

PLANNING AND COMPULSORY PURCHASE ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7: Crown Application of Planning Acts

Section 79: Crown application of planning Acts

108. This section makes each of the planning Acts bind the Crown, subject to certain provisions and exceptions. The planning Acts 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"). Section 79 also introduces Schedule 3, which amends the planning Acts to take account of Crown application.

Section 80: Special provision relating to national security

109. **Section 80** deals with the arrangements for planning inquiries where matters of national security are at issue. It adds eight new subsections to section 321 of the principal Act and a new section 321A. Section 321 provides that all oral evidence at planning inquiries must be heard in public, and that documents must be open to public inspection. There is, however, an exception. This is when there would be public disclosure of information relating to national security or to the security of any premises or property, and that public disclosure would be contrary to the national interest. The new provisions provide for the appointment and functions of a special advocate to represent the interest of those people who are prevented from seeing the sensitive material. They also provide for the payment of the special advocate, whether or not an inquiry takes place. The remainder of section 80 repeats these provisions for the listed buildings Act and the hazardous substances Act.

Section 81: Special provision relating to national security: Wales

110. **Section 81** sets out how the arrangements as described in section 80 will differ for inquiries in Wales, again set out three times, once for each of the planning Acts.

Section 82: Urgent Crown development

111. **Section 82** contains the urgency procedures for Crown applications. It provides that where the appropriate authority (as defined in section 293 of the principal Act) certifies that the development is of national importance and that it is necessary that the development is carried out urgently, the appropriate authority may apply directly to the Secretary of State instead of to the local planning authority. The appropriate authority must provide the Secretary of State with all the necessary documentation, including an environmental statement, if required. The application is to be treated as if it were a "called-in" application. This will mean that the Inquiries Procedure Rules

apply, enabling complementary changes to the Rules to be made to shorten the period leading up to the public inquiry.

Section 83: Urgent works relating to Crown land

112. This section provides for a procedure for works to Crown land under the listed buildings Act that is an almost identical procedure to that under section 82. This provision is designed for development works to listed buildings, not for repairs or remedial works.

Section 84: Enforcement in relation to Crown land

113. This section provides that the Crown should remain immune from prosecution for any offence under the planning Acts. Local planning authorities will be able to initiate enforcement action by serving enforcement notices or issuing revocation orders etc, but will not be able to enforce them by entering land, bringing proceedings or making applications to the court without the permission of the appropriate authority.

Section 85: Tree preservation orders affecting land where the Forestry Commissioners interested

114. [Section 85](#) provides that any tree preservation orders made on land placed at the disposal of the Forestry Commission do not apply to prevent forestry operations undertaken by the Commission.

Section 86: Trees in conservation areas: acts of Crown

115. [Section 86](#) prohibits the Crown from doing any act to a tree in a conservation area which might be prohibited by a tree preservation order, unless it serves notice of its intention on the local planning authority and does the act either with the consent of the authority or between six weeks and two years after the date of the notice.

Section 87: Old mining permissions

116. This section deals with old mining permissions granted in the period 1943-1948 that were validated by the 1947 Town and County Planning Act. The section enables Crown bodies holding such permissions to have the opportunity to register such permissions and apply for the determination of new conditions, on the same terms that applied to all other permissions when the Planning and Compensation Act 1991 was implemented.

Section 88: Subordinate legislation

117. [Section 88](#) provides the Secretary of State with a power to make an order to simplify the application of existing planning subordinate legislation to the Crown, with or without modifications.

Section 89: Crown application: transitional

118. This section introduces Schedule 4 which makes transitional provisions to deal with Notices of Proposed Development submitted by the Crown to the local planning authority in accordance with the guidelines set out in DOE Circular 18/84.

Section 90: Crown application of Scottish planning Acts

119. [Section 90](#) creates an equivalent provision to section 79 for the principal Scottish planning Act, the Scottish listed buildings Act and Scottish hazardous substances Act, with the exception of the transitional arrangements for hazardous substances. The Scottish Executive intend that corresponding transitional provisions will be made by subordinate legislation in Scotland. Section 90 also introduces Schedule 5, which amends the Scottish planning Acts to take account of Crown application.

Section 91: Special provision for certain circumstances where disclosure of information as to national security may occur: Scotland

120. **Section 91** introduces a new section 265A to the principal Scottish planning Act and applies it to the Scottish listed buildings and hazardous substances Acts. This new section has a similar effect to that of sections 321 and 321A of the principal planning Act in England and Wales as amended and introduced by section 80. The new section gives a concurrent power exercisable by either the Scottish Ministers or the Secretary of State to make directions restricting disclosure of specified evidence at inquiry. However, before the Scottish Ministers make such a direction, they are required to consult the Secretary of State. The concurrent power and consultation requirement reflect the fact that national security functions are reserved and planning functions are devolved. The Secretary of State and the Scottish Ministers are given powers to make rules as to the procedure to be followed respectively by them before giving a direction. In addition, the power to appoint special advocates in Scotland is conferred on the Lord Advocate to reflect the differences of the Scottish legal system.

Section 92: Urgent Crown development: Scotland

121. **Section 92** provides for similar procedures to those set out in section 82 in relation to the Scottish principal planning Act.

Section 93: Urgent works relating to Crown land: Scotland

122. **Section 93** provides for similar procedures to those set out in section 83 in relation to the Scottish listed buildings Act.

Section 94: Enforcement in relation to Crown land: Scotland

123. **Section 94** makes amendments to Scottish planning legislation along the same lines as section 84. It introduces new sections 245A (Enforcement in relation to the Crown) and 245B (References to an interest in land) to the principal Scottish planning Act. It also introduces equivalent amendments to the Scottish listed buildings Act (new sections 73D and 73E) and the Scottish hazardous substances Act (new sections 30B and 30C).

Section 95: Tree preservation orders: Scotland

124. **Section 95** amends section 162 of the principal Scottish planning Act in a virtually identical way to the amendment of section 200 of the principal Act under section 85.

Section 96: Trees in conservation areas in Scotland: acts of Crown

125. **Section 96** amends section 172 of the principal Scottish planning Act in a virtually identical way to the amendment of section 211 of the principal Act under section 86.

Section 97: Old mining permissions: Scotland

126. **Section 97** makes changes to Scottish planning legislation similar to those made by section 87 for England and Wales.

Section 98: Subordinate legislation: Scotland

127. **Section 98** provides a similar power to the Scottish Ministers to that provided by section 88 for the Secretary of State.