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STATUTORY INSTRUMENTS

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

**TOWN AND COUNTRY PLANNING, SCOTLAND**

**The Planning (National Security Directions and  
Appointed Representatives) (Scotland) Rules 2008**

<i>Made</i>	- - - -	<i>19th June 2008</i>
<i>Laid before Parliament</i>		<i>23rd June 2008</i>
<i>Coming into force</i>	- -	<i>14th July 2008</i>

The Secretary of State makes the following Rules in exercise of the powers conferred by section 265A(6)(a) of the Town and Country Planning (Scotland) Act 1997(1), paragraph 6(7) of Schedule 3 to the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997(2) and paragraph 6(7) of the Schedule to the Planning (Hazardous Substances) (Scotland) Act 1997(3).

**Citation, commencement and extent**

1.—(1) These Rules may be cited as the Planning (National Security Directions and Appointed Representatives) (Scotland) Rules 2008 and shall come into force on 14th July 2008.

(2) These Rules extend to Scotland 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, or by virtue of—

- (a) section 265A(5) of the principal Act;
- (b) paragraph 6(7) of Schedule 3 to the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997; or
- (c) paragraph 6(7) of the Schedule to the Planning (Hazardous Substances) (Scotland) Act 1997;

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

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(1) 1997 c. 8. Section 265A was inserted by the Planning and Compulsory Purchase Act 2004 (c. 5), section 91(1).  
(2) 1997 c. 9. Paragraph 6(7) was inserted by the Planning and Compulsory Purchase Act 2004, section 91(2).  
(3) 1997 c. 10. Paragraph 6(7) was inserted by the Planning and Compulsory Purchase Act 2004, section 91(3).

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

- (a) section 265A(3) of the principal Act;
- (b) paragraph 6(7) of Schedule 3 to the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997; or
- (c) paragraph 6(7) of the Schedule to the Planning (Hazardous Substances) (Scotland) Act 1997;

“document” includes a photograph, map or plan;

“electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000(4);

“local advertisement” means—

- (a) publication of the notice in a newspaper circulating in the locality in which the relevant land 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;

“neighbouring land” means land which is conterminous with or within 4 metres of the relevant land but only if, in the case of an application for planning permission, any part of such land is within 90 metres of any part of the development in question: provided that in such a case—

- (a) where the proposed development is taking place within a building divided into separate units “neighbouring land” shall include—
  - (i) those parts of the building conterminous with or within 4 metres of the boundary of that unit; and
  - (ii) all units directly above and below the unit for which the development is proposed and all units directly above and below those parts of the building conterminous with or within 4 metres of the boundary of that unit; and
  - (iii) land outwith the building which is conterminous with or within 4 metres of the boundary of the unit for which the development is proposed;
- (b) where the “neighbouring land” consists of or includes a building divided into separate units, and the proposed development is taking place within a building which is not divided into separate units, only those units of that building which are conterminous with or are within 4 metres of the boundary of the land for which the development is proposed and all parts of the building directly above and below those units shall constitute neighbouring land;
- (c) where the “neighbouring land” consists of or includes a building divided into separate units, and the proposed development is taking place within a building which is also divided into separate units, only those units of the former building which are conterminous with or are within 4 metres of the boundary of the unit for which the development is proposed and all parts of the building directly above and below those units shall constitute neighbouring land;
- (d) where a road falls within the distance of 4 metres measured from the boundary of the land or the boundary of the unit (as the case may be) for which the development is proposed, the width of such road shall be disregarded in calculating the specified distance unless the road is more than 20 metres in width;

“the parties” means—

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

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(4) 2000 c. 7.

and references to “party” shall be construed accordingly;

“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 (Scotland) Act 1997;

“relevant land” means the land to which the application or enforcement action which is the subject matter of the local inquiry relates; 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 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—

(a) at any time before the end of a day which is a working day, it shall be deemed to have been received on that day; or

(b) at any time during a day which is not a working day, it shall be deemed to have been received on the next working day,

and for these purposes, “working day” means a day which is not a Saturday, a Sunday, Christmas Eve, a bank holiday in Scotland under the Banking and Financial Dealings Act 1971(5), a day appointed for public thanksgiving or mourning, or any other day which is a local or public holiday in an area in which the electronic communication is received.

(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 person making a request for a direction, or giving or serving a notice, using electronic communications shall, unless a contrary intention appears, be deemed to have agreed—

(a) to the use of such communications for all purposes relating to the request or notice, as the case may be, which are capable of being carried out electronically;

(b) that the address for that purpose is the address incorporated into, or otherwise logically associated with, the request or notice; and

- (c) that the person's deemed agreement under this paragraph shall subsist until the person gives notice in accordance with rule 13 that the person is no longer willing to accept the use of electronic communication, and such withdrawal of consent shall be final, and shall take effect in accordance with rule 13.

### **Application of certain rules in particular cases**

**3.** Rules 5 to 14 apply only in relation to a case where an appointed representative has been appointed under—

- (a) section 265A(5)(a)(6) of the principal Act;
- (b) section 265A(5)(a) of the principal Act as applied by paragraph 6(7) of Schedule 3 to the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997; or
- (c) section 265A(5)(a) of the principal Act as applied by paragraph 6(7) of the Schedule to the Planning (Hazardous Substances) (Scotland) Act 1997.

### **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 the 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 an appointed representative has been appointed after a direction has been made, 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 closed evidence or potentially closed evidence is 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 latest.

