



Planning and Compulsory Purchase Act 2004

2004 CHAPTER 5

PART 7

CROWN APPLICATION OF PLANNING ACTS

CHAPTER 1

ENGLAND AND WALES

Crown application

79 Crown application of planning Acts

- (1) In Part 13 of the principal Act before section 293 (preliminary definitions for Part 13) there is inserted the following section—

“292A Application to the Crown

- (1) This Act binds the Crown.
(2) But subsection (1) is subject to express provision made by this Part.”
- (2) In the listed buildings Act after section 82 there is inserted the following section—

“82A Application to the Crown

- (1) This Act (except the provisions specified in subsection (2)) binds the Crown.
(2) These are the provisions—
(a) section 9;

Status: This is the original version (as it was originally enacted).

- (b) section 11(6);
- (c) section 21(7);
- (d) section 42(1), (5) and (6);
- (e) section 43;
- (f) section 44A;
- (g) section 54;
- (h) section 55;
- (i) section 59;
- (j) section 88A.

(3) But subsection (2)(a) does not have effect to prohibit the doing of anything by or on behalf of the Crown which falls within the circumstances described in section 9(3)(a) to (d) and the doing of that thing does not contravene section 7.”

(3) In the hazardous substances Act after section 30 there are inserted the following sections—

“30A Application to the Crown

- (1) This Act (except the provisions specified in subsection (2)) binds the Crown.
- (2) The provisions are—
 - (a) section 8(6);
 - (b) section 23;
 - (c) section 26AA;
 - (d) section 36A;
 - (e) section 36B(2).”

30B Crown application: transitional

- (1) This section applies if at any time during the establishment period a hazardous substance was present on, over or under Crown land.
- (2) The appropriate authority must make a claim in the prescribed form before the end of the transitional period.
- (3) The claim must contain the prescribed information as to—
 - (a) the presence of the substance during the establishment period;
 - (b) how and where the substance was kept and used.
- (4) Unless subsection (5) or (7) applies, the hazardous substances authority is deemed to have granted the hazardous substances consent claimed in pursuance of subsection (2).
- (5) This subsection applies if the hazardous substances authority think that a claim does not comply with subsection (3).
- (6) If subsection (5) applies, the hazardous substances authority must, before the end of the period of two weeks starting with the date they received the claim—
 - (a) notify the claimant that they think the claim is invalid;
 - (b) give their reasons.

Status: This is the original version (as it was originally enacted).

- (7) This subsection applies if at no time during the establishment period was the aggregate quantity of the substance equal to or greater than the controlled quantity.
- (8) Hazardous substances consent which is deemed to be granted under this section is subject—
- (a) to the condition that the maximum aggregate quantity of the substance that may be present for the purposes of this subsection at any one time must not exceed the established quantity;
 - (b) to such other conditions (if any) as are prescribed for the purposes of this section and are applicable in the case of the consent.
- (9) A substance is present for the purposes of subsection (8)(a) if—
- (a) it is on, over or under land to which the claim for consent relates,
 - (b) it is on, over or under other land which is within 500 metres of it and is controlled by the Crown, or
 - (c) it is in or on a structure controlled by the Crown any part of which is within 500 metres of it,
- and in calculating whether the established quantity is exceeded a quantity of a substance which falls within more than one of paragraphs (a) to (c) must be counted only once.
- (10) The establishment period is the period of 12 months ending on the day before the date of commencement of section 79(3) of the Planning and Compulsory Purchase Act 2004.
- (11) The transitional period is the period of six months starting on the date of commencement of that section.
- (12) The established quantity in relation to any land is the maximum quantity which was present on, over or under the land at any one time within the establishment period.”
- (4) Schedule 3 amends the planning Acts in relation to the application of those Acts to the Crown.

National security

80 Special provision relating to national security

- (1) In section 321 of the principal Act (planning inquiries to be held in public subject to certain exceptions) after subsection (4) there are inserted the following subsections—
- “(5) If the Secretary of State is considering giving a direction under subsection (3) the Attorney General may appoint a person to represent the interests of any person who will be prevented from hearing or inspecting any evidence at a local inquiry if the direction is given.
 - (6) If before the Secretary of State gives a direction under subsection (3) no person is appointed under subsection (5), the Attorney General may at any time appoint a person as mentioned in subsection (5) for the purposes of the inquiry.

Status: This is the original version (as it was originally enacted).

- (7) The Lord Chancellor may by rules make provision—
 - (a) as to the procedure to be followed by the Secretary of State before he gives a direction under subsection (3) in a case where a person has been appointed under subsection (5);
 - (b) as to the functions of a person appointed under subsection (5) or (6).
 - (8) Rules made under subsection (7) must be contained in a statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
 - (9) If a person is appointed under subsection (5) or (6) (the appointed representative) the Secretary of State may direct any person who he thinks is interested in the inquiry in relation to a matter mentioned in subsection (4) (the responsible person) to pay the fees and expenses of the appointed representative.
 - (10) If the appointed representative and the responsible person are unable to agree the amount of the fees and expenses, the amount must be determined by the Secretary of State.
 - (11) The Secretary of State must cause the amount agreed between the appointed representative and the responsible person or determined by him to be certified.
 - (12) An amount so certified is recoverable from the responsible person as a civil debt.”
- (2) After section 321 of the principal Act (planning inquiries to be held in public subject to certain exceptions) there is inserted the following section—

