

**EXPLANATORY MEMORANDUM TO
THE PLANNING (APPLICATION TO THE HOUSES OF PARLIAMENT) ORDER
2006**

1. This explanatory memorandum has been prepared by the Office of the Deputy Prime Minister and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 This Order applies the planning Acts to Parliament.

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

- 3.1 None.

4. **Legislative Background**

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

- 4.2 Section 293(1) of the 1990 Act (as amended by the 2004 Act) defines “Crown land” as land in which there is a Crown interest or a Duchy interest. “Crown interest” is defined to include an interest belonging to Her Majesty in right of the Crown or in right of Her private estates, an interest belonging to a government department or held in trust for Her Majesty for the purposes of a government department and such other interest as the Secretary of State specifies by order. Similar provision is made in relation to the other planning Acts.

- 4.3 Section 112 of the 2004 Act provides that the planning Acts and the 2004 Act have effect despite any rule of law relating to Parliament or the law and practice of Parliament.

- 4.4 Before the commencement of Part 7 of the 2004 Act, the planning Acts applied in relation to Crown land in limited circumstances. The Parliamentary Corporate Bodies (Crown Immunities etc) Order 1992 provided that for the purposes of the 1990 Act and the Listed Buildings Act that the interest of the Corporate Officer of the House of Lords or the House of Commons, or of the Corporate Officers, in any land

should be regarded as a Crown interest and any development or works carried out by or on behalf of them should be regarded as development or works carried out by or on behalf of the Crown. It also provided that they were the “appropriate authority” for the purposes of Part 13 of the 1990 Act and the Listed Buildings Act in relation to that land. The appropriate authority has the power to make planning applications, give permission for enforcement action and act generally as the point of contact with the local planning authority (see, for example section 293A(1) of the 1990 Act).

4.4 This Order specifies as a Crown interest, the interest of the Speaker of the House of Lords, the interest of the Speaker of the House of Commons and the interests of the Corporate Officers in various parts of the Palace of Westminster. The Order also specifies who is the appropriate authority for the purposes of the application of the planning Acts to the Crown in relation to those interests.

4.5 Consequential amendments will be made to the Parliamentary Corporate Bodies (Crown Immunities etc) Order 1992.

5. Extent

5.1 This instrument applies in England.

6. European Convention on Human Rights

The Baroness Andrews has made the following statement regarding Human Rights:

In my view the provisions of the Planning (Application to the Houses of Parliament) Order 2006 are compatible with the Convention rights.

7. Policy background

7.1 Until the commencement of Part 7 of the 2004 Act, the planning Acts did not bind the Crown. However, planning control extended to private interests in Crown land, so that, for example, a tenant from the Crown needed planning permission to undertake development in the normal way. There was also provision in the 1990 Act for the Crown to seek planning permission in anticipation of a disposal of the land (section 299). Crown immunity extended to Her Majesty the Queen and the Prince of Wales in their private capacities, to the Prince of Wales in right of the Duchy of Cornwall, the Duchy of Lancaster, the Crown Estate, Government Departments and to the Corporate Officers of the Houses of Parliament in respect of land owned by them.

7.2 The effect of Crown immunity was that the Crown was unable to apply for planning permission for its own development on Crown land; its only power to seek planning permission was in section 299, which enabled an application in anticipation of disposal. Most Crown development was accordingly undertaken under the non-statutory arrangements in Part IV of DoE Circular 18/84, which were designed to replicate the procedure for planning applications and appeals so far as practicable. All Crown bodies agreed to abide by these arrangements.

7.3 The Palace of Westminster and its precincts are not, for the most part, Crown land. Parts of it have, however, been treated as if they were Crown land for the purposes of the planning Acts (see the Parliamentary Corporate Bodies (Crown Immunities etc) Order 1992). The policy in relation to Parliament was that it should be put, as near as may be, in the same position as the Crown - subject to the same restrictions, but also able to benefit from the same exemptions, as the Crown so far as relevant.

7.4 A consultation paper "Removal of Crown Immunity from Planning Law" issued in 1992 proposed that all Crown bodies should be required to apply for planning permission and related consents in the normal way. This proposal received overwhelming support, and in March 1994 the Government announced that Crown immunity would be removed from the planning system as soon as a suitable legislative opportunity arose.

7.5 The existence of Crown immunity from planning control had the result that the EC Directive on Environmental Impact Assessment (Directive 85/337/EEC, as amended by Directive 97/11/EEC) was not fully implemented by UK law, because the relevant Regulations could not apply to the Crown - a further reason for removing Crown immunity.

7.6 Part 7 of the 2004 Act applies the planning Acts to the Crown, subject to certain modifications. The policy intention is for Parliament to be put in the same position as the Crown. That is achieved by this Order and the definition of "Crown interest" in the planning Acts which covers those parts of the Palace of Westminster which are Crown land (such as Her Majesty's Robing Room).

7.7 A further consultation was carried out in September 2005¹ on the details of the subordinate legislation which would be applied to the Crown (and hence Parliament) with or without modifications. This was generally well-received and only minor changes were made as a result. This Order has not been the subject of public consultation because of its limited applicability. It has, however, been prepared in consultation with the House Authorities.

8. Impact

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

9. Contact

Robert Segall at the Office of the Deputy Prime Minister Tel: 020 7944 3913 or e-mail: robert.segall@odpm.gsi.gov.uk can answer any queries regarding the instrument.

¹ "Applying the Planning Acts to the Crown", ODPM Consultation Paper September 2005.