

Statutory Instrument 1997 No. 750 (S.73)

The Town and Country Planning Appeals (Determination by Appointed Person) (Inquiries Procedure) (Scotland) Rules 1997

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STATUTORY INSTRUMENTS

1997 No. 750 (S.73)

TRIBUNALS AND INQUIRIES

The Town and Country Planning Appeals (Determination by Appointed Person) (Inquiries Procedure) (Scotland) Rules 1997

Made

6th March 1997

Laid before Parliament

19th March 1997

Coming into force

27th May 1997

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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 Appeals (Determination by Appointed Person) (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 any local inquiry held by a person appointed by the Secretary of State for the purpose of appeals to the Secretary of State where such appeals fall to be determined by that person instead of by the Secretary of State by virtue of the powers contained in Schedule 4 to the Act, Schedule 3 to the Listed Buildings Act or the Schedule to the Hazardous Substances Act or any regulations made thereunder.

(2) These Rules shall not apply where the Secretary of State, in exercise of his powers under paragraph 3(1) or 7 of Schedule 4 to the Act, or of paragraph 3(1) of Schedule 3 to the Listed Buildings Act or the Schedule to the Hazardous Substances Act, as the case may

be, directs 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, or as the case may be, not be begun or proceeded with.

(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];
- "the appeal" means the appeal to which the inquiry relates;
- "appeals questionnaire" means a document in the form supplied by the Secretary of State for the purpose of proceedings under these Rules;
- "the application" means the application giving rise to the appeal to which the inquiry relates;
- "the appointed person" means the person appointed by the Secretary of State to determine the appeal;
- "assessor" means a person appointed by the Secretary of State to sit with the appointed person at an inquiry or re-opened inquiry to advise the appointed person 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 Building 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 that 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 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;

"relevant date" means the date of the written notification to the planning authority that an inquiry is to be held;

"relevant notice" means the written notification to the planning authority that an inquiry is to be held;

"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) The planning authority shall, not later than 2 weeks after receiving notification of an 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 appellant 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 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.

Notification of identity of appointed person

5 . - (1) The Secretary of State shall give to the appellant, to the planning authority and to all statutory parties written notice informing them of the name of the appointed person.

(2) Where the Secretary of State appoints another person instead of the person previously appointed and it is not practicable to notify the new appointment before the inquiry is held, the person holding the inquiry shall, at its commencement, announce his name and the fact of his appointment.

Pre-inquiry meetings

6. - (1) The appointed person may hold a pre-inquiry meeting if he thinks it desirable.

(2) The appointed person 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 appellant, 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 appointed person where he proposes to hold a meeting under paragraph (1) of this rule-

(a) may require, by such date as he may determine, the appellant, 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 appellant, 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 8 weeks after the relevant date and in any event 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 appellant 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 appeal;

(b) where relevant, the conditions (if any) which they presently consider should be imposed in the event that permission is 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 terms 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 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 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 12(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 - appellant

8 . - (1) The appellant shall, not later than 8 weeks after the relevant date, and in any event 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 appellant for the references to the planning authority, in relation to the appellant's statement of case.

Service of statements of case - other persons

9 . - (1) The Secretary of State 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 appellant, the planning authority, the Secretary of State and any statutory party.

(2) The Secretary of State 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 appellant'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 to provide such further information about the matters contained in the statement as may be specified,

that person shall provide the Secretary of State 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.

Precognitions

11 . - (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 appointed person 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 appointed person-

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

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

(4) Where the appellant or the planning authority send a copy of a precognition to the appointed person 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 appellant, 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 appellant, 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 appointed person 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 12(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

12 . - (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 or 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 appointed person 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 appointed person, on the application of a party, may vary any time limit imposed on that party by rule 7, 8, 9 or 11 above or by paragraph (4) of this rule.

Notification of appointment of assessor

13 . 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 appointed person.

Date and notification of inquiry

14 . - (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 24 weeks after the relevant date.

(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 appellant;
- (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 appellant 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

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

- (a) the appellant;
- (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 14(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 appointed person.

