EXPLANATORY MEMORANDUM TO

THE PARLIAMENTARY CORPORATE BODIES (CROWN IMMUNITIES ETC.) (AMENDMENT) ORDER 2006

2006 No. 1457

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 instrument is consequential to the Planning (Application to the Houses of Parliament) Order 2006 which 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 The Parliamentary Corporate Bodies Act 1992 established the Corporate Officer or the House of Lords and the Corporate Officer of the House of Commons. Sections 1(6) and 2(6) of that Act provide that neither Officer are to be regarded as Crown servants or as enjoying any status, privilege or immunity of the Crown and that any land vested in them is not to be regarded as Crown property. This is subject to any provision to the contrary made by Her Majesty by Order in Council.

4.2 The Parliamentary Corporate Bodies (Crown Immunities etc) Order 1992 provided that for the purposes of the Town and Country Planning Act 1990 ("the 1990 Act") and the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the Listed Buildings Act"), 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.

4.3 Part 7 of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act") applies the 1990 Act, 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.

4.4 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.

4.5 The Planning (Application to the Houses of Parliament) Order 2006 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 (e.g. section 293A(1) of the 1990 Act).

4.5 This Order amends the Parliamentary Corporate Bodies (Crown Immunities etc) Order 1992 in consequence of the Planning (Application to the Houses of Parliament) Order 2006.

5. Extent

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 As this Order only contains provisions necessary in consequence of the Planning (Application to the Houses of Parliament) Order 2006, there is no distinctive policy background. The policy background in the Explanatory Memorandum to that Order is therefore repeated below (with minor modifications).

7.2 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.

7.3 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 the Memorandum to 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.

7.4 The Palace of Westminster and its precincts are not, for the most part, Crown interests in land. Parts of it have, however, been treated as if they were Crown interests 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.

7.5 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.

7.6 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.

7.7 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 the Planning (Application to the Houses of Parliament) Order 2006 as described in paragraph 4.5 above. The appropriate authorities for those parts of the Palace of Westminster which are already Crown interests (such as Her Majesty's Robing Room) are set out in the amendments to the planning Acts in paragraphs 6 to 8 of Schedule 3 to the 2004 Act. This Order is entirely consequential to the Planning (Application to the Houses of Parliament) Order 2006 and amends the Parliamentary Corporate Bodies (Crown Immunities etc) Order 1992 to remove redundant provisions.

7.8 A further consultation was carried out in September 2005 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 and the Planning (Application to the Houses of Parliament) Order 2006 have not been the subject of public consultation because of their limited applicability. They have, however, been prepared in consultation with the House Authorities.

8. Impact

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.