

Statutory Instrument 1997 No. 796 (S.75)

The Town and Country Planning (Inquiries Procedure) (Scotland) Rules 1997

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STATUTORY INSTRUMENTS

1997 No. 796 (S.75)

TRIBUNALS AND INQUIRIES

The Town and Country Planning (Inquiries Procedure) (Scotland) Rules 1997

<i>Made</i>	<i>6th March 1997</i>
<i>Laid before Parliament</i>	<i>19th March 1997</i>
<i>Coming into force</i>	<i>27th May 1997</i>

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The Lord Advocate, in exercise of the powers conferred on him by section 9 of the Tribunals and Inquiries Act 1992[1] and of all other powers enabling him in that behalf, and after consultation with the Council on Tribunals, hereby makes the following Rules:

Citation and commencement

1 . These Rules may be cited as the Town and Country Planning (Inquiries Procedure) (Scotland) Rules 1997 and shall come into force on 27th May 1997.

Application of rules

2 . - (1) Subject to the provisions of this rule, these Rules apply to a local inquiry caused by the Secretary of State to be held for the purpose of any application referred to the Secretary of State or any appeal made to the Secretary of State under the Act, the Listed Buildings Act or the Hazardous Substances Act or any regulations made thereunder.

(2) These Rules shall not apply to a local inquiry held under Schedule 4 to the Act or under Schedule 3 to the Listed Buildings Act or the Schedule to the Hazardous Substances Act, except where the Secretary of State directs under paragraph 3(1) of the relevant Schedule that an appeal which, by virtue of paragraph 1 of that Schedule, falls to be determined by a person appointed by the Secretary of State, shall, instead of being determined by that person, be determined by the Secretary of State; and these Rules shall apply in relation to any step taken or thing done after the giving of the said direction, but do not affect any step taken or thing done before the giving of such direction.

(3) Where the appeal is made-

(a) by virtue of section 130 or 169 or 180 of the Act (appeals against enforcement notices, notices requiring the replacement of trees or notices under section 179 of the Act),

(b) under section 47 of the Act as applied to an application for consent under an order made under section 160 of the Act (appeals in relation to tree preservation orders),

(c) by virtue of section 35 of the Listed Buildings Act (appeals against listed building enforcement notice), or

(d) by virtue of section 19 of the Hazardous Substances Act (appeals against decisions or failure to take decisions relating to hazardous substances),

rule 4(1) below shall not apply and the references in these Rules to statutory parties shall be omitted.

Interpretation

3 . - (1) In these Rules, unless the context otherwise requires-

"the Act" means the Town and Country Planning (Scotland) Act 1997[2];

"appeals questionnaire" means a document in the form supplied by the Secretary of State for the purpose of proceedings under these Rules;

"applicant" in the case of an appeal means the appellant;

"the application" means the application to which the inquiry relates;

"assessor" means a person appointed by the Secretary of State to sit with a reporter at an inquiry or re-opened inquiry to advise the reporter on such matters arising as the Secretary of State may specify;

"consulted person" means an authority or person consulted by the planning authority in compliance with a requirement imposed by virtue of-

(a) section 43(1)(c) of the Act;

(b) regulation 16 of the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984[3]; or

(c) regulation 11 of the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993[4];

"document" includes, in addition to a document in writing-

(a) any map, plan, graph or drawing;

(b) any photograph;

(c) any disc, tape, sound track or other device in which sounds or other data (not being visual images) are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and

(d) any film, negative, tape, disc or other device in which one or more visual images are recorded so as to be capable (as aforesaid) of being reproduced therefrom;

"the Hazardous Substances Act" means the Planning (Hazardous Substances) (Scotland) Act 1997[5];

"inquiry" means a local inquiry to which these Rules apply;

"the land" means the land (including trees and buildings) to which the inquiry

relates or, in the case of an inquiry relating to an advertisement, the land on which the advertisement is or is to be displayed;

"the Listed Buildings Act" means the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997[6];

"listed building consent" means consent required by section 7(1) to (3) of the Listed Buildings Act in respect of works for the demolition, alteration or extension of a listed building and the consent required by those subsections as applied by section 66 of the Listed Buildings Act for works for the demolition of any building in a conservation area;

"outline statement" means a written statement of the principal submissions which a person proposes to put forward at an inquiry together with a list (so far as then known) of the documents (if any) which that person intends to refer to, rely on or put in evidence;