(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 appointed person 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

16 . - (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 15(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 appointed person is directed to the merits of government policy and the appointed person shall disallow any such question.

Representatives of local authorities at inquiry

17 . - (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 15(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 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.

Appointed person may act in place of the Secretary of State

18 . The appointed person may in place of the Secretary of State take such steps as the Secretary of State is required or enabled to take by virtue of rule 7(4), 9(1) or (2), 10, 14, 16 or 23, and where an appointed person requires further information pursuant to rule 10(c) that information shall be sent to him.

Procedure at inquiry

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

(2) The appointed person 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 appointed person otherwise determines, the appellant 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 appointed person may determine.

(4) Subject to paragraph (5) of this rule, the appellant, 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 appointed person.

(5) The appointed person 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 appointed person 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 16(4) and section 265(4) to (7) of the Act (evidence at local inquiries) any evidence may be admitted at the discretion of the appointed person, 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 appointed person 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 appellant 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 appointed person may proceed with the inquiry at his discretion.

(9) The appointed person 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 appointed person 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 appointed person 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 appointed person may, and shall if so requested by the appellant 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 appointed person 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 appellant, 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 appointed person 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) Where an assessor has been appointed, he may (and if so required by the appointed person, shall), after the close of the inquiry, make a report in writing to the appointed person in respect of the matters on which he was appointed to advise and, where he does so, the appointed person shall state in his notification of his decision that such a report was made.

(2) If, after the close of the inquiry, the appointed person 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 which he considers to be material to his decision, he shall not come to a decision without first notifying the appellant, the planning authority and any statutory party who appeared at the inquiry of the substance of the new evidence or of the new issue of fact and affording them an opportunity of making representations thereon in writing within 3 weeks or of asking within 3 weeks for the reopening of the inquiry.

(3) The appointed person 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 (2) of this rule; and if the inquiry is reopened rule 14(3) to (6) of these Rules shall apply to the reopened inquiry as it applied to the original inquiry, with the substitution of the words "3 weeks" for the words "4 weeks".

Notification of decision

22 . - (1) The appointed person shall notify his decision and his reasons therefor in writing to the appellant, 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) Any person entitled to be notified of the decision of the appointed person 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 for an opportunity of inspecting any documents listed in the notification, 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 Appeals (Determination by Appointed Person) (Inquiries Procedure) (Scotland) Rules 1980[9] and the Town and Country Planning Appeals (Determination by Appointed Person) (Inquiries Procedure) (Scotland) Amendment Rules 1987[10] are revoked.

(2) The said Rules of 1980, as amended, shall continue to apply to any 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 are complementary to the Town and Country Planning (Inquiries Procedure) (Scotland) Rules 1997. They amend and replace the Town and Country Planning Appeals (Determination by Appointed Person) (Inquiries Procedure) (Scotland) Rules 1980, as amended, 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 in connection with appeals made to the Secretary of State where such appeals fall to be determined by a person appointed for the purpose by the Secretary of State, in accordance with regulations made under paragraph 1 of Schedule 4 to the Town and Country Planning (Scotland) Act 1997 and paragraph 1 of Schedule 3 to the Planning (Listed Buildings and Buildings in Conservation Areas) (Scotland) Act 1997 and of the Schedule to the Planning (Hazardous Substances) (Scotland) Act 1997.

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

(a) the Rules no longer apply to the conduct of hearings held for purposes of these Acts. A non-statutory Code of Practice for Hearings has been published separately by The Scottish Office;

(b) 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) rule 6 provides 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 appellant to disclose at an early stage the principal basis of his case. In addition, rule 9 enables the Secretary of State 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 11 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 13 provides for the Secretary of State to notify the appointment of an assessor to persons entitled to appear at the inquiry;

(i) rule 14 provides that the start date for the inquiry shall be not later than 24 weeks after the relevant date, unless the Secretary of State considers such a date impracticable;

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

There are also a number of minor and drafting amendments, as well as necessary updating of references to the 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. 1980/1677. [back](#)

[10] S.I. 1987/1522. [back](#)

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