

2006 No. 1284

TOWN AND COUNTRY PLANNING, ENGLAND

**The Planning (National Security Directions and Appointed
Representatives) (England) Rules 2006**

<i>Made</i> - - - -	<i>12th May 2006</i>
<i>Laid before Parliament</i>	<i>17th May 2006</i>
<i>Coming into force</i> - -	<i>7th June 2006</i>

The Lord Chancellor, in exercise of the powers conferred by section 321(7) of the Town and Country Planning Act 1990(a), paragraph 6A(3) of Schedule 3 to the Planning (Listed Buildings and Conservation Areas) Act 1990(b) and paragraph 6A(3) of the Schedule to the Planning (Hazardous Substances) Act 1990(c) makes the following Rules:

Citation, commencement and application

1.—(1) These Rules may be cited as the Planning (National Security Directions and Appointed Representatives) (England) Rules 2006 and shall come into force on 7th June 2006.

(2) These Rules apply in relation to England only.

Interpretation

2.—(1) In these Rules—

“affected person” means the person who will be prevented from hearing or inspecting closed evidence at a local inquiry if a direction is given;

“appointed representative” means a person appointed under—

- (a) section 321(5) or (6) of the principal Act;
- (b) paragraph 6A(1) or (2) of Schedule 3 to the Listed Buildings Act; or
- (c) paragraph 6A(1) or (2) of the Schedule to the Hazardous Substances Act;

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

“direction” means a direction by the Secretary of State under—

- (a) section 321(3) of the principal Act;
- (b) paragraph 6(6) of Schedule 3 to the Listed Buildings Act; or
- (c) paragraph 6(6) of the Schedule to the Hazardous Substances Act;

“document” includes a photograph, map or plan;

(a) 1990 c. 8. Subsections (5) to (12) of section 321 were inserted by the Planning and Compulsory Purchase Act 2004 (c. 5), section 80(1).
(b) 1990 c. 9. Paragraph 6A was inserted by the Planning and Compulsory Purchase Act 2004, section 80(3).
(c) 1990 c. 10. Paragraph 6A was inserted by the Planning and Compulsory Purchase Act 2004, section 80(4).

“electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000(a);

“the Hazardous Substances Act” means the Planning (Hazardous Substances) Act 1990;

“the Listed Buildings Act” means the Planning (Listed Buildings and Conservation Areas) Act 1990;

“the parties” means—

- (a) the person making the request for a direction; and
- (b) the appointed representative;

“potentially closed evidence” means evidence in respect of which a request for a direction has been made;

“the principal Act” means the Town and Country Planning Act 1990; and

“written representations” includes supporting documents.

(2) In these Rules, and in relation to the use of electronic communications for any purpose of these Rules which is capable of being effected electronically—

- (a) the expression “address” includes any number or address used for the purposes of such communications;
- (b) references to notices, representations or other documents, or to copies of such documents, include references to such documents or copies of them in electronic form.

(3) Paragraphs (4) to (8) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Rules to give or send any statement, notice or other document to any other person (“the recipient”).

(4) The requirement shall be taken to be fulfilled where the notice or other document transmitted by means of the electronic communication is—

- (a) capable of being accessed by the recipient;
- (b) legible in all material respects; and
- (c) sufficiently permanent to be used for subsequent reference.

(5) In paragraph (4), “legible in all material respects” means that the information contained in the notice or other document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(6) Where the electronic communication is received by the recipient outside the recipient’s business hours, it shall be taken to have been received on the next working day; and for this purpose “working day” means a day which is not a Saturday, Sunday, Bank Holiday or other public holiday.

(7) A requirement in these Rules that any document should be in writing is fulfilled where that document meets the criteria in paragraph (4), and “written” and cognate expressions are to be construed accordingly.

(8) A requirement in these Rules to send more than one copy of a statement or other document may be complied with by sending one copy only of the statement or other document in question.

Application of certain rules in particular cases

3.—(1) These Rules apply in a case where the Secretary of State is considering giving or has given a direction under any of the following provisions—

- (a) section 321(3) of the principal Act;
- (b) paragraph 6(6) of Schedule 3 to the Listed Buildings Act; or
- (c) paragraph 6(6) of the Schedule to the Hazardous Substances Act.

