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STATUTORY INSTRUMENTS

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**2004 No. 3305**

The Access to the Countryside (Means of  
Access, Appeals) (England) Regulations 2004

PART 3

DETERMINATION OF APPEALS

CHAPTER III

*Appeals to be determined by way of an inquiry*

**Procedure where the Secretary of State or inspector causes a pre-inquiry meeting to be held**

25.—(1) The Secretary of State or the inspector shall hold a pre-inquiry meeting if it appears to her to be necessary, and any such meeting (or, where there is more than one, the first such meeting) shall be held within sixteen weeks of the start date or at the earliest practicable time thereafter.

(2) Where the Secretary of State or the inspector decides to hold such a meeting she shall notify in writing the appellant and the access authority of her intention to hold such a meeting.

(3) The Secretary of State or the inspector shall give not less than two weeks' written notice of the pre-inquiry meeting to –

- (a) the appellant and the access authority; and
- (b) any other person whose presence at the pre-inquiry meeting she considers desirable.

(4) The inspector –

- (a) shall preside at the pre-inquiry meeting;
- (b) shall determine the matters to be discussed and the procedure to be followed;
- (c) may require any person present at the pre-inquiry meeting who he considers is behaving in a disruptive manner to leave; and
- (d) may refuse to permit that person to return or to attend any further pre-inquiry meeting or may permit him to return or attend only on such conditions as he may specify.

(5) Where a pre-inquiry meeting is held pursuant to paragraph (1), the inspector may hold a further pre-inquiry meeting and he shall arrange for such notice to be given of a further pre-inquiry meeting as appears to him necessary; and paragraph (4) shall apply to such a pre-inquiry meeting.

(6) If the Secretary of State or the inspector requests any further information at the pre-inquiry meeting from the appellant, the access authority or any other person present at that meeting, the person required to provide the information shall ensure that two copies of it have been received by the Secretary of State or the inspector, as the case may be, within four weeks of the conclusion of the pre-inquiry meeting; and the Secretary of State shall, as soon as practicable after receipt of any such information, send a copy of it to the other parties entitled to appear at the inquiry.

**Inquiry timetable**

26.—(1) Where a pre-inquiry meeting is held pursuant to regulation 25, the inspector shall arrange a timetable for the proceedings.

(2) The inspector shall specify in the timetable arranged pursuant to this regulation a date by which any proof of evidence as mentioned in regulation 28 shall be sent to the Secretary of State.

**Date and notification of inquiry**

27.—(1) The date fixed by the Secretary of State for the holding of an inquiry shall, unless she considers such a date to be impracticable, be not later than –

- (a) subject to sub-paragraph (b), twenty-two weeks after the start date; or
- (b) where a pre-inquiry meeting is held pursuant to regulation 25, eight 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 she considers to be practicable after the expiry of the relevant period mentioned in that paragraph.

(3) Unless the Secretary of State agrees a lesser period of notice with the appellant and the access authority, she shall give to the appellant, the access authority and every interested person not less than four weeks' written notice of the date, time and place fixed by her for the holding of an inquiry.

(4) The Secretary of State may –

- (a) change the date fixed for the holding of an inquiry (whether or not the date as changed is within the relevant period mentioned in paragraph (1)); or
- (b) change the time or place for the holding of an inquiry.

(5) Where, under paragraph (4)(a), the Secretary of State changes the date for the holding of an inquiry, paragraph (3) shall apply to the new date as it applied to the date originally fixed, and where, under paragraph (4)(b), she changes the time or place for the holding of an inquiry, she shall give such notice of such change as appears to her to be reasonable.

(6) The Secretary of State–

- (a) may require the access authority to publish, not less than two weeks before the date fixed for the inquiry, a notice of the inquiry in one or more newspapers circulating in the locality in which the appeal land is situated;
- (b) may require the access authority to affix a notice of the inquiry firmly to the appeal land or to some object on or near the land in such manner as to be readily visible to and legible by members of the public; and the access authority shall not remove the notice, or cause it to be removed, for such period before the hearing as the Secretary of State may specify; and
- (c) shall ensure that the Planning Inspectorate Executive Agency makes a notice of the inquiry available for inspection on a website which it maintains until the appeal is determined.

(7) Every notice of an inquiry referred to in paragraph (6) shall contain –

- (a) a statement of the date, time and place of the inquiry and of the powers enabling the Secretary of State to determine the appeal in question; and
- (b) a brief description of the appeal land and of the grounds of appeal.

(8) A notice referred to in paragraph (6) may relate to more than one inquiry.

**Proofs of evidence**

28.—(1) Subject to paragraph (2), where the appellant or the access authority propose to give, or to call another person to give, evidence at the inquiry by reading a proof of evidence he or they shall

send two copies of the proof of evidence, together with any written summary accompanying it, to the Secretary of State; and the Secretary of State shall, as soon as practicable after receipt, send to the appellant or the authority, as appropriate, a copy of the other's proof of evidence together with any written summary accompanying it.

(2) A written summary shall be required where the proof of evidence in question exceeds one thousand five hundred words.

