act. This makes equivalent provision to the amendments to section 293 of the principal Act described above.

- paragraph 8 repeals section 31(1) and (2) of the hazardous substances Act and amends the remainder of section 31 to bring it into line with the amendments to section 293 of the principal Act where relevant.

11. Paragraph 9 repeals sections 294 and 295 of the principal Act which deal with **special enforcement notices** for unauthorised development carried out on Crown land. These provisions are repealed because they are no longer necessary. Unauthorised development on Crown land will be subject to the normal enforcement procedures, which include the service of an enforcement notice without the appropriate authority's consent. Under new section 296A of the principal Act (inserted by section 84(2) of the 2004 Act), the local planning authority will be able to take coercive enforcement action with the consent of the appropriate authority. However, development undertaken before the commencement of Part 7 of the 2004 Act is still be bound by any special enforcement notices already served before 7 June 2006.

12. Paragraphs 10, 11 and 12 consider **applications for planning permission and related activities**:

- paragraph 10 inserts new section 298A into the principal Act to allow the Secretary of State to make regulations to modify or exclude any statutory provisions relating to the making or determination of Crown applications for planning permission or established use certificates[14]. It also repeals Section 299 of the principal Act. This allowed the Crown to obtain planning permission or a section 64 determination[15] in anticipation of disposal of Crown land and is unnecessary following the general application of the planning Acts to the Crown. However, the regulations made under section 299(5)(b)[16] requiring the Crown to notify a local planning authority of any disposal of an interest in Crown land still apply in respect of any section 299 permission granted before commencement;

[14] under section 192 of the principal Act

[15] an application to determine whether planning permission is required

[16] Regulation 3 of the Town and Country Planning (Crown Land Applications) Regulations 1995 (SI 1995/1139)

- paragraph 11 inserts new section 82F into the listed buildings Act to provide equivalent regulation making powers to those in new section 298A of the principal Act;

- paragraph 12 similarly inserts new section 31A into the hazardous substances Act. It also repeals section 32 of the hazardous substances Act, which equated to section 299 of the principal Act.

13. Paragraphs 13, 14 and 15 are concerned with **rights of entry**:

- paragraph 13 inserts new section 325A into the principal Act. This modifies section 324 (Rights of entry) to provide that a person who wishes to enter on to Crown land can only do so after obtaining the relevant permission. Relevant permission will be deemed to have been given by the person who appears to have the requisite authority to the person who is seeking it, or it can be given by the appropriate authority as defined by the 1990 Act;

- paragraph 14 inserts new section 88C into the listed buildings Act and paragraph 15 inserts new section 36 into the hazardous substances Act to provide equivalent arrangements for entry on to Crown land.

14. Paragraphs 16, 17, 18, 19 and 21 deal with the **service of notices and provision of information**:

- paragraph 16 inserts new section 329A into the principal Act to provide for the service of notices on the Crown. It disapplies section 329 of the principal Act in respect of the service of any document or notices on the Crown and instead requires them to be served on the appropriate authority as set out and defined in section 293(2) (as now amended);

- paragraph 17 introduces new section 330A into the principal Act. This disapplies section 330 and instead requires an appropriate authority to comply with a request from the Secretary of State to provide information as to non-private interests in Crown land where this is required in order to make orders or issue or serve notices or documents. The appropriate authority must provide this information if it knows the answers to the relevant questions unless it considers that its disclosure would breach national security;

- paragraph 18 repeals sections 83 and 84 of the listed buildings Act. However, the regulations made under section 84(4)(b)[17] requiring the Crown to notify a local planning authority of any disposal of an interest in Crown land still apply in respect of any application under section 84(2) made before commencement.

- paragraph 19 applies the new provisions in the principal Act for the service of notices and requests for information to the listed buildings Act.;

- paragraph 21 makes similar provisions in respect of the hazardous substances Act.

[17] Regulation 15(2) of the Planning (Listed Buildings and Conservation Areas) Regulations 1990 (SI 1990/1519)

15. Paragraph 20 of Schedule 3 inserts new section 17(3) into the hazardous substances Act. This disapplies section 17 (**revocation of consent on change of control of land**) if there is a change of control of land from one Crown body to another.

