
DRAFT STATUTORY INSTRUMENTS

2011 No.

The Marine Licensing (Licence
Application Appeals) Regulations 2011

PART 5

Hearings and inquiries

Scope

11. This Part applies if an appeal is to be determined by way of hearing or inquiry (but certain provisions apply only to hearings or only to inquiries).

Establishing the hearing or inquiry

12.—(1) The Secretary of State must set a date for the hearing or inquiry (“the relevant date”).

(2) The Secretary of State must, at least 6 weeks before the relevant date, give notice of the relevant date to the appellant, the Authority and any person who has made representations concerning the appeal.

(3) The Authority must, at least 3 weeks before the relevant date, publish notice of the appeal in such manner as the Authority thinks is best calculated to bring it to the attention of any persons likely to be interested in it.

(4) If the relevant date is changed the procedure in paragraphs (2) and (3) must be repeated.

Pre-inquiry meeting

13.—(1) The appointed person may hold a pre-inquiry meeting to determine the matters to be addressed and the procedure to be followed at an inquiry.

(2) The Secretary of State must give at least 4 weeks’ notice of such a meeting to—

- (a) the appellant and the Authority;
- (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 the appointed person considers desirable.

(3) At the meeting, the appointed person may give directions to the appellant, the Authority and any other person wishing to appear at the inquiry about things to be done in preparation for the inquiry and the date by which they must be done.

Statement of agreed facts – inquiries

14.—(1) The appellant and the Authority must together prepare a statement containing agreed factual information about the subject matter of the appeal.

(2) The Authority must ensure that the appointed person receives that statement at least 4 weeks before the inquiry date.

Proofs of evidence – inquiries

15.—(1) This regulation applies where a person entitled to appear at an inquiry intends to give, or to call a witness to give, evidence at the inquiry.

(2) The person must, at least 4 weeks before the inquiry date or such other time as the appointed person directs, send a proof of the evidence intended to be given together with any written summary required to the Secretary of State.

(3) The Secretary of State must, as soon as practicable after receiving a proof of evidence, send a copy of it to the appellant, the Authority and any other person who has sent 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 may be read at the inquiry, unless the appointed person directs otherwise.

(6) 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 appointed person that the 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.

(7) The appointed person may allow any person to alter or add to a proof of evidence or summary so far as may be necessary for the purposes of the inquiry.

(8) But if this is done, the appointed person 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.

(9) This regulation is subject to regulation 17.

Procedure

16.—(1) Except as otherwise provided in these Regulations, the appointed person may determine the procedure to be followed at a hearing or an inquiry.

(2) Once the hearing or inquiry has started the appointed person may adjourn it at any time.

(3) The persons entitled to appear are—

(a) the appellant;

(b) the Authority; and

(c) any person who has made representations concerning the appeal.

(4) The appointed person may proceed in the absence of any person entitled to appear.

(5) The appointed person may permit any other person to appear, and such permission must not be unreasonably withheld.

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

(7) A person entitled to appear may call evidence, but the calling of evidence is otherwise at the appointed person's discretion.

(8) Cross-examination is not permitted at a hearing unless the appointed person considers that it is required to ensure a thorough examination of the main issues.

(9) If the appointed person considers that cross-examination is required, the appointed person must consider, after consulting the appellant and the Authority, whether to close the hearing and start an inquiry instead.

(10) A person entitled to appear at an inquiry may cross-examine persons giving evidence, but the cross-examination of persons giving evidence at an inquiry is otherwise at the appointed person's discretion.

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

(12) If the appointed person so decides, a hearing or an inquiry may be held wholly or partly in private.

(13) This regulation is subject to regulation 17.

Powers to exclude persons, evidence etc

17.—(1) If, at any stage of a hearing or inquiry, the appointed person considers that any of the reasons referred to in paragraph (2) apply, the appointed person may prevent any person from—

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

(2) The reasons are—

- (a) that the evidence or matter was not provided within the relevant time limits;
- (b) that the evidence or matter was otherwise not provided in accordance with any provision of these Regulations or with any direction given or requirement made by the appointed person under these Regulations;
- (c) that the evidence or matter is irrelevant or repetitious; or
- (d) that the person is behaving or has behaved in a disruptive manner at the hearing or inquiry.

(3) Without prejudice to the powers in paragraph (1), if any person at the hearing or inquiry behaves in a disruptive manner the appointed person may—

- (a) require that person to leave;
- (b) prevent that person from participating in the hearing or inquiry; or
- (c) permit that person to remain at, or participate in, the hearing or inquiry only on specified conditions.

(4) Where the appointed person refuses to permit a person to give oral evidence under paragraph (3), the person may submit to the appointed person any evidence or other matter in writing before the close of the hearing or inquiry (but this is subject to paragraph (1)).

Additional provisions as to evidence and costs

18.—(1) Subsections (2) to (5) of section 250 of the Local Government Act 1972(1) (local inquiries: evidence and costs) apply, with the modifications described in paragraph (2), to any hearing or inquiry under these Regulations as they apply to inquiries under that section.

(2) The modifications are—

- (a) the reference to the person appointed to hold the inquiry is to be read as a reference to the appointed person;
- (b) the reference to a local authority in proviso (b) to subsection (2) is to be read as a reference to the Authority;

(1) 1972 c. 70. Section 250 has been amended by the Criminal Justice Act 1982 (c. 48), sections 37, 38 and 46, by the Housing and Planning Act 1986 (c. 63), section 49(2) and Schedule 12 and by the Statute Law (Repeals) Act 1989 (c. 43).

- (c) the reference to “such local authority” in subsection (4) is to be read as a reference to the Authority;
- (d) references to the Minister causing an inquiry to be held are to be read as references to the appointed person.

(3) Section 322A of the Town and Country Planning Act 1990⁽²⁾ (orders as to costs where no hearing or inquiry takes place) applies in relation to a hearing or an inquiry under these Regulations as it applies in relation to a hearing or local inquiry referred to in that section.

(4) Subject to paragraphs (1) and (3), the costs of a hearing or an inquiry held under these Regulations must be defrayed by the Secretary of State.

Concurrent or combined inquiries

19.—(1) Paragraph (2) applies where—

- (a) the appeal is to be determined by an inquiry, and
- (b) in the case of some other matter required or authorised to be the subject of an inquiry (“the other inquiry”), it appears to the relevant authority or authorities that the matters are so far cognate that they should be considered together.

(2) The relevant authority or authorities may direct that the two inquiries be held concurrently or combined as one inquiry.

(3) In this regulation “the relevant authority or authorities” means the Secretary of State or, where causing the other inquiry to be held is the function of some other person, the Secretary of State and that other person acting jointly.

National security – inquiries

20.—(1) If, in the case of any particular appeal, the Secretary of State certifies that it would in the opinion of the Secretary of State be contrary to the interests of national security—

- (a) if an inquiry under these Regulations were to be held, or
- (b) if any members of the public, or any specified persons, were to be admitted to the inquiry or some specified part of it,

the inquiry is not to be held or, as the case may be, the public is not, or those persons are not, to be admitted to the inquiry or that part of it.

(2) In paragraph (1) “specified persons” means—

- (a) persons specified in the certificate, or
- (b) persons of a description specified in the certificate.

(2) 1990 c. 8. Section 322A was inserted by the Planning and Compensation Act 1991 (c. 34), section 30(1), and subsection (1A) of section 322A was inserted by the Planning Act 2008 (c. 29), section 196(4) and Schedule 10, paragraphs 1 and 11.