“321A Appointed representative: no inquiry

- (1) This section applies if—
 - (a) a person is appointed under subsection (5) or (6) of section 321, but
 - (b) no inquiry is held as mentioned in subsection (1) of that section.
 - (2) Subsections (9) to (12) of section 321 apply in respect of the fees and expenses of the person appointed as if the inquiry had been held.
 - (3) For the purposes of subsection (2) the responsible person is 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.
 - (4) This section does not affect section 322A.”
- (3) In Schedule 3 to the listed buildings Act (determination of certain appeals by person appointed by the Secretary of State) after paragraph 6 there is inserted the following paragraph—
- “6A (1) If the Secretary of State is considering giving a direction under paragraph 6(6) the Attorney General may appoint a person to represent the interests of any person who will be prevented from hearing or inspecting any evidence at a local inquiry if the direction is given.
 - (2) If before the Secretary of State gives a direction under paragraph 6(6) no person is appointed under sub-paragraph (1), the Attorney General may

Status: This is the original version (as it was originally enacted).

- at any time appoint a person as mentioned in sub-paragraph (1) for the purposes of the inquiry.
- (3) The Lord Chancellor may by rules make provision—
- (a) as to the procedure to be followed by the Secretary of State before he gives a direction under paragraph 6(6) in a case where a person has been appointed under sub-paragraph (1);
 - (b) as to the functions of a person appointed under sub-paragraph (1) or (2).
- (4) If a person is appointed under sub-paragraph (1) or (2) (the appointed representative) the Secretary of State may direct any person who he thinks is interested in the inquiry in relation to a matter mentioned in paragraph 6(7) (the responsible person) to pay the fees and expenses of the appointed representative.
- (5) If the appointed representative and the responsible person are unable to agree the amount of the fees and expenses, the amount must be determined by the Secretary of State.
- (6) The Secretary of State must cause the amount agreed between the appointed representative and the responsible person or determined by him to be certified.
- (7) An amount so certified is recoverable from the responsible person as a civil debt.
- (8) Rules made under sub-paragraph (3) must be contained in a statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) Sub-paragraph (10) applies if—
- (a) a person is appointed under sub-paragraph (1) or (2), but
 - (b) no inquiry is held as mentioned in paragraph 6(1).
- (10) Sub-paragraphs (4) to (7) above apply in respect of the fees and expenses of the person appointed as if the inquiry had been held.
- (11) For the purposes of sub-paragraph (10) the responsible person is the person to whom the Secretary of State thinks he would have given a direction under sub-paragraph (4) if an inquiry had been held.
- (12) Sub-paragraphs (9) to (11) do not affect paragraph 6(8).”
- (4) In the Schedule to the hazardous substances Act (determination of certain appeals by person appointed by the Secretary of State) after paragraph 6 there is inserted the following paragraph—
- “6A (1) If the Secretary of State is considering giving a direction under paragraph 6(6) the Attorney General may appoint a person to represent the interests of any person who will be prevented from hearing or inspecting any evidence at a local inquiry if the direction is given.
- (2) If before the Secretary of State gives a direction under paragraph 6(6) no person is appointed under sub-paragraph (1), the Attorney General may at any time appoint a person as mentioned in sub-paragraph (1) for the purposes of the inquiry.
- ”

Status: This is the original version (as it was originally enacted).

- (3) The Lord Chancellor may by rules make provision—
- (a) as to the procedure to be followed by the Secretary of State before he gives a direction under paragraph 6(6) in a case where a person has been appointed under sub-paragraph (1);
 - (b) as to the functions of a person appointed under sub-paragraph (1) or (2).
- (4) If a person is appointed under sub-paragraph (1) or (2) (the appointed representative) the Secretary of State may direct any person who he thinks is interested in the inquiry in relation to a matter mentioned in paragraph 6(7) (the responsible person) to pay the fees and expenses of the appointed representative.
- (5) If the appointed representative and the responsible person are unable to agree the amount of the fees and expenses, the amount must be determined by the Secretary of State.
- (6) The Secretary of State must cause the amount agreed between the appointed representative and the responsible person or determined by him to be certified.
- (7) An amount so certified is recoverable from the responsible person as a civil debt.
- (8) Rules made under sub-paragraph (3) must be contained in a statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) Sub-paragraph (10) applies if—
- (a) a person is appointed under sub-paragraph (1) or (2), but
 - (b) no inquiry is held as mentioned in paragraph 6(1).
- (10) Sub-paragraphs (4) to (7) above apply in respect of the fees and expenses of the person appointed as if the inquiry had been held.
- (11) For the purposes of sub-paragraph (10) the responsible person is the person to whom the Secretary of State thinks he would have given a direction under sub-paragraph (4) if an inquiry had been held.
- (12) Sub-paragraphs (9) to (11) do not affect paragraph 6(8).”

81 Special provision relating to national security: Wales

- (1) After section 321A of the principal Act (inserted by section 80 above) there is inserted the following section—

“321B Special provision in relation to planning inquiries: Wales

- (1) This section applies if the matter in respect of which a local inquiry to which section 321 applies is to be held relates to Wales.
- (2) The references in section 321(5) and (6) to the Attorney General must be read as references to the Counsel General to the National Assembly for Wales.

