

2006 No. 339

TOWN AND COUNTRY PLANNING

**The Town and Country Planning (Application of Subordinate
Legislation to the Crown) (Inquiries Procedure) (Scotland)
Order 2006**

<i>Made</i> - - - -	<i>7th June 2006</i>
<i>Laid before the Scottish Parliament</i>	<i>9th June 2006</i>
<i>Coming into force</i> - -	<i>1st July 2006</i>

The Scottish Ministers, in exercise of the powers conferred by sections 98 and 122(3) of the Planning and Compulsory Purchase Act 2004(a) hereby make the following Order:

Citation, commencement and extent

1.—(1) This Order may be cited as the Town and Country Planning (Application of Subordinate Legislation to the Crown) (Inquiries Procedure) (Scotland) Order 2006 and shall come into force on 1st July 2006.

(2) This Order extends to Scotland only.

Town and Country Planning (Inquiries Procedure) (Scotland) Rules 1997

2.—(1) The Town and Country Planning (Inquiries Procedure) (Scotland) Rules 1997(b) apply to the Crown with the following modifications.

(2) After rule 2 (application of rules) insert—

“Modifications where national security direction given and for urgent Crown development or works

2A.—(1) The modifications set out in Part 1 of the Schedule shall have effect where a direction is given by the Scottish Ministers, or the Secretary of State, under or by virtue of—

- (a) section 265A of the Act(c) (planning inquiries to be held in public subject to certain exceptions);
- (b) paragraph 6(7) of Schedule 3 to the Listed Building Act(d) (determination of certain appeals by person appointed by the Scottish Ministers); or

(a) 2004 c.5.

(b) S.I. 1997/796 as amended by S.I. 1998/2311.

(c) 1997 c.8. Section 265A was inserted by the Planning and Compulsory Purchase Act 2004 (c.5) (“the 2004 Act”), section 91(1).

(d) The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 c.9. Paragraph 6(7) of Schedule 3 was inserted by section 91(2) of the 2004 Act.

(c) paragraph 6(7) of the Schedule to the Hazardous Substances Act^(a) (determination of certain appeals by person appointed by the Scottish Ministers).

(2) The modifications set out in Part 2 of the Schedule shall have effect where either section 242A of the 1997 Act (urgent Crown development) or section 73B of the Listed Buildings Act (urgent works relating to Crown land), or both, apply.”.

(3) At the end of the Rules add the Schedule set out in Schedule 1 to this Order.

Town and Country Planning Appeals (Determination by Appointed Person) (Inquiries Procedure) (Scotland) Rules 1997

3.—(1) The Town and Country Planning Appeals (Determination by Appointed Person) (Inquiries Procedure) (Scotland) Rules 1997^(b) apply to the Crown with the following modifications.

(2) After rule 2 (application of rules) insert—

“Modifications where national security direction given

2A. The modifications set out in the Schedule shall have effect where a direction is given by the Scottish Ministers, or the Secretary of State, under or by virtue of—

(a) section 265A(3) of the Act^(c) (planning inquiries to be held in public subject to certain exceptions);

(b) paragraph 6(7) of Schedule 3 to the Listed Buildings Act^(d) (determination of certain appeals by person appointed by the Scottish Ministers);

(c) paragraph 6(7) of the Schedule to the Hazardous Substances Act^(e) (determination of certain appeals by person appointed by the Scottish Ministers).”.

(3) At the end of the Rules add the Schedule set out in Schedule 2 to this Order.

MALCOLM CHISHOLM
A member of the Scottish Executive

St Andrew’s House,
Edinburgh
7th June 2006

(a) The Planning (Hazardous Substances) (Scotland) Act 1997 c.10. Paragraph 6(7) was inserted by section 91(3) of the 2004 Act.
(b) S.I. 1997/750 as amended by S.I. 1998/2312.
(c) 1997 c.8. Section 265A was inserted by the Planning and Compulsory Purchase Act 2004 (c.5 (“the 2004 Act”), section 91(1)).
(d) 1997 c.9. Schedule 3 was amended by the 2004 Act, section 91(2).
(e) The Planning (Hazardous Substances) (Scotland) Act 1997 c.10. Paragraph 6(7) was inserted by section 91(3) of the 2004 Act.

