

**EXPLANATORY MEMORANDUM TO
THE PLANNING AND COMPULSORY PURCHASE ACT 2004 (COMMENCEMENT
NO.9 AND CONSEQUENTIAL PROVISIONS) ORDER 2006**

2006 No. 1281 (C.43)

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This order commences provisions contained in the Planning and Compulsory Purchase Act 2004 concerned with Crown application of the planning Acts and makes consequential amendments to secondary legislation and to enactments contained in an Act.

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

3.1 None

4. Legislative Background

4.1 The Commencement Order is subject to Parliamentary procedure because of the operation of section 122(5)(d) and section 122(8) of the Planning and Compulsory Purchase Act 2004.

4.2 Section 122(5)(d) provides that an order made under section 121(1), an appointed day commencement order, to which subsection (8) applies shall not be subject to annulment in pursuance of a resolution of either House of Parliament.

4.3 Subsection (8) applies to an order which does not contain provision amending or repealing an enactment contained in an Act.

4.4 The effect of sections 122(5)(d) and section 122(8) is that a commencement order containing provision amending or repealing an enactment contained in an Act is subject to Parliamentary procedure. A commencement order which does not contain provision amending or repealing an enactment contained in an Act will not be subject to Parliamentary procedure.

4.5 This Order is related to the following statutory instruments – the Town and Country Planning (Application of Subordinate Legislation to the Crown) Order 2006 No.1282, the Planning (National Security Directions and Appointed Representatives)

(England) Rules 2006 No.1284 and the Planning (Listed Buildings, Conservation Areas and Hazardous Substances) (Amendment) (England) Regulations 2006 No.1283

5. Extent

5.1 This instrument applies to England, Scotland and Wales.

5.2 The Scottish Ministers have agreed to the Order, as required by section 121(3) of the Planning and Compulsory Purchase Act 2004.

5.3 Consultation with the National Assembly for Wales has taken place in compliance with section 121(2) of the Planning and Compulsory Purchase Act 2004.

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 and Compulsory Purchase Act 2004 (Commencement No.9 and Consequential Provisions) Order 2006 are compatible with the Convention rights

7. Policy background

7.1 The application of the planning Acts to the Crown to end the Crown's immunity from the planning system has been declared Government policy since 1994. There is a general policy that the Crown should not have immunity from administrative law where it is not necessary (the NHS, for example, lost Crown immunity in 1991). In addition, the UK has been subject to infraction proceedings by the European Commission for the incomplete transposition of the Environmental Impact Assessment (EIA) Directive¹, which operates through the planning system. The Crown's immunity meant that the transposing Regulations² did not apply to the Crown.

7.2 The Planning and Compulsory Purchase Act 2004 in Part 7 contained the legislation necessary to remove the Crown's immunity by applying the planning Acts to the Crown, subject to particular provisions on national security, urgent applications and enforcement. Chapter 1 of part 7 applies to England and Wales and Chapter 2 applies to Scotland. Separate legislation has been prepared for Northern Ireland. This Order substantively commences Chapter 1 together with section 91 (Special provision for certain circumstances where disclosure of information as to national security may occur: Scotland) for Chapter 2, which must also be commenced by the Secretary of State. The remainder of Chapter 2 is to be commenced by the Scottish Ministers. The Order also commences sections 111(1) (Crown) and 112 (Parliament), together with Schedules 3 (Crown Application) and 4 (Transitional Provisions: Crown Application) and elements of Schedules 6 (Amendments of the Planning Acts) and 9 (Repeals).

¹ Council Directive 85/337/EEC as amended by Council Directive 97/11/EC

² The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (SI 1999/293 as amended), amongst others

7.3 Most of the consequential provisions required for primary legislation are required because the definitions of “planning permission” and “planning decision” refer to such permissions and decisions being granted or made under Part III of the Town and Country Planning Act 1990. The new section 293A for applications for urgent Crown development is, however, in Part XIII. Without these amendments, the provisions which should apply to all permissions and decisions would not apply to permission and decisions made following an application made under section 293A.

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 Department for Communities and Local Government Tel: 020 7944 3913 or e-mail: robert.segall@odpm.gsi.gov.uk can answer any queries regarding the instrument.