

2010 No. 103

TRIBUNALS AND INQUIRIES

INFRASTRUCTURE PLANNING

**The Infrastructure Planning (Examination Procedure) Rules
2010**

<i>Made</i> - - - -	<i>21st January 2010</i>
<i>Laid before Parliament</i>	<i>1st February 2010</i>
<i>Coming into force</i> - -	<i>1st March 2010</i>

The Lord Chancellor, in exercise of the powers conferred by sections 88(6), 90(3), and 97 of, and paragraphs 3 and 4 of Schedule 3 to, the Planning Act 2008(a), and after consultation with the Administrative Justice and Tribunals Council, makes the following Rules:

Citation, commencement and application

1.—(1) These Rules may be cited as the Infrastructure Planning (Examination Procedure) Rules 2010 and shall come into force on 1st March 2010.

(2) Subject to paragraphs (3) to (5), these Rules apply to the examination of an application and specified matters by an Examining authority.

(3) These Rules do not apply if the development to which the application relates (or part of the development) is the construction (other than by a gas transporter) of an oil or gas cross-country pipe-line—

- (a) one end of which is in England or Wales, and
- (b) the other end of which is in Scotland.

(4) Parts 1 and 2 of the Schedule to these Rules apply where the Secretary of State has received a request for a direction to be given.

(5) Parts 1 and 3 of the Schedule to these Rules apply instead of rules 3 to 23 to the examination of closed evidence where the Secretary of State has made a direction.

Interpretation

2.—(1) In these Rules, unless otherwise defined in Part 1 of the Schedule to these Rules—

“the 2008 Act” means the Planning Act 2008;

“accepted application” means an application that has been accepted under section 55 (acceptance of applications);

“address” includes any number or address used for the purposes of electronic transmission;

(a) 2008 c.29. See section 235(1) for the meaning of “prescribed”.

“affected person” means a person whose name has been given to the Commission in a notice under section 59 (notice of persons interested in land to which compulsory acquisition request relates);

“application” means an application for development consent under section 37 (application for orders granting development consent) and includes—

- (a) part of an application;
- (b) any accompanying documents and further representations made by the applicant; and
- (c) any amendments made to the application;

“assessor” means a person appointed by the chair to the Commission to assist and advise the Examining authority in its examination of an application;

“closed evidence” means any representation which is subject to a direction;

“Commissioner” means a person appointed by the Secretary of State as a Commissioner^(a);

“compulsory acquisition hearing” means a hearing held in accordance with section 92(3) (compulsory acquisition hearings);

“compulsory acquisition request” means a request for an order granting development consent to authorise compulsory acquisition of land or of an interest in or right over land;

“decision-maker”, in relation to an application for an order granting development consent—

- (a) where the Council or the Secretary of State has the function of deciding the application, means the Council or (as the case may be) the Secretary of State;
- (b) in any other case, means the Panel that has the function of deciding the application;

“direction” means a direction given by the Secretary of State under paragraph 2(6) of Schedule 3;

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means but in electronic form;

“Examining authority” means—

- (a) the Panel or single Commissioner appointed under section 65 (appointment of members, and lead member, of Panel) or section 79 (appointment of single Commissioner), and may include one or more members of the Panel allocated a function of the Panel in accordance with section 76 (allocation within Panel of Panel’s functions); or
- (b) the Secretary of State, where the Secretary of State has the function of examining an application following a direction under section 112(1) (power of Secretary of State to intervene), and may include any person appointed by the Secretary of State to act on the Secretary of State’s behalf;

“hearing” means an open-floor hearing, issue-specific hearing or compulsory acquisition hearing;

“interested party”, in relation to an application, means a person who is an interested party for the purposes of Chapter 4 of Part 6^(b);

“issue-specific hearing” means a hearing held in accordance with section 91 (hearings about specific issues);

“national policy statement” means a statement designated under section 5(1) (national policy statements);

“open-floor hearing” means a hearing held in accordance with section 93 (open-floor hearings);

(a) See paragraph 1 of Schedule 1.

(b) See section 102(1) (interpretation of Chapter 4: “interested party” and other expressions).

“Panel” means the Panel appointed under section 65 (appointment of members, and lead member, of Panel) to handle the application;

“preliminary meeting” means the meeting which the Examining authority is required to hold under section 88 (initial assessment of issues, and preliminary meeting);

“procedural decision”, in relation to an application, means a decision about how the application is to be examined;

“representation” includes evidence and references to the making of a representation include the giving of evidence;

“single Commissioner” means the Commissioner appointed under section 79 (appointment of single Commissioner) to handle the application;

“specified matters”, in relation to the application, means the matters specified in relation to that application in the Secretary of State’s direction under section 113(3)(a) (effect of intervention);

“statement of common ground” means a written statement prepared jointly by the applicant and any interested party, which contains agreed factual information about the application; and

“written representation” means the full particulars of the case which a person puts forward in respect of an application and includes any supporting evidence or documents.