**MODIFICATIONS TO THE TOWN AND COUNTRY PLANNING
(INQUIRIES PROCEDURE) (SCOTLAND) RULES 1997**

“SCHEDULE

Rule 2A

PART 1

MODIFICATIONS WHERE NATIONAL SECURITY DIRECTION GIVEN

Interpretation

1. In rule 3(1)–

(a) after the definition of “the application” insert–

““appointed representative” means a person (who is also a specified person) to represent the interests of any party to the inquiry, under or by virtue of–

(i) section 265A of the Act^(a) (planning inquiries to be held in public subject to certain exceptions);

(ii) paragraph 6(7) of Schedule 3 to the Listed Building Act^(b) (determination of certain appeals by person appointed by the Scottish Ministers); or

(iii) paragraph 6(7) of the Schedule to the Hazardous Substances Act^(c) (determination of certain appeals by person appointed by the Scottish Ministers);”;

(b) after the definition of “assessor” insert–

““closed evidence” means evidence which is subject to a security direction;”;

(c) after the definition of “listed building consent” insert–

““open outline statement” means such part (if any) of an outline statement as does not include or refer to closed evidence;

“open statement of case” means such part (if any) of a statement of case as does not include or refer to closed evidence;”;

(d) after the definition of “reporter” insert–

““security direction” means a direction given under section 265A(3) of the Act;

“specified person” means a person specified in, or a person of such description as is specified in, a security direction as being entitled to hear or inspect closed evidence;”.

2. After rule 3A insert–

“3B.—(1) Where any rule requires or permits an outline statement or a statement of case to be served on any party (other than the Scottish Ministers or an appointed representative), then where such outline statement contains or makes reference to

(a) 1997 c.8. Section 265A was inserted by the Planning and Compulsory Purchase Act 2004 (c.5) (“the 2004 Act”), section 91(1).

(b) 1997 c.9. Schedule 3 was amended by the 2004 Act, section 91(2).

(c) 1997 c.10. Schedule 3 was amended by the 2004 Act, section 91(3).

any closed evidence that rule shall be read as requiring, or permitting, the service of an open outline statement or open statement of case, as the case may be, rather than an outline statement or a statement of case.

(2) Paragraph (1) applies to an amended or additional statement of case in the same manner as to a statement of case.

(3) Paragraph (1) applies to rules 10A and 13 with the modification that references to service of a statement of case shall include a reference to inspection of a statement of case.”.

Preliminary information and notice

3. In rule 4–

(a) in paragraph (2) after “applicant” insert, “any appointed representative”;

(b) after paragraph (2) insert–

“(2A) Where a security direction has been made prior to service of the relevant notice the Scottish Ministers shall give notice of the making of the security direction when serving the relevant notice.

(2B) Where a security direction is made after the service of the relevant notice the Scottish Ministers shall, as soon as practicable after receiving notice of the making of the direction, give notice of the making of the direction to any person known at that date to be entitled to appear at the inquiry.”.

Procedure where the Scottish Ministers cause a pre-inquiry meeting to be held

4. In rule 5–

(a) after paragraph (6) insert–

“(6A) The Scottish Ministers shall, as soon as practicable after receipt, send to any appointed representative any outline statement received in accordance with paragraph (3) or (5).”;

(b) after paragraph (10) insert–

“(10A) Where closed evidence is to be discussed or considered at a pre-inquiry meeting then while closed evidence is being discussed or considered–

(a) attendance at the meeting, shall be restricted to specified persons;

(b) the notice given by the Scottish Ministers pursuant to paragraph (8) shall state while closed evidence is being discussed that attendance at the pre-inquiry meeting is restricted to specified persons; and

(c) in paragraph (11) for “paragraph (10)” substitute “paragraphs (10) and (10A).”.

Further power of reporter to hold pre-inquiry meetings

5. In rule 6 after paragraph (3) insert–

“(4) The Scottish Ministers shall, as soon as practicable after receipt, send to a appointed representative any outline statement received in accordance with paragraph (3)(a).