(3) The appellant and the access authority shall ensure that the proof of evidence and any summary shall be received by the Secretary of State no later than –

- (a) four weeks before the date fixed for the holding of the inquiry; or
- (b) where a timetable has been arranged pursuant to regulation 26 which specifies a date by which the proof of evidence and any summary shall be received by the Secretary of State, that date.

(4) Where a written summary is provided in accordance with paragraph (1), only that summary shall be read at the inquiry, unless the inspector permits or requires otherwise.

(5) Any person required by this regulation to send copies of a proof of evidence to the Secretary of State shall send with them the same number of copies of the whole (or the relevant part) of any document referred to in the proof of evidence.

### **Statement of common ground**

**29.** The appellant and the access authority shall together prepare a statement of common ground and the authority shall ensure that the Secretary of State receives it not less than four weeks before the date fixed for the holding of the inquiry.

### **Appearances at inquiry and notification of the name of inspector**

**30.—**(1) The persons entitled to appear at an inquiry are –

- (a) the appellant; and
- (b) the access authority;

but the inspector may permit any other person to appear at an inquiry, and such permission shall not be unreasonably withheld.

(2) Any person entitled or permitted to appear may appear in person or be represented by any other person.

(3) The inspector shall, at the commencement of the inquiry, announce his name and the fact of his appointment.

### **Procedure at inquiry**

**31.—**(1) Except as otherwise provided in these Regulations, the inspector shall determine the procedure at an inquiry.

(2) At the start of the inquiry the inspector shall identify what are, in his opinion, the main issues to be considered at the inquiry and any matters on which he requires further explanation from any person appearing at the inquiry.

(3) Nothing in paragraph (2) shall preclude the addition in the course of the inquiry of other issues for consideration or preclude any person entitled or permitted to appear from referring to issues which that person considers relevant to the consideration of the appeal but which were not issues identified by the inspector pursuant to that paragraph.

(4) Unless in a particular case the inspector otherwise determines, the access authority shall begin and the appellant shall have the right of final reply; and any other persons appearing at the inquiry shall be heard in such order as the inspector shall determine.

(5) Subject to paragraphs (6) to (8), a person appearing at an inquiry shall be entitled to give, or call any other person to give, oral evidence; and the appellant, the access authority, and any other person if so permitted by the inspector, may cross-examine any person giving evidence.

(6) The inspector may at any stage in the proceedings refuse to permit –

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

which he considers to be irrelevant or repetitious.

(7) Where under paragraph (6) the inspector refuses to permit the giving of oral evidence, the person wishing to give the evidence may submit to him any evidence or other matter in writing before the close of the inquiry.

(8) Where a person gives evidence at an inquiry by reading a summary of his proof of evidence –

- (a) the proof of evidence referred to in regulation 28(1) shall be treated as tendered in evidence, unless the person required to provide the summary notifies the inspector that he now wishes to rely on the contents of that summary alone; and
- (b) the person whose evidence the proof of evidence contains shall then be subject to cross-examination on it to the same extent as if it were evidence he had given orally.

(9) The inspector may –

- (a) require any person appearing at an inquiry who, in his opinion, is behaving in a disruptive manner to leave; and
- (b) refuse to permit that person to return or permit him to return only on such conditions as he may specify;

but any such person may submit to the inspector any evidence or other matter in writing before the close of the inquiry.

(10) The inspector may allow any person to alter or add to a statement of case received by the Secretary of State under regulation 9 or a proof of evidence or summary sent to the Secretary of State under regulation 28(1) so far as may be necessary for the purposes of the inquiry; but he shall (if necessary by adjourning the inquiry) give every other person appearing at the inquiry an adequate opportunity of considering any fresh matter or document.

(11) The inspector may proceed with an inquiry in the absence of any person entitled to appear at it.

(12) The inspector may take into account any written representations, or evidence or any other document received by him from any person before an inquiry opens or during the inquiry provided he discloses it at the inquiry.

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

### **Site inspections**

**32.—**(1) During an inquiry or after its close, the inspector may, where it appears to him necessary or expedient to do so, arrange to make an inspection of the appeal land; and the inspector shall arrange to make such an inspection if so requested by the appellant or the access authority before or during the inquiry in relation to an appeal.

(2) Where the inspector intends to make an inspection under paragraph (1), he shall ask the appellant and the access authority whether they wish to be present or be represented.

(3) Where the appellant or the access authority have indicated that they wish to be present, or be represented, the inspector shall give the appellant and the authority reasonable notice of the date and time of the inspection and shall afford the appellant and the authority, or their representatives, the opportunity of being present during the inspection.

(4) The inspector shall not be bound to defer an inspection if the appellant or the access authority (or their representatives) are not present at the appointed time.

### **Procedure after inquiry – appeals to be determined by the Secretary of State**

**33.**—(1) This regulation applies where an inquiry has been held for the purposes of any appeal determined by the Secretary of State.

(2) After the close of an inquiry the inspector shall make a report in writing to the Secretary of State which shall include his conclusions and his recommendations or his reasons for not making any recommendations.

(3) When making her determination the Secretary of State may disregard any written representations, evidence or other document received after the close of the inquiry.

