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SCHEDULES

SCHEDULE 9

Sections 36, 88, 95, 97 and 103 and
paragraph 8 of Schedule 11.

DETERMINATION OF CERTAIN APPEALS BY PERSON APPOINTED BY SECRETARY OF STATE

Determination of appeals by appointed person

- 1 (1) An appeal to which this Schedule applies, being an appeal of a prescribed class, shall, except in such classes of case as may for the time being be prescribed or as may be specified in directions given by the Secretary of State, be determined by a person appointed by the Secretary of State for the purpose instead of by the Secretary of State.
- (2) Regulations made for the purpose of this paragraph may provide for the giving of publicity to any directions given by the Secretary of State under this paragraph.
- (3) This paragraph shall not affect any provision contained in this Act or any instrument thereunder that an appeal shall lie to, or a notice of appeal shall be served on, the Secretary of State.

Powers and duties of person determining appeal

- 2 (1) A person appointed under this Schedule to determine an appeal shall have the like powers and duties in relation to the appeal as the Secretary of State under whichever are relevant of the following provisions, that is to say—
- (a) in relation to appeals under section 36 subsections (3) and (5) of that section ;
 - (b) in relation to appeals under section 88 subsections (4) to (6) of that section ;
 - (c) in relation to appeals under section 95 subsections (2) and (3) of that section ;
 - (d) in relation to appeals under section 97 subsections (4) and (5) of that section ;
 - (e) in relation to appeals under section 103 sections 88(4) and (5) of this Act;
 - (f) in relation to appeals under paragraph 8 of Schedule 11 to this Act, sub-paragraph (3) of that paragraph.
- (2) The provisions of sections 36(4), 88(2), 95(4), 97(2) and paragraph 8(4) of Schedule 11 to this Act relating to the affording of an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State, shall not apply to an appeal which falls to be determined by a person appointed under this Schedule but before the determination of any such appeal the Secretary of State shall, unless (in the case of an appeal under section 36) the appeal is referred to a Planning Inquiry Commission under section 48 of this Act, ask the applicant or appellant, as the case may require, and the local planning authority whether they wish to appear before and be heard by the person so appointed, and—
- (a) the appeal may be determined without a hearing of the parties if both of them express a wish not to appear and be heard as aforesaid; and

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- (b) the person so appointed shall, if either of the parties expresses a wish to appear and be heard, afford to both of them an opportunity of so doing.
- (3) Where an appeal to which this Schedule applies has been determined by a person appointed under this Schedule, his decision shall be treated as that of the Secretary of State and—
 - (a) except as provided by Part XII of this Act, the validity of his decision shall not be questioned in any proceedings whatsoever;
 - (b) it shall not be a ground of application to the High Court under section 245 of this Act, or of appeal to the High Court under section 246 or 247 thereof, that the appeal ought to have been determined by the Secretary of State and not by that person, unless the challenge to the person's power to determine the appeal was made (either by the appellant or the local planning authority) before his decision on the appeal was given.
- (4) Where in any enactment (including this Act) there is a reference to the Secretary of State in a context relating or capable of relating to an appeal to which this Schedule applies, or to any thing done or authorised or required to be done by, to or before the Secretary of State on or in connection with any such appeal, then so far as the context permits it shall be construed, in relation to an appeal determined or falling to be determined by a person appointed under this Schedule, as a reference to that person.

