

**EXPLANATORY MEMORANDUM TO
THE PLANNING (NATIONAL SECURITY DIRECTIONS AND APPOINTED
REPRESENTATIVES) (ENGLAND) RULES 2006**

2006 No. 1284

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

2. **Description**

- 2.1 These Rules set out the procedure to be followed by the Secretary of State in considering whether to make a national security direction under the planning Acts and sets out the functions of appointed representatives.

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

- 3.1 None.

4. **Legislative Background**

- 4.1 Section 321(2) of the Town and Country Planning Act 1990 (“the 1990 Act”) provides that oral evidence at an inquiry under the Act shall be heard in public and documentary evidence shall be open to public inspection. Subsection (3) gives the Secretary of State power to direct that such evidence shall only be heard, or open to inspection, at that inquiry by specified persons. The power is exercisable if the Secretary of State is satisfied that without a direction, matters relating to national security or relating to the security of any premises will be disclosed, and that public disclosure of that information is not in the national interest. Similar provision is made in the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Planning (Hazardous Substances) Act 1990.

- 4.2 Part 7 of the Planning and Compulsory Purchase Act 2004 applies the 1990 Act, 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.

- 4.3 Section 80 of the Planning and Compulsory Purchase Act 2004 inserts new subsections into section 321 of the 1990 Act and a new section 321A. They provide for the appointment of a person to represent the interests of any person who will be prevented from hearing or inspecting any evidence at an inquiry if a direction is given. Subsection (5) provides for the appointment of such a person before the Secretary of

State makes his decision on whether to make a direction and subsection (6) provides for the appointment after a direction has been made. Subsection (7) provides that the Lord Chancellor may by rules make provision as to the procedure to be followed by the Secretary of State before he gives a direction in a case where a representative has been appointed under subsection (5) and as to the functions of a person appointed under either subsection (5) or subsection (6). Similar provision is made in relation to the other planning Acts (section 80(3) and (4)). These Rules are made under subsection (7).

4.4 These Rules are linked with the Planning and Compulsory Purchase Act 2004 (Commencement No.9 and Consequential Provisions) Order 2006, the Town and Country Planning (Application of Subordinate Legislation to the Crown) Order 2006, and the Planning (Listed Buildings, Conservation Areas and Hazardous Substances) (Amendment) (England) Regulations 2006.

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 power to give a direction under section 321 and the equivalent provisions in the other planning Acts has been available since 1982 (following its insertion into the Town and Country Planning Act 1971 by means of a private Member's Act). The power has not been used hitherto because the Crown (as the guardian of national security) has been outside the statutory planning system. It is only now, when Crown immunity is to be lifted, that a procedure for handling planning applications which have national security implications has become necessary.

7.2 The concept of appointed representatives, also called special advocates, who look after the interests of those persons denied access to the "closed evidence", has been derived from the special advocates appointed under the Special Immigration Appeals Commission legislation to represent the interests of those whom the Government wishes to refuse entry to, or remove from, the UK, on national security grounds, but who cannot be shown all the evidence against them for security reasons.

7.3 The common principle is that the appointed representative will take instructions from the excluded persons before he sees the closed evidence. Once the representative has seen the closed evidence he or she cannot normally take any further instructions and must therefore act solely on his or her own judgement in the interests of those represented.

7.4 A public consultation exercise took place between September and December 2005 on these Rules, the Town and Country Planning (Application of Subordinate

Legislation to the Crown) Order 2006, and the Planning (Listed Buildings, Conservation Areas and Hazardous Substances) (Amendment) (England) Regulations 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 Office received 32 responses to the consultation paper, of which five commented on these Rules. Although the substance is largely unchanged, some minor amendments were made as a result of the 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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