(4) If, after the close of the inquiry, the Secretary of State –

(a) differs from the inspector on any matter of fact mentioned in, or appearing to her to be material to, a conclusion reached by the inspector, or

(b) takes into consideration any new evidence or new matter of fact,

and is for that reason disposed to disagree with a recommendation made by the inspector, she shall not come to a decision which is at variance with that recommendation without first notifying the appellant and the access authority and any other person who appeared at the inquiry of her disagreement and the reasons for it, and affording them an opportunity of making written representations to her or of asking for the re-opening of the inquiry.

(5) Those persons making written representations or requesting that the inquiry be re-opened under paragraph (4) shall ensure that such representations or requests are received by the Secretary of State within three weeks of the date of the Secretary of State's notification under that paragraph.

(6) The Secretary of State may, if she thinks fit, cause an inquiry to be re-opened, and she shall do so if asked by the appellant or the access authority in the circumstances mentioned in paragraph (4) and within the period mentioned in paragraph (5); and where an inquiry is re-opened (whether by the same or a different inspector) –

(a) the Secretary of State shall send to the appellant, the access authority and any other person who appeared at the inquiry a written statement of the matters with respect to which further evidence is invited; and

(b) paragraphs (3) to (8) of regulation 27 shall apply as if the references to an inquiry were references to a re-opened inquiry.

### **Procedure after inquiry – transferred appeals**

**34.**—(1) This regulation applies where an inquiry has been held for the purposes of a transferred appeal.

(2) Where an assessor has been appointed he shall, after the close of the inquiry, make a report in writing to the inspector in respect of the matters on which he was appointed to advise, and the inspector shall state in the notification of his decision pursuant to regulation 36 that such a report was made.

(3) When making his decision the inspector may disregard any written representations or evidence or other document received after the close of the inquiry.

(4) If, after the close of the inquiry, an inspector proposes to take into consideration any new evidence or any new matter of fact 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 –

- (a) notifying the appellant and the access authority and any other person who appeared at the inquiry; and
- (b) affording them an opportunity of making written representations to him or of asking for the inquiry to be re-opened;

and they shall ensure that such written representations or request to re-open the inquiry are received by the Secretary of State within three weeks of the date of the notification.

(5) An inspector may, if he thinks fit, cause an inquiry to be re-opened, and he shall do so if asked by the appellant or the access authority in the circumstances and within the period mentioned in paragraph (4); and where an inquiry is re-opened –

- (a) the inspector shall send to the appellant, the access authority and any other person who appeared at the inquiry a written statement of the matters with respect to which further evidence is invited; and
- (b) paragraphs (3) to (8) of regulation 27 shall apply as if the references to an inquiry were references to a re-opened inquiry.

#### **Notification of decision – appeals determined by the Secretary of State**

**35.**—(1) This regulation applies where an inquiry has been held for the purposes of any appeal to be determined by the Secretary of State.

(2) The Secretary of State shall, as soon as practicable, notify her decision on an appeal, and her reasons for it, in writing to –

- (a) the appellant;
- (b) the access authority;
- (c) every other person who appeared at the inquiry or who is an interested person;
- (d) every other owner or occupier of the land who has been notified by the access authority as mentioned in regulation 4(3) or section 37(3) of the Act; and
- (e) the local access forum.

(3) Where a copy of the inspector’s report is not sent with the notification of the decision, the notification shall be accompanied by a statement of the inspector’s conclusions and of any recommendations made by him; and if a person entitled to be notified of the decision has not received a copy of that report, he shall be supplied with a copy of it on written application made to the Secretary of State within four weeks of the receipt of the notification of the decision as mentioned in paragraph (2).

(4) In this regulation, “report” does not include any documents appended to the inspector’s report; but any person who has received a copy of the report may, within two weeks of such receipt, apply in writing to the Secretary of State for an opportunity to inspect any such documents and the Secretary of State shall afford him that opportunity.

(5) The Secretary of State shall ensure that, as soon as practicable after any notification has been given under paragraph (2), a copy of the notification is made available for inspection on the website maintained by the Planning Inspectorate Executive Agency for a period of three months.

### **Notification of decision – transferred appeals**

**36.**—(1) This regulation applies where an inquiry has been held for the purposes of a transferred appeal.

(2) The inspector shall, as soon as practicable, notify his decision on an appeal, and his reasons for it, in writing to –

- (a) the appellant;
- (b) the access authority;
- (c) every other person who appeared at the inquiry or who is an interested person;
- (d) every other owner or occupier of the land who has been notified by the access authority as mentioned in regulation 4(3) or section 37(3) of the Act; and
- (e) the local access forum.

(3) Any person entitled to be notified of the inspector’s decision under paragraph (2) may apply to the Secretary of State in writing for an opportunity to inspect any documents referred to in the notification and the Secretary of State shall afford him that opportunity.

(4) Any person making an application pursuant to paragraph (3) shall ensure that it is received by the Secretary of State within six weeks of the date of the inspector’s decision.

(5) The Secretary of State shall ensure that, as soon as practicable after any notification has been given under paragraph (2), a copy of the notification is made available for inspection on the website maintained by the Planning Inspectorate Executive Agency for a period of three months.