(2) Rule 4 applies in relation to all appointed representatives.

(a) 2000 c.7.

(3) Rules 5 to 14 apply in relation to a case where an appointed representative has been appointed under—

- (a) section 321(5) of the principal Act;
- (b) paragraph 6A(1) of Schedule 3 to the Listed Buildings Act; or
- (c) paragraph 6A(1) of the Schedule to the Hazardous Substances Act.

Functions of an appointed representative

4.—(1) The first function of an appointed representative is to represent the interests of the affected person by—

- (a) taking instructions from the affected person before receiving copies of potentially closed evidence;
- (b) making written representations as to whether a direction should be given; and
- (c) in respect of a hearing held in accordance with rule 10—
 - (i) dealing with preliminary matters;
 - (ii) making submissions; and
 - (iii) cross-examining witnesses.

(2) The second function of an appointed representative is to represent the interests of the affected person by—

- (a) where the appointed representative has been appointed under—
 - (i) section 321(6) of the principal Act;
 - (ii) paragraph 6A(2) of Schedule 3 to the Listed Buildings Act; or
 - (iii) paragraph 6A(2) of the Schedule to the Hazardous Substances Act,taking instructions from the affected person before receiving copies of closed evidence;
- (b) dealing with preliminary matters in relation to closed evidence in respect of a local inquiry;
- (c) making submissions or cross-examining witnesses, in relation to closed evidence, at a local inquiry; and
- (d) attending site visits.

(3) The third function of an appointed representative is to ensure that the copies of the closed evidence or potentially closed evidence are returned to the person who supplied it as soon as practicable after—

- (a) the Secretary of State has given notice under rule 14 that he does not intend to give a direction;
- (b) the local inquiry, to which the closed evidence relates, has ended; or
- (c) the Secretary of State has notified the appointed representative that no local inquiry, to which the closed evidence relates, will be held,

whichever is later.

(4) The fourth function of an appointed representative is to make applications to the Court in relation to any of his other functions.

(5) For the purposes of any of his functions, the appointed representative may discuss any matter relating to the closed evidence or potentially closed evidence with—

- (i) the person who supplied the closed or potentially closed evidence to the Secretary of State; or
- (ii) a person specified, or of any description specified, in the direction.

Acknowledgement of request for a direction

5. As soon as practicable after receiving a request for a direction the Secretary of State shall acknowledge receipt of it in writing.

Publicity

6.—(1) As soon as practicable after receiving a request for a direction it shall be publicised by the Secretary of State in the manner prescribed by this rule.

(2) In the case of a request which relates to an application for planning permission for development which—

- (a) is an EIA application accompanied by an environmental statement;
- (b) does not accord with the provisions of the development plan in force in the area in which the land to which the application relates is situated; or
- (c) would affect a right of way to which Part 3 of the Wildlife and Countryside Act 1981(a) (public rights of way) applies,

the request shall be publicised in the manner specified in paragraph (3).

(3) A request falling within paragraph (2) (“a paragraph (2) request”) shall be publicised by giving notice—

- (a) by site display in at least one place on or near the land to which the application for planning permission relates for not less than 2 weeks; and
- (b) by local advertisement.

(4) In the case of a request for a direction which is not a paragraph (2) request, if the proposed development to which the request relates is major development the request shall be publicised by giving notice—

- (a) by site display in at least one place on or near the land to which the application relates for not less than 2 weeks or by serving the notice on any adjoining owner or occupier; and
- (b) by local advertisement.

(5) In a case to which neither paragraph (2) nor paragraph (4) applies, a request for a direction shall be publicised by giving notice—

- (a) by site display in at least one place on or near the land to which the application relates for not less than 2 weeks; or
- (b) by serving the notice on any adjoining owner or occupier.

(6) A notice given under paragraphs (3), (4) or (5) shall—

- (a) state that a request for a direction has been made;
- (b) state that written representations as to whether a direction should be given can be made to the Secretary of State at the address specified in the notice; and
- (c) specify the date by which any such representations should be made to the Secretary of State (being a date not less than 2 weeks from the date when the notice is given).

