

Executive Note
The Planning (National Security Directions and Appointed Representatives) (Scotland)
Rules 2006 SSI/2006/265

1. The above instrument was made in exercise of the powers conferred by section 265A(6)(b) of the Town and Country Planning (Scotland) Act 1997 (the 1997 Act).

Policy Objectives

3. 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.

4. In bringing the Crown within the statutory planning system we need to recognise the possibility that planning cases may involve security sensitive information. The provisions in the Planning and Compulsory Purchase Act 2004 on removing Crown immunity from planning control allow the Secretary of State or the Scottish Ministers in consultation with the Secretary of State to direct, in relation to a planning inquiry, that access be restricted in relation to information on 1) national security or 2) the measures taken, or to be taken, to ensure the security of any premises or property where, in either case 1) or 2), the public disclosure of that information would be contrary to the national interest. This is a shared power as national security is a reserved matter. These powers to direct are contained in a new section 265A to be introduced to the 1997 Act.

5. New section 265A also allows the Lord Advocate to appoint special representatives to act in relation to security sensitive information on behalf of those (e.g. the planning authority or objectors) whose access to it is restricted. New Section 265A(6)(b) allows the Scottish Ministers 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. These are the rules which are the subject of this Executive Note.

6. The main Rules are:

Rule 4: The functions of an appointed representative – this covers the 4 main functions – acting on behalf of parties in relation to potentially closed information when a direction is being considered; acting in relation to closed information at a planning inquiry on behalf of parties prevented from accessing it; ensuring closed information is returned to the person who supplied it at the appropriate time; and finally to make applications to the Court in relation to any of the appointed representatives other functions. This rule also specifies with whom the appointed representative can discuss closed, or potentially closed, evidence.

Rules 5 to 14 set out the procedures where the Scottish Ministers are considering the need for a direction and a representative has been appointed for the benefit of parties who have been prevented from seeing the potentially closed evidence:

Rule 5: acknowledgement of receipt of the request for a direction;

Rule 6: publicity about the request for a direction (neighbour notification and local advertising) and where representations should be sent and by when;

Rule 7: the information to be sent to parties (namely advising the appointed representative and holder of the potentially closed evidence of written representations, and the passing of the potentially closed evidence to the appointed representative);

Rule 8: covers the exchange of comments between appointed representatives, the party holding the potentially closed evidence and the Scottish Ministers. It also allows the Scottish Ministers to direct on the restriction of access to information based on the written representations;

Rule 9: allows Ministers to hold a hearing if necessary to consider the need for a direction and covers the timing and location of that hearing and the informing parties of the arrangements;

Rule 10: covers the hearing procedure. Except where specifically provided for in the Rules, the Scottish Ministers will determine the procedure. Rule 8 specifies some minimum requirements e.g. allowing cross-examination where Scottish Ministers consider it necessary to ensure a thorough examination of the main issues and allowing parties to introduce issues in addition to those specified by the Scottish Ministers at the outset of the hearing;

Rule 11: allows the Scottish Ministers to specify further time be allowed for any of the steps in the Rules;

Rule 12: covers how the notices and documents specified in the Rules should be served or given and includes electronic communication where appropriate;

Rule 13: Covers withdrawal of consent to use electronic communication by any of the parties;

Rule 14: Notification of Decision – requirements on the Scottish Ministers to notify parties who made representations, the party who made the request for a direction and the appointed representative. Nothing in this rule requires or permits the Scottish Ministers to give reasons for their decision, where the giving of reasons would result in the public disclosure of closed evidence.

7. New section 265A of the 1997 Act allows the Scottish Ministers 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 pay the latter.

Consultation

8. The question of the removal of Crown immunity from planning controls in Scotland was the subject of public consultation in the early 1990s. It is only in recent years that a suitable legislative opportunity arose to make the necessary provisions in planning legislation. While a number of Crown bodies have been consulted on aspects of the secondary legislation, we have not carried out a full public consultation on the secondary legislation. In light of the European infringement proceedings in relation to applying the requirements of the European Directive on environmental impact assessment to Crown development we have pressed ahead with the laying of Scottish Statutory Instruments.

Financial Effects

9. With the removal of Crown immunity from planning controls, Crown bodies will 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 the 3rd paragraph above.

10. Where the procedure involving representatives appointed by the Lord Advocate applied in relation to an application involving information on national security and/or the security of any premises or property, the appointed representatives would be paid for by the holder of the closed evidence, normally the developing department. Cases involving security sensitive material of national importance are likely to be very limited in number.

The Scottish Executive Development Department
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