Status: This is the original version (as it was originally enacted).

- (3) The Assembly may by regulations make provision as mentioned in section 321(7) in connection with a local inquiry to which this section applies.
 - (4) If the Assembly acts under subsection (3) rules made by the Lord Chancellor under section 321(7) do not have effect in relation to the inquiry.
 - (5) The Counsel General to the National Assembly for Wales is the person appointed by the Assembly to be its chief legal adviser (whether or not he is known by that title).
 - (6) Section 333(3) does not apply to regulations made under subsection (4).”
- (2) In Schedule 3 to the listed buildings Act (determination of certain appeals by person appointed by the Secretary of State), after paragraph 7 there is inserted the following paragraph—

“Local inquiries: Wales

- 8
- (1) This paragraph applies in relation to a local inquiry held in pursuance of this Schedule if the matter in respect of which the inquiry is to be held relates to Wales.
 - (2) The references in paragraph 6A(1) and (2) to the Attorney General must be read as references to the Counsel General to the National Assembly for Wales.
 - (3) The Assembly may by regulations make provision as mentioned in paragraph 6A(3) in connection with a local inquiry to which this section applies.
 - (4) If the Assembly acts under sub-paragraph (3) rules made by the Lord Chancellor under paragraph 6A(3) do not have effect in relation to the inquiry.
 - (5) The Counsel General to the National Assembly for Wales is the person appointed by the Assembly to be its chief legal adviser (whether or not he is known by that title).
 - (6) Section 93(3) does not apply to regulations made under this paragraph.”
- (3) In the Schedule to the hazardous substances Act, after paragraph 7 there is inserted the following paragraph—

“Local inquiries: Wales

- 8
- (1) This paragraph applies in relation to a local inquiry held in pursuance of this Schedule if the matter in respect of which the inquiry is to be held relates to Wales.
 - (2) The references in paragraph 6A(1) and (2) to the Attorney General must be read as references to the Counsel General to the National Assembly for Wales.
 - (3) The Assembly may by regulations make provision as mentioned in paragraph 6A(3) in connection with a local inquiry to which this section applies.

Status: This is the original version (as it was originally enacted).

- (4) If the Assembly acts under sub-paragraph (3) rules made by the Lord Chancellor under paragraph 6A(3) do not have effect in relation to the inquiry.
- (5) The Counsel General to the National Assembly for Wales is the person appointed by the Assembly to be its chief legal adviser (whether or not he is known by that title).
- (6) Section 40(3) does not apply to regulations made under this paragraph.”

Urgent development and works

82 Urgent Crown development

- (1) Before section 294 of the principal Act (special enforcement notices in relation to development on Crown land) there is inserted the following section—

“293A Urgent Crown development: application

- (1) This section applies to a development if the appropriate authority certifies—
 - (a) that the development is of national importance, and
 - (b) that it is necessary that the development is carried out as a matter of urgency.
- (2) The appropriate authority may, instead of making an application for planning permission to the local planning authority in accordance with Part 3, make an application for planning permission to the Secretary of State under this section.
- (3) If the appropriate authority proposes to make the application to the Secretary of State it must publish in one or more newspapers circulating in the locality of the proposed development a notice—
 - (a) describing the proposed development, and
 - (b) stating that the authority proposes to make the application to the Secretary of State.
- (4) For the purposes of an application under this section the appropriate authority must provide to the Secretary of State—
 - (a) any matter required to be provided by an applicant for planning permission in pursuance of regulations made under section 71A;
 - (b) a statement of the authority’s grounds for making the application.
- (5) If the appropriate authority makes an application under this section subsections (6) to (9) below apply.
- (6) The Secretary of State may require the authority to provide him with such further information as he thinks necessary to enable him to determine the application.
- (7) As soon as practicable after he is provided with any document or other matter in pursuance of subsection (4) or (6) the Secretary of State must make a copy of the document or other matter available for inspection by the public in the locality of the proposed development.

- (8) The Secretary of State must in accordance with such requirements as are contained in a development order publish notice of the application and of the fact that such documents and other material are available for inspection.
- (9) The Secretary of State must consult—
 - (a) the local planning authority for the area to which the proposed development relates, and
 - (b) such other persons as are specified or described in a development order,about the application.
- (10) Subsection (7) does not apply to the extent that the document or other matter is subject to a direction under section 321(3) (matters related to national security).
- (11) Subsections (4) to (7) of section 77 apply to an application under this section as they apply to an application in respect of which a direction under section 77 has effect.”
- (2) In section 284 of the principal Act (validity of certain matters) in subsection (3) at the end there is inserted the following paragraph—
 - “(i) any decision on an application for planning permission under section 293A.”

83 Urgent works relating to Crown land

- (1) After section 82A of the listed buildings Act (inserted by section 79(2)) there is inserted the following section—

“82B Urgent works relating to Crown land: application

- (1) This section applies to any works proposed to be executed in connection with any building which is on Crown land if the appropriate authority certifies—
 - (a) that the works are of national importance, and
 - (b) that it is necessary that the works are carried out as a matter of urgency.
- (2) The appropriate authority may, instead of making an application for consent to the local planning authority in accordance with this Act, make an application for consent to the Secretary of State under this section.
- (3) If the appropriate authority proposes to make the application to the Secretary of State it must publish in one or more newspapers circulating in the locality of the building a notice—
 - (a) describing the proposed works, and
 - (b) stating that the authority proposes to make the application to the Secretary of State.
- (4) For the purposes of an application under this section the appropriate authority must provide to the Secretary of State a statement of the authority’s grounds for making the application.