16. Paragraphs 22 to 27 of Schedule 3 set out **miscellaneous** amendments and repeals of redundant sections of the principal Act, some with savings:

- paragraph 22: section 293(4) repealed
- paragraph 23: section 297 repealed
- paragraph 24: section 298(1) and (2) repealed. Section 298(3) is amended by expanding it to include Crown interests as well as Duchy interests.
- paragraph 25: section 299A repealed
- paragraph 26: section 300 repealed with a saving for tree preservation orders made by virtue of that section before commencement
- paragraph 27: section 301 repealed with a saving for agreements made under section 301(1) before commencement.

17. Paragraph 2 of **Schedule 6** amends section 55(2)(b) of the principal Act. This subsection provides that "development" does not apply to the carrying out on land within the boundaries of a road of any works required for the maintenance or improvement of that road. The amendment extends this exemption to all highways authorities rather than, as previously, just local highways authorities. This is necessary because, otherwise, the application of the planning Acts to the Crown would mean that the Highways Agency would not continue to enjoy the same exemption.

SPECIAL PROVISIONS RELATING TO NATIONAL SECURITY (SECTIONS 80 AND 81)

18. Section 80 is concerned with the special arrangements required for dealing with planning inquiries on matters relating to national security issues.

19. Section 321(3) of the principal Act gives the Secretary of State a power to direct that a planning inquiry is not to be held in public in the circumstances specified in section 321(4), which include national security. Section 80(1) of the 2004 Act adds new sections 321(5) to (12) to facilitate this.

20. New section 321(5) provides that, whilst the Secretary of State is considering making a direction, the Attorney General can appoint a person to act as a "special advocate" on behalf of any person who will not be allowed to hear or inspect the evidence at a local inquiry. Subsection (6) alternatively allows the Attorney General to appoint a special advocate for the purposes of the inquiry after such a direction has been given. Subsection (7)(a) allows the Lord Chancellor to make statutory Rules setting out the procedure to be followed by the Secretary of State before giving a direction under section 321(3) if a special advocate has already been appointed. Subsection (7)(b) allows the Lord Chancellor to make Rules setting out the functions of a special advocate

who has been appointed by the Attorney General either under subsection (5) or (6). Subsection (8) requires all these Rules to be made by means of a statutory instrument[18].

21. New section 321(9) gives the Secretary of State a power to direct who should pay the fees and expenses incurred by the special advocate. If the special advocate and the person directed to pay his fees and expenses are unable to reach an agreement, subsections (10) to (12) allow the Secretary of State to determine the amount payable. This must be certified and is recoverable as a civil debt.

22. Section 80(2) of the 2004 Act inserts new section 321A into the principal Act to provide that, once appointed, special advocates will be entitled to the payment of their fees irrespective of whether an inquiry goes ahead as originally intended. Section 321A(2) enables the Secretary of State to direct that payment should be made as if an inquiry had been held; and section 321A(3) provides that the person directed to make such a payment should be the person to whom the Secretary of State thinks he would have given a direction under section 321(9) if an inquiry had been held. Section 321A(4) clarifies that section 321A does not affect the Secretary of State's power in section 322A of the principal Act to award costs in planning appeals where arrangements have been made for an inquiry or hearing to be held and it does not then take place.

23. Section 80(3) of the 2004 Act inserts a new paragraph 6A into Schedule 3 to the listed buildings Act and section 80(4) inserts new paragraph 6A into the Schedule to the hazardous substances Act to make parallel provisions for appointing special advocates.

24. Section 81 sets out the national security arrangements as they will apply to Wales.

URGENT CROWN DEVELOPMENT AND URGENT WORKS RELATING TO LISTED BUILDINGS OWNED BY THE CROWN (SECTIONS 82 AND 83)

25. Section 82(1) inserts new section 293A into the principal Act to provide special arrangements for the Crown to make applications which are certified as being of national importance and which must be carried out as a matter of urgency.

26. Section 293A(2) enables the Crown to make an application direct to the Secretary of State, but only after fulfilling the requirements of section 293A(3) by advertising their intention in at least one newspaper local to the development, describing the development and stating their intention to apply direct to the Secretary of State. Section 293A(4)(a) provides that the Crown body must provide an Environmental Impact Assessment where required and section 293A(4)(b) requires the applicant to submit a statement of the case for making the application.