"permission" includes consent;

"planning authority" means the council constituted under section 2 of the Local Government etc. (Scotland) Act 1994[7] which was responsible for dealing with the application (or in the case of a referred application would have been so responsible had it not been referred to the Secretary of State) or for service of the notice, as the case may be;

"precognition" means a written statement of the evidence which it is proposed that a witness will give to the inquiry;

"pre-inquiry meeting" means a meeting held before an inquiry to consider what may be done with a view to securing that the inquiry is conducted efficiently and expeditiously, and where two or more such meetings are held references to the conclusion of a pre-inquiry meeting are references to the conclusion of the final meeting;

"referred application" means an application referred to the Secretary of State under section 46 of the Act or that section as applied by a tree preservation order, under section 11 of the Listed Buildings Act (listed building consent), under regulations made under section 182 of the Act (control of advertisements), or under section 18 of the Hazardous Substances Act;

"relevant date" means the date of the Secretary of State's written notification to the planning authority of his intention to proceed with the consideration of the application or appeal by causing an inquiry to be held;

"relevant notice" means the Secretary of State's written notification to the planning authority of his intention to proceed with the consideration of the application or appeal by causing an inquiry to be held;

"reporter" means the person appointed by the Secretary of State to hold the inquiry and to report thereon to him;

"statement of case" means, and is comprised of-

(a) a written statement which contains full particulars of the case which a person proposes to put forward at an inquiry; and

(b) a list of documents (if any) which the person putting forward that case intends to refer to, rely on or put in evidence;

"statutory party" means-

- (a) any consulted person from whom representations are received whether by the planning authority or by the Secretary of State;**
- (b) in relation to an application which is an application for planning permission, any person, being the owner or the agricultural tenant of land to which the application relates, from whom representations were received within the period prescribed by virtue of section 38(2) of the Act;**
- (c) any other person from whom representations were received, whether by the planning authority or by the Secretary of State, before the end of the period mentioned in section 38(1) of the Act or, in the case of an application affecting a conservation area, before the end of the periods specified in section 65(3) of the Listed Buildings Act and, in the case of an application for development which does not accord with the development plan, before the end of any period prescribed by the Secretary of State in a direction given under article 18 of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992[8];**

"trees" include groups of trees and woodlands,

and other expressions have the same meaning for the purpose of these Rules as they have for the purpose of the Act.

(2) References in these Rules to section 38 of the Act shall be construed as including where appropriate references to regulations made under section 10 of the Listed Buildings Act.

(3) Where the appeal is an appeal against a notice served under the Act, any reference in these Rules to an application shall be construed as a reference to that notice.

(4) Where the appeal is made under provisions of the Act relating to a listed building, a building in a conservation area or a tree preservation order, the reference in these Rules to-

(a) development shall be construed as a reference to works for the demolition, alteration or extension of a listed building or to works for the demolition of a building in a conservation area or to the cutting down, topping or lopping of trees, as the case may be; and

(b) permission shall be construed as a reference to listed building consent, conservation area consent or consent under a tree preservation order, as the case may be.

Preliminary information and notice

4 . - (1) In the case of an appeal, the planning authority shall, not later than 2 weeks after receiving notification of the appeal from the Secretary of State, send to the Secretary of State and to the appellant a completed appeals questionnaire and a copy of all documents relating to the case which are referred to in the completed appeals questionnaire (other than any written representations which the maker thereof has asked to be treated as confidential).

(2) The Secretary of State, if he determines that an inquiry is to be held, shall

thereafter give written notice to that effect ("the relevant notice") to the planning authority and shall send a copy of that notice to the applicant and to any statutory party.

(3) Where-

(a) the Secretary of State has given to the planning authority a direction restricting the grant of permission for the development for which the application was made or a direction as to how the application is to be determined; or

(b) any government department or local authority have expressed in writing to the planning authority the view that the application should not be granted either wholly or in part, or should be granted only subject to conditions, or, in the case of an application for consent under a tree preservation order, should be granted together with a direction requiring the replanting of trees or in the case of any application that it should be granted,

the planning authority shall inform the Secretary of State, government department or local authority concerned, as the case may be, that such direction or expression of view is relevant to the application or appeal and the Secretary of State, government department or local authority, as the case may be, shall (unless they have already done so) thereupon furnish to the planning authority a statement in writing of the reasons for the direction or expression of view.