Status: This is the original version (as it was originally enacted).

- (5) If the appropriate authority makes an application under this section subsections (6) to (9) below apply.
 - (6) The Secretary of State may require the authority to provide him with such further information as he thinks necessary to enable him to determine the application.
 - (7) As soon as practicable after he is provided with any document or other matter in pursuance of subsection (4) or (6) the Secretary of State must make a copy of the document or other matter available for inspection by the public in the locality of the proposed development.
 - (8) The Secretary of State must in accordance with such requirements as may be prescribed publish notice of the application and of the fact that such documents and other material are available for inspection.
 - (9) The Secretary of State must consult—
 - (a) the local planning authority for the area to which the proposed development relates, and
 - (b) such other persons as may be prescribed, about the application.
 - (10) Subsection (7) does not apply to the extent that the document or other matter is subject to a direction under paragraph 6(6) of Schedule 3 (matters related to national security).
 - (11) Subsections (4) and (5) of section 12 apply to an application under this section as they apply to an application in respect of which a direction under section 12 has effect.”
- (2) In section 62 of the listed buildings Act (validity of certain matters) in subsection (2) at the end there is inserted the following paragraph—
- “(d) any decision on an application for listed building consent under section 82B.”

Enforcement

84 Enforcement in relation to Crown land

- (1) Section 296 of the principal Act (exercise of powers in relation to Crown land) is omitted.
- (2) After section 296 there are inserted the following sections—

“296A Enforcement in relation to the Crown

- (1) No act or omission done or suffered by or on behalf of the Crown constitutes an offence under this Act.
- (2) A local planning authority must not take any step for the purposes of enforcement in relation to Crown land unless it has the consent of the appropriate authority.

Status: This is the original version (as it was originally enacted).

- (3) The appropriate authority may give consent under subsection (2) subject to such conditions as it thinks appropriate.
- (4) A step taken for the purposes of enforcement is anything done in connection with the enforcement of anything required to be done or prohibited by or under this Act.
- (5) A step taken for the purposes of enforcement includes—
 - (a) entering land;
 - (b) bringing proceedings;
 - (c) the making of an application.
- (6) A step taken for the purposes of enforcement does not include—
 - (a) service of a notice;
 - (b) the making of an order (other than by a court).

296B References to an interest in land

- (1) Subsection (2) applies to the extent that an interest in land is a Crown interest or a Duchy interest.
 - (2) 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.
 - (3) An interest in land includes an interest only as occupier of the land.”
- (3) After section 82C of the listed buildings Act (inserted by Schedule 3) there are inserted the following sections—

“82D Enforcement in relation to the Crown

- (1) No act or omission done or suffered by or on behalf of the Crown constitutes an offence under this Act.
- (2) A local planning authority must not take any step for the purposes of enforcement in relation to Crown land unless it has the consent of the appropriate authority.
- (3) The appropriate authority may give consent under subsection (2) subject to such conditions as it thinks appropriate.
- (4) A step taken for the purposes of enforcement is anything done in connection with the enforcement of anything required to be done or prohibited by or under this Act.
- (5) A step taken for the purposes of enforcement includes—
 - (a) entering land;
 - (b) bringing proceedings;
 - (c) the making of an application.
- (6) A step taken for the purposes of enforcement does not include—
 - (a) service of a notice;
 - (b) the making of an order (other than by a court).

82E References to an interest in land

- (1) Subsection (2) applies to the extent that an interest in land is a Crown interest or a Duchy interest.
 - (2) 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.
 - (3) An interest in land includes an interest only as occupier of the land.”
- (4) After section 30B of the hazardous substances Act (inserted by section 79(3)) there are inserted the following sections—

“30C Enforcement in relation to the Crown

- (1) No act or omission done or suffered by or on behalf of the Crown constitutes an offence under this Act.
- (2) A local planning authority must not take any step for the purposes of enforcement in relation to Crown land unless it has the consent of the appropriate authority.
- (3) The appropriate authority may give consent under subsection (2) subject to such conditions as it thinks appropriate.
- (4) A step taken for the purposes of enforcement is anything done in connection with the enforcement of anything required to be done or prohibited by or under this Act.
- (5) A step taken for the purposes of enforcement includes—
 - (a) entering land;
 - (b) bringing proceedings;
 - (c) the making of an application.
- (6) A step taken for the purposes of enforcement does not include—
 - (a) service of a notice;
 - (b) the making of an order (other than by a court).

30D References to an interest in land

- (1) Subsection (2) applies to the extent that an interest in land is a Crown interest or a Duchy interest.
- (2) 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.
- (3) An interest in land includes an interest only as occupier of the land.”

