

MEMORANDUM
PLANNING AND COMPULSORY PURCHASE BILL: CROWN IMMUNITY
PROVISIONS

Background

1. Planning is a devolved matter. However, the Town and Country Planning Acts¹ currently do not apply to the Crown. As a result Crown bodies are not subject to planning control for development which they propose to carry out. Instead, government departments and other Crown bodies wishing to carry out development in Scotland have undertaken to comply with the non-statutory arrangements in Part IV of the Memorandum to Scottish Development Department Circular 21/84 (Similar arrangements apply to such development in England and Wales).

2. The UK Government and the Executive are proposing to rectify this anomaly. Provisions to remove Crown immunity from planning controls are therefore being introduced as an amendment to the recommitted Planning and Compulsory Purchase Bill. This will mean that, once the proposed powers are brought into force, all Crown bodies will need to seek planning permission in the normal way. The statutory requirements of the devolved planning regime will thereby be extended. This approach to the removal of Crown Immunity from planning control in Great Britain will among other things, put the requirements of the European Directive on Environmental Impact Assessment in relation to Crown development on a statutory footing.

Content of the Bill and the Amendments

3. With the exception of the proposed amendments to extend controls on planning, listed buildings and hazardous substances to the Crown, the other provisions in the Bill extend only to England and Wales. The proposed amendments for Scotland include an amended definition of "Crown interest" for Part XII of the 1997 Planning Act and power for the Scottish Ministers by order subject to affirmative resolution of the Scottish Parliament to add to the list of "Crown interests". Crown land including the interests of government departments and the Monarch's private estates in Scotland will therefore be subject to statutory controls.

4. The proposed amendments will remove Crown immunity from the controls in the Scottish planning Acts i.e. the Town and Country Planning (Scotland) Act 1997, the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, and the Planning (Hazardous Substances) Act 1997.

Application to the Crown

5. The pivotal amendment makes it explicit that abolition of Crown immunity will mean that, (subject to certain exceptions), the Planning Acts will bind the Crown.

Special Provision relating to National Security

6. A new provision will be introduced for inquiries under the planning Acts to be held in public and evidence to be available for public inspection subject to certain exceptions. These exceptions are where the public disclosure or inspection of

¹ In Scotland, the Town and Country Planning (Scotland) Act 1997, the Planing (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and the Planning (Hazardous Substances) (Scotland) Act 1997

information would be contrary to the national interest on grounds of national security or relate to measures taken or to be taken to ensure the security of any premises or property. Reflecting the parameters of the devolution settlement, it is intended that the power to direct that the availability of such information should be restricted will be a concurrent (shared) power available to the Scottish Ministers and the Secretary of State.

7. In cases where consideration is being given to the issuing of a direction to authorise the withholding of information the Lord Advocate may appoint a special advocate to represent the interests of any person affected by the withholding of information from evidence or public inspection.

Urgent Crown Development and Urgent works to Crown Land

8. This amendment enables the Crown as the developing body to make an application for planning permission or listed building consent directly to the Scottish Ministers where the proposed development is of national importance and that it is necessary for the development to be carried out as a matter of urgency. This includes requirements for publicity and opportunities for interested parties to comment on the proposals.

Enforcement in relation to the Crown

9. Across the three planning Acts, the Crown's exemption from criminal sanctions will be retained. Planning authorities wishing to take enforcement action will be able to serve an enforcement notice or make an order (other than a court order) without the consent of the relevant Crown body but will not be able to enter land or bring proceedings in, or applications to, the courts without consent.

Trees

10. The provisions in the Town and Country Planning (Scotland) Act 1997 relating to tree preservation orders (TPOs) affecting land where the Forestry Commissioners have an interest will be adapted to ensure that any such TPOs do not interfere with specific plans made by the Commissioners. In relation to trees in conservation areas the Crown will be able to act in comparable circumstances to where a private person would have a defence to prosecution

Old mining permissions

11. The provisions of the Town and Country Planning (Scotland) Act 1997, which require the registration of certain old mining permissions, and the determination of modern working conditions, are to apply to Crown land.

Crown application

12. A number of changes and additions to the Planning Acts will be required in order to accommodate the Crown and are contained in the amendments. These include the definition of the circumstances in which a person with an interest in Crown land and certain Crown bodies can serve a Purchase Notice, and confirmation of the existing provisions which prevent the compulsory purchase of crown land unless the interest is held other than by or on behalf of the Crown and the appropriate authority consents. They also include provisions on issues such as the service of notices on the Crown, requests for information as to interests in land and rights of entry to land. There are also powers for the Scottish Ministers to make regulations to amend the procedures for the Crown obtaining consent or permission under the Scottish Planning Acts. As with comparable powers to prescribe procedures for planning applications by private bodies such regulations would be subject to negative procedure in the Scottish Parliament.

Subordinate legislation

13. The Scottish Ministers will be able to make an order defining which existing subordinate planning legislation is to apply to the Crown, either as it stands or with modifications. Any such changes to subordinate legislation will be subject to negative procedure in the Scottish Parliament.

Transitional Provisions

14. The Scottish amendments include powers for the Scottish Ministers to make transitional arrangements through subordinate legislation subject to negative procedure in the Scottish Parliament.

Remaining amendments

15. These provide that regulations and orders may make different provisions for different purposes and also make consequential amendments to the repeals Schedule to the Bill. The amendments will repeal those elements of existing planning legislation on Crown land and Crown development which are redundant as a result of the withdrawal of Crown Immunity.

Financial Effects

16. Under the proposed changes, Crown bodies would have to pay planning fees to the planning authorities for planning applications, as private developers do at present. The extent of these costs will depend on the number and nature of Crown developments which may come forward in any given year. However, planning fees generally are a very small fraction of the overall costs of a development proposal. Planning authorities do not currently receive a fee for considering Crown development proposal under the administrative arrangements mentioned in paragraph 1 above. Where the special advocate procedure applied in relation to an application involving information on national security and/or the security of any premises or property, the special advocates would be paid for by the developing department.

Conclusion

17. The Planning and Compulsory Purchase Bill represents a suitable juncture to implement the removal Crown Immunity from planning control. Using this Bill also ensures the removal of Crown Immunity from planning control in Great Britain and has the effect of applying the requirements of the environmental impact assessment Directive to Crown development on a statutory basis.