(2) Any reference in these Rules to a section, Part or Schedule by number is a reference to a section or Part of, or a Schedule to, so numbered in the 2008 Act.

Relevant representations, etc.

3.—(1) An interested party must ensure that their relevant representation is received by the Commission by whichever is the later of—

- (a) the deadline notified under section 56(4) (notifying persons of accepted applications) or
- (b) the deadline for receipt of representations included in the notice published in accordance with section 56(8).

(2) Any interested party who submits a written comment on any relevant representation must ensure that it is received by the Commission by whichever is the later of—

- (a) the date on which the preliminary meeting is held; or
- (b) the date specified in the timetable referred to in rule 8.

(3) The Commission may require in writing any person who has submitted a relevant representation or written comment to provide—

- (a) a specified number of additional copies of the representation or comment; and
- (b) such further information about the matters contained in the representation or comment as the Commission may specify,

and may specify the date by which the copies or information must be received by it.

(4) Any person required to provide additional copies or further information must ensure that the additional copies or further information have been received by the Commission by the date specified.

(5) As soon as practicable after receipt of any relevant representations, written comments on relevant representations or further information requested under paragraph (4)(b) the Commission must make the representations, comments or information available in accordance with rule 21.

Notice of appointment of a Panel or a single Commissioner

4.—(1) Where the Examining authority is a Panel or a single Commissioner, the chair must, before the preliminary meeting, notify all those who in accordance with section 56(2) (notifying persons of accepted applications) have been notified of an accepted application, that the Examining authority has been appointed and give details of who has been appointed.

(2) Where—

- (a) a single Commissioner has been appointed as the Examining authority in relation to an application; and
 - (b) the chair subsequently decides that the Examining authority should be a Panel,
- the chair must notify all those who were notified in accordance with paragraph (1), and any other interested party, of the chair's decision.
- (3) The chair must notify all those who were notified in accordance with paragraph (1), and any other interested party, of—
- (a) any change in the membership of the Panel or appointment of any replacement single Commissioner in accordance with section 82 (appointment of replacement single Commissioner); and
 - (b) any direction given by the Secretary of State under section 112(1).

Initial assessment of issues

5. The Examining authority shall make its initial assessment under section 88(1) (initial assessment of issues, and preliminary meeting) within the period of 21 days that begins with the day after the day notified under section 56 (notifying persons of accepted application) as the deadline for the receipt of representations.

Notice of preliminary and other meetings

6.—(1) The Examining authority must give at least 21 days' notice of the date, time and place of the meeting required by section 88(2) (in these Rules, "the preliminary meeting"), to all those whom it is required by section 88(3) to invite to the preliminary meeting, and to any other person it chooses to invite.

(2) The Examining authority must, at the same time as giving notice of the preliminary meeting, notify all those invited to it of the matters to be discussed at the preliminary meeting.

(3) Where the Examining authority holds any other meeting for the purposes of the examination to which these Rules apply, it shall arrange for such notice to be given of that meeting as appears to the authority to be necessary.

Preliminary meeting

7.—(1) The Examining authority shall preside at the preliminary meeting and shall determine—

- (a) the procedure at the preliminary meeting;
- (b) the matters to be discussed;
- (c) the amount of time to be allocated—
 - (i) to each matter; and
 - (ii) allowed for making any oral representations.

(2) As soon as practicable after the end of the preliminary meeting, the Examining authority must prepare a note of the proceedings, and make the note available in accordance with rule 21 to all interested parties and anyone who attended the preliminary meeting.

Timetable

8.—(1) At the preliminary meeting, or as soon as practicable after the end of that meeting, the Examining authority must set the timetable for its examination of the application or specified matters, specifying in the timetable—

- (a) the date by which written representations must be received by the Examining authority;
- (b) the period within which the Examining authority will ask questions in writing and seek further written information about—

- (i) any matter contained in the application, specified matters or a relevant representation;
 - (ii) any written representation; and
 - (iii) any other matter it considers relevant to its examination of the application or specified matters;
- (c) the period within which the applicant will have the opportunity to comment in writing on—
- (i) any relevant or written representations; and
 - (ii) any responses to written questions received from an interested party or others;
- (d) the period within which any interested party will have the opportunity to comment in writing on—
- (i) any relevant and written representations; and
 - (ii) any responses to written questions received from an interested party or others;
- (e) the period within which the applicant and any interested party must agree a statement of common ground;
- (f) the date by which any interested party must notify the Examining authority of their wish to be heard at an open-floor hearing;
- (g) the date by which any affected person must notify the Examining authority of their wish to be heard at a compulsory acquisition hearing;
- (h) the date of any issue-specific hearing;
- (i) the date by which any summaries of relevant and written representations must be received by the Examining authority;
- (j) the date by which any local impact report must be received by the Commission and the period within which an interested party will have the opportunity to make written comments on that report; and
- (k) such other deadlines as the Examining authority considers necessary.