(5) Where closed evidence is to be discussed at a pre-inquiry meeting held under paragraph (1) of this rule–

(a) attendance at the meeting, or part of the meeting, shall be restricted to specified persons; and

(b) the notice given by the reporter under paragraph (2) shall state while closed evidence is being discussed that attendance at the pre-inquiry meeting is restricted to specified persons.”.

Service of statement of case – planning authority

6. In rule 7(1) after “the applicant” insert, “, any appointed representative”.

Service of statement of case – applicant

7. In rule 8(1) after “planning authority” insert, “, any appointed representative”.

Service of statements of case – other persons

8. In rule 9(1) after “planning authority” insert, “, any appointed representative”.

Precognitions

9. In rule 12–

(a) in paragraph (1) for “A person” substitute “Subject to paragraph (1A), a person”;
and

(b) after paragraph (1) insert–

“(1A) Paragraph (1B) applies where the precognition includes or refers to closed evidence.

(1B) Where this paragraph applies, any person entitled to appear at an inquiry, who proposes to give, or to call another person to give evidence at the inquiry by reference to a precognition, shall–

(a) send to the Scottish Ministers 2 copies, in the case of the planning authority and the applicant, or 3 copies in the case of any other person, of–

(i) the precognition including closed evidence together with any written summary of it;

(ii) the precognition not including or referring to closed evidence (“the open precognition) together with any written summary of it; and

(b) simultaneously send copies of the open precognition and any written summary of it to any statutory party,

and the Scottish Ministers shall, as soon as practicable after receipt, send a copy of each open precognition together with any written summary of it to the planning authority and the applicant and send a copy of each precognition including closed evidence to any appointed representative.”;

(c) in paragraph (4) after “applicant” insert “, any appointed representative”; and

(d) in paragraph (5) after “paragraph (1)” insert “or (1B)”.

Service of statements of case, documents and precognitions

10. In rule 13(4) after sub-paragraph (b) insert, “(ba) any appointed representative”.

Date and notification of inquiry

11. In rule 15(3) after sub-paragraph (ba) insert, “(bb) any appointed representative”.

Appearances at inquiry

12. In rule 16(1) after sub-paragraph (a) insert–

“(aa) any appointed representative.”.

Procedure at inquiry

13. In rule 19(4) after “the applicant” insert, “any appointed representative”.

Site inspections

14. In rule 20–

- (a) in paragraph (1) for “The reporter” substitute “Subject to paragraph (1A), the reporter”;
- (b) after paragraph (1) insert–
“(1A) Paragraph (1) does not apply where a site inspection will involve inspection of closed evidence.”;
- (c) after paragraph (2) insert–
“(2A) Where an accompanied site inspection will involve the inspection of closed evidence, paragraph (2) does not apply and the reporter–
 - (a) may inspect the land in the company of the applicant and the appointed representative, where one has been appointed; and
 - (b) shall make such an inspection if so requested by the applicant or the appointed representative before or during an inquiry.”.

Procedure after inquiry

15. In rule 21–

- (a) after paragraph (3) insert–
“(3A) Where closed evidence was considered at the inquiry–
 - (a) the reporter and assessor, where one has been appointed, shall set out in a separate part (“the closed part”) of their reports any description of that evidence together with any conclusions or recommendations in relation to that evidence; and
 - (b) where an assessor has been appointed, the reporter shall append the closed part of the assessor’s report to the closed part of his own report made in accordance with paragraph (2) and shall state in the closed part of his own report how far he agrees or disagrees with the closed part of the assessor’s report and, where he disagrees with the assessor, his reasons for that disagreement.”;
- (b) at the beginning of paragraph (4) insert “Subject to paragraph (4A),”;
- (c) after paragraph (4) insert–
“(4A) Where the Scottish Ministers differ from the reporter on any matter of fact mentioned in, or appearing to them to be material to, a conclusion reached by the reporter in relation to a matter in respect of which closed evidence has been given, the notification referred to in paragraph (4) shall include the reasons for the Scottish Ministers’ disagreement unless–
 - (a) the notification is addressed to a person who is not a specified person; and
 - (b) inclusion of the reasons would disclose (directly or indirectly) any part of the closed evidence.”.

