

SCHEDULE 4

Regulation 1(10)

Closed Evidence

Modification of provisions where security direction given

1. Where a security direction has been given or a request for a security direction has been made in relation to an inquiry session these Regulations apply in accordance with paragraphs 2 to 12.
2. Where closed evidence is to be discussed at a pre-examination meeting—
 - (a) only specified persons and any appointed representative may attend the pre-examination meeting while closed evidence is being discussed; and
 - (b) the notice to be given under regulation 10(3) must state that while closed evidence is being discussed at the pre-examination meeting attendance at the meeting is restricted to specified persons and any appointed representative.
3. Where a site inspection will involve inspection of closed evidence—
 - (a) regulation 12 does not apply; and
 - (b) the appointed person may inspect the land in the company of specified persons and any appointed representative.
4. Where the appointed person is notified that a security direction has been given—
 - (a) before the appointed person gives notice that an inquiry session is to be held under rule 1(1) of the Inquiry Session Rules, the appointed person must include in that notice a statement that a security direction has been given; and
 - (b) after giving that notice, the appointed person must as soon as practicable after being notified of the making of the direction, give notice of the making of the security direction to any person known at that date to be entitled to appear at the inquiry session.
5. While closed evidence is being considered at an inquiry session the persons entitled to appear at the inquiry session is restricted to—
 - (a) specified persons; and
 - (b) any appointed representative.
6. Where any provision of these Regulations requires or permits a document (or other materials or evidence) to be sent to any person that provision is to be read as requiring, or permitting—
 - (a) the sending of such documents (or other materials or evidence) which contain or make reference to any closed evidence to specified persons or any appointed representative; and
 - (b) the sending of such documents (or other materials or evidence) to any other person only to the extent that they do not contain or make reference to any closed evidence.
7. Where any rule of the Inquiry Session Rules requires or permits an inquiry statement (including any amended or additional inquiry statement) to be sent to any person that rule is to be read as requiring, or permitting—
 - (a) a closed inquiry statement to be sent to specified persons and any appointed representative; and
 - (b) an open inquiry statement to be sent to any other person.
8. Where any rule of the Inquiry Session Rules requires or permits a precognition (including any amended or additional precognition) to be sent to any person that rule is to be read as requiring, or permitting—
 - (a) a closed precognition to be sent to specified persons and any appointed representative; and

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(b) an open precognition to any other person.

9. Where closed evidence was considered at an inquiry session the assessor, where one has been appointed, if making a report in accordance with regulation 30 is to set out in a separate part (“the closed part”) of the report any matters which relate to that evidence.

10. Where the appointed person’s reasons for a decision relate to matters in respect of which closed evidence has been given, nothing in these Regulations requires notification of those reasons to any person other than a specified person and any appointed representative.

11. Closed evidence must not be published and nothing in these Regulations is to be taken to require or permit closed evidence to be disclosed to a person other than—

- (a) a specified person; and
- (b) any appointed representative.

12.—(1) In this Schedule—

“appointed representative” means a person (who is also a specified person) to represent the interests of any party to the inquiry, under or by virtue of—

- (a) section 265A(5) of the Act (planning inquiries to be held in public subject to certain exceptions); or
- (b) paragraph 6(7) of Schedule 3 to the Listed Buildings Act (determination of certain appeals by person appointed by the Scottish Ministers);

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

“closed inquiry statement” means such part (if any) of an inquiry statement as includes or refers to closed evidence;

“closed precognition” means such part (if any) of a precognition as includes or refers to closed evidence;

“open inquiry statement” means such part (if any) of an inquiry statement as does not include or refer to closed evidence;

“open precognition” means such part (if any) of a precognition as does not include or refer to closed evidence;

“potentially closed evidence” means evidence in respect of which a request for a security direction has been made; and

“specified person” means a person specified in, or a person of such description as is specified in, a security direction as being entitled to hear or inspect closed evidence.

(2) Where a request for a security direction has been made to the Scottish Ministers or the Secretary of State but no determination as to whether or not to give a direction has been made, references in paragraphs 2 to 12(1) to closed evidence are to be treated as references to potentially closed evidence and references to specified persons are to be treated as references to persons who, in terms of the request for a direction, would be permitted to hear or, as the case may be, inspect closed evidence if a security direction is given.