(2) The Examining authority must send the timetable to all interested parties and any other person it has invited to the preliminary meeting.

(3) The Examining authority may subsequently vary the timetable; and as soon as practicable after doing so it must notify the variation to all interested parties and any other person it has invited to the preliminary meeting.

Notice of procedural decisions

9. As soon as practicable after making any procedural decision, the Examining authority must notify all interested parties of the decision.

Written representations

10.—(1) An interested party must ensure that any written representation that party may wish to make is received by the Examining authority by the date specified in the timetable set under rule 8, or otherwise under this rule, by the Examining authority.

(2) The Examining authority may at any time specify the date (being a date not earlier than the end of a period of 21 days) by which a written representation to be submitted from an interested party must be received by the Examining authority.

(3) The Examining authority may permit a written representation to be made by any person who is not an interested party.

(4) Any person, other than the applicant, who submits a written representation, must identify in their written representation those parts of the application or specified matters with which they agree and those parts with which they do not agree, and must state the reasons for such disagreement.

(5) The Examining authority must provide all interested parties with the opportunity to comment in writing on any written representation relevant to the examination of the application or specified matters.

(6) The Examining authority may in writing request—

- (a) a specified number of additional copies of any representation;
- (b) responses to questions posed by the Examining authority about the matters contained in any representation; and
- (c) such further information about the matters contained in any representation as the Examining authority may specify;

and shall specify the date by which these must be received by it.

(7) Any person who receives a request in accordance with paragraph (6) above must ensure that the additional copies, responses to written questions or further information are received by the Examining authority by the date specified.

(8) The Examining authority may disregard any written representations, responses to questions or further information received after the date, or the expiry of the period, specified for their receipt.

(9) The Examining authority must make all written representations, responses to written questions and further information received by it available in accordance with rule 21 as soon as is practicable.

Appointment of assessor

11. The Examining authority must notify all interested parties of the name of any assessor, appointed under section 100 (assessors), and of the particular matters on which the assessor is to assist the Examining authority.

Appointment of barrister, solicitor or advocate

12. The Examining authority must notify all interested parties if a barrister, solicitor or advocate is appointed under section 101 (legal advice and assistance) give details of who has been appointed.

Notification of hearings

13.—(1) In fixing, and causing persons to be informed of, a deadline under section 92(2) (compulsory acquisition hearing) or 93(1) (open-floor hearing), the Examining authority must ensure that the deadline is at least 21 days after the date on which notice of the deadline is given.

(2) The Examining authority may disregard any request for an open-floor hearing or for a compulsory acquisition hearing to be held which is received after the deadline.

(3) As soon as practicable after the expiry of the deadline the Examining authority must notify—

- (a) all interested parties of the date, time and place fixed for any open-floor hearing or issue-specific hearing; and
- (b) affected persons of the date, time and place fixed for a compulsory acquisition hearing,

and ensure that at least 21 days' notice is given of any hearing.

(4) The Examining authority may vary the date, time and place fixed for any hearing and must give such notice of any variation as appears to it to be reasonable.

(5) The place at which a hearing is to be held shall be determined by the Examining authority in consultation with the applicant and, where the Examining authority is satisfied, having regard to the nature of the application, that it is reasonable to do so, the Examining authority may direct that different parts of a hearing shall be held at different locations.

(6) Unless the Examining authority otherwise directs, the applicant must not later than 21 days before the date fixed for the commencement of a hearing—

- (a) post and maintain a notice of the hearing in a conspicuous place or (in the case of an application for an order making provision for land-based linear works more than 5 kilometres in length) at intervals of not more than 5 kilometres on, or as close as is reasonably practicable to, the land to which the application relates;
 - (b) post and maintain a notice of the hearing in one or more places where public notices are usually posted in the area to which the proposals contained in the application relate; and
 - (c) publish a notice of the hearing by local advertisement in the area in which the proposals contained in the application are to have effect.
- (7) In this rule “by local advertisement” means—
- (a) by publication of the notice in a newspaper circulating in the locality in which the land to which the application relates is situated; and
 - (b) where the Examining authority maintains a website for the purpose of advertisement of applications, by publication of the notice on the website.
- (8) Where a direction has been given under paragraph (5), paragraph (6) shall have effect with the substitution—
- (a) for references to the hearing, of references to the part of the hearing which is to be held at a place specified in the direction; and
 - (b) for references to the application, of references to that part of the application which is to be the subject of that part of the hearing.
- (9) Any notice posted pursuant to paragraph (6)(a) or (b) must be readily visible to and legible by members of the public; but where, without any fault or intention of the applicant, the notice is removed, obscured or defaced before the commencement of the hearing, the applicant shall be treated as having complied with the requirements of those sub-paragraphs if the applicant has taken reasonable steps for the protection of the notice and, if need be, its replacement.
- (10) A notice of a hearing posted or published pursuant to paragraph (6) must contain a statement of the date, time and place of the hearing, and of the section of the 2008 Act under which the application has been made, together with a description of the proposals contained in the application sufficient to identify the location of the proposed development with or without reference to a specified map, and details of a place where a copy of the application can be inspected.