Procedure where the Secretary of State causes pre-inquiry meeting to be held
5 . - (1) The Secretary of State may cause a pre-inquiry meeting to be held if it appears to him desirable and where he does so the following paragraphs apply.

(2) The Secretary of State shall serve with the relevant notice a notification of his intention to cause a meeting to be held and, in the case of a referred application, a statement of the matters about which he particularly wishes to be informed for the purposes of his consideration of the application; and in that case where any government department or local authority have expressed in writing to the Secretary of State a view which is mentioned in rule 4(3)(b), the Secretary of State shall set this out in his statement and shall supply a copy of the statement to the government department or local authority concerned.

(3) The applicant and the planning authority shall, not later than 8 weeks after the relevant date (or such other date as the person appointed for the purpose of paragraph (10) of this rule, after considering any representations from such parties as he thinks fit, may determine), each serve an outline statement on the other and on the Secretary of State.

(4) Where any direction has been given or view expressed as referred to in rule 4(3), the planning authority shall-

(a) include in or attach to their outline statement the terms of that direction or, as the case may be, that statement of view, and of the statement of reasons relating to it; and

(b) within the period mentioned in paragraph (3) of this rule, supply a copy of their statement and of any such attachments to the person or body concerned.

(5) The Secretary of State may in writing require any other person who has notified him of an intention or a wish to appear at the inquiry to serve, not later than 4 weeks

after being so required (or such other date as the person appointed for the purpose of paragraph (10) of this rule, after considering any representations from such parties as he thinks fit, may determine), an outline statement on him, the applicant and the planning authority.

(6) Where a person is required to serve an outline statement of case in terms of paragraph (5) of this rule, the Secretary of State may require, by such date as he may determine, service on such person by any other party of the outline statement of that other party.

(7) The meeting (or, where there is more than one, the first meeting) shall be held not later than 16 weeks after the relevant date.

(8) The Secretary of State shall give not less than 3 weeks' written notice of the meeting to the applicant, the planning authority, any person known at the date of the notice to be entitled to appear at the inquiry and any other person whose presence at the meeting seems to him to be desirable; and he may require the planning authority to take, in relation to notification of the meeting, one or more of the steps which he may under rule 15(6)(b) or (c) require them to take in relation to notification of the inquiry.

(9) The Secretary of State shall cause to be published in a newspaper circulating in the locality in which the land is situated a notice of his intention to cause a meeting to be held.

(10) A person appointed by the Secretary of State for the purpose shall preside and shall determine the matters to be discussed and the procedure to be followed at the meeting.

(11) Where a pre-inquiry meeting has been held pursuant to paragraph (1) of this rule, a further meeting may be held and, in that event, that person so appointed shall arrange for such notice to be given as appears to him necessary; and paragraph (10) of this rule shall apply to such a meeting.

Further power of reporter to hold pre-inquiry meetings

6. - (1) Where no pre-inquiry meeting is held pursuant to rule 5, the reporter may hold one if he thinks it desirable.

(2) The reporter shall arrange for not less than 2 weeks' written notice of a meeting he proposes to hold under paragraph (1) of this rule to be given to the applicant, the planning authority, any person known at the date of the notice to be entitled to appear at the inquiry and any other person whose presence at the meeting appears to him to be desirable.

(3) The reporter where he proposes to hold a meeting under paragraph (1) of this rule-

(a) may require, by such date as he may determine, the applicant, the planning authority or any other person who has notified an intention or a wish to appear at the inquiry to serve an outline statement on the applicant, the planning authority or such other person, as the case may be, and on the Secretary of State;

(b) shall preside and shall determine the matters to be discussed and the procedure to be followed at the meeting.

Service of statements of case - planning authority

7 . - (1) Subject to paragraphs (3) and (4) of this rule, the planning authority shall, not later than-

(a) where no pre-inquiry meeting is held pursuant to rule 5, 8 weeks after the relevant date, or

(b) where a pre-inquiry meeting is held pursuant to rule 5, 4 weeks after the conclusion of that meeting,

and in any case not later than 4 weeks before the date fixed for the holding of the inquiry, serve a statement of case on the Secretary of State, the applicant and any statutory party.

