

SCHEDULE

Appeals procedure

PART 4

Determination of the appeal

Appeals determined by way of a hearing or inquiry—establishing the hearing or inquiry

16.—(1) This paragraph applies if the appeal is determined by way of hearing or inquiry.

(2) The Secretary of State must set a date for the hearing or inquiry, and notify the appellant, Natural England, any section 28L(2) party and any person who has made written representations concerning the appeal.

(3) The date must be at least six weeks from the date of that notification unless the appellant, Natural England and any section 28L(2) party agree to a shorter period, but any shorter period must not be less than three weeks.

(4) The Secretary of State must, no later than three weeks before the date fixed, publish notice of the appeal in a local newspaper circulating in the area in which the land which is the subject of the appeal is situated.

(5) If the date is changed the procedure in sub-paragraphs (2) to (4) must be repeated.

(6) The Secretary of State may appoint any person to hold a hearing or inquiry (referred to in this Schedule as “the inspector”) but the inspector must make a recommendation to the Secretary of State, who must make the final decision.

Appeals determined by way of a hearing or inquiry—procedure

17.—(1) Once the hearing or inquiry has started the inspector may adjourn it at any time.

(2) The persons entitled to appear are—

- (a) the appellant;
- (b) Natural England;
- (c) any section 28L(2) party; and
- (d) any person who has made written representations concerning the appeal.

(3) Except as otherwise provided in this Schedule, the inspector may determine the proceedings to be followed.

(4) If any person at the hearing or inquiry behaves in a disruptive manner the inspector may—

- (a) require that person to leave;
- (b) prevent that person from participating in the hearing or inquiry, and in particular may refuse to allow that person to give evidence, cross-examine a person giving evidence, or present any matter; or
- (c) permit that person to remain at, or participate in, the hearing or inquiry only on specified conditions.

(5) The inspector may proceed with a hearing or inquiry in the absence of any person entitled to appear at it.

(6) The inspector may permit any other person to appear at a hearing or inquiry, and such permission must not be unreasonably withheld.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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

(8) The inspector may take into account any written representations or evidence or any other document received from any person before or during a hearing or inquiry, provided that the inspector discloses it at the hearing or inquiry.

(9) The inspector may, at any stage of a hearing or inquiry, prevent any person from—

- (a) giving evidence,
- (b) cross-examining a person giving evidence, or
- (c) presenting any matter,

if the inspector considers it to be irrelevant or repetitious.

Inquiries—pre-inquiry meeting

18.—(1) Where it has been decided to hold an inquiry, the inspector may, if it is desirable, hold a pre-inquiry meeting to determine the matters to be addressed and the procedure to be followed at the inquiry.

(2) An inspector who decides to hold a pre-inquiry meeting must give not less than two weeks' notice in writing to—

- (a) the appellant, Natural England and any section 28L(2) party;
- (b) any person known at the date of the notice to be entitled to appear at the inquiry; and
- (c) any other person whose presence is considered desirable.

(3) The inspector may, at a pre-inquiry meeting—

- (a) give directions to the appellant, Natural England and any other person wishing to appear at the inquiry about things to be done in preparation for the inquiry; and
- (b) specify a date or dates by which any such directions must be complied with.

Inquiries—proof of evidence

19.—(1) This paragraph applies where an inquiry is to be held and any person entitled to appear intends to give, or to call a witness to give, evidence at the inquiry.

(2) At least four weeks before the date of the inquiry (or such other time as the inspector may direct) the person intending to give evidence or call a witness must send a proof of the evidence intended to be given, together with any written summary accompanying it, to the Secretary of State.

(3) The Secretary of State must, as soon as practicable after receiving a proof of evidence, send a copy to the appellant, Natural England, any section 28L(2) party and any person who has submitted a proof.

(4) A written summary is required if the proof of evidence in question exceeds 1500 words.

(5) Where a written summary is provided, only that summary shall be read at the inquiry, unless the inspector directs otherwise.

Inquiries—common ground

20. The appellant, Natural England and any section 28L(2) party must together prepare a statement of common ground, and Natural England must ensure that the Secretary of State receives it not less than four weeks before the date fixed for the holding of the inquiry.

Inquiries—miscellaneous

21.—(1) At the start of the inquiry the inspector must identify what are, in the inspector’s opinion, the main issues to be considered at the inquiry and any matters on which further explanation will be required from any person appearing at the inquiry.

(2) This does not 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.

(3) Any person entitled to appear at the inquiry may give, or call any other person to give, oral evidence.

(4) The inspector may permit any other person permitted to appear at the inquiry to give, or call any other person to give, oral evidence.

(5) The appellant, Natural England, any section 28L(2) party and (with the permission of the inspector) any other person appearing at the inquiry may cross-examine persons giving evidence.

(6) If the inspector refuses to permit the giving of oral evidence from any person not entitled to appear at the inquiry, the person wishing to give the evidence may submit any evidence or other matter in writing before the close of the inquiry.

(7) Where a person gives evidence at an inquiry by reading a summary of a proof of evidence—

(a) the proof of evidence is treated as tendered in evidence, unless the person required to provide the summary notifies the inspector that that person now wishes to rely on the contents of that summary alone; and

(b) the person whose evidence the proof of evidence contains may then be subject to cross-examination on it to the same extent as if it were evidence given orally.

(8) The inspector may allow any person to alter or add to a proof of evidence or summary sent to the Secretary of State so far as may be necessary for the purposes of the inquiry, but must (if necessary by adjourning the inquiry) give every other person appearing at the inquiry an adequate opportunity of considering any fresh matter or document.

Change to the procedure of an appeal

22.—(1) If an appeal is by way of written representations, but, before the decision on the appeal has been notified, the appellant, Natural England, a 28L(2) party or the Secretary of State wishes the appeal to be dealt with other than by way of written representations, the Secretary of State must arrange for the appeal to proceed by way of a hearing or inquiry.

(2) If an appeal is by way of an inquiry or hearing, but before the inquiry or hearing has opened the appellant, Natural England or any 28L(2) party wishes it to be determined by way of written representations instead, the Secretary of State must consult the other parties, and, if all the parties and the Secretary of State agree to such a change in procedure, the Secretary of State shall arrange for the appeal to be determined by way of written representations.

(3) If an appeal is by way of an inquiry or hearing, but before the inquiry or hearing has opened the appellant, Natural England, any 28L(2) party or the Secretary of State wishes an appeal to be determined—

(a) no longer by way of a hearing but instead by way of an inquiry, or

(b) no longer by way of an inquiry but instead by way of a hearing,

the Secretary of State must, after consulting all the parties, decide whether the hearing or inquiry (as the case may be) should proceed no further and an inquiry or hearing (as appropriate) be held instead.

(4) Where the appeal procedure is changed by the Secretary of State under this paragraph—

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (a) the Secretary of State must notify all the parties and any other person who has made representations in respect of the appeal of such change;
- (b) any step taken or thing done in relation to the former appeal procedure which could have been done under any corresponding provision of this Schedule relating to the new appeal procedure shall have effect as if taken or done under that corresponding provision; and
- (c) the Secretary of State may give consequential directions as to the procedure.