Trees

85 Tree preservation orders: Forestry Commissioners

For section 200 of the principal Act (Orders affecting land where Forestry Commissioners interested) there is substituted the following section—

“200 Tree preservation orders: Forestry Commissioners

- (1) A tree preservation order does not have effect in respect of anything done—
 - (a) by or on behalf of the Forestry Commissioners on land placed at their disposal in pursuance of the Forestry Act 1967 or otherwise under their management or supervision;
 - (b) by or on behalf of any other person in accordance with a relevant plan which is for the time being in force.
- (2) A relevant plan is a plan of operations or other working plan approved by the Forestry Commissioners under—
 - (a) a forestry dedication covenant within the meaning of section 5 of the Forestry Act 1967, or
 - (b) conditions of a grant or loan made under section 1 of the Forestry Act 1979.
- (3) A reference to a provision of the Forestry Act 1967 or the Forestry Act 1979 includes a reference to a corresponding provision replaced by that provision or any earlier corresponding provision.”

86 Trees in conservation areas: acts of Crown

After section 211(4) of the principal Act (preservation of trees in conservation areas) there are inserted the following subsections—

- “(5) An emanation of the Crown must not, in relation to a tree to which this section applies, do an act mentioned in subsection (1) above unless—
 - (a) the first condition is satisfied, and
 - (b) either the second or third condition is satisfied.
- (6) The first condition is that the emanation serves notice of an intention to do the act (with sufficient particulars to identify the tree) on the local planning authority in whose area the tree is situated.
- (7) The second condition is that the act is done with the consent of the authority.
- (8) The third condition is that the act is done—
 - (a) after the end of the period of six weeks starting with the date of the notice, and
 - (b) before the end of the period of two years starting with that date.”

Miscellaneous

87 Old mining permissions

- (1) Subsection (2) applies if—
 - (a) an old mining permission relates to land which is Crown land, and
 - (b) the permission has not been registered in pursuance of Schedule 2 to the Planning and Compensation Act 1991.
- (2) Section 22 of and Schedule 2 to that Act apply to the old mining permission subject to the following modifications—
 - (a) in section 22(3) for “May 1, 1991” there is substituted “the date of commencement of section 87(2) of the Planning and Compulsory Purchase Act 2004”;
 - (b) in paragraph 1(3) of Schedule 2 for “the day on which this Schedule comes into force” there is substituted “the date of commencement of section 87(2) of the Planning and Compulsory Purchase Act 2004”.
- (3) Old mining permission must be construed in accordance with section 22 of the Planning and Compensation Act 1991.
- (4) Crown land must be construed in accordance with Part 13 of the principal Act.

88 Subordinate legislation

- (1) The Secretary of State may by order provide that relevant subordinate legislation applies to the Crown.
- (2) The order may modify such subordinate legislation to the extent that the Secretary of State thinks appropriate for the purposes of its application to the Crown.
- (3) Relevant subordinate legislation is an instrument which—
 - (a) is made under or (wholly or in part) for the purposes of any of the planning Acts,
 - (b) is made before the commencement of section 79 of this Act, and
 - (c) is specified in the order.

89 Crown application: transitional

Schedule 4 (which makes transitional provisions in consequence of the application to the Crown of the planning Acts) has effect.

CHAPTER 2

SCOTLAND

Crown application

90 Crown application of Scottish planning Acts

- (1) In Part 12 of the Town and Country Planning (Scotland) Act 1997, before section 242 (preliminary definitions for Part 12) there is inserted the following section—

“241A Application to the Crown

- (1) This Act binds the Crown.
- (2) But subsection (1) is subject to express provision made by this Part.”
- (2) In the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, after section 73 (application of Act to land and works of planning authorities) there is inserted the following section —

“73A Application to the Crown

- (1) This Act (except the provisions specified in subsection (2)) binds the Crown.
- (2) These are the provisions—
- (a) section 8,
 - (b) section 10(3),
 - (c) section 19(7),
 - (d) section 38(1) and (8),
 - (e) section 39,
 - (f) section 49,
 - (g) section 50,
 - (h) section 53,
 - (i) section 77.
- (3) But subsection (2)(a) does not have effect to prohibit the doing of anything by or on behalf of the Crown which falls within the circumstances described in section 8(3)(a) to (d) and the doing of that thing does not contravene section 6.”
- (3) In the Planning (Hazardous Substances) (Scotland) Act 1997, after section 30 (application of Act to planning authorities) there is inserted the following section—

“30A Application to the Crown

- (1) This Act (except the provisions specified in subsection (2)) binds the Crown.
- (2) The provisions are—
- (a) section 6(3),
 - (b) section 21,
 - (c) section 25,

- (d) section 34,
 - (e) section 35(2).”
- (4) Schedule 5 amends the Scottish planning Acts in relation to the application of those Acts to the Crown.

