

**EXPLANATORY MEMORANDUM TO**  
**THE PLANNING (LISTED BUILDINGS, CONSERVATION AREAS AND**  
**HAZARDOUS SUBSTANCES) (AMENDMENT) (ENGLAND) REGULATIONS 2006**

**2006 No. 1283**

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 These Regulations amend the Planning (Listed Buildings and Conservation Areas) Regulations 1990 to prescribe the publicity requirements for applications by the Crown for listed building consent where the works are urgently required. The Regulations also amend the Planning (Hazardous Substances) Regulations 1992 to prescribe the form and content of the claim and the conditions to which a deemed consent will be subject under the transitional provisions applicable to the Crown under the Planning (Hazardous Substances) Act 1990.

**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 Planning (Listed Buildings and Conservation Areas) Act 1990 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 83 of the 2004 Act amends the Planning (Listed Buildings and Conservation Areas) Act 1990 by inserting a new section 82B. This makes provision for urgent applications for works to buildings on Crown land which are listed or which are in conservation areas and provides for such applications to be made directly to the Secretary of State. Section 82B of the Planning (Listed Buildings and Conservation Areas) Act 1990 provides that where the appropriate authority<sup>1</sup> certifies that the works are of national importance and that it is necessary that the works are carried out urgently, the appropriate authority can apply direct to the Secretary of State rather than to the local planning authority. Section 82B(8) imposes a duty on the Secretary of State to publicise the application in accordance with any prescribed requirements.

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<sup>1</sup> See section 82C. Where, for example, the works are to be carried out by a Government Department, that Department will be the “appropriate authority”.

These Regulations amend the Planning (Listed Buildings and Conservation Areas) Regulations 1990 to prescribe those publicity requirements.

4.3 Section 79 of the 2004 Act amends the Planning (Hazardous Substances) Act 1990 by inserting a new section 30B. This makes transitional provision for hazardous substances consent to be deemed to be granted in relation to hazardous substances present on Crown land before the date on which Part 7 of the 2004 Act is commenced. Section 30B requires a claim to be made for deemed hazardous substances consent in the prescribed form and contain the prescribed information. It also provides that any deemed consent will be subject to certain conditions - including any condition which is prescribed. These Regulations amend the Planning (Hazardous Substances) Regulations 1992 to prescribe the form and content of the claim and the conditions to which a deemed consent will be subject.

4.4 These Regulations are linked with the Planning and Compulsory Purchase Act 2004 (Commencement No.9 and Consequential Provisions) Order 2006 No.1281 (C.43), the Planning (National Security Directions and Appointed Representatives) (England) Rules 2006 No.1284, and the Town and Country Planning (Application of Subordinate Legislation to the Crown) Order 2006 No.1282

## **5. Extent**

5.1 This instrument applies to England.

## **6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 The policy behind regulation 2 is that modifications made to secondary legislation to accommodate the Crown should reflect existing general provisions, unless there is a reason for them to be different. Urgent applications under section 82B of the 1990 Act are made direct to the Secretary of State instead of to local planning authorities. The only difference is that the Secretary of State must arrange the publicity instead of the local planning authority: the provisions introduced by regulation 2 are therefore very similar to the standard arrangements set out in regulation 5 of the Planning (Listed Buildings and Conservation Areas) Regulations 1990.

7.2 A public consultation exercise took place between September and December 2005 on regulation 2, the Town and Country Planning (Application of Subordinate Legislation to the Crown) Order 2006, and the Planning (National Security Direction and Appointed Representatives) (England) Rules 2006, together with a draft Circular. The consultation paper can be viewed at <http://www.odpm.gov.uk/index.asp?id=1164257> or hard copies are available. The Department received 32 responses to the consultation paper, but none of them referred to regulation 2.

7.3 The policy underlying section 30B of the Planning (Hazardous Substances) Act 1990 is to allow Crown bodies to obtain deemed consent for holdings of hazardous substances similar to that afforded to the industry in 1992 and 1999. Once the Crown is subject to the planning Acts, any holdings of hazardous substances would require consent. Deemed consent for the Crown as it enters the planning system is appropriate as the Crown can be assumed to be holding any hazardous substances in a safe manner.

7.4 Regulation 3 was added to these Regulations post-consultation following further consideration within the Department. Given that these provisions are fairly minor (and the substance of the transitional provisions are contained in the 2004 Act), it was considered that there was no need for further public consultation.

## **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**

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