Notification of decision

16. In rule 22–

- (a) in paragraph (1) at the beginning insert, “Subject to paragraph (1B),”;

- (b) after paragraph (1A) insert–
“(1B) Where the Scottish Ministers’ reasons for a decision relate to matters in respect of which closed evidence has been given, nothing in paragraph (1) requires the Scottish Ministers to notify those reasons to any person other than a specified person.”;
- (c) in paragraph (2) for “Where a copy” substitute “Subject to paragraph (2A), where a copy”; and
- (d) after paragraph (2) insert–
“(2A) Nothing in paragraph (2) requires the disclosure of the closed part of the reporter’s report referred to in rule 21(3A) to a person other than a specified person.”.

Closed evidence not to be disclosed

17. After rule 22 insert–

“Closed evidence not to be disclosed

22A. Nothing in these Rules shall be taken to require or permit closed evidence to be disclosed to a person other than–

- (a) the Scottish Ministers; or
- (b) a specified person.”.

PART 2

**MODIFICATIONS FOR URGENT CROWN DEVELOPMENT OR
URGENT WORKS AFFECTING CROWN LAND**

Application of Rules

1. In rule 2(1) after “application” insert, “made or”.

Preliminary information to be supplied – application for urgent Crown development

2. For rule 4 substitute–

“4.—(1) Where–

- (a) an application for planning permission is made to the Scottish Ministers under section 242A of the Act, and
- (b) the Scottish Ministers determine that an inquiry is to be held,

the Scottish Ministers shall give written notice to that effect (“the relevant notice”) to the planning authority, the applicant, any appointed representative and to any statutory party.

(2) The Scottish Ministers shall, as soon as practicable after the date of the relevant notice, inform the planning authority and the applicant in writing of the name and address of any statutory party who has made representations to them.

(3) Where any government department or local authority have expressed in writing to the Scottish Ministers the view that the application should–

- (i) not be granted either wholly or in part; or
- (ii) should be granted, or granted only subject to conditions,

the Scottish Ministers shall inform the government department or local authority concerned, as the case may be, that such expression of view is relevant to the application and the government department or local authority, as the case may be, shall (unless they have already done so) thereupon furnish to the Scottish Ministers a statement in writing of the reasons for the expression of view.”.

Procedure where Scottish Ministers cause a pre-inquiry meeting to be held

3. In rule 5–

- (a) in paragraph (3) for “8” substitute “6”;
- (b) in paragraph (5) for “4” substitute “3”;
- (c) in paragraph (7) for “16” substitute “10”; and
- (d) in paragraph (8) for “3” substitute “2”.

Service of statements of case – planning authority

4. In rule 7–

- (a) in paragraph (1)(a) for “8” substitute “4”; and
- (b) in paragraph (1)(b) for “4” substitute “3”.
- (c) in paragraph (1) for “not later than 4 weeks”, substitute, “not later than 2 weeks”.

Service of statements of case – applicant

5. In rule 8–

- (a) in paragraph (1)(a) for “8” substitute “4”;
- (b) in paragraph (1)(b) for “4” substitute “3” and
- (c) in paragraph (1) for “not later than 4 weeks” substitute, “not later than 2 weeks”.

Service of statements of case – other persons

6. In rule 9–

- (a) in paragraph (1)(a) for “within 4 weeks” substitute “within 3 weeks”; and
- (b) in paragraph (1) for “not later than 4 weeks” substitute, “not later than 2 weeks”.

Service of statements of case, documents and precognitions

7. In rule 13(4) for “4” substitute “3”.

Date and notification of inquiry

8. In rule 15–

- (a) in paragraph (1)(a) for “24” substitute “14”;
- (b) in paragraph (1)(b) for “8” substitute “6”; and
- (c) in paragraph (6)–
 - (i) omit “require the planning authority to”;
 - (ii) in sub-paragraph (a) for “to publish” substitute, “publish”;
 - (iii) in each of sub-paragraphs (b) and (c) omit “to” where it first occurs.”

