

# **CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### *Commentary on Sections*

#### **Part 8: Architecture and the Built Environment**

##### **Commission for Architecture and the Built Environment**

230. **Part 8** is concerned with the establishment of a statutory corporation known as the Commission for Architecture and the Built Environment (the “Commission”). Prior to Part 8 coming into force, there was a non-departmental public body of the same name (the “old Commission”), which was constituted as a private company limited by guarantee. The Act, in effect, transfers the functions, staff and property of the old Commission to the new statutory body, thereby putting the old Commission on a statutory footing. The old Commission is dissolved under the Act.

##### ***Section 87 and Schedule 2 Commission for Architecture and the Built Environment***

231. **Section 87** establishes the corporate body and Schedule 2 makes further provision about its constitution as well as other matters relating to its proceedings, accounts etc.

##### ***Section 88 General functions of the Commission***

232. **Section 88** sets out the general functions of the Commission, where it may operate, its powers and the conditions which apply to them. The functions of the Commission, which broadly reflect the objects of the old Commission under its memorandum of association, are the promotion of education and high standards in, and an understanding and appreciation of, architecture and the design, management and maintenance of the built environment.

233. **Subsection (4)** describes some of the specific powers that the Commission has for the purpose of discharging its functions. Again, these broadly reflect the powers of the old Commission, which are set out in its memorandum of association.

234. In **subsection (9)** the Commission is required, in discharging its functions, to have regard to national policies and advice relating to sustainable development contained in guidance issued by the Secretary of State. This provision is included in recognition of government's aim to deliver sustainable development. Policy in this area is broad in its aims in that it relates to social, economic and environmental factors.

235. **Subsection (10)** defines the “built environment” in terms that allow the Commission to carry out its functions not only in relation to buildings and structures but also in relation to open spaces designed for human use (such as parks and, recreation areas). It also ensures that the Commission’s remit covers any other area available for public use which is in the vicinity of a structure or “man-made” open space. This part of the

definition is designed to ensure that natural areas such as commons, heaths and beaches in the vicinity of seaside towns can be within the Commission's jurisdiction.

### ***Section 89 Changes to the function of the Commission***

236. This section enables the Secretary of State by order to amend the Commission's functions. An order can only confer a further function on the Commission if the new function is connected either directly or indirectly to an existing or former function of the Commission. This provides flexibility should other functions arise which are complementary to the Commission's existing or previous functions. The Commission's role has changed since its inception (from promoting high standards in design and management of buildings and structures to also working in relation to the design and management of parks and public spaces) and this provision will ensure that similar changes can occur in the future.

### ***Section 90 Power to dissolve the Commission***

237. **Section 90** enables an order to be made by the Secretary of State to wind up the Commission. It specifies that the order may, among other things, provide for the transfer of the functions, property, rights or liabilities of the Commission to another person. It also protects the employees by ensuring that an order made under this section will apply the Transfer of Undertakings (Protection of Employment) Regulations ("TUPE") to the transfer of rights and liabilities relating to employees. There was no intention to dissolve the Commission at the time of the Act receiving Royal Assent, however, this provision is included so that it can be dissolved should a future need arise.

### ***Section 91 Dissolution of the old Commission; Section 92 and Schedule 3 Transfer of staff, property etc from the old Commission***

238. **Section 91** provides for the dissolution of the old Commission. **Section 92** gives effect to **Schedule 3** which provides for the transfer of staff, property, rights and liabilities from the old Commission to the Commission. The effect of paragraph 1 of **Schedule 3** is that TUPE applies to the transfer of staff. These transfers take place immediately before the dissolution of the old Commission.

### ***Section 93 Tax***

239. The effect of section 93 is that the transfers from the old Commission to the Commission under this Part are tax neutral. They do not give rise to any tax, or conferred a tax advantage, on either body. This is achieved mainly by treating the Commission as the same person as the old Commission for tax purposes.

## **Financial assistance**

### ***Section 94 Architecture and the built environment: financial assistance***

240. This section enables the Secretary of State to provide financial assistance to any person, for the purposes described (which mirror the functions of the Commission).
241. If an order is made under section 89 to change the functions of the Commission, *subsection (4)* enables the Secretary of State to make an order amending the purposes for which financial assistance may be given under this section in a similar fashion to ensure that any changes to the Commission's functions need not affect the availability of financial assistance.

## **Supplementary**

### ***Section 95 Orders***

242. **Section 95** requires that any order made under Part 8 is to be made by statutory instrument by affirmative resolution, with the exception of an order under paragraph 2(4) of Schedule 2, to vary the maximum or minimum numbers of members of the Commission.