(7) Where the notice is, without any fault or intention of the Secretary of State, removed, obscured or defaced before the period of 2 weeks referred to in paragraph (3)(a), (4)(a)(i) or (5)(a) has elapsed, the Secretary of State shall be treated as having complied with the requirements of the relevant paragraph if he has taken reasonable steps for protection of the notice and, if need be, its replacement.

(8) In this rule—

“adjoining owner or occupier” means any owner or occupier of any land adjoining the land to which the application relates;

(a) 1981 c. 69. Relevant amendments were made by the Countryside and Rights of Way Act 2000, section 51 and Schedule 5, Part I.

“dwellinghouse” does not include a building containing one or more flats, or a flat contained within such a building;

“EIA application” has the meaning given in regulation 2 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999^(a), and “environmental statement” means a statement which the applicant refers to as an environmental statement for the purposes of those Regulations;

“by local advertisement” means—

- (a) publication of the notice in a newspaper circulating in the locality in which the land to which the application relates is situated; and
- (b) where the Secretary of State maintains a website for the purpose of advertisement of applications, by publication of the notice on the website;

“major development” means development involving any one or more of the following—

- (a) the winning and working of minerals or the use of land for mineral-working deposits;
- (b) waste development;
- (c) the provision of dwellinghouses where—
 - (i) the number of dwellinghouses to be provided is 10 or more; or
 - (ii) the development is to be carried out on a site having an area of 0.5 hectare or more and it is not known whether the development falls within paragraph (c)(i);
- (d) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or
- (e) development carried out on a site having an area of 1 hectare or more;

“by site display” means by the posting of the notice by firm affixture to some object, sited and displayed in such manner as to be easily visible and legible by members of the public; and

“waste development” means any operational development designed to be used wholly or mainly for the purpose of, or a material change of use to, treating, storing, processing or disposing of refuse or waste materials.

Information to be sent to the parties

7.—(1) As soon as practicable after notice of the request for a direction has been given in accordance with rule 6, the Secretary of State shall—

- (a) notify in writing the appointed representative of the date by which any written representations as to whether a direction should be given should be received by the Secretary of State (being a date not less than 6 weeks from the date when the notice to the appointed representative is given); and
- (b) at the same time, send a copy of the notice referred to in sub-paragraph (a) to the other party.

(2) As soon as practicable after being notified by the appointed representative that he has taken instructions from the affected person, the Secretary of State shall send to the appointed representative—

- (a) a copy of the request for a direction; and
- (b) where the potentially closed evidence includes documentary evidence or a proof of evidence of a person who intends to give oral evidence, a copy of that evidence.

Written representations procedure

8.—(1) For the purposes of these Rules, the request for a direction comprises the written representations of the person making the request for a direction.

(a) S.I.1999/293 to which there are amendments not relevant to this instrument.

- (2) The Secretary of State shall, as soon as practicable after receipt, send—
- (a) a copy of any written representations made to him by the appointed representative to the other party; and
 - (b) copies of any written representations made to him by persons pursuant to rule 6(6)(b) to the parties.
- (3) If either party makes any further representations, the Secretary of State shall, as soon as practicable after receipt, send a copy of the further representations to the other party.
- (4) The Secretary of State may proceed to a decision on a request for a direction taking into account only such representations as have been submitted within the relevant time limits.
- (5) In paragraph (4) “relevant time limits” means the time limits prescribed by rule 6(6)(c) and rule 7(1)(a) or, where the Secretary of State has exercised his power under rule 11, any later time limit.

Decision to hold a hearing and date of hearing

- 9.—(1) Where the Secretary of State considers that one or more matters relating to the request would be more satisfactorily resolved by holding a hearing attended by the parties, he shall give the parties written notice accordingly.
- (2) The date fixed by the Secretary of State for the holding of a hearing shall be not later than 6 weeks after the date of the notice referred to in paragraph (1).
- (3) Unless the Secretary of State agrees a lesser period of notice with the parties, he shall give to them not less than 2 weeks’ written notice of the date, time and place fixed by him for the holding of the hearing.
- (4) The Secretary of State may vary the date fixed for the holding of the hearing, whether or not the date as varied is within the period of 6 weeks mentioned in paragraph (2); and paragraph (3) applies to a variation of a date as it applied to the date originally fixed.
- (5) The Secretary of State may vary the time or place for the holding of a hearing and shall give the parties such notice of any variation as appears to him to be reasonable.