27. Section 293A(5) applies sections 293A(6) to (9) to all applications made under this procedure. Subsections (6) to (9) all refer to the Secretary of State's subsequent activities, with subsection (6) giving him the right to request further information from the applicant. Subsection (7) requires the Secretary of State to make available for inspection in the locality of the proposed development copies of any documents

[18] Guidance on the operation of the Planning (National Security Directions and Appointed Representatives) (England) Rules made under section 321(7) (SI 2006/1284) can be found in paragraphs 6 to 23 of the Memorandum attached to this Circular.

requested under subsections (4) or (6). Subsection (8) requires the Secretary of State to comply with such requirements as may be contained in a development order with regard to publishing notice of the application and making it known that the application and other documents are available for public inspection. This development order is the General Development Procedure Order (the "GDPO")[19], which has accordingly been amended by the insertion of paragraph (7A) into article 8[20].

28. The GDPO has also been amended to accommodate the requirements of section 293A(9) of the principal Act. Subsection (9)(a) requires the Secretary of State to consult the local planning authority for the area to which the proposed development relates and subsection (9)(b) requires him to consult those persons specified or described in Article 10 of the GDPO (as modified by article 10A).

29. Section 293A(10) disapplies section 293A(7) where a section 321 direction has been given on national security grounds. This means that, in such cases, the Secretary of State does not have to make closed material available for public inspection.

30. Section 293A(11) provides that section 77(4) to (7) of the principal Act applies to applications under section 293A as it does to applications which are subject to a direction under section 77. This relates to the Secretary of State's powers to "call-in" planning applications, including the right for the applicant and the local planning authority to have an opportunity to have their views heard by a person appointed by the Secretary of State. That has necessitated amendments to the Inquiries Procedure Rules[21].

31. These arrangements will most likely be needed where an application is a departure from the development plan and also potentially controversial, so that it risks being refused by the local planning authority. The intention is to minimise the overall time required to consider an application where it would, in any case, need to be "called-in" by the Secretary of State

32. Section 82(2) inserts new paragraph (i) into section 284(3) of the principal Act to provide that any decisions made by the Secretary of State under section 293A of the principal Act cannot be the subject of any legal proceedings, except as provided by Part 12 of the Act.

33 Section 83(1) inserts new section 82B into the listed buildings Act. This consists of eleven subsections which parallel the provisions of new section 293A of the principal Act to cover applications for urgent works relating to buildings to which the listed buildings Act applies. It has also necessitated appropriate amendments to the Listed Buildings Regulations[22].

34. Section 83(2) inserts new paragraph (d) into section 62(2) of the listed buildings Act, the effect of which is that any decision made by the Secretary of State under that section cannot be subject to legal proceedings except as provided by section 63.

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[19] SI 1995/419 (as amended)

[20] See paragraphs 26 to 37 of the Memorandum attached to this Circular.

[21] See paragraphs 35 to 37 of the Memorandum attached to this Circular.

[22] See paragraph 26 of the Memorandum attached to this Circular.

ENFORCEMENT ACTION IN RELATION TO CROWN LAND (SECTION 84)

35. Section 84(1) repeals section 296 of the principal Act (exercise of powers in relation to Crown land) and sections 84(2) and (3) insert sections 296A and 296B respectively to enable the Crown to retain its immunity from prosecution.

36. New section 296A says that no act or omission by or on behalf of the Crown constitutes an offence under the Act. A local planning authority cannot take enforcement action in relation to Crown land unless it is has the consent of the appropriate authority, and this consent can be subject to conditions. Actions which require such consent include entering land, bringing proceedings or making applications to a court. However, a local planning authority may serve a notice or make an order (other than a court order) without consent.

37. New section 296B defines references to an interest in land. Where there is a Crown or Duchy interest, an owner of the interest is taken to be the appropriate authority. The definition of an interest in land also includes an interest only as an occupier of the land.

38. Section 84(3) inserts sections 82D and 82E into the listed buildings Act to provide equivalent provisions, and section 84(4) similarly inserts sections 30C and 30D into the hazardous substances Act.

TREES (FORESTRY COMMISSION AND CONSERVATION AREAS) (SECTIONS 85 AND 86)

39. Section 85 sets out a replacement for section 200 of the principal Act relating to tree preservation orders on land placed at the disposal of the Forestry Commission or land which is subject to a management scheme approved by the Commission. It removes the requirement for a local planning authority to obtain the Commission's agreement before making tree preservation orders on such land. However, although local planning authorities can make tree preservation orders where they believe it is necessary to do so, any such orders made on land placed at the disposal of the Commission, or managed on their behalf, will not apply to prevent any Commission-approved schemes from being carried out.