(2) The planning authority shall include in or attach to their statement of case-

(a) except insofar as already provided, copies of all representations received by them in relation to the application or appeal;

(b) where relevant, the conditions (if any) which they presently consider should be imposed in the event that the Secretary of State decides that permission be granted; and

(c) where a direction is given or a view expressed in terms of rule 4(3) (unless already contained in an outline statement), the terms of that direction or, as the case may be, that statement of view, and of the statement of reasons relating to it, and in that case shall serve a copy of the statement of case on the person or body concerned.

(3) Where, having regard to the number of representations received in the case of an application or appeal relating to a development to which section 34 of the Act applies, the planning authority consider it expedient, they may, instead of supplying or serving copies of all such representations as required by paragraph (2)(a) of this rule, include a summary of those representations in their statement of case.

(4) Where, having regard to the number of statutory parties and the length of the planning authority's statement of case, the Secretary of State or a reporter considers it expedient, he may, at the request of the planning authority, authorise them, instead of serving a copy of that statement of case and of the representations on all statutory parties on whom any document requires to be served in accordance with rule 13(3), to give notice to all statutory parties (whether or not that party is required to serve a statement of case in terms of rule 9(1)) stating the time and place at which the statement of case and the representations may be inspected by all statutory parties; and the authority shall afford them a reasonable opportunity to inspect and, where practicable, to take copies of the statement and the representations.

Service of statements of case - applicant

8 . - (1) The applicant shall, not later than-

(a) where no pre-inquiry meeting is held pursuant to rule 5, 8 weeks after the relevant date; or

(b) where a pre-inquiry meeting is held pursuant to rule 5, 4 weeks after the conclusion of that meeting,

and in any case not later than 4 weeks before the date fixed for the holding of the inquiry, serve a statement of case on the Secretary of State, the planning authority and any statutory party.

(2) Rule 7(4) above shall apply, substituting references to the applicant for the references to the planning authority, in relation to the applicant's statement of case.

Service of statements of case - other persons

9 . - (1) The Secretary of State or a reporter may in writing require any other person who has notified him of an intention or a wish to appear at an inquiry to serve a statement of case, within 4 weeks of being so required, and in any event not later than 4 weeks before the date fixed for the holding of the inquiry, on the applicant, the planning authority, the Secretary of State and any statutory party.

(2) The Secretary of State or a reporter, as the case may be, shall supply any person from whom he requires a statement of case in accordance with paragraph (1) of this rule with a copy of the applicant's and the planning authority's statement of case and shall inform that person of the name and address of every person on whom his statement of case is required to be served.

(3) Rule 7(4) above shall apply, substituting references to the person required to serve a statement of case for the references to the planning authority, in relation to any statement of case required to be served under this rule.

Service of amended statements of case

10 . Where prior to the commencing of the inquiry any person who has served a statement of case in accordance with rule 7, 8 or 9-

(a) intends to put forward at the inquiry a case materially different from the case set out in the statement of case; or

(b) considers that conditions other than those proposed by the planning authority in accordance with rule 7(2)(b) ought to be imposed; or

(c) is required by the Secretary of State or a reporter to provide such further information about the matters contained in the statement as may be specified,

that person shall provide the Secretary of State, or as the case may be the reporter, with an amended or additional statement and shall, at the same time, send a copy to any other person on whom the statement of case has been served.

Statement of reasons for direction by Secretary of State

11 . In the case of a referred application-

(a) the Secretary of State shall, where this has not already been done, not later than 4 weeks after the relevant date serve or cause to be served on the applicant, on the planning authority and on all statutory parties, a written statement of the reasons for his direction that the application be referred to him and of any matters which seem to him to be likely to be relevant to his consideration of the application; and

(b) where a government department have expressed in writing to the Secretary of State the view that the application should not be granted either wholly or in part, or should be granted only subject to conditions, or, in the case of an application for consent under a tree preservation order, should be granted

together with a direction requiring the replanting of trees or, in the case of any application, that it should be granted, the Secretary of State shall include this expression of view in his statement and shall supply a copy of the statement to the government department concerned.

Precognitions

12 . - (1) A person entitled to appear at an inquiry who proposes to give, or to call another person to give, evidence at the inquiry by reference to a precognition shall send a copy of the precognition to the reporter together with, subject to paragraph (2) of this rule, a written summary.

(2) A written summary shall not be required in relation to a precognition which contains fewer than 2000 words.