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**(6)** Section 265A(5)(a) confers a power to appoint a representative before a direction is given under section 265A(3) of the principal Act. Section 265A(5)(b) confers a power to appoint a representative if such a direction is given before any appointment is made under section 265A(5)(a).

(4) The fourth function of an appointed representative is to bring proceedings in a court in relation to any of the appointed representative's other functions.

(5) The appointed representative may, for the purpose of any function conferred by this rule, discuss any matter relating to the closed evidence or potentially closed evidence with—

- (a) the person who has requested the direction; or
- (b) a person specified, or of any description specified, in the direction as being entitled to hear or inspect such information.

### **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 the Secretary of State shall give notice of the request in the manner prescribed by this rule.

- (2) Notification of a request for a direction shall be made—
  - (a) by serving notice on every person (other than the person making the request) who is the owner, lessee or occupier of any relevant land;
  - (b) by serving notice on persons holding a notifiable interest in neighbouring land (other than persons on whom notice is served under sub-paragraph (a) or the person making the request); and
  - (c) by local advertisement.
- (3) A notice given or advertisement published under paragraph (2) 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, in the case of a notice served under paragraph (2)(a) or (b), a date not less than 2 weeks from the date when the notice is given and, in the case of a local advertisement published under paragraph (2)(c), a date not less than 2 weeks from the date when the notice is first published).
- (4) In this rule the persons holding a notifiable interest in neighbouring land are—
  - (a) in the case of lands and heritages entered in the valuation roll at the date of the request, the persons appearing in the valuation roll in force at that time as being the owners, lessees and occupiers of those lands and heritages; and
  - (b) in the case of lands and heritages not entered in the valuation roll at the date of the request, the owners and occupiers of those lands and heritages.

### **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 precognition 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.
- (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(3)(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(3)(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 for a direction 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 the parties 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.

#### **Notification**

**12.—(1)** Any notice or other document required or authorised to be served or given under these Rules may be served or given—

- (a) by delivering it to the person on whom it is to be served or to whom it is to be given;
- (b) by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to that person at that person's usual or last known place of abode, or, in a case where an address for service has been given by that person, at that address;
- (c) in a case where an address for service using electronic communications has been given by that person, by sending it using electronic communications, in accordance with the condition set out in paragraph (3), to that person at that address;
- (d) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at their registered or principal office, or sending it in a prepaid registered letter, or by the recorded delivery service, addressed to the secretary or clerk of the company or body at that office.

(2) Without prejudice to paragraph (1), notification in accordance with rule 6(2)(b) of a person holding a notifiable interest in neighbouring land may—

- (a) in each case where the name and address of the owner, lessee or occupier can be ascertained from the valuation roll, be sent to such person at that person's address as entered in the valuation roll;
- (b) where information as to the owner, lessee or occupier of neighbouring land or of any premises contained or included in neighbouring land cannot be ascertained from the valuation roll, be sent addressed to "the Owner" at such land or premises where the name of the owner cannot be ascertained, to "the Lessee" at such land or premises where the name of the lessee cannot be ascertained and to "the Occupier" at such land or premises where the name of the occupier cannot be ascertained;

- (c) in the case of lands and heritages not entered in the valuation roll at the date of the request, be sent addressed in each case to “the Owner” and “the Occupier” at each address of the premises contained or included in the neighbouring land.
- (3) The condition mentioned in paragraph (1)(c) is that the notice or other document shall be—
  - (a) capable of being accessed by the person mentioned in that provision;
  - (b) legible in all material respects; and
  - (c) in a form sufficiently permanent to be used for subsequent reference.
- (4) In paragraph (3)(b) “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served or given by means of a notice or document in printed form.

#### **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 or potentially 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—

- (a) the appointed representative;
- (b) the person who requested the direction; and
- (c) the person appointed by the Scottish Ministers to hold the inquiry.

(3) Nothing in this rule shall be taken to require or permit the disclosure of information which is subject to a direction to a person other than a person specified in, or of such description as is specified in, the direction as being entitled to hear or inspect such information.

Dover House, London  
19th June 2008

*DAVID CAIRNS*  
Minister of State, Scotland Office Ministry of  
Justice

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## EXPLANATORY NOTE

*(This note is not part of the Rules)*

Section 265A of the Town and Country Planning (Scotland) Act 1997 (“the 1997 Act”) provides that all planning inquiries are to be held in public except where the Secretary of State or the Scottish Ministers, after consultation with the Secretary of State, otherwise direct on the grounds of national security. Section 265A of the 1997 Act also 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. In particular, section 265A(5)(a) confers a power on the Lord Advocate to appoint such a person before a direction is given by the Secretary of State and section 265A(5)(b) confers a power to appoint such a person where a direction has already been given.

These Rules set out the functions of all appointed representatives (rule 4).

These Rules also 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 provisions in section 265A(2) to (13) of the 1997 Act are applied to the holding of a local inquiry under paragraph 6 of Schedule 3 to the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 by paragraph 6(7) of that Schedule; and to the holding of a local inquiry under paragraph 6 of the Schedule to the Planning (Hazardous Substances) (Scotland) Act 1997 by paragraph 6(7) of that Schedule.

Similar Rules have been made in connection with Scottish Ministers' direction-making functions under section 265A of the 1997 Act (S.S.I.2006/265) and in relation to English planning inquiries by S.I. 2006/1284.