National security

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

- (1) In the Town and Country Planning (Scotland) Act 1997 (c. 8), there is inserted after section 265 (local inquiries) the following section—

“265A Planning inquiries to be held in public subject to certain exceptions

- (1) This section applies in relation to the holding of inquiries under section 265(1), paragraph 6 of Schedule 4, paragraph 5 of Schedule 6 or paragraph 8 of Schedule 7.
- (2) Subject to subsection (3), at any such inquiry oral evidence shall be heard in public and documentary evidence shall be open to public inspection.
- (3) If the Secretary of State is, or after consultation with the Secretary of State the Scottish Ministers are, satisfied in the case of any such inquiry—
 - (a) that giving evidence of a particular description or, as the case may be, making it available for inspection would be likely to result in the disclosure of information as to any of the matters mentioned in subsection (4), and
 - (b) that the public disclosure of that information would be contrary to the national interest,
 he or as the case may be they may direct that evidence of the description indicated in the direction shall only be heard or, as the case may be, open to inspection at that inquiry by such persons, or persons of such descriptions, as may be specified in the direction.
- (4) The matters referred to in subsection (3)(a) are—
 - (a) national security, and
 - (b) the measures taken, or to be taken, to ensure the security of any premises or property.
- (5) The Lord Advocate may appoint a person to represent the interests of any person who—
 - (a) if a direction is given under subsection (3), will be prevented from hearing or inspecting any evidence at any such inquiry; or
 - (b) is so prevented by such a direction given before any appointment is made by virtue of paragraph (a).
- (6) By rules—
 - (a) the Secretary of State may make provision as to the procedure to be followed by him before he gives a direction under subsection (3) in a

- case where a person has been appointed under subsection (5) and as to the functions of a person appointed under subsection (5),
- (b) the Scottish Ministers may make provision as to the procedure to be followed by them before they give such a direction in such a case and as to such functions.
- (7) If a person (the representative) is appointed—
- (a) under paragraph (a) of subsection (5) and either no direction in relation to the evidence in question has been given under subsection (3) or any such direction so given has been given by the Secretary of State, the Secretary of State may direct any person who he thinks,
- (b) under paragraph (a) of subsection (5) and such a direction has been given under subsection (3) by the Scottish Ministers, the Scottish Ministers may direct any person who they think,
- (c) under paragraph (b) of subsection (5) and the direction referred to in that paragraph was given by the Secretary of State, the Secretary of State may direct any person who he thinks,
- (d) under paragraph (b) of that subsection and the direction so referred to was given by the Scottish Ministers, the Scottish Ministers may direct any person who they think,
- is interested in the inquiry, or prospective inquiry, in relation to a matter mentioned in subsection (4) (the responsible person) to pay remuneration or allowances to, and to reimburse any expenses incurred by, the representative.
- (8) If the representative and the responsible person are unable to agree an amount payable by virtue of—
- (a) paragraph (a) or (c) of subsection (7), the amount must be determined by the Secretary of State,
- (b) paragraph (b) or (d) of that subsection, the amount must be determined by the Scottish Ministers.
- (9) The Secretary of State must cause an amount payable by virtue of paragraph (a) or (c) of subsection (7) (whether determined under subsection (8) or agreed between the representative and the responsible person) to be certified.
- (10) The Scottish Ministers must cause an amount payable by virtue of paragraph (b) or (d) of subsection (7) (whether so determined or so agreed) to be certified.
- (11) An amount certified under subsection (9) or (10) is recoverable from the responsible person as a debt.
- (12) Subsections (7) to (11) apply even if the inquiry does not take place.
- (13) The power to make rules under—
- (a) paragraph (a) of subsection (6) must be exercised by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament,
- (b) paragraph (b) of that subsection must be exercised by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.”

Status: This is the original version (as it was originally enacted).

- (2) In Schedule 3 to the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (determination of certain appeals by person appointed by the Scottish Ministers), in paragraph 6, after sub-paragraph (6) there is inserted the following sub-paragraph—

“(7) Subsections (2) to (13) of section 265A of the principal Act apply to the holding of an inquiry under this paragraph as they apply to the holding of an inquiry under section 265 of that Act.”

- (3) In the Schedule to the Planning (Hazardous Substances) (Scotland) Act 1997 (determination of certain appeals by person appointed by Scottish Ministers), in paragraph 6, after sub-paragraph (6) there is inserted the following sub-paragraph—

“(7) Subsections (2) to (13) of section 265A of the principal Act apply to the holding of an inquiry under this paragraph as they apply to the holding of an inquiry under section 265 of that Act.”

Urgent development and works

92 Urgent Crown development: Scotland

- (1) In the Town and Country Planning (Scotland) Act 1997 (c. 8), before section 243 (control of development on Crown land: special enforcement notices) there is inserted the following section—

“242A Urgent Crown development: application

- (1) This section applies to a development if the appropriate authority certifies—
- (a) that the development is of national importance, and
 - (b) that it is necessary that the development is carried out as a matter of urgency.
- (2) The appropriate authority may, instead of making an application for planning permission to the planning authority in accordance with Part 3, make an application for planning permission to the Scottish Ministers under this section.
- (3) If the appropriate authority proposes to make the application to the Scottish Ministers, it must publish in one or more newspapers circulating in the locality of the proposed development a notice—
- (a) describing the proposed development, and
 - (b) stating that the authority proposes to make the application to the Scottish Ministers.
- (4) For the purposes of an application under this section the appropriate authority must provide to the Scottish Ministers—
- (a) any matter required to be provided by an applicant for planning permission in pursuance of regulations made under section 40,
 - (b) a statement of the authority’s grounds for making the application.
- (5) If the appropriate authority makes an application under this section subsections (6) to (11) below apply.