(3) The precognition and any summary shall be sent to the reporter-

(a) not later than 2 weeks before the date fixed for the holding of the inquiry; or

(b) by such other date as the reporter may specify.

(4) Where the applicant or the planning authority send a copy of the precognition to a reporter in accordance with paragraph (1) of this rule they shall at the same time send a copy of that precognition and any summary to the planning authority or the applicant, as the case may be, and to any statutory party; and where any other party so sends such a copy he shall at the same time also send a copy to the applicant, the planning authority and any statutory party.

(5) Where a written summary is provided in accordance with paragraph (1) of this rule, only that summary shall be read out at the inquiry, unless the reporter permits or requires otherwise.

(6) Any person required by this rule to send a copy of a precognition to any other person shall send with it a copy of the whole, or the relevant part, of any document referred to in it, unless a copy of the document or part of the document in question is already available for inspection pursuant to rule 13(2).

(7) The planning authority shall afford to any person who so requests a reasonable opportunity to inspect and, where practicable, take copies of any precognition, summary or document sent to or by them in accordance with this rule.

Service of statements of case, documents and precognitions

13 . - (1) Any person who serves a statement of case on the planning authority shall not be obliged to serve with it a copy of any document, or of the relevant part of any document, if a copy of the document or part of the document in question is already available for inspection pursuant to paragraph (2) of this rule.

(2) The planning authority shall afford to any person who so requests a reasonable opportunity to inspect and, where practicable, take copies of any statement of case (or any part thereof) or other document which, or a copy of which, has been served on them in accordance with this rule or rule 7, 8 or 9 of their statement of case (or any part thereof); and shall specify in their statement of case the time and place at which the opportunity will be afforded.

(3) Where under these Rules, any precognition, summary or document is required to be served by a person on a statutory party that obligation of service shall apply only in respect of a statutory party who has been required to serve a statement of case in

terms of rule 9(1) and the reporter may specify the period within which the obligation must be fulfilled.

(4) Where any party intends to rely on or put in evidence any documents, that party shall, by the date 4 weeks before the day fixed for the holding of the inquiry, provide copies of those documents (or the relevant parts of those documents) to the planning authority and the Secretary of State; and where that party is the planning authority, such copies shall be provided to the Secretary of State and the planning authority shall, for the purposes of compliance by them with the duty imposed by paragraph (2) of this rule in respect of their statement of case, make such statement available by said date.

(5) The reporter, on the application of a party, may vary any time limit imposed on that party by rule 7, 8, 9 or 12 above or by paragraph (4) of this rule.

Notification of appointment of assessor

14 . Where the Secretary of State appoints an assessor, he shall notify every person entitled to appear at the inquiry of the name of the assessor and of the matters on which he is to advise the reporter.

Date and notification of inquiry

15 . - (1) The date fixed by the Secretary of State for the holding of an inquiry shall be, unless he considers such a date impracticable, not later than-

(a) 24 weeks after the relevant date; or

(b) in a case where a pre-inquiry meeting is held pursuant to rule 5, 8 weeks after the conclusion of that meeting.

(2) Where the Secretary of State considers it impracticable to fix a date in accordance with paragraph (1), the date fixed shall be the earliest date which he considers to be practicable.

(3) Subject to paragraphs (1) and (2) of this rule, a date, time and place for the holding of the inquiry shall be fixed by the Secretary of State who shall give not less than 4 weeks' notice in writing of such date, time and place to-

(a) the applicant;

(b) the planning authority;

(c) all statutory parties at the addresses furnished by them; and

(d) any person to whom notification is required to be given under section 265(3) of the Act (notification of local inquiries).

(4) With the consent in writing of the applicant and of the planning authority the Secretary of State may give such lesser period of notice than that specified in paragraph (3) of this rule as may be agreed with them and in that event he may specify a date for service of the statements or other documents referred to in rule 7, 8 or 9 other than the date prescribed in those rules.

(5) The Secretary of State may vary the date, time and place fixed for the holding of the inquiry and he shall give such notice of the variation to the parties referred to in paragraph (3) of this rule as may appear to him to be reasonable in the circumstances.

(6) Without prejudice to the foregoing provisions of this rule and, where the Secretary of State has not already done so, he may require the planning authority to take one or more of the following steps-

- (a) not less than 2 weeks before the date fixed for the holding of the inquiry, to publish in one or more newspapers circulating in the locality in which the land is situated such notices of the inquiry as he may direct;**
- (b) to serve notice of the inquiry in such form and on such persons or classes of persons as he may specify;**
- (c) to post such notices of the inquiry as he may direct in a conspicuous place or places near to the land,**

but the requirements as to the period of notice contained in paragraph (3) of this rule shall not apply to any such notices.