MODIFICATIONS TO THE TOWN AND COUNTRY PLANNING
 APPEALS (DETERMINATION BY APPOINTED PERSON)
 (INQUIRIES PROCEDURE) (SCOTLAND) RULES 1997

“SCHEDULE

Rule 2A

MODIFICATIONS WHERE NATIONAL SECURITY
 DIRECTION GIVEN

Interpretation**1.** In rule 3(1)–

(a) after the definition of “the application” insert–

““appointed representative” means a person (who is also a specified person) to represent the interests of any party to the inquiry, under or by virtue of–

(i) section 265A of the Act^(a) (planning inquiries to be held in public subject to certain exceptions);

(ii) paragraph 6(7) of Schedule 3 to the Listed Buildings Act^(b) (determination of certain appeals by person appointed by the Scottish Ministers); or

(iii) paragraph 6(7) of the Schedule to the Hazardous Substances Act^(c) (determination of certain appeals by person appointed by the Scottish Ministers;”;

(b) after the definition of “assessor” insert–

““closed evidence” means evidence which is subject to a security direction;”;

(c) after the definition of “listed building consent” insert–

““open outline statement” means such part (if any) of an outline statement as does not include or refer to closed evidence;

“open statement of case” means such part (if any) of a statement of case as does not include or refer to closed evidence;”;

(d) after the definition of “relevant person” insert–

““security direction” means a direction given under section 265A(3) of the Act;

“specified person” means a person specified in, or a person of such description as is specified in, a security direction as being entitled to hear or inspect closed evidence;”.

2. After rule 3A insert–

“3B.—(1) Where any rule requires or permits an outline statement or a statement of case to be served on any party (other than the Scottish Ministers or an appointed representative), then where such outline statement contains or makes reference to

(a) 1997 c.8. Section 265A was inserted by the Planning and Compulsory Purchase Act 2004 (c.5) (“the 2004 Act”), section 91(1).

(b) 1997 c.9. Schedule 3 was amended by the 2004 Act, section 91(2).

(c) 1997 c.10. Schedule 3 was amended by the 2004 Act, section 91(3).

any closed evidence that rule shall be read as requiring, or permitting, the service of an open outline statement or open statement of case, as the case may be, rather than an outline statement or a statement of case.

(2) Paragraph (1) applies to an amended or additional statement of case in the same manner as to a statement of case.

(3) Paragraph (1) applies to rules 10A and 12 with the modification that references to service shall include a reference to inspection of a statement of case.”.

Preliminary information and notice

3. In rule 4–

(a) in paragraph (2) after “appellant” insert, “any appointed representative”;

(b) after paragraph 2 insert–

“(2A) Where the appointed person has been notified that a security direction has been made prior to service of the relevant notice, the appointed person shall give notice of the making of the security direction when serving the relevant notice.

(2B) Where a security direction is made after the service of the relevant notice the Scottish Ministers shall, as soon as practicable after receiving notice of the making of the direction, give notice of the making of the direction to any person known at that date to be entitled to appear at the inquiry.”.

Pre-inquiry meetings

4. In rule 6 after paragraph (3) insert–

“(4) The Scottish Ministers shall, as soon as practicable after receipt, send to an appointed representative any outline statement received in accordance with paragraph (3)(a).

(5) Where a closed evidence is to be discussed at a pre-inquiry meeting held under paragraph (1) of this rule–

(a) attendance at the meeting, or part of the meeting, shall be restricted to specified persons; and

(b) the notice given by the reporter under paragraph (2) shall state while closed evidence is being discussed that attendance at the pre-inquiry meeting is restricted to specified persons.”.

Service of statement of case – planning authority

5. In rule 7(1) after “appellant” insert, “, any appointed representative”.

Service of statements of case – applicant

6. In rule 8(1) after “planning authority” insert, “, any appointed representative”.

Service of statements of case – other persons

7. In rule 9(1) after “planning authority” insert, “, any appointed representative”.

Precognitions

8. In rule 11–

(a) in paragraph (1) for “A person” substitute “Subject to paragraph (1A), a person”; and