- (6) The Scottish Ministers may require the authority to provide them with such further information as they think necessary to enable them to determine the application.
 - (7) As soon as practicable after they are provided with any document or other matter in pursuance of subsection (4) or (6) the Scottish Ministers must make a copy of the document or other matter available for inspection by the public in the locality of the proposed development.
 - (8) The Scottish Ministers must in accordance with such requirements as they may specify in a development order publish notice of the application and of the fact that such documents and other material are available for inspection.
 - (9) The Scottish Ministers must consult—
 - (a) the planning authority, and
 - (b) such other persons as may be so specified,about the application.
 - (10) Subsection (7) above does not apply to the extent that the document or other matter is subject to any direction given under section 265A(3) of this Act.
 - (11) Subsections (4) to (7) of section 46 apply to an application under this section as they apply to an application in respect of which a direction under section 46 has effect.”
- (2) In section 237 of that Act, (validity of certain matters) in subsection (3) at the end there is added the following paragraph—
- “(i) any decision on an application for planning permission under section 242A.”

93 Urgent works relating to Crown land: Scotland

- (1) In the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (c. 9), after section 73A (inserted by section 90(2)) there is inserted the following section—

“73B Urgent works relating to Crown land: application

- (1) This section applies to any works proposed to be executed in connection with any building which is on Crown land if the appropriate authority certifies—
 - (a) that the works are of national importance, and
 - (b) that it is necessary that the works are carried out as a matter of urgency.
- (2) The appropriate authority may, instead of making an application for consent to the planning authority in accordance with this Act, make an application for consent to the Scottish Ministers under this section.
- (3) If the appropriate authority proposes to make the application to the Scottish Ministers it must publish in one or more newspapers circulating in the locality of the building a notice—
 - (a) describing the proposed works, and
 - (b) stating that the authority proposes to make the application to the Scottish Ministers.

Status: This is the original version (as it was originally enacted).

- (4) For the purposes of an application under this section the appropriate authority must provide to the Scottish Ministers a statement of the authority's grounds for making the application.
 - (5) If the appropriate authority makes an application under this section subsections (6) to (11) below apply.
 - (6) The Scottish Ministers may require the authority to provide them with such further information as they think necessary to enable them to determine the application.
 - (7) As soon as practicable after they are provided with any document or other matter in pursuance of subsection (4) or (6) the Scottish Ministers must make a copy of the document or other matter available for inspection by the public in the locality of the proposed development.
 - (8) The Scottish Ministers must in accordance with such requirements as may be prescribed publish notice of the application and of the fact that such documents and other material are available for inspection.
 - (9) Subsection (7) above does not apply to the extent that the document or other matter is subject to any direction given under section 265A(3) of the principal Act.
 - (10) The Scottish Ministers must consult—
 - (a) the planning authority, and
 - (b) such other persons as may be prescribed,
 about the application.
 - (11) Subsections (4) and (5) of section 11 apply to an application under this section as they apply to an application in respect of which a direction under section 11 has effect.”
- (2) In section 57 of that Act (validity of certain matters), in subsection (2) at the end there is added the following paragraph—
- “(d) any decision on an application for listed building consent under section 73B.”

Enforcement

94 Enforcement in relation to Crown land: Scotland

- (1) In the Town and Country Planning (Scotland) Act 1997 (c. 8), section 245 (exercise of powers in relation to Crown land) is omitted.
- (2) After section 245 there is inserted the following section—

“245A Enforcement in relation to the Crown

- (1) No act or omission done or suffered by or on behalf of the Crown constitutes an offence under this Act; but the Court of Session may, on the application of a public authority or office-holder responsible for the enforcement of anything required to be done, or prohibited, by or under this Act, declare unlawful any act or omission so done or suffered.

- (2) A planning authority must not take any step for the purposes of enforcement in relation to Crown land unless it has the consent of the appropriate authority.
 - (3) The appropriate authority may give consent under subsection (2) subject to such conditions as it thinks appropriate.
 - (4) A step taken for the purposes of enforcement is anything done in connection with the enforcement of anything required to be done or prohibited by or under this Act.
 - (5) A step taken for the purposes of enforcement includes—
 - (a) entering land,
 - (b) initiating proceedings,
 - (c) the making of an application.
 - (6) A step taken for the purposes of enforcement does not include—
 - (a) service of a notice,
 - (b) the making of an order (other than a court order).”
- (3) In the Town and Country Planning (Scotland) Act 1997 (c. 8), after section 245A (inserted by subsection (2) above) there is inserted the following section—

“245B References to an interest in land

- (1) Subsection (2) applies to the extent that an interest in land is a Crown interest.
 - (2) 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.
 - (3) An interest in land includes an interest only as occupier of the land.”
- (4) In the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (c. 9) after section 73C (inserted by Schedule 5) there are inserted the following sections—

“73D Enforcement in relation to the Crown

- (1) No act or omission done or suffered by or on behalf of the Crown constitutes an offence under this Act; but the Court of Session may on the application of a public authority or office-holder responsible for the enforcement of anything required to be done, or prohibited, by or under this Act, declare unlawful any act or omission so done or suffered.
- (2) A planning authority must not take any step for the purposes of enforcement in relation to Crown land unless it has the consent of the appropriate authority.
- (3) The appropriate authority may give consent under subsection (2) subject to such conditions as it thinks appropriate.
- (4) A step taken for the purposes of enforcement is anything done in connection with the enforcement of anything required to be done or prohibited by or under this Act.
- (5) A step taken for the purposes of enforcement includes—
 - (a) entering land,

Status: This is the original version (as it was originally enacted).