Procedure at hearings

14.—(1) The Examining authority shall preside at any hearing and shall determine the procedure at the hearing.

(2) At the start of the hearing the Examining authority shall identify the matters to be considered at the hearing, and any matters on which the Examining authority requires further explanation from—

- (a) the persons entitled under section 91(3), 92(4) or 93(3) to make oral representations; or
- (b) the persons permitted under rule 15(3) to make oral representations.

(3) Any oral representations must be based on either the relevant or written representations made by the person by whom or on whose behalf the oral representations are made; and where those relevant or written representations exceed 1500 words the person by whom they were made must prepare a summary.

(4) Without prejudice to the Examining authority’s discretion as to the conduct of the hearing, nothing in paragraph (2) or (3) precludes a person from referring to issues which they consider relevant to the examination of an application or specified matters but which are not issues identified by the Examining authority pursuant to paragraph (2) or included in their relevant or written representations.

(5) The Examining authority^(a) shall be responsible for the oral questioning of a person giving evidence (“A”) except where, in the view of the Examining authority, oral questioning of A by another person (“B”) is necessary in order to ensure—

- (a) adequate testing of any representation; or
- (b) that B has a fair chance to put B’s case.

(6) The Examining authority may refuse to permit the oral questioning of persons giving evidence, or may require such questioning to cease, if it appears to the Examining authority that permitting such questioning or allowing it to continue (as the case may be) would have the effect that the timetable referred to in rule 8 could not be met.

(7) The Examining authority may proceed with a hearing in the absence of a person entitled to appear at it.

(8) The Examining authority may from time to time adjourn a hearing and, if the date, time and place of the adjourned hearing are announced at the hearing before the adjournment, no further notice shall be required.

(9) Any person entitled or permitted to make oral representations at a hearing may do so on that person’s own behalf or be represented by any other person.

(10) The Examining authority may permit any person, in addition to those who are entitled under section 91(3), 92(4) or 93(3), to make oral representations at a hearing.

Hearings

15.—(1) Where the Examining authority is a Panel, it may hold any two or more hearings relating to the same application concurrently; and where it does so and decides to allocate functions under section 76 (allocation within the Panel of the Panel’s functions), it must notify all interested parties of the details of the allocation.

(2) The Examining authority may consider all compulsory acquisition requests relating to the same application at the same compulsory acquisition hearing or at separate compulsory acquisition hearings.

Site inspections

16.—(1) The Examining authority may make an unaccompanied inspection of any site to which the application or specified matters relate before or during its examination of the application or specified matters without giving notice of its intention.

(2) The Examining authority may, before the completion of its examination of the application or specified matters, inspect any site to which the application or specified matters relate in the company of any interested party or their representative.

(3) Where the Examining authority intends to make an inspection of the kind referred to in paragraph (2), it must notify all interested parties of the date, time and place at which it proposes to make the inspection.

(4) The Examining authority shall not be bound to defer an inspection of the kind referred to in paragraph (2) where an interested party is neither present nor represented at the time appointed.

Further information

17.—(1) The Examining authority may at any time before the completion of its examination of an application or specified matters request further information or written comments from an interested party, who must supply such information by the date and in the manner specified by the Examining authority.

(a) By virtue of section 101(2), any oral questioning of a person making representations at a hearing may be carried out on the Examining authority’s behalf by a barrister, solicitor or advocate appointed under section 101(1) of the 2008 Act.

(2) The Examining authority shall on receiving any further information or written comments within the specified period, consider whether or not a further opportunity to comment in writing should be given to all interested parties and, if so, the Examining authority shall specify a period for making any further written comments.

(3) The Examining authority and the decision-maker may disregard any information or written comments received after the date specified or in a manner other than that specified.

Additional copies

18.—(1) The Examining authority may at any time before the completion of its examination of an application request from any interested party additional copies of any document sent to the Examining authority during the examination and specify the period within which and the manner in which the copies are to be supplied.

(2) The interested party must supply the copies within the period and in the manner specified by the Examining authority.

Procedure after completion of examination

19.—(1) Where the Examining authority does not have the function of deciding an application, after the completion of its examination it must make a written report to the decision-maker.

(2) The report must include the Examining authority's—

- (a) findings and conclusions in respect of the application and any specified matters; and
- (b) recommendation as to the decision to be made on the application.

