EXPLANATORY MEMORANDUM TO
THE PLANNING (NATIONAL SECURITY DIRECTIONS AND APPOINTED REPRESENTATIVES) (AMENDMENT) RULES (NORTHERN IRELAND) 2006

S.R. 2006 No 285.

1. This explanatory memorandum has been prepared by Northern Ireland Court Service in conjunction with the Department of the Environment (Northern Ireland), the Department with lead responsibility for planning reform in Northern Ireland and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

These Rules amend the Planning (National Security Directions and Appointed Representatives) Rules (Northern Ireland) 2006 (S.R. 2006 No.215), which establish the procedure to be followed by the Secretary of State when he is considering giving a direction that the disclosure of information relating to national security or to measures intended to secure premises or property at an inquiry or independent examination held under the Planning (Northern Ireland) Order 1991 would be contrary to the national interest.

In particular, the Rules amend the definition of "electronic communication" to accord with the current definition provided by section 4 of the Electronic Communications Act (Northern Ireland) 2001, which was amended by paragraph 170 of Schedule 17 to the Communications Act 2003.

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

3.1 These Rules address a query raised by the Committee on 14 June 2006 regarding the Planning (National Security Directions and Appointed Representatives) Rules (Northern Ireland) 2006 (S.R. 2006 No.215) and fulfil a subsequent undertaking given by the Department for Constitutional Affairs to amend the definition of "electronic communication" in those Rules.

4. Legislative Background

4.1 Article 22 of the Planning Reform (Northern Ireland) Order 2006 (S.I.2006/1252 (N.I.7)), which was made on 9th May 2006, inserted a new Article 123A into the 1991 Order to provide that, at any planning inquiry or independent examination held under the 1991 Order, oral evidence should be heard in public and documentary evidence be open to public inspection except where the Secretary of State otherwise directs on the grounds that to do so in relation to national security or measures intended to secure premises or property would be contrary to the public interest.

4.2 In such instances, persons can be appointed ("appointed representatives") by the Attorney General for Northern Ireland to represent the interests of any party who will be prevented from hearing or inspecting evidence if the Secretary of State gives such a direction.

4.3 Article 123A further provides that the Lord Chancellor may make rules as to the procedure to be followed by the Secretary of State before he gives a direction and as to the functions of an appointed representative.

4.4 That power was first exercised in respect of the Planning (National Security Directions and Appointed Representatives) Rules (Northern Ireland) 2006 (S.R. 2006 No.215), which these Rules amend.

5. Extent

This instrument applies only to Northern Ireland.

6. European Convention on Human Rights

The Minister for Constitutional Affairs has made the following statement regarding Human Rights:

In my view the provisions of the Planning (National Security Directions and Appointed Representatives) (Amendment) Rules (Northern Ireland) 2006 are compatible with the Convention rights.

7. Policy background

7.1 These Rules amend the Planning (National Security Directions and Appointed Representatives) Rules (Northern Ireland) 2006 (S.R. 2006 No.215), which are necessary to support the Planning Reform (Northern Ireland) Order 2006), which includes a number of measures designed to reform and improve planning processes.

7.2 In advance of the 2006 Order being made, the Department of the Environment (Northern Ireland) issued a public consultation paper in August 2004 entitled "Reforming Planning Proposals to Amend Primary Legislation in Northern Ireland". There was a very encouraging response to the consultation, with some 114 responses received. Respondents covered a wide spectrum of planning interests and most supported the proposals.

7.3 A legislation consultation document was issued by the Department in October 2005 entitled, "The Planning Reform (Northern Ireland) Order and Explanatory Memorandum Public Consultation Document". 57 responses were received from a wide range of interests and, again, the proposals were generally welcomed by respondents. Reports of the consultation process can be found on the Department's internet site at www.planningni.gov.uk.

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. The instrument supports the Planning Reform (Northern Ireland) Order 2006 in relation to which the Department of the Environment (Northern Ireland) has carried out a Regulatory Impact Assessment and concluded that the Order will not impose any significant costs on business, charities or the voluntary sector.

8.2 The full regulatory impact assessment is available on the Department's internet site at www.planningni.gov.uk. It has also been placed in the Libraries of the House of Commons and House of Lords.

9. Contact

Michael Kelly at Northern Ireland Court Service (Tel: 028 90 412394 or e-mail: michaelkelly@courtsni.gov.uk) or Wilfrid Reavie at the Department of the Environment (Northern Ireland) (Tel: 028 90 256505 or e-mail: wilfrid.reavie@doeni.gov.uk) can answer any queries regarding the instrument.