

**EXPLANATORY MEMORANDUM TO  
THE PLANNING (NATIONAL SECURITY DIRECTIONS AND APPOINTED  
REPRESENTATIVES) (SCOTLAND) RULES 2008**

**2008 No. 1590 (S.5)**

1. This explanatory memorandum has been prepared by the Scotland Office and is laid before the UK 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 Town and Country Planning (Scotland) Act 1997 and sets out the functions of appointed representatives.

2.2 This Order is made in exercise of the powers conferred by section 265A(6)(a) of the Town and Country Planning (Scotland) Act 1997; paragraph 6(7) of Schedule 3 to the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997; and, paragraph 6(7) of the Schedule to the Planning (Hazardous Substances) (Scotland) Act 1997.

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

3.1 None.

**4. Legislative Background**

4.1 Section 91 of the Planning and Compulsory Purchase Act 2004 ('the 2004 Act') amended the Town and Country Planning (Scotland) Act 1997 ('the 1997 Act') by inserting section 265A. The effect of this is that in a planning inquiry, the Secretary of State may determine whether the giving of evidence, or the making of it available for inspection, should be conducted in private, including where issues of national security are raised. This function is also given separately to the Scottish Ministers, which may be exercised after consultation with the Secretary of State.

4.2 Subsections (3) to (6) of section 265A provide for circumstances where reserved issues of national security are at stake, in relation to the giving of evidence, or the making of it available for inspection, before a planning inquiry. By virtue of subsections (3) and (4), the Secretary of State may direct that such evidence should be heard, or made available for inspection, by only a restricted list or category of persons. Such power is exercisable also by the Scottish Ministers, albeit after consultation with the Secretary of State.

4.3 Subsection (5) allows for the appointment of a special representative, where a direction is made for evidence to be given to a limited group of people and the interests of any excluded person is required to be protected. The special representative will be appointed to represent the interests of any person prevented from hearing or inspecting evidence, as the result of a direction under section 265A. The Lord Advocate has been given the function of appointing any such special representative.

4.4 Subsection (6) provides both the Secretary of State with powers to make rules governing the procedure to be followed when considering a national security direction; and, regarding the functions of representatives appointed by the Lord Advocate, to represent the interests of any person prevented from hearing or inspecting evidence, as a result of a direction under section 265A. This function is also given separately to the Scottish Ministers and rules have been made in exercise of this function (SSI 2006 No. 265).

## **5. Extent**

5.1 This instrument extends to Scotland.

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

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

## **7. Policy background**

7.1 This Order relates to the removal of Crown immunity from planning control in Scotland. The overall aim is to subject the Crown to statutory planning provisions while recognising that the unique nature and responsibilities of the Crown mean that certain exceptions and special arrangements need to be made.

7.2 In bringing the Crown within the statutory planning system, the possibility that planning cases may involve security sensitive information is recognised. The provisions in the 2004 Act on removing Crown immunity from planning control allow the Secretary of State, or the Scottish Ministers after consultation with the Secretary of State, to direct, in relation to a planning inquiry, that access be restricted in relation to information on national security or the measures taken, or to be taken, to ensure the security of any premises or property. Such a direction may be made where the public disclosure of that information would be contrary to the national interest. These powers to direct are contained in section 265A of the 1997 Act.

7.3 Section 265A of the 1997 Act also allows the Lord Advocate to appoint special representatives to act in relation to security sensitive information on behalf of those (for example, the planning authority or objectors) whose access to it is restricted. Section 265A(6)(a) allows the Secretary of State to make rules to govern both the procedure they are to follow prior to the making of a direction restricting access to security sensitive information, and the functions of a person appointed by the Lord Advocate to represent those who are prevented from seeing the restricted material.

7.4 Section 265A of the 1997 Act also allows the Secretary of State to direct who should pay for the appointed representatives and, if it cannot be agreed, how much. It is anticipated that the party holding the security sensitive information which triggered the need for a direction and for appointed representatives would be liable.

## **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**

9.1 Niva Thiruchelvam at the Scotland Office (email: [niva.thiruchelvam@scotland.gsi.gov.uk](mailto:niva.thiruchelvam@scotland.gsi.gov.uk)) can answer any queries regarding this instrument.

Scotland Office  
June 2008