(3) If after the completion of the Examining authority's examination, the decision-maker—

- (a) differs from the Examining authority on any matter of fact mentioned in, or appearing to the decision-maker to be material to, a conclusion reached by the Examining authority; 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 Examining authority, the decision-maker shall not come to a decision which is at variance with that recommendation without—

- (i) notifying all interested parties of the decision-maker's disagreement and the reasons for it; and
- (ii) giving them an opportunity of making representations in writing to the decision-maker in respect of any new evidence or new matter of fact.

(4) Rule 10 shall apply to any representation in writing made in response to the opportunity given under paragraph (3) subject to the following modifications—

- (a) for "Examining authority" there shall be substituted "decision-maker";
- (b) for "written representation" there shall be substituted "representation in writing"; and
- (c) paragraphs (2) and (4) shall not apply .

Procedure following quashing of decision

20.—(1) Where a decision of the Council or a Panel in respect of an application is quashed in proceedings before any court, the chair of the Commission—

- (a) shall send to all interested parties a written statement of the matters with respect to which further representations in writing are invited for the purposes of the decision-maker's further consideration of the application;
- (b) shall give all interested parties the opportunity of making representations in writing to the decision-maker in respect of those matters or of requesting a hearing, or if a hearing has been held, of requesting it to be re-opened.

(2) Where a decision of the Secretary of State in respect of an application is quashed in proceedings before any court, the Secretary of State—

- (a) shall send to all interested parties a written statement of the matters with respect to which further representations in writing are invited for the purposes of the Secretary of State's further consideration of the application;
- (b) shall give all interested parties the opportunity of making representations in writing to the Secretary of State in respect of those matters.

Availability and inspection of representations and documents

21.—(1) Relevant representations, written representations or documents must be made available by the Commission to all interested parties and to anyone who requests an opportunity to inspect and take copies of them.

(2) A relevant representation, written representation or document shall be taken to be available where all interested parties are notified of—

- (a) publication of the relevant document on a website;
- (b) the address of the website;
- (c) the place on the website where the representation or document may be accessed, and how it may be accessed;
- (d) details of where and when copies of representations and documents may be inspected;
- (e) details of where and when representations and documents may be copied; and
- (f) whether a charge will be made for copies of any representation or document available for inspection and if so the amount of any charge.

(3) Where the applicant or an interested party is under an obligation to give to any person who so requests an opportunity to inspect and take copies of any representation or document, the opportunity shall be taken to have been given where that person is notified of—

- (a) publication of the relevant representation or document on a website;
- (b) the address of the website;
- (c) the place on the website where the representation or document may be accessed, and how it may be accessed;
- (d) details of where and when copies of the representation or document may be inspected;
- (e) details of where and when any representation or document may be copied;
- (f) whether a charge will be made for copies of any representation or document available for inspection and if so the amount of any charge.

(4) In this rule “document” means any notice, report or other document required or authorised to be sent or prepared under these Rules or under the 2008 Act

Form and service of notices etc.

22.—(1) Where under any provision of these Rules a person is required to notify another person or body of something, that notification must be in writing.

(2) Any representation, notice or other document required or authorised to be sent under any provision of these Rules may be sent—

- (a) by sending it by post, addressed to that person at that person's usual or last known place of abode, or in a case where an address for service has been given by that person, at that address;
- (b) by sending it in a prepaid registered letter, or by recorded delivery service addressed to that person at that person's usual or last known place of residence, or in a case where an address for service has been give by that person, at that address; or

(c) subject to paragraphs (3) to (6), by electronic transmission to such address as may for the time being be specified by the person for that purpose.

(3) Where a representation, notice or other document required to be sent for any purpose of these Rules is sent by electronic transmission, the requirement shall be taken to be fulfilled where the recipient of the representation, notice or other document has consented, either in writing or by electronic transmission, to the use of electronic transmission.

(4) Where the recipient of a representation, notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or any part of that representation, notice or other document, the sender must provide such a copy as soon as is reasonably practicable.

(5) A person may revoke their consent to the use of electronic transmission for any purpose of these Rules by giving notice to that effect in writing or by electronic transmission, specifying the purpose for which electronic transmission may not be used and the date on which revocation is to take effect, being not less than 7 days after the date on which the notice is given.

(6) A revocation under paragraph (5) shall take effect on the date specified in the notice.

Allowing further time

23. The Commission or the Examining authority may at any time and in any particular case allow further time for the taking of any step which must or may be taken by virtue of these Rules.

Closed evidence not to be disclosed

24. Nothing in these Rules shall be taken to require or permit closed evidence to be disclosed to a person other than—

- (a) the Secretary of State;
- (b) the parties; or
- (c) a person of any description specified in a direction.