40. Section 86 adds section 211(5), (6), (7) and (8) to the principal Act. These prevent the Crown from carrying out any act to a tree in a conservation area which might be subject to prohibition by a tree preservation order unless it notifies the local planning authority and either the authority consents, or, if the authority has not responded within six weeks, it takes the action between six weeks and two years from the date of the notice. This gives the Crown an equivalent to the defence to prosecution enjoyed by private individuals under section 211(3).

OLD MINING PERMISSIONS (SECTION 87 AND SCHEDULE 7 (PARAGRAPH 19))

41. Section 87 sets out the arrangements for dealing with old mining permissions granted between 1943 and 1948 on Crown land and given retrospective consent under the Town and Country Planning Act 1947. It affords an opportunity for Crown bodies with such permissions to register them and apply for the determination of new conditions if they had not already registered them when a new scheme was introduced in the

Planning and Compensation Act 1991. Registration is to be done on the same basis as under the original provisions in the Planning and Compensation Act 1991.

42. Paragraph 19 of Schedule 7 amends section 67 of, and Schedule 14 to, the Environment Act 1995 partly to facilitate the implementation of the provisions in section 87.

SUBORDINATE LEGISLATION (SECTION 88)

43. Section 88 provides the Secretary of State with an order-making power to apply planning subordinate legislation to the Crown, with or without modification. This is necessary because subordinate legislation made before 7 June 2006 does not automatically bind the Crown.

TRANSITIONAL PROVISIONS (SECTION 89 AND SCHEDULE 4)

44. Section 89 introduces Schedule 4, which makes arrangements for the transition from the non-statutory system for Crown development under DoE Circular 18/84 (WO 37/84) to the statutory development control system in the planning Acts as it applies to the Crown from 7 June 2006. Part 1 of Schedule 4 applies to the principal Act and Part 2 to the listed buildings Act.

45. Paragraph 1 sets out the developments to which Part 1 applies, with appropriate definitions in paragraph 2. These are developments for which the Crown had given notice of proposed development under the non-statutory arrangements before 7 June 2006 and which were not classed as permitted development by virtue of a development order.

46. Paragraph 3 provides for developments which have been formally accepted as "acceptable" under the non-statutory arrangements in place before 7 June 2006 to be treated as if the notice indicating that the development is acceptable was planning permission granted under Part 3 of the principal Act. If the notice was subject to conditions, these are to have effect as if they were conditions attached to a planning permission. Paragraph 4 provides that where an authority previously kept a register of proposed development notices, the register is to be treated as if it is part of the planning register under section 69 of the principal Act.

47. Paragraph 5 deals with applications under the non-statutory arrangements which have been referred to the Secretary of State for determination, but have not been determined by 7 June 2006 to be dealt with as if they were appeals under section 78 of the principal Act. This applies both to referrals arising because the local planning authority has notified the developer that the proposal development is not acceptable and to referrals where there is a dispute about the conditions which should be applied.

48. Paragraph 6 applies to applications where the developer has given notice under the non-statutory arrangements but the local planning authority has not given a response notice under paragraph 3 or 5 of Schedule 4 before 7 June 2006. Any such application is treated as if it were made under Part 3 of the principal Act.

49. Part 2 mirrors the arrangements in Part 1 in applying them to proposals for works to listed buildings initiated under the previous informal arrangements.

APPENDIX 2

Fees Protocol for Applications for Urgent Crown Development

1. Applications made direct to the Secretary of State for urgent Crown development under section 293A of the Town and Country Planning Act 1990 are not covered by the Fees Regulations, because the enabling power (section 303 of that Act) only applies to applications made to local planning authorities.

2. Although not legally bound to pay fees for this type of application, the Crown undertakes, by this protocol, to pay fees to the Secretary of State. The quantum of fee is that which would have been paid to a local planning authority had the application been made to one. The appropriate amount can be calculated by reference to the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989 (SI 1989 No. 193 as amended). Cheques should be made payable to "The Planning Inspectorate" and sent to

   The Planning Inspectorate
   MSC Division (Crown Development Applications)
   Room 4/04 Kite Wing
   Temple Quay House
   2 The Square
   Temple Quay
   BRISTOL BS1 6PN

3. This protocol is effective from 7 June 2006.

4. All enquiries on the content of this protocol should be addressed to

   Planning Delivery and Performance Division
   Department for Communities and Local Government
   Eland House
   Bressenden Place
   LONDON SW1E 5DU

DCLG

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