Appearances at inquiry

16 . - (1) The persons entitled to appear at the inquiry shall be-

- (a) the applicant;**
- (b) the planning authority;**
- (c) where the Secretary of State has given a direction restricting the grant of permission for the development for which the application was made or a direction as to how the application is to be determined, a representative of the Secretary of State;**
- (d) where a government department have expressed a view in writing on the application and the planning authority have included this in their statement of case, a representative of that department;**
- (e) any local authority;**
- (f) all statutory parties;**
- (g) any person on whom the Secretary of State has required notice to be served under rule 15(6)(b);**
- (h) any other person to whom notification has been given under section 265(3) of the Act (notification of local inquiries).**

(2) Any other person may appear at the inquiry at the discretion of the reporter.

(3) Any person entitled or permitted to appear may do so on his own behalf or be represented by counsel, solicitor or any other person.

(4) Where there are two or more persons having a similar interest in the matter under inquiry, the reporter may allow one or more persons to appear for the benefit of some or all persons so interested.

Representatives of the Secretary of State or government departments at inquiry

17 . - (1) Where either-

(a) the Secretary of State has given a direction restricting the grant of permission for the development for which the application was made or a direction as to how the application is to be determined; or

(b) any government department have expressed in writing to the Secretary of State or to the planning authority a view on the application,

any of the persons mentioned in rule 16(1) may, not later than 2 weeks before the date of the inquiry, apply in writing to the Secretary of State for a representative of the Secretary of State or government department concerned to be made available at the inquiry.

(2) Where an application is made to the Secretary of State under paragraph (1) of this rule he shall make a representative of his department available to attend the inquiry, or, as the case may be, transmit the application to the other government department concerned who shall make a representative of that department available to attend the inquiry.

(3) A representative who, in pursuance of this rule, attends an inquiry shall state the reasons for the Secretary of State's direction, or, as the case may be, the reasons for the view expressed by the department which he represents and shall give evidence and be subject to cross-examination to the same extent as any other witness.

(4) Nothing in this rule shall require a representative of the Secretary of State or a government department to answer any question which in the opinion of the reporter is directed to the merits of government policy and the reporter shall disallow any such question.

Representatives of local authorities at inquiry

18 . - (1) Where any local authority have expressed in writing to the planning authority the view that the application should not be granted wholly or in part or should be granted only subject to conditions, any of the persons mentioned in rule 16(1) may, not later than 14 days before the date of the inquiry, apply in writing to the Secretary of State for a representative of the authority concerned to be made available to attend the inquiry.

(2) Where an application is made to the Secretary of State under paragraph (1) of this rule he shall transmit the application to the authority concerned, who shall make a representative of the authority available to attend the inquiry.

(3) A representative of a local authority who, in pursuance of this rule, attends an inquiry shall state the authority's reasons for the view expressed by them and shall give evidence and be subject to cross-examination to the same extent as any other witness.

Procedure at inquiry

19 . - (1) Except as otherwise provided in these Rules, the procedure at the inquiry shall be such as the reporter shall in his discretion determine.

(2) The reporter shall state at or before the commencement of the inquiry the procedure which, subject to consideration of any submission by the parties, he proposes to adopt.

(3) Unless in any particular case the reporter otherwise determines, the applicant shall begin and shall have the right of final reply; and other persons entitled or permitted to appear shall be heard in such order as the reporter may determine.

(4) Subject to paragraph (5) of this rule, the applicant, the planning authority and the statutory parties shall be entitled to call evidence and to cross-examine persons giving evidence and to make closing statements but any other person appearing at the inquiry may do so only to the extent permitted by the reporter.

(5) The reporter may refuse to permit-

- (a) the giving or production of evidence;**
- (b) the cross-examination of persons giving evidence; or**
- (c) the presentation of any other matter,**

which he considers to be irrelevant or repetitious.

(6) The reporter shall not require or permit the giving or production of any evidence whether written or oral, which would be contrary to the public interest; but save as aforesaid and without prejudice to rule 17(4) and section 265(4) to (7) of the Act (evidence at local inquiries) any evidence may be admitted at the discretion of the reporter, who may direct that documents tendered in evidence may be inspected by any person entitled or permitted to appear at the inquiry and that facilities be afforded him to take or obtain copies thereof.