Signed by authority of the Lord Chancellor

21st January 2010

Bridget Prentice
Parliamentary Under Secretary of State
Department for Justice

SCHEDULE

Rules 1 and 2

Provisions in respect of a request for a direction and the examination of closed evidence

PART 1

Interpretation

1. In this Schedule—

“application” means an application for development consent under section 37 (applications for orders granting development consent) to which closed evidence relates and includes—

- (a) part of the application;
- (b) any accompanying documents and further representations made by the applicant; and
- (c) any amendments made to the application;

“appointed representative” means a person appointed under paragraph 4(2) of Schedule 3 to represent the interests of a precluded person;

“examiner” means the person appointed under paragraph 9(1);

“hearing” means the hearing at which closed evidence is to be examined;

“party”, except in the expression “interested party”, means—

- (a) the person making the request for a direction; or
- (b) any appointed representative; and

“precluded person” means a person who is prevented from inspecting or hearing closed evidence during the examination of the application as a result of a direction.

PART 2

Request for a direction

Acknowledgement of request for a direction

2. As soon as practicable after receiving a request for a direction the Secretary of State shall acknowledge receipt of the request in writing.

Publicity

3.—(1) As soon as practicable after receiving a request for a direction the request shall be publicised by the Secretary of State in accordance with paragraphs (2) and (3).

(2) Notice of the request shall be given—

- (a) to each interested party;
- (b) by posting and maintaining notice of the request in a conspicuous place or (in the case of an application for an order making provision for land-based linear works more than 5 kilometres in length) at intervals of not more than 5 kilometres on, or as close as is reasonably practicable to, the land to which the application relates; and
- (c) by local advertisement.

(3) The notice given under paragraph (2) shall—

- (a) state that a request for a direction has been made;
- (b) state that written representations as to whether a direction should be given can be made to the Secretary of State at the address specified in the notice; and
- (c) specify the date by which any such representations should be made to the Secretary of State (being a date not less than 14 days from the date when the notice is given).

(4) Any notice posted pursuant to paragraph (2)(b) shall be readily visible to and legible by members of the public; but where, without any fault or intention of the applicant, the notice is removed, obscured or defaced before the commencement of the hearing, the Secretary of State shall be treated as having complied with the requirements of that sub-paragraph if the Secretary of State has taken reasonable steps for the protection of the notice and, if need be, its replacement.

(5) In this rule “by local advertisement” means—

- (a) by publication of the notice in a newspaper circulating in the locality in which the land to which the application relates is situated; and
- (b) where the Secretary of State maintains a website for the purpose of advertisement of applications, by publication of the notice on the website.

Notice of decision in respect of request for a direction

4.—(1) As soon as practicable after determining whether or not to give a direction, the Secretary of State shall notify the decision to—

- (a) any person who made representations to the Secretary of State; and
- (b) any precluded person,

but nothing in this paragraph requires or permits the Secretary of State to give reasons for the decision, where the giving of reasons would result in the public disclosure of closed evidence.

(2) Where a direction is given the Secretary of State shall, at the same time as notifying the decision in accordance with paragraph (1), send a copy of the direction to—

- (a) the person who requested the direction;
- (b) the Commission; and
- (c) any precluded person or their appointed representative.

PART 3

Examination of closed evidence

Functions of appointed representative

5.—(1) The provisions of this paragraph apply to an appointed representative.

(2) The first function of an appointed representative is to represent the interests of the precluded person by—

- (a) taking instructions from the precluded person before receiving copies of closed evidence;
- (b) inspecting, considering and making representations in respect of closed evidence;
- (c) dealing with preliminary matters in relation to closed evidence in connection with any hearing;
- (d) making representations in relation to closed evidence at any hearing; and
- (e) attending site visits.

(3) The second function of an appointed representative is to ensure that the copies of the closed evidence are returned to the person who supplied them as soon as practicable after whichever is the later of—

- (a) the end of the hearing at which closed evidence is considered; or
- (b) notification by the Secretary of State that no such hearing will be held.

(4) The third function of an appointed representative, where a decision is quashed, is to—

- (a) consider and make representations in relation to the matters with respect to which the Secretary of State has invited further representations; and
- (b) make representations in relation to these matters at any hearing.

(5) The fourth function of an appointed representative is to make applications to the Court in relation to any of the appointed representative's other functions.

(6) For the purpose of the exercise of any of the appointed representative's functions, the appointed representative may discuss any matter relating to the closed evidence with—

- (a) the person who supplied the closed evidence to the Secretary of State; or
- (b) a person specified, or of any description specified, in the direction.

Pre-hearing meeting

6.—(1) The Secretary of State may hold a pre-hearing meeting and shall give the parties, and such other persons as the Secretary of State may invite, not less than 14 days' notice of the date, time and place fixed for the holding of the pre-hearing meeting.

(2) At the pre-hearing meeting the Secretary of State shall—

- (a) identify what are, in the Secretary of State's opinion—
 - (i) the main issues to be considered at the hearing; and
 - (ii) any matters on which the Secretary of State requires further explanation from the parties;
- (b) specify—
 - (i) the timetable for the submission and exchange of representations; and
 - (ii) any other deadlines the Secretary of State thinks necessary; and
- (c) make such other procedural decisions as the Secretary of State thinks appropriate.