- (b) after paragraph (1) insert–
 - “(1A) Paragraph (1B) applies where the precognition includes or refers to closed evidence.
 - (1B) Where this paragraph applies, any person entitled to appear at an inquiry, who proposes to give, or to call another person to give evidence at the inquiry by reference to a precognition, shall–
 - (a) send to the appointed person 2 copies, in the case of the planning authority and the applicant, or 3 copies in the case of any other person, of–
 - (i) the precognition including closed evidence together with any written summary of it;
 - (ii) the precognition not including or referring to closed evidence (“the open precognition”) together with any written summary of it; and
 - (b) simultaneously send copies of the open precognition and any written summary of it to any statutory party,
- and the appointed person shall, as soon as practicable after receipt, send a copy of each open precognition together with any written summary of it to the planning authority and the applicant and send a copy of each precognition including closed evidence to any appointed representative.”;
- (c) in paragraph (4) after “appellant” insert “, any appointed representative”; and
- (d) in paragraph (5) after “paragraph (1)” insert “or (1B)”.

Service of statements of case, documents and precognitions

- 9. In rule 12(4) after sub-paragraph (b) insert, “(ba) any appointed representative”.

Date and notification of inquiry

- 10. In rule 14(3) after sub-paragraph (ba) insert, “(bb) any appointed representative”.

Appearances at inquiry

- 11. In rule 15(1) after sub-paragraph (a) insert, “(aa) any appointed representative.”.

Procedure at inquiry

- 12. In rule 19(4) after “applicant” insert, “any appointed representative”.

Site inspections

- 13. In rule 20–
 - (a) in paragraph (1) at the beginning insert, “Subject to paragraph (1A),”;
 - (b) after paragraph (1) insert–
 - “(1A) Paragraph (1) does not apply where a site inspection will involve inspection of closed evidence.”;
 - (c) after paragraph (2) insert–
 - “(2A) Where an accompanied site inspection will involve the inspection of closed evidence, paragraph (2) does not apply and the appointed person–
 - (a) may inspect the land in the company of the appellant and the appointed representative, where one has been appointed; and
 - (b) shall make such an inspection if so requested by the appellant or the appointed representative before or during an inquiry.”.

Procedure after inquiry

14. In rule 21 after paragraph (3) insert–

“(4) Where closed evidence was considered at the inquiry the assessor, where one has been appointed, if making a report shall set out in a separate part (“the closed part”) of the report any matters which relate to that evidence.”.

Notification of decision

15. In rule 22–

(a) in paragraph (1) at the beginning insert, “Subject to paragraph (1B),”;

(b) after paragraph (1A) insert–

“(1B) Where the appointed person’s reasons for a decision relate to matters in respect of which closed evidence has been given, nothing in paragraph (1) requires notification of those reasons to any person other than a specified person.”.

Closed evidence not to be disclosed

16. After rule 22 insert–

“Closed evidence not to be disclosed

22A. Nothing in these Rules shall be taken to require or permit closed evidence to be disclosed to a person other than–

(a) the Scottish Ministers; or

(b) a specified person.”.

EXPLANATORY NOTE

(This note is not part of the Order)

Part 7 of the Planning and Compulsory Purchase Act 2004 applies the Town and Country Planning Act (Scotland) 1997, the Planning (Listed Buildings and Conservations Areas) (Scotland) Act 1997 and the Planning (Hazardous Substances) (Scotland) Act 1997 to the Crown. As well as applying the planning Acts to the Crown, Part 7 makes provision for national security, urgent Crown development, enforcement, preservation of trees and old mining permissions.

Section 98 of the 2004 Act gives the Scottish Ministers power, by order, to apply to the Crown any subordinate legislation made under or for the purposes of the planning Acts. This Order applies the Town and Country Planning (Inquiries Procedure) (Scotland) Rules (S.I. 1997/796) and the Town and Country Planning Appeals (Determination by Appointed Person) (Inquiries Procedure) (Scotland) Rules 1997 (S.I. 1997/750) to the Crown. This Order modifies various Rules relating to the procedure to be followed at planning inquiries to take account of the new provisions dealing with the appointment of persons to represent the interests of any person who is prevented from hearing or inspecting evidence at a planning inquiry which is subject to a national security direction and the new provision on urgent Crown Development.

2006 No. 339

TOWN AND COUNTRY PLANNING

**The Town and Country Planning (Application of Subordinate
Legislation to the Crown) (Inquiries Procedure) (Scotland)
Order 2006**

£3.00

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