(7) The reporter may at the inquiry allow any party to alter or add to the case contained in any statement served under rule 7(1), 8(1) or 9(1) or to any list of documents which accompanied such statement, so far as may be necessary for the purpose of determining the questions in dispute between the parties, but shall (if necessary by adjourning the inquiry) give the applicant or the planning authority, as the case may be, and all statutory parties an adequate opportunity of considering any such alterations or additions.

(8) If any person entitled to appear at the inquiry fails to do so, the reporter may proceed with the inquiry at his discretion.

(9) The reporter shall be entitled (subject to disclosure thereof at the inquiry) to take into account any written representations or statements received by him before or during the inquiry from any person, but shall circulate such documents in advance of the inquiry where he considers this to be practicable.

(10) The reporter may from time to time adjourn the inquiry and, if the date, time and place of the adjourned inquiry are announced before the adjournment, no further notice shall be required.

Site inspections

20 . - (1) The reporter may at any time make an unaccompanied inspection of the land without giving notice of his intention to the persons entitled or permitted to appear at the inquiry.

(2) Subject to the provisions of this rule, the reporter may, and shall if so requested by the applicant or the planning authority before or during the inquiry, inspect the land during or after the close of the inquiry in the company of such of the persons entitled under paragraph (3) of this rule to accompany him as desire to do so.

(3) Where the reporter intends to make an inspection by virtue of paragraph (2) of this rule, he shall during the inquiry announce the date and time at which he proposes to do so and the applicant, the planning authority, all statutory parties and any other party to the inquiry shall be entitled to accompany him on any such inspection.

(4) The reporter shall not be bound to defer his inspection if any person entitled to accompany him is not present at the time appointed.

Procedure after inquiry

21 . - (1) After the close of the inquiry, the reporter shall make a report in writing to the Secretary of State which shall include his findings of fact, his conclusions and his recommendations or his reasons for not making any recommendations.

(2) Where an assessor has been appointed, he may (and if so required by the reporter, shall), after the close of the inquiry, make a report in writing to the reporter in respect of the matters on which he was appointed to advise.

(3) Where an assessor makes a report in accordance with paragraph (2), the reporter shall append it to his own report and shall state in his own report how far he agrees or disagrees with the assessor's report and, where he disagrees with the assessor, his reasons for that disagreement.

(4) Where the Secretary of State-

(a) differs from the reporter on a finding of fact; or

(b) after the close of the inquiry proposes to take into consideration any new evidence (including expert opinion on a matter of fact) or any new issue of fact (not being a matter of government policy) which was not raised at the inquiry,

and by reason thereof is disposed to disagree with a recommendation made by the reporter, he shall not come to a decision which is at variance with any such recommendation without first notifying the applicant, the planning authority and all statutory parties who appeared at the inquiry of his disagreement and the reasons for it and affording them an opportunity of-

(i) making representations thereon in writing within 3 weeks; or

(ii) if the Secretary of State has received new evidence or taken into consideration any new issue of fact not being a matter of government policy, asking within 3 weeks for the reopening of the inquiry.

(5) The Secretary of State may in any case if he thinks fit cause the inquiry to be reopened, and shall cause it to be reopened if asked to do so in accordance with paragraph (4) of this rule, and if the inquiry is reopened, paragraph (3) to (6) of rule 15 shall apply to the reopened inquiry with the substitution in paragraph (3) of the words "3 weeks" for the words "4 weeks".

Notification of decision

22 . - (1) The Secretary of State shall notify his decision and his reasons therefor in writing to the applicant, the planning authority and the statutory parties and to any person who, having appeared or been represented at the inquiry, has asked to be notified of the decision.

(2) Where a copy of the report is not sent with the notification of the decision, the notification shall be accompanied by a summary of the reporter's conclusions and recommendations; and if any person entitled to be notified of the Secretary of State's decision under paragraph (1) of this rule has not received a copy of the report, he shall be supplied with a copy thereof on written application made to the Secretary of State

within 6 weeks from the date of his decision.