(3) When deciding the application the Secretary of State may disregard any written representation, received after the date, or the expiry of the period, specified for their receipt.

(4) The Secretary of State must notify the parties and any other persons invited under paragraph (1) of the timetable.

(5) The Secretary of State may vary the timetable and as soon as is practicable must notify the parties and any other persons invited under paragraph (1) of the variation.

(6) In this paragraph, "procedural decision" means a decision about how the closed evidence is to be examined.

Notice of hearing

7.—(1) Unless the Secretary of State agrees a lesser period of notice with the parties and anyone invited to the pre-hearing meeting, the Secretary of State must give to them not less than 14 days' notice of the date, time and place fixed for the holding of the hearing.

(2) The Secretary of State may vary the date, time or place for the holding of the hearing and shall give the parties such notice of any variation as appears to the Secretary of State to be reasonable.

Hearing procedure

8.—(1) The Secretary of State shall determine the procedure at the hearing.

(2) Without prejudice to the generality of sub-paragraph (1), the Secretary of State shall determine—

- (a) the order in which oral representations are to be made;
- (b) the amount of time to be allowed for making any oral representation;
- (c) the matters in respect of which there may be oral questioning by persons other than the person making the representation; and
- (d) the amount of time to be allowed for such oral questioning.

(3) The Secretary of State shall be responsible for the oral questioning of a person giving evidence except where the Secretary of State thinks that the oral questioning of a person giving evidence by another person is necessary in order to ensure—

- (a) adequate testing of any representation; or
- (b) that a party has a fair chance to put their case.

(4) The Secretary of State may proceed with a hearing in the absence of a party.

(5) The Secretary of State may from time to time adjourn a hearing and, if the date, time and place of the adjourned hearing are announced at the hearing before the adjournment, no further notice shall be required.

Appointment of an examiner

9.—(1) The Secretary of State may appoint an examiner to preside at the hearing.

(2) The Secretary of State must notify all parties if an examiner is appointed.

(3) Where an examiner has been appointed, paragraphs 8 and 12 shall apply in relation to the examiner as if for “the Secretary of State”, there were substituted “the examiner”.

Procedure after a hearing

10.—(1) This paragraph applies if an examiner has been appointed.

(2) The examiner must make a report in writing to the Secretary of State setting out the examiner’s—

(a) findings and conclusions in respect of the closed evidence; and

(b) recommendation, if any, as to the decision to be made on the application.

(3) The report referred to in paragraph (2) must only be disclosed to the parties and any person specified, or of a description specified, in the direction.

Further time

11. The Secretary of State may at any time and in any particular case allow further time for the taking of any step which must or may to be taken virtue of this Schedule.

Site inspections

12.—(1) Before or during the examination of the closed evidence, the Secretary of State may make an unaccompanied inspection of any site to which the closed evidence or application relates, without giving notice of his intention to the parties.

(2) The Secretary of State may, as part of the examination of closed evidence and before its completion, inspect such a site in the company of any party.

(3) Where the Secretary of State intends to make an inspection of the kind referred to in sub-paragraph (2), the Secretary of State shall notify the parties of the date, time and place at which the Secretary of State proposes to make it.

(4) The Secretary of State shall not be bound to defer an inspection of the kind referred to in sub-paragraph (2) where a party is not present at the time appointed.

Procedure after completion of examination

13.—(1) The Secretary of State may disregard any representations received after the completion of the examination.

(2) If, after the completion of the examination, the Secretary of State—

(a) differs from the examiner on any matter of fact mentioned in, or appearing to the Secretary of State to be material to, a conclusion reached by the examiner; or

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

and is for that reason disposed to disagree with any recommendation made by the examiner, the Secretary of State shall not come to a decision which is at variance with that recommendation without—

(i) notifying the parties of the disagreement and the reasons for it; and

- (ii) giving them an opportunity of making written representations to the Secretary of State in respect of the new evidence or new matter of fact.

(3) In the circumstances described in paragraphs (2)(a) and (b) the Secretary of State may re-open the hearing.

(4) Where the hearing is re-opened, the provisions in paragraph 9 shall apply and where an examiner has been appointed paragraph 10 shall apply.

(5) In this paragraph “completion of the examination” means the completion of the examination of the closed evidence.

Reasons for decision to grant or refuse development consent

14.—(1) The Secretary of State may refer to the report of an examiner in the statement of reasons prepared in accordance with section 116 (reasons for decision to grant or refuse development consent) but must not disclose the closed evidence.

(2) The Secretary of State may refer to the closed evidence in the version of the statement of reasons which is sent to the parties in accordance with section 116.

Procedure following quashing of decision

15.—(1) This paragraph applies where the Secretary of State’s decision on an application is quashed in proceedings before any court.