Hearing procedure

- 10.—(1) Except as otherwise provided in these Rules, the Secretary of State shall determine the procedure at a hearing.
- (2) A hearing shall take the form of a discussion led by the Secretary of State and cross-examination shall be permitted if the Secretary of State considers it necessary to ensure a thorough examination of the main issues.
- (3) At the start of the hearing the Secretary of State shall identify what are, in his opinion, the main issues to be considered at the hearing and any matters on which he requires further explanation from the parties.
- (4) Nothing in paragraph (3) precludes the parties from referring to issues which they consider relevant to the consideration of the request for a direction but which were not issues identified by the Secretary of State pursuant to that paragraph.
- (5) The Secretary of State may—
- (a) proceed with a hearing in the absence of any party;
 - (b) take into account any written representation or evidence or any other document received by him from any person before a hearing opens or during the hearing provided that he discloses it at the hearing; and
 - (c) from time to time adjourn a hearing and, if the date, time and place of the adjourned hearing are announced at the hearing before the adjournment, no further notice is required.
- (6) When making his determination the Secretary of State may disregard any written representations, evidence or other document received after the end of the hearing.

Further time

11. The Secretary of State may at any time in any particular case allow further time for the taking of any step which is required or enabled to be taken by virtue of these Rules, and references in these Rules to a day by which, or a period within which, any step is required or enabled to be taken shall be construed accordingly.

Notices by post

12. Notices or documents required or authorised to be sent under these Rules may be sent or supplied—

- (a) by post; or
- (b) by using electronic communications to send or supply the notice or document (as the case may be) to a person at such an address as may be for the time being specified by the person for that purpose.

Withdrawal of consent to use of electronic communications

13. Where a person is no longer willing to accept the use of electronic communications for any purpose under these Rules which is capable of being effected electronically, the person shall give notice in writing—

- (a) withdrawing any address notified to the Secretary of State for that purpose; or
- (b) revoking any agreement entered into with the Secretary of State for that purpose,

and such withdrawal or revocation shall be final and shall take effect on a date specified by the person in the notice but not less than 7 days after the date on which the notice is given.

Notification of decision

14.—(1) As soon as practicable after determining whether or not to make a direction the Secretary of State shall notify his decision to any person who made representations to him in relation to the direction; but nothing in this paragraph requires or permits the Secretary of State to give reasons for his decision, where the giving of reasons would result in the public disclosure of closed evidence.

(2) Where a direction is given the Secretary of State shall, at the same time as notifying his decision in accordance with paragraph (1), send a copy of the direction to the appointed representative and the person who requested the direction.

Signed by the Lord Chancellor

12th May 2006

Falconer of Thoroton, C
Department for Constitutional Affairs

EXPLANATORY NOTE

(This note is not part of the Rules)

Section 321 of the Town and Country Planning Act 1990 provides that all planning inquiries are to be held in public except where the Secretary of State otherwise directs on the grounds of national security. Section 321 (as amended by section 80(1) of the Planning and Compulsory Purchase Act 2004 (c. 5)) makes provision for the appointment of persons (“appointed representatives”) to represent the interests of any person who will be prevented from hearing or inspecting any evidence at a local inquiry if such a direction is given. Paragraph 6 of Schedule 3 to the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended by section 80(3) of the 2004 Act) and paragraph 6 of the Schedule to the Planning (Hazardous Substances) Act 1990 (as amended by section 80(4) of the 2004 Act) make similar provision in respect of those Acts.

These Rules make provision as to the procedure to be followed by the Secretary of State when he is considering giving a national security direction, including provisions on publicity (rule 6), written representations (rule 8), hearings (rules 9 and 10) and notification of his decision (rule 14). The Rules also set out the functions of appointed representatives (rule 4).

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business, charities, voluntary bodies or the public sector.

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