(3) For the purpose of this rule "report" means the report submitted to the Secretary of State (including the assessor's report, if any) but does not include documents appended to the report but any person entitled to be notified of the Secretary of State's decision under paragraph (1) of this rule may apply to the Secretary of State in writing within 6 weeks of the notification to him of the decision or the supply to him of the report, whichever is the later, for an opportunity of inspecting such documents, and the Secretary of State shall afford him an opportunity accordingly.

Allowing further time

23 . 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.

Service of notices by post

24 . Notices or documents required or authorised to be served or sent under the provisions of any of these Rules may be sent by post.

Revocation and savings provision

25 . - (1) Subject to paragraph (2) below, the Town and Country Planning (Inquiries Procedure) (Scotland) Rules 1980[2] are revoked.

(2) The said Rules of 1980 shall continue to apply to any application or appeal in respect of which notification by the Secretary of State of his intention to proceed by inquiry was given prior to the coming into force of these Rules.

Mackay of Drumadoon

Lord Advocate

Lord Advocate's Chambers

6th March 1997

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend and replace the Town and Country Planning (Inquiries Procedure) (Scotland) Rules 1980, which are revoked, subject to the transitional provisions contained in rule 25(2).

The Rules prescribe the procedures to be followed at local inquiries held for the purpose of any application referred to the Secretary of State or any appeal made to the Secretary of State under the Town and Country Planning (Scotland) Act 1997, the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and the Planning (Hazardous Substances) (Scotland) Act 1997, other than appeals which fall to be determined by a person appointed for the purpose by the Secretary of State rather than the Secretary of State himself.

The principal changes made by these Rules as are as follows:-

(a) the Rules no longer apply to the conduct of hearings for the purposes of those

Acts. A non-statutory Code of Practice for Hearings has been published separately by The Scottish Office;

(b) in the case of an appeal, the planning authority must complete a questionnaire and return it to the Secretary of State, together with copies of documents relating to the case;

(c) in order to make more effective use of pre-inquiry time the Rules require that, wherever possible, the timescales for pre-inquiry procedures, for example the submission and circulation of parties' statements of case, are fixed by forward reference from the date when it is decided that the case will go to inquiry - the "relevant date";

(d) rules 5 and 6 provide a statutory framework for the holding of pre-inquiry meetings;

(e) rule 7(2)(b) requires planning authorities to include as part of their statement of case a list of the conditions (if any) which they presently consider should be imposed on any grant of planning permission by the Secretary of State;

(f) rule 8 places a statutory obligation on the applicant to disclose at an early stage the principal basis of his case. In addition, rule 9 enables the Secretary of State or the reporter to require any other party who has notified an intention to attend the inquiry to submit a statement of case prior to the commencement of that inquiry;

(g) where a party intends to give evidence at an inquiry by reference to a precognition - a written statement of the evidence they shall give - and that precognition exceeds 2,000 words, rule 12 imposes a statutory requirement on that party to submit a written summary of the precognition. Further, where a summary is provided only that summary shall be read out at the inquiry, although parties may be questioned on the content of their whole precognition;

(h) rule 14 provides for the Secretary of State to notify the appointment of an assessor to persons entitled to appear at the inquiry;

(i) rule 15 provides that the start date for the inquiry shall be not later than 24 weeks after the relevant date or, where a pre-inquiry meeting is held, not later than 8 weeks after the conclusion of that meeting, unless the Secretary of State considers such a date impracticable;

(j) rule 19 provides that the applicant shall normally begin and shall have the final right of reply at the inquiry. This rule also clarifies the reporter's powers to restrict the giving of evidence which is repetitious or irrelevant;

(k) under rule 21 the reporter is no longer obliged to circulate in draft Part I of his report to the Secretary of State.

There are also a number of minor and drafting amendments, as well as necessary updating of references to relevant legislation.

A copy of the appeals questionnaire referred to in these rules may be obtained from the Scottish Office Inquiry Reporters Unit, 2 Greenside Lane, Edinburgh EH1 3AG.

Notes:

[1] 1992 c.53. [back](#)

[2] 1997 c.8. [back](#)

[3] S.I. 1984/467. [back](#)

[4] S.I. 1993/323, amended by S.I. 1994/2567. [back](#)

[5] 1997 c.10. [back](#)

[6] 1997 c.9. [back](#)

[7] 1994 c.39. [back](#)

[8] S.I. 1992/224, to which there are no relevant amendments. [back](#)

[9] S.I. 1980/1676. [back](#)

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