(2) The Secretary of State shall—

- (a) send to the parties a written statement of the matters with respect to which further written representations are invited for the purposes of further consideration of the application by the Secretary of State; and
- (b) give the parties the opportunity of making further representations to the Secretary of State in respect of those matters, either in writing or by way of a hearing.

(3) Where a hearing is held pursuant to sub-paragraph (2)(b), paragraph 9 shall apply, and where an examiner is appointed, paragraphs 10(2) and (3) shall apply.

EXPLANATORY NOTE

(This note is not part of the Rules)

The Planning Act 2008 (“the Act”) establishes the Infrastructure Planning Commission (“the IPC”) and provides for the granting of development consent for certain types of nationally significant infrastructure projects. Part 6 of the Act sets out the procedure for examining the majority of applications for development consent.

These Rules prescribe the procedure to be followed in connection with the examination of an application for development consent by a Panel, or a single Commissioner, or the Secretary of State following a direction under section 112(1) of the Act (power of the Secretary of State to intervene). This section provides that the Secretary of State may intervene and decide an application in place of the Commission in certain circumstances, for example where the Secretary of State is satisfied that the intervention would be in the interests of defence or national security.

These Rules do not apply to the examination of an application for development involving the construction, other than by a gas transporter of an oil or gas cross-country pipeline one end of which is in England or Wales and the other end of which is in Scotland.

Rule 3 concerns the submission of “relevant representations”. Rule 4 requires the person who chairs the IPC to notify all interested parties of the appointment of a Panel or a Single Commissioner as the Examining authority. Rule 5 concerns the initial assessment by the Examining authority of the principal issues raised by an application. Rules 6 to 9 relate to the notification of the date of the preliminary meeting, its conduct, the setting of the timetable for the examination of the application and notification of procedural decisions.

Rule 10 concerns the submission of written representations. Rules 11 and 12 relate to the appointment of assessors and barristers, solicitors or advocates respectively. Rules 13 to 15 concern the notification of, procedure for and conduct of hearings. Rule 16 is about site inspections. Rules 17 and 18 contain provisions about further information and additional copies. Rules 19 and 20 make provision for the stages after the completion of an examination and when a decision on an application is quashed in court proceedings. Rules 21 to 23 concern the availability and inspection of representations and documents, the service of notices, representations and documents and allowing of further time. Rule 24 provides that nothing in these Rules is to be taken to require or permit the disclosure of closed evidence to persons other than those specified.

The Schedule to these Rules applies where the Secretary of State has made a direction under section 112(1) of the Act (power of Secretary of State to intervene) by virtue of section 110 (intervention: defence or national security). It contains procedural provisions in respect of a request for a direction under paragraph (2)(6) of Schedule 3 to the Act (examination of matters by Secretary of State: procedure) and the examination of closed evidence. Under paragraph (2)(6) of Schedule 3 the Secretary of State may direct that representations of specified description may be made only to persons of a specified description (instead) of being in public.

Part 1 of the Schedule sets out definitions for the terms used in the Schedule.

Part 2 of the Schedule applies where the Secretary of State has received a request for a direction under paragraph 2(6) of Schedule 3. Paragraph 2 requires the Secretary of State to acknowledge the request for a direction and paragraph 3 provides that the Secretary of State must publicise the request. Paragraph 3 requires the Secretary of State to give notice of any direction made under paragraph 2(6) to the person who requested the direction, the Commission, any precluded person (a person who is prevented from hearing or inspecting closed evidence) and any appointed representative.

Part 3 of the Schedule provides for the examination of closed evidence where a direction under paragraph 2(6) of Schedule 3 has been given by the Secretary of State. Paragraph 5 describes the functions of appointed representatives Paragraph 6 provides that the Secretary of State may hold a pre-hearing meeting, where a timetable for the submission and exchange of representations may be specified, deadlines may be specified for other purposes and procedural decisions made. Paragraph 7 states that the Secretary of State should give not less than 14 days' notice of the date, time and place of the hearing. Paragraph 8 describes the procedure for hearings. Paragraph 9 concerns the appointment of an examiner. Paragraph 10 relates to the procedure after a hearing. Paragraph 11 provides that the Secretary of State may allow further time for the taking of any step. Paragraph 12 enables the Secretary of State to make an unaccompanied site visit without prior notice to the parties or an accompanied site visit.

Paragraph 13 concerns the procedure after the completion of an examination and paragraph 14 contains provision in respect of the statement of reasons that the Secretary of State must prepare in accordance with section 116 of the Act. Paragraph 15 describes the procedure that applies following the quashing of a decision by a court.

A combined impact assessment has been prepared for these Rules and for the Infrastructure Planning (Fees) Regulations 2010. It has been placed in the Library of each House of Parliament and copies may be obtained from the Planning Reform Team, Department for Communities and Local Government, First Floor, Eland House, Bressenden Place, London SW1E 5DU (Telephone 020 7944 0815). The impact assessment can be found on the Communities and Local Government website (<http://www.communities.gov.uk>).

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