



Planning and Compulsory Purchase Act 2004

2004 CHAPTER 5

PART 7

CROWN APPLICATION OF PLANNING ACTS

CHAPTER 2

SCOTLAND

National security

91 Special provision for certain circumstances where disclosure of information as to national security may occur: Scotland

- (1) In the Town and Country Planning (Scotland) Act 1997 (c. 8), there is inserted after section 265 (local inquiries) the following section—

“265A Planning inquiries to be held in public subject to certain exceptions

- (1) This section applies in relation to the holding of inquiries under section 265(1), paragraph 6 of Schedule 4, paragraph 5 of Schedule 6 or paragraph 8 of Schedule 7.
- (2) Subject to subsection (3), at any such inquiry oral evidence shall be heard in public and documentary evidence shall be open to public inspection.
- (3) If the Secretary of State is, or after consultation with the Secretary of State the Scottish Ministers are, satisfied in the case of any such inquiry—

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- (a) that giving evidence of a particular description or, as the case may be, making it available for inspection would be likely to result in the disclosure of information as to any of the matters mentioned in subsection (4), and
- (b) that the public disclosure of that information would be contrary to the national interest,

he or as the case may be they may direct that evidence of the description indicated in the direction shall only be heard or, as the case may be, open to inspection at that inquiry by such persons, or persons of such descriptions, as may be specified in the direction.

- (4) The matters referred to in subsection (3)(a) are—
 - (a) national security, and
 - (b) the measures taken, or to be taken, to ensure the security of any premises or property.
- (5) The Lord Advocate may appoint a person to represent the interests of any person who—
 - (a) if a direction is given under subsection (3), will be prevented from hearing or inspecting any evidence at any such inquiry; or
 - (b) is so prevented by such a direction given before any appointment is made by virtue of paragraph (a).
- (6) By rules—
 - (a) the Secretary of State may make provision as to the procedure to be followed by him before he gives a direction under subsection (3) in a case where a person has been appointed under subsection (5) and as to the functions of a person appointed under subsection (5),
 - (b) the Scottish Ministers may make provision as to the procedure to be followed by them before they give such a direction in such a case and as to such functions.
- (7) If a person (the representative) is appointed—
 - (a) under paragraph (a) of subsection (5) and either no direction in relation to the evidence in question has been given under subsection (3) or any such direction so given has been given by the Secretary of State, the Secretary of State may direct any person who he thinks,
 - (b) under paragraph (a) of subsection (5) and such a direction has been given under subsection (3) by the Scottish Ministers, the Scottish Ministers may direct any person who they think,
 - (c) under paragraph (b) of subsection (5) and the direction referred to in that paragraph was given by the Secretary of State, the Secretary of State may direct any person who he thinks,
 - (d) under paragraph (b) of that subsection and the direction so referred to was given by the Scottish Ministers, the Scottish Ministers may direct any person who they think,

is interested in the inquiry, or prospective inquiry, in relation to a matter mentioned in subsection (4) (the responsible person) to pay remuneration or allowances to, and to reimburse any expenses incurred by, the representative.

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- (8) If the representative and the responsible person are unable to agree an amount payable by virtue of—
 - (a) paragraph (a) or (c) of subsection (7), the amount must be determined by the Secretary of State,
 - (b) paragraph (b) or (d) of that subsection, the amount must be determined by the Scottish Ministers.
 - (9) The Secretary of State must cause an amount payable by virtue of paragraph (a) or (c) of subsection (7) (whether determined under subsection (8) or agreed between the representative and the responsible person) to be certified.
 - (10) The Scottish Ministers must cause an amount payable by virtue of paragraph (b) or (d) of subsection (7) (whether so determined or so agreed) to be certified.
 - (11) An amount certified under subsection (9) or (10) is recoverable from the responsible person as a debt.
 - (12) Subsections (7) to (11) apply even if the inquiry does not take place.
 - (13) The power to make rules under—
 - (a) paragraph (a) of subsection (6) must be exercised by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament,
 - (b) paragraph (b) of that subsection must be exercised by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.”
- (2) In Schedule 3 to the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (determination of certain appeals by person appointed by the Scottish Ministers), in paragraph 6, after sub-paragraph (6) there is inserted the following sub-paragraph—
- “(7) Subsections (2) to (13) of section 265A of the principal Act apply to the holding of an inquiry under this paragraph as they apply to the holding of an inquiry under section 265 of that Act.”
- (3) In the Schedule to the Planning (Hazardous Substances) (Scotland) Act 1997 (determination of certain appeals by person appointed by Scottish Ministers), in paragraph 6, after sub-paragraph (6) there is inserted the following sub-paragraph—
- “(7) Subsections (2) to (13) of section 265A of the principal Act apply to the holding of an inquiry under this paragraph as they apply to the holding of an inquiry under section 265 of that Act.”