- (b) initiating proceedings,
- (c) the making of an application.

- (6) A step taken for the purposes of enforcement does not include—
- (a) service of a notice,
 - (b) the making of an order (other than a court order).

73E Reference to an interest in land

- (1) Subsection (2) applies to the extent that an interest in land is a Crown interest.
 - (2) 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.
 - (3) An interest in land includes an interest only as occupier of the land.”
- (5) In the Planning (Hazardous Substances) (Scotland) Act 1997, after section 30A (inserted by section 90(3)) there are inserted the following sections—

“30B Enforcement in relation to the Crown

- (1) No act or omission done or suffered by or on behalf of the Crown constitutes an offence under this Act; but the Court of Session may, on the application of a public authority or office-holder responsible for the enforcement of anything required to be done, or prohibited, by or under this Act, declare unlawful any act or omission so done or suffered.
- (2) A planning authority must not take any step for the purposes of enforcement in relation to Crown land unless it has the consent of the appropriate authority.
- (3) The appropriate authority may give consent under subsection (2) subject to such conditions as it thinks appropriate.
- (4) A step taken for the purposes of enforcement is anything done in connection with the enforcement of anything required to be done or prohibited by or under this Act.
- (5) A step taken for the purposes of enforcement includes—
 - (a) entering land,
 - (b) initiating proceedings,
 - (c) the making of an application.
- (6) A step taken for the purposes of enforcement does not include—
 - (a) service of a notice,
 - (b) the making of an order (other than a court order).

30C Reference to an interest in land

- (1) Subsection (2) applies to the extent that an interest in land is a Crown interest.
- (2) 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.

(3) An interest in land includes an interest only as occupier of the land.”

Trees

95 Tree preservation orders: Scotland

For section 162 of the Town and Country Planning (Scotland) Act 1997 (Orders affecting land where Forestry Commissioners interested) there is substituted the following section—

“162 Tree preservation: Forestry Commissioners

- (1) A tree preservation order does not have effect in respect of anything done—
 - (a) by or on behalf of the Forestry Commissioners on land placed at their disposal in pursuance of the Forestry Act 1967 or otherwise under their management or supervision;
 - (b) by or on behalf of any other person in accordance with a relevant plan which is for the time being in force.
- (2) A relevant plan is a plan of operations or other working plan approved by the Forestry Commissioners under—
 - (a) a forestry dedication agreement within the meaning of section 5 of the Forestry Act 1967, or
 - (b) conditions of a grant or loan made under section 1 of the Forestry Act 1979.
- (3) A reference to a provision of the Forestry Act 1967 or the Forestry Act 1979 includes a reference to a corresponding provision replaced by that provision or any earlier corresponding provision.”

96 Trees in conservation areas in Scotland: acts of Crown

In the Town and Country Planning (Scotland) Act 1997 (c. 8), after section 172(4) (preservation of trees in conservation areas) there are inserted the following subsections—

- “(5) An emanation of the Crown must not, in relation to a tree to which this section applies, do an act mentioned in subsection (1) above unless—
 - (a) the first condition is satisfied, and
 - (b) either the second or third condition is satisfied.
- (6) The first condition is that the emanation serves notice of an intention to do the act (with sufficient particulars to identify the tree) on the planning authority in whose area the tree is situated.
- (7) The second condition is that the act is done with the consent of the authority.
- (8) The third condition is that the act is done—
 - (a) after the end of the period of six weeks starting with the date of the notice, and
 - (b) before the end of the period of two years starting with that date.”

*Miscellaneous***97 Old mining permissions: Scotland**

- (1) Subsection (2) applies if—
 - (a) an old mining permission relates to land which is Crown land, and
 - (b) the permission has not been registered in pursuance of Part 2 of Schedule 8 to the Town and Country Planning (Scotland) Act 1997.
- (2) Paragraph 10 of that Schedule and that Part apply to the old mining permission subject to the following modifications—
 - (a) in sub-paragraph (3) of that paragraph, for “16th May 1991” there is substituted “the date of commencement of section 97(2) of the Planning and Compulsory Purchase Act 2004”,
 - (b) in paragraph 13(3) of that Part, for “24 January 1992” there is substituted “the date of commencement of section 97(2) of the Planning and Compulsory Purchase Act 2004”.
- (3) “Old mining permission” must be construed in accordance with paragraph 10 and Part 2 of that Schedule.
- (4) “Crown land” must be construed in accordance with Part 12 of the Town and Country Planning (Scotland) Act 1997.

98 Subordinate legislation: Scotland

- (1) The Scottish Ministers may by order provide that relevant subordinate legislation applies to the Crown.
- (2) The order may modify such subordinate legislation to the extent that the Scottish Ministers think appropriate for the purposes of its application to the Crown.
- (3) Relevant subordinate legislation is an instrument which—
 - (a) is made under or (wholly or in part) for the purposes of any of the Scottish planning Acts,
 - (b) is made before the commencement of section 90 of this Act, and
 - (c) is specified in the order.
- (4) In subsection (3), “instrument” includes an instrument made under an Act of the Scottish Parliament.