Determination of appeals by Secretary of State

- 3 (1) The Secretary of State may, if he thinks fit, direct that an appeal, which by virtue of paragraph 1 of this Schedule and apart from this sub-paragraph, falls to be determined by a person appointed by the Secretary of State shall instead be determined by the Secretary of State.
- (2) A direction under this paragraph shall state the reasons for which it is given and shall be served on the person, if any, so appointed, the applicant or appellant, the local planning authority and any person who has made representations relating to the subject matter of the appeal which the authority are required to take into account under section 29(3)(a) of this Act.
- (3) Where in consequence of a direction under this paragraph an appeal to which this Schedule applies falls to be determined by the Secretary of State, the provisions of this Act which are relevant to the appeal shall, subject to the following provisions of this paragraph, apply to the appeal as if this Schedule had never applied to it.
- (4) Where in consequence of a direction under this paragraph the Secretary of State determines an appeal himself, he shall, unless (in the case of an appeal under section 36) the appeal is referred to a Planning Inquiry Commission under section 48 of this Act, afford to the applicant or appellant, the local planning authority and any person who has made any such representations as aforesaid an opportunity of appearing before and being heard by a person appointed by the Secretary of State for that purpose either—
 - (a) if the reasons for the direction raise matters with respect to which either the applicant or appellant, or the local planning authority or any such person, have not made representations; or
 - (b) if the applicant or appellant or the local planning authority had not been asked in pursuance of paragraph 2(2) of this Schedule whether they wished to appear before and be heard by a person appointed to hear the appeal, or had been asked that question and had expressed no wish in answer thereto,

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or had expressed a wish to appear and be heard as aforesaid, but had not been afforded an opportunity of doing so.

- (5) Except as provided by sub-paragraph (4) of this paragraph, where the Secretary of State determines an appeal in consequence of a direction under this paragraph he shall not be obliged to afford any person an opportunity of appearing before and being heard by a person appointed for the purpose, or of making fresh representations or making or withdrawing any representations already made; and in determining the appeal the Secretary of State may take into account any report made to him by any person previously appointed to determine it.

Appointment of another person to determine appeal

- 4 (1) Where the Secretary of State has appointed a person to determine an appeal under this Schedule the Secretary of State may, at any time before the determination of the appeal, appoint another person to determine it instead of the first-mentioned person.
- (2) If before the appointment of a person under this paragraph to determine an appeal, the Secretary of State had with reference to the person previously appointed, asked the question referred to in paragraph 2(2) of this Schedule, the question need not be asked again with reference to the person appointed under this paragraph and any answers to the question shall be treated as given with reference to him, but—
- (a) the consideration of the appeal or any inquiry or other hearing in connection therewith, if already begun, shall be begun afresh ; and
- (b) it shall not be necessary to afford any person an opportunity of making fresh representations or modifying or withdrawing any representations already made.

Local inquiries and hearings

- 5 (1) A person appointed under this Schedule to determine an appeal may (whether or not the parties have asked for an opportunity to appear and be heard) hold a local inquiry in connection with the appeal and shall hold such an inquiry if the Secretary of State directs him to do so.
- (2) Subject to sub-paragraph (3) of this paragraph, the costs—
- (a) of any hearing held by virtue of paragraph 2(2)(b) of this Schedule; and
- (b) of any inquiry held by virtue of this paragraph,
- shall be defrayed by the Secretary of State.
- (3) Subsections (2) to (5) of section 290 of the Local Government Act 1933 (evidence and costs at local inquiries) shall apply in relation to an inquiry held under this paragraph as they apply in relation to an inquiry caused to be held by a department under subsection (1) of that section, with the substitution for references to a department (other than the first reference in subsection (4)) of references to the Secretary of State,

Stopping of appeals

- 6 If before or during the determination of an appeal under section 36 of this Act which is to be or is being determined in accordance with paragraph 1 of this Schedule, the Secretary of State forms the opinion mentioned in subsection (7) of that section, he may direct that the determination shall not be begun or proceeded with.

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Supplementary provisions

- 7 (1) The Tribunals and Inquiries Act 1971 shall apply to a local inquiry or other hearing held in pursuance of this Schedule as it applies to a statutory inquiry held by the Secretary of State, but as if in section 12(1) of that Act (statement of reasons for decisions) the reference to any decision taken by the Secretary of State were a reference to a decision taken by a person appointed to determine the relevant appeal under this Schedule.
- (2) The functions of determining an appeal and doing anything in connection therewith conferred by this Schedule on a person appointed to determine an appeal thereunder who is an officer of the Department of the Environment or the Welsh Office shall be treated for the purposes of the Parliamentary Commissioner Act 1967—
- (a) if he was appointed by the Secretary of State for the time being having general responsibility in planning matters in relation to England, as functions of that Department; and
 - (b) if he was appointed by the Secretary of State for the time being having general responsibility in planning matters in relation to Wales, as functions of the Welsh Office.